

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

January 15, 2004

Time: 10:10 a.m.
Members present: Chairwoman Shiroma, Board Members Barrios, Rivera-Hernandez, and Zingale
Member absent: Bustamante
Staff Present: General Counsel Turner; Deputy General Counsel Sobel; Board Counsels Heyck, Murray, and Wender; Executive Secretary Barbosa; Analyst Massie; Fiscal Officer Nevans; Accounting Officer Davis
Staff Absent: None
Others: Javier Juarez

OPEN SESSION

- 1. Approval of Minutes:** The Board approved the minutes for January 6, 2004, 5-0.
- 2. Board Member Comments:** None
- 3. Public Comments:** None.
- 4. Announcements:**

Barbara Lundgren's retirement luncheon will be held on January 16, 2004, at 1 p.m. at The Riverside Clubhouse, 2633 Riverside Boulevard, Sacramento.

Monday, January 19, 2004 is Martin Luther King Day, a state holiday.

On January 13, 2004 the Executive Secretary circulated Annual Statement of Economic Interests forms (Form 700) to all ALRB designated employees. The forms are due by April 1, 2004.

Chairwoman Shiroma announced the "Frank Fats" Annual Chinese New Year celebration is being held on January 21st.

The Board's February Public Meeting Notice will issue on Friday, January 16, 2004, and pending the outcome of today's Board vote, will contain a revised Notice of Proposed Regulatory Action to Amend Title 8, Division 2, sections 20299 (Agricultural Employee Relief Fund) and 20390 (Decertification and Rival Union Petitions).

5. Weekly Status Report On Elections, Unfair Labor Practice Complaints, Hearings And Court Litigation

ELECTION REPORT

NOTICE OF INTENT TO TAKE ACCESS (NA) AND NOTICE OF INTENT TO ORGANIZE (NO):

None.

PENDING ELECTION MATTERS:

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

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

MaCahon Floral, Inc., 04-RC-1-SAL

The UFW filed a representation petition with the Salinas Regional Office on January 5 2004 seeking to organize the agricultural employees at MaCahon Floral which is a nursery in Monterey County with approximately 60 employees. The election was held on January 7, 2004 with the following results:

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

Since the challenged ballots are outcome determinative, the Regional Director will now proceed to investigate the challenges and issue a report forthwith. Election objections, if any, were due January 14, 2004.

COMPLAINT REPORTS:

No new complaints issued last week. There are 12 complaints and 2 backpay/makewhole specifications pending before the Board. Three cases are set for hearing (Rancho Ramona Dairy, Maria Duran and Sun City Growers), one case is pending exceptions to ALJ decision (Gallo) and 10 cases are waiting to be set for hearing.

PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED:

Two prehearing held this week: **Sun City Growers**, 02-CE-53-EC(R) and **Maria G. Duran, Farm Labor Contractor**, 01-CE-606-EC(R).

NEW CASES SET FOR HEARING:

None.

CASES ON CALENDAR:

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

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

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

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

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

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

CASES PENDING ALJ DECISION:

None.

ALJ/IHE DECISIONS ISSUED:

None.

CASE PENDING EXCEPTIONS AND/OR REPLY:

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

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

CASES SETTLED OR RESOLVED:

None.

COMPLIANCE CASES CLOSED:

None.

CASES TRANSFERRED TO BOARD FOR DECISION:

None.

BOARD DECISIONS:

None.

REQUESTS UNDER MANDATORY MEDIATION AND CONCILIATION LAW:

Hess Collection Winery, Request for Mediation, 2003-MMC-01:

In *Hess Collection Winery* (2003) 29 ALRB No. 6, the Board issued its first decision under the new mandatory mediation and conciliation law, denying the Hess Collection Winery's (Employer) petition for review of the mediator's report imposing final terms of a collective bargaining agreement. The Employer requested that the Board vacate and set aside the mediator's report for a variety of reasons. The Board found no basis for accepting review of the mediator's report and denied the Employer's petition in full. On November 14, 2003, the Employer filed a petition for a writ of review in the Court of Appeal, Third Appellate District pursuant to Labor Code section 1164 seeking review of the Board's Order and Decision in Hess Collection Winery. The certified record was filed with the court on November 24, 2003. On November 24, 2003, the court requested the parties provide supplemental briefing regarding the petitioner's stay request. The petitioner's supplemental letter brief addressing legal authority for, and the appropriateness of the stay was filed December 1, 2003. On December 11, 2003, the parties filed a stipulation to stay the Board's decision pending resolution of the appeal. Petitioner's opening brief was filed with the court on December 23, 2003. The Board's response brief is due January 22, 2004.

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

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

SMCS issued its letter and the parties have now selected a new mediator, Gerald McKay.

COURT LITIGATION:

Western Growers Association, et al., 03AS00987

On August 22, 2003, the plaintiffs filed a petition for writ of mandate in the Court of Appeal, Third Appellate District, seeking to overturn a ruling by the Superior Court that the matter is not yet ripe for adjudication. The Superior Court ruled that the matter would not be ripe until the Board issues a decision fixing the terms of a collective bargaining agreement. This lawsuit, which challenges the constitutionality of the new mandatory mediation and conciliation law (SB 1156 and AB 2596, codified as Labor Code sections 1164 to 1164.14), was filed on February 24, 2002 in the Sacramento County Superior Court. On November 20, 2003, the 3rd DCA issued an order summarily dismissing the petition for writ of mandate in the WGA case. The plaintiffs have filed an amended complaint in the Sacramento County Superior Court. The court has taken plaintiff's motion for a preliminary injunction off calendar pending the DCA ruling in the related case of The Hess Collection Winery, C045405. On December 22, 2003, a demurrer and request for a stay of the matter pending the resolution of a related case (Hess) was filed on behalf of the Board. A hearing on the demurrer and request for stay is scheduled for February 19, 2004.

Pictsweet Mushroom Farms, B166260

The employer filed a petition for writ of review with the Second Appellate District Court, Division Six, seeking review of the Board's decision in Pictsweet Mushroom Farms, 29 ALRB No. 1. The Petitioner's opening brief was received July 15, 2003, and the Board's response brief was sent overnight September 28, 2003. If the Petitioner wishes to file a reply brief, it will be due October 29, 2003. On October 6, 2003, Pictsweet proposed a 60-day continuance to December 19, to allow time for a global settlement. All parties agreed to the stipulation and the employer filed it October 14, 2003. The court approved the stipulation. The Petitioner's brief was filed December 19, 2003. Court noted on December 22, 2003, that the case was fully briefed.

The Hess Collection Winery, C045405

On November 14, 2003, the Employer filed a petition for a writ of review in the Court of Appeal, Third Appellate District pursuant to Labor Code section 1164 seeking review of the Board's Order and Decision in Hess Collection Winery. The certified record was filed on November 24, 2003. On November 24, 2003 the court requested the parties provide supplemental briefing regarding the petitioner's stay request. On December 11, 2003, the parties filed a stipulation staying the Board's order pending resolution of the appeal. Petitioner's opening brief was filed with the court on December 23, 2003. Board's response brief is due January 22, 2004.

6. Budget And Administration

- (a) Information Technology: Analyst Massie reported the agency software inventory has been completed. Executive Secretary Barbosa and Analyst Massie met with Russ Hicks, a member of the Steering Committee for the California Public Sector CIO Academy, regarding the Academy taking place February 4-5, 2004, at the Sacramento Convention Center. Executive Secretary Barbosa and Analyst Massie will attend the event.
- (b) Regulations: Agricultural Employees Relief Fund (AERF) and Decertification Amendments—The Board voted 4-0 to rescind its vote of December 3, 2003, and extend the period for public comment. The Rulemaking Calendar was reviewed and will be filed with the Office of Administrative Law.
- (c) Budget: Fiscal Officer Carrie Nevans reported that a routine audit would be conducted by the Department of Industrial Relations within the next two months. The budget projection for the next fiscal year was discussed. Accounting Officer Nancy Davis expressed a need for help with contracts.
- (d) Storage: Accounting Officer Davis reported that Headquarters must relinquish space currently used for storage. Analyst Massie and Accounting Officer Nancy Davis will discuss new location for storage.
- (e) Policies and Procedures Committee--Nothing new.
- (f) Labor and Workforce Development Agency:
 - (1) Case Tracking System: Chairwoman Shiroma discussed moving forward with the Case Tracking System with Herb Schultz of the Labor Agency.
 - (2) Labor Agency General Counsel Meeting—Board Counsel Wender reported on the General Counsel's meeting.
 - (3) Labor Agency Senior Staff Meeting—Chairwoman Shiroma reported on the senior staff meeting.
- (g) Annual Report: Board Counsel Murray and Executive Secretary Barbosa are continuing with the collection and analysis of data.

7. Outreach Projects

(a) Novella: Javier Juarez presented a color version of the novella. He also provided the Board with estimated printing costs for the novella. Mr. Juarez proposed a video version of the novella.

(b) Brochures: Board Counsel Heyck reported that the next two brochures are being printed.

8. Legislation: SCA1-Access to Government Information (Burton) passed out of the Assembly on January 12, 2004. Amendment will be placed on future ballot for voter approval. AB 556-State Boards and Commissions Salaries (Strickland) hearing was held on January 13, 2004, before the Assembly Appropriations Committee. The bill failed passage.

9. Personnel: None.

10. Procedure Manual: Nothing new.

11. Compliance: Chairwoman Shiroma will meet with General Counsel Turner regarding compliance reporting.

12. Future Agenda Review: Message to staff reviewing accomplishments.

The public meeting adjourned at 12:30 p.m.