

**STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD**

**BOARD MEETING MINUTES**

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

**January 21, 2004**

Time: 10:10 a.m.  
Members present: Chairwoman Shiroma, Board Members Barrios, Rivera-Hernandez, Bustamante and Zingale  
Staff Present: Board Counsels Heyck, Murray, and Wender; Executive Secretary Barbosa.  
Staff Absent: Analyst Massie

**OPEN SESSION**

1. **Approval of Minutes:** The Board approved the minutes for January 15, 2004, 4-0 with changes discussed at the meeting (Member Bustamante abstained as he was absent from the January 15 meeting).
2. **Board Member Comments:** Chairwoman Shiroma noted that Executive Secretary Barbosa had sent a response to San Francisco Chronicle columnists Phillip Matier and Andrew Ross regarding a misstatement made in their January 19, 2004 column about the frequency of Board meetings.
3. **Public Comments:** None.
4. **Announcements:**

California Rural Legal Assistance will be hosting a fundraiser and community awards event on Saturday, January 24, 2004 from 2:00 p.m. to 5:00 p.m. The event will be held at the Joe Serna, Jr. CalEPA building at 1001 I Street, Sacramento.

The ALRB Staff will participate in the 2004 Dymally-Allatore Bilingual Services Act survey during the week of January 26-30, 2004.

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:**

**Gallo Vineyards, Inc., 03-RD-1-SAL**

The ALJ issued her decision on December 19, 2003. Exceptions are due February 11, 2004. Replies, if any, are due February 24, 2004.

**MaCahon Floral, Inc., 04-RC-1-SAL**

The UFW filed a representation petition with the Salinas Regional Office on January 5 2004 seeking to organize the agricultural employees at MaCahon Floral which is a nursery in Monterey County with approximately 60 employees. The election was held on January 7, 2004 with the following results:

UFW.....	30
No Union .....	14
Unresolved Challenged Ballots.....	<u>17</u>
Total .....	61

Election objections, if any, were due January 14, 2004. None were filed. The Regional Director issued his report on challenged ballots on January 20, 2004. Exceptions, if any, are due within 5 days.

**COMPLAINT REPORTS:**

**PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED:**

None.

**NEW CASES SET FOR HEARING:**

One new case set for hearing:

**Bob Borba dba Bob Borba Livestock, 03-CE-56-VI**

The pre-hearing conference is set for February 17, 2004. The hearing is set for March 8, 2004.

**CASES ON CALENDAR:**

**Desert Springs dba Sun City Growers, 02-CE-53-EC(R)**

The hearing previously set for January 28, 2004 has been taken off calendar and a settlement conference has now been set for the same date.

**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.

**Bob Borba dba Bob Borba Livestock, 03-CE-56-VI**

The pre-hearing conference is set for February 17, 2004. The hearing is set for March 8, 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:**

None.

**ALJ/IHE DECISIONS ISSUED:**

None.

**CASE PENDING EXCEPTIONS AND/OR REPLY:**

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

The ALJ issued her decision on December 19, 2003. Exceptions are due February 11, 2004. Replies, if any, are due February 24, 2004.

**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's (Employer) petition for review of the mediator's report imposing final terms of a collective bargaining agreement. 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*. On December 11, 2003, the parties filed a stipulation to stay the Board's

decision pending resolution of the appeal. Petitioner's opening brief was filed with the court on December 23, 2003. The Board's response brief is due January 22, 2004.

**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 August 1, 2003 referring the matter to mandatory mediation. On November 20, 2003, the mediator previously selected by the parties in the above-entitled case informed the Board by telephone that he had resigned from the case due to illness. On November 21, 2003, the Board granted the UFW's motion to refer the matter to the State Mediation and Conciliation Service to provide a list of mediators from which the parties would select a new mediator. On November 24, 2003, the Employer filed a motion for reconsideration and, in the alternative, for clarification of the Board's order referring request for new panel of mediators. On November 26, 2003, the Board placed its prior order (Admin. Order No. 2003-13) in abeyance pending consideration of the employer's opposition and any response filed by the UFW. On December 3, 2003, the Board issued an order on the motion for reconsideration and clarification, referring the case to the State Mediation and Conciliation Service (SMCS) for the issuance of a new list of mediators, and clarifying the procedure to be utilized in the renewal mediation. The SMCS issued its letter and the parties have now selected a new mediator, Gerald McKay.

**COURT LITIGATION:**

**Western Growers Association, et al., 03AS00987**

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, 2003 in Sacramento County Superior Court. 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 would not be ripe for adjudication until the Board issues a decision fixing the terms of a collective bargaining agreement. On November 20, 2003, the 3rd DCA issued an order summarily dismissing the petition for writ of mandate in the WGA case. The plaintiffs have filed an amended complaint in the Sacramento County Superior Court. The court has taken plaintiff's motion for a preliminary injunction off calendar pending the DCA ruling in the related case of The Hess Collection Winery, C045405. On December 22, 2003, a demurrer and request for a stay of the matter pending the resolution of a related case (Hess) was filed on behalf of the Board. A hearing on the demurrer and request for stay is scheduled for February 19, 2004.

**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. On October 6, 2003, Pictsweet proposed a 60-day continuance to December 19, to file its reply brief, to allow time for a global settlement. All parties stipulated to the continuance and the court approved the stipulation. The Petitioner's brief was filed December 19, 2003. The case is now fully briefed.

### **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. On December 11, 2003, the parties filed a stipulation staying the Board's order pending resolution of the appeal. Petitioner's opening brief was filed with the court on December 23, 2003. Board's response brief is due January 22, 2004.

## **6. Budget And Administration**

- (a) Information Technology: Nothing new to report.
- (b) Regulations: Agricultural Employees Relief Fund (AERF) and Decertification Amendments— The revised notice of proposed regulatory action was mailed out and posted on the ALRB website on January 16, 2004. The new public comment period ends on March 1, 2004.
- (c) Budget: Nothing new to report.
- (d) Policies and Procedures Committee: Nothing new to report.
- (e) Labor and Workforce Development Agency:
  - (1) Case Tracking System: Member Barrios gave an update on the development of the Case Tracking System.
- (f) Annual Report: Board Counsel Murray and Executive Secretary Barbosa are continuing with the collection and analysis of data.

## **7. Outreach Projects**

- (a) Novella: The Board discussed edits to the novella's introductory page suggested by Members Zingale and Bustamante. The Board approved the suggested edits 5-0. Executive Secretary Barbosa will transmit the changes to Javier Juarez.
- (b) Brochures: Board Counsel Heyck reported that the next two brochures should be available soon.

## **8. Legislation:** Nothing new to report.

## **9. Personnel:** With Barbara Lundgren's retirement, Lydia Perez is now the secretary for all five Board members.

## **10. Procedure Manual:** Nothing new to report.

**11. Compliance:** Chairwoman Shiroma will meet with General Counsel Turner regarding compliance reporting.

**12. Future Agenda Review:** The Board discussed scheduling the next Regional Directors' Quarterly meeting for February 4, 2004 in Salinas.

The public meeting adjourned at 11:20 a.m.