

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

WONDERFUL NURSERIES, LLC,	)	Case No. 2024-MMC-001
)	
Employer,	)	ORDER (1) DENYING EMPLOYER
	)	WONDERFUL NURSERIES, LLC'S
and,	)	MOTION TO HOLD IN ABEYANCE
	)	PETITIONER UNITED FARM
UNITED FARM WORKERS OF	)	WORKERS OF AMERICA'S REQUEST
AMERICA,	)	FOR REFERRAL TO MANDATORY
	)	MEDIATION AND CONCILIATION,
Petitioner.	)	AND (2) DIRECTING PARTIES TO
	)	MANDATORY MEDIATION AND
	)	CONCILIATION
)	
)	
	)	Administrative Order No. 2024-23
	)	(July 10, 2024)
)	

On June 26, 2024,¹ petitioner United Farm Workers of America (UFW) filed with the Agricultural Labor Relations Board (ALRB or Board) a request for referral to mandatory mediation and conciliation (MMC) with employer Wonderful Nurseries, LLC (Wonderful) pursuant to Labor Code section 1164.² (See Board reg. 20400.)³ Wonderful filed an answer on July 1, as well as a separate motion to hold the UFW's request in abeyance pending the resolution of a lawsuit it filed in Kern County Superior Court challenging the constitutionality of Labor Code section 1156.37 and validity of the

¹ All dates are in 2024 unless otherwise indicated.

² Subsequent statutory citations are to the Labor Code unless otherwise indicated.

³ The Board's regulations are codified at California Code of Regulations, title 8, section 20100 et seq.

UFW's certification.⁴ For the reasons below, the Board DENIES Wonderful's motion to hold the UFW's request in abeyance, GRANTS UFW's request, and hereby DIRECTS the parties to MMC.

BACKGROUND

On February 23, the UFW filed a majority support petition pursuant to section 1156.37. The regional director conducted an investigation and issued a report on March 4 stating her determination the UFW established majority support.⁵ The executive secretary thereupon issued a certification on March 4 designating the UFW as the exclusive collective bargaining representative of Wonderful's agricultural employees. (§ 1156.37, subd. (e)(3).)

Wonderful timely objected to the certification pursuant to subdivision (f)(1) of section 1156.37, and the Board set some of its objections for hearing in *Wonderful Nurseries, LLC* (Mar. 18, 2024) ALRB Administrative Order No. 2024-04. The hearing on Wonderful's objections remains ongoing.

On June 26, the UFW filed the underlying request for referral to MMC. The request is accompanied by a supporting declaration from UFW Secretary-Treasurer Armando Elenes. Elenes' declaration states (1) the UFW was certified as the exclusive collective bargaining representative for Wonderful's agricultural employees on March 4,

⁴ *Wonderful Nurseries, LLC v. ALRB*, Kern County Superior Court case no. BCV-24-101649, filed May 13.

⁵ The regional director electronically filed her report late in the evening on Friday, March 1. The Board deemed the report filed effective Monday, March 4. (Board reg. 20169, subd. (a)(2).)

(2) the UFW initially requested bargaining on March 4, (3) 90 days have passed since the UFW's initial bargaining request and the parties have not reached a collective bargaining agreement, and (4) Wonderful has employed at least 25 agricultural employees during a calendar week in the preceding year. Wonderful timely answered the UFW's request for referral to MMC on July 1 and separately moved to hold the UFW's request in abeyance pending its litigation challenge to section 1156.37 and the UFW's certification. The UFW filed an opposition to Wonderful's abeyance motion on July 3.

DISCUSSION

The Legislature added the MMC statute (§ 1164 et seq.) to the Agricultural Labor Relations Act (ALRA or Act)⁶ in 2002 after finding the Act had failed to achieve its goal of facilitating the adoption of collective bargaining agreements for agricultural workers. (*Gerawan Farming, Inc. v. ALRB* (2017) 3 Cal.5th 1118, 1132-1133.) A substantial factor contributing to this dilemma was the continued refusal of agricultural employers to timely bargain in good faith with unions certified to represent their agricultural employees. (*Id.* at p. 1132.) The MMC statute thus establishes a procedure for ensuring a more effective collective bargaining process by facilitating the expeditious resolution of first contracts. (*Id.* at p. 1141.)

The UFW's request satisfies the statutory and regulatory criteria for referral to MMC. (§ 1164, subd. (a)(2); Board reg. 20400, subd. (b).) Wonderful's answer does

⁶ The ALRA is codified at section 1140 et seq.

not dispute this. Nevertheless, Wonderful resists referral to MMC on grounds:

- (1) the certification “will be proven invalid and will be revoked” after the conclusion of the objections hearing being conducted pursuant to subdivision (f) of section 1156.37;
- (2) section 1156.37 is unconstitutional;
- (3) the MMC statute constitutes an unlawful delegation of authority; and
- (4) the MMC statute imposes “unconditional conditions” and a “substantial monetary obligation” on Wonderful by requiring it to bear an equal share of the costs of MMC.

Separately, Wonderful asks the Board to hold the UFW’s request in abeyance, contending it is not subject to arbitration, has not consented to arbitration, and will suffer irreparable harm if directed to MMC.

None of Wonderful’s allegations provide a basis for the Board to hold this matter in abeyance or otherwise defer or decline the UFW’s request for referral to MMC.⁷ The UFW’s certification issued in accordance with subdivision (e)(3) of section 1156.37. Wonderful plainly is subject to referral to MMC. (§§ 1156.37, subs. (e)(3), (f)(3), 1164, subd. (a).) A party’s consent to MMC when requested by the other party to the collective bargaining relationship is not, and never has been, a prerequisite for referral to MMC proceedings. (§ 1164, subd. (a); Board reg. 20400, subd. (b).) The authorities cited by Wonderful are inapposite, involve private or contractual arbitration between private parties, and have no relevance to MMC proceedings conducted under the ALRA.

⁷ In fact, the California Supreme Court already has rejected the contention the MMC statute constitutes an unlawful delegation of authority. (*Gerawan Farming, Inc., supra*, 3 Cal.5th at pp. 1146-1152.)

Wonderful's remaining arguments also are unavailing. The Board has no authority to declare or refuse to enforce the provisions of sections 1156.37 or 1164 as unconstitutional. (Cal. Const., art. 3, § 3.5; *Wonderful Nurseries, LLC* (Apr. 12, 2024) ALRB Admin. Order No. 2024-08, pp. 7-8; *Wonderful Nurseries, LLC, supra*, ALRB Admin. Order No. 2024-04, pp. 6-7; *Gerawan Farming, Inc.* (2013) 39 ALRB No. 5, p. 4; *Hess Collection Winery* (2003) 29 ALRB No. 6, pp. 6-7.) Also unpersuasive is Wonderful's reliance on an order of the Deputy General Counsel of the New York Public Employment Relations Board (NYPERB) staying collective bargaining impasse proceedings pending resolution of an employer's objections to the union's certification. First, as indicated above, we have no authority to disregard or refuse to enforce the relevant statutory provisions of the ALRA. Second, with all due respect to the NYPERB and whatever the merits of the NYPERB's order cited by Wonderful as it relates to the statutes or regulations administered by it,⁸ that case simply has no application or relevance to the UFW's request before *our* Board under *our* Act. Section 1156.37, subdivision (f)(3) plainly states that an employer's objections to a majority support certification shall not diminish the employer's bargaining obligation or delay the period of time after which MMC may be requested by either party to the bargaining relationship. (Cf. N.Y. COMP. CODES R. & REGS. tit. 12, § 263.29(d) [NYPERB authority to stay certification after objections filed].)

⁸ Cf. N.Y. LAB. LAW §§ 702-b, 705-1; N.Y. COMP. CODES R. & REGS. tit. 12, §§ 263.29, 263.102.

The statutory scheme reflects the Legislature's intent that an employer's challenge to a union's certification shall not provide a basis for delaying or precluding MMC, but rather that such separate proceedings may occur concurrently. (*Wonderful Nurseries, LLC, supra*, ALRB Admin. Order No. 2024-08, p. 8; *Wonderful Nurseries, LLC, supra*, ALRB Admin. Order No. 2024-04, p. 7; see *Premiere Raspberries, LLC* (2018) 44 ALRB No. 8, pp. 4-5; *Premiere Raspberries, LLC* (2018) 44 ALRB No. 3, p. 3; *Premiere Raspberries, LLC* (2018) 44 ALRB No. 2, pp. 3-4.) The Legislature determined this to be necessary to avoid the types of delays and other tactics that have frustrated the collective bargaining process under our Act. If the UFW's certification is revoked because any of Wonderful's objections are sustained after hearing, then any contract resulting from MMC will be nullified. (See *Gerawan Farming, Inc. v. ALRB* (2020) 52 Cal. App. 5th 141, 160, fn. 10.) In any event, judicial review is available, including of constitutional claims, if Wonderful (or the UFW) is unsatisfied with the terms of a contract ordered into effect at the conclusion of MMC proceedings. (§ 1164, subd. (b).)

ORDER

For the foregoing reasons, the Agricultural Labor Relations Board hereby DIRECTS petitioner United Farm Workers of America and employer Wonderful Nurseries, LLC to mandatory mediation and conciliation pursuant to Labor Code section 1164, subdivision (b) and Board regulation 20402, subdivision (b). Upon the issuance of this Order, the executive secretary shall request the California State Mediation and Conciliation Service furnish a list of nine mediators to be provided to the parties. The

parties shall have seven days from receipt of the list to select a mediator in accordance with Labor Code section 1164, subdivision (b) and Board regulation 20403.

IT IS SO ORDERED.

DATED: July 10, 2024

Victoria Hassid, Chair

Isadore Hall, III, Member

Barry Broad, Member

Ralph Lightstone, Member

Cinthia N. Flores, Member