

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:)	
)	Case No. 2012-CE-024-VIS
ACE TOMATO COMPANY, INC.,)	
)	
Respondent,)	ORDER AFFIRMING ALJ
)	DECISION STAYING
and)	PROCEEDINGS
)	
UNITED FARM WORKERS OF)	Admin. Order No. 2012-22
AMERICA,)	
)	
Charging Party.)	
_____)	

On October 25, 2012, the United Farm Workers of America (UFW) filed a Request for Review of ALJ Decision Staying Proceedings, or in the Alternative, Application for Special Permission to Appeal ALJ Decision Staying Proceedings. Ace Tomato Company, Inc. (Ace) filed an opposition to the UFW’s filing and the General Counsel of the Agricultural Labor Relations Board filed a statement in support. The UFW’s filing has been construed as an application for special permission to appeal a ruling of an administrative law judge (ALJ) pursuant to Board Regulation 20242 (b).¹ Special permission is granted, as the request meets the standard recently articulated by the Board in *Premiere Raspberries LLC, dba Dutra Farms* (2012) 38 ALRB No. 11, to wit: the issue cannot be addressed effectively through exceptions filed pursuant to Regulations 20282 or 20370 (j). Therefore, the Board has reviewed the ALJ’s ruling and,

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

as explained below, affirms the ALJ's decision to stay the proceedings in the above-referenced case.

By letter dated October 18, 2012, ALJ James Wolpman informed the parties that in his judgment a stay issued by the Fifth District Court of Appeal (5th DCA) on October 17, 2012 in *Ace Tomato Company, Inc. v. ALRB*, Case No. F065589 extended to the instant case, necessitating that it too be stayed pending further order of the court. In *Ace Tomato Company, Inc. v. ALRB*, Case No. F065589, Ace sought review of the decision of the Board in *Ace Tomato Company, Inc.* (2012) 38 ALRB No. 6, a matter that remains pending before the court.² In that decision, the Board affirmed a report issued by mediator Matthew Goldberg fixing the terms of a collective bargaining agreement (CBA) pursuant to the authority conveyed by the Mandatory Mediation and Conciliation (MMC) provisions in Labor Code section 1164, et seq. Prior to the issuance of the October 17, 2012 stay order, Ace refused to implement the terms of the CBA, even though it acknowledged that the CBA was in effect in the absence of a stay. The complaint in the instant case alleges that Ace's failure to abide by the terms of the CBA independently violates its duty to bargain under the Agricultural Labor Relations Act (ALRA; Labor Code section 1140, et seq.)

The October 17, 2012 order from the 5th DCA reads as follows:

The "Mediator's Report to the Board" dated June 27, 2012, and the "Decision and Order" in *Ace Tomato Company, Inc. and United Farm Workers of America*, 38 ALRB No. 6, filed in 2012-MMC-001 on or about July 25, 2012 and all proceedings to enforce them are stayed pending

² The Board opposed the request for a stay and is defending the merits of its decision in that case. Briefing in that matter has yet to be completed.

further order of this court or determination of the petition in the above entitled action.

The pertinent language from the court's order as it relates to the instant case is "and all proceedings to enforce them." This language controls the inquiry here, as Ace's listing of the instant case in its request for a stay in Case No. F065589 is of no legal significance in the absence of the court expressly referencing the case in its order.³

While the Board is a party in the case in which the stay order was issued, with reference to the instant case the Board is acting in its quasi-judicial capacity. As a tribunal inferior to the Court of Appeal, the Board does not have the authority to contravene the court's order. A stay precludes the doing of any act for the purpose of carrying the judgment or order into effect. (4 Cal. Jur. 3rd (2012) Appellate Review §400, citing *State Inv. & Ins. Co. v. Superior Court of City and County of San Francisco* (1894) 101 Cal. 135.) Accordingly, the proper inquiry in complying with the language of the stay order from the 5th DCA is whether the proceedings in the instant case arguably constitute an effort to enforce the Board's decision in *Ace Tomato Company, Inc.* (2012) 38 ALRB No. 6. While the complaint in the instant case rests on a legal theory distinct from the proper imposition of the CBA pursuant to the MMC provisions of the ALRA, it is inextricably linked in that it depends upon the existence of a CBA that is in effect. Moreover, it is at least arguable that pursuit of this legal theory constitutes a proceeding to enforce the Board's decision imposing the CBA because the factual predicate of the violation alleged is the failure to abide by the Board's decision in *Ace Tomato Company,*

³ It is important to note that the only issue before the Board at this time is the effect of the court's stay order on the instant case, i.e., Case No. 2012-CE-024-VIS.

Inc. (2012) 38 ALRB No. 6. Therefore, the instant case may not proceed at this time without risking violation of the stay order.

For the reasons set forth above, the Board affirms the ALJ's decision to stay the proceedings in the instant case. In light of the fact that in the instant case the Board is acting in its quasi-judicial capacity, any effort to seek clarification from the court as to the scope of its order should be sought by the parties to this proceeding.

By Direction of the Board.

Dated: November 1, 2012

J. ANTONIO BARBOSA
Executive Secretary, ALRB