

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

PREMIERE RASPBERRIES, LLC,)	Case No.	2018-MMC-02
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Employer,)		
)		
and,)		
)	44 ALRB No. 3	
UNITED FARM WORKERS OF)		
AMERICA,)		
)	(March 20, 2018)	
)		
)		
Petitioner.)		
_____)		

DECISION AND ORDER

On March 8, 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 March 13, 2018, Premiere

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

submitted an answer to the UFW's declaration pursuant to section 20401 of the Board's regulations.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 declaration states that the UFW was first certified as the exclusive collective bargaining representative of Premiere's agricultural employees on October 11, 2017, and that the certification was stayed from October 12, 2017, to December 6, 2017. The stay of certification was lifted by the Board on December 6, 2017. (Admin. Order 2017-20.) The declaration states that the UFW initially requested bargaining on December 7, 2017, and that follow-up requests were made on December 20, 2017, and on January 29 and March 6, 2018.

² This is the UFW's second MMC petition. The UFW's previous petition, filed on February 2, 2018, was dismissed by the Board because 90 days had not elapsed since the initial demand to bargain following the certification of representative. (See *Premiere Raspberries, LLC* (2018) 44 ALRB No. 2.)

In its answer to the UFW’s request for referral to MMC, Premiere states that it is refusing to bargain with the UFW in order to obtain judicial review of the Board’s certification order, a procedure known as a “technical refusal to bargain.” (See *F & P Growers Assoc. v. ALRB* (1985) 168 Cal.App.3d 667, 680, fn. 10.) 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 the ULP matter was issued by the General Counsel on February 9, 2018, and a hearing before an administrative law judge is scheduled for July 10, 2018. In light of the pending ULP matter, Premiere argues that the UFW’s application for an order directing parties to MMC is “inappropriate,” and that, until the court of appeal determines whether or not the certification is valid, any actions taken pursuant to the certification should not proceed. Premiere also argues that the MMC process does not provide it with a meaningful and timely process to review the certification which triggered MMC, and thus violates various constitutional and statutory rights of the employer. Finally, Premiere requests an order staying the request for MMC pending judicial review of the certification. We deny Premiere’s request for the reasons set forth in our prior decision. (*Premiere Raspberries, supra*, 44 ALRB No. 2, pp. 3-4.) Labor Code section 1158 expressly provides that MMC proceedings shall go forward regardless of the pendency of a technical refusal to bargain.

We find that the declaration submitted by the UFW meets the prerequisites for MMC discussed above, and therefore we direct the parties to MMC.

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ORDER

In accordance with the discussion above, the UFW's request that the Board issue an order directing the parties to mandatory mediation and conciliation is GRANTED.

Accordingly, pursuant to Labor Code section 1164, subdivision (b) and section 20402 of the Board's regulations, the parties in the above matter are hereby directed to mandatory mediation and conciliation. The mandatory mediation process is governed by Labor Code sections 1164-1164.13 and sections 20400-20408 of the Board's regulations. Upon the issuance of this Order, the Board shall request that a list of nine mediators be compiled by the California State Mediation and Conciliation Service and be provided to the parties. The parties shall then have seven (7) days from the receipt of the list to select a mediator in accordance with Labor Code section 1164, subdivision (b) and section 20403 of the Board's regulations.

DATED: March 20, 2018

Genevieve A. Shiroma, Chairwoman

Cathryn Rivera-Hernandez, Member

Isadore Hall, III, Member

CASE SUMMARY

PREMIERE RASPBERRIES, LLC
(Employer)

Case No. 2018-MMC-02

44 ALRB No. 3

United Farm Workers of America
(Petitioner)

On March 8, 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 found that the relevant prerequisites for referral to MMC as set forth in Labor Code section 1164, subdivision (a) and section 20400, subdivision (b) of the Board’s regulations were met. The Board granted the request for referral to MMC

The Board denied Premiere’s request for an order staying the MMC process 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 Unfair Labor Practice 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.