

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

July 27, 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 and Analyst Massie
Staff Absent:
Others Present: None

OPEN SESSION

- 1. Approval of Minutes:** Minutes for July 20, 2005 were approved 3-0.
- 2. Board Member Comments:** None.
- 3. Public Comments:** None.
- 4. Announcements:**

The Regional Directors' Quarterly Meeting is scheduled for tomorrow July 28, 2005 at 10:00 a.m.

The 2005 Conference on Labor and Employment Law presented jointly by the National Labor Relations Board, the Industrial Relations Research Association, and the Labor and Employment Section of the Bar Association of San Francisco will be held on September 1, 2005, at the Marriott Hotel, 55 Fourth Street, San Francisco.

- 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 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. On May 9, 2005 the UFCW filed objections to the election. The objections petition 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

None.

CASE PENDING 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. Both the General Counsel and Charging Party filed an appeal from that ruling which is pending before the Board. Replies, if any, are due by August 4, 2005.

CASES PENDING BOARD DECISION:

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. Both the General Counsel and Charging Party filed an appeal from that ruling which is pending before the Board. Replies, if any, are due by August 4, 2005.

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. On July 13, 2005 Board Counsel received the signed copy of a stipulation to dismiss the petition and will file it with the Court shortly.

6. Budget and Administration

- (a) Information Technology: Analyst Massie reported on the information security and privacy workshop.
- (b) Regulations: Nothing new.
- (c) Budget: Nothing new.
- (d) Policy and Procedures: The updated Operational Recovery Plan was reviewed and approved.
- (e) Labor and Workforce Development Agency: Nothing new to report.

7. Outreach Projects

- (a) Bound Decisions—It was decided vacated decisions will not be published in bound volumes of ALRB decisions. A placeholder indicating the disposition of the case will be inserted.
- (b) ALRB Handbook—Nothing new to report.

(c) Radio Public Service Announcement: The announcements have been sent to the regions for distribution.

8. Legislation: Nothing new.

9. Personnel: Nothing new.

10. Compliance: Nothing new

11. Future Agenda Review: None.

The public meeting adjourned at 11:05 a.m.