Crows Landing, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

SAN JOAQUIN TOMATO GROWERS, INC.,	)	Case No. 2011-MMC-001
Employer,	)	
and	)	37 ALRB No. 5
UNITED FARM WORKERS OF AMERICA,	)	December 23, 2011
Petitioner.	)	

DECISION AND ORDER

On November 17, 2011, the United Farm Workers of America (UFW) filed a declaration requesting Mandatory Mediation and Conciliation (MMC) pursuant to Labor Code section 1164 and Title 8, California Code of Regulations section 20400. The employer, San Joaquin Tomato Growers, Inc. (SJTG), timely filed an answer to the declaration. On December 2, 2011, the Agricultural Labor Relations Board (ALRB or Board) issued an Order to Show Cause why the UFW's request to invoke the MMC process should not be dismissed for failure to meet the statutory prerequisite that "the parties have not previously had a binding contract between them." (Labor Code section 1164.11.) The UFW filed its response to the Order to Show Cause on December 14, 2001, and on December 21, 2011 SJTG filed its response to the UFW's submission. Finding that there are material facts in dispute that must be resolved in order to determine

if the parties previously had a binding contract between them that precludes referral to MMC, the Board shall set the matter for hearing to resolve the disputed facts. As explained below, we also find that none of SJTG's other claims of failure to meet the statutory requirements for referral to MMC has merit.

SJTG correctly asserts that the UFW has not accurately described the bargaining unit certified by the Board in 1993. The unit certified was "all agricultural employees of San Joaquin Tomato Growers, Inc. in San Joaquin and Stanislaus Counties, " not all agricultural employees in the "San Joaquin Valley." However, there is no question as for which certification UFW seeks referral to MMC and the Board hereby takes administrative notice of the correct unit description. SJTG also asserts that the UFW did not correctly identify the date on which it initially requested negotiations after the certification issued. The Board takes administrative notice that the date of the initial demand to bargain was June 14, 1993, as reflected in the stipulated record in San Joaquin Tomato Growers, Inc. (1994) 20 ALRB No. 13. In addition, along with its response to the Order to Show Cause, the UFW has provided the correct date in an erratum to its original declaration seeking referral to MMC.

Next, SJTG asserts that the refusal to bargain violation found by the Board in *San Joaquin Tomato Growers, Inc.* (1994) 20 ALRB No. 13 is too remote in time from the request for MMC, and that a series of dismissals of bad faith bargaining charges in 1996 illustrates that SJTG bargained in good faith during the period after the Board's decision in 1994. These assertions are of no relevance, as the MMC provisions require

only that the employer have "committed an unfair labor practice." (Labor Code sec. 1164.11; see *D'Arrigo Bros. Co. of California* (2007) 33 ALRB No. 1 (unfair labor practices found by the Board in 1982 and 1983 qualifying for purposes of MMC). There is no requirement that the violation be close in time to the request for referral to MMC, nor does the law contain any provision that suggests that subsequent good faith bargaining negates an earlier violation for the purposes of meeting the MMC prerequisites.

Next, SJTG asserts that the UFW has abandoned the bargaining unit because the UFW has been absent from the fields of SJTG "for years." Though the time period alleged is not clear, we shall assume for the sake of argument that it is from 1998, when SJTG asserts that the UFW failed to sign an agreed upon contract, until the renewed demand to bargain in August of this year. In *Pictsweet Mushroom Farms* (2003) 29 ALRB No. 3, the Board

rejected a very similar claim of abandonment as a defense to a request for MMC. The Board noted that in *Dole Fresh Fruit Company* (1996) 22 ALRB No. 4 it had clarified that under the ALRA the concept of abandonment has no significance beyond a union disclaimer of interest or union defunctness. This is consistent with the established principle under the ALRA that employers can not withdraw recognition of the union based on a reasonable belief of loss of majority support. Rather, the continued representation status of the union may be tested only via a decertification election. Moreover, in *Dole Fresh Fruit Company* the Board specifically held that a period of dormancy in bargaining, even a prolonged period, did not establish union “abandonment” of a certification. Finally, the Board pointed out that

the presentation of an abandonment defense has no relevance where, as here, bargaining has resumed after a period of dormancy.

Lastly, SJTG asserts that the MMC provisions are invalid because they are inconsistent with a pre-existing provision of the ALRA, section 1155.2, subdivision (a), that states in pertinent part that the bargaining obligation "does not compel either party to agree to a proposal or require the making of a concession." An identical argument was made and rejected in *Pictsweet Mushroom Farms*, *supra*, 29 ALRB No. 3, at p. 12. There the Board pointed out that the MMC provisions amended the existing provisions of the ALRA to provide for a hybrid mediation/binding interest arbitration process in specified circumstances and that reliance on the unamended statute is unavailing. The principle reflected in section 1155.2, subdivision (a), continues to control during bargaining outside the MMC process.

ORDER

While the parties' submissions indicate that they had reached a collective bargaining agreement in 1998 that would otherwise be binding under existing law, they have made competing factual allegations that, if true, may provide the basis for estopping either party from asserting or denying the existence of a binding agreement that would preclude referral to mandatory mediation and conciliation. Therefore, the Board finds that an evidentiary hearing is necessary to determine if the request for referral to MMC has met all statutory prerequisites. The Executive Secretary shall set this matter for hearing as soon as possible.

The parties shall present evidence on the following issue:

> Whether either party failed or refused to implement, enforce, or abide by the terms of the collective bargaining agreement, or whether either party in any other manner renounced or disavowed the agreement such that they should be estopped from asserting or denying the existence of a binding agreement that would preclude referral to mandatory mediation and conciliation.

DATED: December 23, 2011

Genevieve A. Shiroma, Chairwoman

Cathryn Rivera-Hernandez, Member

Carole Migden, Member

CASE SUMMARY

SAN JOAQUIN TOMATO GROWERS, INC. (United Farm Workers of America)

37 ALRB No. 5
Case No. 2011-MMC-001

Background

On November 17, 2011, the United Farm Workers of America (UFW) filed a declaration requesting Mandatory Mediation and Conciliation (MMC) pursuant to Labor Code section 1164 and Title 8, California Code of Regulations section 20400. The employer, San Joaquin Tomato Growers, Inc. (SJTG), timely filed an answer to the declaration. On December 2, 2011, the Agricultural Labor Relations Board (ALRB or Board) issued an Order to Show Cause why the UFW's request to invoke the MMC process should not be dismissed for failure to meet the statutory prerequisite that "the parties have not previously had a binding contract between them." (Labor Code section 1164.11.) The UFW filed its response to the Order to Show Cause on December 14, 2001, and on December 21, 2011 SJTG filed its response to the UFW's submission.

Board Decision

Finding that there are material facts in dispute that must be resolved in order to determine if the parties previously had a binding contract between them that precludes referral to MMC, the Board set the matter for hearing to resolve the disputed facts. The Board also found that none of SJTG's other claims of failure to meet the statutory requirements for referral to MMC had merit. The Board rejected SJTG's assertion that a 1994 refusal to bargain violation was too remote in time from the request for MMC, as the MMC provisions require only that the employer have "committed an unfair labor practice." The Board also rejected SJTG's claim that the UFW abandoned the bargaining unit that a period of dormancy in bargaining, even a prolonged period, did not establish union "abandonment" of a certification, particularly where, as here, bargaining has resumed after a period of dormancy. Lastly, the Board rejected SJTG's claim that the MMC provisions are invalid because they are inconsistent with a pre-existing provision of the ALRA, section 1155.2, subdivision (a) that states in pertinent part that the bargaining obligation "does not compel either party to agree to a proposal or require the making of a concession." An identical argument was made and rejected in *Pictsweet Mushroom Farms* (2003) 29 ALRB No. 3, at p. 12.

***