

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

GERAWAN FARMING, INC.,)	Case No. 2013-MMC-002
)	
Employer,)	
)	
and)	ORDER DISMISSING REQUEST
)	FOR MANDATORY MEDIATION
UNITED FARM WORKERS)	AND CONCILIATION
OF AMERICA,)	
)	
<u>Petitioner.</u>)	Admin. Order No. 2013-19

On March 22, 2013, the Petitioner, United Farm Workers of America (the “UFW”), filed a declaration by Armando Elenes, the UFW’s National Vice President, with the Agricultural Labor Relations Board (“ALRB” or “Board”) requesting mandatory mediation and conciliation pursuant to Labor Code section 1164(a). The employer named in the request is Gerawan Farming, Inc. (the “Employer”). On March 28, 2013, the Employer filed an answer to the UFW’s declaration, a brief in support of its answer, and a motion to dismiss the UFW’s declaration.

The Board has reviewed the UFW’s March 22nd declaration and has determined that the UFW’s request for mandatory mediation and conciliation must be dismissed because it fails to meet all the requirements set forth in Labor Code sections 1164(a), 1164.11 and Board Regulation 20400(a).¹ Specifically, where a labor

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

organization was certified as the exclusive bargaining agent prior to January 1, 2003 (as the UFW's declaration states), the labor organization may file a request for mandatory mediation and conciliation at any time at least 90 days after a renewed demand for bargaining. However, Board Regulation 20400(a) states that the declaration supporting the request:

shall state that the parties are subject to an existing certification and have failed to reach a collective bargaining agreement, and shall state that (A) the parties have failed to reach agreement for at least one year after the date on which the labor organization made its initial request to bargain, (B) the employer has committed an unfair labor practice, describing the nature of the violation, and providing the corresponding Board decision number or case number, (C) the parties have not previously had a binding contract between them, and (D) 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 and establishes the date of the renewed demand to bargain.

The UFW's declaration states that the UFW was certified prior to January 1, 2003, made an initial demand for bargaining on July 21, 1992, and a renewed demand for bargaining on October 12, 2012. [Elenes Decl. ¶ 3, 4, & 6.] However, the declaration fails to state that the parties did not reach a contract for at least one year after the initial demand for bargaining, that the Employer committed an unfair labor practice, that the parties have not previously had a binding contract between them, or that the Employer employed or engaged 25 or more agricultural employees during a calendar week in the year preceding the filing of the declaration. Nor is this information to be found in the three exhibits attached to the declaration.

On March 28, 2013, after the Employer filed its answer and motion, the UFW filed via facsimile a second declaration by Armando Elenes. The letter accompanying the declaration stated that the declaration filed on March 22, 2013 was “erroneously transmitted in incomplete format” and that the later-filed declaration was the “complete Declaration of Armando Elenes in support of UFW’s request for mandatory mediation and conciliation.” However, the March 28th declaration was not filed with an accompanying proof of service as required by Board Regulations 20166 and 20168.² Accordingly, that declaration was not properly filed and may not be considered.

Under Board Regulation 20402(a), the Board is to dismiss any declaration that does not meet the requirements set forth in Labor Code sections 1164(a) and 1164.11 and Board Regulation 20400(a). Because the UFW’s March 22, 2013 declaration does not meet those requirements, it must be dismissed.

PLEASE TAKE NOTICE that, pursuant to Board Regulation 20402(a), the Petitioner’s request for mandatory mediation and conciliation is DISMISSED without prejudice for failure to meet all the requirements set forth in Labor Code

////

////

² The declaration filed on March 28, 2013 initially did not include any exhibits. The UFW re-filed the declaration shortly thereafter with four (4) exhibits attached. Neither filing was accompanied by a proof of service.

sections 1164(a) and 1164.11 and Board Regulation 20400(a). The Employer's motion to dismiss Petitioner's declaration is DISMISSED as moot.

By Direction of the Board.

Dated: March 29, 2013

J. ANTONIO BARBOSA
Executive Secretary, ALRB