

Agricultural Labor Relations Board

Report to the Legislature



Fiscal Years 2005-06 & 2006-07

Members of Board

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Introduction

This report is being submitted pursuant to Labor Code § 1143, which mandates that the Agricultural Labor Relations Board (ALRB) annually report to the Legislature and to the Governor on the cases heard; decisions rendered; the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board; and an account of moneys it has disbursed (monetary awards to farm workers in unfair labor practice cases).

The past year continued to be a period of great activity and achievement for both the Board and General Counsel. The Board continued to fulfill its mission to provide farm workers with the opportunity to choose whether to have union representation and to protect farm workers' right to engage in concerted activity to improve wages and working conditions.

The Board experienced a significant amount of election activity, including holding one of the largest elections in ALRB history involving over 2500 voters. The Board received needed support from the Labor Agency, numerous sister agencies, and the National Labor Relations Board to insure the election was a success.

The Agricultural Employer-Employee Collective Bargaining and Mediation law, commonly referred to as Mandatory Mediation and Conciliation, is also playing a critical role in the resolution of disputes. In specified circumstances when an agricultural employer and a labor organization certified as the exclusive bargaining agent are at an impasse, the law provides for a third-party mediator to assist employers and labor organizations in reaching a collective bargaining agreement (contract). Where an agreement cannot be reached voluntarily, the mediator takes on the role of an arbitrator and fixes the terms of a contract, subject to review by the Board and the courts. A constitutional challenge to the law was successfully defeated before the 3rd District Court of Appeal. Following the Court's decision, additional requests for mediation are proceeding.

The Board has continued its outreach efforts through the distribution of educational materials, including a *novella* (educational comic book) explaining the rights of farm workers, and through participation in workshops around the State. In addition, the Board produced a public service announcement warning of heat-related risks following the deaths of farm workers during the Summer.

In the interest of protecting ALRB employees' right to privacy, all sensitive information including names, salaries and duties of ALRB personnel is provided under separate cover and can be obtained through a written request to the Executive Secretary.

J. Antonio Barbosa
Executive Secretary
Agricultural Labor Relations Board

Decisions Issued By the Board in Fiscal Year 2005-06

The Board issued six decisions in fiscal year 2005-06. The Board took the unusual step of vacating one of its decisions after the parties entered into a global settlement and collective bargaining agreement. A list of decisions with brief summaries follows (the full text of decisions can be found on the ALRB website: www.alrb.ca.gov).

HESS COLLECTION WINERY (31 ALRB No. 3)

This case involved a dispute over a bargaining makewhole specification issued by the General Counsel. The Board had ordered the remedy of bargaining makewhole in a prior decision (27 ALRB No. 2). The Administrative Law Judge (ALJ) issued a ruling granting Respondent Hess Collection Winery's (Hess) Motion to Dismiss Makewhole Specification. In his ruling, the ALJ found the General Counsel's bargaining makewhole specification to be punitive, arbitrary, and counter to the purposes of the Agricultural Labor Relations Act. He therefore dismissed the specification with leave to submit a new specification utilizing a more appropriate methodology. The Board affirmed the ALJ's dismissal of the specification. The Board agreed with the ALJ that the methodology chosen in this case was unreasonable on its face and did not warrant a hearing. In particular, the Board agreed with the ALJ's view that the use of bargaining proposals would discourage good faith bargaining in the future by providing an incentive for both sides to present extreme proposals at the outset of bargaining.

SUTTER MUTUAL WATER CO. (31 ALRB No. 4)

On February 2, 2005 a representation election was held among employees of Sutter Mutual Water Company (Sutter), a non-profit mutual water company that supplies water to its shareholders. The employer filed objections to the election, arguing that the Board lacked jurisdiction to conduct the election because Sutter's workers were not agricultural employees. The Board concluded that it could assert jurisdiction only to the extent that Sutter employees engaged in primary agriculture. Because the votes of those not properly in the unit could not be segregated without potentially affecting the result, the Board dismissed the petition for certification and set aside the election. The Board held that the petitioner could file a new petition for certification seeking to represent a unit comprised of employees engaged in primary agriculture as set forth in the Board's decision. The Board pointed out that the fundamentally unfair situation faced by employees who work for mutual water companies could be remedied by the California Legislature, as the states are not preempted from acting to extend collective bargaining rights to employees of this type.

GIUMARRA VINEYARDS CORP. (31 ALRB No. 5)

This case involved challenges to voter eligibility following a representation election on September 1, 2005. The initial tally of ballots showed 1121 votes for the United Farm Workers of America, AFL-CIO (UFW), 1246 votes for No Union, and 171 Unresolved Challenged Ballots. The Regional Director's Challenged Ballot Report (Report) recommended that the Board overrule the challenges to 24 of the 75 voters challenged for not presenting identification at the polling place. The Report also recommended that the challenges to the ballots of 11 voters who were challenged for not being on the eligibility list be overruled and their ballots counted. The Report concluded that six additional employees who were not on the list were absent because of illness or disability, and

recommended that the challenges to their ballots be overruled and that their ballots be counted. The Report also concluded seven challenged voters were ineligible to vote because they had not been employed in the bargaining unit in the eligibility payroll period and recommended that the challenges to their ballots be sustained. The Board adopted the Regional Director's recommendations. The Board ordered the Regional Director to open and count the 41 overruled challenged ballots and issue a revised tally of ballots. The Board further ordered that if, after the revised tally of ballots, a determinative number of challenged ballots remained, the Regional Director was to issue a further report or reports on challenged ballots until a determinative result was reached.

GIUMARRA VINEYARDS CORP. (31 ALRB No. 6)

This matter is related to the case discussed immediately above. The UFW filed objections to the election, the evaluation of which awaited the completion of the challenged ballot process. The Executive Secretary (ES) issued an order setting the bulk of the objections for hearing. However, the ES dismissed portions of two objections. The UFW timely filed exceptions to the partial dismissal of one of the objections. The Board affirmed the partial dismissal. Applying principles concerning campaign misrepresentations, the Board found it unnecessary to evaluate the content of the campaign literature because the UFW had ample time to refute or explain away any misrepresentations.

D'ARRIGO BROS. CO. of CALIFORNIA (32 ALRB No. 1) (vacated)

The Board found that the employer, D'Arrigo Brothers Company of California violated section 1153(a) and (e) of the Agricultural Labor Relations Act by refusing to furnish information requested for representational purposes by the United Farm Workers of America (UFW), and by engaging in unlawful surface bargaining. The decision was vacated by the Board, at the parties' request on September 10, 2007, after the parties entered into a global settlement and collective bargaining agreement.

GH & G ZYSLING DAIRY (32 ALRB No. 2)

This case involved challenges to voter eligibility following a representation election. The Investigative Hearing Examiner (IHE) sustained challenges to two ballots after finding that those voters were independent contractors. He found that five challenged voters were not independent contractors under prior Board precedent, and recommended that the challenges to their ballots be overruled. He recommended overruling four other challenges, including three challenges contending that the challenged voters had not worked during the eligibility period and one alleging supervisory status. The Board adopted the rulings, findings and conclusions of the IHE with one exception. The Board found that a handyman performing construction work during the eligibility period was an independent contractor and further found that he performed only construction work during the eligibility period and was therefore not an agricultural employee as defined in section 1140.4(b) of the Agricultural Labor Relations Act.

Decisions Issued by the Board in Fiscal Year 2006-07

The Board issued seven decisions in fiscal year 2006-07. A list of decisions with brief summaries follows (the full text of decisions can be found on the ALRB website: www.alrb.ca.gov).

ARTESIA DAIRY (32 ALRB No. 3)

This case involved challenges to voter eligibility following a representation election which was held on March 7, 2006. The initial tally of ballots showed 25 votes for the Petitioner, United Farm Workers of America (UFW), 24 votes for “No Union,” and 15 unresolved challenged ballots. The Regional Director (RD) recommended in his challenged ballot report that the challenges to the ballots of two individuals be overruled, that the challenge to one individual be set for hearing should it be outcome determinative after a revised tally of ballots, and that the challenges to the remaining twelve ballots be sustained. The Board held that there was a material factual dispute regarding the challenge to one individual, as well as ten of the twelve challenges that the RD recommended be sustained and set the eleven challenges for an evidentiary hearing. The Board also sustained the RD’s conclusion that two challenged voters were ineligible independent contractors.

GIUMARRA VINEYARDS CORP. (32 ALRB No. 4)

On September 13, 2006, the United Farm Workers of America (UFW) filed with the Visalia Regional Director (RD) a Notice of Intent to Take Access (NA). On September 19, 2006, the RD issued a letter dismissing the NA in light of an election case involving the same parties that presently remains unresolved. The Board found that there was no legal impediment to a new election and, thus, no legal justification for dismissing the NA. The Board therefore overturned the dismissal.

GIUMARRA VINEYARDS CORP. (32 ALRB No. 5)

An election was conducted on September 1, 2005. The UFW filed objections to the election. Following an investigative hearing, the Investigative Hearing Examiner (IHE) found that the Employer engaged in misconduct sufficient to affect an outcome determinative number of voters, and recommended that the election be set aside. In the interim, the Board issued decision 32 ALRB No. 4 (summarized above), in which the Board held that a new election petition was not barred by the pending objections because the one-year election bar had expired. Because there was no effective relief to be granted from deciding the merits of the objections, the Board found the case to be moot. However, the Board commented that the result in this case illustrated a larger systemic problem with the adjudication of election objections where there is an ostensible “No Union” victory and no parallel unfair labor practice charges are filed. In these instances, the Agricultural Labor Relations Act (ALRA) confers on the Board only the authority to uphold or set aside the election and does not provide for any other sanctions for engaging in misconduct affecting the results of an election. As a result, the setting aside of the election merely returns the situation to the status quo before the election petition was filed, but with the residual effect on free choice from the misconduct, allowing

wrongdoers to profit from their misconduct. The Board noted that since the statute in its present form does not provide the Board with remedial authority through which it might address this problem, it is a matter that can be addressed only by the Legislature.

BAYOU VISTA DAIRY (32 ALRB No. 6)

The Regional Director dismissed a decertification petition based on the allegations in a complaint that issued after the election had been conducted and the ballots impounded. The Regional Director relied on the Board's decision in *Cattle Valley Farms* (1982) 8 ALRB No. 24, and Board Regulations sections 20300(i)(1) and 20360(c). The Board found that the authority cited by the Regional Director did not authorize the Regional Director's administrative dismissal of the election petition in these circumstances. The Board reversed the dismissal and referred the reinstated petition to the Board's election objections process for consideration of objections filed by the Union and the Employer.

D'ARRIGO BROS. CO. of CALIFORNIA (33 ALRB No.1)

On January 11, 2007, the United Farm Workers of America (UFW) filed a request with the Board for an order directing the parties to mandatory mediation and conciliation (MMC). The Employer, D'Arrigo, contested two of the statutory prerequisites, denying the assertions that it had committed an unfair labor practice within the meaning of section 1164.11, subdivision (b), and that the parties have not previously had a binding contract within the meaning of section 1164.11, subdivision (c). D'Arrigo also argued that the mediation and conciliation statute was unconstitutional. The Board noted that D'Arrigo's constitutional arguments had already been considered and rejected by the courts (*Hess Collection Winery v. ALRB* (2006) 140 Cal.App.4th 1584.) The Board took official notice of four cases, now final, in which the Board found that D'Arrigo had committed various unfair labor practices. While the Board found that the parties did have a "binding contract" prior to the passage of the Agricultural Labor Relations Act (ALRA), the Board concluded that the Legislature intended the no binding contract prerequisite to refer only to a contract entered into after certification of the labor organization under the provisions of the ALRA. The Board, therefore, directed the parties to proceed to mandatory mediation and conciliation.

**UNITED FARM WORKERS OF AMERICA (VIRGEN/MENDOZA)
(33 ALRB No. 2)**

This case involved allegations that union dues authorizations sought by the UFW contained insufficient notices to employees of their right to object to those portions of the dues that were used for expenses other than the costs of representing the bargaining unit. The Administrative Law Judge (ALJ) found that while the UFW's manner of delivering the notices to employees was sufficient, the information contained in the notices was insufficient to enable employees to assess their rights to object. He also found that the UFW failed to process objections to paying full union dues. The Board reversed the ALJ's finding that the notice was adequate, holding that the front page of the packet had to prominently draw employees' attention to the notice of their rights. The UFW was ordered to distribute a new fully compliant notice allowing all employees who had paid dues to object, to promptly process their objections and to refund amounts of dues proportional to the UFW's expenditures on expenses not incurred in the direct representation of bargaining unit members.

ARTESIA DAIRY (33 ALRB No. 3)

An election was held on March 7, 2006. The initial tally of ballots showed 25 votes for the Petitioner, United Farm Workers of America, 24 votes for “No Union,” and 15 unresolved challenged ballots. As a result of an earlier Board decision (*Artesia Dairy* (2006) 32 ALRB No. 3) twelve challenged ballots were set for hearing. The Board affirmed the IHE’s recommendation to overrule the challenges to two individuals, but sustained the challenges to the remaining individuals. As a result of the Board’s decision, in conjunction with its earlier decision at 32 ALRB No. 3, of the original 15 challenged ballots, 3 were overruled and, thus, were opened and counted, and 12 were sustained.

Board Administrative Orders

The Board issued five numbered administrative orders in fiscal year 2005-06 and twelve in fiscal year 2006-07. A list of the orders follows.

Administrative Orders Issued in Fiscal Year 2005-06				
2005-06	Hadleys Date Gardens, Inc.,	03-CE-15-EC	8/10/05	Order Vacating Decision Pursuant To Settlement Agreement
2005-07	Ranjit Grewal & Grewal Enterprises	97-CE-1-EC 98-CE-162-EC	9/26/05	Order Granting Motion To Make Cases Eligible For Pay Out From Agricultural Employee Relief Fund
2005-08	Brighton Farming Company	89-CE-59-EC	10/27/05	Order Granting Motion To Make Case Eligible For Payout From Agricultural Employee Relief Fund
2006-01	D'Arrigo Bros. Co. Of California	00-CE-5-SAL et al	3/2/06	Order Denying Respondent's Application For Special Permission To Appeal Ruling Of Executive Secretary
2006-02	Giumarra Vineyards Corporation And Giumarra Farms Inc.,	05-RC-7-VI	3/8/06	Order Denying Interim Appeal of IHE Ruling

Administrative Orders Issued in Fiscal Year 2006-07				
2006-03	Giumarra Vineyards Corp. And Giumarra Farms Inc.,	05-RC-7-VI	8/16/06	Order Remanding Case To IHE
2006-04	Giumarra Vineyards Corp. And Giumarra Farms Inc.,	06-NA-48-VI	9/19/06	Order Setting Time Period For Response To Request For Review
2006-05	Giumarra Vineyards Corp. And Giumarra Farms Inc.,	06-NA-48-VI	9/20/06	Order Denying Employer's Request For Extension of Time
2006-06	Boyd Branson Flowers Inc	93-CE-23-EC	9/25/06	Order Granting Motion To Make Case Eligible For Payout From the AERF
2006-07	Bayou Vista Dairy	06-RD-4-VI	10/5/06	Order To Provide Briefing On Regional Director's Dismissal of Election Petition; Order Setting Briefing Schedule
2006-08	Valley View Farms	2006-MMC-02	10/12/06	Order Directing Parties To Mandatory Mediation
2006-09	Bayou Vista Dairy	06-RD-4-VI	10/19/06	Order Directing Parties To Mandatory Mediation And Conciliation
2006-10	Valley View Farms	2006-MMC-02	12/28/06	Order Making Mediator's Report Final
2007-01	D'Arrigo Bros. Co. Of California	2007-MMC-01	2/4/07	Order Referring Motion To Mediator
2007-02	D'Arrigo Bros. Co. Of California	2007-MMC-01	5/3/07	Order Denying Request For Continuance of Commencement of Mandatory Mediation
2007-03	United Farm Workers	04-CL-1-VI	6/1/07	Order Clarifying Board Notice
2007-04	Gallo Vineyards, Inc.,	07-RD-1-SAL	6/22/07	Order Denying Request For Review of Decision To Direct Election

Litigation

In the majority of cases, parties to decisions of the Board file petitions for review in the courts of appeal pursuant to Labor Code section 1160.8. Therefore a significant portion of the Board's workload is comprised of writing and filing appellate briefs and appearing for oral argument in those cases. At times the Board is also required to defend against challenges to its jurisdiction and other types of collateral action in both state and federal courts.

A list of cases on the Board's litigation docket for fiscal years 05/06 and 06/07 and summaries of those cases is provided below.

Western Growers Association et al. v. ALRB: Sacramento County Superior Court No. 03AS00987

This case involved a challenge to the constitutionality of the Mandatory Mediation and Conciliation law (Cal. Labor Code section 1164 et seq.) which had been signed into law in September 2002. In February 2004, the Superior Court granted the Board's request for a stay in this matter pending the resolution of the related case, *Hess Collection Winery v. ALRB*, discussed immediately below. After the court rejected the constitutional challenge in the *Hess* matter, the petitioner requested a dismissal as issues it had raised had been decided adversely to it in the *Hess* matter. The case was dismissed in May 2007.

Hess Collection Winery v. ALRB: 3rd District Court of Appeal No. C045405; California Supreme Court No. S145732 (29 ALRB No. 6)

This case involved a challenge to the constitutionality of the Mandatory Mediation and Conciliation law (Cal. Labor Code section 1164 et seq.) which had been signed into law in September 2002. In April 2003 the United Food and Commercial Workers Union (UFCW) requested that the Board direct the parties to mandatory mediation and the Board granted the request. Hess did not participate in the mediation sessions and the Board issued an order approving the collective bargaining agreement established by the mediator. Hess then sought review of the Board's order in the Court of Appeal in November 2003. The Court of Appeal rejected Hess's constitutional challenge in July 2006 by a 2-1 decision (Nicholson dissenting). The California Supreme Court denied Hess's petition for review on September 13, 2006. Hess did not seek further review and the matter became final in December 2006.

Gallo Vineyards, Inc. v. ALRB: 3rd District Court of Appeal Nos. C048387, C048405 (30 ALRB No. 2)

This matter involved an appeal of Board decision 30 ALRB No. 2 which set aside a decertification election due to a finding of illegal employer influence over the decertification petition. The Court of Appeal summarily denied the petition for review on December 9, 2005. The California Supreme Court denied the petition for review on January 26, 2006.

Gerawan v. Bill Lockyer (Zingale): Sacramento County Superior Court No. 05 CS 00493

This action sought to have Board Member Daniel Zingale removed from the Board for an alleged violation of Labor Code section 1150, which prohibits Board members from having outside employment. Gerawan filed an application for leave to sue in *quo warranto* with the California Attorney General's office in October 2004, and this application was denied on March 10, 2005. Gerawan then filed a petition for writ of mandate in Sacramento County Superior Court seeking an order directing the Attorney General to set aside its denial. The Superior Court denied the writ of mandate and Gerawan filed an appeal with the 3rd District Court in September 2005. On November 1, 2005, Mr. Zingale resigned from the ALRB to accept a position with Governor Schwarzenegger's administration. On September 29, 2006 the Court of Appeal issued an unpublished decision dismissing Gerawan's petition as moot.

D'Arrigo Bros. Co. of California v. ALRB: 4th District Court of Appeal No. D048904 (32 ALRB No. 1)

This matter involved an appeal of Board decision no. 32 ALRB No. 1 in which the Board found that D'Arrigo had violated the ALRA by engaging in surface bargaining and by refusing to provide information requested by the certified bargaining representative. In July, 2007, the parties reached a global settlement as part of the mandatory mediation and conciliation process begun in the related matter discussed below. As part of the settlement, D'Arrigo and the Board filed a stipulated request for dismissal with the Court of Appeal. The Court dismissed the petition on September 5, 2007. On September 10, 2007, the Board vacated decision no. 32 ALRB No. 1 as agreed in the global settlement.

D'Arrigo Bros. of California v. ALRB: 4th District Court of Appeal, Case No. D050270 (33 ALRB No. 1)

Rather than awaiting the completion of the mandatory mediation process and appealing any final Board decision that might arise from that process, on February 13, 2007 the employer filed a petition for writ of mandate, prohibition, certiorari, or other appropriate relief and application for immediate stay of mandatory mediation proceedings ordered pursuant to the Board's decision in *D'Arrigo Bros. Of California* (2007) 33 ALRB No. 1. D'Arrigo argued that 1) the statutory prerequisites of Labor Code section 1164.11 had not been met, and 2) the mandatory mediation statute was unconstitutional. On February 28, 2007, after the Board had filed its preliminary opposition, the 4th District Court of Appeal summarily denied the petition. D'Arrigo did not seek review of the court's ruling.

D'Arrigo Bros. Co. of California v. ALRB: U.S. District Court, S.D. California No. 07-CV-707-BEN (CAB) (33 ALRB No. 1)

After unsuccessfully seeking to enjoin the mandatory mediation process in the 4th District Court of Appeal (see above), D'Arrigo filed a separate action in the U.S. District Court for the Southern District of California seeking to enjoin the ALRB from proceeding with the mandatory mediation process. This action was based solely on the claim that the mandatory mediation process was preempted by the Employee Retirement Income Security Act. On June 7, 2007, the Court granted the ALRB's motion to dismiss. Shortly thereafter, the parties reached the global settlement discussed above.

Tuls Cattle Ranch Company et al.: Tulare County Superior Court, 5th District Court of Appeal (ALRB case no. 07-CE-7-VI)

In this matter, the ALRB General Counsel filed a petition for injunctive relief after the employer allegedly committed various unfair labor practices (ULPs) during a union organizing campaign. The Tulare County Superior Court denied the petition on March 23, 2007. The General Counsel filed a petition for writ of mandate with the 5th District Court of Appeal, and this writ was denied on May 3, 2007. Later in May 2007, the parties reached a settlement agreement which resolved all allegations in the underlying ULP complaint.

Regional Office Activity

In fiscal year 2005/2006, one hundred sixty seven (167) unfair labor practice charges were filed and one hundred fifty nine (159) new unfair labor practice charges were filed in fiscal year 2006/2007. Each of these charges was investigated by Regional staff. Some charges were dismissed, and others were settled or prosecuted.

Twenty nine (29) complaints were filed in fiscal year 2005/2006. Regional staff conducted two (2) hearings during that year. In fiscal year 2006/2007, the General Counsel filed seventeen (17) complaints and conducted three (3) hearings.

Settlements were reached in eight (8) cases during fiscal year 2005/2006. In addition, ten (10) cases were settled during fiscal year 2006/2007.

During fiscal year 2005/2006 regional office staff conducted five (5) elections. Ten (10) more elections were run by regional staff during fiscal year 2006/2007. Two of the elections conducted during the time period covered by this report were among the workers at very large agricultural employers having more than 2,000 agricultural employees.

Board Ordered Remedies

In cases where a violation is found, the Board generally orders notice remedies in addition to monetary awards. A notice remedy requires the employer to post, mail, and/or read a prepared notice to all agricultural employees so they can learn about the outcome of the case.

Monetary awards to farm workers in unfair labor practice cases:

The following amounts were paid to workers as a result of findings of liability in unfair labor practice cases or as a result of settlement agreements:

Fiscal Year 2005/06: Sixty eight (68) workers paid a total of \$99,190.61

Fiscal Year 2006/07: Fifty two (52) workers paid a total of \$310,039.09

Agricultural Employee Relief Fund:

The creation of the Agricultural Employee Relief Fund (Fund) (Labor Code section 1161) resulted in significant pay outs to farm workers during the fiscal year. The Fund, which is funded by monies collected for farm workers who cannot be located, is used to pay workers in other cases where the workers otherwise would have received nothing because their employers had gone out of business or become bankrupt, making collection impossible. In July 2005, the six farm workers who were eligible for pay out from the Fund were allocated a total of \$58,556. \$48,113 of that amount was disbursed to four of the claimants. The other two were not located and their allocations have reverted to the Fund. In July 2006, the 232 farm workers who were eligible for pay out from the Fund were allocated a total of \$191,308. Thus far, \$171,854 of that amount has been disbursed to 175 of the claimants or their heirs. The Board also proposed two regulatory amendments (Title 8, Cal. Code Regs., sec. 20299) in an effort to provide more substantial payouts to eligible workers.