STATE OF CALIFORNIA AGRICULTURAL LABOR RELATIONS BOARD

BOARD MEETING MINUTES

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

March 24, 2004

Time: 2:10 p.m.

Members Present: Chairwoman Shiroma, Board Members Zingale and Bustamante

Members Absent: Rivera-Hernandez

Staff Present: Board Counsel Wender, Executive Secretary Barbosa, and Analyst

Massie

Staff Absent: Board Counsels Murray and Heyck

OPEN SESSION

- **1. Approval of Minutes**: The Board will consider approval of the minutes of March 16, 2004 at the next Board meeting.
- 2. Board Member Comments: None.
- **3. Public Comments**: None.

4. Announcements:

Labor Agency Acting Secretary Victoria Bradshaw will be attending the Board's April 14, 2004 meeting.

Assembly Member Paul Koretz, Chair of the Assembly Committee on Labor and Employment held an oversight hearing on the status of the California Labor and Workforce Development Agency and California Labor Law Enforcement on March 17, 2004, at the State Capitol.

On March 8, 2004, SEIU Local 1000 and CSEA requested copies of any and all personal services contracts entered into by the Agricultural Labor Relations Board. On March 23, 2004, the Executive Secretary responded to SEIU Local 1000 and CSEA's request.

Executive Secretary Barbosa asked Business Services Officer McCarther to investigate the cost of binding ALRB Board decisions from 1996 to 2003. Masako Yniguez is compiling the information for the request.

The Board's public meeting notice for April 2004 was sent out on March 19, 2004.

State Personnel Board has announced a unique training opportunity for state employees to serve as volunteer mediators for the State Personnel Board's Mediation Program. The training will be offered June 21-25, 2004 at SPB headquarters. The deadline to apply is Friday, June 4, 2004.

On March 27, 2004, the Fallbrook Healthcare District is having its annual health fair in North San Diego County in Fallbrook. El Centro Regional Office staff will be attending the event and distributing information about the ALRB. On this same day, the El Centro Regional Office staff will also be attending the Chavez Festival in Coachella and providing outreach material.

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

ELECTION REPORT

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

Nothing new to report.

PENDING ELECTION MATTERS:

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

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

COMPLAINT REPORTS:

PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED:

Nothing new to report.

TWO NEW CASES SET FOR HEARING:

Cocopah Nurseries, Inc., 03-CE-4-EC

The pre-hearing conference is set for June 1, 2004. The hearing is set for June 15, 2004.

Hadley's Date Gardens, Inc., 03-CE-15-EC

The pre-hearing conference is set for October 5, 2004. The hearing is set for October 19, 2004.

SIX CASES ON CALENDAR:

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

The pre-hearing conference was held February 17, 2004. The hearing, which was previously set for March 8, 2004, has been continued to April 5, 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.

D'Arrigo Bros. Co., 03-CE-5-SAL

The pre-hearing conference is set for April 20, 2004. The hearing is set for May 11, 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.

Cocopah Nurseries, Inc., 03-CE-4-EC

The pre-hearing conference is set for June 1, 2004. The hearing is set for June 15, 2004.

Hadley's Date Gardens, Inc., 03-CE-15-EC

The pre-hearing conference is set for October 5, 2004. The hearing is set for October 19, 2004.

CASES PENDING ALJ DECISION:

Nothing new to report.

ALJ/IHE DECISIONS ISSUED:

Nothing new to report.

CASE PENDING EXCEPTIONS AND/OR REPLY:

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

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

CASES SETTLED OR RESOLVED:

Nothing new to report.

COMPLIANCE CASES CLOSED:

Nothing new to report.

CASES TRANSFERRED TO BOARD FOR DECISION:

Nothing new to report.

BOARD DECISIONS:

Nothing new to report.

REQUESTS UNDER MANDATORY MEDIATION AND CONCILIATION LAW:

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

In Hess Collection Winery (2003) 29 ALRB No. 6, the Board issued its first decision under the new mandatory mediation and conciliation law, denying the Hess Collection Winery's (Employer) petition for review of the mediator's report imposing final terms of a collective bargaining agreement. The Employer requested that the Board vacate and set aside the mediator's report for a variety of reasons. The Board found no basis for accepting review of the mediator's report and denied the Employer's petition in full. On November 14, 2003, the Employer filed a petition for a writ of review in the Court of Appeal, Third Appellate District pursuant to Labor Code section 1164 seeking review of the Board's Order and Decision in Hess Collection Winery. The certified record was filed with the court on November 24, 2003. On November 24, 2003, the court requested the parties provide supplemental briefing regarding the petitioner's stay request. The petitioner's supplemental letter brief addressing legal authority for, and the appropriateness of the stay was filed December 1, 2003. On December 11, 2003, the parties filed a stipulation to stay the Board's decision pending resolution of the appeal. Petitioner's opening brief was filed with the court on December 23, 2003. The Board's response brief was filed January 22, 2004. Hess' reply brief is due March 3, 2004. On February 4, 2004, the court granted the UFW's request to file an amicus brief, and accepted the brief filed with the request. On February 19, 2004, the court issued a writ of review, directing the ALRB and the real party in interest (UFCW) to file returns (responses) by March 10, with Hess' replication (reply) due 10 days thereafter. Originally, the court treated the case as if it

was governed by Rule 59 of the CA Rules of Court, which governs the procedures for review of final Board orders in unfair labor practice cases. Section 1164.9 of the MMC statute speaks of court review of Board orders fixing a contract in more traditional writ of review terms. The new filings required by the writ of review will essentially reiterate or incorporate by reference the earlier briefs. Western Growers Association filed an amicus curiae brief on March 8, 2004. The ALRB's return was filed on March 10, 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. 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 parties are currently discussing a global settlement agreement which would resolve the remaining issues pending on appeal. On March 23, 2004, the court filed an order dismissing the appeal and remanding the matter to the Board for the purpose of vacating its decision. The Board will issue an order vacating its decision, reported at 29 ALRB No. 1, upon receipt of the court's order and remittitur returning jurisdiction to the Board.

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. On February 19, 2004, the court issued a writ of review, directing the ALRB and the real party in interest (UFCW) to file returns (responses) by March 10, with Hess' replication (reply) due 10 days thereafter. Originally, the court treated the case as if it was governed by Rule 59 of the CA Rules of Court, which governs the procedures for review of final Board orders in unfair labor practice cases. Section 1164.9 of the MMC statute speaks of court review of Board orders fixing a contract in more traditional writ of review terms. The new filings required by the writ of review will essentially reiterate or incorporate by reference the earlier briefs. Western Growers Association filed an amicus curiae brief on March 8, 2004. The ALRB's return was filed on March 10, 2004.

6. Budget And Administration

- (a) Information Technology: MCI has not resolved the problem with the 800 number ringing to a message informing callers of the new telephone number for the Salinas Regional Office. Analyst Massie will contact MCI again. Ideas were discussed towards redesigning the agency's website to provide greater ease of use and electronic filing capabilities, including coordinating with the other Labor Agencies and applying for a grant.
- (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 ended on March 1, 2004. No

comments were received. On March 3, 2004, the Board took up the matter and voted 4-0 to adopt the amendments as proposed. The regulation package was forwarded to the Office of Administrative Law and they have until April 23 to approve or reject the package.

- (c) Budget: On March 18, 2004 the Senate Budget and Fiscal Review Subcommittee No. 2 voted 3-0 to approve the ALRB's proposed budget for fiscal year 2004/05. The Assembly budget hearing is scheduled for March 30, 2004.
- (d) Policy and Procedures Committee:
 - (1) Board Counsel Time Sheets—Work continues on the policy.
 - (2) Press Release Policy—Press releases will be reviewed on a case-by-case basis.
- (e) Labor and Workforce Development Agency:
 - (1) Case Tracking System: The meeting with EDD 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 was continued again due to scheduling conflicts. EDD has requested that our technical expert attend the meeting particularly since a review of the proposal and scope of work indicates additional hours may be required.
 - (2) Bilingual Services Alice Justice completed the ALRB's annual bilingual services report that was forwarded to the Labor Agency on March 22, 2004.
- (f) Annual Report 2002/03 Executive Secretary Barbosa reported that work continues and the report and he will work with Analyst Massie on the Petition to Certification Chart.
- (g) Ideas for Legislative Amendments to Promote Greater Efficiency in the Administration of the ALRA Board Counsel Murray's preliminary report was discussed by the Board.

7. Outreach Projects

- (a) Novella: Nothing new to report. Sallie McCarther continues to explore the cost of digitizing the Novella.
- (b) Brochures: Printing costs are being researched.
- **8. Legislation:** Nothing new to report.

- **9. Personnel:** Nothing new to report
- **10. Compliance:** Executive Secretary Barbosa and Chairwoman Shiroma will continue discussions with General Counsel Turner.
- 11. Future Agenda Review: Nothing new to report.

The public meeting adjourned at 4:00 p.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.