

**STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD**

**BOARD MEETING MINUTES**

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

**February 18, 2004**

Time: 10:25 a.m.  
Members Present: Chairwoman Shiroma, Board Members Barrios and Bustamante  
By Telephone: Member Rivera-Hernandez  
Members Absent: Member Zingale  
Staff Present: Board Counsels Wender, Heyck, and Murray; Executive Secretary  
Barbosa and Analyst Massie

**OPEN SESSION**

1. **Approval of Minutes:** The Board postponed review of the minutes of February 11, 2004 until February 25, 2004.
2. **Board Member Comments:** The Board discussed transmitting correspondence to the appropriate parties, including the authors of the legislation and the Governor, regarding resolution of the first MMC case.

Member Barrios reported on the Dolores Huerta Mi Corazon Award Dinner held in Los Angeles on February 12, 2004.

3. **Public Comments:** None.
4. **Announcements:**

The Industrial Relations Association of Northern California luncheon is scheduled for noon today at the Firehouse, Old Sacramento.

**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):**

Nothing new to report.

**PENDING ELECTION MATTERS:**

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

The ALJ issued her decision on December 19, 2003. Both the union and employer filed exceptions to her decision. Replies, if any, are due February 24, 2004.

**COMPLAINT REPORTS:**

**Hadleys Date Gardens, Inc., 03-CE-15-EC(R)**

The complaint alleges that the employer unlawfully discharged an employee because he engaged in protected concerted activities and/or because his supervisors believed that he had engaged in protected concerted activities (i.e., complained to his supervisor about wages and working conditions).

**PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED:**

Nothing new to report.

**NEW CASES SET FOR HEARING:**

Nothing new to report.

**CASES ON CALENDAR:**

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

The pre-hearing conference was held 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:**

Nothing new to report.

**ALJ/IHE DECISIONS ISSUED:**

Nothing new to report.

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

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

The ALJ issued her decision on December 19, 2003. Both the union and employer filed exceptions to her decision. 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 are due February 19, 2004.

**CASES SETTLED OR RESOLVED:**

Nothing new to report.

**COMPLIANCE CASES CLOSED:**

Nothing new to report.

**CASES TRANSFERRED TO BOARD FOR DECISION:**

Nothing new to report.

**BOARD DECISIONS:**

Nothing new to report.

**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 was filed January 22, 2004. Hess' reply brief is due March 3, 2004. On February 4, 2004, the court granted the UFW's request to file an amicus brief, and accepted the brief filed with the request.

**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 selected a new mediator, Gerald McKay. The mediator issued his report and recommendation on February 4, 2004 and exceptions, if any, are due February 11, 2004. None were filed. On February 13, 2004 the Executive Secretary issued his order making the mediator's report final. The case is now resolved.

**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. On February 6, 2004 WGA filed its memorandum of points and authorities in opposition to the ALRB's (and the intervenors') motion to stay proceedings and demurrer. The hearing is set for February 19, 2004. A tentative ruling will issue this afternoon, with the parties afforded the opportunity to appear at the hearing to contest the tentative ruling.

**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 was filed January 22, 2004. Hess' reply brief is due March 3, 2004. On February 4, 2004, the court granted the UFW's request to file an amicus brief, and accepted the brief filed with the request.

**6. Budget And Administration**

(a) Information Technology: Nothing new to report.

- (b) Regulations: 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.
- (c) Budget: Nothing new to report.
- (d) Policies and Procedures Committee: Member Barrios reported that the committee would like to further refine the Board's time reporting system.
- (e) Labor and Workforce Development Agency:
  - (1) Case Tracking System: Analyst Massie distributed the first draft of the Memorandum of Understanding along with the Feasibility Study Report of September 29, 2003, for the Board's review. She will meet with EDD staff on Monday, February 23, 2004, to discuss the terms and responsibilities of the Memorandum of Understanding.
  - (2) Public Records Act Request: General Counsel Bob Dresser requested that Lorna Yee be contacted if any requests under the Public Records Act for information regarding any outstanding checks or unclaimed investment bonds are received.
  - (3) Bilingual Survey Committee: Executive Secretary Barbosa reported committee members are sharing complaint procedures and posters.
- (f) Annual Report: Board Counsel Murray and Executive Secretary Barbosa are continuing with the collection of data from the regions.
- (g) Letter from Assemblymember Simon Salinas: The Board discussed sending a response to Assemblymember Salinas' letter regarding charges pending at McCahon Floral.

## **7. Outreach Projects**

- (a) Novella: The Employment Development Department is costing out the charges for printing. Member Bustamante will investigate further printing resources.
- (b) The El Centro Office has been invited to have an informational booth at the Cesar Chavez Festival on Saturday, March 27, 2004, at Veteran's Park in Coachella.
- (c) Brochures: Member Barrios and Board Counsel Heyck will pick up the ULP and Concerted Activity brochures from the print shop.

**8. Legislation:** Nothing new to report.

**9. Personnel:** Member Rivera-Hernandez reported that interviews with several law students for internships will commence next week.

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

**11. Compliance:** Nothing new to report.

**12. Future Agenda Review:** Performance review, future goals, review of flow charts, development of ideas to augment agency's budget, and consideration of delegation of authority regarding injunctive relief.

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