

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

August 11, 2004

Time: 9:30 a.m.
Members Present: Chairwoman Shiroma, Board Members Rivera-Hernandez
Bustamante and Zingale
Members Absent: None
Staff Present: Board Counsel Heyck, Wender and Murray; Executive Secretary
Barbosa and Analyst Massie
Staff Absent: None
Others: Accounting Officer Davis, Legal Intern Shiners and Partovi

OPEN SESSION

1. Approval of Minutes: Board minutes for July 28 and August 4 were approved 4-0.

2. Board Member Comments: None.

3. Public Comments: None.

4. Announcements:

Secretary Victoria Bradshaw and Deputy for Enforcement Jose Millan's confirmation hearings are rescheduled for today, Wednesday, August 11th at 1:30 p.m.

IRANC will be holding a conference at Freeborn Hall on the UC Davis campus on March 16, 2005, entitled "Prospects for the Future, Are You Ready."

An Award for Excellence in Financial Reporting for fiscal year 2002-03 was presented to Accounting Officer Nancy Davis.

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 was 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. The Board received an order, dated August 2, 2004, issued by General Counsel Norma Turner, directing the Regional Director of the Salinas Regional Office to (1) open and count the ballots that have been impounded in the pending case involving a decertification election at Gallo Vineyards, Inc., and (2) subtract the signatures gathered in the crews of the two supervisors found by the ALJ to have unlawfully assisted in the decertification effort and report whether the remaining signatures are sufficient to meet the requisite showing of interest. On August 4, 2004 the Board issued an order, pursuant to the authority over election matters vested in the Board itself pursuant to Labor Code section 1142, subdivision (b), directing that the ballots remain impounded until further order of the Board. In addition, the Board directed that the Regional Director take no action with regard to the adequacy of the showing of interest in support of the decertification petition in this case absent further order of the Board in the related unfair labor practice case now pending before the Board. On August 10, 2004, approximately 20 farm workers from Gallo met with General Counsel Turner and Staff Counsel Blanco, and with Chairwoman Shiroma, Member Zingale and Executive Secretary Barbosa.

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

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

The ALJ issued a notice scheduling a prehearing conference for October 5, 2004 with the hearing to follow on November 2, 2004.

Aurora Farms dba Borba & Son Dairy, 03-CE-18-EC

The pre-hearing conference was held August 3, 2004.

FOUR CASES ON CALENDAR:

Aurora Farms dba Borba & Son Dairy, 03-CE-18-EC

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

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

The ALJ issued a notice scheduling a prehearing conference for October 5, 2004 with the hearing to follow on November 2, 2004.

Hess Collection Winery, 01-CE-09-SAL

The pre-hearing conference is set for November 23, 2004. The hearing is set for January 11, 2004.

CASES PENDING ALJ DECISION:

Nothing new to report.

ALJ/IHE DECISIONS ISSUED:

Milky Way Dairy, 02-CE-44-VI

The ALJ issued an order approving the bilateral formal settlement agreement between the parties. The order is final and no further review by the Board is necessary under the recently revised regulations.

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:

Ronald Panziera dba Joe Panziera Farm, 01-CE-55-SAL

The Salinas Regional Director withdrew the complaint and dismissed the case as the respondent had complied with all the terms and conditions of the settlement agreement.

COMPLIANCE CASES CLOSED:

Nothing new to report.

CASES TRANSFERRED TO BOARD FOR DECISION:

D'Arrigo Brothers of California, 00-CE-5-SAL

Respondent's Application for Enforcement of Subpoena to General Counsel, dated August 2, 2004;

D'Arrigo Brothers of California, 00-CE-5-SAL

Respondent's Application for Enforcement of Subpoena to UFW, dated August 2, 2004

BOARD DECISIONS:

D'Arrigo Brothers of California, 30 ALRB No. 1

The Board issued its decision on August 2, 2004.

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 was 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. Petitioner's reply brief was due July 8, 2004.

6. Budget And Administration

- (a) Information Technology: Senior Systems Engineer Stephen Wicklund will be working with EDD to complete the necessary work on the network to set up the case tracking system. He will also be looking into the cause of the low disk space on the server. Telelink is making arrangements to install the equipment to automate the answering system and to check on other telephone problems that office is experiencing.
- (b) Regulations: Agricultural Employee Relief Fund/Administration of the Fund – Nothing new to report.
- (c) Budget – ALRB Program Narrative Update – The ALRB program narrative update was sent to the Department of Finance on July 30, 2004 in accordance with Budget Letter 04-011.
- (d) Policy and Procedures Committee
 - (1) Procurement Policy – The Board's policy on procurement was forwarded to the Department of General Services, Procurement Division, Purchasing Authority Management Section on July 30, 2004 and is under review.
 - (2) Board Governance Policy – Chairwoman Shiroma will circulate the proposed policy for approval.
- (e) Labor and Workforce Development Agency
 - (1) Case Tracking System – System Requirement Document, Training and Institutional Database – System Requirement Specification needs to be approved by General Counsel.

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 trained ALRB staff on the new system last Thursday. Former ALRB employee Jim Winston has contacted the Executive

Secretary and informed him how to access the Board's institutional database.

- (2) Enforcement Committee – Statistical Review Report, July 2004 The Enforcement Committee for the Labor and Workforce Development Agency issued its report on the enforcement responsibilities of each of the recipient agencies. A team of staff from each of the departments having enforcement responsibilities was assembled to review the statistical data gathering and verification processes of selected units. Due to an inadvertent omission, the statistical information requested by the committee was not provided to the committee. The Board's Executive Secretary has now contacted the committee, informed it of this omission, provided the requested data and has been informed that the committee will attempt to incorporate the Board's information into the report.
- e) Regulating Farm Labor Relations: The ALRA at 30 – We received an inquiry from an ALRB employee requesting clarification whether regional staff will be allowed to attend the conference and whether they will be entitled to reimbursement should they attend. Chairwoman Shiroma will be responding shortly. The Board will investigate the travel costs involved.
- f) California Performance Review – Executive Secretary was contacted by a representative from the California Performance Review Team approximately a month ago who requested the organizational charts for the agency. Updated charts were prepared and faxed to CPR.

Craig Grivette, Director of the Teale Data Center, is hosting a Customer Briefing re California Performance Review (CPR) Recommendations on Thursday, August 19, 9:30 - 11:30 a.m. at the Department of Education Auditorium, 1500 Capitol Avenue, Sacramento, CA.

7. Outreach Projects

- (a) Novella: Javier Juarez was contacted and agreed to make the correction to Novella to reflect the correct fax number for the El Centro Regional Office.
- (b) Brochures: The Visalia Regional Office requested outreach materials for an upcoming event.

8. Legislation:

AB290 (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. On May 6, 2004, the bill passed out of the Committee on Appropriations, and on May 10, 2004, the bill was read for the second time in the Assembly. On May 17, 2004, the bill was read for a third time in the Assembly and passed on to the Senate. On May 18, 2004, the bill was read for the first time in the Senate and was sent to the Rules Committee for assignment. The bill was referred to the Senate Judiciary Committee on May 27, 2004. A hearing on the matter was held June 22, 2004. On June 23, 2004, the bill passed out of the Senate Judiciary Committee and was re-referred to the Senate Appropriations Committee. On August 5, the bill passed out of the Senate Appropriations Committee and was sent to the Senate Floor, where it was read for the second time on August 9.

SB 1809 (Dunn)

This bill would make several changes to SB 796, which was adopted by the Legislature last year and signed by the Governor on October 12, 2003. That bill provided for private actions to recover civil penalties for violations of the Labor Code. The bill would require, as a condition to bringing a civil action, that the plaintiff report the alleged violation to the LWDA and that no state enforcement action commence within 15 calendar days of the report. The bill also would allow the court, in very limited circumstances, to award less than the specified maximum penalty. In addition, the bill would allow civil penalties for any violation of a posting or notice requirement to be recovered only by the LWDA. The bill passed the Senate May 26, 2004, on a 21-13 vote. The bill was read for the first time in the Assembly on May 27, 2004. On June 3, 2004 the bill was referred to the Assembly Committee on Labor and Employment and Judicial Committee. A hearing on the bill was held June 16, 2004. On June 23, 2004, the bill passed out of the Assembly Judiciary Committee and was re-referred to the Assembly Appropriations Committee. On July 27, the bill was amended as agreed as part of the budget accord. On July 28, it passed out of the Assembly Appropriations Committee and was passed by the full Assembly after adding an urgency clause. On July 29, the Senate concurred in the amendments, and the bill was enrolled and sent to the Governor on July 30.

Assemblyman Marco Antonio Firebaugh, Chair of the Latino Caucus, has asked the California Research Bureau (CRB) to conduct a survey of programs, including but not limited to special intergovernmental projects performed by state agencies, departments, boards and commissions that focus on common issues between California and Mexico.

Legal Interns Partovi and Shiners presented their analyses of the effect of SB 796 and SB 1809 on the administration of the ALRA.

- 9. Personnel:** Agency is reviewing our request for a freeze exemption regarding the Executive Secretary I position.
- 10. Compliance:** The Board continues to express its appreciation of Regional staff's efforts to move forward on compliance.
- 11. Future Agenda Review:** The Wednesday, September 15, 2004 Board meeting will be moved to Thursday, September 16 at 9:00 a.m.

The open session ended at 10:55 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.