Crows Landing, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

SAN JOAQUIN TOMATO GROWERS, INC.,	)	Case No. 2011-MMC-001
Employer,	)	
and	)	38 ALRB No. 2
UNITED FARM WORKERS OF AMERICA,	)	(March 29, 2012)
Petitioner.	)	

DECISION AND ORDER

On November 17, 2011, the United Farm Workers of America (UFW) filed a declaration requesting mandatory mediation and conciliation 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 mandatory mediation and conciliation process should not be dismissed for failure to meet the statutory prerequisite that "the parties have not previously had a binding contract between them." (Lab. Code § 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 reply to the UFW's submission. On December 23, 2011, the Board issued *San Joaquin Tomato Growers, Inc.* (2011) 37 ALRB No. 5, in which it found that the request for mandatory mediation and

conciliation met all other statutory prerequisites but that there were material facts in dispute regarding whether the parties previously had a binding contract between them that precludes referral to mandatory mediation and conciliation. Accordingly, the Board set the matter for hearing to allow the parties to 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.

The hearing was held on February 8, 2012, and the Administrative Law Judge (ALJ) issued the attached decision on March 6, 2012. In that decision, the ALJ concluded that there was no binding agreement because the intent and belief of both parties was that formalization and execution of the agreement were required to manifest final agreement to its terms. SJTG timely filed exceptions to the ALJ's decision.

DISCUSSION

The Board has considered the record and the ALJ's decision in light of the exceptions filed by SJTG and, as explained below, adopts the ALJ's findings of fact and conclusions of law.

SJTG's main contention is that there was a binding agreement as a matter of law when Dolores Huerta, negotiator and UFW official, sent an August 13, 1998 letter to SJTG's attorney indicating that the employees in the bargaining unit had ratified the agreement (consisting of tentative agreements and SJTG's latest proposals on outstanding issues). The authorities cited by SJTG reflect the same principles reflected in the cases

cited by the Board in the Order to Show Cause.[1] Those cases stand for the proposition that a contract need not be formalized or signed in order to be binding. Rather, a binding collective bargaining agreement may be formed by a variety of manifestations of acceptance of an outstanding offer, whether or not the agreement is reduced to writing or signed. But as the ALJ observed, those cases are all consistent with the principle that it is the parties' intent that controls, and parties are free to make formalization and execution a condition precedent to enforceability. As stated in *Hamilton Foundry & Machine Co. v. Int'l. Molders & Foundry Workers Union of North America* (6th Cir. 1951) 193 F.2d 209, 213-214:

> Although the general rule is settled that an unsigned contract cannot be enforced by either of the parties, however completely it may express their mutual agreement, if it was also agreed that the contract should not be binding until signed by both of them, it is also a recognized exception that if the party sought to be charged intended to close a contract prior to the formal signing of a written draft, and such written draft is viewed by the parties merely as a convenient record of their previous contract, he will be bound by the contract actually made though the signing of the written draft be omitted. [Citations omitted] It is essentially a question of intention.

The crucial inquiry is whether there "is conduct manifesting an intention to abide and be bound by the terms of an agreement." (*Capitol-Husting Co., Inc. v. NLRB* (7th Cir. 1982) 671 F.2d 237, 243.) Perhaps the clearest statement of this principle is found in *Warrior Constructors, Inc. v. International Union of Operating Engineers,*

[1] See, e.g., *Tex-Cal Land Management, Inc. v. Agricultural Labor Relations Board* (1982) 135 Cal. App. 3d 906, 915 (A collective bargaining agreement need not be reduced to a formal writing to be enforceable); *Warehousemen's Union Local 206 v. Continental Can Co., Inc.* (9th Cir. 1987) 821 F.2d 1348, 1350 (Acceptance of a final offer is all that is necessary to create a contract, regardless of whether either party later refuses to sign a formal written draft).

Local Union 926, AFL-CIO (5th Cir. 1967) 383 F.2d 700. In that case, at page 708, the court stated "whether a contract takes effect before a contemplated writing is executed depends on the intention of the parties," citing the following provision from Corbin on Contracts:

> One of the most common illustrations of preliminary negotiation that is totally inoperative is one where the parties consider the details of a proposed agreement, perhaps settling them one by one, with the understanding during this process that the agreement is to be embodied in a formal written document and that neither party is to be bound until he executes this document. Often it is a difficult question of fact whether the parties have this understanding; and there are very many decisions holding both ways. These decisions should not be regarded as conflicting, even though it may be hard to reconcile some of them on the facts that are reported to us in the appellate reports. It is a question of fact that the courts are deciding, not a question of law; and the facts of each case are numerous and not identical with those of any other case.
> (1 Corbin on Contracts, § 30.)

In the present case there is ample evidence that the understanding and intent of both parties was that the agreement would not be binding and enforceable until it was formalized and executed. All of their actions were consistent with that intent. There were no efforts to enforce the agreement, nor any admissible evidence offered as to whether or not the agreement was implemented.[2] Neither party took any action to ensure that the agreement was signed. As the ALJ observed, the evidence indicates that

[2] While the ALJ states, at page 4 of his decision, that there is no persuasive evidence that SJTG or the UFW failed to implement the agreement, there also is no admissible evidence in the record that the agreement was implemented. Normally, it would be easy to establish whether an agreement had been implemented. However, SJTG attorney Spencer Hipp testified that in this case, with the exception of wage increases for a small number of employees, the agreement generally reflected the employer's existing practices.

neither party was in any hurry to finalize the contract, blaming each other for not initiating that finalization. It appears that both parties were happy to walk away from the agreement believing that they were not bound by its terms. (ALJ dec., p. 5.) In these particular circumstances, it cannot be concluded that a binding agreement existed.

SJTG also argues that the ALJ's findings exceeded the confines of the issues set for hearing, based on the premise that the Board previously determined that the parties had reached a binding agreement and that the only issue set for hearing is whether the parties nevertheless should be estopped from so asserting. In fact, the Board never made a definitive finding as to the existence of a binding contract. Rather, in the Order to Show Cause the Board cited authorities supporting the conclusion that the facts as alleged by SJTG could provide the basis for concluding that a binding agreement existed, but provided the UFW with the opportunity to show that "due to intervening events or other factors no binding agreement in fact existed." While the issues set for hearing were couched in the language of estoppel, the clear intent was to explore whether there was any basis for concluding that no binding contract in fact existed. Moreover, the record clearly indicates that this issue was fully litigated. Therefore, SJTG's attempt to confine the scope of the hearing based on a strict parsing of the language in the order setting the matter for hearing is unavailing.

ORDER

Having found that the parties have not previously had a binding agreement between them, and having found in *San Joaquin Tomato Growers, Inc.* (2011) 37 ALRB No. 5 that the request for mandatory mediation and conciliation has met all other

statutory prerequisites, pursuant to Labor Code section 1164, subdivision (b) and section 20402 of the Board's regulations, the parties in the above-captioned matter are hereby directed to mandatory mediation and conciliation. [3]

The mandatory mediation and conciliation process is governed by Labor Code sections 1164-1164.13 and sections 20400-20408 of the Board's regulations. Upon the issuance of this Order, the Board shall request that a list of nine mediators be compiled by the California Mediation and Conciliation Service and provided to the parties. The parties shall then have seven (7) days from the receipt of the list to select a mediator in accordance with Labor Code section 1164(b) and section 20403 of the Board's regulations.

DATED: March 29, 2012

Genevieve A. Shiroma, Member

Cathryn Rivera-Hernandez, Member

Herbert O. Mason, Member

[3] Under the statutory provisions governing mandatory mediation and conciliation, this Decision does not constitute a final order of the Board. Therefore, a party dissatisfied with any of the holdings herein may challenge them in a petition for review of the mediator's report, should it be necessary that a report issue, and in the appellate courts on review of the Board's decision on the report. (See Lab. Code §§ 1164.3 and 1164.5.)"

CASE SUMMARY

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

38 ALRB No. 2
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 pursuant to Labor Code section 1164. The employer, San Joaquin Tomato Growers, Inc. (SJTG), timely filed an answer to the declaration. In addition to asserting several other bases why the request should be dismissed, SJTG submitted documents that appeared to indicate that the parties had reached an agreement in 1998, but had not formalized or signed the agreement. Recognizing that as a general rule agreements need not be signed in order to be binding, but in order to provide the UFW with the opportunity to show whether there were intervening events or other factors demonstrating that no binding agreement in fact existed, the Agricultural Labor Relations Board (Board) issued an Order to Show Cause why the UFW's request 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.) After receiving the UFW's response and SJTG's reply thereto, the Board issued *San Joaquin Tomato Growers, Inc.* (2011) 37 ALRB No. 5, in which it found that the request for mandatory mediation and conciliation met all other statutory prerequisites but that a hearing was necessary to resolve disputed material facts regarding whether the parties previously had a binding contract between them. A hearing was held and on March 6 2012 the Administrative Law Judge (ALJ) issued his decision. The ALJ concluded that there was no binding agreement because the intent and belief of both parties was that formalization and execution of the agreement were required to finalize the agreement. SJTG timely filed exceptions to the ALJ's decision.

Board Decision

The Board adopted the ALJ's decision, agreeing that on the particular facts of this case there was no binding agreement because the evidence showed that the parties mutually intended that the agreement was not to be binding until it was formalized and executed. The Board acknowledged that a binding collective bargaining agreement may be formed by a variety of manifestations of acceptance of an outstanding offer, whether or not the agreement is reduced to writing or signed. However, the Board cited the overriding principle that the parties' intent is what controls and, as here, that parties are free to make formalization and execution a condition precedent to enforceability. Having thus found that all statutory prerequisites had been met, the Board directed the parties to mandatory mediation and conciliation.

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STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:	)	Case No. 2011-MMC-001
	)	(37 ALRB No. 5)
SAN JOAQUIN TOMATO GROWERS, INC., A California Corporation,	)	
	)	
Employer,	)	
	)	
and	)	
	)	
UNITED FARM WORKERS OF AMERICA,	)	
	)	
Petitioner.	)	

Appearances:

Spencer H. Hipp and Eric R. Ostrem
Littler Mendelson
Fresno, California
For Respondent

Mario Martinez
United Farm Workers of America Legal Department
Bakersfield, California
For the Charging Party

DECISION OF THE ADMINISTRATIVE LAW JUDGE

DOUGLAS GALLOP: Pursuant to the Decision and Order of the Agricultural Labor Relations Board (ALRB or Board) in *San Joaquin Tomato Growers, Inc.* (2011) 37 ALRB No. 5, I conducted a hearing on February 8, 2012, at Modesto, California. Present at the hearing were San Joaquin Tomato Growers, Inc. (Employer) and United Farm Workers of America (Petitioner). Petitioner had 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 contends that MMC is not permitted, because the parties reached agreement for a collective bargaining agreement in 1998, and the Agricultural Labor Relations Act (Act) does not provide for MMC under that circumstance. In the Board's Decision and Order, it agreed that the Act does not provide for MMC where the parties have had a binding agreement, but directed that a hearing be conducted 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 existence of a binding agreement that would preclude referral to mandatory mediation and conciliation.

The parties presented testimony and documentary evidence on this issue, and after the hearing filed briefs, which have been duly considered. Upon the entire record in this case, the undersigned makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

After extensive litigation concerning the Board's certification of Petitioner as the collective bargaining representative of the Employer's agricultural employees, the parties commenced contract negotiations in 1994, which continued, off and on, until 1998. The lead negotiators were Dolores Clara Huerta for Petitioner, and Spencer Herbert Hipp, one

of the Employer's attorneys. In a FAX sent on August 13, 1998,[1] Huerta notified Hipp that Petitioner had accepted the Employer's latest proposal, and the agreement had been ratified by the membership. The agreement was never executed. Huerta and Hipp testified at the hearing, essentially blaming each other for this.

On August 17, Hipp sent Huerta a letter requesting the date of ratification, and the ratification vote. Hipp testified he asked what the vote was out of curiosity. Huerta did not respond to these requests, testifying she felt this was confidential information and not subject to disclosure.

On August 25, Huerta's assistant left a telephone message for Hipp regarding negotiations involving three companies, including the Employer. She suggested that they meet regarding the Employer at the same time another meeting was scheduled involving one of the other growers. Hipp responded, in a letter dated August 28, that the Employer's President, Thomas Perez, would have to be present at such a meeting, and was unavailable on the scheduled date. Hipp suggested two other dates for the parties to meet. After initially testifying she could not recall receiving the letter, Huerta testified she did not receive it.

Neither Hipp, nor Huerta made any further significant efforts to contact each other, or to otherwise consummate execution of the agreement.[2] Both testified they took no further action, because they felt it was the other's obligation to continue the process. Both further testified they did not believe the agreement was binding, because it had not

[1] All dates hereinafter refer to 1998 unless otherwise indicated.

[2] Huerta testified she called Hipp's office twice, but did not leave a message when advised he was not there.

been executed.[3] Huerta informed employees on Petitioner's negotiating team there was no agreement, and Hipp informed the Visalia Regional Office of this, in a letter dated January 11, 2005. Thomas Perez, the Employer's President, testified he believed there was and is an agreement in effect, due to automatic renewal, but was unable to explain why, if this was the case, the Employer increased the piece rate for harvesters while, or after the parties were engaged in recent collective bargaining negotiations.[4]

The agreement did not contain a dues checkoff provision. Nevertheless, Huerta testified she delivered signed union dues authorization forms to the Employer, expecting it to provide payroll records, so Petitioner could calculate dues.[5] Perez testified he never received such a list. Assuming such a list was delivered, Huerta took no further action.

The agreement provided wage increases for only a few employees. The Employer contends these were implemented, but presented no first-hand evidence to this effect. Huerta and one of Petitioner's attorneys denied the agreement was implemented, without any substantiation for the claim. The agreement did not provide for any fringe benefits. It provided for a grievance procedure, but Petitioner has filed no grievances. Accordingly, it is found that there is no persuasive evidence that the Employer or Petitioner failed to implement any term of the agreement. Neither party has filed an unfair labor practice to compel execution of the agreement, or alleging a repudiation thereof.

[3] Hipp testified this was his belief in 1998. He later learned of his mistake in law.

[4] The parties report that Petitioner has filed an unfair labor practice charge regarding the pay increase, which is still under investigation.

[5] Petitioner calculates dues based on a percentage of gross wages.

ANALYSIS AND CONCLUSIONS OF LAW

It is apparent to the undersigned that neither party was happy with the agreement, and, for this reason, both made grossly insufficient efforts to see it through to execution.[6] The agreement offered little for the employees, and it appears that acceptance came as an unpleasant surprise to the Employer who, even with these highly beneficial terms, was perfectly content to have no agreement at all. The evidence further shows that the reason neither party diligently sought execution or enforcement of the agreement was that both considered execution as a condition to manifest their final agreement to its terms.

Section 1164.11(c) of the Act precludes utilization of Mandatory Mediation and Conciliation in this matter unless "the parties have not previously had a binding agreement between them." As discussed in the Board's Administrative Order in this case,[7] it is well established that once the parties have agreed to all the terms of a collective bargaining agreement, either may seek enforcement. This does not mean that acceptance of a proposal, in all cases, shows final agreement. When parties negotiate an agreement, they are free to set what terms establish binding consent, either explicitly, or by their conduct. Thus, the parties' intent is a very relevant factor in considering whether a binding agreement has been reached, and such intent is not established by legal principles regarding enforceability, such as those cited by the Employer.

The undisputed facts show that both the Employer's and Petitioner's lead negotiators considered execution of the agreement as a condition precedent to its

[6] It is highly revealing that Hipp and Huerta did not claim they even brought up the subject of executing this contract, while meeting to negotiate the other agreements.

[7] Admin. Order No. 2011-22.

enforceability. In their minds, absent execution, there was no agreement. The subsequent history of the case fortifies this conclusion. Both have publicly denied that a binding agreement existed, and neither has sought enforcement. Based on the foregoing, it is concluded that, under the facts of this specific case, there was no binding agreement, because the parties considered execution a requirement to manifest final consent.[8] Inasmuch as the Board has found this to be the only potential impediment to MMC herein, the parties will be directed to participate in those proceedings.

ORDER

Pursuant to section 1164(b) of the Act and section 20402(b) of the Board's regulations, the parties in the above matter are directed to Mandatory Mediation and Conciliation of their issues. The mandatory mediation process is governed by Labor Code sections 1164-1164.14 and sections 20400-20408 of the Board's regulations. The Board requests that upon the issuance of this order, a list of nine mediators compiled by the California Mediation and Conciliation Service be provided to the parties; and thereafter, the parties shall select a mediator in accordance with Labor Code section 1164 (b) and section 20403 of the Board's regulations.

Dated: March 6, 2012

_____
Douglas Gallop
Administrative Law Judge, ALRB

[8] Petitioner argues at length that section 1164.11(c) should be interpreted to generally require execution to establish a binding agreement. The undersigned interprets the Board's Order setting this matter for hearing as having rejected that position.