

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

November 12, 2003

Time: 1:00 p.m.
Members present: Chairwoman Shiroma, Board Members Barrios and Rivera-Hernandez
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 November 5, 2003 were approved 3-0.
2. **Board Member Comments:** None.
3. **Public Comments:** None.
4. **Announcements:** None.
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 employer requested withdrawal of its election objections petition on November 4, 2003, which was granted by the Executive Secretary on November 7, 2003. The Executive Secretary issued an order on November 7, 2003, granting in part and dismissing in part the petitioner's election objection petition. The request for review is due on November 17, 2003. A hearing will be set at a time and place to be later noticed by the Executive Secretary's office with respect to those 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. 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 will complete his investigation of the charges by

November 17, 2003, and will determine, in light of his disposition of the charges, whether to open and count the ballots.

COMPLAINT REPORTS:

None.

PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED:

Coastal Berry of California – a pre-hearing was held on November 6, 2003. The respondent failed to appear in person or via telephone. See below for more information.

NEW CASES SET FOR HEARING:

None.

CASES ON CALENDAR:

Coastal Berry of California, Farm Workers' Committee, 01-CL-3-SAL

The pre-hearing conference was held on November 6, 2003. The respondent failed to appear at the conference, and the representative for General Counsel informed those participating that he had received a letter from Respondent's attorney, stating that inasmuch as the Respondent is now defunct, the Respondent did not intend to appear at the prehearing conference or at the hearing, scheduled for November 20, 2003. In accordance with section 20249(f), the ALJ struck Respondent's Answer to Complaint, and to deem all allegations in the Complaint to be true. Any request for review is due by November 17, 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.
The employer filed a motion to continue the hearing on November 7, 2003, which is pending.

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:

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 30 days from October 16, 2003, to petition for a writ of review in the Court of Appeal or California Supreme Court pursuant to Labor Code section 1164 (due November 17, 2003).

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 and it was 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: Analyst Massie reminded the Board of the monthly Microsoft update. She will also be completing a software inventory in November, which will be due in January.

- (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 be in effect November 16, 2003. The Executive Secretary will issue a notice to all employees informing them of the revised regulations with an attached copy. The regulations will be loaded to the ALRB web site.
 - (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 has not received any comment to date. 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 has been posted to the ALRB website.

- (c) Budget: Accounting Officer Davis provided the Board with an update on the status of the Fiscal Year (FY) 2003-2004 budget. The Board directed Accounting Office Davis and Assistant Executive Secretary Fong to look at options to resolve outstanding budget and contract issues.

- (d) Policies and Procedures:
 - (1) Vehicle Use Policy: Comments received from the board approving the policy.
 - (2) Bilingual Services Survey: Assistant Secretary Fong updated the Board on the next bilingual services survey, required under the mandates of the Dymally-Alatorre Bilingual Services Act of 1973.

- (e) Labor and Workforce Development Agency:
 - (1) Case Tracking System: Board Member Barrios provided an update on the status of the feasibility study report.

- (f) Annual Report: Work continues on the draft.
- (g) Regional Directors' Quarterly Meeting: The Board and Board Counsel will review draft agenda and send changes to the Executive Secretary by November 14, 2003.
- (h) Conflict of Interest – Appointment of Filing Officer: The Board will discuss with the General Counsel use of the ALRB Personnel Officer as the filing officer for conflict of interest documents.

7. Outreach Projects

- (a) Novella: the novella with edits from the ALRB field staff was turned over to Javier Juarez, who will meet with the Executive Secretary on November 13, 2003, to finalize the novella.
- (b) Brochures: The Labor Agency provided the ALRB with brochure paper samples and cost estimates for publishing brochures. The photographs of farmworkers can be used in brochures or for other outreach purposes. The Labor Agency continues to work on printing options for the ALRB. Volume estimates for the brochures are due from the regional offices November 12, 2003.

8. Legislation: SB 796 (Dunn) signed into law October 12, 2003 (Chapter 906, Statutes of 2003). Board Member Rivera-Hernandez reported on a meeting with representatives from the Labor Agency and other labor departments. The purpose of the meeting was to discuss implementation of the mandates contained in the bill. The Board will seek additional clarification from the Legislative Counsel.

9. Personnel: None.

10. Compliance:

Hess Collection Winery, Case No. 09-CE-23-SAL (27 ALRB No. 2). Regional Director Capuyan issued a notice of hearing and makewhole specification on November 6, 2003, with a proposed award of \$476,850. An answer to the specification is due within 15 days.

11. Future Agenda Review: None.

The public meeting adjourned at 3:15 p.m.

THERE WAS NO CLOSED SESSION