

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

May 21, 2003

Time: 10:00 a.m.
Members Present: Chairwoman Shiroma, Board Members Barrios and Rivera,
Staff Present: Executive Secretary Barbosa, Board Counsels Wender, Levy
and Murray, Analyst Massie; Law Student Interns Diana
Castillo, Autumn Gonzales, Ben Nicholson, Colleen
Van Egmond.
Staff Absent: Board Counsel Heyck.
Others Present: Neil Long and Darcy Steen, EDD Technology Policy and
Planning Division.

OPEN SESSION

1. APPROVAL OF MINUTES

The Board voted 3-0 to approve the Board meeting minutes from May 14, 2003.

2. BOARD MEMBER COMMENT

The new law student interns were introduced and welcomed by the Board.

3. PUBLIC COMMENT

None.

4. ANNOUNCEMENTS

The public meeting notice for June issued May 20, 2003.

ALRB Board Counsel Laura Heyck is in Delano today, May 21, 2003, attending the North Kern Employer Advisory Council meeting where she will be speaking on the new mandatory mediation and conciliation law.

The Grape and Tree Fruit League Association will meet with the Board Sacramento on May 27, 2003, at 4 p.m. in the Board Conference Room.

Chairwoman Shiroma will meet with the Food and Agriculture Commission on May 28, 2003.

The Board meeting next week has been rescheduled. It will be held at 1:30 p.m. on Wednesday, May 28, 2003.

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:

None.

PENDING ELECTION MATTERS:

Milky Way Dairy, 02-RC-2-VI

The Investigative Hearing Examiner issued her decision on challenged ballots on May 20, 2003. Exceptions, if any, are due June 2, 2003 with the reply due on June 12, 2003.

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 UFW has requested a review of the dismissal of the CE-10 case. Currently, the matter is pending resolution of this request as well as of the CE-9 Complaint.

On May 12, 2003 the employer requested that the Regional Director tally the ballots. The Regional Director denied the employer's request without prejudice on May 15, 2003, stating that the request was premature since the UFW request for review had not yet been resolved..

Countryside Mushrooms, Inc., 03-RC-1-SAL

The UFW filed a representation petition at the Salinas Regional Office seeking to represent the agricultural employees of Countryside Mushrooms, Inc. The employer is located in Gilroy and employs approximately 70 workers. The election is scheduled for Friday, May 23, 2003, from 9:30 to 11:00 a.m.

COMPLAINT REPORT

None.

PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED

U.S. Abalone, 01-CE-59-SAL

The pre-hearing conference is set for November 18, 2003.

The hearing is set for December 2, 2003.

NEW CASES SET FOR HEARING

None.

HEARINGS IN PROGRESS:

None.

SEVEN CASES ON CALENDAR

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

The pre-hearing conference is set for June 9, 2003.

The hearing is set for June 23, 2003.

Northend Equipment Inc., 02-CE-48-EC

The pre-hearing conference is set for June 17, 2003.

The hearing is set for June 24, 2003.

Fresh Pic Harvest, 01-CE-52-EC(R)

The pre-hearing conference is set for July 15, 2003.

The hearing is set for August 5, 2003.

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.

TWO CASES PENDING ALJ/IHE DECISION:

Rivera Vineyard, 01-CE-317-EC(R)
The hearing closed on March 31, 2003. The post-hearing briefs were received May 16, 2003. The matter is pending the ALJ's decision.

UFW (L.E. Cooke), 00-CL-1-VI
The hearing closed on April 7, 2003. The matter is pending the filing of post hearing briefs due June 4, 2003.

ONE CASE PENDING EXCEPTIONS/REPLY

Milky Way Dairy, 02-RC-2-VI
Exceptions are due June 2, 2003.
Reply is due June 12, 2003.

CASES SETTLED OR RESOLVED

American Taki, Inc., 01-CE-49-SAL
The Regional Director withdrew the complaint and closed the case.
Respondent has fully complied with the terms and conditions of the informal settlement agreement.

COMPLIANCE CASES CLOSED

None.

NEW 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 8, 2003, the Board noticed the parties that this matter is no longer held in abeyance as the Board's regulations implementing the mandatory mediation and conciliation law went into effect on May 7, 2003. The Employer's answer to the Union's declaration was received on May 16, 2003. The petition and answer are now under review by the Board.

COURT LITIGATION

McCaffrey Goldner Roses, F041479

The matter is now pending oral argument or a decision by the court.

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. Counsel Wender reported that 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 AG 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 are set for hearing before the court on June 24, 2003.

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. Counsel Murray reported that the Petitioner's opening brief is due July 14, 2003 with the Board's Response brief is 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 and Web Site Development Project**
Analyst Massie reported on networking and e-mail problems and the anticipated resolution date.

- (b) **Regulations**
Board Member Rivera reported on the status of the request to Senator Rivera for a written opinion from the Legislative Counsel concerning whether SB 1198 (the Agricultural Employee Relief Fund or AERF) is subject to a broader interpretation than reflected in the adopted implementing regulations.

Board Counsel Wender reported that the end of the 45-day written comment period on the proposed amendments to the Conflict of Interest Code regulations was May 19, 2003. No public comment was received. The Board voted 3-0 to approve the regulations as amended.

- (c) **Budget**
The Senate budget hearing is scheduled this morning, May 21, 2003 at 9:00 a.m.

The Assembly budget hearing is scheduled May 22, 2003 at 10:00 a.m.

- (d) **Policies and Procedures**
Board Member Barrios reported that the Policies and Procedures Committee would revise Board Counsel time sheets to more accurately reflect actual work done. She also reported that:
- The Committee is currently reviewing the policy on Compensatory Time Off (CTO);
 - The new policies on the Family Medical Leave Act (FMLA) and Disability Discrimination/Reasonable Accommodation have been approved by the Board and transmitted to General Counsel Turner for review;
 - The Committee will be recommending a response to the General Counsel requiring External Complaint procedures for regional employees.

Counsel Wender passed out a new policy on Records Retention which will be discussed at the Board meeting on June 4, 2003.

(e) Labor and Workforce Development Agency

Neil Long and Darcy Steen of the EDD division of Technology Policy and Planning attended the meeting to discuss the Board's information technology needs for developing a more efficient system for legal research and case tracking. They were able to answer questions as to the requirements for a Feasibility Study Report (FSR) and to explain the contents the process of preparing an FSR. On behalf of the Board, Chairwoman Shiroma, thanked Mr. Long and Mr. Steen for EDD's help in this matter.

Member Rivera reported on the most recent meeting of the Enforcement Subcommittee and passed out a memorandum on the Lead Referral Workgroup. The Board discussed the issue of access to EDD information.

The Labor Agency is coordinating with an outside consultant to discuss the IT challenges each agency is facing. Executive Secretary Barbosa has been designated the contact person for the ALRB.

Agency has prepared a list of all Labor Agency committees and subcommittees and their members.

(f) Strategic Plan

None.

(g) Annual Report

None.

- 7. OUTREACH PROJECT** – The El Centro Regional Office will participate in various outreach activities, with two sister agencies:
- May 29 - Farmworker Appreciation Day in Mecca
 - May 31 - FLC Training at College of the Desert in Palm Desert
 - June 9 - Mexican Consul's Forum in San Bernardino
 - June 19 - Cal-OSHA Farmworker Forum in Mecca

(a) Novela

None.

(b) Brochures

None.

8. LEGISLATION:

Board Counsel Wender reported on the following pending legislation:

Senate Bill 796 (Dunn)—Employment

Under existing law, the Labor and Workforce Development Agency and its departments, divisions, commissions, boards, agencies, or employees may assess and collect penalties for violations of the Labor Code. This bill would allow aggrieved employees to bring civil actions to recover these penalties, if the agency or its departments, divisions, commissions, boards, agencies, or employees do not do so. The penalties collected in these actions would be distributed 50% to the General Fund, 25% to the agency for education, to be available for expenditure upon appropriation by the Legislature, and 25% to the aggrieved employee, except that if the person does not employ one or more persons, the penalties would be distributed 50% to the General Fund and 50% to the agency. In addition, the aggrieved employee would be authorized to recover attorney's fees and costs. For any violation of the code for which no civil penalty is otherwise established, the bill would establish a civil penalty. On May 20, 2003, the bill was read a second time, and sent to the third reading file.

Board Counsel Wender reported that there were no changes on the following pending legislation:

- Senate Bill 75 (Burton)—Agricultural Labor Relations
- Assembly Bill 1722 (Committee on Labor and Employment)—Agricultural Labor Relations Board
- Assembly Bill 556 (Strickland)—State Boards and Commissions: salaries: suspension
- Senate Bill X1 1 (Poochigian)—State Economy: Suspension of Statutes
- State Constitutional Amendment 1 (Burton)—Access to government information

9. PERSONNEL

None.

10. COMPLIANCE

None.

11. FUTURE AGENDA REVIEW

None.

12. PUBLIC MEETING ADJOURNED AT: 12:30 p.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION