In the Supreme Court of the State of California

GERAWAN FARMING, INC.,

Petitioner and Appellant,

v.

AGRICULTURAL LABOR RELATIONS BOARD,

Respondent,

UNITED FARM WORKERS OF AMERICA,

Real Party in Interest and Respondent.

Case No. S227243

Fifth Appellate District, Case No. F068526
ALRB Case No. 2013-MMC-003 [39 ALRB No. 17]

Fifth Appellate District, Case No. F068676
Fresno County Superior Court, Case No. 13CECG01408
The Honorable Donald S. Black, Judge

REPLY BRIEF OF RESPONDENT AGRICULTURAL LABOR RELATIONS BOARD

KAMALA D. HARRIS
Attorney General of California
KATHLEEN A. KENEALY
Chief Assistant Attorney General
DOUGLAS J. WOODS
Senior Assistant Attorney General
CONSTANCE L. LELOUIS
Supervising Deputy Attorney General

BENJAMIN M. GLICKMAN
Deputy Attorney General
State Bar No. 247907
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
(916) 323-7355
Benjamin.Glickman@doj.ca.gov

Attorneys for Respondent
Agricultural Labor Relations Board

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INTRODUCTION

In 2002, in response to decades of unsuccessful bargaining under the Agricultural Labor Relations Act, the Legislature amended the Act to include mandatory mediation and conciliation (MMC), an interest arbitration process intended to foster negotiation, resolve bargaining disputes, and facilitate the conclusion of essential, but historically elusive, first contracts between agricultural employers and their employees. (Lab. Code, § 1164 et seq. (MMC Statute).)[1] MMC was not a new idea, as similar procedures have been used for decades to resolve collective bargaining disputes in various industries. MMC's constitutionality was recognized in a well-reasoned decision by the Third Appellate District in 2006. (*Hess Collection Winery v. Cal. Agricultural Labor Relations Bd.* (2006) 140 Cal.App.4th 1584.)

The Court of Appeal in this case nonetheless held that the MMC Statute is facially unconstitutional as a violation of equal protection and an unlawful delegation of legislative power. This decision is contrary to law and impermissibly overrides the Legislature's rational determination, consistent with its constitutional authority to provide for the general welfare of agricultural employees, that MMC is necessary to protect employees' rights and ensure effective collective bargaining under the ALRA. (Cal. Const. art. XIV, § 1.) As an "alternative basis for its ruling," the Court of Appeal also held that the Agricultural Labor Relations Board (ALRB or Board) abused its discretion in referring Petitioner Gerawan Farming, Inc. (Gerawan) and the United Farm Workers of America (UFW) to MMC without "properly considering" Gerawan's assertion that the UFW had "abandoned" Gerawan's employees and no longer had their support. This

[1] Further statutory references are to the Labor Code unless otherwise indicated.

decision is contrary to law, to decades of administrative practice and judicial precedent, and to the express legislative purpose of the legislation at issue. Gerawan's answering brief, as explained below, only compounds the Court of Appeal's fundamental errors.

As an initial matter, Gerawan devotes a substantial portion of its brief to issues outside the scope of this Court's review. For example, Gerawan's repeated references to the vacated decertification election are misplaced. (See Combined Answering Brief of Petitioner (ABM) 3-4, 12-15, 17, 33-34, 40-41.) The election is not before this Court (and was not before the Court of Appeal), and indeed is the subject of ongoing legal proceedings. It therefore is irrelevant to the issues currently on review. Similarly, Gerawan's lengthy lead argument—that MMC's interest arbitration processes are categorically unconstitutional as a violation of substantive due process—is improper and should be rejected. (ABM 20-31.) This Court denied review of this issue, which the Court of Appeal also declined to consider. In any event, this argument, which relies on a completely repudiated line of authority, fails on the merits for the same reasons as Gerawan's equal protection claim: the Legislature had a rational basis for enacting the MMC Statute. (See *Hess*, *supra*, 140 Cal.App.4th at p. 1601.)

As to the issues properly before the Court, Gerawan's arguments fail—and the Court of Appeal should be reversed—for the reasons set forth below and in the Board's opening brief:

- The MMC Statute is economic legislation that does not violate equal protection because, as Gerawan now concedes, the lines drawn by the Legislature for the application of MMC are rationally related to the State's legitimate interest in facilitating collective bargaining under the ALRA. (ABM 47.) Likewise, MMC's individualized processes are rationally related to the State's legitimate interest in tailoring MMC and collective bargaining agreements (CBAs) to the particular interests of the bargaining

parties. Finally, Gerawan's new theory that the MMC Statute is unconstitutional because it allegedly gives unions "unilateral power" to subject employers to MMC, is wrong. (ABM 3, 41-43, 49.) The Legislature—not any union—established the statutory prerequisites for MMC, and both unions and employers may demand MMC. (§§ 1164, subd. (a), 1164.11.) In either case, the requesting party's role is limited to informing the Board of the request, and it is the Board—not either party—that determines whether the statutory criteria are met and, if so, directs the parties to MMC.

- The MMC Statute is a permissible delegation of legislative power, because the Legislature made the fundamental policy decision that MMC was necessary in specified circumstances to facilitate the conclusion of first contracts, established detailed procedures for MMC's operation, specified neutral criteria to guide the mediator's decisions, and provided for the prompt review of the mediator's report by the Board and appellate courts.

- The Board did not abuse its discretion in referring the parties to MMC without taking evidence on Gerawan's purported defense of union "abandonment." To the contrary, the Board's decision in this case, which is entitled to deference, is consistent with the ALRA's plain language and legislative purpose, which prohibits any employer involvement in the recognition of bargaining representatives, as well as decades of administrative and judicial precedent. In arguing otherwise, Gerawan repeatedly references the ALRA's protection of employees' freedom to choose bargaining representatives. But Gerawan, like the Court of Appeal, disregards the ALRA's corresponding protection of employees' right "to be free from the interference, restraint, or coercion of employers of labor, or their agents" in such choice. (§ 1140.2; ABM 4, 28-31, 39-41.) Permitting Gerawan to challenge the UFW's status as the certified bargaining

representative of Gerawan's employees—as the Court of Appeal's decision would require—contravenes both the principle of employee free choice and employer non-interference. To the extent there may be "policy reasons" to permit an employer to avoid its duties under the ALRA by asserting that a union has "abandoned" its employees, it is for the Legislature—not Gerawan or the Court of Appeal—to declare such policy.

ARGUMENT

I. GERAWAN IMPROPERLY RAISES ISSUES NOT BEFORE THE COURT

Gerawan devotes a substantial portion of its brief to two issues not before the Court: (1) the November 2013 decertification election of Gerawan's employees, which was set aside due to Gerawan's unlawful interference; and (2) Gerawan's argument that MMC is categorically unconstitutional as a violation of substantive due process, which the Court of Appeal did not address and this Court declined to review.

A. The Vacated Decertification Election Is Not Before the Court and Is Irrelevant to the Issues on Review

Gerawan's repeated references to the now-vacated decertification election are improper and irrelevant. (ABM 3-4, 12-15, 17, 33-34, 40-41.) The election is not before this Court (and was not before the Court of Appeal), but rather is the subject of the ALRB's decision in *Gerawan Farming, Inc.* (2016) 42 ALRB No. 1 (<https://www.alrb.ca.gov/legal_searches/decisions/42_1(2016).pdf> [last accessed April 25, 2016]) and of ongoing legal proceedings. Specifically, in September 2015, following a lengthy administrative hearing, Administrative Law Judge Soble held that Gerawan's "unlawful support and assistance" of the decertification effort "tainted the entire decertification process," and "set[] aside the decertification election and dismiss[ed] the decertification petition." (See ALRB's Request for Judicial Notice (RJN), Ex. F, pp. 186-187.) On April

15, 2016, the Board affirmed Judge Soble's conclusion that Gerawan's unlawful conduct tainted the entire decertification process, adopted his conclusion that numerous unfair labor practices had been committed by Gerawan, and accepted his recommended remedy to dismiss the decertification petition and set aside the election. (See *Gerawan Farming, Inc., supra*, 42 ALRB No. 1.)

Moreover, the election is irrelevant to the issues that *are* before this Court on review. The election was held nearly seven months after the Board's decision to refer the parties to MMC, and it therefore has no bearing on whether the Board abused its discretion in making that referral. Likewise, the election and post-election proceedings have no bearing on the Court's review of Gerawan's *facial* constitutional challenges to the MMC Statute, which "considers only the text of the measure itself." (*Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1084.)

B. Gerawan's Substantive Due Process Argument Is Not Before the Court and Should Be Rejected

Gerawan's lengthy lead argument—that the MMC Statute is categorically unconstitutional as a violation of substantive due process—is not properly before this Court and should not be considered. (ABM 20-31.) The Court of Appeal declined to consider the claim. (Slip Op. 42.) This Court likewise declined Gerawan's request to extend review to this issue, and it is not fairly included within the constitutional questions presented. (Aug. 19, 2015 Order Granting Review ["[t]he issues to be briefed and argued are limited to the issues raised in the petitions for review"].)

In compliance with California Rule of Court 8.516(a)(1), the Board will limit its brief to the issues presented unless the Court orders otherwise. At this juncture, the Board notes only that the line of cases on which Gerawan relies, beginning with *Wolff Packing Co. v. Ct. of Indus. Relations* (1923) 262 U.S. 522, have been squarely repudiated. (See, e.g., *Birkenfeld*

v. City of Berkeley (1976) 17 Cal.3d 129, 155; *Lincoln Federal Labor Union v. Northwestern Iron & Metal Co.* (1949) 335 U.S. 525, 536-537; see also *Hess*, *supra*, 140 Cal.App.4th at p. 1601 [discussing "complete" repudiation of *Wolff* and holding "in view of the Legislature's broad authority over employment, and the limited role of the courts in reviewing legislative policy decisions, [the MMC] statutory scheme meets the constitutional test for substantive due process"].)

II. THE MMC STATUTE DOES NOT VIOLATE EQUAL PROTECTION ON ITS FACE

The Court of Appeal erred in holding the MMC Statute "on its face violates equal protection principles." (Slip Op. 51; see ALRB OBM 15-25.) To prevail on its facial challenge, Gerawan "must demonstrate that the [MMC Statute's] provisions inevitably pose a present total and fatal conflict with applicable constitutional prohibitions." (See, e.g., *Tobe v. City of Santa Ana*, *supra*, 9 Cal.4th at p. 1084.) Moreover, where "purely economic interests are at stake, the Legislature may impose any distinction between classes which bears some 'rational relationship' to a conceivably legitimate state purpose." (*Hale v. Morgan* (1978) 22 Cal.3d 388, 395; see also *Cal. Grocers Assn. v. City of Los Angeles* (2011) 52 Cal.4th 177, 209 [same]; *Vergara v. State of California, et al.* (Apr. 14, 2016, B258589) ___ Cal.App.4th ___ [2016 WL 1503698, *13] [same].) Applying the highly deferential standards governing facial constitutional challenges to economic legislation,[2] the MMC Statute easily withstands equal protection scrutiny.

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[2] Gerawan's attempt to minimize the deference due the Legislature under rational basis review because constitutional rights allegedly "are threatened" by the MMC Statute should be rejected. (ABM 46.) Each case Gerawan cites involved direct limitations on fundamental constitutional rights, not routine economic regulation. (See *Spiritual Psychic Sci. Church v. City of Azusa* (1985) 39 Cal.3d 501, 514 [city's determination that fortunetelling is "inherently deceptive" and therefore not "speech" violated

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A. Interest Arbitration Is a Widely Accepted Component of Collective Bargaining and Is Not Limited to Specific Industries

As explained in the Board's opening brief, interest arbitration is a widely accepted tool for facilitating the resolution of collective bargaining disputes in a variety of labor settings. (See ALRB OBM 18-20.) As Gerawan acknowledges, interest arbitration has been used for decades to resolve bargaining disputes for federal, state, and local employees, as well as in various private industries, including hospitals, utilities, and transit. (See ABM 23-24; ALRB OBM 19.)

The fact that interest arbitration has most commonly been used in "public or quasi-public employment" does not mean that it is constitutionally restricted to such areas, as Gerawan contends. (See ABM 23.) To the contrary, interest arbitration is less common in the private sector not because of a constitutional limitation, but rather a statutory one: the National Labor Relations Act of 1935 (NLRA), which preempts state labor law in covered industries, currently does not provide for interest arbitration of bargaining disputes. Of course, the NLRA does not apply to agricultural workers, and it therefore does not preempt the ALRA. (See 29 U.S.C. § 152(3).) More fundamentally, Congress's decision not to include interest arbitration in the NLRA does not mean the Constitution precludes it. (See *N.L.R.B. v. Jones & Laughlin Steel Corp.* (1937) 301 U.S. 1, 44-45; ABM 22.)

Although Gerawan asserts that the U.S. Supreme Court upheld the NLRA against a due process challenge because it "does not compel

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First Amendment]; *Am. Acad. of Pediatrics v. Lungren* (1997) 16 Cal.4th 307, 348 [parental consent requirement for minors seeking abortions violated exercise of "fundamental constitutional privacy rights"].)

agreements between employers and employees," the Court's constitutional ruling in *Jones & Laughlin* was not contingent on this policy choice. (ABM 22, quoting *Jones & Laughlin*, *supra*, 301 U.S. at p. 45.) Indeed, because the NLRA does not compel arbitration to resolve bargaining disagreements, the Supreme Court had no opportunity to consider whether doing so would be constitutional. (*Ibid.*) Moreover, in a more recent decision, the U.S. Supreme Court expressly contemplated that Congress could amend the NLRA to "allow governmental review of proposals for collective-bargaining agreements and compulsory submission to one side's demands." (*H.K. Porter Co. v. N.L.R.B.* (1970) 397 U.S. 99, 109.) That "[t]he *present* Act does not envision such a process" does not mean that the Constitution forbids it. (*Ibid.*, emphasis added.)

Given its history of successful use in other labor settings, the Legislature here could rationally conclude that interest arbitration was the appropriate mechanism for resolving protracted bargaining disputes under the ALRA

B. The MMC Statute Is Rationally Related to Legitimate State Interests

Gerawan asserts two equal protection theories: (1) that the MMC Statute discriminates between employers that are subject to MMC and those that are not, and (2) that the statute discriminates within the class of employers subject to MMC because not every eligible employer will be ordered to MMC and MMC results in a CBA applicable to a single employer. Neither asserted classification violates equal protection because both are rationally related to legitimate state interests.

1. MMC Is Rationally Related to the State's Legitimate Interest in Facilitating the Conclusion of First Contracts Under the ALRA

Gerawan's first equal protection theory—that the MMC Statute

unlawfully discriminates between employers subject to MMC and those that are not—fails, because, as Gerawan now concedes, the lines drawn by the MMC Statute are rationally related to the State's interest in facilitating effective collective bargaining through the conclusion of first contracts. (See ABM 47 [class of employers subject to MMC "distinctly may bear a rational relationship to the statutory purpose of promoting collective bargaining"].)

Shifting focus, Gerawan now argues—for the first time—that the MMC Statute nonetheless violates equal protection because it allegedly "empower[s] a self-interested union to compel the regulation of individual employers of its choosing." (ABM 42.) Gerawan's alternative theory fails because it misrepresents the union's role in initiating MMC, and in so doing, ignores the Legislature's obvious rational basis for MMC's design.

The MMC Statute does not give a union "unilateral power to decide which employer" will be subject to MMC. (ABM 42.) Rather, MMC may be requested by *either* a certified union *or* an agricultural employer. (§§ 1164, subd. (a).) And it is the Board—not either party—that determines whether the statutory prerequisites are met and directs the parties to MMC. (§§ 1164, subd. (b), 1164.11.) A union's power under the MMC Statute (like an employer's) is limited to informing the Board that MMC is desired and that it believes the statutory criteria are met. It is perfectly rational for the Legislature to determine that the bargaining parties are best positioned to alert the Board of such circumstances.

2. MMC's Individualized Processes Are Rationally Related to the State's Legitimate Interest in Tailoring Each CBA to the Unique Circumstances of the Parties

Gerawan's second equal protection theory—that the MMC Statute discriminates *within* the class of employers subject to MMC—fails because the MMC Statute's individualized processes are rationally related to the

State's legitimate interest in tailoring each CBA to the unique interests of the bargaining parties.

a. Equal Protection Does Not Require That Every Eligible Employer Be Subject to MMC

Gerawan's objection that every eligible employer may not be subject to MMC has no constitutional relevance. (See ABM 42-45.) Equal protection does not require that a law be applied against all potentially subject to it, but only that it is applied in a non-discriminatory fashion. (See *Engquist v. Or. Dept. of Agriculture* (2008) 553 U.S. 591, 603-604.) The U.S. Supreme Court's equal protection analysis in *Engquist* elucidates this distinction. As the Court explained, a speed limit law does not violate equal protection because only a fraction of violators are cited. (*Ibid.*) "[A]llowing an equal protection claim on the ground that a ticket was given to one person and not others, even if for no discernible or articulable reason, would be incompatible with the discretion inherent in the challenged action." (*Ibid.*) Similarly, the Legislature here determined that not all agricultural employers (or unions) need be subject to MMC. Rather, MMC may be directed only for those bargaining relationships meeting the statutory criteria, and even then, only upon the request of a bargaining party. There is nothing irrational about this design.

Gerawan's reliance on *Gerhart v. Lake County, Mont.* (9th Cir. 2011) 637 F.3d 1013, is misplaced. *Gerhart* involved an as-applied challenge to a specific decision (the County's denial of a construction permit), not a facial challenge to an entire regulatory scheme.[3] (See *id.* at p. 1021.) Moreover,

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[3] Gerawan's reliance on *Schaezlein v. Cabaniss* is similarly misplaced. (ABM 44-45.) *Schaezlein* involved unlawful delegation and special legislation claims, not a facial equal protection challenge. (*Schaezlein v. Cabaniss* (1902) 135 Cal. 466.) Moreover, the discretion at issue in that case—determining whether factory air quality could be

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the court in *Gerhart* held only that there was a genuine question as to the County's rational basis in light of the "considerable evidence that [Gerhart] was treated differently than other similarly situated property owners throughout the permit application process." (*Id.* at pp. 1022-1023.) By contrast, Gerawan cannot establish that any similarly situated employers were treated differently in MMC. Quite the contrary, the mediator determined—and Gerawan does not dispute—that there are no similarly situated employers to "provide guidance" on CBA terms. (See ABM 19, citing Certified Record (CR) 362-363.)

Gerawan's attempt to distinguish *RUI One Corp. v. City of Berkeley* (9th Cir. 2004) 371 F.3d 1137, likewise fails. (ABM 49.) In *RUI*, the court rejected a "class of one" equal protection challenge to a City's imposition of a minimum wage on certain businesses "but not upon other similar businesses elsewhere in the City," because the City established neutral criteria—geographic location, employer size, and lease status—for the ordinance's application. (*Id.* at pp. 1154-1156.) Similarly, the Legislature here established neutral criteria for when MMC may be invoked. (§§ 1164, subd. (a), 1164.11.)

b. The Fact that MMC Results in CBAs Tailored to Each Employer Does Not Violate Equal Protection

Gerawan's alternative argument that MMC violates equal protection because it results in a CBA applicable to a single employer also fails,

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improved "to a great extent" with "some mechanical contrivance" and prescribing the specific "contrivance" to be used—is nothing like the straightforward prerequisites for invoking MMC. (*Id.* at pp. 467-470; see Slip Op. 20 fn. 19 ["each of the conditions set forth in sections 1164 and 1164.11 appear to be matters that are ordinarily capable of being readily and quickly ascertained"].)

because such individualized agreements are rationally related to the State's legitimate interest in promoting labor stability by tailoring the terms of each CBA to the individual circumstances of the bargaining parties. (See ABM 46-50.) As the U.S. Supreme Court has explained, for equal protection purposes, "[i]t is no proper challenge to what in its nature is a subjective, individualized decision that it was subjective and individualized." (*Engquist, supra*, 553 U.S. at p. 604.) MMC plainly involves such "subjective and individualized" discretionary decisions and, notably, Gerawan does not dispute that collective bargaining is an inherently individualized process. (See ALRB OBM 21-22.)

Instead, Gerawan attacks a straw man—mischaracterizing the Board's argument as seeking to insulate *every* mediator's report from *any* equal protection challenge. (ABM 2, 43, 46.) To the contrary, the Board's opening brief expressly contemplated the possibility of an *as-applied* challenge to a particular mediator's report if, in a given circumstance, the result was not simply individualized, but discriminatory. (ALRB OBM 25.) But such a claim is not before the Court, and the mere possibility that an employer could be treated unfairly in some hypothetical circumstance does not render an entire statutory scheme invalid.

Recognizing that *Engquist* precludes its facial claim, Gerawan's only answer is the bald assertion that *Engquist* is "not applicable to private employers." (ABM 49.) But *Engquist*'s equal protection analysis is not so limited. (*Las Lomas Land Co., LLC v. City of Los Angeles* (2009) 177 Cal.App.4th 837, 859 ["[a]lthough the holding in *Engquist* was limited to the public employment context, we believe that its reasoning applies more broadly"].)[4] Indeed, as discussed above, the Court's primary example

[4] See also *Squires v. City of Eureka* (2014) 231 Cal.App.4th 577, 595 [applying *Engquist* to reject equal protection challenge to municipal (continued...)

supporting its rationale—speed limits—has nothing to do with public employment.

Gerawan's related argument that MMC violates equal protection because the individualized terms in each CBA allegedly are not rationally related to the MMC Statute's "only stated purpose . . . to promote stability in bargaining relationships and foster collective bargaining" also fails. (ABM 46.) The actual policies supporting MMC are much broader. In enacting the MMC Statute, the Legislature also expressly sought to "ensure a more effective collective bargaining process . . . and thereby more fully attain the purposes of the [ALRA]" and to "ameliorate the working conditions and economic standing of agricultural employees." (Stats. 2002, ch. 1145, § 1.) Gerawan does not explain how a law that results in a first CBA setting the economic terms of employment, either through negotiation or Board order, is not rationally related to these goals.[5]

Finally, there is no constitutional basis to distinguish decisions upholding laws permitting similar discretionary decisions in other legal settings, including rate-making, rent control, land use, and criminal prosecution. (See ABM 47-49.) In each case, the legislative body set a policy and established criteria for its application. So too here with the Legislature's enactment of the MMC Statute.

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code enforcement]; *Towery v. Brewer* (9th Cir. 2012) 672 F.3d 650, 660 [applying *Engquist* to reject equal protection challenge to Arizona's lethal injection statutes].

[5] Notably, Gerawan's only support for its assertion that MMC's individualized CBAs violate equal protection is a *dissenting opinion*. (See ABM 47, quoting *Barsky v. Bd. of Regents of University* (1954) 347 U.S. 442, 470 [Frankfurter, J., dissenting].)

C. The MMC Statute Does Not Facially Discriminate Among Similarly Situated Employers

Gerawan's facial equal protection challenge fails for the additional reason that Gerawan has not shown that the MMC Statute systematically causes similarly situated employers to receive materially different treatment in all or the "vast majority" of cases, as is required. (*Today's Fresh Start, Inc. v. Los Angeles County Office of Ed.* (2013) 57 Cal.4th 197, 218; see ALRB OBM 22-25.)

First, given the "peculiar problems with the collective bargaining process between agricultural employers and agricultural employees," agricultural employers are not similarly situated to employers in other industries. (See, e.g., *Hess*, *supra*, 140 Cal.App.4th at pp. 1603-1604.) Gerawan does not dispute this.

Second, the MMC Statute, by its terms, applies to all agricultural employers and certified unions. The Legislature did not single-out Gerawan or any other agricultural employer to be subject to MMC, but rather defined objective circumstances in which MMC may be initiated. (§§ 1164, subd. (a), 1164.11.) Gerawan concedes the rationality of this design. (See ABM 47.) Similarly, because the mediator's report is based on the application of neutral statutory criteria to a specific dispute, the differences in individual CBAs are designed to reflect the unique circumstances of the bargaining parties, not to treat similarly situated employers differently. (*Hess*, *supra*, 140 Cal.App.4th at p. 1604.)

Third, Gerawan has not established any identifiable class for equal protection purposes. "Although a group need not be specifically identified in a statute to claim an equal protection violation [citations], group members must have some pertinent common characteristic other than the fact that they are assertedly harmed by a statute [citations]." (*Vergara*, *supra*, ___ Cal.App.4th ___ [2016 WL 1503698, *13].) Here, Gerawan

identifies no such common characteristic but rather asserts that the mere fact that MMC results in a CBA applicable to a single employer violates equal protection. But this is not the law. Equal protection requires only that the Legislature have a rational basis for such individualized treatment. (See, e.g., *Vill. of Willowbrook v. Olech* (2000) 528 U.S. 562, 564; *Engquist, supra*, 553 U.S. at p. 604.) As described above, the inherently individualized nature of collective bargaining provides that rational basis.

III. THE MMC STATUTE IS NOT AN UNCONSTITUTIONAL DELEGATION OF LEGISLATIVE POWER

The Court of Appeal erred in holding that "the MMC statute involves an unconstitutional delegation of legislative authority." (Slip Op. 56.) The Legislature here made the fundamental policy decision that MMC was necessary to address the unique challenges of collective bargaining in the agricultural industry. (See ALRB OBM 26-27.) The Legislature likewise provided clear direction for MMC's implementation, specifying the criteria to be considered by the mediator in applying the Legislature's policy and establishing straightforward procedures for prompt administrative and judicial review to ensure its fair application. (ALRB OBM 27-34.) Nothing more is constitutionally required.

A. The Legislature Made the Fundamental Policy Decisions Supporting MMC

Gerawan's unlawful delegation claim fails at the threshold, because the Legislature in enacting the MMC Statute did not delegate any "fundamental policy decisions." (See, e.g., *Carson Mobilehome Park Owners' Assn. v. City of Carson* (1983) 35 Cal.3d 184, 190.) To the contrary, the Legislature expressly made the fundamental policy decisions that the conclusion of first contracts was essential to the ALRA's purpose, and that MMC should therefore be available to resolve protracted bargaining disputes. (See *Hess, supra*, 140 Cal.App.4th at p. 1605; RJN,

Ex. C, p. 7; RJN, Ex. D, pp. 7-8.) The Legislature likewise made the related policy decisions determining the circumstances in which MMC should be available, the goals to be accomplished, the processes to be followed, the scope of the mediator's discretion, and the criteria to be considered in resolving the parties' disputes. (See §§ 1164, 1164.3, 1164.11; Stats. 2002, ch. 1145, § 1.)

Contrary to Gerawan's assertion, the Board does not contend that "the imposition of a CBA on a private employer is 'not a 'fundamental' issue of public policy." (ABM 51.) Quite the opposite—the decision to establish an interest arbitration procedure for the conclusion of first contracts in specified circumstances *is* a public policy decision, which *the Legislature made* in enacting the MMC Statute. But the specific terms of such contracts do not involve fundamental policy decisions, and properly are left for determination by the mediator. (See (*Pac. Legal Found. v. Brown* (1981) 29 Cal.3d 168, 201.)

Gerawan's argument that the MMC Statute is an unlawful delegation because it leaves the resolution of specific contract terms to the mediator, and that such terms are "'fundamental' policies" to *the contracting parties*, misses the point. (ABM 51.) The relevant question is not whether the mediator's decision regarding a specific contract term affects the contracting parties, but rather whether it implicates fundamental policy decisions *of the State*. As this Court has explained, the determination of "the working details of the wages, hours and working conditions" in a CBA plainly does not. (*Pac. Legal Found. v. Brown*, *supra*, 29 Cal.3d at p. 201; see also § 1164.3, subd. (a) [mediator's report must be limited "to wages, hours, or other conditions of employment"].)

Gerawan's related concern that interest arbitration may "push the arbitrator into the realm of social planning and fiscal policy" is a consideration unique to public sector labor relations. (ABM 52, quoting

County of Sonoma v. Superior Court (2009) 173 Cal.App.4th 322, 342.) As the court in *County of Sonoma* explained, "[t]he obvious reason for this is that costs arising from the terms of a binding [public sector] interest arbitration award must be paid out of government funds," which in turn may require fundamental policy decisions to raise taxes or make budget cuts. (*County of Sonoma*, *supra*, 173 Cal.App.4th at p. 342.) The mediator's determination of individual contract terms during MMC implicates no such public policy decisions.

B. The Legislature Provided Adequate Guidance for the Implementation of Its Policy Decisions

The Legislature also provided clear guidance for the implementation of its policy decisions: If the parties to MMC are unable to reach an agreement through mediation, the mediator has discretion to "resolv[e] all of the [disputed] issues between the parties" concerning "the final terms of a collective bargaining agreement." (§ 1164, subd. (d).) Further, the mediator's discretion is guided by "those factors commonly considered in similar proceedings," including the parties' stipulations, the employer's financial condition, corresponding CBAs, employment conditions in similar industries and regions, and the California Consumer Price Index and overall cost of living where the work is performed. (*Id.*, subd. (e); cf. Gov. Code, §§ 3505.4, subd. (d)(3)-(7) [similar factors to be considered in resolving bargaining disputes under Meyers-Milias-Brown Act], 3548.2, subd. (b) [same as to Educational Employment Relations Act].)

This Court has repeatedly rejected "delegation" challenges to statutes that similarly provide a list of factors to be considered in implementing a stated policy. (See, e.g., *Birkenfeld*, *supra*, 17 Cal.3d at p. 168; *Carson*, *supra*, 35 Cal.3d at pp. 190-191.) For example, in *Birkenfeld*, this Court rejected a delegation challenge to a rent control ordinance based on the same fundamental argument advanced by Gerawan and adopted by the

Court of Appeal in this case—namely, that the mere "listing of factors does not adequately inform either the Board or a court reviewing the Board's actions just how the presence of the factors under particular circumstances is to be translated into [financial terms]." (*Birkenfeld*, *supra*, 17 Cal.3d at p. 168.)

Gerawan—like the Court of Appeal—attempts to distinguish *Birkenfeld* on the ground that the challenged rent ordinance's "stated purpose . . . furnished an implied standard by which the board could apply those factors" (ABM 54)—namely, to implement "a just and reasonable rental amount based on several factors." (Slip Op. 53.) But neither explains why a similarly constitutional standard—i.e., to establish a just and reasonable CBA based on the consideration of specified criteria—cannot be implied from the MMC Statute's stated purpose and statutory guidance. Instead, Gerawan simply asserts that the MMC Statute provides "no guiding standards" because the Legislature failed to establish "the specific formula or objective pursuant to which the delegee would operate." (ABM 55.) But this assertion is contrary to both the law and the facts.

First, this Court has repeatedly rejected the notion that an agency must be bound to any particular formula in the implementation of legislative policy. (*Birkenfeld*, *supra*, 17 Cal.3d at p. 165; *Carson*, *supra*, 35 Cal.3d at p. 191.) Second, the Legislature here *did* establish policies and standards to guide the mediator. (See §§ 1164, subds. (d)-(e); Stats. 2002, ch. 1145, § 1.) That Gerawan disagrees with the Legislature's choices does not render them unconstitutional. Lastly, any demand for a more rigid formula to guide the mediator disregards the inherent complexities of labor negotiations. (ALRB OBM 30-31; see, e.g., *Fire Fighters Union, Local 1186, Internat. Assn. of Fire Fighters v. City of Vallejo* (1974) 12 Cal.3d

608, 622, fn. 13 [rejecting delegation challenge to city's interest arbitration law][6]; see generally *Birkenfeld, supra*, 17 Cal.3d at p. 168 [statutory "yardstick must be as definite as the exigencies of the particular problem permit"].)

C. The Legislature Included Adequate Safeguards to Ensure the MMC Statute Is Fairly Applied

Finally, to ensure MMC's fair application, the Legislature included a two-tiered process providing for the prompt review of the mediator's report by the Board and appellate courts. (§§ 1164.3, subds. (a), (e), 1164.5; *Hess, supra*, 140 Cal.App.4th at pp. 1609-1610.) Gerawan does not contest that these straightforward procedures are nothing like the "inexcusably cumbersome" procedures held insufficient in *Birkenfeld*. (Cf. *Birkenfeld, supra*, 17 Cal.3d at pp. 169-173; see Slip Op. 54 [citing *Birkenfeld*].) Rather, Gerawan attempts to minimize the MMC Statute's safeguards by declaring that the Board's review is "illusory," and the appellate courts' review "meaningless." (ABM 57.) Gerawan's unsupported assertions should be rejected as contrary to law and the facts of this case.

The MMC Statute requires the Board to reject the entirety of the mediator's report if it determines the mediator was corrupt, the report was "procured by corruption, fraud, or other undue means," or that a party's rights "were substantially prejudiced by the misconduct of the mediator." (§ 1164.3, subd. (e).) The Board also must reject any provision of the mediator's report that is: (1) "unrelated to wages, hours, or other conditions of employment"; (2) "based on clearly erroneous findings of

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[6] See also *City of Richfield v. Local No. 1214, Internat. Assn. of Firefighters* (Minn. 1979) 276 N.W.2d 42, 46-47 [rejecting delegation challenge to interest arbitration law and explaining that rigid standards are not possible in collective bargaining]; *Superintending School Com. of Bangor v. Bangor Ed. Assn.* (Me. 1981) 433 A.2d 383, 387 [same].

material fact"; or (3) "arbitrary and capricious in light of the . . . findings of fact." (*Id.*, subd. (a).) Applying these criteria to Gerawan's objections in this case, the Board remanded six contested CBA terms to the mediator for revision. (CR 721-731.) Such a result is hardly "illusory."

Following the Board's review, a dissatisfied party may seek review in the appellate courts. (§ 1164.5.) This review is not limited to the "highly deferential 'arbitrary and capricious' standard," as Gerawan states (ABM 57), but rather encompasses whether the Board acted in excess of its powers or jurisdiction or did not proceed as required by law, and whether the Board's decision was procured by fraud, is an abuse of discretion, or violates any constitutional right. (§ 1164.3, subds. (a), (e).) Again, this case confirms that the MMC Statute's judicial review provisions are not "meaningless."

That the Board's regulations permit a mediator "to go off the record at any time to clarify or resolve issues informally" does not alter this conclusion. (Cal. Code Regs., tit. 8, § 20407, subd. (a)(2); see ABM 58.) At the threshold, the fact that "off-the-record" communications are *permitted* in MMC is insufficient to establish that such communications will occur in the "vast majority" of cases, as is required for a facial constitutional challenge. (*Today's Fresh Start, supra*, 57 Cal.4th at p. 218.)

Moreover, the mediator is expressly prohibited from relying on any off-the-record communications and must cite evidence in the record to support his or her findings. (§ 1164.3, subd. (d); Cal. Code Regs., tit. 8, § 20407, subd. (a)(2).) MMC is a quasi-legislative process,[7] and courts generally will not disturb a quasi-legislative decision if it is supported by the evidence *in the record*, not arbitrary or capricious, and consistent with

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[7] See, e.g., Slip Op. 45; *Hess, supra*, 140 Cal.App.4th at p. 1601; ABM 3, 41-42, 44, 49.

law. (See, e.g., *Stauffer Chemical Co. v. Air Resources Bd.* (1982) 128 Cal.App.3d 789, 794.) The presence or potential for "off-the-record" communications thus has no bearing on the adequacy of judicial review of such decisions.[8]

IV. THE BOARD DID NOT ABUSE ITS DISCRETION IN DIRECTING THE PARTIES TO MMC

The Court of Appeal erred in holding that the Board abused its discretion in referring the parties to MMC. MMC may be requested by any "labor organization certified as the exclusive bargaining agent of a bargaining unit of agricultural employees." (§ 1164, subd. (a).) Here, there is no dispute that UFW was certified as the exclusive bargaining agent of Gerawan's employees in 1992, and, to date, has not been decertified, or replaced, by an election. (CR 2, 23.) The Court of Appeal's conclusion that the Board nonetheless abused its discretion by referring the parties to MMC without "properly considering" Gerawan's argument that the UFW had forfeited its certification by allegedly "abandoning" Gerawan's workers is contrary to the plain language and history of the ALRA, to the legislative policies underlying MMC, and to decades of administrative and judicial precedent. (Slip Op. 40-41; see ALRB OBM 35-42.)

In enacting the ALRA, the Legislature expressly prohibited employer participation in the selection, recognition, and removal of bargaining

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[8] Gerawan's reliance on *Tex-Cal Land Mgmt., Inc. v. Agricultural Labor Relations Bd.* (1979) 24 Cal.3d 335, is misplaced. *Tex-Cal* involved the Court of Appeal's judicial review of the Board's *quasi-adjudicative* decisions in unfair labor practice proceedings, and it is therefore irrelevant to the judicial review required for the Board's *quasi-legislative* decisions in MMC. (See *id.* at pp. 345-346.) In any event, *Tex-Cal* held only that "the Legislature may accord finality to the findings of a statewide agency that are supported by substantial evidence on the record considered as a whole"; the Court said nothing about what must be included in that record. (*Id.* at p. 346.)

representatives. (See, e.g., § 1140.2 [ALRA intended to protect the right of agricultural employees "to be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives"]; *F&P Growers Assn. v. Agricultural Labor Relations Bd.* (1985) 168 Cal.App.3d 667, 673-677.) Accordingly, the ALRA requires an employer "to continue bargaining" with a certified labor union "until such time as the union is officially decertified" via an election. (*Montebello Rose Co. v. Agricultural Labor Relations Bd.* (1981) 119 Cal.App.3d 1, 23-24.) Consistent with this long-standing "certified until decertified" rule, the Board has repeatedly rejected the argument that a union's alleged "abandonment"—i.e., an extended period of union inactivity—may terminate its certification or otherwise excuse an employer from fulfilling its duties under the Act. (See, e.g., *O.E. Mayou & Sons* (1985) 11 ALRB No. 25; *Bruce Church, Inc.* (1991) 17 ALRB No. 1; *Dole Fresh Fruit Co., Inc.* (1996) 22 ALRB No. 4; *Arnaudo Brothers, LP* (2014) 40 ALRB No. 3, p. 14.)

When the MMC Statute was enacted, the Board's "certified until decertified" rule and rejection of the "abandonment" defense were well-established, and the Legislature gave no indication that it intended to depart from these accepted rules. (See §§ 1164, subd. (a), 1164.11.) Accordingly, since 2003, the Board has consistently held that a union's inactivity does not forfeit its status as a "certified" representative for purposes of requesting MMC. (See, e.g., *Pictsweet Mushroom Farms* (2003) 29 ALRB No. 3; *San Joaquin Tomato Growers, Inc.* (2011) 37 ALRB No. 5.) Notably, the Legislature has amended the ALRA numerous times, but has taken no action to override the Board's consistent rejection of the "abandonment" defense or the "certified until decertified" doctrine on which it is based. (See, e.g., Stats. 1994, ch. 1010, § 181; Stats. 2004, ch. 788, § 13; Stats. 2011, ch. 697.) Accordingly, the Board's long-standing

administrative interpretation is entitled to deference,[9] and the Board did not abuse its discretion in this case.

The Court of Appeal's contrary conclusion—and Gerawan's argument—rests on two incorrect premises: first, that MMC is not part of an employer's bargaining obligation under the ALRA, and second, that there are "policy reasons" to consider an employer's "abandonment" defense before MMC to protect their employees' freedom to choose a bargaining representative. As explained below, the first conclusion is contrary to law, while the second misapprehends how the ALRA is intended to operate and improperly seeks to supplant the Legislature's exclusive power to set policy.

A. MMC Is Part of the Bargaining Obligation Under the ALRA

The Court of Appeal erred in concluding that the ALRA's "certified until decertified" rule did not apply to MMC because—in the court's view—MMC is entirely "a postbargaining process." (Slip Op. 32-34, 41.) The ALRA does not draw a distinction between MMC and bargaining. To the contrary, the MMC Statute was enacted specifically to remedy a broken bargaining system under the ALRA, and MMC's stated purpose is to "ensure a more effective collective bargaining process" (Stats. 2002, ch. 1145, § 1) and facilitate the conclusion of a first collective bargaining agreement (§§ 1164, subd. (a), 1164.11). In this regard, MMC's design is consistent with the use of interest arbitration in other labor settings, where

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[9] See, e.g., *Highland Ranch v. Agricultural Labor Relations Bd.* (1981) 29 Cal.3d 848, 859 ["construction of a statute by the officials charged with its administration must be given great weight," quotations omitted]; *Moore v. Cal. State Bd. of Accountancy* (1992) 2 Cal.4th 999, 1017 [administrative interpretation of statute presumed consistent with legislative intent if Legislature does not amend statute to defeat agency's interpretation].

it has traditionally been viewed as a part of the collective bargaining process. (*City of Vallejo*, *supra*, 12 Cal.3d at p. 614 ["collective bargaining and issues arbitration are together a dynamic process," quotations omitted]; *Arnaudo Brothers, LP* (2015) 41 ALRB No. 6, p. 2 fn. 2 ["interest arbitration is well-accepted as an adjunct for bargaining"; collecting authorities].)[10]

Gerawan nonetheless asserts—without any authority—that MMC "is not 'bargaining' at all," because it may result in a mediator resolving the parties' disputes over specific contract terms. (ABM 32.) But Gerawan's argument—like the Court of Appeal's decision—ignores the concern the Legislature sought to address in enacting the MMC Statute (stalled bargaining), as well as the critical fact that the parties to MMC first attempt to reach a voluntary agreement through mediation. (§ 1164, subd. (c).) To divorce MMC from the ALRA's bargaining processes is to ignore the very purpose of MMC (and interest arbitration generally): the resolution of *bargaining* disputes.

B. There Is No Reason to Depart from the "Certified Until Decertified" Doctrine or the Board's Consistent Rejection of the "Abandonment" Defense

Gerawan's assertion that there are "policy reasons to address (and not ignore) abandonment" in the MMC context highlights the fundamental flaw in its argument and the Court of Appeal's decision. (See ABM 32.) To the extent there may be "policy reasons" that support the Court of Appeal's novel interpretation of the ALRA, it is for the Legislature—not Gerawan or

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[10] See also, e.g., *Kitsap County Deputy Sheriffs' Guild v. Kitsap County* (Wash. 2015) 253 P.3d 188, 193; *Borough of Lewistown v. Penn. Labor Relations Bd.* (Pa. 1999) 735 A.2d 1240, 1244; Elkouri & Elkouri, How Arbitration Works (7th ed. 2012), Ch. 22, p. 22-4 ["[a]rbitration of interest disputes may be viewed more as an instrument of collective bargaining"].

the Court of Appeal—to make such policy choices. Absent legislative action, there is no legal basis to depart from the long-standing "certified until decertified" doctrine or the Board's consistent rejection of the "abandonment" defense.

1. The ALRA's Decertification Procedures Are Not "Illusory"

Gerawan and the Court of Appeal's concern that "a decertification option would often be too late to stop the MMC process" is misplaced. (Slip Op. 37; ABM 39-41.) Gerawan has submitted no evidence to support its assertion that the decertification election process is too difficult or burdensome for employees to navigate. To the contrary, since the ALRA's enactment, employees have successfully petitioned for elections at dozens of farms. Additionally, the ALRA requires decertification elections to be held within seven days of a valid petition (or within 48 hours where employees are on strike). (§§ 1156.3, subd. (b), 1156.7, subd. (c).) Such expedited processes can hardly be considered "illusory." (See ABM 39.)

More fundamentally, if Gerawan has concerns about the required waiting period between a "renewed demand to bargain" and an MMC request (see § 1164, subd. (a)), or the efficacy of the ALRA's decertification election procedures generally, such concerns are properly directed to the Legislature.

2. A Certified Union's Presumption of Majority Support May Be Rebutted Only by an Employee-Initiated Election

The so-called "rebuttable presumption" rule does not support the Court of Appeal's conclusion that "abandonment may be raised defensively in response to a union's demand to invoke the substantial legal measures of the MMC process." (Slip. Op., p. 27; see ABM 34-38.)

In *Montebello Rose*, the court recognized that the ALRA grants certified unions an irrebuttable presumption of majority support of the bargaining unit during the initial certification year, during which time no rival elections are permitted. (*Montebello Rose*, *supra*, 119 Cal.App.3d at pp. 23-24.) After the initial certification year, employees may obtain a new election, but an employer has a "duty to continue bargaining" with the originally certified union "until such time as the union is officially decertified" via such an election. (*Ibid.*) In other words, after the initial certification year, a union's presumption of majority support—and the employer's corresponding duty to bargain—may be rebutted *by a new election*. But under the ALRA, employers play no role in this election process. (§ 1140.2.) Permitting Gerawan to avoid its obligations under the ALRA by unilaterally asserting that its employees no longer support the UFW would permit Gerawan "to do indirectly . . . what the Legislature has clearly shown it does not intend the employer to do directly." (*F&P Growers*, *supra*, 168 Cal.App.3d at p. 677.) There is no legal justification for such an outcome.[11]

[11] The Court of Appeal's conclusions that the "certified until decertified" rule has never been extended outside the bargaining context and that "any process by which parties are *compelled* to *agree* to imposed terms—which is the crux of the MMC process—does not fit into the parameters of bargaining under the ALRA" are misplaced. (Slip. Op. 33-34; ABM 35-36.) That the ALRA originally did not "compel [employers] to agree to a proposal or require them to make a concession" is irrelevant to whether MMC is part of bargaining. (See Slip Op. 33, quoting *Kaplan's Fruit & Produce Co.* (1977) 3 ALRB No. 28, p. 7.) As discussed above, when the Legislature amended the ALRA to include MMC, it also expanded the ALRA's bargaining obligation to include that process.

3. Permitting the "Abandonment" Defense in MMC Is Contrary to the ALRA's Core Purpose of Eliminating Employer Participation in the Recognition of Bargaining Representatives

Gerawan's contention that permitting the "abandonment" defense in MMC "vindicates the Act's core purpose of protecting the workers' right to freely choose their bargaining representatives" is contrary to law. (ABM 39.) At the threshold, Gerawan ignores the second "core purpose" of the Act: to ensure employees are "free from the interference, restraint, or coercion of employers . . . in the designation of such representatives." (§ 1140.2.) "The clear purpose of the Legislature [in enacting the ALRA] is to preclude the employer from active participation in choosing or decertifying a union, and this certainly overrides any paternalistic interest of the employer that the employees be represented by a union of the present employees' choice." (*F&P Growers*, *supra*, 168 Cal.App.3d at p. 677.) Accordingly, Gerawan's assertion that "given the difficult if not illusory nature of decertification as the only means for workers to stop the MMC process, the employer's ability to raise the abandonment defense is . . . the only way to protect the workers' right to choose" is directly contrary to the ALRA's design. (ABM 39; see ALRB OBM 40-44; see generally (*Gerawan Farming, Inc.*, *supra*, 42 ALRB No. 1, pp. 73-81 (conc. opn. of Gould, Ch.) [discussing 81-year history under federal and state labor law of limiting employer involvement in employee choice of bargaining representatives].)

Likewise, the Court of Appeal's conclusion that permitting an employer to avoid MMC based on a union's alleged "abandonment" does not contravene the ALRA's limitations on employer involvement in union recognition, because it "would simply permit the employer to *negate* a statutory element" required for MMC—i.e., "the union's representative status"—does not withstand scrutiny. (Slip. Op., p. 27; ABM 36-37.)

Whether an employer denies a union's representative status to negate a prerequisite for MMC or to avoid its other bargaining obligations is of no legal significance—the ALRA prohibits employers from even "peripheral participation" in the selection, recognition, or removal of a union. (*F&P Growers*, *supra*, 168 Cal.App.3d at p. 677; see § 1140.2.)

Finally, Gerawan's claim that "there is no reason to presume Gerawan's employees are 'satisfied' with the UFW" has no bearing on the question of whether the Board abused its discretion in referring the parties to MMC. (ABM 40; see Slip Op. 41.) Not only is Gerawan's opinion of its employees' satisfaction with the UFW irrelevant under the ALRA, but the decertification election occurred months after the Board's MMC referral and therefore could have no bearing on whether the Board abused its discretion. (See, e.g., *F&P Growers*, *supra*, 168 Cal.App.3d at pp. 676-677.) Moreover, the decertification petition was ultimately dismissed and the election set aside due to Gerawan's unlawful conduct, which tainted the entire decertification process. (See RJN, Ex. A, pp. 186-187; *Gerawan Farming, Inc.*, *supra*, 42 ALRB No. 1.) These issues are not before the Court, and it therefore would be improper for this Court to draw any conclusions from such proceedings at this time.

The Board did not abuse its discretion in referring the parties to MMC.

CONCLUSION

The judgment of the Court of Appeal should be reversed.

Dated: April 22, 2016

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
KATHLEEN A. KENEALY
Chief Assistant Attorney General
DOUGLAS J. WOODS
Senior Assistant Attorney General
CONSTANCE L. LELOUIS
Supervising Deputy Attorney General

for

BENJAMIN M. GLICKMAN
Deputy Attorney General
Attorneys for Respondent
Agricultural Labor Relations Board

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CERTIFICATE OF COMPLIANCE

I certify that the attached Reply Brief uses a 13-point Times New Roman font and contains 8,141 words.

Dated: April 22, 2016

KAMALA D. HARRIS
Attorney General of California

for

BENJAMIN M. GLICKMAN
Deputy Attorney General
Attorneys for Respondent
Agricultural Labor Relations Board

DECLARATION OF SERVICE BY E-MAIL and OVERNIGHT COURIER

Case Name: **Gerawan Farming, Inc. v. Agricultural Labor Relations Board**
No.: **S227243**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for overnight mail with the **GOLDEN STATE OVERNIGHT**. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the overnight courier that same day in the ordinary course of business.

On April 22, 2016, I served the attached **REPLY BRIEF OF RESPONDENT AGRICULTURAL LABOR RELATIONS BOARD** by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, for overnight delivery, addressed as follows:

SEE ATTACHED SERVICE LIST.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on April 22, 2016, at Sacramento, California.

Eileen A. Ennis
Declarant

Eileen A. Ennis
Signature

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SERVICE LIST

David A. Schwarz
Irell & Manella, LLP
1800 Avenue of the Stars. Suite 900
Los Angeles, California 90067-4276
Tel: (310) 277-1010
Fax: (310) 203-7199
Email: DSchwarz@irell.com
Attorneys for Petitioner and Appellant, Gerawan Farming, Inc.

Ronald H. Barsamian
Barsamian & Moody
1141 West Shaw, Suite 104
Fresno, CA 93711
Tel: (559) 248-2360
Fax: (559) 248-2370
Email: ronbarsamian@aol.com
Attorneys for Petitioner and Appellant, Gerawan Farming, Inc.

Scott A. Kronland
Jonathan Weissglass
Altshuler Berzon LLP
177 Post Street, Suite 300
San Francisco, CA 94108
Tel: (415) 421-7151
Fax: (415) 362-8064
Email: skronland@altshulerberzon.com
Attorneys for Real Party in Interest, UFWA

Superior Court Clerk
Fresno County Superior Court
B.F. Sisk Courthouse
1130 O Street
Fresno, CA 93721-2220
(39 ALRB NO. 17 and 13CECG01408

C. Russell Georgeson
Georgeson, Belardinelli and Noyes
7060 N. Fresno Street. Suite 250
Fresno, California 93720
Tel: (559) 447-8800
Fax: (559) 447-0747
Email: crgdanelaw@sbcglobal.net
Attorneys for Petitioner and Appellant, Gerawan Farming, Inc.

Mario Martinez
Thomas Patrick Lynch
Martinez Aguilasocho & Lynch
Administration Building
29700 Woodford-Tehachapi Rd.
Keene, CA 93389-1208
Tel: (661) 859-1174
Fax: (661) 840-6154
Email: mmartinez@farmworkerlaw.com
Attorneys for Real Party in Interest, UFWA

Michael P. Mallery
General Counsel
Gerawan Farming, Inc.
7108 N Fresno St., Ste 450
Fresno, CA 93720
Tel: (559) 272-2310
Fax: (559) 500-1079
Email: m.mallery@gerawan.com
Attorneys for Petitioner and Appellant Gerawan Farming, Inc.

Honorable Donald S. Black
c/o Clerk's Office
Fresno County Superior Court
B.F. Sisk Courthouse
1130 O Street
Fresno, CA 93721-2220
(39 ALRB NO. 17 and 13CECG01408)

Clerk of the Court
Court of Appeal
Fifth Appellate District
2424 Ventura Street
Fresno, CA 93721
(*F068526 and F068676*)
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