

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

August 20, 2003

Time: 10:00 a.m.
Members Present: Chairwoman Shiroma, Board Members Barrios and Rivera
Staff Present: Executive Secretary Barbosa, Board Counsel Wender,
Murray and Heyck; Analyst Massie.
Staff Absent:
Others Present:

OPEN SESSION

1. APPROVAL OF MINUTES

The Board voted 3-0 to approve the Board meeting minutes from August 13, 2003.

2. BOARD MEMBER COMMENT

None.

3. PUBLIC COMMENT

None.

4. ANNOUNCEMENTS

California Labor and Workforce Investment is hosting a reception on August 20, 2003, for Jack McNalley and Matt McKinnen at the Labor Agency at 4:00 p.m.

Assistant General Counsel Sobel will prepare the initial implementation plan required under the Dymally-Alatorre Bilingual Services Act - Government Code 7290-7299.8 for submission to the Labor and Workforce Development Agency by September 1, 2003.

The 17th Annual California Governor's Conference for Women will be held October 22, 2003, in Long Beach. Details can be found at the conference web site: www.cgcw.org.

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:

Approximately 10 notices to take access and notices to organize have been filed in the Salinas Regional Office.

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 employer filed its reply on June 12, 2003. No reply was received from the petitioner. The matter is pending decision before the Board.

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 General Counsel overturned the dismissal of the CE-10 case. Currently, the matter is pending resolution of the CE-9 Complaint.

The hearing on charge 03-CE-9-SAL ended on Thursday, July 3, 2003. The matter is pending receipt of the post-hearing briefs which are due on August 29, 2003.

Bob Borba Livestock, 03-RC-2-VI

On August 1, 2003 International Brotherhood of Teamsters, Local 386 filed a representation petition with the Visalia Regional Office seeking to represent the agricultural employees at Bob Borba Livestock in Turlock, CA. The election was held on August 8, 2003 with the following results:

Teamsters Local 386	3
No Union	1
UCBs	<u>0</u>
Total	4

No election objections were filed. The certification of representative issued August 18, 2003.

Vincent B. Zaninovich & Sons, Inc., 03-NO-8-VI

The UFW filed an NA and NO in Vincent B. Zaninovich & Sons, Inc., 03-NO-8-VI. The unit is comprised of approximately 1800 – 2000 employees. The NO list was submitted last Friday and the Regional Office determined that the showing of interest was met. No petition for election has been filed as of this date.

Kovacevich "5" Farms, 03-RC-3-VI

On August 12, 2003 the UFW filed a representation petition with the Visalia Regional Office seeking to represent the agricultural employees at Kovacevich "5" Farms. The election was conducted on August 19, 2003 with the following results:

UFW	95
No Union	160
UCBs	<u>14</u>
Total	269

Election objections, if any, are due August 26, 2003.

COMPLAINT REPORT

None.

PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED

None.

NEW CASES SET FOR HEARING

None.

HEARINGS IN PROGRESS:

None.

SIX CASES ON CALENDAR

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.

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

The pre-hearing conference is set for November 19, 2003.

The hearing is set for December 8, 2003.

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

The pre-hearing conference is set for January 14, 2004.

The hearing is set for February 4, 2004.

ONE CASE PENDING ALJ DECISION:

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

The hearing closed on July 3, 2003. The post hearing briefs are due August 29, 2003.

ALJ/IHE DECISIONS ISSUED

None.

ONE CASE PENDING EXCEPTIONS AND/OR REPLY:

UFW (L.E. Cooke), 00-CL-1-VI
The ALJ decision issued July 29, 2003.
Exceptions are due August 21, 2003.
Reply briefs due September 4, 2003.

CASES SETTLED OR RESOLVED

None.

COMPLIANCE CASES CLOSED

None.

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 (CSMCS) issued its list of mediators to the parties. On June 6, 2003 the parties informed the CSMCS that they had selected a mediator.

Pictsweet Mushroom Farms, Request for Mediation,
Case No. 2003-MMC-02:

On July 7, 2003 the Board received a petition for mediation from the UFW concerning Pictsweet Mushroom Farms. The Employer's response was received on July 9, 2003. On July 11, 2003 the Board requested briefing on the following novel issue:

Whether a certified labor organization's request for mandatory mediation with a successor employer under Labor Code section 1164 precluded from meeting the requirement in Labor Code section 1164.11, subdivision (c), that 'the parties

have not previously had a binding contract between them' where the certified labor organization had a contract with the predecessor employer but not with the present employer, who succeeded to the bargaining obligations.

On July 14, 2003 the Board granted the employer's request for a one-week extension of time to file briefs. On July 25, 2003 both the employer and union filed their responsive briefs. The Board decision on the petition for mandatory mediation issued on August 1, 2003. The Board granted the UFW's request for mandatory mediation and ordered the parties to mandatory mediation and conciliation of their issues. The California Mediation and Conciliation Service sent the parties a list of mediators.

COURT LITIGATION

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 were held on June 24, 2003. The court rejected the Board's argument on jurisdiction but agreed with its argument that the matter is not ripe for adjudication. Based on his rulings, the judge stated his intention to dismiss the complaint with leave to file amended complaint within 14 days after a completed mediation process resulting in an imposed contract, i.e., after the Board issues an order on an appeal from a mediator's report fixing the terms of a contract. In the first mediation case (Hess Collection Winery), the parties have selected a mediator, but no mediation sessions have yet taken place. Consequently, it will be at least several months before the case could be ripe under the judge's stated standard. On July 2, the Superior Court heard the plaintiffs' ex parte request to shorten time to file a motion for reconsideration of the judge's ruling of June 24. The request technically was granted, but the hearing on the motion for reconsideration was set for August 1,

well beyond the date sought by the plaintiffs. On July 31, the Superior Court Judge Jeffrey Gunther issued a tentative ruling denying the motion for reconsideration of his earlier ruling sustaining the ALRB's demurrer on ripeness grounds. The tentative ruling became final when the plaintiffs decided to accept the ruling rather than go forward with the hearing scheduled for August 1. The plaintiffs are expected to seek review of the ruling in the Court of Appeal.

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 on July 15, 2003 with the Board's Response brief 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 –**
Executive Secretary Barbosa met with Board Counsel to compare on-line legal research systems. He will discuss preferences with Administrative Law Judges.

Analyst Massie reiterated the importance of keeping anti-virus definitions updated and the procedures to take should a virus or worm be received by e-mail.
- (b) **Regulations –**
Board Counsel Heyck reported that final changes were submitted to the Fair Political Practices Commission and we are awaiting approval.
- (c) **Budget –**
Board Member Barrios has been in contact with the Native American Heritage Commission regarding the possibility of the Commission needing additional space adjoining their offices.
- (d) **Policies and Procedures –**
Member Barrios reported that the General Counsel has reviewed and approved various policies.

- (e) **Labor and Workforce Development Agency –**
The meeting with LWDA General Counsel Bob Dresser will be rescheduled.
- (f) **Strategic Plan –**
None.
- (g) **Annual Report –**
Janet Coffman contacted Board Counsel Heyck regarding delivery of the Annual Report.
- (h) **Procedural Manual (Style Manual) –** Executive Secretary Barbosa will meet with staff today to discuss office procedural manuals and staff reassignments.

7. **OUTREACH PROJECT**

- (a) **Novella**
The Board will meet to review comments from the ad hoc committee on August 25, 2003, at 1:30 p.m.
- (b) **Brochures**
Board Counsel Heyck reported that Janet Coffman indicated that brochure designs will be available soon for the Board's review.

8. **LEGISLATION:**

Board Counsel Wender reported on the following pending legislation:

S.C.A. 1 (Burton)--Access to government information:

This measure would provide that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. It would provide that, except as otherwise provided in the California Constitution, the people have a right to attend, observe, and be heard in the meetings of elected and appointed public bodies, and to inspect and obtain copies of records made or received in connection with the official business of any public body, agency, officer, or employee, or anyone acting on behalf of a public body, agency, officer, or employee. This measure also would provide that nothing in its provisions supersedes the right to privacy guaranteed by the California Constitution, or limits the ability of the Legislature to provide by statute, or the Judicial Council to provide by rule not inconsistent with statute, for the protection of personal privacy. On

August 19, the bill was re-referred to the Committee on Appropriations with a recommendation to place it on the consent calendar.

9. PERSONNEL

Finance Officer Davis will attend the Department of Finance's semiannual seminar exclusively for Accounting, Audit, and Budget managers on October 7, 2003.

10. COMPLIANCE

None.

11. FUTURE AGENDA REVIEW

None.

12. PUBLIC MEETING ADJOURNED AT: 10:55 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION