

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

December 17, 2003

Time: 10:10 a.m.
Members present: Chairwoman Shiroma, Board Members Barrios, Bustamante, Rivera-Hernandez, and Zingale
Member absent:
Staff Present: Board Counsels Heyck, Murray, and Wender; Executive Secretary Barbosa; Analyst Massie
Staff Absent: None

OPEN SESSION

- 1. Approval of Minutes:** The Board approved the minutes for December 10, 2003, 3-0 with Member Zingale abstaining.
- 2. Board Member Comments:** The Board Members attending the 24th Annual Farm Worker Appreciation Breakfast held in Calexico on December 12 found it to be an outstanding outreach event.
- 3. Public Comments:** None.

Announcements: In celebration of the holiday season, the Governor has authorized informal time off (ITO) for all employees. The ITO should be granted in a manner consistent with maintaining necessary services to the public.

- 4. 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):

None.

PENDING ELECTION MATTERS:

Gallo Vineyards, Inc., 03-RD-1-SAL

A petition to decertify the UFW was filed at Gallo Vineyards, Inc. on March 6, 2003. The election was held on March 13, 2003, however the ballots were impounded pending investigation of unfair labor practice (ULP) charges filed by the incumbent union. On April 14, 2003, the Regional Director issued a complaint with respect to one of the charges (03-CE-9-SAL) and dismissed the other two (03-CE-10 & 11-SAL). The General Counsel overturned the dismissal of the CE-10 case. The hearing on charge 03-CE-9-SAL ended July 3, 2003. Post-hearing briefs were received September 22, 2003. The ALJ's decision is pending issuance.

Egg West LLC, 03-RC-4-VI

The Laborers Local 220, AFL-CIO filed an election petition with the Visalia Regional Office on December 12, 2003 seeking an election at Eggs-West UC in Delano. The Laborers Union requested withdrawal of the petition that was granted by the Regional Director on December 16, 2003.

COMPLAINT REPORTS:

UFW, 01-CL-3-EC (OX)

The certified bargaining representative, UFW, allegedly failed to explain to bargaining unit members that they had the right to object to the payment and expenditure of union dues and such failure resulted in the unlawful discharge of unit employees.

PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED:

None.

NEW CASES SET FOR HEARING:

None.

CASES ON CALENDAR:

US Abalone, 01-CE-59-SAL

The pre-hearing conference was held November 18, 2003. The hearing is set for January 6, 2004.

Sun City Growers, 02-CE-53-EC(R)

The pre-hearing conference is set for January 14, 2004. The hearing is set for January 28, 2004.

Maria G. Duran, Farm Labor Contractor, 01-CE-606-EC(R)

The pre-hearing conference is set for January 14, 2004. The hearing is set for February 4, 2004.

Rancho Ramona Dairy, 02-CE-5-EC(R)

The pre-hearing conference is set for April 6, 2004. The hearing is set for April 26, 2004.

CASES PENDING ALJ DECISION:

Gallo Vineyards, Inc., 03-CE-9-SAL

The hearing closed on July 3, 2003. Post-hearing briefs were received September 22, 2003. Reply briefs are due December 4, 2003. The matter is pending ALJ decision.

ALJ/IHE DECISIONS ISSUED:

None.

CASE PENDING EXCEPTIONS AND/OR REPLY:

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.

Pictsweet Mushroom Farms, Request for Mediation, 2003-MMC-02:

On July 7, 2003, the Board received a petition for mediation from the UFW concerning Pictsweet Mushroom Farms. The Board issued a decision on the petition for mandatory mediation on August 1, 2003. On November 20, 2003, the mediator previously selected by the parties in the above-entitled case informed the Board by telephone that he had resigned from the case due to illness. On November 21, 2003, the UFW filed a motion with the Board requesting, in light of the resignation of the mediator, that the Executive Secretary refer this matter to the State Mediation and Conciliation Service to provide a list of mediators from which the parties would select a new mediator. On November 24, 2003, the Employer filed a motion for reconsideration and, in the alternative, for clarification of the Board's order referring request for new panel of mediators. On November 26, 2003, the Board placed its prior order (Admin. Order No. 2003-13) in abeyance pending consideration of the employer's opposition and any response filed by the UFW. The UFW thereafter filed its response on November 26, 2003. On December 3, 2003, the Board issued an order on the motion for reconsideration and clarification, referring the case to the State Mediation and Conciliation Service (SMCS) for the issuance of a new list of mediators, and clarifying the procedure to be utilized in the renewal mediation. The SMCS issued its letter and the parties have now selected a new mediator, Gerald McKay.

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.

Pictsweet Mushroom Farms, B166260

The employer filed a petition for writ of review with the Second Appellate District Court, Division Six, seeking review of the Board's decision in Pictsweet Mushroom Farms, 29 ALRB No. 1. The Petitioner's opening brief was received July 15, 2003, and the Board's response brief was sent overnight September 28, 2003. If the Petitioner wishes to file a reply brief, it will be due October 29, 2003. On October 6, 2003, Pictsweet proposed a 60-day continuance to December 19, to allow time for a global settlement. All parties agreed to the stipulation and the employer filed it October 14, 2003. The court approved the stipulation. The Petitioner's brief is due December 19, 2003.

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 is due December 24, 2003.

5. Budget And Administration

(a) Information Technology:

- (1) Analyst Massie reported the Department of Finance is evaluating the mid-range computing capabilities and workload for the Health and Human Service Data Center and the Teale Data Center. They are requesting information concerning any planned implementation of mid-range systems during FY 2003/04 or FY 2004/05.
- (2) The Board discussed the options for leased CALSTARS equipment from expired Master Agreement. Per Department of General Services, equipment must be terminated and replaced, purchase converted in place, or terminated. The Board selected Option 1b, to swap out old leased equipment with new leased equipment and replace the printer.

(b) Regulations

- (1) Agricultural Employees Relief Fund (AERF):
 - 1) Draft amendments to the AERF and decertification regulations, Notice of Proposed Regulatory Action, Initial Statement of Reasons. The Notice of Proposed Regulatory Action was submitted to the Office of Administrative Law on October 6, 2003, for publication in the Notice Register on October 17, 2003. The public comment period closed on December 1, 2003. No comment was received. On December 3, 2003, the Board voted 5-0 to adopt the regulations as proposed. Submission to the Office of Administrative Law will be deferred pending submission of the reports required by Executive Order S-2-03.
 - 2) No suggested changes to the AERF protocols were received from the Regional Directors. The Board unanimously approved the draft protocols, with a minor change in wording in the tracking letters suggested by Chairwoman Shiroma. Regional Directors will be consulted regarding a new protocol for tracking employees found eligible for pay out from the Fund.
- (2) Board's Response to Paragraph 1(d) and 1(e) of Executive Order S-2-03: The Board reviewed its response and approved further edits.

(c) Budget: The Executive Secretary will verify cancellation of Board's cell phone service. Chairwoman Shiroma reviewed the ALRB's budget galley.

(d) Policies and Procedures Committee: Chairwoman Shiroma will contact the Treasurer's Office to inquire about holding a joint fire drill.

(e) Labor and Workforce Development Agency:

- (1) Case Tracking System: Nothing new
- (2) Senior staff meetings are now being held once per month.

(f) Annual Report: Work continues on collecting data.

7. Outreach Projects

(a) Novella: Executive Secretary Barbosa received an estimated cost summary and will circulate it to the Board. The Migrant Headstart program in Watsonville contacted Board Counsel Heyck and expressed an interest in the novella and additional brochures. Various printing options for the novella were discussed.

(b) Brochures: Board Counsel Heyck reported that printing has commenced.

8. Legislation: Nothing new.

9. Personnel: Barbara Lundgren will be retiring the end of December. Her retirement luncheon will be held on January 16, 2004, at 1 p.m. at The Riverside Clubhouse, 2633 Riverside Boulevard, Sacramento. A voluntary fundraising event will be held in honor of retired Board Counsel Stella Levy on February 2, 2004, at 5:30 p.m. at The Grand, 1215 J Street, Sacramento.

10. Procedure Manual: Board Counsel Heyck volunteered to continue work on the procedure manual until Lorna Fong returns to the ALRB from her current assignment.

11. Compliance: Executive Secretary Barbosa to contact General Counsel Turner regarding her request for a meeting with the Board regarding Compliance.

12. Future Agenda Review: The next regularly scheduled meeting of the Board will be Tuesday, January 6, 2004, at 10 a.m.

The public meeting adjourned at 11:25 a.m.