

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

**Board Conference Room
915 Capitol Mall, 3rd Floor
Sacramento, CA 95814**

November 8, 2006

Time: 10:00 a.m.

Members Present: Chairwoman Raymundo, Members Shiroma and Rivera-Hernandez

Members Absent: None.

Staff Present: General Counsel Lee, Executive Secretary Barbosa, Board Counsels Wender, Murray and Heyck, and Analyst Massie.

Staff Absent: None.

OPEN SESSION

- 1. Approval of Minutes:** The Board minutes for November 1, 2006 were approved 3-0.
- 2. Public Comments:** None
- 3. Chair Budget Report:** Chairwoman Raymundo will meet with Budget Officer Vogel and Accounting Officer Davis regarding the proposed 2007-08 budget.
- 4. General Counsel Report:** Two charges have been filed. General Counsel Lee received the State Agency Requirements Review Manual from Department of Finance.
- 5. Executive Officer Report:**

ELECTION REPORT

NOTICE OF INTENT TO TAKE ACCESS (NA) AND NOTICE OF INTENT TO ORGANIZE (NO):

San Martin Mushrooms, Inc., 06-RC-1-SAL

On October 23, 2006, the United Farm Workers of America filed an NA, an NO and a petition for certification with the Salinas Regional Office seeking to organize the agricultural employees of San Martin Mushrooms, Inc. The employer is located in San Martin, CA and grows mushrooms in Santa Clara County. The unit consists of all agricultural employees (31) of the employer in Santa Clara County. The election was held on October 30, 2006 with the following results:

UFW	23
No Union	8
Unresolved CBs	<u>0</u>
Total	31

Election objections, if any, were due postmarked November 6, 2006. None were filed. On November 8, 2006 the Executive Secretary issued a certification of representative as the UFW were a majority of the valid ballot cast and neither party filed objections to the election.

Giumarra Farms, Inc., 06-NA-48-VI

The UFW filed an NA with the Visalia Regional office on September 13, 2006. The petition was accepted for filing initially but following reconsideration was dismissed on September 19, 2006. On September 19, 2006, the UFW filed a request for review of that dismissal. On September 22, 2006 the Board issued its decision in 32 ALRB No. 4 overturning the Visalia Regional Director's decision to dismiss the notice of intent to take access and reinstating the NA. Since this decision, the UFW has now filed an NO with the office and has been taking worksite access in accordance with the previously filed NA. The employer's response was received October 11, 2006 and is being reviewed to see if the union has met the 10% showing. The union submitted additional authorization cards and, October 23, 2006, made the requisite showing to obtain the employer list.

PENDING ELECTION MATTERS:

G H & G Zysling Dairy, 05-RC-4-VI

On April 20, 2005 petitioner UFCW Local 1096 filed a rival union petition with the

Visalia Regional Office seeking to organize the agricultural employees of G H & G Zysling Dairy and oust the incumbent union Teamster Union, Local 517. The employer is a dairy located in Dinuba with approximately 12 employees. The election was held on April 27, 2005 with the following results:

UFCW, Local 1096 (Petitioner)	8
Teamsters, Local 517 (Incumbent)	1
No Union	4
Unresolved Challenged Ballots	<u>13</u>
Total	26

On May 9, 2005 the UFCW filed objections to the election. The objections petition is in abeyance pending completion of the challenged ballot proceeding. Since the unresolved challenged ballots are outcome determinative in number, the RD conducted a challenged ballot investigation and issued his report on July 18, 2005. The Regional Director, after reviewing all the declarations and the information provided by the parties, was unable to resolve the challenges and therefore set the matter for hearing on October 24, 2005. The hearing was held on October 24, 25 and 26. The IHE issued his decision on February 2, 2006. The petitioner, employer and Regional Director all filed exceptions to his decision on February 17, 2006. The employer filed his reply to the Regional Director's and petitioner's exceptions on March 1, 2006. The Board issued its decision on June 14, 2006 (32 ALRB No. 2). On July 6, 2006 the Regional Director issued a revised tally of ballots with the following results:

UFCW, Local 1096 (Petitioner)	8
Teamsters, Local 517 (Incumbent)	1
No Union	12
Unresolved Challenged Ballots	<u>1</u>
Total	22

On July 11, 2006, the Executive Secretary issued his order dismissing election objections. In accordance with the Board's decision in Zysling Dairy, 32 ALRB No. 2, the order included setting for hearing the additional objection set forth in the Board's decision: whether payments to three employees amounted to coercive misconduct which interfered with the integrity of the election process. (Decision, p. 15) The hearing on objections is scheduled November 14, 2006. On November 6, 2007 the petitioner requested withdrawal of its objections and cancellation of the investigative

hearing. On November 7, 2006 that request was granted and the hearing was cancelled. The Executive Secretary also issued a certification of results of election as the no union choice received a majority of the valid ballots cast and the Executive Secretary determined that the petitioner's request to withdraw objections be with prejudice as the objections could not be re-filed under the statute or regulations.

Giumarra Vineyards Corporation and Giumarra Farms, Inc., 05-RC-7-VI

On August 25, 2005, petitioner United Farm Workers (UFW) filed a representation petition with the Visalia Regional Office seeking to organize the agricultural employees of Giumarra Vineyards Corporation and Giumarra Farms, Inc. The employer is involved in the production of grapes and potatoes and has approximately 3110 employees in Kern and Tulare counties. The election was held on September 1, 2005 with the following results:

UFW	1121
No Union	1246
Unresolved Challenged Ballots	<u>171</u>
Total	2538

Since the unresolved challenged ballots were outcome determinative in number, the RD conducted a challenged ballot investigation and issued his report on October 14, 2005. The Employer filed one exception to the report on October 26, 2005. On October 31, 2005, the Board issued its decision and order on challenged ballots. The Board adopted the RD's recommendations, i.e., to open and count 41 overruled challenged ballots and thereafter issue a revised tally of ballots. On November 14, 2005 the RD opened and counted the 41 overruled challenged ballots and issued the following revised and now final tally:

UFW	1141
No Union	1266
Unresolved Challenged Ballots	<u>123</u>
Total	2530

As the remaining unresolved challenged ballots were not outcome determinative, the Executive Secretary proceeded with consideration of the election objections filed by the UFW. On November 17, 2005 the Executive Secretary issued his order setting eight (8) objections for an evidentiary hearing and partially dismissing two (2)

objections that were not supported by sufficient declaratory support. The UFW sought review of a single partially dismissed objection, which was denied by the Board. An investigative hearing was held from February 28, 2006 to March 9, 2006 in Bakersfield before Investigative Hearing Examiner (IHE) James Wolpman. The parties' post-hearing briefs were received June 9, 2006. The IHE's decision issued August 7, 2006. On August 16, 2006 the Board issued an order remanding the case to the IHE for reconsideration of his calculation of the potential effect on the outcome of the election from the number of votes he found to have been tainted by election misconduct. On August 17, 2006 the IHE issued a modified decision setting aside the election. On September 26, 2006 the employer filed exceptions to the IHE's recommended decision. The UFW filed a reply on October 6, 2006. The matter is now before the board for decision.

Artesia Dairy, 06-RC-1-VI

On February 28, 2006, the United Farm Workers filed a representation petition with the Visalia Regional Office seeking an election amongst the agricultural employees of Artesia Dairy Farms LLC in Corcoran, CA. The employer is a dairy with approximately 45 employees. The election was held on March 7, 2006. The tally of ballots showed the following:

UFW	25
No Union	24
Unresolved Challenged Ballots	<u>15</u>
Total	64

As the number of challenged ballots was outcome determinative, the Regional Director conducted an investigation to determine whether the challenges should be sustained or overruled. Election objections, if any, were due on March 14. No objections were filed. The Regional Director issued his Challenged Ballot Report on June 12, 2006. On June 22, 2006 the employer filed its exceptions to the Regional Director's report. The Board's decision in Artesia Dairy issued August 2, 2006. A telephone conference was held October 17, 2006. The hearing on challenged ballots was held from October 24-27, 2006 in Visalia, CA. The parties are awaiting receipt of the hearing transcripts and the designation of the post hearing brief due date.

Valley View Farms, 06-RD-3-VI

On July 10, 2006, agricultural employee Sergio Ozuna Lopez filed a decertification

petition with the Visalia Regional Office seeking to decertify the incumbent union, UFCW Local 1096, at Valley View Farms. The employer operates a dairy in Hanford, CA with approximately 41 employees. The election was held on July 17, 2006 and yielded the following results:

UFCW	17
No union	16
Unresolved Challenged Ballots	<u>5</u>
Total	38

The number of unresolved challenged ballots is sufficient to affect the outcome of the election. The Regional Director issued his challenged ballot report on September 5, 2006. Exceptions, if any, were due on September 15, 2006. No exceptions were filed. The Executive Secretary's issued his order making the Regional Director's Challenged Ballot Report final and directing that the ballots be processed as outlined in the report. The election case will be held in abeyance pending resolution of three pending unfair labor practice (ULP) charges relating to three of the individuals whose ballots were challenged. On July 24, 2006 the employer filed objections to the election which also will be held in abeyance pending resolution of the three ULP charges. The Executive Secretary has requested that the investigation of these charges be expedited which the General Counsel has agreed to do.

Bayou Vista Dairy, 06-RD-4-VI

On July 18, 2006, agricultural employee Alejandro Ayala filed a decertification petition with the Visalia Regional Office seeking to decertify the incumbent union, UFCW Local 1096, at Bayou Vista Dairy. The employer operates a dairy in Tipton, CA with approximately 80 employees. The election was held July 25, 2006. On August 2, 2006 the employer and then the union filed objections to the election which are pending before the Executive Secretary on review. On July 24, 2006, an unfair labor practice (ULP) charge alleging conduct that may impact the election was filed against the employer. Immediately following the election, the Regional Director of the Visalia Regional Office informed all parties that due to the filing of the ULP charge, he would impound the ballots cast in the election until he completes his expedited investigation of the ULP charge. On August 14, 2006 the Regional Director completed his investigation of the pending ULP and issued a complaint in this matter. On September 11, 2006 the Regional Director dismissed the decertification petition finding that employer threats made one day prior to the election created an atmosphere where it

became impossible to conduct the election where employees could exercise their choice in a free and uncoerced manner. Any request for review was due September 21, 2006. No request for review was timely filed. On October 5, 2006 the Board issued an administrative order (Admin Order No. 2006-07) requesting briefing on the question whether the Regional Director exceeded his authority by dismissing the underlying election petition after the election had been conducted. The regional director filed his responsive brief on October 20, 2006. Replies, if any, were due October 27, 2006. No replies were received. The matter is now ripe for decision.

COMPLAINT REPORTS

PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED

None.

HEARINGS HELD:

None.

ONE CASE ON CALENDAR:

Hess Collection Winery, 01-CE-08-SAL

Pre-Hearing Conference November 30, 2006

Hearing February 27, 2007

ONE CASE PENDING ALJ/IHE DECISION:

Artesia Dairy, 06-RC-1-VI

Pre-Hearing Conference held October 17, 2006.

Hearing held October 24-27, 2006

ALJ/IHE DECISIONS ISSUED:

UFW (Virgen/Mendoza), 04-CL-1-VI (OX)

Hearing closed June 16, 2006.

ALJD issued November 7, 2006

ONE CASE PENDING EXCEPTIONS OR REPLY:

UFW (Virgen/Mendoza), 04-CL-1-VI (OX)

Exceptions due December 1, 2006

Reply due December 15, 2006

CASES PENDING BOARD DECISION:

Giumarra Vineyards Corporation and Giumarra Farms, Inc., 05-RC-7-VI
Exceptions were filed September 26, 2006. UFW filed its reply to exceptions on October 6, 2006.

Bayou Vista Dairy, 06-RD-4-VI

Order Requesting Briefing re Regional Director's Authority to Dismiss Petition was issued October 5, 2006.

CASES PENDING SETTLEMENT:

None.

CASES SETTLED OR RESOLVED:

None.

COMPLIANCE CASES CLOSED:

None.

CASES TRANSFERRED TO BOARD FOR DECISION:

Giumarra Vineyards Corporation and Giumarra Farms, Inc., 05-RC-7-VI
Request for Review of IHE recommended decision.

BOARD DECISIONS:

None.

REQUESTS UNDER MANDATORY MEDIATION AND CONCILIATION LAW:

Hess Collection Winery, Request for Mediation, 2003-MMC-01:

In *Hess Collection Winery* (2003) 29 ALRB No. 6, the Board issued its first decision under the new mandatory mediation and conciliation law, denying the Hess Collection Winery's (Employer) petition for review of the mediator's report imposing final terms of a collective bargaining agreement. The Employer requested that the Board vacate

and set aside the mediator's report for a variety of reasons. The Board found no basis for accepting review of the mediator's report and denied the Employer's petition in full. On November 14, 2003, the Employer filed a petition for a writ of review in the Court of Appeal, Third Appellate District pursuant to Labor Code section 1164 seeking review of the Board's Order and Decision in Hess Collection Winery. The certified record was filed with the court on November 24, 2003. On November 24, 2003, the court requested the parties provide supplemental briefing regarding the petitioner's stay request. The petitioner's supplemental letter brief addressing legal authority for, and the appropriateness of the stay was filed December 1, 2003. On December 11, 2003, the parties filed a stipulation to stay the Board's decision pending resolution of the appeal. Petitioner's opening brief was filed with the court on December 23, 2003. On February 4, 2004, the court granted the UFW's request to file an amicus brief, and accepted the brief filed with the request. On February 19, 2004, the court issued a writ of review, directing the ALRB and the real party in interest (UFCW) to file returns (responses) by March 10, with Hess' replication (reply) due 10 days thereafter (Originally, the court treated the case as if it was governed by Rule 59 of the CA Rules of Court, which governs the procedures for review of final Board orders in unfair labor practice cases. Section 1164.9 of the MMC statute speaks of court review of Board orders fixing a contract in more traditional writ of review terms).

On July 5, 2006, the 3rd District Court of Appeal rejected Hess Collection Winery's' constitutional challenge to the mandatory mediation statute, by a 2•1 decision (Nicholson dissenting). On July 14, 2006, Hess Collection Winery filed a petition for rehearing with the 3rd District Court of Appeal. On July 20, 2006 the court denied Hess' petition for rehearing. The petitioner filed a petition for review in the Supreme Court on August 10, 2006. The Supreme Court denied the petition for review on September 13, 2006. Pursuant to Rule 13, Hess has 90 days from September 13 to file with the U .S. Supreme Court (approximately December 13, 2006). On September 22, 2006, the UFCW requested that the ALRB General Counsel take immediate action to enforce compliance. The General Counsel has informed the Executive Secretary that it will be pursuing enforcement of this matter. Absent a court order the Board's order is not stayed pending filing with the U.S. Supreme Court.

Valley View Farms and Valley View Farms Dairy, 2006-MMC-02

The Board issued an order directing the parties to mandatory mediation and conciliation on October 12, 2006. (Admin Order No. 2006-08). The parties have selected a mediator and a schedule of negotiation sessions will follow, assuming the

mediator is available to hear this case.

Bayou Vista Dairy and Bayou Vista Farms West, 2006-MMC-01

The Board issued an order directing the parties to mandatory mediation and conciliation on October 19, 2006. (Admin Order No. 2006-09)

COURT LITIGATION:

Western Growers Association, et al., 03AS00987

This lawsuit, which challenges the constitutionality of the mandatory mediation and conciliation law (SB 1156 and AB 2596, codified as Labor Code sections 1164 to 1164.14), was originally filed on February 24, 2002 in the Sacramento County Superior Court. Initially the court ruled that the matter was not ripe for adjudication. Following the issuance of a decision fixing the terms of a collective bargaining agreement in the Hess Collection Winery matter (see below), the plaintiffs filed an amended complaint in the Sacramento County Superior Court. On December 22, 2003, a demurrer and request for a stay of the matter pending the resolution of a related case (Hess) was filed on behalf of the Board. On February 18, 2004, the superior court issued a tentative ruling granting the request for a stay, which became final when no party requested to appear at the scheduled hearing. Any further action on this case will await resolution of the Hess Collection Winery v. ALRB case below.

The Hess Collection Winery, C045405

On November 14, 2003, the Employer filed a petition for a writ of review in the Court of Appeal, Third Appellate District pursuant to Labor Code section 1164 seeking review of the Board's Order and Decision in Hess Collection Winery. On December 11, 2003, the parties filed a stipulation staying the Board's order pending resolution of the appeal. Originally, the court treated the case as if it was governed by Rule 59 of the CA Rules of Court, which governs the procedures for review of final Board orders in unfair labor practice cases. Section 1164.9 of the MMC statute speaks of court review of Board orders fixing a contract in more traditional writ of review terms.

On May 25, the court issued an order asking for supplemental letter briefing related to whether the mandatory mediation process involves the delegation of legislative authority and whether such a delegation is valid. Oral argument took place on June 19, 2006. On July 5, 2006, the 3rd District Court of Appeal rejected Hess Collection Winery's' constitutional challenge to the mandatory mediation statute, by a 2•1 decision

(Nicholson dissenting). On July 14, 2006, Hess Collection Winery filed a petition for rehearing with the 3rd District Court of Appeal. On July 20, 2006 the court denied Hess' petition for rehearing. The petitioner filed a petition for review in the Supreme Court on August 10, 2006 (case no. S145732). The Supreme Court denied the petition for review on September 13, 2006. Pursuant to Rule 13, Hess has 90 days from September 13 to file with the U.S. Supreme Court. On September 22, 2006, the Union requested that the ALRB General Counsel take immediate action to enforce compliance. Absent a court order the Board's order is not stayed pending filing with the U.S. Supreme Court.

Gerawan v. Bill Lockyer (Zingale), 05 CS 00493

On May 17, 2006 the 3rd District Court of Appeal issued an order directing the Appellant Gerawan to, on or before May 30, 2006, show cause in writing why the above-captioned appeal should not be dismissed as moot. The court later extended this date to June 16, 2006 following Gerawan's motion for extension of time that was granted on May 25, 2006. On June 16, 2006 Gerawan filed its reply brief with the court. Oral argument was held on September 25, 2006 before the 3rd District Court of Appeal. On September 29, 2006 the court issued an unpublished decision dismissing the petitioner's appeal as moot. Any petition for review before the California Supreme Court was due November 8, 2006.

D'Arrigo Bros. of California, D048904

On June 29, 2006 the petitioner D'Arrigo Bros. of California filed a petition for writ of review with the Fourth Appellate District, Division One. On July 7, 2006 the court sent a letter to the parties directing that the record be prepared within ten (10) of the notice. On July 11, 2006, the ALRB filed a motion for extension of time to file the certified record to August 16, 2006, which was granted by the court on July 18, 2006. The record was filed with the court on August 16, 2006. The petitioner's opening brief is due December 14, 2006.

6. Special:

Case Statistics Tracking System – IT Consultant Steve Guida has indicated that the current contract to convert the website to current State standards needs to be revised due to the pending issuance of new standards.

Legal Secretary Position – The interview questions for the Legal Secretary position

are complete. Scheduling of interviews will occur in the near future.

Personnel – The new attorney in the Salinas office will begin work on November 20, 2006. The search for a new Business Services Officer will commence shortly.

7. Roundtable:

Greg Sabin with the Department of Personnel Administration's Saving Plus Program will be making a presentation on Approaching Retirement on Thursday, November 9, 2006 at 1:30 p.m. in the Board conference room. The Native American Heritage Commission has also been invited to attend.

The public meeting adjourned at 11:10 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.