

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

SPAWN MATE, INC. dba)	Case No.	2016-MMC-01
MUSHROOM FARMS, a)		
California Corporation,)		
)		
Employer,)		
)		
and,)		
)		
UNITED FOOD AND)	ORDER REMANDING	
COMMERCIAL WORKERS,)	MEDIATOR’S REPORT; ORDER	
LOCAL 5,)	DISMISSING PETITIONS FOR	
)	REVIEW WITHOUT PREJUDICE	
)		
)	Admin. Order No.	2017-17
Petitioner.)		
_____)		

On August 17, 2016, the Agricultural Labor Relations Board (“ALRB” or “Board”) issued a decision and order directing Spawn Mate, Inc. dba Mushroom Farms (“Mushroom Farms”) and the United Food and Commercial Workers Union, Local 5 (“UFCW”) to Mandatory Mediation and Conciliation (“MMC”) pursuant to Labor Code section 1164 et seq. (*Mushroom Farms, Inc.* (2016) 42 ALRB No. 3.) The parties selected as their mediator Matthew Goldberg (the “Mediator”).

Mediation sessions were held on December 13, 2016, April 4, 2017, and May 8, 2017. On October 24, 2017, the Mediator filed a report (“Report”) with the Board pursuant to Labor Code section 1164, subdivision (d). Mushroom Farms and the UFCW both filed petitions for review of the Report pursuant to Labor Code section 1164.3, subdivision (a). Because the

Board finds the Report fails to satisfy the requirements of Labor Code section 1164, subdivision (d), the Board remands this matter to the Mediator and dismisses the parties' petitions, without prejudice to seeking review of a mediator's report issued and filed in compliance with Labor Code section 1164, subdivision (d).

Labor Code section 1164, subdivision (d) requires that a mediator's report filed with the Board shall "resolve[] all of the issues between the parties and establish[] the final terms of a collective bargaining agreement, including all issues subject to mediation and all issues resolved by the parties prior to the certification of the exhaustion of the mediation process." The document submitted by the Mediator as the Report, by its very terms, fails to fully resolve the issues remaining in dispute between the parties. The Mediator "remanded" aspects of two health and welfare provisions to the parties for 90 days with a direction to either mutually resolve the provisions, or if mutual resolution is not possible, to submit further written argument and evidence to the Mediator for "ultimate determination." (Report, pp. 48-49.)

The first issue remanded relates to excess contributions to the Western Growers Association Trust ("WGAT") resulting from Mushroom Farms' need to change to a new health insurer following the decertification of the United Farm Workers of America as its agricultural employees' exclusive representative. The Mediator accepted Mushroom Farms' proposal on this article except for the last sentence, and remanded the question of the means by which the employees' portion of those funds will be disbursed to the appropriate employees back to the parties for resolution. (Report, pp. 41-42, 48.)

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The second article left unresolved in the Report is the Pension article. After discussing the parties' positions on whether a 401(k) plan should be established, the Mediator concluded that "[w]hile it is clear that some sort of 401(k) plan should be instituted... there was insufficient information in the record to reach any determination as to the parameters of such a plan, or the level of employer contribution that would be mutually acceptable." (Report, pp. 44-45.) The Mediator then stated that "[b]eyond ordering the establishment of a 401(k) plan, the question of what dimensions that plan will take is returned to the parties." (Report, p. 45.)

The Board has previously held that a mediator's report that remanded a provision to the parties for further meeting and conferring did not meet the minimum standards for a mediator's report set forth in the MMC statute. (*Arnaudo Brothers, LP* (2014) 40 ALRB No. 9, p. 4) Here, the Mediator left significant portions of two economic provisions open for a 90-period during which the Mediator apparently retains jurisdiction over this matter. This is inconsistent with the statutory requirement that the report establish the final terms of a collective bargaining agreement and fully resolve all disputed issues remaining between the parties.¹

¹ In its petition for review, the UFCW alleges that, during a conference call held with the parties after issuance of the Report, the Mediator acknowledged that he had not made a ruling on Article 16E which relates to reporting and standby time, made an oral ruling adopting Mushroom Farms' proposal on this provision, and requested that Mushroom Farms draft and submit an addendum to the Report which the Mediator would then review. (UFCW's Request for Review of the Mediator's Report to the Board, p. 12; Declaration of Caroline N. Cohen in Support of UFCW's Request for Review of the Mediator's Report to the Board, ¶ 8.) While the Board does not address the merits of the UFCW's petition for review, as stated above, the statute requires that the Mediator's Report establish the final terms of the collective bargaining agreement and a report that omits resolution of an issue between the parties would not satisfy this requirement.

Accordingly, this matter will be remanded to the Mediator for further proceedings consistent with this Order.² The petitions for review are dismissed without prejudice as premature.³

ORDER

The Report filed by the Mediator in this matter does not satisfy the requirements of a mediator's report set forth in Labor Code section 1164, subdivision (d). Because the Board has not received a proper mediator's report, the petitions for review filed by Mushroom Farms and the UFCW are premature and are, for that reason, DISMISSED WITHOUT PREJUDICE. The Board remands this matter to the Mediator for further proceedings consistent with this Order.

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² Board regulation section 20407, subsection (c) states that the mediator's report shall be served on the parties and filed with the Board in accordance with regulation sections 20164 and 20168. Section 20164 indicated that papers filed by the Board or any of its agents shall be served along with a proof of service on parties or their representatives. The Report submitted to the Board in this matter was not accompanied by a proof of service. The Board directs the Mediator to comply with the service requirements in the Board's regulations in future filings.

³ Because the Report submitted by the Mediator fails to satisfy the requirements of Labor Code section 1164, subdivision (d), the merits of the parties' petitions for review have not been considered.

The Mediator shall, within 21 days of the date of this order, file with the Board and serve on the parties a report pursuant to Labor Code 1164, subdivision (d). This time limit shall be extended only upon written leave of the Board's Executive Secretary, who is to grant such extensions only for good cause shown and only to the extent reasonably necessary.

DATED: November 8, 2017

Genevieve A. Shiroma, Chairwoman

Cathryn Rivera-Hernandez, Member

Isadore Hall, III, Member