

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

September 6, 2006

Time: 10:10 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, Analyst Massie

Staff Absent: None.

Others Present: None.

OPEN SESSION

1. Approval of Minutes: The Board minutes for August 9, August 16, and August 23, 2006 were approved 3-0.

2. Public Comments: None

3. Chair Budget Report: Chairwoman Raymundo reviewed the current budget including a reduction of \$79,000.

Federal Immigration Forum: Chairwoman Raymundo reported on the Federal Immigration Forum hosted by Congressman Radanovich in Fresno on August 30, 2006.

Regional Directors' Quarterly Meeting

The Regional Directors' quarterly meeting is scheduled for today 1:30 p.m. via telephone conference.

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4. General Counsel Report: ULP Charges, New Complaints, Visalia Office Relocation – General Counsel Lee reported that he has been advised by DGS Real Estate Services Division that the Visalia Regional Office will need to relocate on October 2 to temporary office space until the completion of the new office building. Analysts Barr and McCarther reviewed the temporary office space, located in the same office complex as the present office, and determined that the space will accommodate all employees. Mr. Lee also reported several 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):

UFW filed an NA at Stamoules Produce Company in Mendota, CA.

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 is scheduled 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 issued August 7, 2006. On August 16, 2006 the Board issued an order remanding the case to the Investigative Hearing Examiner for reconsideration of his calculation of the potential effect on the outcome of the election from the number of votes he found to have been tainted by election misconduct. On August 17, 2006, the IHE issued a modified decision setting aside the election. The exceptions are due on September 26, 2006 with the reply briefs, if any, due October 6, 2006.

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 Board's decision in Artesia Dairy issued August 2, 2006. The hearing in this matter has been scheduled for October 24, 2006 in Visalia, CA.

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 issued his challenged ballot report on September 5, 2006. Exceptions, if any, are due on September 15, 2006. On July 24, 2006 the employer filed objections to the election which are pending before the Executive Secretary on review.

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 election was held July 25, 2006. On July 24, 2006, an unfair labor practice (ULP) charge alleging conduct that may impact the election was filed against the employer. Immediately following the election, the Regional Director of the Visalia Regional Office informed all parties that due to the

filing of the ULP charge, he would impound the ballots cast in the election until he completes his expedited investigation of the ULP charge. On August 14, 2006, the Regional Director completed his investigation of the pending ULP and issued a complaint in this matter. On August 2, 2006 the employer and then the union filed objections to the election which are pending before the Executive Secretary on review.

COMPLAINT REPORTS

PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED:

None.

HEARINGS HELD:

None.

FOUR CASES ON CALENDAR:

Milky Way, 03-CE-74-VI

Hearing: September 11-14, 2006

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

Hearing: November 14, 2006

Artesia, 06-RC-1-VI

Hearing: October 24, 2006

Hess Collection Winery, 01-CE-08-SAL

Pre-Hearing Conference: November 2, 2006

Hearing: January 16, 2007

ONE CASE PENDING ALJ/IHE DECISION:

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

Hearing closed June 16, 2006.

Post-hearing briefs due September 20, 2006.

ALJ/IHE DECISIONS ISSUED:

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

IHE decision issued August 7, 2006. Modified IHE decision issued August 17, 2006.

Exceptions are due September 26, 2006. Replies, if any, are due October 6, 2006.

CASE PENDING EXCEPTIONS OR REPLY:

None.

CASES PENDING BOARD DECISION:

None.

CASES PENDING SETTLEMENT:

None.

CASES SETTLED OR RESOLVED:

None.

COMPLIANCE CASES CLOSED:

None.

CASES TRANSFERRED TO BOARD FOR DECISION:

Boyd Branson Flowers, Inc., 93-CE-28-EC(OX)

Regional Director's Motion to Make Case Eligible for Pay Out from AERF

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. On July 20, 2006 the court denied Hess' petition for rehearing. The petitioner filed a petition for review in the Supreme Court on August 10, 2006. The real party in interest filed its answer to the petition on August 31, 2006. The ALRB did not file an answer.

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

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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. Oral argument has been scheduled for September 25, 2006 at 2:00 p.m. in Sacramento before the 3rd District Court of Appeals.

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. The record was filed with the court on August 16, 2006. On August 23, 2006 the petitioner filed an application for an order extending time to file petitioner's brief to December 14, 2006. The court granted the application on August 28, 2006.

Proposed Contract with the NLRB

Nothing new to report.

Labor Agency Request for Information

General Counsel Dresser requested updates concerning vacancies filled and unfilled since the March 21, 2006 and training provided to legal staff. The information is requested by September 8, 2006. Executive Secretary Barbosa is preparing a response and will be forwarding the information.

UC Research Fund for 2006-07 Conference

Professor Phil Martin from UC Davis has indicated that they have received funding in their 2006-07 budget to do research and hold conferences on California labor issues. Dr. Martin would like to submit a proposal that includes a conference dealing with protecting farm workers. His concept is a 1 or 1½ day meeting in Spring of 2007 that would focus on the ALRA and the EEEEC's activities in agriculture. The goal would be to have UC researchers prepare papers on changes in the farm labor market. State officials would comment and make presentations on agency activities. The proposal includes both employers and unions. The Board indicated it would be interested in participating in Professor Martin's proposed conference.

6. Special:

Case Statistics Tracking System – Steve Guida is working on a prototype of the new case statistic tracking system database. He will be meeting with Administrative Assistant Justice to review the design. The search services of the ALRB website have been activated but there remain problems with search results. Mr. Guida will meet with Board attorneys this week to discuss refinement of the search functionality of the website.

Electronic Distribution of Board Decisions – Several Board Decision subscribers have contacted Analyst Massie and expressed interest in receiving decisions electronically. The Board approved distribution of Board decisions both electronically in PDF format as well as in hard copy. Board decision subscribers will be contacted regarding their preferences.

Emergency Preparedness Plan – Member Rivera-Hernandez reported that the General Counsel has completed revisions to the plan and copies have been distributed

to the Regional Directors for review.

Compliance and AERF Payment Procedure – Board Counsel Wender summarized a proposed new section of the Compliance Manual that will be circulated for Board review. The proposal would provide guidelines for the issuance of checks for claimants in back pay and Agricultural Employee Relief Fund cases.

Personnel (Senior Legal Typist): No applications for the Senior Legal Typist position have been received.

7. Roundtable:

The 2006 Conference on Labor and Employment Law sponsored by the San Francisco Bay Area Chapter of the Industrial Relations Research Association and the San Francisco Labor and Employment Law Section will be held on Thursday, October 19, 2006, at the Ramada Plaza Hotel in San Francisco, California.

Executive Secretary Barbosa will attend the Chief Counsel's meeting on September 12, 2006. The group will be discussing ideas, concerns and suggested improvements they might have on how SPB operates.

Executive Secretary Barbosa, Assistant General Counsel Blanco and Analyst Massie attended the California Executive Summit on Continuity of Government on August 31, 2006 in Sacramento.

A new "Leadership for the Government Executive Certificate Program" is being offered through Sacramento State University.

The public meeting adjourned at 11:45 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.