

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

July 20, 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 Wender, Murray and Heyck, Legal Intern Elsea
Staff Absent:
Others Present: Analyst Massie

OPEN SESSION

- 1. Approval of Minutes:** Minutes for July 13, 2005 were approved 3-0.
- 2. Board Member Comments:** None.
- 3. Public Comments:** None.
- 4. Announcements:** None.
- 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 resumed on July 12, 2005, concluded that same day and is pending the filing of post-hearing briefs.

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 conducted a challenged ballot investigation and issued his report on July 18, 2005. The Regional Director, after reviewing all the declarations and the information provided by the parties, was unable to resolve the challenges and therefore set the

matter for hearing on October 24, 2005. The objections petition filed on May 9, 2005 by the UFCW is in abeyance pending completion of the challenged ballot proceeding.

COMPLAINT REPORTS

PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED

None.

HEARINGS HELD:

None.

ONE CASE ON CALENDAR:

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

Pre-hearing Conference: August 2, 2005

Hearing: August 23, 2005

CASES PENDING ALJ/IHE DECISION:

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

Pending receipt of post-hearing briefs that are due September 2, 2005.

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

Pending receipt of transcript and post-hearing briefs.

ALJ/IHE DECISIONS ISSUED:

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

On July 14, 2005 the ALJ issued his ruling granting Respondent's motion to dismiss the makewhole specification.

CASE PENDING EXCEPTIONS AND/OR REPLY:

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

On July 14, 2005 the ALJ granted Respondent's motion to dismiss the makewhole specification. Any appeal is due by July 25, 2005 (Monday) and replies by August 4, 2005.

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.

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. Parra filed an opening brief on May 20, 2005, and Gallo filed its opening brief on June 10, 2005. The ALRB's response brief is due September 10, 2005. Any reply briefs by the petitioners will be due 80 days after the filing of the response briefs.

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 was received from the court, the certified record was filed with the court on April 18, 2005. The Petitioner was granted a 5-day extension of time to May 31 to file its opening brief. Thereafter, the Petitioner and the Board entered into a stipulation extending the time to file 30 days in order to allow a private party settlement agreement to be presented to the Board for its approval. On June 9, 2005, Judge Ramirez, on its own motion, stayed the pending proceedings and directed the parties to furnish the court with a letter informing it of the status of settlement negotiations

20 days from the date of this order (i.e., June 29, 2005). On June 21, 2005 the employer and charging party submitted an informal settlement agreement resolving the underlying action which the Board approved on June 24, 2005. Board Counsel Wender filed the stipulated request for dismissal with the court on July 15, 2005. Pursuant to the stipulation, the Board will issue an order vacating its decision. The employer will have 10 days from the date of issuance to deliver its check to the former employee. The stipulation also provides for an education session for employer's current employees that will be conducted by Board agents.

6. Budget and Administration

(a) Information Technology: Nothing new.

(b) Regulations: Nothing new.

(c) Budget:

The Board decided not to renew the maintenance agreement for the photocopier in the library. This will save \$515 per month.

The Board discussed the need to temporarily designate a small business advocate until permanent staff to handle procurement can be hired.

Chairwoman Shiroma provided an update on the end of the year expenditures.

(d) Policy and Procedures: The Board discussed minor changes to the ALRB's Policy on Procurement-Related Training and Education

(e) Labor and Workforce Development Agency: The next Senior Management Meeting will be held on September 13, 2005.

(f) Regional Directors' Quarterly Meeting – The agenda for the meeting was previously circulated for review.

7. Outreach Projects

(a) Brochures: Board Counsel Heyck is working with the State Printing Plant to print the ALRB's brochures. The purchase orders for printing materials were completed June 30, 2005.

(b) Radio Public Service Announcement: The Board requested an update from the Regional Directors on their efforts to distribute the PSA. The Board discussed the importance of informing the public about rights under the ALRA.

8. Legislation: Nothing new.

9. Personnel: The revised job announcement for the ALRB Hearing Officer has issued. The Board discussed issuing a job announcement for a permanent staff person to handle procurement and contracts.

10. Compliance: The Board requested that the Regional Directors be asked to provide an update at the July 28 Regional Directors' meeting on their efforts to locate employees who were found to be eligible to receive payouts from the Agricultural Employee Relief Fund.

11. Future Agenda Review: Board meeting for August 3rd has been rescheduled for Tuesday, August 2, 2005.

The public meeting adjourned at 11:00 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION