Napa, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:	)	
	)	
HESS COLLECTION WINERY,	)	
	)	Case No. 2003-MMC-01
	)	
Employer,	)	29 ALRB No. 6
	)	
and	)	October 16, 2003
	)	
UNITED FOOD AND COMMERCIAL WORKERS UNION, FRESH FRUIT AND VEGETABLE WORKERS, LOCAL 1096,	)	
	)	
Petitioner.	)	
	)	

DECISION AND ORDER

On October 6, 2003, the Hess Collection Winery (Hess or Employer) filed with the Agricultural Labor Relations Board (Board or ALRB) a Petition for Review of the Mediator's Report With Recommended Collective Bargaining Agreement in the above captioned matter. The Board has evaluated the Employer's petition and finds, for the reasons discussed below, that the Employer has failed to establish that any grounds exist for the Board to grant review of the Mediator's Report.

BACKGROUND

On April 3, 2003, the United Food and Commercial Workers Union, Fresh Fruit and Vegetable Workers, Local 1096 (Union or UFCW) filed a declaration with the Board pursuant to Labor Code section 1164 et seq.[1] indicating that the Union and Employer had failed to reach a collective bargaining agreement and requesting that the Board issue an order directing the parties to mandatory mediation and conciliation of their issues.

On April 7, 2003, the parties filed a stipulation with the Board requesting that the matter be held in abeyance to allow time for the Board's proposed regulations implementing the mandatory mediation and conciliation law to go into effect. On April 14, 2003, the Board issued Administrative Order 2003-3 granting the parties' joint request to hold the above matter in abeyance. On May 8, 2003, the Board notified the parties that the regulations implementing the mandatory mediation and conciliation law had gone into effect, and that the matter was no longer held in abeyance. Pursuant to Administrative Order 2003-3, the Union's declaration was deemed filed and served on May 8, 2003.

On May 16, 2003, the Employer timely filed an answer to the Union's declaration pursuant to section 20401 of the Board's regulations. The Board evaluated the Employer's answer in accordance with section 20402 of the Board's regulations and found that the Employer's answer did not dispute any of the prerequisites for referral to

[1] On September 30, 2002, Governor Davis signed two companion bills, Senate Bill 1156 and Assembly Bill 2596, that amend the Agricultural Labor Relations Act (ALRA or Act) to provide for mandatory mediation in selected circumstances where the parties have been unable to reach a collective bargaining agreement. The amendments created Labor Code sections 1164-1164.14, which became effective January 1, 2003.

mediation set forth in Labor Code sections 1164 (a) and 1164.11 and regulation section 20400(a). The Board therefore issued Administrative Order 2003-5 ordering the parties to mandatory mediation and conciliation on May 21, 2003.

The parties selected Mediator Gerald McKay in accordance with Labor Code section 1164 (b) and section 20403 of the Board's regulations. The Mediator met with the parties informally and off the record on August 18, 2003. The Mediator explored a variety of issues that were unresolved between the parties, but the parties were not able to agree on any of the items in dispute. On September 17, 2003, the Mediator conducted a mandatory mediation session on the record. The Employer did not attend or participate in the session.

Mediator's Report and Recommendation for a Collective Bargaining Agreement

On September 24, 2003 the Mediator filed a report with the Board pursuant to Labor Code section 1164 (d). The report resolves all remaining issues between the parties and establishes the terms of a collective bargaining agreement.

The Mediator based his recommendation on the evidence presented by the Union as to why its proposal should be adopted as the collective bargaining agreement between the parties. The Mediator pointed out that the Employer did not respond to the Union's evidence, and therefore the evidence submitted by the Union is not contradicted in the record.

The Mediator stated that he considered the criteria set forth in section 20407 of the Board's regulations in determining the appropriateness of the collective bargaining agreement, and adopted the Union's proposal except that he found that the

Union's request for a 3-year contract was not appropriate. The Mediator reasoned that because this is a mandated contract (as opposed to a mutually negotiated contract) and is a first contract, it should be of a relatively short duration. The Mediator's recommended collective bargaining agreement begins on October 1, 2003 and terminates on July 1, 2005. The Mediator pointed out that although the contract covers more than 12 months, it covers only one working season, as the 2003 season was essentially already over when he issued his report.

Employer's Petition for Review of the Mediator's Report

On October 6, 2003, the Employer filed a petition for review of the mediator's report. The Employer requests that the Board vacate and set aside the Mediator's report for a variety of reasons, namely that:

1. The Mediator's report and the process leading to it violate state and federal constitutional rights such as freedom of contract;

2. The Mandatory Mediation and Conciliation law violates California Evidence Code sections 1119 and 1121;

3. The Mediator's report violates public policy which promotes collective bargaining. The Employer argues that section 1155.2(a) of the ALRA gives parties to collective bargaining the right to turn down proposals made by the other side;

4. The collective bargaining agreement attached to the Mediator's report is based on clearly erroneous findings of material fact, false testimony by the Union President, and evidence for which there was no proper foundation;

5. The Mediator erred when he stated that the duration of the contract would be one year, while it is actually for 21 months (from October 1, 2003 to July 1, 2005). The Employer contends that the Mediator based this determination on the erroneous finding that Hess employees would not be working on October 1 or November 1;

6. Finally, the Employer points out that the Mediator mistakenly indicated that Hess had filed the lawsuit challenging the Mandatory Mediation and Conciliation law, and suggests that this misunderstanding "may have adversely affected [the Mediator's] ultimate decision."

ANALYSIS AND DISCUSSION

Labor Code section 1164.3(a) and (e) and Board regulation 20408 provide that either party may petition the Board for review of a mediator's report within seven days of the filing of the report.

Under Labor Code section 1164.3(a), the Board may accept a petition for review where the petitioner has established a prima facie case that 1) a provision of the collective bargaining agreement in the mediator's report is unrelated to wages, hours or other conditions of employment, or 2) a provision of the collective bargaining agreement in the mediator's report is based on clearly erroneous findings of material fact. If the Board grants a petition for review pursuant to section 1164(a), then it must issue an order requiring the mediator to modify the terms of the collective bargaining agreement within 21 days of accepting the petition. If the Board does not accept a petition for review, then the mediator's report will become a final order of the Board.

Under Labor Code section 1164.3(e), the Board must vacate a mediator's report where the petitioning party establishes that 1) the mediator's report was procured by corruption, fraud or any other undue means, 2) there was corruption in the mediator, or 3) the rights of the petitioning party were substantially prejudiced by the misconduct of the mediator.

The Employer indicates that it is petitioning the Board under section 1164(a), on the grounds that provisions of the collective bargaining agreement in the Mediator's report are based on clearly erroneous findings of material fact. The Employer's petition also requests that the Board vacate the Mediator's report based on arguments that are unrelated to any of the specific grounds set forth in the statute. The Board already addressed some of these latter arguments in its previous order directing the parties to mandatory mediation and conciliation (Admin. Order 2003-5).

The Employer asserts that the mandatory mediation law found in Labor Code sections 1164-1164.14 violates various rights and protections guaranteed under the California and United States Constitutions. As the Board stated when it referred this matter to mediation, the Board has no authority to declare a statute unconstitutional. Under Article 3, Section 3.5 of the California Constitution, an administrative agency has no power to: (a) declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional; (b) declare a statute unconstitutional; or (c) declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has

made a determination that the enforcement of such statute is prohibited by federal law or federal regulations. Because the Board cannot declare Labor Code sections 1164-1164.14 unconstitutional, this argument provides no grounds for the Board to grant review of the Mediator's report.

The Employer also argues that the mandatory mediation and conciliation law violates California Evidence Code sections 1119 and 1121. Section 1119 provides that communications made in the course of a mediation session shall remain confidential, and that no admission or writing made for the purpose of a mediation is admissible in any subsequent adjudication. Section 1121 provides that neither a mediator nor any other party may submit to an adjudicative body, a report, evaluation, assessment or finding of any kind concerning a mediation unless a) the report is mandated by law, b) states only whether an agreement was reached, or c) all parties to the mediation expressly agree that such a writing by the mediator is admissible.

The Employer insists that because Labor Code sections 1164-1164.14 use the term "mediation," the process must be subject to rules governing traditional mediation. However, it is clear that the law by its terms creates a hybrid mediation/ arbitration process, which is not governed by California Evidence Code sections 1115-1128. The Board has accounted for the portion of the process that is akin to mediation in section 20407 (a)(2) of the Board's regulations. This section provides that the mediator retains the discretion to go off the record at any time during the proceeding, and that all communications taking place off the record are subject to the same limitations on admissibility and disclosure as provided by Evidence Code section 1119 (a) and (c), and

shall not be the basis for any findings and conclusions in the mediator's report. The Employer was therefore not precluded from making statements to the Mediator in confidence.

The statute and regulations also make it clear that if the mediation phase of the process is not successful, the process concludes with interest arbitration, and this final part of the process is not governed by provisions of the Evidence Code relating to confidentiality in mediation. The Employer's argument that it could not participate in the September 17, 2003 session because it would be violating laws of evidence is patently without foundation, and provides no basis for the Board to accept the Employer's petition for review.

The Employer contends that the mandatory mediation law violates California Labor Code section 1155.2 (a). This section of the ALRA mandates that the parties must bargain in good faith, but indicates that this obligation does not "compel either party to agree to a proposal or require the making of a concession." This argument is also without merit. The ALRA was amended by the addition of Labor Code sections 1164-1164.14 to provide for mandatory mediation in selected circumstances where the parties have been unable to reach a collective bargaining agreement. These amendments went into effect on January 1, 2003. The Employer cannot now rely on the un-amended version of the Act to support its claim that the mandatory mediation process violates the ALRA.

Further, the Employer's claim that there has been no bad faith bargaining by Hess during the prior 23 negotiation sessions with the Union is irrelevant. A finding of

bad faith bargaining is not a prerequisite for the Board to order parties to the mandatory mediation process set forth in Labor Code sections 1164-1164.14.

The Employer argues that the collective bargaining agreement attached to the Mediator's report is based on the clearly erroneous finding of material fact that no agricultural employees in the Napa Valley were covered by collective bargaining agreements. The Employer takes issue with the relevance of the excerpts from other collective bargaining agreements that the Union submitted as "Petitioner's Exhibit No. 1" because some are from contracts with employers outside the Napa Valley, and some are from contracts with agricultural employers other than wineries. The Employer further argues that there was no proper foundation laid for the admission of the contract excerpts into evidence, and so it was improper for the Mediator to base his findings on this exhibit.

Pete Maturino (Maturino), the UFCW President, did incorrectly state during the September 17 session that the UFW [United Farm Workers of America, AFL-CIO] "probably" did not represent any employees in the Napa Valley wine industry, but he also stated that the UFW "had Gallo" and two other wineries in Sonoma and the surrounding areas (Mediation Transcript, page 16).[2] The Employer points out that the two wineries (Mondavi and St. Supery) were indeed in the Napa Valley; however, there is nothing in the record to support the Employer's assertion that the Union deliberately misled the Mediator into thinking that there were no other agricultural employees covered by collective bargaining agreements in the Napa Valley, nor does the Employer explain how it was prejudiced by this mistake of fact.

[2] Subsequent references to the Mediation Transcript will be designated by "MT" followed by the page number.

Petitioner's Exhibit No. 1 does include only excerpts from the UFW's contract with Gallo and contracts with several other non-winery operations. However, as Maturino indicated, the Union submitted Exhibit No. 1 to show a pattern of standard contract clauses in agriculture, to show that the Union's proposal for a collective bargaining agreement with Hess contains "almost identical" provisions (MT: 17.) To the extent the Employer is arguing that the wage rates included in the collective bargaining contract deviate from area practices and standards, it is incorrect, as Maturino testified that he had researched wages in nearby wine grape operations. (MT: 42-52.) Most importantly, by refusing to participate in the September 17 session, the Employer has waived the right to contest the relevance of the evidence offered by the Union. For the same reason, the Employer cannot now complain of a lack of foundation for the admission of Exhibit No. 1. Had the Employer been present during the session, it could have questioned Maturino as to the authenticity of the excerpts and the accuracy of the wage data.

This argument fails to establish a prima facie case that the collective bargaining agreement is based on a clearly erroneous finding of material fact, and provides no basis for the Board to accept the Employer's petition for review.

We find that the Employer's complaint about the duration of the contract is also unpersuasive. While the Mediator's statement that he was imposing what amounted to a one-year contract was not entirely accurate, it was inconsequential. The Mediator set the effective dates of the contract based on the Union's representation that the season, or time when there is the greatest number of workers, runs from February to October.

Although the Employer argues that, contrary to the Mediator's finding, there are indeed employees present in October and November, the fact that there are some year-round workers does not contradict the statement that the working season runs for only a part of each 12-month period. The Mediator clearly indicated that he wanted the contract to cover one working season, plus he was also willing to accommodate the Union's request to have the contract terminate in July rather than in October.[3]

Again, this additional argument fails to establish a prima facie case that the collective bargaining agreement is based on a clearly erroneous finding of material fact.

Finally, the Employer takes issue with the fact that the Mediator mistakenly stated in his report that Hess filed the pending lawsuit challenging the mandatory mediation and conciliation law.[4] While it is true that Hess is not one of the named plaintiffs in the lawsuit, the Employer has not provided any basis for its claim that this misstatement by the Mediator "may have adversely affected his ultimate decision." The Mediator mentioned the lawsuit when reciting the procedural history of the case leading up to the mandatory mediation process because the Employer had unsuccessfully petitioned the Board to hold the mediation process in abeyance pending the outcome of the lawsuit. This argument also fails to establish a prima facie case that the collective

[3] Maturino explained that he generally tried to have his Union's contracts expire in the middle of the season because this was generally a time when there would be a significant number of workers present. This way the Union is able to have access to the maximum number of workers when renegotiating the contract. (MT: 61.)

[4] The pending case is *Western Growers Association et al v. Agricultural Labor Relations Board*, *et al*. Case No. 03AS00987. This lawsuit was filed in Sacramento County Superior Court on February 24, 2003 by the Pacific Legal Foundation on behalf of various agricultural employer organizations and one named individual agricultural employer, Excelsior Farming, LLC.

bargaining agreement is based on a clearly erroneous finding of material fact, and provides no basis for the Board to accept the Employer's petition for review.

CONCLUSION

We find no basis for accepting review of the Mediator's report. Therefore, the Employer's Petition for Review of the Mediator's Report With Recommended Collective Bargaining Agreement in the above captioned matter is hereby DISMISSED.

ORDER

In accordance with the decision above, and pursuant to the requirements of California Labor Code section 1164.3 (b), it is ORDERED that the Mediator's Report and Recommendation for Collective Bargaining Agreement dated September 24, 2003 become the final order of the Board.

IT IS FURTHER ORDERED that the Collective Bargaining Agreement between The Hess Collection Winery and the United Food and Commercial Workers Union, Fresh Fruit and Vegetable Workers, Local 1096 contained in the Mediator's Report dated September 24, 2003, take immediate effect.

Dated: October 16, 2003

GENEVIEVE A. SHIROMA, Chair

GLORIA A. BARRIOS, Member

CATHRYN RIVERA, Member

CASE SUMMARY

HESS COLLECTION WINERY
(Fresh Fruit & Vegetable Workers,
U.F.C.W., AFL-CIO, Local 1096, CLC)

Case No. 2003-MMC-01
29 ALRB No. 6

Background

On April 3, 2003, the United Food and Commercial Workers Union, Fresh Fruit and Vegetable Workers, Local 1096 (Union or UFCW) filed a declaration with the Agricultural Labor Relations Board (Board) pursuant to Labor Code section 1164 et seq. indicating that the Union and Hess Collection Winery (Employer or Hess) had failed to reach a collective bargaining agreement and requesting that the Board issue an order directing the parties to mandatory mediation and conciliation of their issues. The Board evaluated the Employer's answer to the UFCW's declaration and found that the Employer's answer did not dispute any of the prerequisites for referral to mediation set forth in the mandatory mediation and conciliation statute or the Board's regulations. The Board ordered the parties to mandatory mediation and conciliation on May 21, 2003. The Mediator, who was selected by the parties pursuant to the mandatory mediation and conciliation statute, met with the parties informally and off the record on August 18, 2003. The Mediator explored a variety of issues that were unresolved between the parties, but the parties were not able to agree on any of the items in dispute. On September 17, 2003, the Mediator conducted a mandatory mediation and conciliation session. The Employer did not attend or participate in the session.

Mediator's Report and Recommendation for a Collective Bargaining Agreement

On September 24, 2003 the Mediator filed a report with the Board. The report resolved all remaining issues between the parties and established the final terms of a collective bargaining agreement. The Mediator based his recommendation on the evidence presented by the Union as to why its proposal should be adopted as the collective bargaining agreement between the parties. The Mediator pointed out that the Employer did not respond to the Union's evidence, and therefore the evidence submitted by the Union is not contradicted in the record.

Board's Decision

On October 6, 2003, the Employer filed a petition for review of the mediator's report. 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. The Employer first argued that the Mediator's report and the process leading to it violated state and federal constitutional rights. The Board pointed out that it has no authority to declare a statute unconstitutional under Article 3, Section 3.5 of the California Constitution. The Board found that this argument provided no grounds for the Board to grant review of the Mediator's report

The Employer also argued that the Mandatory Mediation and Conciliation law violates Cal. Evidence Code sections 1119 and 1121, which pertain to confidentiality in mediation. The Employer insisted that because the law uses the term "mediation," the process must be subject to rules governing traditional mediation. The Board found it was clear that the law created a hybrid mediation/ arbitration process, which is not governed by California Evidence Code sections 1115-1128. The Board found that the Employer's argument that it could not participate in the September 17, 2003 session because it would be violating laws of evidence was without merit, and provided no basis for the Board to accept the Employer's petition for review.

The Employer further argued that the Mediator's report violated section 1155.2(a) of the ALRA, which gives parties to collective bargaining the right to turn down proposals made by the other side. The Board rejected this argument because it found that the Employer could not rely on the un-amended version of the Act to support its claim that the mandatory mediation process violates the ALRA. The ALRA was amended by the addition of Labor Code sections 1164-1164.14. These amendments went into effect on January 1, 2003.

The Employer argued that the collective bargaining agreement attached to the Mediator's report was based on the incorrect finding that no agricultural employees in the Napa Valley were covered by collective bargaining agreements. The Board found that the Employer did not establish a prima facie case that the collective bargaining agreement was based on a clearly erroneous finding of material fact. The Board found nothing in the record to support the Employer's assertion that the Union deliberately misled the Mediator into thinking that there were no other agricultural employees covered by collective bargaining agreements in the Napa Valley. The Board further concluded that by refusing to participate in the mandatory mediation session, the Employer waived the right to contest the relevance and authenticity of the evidence offered by the Union.

Finally, the Employer argued that the Mediator erred when he stated that the duration of the contract would be one year, while it is actually for 21 months (from October 1, 2003 to July 1, 2005). The Board found that while the Mediator's statement about the term of the contract was not entirely accurate, this was inconsequential. The Mediator clearly indicated that he wanted the contract to cover one working season, plus he was also willing to accommodate the Union's requested termination date.

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A MATTER IN FORMAL MEDIATION

In a Matter Between: HESS COLLECTION WINERY (Employer) and UNITED FOOD & COMMERCIAL WORKERS LOCAL 1096 (Union)	CSMCS Case No. ARB-02-14500 ALRB Case No. 2003-MMC-01 McKay Case No. 03-217

MEDIATOR'S RECOMMENDATION FOR COLLECTIVE BARGAINING AGREEMENT

GERALD R. McKAY, MEDIATOR

Appearances By:

Employer: Randolph C. Roeder, Esq.
Littler Mendelson
650 California Street, 20th Floor
San Francisco, CA 94108-2693

Union: David A. Rosenfeld, Esq.
Weinberg, Roger & Rosenfeld
180 Grand Avenue, Suite 1400
Oakland, CA 94612

A MATTER IN FORMAL MEDIATION

In a Matter Between:	
HESS COLLECTION WINERY	CSMCS Case No. ARB-02-14500
(Employer)	ALRB Case No. 2003-MMC-01
and	McKay Case No. 03-217
UNITED FOOD & COMMERCIAL WORKERS LOCAL 1096	
(Union)	

STATEMENT OF PROCEDURE

This matter arises pursuant to an order from the Agriculture Labor Relations Board in Case No. 2003-MMC-01 directing the above-identified parties to engage in mandatory mediation and conciliation pursuant to the authority granted to the Board under Labor Code Section 1164, et seq. On April 3, 2002, the Union filed a declaration with the Agriculture Labor Relations Board pursuant to Labor Code Section 1164, et seq. stating that the Union and the Employer have failed to reach a Collective Bargaining Agreement and requesting the Board to order the parties to mandatory mediation and conciliation. The matter was held over until May 8, 2002 for the Board to implement its regulations implementing the mandatory mediation and conciliation law. Pursuant to Administrative Order 2003-5, the Union's declaration was deemed filed and served on May 8, 2003. On May 16, 2003, the Employer filed a timely answer to the Union's declaration pursuant to Section 20401 of the Board's regulations. The Board found that the Employer's response did not dispute the existence of any of the prerequisites for referral to mediation set forth in Labor Code Sections 1164(a) and 1164.11, and Regulation Section

20400 (a). The Employer requested the Board to hold the matter in abeyance pending proceedings the Employer had filed challenging the mandatory mediation law. The matter was filed in Sacramento County Superior Court (Western Growers Association, et al. v. California Agricultural Labor Relations Board, et al., Case No. 03AS00987). The Employer asserted that it could not participate in the mediation process because doing so would cause it to waive its position that the mandatory mediation law is invalid. The Board concluded that the Employer did not state any grounds that required the Board to hold the matter in abeyance. The Board stated that upon issuance of its order, the Board would request that a list of nine Mediators compiled by the California Mediation and Conciliation Service be provided to the parties from which the parties were to select a Mediator in accordance with Labor Code Section 1164(b) and Section 20403 of the Board's regulations.[1]

Pursuant to the Board's directives, the Employer and the Union selected this Mediator to serve as the Mediator pursuant to the Board's Order. On August 18, 2003, this Mediator conducted an informal mediation pursuant to the provisions of the Code and the Regulations of the Agriculture Labor Relations Board to determine whether the parties could reach an amicable agreement on the terms and conditions of a Collective Bargaining Agreement. The mediation session was held in Napa, California. During the course of the mediation, the Mediator explored a number of the issues, which were unresolved between the parties, and obtained tentative agreements in principle on various items, but was not able to obtain an unconditional agreement to any items still in dispute. The Employer expressed the opinion that it had given the Union its last, best and final offer and that it would stand on that offer without any change. In light of the Employer's refusal to make any changes whatsoever to its last, best and final offer, the Union did not change its position at the table. Because the Employer was not willing to participate in the

[1] Mediator's Exhibit 1

mandated mediation process pursuant to the Board's Order, the Mediator concluded that it would not be possible, in the context of informal mediation, to reach an accord. He announced to the parties at the mediation session on August 18, 2003 that he would convene a mandatory mediation session pursuant to the Code and Regulations on September 17, 2003. He invited the Union and the Employer to participate in this mediation session so that he could fulfill his obligation to issue a recommendation to the Agriculture Labor Relations Board with respect to the terms and conditions of a Collective Bargaining Agreement for the parties. The Employer informed the Mediator that it would not participate in the mandatory mediation session on September 17, 2003. The Union stated that it would participate in the mandatory mediation session.

The Mediator conducted a mandatory mediation session on September 17, 2003 in Oakland, California. The Employer did not present itself at the mediation session and, through counsel, informed the Mediator prior to the commencement of the hearing that it would not be there and did not intend to participate. The Union did present itself at the mandatory mediation session and presented evidence to support its request that the Mediator adopt its proposal for a Collective Bargaining Agreement between the parties. The mediation session was transcribed by a court reporter and exhibits were marked and received. At the conclusion of the mediation session, the Mediator informed the Union that he would take the matter under advice and, after reviewing the record and the exhibits, he would issue his recommendation to the Board pursuant to the provisions in Labor Code Section 1164(d). This writing is the Mediator's report to the Board to resolve all of the issues between the parties and to establish the final terms of a Collective Bargaining Agreement, including all the issues subject to mediation and all the issues resolved by the parties prior to the certification of the exhaustion of the mediation process.

ISSUE

How should the issues and dispute between the parties be resolved and what should be the terms of the Collective Bargaining Agreement between the parties?

BACKGROUND

The Employer operates a winery located in the Napa, California area where it grows grapes and produces wine. The employees who are affected by the process pending before this Mediator are the employees who work as agricultural workers in the vineyards owned and operated by this Employer. These employees engage in traditional agricultural labor, such as planting, irrigating, pruning, and harvesting. In addition to this group of employees, the Employer engages the services of other employees who work in different parts of the winery operation. The Union filed a petition to represent the agricultural workers and was authorized by the Agriculture Labor Relations Board to be the exclusive representative of this group of employees. Pursuant to that authorization, which the Mediator understands occurred sometime in 1999, the parties began to engage in negotiations. Between the first negotiation and the day of the informal mediation in August 2003, the parties engaged in approximately twenty-three negotiating sessions. The parties' twenty-third negotiation session occurred on January 30, 2003 and ended in continued impasse. Pursuant to the assertion by representative Pete Maturino, President of the Union that an impasse existed, the Employer informed the Union that it would implement its best and final proposal in its entirety.

At the time the Employer implemented its last and best proposal, according to the Union, there were fourteen articles in which the parties had continuing disagreements.[2] The articles the

[2] Petitioner Exhibit 1

Union identified as ones in which the parties disagreed included union security, seniority, access, discipline, leaves, health, management rights, overtime, call time, funeral leave, holidays, injury, contracting, and duration of the agreement. During the course of the mandatory mediation session, the Union presented evidence why its proposal, in contrast to the Employer's proposal, should be adopted by the Mediator as the Collective Bargaining Agreement between the parties. Because the Employer refused to participate in the mandatory mediation, the Employer did not respond to the Union's evidence concerning the reasons the Union believed that its proposal was reasonable and consistent with area practice. The Mediator, in this respect, is required to accept at face value the representations made to him by the Union since they are not contradicted in the record. The Mediator did not independently determine the accuracy of each of the Collective Bargaining Agreements presented to him by the Union during the course of the Union's presentation of evidence. The Mediator assumes that the contracts from other employers presented by the Union to the Mediator are accurate representations of those contracts, which actually exist. The Mediator bases his recommendation on the evidence presented by the Union and on the assumption that the evidence presented is accurate and complete.

POSITION OF THE PARTIES

UNION

The Union presented an entire agreement, which was intended to go into effect in the year 2000 and continue through 2003 or thereafter. Among other things, the Union asked for retroactive wages to the year 2000. The Union's witness at the mandatory mediation was Mr. Pete Maturino. He testified that he has been involved in negotiating contracts in the agricultural industry for the past 30 years. He has held his current position as President of Local

1096 for the past 7 years and, prior to his current tenure, held the position for 18 years. He described the work that the employees he represents at the Employer's operation do. He stated:

> "The workers start from, basically, preparing the ground as tractor drivers, and then the planting of the vine, the nurturing of the vine, the irrigation, the pesticides, the chemicals, the tying, the pruning, and then the harvest, and then it kind of repeats itself year after year."[3]

He stated that the work performed by these individuals is generally seasonal. The season, depending on the grape variety, begins sometime in January or February and continues up to the end of October. There is virtually no work from October through January. There are approximately 60 to 65 people who perform this work for the Employer and who are members of the bargaining unit.

Mr. Maturino testified that when he was in the process of organizing the Employer's employees, he visited their website and discovered that the owner of the company is an individual named Donald Hess who, Mr. Maturino stated, is a Swedish national. Most of his business operations, according to Mr. Maturino, are in Sweden. He described Mr. Hess and his businesses as extremely wealthy. At no point during negotiations, Mr. Maturino stated, did the Employer ever express the opinion that it did not have the ability to pay the wage demand the Union was making. Mr. Maturino stated that he had conversations with Clem Ferko, the Employer's President, during which he was informed that Mr. Hess was a multimillionaire or multibillionaire. The winery, according to Mr. Maturino from what he learned from Mr. Ferko, is a hobby for Mr. Hess.

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[3] Transcript page 10

In preparing for the formal mediation, Mr. Maturino stated, he reviewed various Collective Bargaining Agreements between agricultural employers and his Union, the United Farm Workers, and the Teamsters. Some of the contracts covered agricultural workers who grew and harvested vegetables; others covered employees who grew and harvested grapes. The work, according to Mr. Maturino, is essentially the same even though the commodity is treated differently. Mr. Maturino stated that he took each of the disputed issues and found portions of Collective Bargaining Agreements, which presently exist that cover the topic in dispute. In every case, Mr. Maturino stated, the position taken in the present negotiations with this Employer are more generous toward the Employer than the language which exists in many of the existing Collective Bargaining Agreements. None of the proposals presented by the Union, according to Mr. Maturino, establish new or different benefits to employees that do not already exist in a number of other locations in the same industry with similar employers. According to Mr. Maturino, his intention in attempting to get a contract with this Employer was to stay within the mainstream of existing Collective Bargaining Agreements. Mr. Maturino recognized that this was the first contract with this Employer so he believed that the demands made on the Employer should be relatively conservative and consistent with area practices and standards.

Beginning with the issue involving union security, Mr. Maturino stated, the difference between the Company and the Union is that the Company was seeking a 60-day term before employees were required to join the Union and pay dues, whereas the Union wanted a 45-day term. In the five contracts that he presented for comparison, all of them required the employees to join the Union in periods between 7 days and 21 days. None of the contracts were as generous

as the 45 days offered by the Union to this Employer. The same issue exists with respect to seniority. Employees do not begin to accrue seniority under the Union's proposal for 45 days, whereas the Employer was seeking 60 days. All of the other contracts, which the Union presented at the hearing, range from 7 days to 21 days.

With respect to the issue of access, the Union stated that it was seeking language that its access would not "unduly disrupt the workforce," where as the Employer was providing language that stated, "will not disrupt the workforce." The Union stated that it is very important that it have access to its workers at the worksite. The Union stated that it does not want to disrupt the work, but its wants to be able to contact employees at the worksite and does not want to be found in violation of the Agreement for merely saying hello to employees as the Union Agent passes by. The dispute with respect to discipline is that the Union proposed a system of progressive discipline. In contrast, the Employer proposed no progressive discipline at all. The Employer wishes to retain the right to discipline an employee and determine the level of discipline without any obligation to approach discipline progressively. All of the contracts the Union presented provided for progressive discipline. In addition to progressive discipline, one of the other issues involving discipline was how long warning notices would remain in effect. The Union is seeking to have warning notices expire after 12 months, whereas the Employer wants warning notices to remain in an employee's record indefinitely. All of the other contracts the Union presented have some expiration date for written warnings between 8 months and 12 months.

The dispute concerning the leaves article focuses on state law. The Union wanted to make sure that the Employer provided leaves in accordance with state law and federal law. The Employer did not want anything in the contract at all, according to the Union. References to leave required by law is in all of the Collective Bargaining Agreements presented by the Union covering ALRB and NLRB employees. The issue concerning health, the Union stated, involves the obligation of the Employer to provide protective garments and tools. If the employees turn in tools and garments, which are worn by normal standards of wear and tear, they are not charged. The Employer does not want any of that language in the contract. According to Mr. Maturino, the Employer is presently doing what the Union is proposing, but it does not want to put that in the Agreement. All of the contracts presented by the Union have similar language to the language the Union is seeking.

In the management's rights clause, the Union proposed that the Employer's work rules be made part of the Collective Bargaining Agreement. The Employer did not want the work rules to be part of the contract. The Union proposed putting the existing work rules into the Agreement so that they would be subject to the just cause provision of the contract. The Employer expressed the desire to change the work rules as it chose without having to negotiate with the Union. A provision addressing overtime applies primarily to irrigators. The Employer is presently paying irrigators time and a half overtime after 10 hours. The Employer simply wanted to drop that provision so that irrigators who are now being paid time and a half would no longer be paid time and a half after 10 hours. Mr. Maturino acknowledged that overtime for

irrigators is not required under state law. Irrigators are paid by the hour in contrast to other employees who work on a piece rate basis.

Concerning Article 17 - Call Time, the Union stated that if employees are called to work and the Employer provides no work for them, they should be paid 4 hours for showing up. In contrast, the Employer is proposing that the employees only be paid 2 hours. At the present time, the Employer is paying 4 hours and its proposal reduces its current practice form 4 hours to 2 hours. According to Mr. Maturino, the other contracts he reviewed and which he presented at the mediation, use 4 hours for call time. The dispute concerning funeral leave, Mr. Maturino stated, involved an interpretation of "immediate family." The Union proposed identifying who was included in immediate and the Employer refused. The Union stated that its proposal reflects what the Employer's current practice is with respect to funeral leave.

The issue concerning holiday pay, Mr. Maturino stated, involves the Union's proposal that if employees have to work on a holiday, they receive time and a half for working on that day, plus their holiday pay. The Employer's proposal is that if an employee has to work on a holiday, they simply get paid their regular wages. The other proposal, the Union stated, deals with holidays that fall on Sunday. The Union proposed that those should be celebrated on Monday. The Employer simply did not respond. In Article 26 dealing with injury, the Union proposed that the Employer provide the injured worker transportation to the closest medical facility. The Employer rejected that proposal. Providing transportation to a medical facility from the field for employees injured on the job is common in all contracts, according to

Mr. Maturino. The Employer at the present time does provide transportation, but refuses to put that into the Agreement, according to Mr. Maturino.

Mr. Maturino did a wage survey in the Napa area, among other employers, by using the workers at Hess and the relatives of the workers to determine what other places paid. Based on his survey, the general labor wage is about $11.00 an hour. He cited Mondavi Winery as approximately the same size as Hess and it pays a general labor wage of $11.00 an hour. Tractor drivers, irrigators and pruners all get additional money, but the entry level wage is about $11.00 an hour in the Napa area. The Union's proposal, Mr. Maturino stated, is considerably less than $11.00 an hour. Since this is a first contract, Mr. Maturino testified, it was his intention to start at a lower level and work up to the general standard in the area.

EMPLOYER

The Hess Collection is proceeding to an off-an-record "mediation" on August 18, 2003 subject to the conditions cited in the June 4, 2003 letter from its attorney to ALRB Executive Secretary Antonio Barbosa. More specifically, the Company is relying on the representation of the Board in its May 21, 2003 Order Directing Parties to Mediation that by proceeding with "mediation," there would be no waiver of the defenses raised by the Company in its Answer to the Request for Mediation. The Board stated specifically that the Company had preserved its claim on the record by outlining its position in its Answer.

Further, while the Company is opposed to any public disclosure (including disclosure to the ALRB) of any communications made to Gerald McKay, who has been appointed to serve as

the mediator in this matter, the Company is authorizing Mr. McKay to disclose the following facts:

The Hess Collection and UFCW Local 1096 have engaged in 23 negotiating session, beginning in May 2000 and continuing through January 2003. At the parties' June 20, 2002 negotiating session, the Company gave to the UFCW its *Eighteenth Company Proposal.* While that proposal was not the Company's best and final at that time, it became such when it saw the Union's final proposal.

Impasse was reached in the negotiations in December 2002 and on that basis, the Company implemented the wage rates in its best and final proposal. (This has never been challenged.)

The parties had their 23rd negotiating session on January 30, 2003. That meeting ended on a note of continued *impasse*. A week later, counsel for the Company had a telephone conversation with UFCW President Pete Maturino in which he said that in his view, the parties were still at *impasse*. Due in part to the fact that the parties were at *impasse*, Mr. Maturino was informed that the Company would be implementing its best and final proposal in its entirety.

DISCUSSION

The Mediator has had an opportunity to review the exhibits submitted by the Union and to review the contract the Union has requested be imposed as the Collective Bargaining Agreement between the parties. The Mediator believes that the Union's arguments are meritorious with respect to the fact that the proposals that it has made to this Employer for a

Collective Bargaining Agreement do not reflect significant deviations from area practice and area contract standards. For example, in the area of Union security, the Union has permitted 45 workdays before an employee must join the Union. The area standard, based on other Collective Bargaining Agreements in the agricultural industry, ranges from 7 days to 21 days. The Employer's demand for 60 days is considerably outside the norm. In each of the areas where a controversy exists, the Union's proposal is relatively conservative in light of other contractual provisions in other Collective Bargaining Agreements. It is fair to say that the Union has not plowed any new ground with the proposed Collective Bargaining Agreement. In fact, the Employer has refused to permit language in the contract which reflects its existing practices. For example, language which requires the Employer to transport injured workers to the nearest medical facility is a practice the Employer presently engages in and is one, which in all likelihood, the Employer is going to continue to perform. Why the Employer refuses to put that obligation into the contract does not find any support in the record. The same result may be cited in a number of other areas where a dispute exists and the Employer is not willing to memorialize its own existing practice. The Employer, for example, is paying irrigators time and a half after 10 hours, but refuses to put that into the Agreement.

Section 20407 of the Regulations promulgated by the Agriculture Labor Relations Board advises the Mediator in making a recommendation to follow certain principles in determining the appropriate Collective Bargaining Agreement. These principles include:

"(1) The stipulations of the parties;

(2) The financial conditions of the employer and its ability to meet the costs of the contract in those instances where the employer makes a plea of inability to meet the union's wage and benefit demands;

(3) Comparison of corresponding wages, benefits, and terms and conditions of employment in collective bargaining agreements covering similar agricultural operations with similar labor requirements;

(4) Comparison of corresponding wages, benefits, and terms and conditions of employment in comparable firms or industries in geographical areas with similar economic conditions, considering the size of the employer, the skills, experience, and training required of the employees, as well as the difficulty and nature of the work;

(5) The average consumer prices for goods and services, commonly known as the Consumer Price Index, and the overall cost of living in the area where the work is performed."

The Mediator has considered each and every one of these criteria in making a decision, including the Consumer Price Index, which was provided by the Union during the hearing.[4] It is the Mediator's opinion that based on this review of these criteria and the evidence presented, the contract attached as Exhibit A to this decision is the appropriate Collective Bargaining Agreement to be adopted between the parties.

Because this is a first contract and because it is a mandated contract, in contrast to a mutually negotiated contract, it is the Mediator's opinion that the Union's request for a three-year agreement, particularly one retroactive to the year 2000 and continuing forward three years, is not appropriate. It is the Mediator's opinion that a mandated contract ought to be relatively short so that the parties establish a contractual relationship and have the time to negotiate a mutually acceptable agreement as their second contract. One would anticipate that the second contract could be longer if the parties mutually agree. It is for this reason that the Mediator is imposing what amounts to a one-year agreement, rather than a three-year agreement, as the Union has requested. It is the Mediator's understanding that the season, during which the workers operate, goes from approximately February through October. The 2003 season, on that basis, is practically over. The 2004 season will not begin for another three or four months. That season will run through October 2004. The Union has requested that the contract terminate on July 1st at a time when employees are working in contrast to October 1st or November 1st at a

[4] Petitioner Exhibit 2

time when employees are not working. In order to accommodate the Union's request for a termination date of July 1st, the Mediator will have the contract terminate on July 1, 2005, although it will begin on October 1, 2003. While the contract, in this respect, covers more than twelve months, in practical effect it really only covers one working season. At the termination of the contract in 2005, if the parties decide they prefer to have a longer contract, they will be free to negotiate one.

RECOMMENDATION

It is the Mediator's recommendation that the document attached as Exhibit "A" to this decision be the Collective Bargaining Agreement between this Employer and this Union.

IT IS SO ORDERED.

Date: September 24, 2003

Gerald R. McKay, Arbitrator

COLLECTIVE BARGAINING AGREEMENT

Between

HESS COLLECTION WINERY

And

UNITED FOOD & COMMERCIAL WORKERS LOCAL 1096
AFL-CIO & CLC

October 1, 2003 to July 1, 2005

Exhibit A

This Collective Bargaining Agreement is between **HESS COLLECTION WINERY**, (hereinafter called "the Company") and the **UNITED FOOD & COMMERCIAL WORKERS LOCAL 1096** (hereinafter called "the Union"). The parties agree as follows:

ARTICLE 1: RECOGNITION

A. The Company does hereby recognize the Union as the exclusive representative for all the Company's agricultural employees (hereinafter called "workers" or "employees") in the bargaining unit set forth in the Agricultural Labor Relations Board's certification in Case Number 99-RC-1-SAL.

B. The term "worker" (or "employee") shall not include office and sales employees, security guards, production, anyone working in the Company's winery, visitor center, gardners, maintenance employees, management trainees, professional employees, members of the immediate families with ownership interests in the Company, and supervisory employees who have the authority to hire, transfer, suspend, layoff, recall, promote, discharge, assign reward or discipline other workers or the responsibility to direct them or adjust their grievances or effectively recommend such action, if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.

ARTICLE 2: UNION SECURITY

A. Union membership shall be a condition of employment. Each worker shall be required to become a member of the Union immediately following forty-five (45) workdays after the beginning of employment, or after forty-five (45) workdays from the date of the signing of this Agreement, whichever is later; and to remain a member of the Union in good standing. "Good standing" shall be defined in accordance with applicable NLRB precedents. Any worker who fails to become a member of the Union within the time limit set forth herein, or who fails to pay the required initiation fee, or periodic dues, shall be immediately discharged upon written notice from the Union to the Company, and shall not be reemployed until written notice from the Union to the Company of the worker's good standing status.

B. The Company agrees to furnish to the Union in writing, within one (1) week after the execution of this Agreement, a list of its workers, giving the names, addresses, social security numbers, and type of job classification.

C. The Company agrees to deduct from each worker's pay initiation fees, all periodic fees, as required by the Union, upon presentation by the Union of individual authorizations signed by workers, directing the Company to make such deductions. The Company shall make such deductions from workers' pay for the payroll period in which it is submitted, provided that it is submitted in advance of the close of the pay period, and periodically thereafter as specified

on authorizations so long as such authorization is in effect, and shall remit moneys weekly. The Company shall provide a monthly summary report as soon as possible, but not later than the tenth (10th) day of the month following the ending date of the previous month's pay period containing the names of the workers, social security numbers, payroll periods covered, gross wages, total hours worked per worker, total number of workers, and amount of Union dues deducted during such pay periods from each worker. The Union will furnish the forms to be used for authorization and will notify the Company in writing of dues, and initiation fees within five (5) days of the execution of this Agreement and five (5) days before the effective date of any change.

D. The Company will advise new workers that it is a condition of their employment that they must become and thereafter remain members in good standing in the Union immediately following completion of their respective employment evaluation period pursuant to Article 3, Section E. The Company shall furnish workers membership applications and dues check-off authorization forms as provided by the Union.

E. The Union shall indemnify and hold the Company harmless from and against any and all claims, demands, suits, or other forms of liability that may arise out of or by reason of action taken by the Company for the purpose of compliance with any of the provisions of this Article.

ARTICLE 3: HIRING AND PROMOTION PROCEDURE

A. In the event new or additional workers are needed to perform work covered by this agreement, the Company may hire employees from any source. The Company shall provide the Union with the names, social security numbers, hire dates and job classification of all workers hired.

B. The first forty-five (45) workdays of employment for a new non-seniority employee shall be considered as an introductory period. Discharges resulting from unsatisfactory work performance during the forty-five (45) days of this period shall not be subject to grievance and arbitration procedure.

ARTICLE 4 - SENIORITY

A. All employees who work forty-five (45) working days within the preceding ninety (90) calendar days; shall acquire seniority with the Company retroactive to his/her date of hire. Seniority is defined as the employee's continuous length of service with the Company, dating from his/her last date of hire. Layoffs are not a break in seniority. There shall be no layoffs for the purpose of circumventing acquisition of seniority. Seniority shall be utilized for the purposes specified in this Article.

B. Seniority shall mean the length of an employee's continuous service with the Company as a year-round, full-time worker and shall be broken if an employee:

1. Quits;
2. Is discharged for just cause;
3. Is absent from work for three (3) consecutive working days without properly notifying the Company;
4. Fails to report to work at the termination of a leave of absence or vacation without approved extension in writing by the Company;
5. Is laid off and fails to report to work within three (3) working days after having been recalled, unless satisfactory reasons are given. The Company shall be the sole judge of what reasons are satisfactory and it may require documentation of the reason;
6. Accepts other employment while on leave of absence;
7. Retirees.

C. If an employee is promoted to a job outside the bargaining unit and later is returned to the bargaining unit, he/she shall not lose his/her seniority, provided he/she is returned to the bargaining unit within one (1) month. If he/she is returned to the bargaining unit after one (1) month, he/she shall establish a new seniority date.

D. Each five (5) months beginning with the date of the execution of this Agreement, the Company shall provide the Union and the shop steward with current seniority lists showing the name of each employee, their date of hire, their union, social security number, and job classification.

E. With respect to employees who have attained seniority pursuant to paragraph A of this Article, seniority shall be one of the factors to be taken into consideration in making layoff and recall decisions, provided the remaining employees have the ability and skill necessary to perform the work under normal supervision with reasonable efficiency. Also to be taken into consideration are the employee's job performance in his/her current ability skill, experience, and attendance record. With respect to employees who have *not* attained seniority, *duration of employment* with the Company will be one of the factors governing, provided the remaining employees have the ability and skill necessary to perform the work under normal supervision with reasonable efficiency. Other factors to be taken into consideration will be the employee's job performance in his/her current ability, skill, experience, and attendance record.

F. Layoffs shall be in order of seniority within the affected classification, with the worker with the lowest classification seniority laid off first. Workers shall be recalled to their job classification in order of classification seniority. There shall be no bumping between classifications, provided, however, if a worker is to be laid off because of a permanent job elimination, he/she shall be entitled to displace (bump) the least senior employee in his/her

former classification; provided further there shall be no upward bumping in a layoff. In addition, an employee laid off from a classification above general labor shall be transferred to a vacancy in the general labor classification or, if no vacancy is available, the employee may use Company-wide seniority to displace the least senior employee in the general labor classification. When transferred to the general labor classification, the employee shall be paid at the applicable general labor hourly rate of pay.

A worker, who for physical, health or valid reasons, is not able to continue performing his/her job shall have the right to permanently transfer into the general labor classification using his/her Company-wide seniority to displace the worker with less seniority.

G. The Company, when anticipating the recall of seniority workers, shall provide reasonable notice to the worker and the Union in writing or by telephone of not less than one (1) week prior to the estimated starting date of the work. Such notice shall include worker's name, social security number, seniority date, job or classification and the approximate duration of the work.

The Company shall obtain from each employee a mailing address where the Company can send the notices. It shall be the responsibility of each employee to notify the Company of any address change.

H. It is understood that the Company and the Union may agree in writing to make deviations from these seniority provisions regarding applications of seniority.

I. For any layoff over a period of ten (10) days, the Company will post on a bulletin board under glass and give a copy to the union. A notice advising the workers of the approximate date that work will resume. Thereafter, workers must contact the Company's office to get the actual date for resumption of work.

ARTICLE 5: GRIEVANCE AND ARBITRATION PROCEDURE

A. The parties to this Agreement agree that all disputes which arise between the Company and the Union out of the interpretation or application of this Agreement shall be subject to the Grievance and Arbitration Procedure. The parties further agree the Grievance Procedure of this Agreement shall be the exclusive remedy for the Union and the workers with respect to any disputes arising under this Agreement and no other remedies shall be utilized with respect to any dispute involving this Agreement. It is understood that the grievance procedure is for the primary benefit of the Union and the workers. The Company has the right to act as opposed to having to file a grievance. Any grievances which occur prior to execution of this Agreement or subsequent to its termination shall not be subject to arbitration, unless by consent of the Company.

B. Grievances shall be processed in the following manner:

Step 1. Any grievance shall be immediately taken up between the supervisor involved and the Union Steward. They shall use their best efforts to resolve the grievance on the day the dispute arises.

Step 2. If the grievance is not resolved in Step1, the grieving party shall file the grievance by certified mail, return receipt requested, to the President of the Company within seven (7) days of the underlying dispute. The written statement of the grievance shall include a brief explanation of the nature of the grievance as it can be ascertained at the time and the remedy requested it must state specifically the section of the contract arguably violated and the basis of the grievance must be an express provision of the contract rather than an implied one. The Company and the Union shall meet within seven (7) days after presentation of the written grievance. If no settlement is reached, the Company shall give its written answer including its reasons for denial within five (5) workdays following the meeting. A Union representative may fully participate in the Step 2 meeting.

Step 3. If the grievance is not settled in Step 2, the party filing the grievance may appeal it to arbitration by giving written notice of its desire to arbitrate to the other party as soon as possible after receiving its Step 2 answer, but in no event later than thirty (30) days after receiving such answer. The arbitrator shall not have the authority or jurisdiction to modify, detract from or alter any provisions of this Agreement. The authority of the arbitrator is to decide the issue jointly submitted by the parties. Where past practice is relevant in determining the meaning of a particular provision, the arbitrator shall consider only the past practice of the Company and shall not consider the practice of any other company. The decision of the arbitrator shall be final and binding on the Company, the Union, and the employee or employees involved. The losing party shall pay the expenses of the arbitrator, including his fee. Each party shall pay the cost of presenting its own case.

C. Grievances shall be processed outside of working hours. The Company agrees to cooperate to make Union Stewards available to a worker or group of workers wishing to submit a grievance.

Aggrieved workers shall have the right to be present at each step of the grievance.

In the event the Company requests a grievance meeting during regular working hours, the time lost by the grievant(s), the Steward(s) and Grievance Committee shall be without any loss of pay. In such cases the Company will cooperate in making employees available.

D. The parties agree to have Mr. Gerald R. McKay as a permanent arbitrator.

E. Grievances dropped by either party prior to an arbitration hearing shall be considered as withdrawn without prejudice to either party's position on a similar matter in the future.

ARTICLE 6: NO STRIKE/NO LOCKOUT

A. There shall not be no strikes, sympathy strikes, picketing, slowdowns or other interruptions of work during the term of this Agreement, nor shall the Union boycott any of the Company's products.

B. There shall be no lockouts by the Company during the term of this Agreement.

C. If any of said events occur, the officers and representatives of the Union and/or the Company, as the case may be, shall do everything within their power to end or avert such activity.

D. No employee shall be required to perform work that normally would have been performed by employees of another Company who are engaged in a lawful primary strike sanctioned by the Union in those instances where performance of such work may cause imminent danger to the health or safety of the employee.

E. For purposes of this Article, a "lawful" picket line is one that is not related to a strike in violation of a contractual no-strike provision between an employer and the UFCW Local 1096 or one that is not unlawful under the Agricultural Labor Relations Act.

F. In the event there is a picket line sanctioned by the Union in the immediate geographic area of the Company, and there is a reason to believe that a picket line could affect the Company operations, the Union will notify the Company in writing.

ARTICLE 7: RIGHT OF ACCESS TO COMPANY PROPERTY

A. Duly authorized and designated representatives of the Union shall have right of access to Company premises in connection with conduct of normal Union affairs in administration of this Agreement. In the exercise of the foregoing, there shall be no unnecessary interference with the productive activities of the workers.

B. Before a Union representative contacts any of the workers during working hours; he shall notify the Company in writing with at least twenty-four (24) hours notice that he will be on the premises.

C. The Union shall advise the Company of the names of its duly authorized and designated representatives. Union representatives shall identify themselves upon request by the Company supervisor.

ARTICLE 8: DISCIPLINE AND DISCHARGE

A. The Company shall have the sole right to discipline and discharge workers for just cause, providing that in the exercise of this right it will not act in violation of this Agreement. No worker shall be disciplined or discharged except for just cause. No worker shall be suspended or discharged unless the Company has given at least three (3) warning notices before proceeding with suspension or discharge in cases of work and safety rules, absenteeism, tardiness, or quality of work. No warning notices will be required before suspension or discharge for other offenses, including but not limited to, dishonesty, flagrant insubordination or intoxication.

Company's three step progressive disciplinary procedure shall be as follows:

1. First step – First written warning;
2. Second step - Second written notice;
3. Third step – Third written warning and three (3) day suspension or termination, depending on violation.

B. The Company shall notify the Steward or other Union official within a day of any discharge or suspension.

C. Written notice of the reasons for a discharge or suspension shall be given to the worker involved and the Union within two (2) workdays after such action. A letter, which is postmarked within two (2) calendar days or received by the Union within two (2) workdays, shall be considered to be in compliance with this notice requirement. The time limit for filing grievances relating to discharges under Article 5, Grievance and Arbitration Procedure, shall begin to run upon the Union's receipt of this written notice.

D. Warning notices shall be valid if issued within three (3) working days after the occurrence of the alleged offense giving rise to the warning notice or knowledge by the Company thereof and shall be valid for a period of eight (8) months following the issuance thereof.

E. The Company shall have the right to require a worker to submit to a drug and/or alcohol test if reasonable suspicion exists that the worker has consumed or has in his/her possession alcohol or drugs or is under the influence of either. If the worker refuses to submit to the test, such refusal shall constitute insubordination and be grounds for termination. If the worker admits to the consumption or the possession of drugs or alcohol or being under the

influence of either, or the Company believes it has sufficient evidence of the foregoing, the Company shall not be required to have the worker tested.

ARTICLE 9: NONDISCRIMINATION

In accordance with the policies of the Company and the Union, it is agreed that there shall be no discrimination against any worker because of race, age, creed, color, religion, sex, political belief, national origin, union activities or lack thereof. In addition, there shall be no discrimination based on language spoken provided that the employee can communicate sufficiently to carry out the requirements of his/her job.

ARTICLE 10: LEAVES OF ABSENCE

A. A leave of absence shall be granted to seniority workers upon applying to and being confirmed by the Company for any of the following reasons without loss of seniority:

1. For jury duty or witness duty, if subpoenaed.

2. Leaves on disability, injury or pregnancy, Company will comply with Federal or State law.

3. Valid Personal Reasons. For valid personal reasons, not to exceed two (2) months provided the worker has at least six (6) months seniority and has given at least five (5) days notice before taking such leave.

4. Temporary Union Business. A temporary leave of absence not to exceed three (3) days for Union business shall be granted under the following conditions:

   (a) The Union shall give one week's written notice to the Company.

   (b) This section shall not apply to operations during critical periods such as the harvest, pruning or other time periods the Company deems as critical.

   (c) It is understood that the Union intends to utilize this section on an infrequent basis, no more than once year.

B. All leaves in excess of three (3) days shall be in writing on approved leave of absence forms provided by the Company. Such forms shall be signed by the Company representative, the worker requesting the leave and by the Union Steward or other Union

representative to signify receipt of the Union's copy. Leaves of absence may be extended by the Company for a valid personal reason not to exceed thirty (30) days, if a request for such extension is made by the worker in writing to the Company with a copy to the Union prior to the termination of the original leave, provided, however, that a request for an extension may be submitted simultaneously with the request for a leave for valid personal reasons if the worker has special circumstances which require additional time. The parties recognize that due to the seasonal nature of the Company's operations, it is not always possible to grant leaves of absence for valid personal reasons during the peak operating season in the type of work involved.

C. Leaves of absence under this Article shall be without pay, except as specifically set forth elsewhere in this Agreement. Seniority shall accumulate during leave of absence, and, upon returning, the worker shall be reinstated without loss of seniority to his classification at the current scale of wages, so long as the leave does not last more than a single season. Failure to report to work at the end of an approved leave of absence, or accepting employment with another employer during a leave, shall terminate seniority in accordance with Article 4, Seniority.

D. In consideration of the fact that employees are occasionally too ill to adequately perform work, but not so gravely ill as to require immediate medical attention, the Company agrees to review, on a case-by-case basis, whether to grant a one-day leave of absence without requiring medical documentation.

E. Employees on a leave of absence for any reason in excess of 30 days shall be required to periodically advise the Company, at least every 30-days, while the employee is on the leave of absence as to their status and ability to return to work following termination of the leave of absence.

ARTICLE 11: SUPERVISORS

A maximum of two (2) supervisors outside of the bargaining unit are to be permitted to perform work regularly performed by employees in the bargaining unit, so long as said work does not exceed five percent (5%) of each supervisor's time.

ARTICLE 12: HEALTH AND SAFETY

A. Tools and equipment and protective garments necessary to perform the work and/or safeguard the health of, or prevent injury to, a worker's person shall be provided, maintained and paid for by the Company. Workers shall be responsible for returning all equipment that is checked out to them, but shall not be responsible for breakage or normal wear and tear. Workers should be charged actual cost for equipment that is not broken and not returned. Receipts for returned equipment shall be given to the worker by the Company.

B. No worker under this Agreement will be required to work in any work situation, which would endanger his/her health or safety.

C. There shall be adequate toilet facilities, including hand washing facilities, separate for men and women, in the field and readily accessible to workers, that will be maintained by the Company in a clean and sanitary manner. These may be portable facilities and shall be maintained at ratios in accordance with applicable laws, rules and regulations.

D. Each place where there is work being performed shall be provided with suitable cool potable drinking water convenient to workers. Individual paper drinking cups shall also be provided. In any workday where the temperature is more than eighty (80) degrees, the Company agrees to provide ice in the water containers.

E. Adequate first aid supplies shall be provided and kept in clean and sanitary dust-proof containers.

ARTICLE 13: MECHANIZATION

In the event the Company anticipates mechanization of any operation of the Company that will permanently displace workers, the Company before commencing such mechanical operations shall meet with the Union to discuss training of displaced workers to operate and maintain new mechanical equipment, the placement of displaced workers in other jobs with the Company, the training of such workers for other jobs with the Company, or the placing of such workers on a preferential hiring list.

ARTICLE 14: MANAGEMENT RIGHTS

A. All functions, rights, powers and authority which the Company has not specifically modified by this Agreement are recognized by the Union as being retained by the Company, including, but not limited to, the exclusive right to direct the work force, the means and accomplishment of any work, the determination of size of crews or the number of employees and their classifications in any operation, the right to decide the nature of equipment, machinery, method, or process and to change or discontinue existing equipment, machinery, methods, or process, the right to determine the type, amount and extent of crops and acreage to be planted, harvested or sold, the right to determine if overtime shall be worked.

B. The Company shall have the right to establish and post work rules and safety rules applicable to all workers. Rules in conflict with the collective bargaining agreement shall be invalid.

ARTICLE 15: NEW OR CHANGED JOB OPERATIONS

In the event a materially changed operation or materially changed classification is installed by the Company, the Company shall have the right to temporarily set the wage scale and/or working conditions in relation to the classification and shall notify the Union at least one (1) week before such action whether or not the Union has agreed to the proposed rate. The Company may put it into effect after such notice. Within sixty (60) days thereafter the parties shall meet to negotiate a wage scale and working conditions. In the event such wage scale cannot be agreed upon mutually by the parties, the same shall be submitted to the Grievance and Arbitration Procedure for determination beginning at the second step. Any wages agreed upon shall be effective retroactive to the date of the installation of such new or changed operation or new or changed classification.

ARTICLE 16: OVERTIME

A. Overtime: The following overtime provisions apply to all workers:

Daily overtime: Hourly workers; all hours worked in excess of ten (10) hours in one workday or sixty (60) hours in the work week, shall be paid at the rate of time and one-half the employees regular rate of pay.

All hours worked on the worker's seventh (7^{th}) consecutive workday shall be paid at the rate of time and one-half of the employee's regular rates of pay. All hours worked in excess of eight (8) hours on these days shall be paid at the rate of double of the employee's regular rate of pay. No work shall be performed on Sundays.

B. Meal time breaks shall be one-half (1/2) hour and are not compensated for, nor counted as hours worked under the provisions of this Agreement. No employee shall be required to work more than five (5) hours without a meal period.

C. When a worker performs work in a higher rated job, he/she shall be paid at a higher rate of pay for all time so worked.

D. When a worker is working as a trainee for qualification for a higher rated job, he/she shall be paid for such training period at his regular rate of pay for a time not to exceed thirty (30) continuous calendar days.

E. Overtime work shall continue to be assigned on the basis of seniority and experience of the employee. However, the Company has the right to assign overtime work to a worker, out of seniority order, so as to complete his/her existing assignment.

ARTICLE 17: REPORTING AND STANDBY TIME

A. A worker who is required to report for work and does report and is furnished no work shall be paid at least four (4) hours at the worker's regular hourly rate of pay.

If workers commence work and they are furnished less than four (4) hours of work, they shall be paid at least four (4) hours that day at their hourly rate of pay.

This Section shall not apply where work covered by this Agreement is delayed or cannot be carried out because of rain, frost, government condemnation of crops, or other causes beyond the control of the Company.

B. A worker shall be paid for all time he/she is required to remain on the job at the employee's classification hourly rate or regular rate of pay.

C. The foregoing reporting time pay provisions is not applicable when:

1. Operations cannot commence or continue due to threats to employees or property; or when recommended by civil authorities; or

2. Public utilities fail to supply electricity, water, or gas, or there is a failure in the public utilities, or sewer system; or

3. The interruption of work is caused by an act of God or other cause not within the Employer's control.

D. Any call may be rescinded by notification to employees at least one (1) hour prior to the time scheduled for reporting to work.

ARTICLE 18: REST PERIODS

Workers shall have paid rest periods of ten (10) minutes each, which, insofar as practical, shall be in the middle of each four (4) hour work period.

ARTICLE 19: VACATIONS

A. Seniority employees accrue paid vacation time at the rate of eighty (80) hours per full year of work. After five years of continuous employment as a seniority worker, he/she shall accrue vacation time at the rate of one hundred twenty (120) hours per full year of work. After twenty (20) years of continuous employment as a seniority worker, he/she shall accrue vacation time at the rate of one hundred sixty (160) hours per full year of work.

B. Potential vacation accrued for the year will be posted by January 15th of that year. This posting assumes that the seniority worker will continually work the full year. Vacation may be taken as it is accrued. No worker will be allowed to use vacation that he/she has not accrued. Upon termination with the Company, a seniority worker will be paid for any unused vacation time that he/she has accrued up to his/her termination date.

C. Seniority workers are encouraged to use his/her vacation in the year that it is accrued. Should a seniority worker's schedule be so busy that he/she cannot use all of the accrued vacation in one year, the remaining vacation can be carried over to the next year. A seniority worker will stop accruing vacation when he/she reaches one hundred twenty-five percent (125%) of his/her accrued vacation. He/She will begin accruing vacation again after his/her accrued vacation hours drop below one hundred twenty-five percent (125%) of his/her annual amount.

D. The Company reserves the right to request a seniority worker to take his/her remaining vacation before December 31st.

E. Since there are periods during the year when the workload is extremely heavy, vacations shall be scheduled in advance, and with the approval of the Vineyard Manager.

ARTICLE 20: BEREAVEMENT PAY

In the event of serious illness or death in a seniority worker's immediate family (mother, father, brother, sister, children, and grandparents), the worker may take up to three (3) workdays off per year with pay, with the approval of the Vineyard Manager. If extensive out-of-state travel is required, additional time may be taken without pay, with approval of the Vineyard Manager. The Company reserves the right to require proof of the serious illness or death.

ARTICLE 21: HOLIDAYS

A. Commencing with the effective date of this Agreement, the following shall be paid holidays:

Labor Day	New Year's Day
Thanksgiving Day	President's Day
Friday after Thanksgiving	Memorial Day
Christmas Day	Fourth of July

Holiday pay shall be eight (8) hours of pay at the employee's regular straight-time hourly rate of pay or the crew's average daily earnings for piece-rate employees based on the preceding payroll week.

Employees required to work on a holiday shall be paid one and one half (1-1/2) times their regular straight-time rate of pay in addition to holiday pay.

When a holiday falls on Saturday, the following Sunday or Monday shall be observed as the holiday. When a holiday falls on a Monday, it shall be observed on that day or the proceeding Sunday.

B. To be eligible for holiday pay as provided in Section A, an employee must have attained seniority and worked at least five (5) days during the two payroll weeks immediately preceding the payroll week in which the holiday falls, and must have worked the last scheduled workday preceding the holiday and the first scheduled workday after the holiday, except that if the next scheduled workday after the holiday is more than five (5) calendar days after the holiday. This requirement for work on the scheduled workday after the holiday shall not apply. Probationary employees are specifically excluded under this Article until such time that they have attained seniority pursuant to Article 4.

ARTICLE 22: LIFE, HEALTH AND WELFARE INSURANCE

After thirty (30) days of employment, seniority workers are eligible for participation in the Company's insurance plans. The Company maintains a health insurance plan, dental insurance plan, vision insurance plan, and life insurance. Eligible seniority workers may elect dependent coverage. Premiums for seniority workers and dependents are partially paid by the seniority worker.

ARTICLE 23: PENSION BENEFITS

The Company shall continue in effect its 401(k) plan, with the enhanced benefit as proposed and accepted on June 29, 2001, i.e., the Company will match a worker's contribution up to six percent (6%) of his/her wages.

ARTICLE 24: SICK LEAVE

The Company will provide paid sick leave to all seniority employees. After completing their probationary period, the seniority employee is eligible for paid sick leave for up to six (6) days per year. Sick leave does not carry over from year to year. Sick leave is in case you are unable to work due to an illness or off the job injury. Sick leave shall not be used for personal leave of absence. The Company shall require medical evidence of worker illness and a medical certificate of your fitness to return to work. Sick leave may not be used before or after a holiday, or before or after a scheduled vacation day.

ARTICLE 25: INJURY ON THE JOB

If a seniority worker is injured on the job and is unable to work, the Company will pay for the day of injury. The seniority worker can then use available sick leave time for the next two (2) days if he or she is unable to work, until Workers' Compensation starts paying for lost time. The Company may request that the worker schedule follow-up doctor appointments during his or her lunch hour or after work if possible.

The Company agrees to provide transportation to any employee who is injured during the course and scope of his/her employment to a location where the employee may obtain medical attention.

ARTICLE 26: SUBCONTRACTING

The Company agrees that when using work force provided by a labor contractor that these employees shall be covered by all provisions of this Agreement and shall be considered employees of the Company.

ARTICLE 27: MODIFICATION

No provision or terms of this Agreement may be amended modified, changed, or altered or waived except by a written document executed by the parties hereto.

The parties agree that they have fully bargained with respect to wages, hours and other terms and conditions of employment and have settled the same for the term of this Agreement in accordance with the terms hereof.

This Agreement, when signed, shall supersede and replace all prior agreements between the Company and the Union on the subjects contained herein and such prior agreements are hereby declared null and void. No alteration, amendment, enlargement, or modification of this Agreement shall be binding on either party unless the same is made in writing signed by each of the parties to this Agreement and attached to the Agreement as an addendum.

ARTICLE 28: DURATION OF AGREEMENT

This Agreement shall be in full force and effect from October 1, 2003, to and including July 1, 2005. This Agreement shall automatically renew itself upon expiration of this Agreement, unless either of the parties shall have given notice in writing to the other party sixty (60) days prior to the expiration, requesting negotiations for a new Agreement, together with thirty (30) days prior written notice to the State Conciliation Service. During this sixty (60) day period all terms and conditions of this Agreement shall remain in full force and effect.

Agreed to this _____ day of _____, 2003.

UNITED FOOD & COMMERCIAL WORKERS, LOCAL 1096

THE HESS COLLECTION WINERY

APPENDIX A – WAGES

Classification	Effective October 1, 2003
Crew Leader	$14.15
General Labor	$10.20
Vineyard Worker 2	$10.40
Vineyard Worker 1	$10.90
Tractor Driver Gondola (includes truck driver)	$16.20
Harvest hourly	$16.20
Pruner	$12.20
Hand Sprayer	$10.20
Weed Eater Operator	$10.40
Construction Work	$13.90
Irrigator	$11.20
Tractor Driver - (heavy equipment)	$16.20
Equipment Operator 2	$12.40
Equipment Operator 1	$14.15
Mechanic 2	$13.40
Mechanic 1	$19.40
Spray Master	$13.10
Harvest Tonnage Rate $120.00 per ton per crew	$16.40

Conditions of Employment:

1. All employees currently at higher wage rates than those agreed to in this Agreement, will continue to receive those wage rates. These employees will also receive rate increases as per each year of the contract.
2. The wage rates agreed to in this Agreement are minimum wages. No employee may be paid less than these rates.