

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

November 25, 2003

Time: 10:00 a.m.
Members present: Chairwoman Shiroma, Board Members Barrios, Bustamante, Rivera-Hernandez, and Zingale
Staff Present: Board Counsels Heyck, Murray, and Wender; Executive Secretary Barbosa; Assistant Executive Secretary Fong; Analyst Massie
Staff Absent: None.

OPEN SESSION

- 1. Approval of Minutes:** The Board's minutes for November 19, 2003, were approved 5-0.
- 2. Board Member Comments:** None.
- 3. Public Comments:** None.
- 4. Announcements:** The Regional Directors' quarterly meeting is scheduled for Wednesday, December 3, 2003. The 2004 Bilingual Services Survey will be conducted during the weeks of December 8-12, 2003, and January 26-30, 2004. Chairwoman Shiroma announced that Assistant Secretary Fong has been reassigned to the California Health and Human Services Agency, beginning December 1, 2003, for at least two months. La Cooperativa will host an open house December 11, 2003.
- 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):

None.

PENDING ELECTION MATTERS:

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
<u>Unresolved Challenged Ballots</u>	<u>0</u>
Total	55

The employer requested withdrawal of its election objections petition on November 4, 2003, which was granted by the Executive Secretary on November 7, 2003. The Executive Secretary issued an order on November 7, 2003, granting in part and dismissing in part the petitioner's election objection petition. The request for review was due November 17, 2003; none was filed. On November 24, 2003, the union requested withdrawal of its objection petition that was granted by the Executive Secretary. Also on November 24, 2003, the Executive Secretary issued a certification of results of election as the "no union" vote received a majority of the valid ballots cast and both the petitioner and employer had withdrawn their objections to the election. The election matter is now resolved.

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. The hearing on charge 03-CE-9-SAL ended 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 election was held on October 17,

2003, and the ballots impounded pending a resolution of the ULPs. The incumbent union (UFCW) requested withdrawal of its charge that was granted by the Regional Director on November 12, 2003. The underlying ULP having been resolved, the Regional Director opened and counted the formerly impounded ballots and issued a final tally of ballots on November 19, 2003 with the following results:

No Union	22
UFCW	13
Unresolved Challenged Ballots	<u>1</u>
Total	36

The “no union” choice having received a majority of the valid ballots cast and neither party having filed objections to the election, the Executive Secretary issued a certification of results of election on November 21, 2003. This election matter is now resolved.

COMPLAINT REPORTS:

None.

PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED:

None.

NEW CASES SET FOR HEARING:

None.

CASES ON CALENDAR:

US Abalone, 01-CE-59-SAL

The pre-hearing conference was held November 18, 2003. The hearing is set for December 2, 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.

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.

CASES 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 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:

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. 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, is due by December 1, 2003. The letter briefs of the respondent and real party in interest are due December 11, 2003.

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 November 20, 2003, the mediator previously selected by the parties in the above-entitled case informed the Board by telephone that he had resigned from the case due to illness. On November 21, 2003, the UFW filed a motion with the Board requesting, in light of the resignation of the mediator, that the Executive Secretary refer this matter to the State Mediation and Conciliation Service to provide a list of mediators from which the parties would select a new mediator. On November 24, 2003, the Employer filed a motion for reconsideration and, in the alternative, for clarification of the Board's order referring request for new panel of mediators (Admin. Order No. 2003-13).

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. The petitioners have asked the Court to consider WGA and Hess together. On November 20, 2003, the 3rd DCA issued an order summarily dismissing the petition for writ of mandate in the WGA 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 will be due December 19, 2003.

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. Petitioner's supplemental letter brief addressing legal authority for, and the appropriateness of the stay, is due by December 1, 2003. The letter briefs of the respondent and real party in interest are due December 11, 2003.

6. Budget And Administration

(a) Information Technology: None.

(b) Regulations

- (1) 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 the Office of Administrative Law 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 are posted to the ALRB website.
- (2) Response to Executive Order S-2-03: Governor Schwarzenegger has issued an Executive Order requesting the Office of Administrative Law to not approve any pending regulations. The Board agreed that the work-in-progress on the AERF regulations would not be impacted by the mandates of the Executive Order. Member Rivera-Hernandez and Counsel Wender will develop a response for the Board's consideration.

(c) Budget: Executive Secretary Barbosa will schedule a meeting with the Board and the General Counsel next week on various budget items.

(d) Policies and Procedures: Member Barrios advised the Board that the policies developed over the last several months were distributed to all ALRB personnel November 24, 2003. Member Barrios provided the Board with an update on the status of ALRB policies and procedures. The handout will put on the shared drive.

(e) Labor and Workforce Development Agency:

- (1) Case Tracking System: Chairwoman Shiroma shared out the MOU with EDD for resources; she will contact EDD to use the MOU for the 60 hours of programming time to complete the case tracking system.
- (2) Fiscal Year 2003-04 Revised Out of State Travel Policy: Effective immediately, all travel blanket authority granted under State Administrative Manual Section 0761 for all out of state travel is rescinded until further notice. The ALRB does not anticipate any out of state travel for Fiscal Year 2003-04.
- (3) Beginning December 1, 2003 at 10:00 a.m., the Agency senior staff meetings will resume.

(f) Annual Report: Work continues on collecting the data. The draft annual report has been stored in color and grayscale on the shared drive.

(g) Procedures Manual: Assistant Secretary Fong has reviewed approximately 50 percent of the existing procedures. She has developed a draft format for an outline of a manual; the procedures manual will have online search and hyperlink capability, consolidating all manuals to a single file.

7. Outreach Projects

(a) Novella: Javier Juarez has completed his work on the novella and is now pending final review by the Executive Secretary. Assistant Secretary Barbosa to obtain copy cost estimates from Mr. Juarez.

(b) Brochures: The Labor Agency provided the ALRB with brochure paper samples and cost estimates for publishing brochures. Counsel Heyck provided quantity estimates to the photocopy contact.

8. Legislation: Senate Bill 796 (Dunn) – The bill was signed into law October 12, 2003 (Chapter 906, Statutes of 2003). The Board discussed the interpretation of the bill and whether to seek direction from the Legislative Counsel. Chairwoman Shiroma will schedule a meeting with the General Counsel to discuss further.

9. Personnel: None.

10. Compliance: None.

11. Future Agenda Review: None.

The public meeting adjourned at 11:50 a.m.