

**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 28, 2004**

Time: 10:00 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; and Analyst Massie.

**OPEN SESSION**

- 1. Approval of Minutes:** The Board approved the minutes for January 21, 2004, 5-0.
- 2. Board Member Comments:** Members Barrios and Rivera-Hernandez reported the California Rural Legal Assistance Sacramento Community Service Awards Reception, held on Saturday, January 24, 2004, was well attended. Members Barrios and Rivera-Hernandez will represent the Board at Career Night at McGeorge School of Law on Thursday, February 5, 2004, from 5-7 p.m.
- 3. Public Comments:** None.
- 4. Announcements:**

Antonio Barbosa and Sharon Massie will be attending California Public Sector Chief Information Officer Academy that will be held on February 4 and 5, 2004 at the Sacramento Convention Center.

The El Centro office will be undergoing re-modeling to meet ADA compliance and to downsize the office during the next two months.

**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):**

Nothing new to report.

**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 (January 30, 2004). On January 27, 2004 the Regional Director issued an erratum to his report correcting a date in his report.

**COMPLAINT REPORTS:**

**PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED:**

Nothing new to report.

**NEW CASES SET FOR HEARING:**

**Milky Way Dairy, 02-CE-44-VI**

The pre-hearing conference is set for May 4, 2004. The hearing is set for June 21, 2004.

The complaint alleges various incidents where the employer allegedly interfered with and threatened workers with termination and harassment; issued disciplinary notices and fired workers for supporting a labor organization.

**CASES ON CALENDAR:**

**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.

**Milky Way Dairy, 02-CE-44-VI**

The pre-hearing conference is set for May 4, 2004. The hearing is set for June 21, 2004.

**CASES PENDING ALJ DECISION:**

Nothing new to report.

**ALJ/IHE DECISIONS ISSUED:**

**Maria G. Duran, Farm Labor Contractor, 01-CE-606-EC(R)**

On January 26, 2004 the ALJ vacated the default judgment against Maria G. Duran and dismissed the complaint as the General Counsel's further investigation revealed that Maria G. Duran is a labor contractor and does not function as an agricultural employer. Exceptions due February 19, 2004.

**Sun World International, Inc., 01-CE-613-EC(R)**

On January 26, 2004 the ALJ issued an order as to Sun World International, Inc. establishing the amount of backpay liability. Exceptions to both orders are due within 20 days (February 19, 2004). Exceptions due February 19, 2004.

**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:**

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

The parties reached an informal settlement agreement and the settlement conference has been canceled.

**COMPLIANCE CASES CLOSED:**

Nothing new to report.

**CASES TRANSFERRED TO BOARD FOR DECISION:**

Nothing new to report.

**BOARD DECISIONS:**

Nothing new to report.

**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 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 was filed with the court on November 24, 2003. On November 24, 2003, the court requested the parties provide supplemental briefing regarding the petitioner's stay request. The petitioner's supplemental letter brief addressing legal authority for, and the appropriateness of the stay was filed December 1, 2003. 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 was filed 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 the petition for mandatory mediation on August 1, 2003. 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 UFW filed a motion with the Board requesting, in light of the resignation of the mediator, that the Executive Secretary refer this 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. The UFW thereafter filed its response on November 26, 2003. 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**

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. 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. 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. 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 the employer filed it October 14, 2003. The court approved the stipulation. The Petitioner's brief was filed December 19, 2003. Court noted on December 22, 2003, that the case was 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. The certified record was filed on November 24, 2003. On November 24, 2003 the court requested the parties provide supplemental briefing regarding the petitioner's stay request. 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 was filed January 22, 2004.

## **6. Budget And Administration**

- (a) Information Technology: The Stephen P. Teale Data Center has begun charging agencies a monthly subscription fee to recover the cost of the State's California Homepage.
- (b) Regulations: Agricultural Employees Relief Fund (AERF) and Decertification Amendments—The revised notice of proposed amendments was mailed out on January 16, 2004. The new public comment period ends on March 1, 2004. No comments have been received.
- (c) Budget: Nothing new to report.
- (d) Policies and Procedures Committee: The smoking policy will be reviewed in light of a new law effective January 1, 2004. The next committee meeting is on January 29, 2004.
- (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 of data from the regions.
- (g) Annual Message from the Board: The revised message was reviewed and approved by the Board.
- (h) Timelines: The Board will examine current standards for setting hearings in an attempt to expedite the hearing process. Staff will prepare informational charts and materials explaining the various timelines for the processing of unfair labor practice charges, election petitions and compliance cases.

## **7. Outreach Projects**

(a) Novella: Chairwoman Shiroma has requested advice from Carrie Nevans with printing of Novella.

(b) Brochures: Board Counsel Heyck reported Stephanie Bullock from the Visalia Regional Office picked up new brochures for that office.

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

**9. Personnel:** Nothing new to report.

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

**11. Compliance:** Chairwoman Shiroma and Executive Secretary Barbosa will meet with General Counsel Turner and Assistant General Counsel Sobel regarding compliance reporting.

**12. Future Agenda Review:** Next Regional Directors' meeting – Tentatively scheduled for Wednesday, March 10, 2004, at 10 a.m. in Salinas Regional Office.

The public meeting adjourned at 12:25 p.m.