

**STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD**

**BOARD MEETING MINUTES**

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

**January 6, 2004**

Time: 10:25 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 17, 2003, with minor changes 5-0.
2. **Board Member Comments:** None
3. **Public Comments:** None.
4. **Announcements:** Members Bustamante and Zingale are scheduled to appear before the Senate Rules Committee on January 7, 2004, at 1:30 p.m. The Labor Agency's Senior Staff meeting has been rescheduled to January 13, 2004, at 10 a.m. The Labor Agency's Chief Counsel meeting is scheduled for January 13, 2004, at 1 p.m. The ALRB Computer Software Inventory is due January 15, 2004. Barbara Lundgren's retirement luncheon is scheduled for January 16, 2004, at 1 p.m. at the Riverside Clubhouse in Sacramento. CRLA is holding its Sacramento Community Service Awards Reception, Saturday, January 24, 2004, at the CalEPA Building, 1001 I Street, in Sacramento, from 2-5 p.m.

**5. 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**

The ALJ issued her decision on December 19, 2003. Exceptions are due February 11, 2004. Replies, if any, are due February 24, 2004.

**McCahon Floral, Inc., 04-RC-1-SAL**

The UFW filed a representation petition with the Salinas Regional Office on January 5 2004 seeking to organize the agricultural employees at McCahon Floral which is a nursery in Monterey County with approximately 60 employees. The petition is under investigation.

**COMPLAINT REPORTS:**

None.

**PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED:**

None.

**NEW CASES SET FOR HEARING:**

None.

**CASES ON CALENDAR:**

**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:**

None.

**ALJ/IHE DECISIONS ISSUED:**

None.

**CASE PENDING EXCEPTIONS AND/OR REPLY:**

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

The ALJ issued her decision on December 19, 2003. Exceptions are due February 11, 2004. Replies, if any, are due February 24, 2004.

**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 is due January 22, 2004.

**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. 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.

**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 was filed December 19, 2003. Court noted on December 22, 2003, that the case was fully briefed.

**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 is due January 22, 2004.

**6. Budget And Administration**

- (a) Information Technology: Analyst Massie reported that the Workgroup Management Plan Certification and the Information Security Officer and Operational Recovery Plan Designation have been filed with the Department of Finance. Pam Harris from the Labor Agency is planning to schedule a briefing to identify opportunities to make IT operations more effective and efficient across agency departments.

(b) Regulations

(1) Agricultural Employees Relief Fund (AERF) and Decertification Amendments--Reopening of Comment Period: Staff will attempt to confirm the mailing of notice in October 2003. If the mailing cannot be confirmed, the Board will mail the notice and commence a new comment period.

(2) Executive Order S-2-03: Nothing new.

(c) Budget--The Executive Secretary will schedule a meeting with Carrie Nevans early next week.

(d) Policies and Procedures Committee--Nothing new.

(e) Labor and Workforce Development Agency:

(1) Case Tracking System: Nothing new.

(f) Annual Report: Board Counsel Murray is assisting with collection of data.

**7. Outreach Projects**

(a) Novella: The matter is pending completion of the Novella and submission of printing costs as soon as Mr. Juarez returns from vacation.

(b) Brochures: Board Counsel Heyck reported that the new Agricultural Workers' Rights brochures in Spanish and English were received. Printing will commence on next set of brochures.

**8. Legislation:** SCA1-Access to Government Information (Burton) is on file for a third reading in the Assembly today (January 6). AB 556-State Boards and Commissions Salaries (Strickland) set for hearing on January 13, 2004, before the Assembly Appropriations Committee.

**9. Personnel:** A law student from U.C. Davis has contacted Member Barrios offering volunteer services.

**10. Procedure Manual:** Nothing new.

**11. Compliance:** Nothing new.

**12. Future Agenda Review:** Rulemaking calendar

The public meeting adjourned at 11:10 a.m.