Case No. S227243

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

GERAWAN FARMING, INC.

Petitioner,

v.

AGRICULTURAL LABOR RELATIONS BOARD

Respondent.

UNITED FARM WORKERS OF AMERICA

Real Party in Interest

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

AMICUS CURIAE BRIEF OF SILVIA LOPEZ IN SUPPORT OF PETITIONER

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INTRODUCTION AND OVERVIEW

The National Labor Relations Act ("NLRA") was perhaps the most progressive piece of labor legislation ever drafted, and the statute transformed the landscape of American labor. The NLRA granted workers in a broad range of industries across the United States the right to engage in concerted activity for their mutual aid and protection, and the right to have a collective voice in the workplace. The foundation of the statute was the principle of industrial democracy – workers' collective choices should dictate whether or not they would have union representation, and that these choices be made through our most democratic of processes, the secret ballot election. But the NLRA left a gaping hole in the protections it provided to workers, as farm workers were excluded from the rights and protections granted by the federal statute.

California, the nation's most productive agricultural state, chose to lead the nation by passing the Agricultural Labor Relations Act ("ALRA"). Based on the NLRA, the ALRA transformed California's fields by embracing worker self-determination and industrial democracy as fundamental rights for farm workers and the foundation for their economic freedom. The ALRA took the democratic ideal one step further than the NLRA, requiring secret ballot elections as the only method whereby workers can choose union representation, while the NLRA allowed employers to voluntarily recognize unions. Like the NLRA, the Act imposed a mutual duty on employers and unions to meet and confer to negotiate agreements establishing terms and conditions of employment for represented employees.

These principles of worker self-determination and democracy in the fields are the foundational principles of labor rights that the ALRB is bound to protect. The principal purpose of the Act is farm workers' right to self-

organization and association. (*Cadiz v. Agricultural Labor Relations Bd.* (1979) 92 Cal.App.3d 365, 378.)

Yet in the present case, the dream of farm workers using democratic elections to choose their future has become a nightmare for Ms. Lopez and her fellow workers whom the statute is designed to protect. It is undisputed in this case that the UFW won a secret ballot election in 1990, 24 years ago. In 1992, the results of that election were certified by the ALRB. In 1995, the UFW disappeared from the scene entirely without cause or explanation, and failed entirely to engage the employer at all for approximately 17 years, until 2012. Despite its own holdings clearly stating that a certification becomes defunct when a union disappears from the scene, or when a union demonstrates its unwillingness or inability to represent the workers, the ALRB enforced the certification summarily during the MMC process. After 17 years of unwillingness and inability to represent the workers, the UFW was back in business with the imprimatur of the ALRB certification granting it unquestionable legitimacy.

The UFW aggressively pursued a contract through the MMC process, and ultimately litigated its way into a contract that would require workers to join the union, and entitling the union to siphon 3% of their hard earned wages from each paycheck. While workers were not given formal notice of this process, when Ms. Lopez and other workers learned of the MMC process, they attempted to attend, and they attempted to intervene. They were barred at the door, silenced because their certified representative had entirely supplanted their voices in the process. Yet the union's goals were far from benevolent, and the interests it was pursuing were not the interests of the workers it had ignored for almost two decades.

The Court of Appeal observed that Gerawan represented in its filings that it employed approximately 5,000 direct hire employees, with another 6,000 workers supplied by farm labor contractors, all of whom would be covered by the union contract in this case. If the employer employs 10,000 workers for approximately 13 weeks per year at $11.00 per hour for 60 hours per week, then the union expects to receive a windfall of 3% of their wages, or ***$2,574,000.00 annually.*** While this is admittedly an estimate, there is no question that the union stands to receive a substantial boost in income if it can capture 3% of the wages paid to the employees of one of the largest farming operations in California. This case does not involve the benevolent actions of a committed collective bargaining representative, but the opportunistic use of a remedial statute to enrich a self-interested enterprise that has already failed in its legal obligation to represent farm workers.

When Ms. Lopez was barred from observing the MMC, she decided to take action. Consistent with the rights granted her by the Act, Ms. Lopez organized her co-workers, and began gathering signatures opposing union representation. She succeeded in obtaining a majority of signatures opposing union representation, and the ALRB ordered an election to take place. On November 5, 2013, thousands of Gerawan employees cast their ballots, beginning in the early morning hours before sunrise and concluding after dark. But the ALRB chose to impound those ballots, and has ordered them destroyed, despite finding that the decertification effort was an organic effort initiated by employees. Ms. Lopez is currently challenging the Board's order to deny the workers their right to vote based on conduct that it attributes to the employer, where there has been no wrongdoing by employees. (*Silvia Lopez v. Agricultural Labor Relations Board*, Case No. F073730.)

The Order that is the subject of this appeal will force Gerawan's employees to work under the terms of a collective bargaining agreement

imposed by the state through the MMC process, and will force them to pay 3% of their wages to a union they did not choose under penalty of termination. The entire validity of the MMC process rests upon the validity of the certified bargaining representative, particularly since validation of the certification silences workers entirely. Workers such as Ms. Lopez are excluded from the MMC process because of the legal policy that their democratically chosen representative speaks for them. But when the certified representative has damaged employee bargaining rights by failing to communicate with their employer for almost two decades, then that representative has no validity, and the underlying MMC process becomes unlawful and invalid, rendering the Order that is the subject of this proceeding invalid. The position taken by the ALRB and the UFW in this case is that a financially interested union that has demonstrated a decades-long unwillingness to represent the workers can initiate the MMC process and shut the workers out entirely of a process that results in a diversion of the workers' wages to the union's coffers. This cannot be the purpose and intention of the Agricultural Labor Relations Act, one of the most progressive worker protection statutes in history.

Ms. Lopez asserts that the MMC Order is invalid because the union's unlawful failure to carry out its duties as the certified bargaining representative from 1995 to 2012 terminated the certification and its right to represent her. Further, she requests that this Court find that the MMC process violated workers' right to due process, and invalidate the order.

QUESTIONS PRESENTED

1. Does a union's absence from the scene for a period of 17 years terminate the certification such that the union cannot return and represent employees as if it was never absent?

2. Did the ALRB's failure to provide workers with notice and an opportunity to challenge the presumption of majority support underlying the certification in the MMC process violate workers' due process rights?

STATEMENT OF THE CASE

Amicus Silvia Lopez adopts the statement of the case and facts as set forth in Respondent's opening brief.

ARGUMENT

In 1975, the State of California guaranteed farm workers that it would protect their right to self-determination:

> It is hereby stated to be the policy of the State of California to encourage and protect the right of agricultural employees to full freedom of association, self-organization, and designation of representatives of their own choosing, to negotiate the terms and conditions of their employment, and to be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. For this purpose this part is adopted to provide for collective-bargaining rights for agricultural employees. (Labor Code Section 1140.4.)

The ALRA guarantees Ms. Lopez and her fellow employees "the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives **of their own choosing**, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities..." (Labor Code § 1152.) (emphasis added.) This right of self-determination provides the foundation for the principles of industrial democracy that are the core policy underlying the ALRA.

The Certified Bargaining Representative has an Affirmative Obligation to Meet and Confer with the Employer on Behalf of Represented Workers

A certified union is empowered as the exclusive representative of the representative employees, but this authority comes with both responsibility and accountability. The certified union has an affirmative duty to bargain on behalf of the represented employees, meaning it must "meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any questions arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party." (Labor Code § 1155.2(a); see *Victoria Packing Corp.* (2000) 332 NLRB 597.)

As the United States Supreme Court has explained, the "undoubted broad authority of the union as exclusive bargaining agent in the negotiation and administration of a collective bargaining agreement **is accompanied by a responsibility of equal scope, the responsibility and duty of fair representation.**" (*Humphrey v. Moore* (1964) 375 U.S. 335, 342 (emphasis added).) It is beyond dispute that in this case, the United Farm Workers union utterly and completely failed to carry out this duty by failing to have any contact with the employer whatsoever for a period of 17 years. This is not a close call; it is the total and complete dereliction of the express statutory obligation to meet and confer with the employer. It is equally beyond dispute that the ALRB has taken no steps whatsoever to remedy this violation of the statute, a violation that has resulted in grave harm to the bargaining rights of the employees who voted for the union and not only did not get a contract, but did not get any representation whatsoever.

MMC is Designed to Remedy Employer Misconduct and Should Not Be Invoked to Reward Union Wrongdoing

It is not at all surprising that the UFW invokes a statute designed to remedy employers who refuse to bargain with unions to cover its own refusal to bargain and to obtain a state mandated contract. It is even less surprising that a large employer like Gerawan was the target for this tactic in light of the millions of dollars the ALRB's order will divert from employee paychecks to union coffers. Avoidance of accountability for unlawful conduct and a windfall profit despite that unlawful conduct are wonderful outcomes for the union in light of its 17 year breach of legal duty, and the UFW must be thrilled.

But it is surprising to Ms. Lopez that the agency charged with protecting *worker* rights would be so determined to invoke a remedial statute designed to address employer misconduct when doing so not only ignores the union's misconduct, it rewards a labor organization that has done untold damage to farm worker bargaining rights by leaving the workers who voted for representation so many years ago without any representation whatsoever. Instead of remedying the damage done by the union's recalcitrance, the government seeks to compound this atrocity by forcing a lawbreaking labor organization on a population of employees who simply want to be able to decide for themselves whether to be represented.

Both the ALRB and the union rely heavily on legislative history expressing concern about the damage done by employers who refused to negotiate contracts with the certified representatives of their employees. Whether or not such refusals justify the existence of the MMC statute is a question for another day, because this case does not involve such an employer, and the policy imperative to punish recalcitrant employers cannot be served in

this case. Instead, this case uses the MMC statute *to reward a recalcitrant union* with a contract worth millions in income.

The legislative history does not support such a purpose, as there is nothing to indicate that the Legislature intended to shield moribund unions from responsibility for their misconduct, or punish future employees for a union's dereliction of the legal obligations owed to today's voters. If anything, the legislative history supports the principle that the Legislature was concerned with the harm done to bargaining rights by delays in contract negotiation and implementation, but was only told one reason that such delays occur. Had the Legislature been asked to address the problem of union abandonment of workers, it no doubt would have done so. But workers like Ms. Lopez do not have lobbyists, or access to the halls of Sacramento. But there can be no question that the outcome in this case is entirely inconsistent with legislative intent and purpose to protect farm worker bargaining rights, because the ALRB has rewarded a labor organization that is responsible for doing damage to those rights.

As set forth in the briefs of the ALRB and the UFW, the Legislature was told of hundreds of certifications where no contracts were reached, ostensibly because of employer refusals to bargain. But there is nothing in the history that indicates that the Legislature was told, or was even aware, that in some cases (like this one), workers never enjoyed the benefits of union representation because the union simply failed to engage their employer on their behalf.[1] At least some number of these failed certifications failed, not

[1] It remains unknown how many bargaining units were disclaimed or abandoned by the UFW in the distant past. In addition to Gerawan, employees at Arnaudo Bros. are facing an MMC imposed contract, despite a dispute over a disclaimer of interest and a 30 year absence by the union. (*Arnaudo Bros.* (2014) 40 ALRB No. 4.) In that case, the employer claims there was an

because of employer misconduct, but because of the unlawful failure of the union to communicate with the employer. As the Legislature lacked this important information, the history clearly shows that the MMC statute was never intended to deal with the problem of a voluntarily absent bargaining representative at all. A more rational interpretation of the statute by the ALRB would have been to deny the request for MMC because this case did not fit the purpose of the statute, to remedy delays caused by employer resistance. As there is no employer delay or refusal to remedy, there was no need to invoke MMC.

By all accounts, Gerawan stood ready and willing to bargain in 1995. For reasons that have never been addressed or explained, the union simply failed to make any proposal, schedule any negotiations, or communicate in any way for 17 years. When the union re-emerged in 2012, it contacted the employer, but made no effort to explain its years of absence and sudden return to the workers it sought to represent. Instead, the union did everything it could to invoke the MMC process as quickly as possible, seeking a contract diverting employee wages to the union, ideally before employees even knew what was happening.

Knowingly or not, the ALRB became complicit in this abuse of farm worker civil rights when it summarily validated the certification and ordered the MMC to proceed without notice to the workers, and without any opportunity for them to be heard. No effort was made to arrange any type of noticing in the employer's fields, and it appears that little or no thought was given to the workers at all. The ALRB compounded its error when it barred

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express disclaimer of interest, but even the union admits that it simply failed to contact the employer for negotiations **for a period of 24 years.** It appears that this is a problem with the UFW that is not isolated to Gerawan Farms.

workers from attending the MMC process, even as witnesses, and prohibited them from intervening in the legal proceedings surrounding the MMC. In short, the summary decision to validate the certification deprived the workers of a voice in their own terms and conditions of employment, and set before them the unsurmountable obstacle of a decertification election.

Decertification Elections Are Not an Effective Remedy Because Employees Cannot Ensure That Their Votes Will be Counted

"The chief means by which the [ALRA] meets its stated goals of ensuring peace in the agricultural fields by guaranteeing justice for all agricultural workers and stability in labor relations **is by the provision of secret ballot elections in which the free choice of those workers** for or against representation by a labor organization can be expressed. **Whether that choice is between representation and non-representation or between decertification and a continuation of certification, the Board views the effectuation of employee free choice as one of its fundamental goals.**" (*Mann Packing Co., Inc.* (1990) 16 ALRB No. 15, 3-4 (emphasis added).) In accordance with the stated goal of effectuating free choice, the ALRA provides for speedy elections and prompt resolution of representation issues "by providing for post rather than preelection hearings on issues bearing on elections." *(Cadiz v. Agricultural Labor Relations Bd.* (1979) 92 Cal.App.3d 365, 375.)

In the present case, the remedy of a decertification election has proven to be an ineffective one. Ms. Lopez and her co-workers voted in November 2013. Their ballots remained impounded until the Spring of 2016, when the ALRB decided that the election was invalid and the ballots should be

destroyed and never counted.[2] That litigation will continue, and with the inevitable delays of litigation, worker rights will be harmed by the delay.

But most important, even the ALRB agreed that Gerawan did not instigate the decertification campaign, and that the workers organized themselves due to their anger at the union's abandonment and initiation of the MMC process. But due to employer actions it construes as "support" for the decertification, the ALRB has decided the votes mean nothing and cannot be counted, entirely depriving workers of their voting rights.

If nothing else, the Act is intended to empower farm workers to organize themselves to act collectively to demand justice in the workplace. It is almost inconceivable that the agency charged with protecting the right to organize would tell thousands of farm workers who organized themselves for an election that their efforts were for nothing and their votes would not be counted, not because of anything the workers did or failed to do, but because parties beyond the workers' control engaged in conduct the Board found distasteful. The cold reality for the workers is that if they organize themselves and others misbehave, their opportunity to vote will be lost. If the workers cannot ensure that their votes will be counted, there is no reason to organize in the first place, and clear demonstration that decertification is not an effective shield against forced representation in the MMC process.[3]

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[2] Ms. Lopez has filed a Writ in the Fifth District Court of Appeal to challenge this decision. (*Silvia Lopez v. Agricultural Labor Relations Board*, Case No. F073730.)

[3] The UFW and ALRB note that speedy election provisions make elections an effective tool for workers to hold the union accountable. Both ignore that elections can only occur during "peak" seasons, meaning the MMC process could be completed during a time when workers are barred from holding an election at all.

As this case demonstrates, as long as the counting of the ballots and effectuation of the democratic franchise depends on the actions of parties outside of the workers' control, decertification remains an ineffective check on the actions of a union that has breached its duty to represent the workers. Quite simply, the workers can do everything right and yet still be denied their election. If nothing else, the delays and ongoing litigation over the election in this case demonstrate that decertification does not impose accountability on a recalcitrant union. Instead, the union should be obligated to demonstrate that it continues to enjoy majority support before the certification is validated and the MMC begins.

The UFW Certification Terminated as a Result of its Voluntary Failure to Carry out its Duty to Represent Farm Workers

Generally, the ALRA provides that "the union's entitlement to bargain arises from the Board's election and certification and can only be removed by the Board's election and certification process." (*Nish Noroian Farms*, 8 ALRB No. 25 (1982).) However, there are two other ways to terminate a certification: "(1) a disclaimer by the certified union of its status as a collective bargaining representative or (2) the certified union's 'defunctness,' i.e., its institutional death and inability to represent the employees." (*Bruce Church, Inc.*, 17 ALRB No.1 (1991).) As the Board has stated unequivocally, "**[A] certified bargaining representative may lose its representative status by its inability or unwillingness to continue to represent employees.**" (emphasis added, *Dole Fresh Fruit Co.*, 22 ALRB No. 4 (1996).)

This is consistent with the principle under the National Labor Relations Act that a disclaimer of interest need not be explicit, and can arise from union

conduct (or, as in this case, lack thereof).[4] In *American Broadcasting Co.*, 290 NLRB No. 15 (1988), the Board held that a union's statutory rights to collective bargaining may be disclaimed either expressly or implicitly by the union's conduct. (*See also California Overnight*, 2004 WL 3315213 (N.L.R.B. General Counsel Opinion). As the Board stated:

> Waivers can occur in any of three ways: by express provision . . . the conduct of the parties (including past practices, bargaining history, and action or inaction) or by a combination of the two.

Under ALRB precedent, when determining whether a union is unable or unwilling to represent the bargaining unit, the Board must assess the union's continuing and active presence in the workplace. (*Id.*; *see also Bruce Church, Inc.*, 17 ALRB No.1 (1991) [Disclaimer requires a showing that the "union had effectively left the scene altogether."].) Such an assessment is easy in this case.

The union effectively left the scene altogether in 1995, and did not reappear until 2012. Accordingly, under the ALRB's own standards, the certification provides the UFW with the entitlement to bargain on behalf of Ms. Lopez. The ALRB erred by treating the UFW as the bargaining representative in the first instance, and MMC should have never begun, much less been completed.

The ALRB's own precedential decisions provide further support that the UFW certification terminated as a matter of law as a result of the disclaimer of interest. In *Ventura County Fruit Growers*, 10 ALRB No. 45 (1984), the Board held that a "union must exercise a degree of diligence in seeking to enforce its representational rights, otherwise, it may be deemed to

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[4] The ALRB follows NLRB authority where the statutes are consistent with each other. (Labor Code § 1148.)

have waived them." In *Ventura*, the union did not disclaim interest because it repeatedly asserted its right to bargain, and filed unfair labor practice charges when the employer refused. In contrast, the union in the present case took no action to assert itself in the workplace at all for almost two decades. But the ALRB ignores this precedent, instead taking a view only through the lens of employer resistance to bargaining, forgetting its duty to protect worker rights, even from the workers' own union.

Unlike in *Ventura*, where the union expressed its continued interest in the bargaining unit by filing two unfair labor practice charges during the alleged period of abandonment, the UFW filed no unfair labor practice against Gerawan when the union voluntarily left the bargaining table and abandoned its representation of the workers in 1995. Instead, the UFW remained completely silent for almost twenty years until it re-emerged in 2012, unequivocally demonstrating that it was unwilling or unable to represent the workers at Gerawan Farms. There is no other conclusion that can be drawn from two decades of total silence other than that the union was unwilling and/or unable to represent the bargaining unit, and as a result, disclaimed interest and terminated the certification.

Indeed, the ALRB has imposed on itself an obligation to hold accountable labor organizations that fail to represent employees because of the damage done to representational rights by a union that fails to carry out its duty to represent the workers. In *Dole Fresh Fruit*, the ALRB stated that it has the ongoing responsibility to ensure that unions carry out their obligations to the workers:

> Because the Board has an obligation to further the purposes and policies of the Act, **it must be alert to situations in which the certified labor organization rests on its bargaining rights, as such neglect serves to erode and undermine the right to be**

> **represented that is granted to employees. Since the Board may be called upon to examine conduct in bargaining, it follows that the absence of conduct should also fall within the Board's purview of holding accountable labor representatives it has authorized to represent employees.**

(*Dole Fresh Fruit Co.* (1996) 22 ALRB No. 4, pp. 17, 23-24, emphasis added.) It is clear that the ALRB had a self-imposed duty to hold the UFW accountable for its 17 year slumber on its bargaining rights, and to protect the workers from the harm done by the union's dereliction of duty. In a bizarre distortion of the policies underlying the Act, the Board has chosen to ***reward*** the union by forcing a contract on Gerawan, and by extension, upon the workers. Instead of holding accountable the labor representative it authorized to represent the workers, it has rewarded that union's neglect, neglect that the Board itself has recognized as destructive of employee representational rights.

The ALRA's statutory scheme contemplates seasonal employees' inevitable turnover, not a generation-long dereliction of duty that has severed any connection between the employees who voted to certify the UFW and those they now seek to represent. The Act certainly does not support the idea that a union can entirely abrogate its responsibility to represent workers who voted for such representation, and then return decades later as if nothing had happened. This Court should not forget the terrible damage that has been done to those long-departed workers who voted for the union, only to have the union utterly fail in its responsibility to represent them. There can be no remedy for the damage to their rights, but the answer is certainly not to reward the union by granting them the legal authority to violate the rights of a whole new generation of workers.

MMC Violates Employee Due Process

The cornerstone of due process is notice and the opportunity to be heard. The parties must have reasonable notice and an opportunity for

hearing. (*Twining v. New Jersey* (1908) 211 U.S. 78.) Yet the MMC process makes no provision for notice to or participation by employees, the parties whose representational rights are at stake, and in most cases, whose wages are at stake. Here, the consequence of the MMC is that if the contract is imposed, the workers will have to allow the diversion of their wages to the UFW, or they will have to accept termination of their employment. The stakes of the MMC were very high for them, as their wages were at stake along with important rights, including the right to strike.

From the workers' perspective, the decision to validate the certification is the most important element of the MMC process, as all of the consequences to them flowed from that decision. Once the certification was validated, the union's legitimacy could not be challenged. Once the certification was challenged, the workers were barred from intervention in the MMC process as parties, were barred from even attending the MMC proceedings, and were left entirely at the whim of the union. This reality enabled the union to negotiate a contract that benefited the union financially, with no oversight or accountability to the workers.

In ordinary collective bargaining, employees have an important control over the process: ratification. One of the benchmarks of union integrity and democracy is ratification of contracts by union members via secret ballot. (*Union Democracy Benchmarks*, Association for Union Democracy, https:// uniondemocracy.org.) Ratification protects the bargaining unit by giving the workers ultimate control to approve or reject the terms agreed to by the union and the employer, and holds the representative accountable to the unit.

Proceedings that wholly deny notice or hearing, or provide inadequate methods, are lacking in due process. (*See Morgan v. United States* (1938) 298 U.S. 468.) In the present setting, the fact that the MMC statute provides no

process for worker ratification denies the workers' due process, as the lack of a ratification process means that the union can negotiate the terms of the contract however it wishes, and impose them on the workers. In the present case, the mediator expressed grave concerns about mandatory union membership and dues obligations in the case of a union that had been absent for many years, a concern that could be eliminated had the statute included a ratification process. In the absence of ratification, the workers must have some notice, and some opportunity to be heard, before a state agency orders them to pay money to a union under penalty of termination.

Once the summary decision to validate the certification was made by the ALRB, the workers were shut out entirely of the process to decide their future, a clear violation of due process. They were bound by the outcome of a process where they were not given notice, were denied party status, and were denied the ability to give final approval of the Board ordered "contract" that would govern them. They must acquiesce to paying dues to a union that has already failed their workplace once, or face termination of their employment, all resulting from a process where they had no notice and no opportunity to be heard.

In short, the workers were never provided notice of the commencement of the MMC, and when they found out, they were barred from even watching. They never had an opportunity to be heard on the continuing validity of the certification, and never had the opportunity to choose their own representation. The process resulted in a government agency order at the request of a labor organization that had committed an egregious and unremedied violation of its own duty to workers, an order that compelled workers to pay money to the very organization that "negotiated" (perhaps "litigated") that order in its own interests, rather than the interests of the workers. The ALRB's summary

determination allowed the voice of a union with a clear conflict of interest to entirely supplant workers' role in determining their own future.

A process that serves to deprive workers of fundamental rights, as well as deprive them of tangible property, without notice and an opportunity to be heard cannot comport with due process.

CONCLUSION

The MMC statute is fatally flawed, as this case illustrates. A statute intended to cure the effects of employer resistance to collective bargaining has instead been used to shield a union that failed to carry out its duty to represent workers from accountability, and to financially reward that union at the workers expense. A result that pushes workers to the sideline while those more powerful and more well-funded determine their fate is offensive to the Agricultural Labor Relations Act and the public policy and cannot be allowed to stand.

Dated: May 25, 2016

RAIMONDO & ASSOCIATES

By: _____

Anthony Raimondo
Attorneys for Amicus SILVIA LOPEZ

CERTIFICATE OF COMPLIANCE

I hereby certify pursuant to Rule 8.520(c)(1) of the California Rules of Court that the foregoing brief contains 5,307 words, including footnotes, and excluding the cover, tables, signature block, and this certificate. Counsel relies on the word count function of the word processing program used to prepare this brief.

Respectfully submitted,

Dated: May 25, 2016

RAIMONDO & ASSOCIATES

By: _____
Anthony Raimondo
Attorneys for Amicus SILVIA LOPEZ

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Raimondo & Associates, 7080 North Marks Avenue, Suite 117, Fresno, California 93711. On May 25, 2016 I served the within documents:

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on May 25, 2016, at Fresno, California.

Carol Williamson

Carol Williamson