

**STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD**

**BOARD MEETING MINUTES**

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

**April 14, 2004**

Time: 10:00 a.m.  
Members Present: Chairwoman Shiroma, Board Members Zingale and Bustamante  
Members Absent: Member Rivera-Hernandez  
Staff Present: Board Counsel Wender, Murray and Heyck; Executive Secretary  
Barbosa, and Analyst Massie  
Staff Absent:

**OPEN SESSION**

- 1. Approval of Minutes:** The Board approved minutes of March 16 and 24, 2004 3-0.
- 2. Board Member Comments:** None.
- 3. Public Comments:** None.
- 4. Announcements:**

The California Asian Pacific Islander Legislative Caucus and California Latino Legislative Caucus invite the public to a special screening of *STAND UP FOR JUSTICE* on Thursday, April 15, 12:30 p.m.-1:30 p.m. at the State Capitol, Room 4202. *Stand Up for Justice* is a 30 minute film about the story of Ralph Lazo, a 16-year-old teenager of Mexican-Irish descent who voluntarily accompanied his Japanese American classmates to the Manzanar Concentration Camp. Ralph spent 2½ years at Manzanar and later became a college counselor.

Executive Secretary Barbosa and Board Counsel Heyck attended the UC Davis School of Law Conference on *Immigration and Civil Rights after September 11: The Impact on California* held April 2, 2004.

On April 20, 2004 the DOJ Equal Employment Rights & Resolution Office is sponsoring a course for DOJ employees and interested State employees on Diversity in the Workplace. The workshop will be held on Tuesday, April 20, 2004 at 1325 J Street, 18<sup>th</sup> Floor. The course is designed for managers, supervisors, and employees wanting to gain a better understanding of how to deal with workplace issues and conflicts rooted in different cultures, values, languages, and other dimensions of diversity. Participants are given an opportunity to address these topics through interactive exercises, group discussions, and applicable resolution activities.

On May 20, 2004, the Performance Institute will host a continental breakfast and invite the public to listen to Donna Arduin, Director, Department of Finance, and CPR co-director Billy Hamilton as they discuss how to improve citizen services while balancing a massive budget shortfall.

Effective March 3, 2004, the Department of General Services, State Record Center will re-open for new records transfers. The Center had previously been closed.

## **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 were received March 29, 2004.

#### **COMPLAINT REPORTS:**

**One complaint was withdrawn, one complaint was settled and one new complaint issued:**

##### **Bob Borba, 03-CE-56-VI**

The regional director withdrew the complaint in Bob Borba, 03-CE-56-VI and the matter was taken off calendar on March 29, 2004.

##### **Rancho Ramona Dairy, 02-CE-5-EC**

On April 6, 2004, the parties reached informal settlement agreement and the case was taken off calendar.

**Dan Tudor & Sons, 02-CE-13-VI**

The employer allegedly terminated one employee and failed to rehire four employees because they assisted an/or supported a labor organization or engaged in protected concerted activities. The consolidated complaint issued on April 5, 2004.

**PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED:**

Nothing new to report.

**ONE NEW CASE SET FOR HEARING**

**UFW (Coastal Berry), 01-CL-3-EC**

The pre-hearing conference is set for July 12, 2004. The hearing is set for July 26, 2004.

**FIVE CASES ON CALENDAR:**

**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.

**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.

**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.

**UFW (Coastal Berry), 01-CL-3-EC**

The pre-hearing conference is set for July 12, 2004. The hearing is set for July 26, 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 issued an order vacating its decision, reported at 29 ALRB No. 1, on March 26, 2004.

### **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: The 800 number calls are being misdirected to the Salinas Regional Office. Analyst Massie will attempt to correct the problem by Friday, April 16, 2004. The Board approved the purchase of spam software.
- (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 Friday, April 23 to approve or reject the package. Board staff will analyze whether contracts between growers and labor unions are a matter of public record and if they are covered by the Public Records Act.

(c) Budget: The ALRB was not asked to participate in the 3% reduction exercise. The reduction concepts were due on April 7, 2004 with the backup documentation due on April 12, 2004. Scott Vogel will be assisting with the upcoming budget.

(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.
- (3) Electronic Filing of Documents Policy—Chairwoman Shiroma will contact the Labor Agency regarding assistance in developing this feature on the agency's website. Analyst Massie will contact the NLRB regarding their on-line filing procedures.

(e) Labor and Workforce Development Agency:

- (1) Case Tracking System: Executive Secretary Barbosa and Analyst Massie met 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. The ALRB and EDD are still discussing further changes to the MOU that hopefully will be finalized this week. The loaned EDD representative is expected to start on May 1, 2004. The number of hours for this project has been increased from 80 to 320 hours.
- (2) Bilingual Services – The Language Coordinator Committee is scheduled to meet Monday, April 19, 2004 at 10:00 a.m.

(f) Annual Report 2002/03 – Executive Secretary Barbosa reported that work continues on the report and he will work with Analyst Massie on the Petition to Certification Chart.

(g) GC Proposed Action Items – Unpublished, Vacated and Depublished Decisions are being updated. Board Counsel Wender will continue working on standard remedies.

**7. Outreach Projects**

(a) Novella: Member Bustamante continues to make contacts regarding assistance with publication of the Novella.

(b) Brochures: Printing costs are being researched.

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

**9. Personnel:** Nothing new to report

**10. Compliance:** The Board will offer the assistance of Board Counsel Murray to the General Counsel to review the oldest compliance tomato cases and make necessary recommendations regarding appropriate disposition.

**11. Future Agenda Review:** Nothing new to report.

The public meeting adjourned at 11:45 a.m.

**WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.**