

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

PREMIERE RASPBERRIES,)	Case No.	2018-MMC-02
LLC,)		
)		
Employer,)		
)		
and)		
)	44 ALRB No. 8	
UNITED FARM WORKERS OF)		
AMERICA,)		
)	(August 27, 2018)	
)		
Petitioner.)		
_____)		

DECISION AND ORDER

This matter is before the Agricultural Labor Relations Board (“Board”) on a petition for review of a Mediator’s Report to the Board after the above parties were directed to mandatory mediation and conciliation (“MMC”) of their issues. The Board has evaluated the petition for review and for the reasons discussed below finds that Premiere has not established any grounds for the Board to grant review of the Mediator’s Report.

Background

On February 2, 2018, United Farm Workers of America (“UFW”), the certified bargaining representative of the agricultural employees of Premiere Raspberries,

LLC (“Premiere”), filed a declaration with the Board pursuant to Labor Code section 1164 and Board Regulation section 20400¹ requesting that the Board issue an order directing the parties to MMC. Premiere opposed the request, seeking a stay of any MMC proceedings pending its efforts to seek judicial review of the Board’s order certifying the UFW in a technical refusal to bargain unfair labor practice proceeding.

The Board denied the UFW’s request for referral to MMC as premature in a decision issued on February 15, 2018. (*Premiere Raspberries, LLC* (2018) 44 ALRB No. 2.) In that decision, the Board also denied Premiere’s stay request pursuant to Labor Code section 1158, which provides that a technical refusal to bargain unfair labor practice case seeking indirect review of a union’s certification “shall not be grounds for a stay of proceedings” conducted pursuant to the MMC statute. (*Premiere Raspberries, supra*, 44 ALRB No. 2, pp. 3-4.)

The UFW filed a second request for referral to MMC on March 8, 2018. Premiere again opposed the request, and sought a stay of any MMC proceedings. Finding the statutory prerequisites for a referral to MMC were met, the Board ordered the parties to MMC. (*Premiere Raspberries, LLC* (2018) 44 ALRB No. 3.) The Board denied Premiere’s stay request for the reasons explained in its earlier decision. (*Id.* at p. 3.)²

¹ The Board’s regulations are codified at California Code of Regulations, title 8, section 20100 et seq.

² Premiere thereafter commenced litigation against the Board in Monterey County Superior Court seeking to stay MMC proceedings pending resolution of its technical refusal to bargain case seeking indirect review of the UFW’s certification. The superior court dismissed that litigation. (Case No. 18CV001447). Premiere appealed, also filing a petition for writ of supersedeas in the Sixth District Court of Appeal seeking to stay

Mediator's Report

On August 11, 2018, the mediator in the MMC case filed his report with the Board. According to the Mediator's Report, Premiere's counsel attended the MMC session which was held on July 9, 2018 solely for the purpose of stating her objection to the MMC process. Premiere did not present proposals or counterproposals or any testimony or evidence in support of any bargaining position. The mediator thus found that Premiere had "agreed *sub silentio* that the Union's evidence supporting its Contract language is relevant and is sufficient to sustain the Union's burden of showing that its suggested language conforms to the statutory considerations." (Mediator's Report, p. 5.)

The mediator further found that the UFW presented evidence that its proposed contract language is comparable to or the same as language found in labor contracts with similar agricultural operations, and that the UFW's evidence demonstrating the overall cost of living in Santa Cruz County justified the proposed wage increases. Without any conflicting evidence to consider, the mediator accepted the UFW's proposals in their entirety and recommended that they comprise a collective bargaining agreement with a term of three years.

Discussion

Premiere filed a petition for review of the Mediator's Report on August 17, 2018. The basis of its petition is that the mediator should have stayed the MMC process because Premiere is challenging the UFW's certification through its technical refusal to

MMC. (Case No. H045909). The appellate court denied that petition and the underlying appeal remains pending at this time.

bargain in case no. 2018-CE-004-SAL. According to Premiere, until a court rules on whether or not the UFW's certification is valid, any action taken pursuant to the certification is inappropriate. Premiere contends that "it could not participate in the MMC process" in order to preserve its claims in the separate technical refusal case challenging the UFW's certification, and that the implementation of a collective bargaining agreement in these circumstances violates its statutory and constitutional rights.

Labor Code section 1164.3 sets forth the process and grounds by which a party can seek Board review of a mediator's report, including on grounds the report: (1) includes nonmandatory subjects of bargaining; (2) "is based on clearly erroneous findings of material fact;" or (3) "is arbitrary or capricious." (Lab. Code, § 1164.3, subd. (a); Cal. Code Regs., tit. 8, § 20408.) If no petition for review is filed or the Board finds none of these grounds to exist, the mediator's report "shall become a final order of the Board." (Lab. Code, § 1164.3, subd. (b).)

We find that Premiere has not established that any of the statutory grounds exist for the Board to grant review of the Mediator's Report. As the Board explained in its previous decisions in this matter, Labor Code section 1158 specifies that the filing of a petition for review in furtherance of a technical refusal to bargain shall not be grounds to stay the MMC process. Neither the Board nor the mediator have authority to declare this statute unconstitutional or otherwise refuse to enforce it by granting a stay of the MMC process. (Cal. Const., art. 3, § 3.5; *Premiere Raspberries, LLC* (2018) 44 ALRB No. 2, p. 4; *Gerawan Farming, Inc.* (2013) 39 ALRB No. 5, p. 4; *Hess Collection Winery* (2003) 29 ALRB No. 6, pp. 6-7; see *Greener v. Workers' Comp. Appeals Bd.* (1993) 6 Cal.4th

1028, 1038 [administrative agency must comply with a statute until an appellate court has considered and upheld a challenge to it].) The mediator's refusal to stay MMC was not arbitrary or capricious.

In addition, we find Premiere's complaint that the MMC process violated its due process rights or that the MMC contract was procured by undue means to be without merit. (See Lab. Code § 1164, subd. (e).) Premiere received notice and an opportunity to participate in the MMC process. Its decision not to avail itself of the opportunity to participate in the process cannot support a violation of due process. (See, e.g., *Wilson v. State Bar of California* (1958) 50 Cal.2d 509, 510.) While Premiere contends it was forced not to participate in MMC in order to preserve its challenge to the UFW's certification in the separate technical refusal case, it cites no authority in support of its position here. In fact, section 1158 contemplates MMC proceedings occurring alongside an employer's technical refusal case in circumstances where an employer challenges a prior certification order.

Premiere's Petition for Review of the Mediator's Report is dismissed.

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ORDER

In accordance with the decision above, and pursuant to the requirements of California Labor Code section 1164.3, subdivision (b), it is ORDERED that the Mediator's Report and Recommendation for Collective Bargaining Agreement dated August 11, 2018, shall take immediate effect as a final order of the Board.

DATED: August 27, 2018

GENEVIEVE A. SHIROMA, Chairwoman

CATHRYN RIVERA-HERNANDEZ, Member

ISADORE HALL III, Member

CASE SUMMARY

PREMIERE RASPBERRIES, LLC
(Employer)

Case No. 2018-MMC-02

44 ALRB No. 8

United Farm Workers of America
(Petitioner)

Background

On March 8, 2018, the United Farm Workers of America (“UFW”), the certified bargaining representative of the agricultural employees of Premiere Raspberries, LLC (“Premiere”), filed a declaration with the Agricultural Labor Relations Board (“Board”) pursuant to Labor Code section 1164 et seq. and Board Regulation section 20400, requesting that the Board issue an order directing the parties to mandatory mediation and conciliation (“MMC”) of their issues. The Board ordered the parties to MMC in its decision, *Premiere Raspberries, LLC* (2018) 44 ALRB No. 3. In this decision, the Board also denied Premiere’s request for an order staying the MMC process pending judicial review of the certification based on its technical refusal to bargain with the UFW. Labor Code section 1158 specifically states that the filing of a petition for review in a Unfair Labor Practice case to obtain indirect review of a Board certification in a representation proceeding (such as in the case of a technical refusal to bargain) “shall not be grounds for a stay of proceedings conducted pursuant to” the MMC statute.

Board Decision and Order

The mediator in the MMC case filed his report with the Board on August 11, 2018. Premiere’s counsel attended the MMC session which was held on July 9, 2018 solely for the purpose of stating her objection to the MMC process. Premiere did not present proposals or counterproposals or any testimony or evidence in support of any bargaining position. The mediator accepted the UFW’s proposals in their entirety and recommended that they comprise a collective bargaining agreement with a term of three years. Premiere filed a petition for review of the mediator’s report with the Board. The Board dismissed the petition for review, finding that Premiere had not established that any of the statutory grounds exist for the Board to grant review of the Mediator’s Report. The mediator’s refusal to stay MMC was not arbitrary or capricious under Labor Code 1158, and Premiere’s decision not to avail itself of the opportunity to participate in MMC did not support a violation of due process. The Board ordered that the Mediator’s Report take immediate effect as a final order of the Board.

This Case Summary is furnished for information only and is not an official statement of the case, or of the ALRB.