

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

November 5, 2003

Time: 10:05 a.m.
Members present: Chairwoman Shiroma, Board Members Barrios and Rivera
Staff Present: Board Counsels Wender, Murray and Heyck; Executive Secretary
Barbosa; Assistant Executive Secretary Fong; Analyst Massie
Staff Absent: None.

OPEN SESSION

1. Approval Of Minutes

The Board's minutes for October 29, 2003 were approved 3-0.

2. Board Member Comment

None.

3. Public Comment

None.

4. Announcements

State Employees Food Drive runs from November 17 through December 19, 2003. The goal for the ALRB is to raise 1,300 pound-equivalents of food. Employees can volunteer to help sort food between December 5 through December 12, 2003, at the Food Link warehouse.

The farmworkers' breakfast in El Centro is now December 12, 2003; set up for the breakfast will be at 3:00 am.

Board Member Rivera will meet interested law students November 6, 2003, for possible nine-month executive fellowships at the ALRB.

5. Weekly Status Report On Elections, Unfair Labor Practice Complaints, Hearings And Court Litigation

ELECTION REPORT

NOTICE OF INTENT TO TAKE ACCESS (NA) AND NOTICE OF INTENT TO ORGANIZE (NO):

The UFW filed an NA with Norman's Nursery, 03-NA-3-EC(R), on October 14, 2003.

The UFW filed an NA with Reiter Berry Farms, 03-NA-15-SAL, on October 14, 2003.

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. On September 26, 2003, the Board denied reconsideration of the order, as the motion contained arguments already considered and rejected by the Board. On October 3, 2003, the Visalia Regional Director opened and counted the challenged ballots and issued a final tally of the ballots:

Fresh Fruit and Vegetable Workers Union	26
No Union	29
<u>Unresolved Challenged Ballots</u>	<u>0</u>
Total	55

The Executive Secretary will process the objections of the incumbent union, which has declined to withdraw its objections.

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 Regional Director 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 July 3, 2003. Post-hearing briefs were received September 22, 2003. The ALJ's decision on the matter is pending.

Albert Goyenette Dairy, Case No. 03-RD-1-VI

On October 10, 2003, agricultural employee Pedro Ruelas filed a decertification petition with the Visalia Regional Office seeking an election to oust the incumbent union, UFCW, at the Albert Goyenette Dairy. The employer is a dairy located in Buttonwillow in Kern County with approximately 35 employees. The election was held on October 17, 2003 and the ballots were impounded pending a resolution of the ULPs. The Regional Director is conducting an expedited investigation of the charges.

COMPLAINT REPORTS:

None.

PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED:

None.

NEW CASES SET FOR HEARING:

None.

CASES ON CALENDAR:

**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.

Sun City Growers, 02-CE-53-EC(R)

The pre-hearing conference is set for January 14, 2004.

The hearing is set for January 28, 2004.

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.

CASE PENDING ALJ DECISION:

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

The hearing closed on July 3, 2003. Post-hearing briefs were received September 22, 2003. The matter is pending an ALJ decision.

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, 2003-MMC-01:

In **Hess Collection Winery** (2003) 29 ALRB No. 6, the Board issued its first decision under the new mandatory mediation and conciliation law, denying the Hess Collection Winery (Employer) petition for review of the mediator's report imposing final terms of a collective bargaining agreement. The Employer requested that the Board vacate and set aside the mediator's report for a variety of reasons. The Board found no basis for accepting review of the mediator's report and denied the Employer's petition in full. The parties have until November 17, 2003, to petition for a writ of review in the Court of Appeal or California Supreme Court pursuant to Labor Code section 1164.

Pictsweet Mushroom Farms, Request for Mediation, 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. On September 23, 2003, the Board received a copy of a letter from the UFW attorney to the assigned mediator regarding the mediator's previous request of the parties that they acknowledge his immunity from being sued for his role in the process. Since there is no request pending from the mediator to the Board, there is nothing for the Board to act on at this time. The mediation between the parties commenced on September 29, 2003, with neutral Bill Rule.

COURT LITIGATION:

Western Growers Association, et al., 03AS00987

On August 22, 2003, the plaintiffs filed a petition for writ of mandate in the Court of Appeal, Third Appellate District, seeking to overturn a ruling by the Superior Court that the matter is not yet ripe for adjudication. The Superior Court ruled that the matter would not be ripe until the Board issues a decision fixing the terms of a collective bargaining agreement. A decision was made not to file an optional preliminary response to the petition for writ of mandate. The Court of Appeals has asked the real parties in interest to file an opposition addressing whether the superior court has subject matter jurisdiction over the matter. An opposition was filed on October 15, 2003, and the parties are awaiting a ruling by the Court. This lawsuit, which challenges the constitutionality of the new mandatory mediation and conciliation law (SB 1156 and AB 2596, codified as Labor Code sections 1164 to 1164.14), was filed on February 24, 2002 in the Sacramento County Superior Court.

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 July 15, 2003, and the Board's response brief was sent overnight September 28, 2003. If the Petitioner wishes to file a reply brief, it will be due October 29, 2003. On October 6, 2003, Pictsweet proposed a 60-day continuance to December 19, to allow time for a global settlement. All parties agreed to the stipulation filed by the employer October 14, 2003. The court approved the stipulation. The Petitioner's brief will be due December 19, 2003.

6. Budget And Administration.

- (a) Information Technology: ALRB support staff and Board Counsel received training on scanning function of the Kyocera. The ALRB website will be modified to include term limits for Board members.
- (b) Regulations
 - (1) Proposed Amendments to Conflict of Interest Code: The ALRB received notification from the Office of Administrative Law that regulations had been filed with the Secretary of State's office on October 16, 2003; the regulations will take effect November 17, 2003.
 - (2) Agricultural Employees Relief Fund (AERF): draft amendments to the AERF and decertification regulations, Notice of Proposed Regulatory Action, Initial Statement of Reasons. The Notice of Proposed Regulatory Action was submitted to OAL on October 6, 2003 for publication in the Notice Register on October 17, 2003. The public comment period will begin upon publication and will close December 1, 2003. The Board is scheduled to discuss the regulations and any comment received from the public at the December 3, 2003, Board meeting. The draft regulations and supporting documents have been posted to the ALRB website. The Board has not received any comments to date.
- (c) Budget: Accounting Officer Davis has been requested to provide the Board with an update on the budget at the November 12, 2003, Board meeting.
- (d) Policies and Procedures: The Board received comments on the draft vehicle use policy from the General Counsel. The draft workplace violence prevention policy will be discussed in committee and presented to the Board for review on November 12, 2003.
- (e) Labor and Workforce Development Agency:
 - (1) Case Tracking System – Board Member Barrios distributed the final report from the Labor Agency on the case management project.
 - (2) Transition Issues – none.
- (f) Annual Report: Final comments on the draft version are due close of business November 7, 2003 for Board consideration November 12, 2003.
- (g) Manuals
 - (1) Procedures Manual: in progress.
 - (2) Style Manual: in progress.

- (h) Regional Directors' Quarterly Meeting – the Board will schedule a conference call with the Regional Directors December 3, 2003 at 1:00 pm.
- (i) Visit to Regional Offices – the Board will look at scheduling a trip in early 2004 to Visalia.

7. Outreach Projects

- (a) Novella: the Executive Secretary sent draft novella with edits to ALRB field staff on October 10, 2003. Board Member Rivera reviewed the comments from the field staff. The Board wanted the language to be more familiar, using common vernacular and terminology. The draft with field staff comments will be forwarded to Javier Juarez for finalization.
- (b) Forms: Board Member Rivera will create a schedule for edits to the forms, based on the feedback from regional offices.
- (c) Brochures: the regional offices will be polled to prioritize volume needs for each brochure.

8. Legislation: SB 796 (Dunn) signed into law October 12, 2003 (Chapter 906, Statutes of 2003). Board Member Rivera and Counsels Wender, Murray, and Heyck met November 4, as a committee to identify issues for implementing SB 796.

9. Personnel: None.

10. Compliance: None.

11. Future Agenda Review: None.

The public meeting adjourned at 11:55 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION