

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

July 30, 2003

Time: 10:00 a.m.
Members Present: Chairwoman Shiroma, Board Members Barrios and Rivera
Staff Present: Executive Secretary Barbosa, Board Counsel Wender,
Murray and Heyck; Law Student Interns Colleen Van
Egmond, Autumn Gonzales, and Ben Nicholson.
Staff Absent: Analyst Massie
Others Present:

OPEN SESSION

1. APPROVAL OF MINUTES

The Board voted 3-0 to approve the Board meeting minutes from July 23,2003 with one change discussed at the meeting.

2. BOARD MEMBER COMMENT

None.

3. PUBLIC COMMENT

None.

4. ANNOUNCEMENTS

The American Cancer Society invites ALRB staff to join them as they kick off the American Cancer Society's 2003 Making Strides Against Breast Cancer Walk on Thursday, August 21, 2003 at 7:00 a.m. The American HeartWalk is scheduled for Thursday, September 4, 2003 at the Capitol Park, West Steps. Walkers and donations are encouraged.

Member Rivera has accepted an invitation to speak at the 15th Annual Western Alliance of Farmworker Advocates Conference on Friday, October 24, 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. 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.

Sonoma-Cutrer Vineyards, Inc., 03-RD-3-SAL

Agricultural employee Alfred Vasquez filed a decertification petition with the Salinas Regional Office seeking the ouster of the certified bargaining representative UFW. On July 30, 2003 the UFW requested that the Board reverse the Regional Director's July 29, 2003 decision that the ballots should not be impounded pending investigation of various charges filed during the week preceding the election. The Board denied this request and

the election was held on July 30, 2003. No results of the election were available as of the time of the Board meeting.

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 January 14, 2004.

The hearing is set for February 4, 2004.

ONE CASE PENDING ALJ 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.

ONE ALJ DECISION ISSUED

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

The ALJ decision issued July 29, 2003.

Exceptions are due August 21, 2003.

Replies are due September 4, 2003.

TWO CASES PENDING EXCEPTIONS AND/OR REPLY:

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

Exceptions filed July 14, 2003.

Reply briefs due July 28, 2003.

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

The ALJ decision issued July 29, 2003.

Exceptions are due August 21, 2003.

Reply briefs due September 4, 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. On July 25, 2003 both the employer and union filed their responsive briefs. The Board decision on the petition for mandatory mediation is pending.

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

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** – No report.
- (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** – Chairwoman Shiroma reported that further budget exercises are expected in light of the Senate and Assembly's approved budgets containing additional cuts.
- (d) **Policies and Procedures - Workgroup Computing Policy** – Member Barrios reported that: 1) the proposed language identifying email as confidential has been forwarded to Analyst Massie; 2) copies of all agency approved policies are available on the shared drive; 3) circulated copies of the workgroup computing policy; 4) informed the Board of the need to develop policies on software and procurement; and 5) circulated proposed responses to Technical and Business Questions posed by EDD.
- (e) **Labor and Workforce Development Agency**
None.

- (f) **Strategic Plan**
None.
- (g) **Annual Report** – Executive Secretary Barbosa circulated an updated annual report assignment list. Assignments now due August 8, 2003.
- (h) **August 11 and 12 Visit to Salinas** – Board approved proposed itinerary prepared by Regional Director Capuyan and Executive Secretary Barbosa.
- (i) **Procedural Manual (Style Manual)** – Member Barrios stressed the need to update the Board’s procedural office manuals to promote efficiency and consistency.

7. OUTREACH PROJECT

- (a) **Novella**
The novella has been sent to the ad hoc committee for final review. The committee members’ responses are due August 8, 2003.
- (b) **Brochures**
None.

8. LEGISLATION:

Board Counsel Wender had no new information to report.

- 9. PERSONNEL** – The Board thanked law interns Ben Nicholson and Diana Castillo for all their hard work during their summer internship with the Board.

- 10. COMPLIANCE** – Chairwoman Shiroma is preparing a follow-up memo on compliance.

- 11. FUTURE AGENDA REVIEW**
None.

- 12. PUBLIC MEETING ADJOURNED AT: 11:15 a.m.**

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION