

**STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD**

**BOARD MEETING MINUTES**

**Board Conference Room  
915 Capitol Mall, 3<sup>rd</sup> Floor  
Sacramento, CA 95814**

**April 6, 2005**

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

**OPEN SESSION**

- 1. Approval of Minutes:** Minutes for March 30, 2005, were approved 3-0.
- 2. Board Member Comments:** None
- 3. Public Comments:** None.
- 4. Announcements:** The Board has granted a regional director's motion to make a case eligible for pay out from the Agricultural Employee Relief Fund (Fund). This is the first case to be made eligible. The first distribution of funds will occur within 90 days of the end of the fiscal year.
- 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 were held in abeyance pending completion of the General Counsel's investigation of ULPs. On March 28, 2005, the General Counsel affirmed the dismissal of the charges. On March 30, 2005, the Executive Secretary issued an order dismissing the election objections, as Board precedent requires deferral to the General Counsel's determination of whether charges warrant the issuance of a

complaint where, as here, the merit of the election objections is dependent on the merit of the related ULP charges. The UFW has until April 11, 2005 to file exceptions to the dismissal of the election objections. The request for review is due Monday, April 11, 2005.

**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 opened on March 24, 2005 in Woodland, California, and was placed in abeyance due to a medical emergency. The hearing will be rescheduled at the earliest convenience of all concerned.

**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 in abeyance pending rescheduling.

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. The hearing commenced 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:**

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 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.

The Order to Show Cause hearing in the D'Arrigo matter was set for May 20, 2005. Board Counsel Heyck contacted the court to request an earlier the hearing date.

**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.

**Hadley Date Gardens, Inc., 31 ALRB No. 1**

A petition for review was filed on March 18. However, the petition was not verified, as required by Rule 59 of the Cal. Rules of Court. An amended petition was filed on April 1. Though the 30-day period for filing a petition for review under sec. 1160.8 is jurisdictional, it has been held that the lack of a verification is a curable defect as long as the petition itself was filed within the time limit, as it was here. (See UFW v.

ALRB (1985) 37 Cal.3d 912.) Though no official notification of the filing has been received from the court, the certified record will be completed and filed shortly.

## **6. Budget and Administration**

(a) Information Technology: The Headquarters server was replaced on March 31, 2005.

(b) Regulations: Nothing new.

(c) Budget: The ALRB budget is currently on calendar for Assembly Budget Subcommittee 4 on Tuesday, April 12, 2005, at 1:30 p.m.

(d) Policy and Procedures: Nothing new.

(e) Labor and Workforce Development Agency:

Performance Measures – Work in progress on the initial phase of the project was discussed.

(f) 30<sup>th</sup> ALRB Anniversary Reception – The event will be announced in the upcoming Public Meeting Notice.

(g) Annual Report – Work continues on the Annual Report.

(h) Operational Recovery Plan – Work in progress.

## **7. Outreach Projects**

(a) Brochures: Nothing new to report.

(b) Radio Public Service Announcement: Chairwoman Shiroma will contact EDD Director Pat Henning regarding the recording of the public service announcement.

(c) Outreach Materials: Nothing new to report.

(d) Cesar Chavez Day: Board Counsel Laura Heyck provided outreach materials a rally at the State Capitol celebrating Cesar Chavez Day.

**8. Legislation: AB 1561 (Umbert)** 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:** Work continues on the justification for filling the vacant ALJ position.

**10. Compliance:** The Board has granted a regional director's motion to make a case eligible for pay out from the Agricultural Employee Relief Fund (Fund) has been closed. This is the first case to be made eligible. The first distribution of funds will occur within 90 days of the end of the fiscal year.

**11. Future Agenda Review:** Nothing new to report.

The public meeting adjourned at 11:20 a.m.