

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

September 4, 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.
Staff Absent: Analyst Massie
Others Present:

OPEN SESSION

1. APPROVAL OF MINUTES

The Board's minutes for August 20, 2003 will be circulated this week for review.

2. BOARD MEMBER COMMENT

None.

3. PUBLIC COMMENT

None.

4. ANNOUNCEMENTS

The State Employee Heart Walk is scheduled for Thursday, September 4, 2003 at the Capitol Park, from 11:30 a.m. to 2:30 p.m. Donations for the event should be given to the Executive Secretary.

The 2003 Conference on Labor and Employment Law sponsored by the National Labor Relations Board (NLRB) is scheduled for Friday, September 5, 2003 in San Francisco.

The State Mediation and Conciliation Service will be holding a neutrals training in connection with the Mandatory Mediation and Conciliation law.

The training is open to the public and will be held in San Francisco on September 26, 2003 from 10:00 a.m. to 4:00 p.m.

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 Board issued its decision on this matter on September 3, 2003. The Regional Director has been directed to comply with the Board's decision and prepare a revised and final tally of ballots.

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 July 3, 2003. The matter is pending receipt of the post-hearing briefs which were due on August 29, 2003.

COMPLAINT REPORT

None.

PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED

None.

NEW CASES SET FOR HEARING

None.

HEARINGS IN PROGRESS:

None.

FIVE CASES ON CALENDAR

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.

Rancho Ramona Dairy, 02-CE-5-EC(R)

The pre-hearing conference is set for November 19, 2003.

The hearing is set for December 8, 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. The post hearing briefs were due August 29, 2003.

ALJ/IHE DECISIONS ISSUED

None.

CASES PENDING EXCEPTIONS AND/OR REPLY:

None.

CASES SETTLED OR RESOLVED

None.

COMPLIANCE CASES CLOSED

None.

CASES TRANSFERRED TO BOARD FOR DECISION

None.

BOARD DECISIONS

Milky Way Dairy, 02-RC-2-VI

Board decision issued September 3, 2003

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 issued on August 1, 2003. The Board granted the UFW's request for mandatory mediation and ordered the parties to mandatory mediation and conciliation of their issues. The California Mediation and Conciliation Service sent the parties a list of mediators.

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, 2003 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, 2003 well beyond the date sought by the plaintiffs. The plaintiffs decided to accept the tentative ruling rather than appear at the hearing scheduled for August 1. On August 22, 2003, the plaintiffs filed a petition for writ of mandate in the Third District Court of

Appeal, seeking to overturn the Superior Court ruling. The matter is pending a reply from the Court of Appeal.

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 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 –

Executive Secretary Barbosa reported that the process of converting to the Lexus-Nexus online research service is underway.

(b) Regulations –

On August 27, 2003, the Fair Political Practices Commission (FPPC) approved the proposed amendments to the agency's Conflict of Interest Code. A copy of the approved code was filed with the Office of Administrative Law (OAL) as required. The code will go into effect 30 days after it is filed with the Secretary of State.

(c) Budget –

Executive Secretary Barbosa reported that he had met with staff regarding the relocation of library materials. The Board will meet with the General Counsel regarding the lease of the library space.

(d) Policies and Procedures –

On October 1, 2003, the Board is required to submit a preliminary report on its compliance with Dymally-Alatorre Bilingual Services Act. The report has been prepared and will be forwarded to Agency this week with the final report issuing on or before October 1, 2003. In order to comply with the Act, the Board needs to consider and approve a new policy which allows farmworkers to contact an agency representative if they are having language difficulties in the regional office. Proposed language for the Board's consideration has been prepared and will be circulated.

- (e) **Labor and Workforce Development Agency –**
Board Member Barrios reported that she is continuing to work with EDD to provide the ALRB with a case tracking system.

On August 28, 2003, a notification of budget adjustments was sent to appropriations authorities.

- (f) **Strategic Plan –**
No new update.
- (g) **Annual Report –**
The printer's proof of the annual report was circulated for review.
- (h) **Procedural Manual (Style Manual) –**
Executive Secretary Barbosa is working with staff on cross-training.
- (i) **Agricultural Employees Relief Fund (AERF)-**
Board Member Rivera and Board Counsel Wender will meet with Deputy General Counsel Sobel to develop a comprehensive AERF protocol.

7. **OUTREACH PROJECT**

- (a) **Novella-** No new update.
- (b) **Brochures –** No new update.

8. **LEGISLATION:**

Board Counsel Wender reported on the following pending legislation:

S.C.A. 1 (Burton)--Access to government information:

This measure would provide that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. It would provide that, except as otherwise provided in the California Constitution, the people have a right to attend, observe, and be heard in the meetings of elected and appointed public bodies, and to inspect and obtain copies of records made or received in connection with the official business of any public body, agency, officer, or employee, or anyone acting on behalf of a public body, agency, officer, or employee. This measure also would provide that nothing in its provisions supersedes the right to privacy guaranteed

by the California Constitution, or limits the ability of the Legislature to provide by statute, or the Judicial Council to provide by rule not inconsistent with statute, for the protection of personal privacy. **On August 29, 2003, the measure passed out of the Assembly Committee on Appropriations (24-0). On September 2, 2003 the measure was read a second time.**

Senate Bill 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. Amendments to the bill made on July 21, 2003 deleted the original content of the bill and replaced it with several amendments to the mandatory mediation law passed last year (Labor Code sections 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. **On August 28, 2003, the matter passed in the Assembly (46-31) and on September 2, 2003 the Senate concurred in the Assembly amendments (23-14). On September 2, 2003, the bill was enrolled and has been sent to the Governor.**

Senate Bill 796 (Dunn) Employment:

Under existing law the Labor and Workforce Development Agency (LWDA) 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 violation of the code for which no civil penalty is otherwise established, the bill

would establish a civil penalty. **On September 2, 2003, the bill was amended in the Assembly. The primary purpose of the amendments is to clarify that there shall be no penalty assessed if the allegation is that LWDA has failed to act to enforce the relevant statute.**

9. PERSONNEL

Lorna Fong, a loaned employee from EDD will begin work with the Executive Secretary's office on September 15, 2003.

10. COMPLIANCE

None.

11. FUTURE AGENDA REVIEW

None.

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

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION