

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

December 13, 2006

Time: 10:00 a.m.

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

Members Absent: None.

Staff Present: General Counsel Lee, Assistant General Counsel Blanco, Regional Director Alderete, Field Examiner Nuno, Executive Secretary Barbosa, Board Counsels Wender, Murray and Heyck, and Analyst Massie.

Staff Absent: None.

Others Present: None.

OPEN SESSION

- 1. Approval of Minutes:** The Board minutes for December 6, 2006 were approved 3-0.
- 2. Public Comments:** None
- 3. Chair Budget Report:** General Counsel Lee and Member Rivera-Hernandez reported on their recent meeting regarding resolving budgeting retired annuitants working in the regional offices.
- 4. General Counsel Report:** A new ULP charge, and a decertification petition seeking the removal of the certified bargaining representative, PCUN, at Mushroom Farms, a division of Spawn Mate in Watsonville, CA. were filed in the Salinas Regional Office. Settlement negotiations are continuing on Hess Collection Winery,

01-CE-08-SAL in Salinas.

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 were due December 15, 2006. On December 8, 2006 the Executive Secretary granted petitioner's request to extend the due date to December 22, 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. Since the agreement, the union has withdrawn and/or dismissed the three charges in question. All that remains is the resolution of the single challenge inquiring whether Sanchez was eligible for Workers Compensation and, if so, whether there was a position he could return to. In accordance with his report on challenged ballot, the matter will be set for investigative hearing.

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 screened 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.

MUSHROOM FARMS, 06-RD-1-SAL

On December 12, 2007 agricultural employee Roberto Zuniga filed a decertification petition with the Salinas Regional Office seeking the removal of the certified bargaining representative, PCUN, at Mushroom Farms, a division of Spawn Mate in Watsonville, CA. The employer produces mushrooms in Monterrey County and has

approximately 75 employees. An election, if appropriate, would be held on December 19, 2006.

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 held December 4, 2006. A second prehearing conference is scheduled for December 21, 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 22, 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:

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. 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 due 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 Statistic Tracking System is in place. Member Shiroma will verify that the conversion of all existing databases has been accomplished. Planning for the redesign of the website continues. Assistant General Counsel Blanco suggested we survey our users regarding the update of the website. Analyst Massie will draft an announcement to be sent out with the monthly Public Meeting Notice and will place a notice on the ALRB website requesting user input.

Budget Information System – General Counsel Lee completed his review of the proposed Budget Information System (BI\$) and has delivered the material to Member Rivera-Hernandez to complete her review.

Regulations – The Board decided to propose amending Regulation 20407 to clarify that (1) the issuance of any document issued by the mediator that fixes the terms of collective bargaining agreement is a "report" subject to review and enforcement under the mandatory mediation law, and (2) where the parties voluntarily reach a collective bargaining agreement, they must notify the Board and submit a copy of the agreement.

Legislation – Nothing new to report.

Personnel – Interviews for the legal secretary position were completed on December 7. A job offer is anticipated as soon as reference checks are completed.

NLRB/ALRB Interagency Agreement – The two contracts received from the NLRB are in the review process and final approval is expected shortly.

7. Roundtable:

The Board reviewed the format of a new booklet distributed by Esperanza entitled

Voces Para Justicia. The style will be considered for future Board publications.

Assistant General Counsel Blanco and Field Examiner Nuno are developing PowerPoint presentations aimed at farm workers and employers/supervisors. Once the project is completed, regional office staff will receive training and the programs will be distributed to all offices

Assistant General Counsel Blanco recently attended a GTC seminar which discussed website innovation and customer responsiveness. Some suggestions to improve our services include: (1) adding an organization chart to our website, (2) partnering with our sister labor agencies to make certain services available through kiosks; (3) exploring the possibility of allowing employers to make deposits electronically, (4) conducting a survey of the usability of our website, and (5) conducting a customer satisfaction survey.

Field Examiner Mauricio Nuno attended the 27th annual Farm Worker Appreciation breakfast on December 8, 2006 at the Calexico One-Stop Business and Employment Service Center.

The next regularly scheduled Board meeting will be held on January 10, 2007.

The public meeting adjourned at 11:50 a.m.