Fresno, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

GERAWAN FARMING, INC.,	)	Case No. 2013-MMC-003
	)	
	)	
Employer,	)	
	)	
and	)	
	)	39 ALRB No. 5
UNITED FARM WORKERS OF AMERICA,	)	(April 16, 2013)
	)	
Petitioner.	)	

DECISION AND ORDER

The United Farm Workers of America ("UFW") filed a declaration on March 29, 2013 requesting Mandatory Mediation and Conciliation ("MMC") with the employer, Gerawan Farming, Inc. (the "Employer" or "Gerawan") pursuant to Labor Code section 1164 (a)(1).

The prerequisite conditions for referral to MMC are set forth in Labor Code sections 1164 (a) and 1164.11, and section 20400 (a) of the Board's regulations. [1] Pursuant to these provisions, a declaration requesting referral to MMC must be signed under penalty of perjury and include a statement that: 1) The labor organization was certified as the exclusive bargaining agent prior to January 1, 2003; 2) the parties have failed to reach agreement for at least one year after the date of the initial request to bargain; 3) there was a renewed demand to bargain at least 90 days prior to the filing of the declaration requesting referral to MMC; 4) the

[1] The Board's regulations are found at California Code of Regulations, title 8, section 20100 *et seq*.

employer has committed an unfair labor practice ("ULP"), along with the nature of the violation and the corresponding Board decision number or case number; 5) the parties have not previously had a binding contract between them; and 6) the employer employed or engaged 25 or more agricultural employees during a calendar week in the year preceding the filing of the declaration. (Lab. Code §§ 1164(a)(1) & 1164.11; Board Regulation 20400(a).)

The declaration filed by the UFW, on its face, meets all the requirements listed above. The Employer filed an answer to the declaration and, although the relevant facts in the declaration are undisputed, contends that the declaration should be dismissed.[2] As discussed below, these contentions lack merit.

The Employer contends that the UFW was required to show that it engaged in "a good faith and sustained effort to bargain" during the one-year period after the initial bargaining request. [Er. Br. at 17.] Labor Code section 1164.11, subdivision (a), contains no language imposing such a requirement. It requires only that the parties failed to reach an agreement for at least one year. The Employer cites *D'Arrigo Bros Co. of*

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[2] The Employer argues that the UFW's evidence concerning the date of the initial bargaining request is inadmissible hearsay. However, the declaration that the Employer submitted along with its answer concedes that "the UFW sent a letter dated July 21, 1992 to Gerawan requesting negotiations." [Sweet Decl. ¶ 3.] Additionally, the Employer argues that, because roughly 20 years elapsed between the UFW's July 1992 request to bargain and the October 2012 request, and because the union stated in the October 2012 letter that it wished to "start negotiations" and later referred to the October 2012 letter as its "first request," the October 2012 letter should be treated as an initial, rather than a renewed, request to bargain. However, neither the time elapsed between the requests, nor the UFW's characterization of the letter alters the status of the October 2012 letter as a renewed request to bargain

California (2007) 33 ALRB No. 1 ("*D'Arrigo*") in support of its argument. However, it is clear that the Board did not hold that there is a good faith bargaining requirement created by Labor Code section 1164.11 subdivision (a), nor did it even consider that issue. Accordingly, *D'Arrigo* does not support the Employer's argument. Additionally, while the legislative history cited by the Employer suggests that the intent of the one-year period was to give the parties time to negotiate over an initial contract before mediation could be required, the statutory language that was adopted contains no requirement of sustained bargaining or good faith bargaining during the one-year period.

The Employer also contends that the UFW was required to show that the Employer committed a ULP arising out of conduct that occurred after the UFW was certified, and which involved a refusal to bargain in good faith. The plain language of Labor Code section 1164.11 subsection (b), however, does not support the Employer's argument. That subsection requires only that the employer "has committed an unfair labor practice." The cases identified by the UFW in its declaration, *Gerawan Ranches* (1992) 18 ALRB No. 5 and *Gerawan Ranches* (1992) 18 ALRB No. 16, which involved multiple ULPs committed in connection with the elections that resulted in the certification of the UFW, including a refusal to bargain over unilateral changes made in the post-election, pre-certification period, meet the requirement of Labor section 1164.11 subsection (b) that the employer "committed an unfair labor practice".

The Employer urges the Board to hold that the UFW abdicated its responsibilities, thereby forfeiting its status as bargaining representative. The Board has previously considered and rejected this type of "abandonment" argument. (*Dole Fresh Fruit*

Company (1996) 22 ALRB No. 4; *Pictsweet Mushroom Farms* (2003) 29 ALRB No. 3; *San Joaquin Tomato Growers, Inc*. (2011) 37 ALRB No. 5. See also *F&P Growers Ass'n v. ALRB* (1985) 168 Cal.App.3d 667, 672-674 (holding that no "loss of majority support" defense to a refusal to bargain exists under ALRA).) The Employer also presents arguments that the MMC process violates its constitutional due process rights. Under Article 3, Section 3.5 of the California Constitution, administrative agencies such as the ALRB have no authority to declare a statute unconstitutional or invalid or to refuse to enforce a statute based upon its alleged unconstitutionality absent an appellate court decision holding the statute unconstitutional. (*Hess Collection Winery* (2003) 29 ALRB No. 6 at pp. 6-7.) Finally, the Employer requests an expedited hearing to resolve factual disputes. In light of our conclusions discussed above, there are no factual disputes that warrant the holding of a hearing. The Employer's request is denied.

ORDER

Pursuant to Labor Code sections 1164 and 1164.11 and Board Regulations 20400(a) and 20402(c), Gerawan Farming, Inc. and the United Farm Workers of America 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 Board Regulations 20400-20408. The Board requests that, upon the issuance of this decision

[3] Under the procedures set forth in the mediation and conciliation statutes, 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. (Lab. Code §§ 1164.3 and 1164.5; *D'Arrigo, supra*, 33 ALRB No. 1 at p. 9 fn. 6.)

and order, a list of nine mediators compiled by the California Mediation and Conciliation Service be provided to the parties. The parties shall select a mediator in accordance with Labor Code section 1164(b) and Board Regulation 20403.

DATED: April 16, 2013

Genevieve A. Shiroma, Chairwoman

Cathryn Rivera-Hernandez, Member

Herbert O. Mason, Member

CASE SUMMARY

GERAWAN FARMING, INC.	39 ALRB No. 5
(United Farm Workers of America)	Case No. 2013-MMC-003

Background

The United Farm Workers of America ("UFW") filed a declaration on March 29, 2013 requesting Mandatory Mediation and Conciliation ("MMC") with the employer, Gerawan Farming, Inc. (the "Employer") pursuant to Labor Code section 1164 (a)(1). The Employer timely filed an answer to the declaration opposing referral to MMC. The Employer argued that the declaration should be dismissed asserting that the UFW failed to meet the requirements of Labor Code 1164.11, forfeited its rights by abandoning the employees it had been certified to represent, and that the MMC process violated the Employer's constitutional due process rights. The Employer requested that an expedited hearing be held to resolve factual disputes if the declaration was not dismissed.

Board Decision

The Board referred the case to MMC finding that all the statutory requirements for referral to MMC were met. The Board held that, contrary to the Employer's assertion, the UFW was not required to show that it bargained in good faith for at least one year after the initial request to bargain. The Board noted that Labor Code section 1164.11, subdivision (a) contains no "good faith and sustained effort to bargain" requirement but requires only that the parties failed to reach an agreement for at least one year after the initial bargaining request. The Board held that the unfair labor practice ("ULP") cases identified by the UFW (*Gerawan Ranches* (1992) 18 ALRB No. 5 and *Gerawan Ranches* (1992) 18 ALRB No. 16), which involved multiple ULPs committed in connection with the election through which the UFW was certified, including a refusal to bargain in the post-election, pre-certification period, were sufficient to show that the Employer committed ULPs within the meaning of Labor Code 1164.11. Citing well-established precedent, the Board held that the Employer's argument that the UFW had forfeited its rights by allegedly abandoning the workers was not legally viable. The Board held that, under Article III, Section 3.5 of the California Constitution, which bars administrative agencies from declaring a statute unconstitutional absent an appellate court decision, the Board did not have authority to rule on constitutional arguments raised by the Employer. Finally, the Board ruled that there were no factual disputes that warranted the setting of an expedited hearing.

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