

**STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD**

**BOARD MEETING MINUTES**

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

**November 19, 2003**

Time: 10:00 a.m.  
Members present: Chairwoman Shiroma, Board Members Barrios, Bustamante, Rivera-Hernandez, and Zingale  
Staff Present: Board Counsels Heyck, Murray, and Wender; Executive Secretary Barbosa; Assistant Executive Secretary Fong; Analyst Massie  
Staff Absent: None.

**OPEN SESSION**

- 1. Approval Of Minutes:** The Board's minutes for November 12, 17, and 18, 2003, were approved 3-0, with two abstentions.
- 2. Board Member Comments:** Chairwoman Shiroma welcomed Board Members Bustamante and Zingale to the ALRB.
- 3. Public Comments:** None.
- 4. Announcements:** Executive Secretary Barbosa introduced Jorge Moreno, a journalism student from California State University, Sacramento, who is visiting various state agencies. His parents are farm workers in the Live Oak area. The Board will provide Jorge with outreach materials. The ALRB Board meeting scheduled for November 26, 2003, has been moved to Tuesday, November 25, 2003.
- 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):**

None.

**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>
<b>Total</b>	<b>55</b>

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. No request for review was filed. The union has sent a letter requesting withdrawal of its petition that is pending receipt. Once the letter is received, the election will be certified.

**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 election was held on October 17, 2003, and the ballots impounded pending a resolution of the ULPs. The incumbent union (UFCW) requested withdrawal of its charge that was granted by the Regional Director on November 12, 2003. The underlying ULP having been resolved, the Regional Director will open and count the ballots and issue a final tally of ballots. The ballots will be opened and counted November 19, 2003, at 11:00 am.

## **COMPLAINT REPORTS:**

### **Pictsweet Mushroom Farms, 01-CE-176-EC(OX)**

The complaint alleges that the employer failed to bargain in good faith with the union in violation of section 1153(e) of the Act.

### **Desert Spring Growers DBA Sun City Growers, 03-CE-5-EC(R)**

The complaint alleges that the employer unlawfully suspended an employee because the employee engaged in protected concerted and union activities.

### **US Abalone, 01-CE-59-SAL**

The Salinas Regional Director issued a back pay specification for one employee in the amount of \$52,479.80.

## **PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED:**

### **US Abalone, 01-CE-59-SAL**

The pre-hearing conference was held November 18, 2003. The pre-hearing conference order was issued November 19, 2003.

## **NEW CASES SET FOR HEARING:**

None.

## **CASES ON CALENDAR:**

### **US Abalone, 01-CE-59-SAL**

The pre-hearing conference was held November 18, 2003. The hearing is set for December 2, 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.

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

The pre-hearing conference is set for April 6, 2004. The hearing is set for April 26, 2004.

**CASES 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 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. On November 14, 2003, the Employer filed a petition for a writ of review in the Court of Appeal, Third Appellate District pursuant to Labor Code section 1164 seeking review of the Board's Order and Decision in Hess Collection Winery. The certified record is due on November 24, 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. The petitioners have asked the Court to consider WGA and Hess together.

**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.

**The Hess Collection Winery, C045405**

On November 14, 2003, the Employer filed a petition for a writ of review in the Court of Appeal, Third Appellate District pursuant to Labor Code section 1164 seeking review of the Board's Order and Decision in Hess Collection Winery. The certified record is due on November 24, 2003.

**6. Budget And Administration**

(a) Information Technology: None.

(b) Regulations

- (1) Proposed Amendments to Conflict of Interest Code: The regulations are effective as of November 17, 2003. The Executive Secretary issued a notice to all employees with an attached copy informing them of the revised regulations with an attached copy on November 14, 2003. The regulations have been uploaded 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 the Office of Administrative Law 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 are posted to the ALRB website.
- (3) Governor Schwarzenegger has issued an Executive Order S-2-03, requesting the Office of Administrative Law to not approve any pending regulations. The Board agreed that the AERF regulations would not be impacted by the mandates of the Executive Order. Member Rivera-Hernandez and Counsel Wender will develop an analysis for the Legal Affairs Secretary.

(c) Budget: The Board has received a past due notice from the Department of Justice of \$644 in connection with services rendered in connection with the mandatory mediation case. Assistant Executive Secretary Fong distributed a list of ALRB contracts and their status for the Board's information.

(d) Policies and Procedures:

- (1) Review Policy List: Member Barrios shared an update on the status of the policies and procedures in progress and completed. Chairwoman Shiroma requested all completed policies be issued to staff as they are approved.
- (2) Vehicle Use Policy: The Board approved the policy 3-0 at the November 12, 2003 meeting. Additional edits from the General Counsel are forthcoming.
- (3) Workplace Violence Prevention Policy: The draft policy was distributed to the board November 17, 2003, for discussion at the December 3, 2003, Board meeting.
- (4) Bilingual Services Survey: The ALRB submitted an exemption request from the 2004 survey on November 18, 2003. In the meantime, training will be scheduled for regional and headquarters public contact staff on December 4, 2003.

(e) Labor and Workforce Development Agency:

- (1) Case Tracking System: Member Barrios provided an update to the new Board members on the case tracking system completed by the regional offices, and the status of the request to secure resources from the Employment Development Department. Member Zingale asked for a briefing on the codes and the case tracking reports, and how the actions affected the agricultural workers. Counsel Heyck will arrange the briefing.
- (2) The ALRB briefing has been tentatively rescheduled for November 21, 2003, to brief Undersecretary Bradshaw.

(f) Annual Report: Work continues on collecting the data. Counsel Heyck will check on options for photocopying the report.

## **7. Outreach Projects**

(a) Novella: The Executive Secretary met with Javier Juarez on November 15, 2003, to discuss final edits of the novella. Mr. Juarez is working on the opening message and final cover and will complete work by November 21, 2003.

(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. Counsel Heyck will contact the photocopy source.

**8. Legislation:** SB 796 (Dunn) signed into law October 12, 2003 (Chapter 906, Statutes of 2003). The Board will seek additional clarification from the author's office. The Board approved the draft letter to Senator Dunn 5-0.

**9. Personnel:** None.

**10. Compliance:** The General Counsel will provide the compliance report next week in preparation for the Regional Directors' conference call on December 3, 2003.

**11. Future Agenda Review:** None.

The public meeting adjourned at 11:30 a.m.