

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

July 19, 2006

Time: 10:00 a.m.

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

Members Absent: None.

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

Staff Absent: None.

Others Present: None.

OPEN SESSION

1. Approval of Minutes: The minutes for June 28 and July 12, 2006 were approved 3-0.

2. Public Comments: None

3. Chair Budget Report: Chairwoman Raymundo met with the current landlord of the Visalia Regional Office. The landlord will advise us next week of the availability of alternative space to occupy while our new office location is completed. She also visited the site of the new office and the EDD Job Service location in Visalia.

4. General Counsel Report: ULP Charges, New Complaints, Visalia Office Relocation & Salinas Office Repairs –New charges have been filed in the Visalia Regional Office.

5. Executive Officer Report:

ELECTION REPORT

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

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 setting and dismissing election objections in Zysling Dairy, Case No. 05-RC-4-VI. The request for review, if any, is due July 21, 2006. Also, in accordance with the Board's decision in Zysling Dairy, 32 ALRB No. 2, the order included 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, previously scheduled for August 22, 2006, has now been continued to November 14, 2006.

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 parties' post-hearing briefs were received June 9, 2006. The IHE's decision is pending.

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 matter is pending before the Board on decision.

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 |
| UCBs | <u>5</u> |
| Total | 38 |

The number of unresolved challenged ballots is sufficient to affect the outcome of the election. The Regional Director will prepare and issue a challenged ballot report. Election objections, if any, are due July 24, 2006.

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 petition is under investigation and if all prerequisites are met, an election may be held on or about July 25, 2006.

COMPLAINT REPORTS

ONE PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED

Milky Way, 03-CE-74-VI

Prehearing August 7, 2006
Hearing September 11, 2006

HEARINGS HELD:

None.

TWO CASES ON CALENDAR:

Milky Way, 03-CE-74-VI

Pre-hearing: 8/7/06
Hearing: 9/11 - 9/9/14

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

Hearing November 14, 2006

TWO CASES PENDING ALJ/IHE DECISION:

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

Post-hearing briefs received June 9, 2006. IHE decision is pending.

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

Hearing closed June 16, 2006. Pending receipt of transcripts and post-hearing briefs.

ALJ/IHE DECISIONS ISSUED:

None.

CASE PENDING EXCEPTIONS OR REPLY:

None.

CASES PENDING BOARD DECISION:

Artesia Dairy, 06-RC-1-VI

Exceptions of Regional Director's Challenged Ballot Report were filed June 22, 2006.

CASES PENDING SETTLEMENT:

None.

CASES SETTLED OR RESOLVED:

COMPLIANCE CASES CLOSED:

None.

ONE CASE TRANSFERRED TO BOARD FOR 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. 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 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. Pursuant to Rule 25 of the California Rules of Court, subdivision (b)(2), no answer to a petition for rehearing may be filed unless the court requests an answer. The matter is also pending the filing of a petition for review before the Supreme Court.

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 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. Pursuant to Rule 25 of the California Rules of Court, subdivision (b)(2), no answer to a petition for rehearing may be filed unless the court requests an answer. The matter is also pending the filing of a petition for review before the 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. The matter is now fully briefed and pending decision and/or oral argument.

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.

6. Special:

Case Statistics Tracking System/Website Redesign Update – Executive Secretary Barbosa, Administrative Assistant Justice and Analyst Massie met with vendor regarding the case tracking database and the ALRB website. Another meeting is being scheduled for next week.

Emergency Preparedness & Telecommuting Plans – Member Rivera-Hernandez reported the Continuity of Operations/Continuity of Government Plan is being redrafted.

Encryption Policy & Operational Recovery Plan – The Encryption Policy was approved 3-0. Analyst Massie reported that the Operational Recovery Plan was filed with the State Information Security Office.

Agricultural Employee Relief Fund – Board Counsel Wender reported the AERF 2006 pay out list will be completed by next week and provided to the Regional Directors, so that they may begin arranging for distribution.

7. Roundtable:

Executive Secretary Barbosa will be attending a Council of Counsels Meeting today, July 19, at 1 p.m. Attendees will be briefed on current initiatives including new regulations pertaining to discrimination complaints and reasonable accommodation appeals.

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

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.