

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

September 1, 2004

Time: 9:30 a.m.
Members Present: Chairwoman Shiroma, Board Members Rivera-Hernandez,
Bustamante and Zingale
Members Absent: None
Staff Present: Board Counsel Heyck, Wender and Murray; Executive Secretary
Barbosa; Accounting Officer Nancy Davis, Personal Services
Analyst Dorothy Kojima
Staff Absent: Analyst Massie
Others: LWDA Budget Officer Scott Vogel

OPEN SESSION

1. **Approval of Minutes:** Board minutes for August 18 and 26, 2004, were approved 4-0.
2. **Board Member Comments:** None.
3. **Public Comments:** None.
4. **Announcements:** None.
5. **Weekly Status Report On Elections, Unfair Labor Practice Complaints, Hearings And Court Litigation**

ELECTION REPORT

NOTICE OF INTENT TO TAKE ACCESS (NA) AND NOTICE OF INTENT TO ORGANIZE (NO): None.

PENDING ELECTION MATTERS:

Gallo Vineyards, Inc., 03-RD-1-SAL

The ALJ issued her decision on the unfair labor practice case on December 19, 2003. Both the union and employer filed exceptions to her decision. Replies were received March 29, 2004. A decision by the Board is pending. The Board has notified all interested parties of an opportunity for written and oral argument on a specified legal issue relevant to the Gallo ULP matter. Written comment was due on August 2, 2004 with oral argument scheduled September 10, 2004 at 10:00 a.m. at the Employment Development Department, 722 Capitol Mall, Room #1063, Sacramento, California.

Excelsior Farming, LLC, 04-RD-1-VI

A decertification election was held on April 27, 2004 among the employees of Excelsior Farming, LLC in Hanford, CA. The certified bargaining agent of the employer is the UFW (United Farmworkers of America, AFL-CIO). According to the petition for decertification filed on April 20, 2004 with the ALRB Visalia Regional Office, there are approximately 360 employees in the bargaining unit. There is no tally of ballots at this time because the ballots were impounded following the election, and are pending investigation of a charge filed by the UFW alleging employer involvement with the decertification effort. On May 17, 2004 the Regional Director dismissed charge number 04-CE-16-VI as there was insufficient evidence to support a prima facie showing of a violation of the Act based on employer initiation of or unlawful assistance to the decertification drive. The UFW filed a request for review which was denied by the General Counsel on August 4, 2004. The regional director will open and count the impounded ballots on September 3, 2004 and a tally of ballots will issue forthwith.

The UFW filed its objection petition on May 4, 2004. On May 6th, the Employer requested that the UFW's petition be dismissed for failure to comply with the regulations as the union allegedly failed to submit declarations in support and its factual statement was inadequate. Review of any objections will begin following receipt of the tally of ballots.

COMPLAINT REPORTS

Nothing new to report.

PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED

None.

FOUR CASES ON CALENDAR:

Hadley's Date Gardens, Inc., 03-CE-15-EC

The pre-hearing conference is set for October 5, 2004. The hearing is set for October 19, 2004.

D'Arrigo Bros. Co., 03-CE-5-SAL

The ALJ issued a notice scheduling a prehearing conference for October 5, 2004 with the hearing to follow on November 2, 2004.

Hess Collection Winery, 01-CE-09-SAL

The pre-hearing conference is set for November 23, 2004. The hearing is set for January 11, 2004.

McCaffrey Roses, 00-CE-92-VI

The Visalia Regional Director has requested that this matter be set for hearing for December 2 and 3, 2004. The request is being processed.

CASES PENDING ALJ DECISION:

Aurora Farms dba Borba & Son Dairy, 03-CE-18-EC

The hearing closed on August 18, 2004. The matter is pending receipt of the transcripts and post-hearing briefs.

ALJ/IHE DECISIONS ISSUED:

None.

CASE PENDING EXCEPTIONS AND/OR REPLY:

None.

CASES PENDING BOARD DECISION:

Gallo Vineyards, Inc., 03-CE-9-SAL

The ALJ issued her decision on December 19, 2003. Both the union and employer filed exceptions to her decision. Replies were received by March 26, 2004. A decision by the Board is pending. The Board has notified all interested parties of an opportunity for written and oral argument on a specified legal issue relevant to the Gallo ULP matter. Written comment is due on August 2, 2004 with oral argument scheduled September 10, 2004 at 10:00 a.m. at the Employment Development Department, 722 Capitol Mall, Room #1063, Sacramento, California.

CASES SETTLED OR RESOLVED:

None.

COMPLIANCE CASES CLOSED:

Sierra Packing Company, Inc., 02-CE-40,40-1-EC

The case was closed on August 26, 2004. An informal, bilateral agreement had been reached on August 15, 2003. One discriminatee was involved in the matter, and that individual received reinstatement and backpay of \$1,268.38.

CASES TRANSFERRED TO BOARD FOR DECISION:

None.

BOARD DECISIONS:

Nothing new to report.

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. The Board's response brief was filed January 22, 2004. Hess' reply brief is due March 3, 2004. 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. The new filings required by the writ of review will essentially reiterate or incorporate by reference the earlier briefs. Western Growers Association filed amicus curiae brief on March 8, 2004. The ALRB's return was filed on March 10, 2004. The matter is now fully briefed and pending decision by the court. 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. The deadline for the Petitioner (Hess) (and amici in support) to file its brief was June 11, 2004. Both Hess and WGA filed letter briefs on June 11. The ALRB's brief was filed June 28, 2004. Any reply brief by the Petitioner was due July 8, 2004.

COURT LITIGATION:

Western Growers Association, et al., 03AS00987

On August 22, 2003, the plaintiffs filed a petition for writ of mandate in the Court of Appeal, Third Appellate District, seeking to overturn a ruling by the Superior Court that the matter is not yet ripe for adjudication. The Superior Court ruled that the matter would not be ripe until the Board issues a decision fixing the terms of a collective bargaining agreement. This lawsuit, which challenges the constitutionality of the new mandatory mediation and conciliation law (SB 1156 and AB 2596, codified as Labor Code sections 1164 to 1164.14), was filed on February 24, 2002 in the Sacramento County Superior Court. On November 20, 2003, the 3rd DCA issued an order summarily dismissing the petition for writ of mandate in the WGA case. The plaintiffs have filed an amended complaint in the Sacramento County Superior Court. The court has taken plaintiff's motion for a preliminary injunction off calendar pending the DCA ruling in the related case of The Hess Collection Winery, C045405. 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. A hearing on the demurrer and request for stay is scheduled for February 19, 2004. On February 6, 2004 WGA filed its memorandum of points and authorities in opposition to the ALRB's (and the intervenors') motion to stay proceedings and demurrer. 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 by the 4:00 p.m. deadline. Absent an effort seeking a writ in the Court of Appeal to overturn the superior court's ruling (there is no indication that such an effort is planned), further action on this case will await resolution of the Hess Collection Winery v. ALRB case.

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. The certified record was filed on November 24, 2003. On November 24, 2003 the court requested

the parties provide supplemental briefing regarding the petitioner's stay request. On December 11, 2003, the parties filed a stipulation staying the Board's order pending resolution of the appeal. Petitioner's opening brief was filed with the court on December 23, 2003. Board's response brief was filed January 22, 2004. Hess' reply brief is due March 3, 2004. 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. The new filings required by the writ of review will essentially reiterate or incorporate by reference the earlier briefs. Western Growers Association filed an amicus curiae brief on March 8, 2004. The ALRB's return was filed on March 10, 2004. The matter is now fully briefed and pending decision by the court. 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. Both Hess and WGA filed letter briefs on June 11. The ALRB's brief was filed June 28, 2004. Petitioner's reply brief was due July 8, 2004.

6. Budget And Administration

- (a) Information Technology: No report.
- (b) Regulations: Nothing new to report.
- (c) Budget: Labor and workforce development budget officer Scott Vogel reported to the Board on the year-end statistics and expenditure projections for the first quarter of fiscal year 2004-05.
- (d) Policy and Procedures Committee: Board Governance Policy – Board Member Rivera will circulate her proposed changes to the policy.
- (e) Labor and Workforce Development Agency: The next senior staff meeting will be held on September 27, 2004.
- (f) Regulating Farm Labor Relations: The ALRA at 30 – The Board approved payment of registration fees for ALRB staff interested in attending the conference.

- (g) Public Hearing/Gallo Vineyards, Inc. – The public hearing will be held September 10, 2004.
- (h) California Performance Review – Executive Secretary Barbosa will respond to Agency’s request for cost analyses of implementing an electronic filing system, and consolidation of regional offices. The Board determined that as many of its constituents do not have access to computers, it would not be practical to implement an electronic filing system, however printable ALRB forms will continue to be available on the agency website. The Board previously determined that there would be no cost savings in consolidating any of the Regional offices.

7. Outreach Projects

- (a) Novella: Nothing new to report.
- (b) Brochures: Nothing new to report

8. Legislation:

AB290 (Laird)

Presently, Labor Code section 1156.3, subdivision (e), requires that the Board decertify a labor organization if it has been found by the EEOC to have discriminated on the basis of race, color, national origin, religion, sex, or other arbitrary or invidious classification in violation of Title 42 of the U.S. Code. This bill would add as a basis for decertification a finding by the California Dept. of Fair Employment and Housing that a labor organization has engaged in discrimination on any basis listed in Government Code section 12940, subdivision (a) (race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation). The bill also makes nonsubstantive changes to other provisions of section 1156.3. On April 26, 2004 the bill passed out of the Committee on Labor and Employment, and was re-referred to the Committee on Appropriations. On May 6, 2004, the bill passed out of the Committee on Appropriations, and on May 10, 2004, the bill was read for the second time in the Assembly. On May 17, 2004, the bill was read for a third time in the Assembly and passed on to the Senate. On May 18, 2004, the bill was read for the first time in the Senate and was sent to the Rules Committee for assignment. The bill was referred to the Senate Judiciary Committee on May 27, 2004. A hearing on the matter was held June 22, 2004. On June 23, 2004, the bill passed out of the Senate Judiciary Committee and was re-referred to the Senate Appropriations Committee. On August 5, 2004, the bill passed out of the Senate Appropriations Committee. On August 9, 2004, the bill was read for the second time. On August 16, 2004, the bill was read for the third time, passed the Senate, and was sent to the Assembly

for enrollment. On August 26, 2004, the enrolled bill was sent to the Governor's office for signature.

SB 1809 (Dunn)

This bill would make several changes to SB 796, which was adopted by the Legislature last year and signed by the Governor on October 12, 2003. That bill provided for private actions to recover civil penalties for violations of the Labor Code. The bill would require, as a condition to bringing a civil action, that the plaintiff report the alleged violation to the LWDA and that no state enforcement action commence within 15 calendar days of the report. The bill also would allow the court, in very limited circumstances, to award less than the specified maximum penalty. In addition, the bill would allow civil penalties for any violation of a posting or notice requirement to be recovered only by the LWDA. The bill passed the Senate May 26, 2004, on a 21-13 vote. The bill was read for the first time in the Assembly on May 27, 2004. On June 3, 2004 the bill was referred to the Assembly Committee on Labor and Employment and Judicial Committee. On June 24, 2004, the bill passed out of the Assembly Judiciary Committee and was re-referred to the Assembly Appropriations Committee. On July 27, 2004, the bill was passed from committee with amendments, read a second time, amended and rereferred to the Assembly Appropriations committee. On July 28, 2004, the bill was passed from committee, read a third time, an urgency clause was adopted, and the bill passed the Assembly. On July 29, the Senate adopted an urgency clause and concurred in Assembly amendments. On July 30, 2004, the bill was enrolled and sent to the Governor. The Governor approved the bill August 11, 2004, and the bill was chaptered by the Secretary of State on that date.

9. **Personnel:** Chairwoman Shiroma and Executive Secretary Barbosa will work on the workload justification for vacant positions which might be filled.
10. **Compliance:** Nothing new to report.
11. **Future Agenda Review:** Next public meeting will be Monday, September 13, 2004.

The open session ended at 11:20 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.