

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

February 4, 2004

Time: 10:00 a.m.
Members present: Chairwoman Shiroma, Board Members Barrios, Rivera-Hernandez, Bustamante and Zingale
Staff Present: Board Counsels Heyck, Murray, and Wender;
Staff Absent: Executive Secretary Barbosa and Analyst Massie.

OPEN SESSION

- 1. Approval of Minutes:** The Board approved the minutes for January 28, 2004, 5-0 with several minor changes.
- 2. Board Member Comments:** None.
- 3. Public Comments:** None.
- 4. Announcements:**
Executive Secretary Barbosa and Analyst Massie are attending the California Public Sector Chief Information Officer (CIO) Academy on February 4 and 5, 2004.

The Kern County Board of Trade dinner will be held in Sacramento on March 31, 2004.

Board Members Rivera and Barrios will attend the annual Career Fair at McGeorge School of Law on Thursday, February 5, 2004.
- 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.

MaCahon 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 MaCahon Floral which is a nursery in Monterey County with approximately 60 employees. The election was held on January 7, 2004 with the following results:

| | |
|-------------------------------------|-----------|
| UFW | 30 |
| No Union | 14 |
| Unresolved Challenged Ballots | <u>17</u> |
| Total..... | 61 |

Election objections, if any, were due January 14, 2004. None were filed. The Regional Director issued his report on challenged ballots on January 20, 2004. Exceptions, if any, were due by January 30, 2004. On February 2, 2004 the Executive Secretary issued his order making the report final, as neither party filed exceptions, and directing the Regional Director to issue a final tally. On February 2, 2204 the Regional Director issued a final tally of ballots with the following results:

| | |
|-------------------------------------|----|
| UFW | 30 |
| No Union | 14 |
| Unresolved Challenged Ballots | 5 |
| Total..... | 49 |

On February 2, 2004 the Executive Secretary issued a certification of representative as the petitioner, the UFW, received a majority of the valid ballots cast and neither party filed objections to the election.

COMPLAINT REPORTS:

PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED:

None.

NEW CASES SET FOR HEARING:

None.

CASES ON CALENDAR:

Bob Borba dba Bob Borba Livestock, 03-CE-56-VI

The pre-hearing conference is set for February 17, 2004. The hearing is set for March 8, 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.

Milky Way Dairy, 02-CE-44-VI

The pre-hearing conference is set for May 4, 2004. The hearing is set for June 21, 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.

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

On January 26, 2004 the ALJ vacated the default judgment against Maria G. Duran and dismissed the complaint as the General Counsel's further investigation revealed that Maria G. Duran is a labor contractor and does not function as an agricultural employer. Exceptions due February 19, 2004.

Sun World International, Inc., 01-CE-613-EC(R)

On January 26, 2004 the ALJ issued an order as to Sun World International, Inc. establishing the amount of backpay liability. Exceptions to both orders are due within 20 days (February 19, 2004). Exceptions due February 19, 2004.

CASES SETTLED OR RESOLVED:

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

The parties reached an informal settlement agreement and the settlement conference was canceled.

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 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. 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 on January 22, 2004. The UFW filed an amicus brief on January 29, 2004. On February 2, 2004, the court approved the parties' stipulation for an extension of time for the Petitioner to file its reply brief. The reply brief is due March 3, 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 August 1, 2003 referring the matter to mandatory mediation. 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 Board granted the UFW's motion to refer the 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. 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 selected a new mediator, Gerald McKay.

COURT LITIGATION:

Western Growers Association, et al., 03AS00987

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, 2003 in Sacramento County Superior Court. 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 would not be ripe for adjudication until the Board issues a decision fixing the terms of a collective bargaining agreement. 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. On October 6, 2003, Pictsweet proposed a 60-day continuance to December 19, to file its reply brief, to allow time for a global settlement. All parties stipulated to the continuance and the court approved the stipulation. The Petitioner's brief was filed December 19, 2003. The case is now 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. 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. The Board's response brief was filed on January 22, 2004. The UFW filed an amicus

brief on January 29, 2004. On February 2, 2004, the court approved the parties' stipulation for an extension of time for the Petitioner to file its reply brief. The reply brief is due March 3, 2004.

6. Budget And Administration

- (a) Information Technology: Nothing new to report.
- (b) Regulations: 1) Agricultural Employees Relief Fund (AERF) and Decertification Amendments—The revised notice of proposed amendments was mailed out on January 16, 2004. The new public comment period ends on March 1, 2004. No comments have been received. 2) The Board approved a standard tracking letter to be mailed to employees found to be eligible for payout from the AERF.
- (c) Budget: Nothing new to report.
- (d) Policies and Procedures Committee: The Board discussed the internal Bar Dues policy. The policy was approved with several minor edits. The Board also discussed developing a policy for ALRB employees to follow as they begin or end employment with the agency. Board Member Barrios will follow up.
- (e) Labor and Workforce Development Agency:
 - (1) Case Tracking System: Chairwoman Shiroma will speak with Herb Schultz at the Employment Development Department (EDD) regarding the MOU for loaned employees.
 - (2) General Counsels' Meeting –Legal Affairs Secretary Peter Siggins, Chief Deputy Attorney General Rick Frank, and General Counsel Bob Dresser have invited Labor Agency General Counsels to attend a meeting of the California General Counsels Association which is scheduled for Friday, February 6, 2004, at McGeorge School of Law. Executive Secretary Barbosa will be attending the meeting on behalf of the Board.
- (f) Annual Report: Board Counsel Murray and Executive Secretary Barbosa are continuing with the collection of data from the regions.

7. Outreach Projects

- (a) Novella: The Board discussed different options for getting the novella printed.
- (b) Brochures: The new ULP and Concerted Activity brochures have been printed and are now being prepared by the CSEA print shop.

8. Legislation: Nothing new to report.

9. Personnel: Nothing new to report.

10. Procedure Manual: Nothing new to report.

11. Compliance: The Board discussed the draft written delegation of authority for compliance with Board Orders. The Board approved the draft 5-0.

12. Future Agenda Review: The next Regional Directors' meeting is now confirmed for Wednesday, March 10, 2004, at 10 a.m. in the Salinas Regional Office.

The public meeting adjourned at 11:55 a.m.