STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

GERAWAN FARMING, INC.,	)	Case No. 2013-MMC-003
	)	(39 ALRB No. 5)
Employer,	)	(39 ALRB No. 11)
	)	(39 ALRB No. 13)
	)	(39 ALRB No. 16)
and	)	
	)	ORDER DENYING REQUEST
UNITED FARM WORKERS OF AMERICA,	)	FOR ORDER DIRECTING EMPLOYER TO IMPLEMENT CONTRACT
	)	
	)	
Petitioner.	)	Admin. Order No. 2013-45

On the afternoon of October 25, 2013, the United Farm Workers of America (the "UFW") filed with the Agricultural Labor Relations Board (the "ALRB" or "Board") a document styled "UFW Request for Order Directing Employer to Implement Contract." Specifically, the UFW requests that the Board "clarify" its October 25, 2013 decision and order (39 ALRB No. 16) by stating that the employer, Gerawan Farming, Inc. ("Gerawan"), must immediately implement the terms contained in mediator Matthew Goldberg's report dated September 28, 2013 to the extent that the Board did not grant review as to those terms. Gerawan filed a response to the UFW's request on October 28, 2013. The Board has considered the UFW's request and Gerawan's response and has determined that the UFW's request is DENIED.

The UFW's request requires the Board to interpret Labor Code section 1164.3, which governs petitions for review of mediators' reports in Mandatory Mediation and Conciliation ("MMC") cases. In doing so, the Board is to ascertain the intent of the

Legislature so as to effectuate the purpose of the enactment. (*Cummins, Inc. v. Superior Court* (2005) 36 Cal.4th 478, 487.) While the Board should construe statutes in such a way as to avoid absurd results, its principal duty is to apply statutory language according to its plain meaning. (*California Teachers Association v. San Diego Community College District* (1981) 28 Cal.3d 692, 698 ("If the words of the statute are clear, the court should not add to or alter them to accomplish a purpose that does not appear on the face of the statute or from its legislative history.").) It is not within the Board's power to disregard or rewrite clear statutory language. (*Elk Hills Power, LLC v. Board of Equalization* (2013) 57 Cal. 4th 593, 609-610 (a "statute's plain meaning controls the court's interpretation unless its words are ambiguous").)

Labor Code section 1164.3 subdivision (b) states that if the Board finds grounds exist to grant review of a mediator's report, "the board shall order the provisions of the report that are not the subject of the petition for review into effect as a final order of the board." By its plain language, the quoted passage applies only to provisions that are "not the subject" of a petition for review. In this case, as the UFW concedes, the petition for review challenged essentially the entire report. Although the Board granted review only with respect to a limited number of the challenged provisions, the Board's action did not change the "subject of the petition."

The UFW argues that failing to order immediate implementation of provisions that were the subject of the petition but which the Board declined to review would invite parties to file petitions for the purpose of causing delay. The Board does not condone the filing of petitions or any other papers for the sole purpose of causing delay.

(See Cal. Code Regs., tit. 8 § 20155 (attorney's signature constitutes certification that a pleading or other paper is well-grounded in fact and existing law and is not interposed for any improper purpose, including to cause unnecessary delay).) Nevertheless, the UFW's concerns are not without merit. The statute, as written, arguably encourages parties to dispute provisions they otherwise might not.

However, the interpretation advocated by the UFW could potentially result in the piecemeal litigation of mediators' reports. In particular, a party whose petition for review was partially accepted might have to file for judicial review twice – once when the Board ordered effectuation of the provisions on which review was denied and again when the Board's order on the provisions it accepted for review issued.[1] This may explain why the Legislature enacted a statute that requires the immediate effectuation only of provisions that were not challenged by either party, and would therefore not be the subject of judicial review.

The Board also notes that an order directing immediate partial implementation could not be enforced until affirmed by a reviewing court or until expiration of the time to seek review. (*Ace Tomato Company, Inc*. (2012) 8 ALRB No. 8 (holding that until a Board's decision in an MMC case is either affirmed by a reviewing court or the time for review has elapsed, there is no legal mechanism through which the Board can seek to enforce its decision).) Accordingly, even if the provisions of the report that are not

[1] Because each order would be a final order, parties would have to seek judicial review within 30 days of each order's issuance or waive their right to judicial review. (See Lab. Code 1164.5 (petitions for writ of review in MMC cases due 30 days after Board's order takes effect).)

under review were immediately implemented as the UFW requests, they would not be immediately enforceable.

For the foregoing reasons, the plain meaning of the disputed language is not necessarily inconsistent with the purposes of the statute and does not lead to absurd results. Accordingly, there is not a sufficient basis for departing from the plain meaning of Labor Code 1164.3 subdivision (b). The UFW's request is DENIED.

Dated: October 30, 2013.

Genevieve A. Shiroma, Chairwoman

Cathryn Rivera-Hernandez, Member

Herbert O. Mason, Member