

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

May 25, 2005

Time: 10:00 a.m.
Members Present: Chairwoman Shiroma, Board Members Rivera-Hernandez and Zingale.
Members Absent: None.
Staff Present: General Counsel Turner, Executive Secretary Barbosa, Board Counsel Wender and Heyck, Analyst Massie, Legal Intern Elsea; Personnel Officer Kojima; Accounting Officer Davis
Staff Absent: Board Counsel Murray
Others Present: Professor Phil Martin, UCD; Ricky Martin, LWDA Budget Officer Scott Vogel

OPEN SESSION

- 1. Approval of Minutes:** Minutes for May 18, 2005, were approved 3-0.
- 2. Board Member Comments:** None.
- 3. Public Comments:** None.
- 4. Announcements:** The Mexican Cultural Center of Northern California is holding an opening reception of "The Dream of Earth" 21st Century Tendencies in Mexican Sculpture on May 25, 2005, from 5:30 to 7:30 p.m. at the California Environmental Protection Agency Headquarters Building, 1001 I Street, Sacramento, CA

The 2005 Conference on Labor and Employment Law is scheduled for September 1, 2005. The program is being presented by NLRB Regions 20 and 32, San Francisco Bay Chapter of the Industrial Relations Research Association.

The Association of Labor Relations Agencies Conference is scheduled for July 9-13, 2005 in Seattle, Washington.

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.

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 matter has been reset for July 12 and 13, 2005.

McCahon Floral, 05-RD-1-SAL

On April 15, 2005 agricultural employee Susana Vasquez filed a decertification petition with the Salinas Regional Office seeking to decertify the UFW as the certified bargaining representative. The election was held on April 22, 2005 with the following results:

UFW	1
No Union	29
Unresolved Challenged Ballots	<u>1</u>
Total	31

Election objections, if any, were due on April 29, 2005. Election objections were received from the UFW on May 2, 2005. The Executive Secretary's order on objections is issuing on May 11, 2005. Any request for review is due May 23, 2005. None was filed. The Executive Secretary's order making his decision final issued and issuing certification of results of election issued May 25, 2005.

G H & G Zysling Dairy, 05-RC-4-VI

On April 20, 2005 petitioner UFCW Local 1096 filed a rival union petition with the Visalia Regional Office seeking to organize the agricultural employees of G H & G Zysling Dairy and oust the incumbent union Teamster Union, Local 517. The employer is a dairy located in Dinuba with approximately 12 employees. The election was held on April 27, 2005 with the following results:

UFCW, Local 1096 (Petitioner)	8
Teamsters, Local 517 (Incumbent)	1
No Union	4
Unresolved Challenged Ballots	<u>13</u>
Total	26

Since the unresolved challenged ballots are outcome determinative in number, the RD will conduct a challenged ballot investigation and issue a report. On May 9, 2005 the UFCW filed objections to the election. The objections petition is under review by the Executive Secretary.

COMPLAINT REPORTS

No new complaints have issued.

PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED

None.

HEARINGS HELD:

None.

THREE CASES ON CALENDAR:

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

Investigative hearing has been reset for July 12 and 13, 2005.

Santa Barbara Farms, 04-CE-21-VI

Pre-hearing Conference: June 9, 2005

Hearing: June 27, 2005

The Hess Collection Winery, 99-CE-23-SAL (27 ALRB No. 2) (makewhole case)

Pre-hearing Conference: July 5, 2005

Hearing: July 19, 2005

Dan Tudor and Sons, 02-CE-13-VI

The Visalia Regional Office has requested that this matter be set for hearing.

CASES PENDING ALJ DECISION:

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

Pending receipt of hearing transcripts

ALJ/IHE DECISIONS ISSUED:

None.

CASE PENDING EXCEPTIONS AND/OR REPLY:

None.

CASES PENDING BOARD DECISION:

None.

CASES SETTLED OR RESOLVED:

Aurora Farms, 03-CE-7-EC(R)

The parties reached in informal settlement agreement on May 10, 2005.

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

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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. Petitioner has requested another extension to May 20, 2005, to file its opening brief.

Hadley Date Gardens, Inc., E037704

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 was filed with the court on April 18, 2005.

6. Budget and Administration

- (a) Information Technology: Replacement of the telephone system voice mail server was discussed.
- (b) Regulations: Judicial Council's Proposed Amendment to Rule 59--Board Counsel Wender reported that the Judicial Council has circulated for public comment a proposed amendment to Rule 59. This amendment, to which the Board had been alerted previously, would require parties to review of Board

decisions, other than the Board, to file a Certificate of Interested Entities or Persons in accordance with new Rule 14.5. These proposals are intended to provide justices of the Courts of Appeal with additional information to help them determine whether they should disqualify themselves from a proceeding. The Board discussed the proposal and, since it would not directly affect the Board, the Board decided to file no comment other than to communicate that it had no objection to the proposal.

- (c) **Budget:** Scott Vogel provided an update of the Agency's current budget. The status of contracts and year-end expenditures were discussed.
- (d) **Policy and Procedures:** The Board voted 3-0 to approved the updated ALRB's Purchasing Order and Supply Policy.
- (e) **Labor and Workforce Development Agency:** Member Rivera-Hernandez reported on the meeting with Chris Paulsen from EDD regarding electronic time reporting. Executive Secretary Barbosa responded to the Agency's request for a Case Tracking system update. The next Chief Counsels' meeting in scheduled for June 8, 2005.
- (f) **30th ALRB Anniversary Reception:** The event will be held on June 7, 2005, from 4-6 p.m. The Board discussed further details of the event.
- (g) **Annual Report:** Work continues on the Annual Report. .

7. Outreach Projects

- (a) **Brochures:** Board Counsel Heyck has contacted the Office of State Printing regarding publishing brochures.
- (b) **Radio Public Service Announcement:** Arrangements have been made to record the Public Service Announcements at EDD on May 26th.
- (c) **Handbook:** Nothing new to report.

- 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.

AB 38 (Tran, Strickland) State boards and commissions: salaries: suspension. This bill would specify that members appointed to specified state boards and commissions

shall receive no salary for the 2005-06, 2006-07, and 2007-08 fiscal years, except that they may receive a per diem payment of \$100 during that time. This bill is virtually identical to AB 556, which was introduced in 2003 and failed in committee early in January 2004. On April 13 the bill was amended to change the operative fiscal years to 2006-07, 2007-08 and 2008-09. The bill failed passage in the Assembly Business and Professions Committee on April 26, 2005.

9. **Personnel:** Personnel Officer Kojima updated the Board on pending job announcements.

10. **Compliance:** Presentation by Professor Phil Martin--Professor Phil Martin of U.C. Davis presented a proposal to update the wage and benefit survey he had performed for the Board in the 1980s, and to make a recommendation on a simpler formula for computing bargaining makewhole. The Board expressed interest in such a project and decided to commence the proper procedures, including a RFP if necessary, for securing a contract with Prof. Martin or any others interested in the project.

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

The public meeting adjourned at 12:15 p.m.