

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)
Employer,	)		(38 ALRB No. 2)
	)		(37 ALRB No. 5)
	)		
and	)		
	)	ORDER REJECTING PETITIONER'S	
	)	UNTIMELY RESPONSE TO	
UNITED FARM WORKERS OF	)	BRIEFING QUESTIONS POSED	
AMERICA,	)	BY THE BOARD	
	)		
Petitioner.	)	Admin. Order No. 2014-23	

On July 24, 2014<sup>1</sup>, the Agricultural Labor Relations Board (ALRB or Board), issued Administrative Order No. 2014-20 (Order 2014-20) with respect to this matter. Order 2014-20 invited briefs from the parties and several amici curiae (amici) in response to nine questions posed by the Board regarding potential Board action with respect to a dispute between the parties arising from alleged violations of a collective bargaining agreement between them which 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>2</sup>. Order 2014-20 clearly

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<sup>1</sup> All dates are for 2014 unless otherwise specified.

<sup>2</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.

stated: “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.”

The Employer, San Joaquin Tomato Growers, Inc. (SJTG or Employer), as well as all amici, timely submitted their briefs. However, at approximately 3:45 p.m. on August 25, Petitioner, the United Farmworkers of America (UFW or Petitioner) sent a letter to the Board’s Executive Secretary via facsimile (fax) machine stating that it had “experienced unexpected difficulties in finalizing” its brief, and that it intended to send its brief on August 26. This letter was not properly served upon the Board or Employer as required by Sections 20164 and 20166 of the Board’s regulations, as it failed to include the required proof of service. It therefore was precluded from consideration by the Board. At approximately 11:57 a.m. on August 26, Employer served the Board with a faxed letter objecting to any late filing by Petitioner, and requesting that the Board reject any such filing as untimely. Petitioner did ultimately submit its brief to the Board – at approximately 4:03 p.m. on August 26. Petitioner subsequently submitted errata to their brief via fax at approximately 4:51 p.m. that same day.

Section 20168(a)(4) of the Board’s regulations provides that service on the Board may be made via fax; however, for a document to be considered received on the day in question, transmission must have begun prior to 4:00 p.m. on that date. Under this standard, Petitioner’s brief was not filed until August 27. The plain language of Order 2014-20 provided Petitioner with sufficient opportunity to timely file its brief, which it failed to do. Moreover, Section 20192 of the Board’s regulations

allows parties to apply via written motion for extensions of time for the filing and service of papers under extraordinary circumstances. However, Petitioner failed to avail itself of this provision, as its letter of August 25 did not constitute a formal motion. Further, nothing in Petitioner's letter described any sort of extraordinary circumstances which would justify their untimely filing.

For the above reasons, Petitioner's response brief in this matter is REJECTED by the Board as untimely filed.

Dated: August 28, 2014

William B. Gould IV, Chairman

Genevieve A. Shiroma, Member

Cathryn Rivera-Hernandez, Member