

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

GERAWAN FARMING, INC.,	)	Case No.	2013-MMC-003
)		
Employer,	)		(39 ALRB No. 17)
	)		(39 ALRB No. 16)
and,	)		(39 ALRB No. 13)
	)		(39 ALRB No. 11)
UNITED FARM WORKERS OF	)		(39 ALRB No. 5)
AMERICA,)		
	)	ORDER DENYING REQUEST	
Petitioner.	)	FOR ORDER DIRECTING	
	)	PARTIES TO MEDIATION TO	
	)	UPDATE ECONOMIC	
	)	CONTRACT TERMS	
)		
	)	Admin. Order No. 2018-02	
)		
	)	(February 05, 2018)	
)		

On April 16, 2013, the Agricultural Labor Relations Board (the “ALRB” or “Board”), pursuant to a declaration filed by the United Farm Workers of America (the “UFW”), issued an order referring the UFW and Gerawan Farming, Inc. (“Gerawan”) to mandatory mediation and conciliation (“MMC”) under the Agricultural Labor Relations Act (the “ALRA” or “Act”).¹ (*Gerawan Farming, Inc.* (2013) 39 ALRB No. 5.) The parties participated in mediation proceedings with mediator Matthew Goldberg (the “Mediator”) and, on November 19, 2013, the Board issued its final order in the case,

¹ The ALRA is codified at Labor Code section 1140 et seq.

putting into effect the contract terms set in the Mediator’s MMC report (the “Report”), as modified by his Supplemental Report, as a final order of the Board. (*Gerawan Farming, Inc.* (2013) 39 ALRB No. 17.) Gerawan subsequently sought judicial review of the Board’s final order and that litigation remains pending before the California Court of Appeal, Fifth Appellate District (“Fifth District Court of Appeal”).

On January 24, 2018, the UFW filed with the Board a document titled “Request for Order Directing Parties to Mediation to Update Economic Contract Terms” (the “Request”). In the Request, the UFW asks the Board to issue an order directing the UFW and Gerawan to further mandatory mediation proceedings before the Mediator for the purpose of “updating” certain terms of the MMC contract, specifically the provisions relating to the duration of the contract and employee wage rates. On January 25, 2018, Gerawan filed a “Request for Leave to File Opposition in Response to the UFW Motion to Compel Further MMC Proceedings,” in which Gerawan argued that the Board lacks jurisdiction to direct the relief the UFW requests due to the pendency of the appellate proceedings, that the Board’s MMC order is not “final” because the appellate proceedings are not concluded, and that the Board’s order would not be enforceable until those proceedings are concluded.²

The Board lacks statutory authority to refer parties to supplemental mandatory mediation proceedings after issuance of its final MMC order. Furthermore,

² Although Gerawan’s filing was presented as a request for leave to file an opposition, Gerawan presented its substantive arguments in its filing. Accordingly, we have treated Gerawan’s filing as its opposition to the UFW’s Request and have considered it accordingly.

the Board is precluded from modifying its final order because the Fifth District Court of Appeal currently has jurisdiction over the matter. Accordingly, the UFW's Request is DENIED.

Factual and Procedural Background

After mandatory mediation proceedings in 2013, the Mediator issued the Report pursuant to Labor Code section 1165, subdivision (d). The Report directed a contract of three years' duration beginning retroactively on July 1, 2013 and terminating on June 30, 2016. (Mediator's Report dated September 28, 2013 ("Mediator's Report") at pp. 53, 58.) The Report also provided for wage increases for general labor and other employees effective July 27, 2013 (retroactive), March 15, 2014, and March 15, 2015. (Mediator's Report at p. 58.) Gerawan sought review of the Report with the Board, challenging, among other things, the duration and wage provisions of the Report. The Board denied review as to most of the challenged provisions of the Report, including duration and wages, but granted review as to six other provisions and remanded the matter to the Mediator for further proceedings. (*Gerawan Farming, Inc.* (2013) 39 ALRB No. 16.) On November 6, 2013, the Mediator issued a Supplemental Report to the Board, which stated that the parties had resolved all six of the issues remanded by the Board. Accordingly, on November 19, 2013, the Board issued its final order in the case ordering the Report, as modified by the Supplemental Report, into effect as a final order of the Board. (*Gerawan Farming, Inc., supra*, 39 ALRB No. 17.)

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Gerawan did not implement the terms of the MMC contract and, on December 16, 2013, filed a petition for review with the Fifth District Court of Appeal seeking review of the Board's final MMC order. Gerawan asserted claims that the MMC statute is unconstitutional and also argued that provisions of the MMC contract were arbitrary and capricious, including the duration and wage provisions. On October 23, 2014, the Fifth District Court of Appeal issued a writ of review of the Board's order and simultaneously ordered that "[p]ending our final determination of the matters to be reviewed herein, any proceedings to enforce the Decision and Order in 39 ALRB No. 17 are hereby stayed."

On May 14, 2015, the appellate court issued an opinion finding, among other things, that the MMC statute violated equal protection principles and represented an unlawful delegation of legislative power and was, therefore, unconstitutional. (*Gerawan Farming, Inc. v. ALRB* (2015) 236 Cal.App.4th 1024.) The Court also found that the Board's MMC order was invalid because the Board had improperly denied Gerawan the opportunity to prove that the UFW had "abandoned" the bargaining unit as a defense to the request for MMC. Because it decided the case on these grounds, the appellate court did not reach Gerawan's arguments that terms of the MMC contract are arbitrary and capricious.

On November 27, 2017, the California Supreme Court reversed the appellate court on both the constitutional and abandonment issues. (*Gerawan Farming, Inc. v. ALRB* (2017) 3 Cal.5th 1118.) The Court remanded to the Fifth District Court of Appeal for further proceedings, where the matter is now pending. In the meantime, the

June 30, 2016 termination date of the MMC contract has passed. The UFW asserts, and Gerawan does not dispute, that Gerawan has never implemented the terms of the MMC contract.³

Discussion

In support of its request for referral to further MMC proceedings, the UFW argues that the intent of the MMC statute was that, at the end of the MMC process, the employer would be required to operate for at least one term under a collective bargaining agreement but that, due to Gerawan's refusal to implement the MMC contract, this has not occurred in this case. The terms of the contract must, the UFW argues, be updated so that Gerawan's employees may receive the intended benefits of MMC; "a 1st time contract with Gerawan that will be in effect going forward."

The UFW cites no authority that the Board is empowered to direct parties to further mediation after issuance of a final order for purposes of updating the terms of an MMC contract. Certainly, there is no express statutory language permitting the Board to do so. Indeed there is no reference in the statute to *any* proceedings with the mediator

³ On November 21, 2013, shortly after the Board issued its final MMC order, the UFW filed an action in Sacramento Superior Court seeking to enforce the terms of the Board order under Labor Code section 1164.3, subdivision (f). (See Case No. 24-2013-00153803-CL-MC-GDS.) The Superior Court denied the requested relief, finding that, pending exhaustion of appellate review of the Board's order, there was no legal mechanism for the UFW to enforce the Board's MMC order. (See Minute Order, Nov. 27, 2013.) The UFW appealed the Superior Court's order to the California Court of Appeal, Third Appellate District. (Case No. C075444.) On December 30, 2014, the Third District Court of Appeal ordered the matter stayed pending resolution of Gerawan's petition for review of the MMC order.

occurring after, at the latest, the issuance of a second report pursuant to Labor Code section 1164.3, subdivision (c). (See also Lab. Code, § 1165, subd. (d) [mediator’s report “establishes the final terms of a collective bargaining agreement”].) We conclude that the Board lacks the authority to direct parties to supplemental mandatory mediation proceedings in order to update the terms of an MMC contract after the Board has issued its final MMC order.⁴

In addition to lacking the statutory authority to grant the relief requested by the UFW, the Board is precluded from doing so because the Fifth District Court of Appeal currently has jurisdiction over the matter and continues to exercise such jurisdiction. While Labor Code section 1164.5 does not contain any specific language concerning the Board’s jurisdiction when review of one of its final MMC orders is sought, the analogous statutes governing review of final orders in unfair labor practice cases make explicit that the reviewing court takes jurisdiction over the matter. (Lab. Code, §§ 1160.3, 1160.8; *Tex-Cal Land Management v. ALRB* (1979) 24 Cal.3d 335, 347 [“When the board files the record of its proceedings the court acquires jurisdiction . . .”]; *Johnson v. WCAB* (1984) 37 Cal.3d 235, 241 [in cases before the Workers Compensation Appeals Board, “proceedings remain before the board and subject to its jurisdiction unless and until this court or the Court of Appeal grants a petition for writ of review”].)

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⁴ A different conclusion might pertain if an MMC matter were returned to the Board on remand for further proceedings after judicial review of the Board’s final MMC order. However, we need not reach that issue at this time.

Accordingly, the United Farm Workers of America's Request for Order Directing Parties to Mediation to Update Economic Contract Terms is DENIED.

DATED: February 05, 2018

GENEVIEVE A. SHIROMA, Chairwoman

CATHRYN RIVERA-HERNANDEZ, Member

ISADORE HALL III, Member