

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

March 3, 2004

Time: 10:05 a.m.

Members Present: Chairwoman Shiroma, Board Members Zingale, Bustamante and Rivera-Hernandez

Members Absent: None

Staff Present: Board Counsels Wender, Heyck, and Murray; Executive Secretary Barbosa, Analyst Massie, Personnel Analyst Kojima, Accounting Officer Davis, and Fiscal Officer Nevans

Staff Absent: None

OPEN SESSION

- 1. Approval of Minutes:** The Board approved the minutes of February 25, 2004, 4-0.
- 2. Board Member Comments:** None.
- 3. Public Comments:** None.
- 4. Announcements:**

On March 8-10, 2004 the California Integrated and Waste Management Board will hold its CRRA Training Conference & 5th Annual Recycled Product Trade Show at the Sacramento Convention Center. Staff members Sharon Massie and Paula Richardson are planning on attending on March 11, 2004.

The Board will visit the Salinas Regional Office on March 9 and 10, 2004. The Regional Director's Quarterly Meeting will be held on March 10, 2004 at 10 a.m. in Salinas.

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. Both the union and employer filed exceptions to her decision. Replies, if any, are due March 26, 2004.

COMPLAINT REPORTS:

Nothing new to report.

PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED:

Nothing new to report.

NEW CASES SET FOR HEARING:

Nothing new to report.

CASES ON CALENDAR:

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

The pre-hearing conference was held February 17, 2004. The hearing, which was previously set for March 8, 2004, has been continued to April 5, 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:

Nothing new to report.

CASE PENDING EXCEPTIONS AND/OR REPLY:

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

The ALJ issued her decision on December 19, 2003. Both the union and employer filed exceptions to her decision. Replies, if any, are due March 26, 2004.

CASES SETTLED OR RESOLVED:

Nothing new to report.

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. Hess' reply brief is due March 3, 2004. On February 4, 2004, the court granted the UFW's request to file an amicus brief, and accepted the brief filed with the request. On

February 19, 2004, the court issued a writ of review, directing the ALRB and the real party in interest (UFCW) to file returns (responses) by March 10, with Hess' replication (reply) due 10 days thereafter. Originally, the court treated the case as if it was governed by Rule 59 of the CA Rules of Court, which governs the procedures for review of final Board orders in unfair labor practice cases. Section 1164.9 of the MMC statute speaks of court review of Board orders fixing a contract in more traditional writ of review terms. The new filings required by the writ of review will essentially reiterate or incorporate by reference the earlier briefs.

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. On February 6, 2004 WGA filed its memorandum of points and authorities in opposition to the ALRB's (and the intervenors') motion to stay proceedings and demurrer. On February 18, 2004, the superior court issued a tentative ruling granting the request for a stay, which became final when no party requested to appear at the scheduled hearing by the 4:00 p.m. deadline. Absent an effort seeking a writ in the Court of Appeal to overturn the superior court's ruling (there is no indication that such an effort is planned), further action on this case will await resolution of the Hess Collection Winery v. ALRB case.

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. Hess' reply brief is due March 3, 2004. On February 4, 2004, the court granted the UFW's request to file an amicus brief, and accepted the brief filed with the request. On February 19, 2004, the court issued a writ of review, directing the ALRB and the real party in interest (UFCW) to file returns (responses) by March 10, with Hess' replication (reply) due 10 days thereafter. Originally, the court treated the case as if it was governed by Rule 59 of the CA Rules of Court, which governs the procedures for review of final Board orders in unfair labor practice cases. Section 1164.9 of the MMC statute speaks of court review of Board orders fixing a contract in more traditional writ of review terms. The new filings required by the writ of review will essentially reiterate or incorporate by reference the earlier briefs.

6. Budget And Administration

- (a) Information Technology: Analyst Massie reviewed the status of the latest computer virus threat.
- (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 ended on March 1, 2004. No comments were received. The Board took up the matter and voted 4-0 to adopt the amendments as proposed.

- (c) Budget: Information Request re Agency Staffing –Assemblymember Paul Koretz, Chair of the Assembly Committee on Labor and Employment, is conducting an oversight hearing on the status of the California Labor and Workforce Development Agency and California Labor Law Enforcement at 1:30 p.m. on March 17, 2004, at the State Capitol in Room 447. Fiscal Officer Nevans and Personnel Analyst Kojima reviewed agency positions involved in enforcement. Fiscal Officer Nevans will forward to the Board a proposed response this afternoon.

The Board recessed at 11:30 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.

The Board reconvened into open session at 11:55 a.m.

(d) Labor and Workforce Development Agency:

- (1) Case Tracking System: The meeting with EDD to discuss the terms and responsibilities of the Memorandum of Understanding for loaned EDD staff that will assist in developing a statistical tracking system for the ALRB was continued in order to address various questions posed by EDD. The meeting will be rescheduled for a later date.
- (2) Audit and Labor Enforcement Taskforce Request for Agency Representative: Chairwoman Shiroma and Executive Secretary Barbosa will meet with General Counsel Turner to discuss a representative.
- (3) Language Survey 2003-2004: Executive Secretary Barbosa reported that Analyst Massie will assist with the preparation of this report to the Labor Agency.
- (4) Small Business, Microbusiness and DVBE Contracting Activity Report: The mid-year report is due to Department of General Services. Executive Secretary Barbosa will follow up with Accounting Officer Davis on the preparation of this report.

7. Outreach Projects

- (a) Novella: The English translation of the finalized Novella is being prepared.

8. Legislation: Board Counsel Wender shared with the Board a communication received from Senator Dunn's office regarding Senate Bill 796.

9. Future Agenda Review: The next regularly scheduled Board Meeting will be held on Thursday, March 11, 2004, at 10 a.m.

The public meeting adjourned at 12:15 p.m.