

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:)	
)	
HESS COLLECTION WINERY,)	
)	Case No. 2003-MMC-01
)	(29 ALRB No. 6)
)	
Employer,)	ORDER REQUESTING
)	BRIEFING ON NOVEL
)	ISSUES
)	
and)	
)	Admin. Order No. 2009-03
UNITED FOOD AND COMMERCIAL)	
WORKERS UNION,)	
LOCAL 5,)	
)	
Petitioner.)	
_____)	

On January 22, 2009, ALRB Salinas Regional Director Freddie Capuyan and Assistant General Counsels Joseph Mendoza and Marvin Brenner informed the Agricultural Labor Relations Board (ALRB or Board) that on December 4, 2008, Hess Collection Winery (Hess) and the United Food and Commercial Workers, Local 5 (UFCW) had entered into a private party settlement agreement resolving “all outstanding issues” between the parties. Pursuant to the agreement the parties have agreed, among other things, to withdraw and/or otherwise cause to be dismissed pending ULP charges, pending/ potentially pending ALRB hearings, pending/ potentially pending makewhole matters, and all pending civil litigation, including at

least one case related to the UFCW's efforts to enforce the mediator-imposed collective bargaining agreement that resulted from *Hess Collection Winery* (2003) 29 ALRB No. 6. As the result of their recent negotiations, Hess and the UFCW have also entered into a new collective bargaining agreement with the effective dates of November 28, 2008 through December 31, 2010.

The position of the Regional Office is that Hess has failed to retroactively implement the collective bargaining agreement that resulted from 29 ALRB No. 6 to cover the period from September 24, 2003 (the date the collective bargaining agreement was issued as a "mediator's report") through November 28, 2006 (the date Hess actually implemented the collective bargaining agreement) and, therefore, is not in compliance with a final Board order. As a result, the Regional Office asserts, the parties may not compromise any amounts owing pursuant to the order without the Board's approval, i.e., through the submission of a formal settlement agreement.

The Region therefore requests that the Board inform it whether the failure to retroactively implement the 2003 collective bargaining agreement is a compliance issue within the Board's continuing jurisdiction or merely a breach of contract issue enforceable only by the parties.

The Region's memo raises several novel issues on which the Board finds it appropriate to request briefing by the parties.

PLEASE TAKE NOTICE that Hess, UFCW and the Regional Office and/or the ALRB General Counsel are requested to submit briefing on the following issues for the Board's consideration:

- 1) The parties are asked to clarify their intent with respect to the settlement agreement's effect on any further enforcement and/or implementation of the Board's order in *Hess Collection Winery* (2003) 29 ALRB No. 6.
- 2) The parties and the Regional Office/General Counsel are asked to detail communications pertaining to the implementation of the collective bargaining agreement resulting from 29 ALRB No. 6 and list any actions taken to enforce the Board order in 29 ALRB No. 6 between September 13, 2006 and November 12, 2006.
- 3) In light of Labor Code section 1164.3, subdivision (f), is the Board's authority to seek court enforcement of its order in a mandatory mediation case limited to the 60-day period following the effective date of the Board's order? If so, once the 60-day period expires is the Board without authority to take any steps to ensure compliance with its order?
- 4) Are there any equitable remedies available to any of the parties or the General Counsel's office that would support the Board's exercise of jurisdiction to enforce the contract?
- 5) Notwithstanding Labor Code section 1164.3, subdivision (f), do the parties retain the right to seek contractual remedies, either pursuant to Labor Code section 1165 or through an arbitration clause in the Board-ordered contract?
- 6) Any other issues arising out of 29 ALRB No. 6 deemed pertinent.

Briefs addressing the above issues are due on March 2, 2009, with replies due on March 12, 2009.

By Direction of the Board

Dated: February 9, 2009

J. ANTONIO BARBOSA
Executive Secretary, ALRB