

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

ARNAUDO BROTHERS, LP, and	)	Case No.	2013-MMC-001
ARNAUDO BROTHERS, INC.,	)		(39 ALRB No. 7)
	)		(40 ALRB No. 2)
Employer,	)		(40 ALRB No. 7)
	)		
and	)		
	)		
UNITED FARM WORKERS OF	)		
AMERICA,	)	40 ALRB No. 9	
	)		
Petitioner.	)	(October 3, 2014)	
_____	)		

**DECISION AND ORDER**

On September 12, 2014, mediator Matthew Goldberg (the “Mediator”) issued a document titled “Supplemental Report to the Board” (the “Supplemental Report”) concerning Mandatory Mediation and Conciliation (“MMC”) proceedings held pursuant to the Agricultural Labor Relations Act (the “ALRA”) between the United Farm Workers of America (the “UFW”) and Arnaudo Brothers, LP/Arnaudo Brothers, Inc. (“Arnaudo”).<sup>1</sup> Both the UFW and Arnaudo subsequently filed petitions for review of the Supplemental Report. For the reasons stated herein, we remand this matter to the Mediator and dismiss the petitions for review as premature.

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<sup>1</sup> The ALRA is codified at Labor Code § 1140 et seq. The statutes governing MMC are found at Labor Code § 1164 et seq. The Board’s regulations are codified at California Code of Regulations, title 8, § 20100 et seq.

## 1. Background

The Mediator issued his initial report (the “First Report”) in this matter on May 13, 2014 and both parties petitioned for review. On June 27, 2014, the Agricultural Labor Relations Board (the “ALRB” or “Board”) sustained the UFW’s petition as to Article 2 (union security) and Article 24 (contract duration) of the MMC Contract and remanded the matter to the Mediator for further proceedings and the issuance of a second report pursuant to Labor Code, section 1164.3 subdivision (c). (*Arnaudo Bros., LP, et al.* (2014) 40 ALRB No. 7.)

After the matter was remanded, the parties reached agreement concerning the union security issue. The parties did not agree concerning the contract term, with Arnaudo arguing that the Mediator should adhere to his original direction of a one-year contract, and the UFW arguing in favor of a three-year contract. According to a letter attached to the Supplemental Report, an “MMC session” was held on August 27, 2014. [Supplemental Report, Exhibit B.] The letter further indicates that the UFW “requested to discuss the issue of wage increases for the second and third years of the contract” and that the “Mediator held that the duration of the agreement issue would need to be resolved before further wage increases could be discussed.” [*Ibid.*]

In the Supplemental Report, the Mediator ruled that the MMC Contract would have a two-year duration commencing on January 1, 2014 and concluding on December 31, 2015. [Supplemental Report, p. 8.] With respect to

the wage rates that would apply during the second year of the MMC Contract, the Mediator stated that “[a]s the Contract has been extended for one year, the matter is further remanded to the parties for consideration of second-year wage rates” and ordered the parties “to meet and confer with regard to wage rates for the second year.” [Supplemental Report p. 9.]

Both Arnaudo and the UFW subsequently filed petitions for review of the Supplemental Report. The UFW specifically objected to the Mediator’s decision to remand the issue of second-year wage rates to the parties, contending that the Mediator did not take any evidence on the issue of wages and that the Supplemental Report failed to “finally resolve and decide all disputed issues. . .” [UFW’s Petition for Review of Mediator’s Supplemental Report to the Board, pp. 5-7.] The UFW argues that the Board should make a final determination of the issue after giving the parties an opportunity to present arguments. [*Ibid.*]

## **2. Discussion**

Labor Code, section 1164, subdivision (d) states, with respect to a mediator’s initial report that,

the 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.<sup>2</sup>

Furthermore, in its June 27, 2014 order, the Board specifically ordered that the Mediator, in issuing his second report, "shall include the basis for each determination, including citations to the relevant portions of the record" and directed that "[a]ll evidence in the record before the Mediator shall be filed with the Board along with the second report." (*Arnaudo Bros., LP, supra*, 40 ALRB No. 7 pp. 16-17.)

Despite the above-quoted statutory language and the Board's June 27, 2014 order, the Mediator "remanded" this issue to the parties with a direction to "meet and confer" regarding second-year wage rates without stating any basis for this determination and without any reference to the record. Due to this, we conclude that the Supplemental Report fails to meet the minimum standards for a mediator's report as set forth in the MMC statutes and the Board's regulations. Accordingly, this matter will be remanded to the Mediator for further proceedings on the issue of second-year wage rates pursuant to Labor Code section 1164.3 subdivision (c) and consistent with this Decision and Order and the Board's June 27, 2014 Decision and Order. The petitions for review are dismissed without prejudice as premature.

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<sup>2</sup> See also Board Regulation 20407, subd. (a)(2) ("The mediator shall cite evidence in the record that supports his or her findings and conclusions.").

**ORDER**

For the reasons described herein, this matter is remanded to the Mediator for further proceedings pursuant to Labor Code section 1164.3 subdivision (c) and Board regulation 20408(c). The petitions for review of the September 12, 2014 Supplemental Report filed by Arnaudo and the UFW are dismissed without prejudice as premature. The Mediator shall file a second report with the Board pursuant to 1164.3 subdivision (c) within 21 days from the date of this Decision and Order. This time limit shall be extended only upon written leave of the Board's Executive Secretary, who is to grant such extensions only for good cause shown and only to the extent reasonably necessary. In issuing the second report, the Mediator shall include the basis for each determination, including citation to the relevant portions of the record. (Labor Code § 1164 subd. (d); Board regulation 20407 subd. (a)(2).) All evidence in the record before the Mediator shall be filed with the Board along with the second report. (Board regulation 20407(a)(2).) Any petitions for review of the second report shall proceed as set forth in Labor Code section 1164.3.

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After the Mediator issues his second report, the Board shall issue an order in accordance with Labor Code section 1164.3, subdivision (d). That order, the Board's order of June 3, 2014 (Admin. Order No. 2014-12), the Board's decision and order of June 27, 2014 (40 ALRB No. 7) and the Order herein, shall constitute the final order of the Board subject to review pursuant to Labor Code section 1164.5.

DATED: October 3, 2014

William B. Gould IV, Chairman

Genevieve A. Shiroma, Member

Cathryn Rivera-Hernandez, Member

## CASE SUMMARY

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

40 ALRB No. 9  
Case No. 2013-MMC-001

### Background

On September 9, 2014, mediator Matthew Goldberg (the “Mediator”) issued a “Supplemental Report” in Mandatory Mediation and Conciliation (“MMC”) proceedings between Arnaudo Brothers, LP/Arnaudo Brothers, Inc. (“Arnaudo”) and the United Farm Workers of America (the “UFW”). In the Supplemental Report, the Mediator, made certain rulings, including that the term of the MMC Contract, which had been set at one year in the Mediator’s original report, would be extended to two years. With respect to the wage rates that would apply during the second year of the MMC Contract, the Mediator ordered that the matter would be “remanded to the parties for consideration of second-year wage rates.” Both Arnaudo and the UFW petitioned for review of the Supplemental Report. The UFW argued that the remand on second-year wage rates was improper.

### Board Decision

The Board remanded the matter to the Mediator for further proceedings. The Board noted that language in the MMC statutes, the Board’s regulations, and the Board’s June 27, 2014 order in this case (40 ALRB No. 7) required that the Mediator’s second report state the basis for any determinations made and include citations to the relevant portions of the record. However, in the Supplemental Report the Mediator “remanded” the issue of second-year wage rates without stating any basis for the determination and without any reference to the record. Accordingly, the Board held that the Supplemental Report failed to meet the minimum standards for a mediator’s report. The Board remanded the matter to the Mediator for further proceedings and the issuance of a second report pursuant to Labor Code, section 1164.3 subdivision (c). The petitions for review were dismissed without prejudice as premature.

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