

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

PREMIERE RASPBERRIES, LLC,)	Case No.	2018-MMC-01
)		
)		
Employer,)		
)		
and,)		
)	44 ALRB No. 2	
UNITED FARM WORKERS OF)		
AMERICA,)		
)	(February 15, 2018)	
)		
)		
Petitioner.)		
_____)		

DECISION AND ORDER

On February 2, 2018, the United Farm Workers of America (“UFW”), the certified bargaining representative of the agricultural employees of Premiere Raspberries, LLC (“Premiere”), filed a declaration with the Agricultural Labor Relations Board (“Board”) pursuant to Labor Code section 1164 et seq. and Board Regulation section 20400¹ requesting that the Board issue an order directing the parties to mandatory mediation and conciliation (“MMC”) of their issues. On February 7, 2018, Premiere submitted an answer to the UFW’s declaration pursuant to section 20401 of the Board’s

¹ The Board’s regulations are codified at California Code of Regulations, title 8, section 20100 et seq.

regulations. On February 13, 2018, the UFW filed a request for permission to reply to Premiere's answer, and simultaneously filed a reply to the answer.²

The relevant prerequisites for referral to MMC are set forth in Labor Code section 1164, subdivision (a) and section 20400, subdivision (b) of the Board's regulations. If, as here, the labor organization was certified after January 1, 2003, either party may file a request for referral to MMC any time following 90 days after an initial demand to bargain following certification. (Lab. Code § 1164, subd. (a); Cal. Code Regs., tit. 8, § 20400, subd. (b).) The filing party must submit a declaration stating that the parties are subject to an existing certification, that they have failed to reach a collective bargaining agreement, and that the employer has employed 25 or more agricultural employees during any calendar week in the year preceding the filing of the declaration and request for MMC. (*Ibid.*) In addition, the declaration must be accompanied by any documentary or other evidence that supports the above statements. (Cal. Code Regs., tit. 8, § 20400, subd. (b).)

The UFW's February 2, 2018 request for referral to MMC must be dismissed because 90 days have not elapsed since an initial request to bargain following the certification of representative. The October 11, 2017 certification was stayed from October 12, 2017 to December 6, 2017. The Board's Executive Secretary issued a Stay of Certification of Representative as Prematurely Issued on October 12, 2017. On October 27, 2017, the Board ordered the certification stayed pending a decision on Premiere's

² The UFW's request for permission to file a reply to the Premiere's answer is denied.

Motion for Reconsideration of the Board’s Decision and Order on Election Objections. (Admin. Order 2017-15.) The stay of certification was lifted by the Board on December 6, 2017. (Admin. Order 2017-20.) The UFW’s October 31, 2017 demand to bargain was made while the certification was stayed; therefore, the 90-day period cannot run from that date. Rather, the period would run from the date of an initial request to bargain following the December 6, 2017 effective date of the certification of representative. Therefore, the UFW’s present request for referral to MMC is dismissed.

In its answer to the UFW’s request for referral to MMC, Premiere states that it is engaging in a technical refusal to bargain in order to obtain judicial review of the certification.³ On January 10, 2018, the UFW filed unfair labor practice (“ULP”) charge 2018-CE-004-SAL alleging that Premiere has refused to bargain beginning December 29, 2017, and continuing to date. A complaint in this matter was issued by the General Counsel on February 9, 2018. In light of the pending ULP matter, Premiere requests an order “staying all future requests for [MMC] pending judicial review of the certification.”

We deny Premiere’s request. Labor Code section 1158 specifically states that the filing of a petition for review in a ULP case to obtain indirect review of a Board

³ Because a Board order certifying a labor organization is not subject to direct review under the Act, an employer wishing to obtain judicial review of such an order may engage in a “technical refusal to bargain,” thereby committing a ULP to obtain such review. (Lab. Code, §§ 1158, 1160.8; compare with 29 U.S.C. §§ 159(d), 160(f); see *F & P Growers Assoc. v. ALRB* (1985) 168 Cal.App.3d 667, 680, fn. 10; *Boire v. Greyhound Corp.* (1964) 376 U.S. 473, 477; *Raley’s, Inc. v. NLRB* (9th Cir. 1984) 725 F.2d 1204, 1206; *Daniel Construction Co. v. NLRB* (4th Cir. 1965) 341 F.2d 805, 809-810 [rejecting employer’s attempt to seek direct review of order certifying election results and finding the employer may seek review of such an order via a technical refusal to bargain].)

certification in a representation proceeding (such as in the case of a technical refusal to bargain) “shall not be grounds for a stay of proceedings conducted pursuant to” the MMC statute. Thus, the Board has no authority to grant such a stay. (Cal. Const., art. 3, § 3.5; *Gerawan Farming, Inc.* (2013) 39 ALRB No. 5, p. 4; *Hess Collection Winery* (2003) 29 ALRB No. 6, pp. 6-7.)

ORDER

In accordance with the discussion above, the UFW’s request that the Board issue an order directing the parties to MMC is DISMISSED. In addition, Premiere’s request for an order staying all future requests for MMC pending judicial review of the certification based on its technical refusal to bargain is DENIED.

DATED: February 15, 2018

Genevieve A. Shiroma, Chairwoman

Cathryn Rivera-Hernandez, Member

Isadore Hall, III, Member

CASE SUMMARY

PREMIERE RASPBERRIES, LLC
(Employer)

Case No. 2018-MMC-01

44 ALRB No. 2

UNITED FARM WORKERS OF AMERICA
(Petitioner)

On February 2, 2018, the United Farm Workers of America (“UFW”), the certified bargaining representative of the agricultural employees of Premiere Raspberries, LLC (“Premiere”) filed a declaration with the Agricultural Labor Relations Board (“Board”) pursuant to Labor Code section 1164 et seq. and Board Regulation section 20400 requesting that the Board issue an order directing the parties to mandatory mediation and conciliation (“MMC”) of their issues.

Board Decision and Order

The Board dismissed the request for referral to MMC because 90 days have not elapsed since an initial request to bargain following the certification of representative as required under Labor Code section 1164, subdivision (a). The certification was stayed by the Board from October 12, 2017 to December 6, 2017. The UFW’s October 31, 2017 demand to bargain was made while the certification was stayed; therefore, the 90-day period cannot run from that date. Rather, the period would run from the date of an initial request to bargain following the December 6, 2017 effective date of the certification of representative.

The Board also denied Premiere’s request for an order staying all future requests for MMC pending judicial review of the certification based on its technical refusal to bargain with the UFW. Labor Code section 1158 specifically states that the filing of a petition for review in a ULP case to obtain indirect review of a Board certification in a representation proceeding (such as in the case of a technical refusal to bargain) “shall not be grounds for a stay of proceedings conducted pursuant to” the MMC statute.

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