

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

June 4, 2003

Time: 10:00 a.m.
Members Present: Chairwoman Shiroma, Board Members Barrios and Rivera.
Staff Present: Executive Secretary Barbosa, Board Counsels Wender, Heyck and Murray, Analyst Massie; Law Student Interns Autumn Gonzales, Ben Nicholson, Colleen Van Egmond and Diana Castillo.
Staff Absent: Board Counsel Levy
Others Present:

OPEN SESSION

1. APPROVAL OF MINUTES

The Board voted 3-0 to approve the Board meeting minutes from May 28, 2003.

2. BOARD MEMBER COMMENT

None.

3. PUBLIC COMMENT

None.

4. ANNOUNCEMENTS

Board Member Barrios will attend the Statewide Emergency Planning Committee meeting on Wednesday, June 11, 9:30 a.m. to 12:00 p.m. on Executive Secretary Barbosa's behalf.

Board Member Rivera attended a meeting of Labor and Workforce Development Agency representatives and Dr. Roberto Tapia-Conyer, Vice Minister for Public Health, Mexico, on June 2, 2003. The focus of the meeting was on health issues facing the migrant worker community. Ms.

Rivera will prepare a summary of the meeting to share with the General Counsel.

5. WEEKLY STATUS REPORT ON ELECTIONS, UNFAIR LABOR PRACTICE COMPLAINTS, HEARINGS AND COURT LITIGATION:

ELECTION REPORT:

NOTICE OF INTENT TO TAKE ACCESS AND NOTICE OF INTENT TO ORGANIZE:

None.

PENDING ELECTION MATTERS:

Milky Way Dairy, 02-RC-2-VI

The Investigative Hearing Examiner issued her decision on challenged ballots on May 20, 2003. Both the employer and petitioner filed exceptions to her decision on June 2, 2003. The reply is due June 12, 2003.

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

A petition to decertify the UFW was filed at Gallo Vineyards, Inc. on March 6, 2003. The election was held on March 13, 2003, however the ballots were impounded pending investigation of unfair labor practice (ULP) charges filed by the incumbent union.

On April 14, 2003, the General Counsel issued a complaint with respect to one of the charges (03-CE-9-SAL) and dismissed the other two (03-CE-10 & 11-SAL). The UFW has requested a review of the dismissal of the CE-10 case. Currently, the matter is pending resolution of this request as well as of the CE-9 Complaint.

A hearing is currently scheduled for June 23, 2003 regarding charge 03-CE-9-SAL.

Countryside Mushrooms, Inc., 03-RC-1-SAL

On May 16, 2003 the UFW filed a representation petition with the Salinas Regional Office seeking to represent the agricultural employees of Countryside Mushrooms, Inc. The employer is based in Gilroy and has approximately 70 employees. The election was held on Friday, May 23, 2003 with the following results:

UFW	28
No Union	14
Unresolved CBs	15
Total	57

The number of unresolved challenged ballots is sufficient to affect the outcome of the election. The regional director will now proceed to investigate the challenges and issue a report forthwith. Election objections, if any, are due June 2, 2003. No objections have been received to date.

COMPLAINT REPORT

None.

PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED

None.

NEW CASES SET FOR HEARING

None.

HEARINGS IN PROGRESS:

None.

SIX CASES ON CALENDAR

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

The pre-hearing conference is set for June 9, 2003.

The hearing is set for June 23, 2003.

Fresh Pic Harvest, 01-CE-52-EC(R)

The pre-hearing conference is set for July 15, 2003.

The hearing is set for August 5, 2003.

Sierra Packing Co., Inc., 02-CE-40-EC.

The pre-hearing conference is set for September 16, 2003.

The hearing is set for September 30, 2003.

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

The pre-hearing conference is set for October 15, 2003.

The hearing is set for October 28, 2003.

Coastal Berry of California,

Farm Workers' Committee, 01-CL-3-SAL

The pre-hearing conference is set for November 6, 2003.

The hearing is set for November 20, 2003.

US Abalone, 01-CE-59-SAL

The pre-hearing conference is set for November 18, 2003.

The hearing is set for December 2, 2003.

TWO CASES PENDING ALJ/IHE DECISION:

Rivera Vineyard, 01-CE-317-EC(R)

The hearing closed on March 31, 2003. The post-hearing briefs were received May 16, 2003. The matter is pending the ALJ's decision.

UFW (L.E. Cooke), 00-CL-1-VI

The hearing closed on April 7, 2003. The matter is pending the filing of post hearing briefs that are due June 4, 2003.

ONE CASE PENDING EXCEPTIONS/REPLY

Milky Way Dairy, 02-RC-2-VI

Exceptions are due June 2, 2003.

Reply is due June 12, 2003.

CASES SETTLED OR RESOLVED

Northend Equipment Inc., 02-CE-48-EC

The General Counsel and Respondent reached an informal settlement agreement.

Grimmway Enterprises, Inc., 02-CE-3-EC(R) – The El Centro Regional Director reached a bilateral informal settlement agreement. The case involved the discharge of one employee because he engaged in protected concerted activity. He received backpay award of \$632.92 and waived reinstatement.

COMPLIANCE CASES CLOSED

None.

NEW CASES TRANSFERRED TO BOARD FOR DECISION

None.

BOARD DECISIONS

None

REQUESTS UNDER MANDATORY MEDIATION AND CONCILIATION LAW

The Hess Collection Winery, Request for Mediation, Case No. 2003-MMC-01:

On May 21, 2003, the Board issued its order directing the parties to mandatory mediation and conciliation. On May 28, 2003, the California State Mediation & Conciliation Service issued its list of mediators to the parties. The matter is pending selection of a mediator by the parties.

COURT LITIGATION

McCaffrey Goldner Roses, F041479

The matter is now pending oral argument or a decision by the court.

Western Growers Association, et al., 03AS00987

The summons and complaint were served on Board Members and the Executive Secretary on February 25, 2003. A motion to intervene filed by the United Farm Workers of America, AFL-CIO and the United Food and Commercial Workers Union, Fresh Fruit & Vegetable Workers, Local 1096 was granted on April 10, 2003. On May 9, 2003, the intervening unions (the UFW and the UFCW) filed a motion for judgment on the pleadings or to dismiss. This motion generally raised the same issues as the demurrer filed by the Attorney General on behalf of the Board. On May 13, 2003, the plaintiffs in the lawsuit filed a demurrer to the intervener's complaint in intervention. The two demurrers and the motion for judgment on the pleadings are set for hearing before the court on June 24, 2003.

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. Counsel Murray reported that the Petitioner's opening brief is due July 14, 2003 with the Board's Response brief is due on September 27, 2003. If Petitioner wishes to file a Reply brief, it will be due October 28, 2003.

6. BUDGET AND ADMINISTRATION

- (a) **Information Technology and Web Site Development Project**
Lexis-Nexis is providing the agency with a free one-week trial of their on-line legal research services. Instructions and a temporary user ID and password are available from Analyst Massie.

The Board discussed issues surrounding the replacement of agency computers and computer accessories.

- (b) **Regulations**
Board Counsel Heyck reported that the proposed amendments to the Conflict of Interest Code regulations, which the Board approved on May 21, 2003, were filed with the Fair Political Practices Commission (FPPC) on May 27, 2003. She will inform the Board of the FPPC's deadline for reviewing and approving the proposed amendments.

- (c) **Budget** – The Board met with Carrie Nevans from the Department of Industrial Relations and Accounting Officer Davis to discuss end of the year expenditures.

- (d) **Policies and Procedures** - Records Retention Policy: The Board discussed the memo from the Policies and Procedures Committee concerning agency records retention policy and the revised records retention schedule for the Board. The Board approved the recommendations outlined by the Committee's memo.

- (e) **Labor and Workforce Development Agency**
Case Management and Case Tracking: Board Member Barrios will circulate a summary of the most recent meeting on the feasibility study for a case management system. The Board discussed the General Counsel's memo regarding case statistics. Chairwoman Shiroma will draft a response on behalf of the Board.

The memorandum of understanding with the Employment Development Department (EDD) for loaned employees has been submitted to EDD for final approval.

- (f) **Strategic Plan**
Chairwoman Shiroma circulated a revised strategic plan. The

plan will be discussed at the Board's June 11, 2003 meeting.

(g) Annual Report

Nothing new to report.

(h) Informational Material for Back Pay Specification Hearings

At the request of General Counsel Turner, Board Member Rivera offered to develop a fact sheet (which will be available in English and Spanish) to distribute to parties participating in back pay specification hearings.

7. OUTREACH PROJECT

(a) Novela

None.

(b) Brochures

None.

8. LEGISLATION:

Board Counsel Wender reported on the following pending legislation:

SB 796 (Dunn) Employment:

Under existing law, the Labor and Workforce Development Agency and its departments, divisions, commissions, boards, agencies, or employees may assess and collect penalties for violations of the Labor Code.

This bill would allow aggrieved employees to bring civil actions to recover these penalties, if the agency or its departments, divisions, commissions, boards, agencies, or employees do not do so. The penalties collected in these actions would be distributed 50% to the General Fund, 25% to the agency for education, to be available for expenditure upon appropriation by the Legislature, and 25% to the aggrieved employee, except that if the person does not employ one or more persons, the penalties would be distributed 50% to the General Fund and 50% to the agency. In addition, the aggrieved employee would be authorized to recover attorney's fees and costs. For any violation of the code for which no civil penalty is otherwise established, the bill would establish a civil penalty.

On May 29, 2003, the bill was read a third time and passed out of the Senate to the Assembly (Ayes 21. Noes 14.).

Board Counsel Wender reported that there were no changes in the following pending legislation:

- Assembly Bill 1722 (Committee on Labor and Employment)—Agricultural Labor Relations Board
- Assembly Bill 556 (Strickland)—State Boards and Commissions: salaries: suspension
- Senate Bill X1 1 (Poochigian)—State Economy: Suspension of Statutes
- State Constitutional Amendment 1 (Burton)—Access to government information
- Senate Bill 75 (Burton)--Agricultural Labor Relations

9. PERSONNEL
None.

10. COMPLIANCE
None.

11. FUTURE AGENDA REVIEW
None.

12. PUBLIC MEETING ADJOURNED AT: 11:45 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION