

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

April 12, 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 and Heyck, Analyst Massie, and LWDA Budget Officer Vogel.

Staff Absent: Board Counsel Murray

Others Present: Professor Phil Martin, UC Davis; Greg deGiere, Senate Office of Research

OPEN SESSION

1. Approval of Minutes: The minutes for the April 5 and 6, 2006 Board meetings were approved 3-0.

2. Public Comments—None

3. Makewhole Project: Professor Phil Martin, UC Davis, presented his report entitled “Computing Makewhole Wages in California Agriculture. The Board discussed the report’s recommendations with Professor Martin. The **Board** will provide Prof. Martin with an example of a bargaining makewhole specification based on comparable contracts for him to compare with his recommended alternative method of calculation.

4. 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 8th to allow consideration of the ALRB's budget change proposal. The Assembly budget hearing was continued. No new date has been set.

Chairwoman Raymundo will develop a Communications policy for Board review.

Budget Officer Vogel updated the budget projections for the present fiscal year.

5. 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).

Two (2) Notices of Intent to Organize were filed: B&D Mushrooms, 06-NO-1-SAL and South Valley Mushrooms, 06-NO-2-SAL

No new NAs or NOs have been filed since the last board meeting (April 5, 2006).

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 transcripts have been received and the IHE will be issuing a notice setting the due dates for the post-hearing briefs.

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 7, 2006. The employer filed additional material on April 7, 2006. The union in turn has also filed supplementary materials. 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 Commercial 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 election was held on April 10th with the following results:

UFCW Local 1096	4
No Union	26
Unresolved Challenged Ballots	<u>0</u>
Total	30

The no union choice received a majority vote and no challenged ballots were lodged. Election objections, if any, are due within five (5) days: April 17, 2006.

COMPLAINT REPORTS

No new complaints have issued

PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED

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

Prehearing Conference May 9, 2006

Hearing May 24, 2006

HEARINGS HELD:

None.

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:

None.

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:

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. 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

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3. General Counsel Report

ULP Charges etc. – General Counsel Lee reported that one new charge has been filed in the Salinas Regional Office and two new charges have been file din the Visalia Regional Office.

Visalia Office Relocation – Negotiations continue on a new office location.

4. Special Projects:

Case Tracking, Statistical Gathering, and Website – Board Member Shiroma will be meeting with staff regarding garnering assistance with consolidation of the Board's databases and improvements to the ALRB website. She will also contact the Attorney General's office regarding their case management system.

Public Records Act – Board Counsel Wender will revise the Public Records Act Guidelines to conform to suggestions made at the latest Labor and Workforce Development Agency meeting, then submit the document, along with other documents necessary to comply with Executive Order No. S-03-06, to the Board and General Counsel for approval.

Electronic Records Management – Board Member Rivera-Hernandez, Deputy General Counsel Blanco, and Board Counsel Wender will be meeting regarding recommended policies on electronic records management.

Encryption Policy – Pam Harris of will keep Analyst Massie apprised of EDD's progress on their encryption policy.

5. Roundtable

Board Counsel Heyck will contact interns regarding summer legal internship program.

The public meeting adjourned at: 12:10 p.m.