

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

SPAWN MATE, INC. dba)	Case No.	2016-MMC-01
MUSHROOM FARMS, a California)		
Corporation,)		
)		
Employer,)		
)		
and,)		
)		
UNITED FOOD AND)	43 ALRB No. 3	
COMMERCIAL WORKERS,)	(42 ALRB No. 3)	
LOCAL 5,)		
)		
Petitioner.)	(December 8, 2017)	
_____)		

DECISION AND ORDER

On August 17, 2016, the Agricultural Labor Relations Board (“Board”) issued *Mushroom Farms, Inc.* (2016) 42 ALRB No. 3, referring Spawn Mate, Inc. dba Mushroom Farms (“Mushroom Farms”) and the United Food and Commercial Workers Union, Local 5 (“UFCW”), the certified bargaining representative of Mushroom Farms’ agricultural employees, to mandatory mediation and conciliation pursuant to Labor Code section 1164. The parties selected Matthew Goldberg to serve as the mediator, and met with him on several occasions but were unable to agree to all terms of a collective bargaining agreement. Accordingly, the Mediator issued a report (“Report”), dated October 24, 2017, fixing the remaining terms of a collective bargaining agreement. (Lab. Code, § 1164, subd. (d).)

Mushroom Farms and the UFCW both filed petitions for review of the Report pursuant to Labor Code section 1164.3, subdivision (a). The Board found that the Report failed to satisfy the requirements of Labor Code section 1164, subdivision (d), because the Report failed to fully resolve all of the issues between the parties. On November 8, 2017, the Board issued Administrative Order 2017-17, remanding the matter to the Mediator with instructions to issue and file a report in compliance with Labor Code section 1164, subdivision (d). The Board dismissed the parties' petitions for review without prejudice as premature.

On November 27, 2017, the Board received from the Mediator a "Supplemental Report to the Board" ("Supplemental Report"). The Supplemental Report addresses the articles that were not fully resolved in the first Report, and addresses an additional provision that was inadvertently omitted from the Report. Specifically, the Supplemental Report addresses Article 20.8 (Excess WGAT Contributions), Article 25 (Pension), and Article 16E (Reporting and Standby Time). Both the UFCW and Mushroom Farms timely filed requests for review of the Mediator's Report as amended by the Supplemental Report.

Standard of Review

Pursuant to Labor Code section 1164.3, subdivision (a), the Board may accept for review those portions of a petition for review for which a prima facie case has been established that a provision of the collective bargaining agreement set forth in the mediator's report is (1) unrelated to wages, hours or other conditions of employment, (2)

based on clearly erroneous finding of material fact, or (3) arbitrary or capricious in light of the mediator's findings of fact.

After careful evaluation of the parties' contentions regarding the provisions of the Report as modified by the Supplemental Report, we grant review only as to Mushroom Farms' petition concerning the incentive bonus rate provision, and we remand that issue to the Mediator in accordance with Labor Code section 1164.3, subdivision (c). In all other respects we find that the parties have failed to establish a prima facie case that the Mediator's findings of material fact are clearly erroneous, or that the provisions fixed in his Report and Supplemental Report are arbitrary or capricious in light of his findings of fact.

Mushroom Farms' Request for Review

Mushroom Farms seeks review of four provisions of the Report/Supplemental Report, and argues that: (1) the Report must be augmented to reflect that Mushroom Farms currently uses the "direct pick" harvest method and a conversion rate for direct pick must be established and included in the Report; (2) rest period pay should be limited to ten minutes and any additional time off should be classified as non-productive time; (3) the Report must be augmented to eliminate the requirement that the Employer establish a 401(k) plan; and (4) Section 20.8 in the Supplemental Report requires clarification.

1. "Direct Pick" Mushrooms (Incentive Bonus Rate)

Mushroom Farms states that it employs two harvesting methods: "lug pick," where mushrooms destined to go on to further processing are put into large twelve-

pound “lugs” as they are harvested, and “direct pick” where harvesters put mushrooms directly into the containers that will be used by retail outlets selling the mushrooms. Lugs are not used in harvesting direct pick mushrooms. According to Mushroom Farms, both types of product (direct pick and lug pick) are harvested simultaneously throughout a workday in the same room at the same time by the same picker.

The Mediator’s Report provides that pickers will receive an hourly wage, plus an incentive bonus. The Report provides that pickers will get a \$2.23 per lug incentive bonus for each lug greater than five lugs picked per hour, and a \$2.25 per lug incentive in the second year for each lug above five and a half lugs per hour. The Report also provides that “[t]he bonus for direct pick will be \$.2271 in the first year and \$.2287 the second, should the Employer institute this method, currently not in effect.” (Report, p. 14.)

Mushroom Farms seeks review because the Mediator’s statement that direct pick is not currently in effect is an erroneous finding of a material fact. Although the Report does include bonus amounts for units of direct pick mushrooms, it is unclear from the Report at what point those bonus amounts take effect. Mushroom Farms therefore argues that the record should be re-opened so the Mediator can establish a conversion rate for direct pick bonus payment that is consistent with other provisions of the Report.

At the hearing, Monterey Mushrooms Regional Vice President Clark Smith testified that he did not think Mushroom Farms was doing direct pick (TR: II, 408). However, Mushroom Farms worker Carlos Garcia testified that he was doing direct pick

“right now.” (TR: I, 167.) Smith testified that it was more labor intensive to do direct pick boxes. (TR: II, 407.)

Mushroom Farms sought clarification from the Mediator about direct pick incentive bonus rates upon reviewing the Report. Included with its request for review is an email exchange between Mushroom Farms and the Mediator in which Mushroom Farms sought clarification. The Mediator answered that the direct pick bonus rate would also apply after five and five and a half lugs. However, it is clear from the record that direct pick mushrooms are not measured in lugs.

We conclude that the Mediator failed to add a formula that would allow Mushroom Farms to calculate incentive bonuses for direct pick mushrooms. The absence of such a formula appears to have been based upon the clearly erroneous finding of fact that Mushroom Farms does not currently use the direct pick method and/or that direct pick mushrooms can be measured in lugs. It is also unclear to what extent the Mediator’s misunderstanding about the direct pick method, including that it is currently being used at Mushroom Farms, may have affected his determinations about incentives payable based on the lug pick method.¹ Accordingly, we remand this provision to the Mediator to allow him to clarify this provision.

¹ Mushroom Farms proposed eliminating the differentiation between lug and direct pick for incentive pay purposes. The Mediator’s Report maintains a distinction between lug and direct pick, but provides an incentive formula applicable only in the lug pick context.

2. Rest Period Pay (Article 17)

Mushroom Farms argues that the legal mandate for paid rest breaks is only ten minutes in duration. Thus, any additional time off mandated by the Report should be classified as non-productive time and not as rest time.

The Mediator adopted the UFCW's proposal on this article and the Report provides for a 15-minute break for every four hours worked paid at the average hourly rate. The record provides that Mushroom Farms workers are now taking 15-minute breaks, consistent with Mushroom Farms most recent collective bargaining agreement covering these employees.² Comparable contracts cited by the Mediator also provide for 15-minute breaks.

The request for review of this provision reflects Mushroom Farms' disagreement with the Mediator and does not meet the required prima facie showing that the provision is either based on clearly erroneous findings of fact and/or is arbitrary in light of the Mediator's findings of fact. Mushroom Farms' main contention is that the Report in providing for 15-minute rest periods exceeds the minimum 10-minute legal requirement. (See Cal. Code Regs., tit. 8, § 11130, subd. (12).) However, the 10-minute standard is a minimum requirement, and Mushroom Farms cites no authority prohibiting

² Mushroom Farms' agricultural employees previously were represented by the United Farm Workers of America ("UFW"). The UFW was decertified after a secret ballot election, and the UFCW was certified as the employees' bargaining representative on January 19, 2016. Mushroom Farms' last contract with the UFW had a term of 2012-2017, and according to the Mediator's Report "provided the 'status quo' platform" for Mushroom Farms' and the UFCW's negotiations for a new contract.

the provision of longer rest breaks. Carlos Garcia testified that Mushroom Farms has been providing its employees 15-minute breaks for the 37 years that he has worked for the company. (TR: I, 172-173.) We deny review of this provision.

3. 401(k) Plan (Article 25)³

Mushroom Farms argues that “it was clearly arbitrary and capricious to mandate that MFI establish a 401(k) plan.” Mushroom Farms contends that “the ruling not only explicitly requires the adoption of a 401(k) plan in the absence of any evidence that such a plan is even remotely feasible (or lawful) at MFI, but also requires MFI to contribute to such a plan, even though it is already contributing to its employees’ pensions through payment of the withdrawal liability assessed by the former union pension fund. Those moneys are already used to fund MFI employee pensions. Thus, the contribution requirement in the Supplemental Report results in inequitable ‘double dipping’ for MFI employees.”⁴

³ In the first Report, the Mediator ordered that “some sort of 401(k) should be instituted for these employees,” but because there was insufficient information in the record to reach a determination about the details of the plan, amount of employer contribution, etc., the Mediator returned the question of “what dimensions the plan will take” to the parties. Upon the Board’s remand of this provision, the Supplemental Report orders that Mushroom Farms establish a 401(k) plan, and contribute \$0.105 per hour per employee in the first year of the contract and \$0.11 per hour in the second year.

⁴ Mushroom Farms’ 2012-2017 contract with the UFW required Mushroom Farms to contribute \$.08 per hour worked to the Juan De La Cruz pension plan for the first four years, and \$.10 per hour thereafter. After decertification, Mushroom Farms had to withdraw from the UFW pension plan. Upon withdrawal, Mushroom Farms was assessed a withdrawal liability of \$236,334 with quarterly payments in the amount of \$3,784.16 for twenty years. The record establishes the withdrawal liability was incurred as a result of underperforming investments.

The Mediator states in the Supplemental Report that “[t]he Employer argued that it is already funding pensions over the contract period as a result of the withdrawal assessment. However, such funding is necessary for it to maintain a prior commitment to provide pension benefits. It is not an adequate reason to discontinue that benefit into the future, and essentially penalize current workers, especially when such benefits are provided to similarly situated employees within the larger Monterey Mushroom organization.” (Supp. Report, p. 3.) The Mediator also found that comparable contracts included pension contribution language. (Report, p. 44.)

Moreover, in his initial Report the Mediator stated “[t]he Employer never claimed ‘an inability to meet the Union’s wage and benefits demands.’ As such, its financial condition and ability to pay projected Contract costs are not in issue.” (Report, p. 4.) This is supported by Mushroom Farms’ attorney Gumberg’s statement at the hearing that “we’re not raising inability to pay.” (TR: II, 421.)

Mushroom Farms additionally contends the imposition of a 401(k) plan is arbitrary and capricious because “there has been no showing in the record whether a 401(k) plan is feasible at MFI, how such a plan would be administered, [and] whether MFI is in a position to comply with all the myriad requirements and responsibilities for establishment and operation of a 401(k) plan” However, the record fails to show Mushroom Farms ever raised these concerns with the Mediator. It is incumbent on a party to explain and support its bargaining positions during the process before the mediator. Mushroom Farms did not do so here with respect to the concerns it now raises before the Board. A party cannot challenge contract terms fixed by a mediator in the

MMC process based on arguments asserted for the first time to the Board on a petition for review where the party could have raised those arguments with the mediator, but failed to do so. Mushroom Farms offers no explanation why the issues it now asserts before the Board were not raised to the Mediator at the crucial time in which the Mediator was taking evidence from the parties to assist him in determining contract terms.

Accordingly, Mushroom Farms has failed to establish a prima facie showing that it was arbitrary and capricious for the Mediator to order that Mushroom Farms establish a 401(k) plan. We deny review of this provision.

4. Excess WGAT Contributions (Article 20.8 in the Supp. Report)

Finally, Mushroom Farms seeks review of the Mediator's Supplemental Report that specifies how to disburse excess Western Growers Assurance Trust ("WGAT") funds upon expiration of the contract.⁵ In his Supplemental Report, the Mediator ordered that beginning six months from the expiration of the contract, Mushroom Farms shall conduct an audit to determine excess amounts previously contributed by each individual employee, and to determine the total amount used during

⁵ WGAT is the health insurance plan that Mushroom Farms elected for its employees after coverage under the RFK Farm Workers Medical Plan terminated when Mushroom Farms' employees decertified the UFW and replaced it with the UFCW. The RFK plan is only available to employees who work for employers who have collective bargaining agreements with the UFW. WGAT coverage began in March 2016. In negotiating terms of the new contract, the parties agreed to change insurance carriers from WGAT to the UFCW National Health and Welfare Trust. Subsequent to the change from RFK to WGAT in 2016, the total funds contributed by Mushroom Farms and by employees under the previous contract exceeded the premium amount charged by WGAT, necessitating a provision in the new contract specifying what is to be done with the excess funds that now exist.

the contract term to provide coverage for employees that did not work sufficient hours to meet the cost of their premiums. The total amount used to cover the employees who are short working hours will be divided by the total number of employees who made contributions, and the difference between the two amounts will be refunded to the appropriate employees when the contract expires.

Mushroom Farms argues that this order is ambiguous and seeks clarification. Mushroom Farms argues that the record must be reopened so the parties can present evidence to the Mediator as to how best create appropriate procedures to comply with the ruling in the Supplemental Report. Labor Code section 1164.3 does not authorize the Board to grant review of a provision of a mediator's report on the ground that the provision is "unclear" or "ambiguous." We therefore consider whether Mushroom Farms has established a prima facie case that this provision of the Supplemental Report was arbitrary or capricious or based upon a clearly erroneous finding of material fact.

One of Mushroom Farms' concerns is about the timing of the audits. Mushroom Farms states that "it is not going to be feasible to conclude the audit and issue any possible reimbursement moneys upon the expiration date of the contract given that the first audit must be conducted 'beginning six months from the expiration of the Contract.' Minimally, at least 90 days will be needed to conclude the audit." However, Mushroom Farms has not provided any explanation as to why the audit would take this long. There will not be any additional excess funds going forward. Therefore, the first amount (excess amounts previously contributed by each individual employee) could be

calculated ahead of the expiration of the contract. Moreover, the number of employees subject to the audit is relatively small. Mushroom Farms has approximately 80 employees at its Watsonville farm—40 of these workers are pickers. (Report, p. 2.)

Mushroom Farms also finds some of the terms used by the Mediator unclear. For example, Mushroom Farms questions whether the order pertains only to employee contributions or whether it includes both employer and employee contributions. However, it is clear from the Supplemental Report that the concern addressed by this provision relates only to amounts deducted from employees' pay checks that were not used to cover those employees' insurance premiums. Any such deductions not utilized for the purposes stated in the revised Health and Welfare Article over the two-year term of the Contract at issue rightfully belong to these employees and should be returned to them. (Supp. Report, p. 2.)

The Report and the Supplemental Report provide a sufficient framework to guide Mushroom Farms in calculating and returning any excess funds to employees. Mushroom Farms has not established a prima facie case that this provision of the Supplemental Report was arbitrary or capricious or based upon a clearly erroneous finding of material fact. Accordingly, we deny review of this provision.

UFCW's Request for Review

The UFCW seeks review of four articles: (1) Appendix A- Wage Rates (Pickers); (2) Article 20.2, 20.3 and Section 20.8 (Health and Welfare Plan); (3) Article 28 (Re-Picking rooms); and (4) Article 16B (Reporting.) The UFCW argues that these

articles are either based on clearly erroneous findings of fact and/or are arbitrary in light of the mediator's findings of fact.

1. Appendix A- Picker's Wage Rates

Under the prior contract, pickers were paid a straight piece rate based on the number of lugs or the number of boxes they picked. During negotiations, Mushroom Farms proposed to eliminate the piece rate system, and instead pay pickers a minimum hourly rate plus an incentive bonus piece rate based on the number of pounds picked per hour. During negotiations, there was a 30-day survey where the earnings of selected workers were compared to determine whether they would earn more, less, or about the same under Mushroom Farms' proposal. (Report, p. 7.) After reviewing the survey results, the UFCW determined that some workers would lose wages under the proposed minimum wage plus per pound incentive system, while Mushroom Farms' position is that the survey showed compensation levels using either method were roughly equivalent. Therefore, the UFCW proposed to keep the existing piece rate system, and Mushroom Farms proposed paying the current minimum wage (\$10.50) plus the per pound per hour incentive rate.

The Mediator adopted a "hybrid" of the parties' proposals. The Report orders a minimum hourly guarantee for workers at \$11.00 per hour for the first year of the agreement beginning January 1, 2018, and \$12 per hour for the second beginning January 1, 2019. The Mediator rejected Mushroom Farms' proposal to base the incentive rate on the number of pounds picked, stating that the "per lug incentive has been the status quo for an extended period." (Report, p. 13.) Thus, the Report provides that

pickers will get a \$2.23 per lug incentive bonus for each lug greater than five lugs picked per hour, and a \$2.25 per lug incentive in the second year for each lug above five and a half lugs per hour.

The UFCW argues that it was erroneous for the Mediator to find that wages would be enhanced under the new agreement, because the UFCW's calculations show that a comparison between average current wages and average wages that will be earned under the Report "primarily shows modest increases of less than 10 cents per hour at most, as well as situations where pickers will sometimes suffer a wage loss." (UFCW's Request for Review, p. 4.) The UFCW also argues that it was arbitrary and capricious for the Mediator to adopt the hybrid of the parties' proposals in light of his finding that Mushroom Farms never claimed an inability to meet the union's wage and benefits demands.

The Mediator found that "reference to the statutory factors⁶ provides little assistance in determining whether the parties should do away with a pure piece rate system in favor of a minimum base plus an incentive." (Report, p. 11.) He then went on to thoroughly discuss his findings and reasoning underpinning his order. He observed that comparisons to similar operations even in the same geographical area or within Monterey Mushrooms do not reveal any consistent pattern or arrangement, and he described systems at a number of companies -- some operations pay piece rate, one company

⁶ Lab. Code, § 1164, subds. (e)(1)-(5).

(within Monterey Mushrooms) pays hourly, and one (also within Monterey Mushrooms) has a negotiated incentive but at higher rates.

The Mediator found that Mushroom Farms' concerns underlying its proposal to alter the compensation system were legitimate, and that there was no statutory impediment to instituting a modified piece rate system. (Report, p. 12.) On the other hand, the Mediator rejected Mushroom Farms' per pound incentive system, holding that the per lug incentive has been the status quo for an extended period. (Report, p. 13.) The Mediator also held that "cost of living factors justify...adopting the Union's suggested increases to the piece rate," and the \$2.23 and \$2.25 per lug incentive rates reflect rates from the UFCW's proposal. (Report, p. 13-14.)

We find the Mediator adequately justified his order on pickers' wage rates, and that the UFCW has failed to make a prima facie showing that review of this provision should be granted.

2. Article 20.2, 20.3 and Section 20.8- Health and Welfare Plan

With respect to the amount of Mushroom Farms' contributions to cover employee health care premiums, the parties agreed that Mushroom Farms would pay 100 percent of the cost of "employee only" coverage under the Universal Health Plan and 100 percent of the cost of employee only Life/AD&D, Delta Dental, and VSP Choice Plan, subject to a monthly cap or maximum. However, they disagreed on the amount of the monthly cap. The UFCW proposed \$717.41 per month per employee, and Mushroom Farms offered \$470. With respect to the percentage of the insurance premium that Mushroom Farms would pay to cover the cost of increases to premiums in the second

year of the contract, the UFCW suggested 7 percent and Mushroom Farms countered with 4 percent.

The Mediator's report reflects a compromise between the two positions. After discussing the rationales offered by the parties, he ordered \$515 per month per employee, and ordered the UFCW's 7 percent increase in the second year of the contract.

First, the UFCW argues that review should be granted because the Mediator's order on Articles 20.2 and 20.3 is clearly erroneous because it is premised on an erroneous assumption that there will be an enhancement in the area of wages, when in practice (as the UFCW argues above), under the order on Appendix A, the mushroom pickers will have only modest wages increases or possibly losses. The UFCW seeks a higher employer contribution to cover the premiums of employees wanting coverage at higher than the employee-only tier.

However, the Report does provide for wage increases—just not at the amounts the UFCW proposed. Moreover, the Mediator stated that while an increase in health care premiums from prior years should be expected, “the figure proposed by the Union cannot be justified by any measure, least of all by reference to the statutory criteria.” (Report, p. 33.) The Mediator thoroughly discussed employer health care plan contributions at several other companies—each larger than Mushroom Farms. The only contract presented for comparison which has a health and welfare contribution that approaches the UFCW's figure is with a packing shed, and thus one which is not a “similar agricultural operation.” (Report, p. 33.)

The UFCW continues to argue that its proposal for distributing the excess WGAT funds should be accepted over Mushroom Farms' proposal. However, this position reflects disagreement with the Report rather than a prima facie showing that this article is either based on clearly erroneous findings of fact and/or is arbitrary in light of the mediator's findings of fact. Therefore, we deny review of this provision.

3. Article 28- Re-Picking rooms

Re-picking a room occurs when a crew has entered a room and picked all marketable mushrooms of all sizes in that room and then returns later the same day and picks all marketable mushrooms of all sizes a second time. In the contract with the UFW, under certain specified circumstances pickers were to receive additional pay for re-picking.

Specifically, the provision was as follows:

1. Re-picking rooms will be compensated at time and a half (1 ½) only when the company requests the entire crew to re-pick a room due to mechanical failures or due to a request from sales.
2. If the re-picking causes overtime after 9 (nine) hours the pickers will be paid at 1 ½ (one and one-half) times the piece rate.

The Mediator adopted Mushroom Farms' proposal to delete the re-picking provision. The UFCW seeks review, arguing that the order on re-picking was arbitrary in light of the mediator's contrary findings of fact on this article. As an example, the UFCW cites to page 46 of the Report, where the mediator states, "The Employer did not present any legitimate reason to depart from the status quo." However, this cited language was

not the Mediator's finding of fact. Rather, it was his recitation of the UFCW's position below.

In adopting Mushroom Farms' proposal, the Mediator found that there was no evidence that the narrow circumstances described in Article 28 had arisen in recent years, and he noted that Article 15 guarantees that pickers who work in excess of nine hours will be compensated at the overtime rate of 1 ½ times the piece rate. Therefore, he found that Article 28 was obsolete as well as superfluous.

The UFCW has failed to make a prima facie showing that review of this provision should be granted.

4. Article 16B –Reporting

Article 16B of the UFW contract provided:

The Company may call in workers, on their regularly scheduled day off, up to one half hour after the beginning of work. If the worker so elects to come to work he or she will not be required by the Company to take an alternate day off.

Mushroom Farms sought to modify this language as follows:

Employees called in on an unscheduled day off may be required to take a day off later in the week in order to achieve efficiency at the farm.

The Mediator found that Mushroom Farms' modification giving it the ability to move an employee's day off to another day that week if he/she comes in to work on the day that was originally scheduled to be his/her day off was a measure directed at containing costs. Since an employee would receive overtime pay for working on his or her scheduled day off, the Mediator found that Mushroom Farms' objective to

minimize overtime costs was a legitimate exercise of an ordinary and widely-held management right. The Mediator adopted Mushroom Farms' proposal on this article.

The UFCW originally sought to maintain the language in the UFW contract. However, the UFCW does not seek review of this provision for that reason. Rather, the UFCW seeks review to ensure the Mediator's Report contains additional language that UFCW says that the Mediator subsequently confirmed was consistent with his ruling. This additional language sought by the UFCW is as follows:

An employee may voluntarily elect whether to report to work on his or her regularly-scheduled day-off when requested by the Company. An employee shall not be disciplined for electing not to report to work when the Company calls the employee in on his or her regularly-scheduled day off.

In support of this request, UFCW submits a declaration by attorney Caroline Cohen stating that around October 28, 2017, after reading the Mediator's Report, she "asked the mediator via email on or around October 28, and again confirmed in a conference call on or around October 30, 2017, that the addition of the [above] language would comport with the report's order on Article 16B." Ms. Cohen further states that "[i]n response to my email and during the conference call, the mediator confirmed that the proposed additional language would comport with his ruling on Article 16B." (Supp. Decl. of C. Cohen, dated October 31, 2017, ¶ 2.)

It is not the Board's role at this stage to draft contract language or to add terms not included within a mediator's report. (Lab. Code, § 1164.3, subd. (c).) We thus deny the UFCW's request that the Board order the union's additional language included

in the Mediator's Report. The UFCW's proposed language is not in the Report, and its hearsay assertions that the Mediator agreed with or confirmed the UFCW's position subsequent to issuing his Report cannot be the basis for inclusion. The UFCW, therefore, has not established a basis for granting review on this provision. Thus, the Board denies review of this provision.

ORDER

Pursuant to Labor Code section 1164.3, subdivisions (b) and (c), the Board hereby grants review as to the specified provision of the Mediator's Report as modified by the Supplemental Report discussed above. Review is hereby denied as to all other disputed provisions of the Report as modified by the Supplemental Report. After meeting with the parties only to the extent he deems necessary and in accordance with Labor Code section 1164.3, subdivision (c), the mediator shall file a second supplemental report addressing the matter upon which review has been granted. After the mediator issues his second report, the Board shall issue an order in accordance with Labor Code section

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1164.3, subdivision (d). That order, together with the Order herein, shall constitute the final order of the Board subject to review pursuant to Labor Code section 1164.5.

DATED: December 8, 2017

Genevieve A. Shiroma, Chairwoman

Cathryn Rivera-Hernandez, Member

Isadore Hall, III, Member

CASE SUMMARY

**SPAWN MATE, INC. dba
MUSHROOM FARMS, INC.**

Case No. 2016-MMC-001

United Food and Commercial Workers,
Local 5 (UFCW)

43 ALRB No. 3
(42 ALRB No. 3)

Background

On August 17, 2016, the Agricultural Labor Relations Board (“Board”) issued *Mushroom Farms, Inc.* (2016) 42 ALRB No. 3, referring Spawn Mate, Inc. dba Mushroom Farms (“Mushroom Farms”) and the United Food and Commercial Workers Union, Local 5 (“UFCW”) to mandatory mediation and conciliation (MMC) pursuant to Labor Code section 1164. The parties met with the mediator on several occasions but were unable to agree to all terms of a collective bargaining agreement. The mediator issued a report (“Report”), dated October 24, 2017, fixing the remaining terms of the agreement. (Lab. Code, § 1164, subd. (d).) The Board found that the Report failed to satisfy the requirements of Labor Code section 1164, subdivision (d), because the Report failed to fully resolve all of the issues between the parties. On November 8, 2017, the Board issued Administrative Order 2017-17, remanding the matter to the Mediator with instructions to issue and file a report in compliance with Labor Code section 1164, subdivision (d). On November 27, 2017, the Board received from the Mediator a “Supplemental Report to the Board” (“Supplemental Report”). Both the UFCW and Mushroom Farms timely filed requests for review of the Mediator’s Report as amended by the Supplemental Report.

Board Decision and Order

Pursuant to Labor Code section 1164.3, subdivision (a), the Board may accept for review those portions of a petition for review for which a prima facie case has been established that a provision of the collective bargaining agreement set forth in the mediator’s report is (1) unrelated to wages, hours or other conditions of employment, (2) based on clearly erroneous finding of material fact, or (3) arbitrary or capricious in light of the mediator’s findings of fact.

After evaluation of the requests for review, the Board granted review only as to Mushroom Farms’ petition concerning an incentive bonus rate provision, and the Board remanded that issue to the Mediator, in accordance with Labor Code section 1164.3, subdivision (c). In all other respects the Board found that the parties failed to establish a prima facie case that the Mediator’s findings of material fact were clearly erroneous, or that the provisions fixed in his Report and Supplemental Report were arbitrary or capricious in light of his findings of fact.

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