

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

ACE TOMATO COMPANY,)	Case No.	2012-MMC-001
INC.,)		
)		
Employer,)		
)		
and)	38 ALRB No. 8	
)		
UNITED FARM WORKERS OF)		
AMERICA,)	August 10, 2012	
)		
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).¹ On March 29, 2012, finding that the statutory prerequisites had been met, the Board issued 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

¹ The Agricultural Labor Relations Act is codified at Labor Code section 1140, et seq.

the Board a 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. On July 25, 2012, the Board issued a decision affirming the mediator's report in full. (*Ace Tomato Company, Inc.* (2012) 38 ALRB No. 6.)

On August 1, 2012, the UFW filed a Request For Agency Action To Enforce Anti-stay Provision In The MMC Law, alleging that Ace had failed to implement the collective bargaining agreement as ordered in 38 ALRB No. 6 and requesting that the Board go to court to enforce its decision. The UFW asserts that payment of wages due under the agreement since its July 1, 2012 effective date could be jeopardized without immediate enforcement in light of the recent sale of the company, effective at the end of the present tomato harvest season. According to the UFW, the season is expected to end in late September.

On August 2, 2012, the Board issued Administrative Order 2012-10 requesting that Ace provide a response to the UFW's request for enforcement on or before August 7, 2012 by 5:00 p.m. Ace provided a response that indicated that it intended to file a petition for review in the Court of Appeal of the Board's decision affirming the mediator, but did not indicate whether it had implemented the agreement. On August 8, 2012, the Board issued Administrative Order No. 2012-12 ordering Ace to state, supported by declarations, whether it has implemented the collective bargaining agreement. As the Board noted in that order, the collective bargaining agreement was effective as of July 1, 2012 and remains in effect without regard to whether Ace files a

petition for writ of review pursuant to ALRA section 1164.5. Moreover, the agreement would continue to be in effect for the duration of the review process unless the Court of Appeal grants a stay under the narrow provisions of ALRA section 1164.3(f).

In its response to Administrative Order 2012-12, Ace admits that it has not implemented the contract pending its planned appeal of the Board's decision affirming the mediator's report.

DISCUSSION

The UFW argues that the Board may seek enforcement of its decision pursuant to either ALRA section 1164.3, subdivision (f) or section 1160.8, the latter of which shall be addressed first. Section 1160.8 by its terms applies only to court review and enforcement of Board decisions in unfair labor practice cases. The present case involves distinct statutory provisions that govern MMC cases, including court review. (ALRA sections 1164-1164.13.) Moreover, the enforcement provision of section 1160.8 expressly applies only where the time for review of the Board's decision has lapsed and the respondent has not voluntarily complied with the decision.² The time for court review of the Board's decision in 38 ALRB No. 6 has not yet lapsed.

The inapplicability of section 1164.3, subdivision (f) is equally clear but requires more extensive explanation.

² In pertinent part: "If the time for review of the board order has lapsed, and the person has not voluntarily complied with the board's order, the board may apply to the superior court in any county in which the unfair labor practice occurred or wherein such person resides or transacts business for enforcement of its order."

Section 1164.3, subdivision (f) reads as follows:

(f) Within 60 days after the order of the board takes effect, either party or the board may file an action to enforce the order of the board, in the superior court for the County of Sacramento or in the county where either party's principal place of business is located. No final order of the board shall be stayed during any appeal under this section, unless the court finds that (1) the appellant will be irreparably harmed by the implementation of the board's order, and (2) the appellant has demonstrated a likelihood of success on appeal.

In *Hess Collection Winery* (2003) 35 ALRB No. 3, the Board addressed the meaning of section 1164.3, subdivision (f). Following rules of statutory construction, the Board concluded that this provision was analogous to section 1160.8. As the Board explained, while section 1160.8, unlike section 1164.3, subdivision (f), has no time limit and expressly applies where the time for review has lapsed, the two provisions serve the same purpose. That is, both provisions establish procedures for reducing a Board decision to a judgment where no appellate court review has been sought. Conversely, and pertinent to the circumstances in that case, the Board held that this section had no effect on the Board's authority to enforce its decisions in MMC cases where the decision had been upheld by a reviewing court. As the Board observed, where a judgment of the Court of Appeal affirming the Board's order has been entered, it would be unnecessary to bring a separate proceeding in superior court under section 1164.3, subdivision (f), or any other provision, in order to transform the Board's order into a judgment.

The Board cannot seek to enforce its decision at this time under section 1164.3, subdivision (f), for an additional reason consistent with but not specifically addressed in *Hess*. That section by its terms provides the Board with authority to seek

court enforcement of its decisions in MMC cases. As in unfair labor practice proceedings, the Board's decisions are not self-enforcing. Rather, in order to enforce its decisions, the Board must first obtain a judgment. That can occur in two ways. First, as noted in *Hess*, an order of an appellate court affirming the Board's decision constitutes a judgment.³ Second, where a Board order becomes final because the time for appellate court review has lapsed, the Board must get a court order reducing the Board's decision to a judgment. As explained in *Hess*, section 1160.8 provides authority for that process in unfair labor practice cases and section 1164.3, subdivision (f), provides analogous authority in MMC cases. At this time, the Board's decision has neither been affirmed by a reviewing court nor has the time for review lapsed. Consequently, there is no legal mechanism through which the Board can seek to *enforce* its decision at this time.

The UFW disagrees with the Board's decision in *Hess* and argues that section 1164.3, subdivision (f) is what the UFW terms an "anti-stay provision." The UFW suggests that the second sentence of the provision, which limits the grounds upon which a Board decision may be stayed, is what the superior court would be enforcing. Under this interpretation, apparently the UFW believes that the Board may go to the superior court to affirm that its decision is not stayed pending appeal in the appellate courts. However, in order to force Ace to comply with the Board's decision under threat of contempt, the court would be acting in a manner equivalent to enforcement, and that

³A "judgment" is defined as a "judgment, order, or decree entered in a court of this state." (Code Civ. Proc., §680.230.)

would require a judgment that, as explained above, cannot be obtained while the time for appellate review of the Board's decision has not yet lapsed.

In addition, because the superior court would be considering whether the Board's decision should be stayed, the UFW's interpretation is inconsistent with ALRA section 1164.9, which states:

No court of this state, except the court of appeal or the Supreme Court, to the extent specified in this article, shall have jurisdiction to review, reverse, correct, or annul any order or decision of the board to *suspend or delay the execution or operation thereof, or to enjoin, restrain, or interfere with the board in the performance of its official duties, as provided by law and the rules of court.* (Italics added.)

Moreover, as noted by the Board in *Hess*, the location of the second sentence of section 1164.3, subdivision (f), is the result of an obvious drafting error and that sentence actually belongs in section 1164.5, which governs court review of Board decisions in MMC cases. While the first sentence pertains to enforcement of Board decisions in the superior court, the second sentence begins with the phrase “[N]o final order of the Board shall be stayed during any *appeal under this section, unless...*” and continues with limits on the granting of a stay. (Italics added.) An enforcement action is not an “appeal” and there is no other reference to court review in section 1164.3. Nor is the granting of a stay logically related to an enforcement action. In contrast, because normally the perfecting of an appeal stays the order of an inferior tribunal,⁴ a provision placing limits on the staying of Board orders in MMC cases is a logical part of the following section, section 1164.5.

⁴ See Code Civil Procedure, section 916.

As detailed above, there is no legal avenue through which the Board may seek to enforce its decision at this time. What the UFW seeks, the immediate implementation of the agreement so that the employees are assured of being paid at contract rates during the period of July 1, 2012 to the end of the tomato harvest season, is actually more in the nature of temporary relief, i.e., a temporary restraining order or preliminary injunction. Unfortunately, there are no provisions of the ALRA governing the MMC process that permit the Board to seek temporary relief during the pendency of the 30-day period for seeking appellate review.⁵ A statutory amendment is needed to afford that authority to the Board where, as here, it is warranted.

However, the remedy sought by the UFW may be available through an entirely different avenue. The Board has taken administrative notice of the unfair labor practice charge No. 2012-CE-024-VIS, in which the UFW has alleged, inter alia, that Ace “has failed and refused to implement and abide by the parties’ collective bargaining agreement.” The General Counsel of the ALRB has final authority with respect to the investigation of unfair labor practice charges and issuance of complaints. (ALRA § 1149.) In addition, the General Counsel has been delegated full and final authority, with approval of the Board, to seek injunctive relief pursuant to ALRA section 1160.4. We note that pursuant to section 1160.4, subdivision (c), temporary relief or restraining orders under that section, unlike injunctions generally, are not stayed pending appeal.

⁵ We have found no authority establishing that the Board could seek temporary relief under the general provisions for injunctions in the Code of Civil Procedure contained at section 525, et seq. Section 525 states, in pertinent part, that an injunction “may be granted by the court in which the action is brought, or by a judge thereof . . .”

ORDER

For the reasons set forth above, we find that there is no legal basis upon which the Board may grant at this time the UFW's request that the Board seek enforcement of the Board's decision in *Ace Tomato Company, Inc.* (2012) 38 ALRB No. 6. As noted above, however, a pending related unfair labor practice charge filed by the UFW may provide an avenue for the temporary relief, subject to the General Counsel's final authority to issue complaints and seek injunctive relief pursuant to ALRA section 1160.4.

DATED: August 10, 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. 8
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). On March 29, 2012, finding that the statutory prerequisites had been met, the Board issued an order directing the parties to MMC. On June 28, 2012, Mediator Matthew Goldberg filed with the Board a 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. On July 25, 2012, the Board issued a decision affirming the mediator's report in full. (*Ace Tomato Company, Inc.* (2012) 38 ALRB No. 6.) The deadline for Ace to seek appellate court review of the Board's decision is August 24, 2012. On August 1, 2012, the UFW filed a Request For Agency Action To Enforce Anti-stay Provision In The MMC Law, alleging that Ace had failed to implement the collective bargaining agreement as ordered in 38 ALRB No. 6 and requesting that the Board go to court to enforce its decision. The UFW asserted that payment of wages due under the agreement since its July 1, 2012 effective date could be jeopardized without immediate enforcement in light of the recent sale of the company, effective at the end of the present tomato harvest season in September.

Board Decision

The Board found no legal basis upon which to grant the UFW's request for enforcement at this time. The Board explained that enforcement of its orders is legally available only after first obtaining a court judgment, which can be obtained in only two ways, 1) by a reviewing court issuing a judgment affirming the Board's decision, or 2) where the time for court review has lapsed. Neither had occurred at the time of the UFW's request for enforcement. The Board also observed that the remedy the UFW seeks is in the nature not of enforcement, but temporary injunctive relief. While the MMC provisions of the ALRA do not provide authority for that type of action, the Board took administrative notice of a pending related unfair labor practice charge filed by the UFW that may provide an avenue for the temporary relief, subject to the General Counsel's final authority to issue complaints and seek injunctive relief pursuant to ALRA section 1160.4.

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