

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

March 9, 2005

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

OPEN SESSION

- 1. Approval of Minutes:** Minutes for February 23, 2005, were approved 2-0.
- 2. Board Member Comments:** None
- 3. Public Comments:** None.
- 4. Announcements:** The Western Growers Association's 2005 Legislative Reception is scheduled for March 9, 2005, from 6:00-7:30 p.m. at the Sutter Club in Sacramento.

The Labor Management Relations Conference: "Prospects for the Future, Are You Ready" is scheduled for March 16, 2005 at the Resource Agency, Auditorium, 1416 "O" Street in Sacramento. Chairwoman Shiroma is one of the scheduled speakers.

- 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.

Sutter Mutual Water Company, 05-RC-1-VI

On Wednesday, January 26, 2005 Teamsters Local 137 filed a representation petition with the Visalia Regional Office seeking to organize the agricultural employees of Sutter Mutual Water Company in Robbins, CA. The employer is a water district and water supplier. The unit includes approximately 10 employees who deliver water to farms. The Regional Director issued a letter finding that the agency has jurisdiction to proceed with petition. The Regional Director denied the employer's request that the ballots be impounded. The election was held February 2, 2005, with the following tally:

General Teamsters Local 137	5	
No Union	2	
Unresolved Challenged Ballots		<u>0</u>
Total	7	

Objections to the election were filed on February 9, 2005. An investigative hearing is scheduled for March 24, 2005 in Woodland, California.

Maple Dairy, 05-RC-2-VI

On February 22, 2005 the United Food and Commercial Workers, Local 1096, filed a representation petition with the ALRB Visalia Regional Office seeking to organize the agricultural employees at Maple Dairy. The employer is a dairy located in Bakersfield with approximately 60 employees. On February 28, 2005 the petitioner requested withdrawal of the petition that was granted on February 4, 2005. Petitioner has since filed a new NA and NO with respect to Maple Dairy and a second operation, but no representation petition.

COMPLAINT REPORTS

No new complaints have issued.

PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED

Nothing new to report.

HEARINGS HELD

None.

TWO CASES ON CALENDAR:

Sutter Mutual Water Company, 05-RC-1-VI

Investigative hearing is scheduled for March 24, 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:

None.

CASES PENDING BOARD DECISION:

None.

CASES SETTLED OR RESOLVED:

None.

COMPLIANCE CASES CLOSED:

None.

CASES TRANSFERRED TO BOARD FOR DECISION:

None.

BOARD DECISIONS:

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

The Board issued its decision in Hadley's Date Gardens, Inc. (February 18, 2005) 31 ALRB No. 1. A petition for writ of review, if any, is due within 30 days.

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 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.

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.

Ms. Heyck informed the Board that on March 8, 2005 she received word from attorneys for D'Arrigo and the UFW that they had not been able to reach a stipulated order after hearing. Ms. Heyck will file an application in the Monterey County Superior court to have the subpoena enforcement matter put back on the calendar so a final order after hearing can be obtained from the court.

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 was due on March 20, 2005 with the ALRB's brief to be due 90 days after the filing of petitioner's brief. The petitioner's reply brief is due 80 days following the ALRB's brief. The court granted Petitioner's request for a 30 day extension to April 20, 2005 to file its opening brief.

6. Budget And Administration

(a) Information Technology: The Headquarters server will be replaced on the Cesar Chavez Holiday on Thursday, March 31, 2005. Service will be disrupted for most of the day.

(b) Regulations: Nothing new to report.

- (c) Budget: A Senate budget pre-hearing was held March 2, 2005. The ALRB did not attend as there were no issues pending concerning the agency. The Senate Budget Hearing is scheduled for 3:30 p.m. on Monday, March 14, 2005.
- (d) Policy and Procedures: Peer to Peer Policy-Budget Letter 05-03 has issued providing new policy regarding the practice of peer-to-peer file sharing, to implement the Governor's Executive Order S-16-04. Board Counsel Wender will draft amended policies and circulate them to the Board. Delegation of Board Authority-Board Counsel Wender will update the Board's delegation of authority to the Chair and Executive Secretary in the absence of a quorum of incumbent board members. Sexual Harassment Seminar-All Board Members, Board Counsel and the Executive Secretary are scheduled to attend a mandatory Sexual Harassment Prevention Seminar on either March 11 or March 23, 2005.
- (e) Labor and Workforce Development Agency: The Governor's office is requesting a six-month-ahead report. Details will follow. Executive Secretary Barbosa was appointed to work with the Agency on proposed performance measures.
- (f) 30th ALRB Anniversary Reception: Member Zingale is seeking more recent photos of ALRB activity.
- (g) Annual Report – Several sections have been completed, two sections need to be reassigned in light of Member Bustamante's departure and the remainder are pending completion. Member Rivera-Hernandez will review the Annual Message from the Board.
- (h) Record Retention Schedule: Proposed changes to the ALRB Retention Schedule were discussed. Staff will review files for destruction at the Records Center. New files to be archived will be retained onsite.
- (i) AERF Form – The Board voted 3-0 to approve the proposed AERF 2-yr. notification and authorization form to be used to identify monies to be deposited in the AERF.

7. Outreach Projects

- (a) Brochures: Analyst Massie will assist Board Counsel Heyck with a request for materials from the Visalia Regional Office.
- (b) Radio Public Service Announcement: The proposed public service announcement will be circulated for approval.

(c) Outreach Materials: Business Services Officer McCarther will obtain quotes for the same quantities of outreach materials as were ordered previously.

- 8. Legislation: AB 1561 (Umberg) State boards and commissions: removal and penalties.** This bill would declare the intent of the Legislature to implement procedures that provide for the imposition of penalties, removal from office, or both, as to appointed members of state boards and commissions who do not adequately perform their duties, including the regular attendance of meetings.
- 9. Personnel:** Accumulation and usage of leave balances for exempt employees were discussed.
- 10. Compliance:** Nothing new to report.
- 11. Future Agenda Review:** The Board meeting scheduled for March 16 is rescheduled to Tuesday, March 15, at 10:00 a.m. The Board meeting scheduled from March 23 is rescheduled to Thursday, March 24, at 10:00 a.m.

The public meeting adjourned at 11:40 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.