

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

SAN JOAQUIN TOMATO)	Case No. 2011-MMC-001
GROWERS, INC.,)	
)	
Employer,)	
)	
and)	
)	ORDER TO SHOW CAUSE
UNITED FARM WORKERS OF)	
AMERICA,)	Admin. Order No. 2011-22
)	
Petitioner.)	
_____)	

On November 17, 2011, the United Farm Workers of America (UFW) filed a declaration requesting Mandatory Mediation and Conciliation (MMC) pursuant to Labor Code section 1164 and title 8, California Code of Regulations section 20400. The employer, San Joaquin Tomato Growers, Inc. (SJTG), timely filed an answer to the declaration.

Among the contentions in the answer is that SJTG and the UFW reached a binding collective bargaining agreement in 1998, and therefore a prerequisite for invoking the MMC process has not been met. (See Lab. Code §§ 1164, subdivision (a) and 1164.11.) Exhibits to SJTG's answer include documents that appear to be tentatively agreed upon contract proposals initialed by the parties, along with a letter from Dolores Huerta, Secretary Treasurer of the UFW, to Spencer Hipp, attorney for SJTG, faxed on August 13, 1998, stating that "the workers at San Joaquin Tomato Co.

have . . . ratified the contract which we have negotiated." The letter ends with the statement "I will be in touch with you so that we can make arrangements to sign the agreement." SJTG asserts that these documents evidence a binding agreement and, therefore, the MMC may not be invoked.

It is well-settled under both the National Labor Relations Act and the Agricultural Labor Relations Act that a collective bargaining agreement need not be reduced to a formal writing to be enforceable. (*Tex-Cal Land Management, Inc. v. Agricultural Labor Relations Board* (1982) 135 Cal. App. 3d 906, 915.) Acceptance of a final offer is all that is necessary to create a contract, regardless of whether either party later refuses or fails to sign a formal written draft. (*Warehousemen's Union Local 206 v. Continental Can Co., Inc.* (9th Cir. 1987) 821 F.2d 1348, 1350.) It "is well established that technical rules of contract do not control whether a collective bargaining agreement has been reached." (*Pepsi-Cola Bottling Co. v. NLRB* (8th Cir. 1981) 659 F.2d 87, 89.) The crucial inquiry is whether there "is conduct manifesting an intention to abide and be bound by the terms of an agreement." (*Capitol-Husting Co., Inc. v. NLRB* (7th Cir. 1982) 671 F.2d 237, 243.)

The UFW is hereby ORDERED TO SHOW CAUSE why the Agricultural Labor Relations Board (Board) should not dismiss its declaration requesting that the parties be directed to MMC for failure to meet the statutory prerequisite that "the parties have not previously had a binding contract between them." (Lab. Code § 1164.11.) The UFW's response to this Order shall be filed and served no later than December 14, 2011, and shall be faxed to the Executive Secretary and to

SJTG on the same date. The response shall indicate whether the UFW contests the authenticity of any of Exhibits 1-23 to SJTG's answer to the declaration and whether the UFW asserts that due to intervening events or other factors no binding agreement in fact existed. SJTG shall file and serve any response to the UFW's submission no later than December 21, 2011, and shall fax its response to the Executive Secretary and the UFW on the same date. SJTG shall indicate which, if any, material factual claims made by the UFW are disputed, so that the Board may determine if an evidentiary hearing is required to fully evaluate the UFW's declaration requesting MMC.

By Direction of the Board.

Dated: December 2, 2011

J. ANTONIO BARBOSA
Executive Secretary, ALRB