

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

SAN JOAQUIN TOMATO	)	Case No.	2011-MMC-001
GROWERS, INC.,	)		38 ALRB No. 9
	)		(38 ALRB No. 7)
	)		(38 ALRB No. 2)
	)		(37 ALRB No. 5)
Employer,	)		
	)		
	)		ORDER REQUESTING BRIEFING
	)		FROM PARTIES AND <i>AMICI</i>
	)		ON QUESTIONS POSED BY
	)		THE BOARD REGARDING
	)		ALLEGED VIOLATIONS OF THE
	)		COLLECTIVE BARGAINING
and	)		AGREEMENT
	)		
UNITED FARM WORKERS OF	)		
AMERICA,	)		
	)	Admin. Order No.	2014-20
<u>Petitioner.</u>	)		

On October 9, 2012, the Agricultural Labor Relations Board (ALRB or Board), in its decision and order in *San Joaquin Tomato Growers, Inc.* (2012) 38 ALRB No. 9, implemented a collective bargaining agreement (CBA or contract) between the United Farm Workers of America (UFW or Petitioner) and San Joaquin Tomato Growers, Inc. (SJTG or Employer) that had been reached via the Mandatory Mediation and Conciliation (MMC) procedures specified by the Agricultural Labor Relations Act

(ALRA or Act) and the Board's regulations<sup>1</sup>. SJTG appealed the Board's decision and order implementing the CBA, but the Fifth District Court of Appeal denied SJTG's petition for review on October 3, 2013<sup>2</sup>, and SJTG did not pursue any further appeal. On April 14, 2014, the UFW sent a position statement to ALRB Visalia Regional Director Silas M. Shawver, alleging that SJTG had, on multiple occasions, failed to comply with the terms of the CBA. These alleged violations included, without limitation, interference with UFW access; disparaging anti-union comments made by supervisors; and failure to provide accurate addresses of agricultural employees. On May 15, 2014, the Regional Director wrote the UFW a letter to the effect that the position statement should be sent to the Board itself. On May 20, 2014, the UFW filed its position statement with the Board via letter, with proper service on SJTG.

On June 23, 2014, the Board provided SJTG with an opportunity to respond to the UFW's position statement. SJTG's response was timely filed with the Board on July 17, 2014. SJTG argued in its response that the UFW had failed to provide any evidence of the alleged violations of the CBA; that if such violations did occur, the exclusive remedy would be the grievance and arbitration procedure contained in the CBA; that if such violations were sufficiently egregious, the UFW could file

---

<sup>1</sup> The Act is codified at Labor Code sections 1140 et seq. The Board's regulations are codified at California Code of Regulations, title 8, section 20100, et seq.

<sup>2</sup> *San Joaquin Tomato Growers, Inc. v. Agricultural Labor Relations Board*, case no. F066074.

unfair labor practice (ULP) charges with the General Counsel of the Board, which it had not; and that the Board had no grounds to act upon the alleged violations.

The UFW's May 20, 2014 position statement and the Employer's July 17, 2014, together, raise the question of whether the Board has the authority to provide the relief requested by the Union. In this case, the Board will consider whether it has such authority. To assist the Board in this determination, the following questions are posed to the parties:

Question 1: Should the Board intervene in this matter in some form for the purposes of compliance with the CBA?

Question 2: Should (and may) the Board order enforcement of the CBA?

Question 3: Should such enforcement take the form of an order directing the parties to arbitration, as provided for in the CBA? What, if any, federal or state jurisprudence dictates or argues for Board intervention as described above?

Question 4: Assuming that that Board directs the parties to arbitration, what, if any, principles of exhaustion apply? In *Republic Steel Corp. v. Maddox* (1965) 379 U.S. 650, the Supreme Court held that, under federal policy, the grievance procedures set forth in a CBA must be exhausted before direct legal redress is sought, where such grievance procedures are specified in the CBA as being exclusive. With respect to the current matter, what would be the indicia of exhaustion? *Cf. Glover et al. v. St. Louis-San Francisco Ry. Co. et al.* (1969) 393 U.S. 324, where the High Court ruled that where the effort to proceed formally with contractual/administrative remedies

would be futile, exhaustion would not be required under *Republic Steel*. Would such reasoning apply to the present situation? Why or why not?

Question 5: Note that section 1164.3(f) of the Act provides a mechanism for the parties and the Board to file an action to enforce the CBA. Also consider that section 1165 of the Act, which is analogous to section 301 of the National Labor Relations Act (NLRA) (29 U.S.C. § 185), authorizes the bringing of a suit in the appropriate superior court for violations of a CBA by parties to the agreement. How do sections 1164.3(f) and 1165 interact, if at all? Is there any manner in which the two sections may be applied in combination or concert, and if so, how?

Question 6: May the Board bring comparable actions? Should such action be brought under section 1164.3(f), 1165, or both? What federal or state jurisprudence, as noted above, argues for the Board bringing such actions?

Question 7: What argues against such Board intervention or bringing such actions in superior court? Again, what federal or state jurisprudence noted above argues against such action?

Question 8: Should the Board take some other course of action? If so, what, and pursuant to what authority?

Question 9: Should whatever course of action taken by the Board apply exclusively to CBAs reached via the MMC process, or not?

The Board also invites *amicus curiae* briefs from the following four sources, should they choose to submit such:

1. Scott A. Kronland of the law firm of Altshuler Berzon LLP, of San Francisco, California.

2. David A. Rosenfeld of the law firm of Weinberg Roger & Rosenfeld APC, of Alameda, California.

3. Ronald H. Barsamian of the law firm of Barsamian & Moody APC, of Fresno, California.

4. Robert K. Carrol of the law firm of Nixon Peabody LLP, of San Francisco, California.

All briefs in this matter, from the parties and all *amici*, must be received by the Board no later than 4:00 p.m. on August 25, 2014.

Dated: July 24, 2014

William B. Gould IV, Chairman

Genevieve A. Shiroma, Member

Cathryn Rivera-Hernandez, Member