

**STATE OF CALIFORNIA**  
**AGRICULTURAL LABOR RELATIONS BOARD**

In the Matter of:	)	
	)	
HESS COLLECTION WINERY,	)	
	)	Case No. 2003-MMC-01
Employer,	)	(29 ALRB No. 6)
	)	
and	)	
	)	
UNITED FOOD AND COMMERCIAL	)	35 ALRB No. 3
WORKERS UNION, LOCAL 5,	)	
	)	(May 19, 2009)
Petitioner.	)	
_____	)	

**DECISION AND ORDER**

**Introduction**

On January 22, 2009, ALRB Salinas Regional Director Fred Capuyan and Assistant General Counsels Joseph Mendoza and Marvin Brenner (the Region) filed a memo with the Executive Secretary of the Agricultural Labor Relations Board (ALRB) regarding a potentially outstanding compliance matter related to ALRB case no. 2003-MMC-01 (*Hess Collection Winery* (2003) 29 ALRB No. 6). The Region’s memo informed the Board that on December 4, 2008, Hess Collection Winery (Hess or Employer) and the United Food and Commercial Workers, Local 5 (UFCW or Union) had entered into a private party settlement agreement resolving “all outstanding issues” between the parties. Pursuant to the agreement the parties have agreed, among other things, to withdraw and/or otherwise cause to be dismissed pending Unfair Labor Practice charges, pending/ potentially pending

ALRB hearings, pending/ potentially pending makewhole matters, and all pending civil litigation, including at least one case related to the UFCW's efforts to confirm the mediator-imposed collective bargaining agreement that resulted from ALRB case no. 2003-MMC-01 (29 ALRB No. 6). As a result of their recent negotiations, Hess and the UFCW have also entered into a new collective bargaining agreement with the effective dates of November 28, 2008 through December 31, 2010.

The Region's position is that Hess' failure to retroactively implement a mediator-imposed collective bargaining agreement that resulted from case no. 2003-MMC-01 (29 ALRB No. 6) to cover the period from September 24, 2003 (the date the collective bargaining agreement was issued as a "mediator's report") through November 28, 2006 (the date Hess implemented the collective bargaining agreement) is non-compliance with a final Board order and is a matter that is still within the Board's jurisdiction to enforce. The Region argues that individuals employed by Hess during the period covered by the above dates are owed a "makewhole" remedy which would be comprised of the difference in wages and benefits provided for in the 2003 mediator-imposed collective bargaining agreement and the wages and benefits they actually received during this time. <sup>1</sup>

The Region requests in its January 22, 2009 memo that the Board inform it whether the Board views Hess' failure to retroactively implement the 2003 collective bargaining agreement and the parties' agreement dispensing with all outstanding issues

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<sup>1</sup> The Region's memo indicates that staff has calculated a makewhole specification for this period in the amount of \$565,018.14, less any appropriate deductions.

stemming from case no. 2003-MMC-01 as a compliance matter within the Board's jurisdiction.

As the Region's memo raised novel issues, the Board issued Administrative Order 2009-03 on February 9, 2009, requesting that the parties, including the ALRB General Counsel and/or Salinas regional office, submit briefs setting forth their positions on questions posed by the Board and raised as a result of the Region's memo. Briefing was completed on April 2, 2009.

### **Preliminary Procedural Matter**

As a preliminary procedural matter, the Board will rule on motions made by Hess and the General Counsel during the course of briefing in this case. Administrative Order 2009-03 set a March 2, 2009 due date for opening briefs with reply briefs due on March 12, 2009. On March 2, just prior to the time any party filed briefs with the ALRB's Executive Secretary, it came to the Board's attention that the Salinas regional office had not been included on the proof of service attached to the Board's February 9, 2009 order requesting briefing on novel issues, and that the Region was not prepared to file a brief. It was subsequently determined that while Salinas Regional Director Capuyan had not received actual service of Administrative Order 2009-03, he had received actual notice of the order on February 9, 2009. Therefore, the Board set forth a revised briefing schedule in Administrative Order 2009-05. That order set forth new due dates for the filing of both opening briefs and replies and also precluded the Salinas Regional office and/or General Counsel from filing an opening brief. However, the order permitted all parties, including the Salinas Regional office

and/or General Counsel, to file reply briefs limited to responses to issues raised in the respective parties' opening briefs.<sup>2</sup>

On April 2, 2009, Hess filed a motion to strike the General Counsel's March 23, 2009 reply brief on the grounds that it went beyond responding to issues raised in Hess' opening brief. In the alternative, Hess requested that the Board accept a response to the General Counsel's reply brief that accompanied Hess' motion.

In its reply brief on novel issues filed on March 23, 2009, the General Counsel requested that the Board strike a portion of Hess' opening brief as non-responsive to the questions the Board presented to the parties in Administrative Order 2009-03.

The Board denies Hess' motion to strike the General Counsel's reply brief and also denies the General Counsel's request that the Board strike portions of Hess' opening brief. The Board grants Hess' request to submit a response to the General Counsel's reply brief, and has considered the response accompanying Hess' April 2, 2009 motion.

The Board finds that the General Counsel's reply brief complies sufficiently with the Board's requirement in Administrative Order 2009-05 that reply briefs be limited to responses to issues raised in the respective parties' opening briefs. Ordinarily, points raised for the first time in a reply brief will not be considered, "because such consideration would deprive the respondent of an opportunity to counter the argument." (*Reichardt v. Hoffman* (1997) 52 Cal.App.4th 754, 764, quoting *American Drug Stores, Inc. v. Stroh* (1992)

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<sup>2</sup> The only reply brief received on March 23, 2009 was from the ALRB Salinas Regional Office/General Counsel. The reply brief filed by the Salinas regional office will be referred to as the "General Counsel's Brief."

10 Cal.App.4th 1446, 1453.) Although the General Counsel's reply contains arguments not specifically raised by Hess, these arguments are responsive to the arguments Hess provides in its opening brief on the issues framed by the Board. However, we find it appropriate to consider the response proffered by Hess in light of the fact that it would have had the opportunity to address those arguments had the General Counsel timely filed an opening brief. The Board will therefore consider the response Hess has filed to the General Counsel's reply brief. The Board can best assess the merits of the novel matters currently before it by considering a complete statement of the parties' positions.

While there are portions of Hess' opening brief that go beyond the precise question posed by the Board regarding equitable remedies, and the General Counsel requests this language be stricken, we find it unnecessary to strike it from the record. The Board is capable of assigning the appropriate weight to all the information provided.

### **Background**

On April 3, 2003, the UFCW filed a declaration with the Board pursuant to the then-new mandatory mediation and conciliation (MMC) law (California Lab. Code §1164 et seq.). The Board ordered the parties to mandatory mediation and conciliation on May 21, 2003. On September 17, 2003, the mediator, Gerald McKay, conducted a MMC session. Hess did not attend or participate in the session. On September 24, 2003, the mediator filed a report with the Board setting forth the provisions of a collective bargaining agreement

between the parties. The agreement was to be in full force and effect from October 1, 2003 to July 1, 2005.<sup>3</sup>

On October 6, 2003, Hess filed a petition for review of the mediator's report with the Board. Hess requested that the Board vacate and set aside the mediator's report for a variety of reasons, primarily arguing that the mediator's report and the process leading to it violated state and federal constitutional rights.

On October 16, 2003, the Board issued a decision and order denying Hess' petition in full. Pursuant to California Labor Code section 1164.3, subdivision (d), the Board ordered that the mediator's report establishing the final terms of the collective bargaining agreement become the final order of the Board and that it take immediate effect. The Board's decision and order are found at *Hess Collection Winery, supra*, 29 ALRB No. 6.

On November 14, 2003, Hess filed a petition for a writ of review in the California Court of Appeal, Third Appellate District challenging the validity of the MMC amendments to the Agricultural Labor Relations Act (ALRA). On December 11, 2003, the parties filed a stipulation seeking a stay of the Board's order (and thus staying the implementation of the collective bargaining agreement) pending resolution of the appeal.

On July 5, 2006, the Court of Appeal rejected Hess' constitutional challenge to the MMC statute and affirmed the order of the Board (see *Hess Collection Winery v. ALRB* (2006) 140 Cal.App.4th 1584). On July 14, 2006, Hess filed a petition for rehearing with the

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<sup>3</sup> Article 28, the duration clause of the agreement, contained an automatic renewal provision stating that the agreement would automatically renew itself upon expiration unless either party gave written notice 60 days prior to the expiration date.

Court of Appeal which was denied on July 20, 2006. Hess then filed a petition for review in the California Supreme Court on August 10, 2006 which was denied on September 13, 2006.<sup>4</sup>

On September 20, 2006, after the litigation was complete, the Union contacted counsel for Hess and demanded implementation of the mediator-imposed collective bargaining agreement. More than two months later, following a series of verbal and written communications between Hess, the Union, the ALRB's General Counsel and ALRB Salinas regional office staff, Hess implemented the collective bargaining agreement effective November 28, 2006. Hess did not pay any amounts for wages and/or benefits retroactive to the original effective date of the collective bargaining agreement, October 1, 2003. The December 4, 2008 private global settlement agreement between Hess and the UFCW does not provide for any retroactive payments stemming from the mediator-imposed collective bargaining agreement.

The General Counsel's brief in this matter indicates that during a telephone conversation on or about October 20, 2006, Salinas regional staff informed counsel for Hess that the Region's position was that Hess was liable for backpay/makewhole amounts covering the period from the date of the Board's final order in 29 ALRB No. 6 to the date Hess actually implemented the collective bargaining agreement, and that counsel for Hess did not dispute that position at the time. The General Counsel states that subsequent to the October 2006

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<sup>4</sup> As the Court of Appeal had lifted the stay of the Board's decision, effective upon its opinion becoming final, the stay was lifted as of the date the Supreme Court denied review. Following the California Supreme Court's denial of Hess' petition for review of the Court of Appeal's decision upholding case no. 29 ALRB No. 6, Hess had 90 days to file a petition for writ of certiorari with the U.S. Supreme Court but did not do so.

phone conversation, but before November 12, 2006, the Region and the Union were informed by Hess that the collective bargaining agreement would be implemented no later than December 1, 2006.

While Counsel for Hess does not expressly deny that the October 2006 telephone conversation took place, Hess' position is that the Salinas Regional Director's recall of what was said in October 2006 is "a creative rewriting of history." Hess argues that it is irrelevant whether or not Hess' counsel disputed the Region's position on retroactive amounts due under the collective bargaining agreement at the time because the Region never issued a makewhole specification setting forth amounts allegedly owed, nor did the General Counsel or Salinas regional staff take any action to enforce the Board's order in 29 ALRB No. 6. Hess states that the first time the Region informed Hess of any specific makewhole amounts allegedly owing was in the January 22, 2009 memo from the Region requesting advice on the Board's jurisdiction.

### **Analysis and Conclusions**

At issue in this case is whether the parties are required to treat the portion of their global settlement agreement dispensing with all outstanding issues stemming from the Board's final order in case no. 2003-MMC-01 (29 ALRB No. 6) as a formal settlement agreement subject to Board approval as required by Section 20298 of the Board's regulations.<sup>5</sup>

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<sup>5</sup> Board regulation section 20298 (d)(1) states that "an informal settlement agreement may only be used to adjust a charge or complaint. It may not be used to adjust a specification, notice of hearing without specification, or previous Board order..." (Emphasis added). Board

(Footnote continued----)

The Board has reviewed and considered briefs filed by the parties and the General Counsel. Both Hess and the Union have expressed their satisfaction with the global settlement and new collective bargaining agreement, and both take the position that the agreement serves to remedy outstanding issues between the parties and benefits the employees in the bargaining unit. It is the policy of the Board to encourage voluntary settlement agreements; however, the Board's jurisdiction over settlement agreements requires it to enforce public interests, not private rights, and to reject settlement agreements that are repugnant to the Act. (Cf. *Independent Stave Co, Inc.* (1987) 287 NLRB 740 741; See also *NLRB v. Hiney Printing Co.* (6th Cir. 1984) 733 F.2d 1170 [“[T]he Board is charged with serving the public interest to enforce labor relations rights which are public, not private rights.”].) As the General Counsel points out, there are other aggrieved parties in this matter whose interests may not have been represented in the negotiations that lead to the global settlement agreement, namely the direct-hire employees who were deprived of the benefits of the mediator-imposed contract from 2003 to 2006 while Hess pursued its court challenge. If

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(---footnote continued)

regulation section 20298 (d)(2) states that “a formal settlement agreement may be used to adjust a charge, complaint, specification, notice of hearing without specification, or previous Board order. Any agreement reached after the taking of testimony must be a formal agreement.” Regulation section 20298(f) sets out the process for review of formal settlement agreements entered into at different stages of the ULP process. Under section 20298(f)(1)(A), a formal settlement agreement must be submitted directly to the Board for review along with a statement of support of the agreement from the General Counsel. The Board then reviews the agreement to ensure that it is in accordance with the policies of the Act.

these individuals are no longer employed by Hess, then they will not benefit from the new collective bargaining agreement and global settlement.

For the reasons discussed below, the Board finds that Hess' failure to pay makewhole for the three-year period from the original effective date of the collective bargaining agreement which took effect as a final Board order <sup>6</sup> in case no. 29 ALRB No. 6 to the date the mediator-imposed contract was actually implemented is a compliance matter that is still within the Board's jurisdiction to enforce.<sup>7</sup> By this Decision and Order, the Board draws no conclusions as to the merits of the parties' proffered compromise of amounts owing under the imposed contract. Rather, at this time we hold only that, as a compromise of a final Board order, this may be accomplished only through a formal settlement agreement subject to the provisions of Board Regulation section 20298(f), not through a private party agreement.

**Labor Code section 1164.3, subdivision (f)** <sup>8</sup>

Central to determining whether the Board retains jurisdiction to enforce compliance with its order in this matter is the Board's interpretation of the enforcement provision contained in Labor Code section 1164.3, subdivision (f). In ULP compliance

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<sup>6</sup> Pursuant to Labor Code section 1164.3(d), the mediator's report takes effect as a final order of the Board if, as was the case here, the Board finds no basis for granting review of the mediator's report.

<sup>7</sup> The period covered is October 1, 2003, the original effective date of the mediator-imposed collective bargaining agreement, to November 28, 2006, the date of actual implementation.

<sup>8</sup> All further statutory references are to the California Labor Code unless otherwise indicated.

proceedings the Board may bring an enforcement action in the appropriate superior court pursuant to Labor Code section 1160.8 once the time for review of the Board's order has lapsed and there has not been voluntary compliance with the Board's order.<sup>9</sup> The MMC provisions also contain an analogous section on enforcement; however, unlike section 1160.8, Labor Code section 1164.3, subdivision (f) contains language that may be construed as a 60-day time limit on enforcement actions.

Section 1164.3, subdivision (f) reads as follows:

(f) Within 60 days after the order of the board takes effect, either party or the board may file an action to enforce the order of the board, in the superior court for the County of Sacramento or in the county where either party's principal place of business is located. No final order of the board shall be stayed during any appeal under this section, unless the court finds that (1) the appellant will be irreparably harmed by the implementation of the board's order, and (2) the appellant has demonstrated a likelihood of success on appeal. (Emphasis added.)

Hess argues that the 60-day provision in Labor Code section 1164.3, subdivision (f) means that the Board is now without authority to seek compliance with the Board order in 20 ALRB No. 6. Hess argues that by the plain language of the statute, the last day for any party or the Board to seek enforcement with the Board's order was November 12, 2006, or 60 days after the Board's order became final on September 13, 2006. Hess states

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<sup>9</sup> Labor Code section 1160.8 provides in pertinent part: "If the time for review of the board order has lapsed, and the person has not voluntarily complied with the board's order, the board may apply to the superior court in any county in which the unfair labor practice occurred or wherein such person resides or transacts business for enforcement of its order. If after hearing, the court determines that the order was issued pursuant to procedures established by the board and that the person refuses to comply with the order, the court shall enforce such order by writ of injunction or other proper process. The court shall not review the merits of the order."

that it did comply with the order by implementing the mediator-imposed collective bargaining agreement, but that even if it had not complied, the Board is now precluded from seeking court enforcement.

In contrast, the Union reasons that no further enforcement action pursuant to 1164.3, subdivision (f) is required, because court enforcement of the Board's order in 29 ALRB. No. 6 was obtained when the Court of Appeal denied Hess' petition for review and affirmed the Board's order in September 2006. Underlying the Union's reasoning is the interpretation that the 60-day provision in 1164.3, subdivision (f) pertains only to situations where no court review of the Board's order making the mediator's report final is sought. Board orders are not self-enforcing judgments. Instead they must first be reduced to judgments by a superior court. In contrast to an unreviewed Board order, an appellate court decision affirming a Board order is a judgment which can later be enforced through the appropriate court procedures.<sup>10</sup>

The issue of whether the 60-day provision on enforcement actions in 1164.3, subdivision (f) applies in the present situation presents a question of statutory construction. In construing a statute, a court's task is to ascertain the intent of the legislature so as to effectuate the purpose of the enactment. (*Cummins, Inc. v. Superior Court* (2005) 36 Cal.4th 478, 487; *Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1386-7.) Courts "must look to the statute's words and give them their usual and ordinary meaning."

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<sup>10</sup> Labor Code section 1164.7 states that "the court of appeal [sic] or the Supreme Court shall enter judgment either affirming or setting aside the order of the board." California Code of Civil Procedure section 680.230 states that

" 'Judgment' means a judgment, order or decree entered in a court of this state."

(*People v. Wager* (2009) 45 Cal.4th 1039, 1178.) The statute's plain meaning controls the court's interpretation unless its words are ambiguous. (Id.) “[T]he ‘plain meaning’ rule does not prohibit a court from determining whether the literal meaning of a statute comports with its purpose.” (*Giammarusco v. Simon* (2009) 171 Cal.App.4th 1586, 1610 citing *County of San Bernardino v. City of San Bernardino* (1997) 15 Cal.4th 909, 943.) “[W]e ‘must select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute.’” (*Giammarusco v. Simon, supra*, 171 Cal.App.4th 1586, 1610 citing *Torres v. Parkhouse Tire Service, Inc.* (2001) 26 Cal.4th 995, 1003; *Alfred v. Pierno* (1972) 27 Cal.App.3d 682, 688.) A statute should be interpreted so as to produce a result that is reasonable. If two constructions are possible, that which leads to the more reasonable result should be adopted. (*Alfred v. Pierno, supra*, citing *In Re Kernan* (1966) 242 Cal.App.2d 488, 491.)

The structure of the statute and its various parts must also be considered. (*Lakin v. Watkins Associated Industries* (1993) 6 Cal.4th 644, 659.) The court construes the words of a statute in context and harmonizes the various parts of an enactment by considering the provision at issue in the context of the statutory framework as a whole. (*Cummins, Inc. v. Superior Court, supra*, 36 Cal.4th 478, 487, citing *Renee J. v. Superior Court* (2001) Cal.4th 735, 743.) The statute’s various components should be read together to achieve the overriding purpose of the legislation. (*Elsner v. Uveges* (2004) 34 Cal.4th 915, 933.)

While it is possible that the legislature intended the 60-day provision to apply even when a party files a petition for review of the Board’s order in the Court of Appeal, this

is not the most reasonable interpretation when the provision is viewed in context. The location of the provision containing the 60-day provision in the statute is instructive. The interpretation that the 60-day provision pertains only to situations where no court review of the Board's order is sought is supported by several textual factors. First, section 1164.3, subdivision (f) is contained in the section of the statute dealing with the Board's review of the mediator's report, not in section 1164.5 which is the section covering court review of the Board's order.<sup>11</sup>

Second, this provision is analogous to the provision of Labor Code section 1160.8 which states that where the time for seeking review of the Board order in the Court of Appeal has lapsed, and there has been no voluntary compliance with the order, the Board may seek enforcement in superior court. While section 1160.8, unlike section 1164.3, subdivision (f), has no time limit and expressly applies where the time for review has lapsed, the two provisions otherwise dovetail and are reasonably viewed as serving the same purpose, that is, both provisions establish procedures for reducing a Board order to a judgment where no appellate court review has been sought.

Finally, section 1164.7, subsection (a) provides that "the court of appeal [sic] or the Supreme Court shall enter judgment either affirming or setting aside the order of the

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<sup>11</sup> It should be noted that the final sentence of 1164.3, subdivision (f) (beginning with the phrase "No final order of the Board shall be stayed under any appeal under this section...") (emphasis added) appears to be out of place and instead belongs in Labor Code section 1164.5. That section pertains to court review of Board orders making a mediator's decision final.

board.” In a case where a judgment of the Court of Appeal affirming the Board’s order has been entered, it would be unnecessary to bring a separate proceeding in superior court under 1164.3, subdivision (f) in order to transform the Board’s order into a judgment.

The legislature’s finding in the preamble to the MMC law states that “a need exists for a mediation procedure in order to ensure a more effective collective bargaining process between agricultural employer and agricultural employees, and thereby more fully attain the purposes of the Agricultural Labor Relations Act” (Stats. 2002, ch. 1145, § 1). The MMC legislation sought to accomplish this purpose by creating a process to jump-start negotiations that have not been productive. Ideally, this process results in a voluntary agreement that requires no further involvement by the Board, either in review or enforcement. Where, as here, no voluntary agreement is reached, the process set forth by the Legislature mandates that the terms of an agreement be fixed by a mediator, subject to Board review.<sup>12</sup>

The Legislature could have provided that, once review of a mediator’s report by the Board and courts had concluded, enforcement of the imposed contract would be left solely to the parties utilizing contractual remedies. Instead, the Legislature provided that if no Board review is sought or the mediator’s report is upheld, the report becomes a “final order of the board.” (Lab. Code § 1164.3, subdiv. (b).) Accordingly, the Board has a legal obligation to ensure that its order is carried out.

In sum, we conclude that the enforcement provision in section 1164.3, subdivision (f) was intended to apply only where no review is sought in the Court of Appeal,

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<sup>12</sup> In this case, Hess refused to participate in the mediation process, thereby necessitating an imposed contract.

yet the employer refuses to comply with the Board's order making the mediator's report final. Within 60 days it would be apparent that the 30-day time period has lapsed for an employer to file a petition for review in the Court of Appeal and that the employer is refusing to implement the contract, requiring an enforcement action by the Board or the union.

In contrast, in the present matter, court review of the Board's order was sought, so it is not necessary to use the procedure set forth in section 1164.3, subdivision (f). The decision issued by the Third District Court of Appeal in *Hess Collection Winery v. ALRB*, *supra*, 140 Cal. App. 4th 1584 constitutes a judgment that can still be enforced through contempt or other enforcement proceedings in the appropriate court.<sup>13</sup>

The parties are seeking to compromise amounts owing under a Board order over which the Board retains jurisdiction to enforce. As indicated above, that cannot be accomplished via a private party settlement. Rather, it requires Board approval via the process set forth in Board regulation 20298. Pursuant to Board regulation 20298, the formal settlement agreement must be signed by the parties and the Regional Director and then presented to the Board with a supporting statement from the Regional Director.<sup>14</sup> The Board reiterates that in requiring the parties to submit their resolution of this issue as a formal settlement agreement, the Board has not made a determination on the merits of the parties' agreement.

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<sup>13</sup> California Code of Civil Procedure section 683.020 prescribes a 10-year period for enforcement of a judgment.

<sup>14</sup> It is only the portion of the parties' global settlement agreement dispensing with all issues stemming from ALRB case no. 2003-MMC-01 (29 ALRB No. 6) that must be presented as a formal settlement agreement.

## ORDER

The Hess Collection Winery and United Food and Commercial Workers, Local 5 are directed to submit to the Board for approval, pursuant to the procedures set forth in Board regulation 20298, any settlement agreement that purports to compromise in any way the full implementation of the imposed contract resulting from ALRB Case No. 2003-MMC-01 (*Hess Collection Winery* (2003) 29 ALRB No. 6), which would include any amounts owing under the contract from its effective date of October 1, 2003 forward.

Dated: May 19, 2009

GUADALUPE G. ALMARAZ, Chair

GENEVIEVE A. SHIROMA, Member

CATHRYN RIVERA-HERNANDEZ, Member

## CASE SUMMARY

### **HESS COLLECTION WINERY**

(United Food and Commercial Workers  
Union, Local 5)

Case No. 2003-MMC-01  
(29 ALRB No. 6)

35 ALRB No. 3

### **Background**

This is a compliance matter arising out of Case No. 2003-MMC-01 (*Hess Collection Winery* (2003) 29 ALRB No. 6). That mandatory mediation and conciliation case resulted in an imposed contract to be in effect from October 1, 2003 to July 1, 2005. Hess sought review of the Board's decision and order in the Court of Appeal in order to challenge the constitutionality of the new law. That challenge was unsuccessful (*Hess Collection Winery v. ALRB* (2006) 140 Cal App 4<sup>th</sup> 1584) and ended with the denial of a petition for review by the California Supreme Court on September 13, 2006. Hess implemented the mediator-imposed CBA on November 28, 2006, but this did not include the payment of contract wage and benefit rates prior to that date.

On January 22, 2009, the Salinas Regional Office issued a memo informing the Board that on December 4, 2008, Hess and the UFCW had entered into a private party settlement agreement purporting to resolve "all outstanding issues" between the parties. As the parties' settlement agreement did not provide for any payments for the period between October 1, 2003 and November 28, 2006, the Region requested that the Board inform it whether this remained a compliance matter within the Board's jurisdiction.

### **Decision and Order**

The Board held that the issue of payment for the October 1, 2003 to November 28, 2006 period remained a compliance matter within the Board's jurisdiction to enforce. The Board drew no conclusions as to the merits of the parties' settlement agreement. Rather, the Board held that because the parties' settlement agreement sought to compromise a final Board order, the parties were required to present their resolution of the matter as a formal settlement agreement pursuant to the provisions of Board Regulation section 20298(f).

The Board held the 60-day enforcement provision in Labor Code section 1164.3, subdivision (f) to be no bar, as that provision relates only to reducing the Board's order to a judgment where no review is sought in the Court of Appeal. Thus, the decision issued by the Third District Court of Appeal constitutes a judgment that can still be enforced through appropriate proceedings in the appropriate court.