

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

ARNAUDO BROTHERS, INC.,)	Case No.	2013-MMC-001
)		(39 ALRB No. 7)
Employer,)		
)		
and)		
)		
UNITED FARM WORKERS OF)		
AMERICA,)	40 ALRB No. 2	
)		
Petitioner.)	(March 27, 2014)	

DECISION AND ORDER

On February 13, 2013, pursuant to a request filed by the United Farm Workers of America (the “UFW”), the Agricultural Labor Relations Board (the “ALRB” or “Board”) referred the UFW and Arnaudo Brothers, Inc.¹ (the “Employer”) to Mandatory Mediation and Conciliation (“MMC”) under the Agricultural Labor Relations Act (the “ALRA”).² The parties selected as their mediator Matthew Goldberg (the “Mediator”).

On December 16, 2013, the parties met with the Mediator for their final mediation session. [Transcript of December 16, 2013 Mediation Session (“Tr.”).] Over

¹ Our previous orders in this case have referred to the Employer as “Arnaudo Brothers, Inc.” and the Employer referred to itself thusly in its answer to the UFW’s request for referral to MMC. We note, however, that the Employer has more recently been referring to itself as “Arnaudo Brothers, LP.” The discrepancy in nomenclature is, however, not material to the instant matter.

² The ALRA is set forth at Labor Code section 1140 et seq. The statutes governing MMC are to be found at Labor Code section 1164 et seq.

the course of the mediation session, the Mediator considered the various proposed articles of the agreement and the parties' positions on those articles. Where the parties had agreed on terms, the Mediator noted those agreements on the record. Where the parties had not agreed, the Mediator stated his rulings on the record.

At the conclusion of the mediation session, the Mediator instructed the parties to “arrive at an agreement as concerns what the contents of the contract will, [sic] subject to the review of the mediator” further indicating that “[i]t is that contract which will be submitted to the Board” [Tr. pp. 49-50.] Thus, the Mediator apparently intended that the parties would create a document that reflected their agreements and his rulings and that they would submit that document to him for eventual filing with the Board. Despite this instruction, the Board has received no report from the Mediator. Instead, on January 21, 2014, the UFW filed a copy of the transcript of the December 16, 2013 mediation session with the Board. Subsequently, both the UFW and the Employer filed petitions for review with the Board pursuant to Labor Code section 1164.3. In those petitions, both parties have treated the transcript as the report that the Mediator is required to prepare and file with the Board pursuant to Labor Code section 1164(d) and Board regulation 20407(d).³

³ The Board's regulations are set forth at California Code of Regulations, title 8, section 20100 et seq.

Labor Code section 1164(d) states that within 21 days of the final mediation session:

[T]he mediator shall file a report with the board that resolves all of the issues between the parties and establishes the final terms of a collective bargaining agreement, including all issues subject to mediation and all issues resolved by the parties prior to the certification of the exhaustion of the mediation process. With respect to any issues in dispute between the parties, the report shall include the basis for the mediator's determination. The mediator's determination shall be supported by the record.

Additionally, Board regulation 20407(d) states:

The issuance of any document signed by the mediator which reflects the determination of the issues in dispute and fixes the terms of a collective bargaining agreement shall be deemed a "report"

The transcript submitted as the report fails to meet the statutory and regulatory requirements for a mediator's report. The transcript was not filed by the Mediator as directed by Labor Code section 1164(d), but was supplied to the Board by the parties. Also, the transcript filed with the Board does not satisfy the requirement of Board regulation 20407(d) that the report be "a document signed by the mediator."

Moreover, the transcript fails to serve as a mediator's report of the final terms of the collective bargaining agreement as it does not establish those terms as required by Labor Code section 1164(d). The transcript references numerous sections and clauses to be included in the contract without providing the substance of those

provisions.⁴ Finally, if the Board accepts review of any provisions of a report, “the board shall order the provisions of the report that are not the subject of the petition for review into effect as a final order of the board.” (Lab. Code § 1164.3(b)). Thus, it is possible that some or all of the mediator’s report might become a final order of the Board and thus the final collective bargaining agreement. Given this, any document submitted as a report should allow the parties, and the affected employees, to determine the final terms of the agreement. The transcript does not meet this standard.⁵

ORDER

The transcript of the December 16, 2013 mediation session does not satisfy the requirements of a mediator’s report set forth in Labor Code section 1164(d) and Board regulation 20407(d). Because the Board has not received a proper mediator’s report, the

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⁴ For example, during the mediation session, the Mediator and the parties frequently referred to a “matrix” that evidently contained the bargaining proposals being considered by the Mediator. [See, e.g. Tr. pp. 14-15, 19-24 & 42.] In some instances, the Mediator made rulings by referring to the matrix without identifying the content of the matrix on the record. In other words, the contract language that was adopted appears only in the matrix and not in the transcript. Accordingly, with respect to those sections, the contract language cannot be ascertained by reviewing the transcript. [See, e.g. Tr. pp. 28 & 42.] Additionally, in discussing articles 3, 9 and 11 of the agreement, the Mediator discussed some sections and did not mention others. [See Tr. pp. 18-19, 25-26 & 28.] It is not clear whether these sections were intentionally omitted, agreed to, or simply overlooked.

⁵ Because the Board has not received a mediator’s report, the merits of the petitions for review filed by the UFW and the Employer have not been considered.

petitions for review filed by the Employer and the UFW are premature and are, for that reason,
DISMISSED WITHOUT PREJUDICE.

DATED: March 27, 2014

William B. Gould IV, Chairman

Genevieve A. Shiroma, Member

Cathryn Rivera-Hernandez, Member

CASE SUMMARY

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

40 ALRB No. 2
Case No. 2013-MMC-001

Background

On February 13, 2013, pursuant to a request by the United Farm Workers of America (the “UFW”), the Agricultural Labor Relations Board (the “ALRB” or “Board”) referred the UFW and Arnaudo Brothers, Inc. (the “Employer”) to Mandatory Mediation and Conciliation (“MMC”). On December 16, 2013, the parties met with their selected mediator (the “Mediator”) for their final mediation session. A transcript of the proceedings was prepared. On January 21, 2014, the UFW filed a copy of the transcript of the December 16, 2013 mediation session with the Board. Both the UFW and the Employer subsequently filed petitions for review with the Board pursuant to Labor Code section 1164.3 treating the transcript as the report that the Mediator is required to prepare and file pursuant to Labor Code section 1164(d) and Board regulation 20407(d).

Board Decision

The Board dismissed the petitions for review as premature on the ground that the transcript failed to meet the statutory and regulatory requirements for a mediator’s report. The transcript was not filed by the Mediator as required under Labor Code section 1164(d) and was not signed by the Mediator as required under Board regulation 20407(d). Additionally, the transcript failed to serve as a mediator’s report of the final terms of the collective bargaining agreement. The transcript referenced numerous sections and clauses to be included in the contract without providing the substance of those provisions. Finally, the Board noted that if the Board accepts review of any provisions of a report, the provisions that are not the subject of the petition for review go into effect as a final order of the Board. Accordingly, the Board held that any document submitted as a report should allow the parties and affected employees to determine the final terms of the agreement, a standard that the transcript did not meet. Because the Board had not received a proper mediator’s report, the Board concluded that the petitions for review were premature and the petitions were dismissed without prejudice.

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