

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

ARNAUDO BROTHERS, INC.,)	Case No.	2013-MMC-01
A California Corporation,)		
)		
Employer,)		
)		
and)		
)	39 ALRB No. 7	
UNITED FARM WORKERS)		
OF AMERICA,)	(June 5, 2013)	
)		
Petitioner.)		

DECISION AND ORDER

On May 28, 2013, the United Farm Workers of America (UFW) filed a request with the Agricultural Labor Relations Board (ALRB or Board) seeking an order on the following matters arising from the above-captioned case:

1. The UFW requested that the Board order the mediator appointed to oversee this case to proceed with the Mandatory Mediation and Conciliation (MMC) process that the mediator is currently holding in abeyance;
2. The UFW requested that the Board inform the mediator that abandonment is not an appropriate defense in MMC proceedings; and
3. The UFW requested that the Board issue a standing order that can be cited in future cases stating that mediators shall proceed with all MMC scheduling regardless of late-filed charges, petitions or pleadings by the parties unless the Board orders otherwise.

On May 29, 2013, the Board issued Administrative Order 2013-24 allowing Employer Arnaudo Brothers, Inc. (Employer) to file a reply to the UFW's request. Employer filed its reply and argued that the mediator's authority under California Code of Regulations, title 8, section 20407 to "exercise all powers relating to the conduct of the mediation" relieves the Board of any legal authority to issue the order the UFW requests. Employer's argument is without merit. We grant the UFW's request.

Section 20407, subdivision (a) of the Board's regulations states that "[m]ediation shall proceed in accordance with California Labor Code section 1164, subdivisions (b), (c) and (d)." Labor Code section 1164, subdivision (c), specifically provides, inter alia, that, "[u]pon appointment, the mediator shall immediately schedule meetings at a time and location reasonably accessible to the parties and that mediation shall proceed for a period of 30 days." Neither the Board's regulations nor Labor Code section 1164 provides for such a broad grant of authority to a mediator that he or she can completely stop the MMC process. Matters such as questions of representation that might or could affect the MMC process would be resolved by the Board.

Section 20407 of the Board's regulations provides a broad grant of authority to the mediator in the MMC process as to *how* he or she conducts the mediation. The question *whether* he or she will conduct the MMC process remains within the authority of the Board.

ORDER

The United Farm Workers of America's request is GRANTED. The mediator is ordered to resume the Mandatory Mediation and Conciliation process.

DATED: June 5, 2013

Genevieve A. Shiroma, Chair

Cathryn Rivera-Hernandez, Member

Herbert O. Mason, Member

CASE SUMMARY

ARNAUDO BROTHERS, INC.
(United Farm Workers of America)

Case No. 2013-MMC-01
39 ALRB No. 7

Background

On May 28, 2013, the United Farm Workers of America (UFW) filed a request with the Agricultural Labor Relations Board (ALRB or Board) seeking an order to require the mediator to proceed with the mediation in this Mandatory Mediation and Conciliation (MMC) matter. The mediation had been held in abeyance by the mediator pending resolution of issues bearing on representation. Employer Arnaudo Brothers, Inc. (Employer) filed a reply to the UFW's request in which it argued that California Code of Regulations, title 8, section 20407 relieved the Board of any legal authority to issue the order requested by the UFW.

Board Decision

The Board granted the UFW's request and ordered the mediator to resume the mediation. Section 20407 of the Board's regulations states that "[m]ediation shall proceed in accordance with California Labor Code section 1164, subdivisions (b), (c) and (d)." Neither the Board's regulations nor Labor Code section 1164 provides for such a broad grant of authority to a mediator that he and she can completely stop the MMC process. Matters such as questions of representation that might or could affect the MMC process would be resolved by the Board.

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