STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

PREMIERE RASPBERRIES, LLC, Employer, and UNITED FARM WORKERS OF AMERICA, Certified Bargaining Representative.	)	Case No. 2018-MMC-002 (44 ALRB No. 8) ORDER DENYING UNITED FARM WORKERS OF AMERICA'S REQUESTS RE: MANDATORY MEDIATION AND CONCILIATION CONTRACT Admin. Order No. 2020-04 (March 6, 2020)

The Legislature amended the Agricultural Labor Relations Act[1] (ALRA or Act) in 2002 to provide for mandatory mediation and conciliation (MMC). The Legislature determined MMC[2] was necessary "to ensure a more effective collective bargaining process between agricultural employers and agricultural employees, and thereby more fully attain the purposes of the [ALRA], ameliorate the working conditions and economic standing of agricultural employees, create stability in the agricultural labor force, and promote California's economic well-being by ensuring stability in its most vital industry." (*Gerawan Farming, Inc. v. ALRB* (2017) 3 Cal.5th 1118, 1132-1133, quoting Stats. 2002, ch. 1145, § 1, p. 7401.) The Third Appellate District in *Hess Collection Winery v. ALRB* (2006) 140 Cal.App.4th 1584, 1600-1601 further recognized

[1] Lab. Code, § 1140 et seq.

[2] The MMC statute is codified at Labor Code section 1164 et seq.

the legislative purpose of MMC "to change attitudes toward collective bargaining by compelling the parties to operate for at least one term with either a collective bargaining agreement or the functional equivalent of a collective bargaining agreement. The Legislature hopes that employers who have been resistant to collective bargaining will learn that collective bargaining can be mutually beneficial."

These goals undoubtedly are frustrated when an employer persists in refusing to implement the terms of a contract ordered into effect by a final order of the Agricultural Labor Relations Board (ALRB or Board) in an MMC case. MMC generally is available only as a means of securing a first collective bargaining agreement between a union and employer. (See Lab. Code, § 1164, subd. (a).) An employer's refusal to implement a contract ordered into effect by the Board "may substantially impair the strength and support of a union and consequently the employees' interest in selecting an agent to represent them in collective bargaining." (*Gerawan Farming, Inc.*, *supra*, 3 Cal.5th at p. 1132, quoting *J.R. Norton Co. v. ALRB* (1979) 26 Cal.3d 1, 30.) Indeed, "[e]mployee interest in a union can wane quickly as working conditions remain apparently unaffected by the union or collective bargaining." (*Ibid.*) Moreover, the employees themselves are deprived numerous protections and benefits typically afforded in a collective bargaining agreement. This deprivation perhaps is most clear as it relates to wages and other economic benefits achieved by their union during bargaining.

The statutory scheme plainly establishes an MMC contract ordered by the Board becomes effective immediately upon issuance of the Board's order. (Lab. Code, § 1164.3, subd. (b).) Unless a party obtains an order staying its obligations under the

contract, the parties are required to implement the contract immediately regardless of any pending judicial challenge to the Board's MMC order. (Lab. Code, § 1164.3, subd. (f)(3).)

It is against this backdrop that we must consider the circumstances of the matter now before us. On August 27, 2018, the Board ordered into effect a three-year collective bargaining contract between the United Farm Workers of America (UFW) and Premiere Raspberries, LLC (Premiere). (*Premiere Raspberries, LLC* (2018) 44 ALRB No. 8, p. 6.) Premiere sought judicial review of the Board's order. Premiere never implemented the contract during the pendency of those judicial proceedings, despite never obtaining an order staying its obligation to do so. Following the conclusion of Premiere's unsuccessful litigation challenging the contract, the UFW now asks the Board to (1) commence an action in superior court to enforce the MMC contract between it and Premiere, (2) order a new three-year duration on the parties' contract, and (3) refer the parties to supplemental MMC proceedings to update certain economic terms of the contract. The regional director of the Board's Salinas office also has filed a request for clarification on the "proper application" of the MMC contract with respect to the bargaining makewhole award ordered by the Board in *Premiere Raspberries, LLC* (2018) 44 ALRB No. 9. On top of this, and immediately on the heels of its unsuccessful litigation efforts challenging both the UFW's certification and the MMC contract ordered into effect, Premiere suddenly — and, indeed, suspiciously — has announced its intent to shut down its business operations in April 2020.

We have carefully considered the entire record in this case, including the original MMC proceedings, the litigation that followed, and the parties' responses to our recent administrative orders. Premiere's obligation to implement the MMC contract immediately is clear, and in fact long overdue. However, we find on the record before us we lack authority to grant the relief requested by the UFW in this case.[3]

BACKGROUND

The UFW was certified as the bargaining representative of Premiere's agricultural employees effective December 6, 2017. (*Premiere Raspberries, LLC*, *supra*, 44 ALRB No. 9, p. 2.) Premiere thereafter refused to bargain with the UFW as a means of inviting an unfair labor practice charge by which it ultimately could obtain review of our order certifying the UFW. (*Ibid.*; see *Premiere Raspberries, LLC* (2017) 43 ALRB No. 2.) The Board referred the parties to MMC in *Premiere Raspberries, LLC* (2018) 44 ALRB No. 3.

The parties held one session with the mediator, at which the UFW offered a comprehensive contract proposal. Premiere offered no proposal of its own or counter to the UFW's. On August 11, 2018, the mediator issued a report recommending the contract proposed by the UFW "be ordered by the Board to comprise the [CBA] between these parties to be in effect for three years from the date of the Board's adoption of this

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[3] In light of the unique circumstances before us, we conclude Premiere's past economic obligations to its employees under the contract it refused to implement appropriately are encompassed within the bargaining makewhole remedy we ordered in *Premiere Raspberries, LLC*, *supra*, 44 ALRB No. 9, as discussed in our separate administrative order issued today. (See *Premiere Raspberries, LLC* (Mar. 6, 2020) ALRB Admin. Order No. 2020-05-P.)

Recommendation." The Board adopted this recommendation in *Premiere Raspberries*, *supra*, 44 ALRB No. 8, p. 6, stating: "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."

In the separate unfair labor practice proceeding arising from Premiere's refusal to bargain, the Board rejected Premiere's attempts to have the Board reconsider its earlier order certifying the UFW, and thus found Premiere's admitted refusal to bargain violated the Act. (*Premiere Raspberries, LLC*, *supra*, 44 ALRB No. 9, pp. 2-3.) The Board further ordered bargaining makewhole relief for the period running from Premiere's initial refusal to bargain (December 29, 2017) until the effective date of the MMC contract ordered into effect by the Board, August 27, 2018. (*Id.* at p. 9.)

Premiere timely filed in the Sixth Appellate District a petition for writ of review of the Board's order in 44 ALRB No. 8 establishing the terms of an MMC contract between Premiere and the UFW, and also requested a stay of enforcement of the Board's order (case no. H046221). Premiere also filed a separate petition for writ of review challenging the Board's order certifying the UFW as the exclusive bargaining representative of its agricultural employees (case no. H046223). (*Premiere Raspberries, LLC*, *supra*, 44 ALRB No. 9; *Premiere Raspberries, LLC*, *supra*, 43 ALRB No. 2.) The appellate court summarily denied both petitions, including Premiere's request for a stay of the MMC contract, on December 17, 2019. Premiere then filed petitions for review in both cases in the California Supreme Court (case nos. S259772, S259773). The Court denied both petitions on January 2, 2020.

On January 23, 2020, the UFW filed with the Board a request that the Board (1) commence an action in superior court to enforce the contract, (2) order a new three-year duration on the contract, and (3) refer the parties to supplemental MMC proceedings to update certain economic terms of the contract. We issued administrative orders on January 28 and February 4 to elicit further information from the parties concerning the status of Premiere's implementation of the MMC contract. (*Premiere Raspberries, LLC* (Jan. 28, 2020) ALRB Admin. Order No. 2020-02; *Premiere Raspberries, LLC* (Feb. 4, 2020) ALRB Admin. Order No. 2020-03.)

The parties each submitted responses to both of our orders. Premiere asserts it has implemented the wage provisions of the contract set forth in Appendix A, as well as the provisions of Article 21 [Hours of Work and Overtime], as of January 27, 2020. The UFW's response to our February 4 administrative order (no. 2020-03) attests that Premiere's counsel stated those provisions have been implemented, but does not directly confirm whether the terms, in fact, have been implemented. There is no dispute in the parties' responses that, at least as of February 11, no other provisions of the contract have been implemented.[4] Although Premiere vaguely states several other contract terms are "in the process of being implemented," Premiere generally ignores the instructions in our prior orders that it identify the date(s) it did or will implement the

[4] In a "supplemental" filing on February 11, Premiere states it distributed dues authorization forms and *Beck* rights notices to the workers on February 5. Premiere does not say, however, whether dues or fees deductions actually have commenced. (Art. 2 [Union Security]; see *Communications Workers v. Beck* (1988) 487 U.S. 735; *Breaux v. ALRB* (1990) 217 Cal.App.3d 730.)

terms of the entire contract. Nor does Premiere commit to implementing the entire contract.

Instead, in a startling development Premiere states in its February 7 response to our administrative order no. 2020-03 that it "will be ceasing its farming operations in April 2020." Suspiciously, Premiere made no mention of its planned shut down in its response to our administrative order no. 2020-02 just one week earlier on January 31. Moreover, the record before us indicates Premiere only informed the UFW of its plans to close at a meeting on February 4. Premiere appears to have withheld this material information from the UFW when scheduling their February 4 meeting during the previous week, and did not inform the UFW of its closure plans in its January 31 response to an information request from the UFW.

Finally, following our receipt of the parties' responses to our administrative orders, the regional director of the Board's Salinas office filed a request asking the Board to "clarify the proper application" of the MMC contract with respect to the bargaining makewhole award ordered in 44 ALRB No. 9, which now is pending compliance.[5]

DISCUSSION

I. The UFW's Request the Board Commence a Superior Court Enforcement Action Is Untimely.

Labor Code section 1164.3, subdivision (f)(1) allows either a party or the

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[5] We address the regional director's request in our separate administrative order issued today concerning the proper scope of the bargaining makewhole award we ordered in 44 ALRB No. 9. (*Premiere Raspberries, LLC, supra*, ALRB Admin. Order No. 2020-05-P.)

Board to commence an action in superior court to enforce a contract ordered into effect by the Board "within 60 days after the order of the board takes effect, even if a party seeks to challenge, appeal, overturn, modify, or stay in any manner any order of the board ...." An order of the Board confirming a contract recommended by a mediator in MMC takes effect immediately upon issuance. (Lab. Code, § 1164.3, subd. (b); *George Amaral Ranches, Inc.* (2013) 39 ALRB No. 10, p. 6 ["... under Labor Code section 1164.3 an imposed contract becomes effective upon an order by the Board confirming the mediator's report or upon a report becoming final without review being sought"], citing *San Joaquin Tomato Growers, Inc.* (2012) 38 ALRB No. 7, p. 6.) Indeed, the Board ordered in 44 ALRB No. 8 that the contract proposed by the UFW, and recommended by the mediator, "shall take immediate effect."

The 60-day limitations period in section 1164.3, subdivision (f)(1) thus began to run when the Board issued its order in 44 ALRB No. 8 on August 27, 2018. While amendments to the statute have taken effect since the Board issued that order, those amendments do not change the result here. Former section 1164.3, subdivision (f), in effect at the time of the Board's order in 44 ALRB No. 8, also required an action to enforce a contract in superior court be commenced "[w]ithin 60 days after the order of the board takes effect." The Board interpreted the 60-day time period in the former statute as running from the date of issuance of a Board order setting the terms of the MMC contract. (*Arnaudo Brothers, LP* (2018) 44 ALRB No. 7, p. 10, fn. 6.) The amendments to subdivision (f) that took effect in 2019 do not alter this language or the Board's prior interpretation of it. In fact, the amendments confirm that the 60-day

deadline to commence a superior court enforcement action runs from the date of the Board's order regardless of whether a party has filed separate litigation challenging the Board's order. (Lab. Code, § 1164.3, subd. (f)(1).)

Therefore, we conclude that the UFW's current request the Board commence a superior court action to enforce the MMC contract is time-barred.[6]

II. The Board May Not Order a New Three-Year Term of the Contract.

The UFW next asks the Board to order the three-year term of the contract

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[6] This is not to say, however, that the contract cannot be enforced. Premiere has a present obligation to fully implement the contract without delay, irrespective of any future intention to cease operations. Furthermore, Premiere is obligated to effectuate the terms of the contract by reimbursing its employees retrospectively for the economic losses they suffered through Premiere's failure to implement the economic terms of the contract. While we conclude that an action to enforce the MMC contract under Labor Code section 1164.3, subdivision (f) now would be untimely, the appellate court's order upholding the Board's MMC order in effect constitutes a judgement that may be enforced, including, for example, through contempt proceedings in superior court. (*Hess Collection Winery* (2009) 35 ALRB No. 3, p. 12 ["an appellate court decision affirming a Board order is a judgment which can later be enforced through the appropriate court procedures"]; see Code Civ. Proc., §§ 680.230 ["'Judgment' means a judgment, order, or decree entered in a court of this state"], 681.010, subd. (e), 717.010, 1209, subd. (a)(5), 1212, 1218, subd. (a), 1219, subd. (a).) To the extent that Premiere's conduct constitutes a violation of the substantive terms of the contract, the UFW also may utilize the contract grievance/arbitration procedures and, if necessary, secure judicial enforcement of a favorable arbitration award. (Code Civ. Proc., § 1285 et seq.) To the extent Premiere repudiates the contract, including its dispute resolution procedures, the UFW may file a breach of contract action pursuant to Labor Code section 1165. (*San Joaquin Tomato Growers* (2015) 41 ALRB No. 1, pp. 9-10, citing *Vaca v. Sipes* (1967) 386 U.S. 171, 185 and *Sidhu v. Flecto Co., Inc.* (9th Cir. 2002) 279 F.3d 896, 898.) Of course, any determination of liability in a future action to enforce the provisions of the MMC contract would be offset by payments made for the contract period in compliance with the makewhole remedy discussed in our separate administrative order issued today. (*Premiere Raspberries, LLC, supra*, ALRB Admin. Order No. 2020-05-P.)

previously ordered into effect to begin when Premiere fully implements the contract. Article 32 ["Duration of Agreement"] of the contract ordered into effect between Premiere and the UFW states: "This Agreement shall be in full force and effect for a period of three years from the date of this Agreement."[7] The contract language does not specify a date certain from which the three-year duration of the contract runs. However, the mediator's report recommended the UFW's comprehensive contract proposal "be ordered by the Board to comprise the [CBA] between these parties to be in effect for three years from the date of the Board's adoption of this Recommendation." The Board adopted that recommendation, and on August 27, 2018, ordered that it "shall take immediate effect as a final order of the Board." (*Premiere Raspberries*, *supra*, 44 ALRB No. 8, p. 6.) Thus, under the terms of the Board's prior order, August 27, 2018, is the effective date for purposes of the contract's three-year duration provision.

The Board lacks authority under the MMC statute to modify or amend its prior order establishing the duration of the contract. Rather, requests by a party to update a duration provision or other terms that have become moot or outdated during the pendency of litigation appropriately are directed to a mediator in supplemental MMC proceedings pursuant to Labor Code section 1164.10, subdivision (b). Alternatively, the contract here between Premiere and the UFW allows for modifications upon the written

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[7] The contract ordered into effect by the Board lists this provision as Article 29. As the UFW points out, this is a typographical error. Article 29 of the contract relates to the pension plan [Juan de la Cruz Farm Worker's Pension Plan (JDLC)], and, going in numerical order of the contract articles, the duration provision appropriately should be identified as Article 32.

agreement of both parties. (Art. 25 [Modification].) However, it appears Premiere refuses to agree to modifying the contract in the manner requested by the UFW as it relates to the duration of the contract (based on its newly announced intention to close), and we have no authority at this juncture to compel it to do so.

III. The UFW's Request for Referral to Supplemental MMC Is Untimely.

Labor Code section 1164.10, subdivision (b) allows a party to request referral to "supplemental" MMC proceedings to update an expired duration provision or contract terms that have become "outdated or otherwise moot" during the pendency of unsuccessful litigation challenging a Board order. A request for referral to supplemental MMC must be filed "within 15 days after any judicial review proceedings become final." (*Ibid.*)

In this case, the Sixth Appellate District denied Premiere's petition for writ of review on December 17, 2019. The appellate court's order was final when issued. (Cal. Rules of Court, rule 8.490(b)(1)(A).) Premiere's subsequent petition for review in the California Supreme Court was denied on January 2, 2020. The litigation thus was final as of January 2. As such, a request for supplemental MMC was due January 17, 2020. However, the UFW did not file its request until January 23. Therefore, the UFW's request for referral to supplemental MMC is untimely.

CONCLUSION

For the foregoing reasons, we deny the UFW's requests for relief under the MMC statute.

DATED: March 6, 2020

Isadore Hall, III, Member

Barry D. Broad, Member

Ralph Lightstone, Member