

**STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD**

**BOARD MEETING MINUTES**

**Board Conference Room  
915 Capitol Mall, 3<sup>rd</sup> Floor  
Sacramento, CA 95814**

**April 5, 2006**

**Time:** 10:00 a.m.

**Members Present:** Chairwoman Raymundo, Board Members Shiroma and Rivera-Hernandez

**Members Absent:** None.

**Staff Present:** General Counsel Lee, Executive Secretary Barbosa, Board Counsel Wender, Murray and Heyck, and Analyst Massie.

**Staff Absent:** None.

**Others Present:** None.

**OPEN SESSION**

**1. Approval of Minutes:** The minutes for the February 8 and March 7, 2006 Board meetings were approved 3-0.

**2. Public Comments—None**

**3. Chair Budget Report:**

Budget Hearings – Senate and Assembly budget pre-meetings were held on March 17, 2006. The Senate budget hearing previously noticed for March 27, 2006 was continued to May 8<sup>th</sup> to allow consideration of the ALRB's budget change proposal. The Assembly budget hearing was continued. No new date has been set.

**4. Executive Officer Report.**

**ELECTION REPORT**

## **NOTICE OF INTENT TO TAKE ACCESS (NA) AND NOTICE OF INTENT TO ORGANIZE (NO):**

The UFW has filed ten (10) Notices of Intent to Take Access (NAs) at the following employers: B & D Mushrooms (February 21, 2006), San Martin Mushrooms (February 21, 2006), Global Mushrooms (February 21, 2006), South Valley Mushrooms (February 21, 2006), Fitz Fresh, Inc. (February 24, 2006), Spring Fixed (February 24, 2006), B & D Mushrooms (February 28, 2006), South Valley Mushrooms, Royal Oaks Mushrooms (March 6, 2006) and Monterey Bay Bouquet Acquisition Partners (March 28, 2006).

Also, two (2) Notices of Intent to Organize have been filed: B&D Mushrooms, 06-NO-1-SAL and South Valley Mushrooms, 06-NO-2-SAL

## **PENDING ELECTION MATTERS:**

### **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. The IHE issued his

decision on February 2, 2006. The petitioner, employer and Regional Director all filed exceptions to his decision on February 17, 2006. The employer filed his reply to the Regional Director's and petitioner's exceptions on March 1, 2006. The matter is now before the Board for decision.

### **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 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. On November 14, 2005 the Regional Director opened and counted the 41 overruled challenged ballots and issued the following revised and now final tally:

UFW	1141
No Union	1266
Unresolved Challenged Ballots	<u>123</u>
Total	2530

As the remaining unresolved challenged ballots are not outcome determinative, the Executive Secretary proceeded with consideration of the election objections filed by the UFW. On November 17, 2005 the Executive Secretary issued his order setting eight (8) objections for an evidentiary hearing and partially dismissing two (2) objections that were not supported by sufficient declaratory support. The UFW sought

review of a single partially dismissed objection, which was denied by the Board. An investigative hearing was held from February 28, 2006 to March 9, 2006 in Bakersfield before Investigative Hearing Examiner (IHE) James Wolpman. The parties are waiting for receipt of the hearing transcripts with the post-hearing due date to be set by the IHE.

### **Jelle H. Reitzma Dairy, 06-RC-1-VI**

On February 28, 2006, the United Farm Workers filed a representation petition with the Visalia Regional Office seeking an election amongst the agricultural employees of Artesia Dairy Farms LLC in Corcoran, CA. The employer is a dairy with approximately 45 employees. The election was held on March 7, 2006. The tally of ballots showed the following:

UFW	25
No Union	24
Unresolved Challenged Ballots	<u>15</u>
Total	64

As the number of challenged ballots are outcome determinative, the Regional Director will conduct an investigation to determine whether the challenges should be sustained or overruled and issue a report. Should there be material factual disputes as to some or all of the challenges, an evidentiary hearing will held before an Investigative Hearing Examiner to resolve such challenges. Election objections, if any, are due on March 14. No objections were filed. The union's response was filed on March 24, 2006. The employer's response was filed on April 3, 2006. The employer will be filing additional material by the end of this week. Once the submissions have been received, the Regional Director will be reviewing the submissions and anticipates issuing a report in approximately three (3) weeks.

### **Candido Costa/Inland Empire Ranch Inc./Costa Dairy Farms, Case No. 06-RD-1-VI**

On April 3, 2006 agricultural employee Santos F. Claros filed a decertification petition with the Visalia Regional Office seeking to decertify the bargaining agent United Food and Commerical Workers, Fresh Fruit and Vegetable Workers, Local 1096 at Candido Costa/Inland Empire Ranch Inc./Costa Dairy Farms. The employer is a dairy located in Wasco with approximately 30 employees. The petition is under investigation and an election, if appropriate, would be held on or about April 10, 2006. The employer's response was filed on April 4, 2006. The staff is noticing the workers this morning and

the pre-election conference is being held tomorrow.

## **COMPLAINT REPORTS**

### **PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED**

**Gregg Surabian & Son, 05-CE-33-VI**

Prehearing Conference May 9, 2006

Hearing May 24, 2006

### **HEARINGS HELD:**

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

February 28, 2006 to March 9, 2006

### **CASES ON CALENDAR:**

**Gregg Surabian & Son, 05-CE-33-VI**

Prehearing Conference May 9, 2006

Hearing May 24, 2006

### **CASES PENDING ALJ/IHE DECISION:**

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

### **ALJ/IHE DECISIONS ISSUED:**

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

Exceptions filed February 17, 2006

Reply filed March 1, 2006

### **CASE PENDING EXCEPTIONS OR REPLY:**

None.

### **CASES PENDING BOARD DECISION:**

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

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

### **CASES SETTLED OR RESOLVED:**

None.

### **COMPLIANCE CASES CLOSED:**

#### **Aurora Farms dba Borba Dairy (Padilla), 03-CE-18-EC(R)**

The Respondent has complied with all of the Board's orders in this case and the Regional Director has issued a closing letter.

### **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. Oral argument has been scheduled for June 19, 2006.

## **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. Oral argument before the court is scheduled for June 19, 2006.

## **5. General Counsel Report**

ULP Charges etc. – General Counsel Lee reported no new charges have been filed.



The Salinas and Visalia regional offices report an increase in organizing activity in dairy and mushroom farming operations.

Visalia Office Relocation – Negotiations on a new office location are continuing.

## **6. Special Projects:**

**Case Tracking & Statistical Gathering** – Board Member Shiroma reported that as requested by the Chair, she is working with the staff to assess the case tracking system, identify any training needs, and determine whether any changes need to be made to the data input/processing protocols.

She also described that much of the agency's historic data needs to be converted from an outdated database into the current case tracking system. She will be working with Administration staff to accomplish the conversion.

**Public Records Act** – Board Counsel Wender distributed draft revised Public Records Act Guidelines, designed to comply with Executive Order S-03-06. The draft guidelines will be revised to include any uniform requirements desired by the Labor and Workforce Development Agency, then submitted to the Board and General Counsel for approval. Designation and training of staff in each office to be responsible for dealing with PRA requests will follow.

**Electronic Records Management** – A committee, consisting of Board Member Rivera-Hernandez, Deputy General Counsel Blanco, and Board Counsel Wender, was selected to draft recommended policies on electronic records management, including a policy on litigation holds and revision of records retention policies to include e-mail and other electronic records.

**Emergency Preparedness & Telecommuting Plans** – Board Member Rivera-Hernandez will work with the policy committee on drafting an Emergency Preparedness Plan and a telecommuting policy.

**Website** – Board Member Shiroma and Analyst Massie will assess the website including improvement of the research capabilities of the site's search engine.

## **7. Outreach**

**Heat Stress PSAs** – Mauricio Nuno recorded the heat stress public service announcement. Copies of the PSAs will be distributed to the regional offices with a supply maintained in Sacramento.

**DVD Jacket** – Business Services will be notified of the selection for the jacket of the ALRB novela DVD.

**NLRB use of ALRB Outreach Video** – Executive Secretary Barbosa informed Victoria Aguayo, the Regional Director of NLRB region 21 (Los Angeles), that the Board granted permission for the NLRB to utilize the ALRB's outreach video to develop their own outreach video. This will now be a basis for a proposal to the NLRB General Counsel to develop an NLRB outreach video.

**8. Encryption Policy** - Analyst Massie will keep the Board apprised of EDD's progress on their encryption policy.

## **9. Round Table**

On March 9, 2006 Governor Schwarzenegger re-appointed Genevieve Shiroma to the ALRB. On March 10, 2006 Governor Schwarzenegger appointed Michael G. Lee as the Board's General Counsel, and designated Irene Raymundo as chair to the Agricultural Labor Relations Board.

UOP-McGeorge School of Law Spring Recruitment Season runs from March 1-April 14. We have received three inquiries into internships.

The 12<sup>th</sup> Annual Labor and Employment Public Sector Program is scheduled for April 28, 2006 in Pasadena, CA.

Giannini Foundation 75th Anniversary celebration will be held on May 3, 2006, at the Activities and Recreation Center at UC Davis from 9:30 a.m. to 6 p.m.

Board Member Genevieve Shiroma is the recipient of this year's Asian Pacific State Employees Association President's Award. The presentation of the award will be made at the Scholarship and Installation dinner on Thursday, April 27, 2006, at the Holiday Villa Restaurant, 7007 S. Land Park Drive, Sacramento, CA.

The ALRB's State Compensation Insurance Fund's representative will be making arrangements to provide Headquarters' staff with Ergonomics Training.

The public meeting adjourned at: 11:55 a.m.

**WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.**