

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

GEORGE AMARAL RANCHES,)	Case No.	2012-MMC-003
INC.,)		
)		
Employer,)		
)		
and)		
)		
UNITED FARM WORKERS)	39 ALRB No. 10	
OF AMERICA,)		
)	(July 18, 2013)	
Petitioner.)		

DECISION AND ORDER

The United Farm Workers of America (UFW) filed a Petition for Review of the Mediator’s Report in the above-titled Mandatory Mediation and Conciliation (MMC)¹ matter on July 8, 2013, pursuant to Labor Code section 1164.3, subdivision (a)(3)² and Section 20408, subdivision (a) of the Agricultural Labor Relations Board’s (ALRB or Board) regulations.³ George Amaral Ranches, Inc. (Employer) filed an unsolicited opposition on July 12, 2013, the UFW filed a Motion to Strike Employer’s Opposition on July 15, 2013, and Employer filed an Opposition to the UFW’s Motion to Strike on July 16, 2013. Labor Code section 1164.3, subdivision (a)(3) allows the Board to accept for review the portions of a petition for review for which a prima facie case has been

¹ The Agricultural Labor Relations Board’s Mandatory Mediation and Conciliation statutes may be found at Labor Code sections 1164 -1164.3.

² All statutory references are to the California Labor Code unless otherwise stated.

³ The Board’s regulations are codified at California Code of Regulations, title 8, section 20100 et seq.

established that a provision of the collective bargaining agreement set forth in the mediator's report is arbitrary and capricious in light of the mediator's findings of fact. The UFW's petition fails to establish a prima facie case under the standard provided by statute, and for that reason we dismiss the UFW's petition. We grant the UFW's Motion to Strike, as neither Labor Code section 1164.3, subdivision (a) (3) nor section 20408 of the Board's regulations provides for an opposition to a petition for review, and none was sought by the Board.

Background

On November 9, 2012, the UFW filed a declaration requesting MMC. This Board issued an order on November 20, 2012, directing the UFW and Employer to MMC. The parties chose mediator Matthew Goldberg, who has served as a mediator in a number of MMC cases.

Pursuant to Labor Code section 1164, subdivision (c), the mediation is to proceed for 30 days, which can be extended for an additional 30 days upon mutual agreement of the parties. Pursuant to Labor Code section 1164, subdivision (d), the mediator is to file his report within 21 days after the mediation ends.⁴

According to the Mediator's Amended Report, the mediation sessions were conducted on February 5, 6, and 18, 2013 and March 11, 2013, as well as by conference

⁴ Labor Code section 1164, subdivision (d) simply states that the mediator is to file the report "within 21 days" but does not specify the event that triggers the running of the 21 days. Section 20407, subdivision (c) of the Board's regulations provides that the mediator shall issue his or her report within twenty-one days of the last mediation session.

call and via email exchanges on various dates⁵. (Mediator's Amended Report at p. 2.) Mediator Goldberg filed his Mediator's Report on June 18, 2013, and filed an Amended Mediator's Report on June 28, 2013. In his Amended Report, Mediator Goldberg rejected Employer's proposal that any wage increases for this year be put into effect as of the date of the Board's final order approving the report. Mediator Goldberg stated:

The season is already some months old. Postponing the increases even more will deprive these workers of any benefit from them for several months of this season. It will also encourage further litigation of these issues and place a premium on delay, considerations which run counter to the purpose behind the time limits placed on this process by the Labor Code which were clearly designed to achieve a prompt resolution of disputes of this nature. Implementation of these increases will be therefore be [sic] become effective on July 1, 2013. In 2014 and 2015, the increases will be put into effect on January 1.

(Mediator's Amended Report at p. 13.)

The UFW states that the Mediator's Report was due to the Board on April 22, 2013. (UFW's Petition for Review at p. 3.) Given that the mediation extended beyond the initial thirty-day period, it is unclear whether the parties agreed to extend the initial 30-day mediation, from February 5 through March 7, another 30 days per Labor Code section 1164, subdivision (c) to April 6, 2013. The Employer's Final Position Statement, which was submitted in addition to the Mediator's Amended Report, states that both the Employer and the UFW submitted position statements on April 22, 2013, and that a mandatory mediation session occurred on May 24, 2013, more than sixty days beyond the beginning of mediation on February 5, 2013.

⁵ The UFW filed no declarations in support of its allegations.

Discussion

The UFW argues that Mediator Goldberg acted arbitrarily and capriciously by failing to abide by the statutory timeframes and deadlines in the MMC process, resulting in the late effective date of wage increases on July 1, 2013. The UFW argues further that Mediator Goldberg failed to consider substantial delays in the mandatory mediation and conciliation process, including a late filing of his report, and failed to discuss retroactive implementation of wages as a possible remedy for these delays. (UFW's Petition for Review at p. 2.) Finally, the UFW urges that the Board standardize the contract by making wage increases for this year effective January 1, 2013. (Id. at p. 3.) The UFW's arguments are problematic in that it is not clear on the face of the UFW's petition that the cause for delay was solely the mediator's, as the Employer's Final Position Statement indicates that all parties were actively participating in the mediation process as late as May 24, 2013, and no one sought Board intervention due to a failure to meet the statutory deadlines. Finally, retroactivity of a contract, in whole or in part, is an option that either party can propose to the mediator; the UFW did not appear to do so in this matter as it has done at least once, in *San Joaquin Tomato Growers, Inc.* (2012) 38 ALRB No. 7.

Labor Code section 1164.3, subdivision (a) (3) provides for review upon a showing of a prima facie case that a provision in the mediator's report is arbitrary or capricious *in light of the findings of fact*. The UFW does not argue any findings of fact by Mediator Goldberg as a basis for a prima facie case that the provision making wage increases effective July 1, 2013 is arbitrary or capricious. Instead, the UFW argues that

retroactivity of wage increases should be imposed as a remedy for an alleged procedural error. As such, the UFW fails to establish a prima facie case under Labor Code section 1164.3 (a) (3). For that reason, the UFW's petition for review must be dismissed.

The UFW complains that Mediator Goldberg's report was filed late. Given that the mandatory mediation sessions began on February 5, 2013, the initial 30-day mediation period set forth in Labor Code section 1164, subdivision (c) would have expired on March 7, 2013. Although it is unclear whether they actually did so, if the parties had extended mediation for an additional 30 days as the statute provides⁶, the mediation period would have expired on April 6, 2013. Accordingly, the latest date that Mediator Goldberg's report could have been filed within the Labor Code section 1164, subdivision (c) time-frames was April 29, 2013.⁷ Clearly, Mediator Goldberg's report was issued far outside the time periods set forth in Labor Code section 1164, subdivision (c).

It also appears, however, that the parties may have continued participating in mandatory mediation into May 2013. The Employer's Final Position Statement, which is not dated, begins, "As a follow-up [sic] to the parties' Mandatory Mediation (hereinafter "MMC") session on Friday, May 24, 2013 and the "Position Statement" we

⁶ Section 20407, subdivision (a) of the Board's regulations provides that the thirty day timelines may be waived by mutual agreement of the parties and with the approval of the mediator. Labor Code section 1164, subdivision (c) appears to allow for a single thirty-day extension. As noted above, it is unclear from the record before us whether the parties agreed to any extensions of the applicable mediation deadlines.

⁷ The twenty-first day would have fallen on a Saturday and the deadline would have been extended to the following Monday.

submitted to you on April 22, 2013. . . .” (Employer’s Final Position Statement at p. 1.) At the very least, this gives the impression that mandatory mediation between the parties had continued far beyond the April 22, 2013 due date for the mediator’s report that the UFW alleges. Additionally, the Mediator’s Amended Report states that mediation sessions were conducted via conference call and email exchanges on various dates. It is not clear from the UFW’s petition or the documents provided by Mediator Goldberg exactly when the mediation sessions ended and whether the parties acquiesced to mandatory mediation continuing beyond the 60 days provided for by statute. Certainly no party sought the Board’s intervention to enforce the statutory time periods prior to the issuance of Mediator Goldberg’s report. We decline to impose a remedy for an alleged procedural error the provenance of which is unclear.

The MMC process permitted the UFW to propose that wage increases be retroactive to the January 1, 2013 date it now seeks as a remedy. This Board has upheld a mediator’s report making an entire contract retroactive in *San Joaquin Tomato Growers, Inc.* (2012) 38 ALRB No. 7. In *San Joaquin Tomato Growers*, we upheld making an imposed contract retroactive to the start of the tomato picking season at issue. In that case, we noted that, while under Labor Code section 1164.3 an imposed contract becomes effective upon an order by the Board confirming the mediator’s report or upon a report becoming final without review being sought, this did not prevent the imposed contract from having retroactive provisions, nor was it uncommon for parties to negotiate provisions that are retroactive to a date prior to the execution of the contract. (*San Joaquin Tomato Growers, Inc.* (2012) 38 ALRB No. 7 at p. 6.) In *San Joaquin Tomato*

Growers, the UFW proposed retroactivity during the mediation process; in this case, it appears the UFW did not until after the mediator's report was submitted.

It is unclear how long the parties continued to engage in mandatory mediation and whether they acquiesced to mediation continuing beyond the statutory time periods. The facts before us leave us with concerns that there may have been a failure to comply with the statutory deadlines for completing mediation and submitting a mediator's report in this case. We take this opportunity to remind parties and mediators engaged in the MMC process of the importance of complying with all statutory deadlines applicable to MMC to avoid any prejudice to the employees affected.

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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. The UFW's Motion to Strike Employer's Opposition is GRANTED.

DATED: July 18, 2013

Genevieve A. Shiroma, Chair

Cathryn Rivera-Hernandez, Member

Herbert O. Mason, Member

CASE SUMMARY

GEORGE AMARAL RANCHES, INC.
(United Farm Workers of America)

Case No. 2012-MMC-003
39 ALRB No. 10

On November 9, 2012, the United Farm Workers of America (UFW) filed a declaration requesting Mandatory Mediation and Conciliation (MMC) with George Amaral Ranches, Inc. (Employer). The Board issued an order on November 20, 2012 directing the parties to MMC. On July 8, 2013, the UFW filed a Petition for Review of the mediator's report pursuant to Labor Code section 1164.3, subdivision (a) (3) and Section 20408, subdivision (a) of the Board's regulations on the grounds that the mediator's failure to make wage increases for the current year under the imposed contract retroactive to January 1, 2013, more than a month before the MMC process began, was arbitrary and capricious because the mediator's report was untimely. Employer filed an opposition to the UFW's petition, the UFW filed a motion to strike the Employer's opposition, and Employer filed an opposition to the UFW's Motion to Strike.

The Board dismissed the UFW's petition for failure to state a prima facie case. Labor Code section 1164.3, subdivision (a) (3), provides for review upon a showing of a prima facie case that a provision in the mediator's report is arbitrary or capricious in light of findings of fact. The UFW did not argue any findings of fact by the mediator as a basis for a prima facie case that the provision in the proposed contract making wage increases for the current year effective on July 1, 2013 was arbitrary or capricious. Instead, the UFW argued that the retroactivity of wage increases to January 1, 2013 should have been imposed as a remedy for an alleged procedural error, i.e., the mediator's untimely report.

The Board noted that it was unclear whether the parties agreed to extend the mediation beyond the additional thirty days' extension provided for by statute and that it was unclear when the mandatory mediation sessions ended. No party sought Board intervention to enforce the statutory deadline prior to the issuance of the mediator's report, and the Board declined to impose a remedy for an alleged procedural error the provenance of which was unclear.

The Board also noted that the MMC process permitted the UFW to propose that wage increases be retroactive to the January 1, 2013 date it sought as a remedy but the UFW had made no such proposal. The Board upheld a mediator's report making an entire contract retroactive in *San Joaquin Tomato Growers, Inc.* (2012) 38 ALRB No. 7, a case in which the UFW had proposed retroactivity during the mediation process.

The Board reminded the parties of the importance of complying with all statutory deadlines applicable to MMC to avoid any prejudice to the employees affected. The Board also granted the UFW's Motion to Strike Employer's Opposition, as a response to a Petition for Review is not provided for under the applicable statutory and regulatory provisions, and none was requested by the Board.

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