

**STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD**

**BOARD MEETING MINUTES**

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

**July 23, 2003**

Time: 10:30 a.m.  
Members Present: Chairwoman Shiroma, Board Members Barrios and Rivera  
Staff Present: Executive Secretary Barbosa, Board Counsel Wender,  
Murray and Heyck, Analyst Massie, Law Student Interns  
Autumn Gonzales, Ben Nicholson, Colleen Van Egmond and  
Diana Castillo.  
Staff Absent:  
Others Present:

**OPEN SESSION**

**1. APPROVAL OF MINUTES**

The Board voted 3-0 to approve the Board meeting minutes from July 15, 2003.

**2. BOARD MEMBER COMMENT**

None.

**3. PUBLIC COMMENT**

None.

**4. ANNOUNCEMENTS**

Chairwoman Shiroma brought to the Board's attention Executive Order D-68-03 – Reducing Illegal Tobacco Sales to Minors.

The Employee Assistance Program (EAP) orientation schedule for July through December 2003 was e-mailed to all employees. Chairwoman Shiroma reiterated the importance that all supervisors and staff attend EAP Orientation if they have not already done so.

Member Rivera will coordinate enrollment of agency employees in mandatory Defensive Driver Training Classes.

Law Student Intern Van Egmond reported on the Milk Advisory Board Conference.

**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. Both the employer and petitioner filed exceptions to her decision on June 2, 2003. The employer filed its reply on June 12, 2003. No reply was received from the petitioner. The matter is pending decision before the Board.

**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 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. The matter is pending receipt of the transcripts and submission of post-hearing briefs.

**Garroutte Farms, 03-NA-3-SAL, 03-NO-3-SAL and 03-RC-2-SAL**

The UFW filed a representation petition with the Salinas Regional Office on July 8, 2003 seeking to represent the agricultural employees of Garroutte Farms. An election was held on July 15, 2003 with the following results:

UFW	123
No Union	242
UCBs	8
Total	373

Election objections, if any, were due July 22, 2003. Since the tally revealed that the No union choice received a majority of the valid ballots cast and since neither party timely filed objections to the election, the Executive Secretary issued a certification of results of election on July 23, 2003.

**COMPLAINT REPORT**

None.

**PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED**

None.

**NEW CASES SET FOR HEARING**

None.

**HEARINGS IN PROGRESS:**

None.

**FIVE CASES ON CALENDAR**

**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.

**Maria G. Duran, Farm Labor Contractor, 01-CE-606-EC(R)**

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

The hearing is set for December 9, 2003.

**TWO CASES PENDING ALJ DECISION:**

**UFW (L.E. Cooke), 00-CL-1-VI**

The hearing closed on April 7, 2003. The post hearing briefs were received June 4, 2003. The matter is pending the ALJ's decision.

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

The hearing closed on July 3, 2003 and the matter is pending receipt of the transcripts and the parties' post hearing briefs.

**ALJ/IHE DECISIONS ISSUED**

None.

**ONE CASE PENDING REPLY:**

**Rivera Vineyards et al., 01-CE-317-EC(R)**

Exceptions filed July 14, 2003.

Reply briefs due July 28, 2003.

**CASES SETTLED OR RESOLVED**

None.

**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 21, 2003, the Board issued its order directing the parties to mandatory mediation and conciliation. On May 28, 2003, the California State Mediation & Conciliation Service (CSMCS) issued its list of mediators to the parties. On June 6, 2003 the parties informed the CSMCS that they had selected a mediator.

**Pictsweet Mushroom Farms, Request for Mediation,**  
Case No. 2003-MMC-02:

On July 7, 2003 the Board received a petition for mediation from the UFW concerning Pictsweet Mushroom Farms. The Employer's response was received on July 9, 2003. On July 11, 2003 the Board requested briefing on the following novel issue:

Whether a certified labor organization's request for mandatory mediation with a successor employer under Labor Code section 1164 precluded from meeting the requirement in Labor Code section 1164.11, subdivision (c), that 'the parties have not previously had a binding contract between them' where the certified labor organization had a contract with the predecessor employer but not with the present employer, who succeeded to the bargaining obligations.

On July 14, 2003 the Board granted the employer's request for a one-week extension of time to file briefs. The briefs are now due on July 25, 2003.

## **COURT LITIGATION**

**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. 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 Attorney General 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 were held on June 24, 2003. The court rejected the Board's argument on jurisdiction but agreed with its

argument that the matter is not ripe for adjudication. Based on his rulings, the judge stated his intention to dismiss the complaint with leave to file amended complaint within 14 days after a completed mediation process resulting in an imposed contract, i.e., after the Board issues an order on an appeal from a mediator's report fixing the terms of a contract. In the first mediation case (Hess Collection Winery), the parties have selected a mediator, but no mediation sessions have yet taken place. Consequently, it will be at least several months before the case could be ripe under the judge's stated standard. On July 2, the Superior Court heard the plaintiffs' ex parte request to shorten time to file a motion for reconsideration of the judge's ruling of June 24. The request technically was granted, but the hearing on the motion for reconsideration was set for August 1, well beyond the date sought by the plaintiffs. Also pending is a request by the Plaintiffs for a stipulation that the ruling on the demurrer be changed to dismissal without leave to amend to allow for direct appeal of the ruling.

**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 on July 15, 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**

Analyst Massie reported on current status of IT services and equipment.

**(b) Regulations**

Board Counsel Heyck reported that additional proposed amendments to the conflict of interest code were circulated to affected employees on July 18, 2003, and that written comments are due on August 4, 2003.

**(c) Budget**

None.

**(d) Policies and Procedures**

Member Barrios reviewed upcoming policies to be reviewed by the committee.

- (e) **Labor and Workforce Development Agency**  
Member Barrios updated the Board on developments involving the Case Management/Case Tracking Committee.
- (f) **Strategic Plan**  
None.
- (g) **Annual Report**  
Analyst Massie contacted DIR Deputy Director of Communications, Janet Coffman for an update on the status of the printing of the annual report.
- (h) **Translation of Forms**  
Member Rivera circulated updated translations of ALRB 38 (Charge Against Employer) and ALRB 184 (Official Notice of Decertification). Revised translations will be forwarded to Regional Directors for review.

## 7. **OUTREACH PROJECT**

- (a) **Novela**  
Executive Secretary Barbosa circulated the English translation of the novela. The novela will now be sent to the ad hoc advisory committee for a two-week final review period.
- (b) **Brochures**  
Board Counsel Heyck reported that DIR Deputy Director of Communications, Janet Coffman, is waiting to hear from EDD regarding brochure design.

## 8. **LEGISLATION:**

Board Counsel Wender reported on the following pending legislation:

### S.B. 75 (Burton)-- Agricultural Labor Relations:

This bill would require the board, by July 1, 2004, to compile a list of all certified labor organizations that have not obtained a collective bargaining agreement with the employer of the agricultural employees represented by the labor organization and to post the list, along with specified information, on the board's Web site. This bill would further

require the board, by July 1, 2004, to advise each labor organization on the list and each respective employer of their rights and responsibilities under those provisions of the Labor Code providing for mandatory mediation to achieve a collective bargaining agreement. On July 21, the bill was amended to delete all of the original content of the bill and replace it with several amendments to the mandatory mediation law passed last year (Labor Code secs. 1165-1164.14). Specifically, the amendments would delete the existing sunset provision, add nonexclusive standards to be followed by the mediator, and expand the grounds for review of the mediator's report. After amendment, the bill was re-referred to Assembly Committee on Labor & Employment. The July 21 amendments deleted all of the original content of the bill and replaced it with several amendments to the mandatory mediation law passed last year (Labor Code secs. 1164-1164.14). Specifically, the amendments would delete the existing sunset provision, add nonexclusive standards to be followed by the mediator, and expand the grounds for review of the mediator's report.

SB 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 July 16, 2003, the bill was read for the second time, amended (the amendments would not alter the effect of the bill on the ALRB), and re-referred to Assembly Committee on Appropriations. A hearing is set for August 20, 2003.

**9. PERSONNEL**  
None.

**10. COMPLIANCE**



None.

**11. FUTURE AGENDA REVIEW**

**12. PUBLIC MEETING ADJOURNED AT: 12:00 p.m.**

**WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.**