

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

December 3, 2003

Time: 10:40 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; Analyst Massie
Staff Absent: None.

OPEN SESSION

- 1. Approval of Minutes:** The Board approved the minutes for November 25, 2003 5-0 with minor changes.
- 2. Board Member Comments:** None.
- 3. Public Comments:** None.

The public meeting adjourned at 10:45 a.m.

The public meeting reconvened at 12:30 p.m.

- 4. Announcements:** The 2004 Bilingual Services Survey will begin next week from December 8-12, 2003.

On November 24, 2003, the Department of General Services notified all department directors that the DGS Transit Storage facility at 1700 National Drive in Sacramento was ceasing operations. Executive Secretary Barbosa will ascertain whether the agency has any records at this facility and, if so, will determine how to store and/or dispose of the records as appropriate.

FPPC Form 700— Due to severe budget constraints, the Commission is implementing a new method for distribution of the updated 2003/2004 Form 700, Statement of Economic Interests. The most significant changes are a reference to new legislation

affecting prospective employment for local officials (AB 1678) and enhanced commission income and incentive compensation disclosure information in the appendix. Next year, FPPC will *not* be providing agencies with a hard copy of the materials but will make them available on the web. FPPC is requesting confirmation by e-mail of the designated agency contact person, currently Mr. Barbosa, and an updated list of individuals whose statements are required to be forwarded to the FPPC.

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:

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.

COMPLAINT REPORTS:

Cocopah Nurseries, Inc., 03-CE-4-EC(R)

The employer allegedly discharged an employee because he engaged in protected concerted and union activity.

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 began on December 2, 2003 and is still in progress.

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. Reply briefs are due December 4, 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 was filed 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. On November 26, 2003, the Board placed its prior order (Admin. Order No. 2003-13) in abeyance pending consideration of the employer's opposition and any response filed by the UFW. The UFW thereafter filed its response on November 26, 2003. The matter is now pending before the Board for decision.

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. The petitioners 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. 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 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: Analyst Massie informed the Board of the agency-wide software survey that is due to Department of Finance in January 2004.

(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 closed on December 1, 2003. No comment was received.

On December 3, 2003, the Board voted 5-0 to adopt the regulations as proposed. Submission to the Office of Administrative Law will be deferred pending submission of the reports specified in Executive Order S-2-03.

- (2) Board began discussion of letter to Victoria Bradshaw re Executive Order S-2-03. Discussion was carried over to December 4, 2003.

(c) Budget: Nothing new.

(d) Policies and Procedures Committee: Policy on Violence in the Workplace will be resubmitted to the Board.

(e) Labor and Workforce Development Agency:

- (1) Case Tracking System: Chairwoman Shiroma will contact EDD to use the existing MOU for the 60 hours of programming time to complete the case tracking system.
- (2) Discrimination, programs or activities funded by state discrimination on the basis of ethnic group identification, religion, age, sex color or disability (Government Code section 11135 et seq.): Chairwoman Shiroma advised Board of Labor Agency's information request for any cases that might fall within the scope of Government Code section 11135.
- (3) Agency senior staff meetings: Agency senior staff meetings will occur once a month and be attended by one representative per department.

(f) Annual Report: Work continues on collecting the data.

7. Outreach Projects

- (a) Novella: Executive Secretary Barbosa will complete his review of the further revised Novella today. Mr. Barbosa has requested cost estimates from Mr. Juarez for the novella.
- (b) Brochures: Board Counsel Heyck reported the CSEA print shop is in the process of printing new outreach materials that will be sent to the regional offices when complete.

The public meeting adjourned at 1:30 p.m.