

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

January 26, 2005

Time: 10:00 a.m.
Members Present: Chairwoman Shiroma and Board Members Rivera-Hernandez, Zingale and Bustamante.
Members Absent: None
Staff Present: Executive Secretary Barbosa; Board Counsel Wender and Heyck; Analyst Massie; Personnel Analyst Kojima; Accounting Officer Davis.
Staff Absent: Board Counsel Murray

OPEN SESSION

- 1. Approval of Minutes:** Minutes for January 19, 2005, were approved 4-0.
- 2. Board Member Comments:** None.
- 3. Public Comments:** None.
- 4. Announcements:**

Analyst Massie and Executive Secretary Barbosa have been invited to attend the first California IT Industry Horizons event featuring Jonathan Schwartz, President & COO Sun Microsystems on January 26, 2005.

Marketware Technologies is presenting a complimentary Solutions Breakfast with a presentation of Acrobat 7 by Adobe on Tuesday, February 15, 2005, from 8:30 a.m.- 10:30 a.m. at the Ziggurat Building Auditorium, 707 3rd Street, West Sacramento.

An invitation was received from the Kern County Board of Trade to attend the annual Kern Products Dinner on March 2, 2005.

Julie Tchang is our new contact person at the New Horizons Computer Learning Center in Sacramento.

5. Weekly Status Report On Elections, Unfair Labor Practice Complaints, Hearings And Court Litigation

ELECTION REPORT

NOTICE OF INTENT TO TAKE ACCESS (NA) AND NOTICE OF INTENT TO ORGANIZE (NO): None.

PENDING ELECTION MATTERS:

Gallo Vineyards, Inc., 03-RD-1-SAL

The ALJ issued her decision on the unfair labor practice case on December 19, 2003. The Board issued its decision on November 5, 2004, affirming the ALJ's recommendation that appropriate remedies included the dismissal of the decertification petition. Gallo filed its petition for review on December 2, 2004. Decertification Petitioner Roberto Parra filed a petition for review on December 3, 2004. The certified record was filed on December 10, 2004. The election objections are in abeyance pending completion of the ULP case.

Green Nature Growers, Inc dba Old River Sod, 04-RD-2-VI

Agricultural employee Tracy Thornhill filed a decertification petition with the Visalia Regional Office seeking an election to oust the incumbent union United Farm Workers of America, AFL-CIO at Green Nature Growers, Inc. dba Old River Sod. A decertification election was held on Friday September 24, 2004 at Old River Sod with the following tally of ballots reported by the Visalia regional office staff:

UFW:	8
No Union:	11
UCB's:	<u>8</u>
Total:	27

On October 29, 2004 the Regional Director issued his report on challenged ballots and recommended that of the eight (8) unresolved challenged ballots, six (6) be opened and counted, one (1) be sustained, and one remain unresolved and not be opened and counted. Exceptions, if any, are due within five (5) days receipt of the report. None have been filed. The Executive Secretary issued an order making the regional director's report final and order the opening and counting of the ballots. The Regional Director opened and counted the unresolved challenged ballots on December 9, 2004 and issued a revised tally of ballots thereafter.

UFW:	9
No Union:	16
UCB's:	<u>1</u>
Total:	26

The UFW filed objections to the election with the Executive Secretary on November 5, 2004 that are in abeyance pending completion of the General Counsel's investigation of ULPs.

COMPLAINT REPORTS

No new complaints have issued.

PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED

Nothing new to report.

HEARINGS HELD

None.

TWO CASES ON CALENDAR:

Hess Collection Winery, 01-CE-09-SAL

The pre-hearing conference was held on November 23, 2004. A second pre-hearing conference was held January 13, 2005. The hearing is set for February 15, 2005.

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

The pre-hearing conference was held October 5, 2004. On January 11, 2005 the Executive Secretary granted the Respondent and Charging Party's request to continue the hearing previously set for January 18, 2005 to April 5, 2005.

CASES PENDING ALJ DECISION:

None.

ALJ/IHE DECISIONS ISSUED:

None.

CASE PENDING EXCEPTIONS AND/OR REPLY:

Hadley's Date Gardens, Inc., 03-CE-15-EC

The exceptions are due January 18, 2005. The exceptions were received on January 25, 2005 and were forwarded to the Board for processing. The reply, if any, is due January 31, 2005.

CASES PENDING BOARD DECISION:

None.

CASES SETTLED OR RESOLVED:

Norman's Nursery, 03-CE-26-EC(R) and 04-CE-11-EC(R).

The parties reached a bilateral informal settlement agreement that provided backpay (\$12,653.06) and notice remedies for the employer's alleged reduction of hours and constructive discharge of employees because of their alleged protected concerted activities.

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.

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 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 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.

ALRB v. D'Arrigo Bros, M 71328

Board Counsel Heyck appeared on behalf of the Board at an OSC hearing in the Superior Court of Monterey County on Friday, October 1, 2004. The court approved the Board's application for an order enforcing the UFW's notice in lieu of subpoena, but it did so on the condition that the negotiation notes and correspondence requested in the UFW's notice in lieu of subpoena not be disseminated or used outside the scope of ALRB Case No. 00-CE-5-SAL, et al.

Ms. Heyck prepared a formal order after hearing, and sent it to counsel for D'Arrigo for approval as conforming to the court's order as required by California Rule of Court 391. The proposed order was submitted to the court for signature on October 13, 2004. The court inadvertently signed two conflicting orders after hearing, and when this was brought to the court's attention, the court issued an order setting both orders after hearing aside. The court rescheduled the hearing set for December 3, 2004, to address the issues of the two conflicting orders to December 17, 2004; however, on December 16, counsel for the UFW and for D'Arrigo indicated that they wished to work out a stipulated order after hearing and all parties agreed to have the court take the matter off calendar.

The UFW applied to intervene in the case on December 15, 2004, and the court issued an order granting the UFW's application on December 15, 2004.

Gallo Vineyards, Inc., C048387

The Board issued its decision on November 5, 2004. Gallo filed its petition for review on December 2, 2004. Roberto Parra filed a separate petition for review on December 3, 2004. The certified record was filed on December 10, 2004. On December 20, 2004, the Court on its own motion consolidated the petitions filed by Gallo and Parra. The parties have stipulated to extend the briefing schedule, and the court approved the stipulation. The petitioner's brief is now due on March 20, 2005 with the ALRB's brief to be due 90 days after the petitioner's brief is filed. The petitioner may then file its reply brief 80 days following the ALRB's brief.

6. Budget And Administration

(a) Information Technology: Nothing new to report.

(b) Regulations: Nothing new to report.

(c) Budget: Nothing new to report.

(d) Policy and Procedures:

- (1) The present Computer Use Policy will be updated to reflect the State's Peer-to-Peer Policy.
- (2) The Policies and Procedures Committee met on agency time reporting and refined the reporting categories. A meeting has been scheduled with Kim Whittaker of EDD for assistance in designing an appropriate database.

(e) Labor and Workforce Development Agency –

- (1) Agency Response to Audit and Evaluation Division's Draft Audit Report on ALRB Internal Control Review – The Board reviewed the Agency's

response to the draft audit report with Personnel Analyst Kojima and Accounting Officer Davis.

(2) LWDA Chief Counsel Meeting – The next LWDA Chief Counsel meeting is scheduled for Tuesday, February 1, 2005.

(f) Regional Directors' Quarterly Meeting – The next Regional Director's Quarterly Meeting is tentatively set for Tuesday, February 16, 2005. The meeting will be conducted by conference call. Executive Secretary Barbosa will confirm the date with the Regional Directors.

7. Outreach Projects

(a) Brochures: Nothing new to report.

(b) ALRB Handbook – A CD of the current version of the Handbook is being ordered from Office of State Publishing.

8. Legislation: AB 79 (Dutra) -- This new law suspends until January 1, 2008 the requirements to prepare and submit various reports to the Legislature and Governor. However, it does not affect the ALRB's obligation to submit an annual report, as Labor Code sec. 1143 (which contains the annual report requirement) is expressly exempted from the suspension provision.

AB 1825 (Reyes) -- This bill requires that supervisors receive two hours of training and education on sexual harassment. It is expected that the Department of Personnel Administration will coordinate compliance with this new law, but this will be verified. The agency sexual harassment policy will be reviewed to determine if it is appropriate to include any reference to this mandated training.

9. Personnel: The Executive Secretary informed all ALRB designated employees of the requirement for state officials to complete an ethics training course every two years. Since the ALRB employees last completed this training in 2003, the training is now required this year. To help employees meet this requirement, the Attorney General's Office and the Fair Political Practices Commission have developed an interactive ethics training course available by clicking on the following site:

<http://caag.state.ca.us/ethics/index.htm>.

10. Compliance: Following up on the Board's decision to focus attention in 2005 on resolving and closing as many compliance cases as possible, Chairwoman Shiroma summarized her conversations with each Regional Director regarding, in general, the status of their compliance cases. She was pleased to report that the Regional Directors estimate they will be seeking closure of a number of older cases this spring,

towards qualifying affected farm workers for the Agricultural Employee Relief Fund (AERF). The AERF regulation became effective in May 2004.

Senior Board Counsel Joe Wender reported that he is working with Accounting Officer Nancy Davis on designating funds for the AERF and estimates it will contain over \$150,000.

11. Future Agenda Review

The open session ended at 12:20 p.m.