NEW ISSUES: MANDATORY MEDIATION AND CONCILIATION

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Background

- On September 30, 2002, Governor Gray Davis signed Assembly Bill 2596 and Senate Bill 1156 into law.
  - These bills amended the ALRA to require a third party to set the terms of an agricultural contract when the parties are unable to reach a contract on their own.
  - The bills were heralded as fulfilling a “promise” made to agricultural laborers that they would have the right to fight for “decent wages and working conditions.”
  - In reality, the bills create a statutory giant, a legislative labyrinth.
The United Farm Workers of America ("UFW") had lobbied hard for the passage of the Mandatory Arbitration Bills. *Id.*

Growers responded that the UFW backed the passage of the Bills as a way "to beg politicians for union contracts that it (was) too weak to win on its own." *Id.*
—Statutory Language of § 1164

- An agricultural employer or a labor organization certified as the exclusive bargaining agent of a bargaining unit of agricultural employees may file with the board, at any time following:

  • 90 days after a renewed demand to bargain by an agricultural employer or a labor organization certified prior to January 1, 2003, which meets the conditions specified in Section 1164.11

  • Section 1164.11 conditions: (a) the parties have failed to reach agreement for at least one year after the date on which the labor organization made its initial request to bargain, (b) the employer has committed an unfair labor practice, and (c) the parties have not previously had a binding contract between them.
- 90 days after an initial request to bargain by an agricultural employer or a labor organization certified after January 1, 2003
- 60 days after the board has certified the labor organization pursuant to subdivision (f) of Section 1156.3, or
- 60 days after the board has dismissed a decertification petition upon a finding that the employer has unlawfully initiated, supported, sponsored, or assisted in the filing of a decertification petition a declaration that the parties have failed to reach a collective bargaining agreement and a request that the board issue an order directing the parties to mandatory mediation and conciliation of their issues.
Upon receipt of a declaration pursuant to subdivision (a), the board shall immediately issue an order directing the parties to mandatory mediation and conciliation of their issues. The parties shall select a mediator within seven days of receipt of the list. If the parties cannot agree on a mediator, they shall strike names from the list until a mediator is chosen by process of elimination. § 1164(b).
Upon appointment, the mediator shall immediately schedule meetings at a time and location reasonably accessible to the parties. Mediation shall proceed for a period of 30 days. Upon expiration of the 30-day period, if the parties do not resolve the issues to their mutual satisfaction, the mediator shall certify that the mediation process has been exhausted. Upon mutual agreement of the parties, the mediator may extend the mediation period for an additional 30 days. § 1164(c).
Within 21 days, the mediator shall file a report with the board that resolves all of the issues between the parties and establishes 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. With respect to any issues in dispute between the parties, the report shall include the basis for the mediator's determination. The mediator's determination shall be supported by the record. § 1164(d).
In resolving the issues in dispute, the mediator may consider those factors commonly considered in similar proceedings, including:

- The stipulations of the parties.
- The financial condition of the employer and its ability to meet the costs of the contract in those instances where the employer claims an inability to meet the union’s wage and benefit demands.
- The corresponding wages, benefits, and terms and conditions of employment in other collective bargaining agreements covering similar agricultural operations with similar labor requirements.
- The average consumer prices for goods and services according to the California Consumer Price Index, and the overall cost of living, in the area where the work is performed. § 1164(e).
Background

• ALRA encourages and protects the rights of agricultural employees to engage in organizational activities and collectively bargain with growers.

• Administered by the currently three-member Agricultural Labor Relations Board (ALRB),
  
  – Acts as a quasi-judicial appellate body adjudicating unfair labor practices relating to election conduct or an employer's or labor organization's refusal to bargain in good faith over the terms and conditions of a collective bargaining agreement.

California Bill Analysis, S.B. 1156 Sen., 8/30/2002
Purpose

- Proponents of the bill asserted that elections determining labor union representation for agricultural employees were meaningless unless employers came to the bargaining table to negotiate post-election contracts.
- Proponents argue this bill was necessary because of an alleged continued refusal of agricultural employers to come to the bargaining table once an election has occurred.
- Without this measure, proponents contended, represented employees would continue to languish without the negotiated contracts they have elected to secure.

California Bill Analysis, S.B. 1156 Sen., 8/30/2002
• Opponents contended that although this bill created a mediation protocol, as the mediation is binding, there is no difference between the provisions of this bill and binding arbitration.

• Additionally, opponents argued that a potential conflict of interest existed due to the Bills’ requirement that the mediator act as both negotiator and arbitrator in the proceedings. California Bill Analysis, S.B. 1156 Assem., 8/30/2002
Validity of MMC Statute – *Delegation of Legislative Authority to Mediator Constitutional*

- Under statute providing for imposition by a mediator of a collective bargaining agreement between agricultural employer and employees when the parties have failed to agree on the terms of an initial collective bargaining agreement, *fact that the mediator is a private person rather than a publicly accountable official or elected entity did not render the delegation of legislative authority unconstitutional*; Agricultural Labor Relations Board could review mediator’s decision and parties could petition for judicial review. *Hess Collection Winery v. California Agr. Labor Relations Bd.* (App. 3 Dist. 2006) 45 Cal.Rptr.3d 609, 140 Cal.App.4th 1584.
Validity of MMC Statute – *Delegation of Legislative Authority to ALRB Constitutional*

- Statute providing for imposition of a collective bargaining agreement between agricultural employer and employees when the parties have failed to agree on the terms of an initial collective bargaining agreement, does not invalidly delegate legislative authority to the Agricultural Labor Relations Board to adopt implementing regulations; regulation did not make fundamental policy decisions, but rather outlined the specific factors the mediator and the Board would apply in arriving at a collective bargaining agreement. *Hess Collection Winery v. California Agr. Labor Relations Bd.* (App. 3 Dist. 2006) 45 Cal.Rptr.3d 609, 140 Cal.App.4th 1584.
Validity of MMC Statute – *Imposition of CBA by Mediator Does Not Violate Parties’ Right to Contract or Substantive Due Process*

- Statute providing for mandatory interest arbitration between agricultural employer and workers, under which mediator imposes a collective bargaining agreement when the parties have failed to agree on the terms of an initial collective bargaining agreement, *does not violate the right to contract or substantive due process*; the Legislature could reasonably conclude that the workers' power to strike was illusory, given the unskilled character of the work, the relatively low wages paid, and the seasonal rather than year-round nature of the work, which combined to make collective action by employees untenable. *Hess Collection Winery v. California Agr. Labor Relations Bd.* (App. 3 Dist. 2006) 45 Cal.Rptr.3d 609, 140 Cal.App.4th 1584.
Equal Protection – Requiring Only Agricultural Employers to Submit to MMC Does Not Violate Equal Protection

• Statute providing for imposition of a collective bargaining agreement between agricultural employer and employees when the parties have failed to agree on the terms of an initial collective bargaining agreement does not violate equal protection by applying only to agricultural employers; the peculiar problems with the collective bargaining process between agricultural employers and agricultural employees provided a rational basis for the law, and factors to be considered by mediator reasonably insured that contracts of different employers would be similar. Hess Collection Winery v. California Agr. Labor Relations Bd. (App. 3 Dist. 2006) 45 Cal.Rptr.3d 609, 140 Cal.App.4th 1584.
Construction and Application of Section 1164 Factors

- In statute stating what factors mediator may consider in imposing collective bargaining agreement on agricultural employer and employees, the word “may” means “must”; permissive use of the word “may” could render illusory the criteria in the statute. *Hess Collection Winery v. California Agr. Labor Relations Bd.* (App. 3 Dist. 2006) 45 Cal.Rptr.3d 609, 140 Cal.App.4th 1584.
Section 1164 Provides Quasi-Legislative Action

• Scheme for mandatory interest arbitration between agricultural employer and workers, which compels the parties to submit to mediation imposing a collective bargaining agreement when the parties have failed to agree on the terms of an initial bargaining agreement, provides for quasi-legislative action. *Hess Collection Winery v. California Agr. Labor Relations Bd.* (App. 3 Dist. 2006) 45 Cal.Rptr.3d 609, 140 Cal.App.4th 1584.
PRACTICAL APPLICATIONS (HOW MMC HAS BEEN USED (ABUSED?) IN PRACTICE)

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