

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

MUSHROOM FARMS, INC.,)	Case No.	2016-MMC-001
)		42 ALRB No. 3
Employer,)		
)		
and)		
)		
UNITED FOOD AND)	ORDER DENYING EMPLOYER'S	
COMMERCIAL WORKERS,)	MOTION FOR	
LOCAL 5,)	RECONSIDERATION	
)		
Petitioner.)	Admin. Order No. 2016-12	
_____)		

On August 17, 2016, the Agricultural Labor Relations Board (Board) issued a decision and order directing Mushroom Farms, Inc. (Employer) and the United Food and Commercial Workers Union, Local 5 (UFCW) to mandatory mediation and conciliation (MMC). The UFCW filed a petition seeking a referral to MMC on August 9, 2016. On August 16, 2016, the Employer filed declaration in response to the UFCW's declaration. The Employer's declaration indicated agreement with all of the prerequisites to MMC alleged in the UFCW's declaration. In fact, rather than raise any dispute with the UFCW's declaration or otherwise oppose referral to MMC, the Employer expressly stated: that "Mushroom Farms, Inc. is hereby requesting mandatory mediation and conciliation based on Labor Code section 1154 [sic]." The relevant prerequisites for referral to mandatory mediation and conciliation are set forth in Labor Code section 1164, subdivision (a), and section 20400, subdivision (b), of the Board's regulations (Cal. Code Regs., tit. 8, § 20400, subd. (b)).

On September 1, 2016, the Employer filed a motion for reconsideration or in the alternative, reopening of the Board's decision and order, arguing that extraordinary circumstance exist that justify the granting of the motion. The Employer argues that it did not obtain legal representation until after it had filed its answer to the UFCW's MMC petition, and thus was unaware of the decision of the Fifth District Court of Appeal in the matter of *Gerawan Farming, Inc. v. ALRB* (2015) 236 Cal.App.4th 1024 (currently pending review in the California Supreme Court), in which that court found that the MMC procedures in Labor Code sections 1164 to 1164.13 were unconstitutional. The Employer requests that the Board stay MMC in the instant matter pending the Supreme Court's decision in the *Gerawan* matter.

We find that the Employer's motion, in addition to being untimely, has failed to state sufficient legal reason why reconsideration is necessary as required by the Board regulations. (Cal. Code Regs. tit. 8, § 20286, subd. (c).) Therefore, we DENY the Motion for the reasons discussed below.

Under the Board's regulations, any motion for reconsideration is due within 10 days of service of the Board's decision; thus, the motion was due on or before August 29, 2016. (Cal. Code Regs. tit. 8, § 20286, subd. (c).) Even if the motion had been timely filed, we find that the Employer has not identified any "extraordinary circumstances," such as newly discovered evidence or an intervening change in law, that merit reconsideration of this matter.

The Employer's argument that it did not obtain legal representation until after it had filed its answer to the UFCW's MMC petition, and that it was unaware of

the decision of the Fifth District Court of Appeal in the *Gerawan* matter, is unpersuasive. “Ignorance of the law, coupled with negligence in ascertaining it will certainly sustain a finding denying relief.” (*Allstar Seed Co.* (2003) 29 ALRB No. 2, p. 4 citing *Robbins v. Los Angeles Unified School District* (1992) 3 Cal.App.4th 313.) It is worth noting that Employer did not attempt to oppose or otherwise resist referral to MMC; it expressly asked for it. Its request that we reconsider our order giving it what it asked for lacks merit. (*Mark v. Spencer* (2008) 166 Cal.App.4th 219, 229 [“Courts do not excuse nonlawyers for their ignorance of the law”], citing *Arthur Andersen v. Superior Court* (1998) 67 Cal.App.4th 1481, 1506 [“ignorance of the law does not excuse one from the consequences of the law”].)

Moreover, even if the Employer had timely raised the issue of the pending Supreme Court review of *Gerawan Farming, Inc. v. ALRB*, *supra*, 236 Cal.App.4th 1024, the Board does not have authority to stay the MMC process under these circumstances. Labor Code, section 1164, subdivision (a) provides that, where the Board receives a request for MMC meeting the statutory requirements, “the Board shall immediately issue an order directing the parties to [MMC].” Moreover, the Fifth District Court of Appeal’s decision in the *Gerawan* case has no binding effect because that case is pending review in the California Supreme Court. Under California Rule of Court, rule 8.1115(e)(1), “pending review and filing of the Supreme Court’s opinion, unless otherwise ordered by the Supreme Court ... a published opinion of a Court of Appeal in the matter has no binding or precedential effect, and may be cited for potentially persuasive value only.” Under article 3, section 3.5, of the California

Constitution, the Board has no authority to declare the MMC statute unconstitutional; therefore, the Board is obligated to enforce the MMC provisions of the Agricultural Labor Relations Act. (*Hess Collection Winery* (2003) 29 ALRB No. 6, pp. 6-7.) The opinion of the Third District Court of Appeal in *Hess Collection Winery v. ALRB* (2006) 140 Cal.App.4th 1584 (review denied Sept. 13, 2006, No. S145732 [2006 Cal. LEXIS 11206]), holding the MMC statute to be constitutional, continues to be the only relevant precedent for the Board to follow. In fact, the Advisory Committee comments following California Rules of Court, rule 8.1115, explain that, under subdivision (e)(1), “when a decision that is pending review conflicts with another published Court of Appeal decision that is not under review, only that other published decision will continue to have binding or precedential effect on the superior court.” (Advisory Com. following Cal. Rules of Court, rule 8.1115(e)(1).) Accordingly, we follow the Third Appellate District’s decision in *Hess Collection Winery* as controlling precedent on the constitutionality of the MMC statute.

PLEASE TAKE NOTICE THAT the Employer’s motion for reconsideration or in the alternative, reopening of the Board’s decision and order, in the above-captioned case is denied.

Dated: September 7, 2016

William B. Gould IV, Chairman

Genevieve A. Shiroma, Member

Cathryn Rivera-Hernandez, Member