

**STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD**

**BOARD MEETING MINUTES**

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

**October 29, 2003**

Time: 10:05 a.m.  
Members present: Chairwoman Shiroma, Board Members Barrios and Rivera  
Staff Present: Board Counsels Wender, Murray and Heyck; Executive Secretary  
Barbosa; Assistant Executive Secretary Fong; Analyst Massie  
Staff Absent: None.

**OPEN SESSION**

**1. Approval Of Minutes**

The Board's minutes for October 15, 2003 were approved 3-0.

**2. Board Member Comment**

None.

**3. Public Comment**

None.

**4. Announcements**

Board Members Barrios and Rivera have been invited to speak at the Labor Law Conference at Boalt Law School.

Board Member Rivera will be speaking at UC, Davis on October 29, 2003, to undergraduate students interested in attending law school.

The Board discussed logistics for the December 5, 2003, farmworkers' breakfast.

**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):**

The UFW filed an NA with Norman's Nursery, 03-NA-3-EC(R), on October 14, 2003.

The UFW filed an NA with Reiter Berry Farms, 03-NA-15-SAL, on October 14, 2003.

**PENDING ELECTION MATTERS:**

**Richard's Grove & Saralee's Vineyard, 03-RD-4-SAL**

The Salinas Regional Director issued a letter announcing his decision to block the decertification election, based on a complaint issued September 9, 2003, which alleged various unlawful unilateral changes. The petitioner, Victoriano Velazquez, and the employer filed a request for review on September 29, 2003, of the Regional Director's decision to block the election. The Board issued its order denying petitioner and employer's requests for review and affirmed the regional director's decision to block the election.

**Milky Way Dairy, 02-RC-2-VI**

The Board issued its decision on challenged ballots on September 3, 2003. The petitioner filed a motion for reconsideration on September 9, 2003. The Executive Secretary, on his own motion, re-served the Board's decision as counsel for the Petitioner was not served with the decision. On September 26, 2003, the Board denied reconsideration of the order, as the motion contained arguments already considered and rejected by the Board. On October 3, 2003, the Visalia Regional Director opened and counted the challenged ballots and issued a final tally of the ballots:

Fresh Fruit and Vegetable Workers Union	26
No Union	29
Unresolved Challenged Ballots	0
<b>Total</b>	<b>55</b>

The employer has informed the Executive Secretary that it will be withdrawing its election objection though the notice of withdrawal has not been received. The

Executive Secretary has contacted the incumbent union regarding the status of its objection petition, but the union does not have a position yet.

**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 Regional Director 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. Post-hearing briefs were received September 22, 2003. The ALJ's decision on the matter is pending.

**Albert Goyenette Dairy, Case No. 03-RD-1-VI**

On October 10, 2003, agricultural employee Pedro Ruelas filed a decertification petition with the Visalia Regional Office seeking an election to oust the incumbent union, UFCW, at the Albert Goyenette Dairy. The employer is a dairy located in Buttonwillow in Kern County with approximately 35 employees. The election was held on October 17, 2003 and the ballots were impounded pending a resolution of the ULPs. The Regional Director is conducting an expedited investigation of the charges.

**COMPLAINT REPORTS:**

None.

**PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED:**

None.

**NEW CASES SET FOR HEARING:**

None.

**CASES ON CALENDAR:**

**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.

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

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

The hearing is set for January 28, 2004.

**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.

**CASE PENDING ALJ DECISION:**

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

The hearing closed on July 3, 2003. Post-hearing briefs were received September 22, 2003. The matter is pending an ALJ decision.

**ALJ/IHE DECISIONS ISSUED:**

None.

**CASE PENDING EXCEPTIONS AND/OR REPLY:**

None.

**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, 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 (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. The parties have 30 days from October 16, 2003, to petition for a writ of review in the Court of Appeal or California Supreme Court pursuant to Labor Code section 1164.

### **Pictsweet Mushroom Farms, Request for Mediation, 2003-MMC-02:**

On July 7, 2003, the Board received a petition for mediation from the UFW concerning Pictsweet Mushroom Farms. The Board issued a decision on the petition for mandatory mediation on August 1, 2003. On September 23, 2003, the Board received a copy of a letter from the UFW attorney to the assigned mediator regarding the mediator's previous request of the parties that they acknowledge his immunity from being sued for his role in the process. Since there is no request pending from the mediator to the Board, there is nothing for the Board to act on at this time. The mediation between the parties commenced on September 29, 2003, with neutral Bill Rule.

## **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. A decision was made not to file an optional preliminary response to the petition for writ of mandate. The Court of Appeals has asked the real parties in interest to file an opposition addressing whether the superior court has subject matter jurisdiction over the matter. An opposition was filed on October 15, 2003, and the parties are awaiting a ruling by the Court. 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.

### **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 filed by the employer October 14, 2003. The court approved the stipulation. The Petitioner's brief will be due December 19, 2003.

## **6. Budget And Administration.**

(a) Information Technology: none.

(b) Regulations

- (1) Proposed Amendments to Conflict of Interest Code: The ALRB received notification from the Office of Administrative Law that regulations had been filed with the Secretary of State's office on October 16, 2003; the regulations will be in effect November 16, 2003.
- (2) Agricultural Employees Relief Fund (AERF): draft amendments to the AERF and decertification regulations, Notice of Proposed Regulatory Action, Initial Statement of Reasons. The Notice of Proposed Regulatory Action was submitted to OAL on October 6, 2003 for publication in the Notice Register on October 17, 2003. The public comment period will begin upon publication and will close December 1, 2003. The Board has not received any comment to date. The Board is scheduled to discuss the regulations and any comment received from the public at the December 3, 2003, Board meeting. The draft regulations and supporting documents have been posted to the ALRB website.

(c) Budget: The Department of General Services (DGS) will be conducting a compliance review in the next 30-45 days on purchase transactions entered into by the ALRB using delegated DGS authority.

(d) Policies and Procedures:

- (1) Vehicle Use Policy – the draft policy was issued to the Board and Counsel for comments by November 12, 2003.

(e) Labor and Workforce Development Agency:

- (1) Case Tracking System – a final report on case management initiatives will be issued by the Labor and Workforce Development Agency on October 29, 2003.
- (2) Transition Binder – John Duncan has been designated the Governor-elect's transition team director for the Labor and Workforce Development Agency. Chairwoman Shiroma and General Counsel Turner met with Mr. Duncan on October 28, 2003 for a general meeting. Two subsequent requests have been made on transition issues, regarding performance-based measures and PDF forms on the ALRB website. The final materials for the transition binder will be due to Agency noon, October 29, 2003.

(f) Annual Report: The working draft of the FY 2002/2003 report was shared with the Board and Counsel for comments November 5, 2003.

(g) Manuals

- (1) Procedures Manual: in progress.
- (2) Style Manual: in progress.

**7. Outreach Projects**

- (a) Novella: the Executive Secretary sent draft novella with edits to ALRB field staff on October 10, 2003. The Executive Secretary has received comments and have forwarded comments to Board Member Rivera to review for recommendations.
- (b) Brochures: none.

**8. Legislation:** SB 796 (Dunn) signed into law October 12, 2003 (Chapter 906, Statutes of 2003). Board Member Rivera and Counsels Wender, Murray, and Heyck will meet as a committee to identify issues for implementing SB 796.

**9. Personnel:** None.

**10. Compliance:** None.

**11. Future Agenda Review:** None.

The public meeting adjourned at 11:30 a.m.

**WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION**