

**STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD**

**BOARD MEETING MINUTES**

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

**February 11, 2004**

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

**OPEN SESSION**

- 1. Approval of Minutes:** The Board approved the minutes for January 28, 2004 and February 4, 2004. 4-0.
- 2. Board Member Comments:** Luma Serrano has returned to State Compensation Insurance Fund. The Board expressed its appreciation for her assistance in the Salinas Regional Office.

The annual California Farm Bureau Reception will be held on Wednesday, February 25, 2004 at the Sheraton Grand Sacramento, 1230 J Street, from 6-8 p.m.

Dolores Huerta Foundation Mi Corazon Award Dinner will be held on February 12, 2004, in Los Angeles.

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

February 12 and 16, 2004 are State holidays.

The next Industrial Relations Association of Northern California luncheon meeting will be held on February 18, 2004 at the Firehouse in Old Sacramento.

Our congratulations to former EDD loaned employee Lorna Fong who has just been appointed to an Agency Career Executive position as Assistant Secretary for Program and Fiscal Affairs for the Health and Human Services Agency.

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

### **ELECTION REPORT**

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

Nothing new to report.

#### **PENDING ELECTION MATTERS:**

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

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

#### **COMPLAINT REPORTS:**

##### **United Farm Workers, 03-CL-02-SAL**

On February 9, 2004, the Regional Director of the ALRB's Salinas Regional Office issued a complaint alleging that the United Farm Workers of America, AFL-CIO (UFW), interfered with the rights of employees of Gallo Vineyards, Inc. by submitting fraudulent declarations, in support of unfair labor practice charges, alleging misconduct by Gallo prior to the decertification election held on March 13, 2003. According to the complaint, the fraudulent declarations, which alleged that agents of Gallo had unlawfully instigated and assisted the decertification effort, were submitted in an effort to block the decertification election.

#### **PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED:**

Nothing new to report.

#### **NEW CASES SET FOR HEARING:**

Nothing new to report.

**CASES ON CALENDAR:**

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

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

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

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

**Milky Way Dairy, 02-CE-44-VI**

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

**CASES PENDING ALJ DECISION:**

Nothing new to report.

**ALJ/IHE DECISIONS ISSUED:**

Nothing new to report.

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

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

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

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

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

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

On January 26, 2004 the ALJ issued an order as to Sun World International, Inc. establishing the amount of backpay liability. Exceptions due February 19, 2004.

**CASES SETTLED OR RESOLVED:**

Nothing new to report.

**COMPLIANCE CASES CLOSED:**

Nothing new to report.

## **CASES TRANSFERRED TO BOARD FOR DECISION:**

Nothing new to report.

## **BOARD DECISIONS:**

Nothing new to report.

## **REQUESTS UNDER MANDATORY MEDIATION AND CONCILIATION LAW:**

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

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

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

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

Mediation and Conciliation Service (SMCS) for the issuance of a new list of mediators, and clarifying the procedure to be utilized in the renewal mediation. The SMCS issued its letter and the parties selected a new mediator, Gerald McKay. The mediator issued his report and recommendation on February 4, 2004 and exceptions, if any, are due February 11, 2004.

## **COURT LITIGATION:**

### **Western Growers Association, et al., 03AS00987**

On August 22, 2003, the plaintiffs filed a petition for writ of mandate in the Court of Appeal, Third Appellate District, seeking to overturn a ruling by the Superior Court that the matter is not yet ripe for adjudication. The Superior Court ruled that the matter would not be ripe until the Board issues a decision fixing the terms of a collective bargaining agreement. This lawsuit, which challenges the constitutionality of the new mandatory mediation and conciliation law (SB 1156 and AB 2596, codified as Labor Code sections 1164 to 1164.14), was filed on February 24, 2002 in the Sacramento County Superior Court. On November 20, 2003, the 3rd DCA issued an order summarily dismissing the petition for writ of mandate in the WGA case. The plaintiffs have filed an amended complaint in the Sacramento County Superior Court. The court has taken plaintiff's motion for a preliminary injunction off calendar pending the DCA ruling in the related case of The Hess Collection Winery, C045405. On December 22, 2003, a demurrer and request for a stay of the matter pending the resolution of a related case (Hess) was filed on behalf of the Board. A hearing on the demurrer and request for stay is scheduled for February 19, 2004. On February 6, 2004 WGA filed its memorandum of points and authorities in opposition to the ALRB's (and the intervenors') motion to stay proceedings and demurrer. The hearing is set for February 19, 2004.

### **Pictsweet Mushroom Farms, B166260**

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

### **The Hess Collection Winery, C045405**

On November 14, 2003, the Employer filed a petition for a writ of review in the Court of Appeal, Third Appellate District pursuant to Labor Code section 1164 seeking

review of the Board's Order and Decision in Hess Collection Winery. The certified record was filed on November 24, 2003. On November 24, 2003 the court requested the parties provide supplemental briefing regarding the petitioner's stay request. On December 11, 2003, the parties filed a stipulation staying the Board's order pending resolution of the appeal. Petitioner's opening brief was filed with the court on December 23, 2003. Board's response brief was filed January 22, 2004. On February 4, 2004, the court granted the United Farm Workers' request to file an amicus brief, and accepted the brief filed with the request.

## **6. Budget And Administration**

- (a) Information Technology: Executive Secretary Barbosa and Analyst Massie reported on the Chief Information Officer's Conference.
- (b) Regulations: Agricultural Employees Relief Fund (AERF) and Decertification Amendments—The revised notice of proposed amendments was mailed out on January 16, 2004. The new public comment period ends on March 1, 2004. No comments have been received.
- (c) Budget: Nothing new to report.
- (d) Policies and Procedures Committee: Member Barrios reported on the status of the bar dues policy, the agency's time reporting program, and various computing policies.
- (e) Labor and Workforce Development Agency:
  - (1) Case Tracking System: Chairwoman Shiroma and Analyst Massie updated the Board on the status of the memorandum of understanding with EDD regarding the development of the Case Tracking System.
  - (2) Bilingual Survey Meeting – Antonio Barbosa attended a Bilingual Survey Meeting on February 10, 2004 to discuss improving services to non-English speaking individuals seeking access to agencies within the Labor Agency.
  - (3) General Counsels Association Meeting: Executive Secretary Barbosa attended the General Counsels Association Meeting on February 6, 2004, at McGeorge School of Law. Legal Affairs Secretary Peter Siggins, Chief Deputy Attorney General Rick Frank introduced their staff and briefly discussed the work of the department or unit. All general counsels in attendance, around 120, introduced themselves and a select few discussed high profile cases in litigation. Mr. Barbosa gave a short summary of the WGA and Hess lawsuits pending before the superior and appellate courts.

- (f) Annual Report: Board Counsel Murray and Executive Secretary Barbosa are continuing with the collection of data from the regions.
- (g) Regional Directors' Quarterly Meeting – The proposed agenda and logistics were discussed.

**7. Outreach Projects**

- (a) Novella: Chairwoman Shiroma reported on meeting with an EDD representative regarding EDD printing the Novella. Javier Juarez presented the finalized Novella to the Board.
- (b) Brochures: Chairwoman Shiroma discussed EDD's interest in distributing brochures at their One Stop Centers. Board Counsel Heyck reported that the new ULP and Concerted Activity brochures in Spanish and English are completed. .

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

**9. Personnel:** Members Barrios and Rivera-Hernandez attended Career Night at McGeorge Law School and received several resumes from law students interested in a summer internship.

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

**11. Compliance:** Chairwoman Shiroma and Executive Secretary Barbosa will meet with General Counsel Turner and Assistant General Counsel Sobel regarding compliance reporting.

**12. Future Agenda Review:** Performance review, future goals, and review of flow charts.

The public meeting adjourned at 12:10 p.m.

**WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION**