

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)
	)		(40 ALRB No. 9)
and	)		
	)		
UNITED FARM WORKERS OF	)		
AMERICA,	)	41 ALRB No. 3	
	)		
Petitioner.	)	(April 23, 2015)	

**DECISION AND ORDER**

On April 6, 2015, Mediator Matthew Goldberg (the “Mediator”) issued a “Second Supplemental Report” in this Mandatory Mediation and Conciliation (“MMC”) case involving Arnaudo Brothers, LP, and Arnaudo Brothers, Inc. (“Arnaudo”) and the United Farm Workers of America (the “UFW”). The Second Supplemental Report issued pursuant to an administrative order of the Agricultural Labor Relations Board (the “ALRB” or “Board”) directing the Mediator to engage in further mediation with the parties concerning the sole outstanding issue of the wage rates to be applied during the second year of the MMC contract and to issue a report.<sup>1</sup>

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<sup>1</sup> Because, as discussed below, the Board had previously rejected a “Supplemental Report” issued by the Mediator, the “Second Supplemental Report” constituted the second report referred to in Labor Code section 1164.3, subdivision (c). Nevertheless, for the sake of clarity, this Decision will adopt the nomenclature used by the Mediator to refer to the various reports.

On April 13, 2015, Arnaudo filed with the Board a “Petition for Review of Mediator’s Second Supplemental Report to Board” (the “Petition for Review”) challenging the Second Supplemental Report.<sup>2</sup> For the reasons stated herein, the Board concludes that Arnaudo has not established a prima facie case that any of the grounds stated in Labor Code section 1164.3 are present and, therefore, denies review of the Second Supplemental Report.

### **Background**

The UFW requested referral to MMC on February 1, 2013. After Arnaudo filed an answer to the MMC request, the Board referred the parties to MMC on February 13, 2013. (Admin. Order No. 2013-08.) On January 21, 2014, the UFW filed a copy of the transcript of the parties’ final mediation session and the parties sought to treat the transcript as the MMC report the Mediator is to file with the Board pursuant to Labor Code section 1164, subdivision (d). However, the Board concluded that the transcript did not constitute a mediator’s report as required under the statute. (*Arnaudo Brothers, Inc.* (2014) 40 ALRB No. 2.)

On May 13, 2014, the Mediator filed an MMC Report (the “First Report”) in the case setting forth the collective bargaining agreement (the “MMC Contract”) based upon the agreements between the parties and the rulings of the Mediator. Article 24 of the MMC Contract stated that the duration would be for one year from January 1, 2014 to December 31, 2014. Appendix A of the MMC Contract set the minimum wage rate at

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<sup>2</sup> The UFW did not petition for review of the Second Supplemental Report.

\$9.25 per hour effective January 1, 2014, rising to \$9.50 per hour effective July 1, 2014, when the state minimum wage was set to increase, with employees previously earning more than the minimum wage receiving wage increases of \$1.25 on January 1, 2014 and \$0.25 per hour on July 1, 2014.

Both parties filed petitions for review of the First Report. The Board rejected Arnaudo's arguments that, due to a disclaimer of interest and/or abandonment by the UFW, the initial referral to MMC was invalid, as well as Arnaudo's arguments concerning the substance of the Mediator's ruling on wage rates. (Admin. Order No. 2014-12.) The Board ruled that Arnaudo had failed to timely raise the disclaimer issue, that the statement allegedly made by the UFW, on its face, did not constitute a disclaimer, and cited its long-standing precedent rejecting abandonment as a defense to the duty to bargain. (*Ibid.*) The Board also rejected Arnaudo's assertion that the Mediator ignored evidence concerning his rulings on wage rates as Arnaudo misstated the Mediator's rulings and failed to cite to any evidence in the record to support its arguments. (*Ibid.*) The Board did, however, grant review with respect to objections raised by the UFW relating to articles 2 and 24 of the MMC contract relating to "union security" and contract duration and remanded the matter for further mediation proceedings as the Mediator had impermissibly based his rulings regarding those provisions on his conclusions concerning employee support for the UFW and his belief that employees might desire an election. (*Arnaudo Brothers, LP and Arnaudo Brothers, Inc.* (2014) 40 ALRB No. 7.)

On September 12, 2014, the Mediator issued a "Supplemental Report to the Board" (the "Supplemental Report"). The Mediator reported that the parties had come to

an agreement regarding union security and directed that the contract would have a two-year duration commencing January 1, 2014 and concluding December 31, 2015.

However, concerning the wage rates to be applied during the second year of the MMC contract, the Mediator “remanded” the issue to the parties, directing them to “meet and confer” over the issue. On October 3, 2014, the Board rejected the Supplemental Report as failing to meet the minimum standards for a mediator’s report because it did not state any basis for the determination that the matter should be remanded to the parties and did not cite the record. (*Arnaudo Brothers, LP and Arnaudo Brothers, Inc.* (2014) 40 ALRB No. 9.) The Board remanded the matter to the Mediator for further proceedings solely on the issue of second-year wage rates. (*Ibid.*)

On April 6, 2015, the Mediator issued a “Mediator’s Second Supplemental Report to the Board (the “Second Supplemental Report”), which incorporated by reference the final written arguments submitted by the parties on the issue.<sup>3</sup> The Mediator adopted the UFW’s proposal for a 4 percent across-the-board wage increase retroactive to March 1, 2015. The Mediator also ordered Arnaudo to pay retroactive

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<sup>3</sup> The Second Supplemental Report did not restate the Mediator’s findings and conclusions regarding the issue of the “union security clause.” As stated in the Mediator’s Supplemental Report, the parties reached agreement on that issue. That agreement is referenced in Arnaudo’s closing argument to the Mediator, which the Mediator incorporated by reference into the Second Supplemental Report. It is clear that the Mediator intended the agreement on union security language to be a part of the final MMC Contract. The content of the parties’ stipulation concerning language for Article 2, Section 1 of the MMC Contract is stated on page 2 of the Supplemental Report. With respect to the contract duration issue, the basis for the Mediator’s determination that the MMC Contract will be two years in duration was stated in the Supplemental Report and the conclusion is restated in the Second Supplemental Report. Neither party has challenged that determination.

wages to all qualifying employees for unpaid wage increases required under the MMC Contract.

### **Discussion**

At the conclusion of MMC's mediation phase, the mediator is to "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 . . ." (Lab. Code, § 1164 subd. (d).)

With respect to any issues that were subject to dispute between the parties, the report is to include the basis for the mediator's determinations and must be supported by the record.

(*Ibid.*) In resolving any issues in dispute, the mediator "may consider those factors commonly considered in similar proceedings" including the following:

- (1) The stipulations of the parties.
- (2) The financial condition of the employer and its ability to meet the costs of the contract in those instances where the employer claims an inability to meet the union's wage and benefit demands.
- (3) The corresponding wages, benefits, and terms and conditions of employment in other collective bargaining agreements covering similar agricultural operations with similar labor requirements.
- (4) The corresponding wages, benefits, and terms and conditions of employment prevailing in comparable firms or industries in geographical areas with similar economic conditions, taking into account the size of the employer, the skills, experience, and training required of the employees, and the difficulty and nature of the work performed.
- (5) The average consumer prices for goods and services according to the California Consumer Price Index, and the overall cost of living, in the area where the work is

performed.

(Lab. Code, § 1164 subd. (e).)

Within seven days of the filing of the mediator's report, either party may petition the Board for review of the report. Such petition must "specify the particular provisions of the mediator's report for which it is seeking review" and "specify the specific grounds authorizing review by the board" (Lab. Code, § 1164.3.)

Where, as here, the Board is considering a petition for review of a mediator's supplemental report, the Board is to determine whether the petitioning party has established a prima facie case that any portion of the report is subject to review for any of the grounds specified in Labor Code section 1164.3, subdivision (a). (Lab.Code, § 1164.3, subd. (d).) The specified grounds are the following:

(1) a provision of the collective bargaining agreement set forth in the mediator's report is unrelated to wages, hours, or other conditions of employment within the meaning of Section 1155.2, (2) a provision of the collective bargaining agreement set forth in the mediator's report is based on clearly erroneous findings of material fact, or (3) a provision of the collective bargaining agreement set forth in the mediator's report is arbitrary or capricious in light of the mediator's findings of fact.

(Lab. Code, § 1164.3 subd. (a).)

Arnaudo asserts, as it has previously, that the Board's initial order referring the parties to MMC is illegitimate because the UFW abandoned and/or disclaimed interest in representing the bargaining unit prior to requesting MMC. The Board has previously addressed these arguments and has rejected them. (See Admin. Order No. 2014-12.)

Regarding the substance of the Second Supplemental Report, Arnaudo argues that the Board should accept review based upon two of the grounds stated in Labor Code section 1164.3, subdivision (a). First, it argues that the Mediator made clearly erroneous findings of material fact. Second, it argues that the report is arbitrary or capricious in light of the Mediator's findings of fact.

With respect to Arnaudo's claim that the Mediator made clearly erroneous findings of material fact, although it argues that the wage rates ordered by the Mediator were excessive and punitive, it does not identify any specific finding by the Mediator that was allegedly erroneous. Accordingly, Arnaudo has failed to establish a prima facie case that the Board should accept review on this ground.

Arnaudo's argument that the second-year wage provisions ordered by the Mediator were arbitrary or capricious in light of the mediator's findings of fact also fails to justify accepting review. Arnaudo's principal argument is that it should not be required to pay wages substantially higher than the state minimum wage because all or nearly all agricultural employers in San Joaquin County, including employers similarly situated to Arnaudo, pay only the minimum wage. Arnaudo argues that the Mediator "ignored" or "discounted" evidence of the wage rates paid by Arnaudo's competitors and the stipulated fact that the UFW has no contracts with any other asparagus growers. In fact, the Second Supplemental Report reveals that the Mediator specifically discussed the facts argued by Arnaudo, including that "most agricultural employers in the San Joaquin Valley pay their general field labor the minimum wage . . ." [Second Supplemental Report at p. 4.] However, the Mediator found that the comparison between Arnaudo and

the bulk of San Joaquin County agricultural employers was not apt because those employers' workers are not represented by labor organizations, meaning that "there is no counterweight to an employer's unilateral authority to set compensation" and "[w]ages are naturally depressed as a result." [*Id.* at pp. 4-5.] Accordingly, the Mediator determined that the factor set forth in Labor Code section 1164, subdivision (e)(4) was not persuasive.

Arnaudo further argues that the \$9.88 hourly rate ordered by the Mediator for the second year of the MMC Contract represents a 9.8 percent increase over what employees are currently earning and is almost eight times higher than the change in the Consumer Price Index from 2012 to 2013. This, Arnaudo argues, is an "unwarranted and punitive" result. However, to the extent that Arnaudo's employees are currently being paid only at the minimum wage, this is because Arnaudo has not implemented the first-year wage rates ordered in the Mediator's First Report.<sup>4</sup> In ordering a 4 percent wage increase for the second year of the MMC Contract, the Mediator relied upon Consumer Price Index data as contemplated in Labor Code section 1164, subdivision (e)(5). More

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<sup>4</sup> In the Petition for Review, Arnaudo argues that the first-year wage increases were themselves excessive. However, those wage rates were ordered in the Mediator's First Report. Arnaudo challenged the first-year wage rates at that time and the Board found that Arnaudo failed to establish a prima facie case. (Admin. Order No. 2014-12.) Having had its opportunity to seek Board review of that provision of the MMC Contract, Arnaudo may not reargue that issue in the context of a subsequent report that was limited to the issue of second-year wage rates. Furthermore, even if it were proper for Arnaudo to challenge the first year wage rates at this time, we would reject that challenge. The Mediator explained that a substantial portion of the first year wage increases would have been mandated by the rising minimum wage in any event. Furthermore, as discussed below, the Mediator supported his conclusions by reference to Consumer Price Index data as contemplated in Labor Code 1164, subdivision (e)(5).

specifically, the Mediator found that, according to the Consumer Price Index and cost of living data, inflation has increased the cost of living by 20 percent since 2005, a single person living in San Joaquin County would require the equivalent of a \$10.29 per hour wage to sustain a yearly budget, and accordingly, payment at the minimum wage results in earnings that are “at or below subsistence level, barely able, if at all, to sustain a single worker or a family.” [Second Supplemental Report at pp. 4-5.] Responding to Arnaudo’s argument that the ordered wage increase was in excess of the Consumer Price Index change, the Mediator found that raises to the minimum wage “have consistently lagged behind inflation and the cost of living in San Joaquin County.” [*Id.* at p. 5.] The Mediator cited a growing trend in certain California cities as well as industries throughout the nation to raise wages over and above state and federally mandated minimums, which, along with increases in the Consumer Price Index and cost of living, supported the 4 percent increase proposed by the UFW. Finally, the Mediator correctly noted that the state minimum wage was scheduled to increase in January 2010 to a rate above that ordered in the MMC Contract.

In sum, the Mediator considered the evidence and arguments presented by Arnaudo and the UFW and provided a reasoned basis, consistent with the permissive factors enumerated in Labor Code 1164, subdivision (e), for adopting the UFW’s proposal for a 4 percent across-the-board wage increase effective March 1, 2015.

Arnaudo has failed to establish a prima facie case that the Mediator’s rulings were based upon clearly erroneous findings of material fact or that they were arbitrary or capricious

in light of the Mediator's findings of fact. Accordingly, the Board does not accept review of the Second Supplemental Report.

**ORDER**

Arnaudo's Petition for Review is dismissed. Pursuant to Labor Code section 1164.3, the Mediator's May 13, 2014 report, as modified by the April 6, 2015 "Second Supplemental Report," and the Board's decisions and orders in this case, shall take immediate effect as a final order of the Board.

DATED: April 23, 2015

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)

41 ALRB No. 3  
Case No. 2013-MMC-001

### Background

On February 13, 2013, the Agricultural Labor Relations Board (the “Board”) referred the United Farm Workers of America (the “UFW”) and Arnaudo Brothers, LP, and Arnaudo Brothers, Inc. (“Arnaudo”) to Mandatory Mediation and Conciliation (“MMC”) Proceedings. Mediator Matthew Goldberg (the “Mediator”) issued a MMC report on May 13, 2014. The Board remanded for further proceedings concerning the “union security” and duration provisions of the MMC Contract. On September 12, 2014, the Mediator issued a “Supplemental Report” which contained rulings on the remanded provisions, but directed the parties to “meet and confer” regarding second-year wage rates. The Board found that the “Supplemental Report” did not meet the minimum requirements for a mediator’s report as it stated no basis and did not cite to the record concerning the direction that the parties meet and confer over wage rates. On April 6, 2015, the Mediator issued a “Second Supplemental Report” that adopted the UFW’s proposal for a 4 percent wage increase for the second year of the MMC Contract. Arnaudo petitioned for review.

### Board Decision

The Board dismissed Arnaudo’s petition for review of the Second Supplemental Report. The Board rejected Arnaudo’s argument that the referral to MMC was invalid based on alleged disclaimer or abandonment by the UFW, as those claims had previously been rejected by the Board. The Board found that Arnaudo did not establish a prima facie case that the Mediator made clearly erroneous factual findings, as Arnaudo had not identified any specific factual findings by the Mediator that it claimed were erroneous. Finally, the Board rejected Arnaudo’s argument that the Mediator’s wage rulings were arbitrary or capricious. The Mediator considered the evidence cited by Arnaudo and its arguments and found that they were not persuasive. In reaching his determinations, the Mediator relied upon Consumer Price Index and cost of living data consistent with Labor Code section 1164, subdivision (e)(5). The Mediator considered the evidence and arguments and provided a reasoned basis for his decision consistent with the factors enumerated in Labor Code section 1164, subdivision (e). Accordingly, the Board dismissed Arnaudo’s petition for review. The Board adopted the Mediator’s first report, as modified by the Second Supplemental Report and the Board’s decisions and orders in the case, as a final order of the Board to take immediate effect.

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