

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

ACE TOMATO COMPANY,	)	Case No.	2012-MMC-001
INC.,	)		
	)		
Employer,	)		
	)		
and	)	38 ALRB No. 6	
	)		
UNITED FARM WORKERS OF	)	(July 25, 2012)	
AMERICA,	)		
	)		
Petitioner.	)		

**DECISION AND ORDER**

On March 14, 2012, the United Farm Workers of America (UFW) filed with the Agricultural Labor Relations Board (Board) a declaration requesting Mandatory Mediation and Conciliation (MMC) pursuant to section 1164, subdivision (a), paragraph (1) of the Agricultural Labor Relations Act (ALRA) and Section 20400, subdivision (a) of the Board’s regulations.<sup>1</sup> Finding that the statutory prerequisites had been met, on March 29, 2012 the Board issued an Administrative Order 2012-5 directing the parties to MMC. While the parties were able to agree upon the vast majority of the terms of a collective bargaining agreement, they could not agree on wages and benefits and three non-economic provisions, necessitating that those terms be determined by the mediator. On June 28, 2012, Mediator Matthew Goldberg filed with the Board a report fixing the

---

<sup>1</sup> The Agricultural Labor Relations Act is codified at Labor Code section 1140, et seq. The Board’s regulations are codified at Title 8, California Code of Regulations section 20100, et seq.

terms upon which the parties had not agreed. Ace Tomato Company, Inc. (Ace) timely filed a petition for review of the mediator's report, urging that the Board reject, for the reasons discussed below, the wage rates set by the mediator. On July 16, 2012, the official record of the proceeding was filed with the Board.

### **DISCUSSION**

Pursuant to ALRA section 1164.3, subdivision (a), the Board may accept for review those portions of the petition for which a prima facie case has been established that (1) a provision of the collective bargaining agreement set forth in the mediator's report is unrelated to wages, hours, or other conditions of employment within the meaning of Section 1155.2, (2) a provision of the collective bargaining agreement set forth in the mediator's report is based on clearly erroneous findings of material fact, or (3) a provision of the collective bargaining agreement set forth in the mediator's report is arbitrary or capricious in light of the mediator's findings of fact. Ace asserts that the wage provisions set forth in the mediator's report are based upon "clearly erroneous findings of material fact" or are arbitrary or capricious in light of the mediator's findings of fact." Ace's specific contentions are addressed in turn below.

As a guide for the wage rates, the mediator heavily relied on a recently negotiated contract between the UFW and Pacific Triple E Ltd. Ace objects to the use of the contract on two grounds, that the contract is inadmissible hearsay and it involves dissimilar business operations. The mediator rejected the same arguments. As he explained, the contract was submitted along with a declaration from Armando Elenes, the chief negotiator for the UFW in both the Pacific Triple E Ltd. and the Ace negotiations,

who attested to the authenticity of the contract and its maintenance as business record of the UFW. The mediator concluded that the contract was admissible as an exception to the hearsay rule. Ace contends that no foundation for the document has been established and also argues that the document was submitted after the record closed.

Whether or not the contract technically falls within the hearsay exception for business records is not controlling. MMC is a hybrid mediation/binding interest arbitration process with a level of formality that is largely controlled by the parties and the mediator. Regulation 20407, subdivision (a)(4), specifically states that the rules of evidence need not be observed. In this case, the mediator properly found that the declaration of Mr. Elenes was sufficient to indicate the trustworthiness of the contract as a business record and Ace has not proffered any reasonable basis for doubting the authenticity of the contract.

The timing of the submission of the contract was dictated by the date of its execution, June 14, 2012, which was after the June 8, 2012 date represented by Ace as the deadline for the parties' final submissions to the mediator.<sup>2</sup> Whether the record had closed is of no import. Pursuant to Regulation 20407, the mediator had broad authority to control the conduct of the MMC process and rule on the admissibility of evidence, which necessarily would include reopening of the record for good cause. While the parties dispute its validity as a model for wage rates in this case, that does not obviate the

---

<sup>2</sup> Mr. Elenes states in his declaration that the contract was sent by e-mail to the mediator and to Ace on June 14, 2012, with an executed copy accompanied by his declaration furnished on June 25, 2012.

obvious relevance of a recently negotiated contract between the UFW and another tomato company.

Ace contends that the Pacific Triple E Ltd. contract, assuming it is admitted as evidence, is not a valid measure of comparison because Pacific Triple E Ltd. is a much larger national and international company that correspondingly has the ability to pay higher wages than the much smaller Ace. The mediator disposed of this argument in a reasonable fashion that precludes reversal under the applicable standard of review. He pointed out that while Pacific Triple E Ltd.'s operations may be more widespread, when it harvests tomatoes in the San Joaquin Valley the operations covered by the contract used for comparison constitute "similar agricultural operations with similar labor requirements."<sup>3</sup> Moreover, as the mediator noted, Ace must draw from the same labor pool and accordingly pay competitive wages.

Ace asserts that the mediator erred by not accepting, in lieu of using the Pacific Triple E Ltd. Contract as a guide, Ace's proposal of an 8% increase in the first year with reopeners for the second and third years. In Ace's view, this would be more reasonable in light of the difficult economic conditions faced in recent years and that are expected to continue in the near future. The mediator addressed and rejected these arguments, noting that the company has remained competitive and expanded its business in the last few years, with no evidence of threats to its overall profitability. In rejecting the proposal for wage reopeners, the mediator explained that, in light of the parties'

---

<sup>3</sup> This is one of the appropriate factors mediators may consider that are listed in Labor Code section 1164, subdivision (e).

inability to conclude a contract over nearly 20 years, the certainty provided by establishing wage and piece rates and having a complete contract for three years would promote needed stability in the parties' bargaining relationship. Based on the record before us, we find nothing clearly erroneous, nor arbitrary or capricious about the mediator's findings on these issues.

Lastly, Ace contends that the mediator committed clear error by making wage rates for the transplant crews retroactive to April 1, 2012. The mediator made these rates retroactive because in his view this was necessary to provide these crews with the benefit of 2012 rates since this work was prior to the 2012 harvest work that is for the most part covered by the July 1, 2012 effective date of the mediated contract. Ace asserts that this issue was not the subject of negotiations between the parties and is based on pure conjecture. The mediator concluded that all crews, including the transplant crews, should benefit from the 2012 wage rates that are fixed in his report. On its face, we find this conclusion reasonable and certainly nothing in the record indicates that this finding is clearly erroneous, or arbitrary or capricious.

/

/

/

/

/

/

/

## ORDER

Finding no grounds to warrant granting review of the mediator's report, we affirm the report in full. Pursuant to Labor Code section 1164.3, subdivision (b), the mediator's report hereby becomes a final order of the Board.

DATED: July 25, 2012

Genevieve A. Shiroma, Chairwoman

Cathryn Rivera-Hernandez, Member

Herbert O. Mason, Member

## CASE SUMMARY

ACE TOMATO COMPANY, INC.  
(United Farm Workers of America)

38 ALRB No. 6  
Case No. 2012-MMC-001

### Background

On March 14, 2012, the United Farm Workers of America (UFW) filed with the Agricultural Labor Relations Board (Board) a declaration requesting Mandatory Mediation and Conciliation (MMC) pursuant to section 1164, subdivision (a), paragraph (1) of the Agricultural Labor Relations Act (ALRA). Finding that the statutory prerequisites had been met, on March 29, 2012 the Board issued an Administrative Order 2012-5 directing the parties to MMC. While the parties were able to agree upon the vast majority of the terms of a collective bargaining agreement, they could not agree on wages and benefits and three non-economic provisions, necessitating that those terms be determined by the mediator. On June 28, 2012, Mediator Matthew Goldberg filed with the Board the attached report fixing the terms upon which the parties had not agreed. Ace Tomato Company, Inc. (Ace) timely filed a petition for review of the mediator's report, urging that the Board reject the wage rates set by the mediator.

### Board Decision

Ace contended that the mediator erred in relying on a recently negotiated contract between the UFW and Pacific Triple E Ltd., a larger tomato company, on the grounds that the contract is inadmissible hearsay and it involved dissimilar business operations. Ace argued that in lieu of using the Pacific Triple E Ltd. contract as a guide the mediator should have adopted Ace's proposal of an 8% increase in the first year with reopeners for the second and third years. Lastly, Ace argued that the mediator committed clear error by making wage rates for the transplant crews retroactive to April 1, 2012. The Board noted that the rules of evidence need not be applied in MMC proceedings and held that, in any event, the mediator properly found that the record was sufficient to indicate the trustworthiness of the contract as a business record and that Ace had not proffered any reasonable basis for doubting the authenticity of the contract. The Board rejected Ace's other contentions, finding that nothing in the record indicated that the mediator's findings were clearly erroneous, or arbitrary or capricious. The Board thus concluded that, in light of the statutory standard of review, there were no grounds to warrant granting review and affirmed the mediator's report in full.

\*\*\*

This Case Summary is furnished for information only and is not an official statement of the case, or of the ALRB.