

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

**1st Floor Conference Room
915 Capitol Mall, 3rd Floor
Sacramento, CA 95814**

June 15, 2005

Time: 10:10 a.m.
Members Present: Chairwoman Shiroma, Board Members Rivera-Hernandez and Zingale.
Members Absent: None.
Staff Present: Executive Secretary Barbosa, Board Counsel Wender, Murray and Heyck, Analyst Massie, and Legal Intern Elsea
Staff Absent: None
Others Present: None.

OPEN SESSION

- 1. Approval of Minutes:** Minutes for June 8, 2005, were approved 3-0.
- 2. Board Member Comments:** None.
- 3. Public Comments:** None.
- 4. Announcements:**

The American Heart Association is holding the 5th Annual State Employee American Heart Walk and Fair on Tuesday, September 13, 2005 from 11:30 am to 1:30 pm on the West Steps of the State Capitol Park in Sacramento.

2005-2006 Biennial Statewide Language Survey is due no later than March 31, 2006. Two training sessions are available on June 23, 2005.

The State Employee Charitable Campaign has awarded the ALRB with the Platinum Award for per capita gifts and Gold Award for a 75% employee participation rate.

Department of General Services is requesting our assistance in updating the Sacramento Regional Facilities Plan which will study State-owned and leased office space in Sacramento County and the eastern portion of Yolo County.

ALRB newspaper articles are now being saved to the Headquarters server's shared drive.

The Sacramento La Raza Lawyers Association will be holding its installation of officers on Wednesday, June 22, 2005 at noon at the Radisson Hotel, 500 Leisure Lane, Sacramento.

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. The Board issued its decision on November 5, 2004, affirming the ALJ's recommendation that appropriate remedies included the dismissal of the decertification petition. Gallo filed its petition for review on December 2, 2004. Decertification Petitioner Roberto Parra filed a petition for review on December 3, 2004. The certified record was filed on December 10, 2004. The election objections are in abeyance pending completion of the ULP case.

Sutter Mutual Water Company, 05-RC-1-VI

On Wednesday, January 26, 2005 Teamsters Local 137 filed a representation petition with the Visalia Regional Office seeking to organize the agricultural employees of Sutter Mutual Water Company in Robbins, CA. The employer is a water district and water supplier. The unit includes approximately 10 employees who deliver water to farms. The Regional Director issued a letter finding that the agency has jurisdiction to proceed with petition. The Regional Director denied the employer's request that the ballots be impounded. The election was held February 2, 2005, with the following tally:

| | | |
|-------------------------------|---|----------|
| General Teamsters Local 137 | 5 | |
| No Union | 2 | |
| Unresolved Challenged Ballots | | <u>0</u> |
| Total | 7 | |

Objections to the election were filed on February 9, 2005. An investigative hearing opened on March 24, 2005 in Woodland, California, and was placed in abeyance due to a medical emergency. The matter has been reset for July 12 and 13, 2005.

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 |

Since the unresolved challenged ballots are outcome determinative in number, the RD will conduct a challenged ballot investigation and issue a report. On May 9, 2005 the UFCW filed objections to the election. The objections petition is under review by the Executive Secretary.

Bayou Vista Dairy, 05-RC-6-VI

On May 26, 2005 the UFCW Local 1096 filed a representation petition with the Visalia Regional Office seeking to represent the agricultural employees of Bayou Vista Dairy. The employer is a dairy in Tipton with approximately 90 employees. An election was held on June 3, 2005 with the following results:

| | |
|-------------------------------|----------|
| UFCW | 52 |
| No Union | 42 |
| Unresolved Challenged Ballots | <u>0</u> |
| Total | 94 |

Election objections, if any, are due June 10, 2005. No objections were filed. The Executive Secretary's order issuing the certification of representative issued today June 15, 2005.

COMPLAINT REPORTS

UFW (Gallo), 03-CL-6-SAL

On June 14, 2005 the General Counsel issued a complaint against the UFW based on a charge filed by Gallo Vineyards alleging that the UFW has engaged in bad faith

bargaining in violation of section 1154(c) of the Act. The complaint further alleges that the UFW has interfered with employee rights in violation of section 1154(a)(1) of the Act.

The complaint alleges, among other things, that the UFW failed and refused to provide information requested by the charging party during collective bargaining negotiations, that the UFW failed to present requested counter proposals, and that the UFW violated an agreement about ground rules that the charging party and UFW had negotiated and memorialized prior to beginning collective bargaining in September 2003 by making statements to the press concerning negotiations and the parties' bargaining positions and by filing a ULP charge against Gallo (Case no. 04-CE-35-SAL) without first discussing allegations with Gallo.

PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED

None.

HEARINGS HELD:

None.

FOUR CASES ON CALENDAR:

Santa Barbara Farms, 04-CE-21-VI

Pre-hearing Conference: June 9, 2005

Hearing: June 27, 2005

Sutter Mutual Water Company, 05-RC-1-VI

Investigative hearing has been reset for July 12 and 13, 2005.

The Hess Collection Winery, 99-CE-23-SAL (27 ALRB No. 2) (makewhole case)

Pre-hearing Conference: July 5, 2005

Hearing: July 19, 2005

Dan Tudor and Sons, 02-CE-13-VI

Pre-hearing Conference: August 2, 2005

Hearing: August 23, 2005

CASES PENDING ALJ DECISION:

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

Pending receipt of hearing transcripts

ALJ/IHE DECISIONS ISSUED:

None.

CASE PENDING EXCEPTIONS AND/OR REPLY:

None.

CASES PENDING BOARD DECISION:

None.

CASES SETTLED OR RESOLVED:

None.

COMPLIANCE CASES CLOSED:

None.

CASES TRANSFERRED TO BOARD FOR DECISION: None.

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. 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. Amicus Western Growers Association's reply brief was filed on July 8, 2004, and Petitioner's reply brief was filed on July 9, 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 was 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. Amicus Western Growers Association's reply brief was filed on July 8, 2004, and Petitioner's reply brief was filed on July 9, 2004.

Gallo Vineyards, Inc., C048387

The Board issued its decision on November 5, 2004. On December 2, 2004, Gallo Vineyards, Inc. filed a petition for review of the Board's decision (30 ALRB No. 2). On December 3, 2004, the decertification petitioner Roberto Parra also filed a petition for review of the Board's decision. Both petitions were filed in the Third District Court of Appeal in Sacramento. Pursuant to a pair of stipulations, the second due to an injury sustained by Gallo's attorney, the petitioners' opening briefs previously were due April 20, 2005. A request for an additional 30-day extension of time to May 20 was filed by Gallo and was granted by the court. Response briefs by the ALRB and the real party in interest (UFW) were to be due 90 days thereafter, and any reply briefs by the petitioners will be due 80 days after the filing of the response briefs. Parra filed his opening brief on May 20. Gallo was given another extension of time to June 10, and filed its opening brief on that date. The Board's response brief is due September 8, 2005.

Hadley Date Gardens, Inc., E037704

A petition for review was filed on March 18. However, the petition was not verified, as required by Rule 59 of the Cal. Rules of Court. An amended petition was filed on April 1. Though the 30-day period for filing a petition for review under sec. 1160.8 is jurisdictional, it has been held that the lack of a verification is a curable defect as long as the petition itself was filed within the time limit, as it was here. (See UFW v. ALRB (1985) 37 Cal.3d 912.) Though no official notification of the filing has been received from the court, the certified record was filed with the court on April 18, 2005. The Petitioner was granted a 5-day extension of time to May 31 to file its opening brief. Thereafter, the Petitioner and the Board entered into a stipulation extending the time to file 30 days in order to allow a private party settlement agreement to be presented to the Board for its approval. On June 9, 2005, Judge Ramirez,] on its own motion, stayed the pending proceedings and directed the parties to furnish the court with a letter informing it of the status of settlement negotiations 20 days from the date of this order (i.e., June 29, 2005).

6. Budget and Administration

- (a) Information Technology: Repair of the telephone system and website were discussed.
- (b) Regulations: Nothing new.
- (c) Budget: The current court reporting contract cannot be extended due to a technicality. This will apparently require a new bidding process.
- (d) Policy and Procedures: Nothing new to report.
- (e) Labor and Workforce Development Agency: Nothing new to report.
- (f) State Auditor's Report – The State Auditor will release the excerpt of its report pertaining to the ALRB on next week. The Board will have five days to respond to the report.

7. Outreach Projects

- (a) Brochures/Handbooks/Novella/Binding: Board Counsel Heyck has received bids on various printing projects and is awaiting further bids. Purchase orders will be prepared as necessary.
- (b) Radio Public Service Announcement: The Executive Secretary will order CDs for distribution of the PSA.

8. Legislation: Nothing new.

9. Personnel: Interviews are being conducted for the Legal Counsel/Assistant General Counsel position. The Staff Services Analyst/Associate Government Program Analysis interviews have been held and a job offer is pending. Hearing Officer interviews will be scheduled in the near future.

10. Compliance: Distribution of the AEFR funds was discussed.

11. Future Agenda Review: The Board will meet as necessary during Chairwoman Shiroma's absence. The Regional Director's Quarterly Meeting has been scheduled for July 13, 2005.

The public meeting adjourned at 11:05 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.