

**STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD**

**BOARD MEETING MINUTES**

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

**December 6, 2006**

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

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

**Members Absent:** None.

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

**Staff Absent:** None

**Others Present:**

**OPEN SESSION**

- 1. Approval of Minutes:** The Board minutes for November 15, 2006 were approved 3-0.
- 2. Public Comments:** None
- 3. Chair Budget Report:** Chairwoman Raymundo reported on the Labor Agency Senior Staff meeting held on December 5, 2006.
- 4. General Counsel Report:** Several new charges have been filed in the regions.
- 5. Executive Officer Report:**

**ELECTION REPORT**

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

### **PENDING ELECTION MATTERS:**

#### **Artesia 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 was outcome determinative, the Regional Director conducted an investigation to determine whether the challenges should be sustained or overruled. Election objections, if any, were due on March 14. No objections were filed. The Regional Director issued his Challenged Ballot Report on June 12, 2006. On June 22, 2006 the employer filed its exceptions to the Regional Director's report. The Board's decision in Artesia Dairy issued August 2, 2006. A telephone conference was held October 17, 2006. The hearing on challenged ballots was held from October 24-27, 2006 in Visalia, CA. The hearing transcripts were received on November 20, 2006 and the parties' post-hearing briefs are due December 15, 2006.

#### **Valley View Farms, 06-RD-3-VI**

On July 10, 2006, agricultural employee Sergio Ozuna Lopez filed a decertification petition with the Visalia Regional Office seeking to decertify the incumbent union, UFCW Local 1096, at Valley View Farms. The employer operates a dairy in Hanford, CA with approximately 41 employees. The election was held on July 17, 2006 and yielded the following results:

UFCW	17
No union	16

Unresolved Challenged Ballots	<u>5</u>
Total	38

The number of unresolved challenged ballots is sufficient to affect the outcome of the election. The Regional Director issued his challenged ballot report on September 5, 2006. Exceptions, if any, were due on September 15, 2006. No exceptions were filed. The Executive Secretary's issued his order making the Regional Director's Challenged Ballot Report final and directing that the ballots be processed as outlined in the report. The election case was originally to be held in abeyance pending resolution of three pending unfair labor practice (ULP) charges relating to three of the individuals whose ballots were challenged. On July 24, 2006, the employer filed objections to the election which also will be held in abeyance pending resolution of the three ULP charges. On December 5, 2006, the Executive Secretary received a notification from the Union's counsel indicating that the parties (the employer and union) had participated in the Board's mandatory mediation and conciliation process and had reached a collective bargaining agreement. As part of that agreement, the union agreed to withdraw all of its unfair labor practices, including presumably the three ULPs that were being investigated and that impacted on the election. The Board will need to decide how to proceed on the case.

### **Bayou Vista Dairy, 06-RD-4-VI**

On July 18, 2006, agricultural employee Alejandro Ayala filed a decertification petition with the Visalia Regional Office seeking to decertify the incumbent union, UFCW Local 1096, at Bayou Vista Dairy. The employer operates a dairy in Tipton, CA with approximately 80 employees. The election was held July 25, 2006. On August 2, 2006 the employer and then the union filed objections to the election which are pending before the Executive Secretary on review. On July 24, 2006, an unfair labor practice (ULP) charge alleging conduct that may impact the election was filed against the employer. Immediately following the election, the Regional Director of the Visalia Regional Office informed all parties that due to the filing of the ULP charge, he would impound the ballots cast in the election until he completes his expedited investigation of the ULP charge. On August 14, 2006 the Regional Director completed his investigation of the pending ULP and issued a complaint in this matter. On September 11, 2006 the Regional Director dismissed the decertification petition finding that employer threats made one day prior to the election created an atmosphere where it became impossible to conduct the election where employees could exercise their choice in a free and uncoerced manner. Any request for review was due September 21,

2006. No request for review was timely filed. On October 5, 2006 the Board issued an administrative order (Admin Order No. 2006-07) requesting briefing on the question whether the Regional Director exceeded his authority by dismissing the underlying election petition after the election had been conducted. The regional director filed his responsive brief on October 20, 2006. Replies, if any, were due October 27, 2006. No replies were received. The Board issued its decision on this matter on November 14, 2006 reversing the Regional Director's decision to dismiss the petition, reinstating the petition and ordering the Regional Director to proceed with the opening and counting of the ballots. On November 29, 2006 the Regional Director opened and counted the ballots and issued a final tally:

UFCW Local 1096	34
No Union	42
Unresolved Challenged Ballots	<u>5</u>
Total	81

As the unresolved challenged ballots were insufficient to affect the results of the election, the Executive Secretary proceed to screen the Employer's and Union's objections and issued his order on November 30, 2006 setting one election objection for hearing. The investigative hearing is scheduled for January 9, 2007. Cal Watkins is now representing the employer.

### **The California Mushroom Farm, Inc., 06-RC-4-VI**

On November 9, 2006 Teamsters Local Union No. 186 filed a representation petition with the Visalia Regional Office seeking to organize the truck drivers at The California Mushroom Farm, Inc. The employer is a mushroom grower in Ventura, CA. The employer has approximately 18 truck drivers. On November 14, 2006, the Regional Director dismissed the petition as it described in an inappropriate unit. Neither party filed a request for review of this decision and the matter is now final.

## **COMPLAINT REPORTS**

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

None.

### **HEARINGS HELD:**

None.

**ONE CASE ON CALENDAR:**

**Hess Collection Winery, 01-CE-08-SAL**

Pre-Hearing Conference scheduled on November 30, 2006 was canceled and reset for December 4, 2006. A second prehearing conference is now scheduled for December 11, 2006.

Hearing February 27, 2007

**ONE CASE PENDING ALJ/IHE DECISION:**

**Artesia Dairy, 06-RC-1-VI**

Pre-Hearing Conference held October 17, 2006.

Hearing held October 24-27, 2006

Post-hearing briefs due December 15, 2006

**ALJ/IHE DECISIONS ISSUED:**

None.

**ONE CASE PENDING EXCEPTIONS OR REPLY:**

**UFW (Virgen/Mendoza), 04-CL-1-VI (OX)**

Exceptions due December 31, 2006

Reply due January 16, 2007

**CASES PENDING BOARD DECISION:**

None.

**CASES PENDING SETTLEMENT:**

None.

**CASES SETTLED OR RESOLVED:**

**Dan Tudor & Sons, 02-CE-13-VI**

The Regional Director withdrew the complaint and dismissed the cases as the respondent had fully complied with an informal bilateral settlement agreement.

**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. 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).

On July 5, 2006, the 3rd District Court of Appeal rejected Hess Collection Winery's constitutional challenge to the mandatory mediation statute, by a 2•1 decision (Nicholson dissenting). On July 14, 2006, Hess Collection Winery filed a petition for rehearing with the 3rd District Court of Appeal. On July 20, 2006 the court denied

Hess' petition for rehearing. The petitioner filed a petition for review in the Supreme Court on August 10, 2006. The Supreme Court denied the petition for review on September 13, 2006. Pursuant to Rule 13, Hess has 90 days from September 13 to file with the U.S. Supreme Court (approximately December 13, 2006). On September 22, 2006, the UFCW requested that the ALRB General Counsel take immediate action to enforce compliance. The General Counsel has informed the Executive Secretary that it will be pursuing enforcement of this matter. Absent a court order the Board's order is not stayed pending filing with the U.S. Supreme Court.

### **Valley View Farms and Valley View Farms Dairy, 2006-MMC-02**

The Board issued an order directing the parties to mandatory mediation and conciliation on October 12, 2006. (Admin Order No. 2006-08). On December 5, 2006 the Executive Secretary received a notification from the Union's counsel indicating that the parties (the employer and union) had participated in the Board's mandatory mediation and conciliation process and had reached a collective bargaining agreement. On December 6, 2006, the Executive Secretary issued an order setting the due date for the filing of exceptions to the Mediator's report. Exceptions are now due on December 18, 2006.

### **Bayou Vista Dairy and Bayou Vista Farms West, 2006-MMC-01**

The Board issued an order directing the parties to mandatory mediation and conciliation on October 19, 2006. (Admin Order No. 2006-09)

## **COURT LITIGATION:**

### **Western Growers Association, et al., 03AS00987**

This lawsuit, which challenges the constitutionality of the mandatory mediation and conciliation law (SB 1156 and AB 2596, codified as Labor Code sections 1164 to 1164.14), was originally filed on February 24, 2002 in the Sacramento County Superior Court. Initially the court ruled that the matter was not ripe for adjudication. Following the issuance of a decision fixing the terms of a collective bargaining agreement in the Hess Collection Winery matter (see below), the plaintiffs filed an amended complaint in the Sacramento County Superior Court. 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. 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. Any further action on this case

will await resolution of the Hess Collection Winery v. ALRB case below.

### **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. On December 11, 2003, the parties filed a stipulation staying the Board's order pending resolution of the appeal. 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.

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. Oral argument took place on June 19, 2006. On July 5, 2006, the 3rd District Court of Appeal rejected Hess Collection Winery's constitutional challenge to the mandatory mediation statute, by a 2•1 decision (Nicholson dissenting). On July 14, 2006, Hess Collection Winery filed a petition for rehearing with the 3rd District Court of Appeal. On July 20, 2006 the court denied Hess' petition for rehearing. The petitioner filed a petition for review in the Supreme Court on August 10, 2006 (case no. S145732). The Supreme Court denied the petition for review on September 13, 2006. Pursuant to Rule 13, Hess has 90 days from September 13 to file with the U.S. Supreme Court (approximately December 13, 2006). On September 22, 2006, the Union requested that the ALRB General Counsel take immediate action to enforce compliance. Absent a court order the Board's order is not stayed pending filing with the U.S. Supreme Court.

### **D'Arrigo Bros. of California, D048904**

On June 29, 2006 the petitioner D'Arrigo Bros. of California filed a petition for writ of review with the Fourth Appellate District, Division One. On July 7, 2006 the court sent a letter to the parties directing that the record be prepared within ten (10) of the notice. On July 11, 2006, the ALRB filed a motion for extension of time to file the certified record to August 16, 2006, which was granted by the court on July 18, 2006. The record was filed with the court on August 16, 2006. The petitioner's opening brief is due December 14, 2006.

## **6. Special:**



**Case Statistics Tracking System/Website Update** – The Case Tracking System is in the testing phase. The new design and standards for the State portal have been sent to the Governor’s office for approval.

**Budget Information System** – General Counsel Lee completed his review of the supplement to the proposed Budget Information System (BI\$) and Member Rivera-Hernandez will review the supplement.

**Proposed Regulatory Change to Increase Minimum Pay Out from the Agricultural Employee Relief Fund** – After discussion of various factors, including staff time needed for issuing distributing checks and experience with farm workers turning down amounts under \$10, the Board decided to propose that the minimum payout set forth in Regulation 20299 be raised to \$10.

**Revision of Compliance Manual Regarding Distribution of Checks** – The Board decided to revise Compliance Manual sections 4-6130 and 4-6140 to clarify that the regional office have the discretion to send checks by registered mail in those instances where it is not feasible for the claimant or a representative to pick up the check in person and the regional office is convinced of the proper identity of the recipient.

**Resolutions** – Framing is complete and presentation of the Resolutions will be made on December 13, 2006.

**Personnel** – Interviews for the legal secretary position are scheduled for December 7, 2006.

**NLRB Contract** – The NLRB will be sending two separate agreements for our signature covering services rendered during the Federal fiscal year, one for FY 06, which ended September 30, 2006, and one for FY 07, that began October 1, 2006.

## **7. Roundtable:**

Cal OSHA will be providing training for ALRB regional staff who conduct elections on Wednesday, December 13, 2006 at 1:00 p.m. in the Board Conference Room in Sacramento. The training will cover safety requirements during outdoor elections.

Friends of the ALRB – Development of a volunteer group to assist with elections was discussed. Training for the program might be arranged through UC Davis or CSU Fresno.

Mauricio Nuno has been invited to be a presenter at the annual Migrant Education Conference in Los Angeles March 16-18, 2007.

Board Member Shiroma participated in a 5-minute interview through Comcast Local Edition highlighting the overall responsibilities of the ALRB and the Agricultural Employee Relief Fund program. It will be shown in January on the CNN Headline News channel interspersed with other local interviews. Comcast Local Edition is a 5-minute, studio-based informational program, airing at 24- and 54-minutes after the hour, every hour on CNN Headline News (except from 4-11 p.m. weekdays). The primary mission of Comcast Local Edition is to provide elected officials, community, non-profit and educational leaders the opportunity to communicate to their key constituents.

Chairwoman Raymundo and Board Member Shiroma met with Assembly Fellows Vianey Nunez and Keith Ochwat to provide an overview of the Board's responsibilities under the Agricultural Labor Relations Act. The Assembly Fellows program requires participants to choose a policy area or department to study, conduct at least 6 interviews, write a paper, and present the paper to the other Fellows in the program.

The public meeting adjourned at 12:25 p.m.

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