

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

May 17, 2006

Time: 10:00 a.m.

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

Members Absent: None.

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

Staff Absent: None.

Others Present: None.

OPEN SESSION

1. Approval of Minutes: The Board on a 3-0 vote approved the minutes for April 19, May 4, and May 10, 2006.

2. Public Comments—None

3. Chair Budget Report -- Budget hearings are completed. End-of-Year Expenditures—Chairwoman Raymundo reviewed the status of year-end expenditures. Budget Change Proposals—Member Shiroma proposed reinstating monies for outreach and education which were approved in a previously fiscal year but withdrawn due to budgetary constraints.

4. General Counsel Report – ULP Charges, New Complaints, Visalia Office Relocation & Salinas Office Repairs -- New complaints and been filed in Visalia and Salinas. There are no new hearings at this time. New charges have been submitted to

each region. Regional staff have been active in outreach projects in Calexico, San Diego, and the Visalia region. Visalia Office Move – The owner of the Mission property continues to be reluctant to provide an estimate of construction costs. He has proposed an increase in the rental rate due to increased cost of janitorial service. He has proposed that in the alternative, if ALRB pays for janitorial service and utilities, the proposed rental rate will remain the same. DGS was informed that we will consider other property in Visalia and surrounding areas. The Architectural Revolving Fund application has been sent to Finance for approval.

5. Executive Officer Report.

ELECTION REPORT

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

No new NAs or NOs have been filed since the last board meeting.

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 matter is now before the Board for decision.

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 are 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. There, the Board adopted the Regional Director's recommendations set forth in the report, i.e., to open and count 41 overruled challenged ballots and thereafter issue a revised tally of ballots. On November 14, 2005 the Regional Director 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 are 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 Executive Secretary granted the petitioner's request for an extension of time to file post-hearing briefs. All parties must now file their briefs on June 6, 2006.

Jelle H. Reitzma 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 is outcome determinative, the Regional Director will conduct an investigation to determine whether the challenges should be sustained or overruled and issue a report. Should there be material factual disputes as to some or all of the challenges, an evidentiary hearing will held before an Investigative Hearing Examiner to resolve such challenges. Election objections, if any, were due on March 14. No objections were filed. The union's response was filed on March 24, 2006. The employer's response was filed on April 7, 2006. The employer filed additional material on April 7, 2006. The union in turn has also filed supplementary materials. The Regional Director anticipates issuing his report on challenged ballots by the end of this week.

Valley View Farms Dairy, 06-RD-2-VI

On May 16, 2006 agricultural employee Daniel Gaytan filed a decertification petition with the Visalia Regional Office seeking to oust the incumbent bargaining representative, UFCW Local 1096, at Valley View Farms Dairy. The employer is a dairy with approximately 42 employees in Handford, CA. An election, if appropriate,

would be held on or about May 23, 2006.

COMPLAINT REPORTS

Two new complaints issued this week.

C & R Farms, 05-CE-36-EC (May 9, 2006)

The case involves the alleged discharge &/or lay off of eight employees because of their involvement in protected concerted activities and/or because their supervisors believed they had engaged in such activities.

Prime Time International, 05-CE-37-EC(R) (May 10, 2006)

The case involves the alleged discharge of one employee because of his involvement in protected concerted activities and/or because their supervisors believed he had engaged in such activities.

PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED

None scheduled.

HEARINGS HELD:

None.

CASES ON CALENDAR:

None.

CASES PENDING ALJ/IHE DECISION:

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

Post-hearing briefs due June 6, 2006

ALJ/IHE DECISIONS ISSUED:

None.

CASE PENDING EXCEPTIONS OR REPLY:

None.

CASES PENDING BOARD DECISION:

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

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

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. Oral argument has been scheduled for June 19, 2006.

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. Oral argument before the court is scheduled for June 19, 2006.

5. Special:

Outreach – Assistant General Counsel Blanco discussed several multi-agency

outreach/training projects currently being developed including relationships with DLSE, the Mexican Consulate, and EEOC.

Salinas Construction – The landlord has agreed to arrange for the construction of walls and a data closet and is in process of obtaining bids for the project.

El Centro Lease – The term of the lease for the office space in El Centro expires next year.

Case Statistics Tracking System Update – The Request for Offer is in the final stages of preparation and will issue by the end of week if not sooner.

Website Redesign – Work on the bid process continues.

Electronic Records Management – A meeting on the Electronic Records Management policy is scheduled for today, May 17. We have an estimate of costs to store and search records.

Encryption Policy – Nothing new to report.

AERF—Board Counsel Wender reported on the amount of funds available for the 2006 distribution and the aggregate amount of existing claims. Cases that may be closed or made eligible for pay out in 2007 were discussed.

6. Roundtable

The makewhole project will be discussed at the next Board meeting.

The Board Meeting scheduled for May 31, 2006 is cancelled.

The public meeting adjourned at: 11:15 a.m.

WHEREUPON THE BOARD RECESSED INTO CLOSED SESSION.