

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

March 16, 2004

Time: 10:10 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, and Analyst Massie
Staff Absent: None

OPEN SESSION

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

Labor Agency Acting Secretary Victoria Bradshaw is unable to attend today's meeting but will reschedule for a later date.

Assembly Member Paul Koretz, Chair of the Assembly Committee on Labor and Employment is holding an oversight hearing on the status of the California Labor and Workforce Development Agency and California Labor Law Enforcement at 10:00 a.m. on March 17, 2004 at the State Capitol in Room 447.

On March 8, 2004, SEIU Local 1000 and CSEA requested copies of any and all personal services contracts entered into by the Agricultural Labor Relations Board. The Board's response is due on March 18, 2004. The Department of Personnel Administration is reviewing the request and will advise the Board on the appropriate response.

Senate Budget Subcommittee No. 2 will review the 2004-05 proposed budget of the ALRB on March 18, 2004, at the State Capitol in Room 112 upon adjournment of session.

The El Centro Regional Office will be staffing an informational booth at the Annual Flying Doctors event in Coachella on March 20, 2004.

The Teale Data Center will host an open house on March 23, 2004 between 2:00 and 4:00 p.m.

There are a series of events at UC Davis School of Law from March 15-18 celebrating Cesar Chavez Day. On April 2, 2004 the UC Davis School of Law is sponsoring an Immigration and Civil Rights Law conference including a discussion on guest workers. The moderators will include Professor Phil Martin and others.

Executive Secretary Barbosa will ask Business Services Officer McCarther to investigate the cost of binding ALRB Board decisions from 1996 to 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):

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:

Albert Goyenette, 02-CE-34-VI

The Visalia Regional Director issued a complaint against Albert Goyenette on March 11, 2004 alleging that the employer has failed to rehire an employee following his testimony an ALRB conducted an investigative hearing.

PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED:

Nothing new to report.

NEW CASES SET FOR HEARING:

The El Centro Regional Director has requested hearing dates in three cases: Cocopah Nurseries, Inc. – 03-CE-4-EC(R), Aurora Farms dba George Borba & Son Dairy – 03-CE-7-EC(R) and 03-CE-18-EC(R), and Hadley's Date Gardens – 03-CE-15-EC(R). The requests are being processed and the cases will be set this week.

D'Arrigo Bros. Co., 03-CE-5-SAL

The pre-hearing conference is set for April 20, 2004. The hearing is set for May 11, 2004.

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:

Excelsior Farming, 01-CE-46-VI

The Regional Director withdrew the complaint and dismissed the case as the parties reached a private party settlement.

Colendich and Vukasovich Vegetable Farms, 99-CE-26-SAL

The Regional Director withdrew the complaint and dismissed the case as the respondents fully complied with the terms of the settlement agreement.

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. Western Growers Association filed an amicus curiae brief on March 8, 2004. The ALRB's return was filed on March 10, 2004.

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 parties are currently discussing a global settlement agreement which would resolve the remaining issues pending on appeal.

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. Western Growers Association filed an amicus curiae brief on March 8, 2004. The ALRB's return was filed on March 10, 2004.

6. Budget And Administration

- (a) Information Technology: Stephen Wicklund of Capital Datacorporation proposed a redesign of our current e-mail system. Analyst Massie will further investigate benefits and costs and report back to the Board. Analyst Massie and Business Services Officer McCarther will cost out replacement of obsolete computers and laptops. The Health and Human Services Data Center (HHSDC) is considering offering Blackberry service to customers, and has asked Agency Information Officers to inquire with agency departments regarding the anticipated need for this service. The Board is not interested in the service at this time but may be in the future. Analyst Massie will contact Pam Harris of EDD regarding costs.
- (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. On March 3, 2004, the Board took up the matter and voted 4-0 to adopt the amendments as proposed. The regulation package was forwarded to the Office of Administrative Law and they have until April 23 to approve or reject the package.

(c) Budget: Senate Budget Subcommittee No. 2 will review the 2004-05 proposed budget of the ALRB on March 18, 2004, at the State Capitol in Room 112 upon adjournment of session. Fiscal Officer Carrie Nevans will be unavailable to assist our agency for the remainder of this fiscal year. Chairwoman Shiroma and Executive Secretary Barbosa will attempt to have a new fiscal officer assigned to the agency.

(d) Policy and Procedures Committee:

- (1) COBRA—The Board approved the COBRA policy.
- (2) Workers' Compensation—The Board approved the Workers' Compensation policy.
- (3) Board Counsel Time Sheets—Work continues on the policy.
- (4) Procurement Policy—Business Officer McCarther needs information regarding the agency's procurement policy for a report due the end of this month.
- (5) Remaining Policies Under Review—Board Counsel Heyck will forward a list of the remaining policies under review by the committee to the Board.

(e) 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 has been continued until next week.
- (2) Audit and Labor Enforcement Taskforce – General Counsel Turner hosted the latest meeting. The Executive Secretary will ask the General Counsel for a summary of the meeting.
- (3) Bilingual Services – Alice Justice is working on the annual bilingual services report which is due at the end of the month. In preparing the report she noticed that the Board's mission statement, while contained in the Annual

Report, is not otherwise available. The mission statement is now being prepared in English and Spanish to be uploaded to the ALRB website.

- (f) Annual Report 2002/03 – Executive Secretary Barbosa reported that work continues and he will be working with Analyst Massie on the Petition to Certification Chart.
- (g) Ideas for Legislative Amendments to Promote Greater Efficiency in the Administration of the ALRA – Board Counsel Murray will issue a draft report by Thursday, March 18. Topics will include bonds, liens, injunctions, makewhole, and bankruptcy.
- (h) Videotapes of Mediator Training – Micki Callahan has 25 videotapes of the mandatory mediation conference that are available at a cost of \$10/tape. Ms. Callahan plans to contact everyone on the ALRB ad hoc committee list to see if anyone is interested. The Board would like to acquire at least 10 tapes.
- (i) ALRB 30th Anniversary Conference – Professor Phil Martin of the UC Davis Department of Agricultural and Resource Economics has contacted the agency and indicated that he is planning a conference on the ALRA in October 2004 or June 2005. He has invited two distinguished keynote speakers to participate: Stanford Law School Professor William B. Gould IV, former Chairman of the NLRB, and Congressman Howard Berman. Approximately 125 participants attended the October 2000 ALRA Conference Executive Secretary Barbosa will contact Professor Martin regarding our interest in the upcoming conference.

7. Outreach Projects

- (a) Novella: An English version of the Novella is now available. Sallie McCarther is exploring the cost of digitizing the Novella.
- (b) Brochures: The Board would like to print the remaining new brochures. Printing costs need to be researched.

8. Legislation: Nothing new to report.

- 9. Personnel:** Member Rivera-Hernandez reported that two students from McGeorge School of Law have expressed an interest in working at headquarters during the summer and one student would like to work in the Salinas Regional Office. Member Rivera-Hernandez will provide students with assistance in applying for grants.

10. Compliance: General Counsel Turner related that Compliance Officer Blanco is unable to continue with compliance duties due to his workload. The Board discussed memos from General Counsel Turner regarding compliance.

11. Future Agenda Review: Nothing new to report.

The public meeting adjourned at 11:45 a.m.