

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

February 25, 2004

Time: 10:00 a.m.
Members Present: Chairwoman Shiroma, Board Members Barrios, Zingale, Bustamante and Rivera-Hernandez

Members Absent: None

Staff Present: Board Counsels Wender, Heyck, and Murray; Executive Secretary Barbosa; Regional Directors Capuyan, Donnell, and Alderete (via telephone); Deputy General Counsel Sobel, Personnel Officer Kojima, Accounting Officer Davis, Board Secretaries Perez and Johnson

Staff Absent: Analyst Massie

OPEN SESSION

1. Approval of Minutes: The Board approved the minutes of February 11, 2004, 4-0 (with Member Bustamante abstaining) and approved the minutes of February 18, 2004, 4-0 (with Member Zingale abstaining).

2. Board Member Comments:

Chairwoman Shiroma presented outgoing Board Member Barrios with a Senate Resolution commending her for her work during her term on the Board.

Ms. Barrios will be returning to her position as a Deputy Attorney General with the California Department of Justice.

On behalf of the Board Chairwoman Shiroma thanked Deputy General Counsel Sobel for his many years of service with the ALRB. Mr. Sobel's last day in the office will be Friday, February 27, 2004, and he will be retiring later this Spring.

3. Public Comments: None.

4. Announcements:

The Board and Staff expressed their condolences to Analyst Sharon Massie and her family for the death of her father, Russell L. Greer. Services for Mr. Greer will be held Thursday, February 26 at 1:00 PM at Slakey Chapel, St. Mary's Cemetery, 6700 21st Ave. The family has requested that in lieu of flowers, donations be made to the American Heart Association.

California Employment Lawyers Association and California Rural Legal Assistance are jointly presenting "Understanding and Using the New Labor Code Private Attorneys General Act of 2004" on March 6, 2004 in San Francisco.

The California Farm Bureau will hold its legislative reception in Sacramento on February 25, 2004.

Western Growers Association will hold its legislative reception in Sacramento on March 17, 2004.

The Kern County Board of Trade will be hosting a reception in Sacramento on March 31, 2004.

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

ELECTION REPORT

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

Nothing new to report.

PENDING ELECTION MATTERS:

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

The ALJ issued her decision on December 19, 2003. Both the union and employer filed exceptions to her decision. Replies are due March 26, 2004.

COMPLAINT REPORTS:

Nothing new to report.

PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED:

Nothing new to report.

NEW CASES SET FOR HEARING:

Nothing new to report.

CASES ON CALENDAR:

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

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

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

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

Milky Way Dairy, 02-CE-44-VI

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

CASES PENDING ALJ DECISION:

Nothing new to report.

ALJ/IHE DECISIONS ISSUED:

Nothing new to report.

CASE PENDING EXCEPTIONS AND/OR REPLY:

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

The ALJ issued her decision on December 19, 2003. Both the union and employer filed exceptions to her decision. Replies are due March 26, 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. None were filed. On February 23, 2004 the Executive Secretary issued an order making the ALJ ruling final.

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

On January 26, 2004 the ALJ issued an order as to Sun World International, Inc. establishing the amount of backpay liability. Exceptions are due February 19, 2004. On February 23, 2004 the Executive Secretary issued an order making the ALJ ruling final.

CASES SETTLED OR RESOLVED:

Nothing new to report.

COMPLIANCE CASES CLOSED:

Nothing new to report.

CASES TRANSFERRED TO BOARD FOR DECISION:

Nothing new to report.

BOARD DECISIONS:

Nothing new to report.

REQUESTS UNDER MANDATORY MEDIATION AND CONCILIATION LAW:**Hess Collection Winery, Request for Mediation, 2003-MMC-01:**

In *Hess Collection Winery* (2003) 29 ALRB No. 6, the Board issued its first decision under the new mandatory mediation and conciliation law, denying the Hess Collection Winery's (Employer) petition for review of the mediator's report imposing final terms of a collective bargaining agreement. The Employer requested that the Board vacate and set aside the mediator's report for a variety of reasons. The Board found no basis for accepting review of the mediator's report and denied the Employer's petition in full. On November 14, 2003, the Employer filed a petition for a writ of review in the Court of Appeal, Third Appellate District pursuant to Labor Code section 1164 seeking review of the Board's Order and Decision in Hess Collection Winery. The certified record was filed with the court on November 24, 2003. On November 24, 2003, the court requested the parties provide supplemental briefing regarding the petitioner's stay request. The petitioner's supplemental letter brief addressing legal authority for, and the appropriateness of the stay was filed December 1, 2003. On December 11, 2003, the parties filed a stipulation to stay the Board's decision pending resolution of the appeal. Petitioner's opening brief was filed with the court on December 23, 2003. The Board's response brief was filed January 22, 2004. Hess' reply brief is due March 3, 2004. On February 4, 2004, the court granted the UFW's request to file an amicus brief, and accepted the brief filed with the request.

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. On February 18, 2004, the superior court issued a tentative ruling granting the request for a stay, which became final when no party requested to appear at the scheduled hearing by the 4:00 p.m. deadline. Absent an effort seeking a writ in the Court of Appeal to overturn the superior court's ruling (there is no indication that such an effort is planned), further action on this case will await resolution of the Hess Collection Winery v. ALRB case.

Pictsweet Mushroom Farms, B166260

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

The Hess Collection Winery, C045405

On November 14, 2003, the Employer filed a petition for a writ of review in the Court of Appeal, Third Appellate District pursuant to Labor Code section 1164 seeking review of the Board's Order and Decision in Hess Collection Winery. The certified record was filed on November 24, 2003. On November 24, 2003 the court requested the parties provide supplemental briefing regarding the petitioner's stay request. On December 11, 2003, the parties filed a stipulation staying the Board's order pending resolution of the appeal. Petitioner's opening brief was filed with the court on December 23, 2003. Board's response brief was filed January 22, 2004. Hess' reply brief is due March 3, 2004. On February 4, 2004, the court granted the UFW's request to file an amicus brief, and accepted the brief filed with the request.

6. Budget And Administration

- (a) Information Technology: On Thursday, February 26, 2004 at 8:30 a.m. a service representative from the Teale Data Center will be coming to our offices to replace a router. Our server should be down for approximately 1/2 hour.
- (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: All departments, boards and panels were asked to prepare a response to a number of questions regarding the position reductions that were implemented as part of the Control Section 4.10 reductions. Carrie Nevans will provide a draft response for the Board's review shortly.

All departments, boards and panels have been asked to indicate by March 5, 2004 whether any employees are headquartered in any location other than a State office.

Executive Secretary Barbosa received a memo from LWDA General Counsel Bob Dresser indicating that resources needed by agency attorneys to perform their work (including, but not limited to, online research services, interpreters, and transcript services) are exempted from the spending ban, and do not require prior approval.

(d) Policies and Procedures Committee:

Board Member Barrios presented the draft COBRA and Workers' Compensation policies to the Board for review. Member Barrios also discussed suggested edits that were made to Board Counsel time sheets and made suggestions for future implementation. Board Member Rivera-Hernandez will follow up on developing a system for tracking the amount of time spent on cases before the Board.

(e) Labor and Workforce Development Agency:

- (1) Case Tracking System: Executive Secretary Barbosa will meet with EDD staff on Thursday, February 26, 2004, to discuss the terms and responsibilities of the Memorandum of Understanding for loaned EDD staff that will assist in developing a statistical tracking system for the ALRB.
- (2) Bilingual Survey Committee: Executive Secretary met with Bilingual Survey Committee and discussed finalization of Survey Report that is due to agency by March 15, 2004.

- (3) Chairwoman Shiroma reported on the monthly meeting with Agency department heads. At the monthly meeting LWDA Acting Secretary Victoria Bradshaw gave updates on a number of matters including the California Performance Review (CPR) and the Legislative Analyst's Office report on the 2004/2005 proposed budget.
- (4) Executive Secretary Barbosa reported that all updated LWDA forms have been uploaded to the shared drive.
- (f) Annual Report: Board Counsel Murray and Executive Secretary Barbosa are continuing with the analysis of data from the regions. The Board discussed the current status of all complaints pending hearing in the Regional Offices.
- (g) Delegation of Authority – Request for Injunctive Relief: The Board discussed Member Barrios' memo regarding delegation of authority to request injunctive relief to the General Counsel. The Board will revisit the issue again in the future.

7. Outreach Projects

- (a) Novella: No new update.
- (b) Brochures: Updated brochures on Workers' Rights under the ALRA, Unfair Labor Practices and Concerted Activity were picked up from the printer's office and are now available for circulation.

8. Legislation: The Board discussed ideas for possible legislative changes that would improve the Board's ability to enforce the ALRA.

9. Personnel: Board Member Rivera-Hernandez gave an update on interviews of law students who have applied for summer internships at the ALRB.

10. Procedure Manual: Nothing new to report.

11. Compliance: Nothing new to report.

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

The public meeting adjourned for lunch at 12:00 p.m., reconvened at 1:45 p.m., and adjourned at 3:05 p.m. Whereupon the Board entered into CLOSED SESSION.