

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

September 17, 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; Assistant Executive Secretary Fong.
Others Present:
Staff Absent: Analyst Massie

PUBLIC SESSION

1. APPROVAL OF MINUTES

The Board's minutes for September 10, 2003 were approved 3-0.

2. BOARD MEMBER COMMENT

None.

3. PUBLIC COMMENT

None.

4. ANNOUNCEMENTS

The Executive Secretary welcomed Lorna Fong as the new Assistant Executive Secretary, who previously served as Interim Assistant Deputy Director of the Disability Insurance Branch and was formerly the Chief of the EDD Information Security Office. She has extensive operational and administrative experience as well as extensive knowledge of policy development and planning.

IRANC will hold its next luncheon meeting on Thursday, September 18, 2003. Speaker Ken Silbert of Chvany, Silbert and Knowlton will be speaking on Interest and Rights Arbitration.

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:

No new NAs or NOs filed.

PENDING ELECTION MATTERS:

Milky Way Dairy, 02-RC-2-VI

The Board issued its decision on challenged ballots on September 3, 2003. The petitioner filed a motion for reconsideration on September 9, 2003. The Executive Secretary, on his own motion, re-served the Board's decision as counsel for the Petitioner was not served with the decision. The motion for reconsideration is due September 23, 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 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 that are due on September 19, 2003.

COMPLAINT REPORT

Bob Borba dba Bob Borba Livestock, Case No. 03-CE-56-VI
Complaint issued September 11, 2003.

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:

William Warmerdam, Case No. 97-CE-10-VI

The Regional Director withdrew the complaint as the respondent fully complied with terms and conditions of the informal settlement agreement.

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 Board issued a decision on the petition for mandatory mediation on August 1, 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. 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, 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. The Petitioner's opening brief was received on July 15, 2003 with the Board's response brief due on September 27, 2003. If the Petitioner wishes to file a reply brief, it will be due October 28, 2003.

6. BUDGET AND ADMINISTRATION

- (a) **Information Technology** – None.
- (b) **Regulations** – Proposed Amendments to Conflict of Interest Code – None. Agricultural Employees Relief Fund - Draft amendments to the AERF and decertification regulations, along with a Draft Notice of Proposed Regulatory Action and Initial Statement of Reasons were distributed to the Board for its review, with a response date of September 24. In the meantime, the draft amendments will be sent to the Regional Directors for their input.
- (c) **Budget** – None.
- (d) **Policies and Procedures** – Dymally-Alatorre Bilingual Services Act – A draft implementation plan has been sent to Agency for comment. The final implementation plan, along with the bilingual services policy, the complaint policy, and a list of certified bilingual employees must be submitted to Agency by October 1, 2003.

The Board's Policies and Procedures Committee will meet Thursday, September 18, 2003, to discuss Dymally-Alatorre and other policy issues.

- (e) **Labor and Workforce Development Agency** – Board Member Barrios reported on the status of the case tracking system.
- (f) **Strategic Plan** – The Board will review the current plan and make necessary updates.
- (g) **Annual Report** – The Board and General Counsel have approved the cover letters to the governor et al. and parties. Distribution will begin this week.
- (h) **Procedural Manual (Style Manual)** – In progress.
- (i) **Agricultural Employees Relief Fund** – Draft protocols are still in progress.
- (j) **Mandatory Mediation Neutrals Training (September 26, 2003)** – The Board and Board Counsel will attend.
- (k) **General Counsel Request for Administrative Assistance - Processing of payroll data on compliance cases:** Assistant Executive Secretary Fong agreed to follow-up with EDD on the specific information security limitations with the data.

7. OUTREACH PROJECT

- (a) **Novella** – Board Member Rivera has changes on the draft. Issues remain on funding to cover print costs.
- (b) **Brochures – ALRB Brochures in Color**

8. LEGISLATION:

Board Counsel Wender reported on the following pending legislation:

SB 796 (Dunn) Employment.

The bill allows aggrieved employees to bring civil actions to recover penalties for Labor Code violations. On September 11, 2003, the bill passed the Assembly (42-34). On September 12, 2003, the Senate concurred in the Assembly amendments and sent the bill to enrollment.

9. PERSONNEL – None.

10. COMPLIANCE – None.

11. FUTURE AGENDA REVIEW - None.

12. PUBLIC MEETING ADJOURNED AT 11:10 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION