

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:) Case No. 2009-MMC-01
)
FRANK PINHEIRO DAIRY dba PINHEIRO)
DAIRY & MILANESIO FARMS,) ORDER DISMISSING REQUEST
) FOR MANDATORY MEDIATION
 Employer,) AND CONCILIATION
)
and) Admin Order No. 2009-11
)
UNITED FOOD AND COMMERCIAL)
WORKERS, LOCAL 5,)
 Petitioner.)
_____)

On August 19, 2009, the United Food and Commercial Workers, Local 5 (UFCW or Petitioner) filed a request for mandatory mediation and conciliation pursuant to California Labor Code section 1164 and Board regulation section 20400, et seq.¹ In support of the request, Petitioner attached a declaration by Juan Cervantes, Organizer/Representative.

On August 26, 2009, Employer, Frank Pinheiro Dairy dba Pinheiro Dairy & Milanesio Farms, filed an answer to Petitioner’s request for mandatory mediation and conciliation arguing that the request must be dismissed because the petitioner failed to provide the date of the initial demand to bargain as required by regulation section 20400, subsection (b). We agree.

¹ The Board’s regulations are found at California Code of Regulations, Title 8, 20100, et seq.

The Petitioner's request for mandatory mediation and conciliation fails to meet all of the prerequisites in Labor Code section 1164, subdivision (a) and Board regulation 20400, subdivision (b). Specifically, Reg. 20400, subsection (b) provides, in pertinent part:

“(b) Where the certification issued after January 1, 2003:
A declaration pursuant to Labor Code section 1164, subdivision (a)(2) may be filed with the Board by the agricultural employer or the certified labor organization at any time at least 180 days after the initial request to bargain by either party following the certification. The declaration shall be served and filed in accordance with sections 20160, 20164, 20166, and 20168. The declaration shall be signed under penalty of perjury, shall state that the parties are subject to an existing certification and have failed to reach a collective bargaining agreement, **shall provide the date of the initial request to bargain**, and shall state that the employer has employed or engaged 25 or more agricultural employees during a calendar week in the year preceding the filing of the declaration. **In addition, the declaration shall be accompanied by any documentary or other evidence that supports the above statements.**” (emphasis added)

The declaration submitted with the request in the above-captioned case states only that “The union’s initial request to bargain was made after the certification issued,” and fails to provide the date of the initial request to bargain. Therefore, we are unable to determine whether the request for mandatory mediation and conciliation is timely. In addition there are no relevant exhibits attached other than the certification, such as a letter requesting bargaining. If the initial request to bargain was in writing, a copy of the letter should have been submitted. If it was oral, the person who made the oral request should have submitted a declaration attesting to the phone call or conversation.

PLEASE TAKE NOTICE that, pursuant to Board regulation section 20402, subdivision (a), the Petitioner's request for mandatory mediation and conciliation is DISMISSED, without prejudice, for failure to meet all of the prerequisites in Labor Code section 1164, subdivision (a) and Board regulation 20400, subdivision (b).

By Direction of the Board.

Dated: August 28, 2009

J. ANTONIO BARBOSA
Executive Secretary, ALRB