

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

D'ARRIGO BROS. CO. OF CALIFORNIA,	)	
	)	
Employer,	)	Case No. 2007-MMC-01
	)	
and	)	ORDER DENYING REQUEST
	)	FOR CONTINUANCE OF
	)	COMMENCEMENT OF
UNITED FARM WORKERS OF AMERICA,	)	MANDATORY MEDIATION
	)	
	)	
Petitioner.	)	Admin. Order 2007-02
_____	)	

ORDER

PLEASE TAKE NOTICE THAT the Request for Continuance of Commencement of Mandatory Mediation, filed by D' Arrigo Bros. Co. of California (D' Arrigo) on April 30, 2007, is hereby DENIED for the reasons that follow.

As a preliminary matter, we address the rationale for having the Board, rather than the mediator, rule on this request. Board Regulation 20407, subdivision (a) (2)<sup>1</sup> provides that "the mediator shall preside at the mediation, shall rule on the admission and exclusion of evidence and on questions of procedure and shall exercise all powers relating to the conduct of the mediation." As a general rule, therefore, questions regarding the scheduling of the mediation are properly addressed to the mediator. However, the instant request for a continuance is based on a complaint filed by D' Arrigo on April 18,

<sup>1</sup> Board Regulations are codified at Title 8, California Code of Regulations, section 20100, et seq.

2007 in the United States District Court for the Southern District of California seeking to enjoin the Board from proceeding with the mandatory mediation process based on an alleged claim of federal preemption. Specifically, the claim is that the entire mandatory mediation process is preempted by the Employee Retirement Income Security Act of 1974 (ERISA, 29 U.S.C. § 1001, et seq.). As this court action is directed to the Board and alleges that the Board's enforcement of the statute creating the mandatory mediation process is prohibited by federal law, it is appropriate that the request for continuance be ruled on by the Board.

The request is denied for two reasons. First, the federal complaint is patently not ripe for review. As there is no certainty that the process will end with an imposed contract, rather than a mediated agreement, or that the terms of an imposed contract would implicate ERISA, the complaint seeks an improper advisory opinion from the court based on a hypothetical set of facts. Further, federal case law makes it clear that there can be no case or controversy until the contested legislative action<sup>2</sup> is complete. (See, e.g., *New Orleans Public Services, Inc. v. Counsel of the City of New Orleans, et al.* (1989) 491 U.S. 350, 371-372.) While it is the Board's position that the legislative action would not be complete until state court review has concluded, there can be no dispute that it would not be complete until at minimum the Board has issued a decision on review of the mediator's report. Therefore, the complaint is subject to dismissal on ripeness grounds.

---

<sup>2</sup> The California Court of Appeal for the Third Appellate District has concluded that the interest arbitration aspect of the mandatory mediation process constitutes legislative action. (*Hess Collection Winery v. Agricultural Labor Relations Board* (2006) 140 Cal.App.4<sup>th</sup> 1584.)

Second, the prayer in the complaint for an injunction of the entire mandatory mediation process is patently overbroad. The only issue presented to the court is the potential preemptive effect of ERISA upon terms of an imposed contract relating to employee benefit plans. The court would have no jurisdiction over the entire process, of which the benefit provisions would be only a small part. Therefore, even if the court were to find that an injunction is warranted, it would not prevent the mediation process from going forward. Rather, the Board could only be enjoined from including provisions in an imposed contract that would be preempted by ERISA. Consequently, there is no meritorious legal basis for delaying the mediation process. In addition, in light of the time frames in the mandatory mediation statute, it is highly unlikely that the Board decision would issue its decision before the court, in the normal course of events, will have ruled on any motion for a preliminary injunction.

By Direction of the Board.

DATED: May 3, 2007

---

J. ANTONIO BARBOSA  
Executive Secretary, ALRB