

**STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD**

**BOARD MEETING MINUTES**

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

**December 10, 2003**

Time: 11:10 a.m.  
Members present: Chairwoman Shiroma, Board Members Barrios, Bustamante and Rivera-Hernandez  
Member absent: Member 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 December 3 and 4, 2003, with minor changes 4-0.
- 2. Board Member Comments:** None.
- 3. Public Comments:** None.
- 4. Announcements:**  
The Annual EDD Farmworkers' Breakfast is scheduled for Friday, December 12, 2003 in Calexico. The 2003 State Employees' Food Drive in Sacramento continues through December 19th.
- 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:**

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 January 6, 2004.

**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. On December 3, 2003, the Board issued an order on the motion for reconsideration and clarification, referring the case to the State Mediation and Conciliation Service for the issuance of a new list of mediators, and clarifying the procedures to be utilized in the renewed mediation.

**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. The plaintiffs have filed an amended complaint 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 Board's response letter brief regarding Petitioner's request for a stay is due December 11, 2003.

**6. Budget And Administration**

(a) Information Technology: Analyst Massie reported on the status of the software inventory.

(b) Regulations

- (1) Agricultural Employees Relief Fund (AERF): (1) 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 provided for in Executive Order S-2-03.
- (2) No suggested changes to the AERF protocols were received from the Regional Directors. The Board unanimously approved the draft protocols, with a minor change in wording in the tracking letters suggested by Chairwoman Shiroma.

- (2) Board's Proposed Response to Paragraph 2 of Executive Order S-2-03: The draft report pursuant to paragraph 2 of Executive Order S-2-03, which requires an assessment of whether the ALRB utilizes any manuals, guidelines, etc. that constitute underground regulations, was unanimously approved with the minor wording changes suggested by member Rivera-Hernandez.
- (c) Budget: The Board discussed Budget Letter 03-43 (Contract, Equipment Acquisition and Travel Ban).
- (d) Policies and Procedures Committee: The Board approved the updated Workplace Violence Prevention Policy and Vehicle Use Policy.
- (e) Labor and Workforce Development Agency:
  - (1) Case Tracking System: Waiting for decision by EDD Acting Chief Deputy Director Geneva Robinson regarding programming.
- (f) Annual Report: Work continues on collecting the data.

## **7. Outreach Projects**

- (a) Novella: Executive Secretary Barbosa met with Javier Juarez and finalized all changes to the novella. Mr. Juarez will now finalize the novella and provide the Board with requested cost estimates for reproducing the novella.
- (b) Brochures: Nothing new.

**8. Legislation:** Nothing new.

**9. Personnel:** Nothing new.

**10. Compliance:** Nothing new.

**11. Future Agenda Review:** The December 24, 2003 Board Meeting is rescheduled to December 23, 2003 at 10 a.m.

The public meeting adjourned at 11:45 a.m.