

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

May 5, 2004

Time: 10:00 a.m.
Members Present: Chairwoman Shiroma, Board Members Rivera-Hernandez, Zingale and Bustamante
Members Absent:
Staff Present: Board Counsel Wender and Heyck; Executive Secretary Barbosa, Personnel Manager Kojima, Budget Officer Davis
Staff Absent: Board Counsel Murray, Analyst Massie
Other: General Counsel Turner, LWDA Acting Secretary, Victoria Bradshaw, LWDA Budget Officer, Scott Vogel, Jamie Fall, LWDA, Carrie Nevins, LWDA, Roy Gabriel, California Farm Bureau Federation.

OPEN SESSION

- 1. Approval of Minutes:** Approval of Board minutes for April 14, 2004 was continued to the next Board meeting.
- 2. Board Member Comments:** Chairwoman Shiroma welcomed visitors attending the Board meeting including LWDA Acting Secretary, Victoria Bradshaw and Roy Gabriel of the California Farm Bureau Federation.
- 3. Public Comments:** LWDA Acting Secretary, Victoria Bradshaw introduced LWDA staff member Jamie Fall who will be working with the Governor's Cabinet office. Ms. Bradshaw also summarized the current status of the proposed budget for FY 2004-05, and gave an update on the process by which the California Performance Review Report will be generated.
- 4. Announcements:**

The Department of Food and Agriculture announced that the 2003 State Employees' Food Drive was a great success. The campaign raised \$178,990.19 and collected

300,046.53 pounds of food. The per capita contribution of ALRB employees to the food drive ranked in the top 10%. Congratulations to all!

The Association of Labor Relations Agencies Annual Conference Annual Conference is being held from July 23-25, 2004 in Halifax, Nova Scotia.

The Performance Institute is sponsoring a free forum on Performance Reviews and Management in California State Government. The forum is scheduled for Thursday, May 20, 2004 at the Sacramento Convention Center from 8:00 a.m. to 12:15 p.m. Two keynote speeches and one leadership panel are planned. Donna Arduin, Director, Department of Finance and Billy Hamilton, Co-/Executive Director of the California Performance Review will be giving keynote addresses.

The Government Technology Conference is scheduled from May 10-14, 2004 at the Sacramento Convention Center.

The Giannini Foundation will be holding its annual conference on Dimensions and Issues in California Agriculture on May 28, 2004 in Sacramento. Those wishing to attend should register by May 19, 2004.

The Board received an invitation to the Placerville Fruit Growers Association annual agricultural tour that will be held on June 4, 2004.

The Industrial Relations Association of Northern California (IRANC) will hold a luncheon meeting on Thursday, May 20, 2004. The topic will be "The History and Current and Future of Private and Public Sector Labor Law." Chairwoman Shiroma will be among several panelists who will speak at the meeting.

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):

Nothing new to report.

PENDING ELECTION MATTERS:

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

The ALJ issued her decision on December 19, 2003. Both the union and employer filed exceptions to her decision. Replies were received March 29, 2004. A decision by the Board is pending.

Excelsior Farming, LLC, 04-RD-1-VI

A decertification election was held on April 27, 2004 among the employees of Excelsior Farming, LLC in Hanford, CA. The certified bargaining agent of the employer is the UFW (United Farmworkers of America, AFL-CIO). According to the petition for decertification filed on April 20, 2004 with the ALRB Visalia Regional Office, there are approximately 360 employees in the bargaining unit. There is no tally of ballots at this time because the ballots were impounded following the election, and are pending investigation of a charge filed by the UFW alleging employer involvement with the decertification effort. Election objections, if any, are due May 4, 2004.

COMPLAINT REPORTS:

PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED:

Nothing new to report.

ONE NEW COMPLAINT ISSUED

Garroutte Farms, Inc., 03-CE-30-SAL

General Counsel vacated and set aside an informal bilateral settlement agreement as the employer allegedly knowingly violated a prior agreement to cease and desist from engaging in prohibited conduct (. i.e., harassing, threatening, intimidating and interrogating employees because of their union or protected concerted activities).

FIVE CASES ON CALENDAR:

Cocopah Nurseries, Inc., 03-CE-4-EC

The pre-hearing conference is set for June 1, 2004. The hearing is set for June 15, 2004.

Milky Way Dairy, 02-CE-44-VI

The pre-hearing conference is set for May 4, 2004. The hearing is set for June 21, 2004.

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

The second pre-hearing conference on discovery is scheduled for May 11, 2004. The hearing is set for July 20, 2004.

UFW (Coastal Berry), 01-CL-3-EC

The pre-hearing conference is set for July 12, 2004. The hearing is set for July 26, 2004.

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

The pre-hearing conference is set for October 5, 2004. The hearing is set for October 19, 2004.

CASES PENDING ALJ DECISION:

Nothing new to report.

ALJ/IHE DECISIONS ISSUED:

Nothing new to report.

CASE PENDING EXCEPTIONS AND/OR REPLY:

Gallo Vineyards, Inc., 03-CE-9-SAL

The ALJ issued her decision on December 19, 2003. Both the union and employer filed exceptions to her decision. Replies were received by March 26, 2004. A decision by the Board is pending.

CASES SETTLED OR RESOLVED:

Albert Goyenette, 02-CE-34-VI

The Regional Director withdrew the complaint and dismissed the case as the parties reached an informal settlement agreement. The respondent fully complied with the settlement (i.e., employer allegedly refused to rehire an employee who testified in an election proceeding).

Rancho Ramona Dairy, 02-CE-5-EC(R)

The Regional Director withdrew the complaint and withdrew charges as the parties reached a private party settlement resolving all issues.

Allstar Seed Company, 02-CE-52-EC

The Regional Director closed the case as all remedies have been complied with.

COMPLIANCE CASES CLOSED:

Nothing new to report.

CASES TRANSFERRED TO BOARD FOR DECISION:

Nothing new to report.

BOARD DECISIONS:

Nothing new to report.

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 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.

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

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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.

6. Budget And Administration

- (a) Information Technology: The request to replace outdated PC's in the ALRB headquarters office is pending.
- (b) Regulations: Agricultural Employees Relief Fund (AERF) and Decertification Amendments – The revised notice of proposed amendments was mailed out on January 16, 2004. The new public comment period ended on March 1, 2004. No comments were received. On March 3, 2004, the Board took up the matter and voted 4-0 to adopt the amendments as proposed. The regulation package was forwarded to the Office of Administrative Law who approved the regulations on April 19, 2004. The amendments will be effective 30 days from that date.
- (c) Budget: Carrie Nevans and Scott Vogel reviewed third quarter expenditure projections.
- (d) Policy and Procedures Committee:
 - (1) Board Counsel Time Sheets—Work continues on the policy.
- (e) Labor and Workforce Development Agency:
 - (1) Case Tracking System: Executive Secretary Barbosa and Analyst Massie met with EDD to discuss the terms and responsibilities of the Memorandum of Understanding for loaned EDD staff that will assist in developing a statistical tracking system for the ALRB. The Memorandum of Understanding has been finalized and is pending signature. The loaned EDD representative is expected to start this week.
 - (2) Bilingual Services – The Language Coordinator Committee was canceled last month and has not been rescheduled.
- (f) Annual Report 2002/03 – Executive Secretary Barbosa reported that work continues on the report and he will work with Analyst Massie on the Petition to Certification Chart.
- (g) GC Proposed Action Items – Lists of published and unpublished court decisions, and a list of vacated Board decisions are being updated. Board Counsel Wender will continue working on standard remedies.

7. Outreach Projects

(a) Novella: Member Bustamante continues to make contacts regarding assistance with publication of the Novella.

(b) Brochures: The cost of reprinting the ALRB handbook (bluebooks) is being researched.

8. Legislation: AB 2900 (Laird)

Presently, Labor Code section 1156.3, subdivision (e), requires that the Board decertify a labor organization if it has been found by the EEOC to have discriminated on the basis of race, color, national origin, religion, sex, or other arbitrary or invidious classification in violation of Title 42 of the U.S. Code. This bill would add as a basis for decertification a finding by the California Dept. of Fair Employment and Housing that a labor organization has engaged in discrimination on any basis listed in Government Code section 12940, subdivision (a) (race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation). The bill also makes nonsubstantive changes to other provisions of section 1156.3. On April 26, 2004 the bill passed out of the Committee on Labor and Employment, and was re-referred to the Committee on Appropriations

9. Personnel: Nothing new to report.

10. Compliance: Nothing new to report.

11. Future Agenda Review:

(a) Press Release Policy

(b) Electronic Filing of Documents Policy

The public meeting adjourned at 11:45 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.