Sacramento, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

PEREZ PACKING, INC.,	)	Case No. 2014-MMC-002
	)	
Employer,	)	
	)	
and	)	
	)	40 ALRB No. 5
UNITED FARM WORKERS OF AMERICA,	)	
	)	(May 23, 2014)
	)	
Petitioner.	)	

DECISION AND ORDER

On January 21, 2014, the United Farm Workers of America (the "UFW") requested that the Agricultural Labor Relations Board (the "ALRB" or "Board") order the UFW and Perez Packing, Inc. (the "Employer") to engage in mandatory mediation and conciliation ("MMC") in order to reach a collective bargaining agreement pursuant to section 1164, subdivision (a)(1), and section 1164.11 of the Agricultural Labor Relations Act (the "ALRA")[1]. On January 24, 2014, the Employer timely filed an answer opposing the request, in accordance with the Board's regulations[2]. The Board designated the matter as Case No. 2014-MMC-001, and issued a decision on March 26, 2014, ruling that an expedited evidentiary hearing was needed to resolve several factual disputes in the matter.

[1] The ALRA is codified at Labor Code section 1140, et seq. All further statutory citations are to the Labor Code unless otherwise indicated.

[2] The Board's regulations are codified in title 8 of the California Code of Regulations, section 20100 et seq.

(*Perez Packing, Inc.* (2014) 40 ALRB No. 1.) This hearing was set for May 13-14, 2014; however, on May 7, 2014, the UFW requested to withdraw Case No. 2014-MMC-001, and this request was granted by the responsible Administrative Law Judge ("ALJ") on May 8, 2014, over the objection of the Employer.

On May 13, 2014, the UFW filed a letter and declaration with the Board, again requesting that the Board issue an order directing the parties to MMC, alleging that all prerequisites were met[3]. In support of its request ("the Request"), the UFW submitted the declaration of Maria Guadalupe Larios (the "Larios Declaration"). The Larios Declaration asserted that the UFW was certified as the exclusive collective bargaining representative for all of the Employer's agricultural employees on December 5, 1989; that it requested negotiations with the Employer on January 30, 2012, with said negotiations failing to reach a collective bargaining agreement ("agreement"); that on February 12, 2014, the UFW contacted the Employer and made a renewed request to engage in negotiations toward reaching an agreement; that negotiations since January 30, 2012 have failed to result in an agreement; that there has never been an agreement in place between the UFW and the Employer; that the Employer is an agricultural employer as defined by section 1140.4(c) of the ALRA and has engaged 25 or more agricultural employees during more than one calendar week in the year preceding the filing of the UFW's request, and that the Employer had committed

[3] These prerequisites are set forth at sections 1164 and 1164.11 of the ALRA, as well as section 20400 of the Board's regulations.

an unfair labor practice ("ULP"), as found by the Board in its decision in *Perez Packing, Inc.* (2013) 39 ALRB No. 19, issued December 19, 2013.

In its answer and opposition to the Request, timely filed on May 16, 2014, the Employer argued that inconsistencies in Larios's declarations in case no. 2014-MMC-001 and the current matter raise serious concerns about her veracity; argued that the UFW's communication on February 12, 2014, was not a renewed request to bargain, but rather a request for continuation of the ongoing negotiations which began with the original demand on January 30, 2012; and, as it previously argued in case no. 2014-MMC-001, denied that there was a final decision that the Employer had ever committed an unfair labor practice, as the Employer's petition for review of the Board's decision in 39 ALRB No. 19 is pending in the Fifth District Court of Appeal.[4] The Employer did not dispute that it is an agricultural employer as defined by the ALRA, that the UFW has been the certified bargaining representative of its employees since 1989, that an initial demand to bargain was made on January 30, 2012, that there has never been an agreement in place between the UFW and the Employer, or that it engaged 25 or more agricultural employees during the relevant time period.

[4] See *Perez Packing, Inc. v. Agricultural Labor Relations Board*, Case No. F068697 (petition for writ of review filed January 17, 2014; briefing completed; oral arguments pending).

DISCUSSION

Where the labor organization in question was certified prior to January 1, 2003, as is the case here, the prerequisite conditions for referral to MMC are set forth in Labor Code sections 1164(a)(1) and 1164.11, and section 20400(a) of the Board's regulations. 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 employer has committed an unfair labor practice, 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; Cal. Code Regs., tit. 8, § 20400.) A declaration failing to meet these requirements must be dismissed pursuant to section 20402(a) of the Board's regulations.

Evaluation as to the merits of the Request

The UFW's Request alleges facts sufficient to meet the requirements for referral to MMC. The UFW was certified as the bargaining representative for the Employer's employees in 1989, therefore the provisions of the MMC statute

and regulations designating criteria for certification prior to January 1, 2003, apply. The UFW delivered an initial request to bargain with the Employer on January 30, 2012, which is more than one year ago, and the two parties, despite some negotiations taking place after the initial request, have failed to reach an agreement. Moreover, the parties have never had an agreement between them. The UFW made a renewed demand to bargain on February 12, 2014, and this preceded the instant Request by more than 90 days. Lastly, the Employer has committed a ULP, to wit, failing to bargain with the UFW in good faith, as found by the Board in its decision in 39 ALRB No. 19. Although 39 ALRB No. 19 is undergoing appellate review, the Board previously ruled that the finding of a ULP in 39 ALRB No. 19 constituted a final order of the Board for purposes of ordering the parties to MMC. (*Perez Packing, Inc*. (2014) 40 ALRB No. 1.)

The veracity of Larios is not an issue, as the documentary exhibits attached to the Request, as well as the admissions of Employer, provide an adequate factual basis for finding that the prerequisites for MMC have been fulfilled. The Board finds that the February 12, 2014, communication from the UFW constitutes a renewed demand to bargain for purposes of meeting the prerequisites for MMC, and that the Employer's argument to the contrary is incorrect.

The Employer further argues that in 40 ALRB No. 1, the Board held that the MMC statute and regulations require that the UFW must have made its initial demand to bargain before January 1, 2003. Language implicating this does

appear on pages 8-9 of said decision; however, that language was erroneous. The factual dispute in that prior case was as to whether the UFW had ever made an initial demand to bargain, and the decision should have merely stated that a showing of an initial demand to bargain was a prerequisite for MMC, as the UFW had been certified as the bargaining representative before January 1, 2003. The MMC process is described in the ALRA at sections 1164 to 1164.13, and in sections 20400 to 20408 of the Board's regulations. Nothing in those provisions of law requires that the initial demand to bargain have been made before January 1, 2003. That particular day is only relevant in that, for a union certified prior thereto, the renewed demand to bargain, for MMC purposes, must have been made on or after that date. Any implication to the contrary in 40 ALRB No. 1 was made in error and is hereby disregarded, as it would be inconsistent with the literal terms of the ALRA and the Board's regulations.

CONCLUSION

The Board concludes that the Request has fulfilled the prerequisites for MMC, as required by statute and regulation. Pursuant to section 1164 of the ALRA and section 20400(b) of the Board's regulations, the Board shall issue an order directing the parties to engage in the MMC process.

ORDER

Pursuant to Labor Code sections 1164 and 1164.11 and sections 20400(a) and 20402(c) of the Board's regulations, Perez Packing, Inc. and the United Farm Workers of America are hereby directed to mandatory mediation and

conciliation[5]. 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 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 section 20403 of the Board's regulations.

DATED: May 23, 2014

William B. Gould IV, Chairman

Genevieve A. Shiroma, Member

Cathryn Rivera-Hernandez, Member

[5] 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 Bros. Co. of California* (2007) 33 ALRB No. 1, at p. 9 fn. 6.)

CASE SUMMARY

PEREZ PACKING, INC. Case Nos. 2014-MMC-002
(United Farm Workers of America) 40 ALRB No. 5

Background

Petitioner, United Farm Workers of America ("UFW"), has been the certified collective bargaining representative for the agricultural employees of Perez Packing, Inc. ("Employer") since December 5, 1989. On January 21, 2014, the UFW requested, in Case No. 2014-MMC-001, that the Board direct the UFW and the Employer ("the parties") to engage in mandatory mediation and conciliation ("MMC") pursuant to sections 1164(a)(1) and 11641.11 of the Agricultural Labor Relations Act ("ALRA" or "Act"), with the goal of reaching a collective bargaining agreement ("CBA"), which Employer opposed. The Board, in its decision and order in that matter (*Perez Packing, Inc.* (2014) 40 ALRB No. 1), set an expedited evidentiary hearing to resolve factual disputes as to whether the UFW had ever made an initial demand to bargain, a prerequisite for direction of MMC. The UFW withdrew Case No. 2014-MMC-001 on May 7, 2014. On May 13, 2014, the UFW filed another request with the Board to order that the parties engage in MMC. The Employer filed its answer opposing this request on May 16, 2014.

Board Decision

Where a labor organization was certified for a particular bargaining unit before January 1, 2003, and such organization requests that the Board direct it and the relevant employer to engage in the MMC process, there are specific factual prerequisites that must be alleged in the declaration accompanying the organization's request. These prerequisites are described in sections 1164(a)(1) and 1164.11 of the Act, as well as Board Regulation 20400(a). In the instant case, the declaration accompanying the UFW's May 13, 2014 request was sufficient, and the Employer's arguments to the contrary were incorrect. The Board also ruled that some language at the end of its decision in 40 ALRB No. 1 (purportedly requiring that the UFW's initial demand to bargain had to have been made before January 1, 2003 in order to qualify for MMC) was erroneous and is to be disregarded.

The Board, pursuant to Board Regulation 20402(b), ordered that the parties be directed to engage in the MMC process as described in sections 1164-1164.13 of the Act.

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