

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

July 28, 2004

Time: 10:20 a.m.
Members Present: Chairwoman Shiroma, Board Members Rivera-Hernandez and Zingale
Member Present
Via Telephone: Board Member Bustamante
Staff Present: Board Counsel Wender, Murray and Heyck; Executive Secretary Barbosa; Analyst Massie
Others: Legal Interns Partovi and Shiners

OPEN SESSION

- 1. Approval of Minutes:** Board minutes for July 7, 2004, and Regional Director Quarterly Meeting Minutes of July 22, 2004, were approved 4-0.
- 2. Board Member Comments:** None.
- 3. Public Comments:** None.
- 4. Announcements:**

The American Cancer Society is hosting its 2004 Kickoff Breakfast on Thursday, August 19, 2004 at the California State University, Sacramento, University Union Ballroom, 6000 J Street in Sacramento.

The Mexican Cultural Center of Northern California is holding it's 10th Annual Gala at the Sacramento Hyatt, 1209 L Street, on Saturday, September 11, 2004.

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):

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. Both the union and employer filed exceptions to her decision. Replies were received March 29, 2004. A decision by the Board is pending. The Board has notified all interested parties of an opportunity for written and oral argument on a specified legal issue relevant to the Gallo ULP matter. Written comment is due on August 2, 2004 with oral argument scheduled September 10, 2004 at 10:00 a.m. at the Employment Development Department, 722 Capitol Mall, Room #1063, Sacramento, California.

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. On May 17, 2004 the Regional Director dismissed charge number 04-CE-16-VI as there was insufficient evidence to support a prima facie showing of a violation of the Act based on employer initiation of or unlawful assistance to the decertification drive. The UFW filed a request for review which is pending before the General Counsel for decision.

The UFW filed its objection petition on May 4, 2004. On May 6th, the Employer requested that the UFW's petition be dismissed for failure to comply with the regulations as the union allegedly failed to submit declarations in support and its factual statement was inadequate. The matter is in abeyance pending completion of the unfair labor practice investigation.

COMPLAINT REPORTS

Nothing new to report.

PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED

Nothing new to report.

FOUR CASES ON CALENDAR:

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

The hearing previously scheduled for July 20, 2004 was canceled due to the unavailability of the hearing officer. The hearing officer will contact the parties to rescheduling the hearing.

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.

George Borba, 03-CE-7-EC

The pre-hearing conference is set for August 3, 2004. The hearing is set for August 17, 2004.

Hess Collection Winery, 01-CE-9-SAL

The pre-hearing conference is set for November 9, 2004. The hearing is set for January 11, 2005.

CASES PENDING ALJ DECISION:

Nothing new to report.

ALJ/IHE DECISIONS ISSUED:

Nothing new to report.

CASE PENDING EXCEPTIONS AND/OR REPLY:

None.

CASES PENDING BOARD DECISION

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. The Board has notified all interested parties of an opportunity for written and oral argument on a specified legal issue relevant to the Gallo ULP matter. Written comment is due on August 2, 2004 with oral argument

scheduled September 10, 2004 at 10:00 a.m. at the Employment Development Department, 722 Capitol Mall, Room #1063, Sacramento, California.

CASES SETTLED OR RESOLVED:

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

The parties reached a formal bilateral settlement at the hearing on July 26, 2004. The matter is pending submission of the agreement to the Board for approval.

COMPLIANCE CASES CLOSED:

Nothing new to report.

CASES TRANSFERRED TO BOARD FOR DECISION:

D'Arrigo Bros. Of California, 00-CE-16-SAL

Respondent's Application for Permission to Appeal Ruling of Administrative Law Judge; UFW's Request for Order Authorizing Enforcement of UFW's Notice in Lieu of Subpoena.

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. 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. Any reply brief by the Petitioner is due July 8, 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 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. 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. Any reply brief by the Petitioner is due July 8, 2004.

6. Budget And Administration

- (a) Information Technology: Replacement computers for Headquarters have arrived. Once the computers have been configured, replacement will begin.
- (b) Regulations: Agricultural Employee Relief Fund/Administration of the Fund-Accounting Officer Davis to set up account for fund.
- (c) Budget – ALRB Program Narrative Update –In accordance with Budget Letter 04-011, departments are required to update the program narrative and return the narrative to their Finance analyst no later than July 30, 2004. The narrative for the 2004-05 Governor's Budget for the ALRB was reviewed by the Executive Secretary's office and proposed revisions were circulated to the Board. Any

revisions are due to the Department of Finance by July 30, 2004. The Board approved the narrative 4-0.

(d) Policy and Procedures Committee

- 1) Procurement Policy – Administrative Assistant Justice will review with Business Officer Davis and submit to Board.
- 2) Board Governance Policy – The Board discussed the development of a Board Governance Policy. Chairwoman Shiroma will prepare draft policy.
- 3) Public Meeting Start Time – The Board discussed and agreed to start public meetings at 9:00 a.m. beginning August 11th. A revised Public Meeting Notice will issue to reflect the change.

(e) Labor and Workforce Development Agency

- 1) Case Tracking System – System Requirement Document, Training and Institutional Database – Executive Secretary Barbosa and representatives from EDD have jointly proposed a System Requirement document that memorializes the agreement between the agencies for creation of a new case tracking system. The document is pending approval from the General Counsel and Board. An EDD representative will be training ALRB staff on the new system on Thursday at 10:00 a.m. Jim Winston has contacted the Executive Secretary and informed him how to access the Board's institutional database.

The public meeting adjourned at 10:45 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.