

**STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD**

**BOARD MEETING MINUTES**

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

**September 10, 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 September 4, 2003 were approved 3-0.

**2. BOARD MEMBER COMMENT**

None.

**3. PUBLIC COMMENT**

None.

**4. ANNOUNCEMENTS**

The State Employee Heart Walk was held on Thursday, September 4, 2003. Thanks to all who participated and made contributions.

The Executive Fellowship Program had circulated its list of fellows who will be working in various agencies between November 24, 2003 and August 18, 2004. Agencies who wish to offer a placement to a fellow must apply by October 10, 2003.

The next lunchtime meeting of the Industrial Relations Association of Northern California (IRANC) will be held on September 18, 2003 at The Firehouse in Sacramento.

**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:**

**Reiter Berry Farms, 02-NA-14-SAL**

The Notice of Intent to Take Access was filed on Sept 8, 2003 by the UFW. Reiter Berry Farms has berry operations in Santa Cruz and Monterey counties.

**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 petitioner filed its motion for reconsideration on September 9, 2003. The matter is pending consideration of the motion for reconsideration.

**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 post-hearing briefs which are due on September 19, 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 are due September 19, 2003.

**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**

**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. The Attorney General filed a demurrer on behalf of the Board on May 9, 2003. 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. On July 31, the Court issued a tentative ruling denying the plaintiffs' motion for reconsideration. The plaintiffs decided to accept the tentative ruling. 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** – No report.
- (b) **Regulations** – The Board discussed the Legislative Counsel Opinion on the Agricultural Employee Relief Fund (AERF) that was received on September 5, 2003. The Board authorized staff to proceed with drafting amendments to the AERF regulations, and to draft decertification regulations.
- (c) **Budget** – The Department of Finance has issued a budget letter requiring agencies to submit a plan eliminating 20% of expenditures. The Board discussed the lease for the library space and the relocation of library materials.
- (d) **Policies and Procedures** – No new update.
- (e) **Labor and Workforce Development Agency** – No new update.
- (f) **Strategic Plan** – No new update.
- (g) **Annual Report** – Finished copies of the Board's Annual Report for Fiscal Years 2000-01 and 2001-02 were delivered to ALRB Headquarters and will be distributed shortly.
- (h) **Procedural Manual (Style Manual)** – Executive Secretary Barbosa is working with staff on cross-training.
- (i) **Agricultural Employees Relief Fund** – The Board discussed issues to be considered when developing protocols for implementing the Agricultural Employees Relief Fund (AERF). Board Member Rivera will circulate proposed protocols shortly.

## 7. OUTREACH PROJECT

- (a) **Novella**  
The finalized text of the novella will be reviewed once more for the accuracy of the Spanish translation.
- (b) **Brochures**  
The Board reviewed a proof of the new design for outreach brochures.

**8. LEGISLATION:**

Board Counsel Wender reported on the following pending legislation:

SB 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 any violation of the code for which no civil penalty is otherwise established, the bill would establish a civil penalty. **On September 8, 2003, the bill was placed on inactive file pursuant to Assembly Rule 78. On September 9, 2003, notice of motion to remove from inactive file was given by Assembly Member Dutra.**

**9. PERSONNEL**

None.

**10. COMPLIANCE**

None.

**11. FUTURE AGENDA REVIEW**

None.

**12. PUBLIC MEETING ADJOURNED AT: 11:40 a.m.**

**WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION**