

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

November 2, 2005

Time: 10:00 a.m.
Members Present: Chairwoman Shiroma, Board Members Raymundo and Rivera-Hernandez (telephone conference)
Members Absent: None.
Staff Present: Executive Secretary Barbosa, Acting General Counsel Blanco, Board Counsel Wender, Murray and Heyck and Analyst Massie
Staff Absent: None.
Others Present: Jehan Flagg, LWDA Director of Communications.

OPEN SESSION

- 1. Approval of Minutes:** The minutes for the October 31, 2005 Board Meeting were approved 2-0 with Member Raymundo abstaining.
- 2. Board Member Comments:** Chairwoman Shiroma and Member Rivera-Hernandez welcomed Member Raymundo. Member Raymundo introduced herself and shared her experiences.
- 3. Public Comments:** None.
- 4. Announcements:**

The 24th Annual Agribusiness Management Conference is scheduled for November 3, 2005 in Fresno, CA.

The Labor and Employment Law Section of the California State Bar will be presenting a seminar on Labor & Employment Law for the General Practitioner in two locations: Saturday, November 12, 2005 8:30 a.m. to 2 p.m., at Canyon Oaks Country Club in Chico; and Saturday, November 19, 2005, 8:30 a.m. to 2 p.m., at the Fresno Courtyard Marriott in Fresno.

Regional Director's Quarterly meeting will be held on November 3, 2005.

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): No new NAs/NOs to report.

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 was held on March 24 and July 12, 2005 in Woodland, California. Both the petitioner and employer filed post-hearing briefs. The IHE decision issued September 1, 2005. Exceptions to the decision were received September 15, 2005. Replies were received on September 23, 2005. The Board issued its decision on jurisdiction on October 31, 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

On May 9, 2005 the UFCW filed objections to the election. The objections petition is in abeyance pending completion of the challenged ballot proceeding. 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 hearing was held on October 24, 25 and 26 and is now completed. The parties are waiting for the transcripts with the posthearing briefs and IHE decision to follow.

Giumarra Vineyards Corporation and Giumarra Farms, Inc., 05-RC-7-VI

On August 25, 2005, petitioner United Farm Workers (UFW) filed a representation petition with the Visalia Regional Office seeking to organize the agricultural employees of Giumarra Vineyards Corporation and Giumarra Farms, Inc. The employer is involved in the production of grapes and potatoes and has approximately 3110 employees in Kern and Tulare counties. The election was held on September 1, 2005 with the following results:

UFW	1121
No Union	1246
Unresolved Challenged Ballots	<u>171</u>
Total	2538

Since the unresolved challenged ballots are outcome determinative in number, the RD conducted a challenged ballot investigation and issued his report on October 14, 2005. The Employer has filed one exception to the report on October 26, 2005. On October 31, 2005, the Board issued its decision and order on challenged ballots. There, the Board adopted the Regional Director's recommendations set forth in the report, i.e., to open and count 41 overruled challenged ballots and thereafter issue a revised tally of ballots. If, after the issuance of the revised tally of ballots, a determinative number of challenged ballots remains, the Board directed the Regional Director to issue a further report or reports on challenged ballots until a determinative result is reached.

Creekside Dairy and Holstein Lane Dairy, 05-RC-11-VI

On October 17, 2005 petitioner UFCW International Union Local 1096 filed a representation petition with the Visalia Regional Office seeking to organize the agricultural employees of Creekside Dairy and Holstein Lane Dairy. The employer is a dairy located in Tulare with approximately 25 employees. The election was held this October 24, 2005 with the following tally:

UFCW	6
No Union	17
Unresolved Challenged Ballots	<u>3</u>
Total	26

Election objections, if any, are due postmarked October 31, 2005. None were filed. The certification of results of election will issue this week.

COMPLAINT REPORTS

PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED

None.

HEARINGS HELD:

None.

CASES ON CALENDAR:

None.

CASES PENDING ALJ/IHE DECISION:

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

Pending transcripts and posthearing briefs.

ALJ/IHE DECISIONS ISSUED:

None.

CASE PENDING EXCEPTIONS OR REPLY:

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

Post-hearing briefs received October 3, 2005.

ALJ Decision was issued October 21, 2005.

Exceptions are due November 14, 2005. Replies are due November 28, 2005.

CASES PENDING BOARD DECISION:

None.

CASES SETTLED OR RESOLVED:

None.

COMPLIANCE CASES CLOSED:

None.

CASES TRANSFERRED TO BOARD FOR DECISION:

None.

BOARD DECISIONS:

Sutter Mutual Water Company, 31 ALRB No. 4 (October 31, 2005)

Giumarra Vineyards, 31 ALRB No. 5 (October 31, 2005)

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 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 UFW's response brief was filed September 8, 2005. The ALRB's response brief was filed September 9, 2005. Petitioner, Roberto Parra, filed a reply brief on September 28, 2005.

6. Budget and Administration

- (a) Information Technology: State ISO Office, the State Office of Privacy Protection and CalOHI are presenting Data Classification and Privacy Inventory Workshops on November 8, 9, and 15, 2005, in Sacramento.
- (b) Regulations: On October 26, 2005, the Board adopted, as proposed, amendments to section 20299 of the AERF regulation. The amendments reduce the eligibility period from 5 to 2 years and clarify that, in the event claimants cannot be found within one year after their last year of eligibility or after they have been allocated 100 percent of their claim, whichever comes first, the claims are extinguished the money reverts to the fund for use in paying other claims. The amendments will be submitted to the Office of Administrative Law, which will have 30 working days

to approve or reject them. They will go into effect 30 days after approval and filing with the Secretary of State.

- (c) **Budget:** Chairwoman Shiroma reviewed the status of the agency's budget.
- (d) **Labor and Workforce Development Agency:** Chairwoman Shiroma provided an update on the Senior Management meeting held November 1, 2005. The next General Counsel meeting is scheduled for December 1, 2005. A discussion was held regarding languages used by our stakeholders. LWDA Communications Director Flagg requested copies of information we provide in languages other than English.
- (e) **Regional Directors' Quarterly Meeting –** The next Regional Director's Meeting is scheduled for Wednesday, November 3, 2005 at 10 a.m.

7. Outreach Projects

- (a) **ALRB Brochures—**The printing project is proceeding at the Office of State Printing (OSP).
- (b) **ALRB Handbook—**The printing project is proceeding at OSP.
- (c) **Public Service Announcement—**Information on the new PSA has been forwarded to DGS and we are awaiting a cost estimate.
- (d) **DVD Novella—**Javier Juarez has completed the DVD of the ALRB Novella. Executive Secretary Barbosa will get estimates on the cost of reproduction.
- (e) **Mexican Consulate—**The Mexican Consulate in Calexico has contacted the ALRB to discuss outreach. Acting General Counsel Blanco plans to meet with the new Mexican Consul General in December. He is coordinating with DIR's Division of Labor Standards Enforcement who has an existing procedure in place with the Mexican Consulate to assist in finding missing discriminatees.
- (f) **DFEH/EEOC—**Acting General Counsel Blanco is working with EEOC & DFEH to develop a joint program to inform workers of their rights under our Act. Few sexual harassment charges involving the farming community have ever been filed with ALRB.

8. Legislation: Nothing new to report.

9. Personnel: AGPA interview is scheduled for Monday, November 7, 2005 at 2:00 p.m.

10. Compliance: Nothing new to report.

11. Future Agenda Review: Nothing new to report.

The public meeting adjourned at 11:40 a.m.