

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

SAN JOAQUIN TOMATO GROWERS, INC.)	Case No. 2011-MMC-001
))
Employer,)
))
and)
))
UNITED FARM WORKERS OF	Admin. Order No. 2012-1
AMERICA,)
))
<u>Petitioner.</u>)

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 was that SJTG and the UFW reached a binding collective bargaining agreement in 1998, and therefore a prerequisite for invoking the MMC process had not been met. (See Labor Code sections 1164, subdivision (a) and 1164.11.)

On December 2, 2011, the Board issued an Order to Show Cause why the Board should not dismiss the UFW's 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." (Labor Code section 1164.11.) Pursuant to the Order to Show Cause, the UFW was to file its response to the order

and SJTG was then to file a response to the UFW's submission and indicate which, if any, material factual claims made by the UFW were disputed by SJTG. Both the UFW and SJTG filed timely responses in accordance with the provisions of the Order to Show Cause.

On January 25, 2012, the UFW filed a Request for Ruling on the Pleadings. On January 26, 2012, SJTG filed a response to the UFW's request. The proffered basis for the UFW's request is that, while the UFW submitted sworn declarations in support of its claims as to why the parties did not previously have a binding agreement, SJTG failed to submit any declaratory evidence to support the contentions submitted in opposition to those made by the UFW. The UFW asks the Board to disregard SJTG's contentions, consider the UFW's contentions to be true, cancel the hearing, and order the parties to begin the MMC process.

The UFW's Request for Ruling on the Pleadings is hereby DENIED. The Order to Show Cause did not require either party to submit declarations in support of their contentions regarding the existence of a binding contract. The pertinent language of the order stated:

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.

Nor is there any general regulatory or statutory provision apart from the language of the Order to Show Cause that would have required declarations. Therefore, SJTG cannot be penalized for failing to submit declarations when no declarations

were required to be submitted.¹ The evidentiary hearing shall proceed as scheduled.

By Direction of the Board.

Dated: January 27, 2012

J. ANTONIO BARBOSA
Executive Secretary, ALRB

¹ In light of this conclusion, it is not necessary to address SJTG's contentions that the Request for Ruling on the Pleadings is untimely or otherwise improper, or that the UFW's submissions in response to the Order to Show Cause were insufficient to decide the issue set for hearing even if SJTG's opposition were disregarded.