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

OPENING BRIEF ON THE MERITS

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STATEMENT OF ISSUES

Forty years ago, the Legislature enacted the Agricultural Labor Relations Act of 1975 (ALRA), recognizing the collective bargaining rights of agricultural workers. In 2002, the Legislature amended the ALRA to include a mandatory mediation and conciliation (MMC) process, intended to facilitate negotiation and resolve disputes in specified circumstances where an agricultural employer and the labor organization certified to represent its employees have been unable to reach agreement on the terms of an initial collective bargaining agreement (CBA). This case arises from the recent MMC between Gerawan Farming, Inc. (Gerawan) and the United Farm Workers of America (UFW).

The issues presented are:

(1) Whether MMC violates the equal protection clause of the state and federal constitutions.

(2) Whether the statute providing for MMC is an unconstitutional delegation of legislative power.

(3) Whether the Agricultural Labor Relations Board (ALRB or Board) abused its discretion by directing the parties to MMC, notwithstanding Gerawan's allegations that the UFW had "abandoned" the bargaining unit.

INTRODUCTION

In 1975, the Legislature enacted the ALRA to provide collective bargaining rights for employees in the State's vital agricultural industry and to ensure freedom from employer interference in the exercise of those rights. (Lab. Code, § 1140.2.)[1] Unfortunately, for nearly thirty years following its enactment, the ALRA did not live up to its promise. Due in large part to

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

employer resistance to bargaining, nearly 60 percent of union elections never resulted in a CBA. Recognizing that collective bargaining rights were illusory if contracts were never concluded, in 2002 the Legislature amended the ALRA to include MMC, a dispute resolution process intended to foster effective negotiation, resolve intractable bargaining disputes, and facilitate the conclusion of elusive first contracts. (§ 1164 et seq. [the "MMC Statute"].)

In this case, the UFW was certified as the exclusive bargaining agent of Gerawan's employees in 1992, but despite several attempts at negotiation the parties never concluded an initial CBA. In 2013, following a failed attempt to reach a CBA through renewed bargaining, the Board granted the UFW's request for MMC. The parties did not reach agreement on all contract terms through mediation, and as contemplated by the MMC Statute, the mediator issued a report resolving their remaining disputes and establishing a CBA, which took effect as a final order of the Board. Rather than implementing the CBA, Gerawan filed a petition for writ of review in the Court of Appeal, challenging the MMC Statute on a number of constitutional grounds, the majority of which had been rejected in 2006 in *Hess Collection Winery v. Cal. Agricultural Labor Relations Bd.* (2006) 140 Cal.App.4th 1584 (*Hess*). Gerawan also alleged that the Board abused its discretion in ordering MMC because the UFW had allegedly forfeited its certification by "abandoning" Gerawan's workers through inactivity prior to its MMC request—a legal theory the Board had consistently rejected for decades as contrary to the Act.

The Court of Appeal set aside the Board's order on three grounds, holding that the MMC Statute "on its face violates equal protection principles," that it effects an unlawful delegation of legislative power, and that the Board erred in rejecting Gerawan's attempt to block MMC based on its "abandonment" theory. As explained below, the Court of Appeal's

decision is contrary to law, and—if left uncorrected—will upend decades of administrative practice and judicial precedent and undermine the very legislative goals underlying the ALRA and MMC.

First, the MMC Statute does not violate the equal protection clause of the state or federal constitution because it is rationally related to the State's legitimate interest in promoting peace and stability in agricultural labor relations. Given the importance of California's agricultural industry and the undisputed fact that—for nearly thirty years—the majority of agricultural union elections never resulted in a contract, the Legislature could rationally conclude that MMC was appropriate to facilitate resolution of protracted bargaining disputes and the conclusion of first contracts under the ALRA. Equal protection requires nothing more.

Second, the MMC Statute is a permissible delegation of legislative power to the Board. The Legislature here determined that MMC was necessary to remedy decades of broken bargaining under the ALRA, set the goals to be accomplished through MMC, directed when MMC should be available and how it should be administered, and provided for prompt administrative and judicial review to ensure its fair implementation. Gerawan may disagree with the wisdom of the Legislature's policy choices or MMC's specific design, but such disagreement does not render the MMC Statute an unconstitutional delegation of legislative power.

Finally, the Board did not abuse its discretion in rejecting Gerawan's attempt to block the UFW's MMC request based on its contention that the UFW had "abandoned" Gerawan's workers during a period of inactivity. The ALRA was explicitly enacted to prohibit employer involvement in the recognition, selection, and removal of bargaining representatives, and the MMC Statute was enacted specifically to address the problem of stalled negotiations and dormant certifications. Permitting Gerawan to block MMC by unilaterally questioning the UFW's commitment to its workers

(or its employees' support for the UFW) would impermissibly permit Gerawan to interfere with the UFW's status as the elected representative, which is contrary to the ALRA's plain language and legislative purpose, as well as decades of Board and judicial precedent.

The Court of Appeal's judgment should be reversed.

BACKGROUND

I. LEGAL BACKGROUND

A. The Agricultural Labor Relations Act

Forty years ago, the Legislature enacted the ALRA, through which California first recognized the collective bargaining rights of agricultural workers, who were expressly excluded from the protections of the National Labor Relations Act of 1935 (NLRA). (See 29 U.S.C. § 152(3).) The Act's stated purpose was 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.

(§ 1140.2.)

The Legislature intended the Act to end labor unrest:

> In enacting this legislation the people of the State of California seek to ensure peace in the agricultural fields by guaranteeing justice for all agricultural workers and stability in labor relations.
>
> This enactment is intended to bring certainty and a sense of fair play to a presently unstable and potentially volatile condition in the state.

(Stats. 1975, 3rd Ex. Sess., ch. 1, § 1, p. 4013.) The Legislature expected

that the Act's benefits that would run to the State as a whole: "[I]n the belief the people affected desire a resolution to this dispute and will make a sincere effort to work through the procedures established in this legislation, it is the hope of the Legislature that farm laborers, farmers, and all the people of California will be served by the provisions of this act." (*Ibid.*)

The primary vehicle for accomplishing the Act's goals is the CBA, a contract between an employer and a labor union, governing the terms and conditions of employment. (See § 1140.2.) However, at the time of the ALRA's enactment, the goal of achieving labor peace through collective bargaining had historically been undermined by employer stalling, evasion, and bad-faith bargaining in negotiations, with the intent of so weakening employee support for the union as to render it powerless to affect negotiations. (See, e.g., *J.R. Norton Co. v. Agricultural Labor Relations Bd.* (1979) 26 Cal.3d 1, 30.) As this Court explained, "[e]mployee interest in a union can wane quickly as working conditions remain apparently unaffected by the union or collective bargaining." (*Ibid.*, quotation omitted; see also *George Arakelian Farms, Inc. v. Agricultural Labor Relations Bd.* (1989) 49 Cal.3d 1279, 1286-1287 & fn. 3.) These concerns are particularly acute for agricultural employees, where short harvest seasons and rapid employee turnover mean the impact of negotiations is often not seen until the following year. (See, e.g., *Agricultural Labor Relations Bd. v. Superior Court (Pandol & Sons)* (1976) 16 Cal.3d 392, 415-416.)

Given this lengthy history of resistance to collective bargaining by agricultural employers, in enacting the ALRA, the Legislature diverged from the NLRA in several ways. For example, in contrast to the NLRA, the ALRA expressly prohibits employer participation in the selection, recognition, and removal of bargaining representatives. (See, e.g., *F&P Growers Assn. v. Agricultural Labor Relations Bd.* (1985) 168 Cal.App.3d 667, 673-677 (*F&P Growers*). In addition, the Legislature recognized that

ordering the parties to bargain, without more, was an inadequate remedy for stalled negotiations, and it therefore expressly vested the Board with the power to award "make whole" damages to remedy bad-faith bargaining. (§ 1160.3; see, e.g., *Harry Carian Sales v. Agricultural Labor Relations Bd.* (1985) 39 Cal.3d 209, 229-230.) But as explained below, even the prospect of damages ultimately proved to be an inadequate incentive to bring some employers to the bargaining table.

B. The Legislature Amends the ALRA to Include MMC for the Resolution of Certain Bargaining Disputes

During the 1980s and 1990s, enforcement under the ALRA "was almost non-existent," "bad faith bargaining became the rule rather than the exception," and collective bargaining languished throughout the State with hundreds of union elections since 1975 never resulting in a CBA. (Off. of Assem. Floor Analyses, 3rd Reading of Sen. Bill No. 1156 (2001-2002 Reg. Sess.), Aug. 31, 2002, p. 7 ("SB 1156 Analysis") [Request for Judicial Notice ("RJN"), Ex. C]; Off. of Assem. Floor Analyses, Conc. in Sen. Amendments of Assem. Bill No. 2596 (2001-2002 Reg. Sess.), as amended Aug. 31, 2002, pp. 7-8 ("AB 2596 Analysis") [RJN, Ex. D].)

In 2002, in direct response to these decades of unsuccessful bargaining under the ALRA, the Legislature amended the Act to include MMC—a form of "interest arbitration"[2]—to facilitate negotiation and foster bargaining relationships, resolve intractable bargaining disputes, and ensure the conclusion of essential, but historically elusive, first CBAs. (See

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[2] The "[r]esolution of disputed contract issues through a binding process is commonly referred to as 'interest arbitration' in labor law." (*Hess*, *supra* 140 Cal.App.4th at p. 1596.) "'Interest arbitration, unlike grievance arbitration, focuses on what the terms of a new agreement should be, rather than the meaning of the terms of the old agreement.'" (*Id.* at pp. 1596-1597, quoting *Local 58, IBEW v. Southeastern Mich. Chapter, Nat. Electrical Contractors Assn.* (6th Cir.1995) 43 F.3d 1026, 1030.)

Sen. Bill No. 1156 (2001-2002 Reg. Sess.), Stats. 2002, ch. 1145 [RJN, Ex. A]; Assem. Bill No. 2596 (2001-2002 Reg. Sess.), Stats. 2002, ch. 1146 [RJN, Ex. B].) In enacting this legislation, the Legislature found and declared:

> [A] need exists for a mediation procedure in order to ensure a more effective collective bargaining process between agricultural employers and agricultural employees, and thereby more fully attain the purposes of the Agricultural Labor Relations Act, ameliorate the working conditions and economic standing of agricultural employees, create stability in the agricultural labor force, and promote California's economic well-being by ensuring stability in its most vital industry.

(Stats. 2002, ch. 1145, § 1.)

The legislative history of the MMC Statute provides additional context for these findings, explaining that MMC was "necessitated by the continued refusal of agricultural employers to come to the bargaining table once an election has occurred." (SB 1156 Analysis, p. 7; AB 2596 Analysis, p. 7.) Indeed, "[o]f the 428 companies where farm workers voted for the United Farm Workers in secret elections since 1975, only 185 have signed union contracts." (SB 1156 Analysis, p. 7; AB 2596 Analysis, pp. 7-8.) Absent a new dispute resolution procedure, "already represented employees will continue to languish without the negotiated contracts they have elected [a union] to secure." (*Ibid.*) MMC was therefore "necessary to help farm workers who have waited for years while negotiations for union contracts drag on without hope of progress." (*Ibid.*)

In signing the MMC Statute into law, Governor Gray Davis reiterated these significant concerns and policy goals, explaining that the ALRA had not fulfilled its "promise to the men and women who toil in California's agricultural fields that they would have the right to fight for decent wages and working conditions," and "that some parts of the system are broken."

(Historical and Statutory Notes, 44A West's Ann. Labor Code (2011) foll. § 1164, p. 401 [RJN, Ex. E].) In particular, Governor Davis noted the ALRA's ineffectiveness in facilitating the conclusion of first CBAs:

> In nearly 60% of the cases in which a union wins an election, management never agrees to a contract. For example, in one case the parties have been negotiating since 1975. The appeals process, coupled with a complicated formula for determining wages, often takes so long that the farmworkers can no longer be located by the time the award is made. The bottom line is that too many people who were supposed to benefit from the protections of the ALRA are left without a contract, without a remedy and without hope.

(*Ibid.*)

In sum, the MMC Statute is targeted legislation intended to remedy long-standing problems that had traditionally undermined the ALRA's goals of peace in the agricultural fields and stability in labor relations through effective collective bargaining.

C. The MMC Process

MMC adds two dimensions to the ALRA's collective bargaining process. First, MMC provides for mediation of stalled first contracts if certain criteria are met. Second, in order to prevent the dilatory tactics that historically diminished the ALRA's effectiveness, if the parties cannot reach an agreement on all contract terms through mediation, the mediator resolves the disputed terms by consideration of specific criteria identified in the statute. (§§ 1164, 1164.3.)

Either an "agricultural employer" or "labor organization certified as the exclusive bargaining agent of a bargaining unit of agricultural employees" may request MMC if specified criteria are met. (See §§ 1164, subd. (a), 1164.11.) Specifically, where, as here, the union was certified prior to 2003, MMC may be requested, 90 days after a renewed bargaining demand, if: "(a) the parties have failed to reach agreement for at least one

year after the date on which the labor organization made its initial request to bargain, (b) the employer has committed an unfair labor practice, and (c) the parties have not previously had a binding contract between them."[3] (§ 1164.11; see § 1164, subd. (a)(1).)

If an MMC request meets the statutory criteria, the Board must "immediately issue an order directing the parties to mandatory mediation and conciliation of their issues."[4] (§ 1164, subd. (b).) The parties then have the option of choosing a mediator from a list provided by the Board, or mutually designating a mediator of their own choice. (*Ibid.*; Cal. Code Regs., tit. 8, § 20403.) Mediation initially proceeds for 30 days, and may be extended by the parties an additional 30 days. (§ 1164, subd. (c).)

Ideally, the parties reach an agreement through mediation, thereby ending the MMC process and the Board's involvement in their negotiations. (Cal. Code Regs., tit. 8, § 20407, subd. (e).) If, however, the parties are unable to resolve all of their differences, the mediator issues a report that "resolves" all remaining issues "and establishes the final terms of a collective bargaining agreement." (§ 1164, subds. (c)-(d); Cal. Code Regs., tit. 8, § 20407, subds. (a)-(d).) The mediator's report must "include the

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[3] Where a union was certified *after* January 1, 2003, the parties may request MMC 90 days after an initial request for bargaining by either party. (§ 1164, subd. (a)(2).) For unions certified by Board order due to employer misconduct during an election or where the Board has dismissed a decertification petition upon a finding that the employer unlawfully participated in its filing, the minimum negotiation period prior to MMC is 60 days. (*Id.*, subd. (a)(3) & (4).)

[4] If MMC is requested, the other party to the bargaining relationship has the opportunity to file an answer contesting the request. (Cal. Code Regs., tit. 8, § 20401.) If an answer is filed, the Board must, upon review of the parties' filings and/or its own investigation, make a decision to dismiss the petition, refer the parties to mediation, or, in its discretion, order an evidentiary hearing to resolve any factual disputes. (*Id.*, § 20402, subd. (c).)

basis for the mediator's determination" of any disputed issues and "be supported by the record." (§ 1164, subd. (d).)

In resolving any disputed terms, the mediator is directed by statute to consider certain specified criteria "commonly considered in similar proceedings," including: (1) the stipulations of the parties, (2) the "financial condition of the employer," (3) the terms of CBAs "covering similar agricultural operations," (4) wages, benefits, terms, and conditions of employment "in comparable firms or industries in geographical areas with similar economic conditions," and (5) "[t]he average consumer prices for goods and services according to the California Consumer Price Index, and the overall cost of living, in the area where the work is performed." (§ 1164, subd. (e).)

If the process has been successful, the mediator's report will be acceptable to the parties as a reasonable determination of disputed issues, and it will take immediate effect as a final order of the Board. (§1164.3, subd. (b).) If, however, either party is dissatisfied with the report, the party may petition the Board for review. (*Id.*, subd. (a).) If any portion of the report is deemed to be (1) unrelated to wages, hours, or other conditions of employment, (2) based on clearly erroneous findings of material fact, or (3) arbitrary and capricious in light of the mediator's findings of fact, the Board must direct the mediator to modify the offending terms and issue a second report. (*Id.*, subds. (a)(1)-(3), (c).) If neither party objects to the second report, it immediately becomes the Board's final order. (*Id.*, subd. (d).) Otherwise, the Board must either order the second report into effect, or enter a final order determining any remaining issues. (*Ibid.*) If still dissatisfied, either party may then "petition for a writ of review in the court of appeal or the California Supreme Court." (§ 1164.5, subd. (a).)

D. The MMC Statute Is Upheld Against a Constitutional Challenge in *Hess*

In 2006, the Court of Appeal upheld the MMC Statute against a broad constitutional challenge. (See *Hess*, *supra*, 140 Cal.App.4th 1584.) Of particular relevance here, the majority in *Hess* held: (1) The MMC Statute does not violate equal protection because the Legislature had a "rational basis for the enactment of interest arbitration legislation applicable to agricultural employers and employees but not to employees of other businesses or industries," and the statutory factors to be considered by the mediator "reasonably ensure that contracts of different employers will be similar" (*id.* at pp. 1603-1604); and (2) MMC is not an unconstitutional delegation of legislative power because the Legislature made the fundamental policy decisions underlying MMC, the factors to be considered by the mediator "are sufficiently concrete to provide lawful guidance to the mediator and the Board," and the MMC statutory scheme includes adequate administrative and judicial safeguards to ensure its fair implementation (*id.* at pp. 1607, 1609-1610).

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The Gerawan-UFW MMC

Gerawan is a stone fruit and grape grower, employing several thousand employees at its operations in Fresno and Madera counties. The UFW was elected as the representative of Gerawan's workers in 1990, and the Board certified the election on July 8, 1992. (Certified Record ("CR") 2, 23.) The UFW promptly sent a letter requesting negotiations with Gerawan, which Gerawan formally accepted shortly thereafter. (CR 2, 6, 23, 26-29.) The UFW made another bargaining request in November 1994, and there was at least one negotiation between the parties the following year, but the parties never reached agreement. (CR 8, 23.) In October

2012, the UFW renewed its bargaining demand, after which the parties met numerous times, but again did not conclude a CBA. (CR 2, 10-11, 19, 362.)

On March 29, 2013, UFW filed a declaration with the Board requesting MMC, which Gerawan opposed. (CR 1-145.) The Board concluded that all relevant facts were undisputed and the UFW's declaration satisfied the statutory prerequisites for MMC, and on April 16, 2013, the Board entered an order referring the parties to MMC. (*Gerawan Farming, Inc.* (2013) 39 ALRB No. 5, CR 146-150; see § 1164, subd. (b).) In directing MMC, the Board rejected Gerawan's various arguments regarding interpretation of the MMC Statute, including its contention that the UFW lacked standing to request MMC because it had forfeited its certification by allegedly "abandoning" Gerawan's workers during a period of inactivity.[5] (CR 147-150.)

The parties agreed on a mediator proposed by Gerawan and several mediation sessions were held during June and August 2013, but the parties did not reach agreement on all issues, and, on September 28, 2013, the mediator issued a report resolving their disputes and establishing a CBA. (CR 357-609.) Gerawan petitioned the Board for review of numerous provisions of the report, and the Board remanded six provisions to the mediator for further proceedings. (CR 640-707; *Gerawan Farming, Inc.* (2013) 39 ALRB No. 16, CR 721-731; § 1164.3, subd. (c).) With the mediator's assistance, the parties reached agreement on these six provisions, which the mediator incorporated into a second report. (CR 745-

[5] In May 2013, prior to the start of MMC, Gerawan filed a petition for writ of mandate in Fresno County Superior Court seeking to stop the MMC process, overturn the Board's referral, and declare the MMC Statute unconstitutional. The Superior Court denied the petition in its entirety. (Slip Op., p. 5 & fn. 6.)

747.) Neither party requested review of the second report, which therefore took immediate effect as a final order of the Board on November 19, 2013.[6] (*Gerawan Farming, Inc.* (2013) 39 ALRB No. 17, CR 799-803; § 1164.3, subd. (d).)

B. The Current Litigation

Following entry of the Board's order, Gerawan filed a petition for writ of review in the Court of Appeal, challenging the MMC Statute on various constitutional grounds and alleging that the Board erred and exceeded its statutory authority in referring the parties to MMC.

The Court of Appeal rejected Gerawan's challenge to the Board's interpretation and application of the MMC Statute's prerequisites, but held that the Board nonetheless abused its discretion in directing MMC without full consideration of Gerawan's allegation that the UFW had "abandoned" its certification as the exclusive bargaining agent of Gerawan's workers. (Slip Op., pp. 18-42.) The court did not, however, remand the matter to the Board for further consideration because the court also held that the MMC Statute was unconstitutional. (*Id.*, p. 42.) Specifically, the Court of Appeal disagreed with *Hess* and held that the MMC Statute "on its face" violates

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[6] Although not at issue in this case, on November 5, 2013, an election was held among Gerawan's employees regarding the decertification of the UFW. The ballots were impounded pending resolution of various election objections and related unfair labor practice complaints. On September 17, 2015, Administrative Law Judge Mark R. Soble, in a 187-page decision, held that Gerawan committed unfair labor practices "[b]y providing unlawful assistance to the decertification effort." (See RJN, Ex. F, p. 186.) Concluding that Gerawan's "unlawful support and assistance" "tainted the entire decertification process," Judge Soble "set[] aside the decertification election and dismiss[ed] the decertification petition." (*Id.* at pp. 186-187.) On November 13, 2015, multiple parties filed exceptions to Judge Soble's decision, which matter is pending before the Board.

equal protection and effects an unconstitutional delegation of legislative power.[7] (Slip Op., pp. 43-56.) The Board did not petition for rehearing, and the Court of Appeal's decision became final on June 13, 2015. The Board and UFW petitioned this Court for review, and review was granted on August 19, 2015.

ARGUMENT

The Court of Appeal set aside the Board's order, *Gerawan Farming, Inc.*, *supra*, 39 ALRB No. 17, on three grounds, all of which are in error:

First, the Court of Appeal erred in holding the MMC Statute "on its face violates equal protection principles." (Slip Op., p. 51.) Applying the highly deferential standards governing facial constitutional challenges, the MMC Statute easily withstands equal protection scrutiny. In areas of economic policy, legislation must be upheld against equal protection challenge if there is any reasonably conceivable basis to support the law. Here, the MMC Statute—enacted in response to decades of ineffective bargaining under the ALRA—is rationally related to the State's legitimate interests in ensuring an effective collective bargaining process and promoting labor peace and stability in California's vital agricultural industry. Moreover, given the inherently individualized nature of collective bargaining, it is perfectly rational for the Legislature to direct the mediator to tailor CBAs to the particular needs of the bargaining parties.

Second, the Court of Appeal erred in concluding the MMC Statute

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[7] Gerawan also directly appealed the Fresno County Superior Court's denial of its petition for writ of mandate, which raised substantially the same constitutional and statutory arguments as its petition for writ of review. (See *ante* p. 12 fn. 2; Slip Op., pp. 5, 56.) Gerawan's appeal (No. F068676) was consolidated in the Court of Appeal with its petition for writ of review (No. F068526). In its consolidated opinion, the Court of Appeal affirmed the trial court's denial of the writ, and Gerawan did not seek review of this decision. (Slip Op., pp. 56-58.)

effects an unconstitutional delegation of legislative power to the Board. As this Court has repeatedly held, the Legislature may constitutionally delegate the implementation of legislative policy to administrative agencies. Here, the Legislature made the fundamental policy decision that MMC should be available in specified circumstances to resolve bargaining impasses, which had traditionally undermined the ALRA's effectiveness. Moreover, the Legislature directed when MMC may be utilized, specified the processes to be followed and the criteria to be considered in resolving the parties' disputes, and provided for prompt administrative and judicial review to ensure MMC's fair implementation. Nothing more is required.

Finally, the Court of Appeal erred in holding the Board abused its discretion by rejecting Gerawan's attempt to block MMC based on its contention that the UFW had "abandoned" its certification. There is no dispute that the UFW was certified as the exclusive bargaining representative of Gerawan's workers in 1992 and has not been displaced by a subsequent election. The Court of Appeal's conclusion that Gerawan may nonetheless contest the UFW's certification status to block MMC is contrary to the ALRA's plain language and legislative purpose, as well as decades of Board and judicial precedent, which make clear that agricultural employers play no role in the recognition, selection, and removal of bargaining representatives.

I. THE MMC STATUTE DOES NOT VIOLATE EQUAL PROTECTION.

The MMC Statute's mechanism for the resolution of protracted collective bargaining disputes does not violate equal protection because the MMC procedures, and any classifications that they may create, are rationally related to the State's legitimate interest in promoting labor peace and stability in California's vital agricultural industry. Additionally, Gerawan has not shown that the MMC Statute, on its face, results in

different treatment of *similarly situated* employers. And Gerawan has not shown, nor did the Court of Appeal find, any as-applied equal protection violation in the application of the MMC Statute to Gerawan in this particular case.

A. The MMC Statute Is Economic Legislation That Is Rationally Related to Legitimate State Interests

Gerawan raised two different equal protection theories below: first, that the MMC Statute discriminates between employers that are subject to MMC and those that are not, and second, that the statute discriminates within the class of employers subject to MMC by subjecting each employer to a different, individualized CBA. As explained below, neither classification violates equal protection because both classifications are rationally related to legitimate state interests.

1. Gerawan's Equal Protection Claims Are Reviewed Under the Rational Basis Standard

As Gerawan and the Court of Appeal acknowledged below (Slip Op., pp. 43-44), Gerawan's equal protection claims are reviewed under the deferential rational basis standard. "In areas of social and economic policy, a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." (*F.C.C. v. Beach Communications, Inc.* (1993) 508 U.S. 307, 313 (*Beach*); accord, *Hernandez v. City of Hanford* (2007) 41 Cal.4th 279, 298-299; *Warden v. State Bar* (1999) 21 Cal.4th 628, 640-641 (*Warden*).)

On rational basis review, "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 *Warden, supra*, 21 Cal.4th at p. 644.) Such legislative classifications come

to the Court "bearing a strong presumption of validity . . . and those attacking the rationality of the legislative classification have the burden to negative every conceivable basis which might support it." (*Beach*, *supra*, 508 U.S. at pp. 314-15, internal quotations and citations omitted; accord, *Warden*, *supra*, 21 Cal.4th at p. 641.) Accordingly, "[w]here there are 'plausible reasons' for [the classification] '[the Court's] inquiry is at an end.'" (*Ibid.*, internal quotation marks and citation omitted; see also *Cal. Grocers Assn. v. City of Los Angeles* (2011) 52 Cal.4th 177, 209.)

Moreover, "[t]hese restraints on judicial review have added force where the legislature must necessarily engage in a process of line-drawing." (*Beach*, *supra*, 508 U.S. at p. 315.) Under such circumstances,

> [d]efining the class of persons subject to a regulatory requirement . . . inevitably requires that some persons who have an almost equally strong claim to favored treatment be placed on different sides of the line, and the fact [that] the line might have been drawn differently at some points is a matter for legislative, rather than judicial, consideration.

(*Id.* at pp. 315-316, quotations and citation omitted; accord, *Warden*, *supra*, 21 Cal.4th at p. 645.) Where the Legislature "ha[s] to draw the line somewhere," "[t]his necessity renders the precise coordinates of the resulting legislative judgment virtually unreviewable, since the legislature must be allowed leeway to approach a perceived problem incrementally." (*Beach*, *supra*, 508 U.S. at p. 316.)

2. 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 the lines drawn by the MMC Statute are rationally related to the State's interest in promoting labor peace and

stability within California's agricultural industry through effective collective bargaining. (Stats. 1975, 3rd Ex. Sess., ch. 1, § 1, p. 4013; Stats. 2002, ch. 1145, § 1.) As the Legislature recognized, first contracts had historically proved elusive under the ALRA, and during the ALRA's first thirty years, nearly 60 percent of union elections never resulted in a CBA. (See Historical and Statutory Notes, 44A West's Ann. Labor Code (2011) foll. § 1164, p. 401.) Given this history, the Legislature determined that the ALRA was not fulfilling its purpose and required amendment.

The Legislature thus rationally concluded that, in certain circumstances, interest arbitration was appropriate to facilitate implementation of first contracts between agricultural employers and their employees, declaring that:

> a need exists for a mediation procedure in order to ensure a more effective collective bargaining process between agricultural employers and agricultural employees, and thereby more fully attain the purposes of the Agricultural Labor Relations Act, ameliorate the working conditions and economic standing of agricultural employees, create stability in the agricultural labor force, and promote California's economic well-being by ensuring stability in its most vital industry.

(Stats. 2002, ch. 1145, § 1; see Historical and Statutory Notes, 44A West's Ann. Labor Code (2011) foll. § 1164, p. 401; see *Hess*, *supra*, 140 Cal.App.4th at pp. 1591, 1603-1604 [empirical evidence of "peculiar problems with the collective bargaining process between agricultural employers and agricultural employees . . . provide[s] a rational basis for the enactment of interest arbitration legislation applicable to agricultural employers and employees but not to employees of other businesses or industries"].)

Interest arbitration is a widely accepted tool for facilitating the resolution of collective bargaining impasses. (See, e.g., *Brotherhood of*

Locomotive Firemen and Enginemen v. Chicago, Burlington & Quincy R.R. Co. (D.D.C. 1964) 225 F.Supp. 11, 22, *aff'd sub nom. Brotherhood of Locomotive Firemen & Enginemen v. Certain Carriers, etc.* (D.C. Cir. 1964) 331 F.2d 1020 [rejecting "suggestion . . . that compulsory arbitration [of labor disputes] was a far-reaching innovation"] (*Brotherhood*); see generally Elkouri & Elkouri, How Arbitration Works (7th ed. 2012), Ch. 22 [Arbitration of Interest Disputes] [hereafter Elkouri & Elkouri].) Indeed, interest arbitration has been used for decades to resolve bargaining disputes for public employees at the local, state, and federal level.[8] Moreover, interest arbitration has historically been utilized to resolve bargaining disputes in a variety of private industries, including privately owned utilities, hospitals, and transportation.[9]

While private sector interest arbitration is less common today due to NLRA preemption in many other industries, this does not affect the rationality of the Legislature's determination that MMC was an appropriate solution to the unique problems plaguing California's agricultural

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[8] 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 (*City of Vallejo*); *Stockton Metropolitan Transit Dist. v. Amalgamated Transit Union* (1982) 132 Cal.App.3d 203, 210; *Kitsap County Deputy Sheriffs' Guild v. Kitsap County* (Wash. 2015) 353 P.3d 188, 193-194; *U.S. Dept. of Justice Federal Bureau of Prisons, etc. v. Federal Labor Relations Authority* (D.C. Cir. 2013) 737 F.3d 779, 787-788.

[9] See, e.g., *United Gas, Coke & Chemical Workers v. Wisc. Employment Relations Bd.* (Wisc. 1949) 38 N.W.2d 692, 694-696; *N.J. Bell Tel. Co. v. Communications Workers, etc.* (N.J. 1950) 75 A.2d 721, 726-730; *Mount St. Mary's Hospital, etc. v. Catherwood* (N.Y. 1970) 260 N.E.2d 508, 511-514; *Fairview Hospital Assn. v. Public Building Service and Hospital and Institutional Employees Union* (Minn. 1954) 64 N.W.2d 16, 27-28; *Brotherhood, supra*, 225 F.Supp. 11, 22-23; *Maine Central Ry. Co. v. Brotherhood of Maintenance of Way Employes* (D. Me. 1987) 657 F.Supp. 971, 976-977.

industry.[10] "Legislative bodies have broad scope to experiment with economic problems," and 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. (*Ferguson v. Skrupa* (1963) 372 U.S. 726, 730.) As this Court observed forty years ago, there is a "strong public policy in California favoring peaceful resolution of employment disputes by means of arbitration." (*City of Vallejo, supra*, 12 Cal.3d at p. 622.)

MMC is an essential tool developed by the Legislature in response to decades of ineffective bargaining under the ALRA. It is rationally intended to ensure that agricultural employers and labor unions will bargain in good faith over wages, hours, and terms and conditions of employment, and to facilitate the conclusion of elusive first contracts where intractable issues arise. The differences in treatment of employers subject to MMC, compared with those who are not, are rationally related to the legitimate governmental interest in promoting the finalization of first collective bargaining agreements under the ALRA. Gerawan's first equal protection theory fails as a matter of law.

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[10] The NLRA does not currently provide for interest arbitration of bargaining disputes. But the fact that Congress thus far has chosen not to include interest arbitration in the NLRA—a law that expressly excludes agricultural workers (see 29 U.S.C. § 152(3))—does not affect the California Legislature's rational basis for amending the ALRA to include MMC. (See, e.g., *H.K. Porter Co. v. N.L.R.B.* (1970) 397 U.S. 99, 109 ["[I]t is the job of Congress, not the Board or the courts, to decide when and if it is necessary to allow governmental review of proposals for collective-bargaining agreements and compulsory submission to one side's demands. The present Act does not envision such a process"].)

3. 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 by resulting in a different individualized CBA in each case—fails because such individualized agreements are rationally related to the State's legitimate interest in tailoring the terms of each agreement to the particular circumstances and interests of the parties.

Collective bargaining is an inherently individualized process, as each employer and bargaining unit will have unique interests and concerns. Contract terms appropriate for a 25-employee family farm may make little sense at a 5000-employee agricultural corporation, and reasonable wages and benefits will necessarily vary across company size, crop, and geographic region. Given that each labor dispute is unique, it is perfectly rational for the Legislature to direct the mediator to craft agreements tailored to the particular needs of the bargaining parties. As the United States 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 v. Or. Dept. of Agriculture* (2008) 553 U.S. 591, 604 (*Engquist*).) Indeed, some forms of state action "by their nature involve discretionary decisionmaking based on a vast array of subjective, individualized assessments. In such cases, [equal protection] . . . is not violated when one person is treated differently from others, because treating like individuals differently is an accepted consequence of the discretion granted." (*Engquist*, *supra*, 553 U.S. at p. 603; accord, *Squires v. City of Eureka* (2014) 231 Cal.App.4th 577, 595 [it is "well-established . . . that individualized discretionary decisions will not support [an equal protection]" claim]; *Las Lomas Land Co., LLC v. City*

of Los Angeles (2009) 177 Cal.App.4th 837, 859 ["[i]n some circumstances involving complex discretionary decisions, the burden [of proving the absence of a rational basis] may be insurmountable"].)

MMC is just such a process. Recognizing the individualized and complex nature of collective bargaining, the Legislature granted the mediator discretion to fashion a reasonable CBA and enumerated specific neutral criteria to be considered in resolving the parties' disputes, including: (1) the stipulations of the parties, (2) the "financial condition of the employer," (3) the terms of CBAs "covering similar agricultural operations," (4) wages, benefits, terms, and conditions of employment "in comparable firms or industries in geographical areas with similar economic conditions," and (5) "[t]he average consumer prices for goods and services according to the California Consumer Price Index, and the overall cost of living, in the area where the work is performed." (§ 1164, subd. (e).) That the application of these factors to the specific facts of a particular labor dispute results in a contract tailored to that dispute proves only that each dispute is unique, not that the MMC process is arbitrary or irrational.

In sum, the governmental interest underlying MMC—promoting stability in agricultural labor relations by facilitating the conclusion of historically elusive first contracts—is indisputably legitimate, and the MMC process designed by the Legislature, which vests discretion in a mediator to choose from a range of reasonable alternatives based on the consideration of specified neutral criteria, is rationally related to this purpose. Nothing more is required to meet the highly deferential standards of review governing equal protection challenges to economic legislation, and the Court of Appeal's contrary judgment should be reversed.

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

Gerawan's facial equal protection claims fail for the additional reason

that the MMC Statute does not, on its face, discriminate between any *similarly situated* employers.

In considering a facial constitutional challenge to a statute, courts uphold the statute "unless its unconstitutionality clearly, positively, and unmistakably appears; all presumptions and intendments favor its validity." (*City of Los Angeles v. Superior Court* (2002) 29 Cal.4th 1, 10-11, quoting *People v. Falsetta* (1999) 21 Cal.4th 903, 912-913.) The fundamental question in a facial challenge is "whether the statute can constitutionally be applied." (*Arcadia Unified School Dist. v. State Dept. of Ed.* (1992) 2 Cal.4th 251, 267.) Accordingly, a plaintiff "must demonstrate that the [statute's] provisions inevitably pose a present total and fatal conflict with applicable constitutional prohibitions." (*Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1084, internal quotation marks omitted; see also *id.* at p. 1102 [law's facial "validity must be sustained unless it cannot be applied without trenching upon constitutionally protected rights"].) This standard is "exacting," and a petitioner meets its burden only by establishing a fatal constitutional conflict in all of the statute's applications, or at least in the generality or vast majority of cases.[11] (*Today's Fresh Start, Inc. v. Los Angeles County Office of Ed.* (2013) 57 Cal.4th 197, 218; *Super. Ct. v. County of Mendocino* (1996) 13 Cal.4th 45, 60.)

The MMC Statute, on its face, does not violate equal protection because it does not treat any *similarly situated* employers differently. As a

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[11] Cases in which courts have applied the less onerous version are distinguishable. They typically involve claims that a statute infringes on free speech or reproductive rights, which implicate different constitutional considerations such as the risk of chilling the exercise of protected rights. (See, e.g., *Am. Academy of Pediatrics v. Lungren* (1997) 16 Cal.4th 307, 342-348 [plur. opn. of George, C.J.].) In any event, under either version of the test the standard is highly deferential to the challenged law.

threshold matter, an equal protection claim requires "a showing that the state has adopted a classification that affects two or more *similarly situated* groups in an unequal manner." (*Cooley v. Super. Ct.* (2002) 29 Cal.4th 228, 253.) Due to the unique history of agricultural labor relations, agricultural employers are not similarly situated to employers in other industries for purposes of collective bargaining. (See Part I.A.2, *ante*.) Similarly, because the MMC Statute provides for individualized CBAs based on the unique circumstances and interests of each employer and bargaining unit, the differences in individual CBAs are designed to reflect these differences, not to treat any similarly situated employers differently. (§ 1164, subd. (e); see Part I.A.3, *ante*.) As *Hess* recognized, the mediator's consideration of "factors commonly considered in similar proceedings" under section § 1164, subdivision (e), "reasonably ensure[s] that contracts of different [similarly situated] employers will be similar."[12] (*Hess*, *supra*, 140 Cal.App.4th at p. 1604.)

Here, 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 would be required to sustain a threshold *facial* equal protection challenge. (*Today's Fresh Start, Inc. v. Los Angeles County Office of Ed.*, *supra*, 57 Cal.4th at p. 218.) And to the

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[12] The Court of Appeal's conclusion that these factors are insufficient to ensure similarly situated employers are treated similarly because two mediators could hypothetically craft different contract terms in the same dispute misapprehends the constitutional requirements. (Slip Op., pp. 48-49, fn. 37.) Equal protection requires only that "persons similarly situated with respect to the legitimate purpose of the law receive like treatment, . . . it does not . . . require absolute equality." (*People v. Romo* (1975) 14 Cal.3d 189, 196.) That two mediators could reasonably apply the statutory criteria to arrive at different results in a particular dispute highlights only that bargaining often requires choices among a range of reasonable alternatives, not that such hypothetical differences are irrational.

extent that Gerawan or another employer believes it has been singled out for unfair treatment in a particular case, that may possibly give rise to an as-applied equal protection claim, but such a claim is not before this Court and the mere possibility of such a claim does not render the MMC Statute facially unconstitutional.[13]

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

"An unconstitutional delegation of authority occurs only when a legislative body (1) leaves the resolution of fundamental policy issues to others or (2) fails to provide adequate direction for the implementation of that policy." (See, e.g., *Carson Mobilehome Park Owners' Assn. v. City of Carson* (1983) 35 Cal.3d 184, 190 (*Carson*).) "Adequate direction" requires sufficient guidance for the agency implementing the legislative policy, and also reasonable safeguards to prevent the unfair or arbitrary application of that policy. (*Birkenfeld v. City of Berkeley* (1976) 17 Cal.3d 129, 169-173 (*Birkenfeld*).) Here, Gerawan has failed to show that the

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[13] Although not expressly designated as such, the Court of Appeal appeared to treat Gerawan's equal protection facial challenge as something akin to a "class of one" claim. (Slip Op., pp. 46-49.) But Gerawan never asserted a "class of one" claim and cannot meet the requirements for such a claim, which requires a showing that Gerawan was "intentionally treated differently from others" and that "there is no rational basis for the difference in treatment." (*Village of Willowbrook v. Olech* (2000) 528 U.S. 562, 564; see, e.g., *Syngenta Crop Protection, Inc. v. Helliker* (2006) 138 Cal.App.4th 1135, 1174.) The MMC Statute applies a set of uniform criteria, and does not intentionally single out Gerawan or any other employer for different treatment. (§§ 1164, subds. (a) & (e), 1164.11.) In any event, there is a rational basis for any differences in treatment resulting from MMC's individualized procedures. (See Part I.A.3, *ante*; see also, e.g., *RUI One Corp. v. City of Berkeley* (9th Cir. 2004) 371 F.3d 1137, 1154-1156 [rejecting equal protection challenge to City's decision to impose Living Wage Ordinance on a small number of businesses "but not upon other similar businesses elsewhere in the City"].)

MMC Statute constitutes an unlawful delegation of legislative power. (See *Hess*, *supra*, 140 Cal.App.4th at pp. 1604-1605.)

Far from providing unfettered discretion to the mediator (or the Board) to make policy decisions, the Legislature in enacting the MMC Statute made the fundamental policy decision that an interest arbitration procedure was necessary to address the unique challenges of collective bargaining in the agricultural industry, declared the policy goals to be accomplished by such procedure, and directed when the procedure is available and the processes to be followed. Moreover, the Legislature specified the criteria to be considered by the mediator in applying this policy, and provided straightforward procedures for prompt administrative and judicial review. The Court of Appeal's conclusion that MMC nonetheless constitutes an unlawful delegation of legislative power does not properly credit these aspects of the MMC statutory scheme.

A. The Legislature Made the Fundamental Policy Decisions Supporting MMC

In enacting the MMC Statute, the Legislature did not delegate "fundamental policy decisions." To the contrary, the Legislature made the fundamental policy decisions that (1) the conclusion of CBAs following union elections was essential to the ALRA's purpose, and (2) MMC should be available to resolve protracted bargaining disputes between agricultural employers and unions and facilitate the conclusion of first contracts. (See *Hess*, *supra*, 140 Cal.App.4th at p. 1605; see also SB 1156 Analysis, p. 7; AB 2596 Analysis, pp. 7-8.)

More specifically, the Legislature expressly declared MMC was necessary in specified circumstances to (1) ensure a more effective collective bargaining process between agricultural employers and agricultural employees, and thereby more fully attain the purposes of the ALRA; (2) ameliorate the working conditions and economic standing of

agricultural employees; (3) create stability in the agricultural labor force; and (4) promote California's economic well-being by ensuring stability in its most vital industry. (Stats. 2002, ch. 1145, § 1.) The Legislature likewise made the related policy decisions concerning the narrow circumstances in which MMC should be available, the specific processes to be followed by the mediator (and Board), and—as discussed below—the criteria to be considered by the mediator in resolving the parties' disputes over particular contract terms. (See §§ 1164, 1164.3.) Further, the mediator's discretion during MMC is expressly limited to resolving the parties' disputes regarding contract terms relating to "wages, hours, or other conditions of employment" (§§ 1164, subd. (d), 1164.3, subd. (a)(1)), and this Court has specifically held that "the working details of the wages, hours and working conditions of . . . employees" do not involve "fundamental policy determinations" under the unlawful-delegation doctrine. (*Pacific Legal Found. v. Brown* (1981) 29 Cal.3d 168, 201.)

The Court of Appeal incorrectly concluded that the MMC Statute "does not provide the mediator with any policy objective to be carried out or standard to be attained." (Slip Op., p. 52.) The policy objective and standards need not be explicit, but "may be implied by the statutory purpose" (*People v. Wright* (1982) 30 Cal.3d 705, 713), and here the clear policy objective is a fair and reasonable resolution of disputed terms in a first CBA based on the particular circumstances of the parties, guided by a list of neutral factors to be considered by the mediator. (§§ 1164, 1164.3.) The Legislature here properly made, and did not delegate, all of the fundamental policy decisions underlying MMC.

B. The Legislature Provided Clear Direction for MMC's Fair Implementation

In addition to making the fundamental policy decisions underlying MMC, the Legislature provided clear direction for MMC's fair

implementation. Specifically, the Legislature (1) provided the mediator with criteria to consider in resolving the parties' disputes over particular contract terms, and (2) included effective safeguards to ensure the MMC Statute's fair implementation.

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

The Legislature's directive to the mediator in implementing the MMC Statute is clear: If—and only if—the parties to MMC are unable to agree on all contract terms through mediation, the mediator must "resolv[e] all of the [disputed] issues between the parties" concerning "the final terms of a collective bargaining agreement." (§ 1164, subd. (d).) Further, the Legislature included specific criteria for the mediator to consider in resolving any disputed issues: "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. (§ 1164, subd. (e).)

This Court has repeatedly rejected "delegation" challenges to statutes that similarly provide a list of criteria to be considered in implementing a stated policy. For example, nearly forty years ago, this Court rejected a delegation challenge to a rent control amendment that provided a list of six non-exclusive factors to be considered by the rent board in resolving rent increase disputes, explaining that:

> The rule that the statute must provide a yardstick to define the powers of the executive or administrative officer is easy to state but rather hard to apply. Probably the best that can be done is to state that the yardstick must be as definite as the exigencies of the particular problem permit. [Citation] *By stating its purpose and providing a nonexclusive illustrative list of relevant factors to be considered, the . . . amendment provides sufficient legislative guidance to the Board . . . .*

(*Birkenfeld, supra*, 17 Cal.3d at p. 168, emphasis added.) In so holding, the Court expressly rejected the same fundamental argument advanced by Gerawan and adopted by the Court of Appeal in this case—*viz.*, 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]." (*Ibid.*; see Slip. Op., pp. 53-54.)

The Court of Appeal sought to distinguish *Birkenfeld* on the ground that in *Birkenfeld* "there was an implied standard that the rent control board was to implement—a just and reasonable rental amount based on several factors." (Slip Op., p. 53.) But *Birkenfeld* cannot be so distinguished, as here there is a virtually identical standard implied in the policy goals and design of MMC: implementation of a just and reasonable first CBA based on several factors. (§§ 1164, 1164.3; see also *People v. Wright, supra*, 30 Cal.3d at p. 713 ["standards for administrative application of a statute . . . may be implied by the statutory purpose"].)

Likewise, the Court of Appeal's demand for a more rigid formula to guide the mediator to a particular result in every MMC dispute is contrary to law. (See Slip. Op., pp. 53-54.) This Court—consistent with United States Supreme Court precedent—has repeatedly rejected the notion that an administrative body must be bound to any particular formula in the implementation of legislative policy. (*Birkenfeld, supra*, 17 Cal.3d at p. 165; *Carson*, 35 Cal.3d at p. 191; accord, *Power Comm'n v. Pipeline Co.* (1942) 315 U.S. 575, 586 ["[t]he Constitution does not bind rate-making bodies to the service of any single formula or combination of formulas"].) Further, any demand for a more rigid formula ignores the complexities and practical realities of labor negotiations, in which the unique needs or challenges of particular employers or employee groups do not permit the type of inflexible standards the Court of Appeal apparently would demand.

The MMC Statute's "yardstick" is "as definite as the exigencies of the particular problem" it seeks to address permit. (*Birkenfeld, supra*, 17 Cal.3d at p. 168.)

In light of the complexities inherent to collective bargaining, this Court and courts in other jurisdictions have repeatedly held that statutes providing for compulsory interest arbitration of collective bargaining disputes do not violate the delegation doctrine, even where they provide little or no guidance for their implementation in a particular dispute. For example, in *City of Vallejo*, this Court rejected a delegation challenge to a city's interest arbitration law that directed an arbitration panel to resolve bargaining disputes based simply on "'all factors relevant to the issues from the standpoint of both the employer and the employee, including the City's financial condition.'" (*City of Vallejo, supra*, 12 Cal.3d at p. 622; see also *id.* at pp. 613, fn. 3, 622, fn. 13.)

Similarly, the Minnesota Supreme Court upheld a statute requiring interest arbitration of bargaining disputes based on the state's general policy "to promote orderly and constructive relationships between all public employers and their employees, subject however, to the paramount right of the citizens of this state to keep inviolate the guarantees for their health, education, safety and welfare." (*City of Richfield v. Local No. 1214, Internat. Assn. of Firefighters* (Minn. 1979) 276 N.W.2d 42, 46.) In concluding this statement provided adequate standards, the court explained:

> Although the standards allow the arbitrators fairly wide latitude in their determinations, this does not suggest that such freedom is unconstitutional. It would be difficult if not impracticable to formulate rigid standards to guide arbitrators in dealing with the complex and volatile issues that might arise during labor negotiations. To do so might well destroy the flexibility necessary for the arbitrators to effect the legislative purpose of enacting the law.

(*Id.* at p. 47.)

Likewise, in upholding a statute providing for interest arbitration of bargaining disputes based on similarly general standards, the Maine Supreme Court explained:

> Formulation of rigid standards for the guidance of arbitrators in dealing with complex and often volatile issues would be impractical, and might destroy the flexibility necessary for the arbitrators to carry out the legislative policy of promoting the improvement of the relationship between public employers and their employees.

(*Superintending School Com. of Bangor v. Bangor Ed. Assn.* (Me. 1981) 433 A.2d 383, 387.)[14]

As these cases make clear, the Legislature here provided more than constitutionally adequate guidance for the implementation of MMC.

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

In addition to declaring a policy and providing clear direction for its implementation, the Legislature also included sufficient safeguards to ensure the MMC Statute's fair application. Specifically, the Legislature designed MMC to include a straightforward two-tiered review process, which provides a prompt and adequate remedy for relief from improper CBA terms or mediator misconduct. (§§ 1164.3, subds. (a), (e), 1164.5; see *Hess*, *supra*, 140 Cal.App.4th at pp. 1609-1610.)

At the conclusion of MMC, the mediator's report is subject to review

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[14] Many other state courts have similarly upheld interest arbitration laws against delegation challenges. (See, e.g., *Municipality of Anchorage v. Anchorage Police Dept. Employees Assn.* (Alaska 1992) 839 P.2d 1080; *City of Spokane v. Spokane Police Guild* (Wash. 1976) 553 P.2d 1316; *City of Amsterdam v. Helsby* (N.Y.Ct.App. 1975) 323 N.E.2d 290; *City of Detroit v. Detroit Police Officers Assn.* (Mich. 1980) 294 N.W.2d 68; *Amalgamated Transit Union v. Mercer County Improvement Authority* (N.J. 1978) 386 A.2d 1290.)

by both the ALRB and the courts. (§§ 1164.3, 1164.5.) First, the Board is required to reject any provision of the report that (1) "is unrelated to wages, hours, or other conditions of employment"; (2) "is based on clearly erroneous findings of material fact"; or (3) "is arbitrary and capricious in light of the . . . findings of fact." (§ 1164.3, subd. (a).) And the entire report must be rejected if it was "procured by corruption, fraud, or other undue means," the mediator was corrupt, or "the rights of the petitioning party were substantially prejudiced by the misconduct of the mediator." (§ 1164.3, subd. (e).)

Second, following the Board's review, any party that remains dissatisfied may seek review in the appellate courts to determine whether:

> (1) The board acted without, or in excess of, its powers or jurisdiction[;]
>
> (2) The board has not proceeded in the manner required by law[;]
>
> (3) The order or decision of the board was procured by fraud or was an abuse of discretion[; or]
>
> (4) The order or decision of the board violates any right of the petitioner under the Constitution of the United States or the California Constitution.

(§ 1164.5, subd. (b).) This two-tiered review process is more than adequate to ensure the fair implementation of MMC. (Cf. *Hess*, *supra*, 140 Cal.App.4th at p. 1601 [judicial review for "[e]xcess of jurisdiction and abuse of discretion necessarily include limited factual review," and "[t]hat is all the review to which a party challenging a quasi-legislative determination is required"]; *Mount St. Mary's Hospital, etc. v. Catherwood*, *supra*, 260 N.E.3d at pp. 515-518 [approving "arbitrary and capricious" standard of review for contract terms imposed by interest arbitration].)

For example, a CBA that failed to consider an employer's financial ability to meet the contract's costs, arbitrarily imposed terms out-of-step

with contracts at similar operations, or failed to support its findings with evidence in the record would be unlikely to survive the Board's review. (See § 1164.3.) And if the Board failed to reject any improper terms, prompt review is available in the appellate courts where a confiscatory contract could be stayed or vacated as an "abuse of discretion" or contrary to law. (§ 1164.5, subd. (b).)

The MMC Statute's straightforward procedures providing for prompt relief are a far cry from the "inexcusably cumbersome" procedures held to be insufficient in *Birkenfeld*, cited by Gerawan and the Court of Appeal. (Cf. *Birkenfeld, supra*, 17 Cal.3d at pp. 169-173; see Slip Op., p. 54.) In *Birkenfeld*, this Court invalidated a rent control ordinance because it "drastically and unnecessarily restrict[ed] the rent control board's power to adjust rents, thereby making inevitable the arbitrary imposition of unreasonably low rent ceilings" of indefinite duration.[15] (*Birkenfeld, supra*, 17 Cal.3d at p. 169.)

As this Court explained, the adequacy of statutory safeguards "must be examined in relation to the magnitude of the job to be done." (*Birkenfeld, supra*, 17 Cal.3d at p. 170.) "The job to be done under the . . . rent control amendment [at issue in *Birkenfeld*] was staggering." (*Carson*, 35 Cal.3d at p. 192.) At least 16,000 rental units were subject to rent control, yet the amendment required individual adjustment hearings for each rental unit, and prohibited the rent control board from delegating "the

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[15] Notably, *Birkenfeld*'s discussion of legislative safeguards occurs within the context of a broader constitutional takings due process analysis not before the Court here, and its holding in this regard is therefore of limited application in this case (or outside the unique rent control context generally). (See, e.g., *id.* at p. 165 [rent control legislation "may be invalid on its face when its terms will not permit those who administer it to avoid confiscatory results in its application to the complaining parties"]; *id.* at p. 169.)

holding of hearings to a staff person or even to one or a panel of its members." (*Birkenfeld, supra*, 17 Cal.3d at pp. 169-170; *Carson, supra*, 35 Cal.3d at p. 192.) These cumbersome procedures "put the Board in a procedural strait jacket"—"regardless of how inequitable any rent ceiling may be under all the circumstances, it cannot be adjusted except by a procedure that inherently and unnecessarily precludes reasonably prompt action except perhaps for a lucky few." (*Id.* at pp. 171-172.)

In contrast to *Birkenfeld*, the MMC Statute applies in limited circumstances to contracts of limited duration, and there is nothing in the record that suggests the Board has been (or ever would be) unable to fulfill its statutory review obligations in a timely manner. (Cf. *Carson, supra*, 35 Cal.3d at pp. 192-193 [upholding rent control ordinance of narrow application].) Likewise, there is nothing inherent in the design of the MMC Statute's review procedures that precludes action "without a substantially greater incidence and degree of delay than is practically necessary." (*Birkenfeld, supra*, 17 Cal.3d at p. 169.) To the contrary, consistent with the Legislature's goal of facilitating the expeditious conclusion of long-stalled negotiations, the MMC Statute requires prompt administrative and judicial review. (§§ 1164.3, subds. (a), (c), (e), 1164.5, subd. (a).) Indeed, this case—in which the Board promptly remanded six challenged contract terms to the mediator and the Court of Appeal provided review—exemplifies the efficacy of MMC's safeguards.

The Legislature is constitutionally permitted to "declare a policy, fix a primary standard, and authorize executive or administrative officers to prescribe subsidiary rules and regulations that implement the policy and standard and to determine the application of the policy or standard to the facts of particular cases." (*Birkenfeld, supra*, 17 Cal.3d at p. 167.) This is precisely what the Legislature did here, and Gerawan's unlawful delegation claim fails as a matter of law.

III. THE BOARD DID NOT ABUSE ITS DISCRETION IN REJECTING GERAWAN'S "ABANDONMENT" ARGUMENT AND DIRECTING THE PARTIES TO MMC

The Board correctly determined that the UFW is a "labor organization certified as the exclusive bargaining agent of a bargaining unit of agricultural employees" and therefore has standing to request MMC notwithstanding Gerawan's allegations that the UFW had "abandoned" Gerawan's workers during a period of inactivity. (§ 1164, subd. (a).) The ALRA was enacted with the express purpose of eliminating employer involvement in the selection or removal of agricultural employees' bargaining representatives, and under its provisions an employer is obligated to continue bargaining with a certified union until the union is decertified by a Board-conducted election. Pursuant to this "certified until decertified" rule, the Board—with judicial approval—has consistently and 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.

The Court of Appeal nonetheless held that the Board abused its discretion in referring the parties to MMC without "properly considering" Gerawan's argument that the UFW had forfeited its certification by allegedly "abandoning" Gerawan's workers. (Slip Op., pp. 40-41.) As explained below, the Court of Appeal's holding on this issue is contrary to the plain language and history of the ALRA, the legislative policies underlying MMC, and decades of administrative and judicial precedent.

A. The Board Correctly Interpreted the ALRA to Preclude Employers from Raising "Abandonment" to Block a Certified Union's Request for MMC

The MMC Statute provides that a "labor organization certified as the exclusive bargaining agent of a bargaining unit of agricultural employees" may file a request for MMC with the Board if certain criteria are met.

(§ 1164, subd. (a).) The MMC Statute does not separately define "certification" for purposes of MMC, but rather relies on the ALRA's pre-existing certification (and decertification) frameworks to determine MMC eligibility. Properly considered, the plain language, history, purpose, and longstanding administrative and judicial interpretations of these provisions support the Board's determination that, for the purposes of MMC, (1) a union is considered "certified until decertified," and (2) employers may not challenge a union's certification based on allegations of union "abandonment" in order to block a certified union's request for MMC.

1. The "Certified Until Decertified" Doctrine and Rejection of an Employer's "Abandonment" Defense Are Well Established Under the ALRA

In enacting the ALRA, the Legislature declared that it is "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" *and* "to be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives." (§ 1140.2.) To better foster these two goals and address the unique challenges facing California's agricultural industry, the Legislature diverged significantly from the NLRA with respect to employer participation in the selection, recognition, and removal of bargaining representatives. (See, e.g., *F&P Growers*, *supra*, 168 Cal.App.3d at pp. 673-677; see also *Hess*, *supra*, 140 Cal.App.4th at p. 1600.)

For example, the ALRA explicitly makes it an unfair labor practice for an employer to "recognize, bargain with, or sign a collective-bargaining agreement with any labor organization not certified" under the ALRA's election procedures. (§ 1153, subd. (f); *Nish Noroian Farms* (1982) 8 ALRB No. 25, p. 13.) By contrast, under the NLRA, an employer may

voluntarily recognize and bargain with a union without the union attaining certification by election. (See *N.L.R.B. v. Gissel Packing Co.* (1969) 395 U.S. 575, 596-598; *F&P Growers*, *supra*, 168 Cal.App.3d at p. 675.) Similarly, the ALRA authorizes only employees or unions acting on employees' behalf to file a petition seeking an election, while the NLRA permits employers to seek elections. (Compare § 1156.3, subd. (a), with 29 U.S.C. § 159(c)(1)(B).) Relatedly, the ALRA "permits only employees or labor organizations to decertify a union by petition and election procedures," while the NLRA permits an employer to unilaterally withdraw recognition of a certified union in certain circumstances. (*F&P Growers*, *supra*, 168 Cal.App.3d at pp. 675-676; see § 1156.7, subd. (c).)

The Board has long recognized that "[b]y these important differences the California legislature has indicated that agricultural employers are to exercise no discretion regarding whether to recognize a union" and that such recognition "is left exclusively to the election procedures of the Board." (*Nish Noroian Farms*, *supra*, 8 ALRB No. 25, at p. 13.) Courts of this state have similarly concluded that these critical differences "show a purpose on the part of the Legislature to prohibit the employer from being an active participant in determining which union it shall bargain with in cases arising under the ALRA." (*F&P Growers*, *supra*, 168 Cal.App.3d at p. 676.)

Based upon the Legislature's clear intent to eliminate employer involvement in the selection and recognition of bargaining representatives, the Board has long held—with judicial approval—that employers are likewise prohibited from withdrawing recognition from, or otherwise playing an active role in the removal of, a certified union. For example, in *Montebello Rose*, the Court of Appeal held that an employer has "a duty 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; accord, *Nish Noroian Farms, supra*, 8 ALRB No. 25, at p. 14 ["[o]nce a union has been certified it remains the exclusive collective-bargaining representative of the employees in the unit until it is decertified or a rival union is certified"].) In other words, under the ALRA, a union remains "certified until decertified."

The ALRA's "certified until decertified" framework—and the legislative policies on which it is based—was approved by the court of appeal in *F&P Growers* decades ago. There, the court upheld the Board's determination that, under the ALRA, an employer may not unilaterally withdraw recognition of—or refuse to bargain with—a certified union based on a perceived (or actual) loss of majority employee support for the union. (*F&P Growers, supra*, 168 Cal.App.3d at pp. 673-679.) Noting the significant differences between the ALRA and NLRA, the court held that NLRA precedent permitting employers to withdraw recognition of a certified union was inapplicable to the ALRA, explaining:

> the Legislature's purpose in enacting the ALRA was to limit the employer's influence in determining whether or not it shall bargain with a particular union. Therefore, to permit an agricultural employer to be able to rely on its good faith belief in order to avoid bargaining with an employee chosen agricultural union, indirectly would give the employer influence over those matters in which the Legislature clearly appears to have removed employer influence. This court will not permit the agricultural employer to do indirectly, by relying on the NLRA loss of majority support defense, what the Legislature has clearly shown it does not intend the employer to do directly.

(*Id.* at pp. 676-677.)

In its analysis distinguishing the ALRA and NLRA approaches to employer participation, the court in *F&P Growers* noted the particular conditions that prevail in California's agricultural industry, including rapid

employee turnover, seasonal employment, and a workforce featuring a large percentage of non-native and/or non-English speaking employees, holding that "[a]pplying the NLRA [loss of majority] defense would fail to respond to the particular needs of the California agricultural scene." (*F&P Growers*, *supra*, 168 Cal.App.3d at p. 677.) The court likewise confirmed that the ALRA does not permit an employer to intercede in representation decisions simply because it believes its employees are unable (or unlikely) to do so, explaining that the "[t]he 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."[16] (*Ibid.*)

Consistent with the ALRA's "certified until decertified" rule and the ALRA's explicit prohibition of employer involvement in representation decisions, 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. Specifically, for the past three decades, the Board has held that an employer under the ALRA may not refuse to bargain with a certified union based upon a claim that the union was inactive or absent for an extended period of time. (See, e.g., *O.E. Mayou & Sons* (1985) 11 ALRB No. 25; *Bruce Church, Inc.* (1991) 17 ALRB No. 1; *Dole Fresh*

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[16] Even under the NLRA, which permits much greater employer involvement in the recognition of bargaining representatives, the United States Supreme Court has observed that "[t]he [NLRB] is entitled to suspicion when faced with an employer's benevolence as its workers' champion against their certified union, which is subject to a decertification petition from the workers if they want to file one." (*Auciello Iron Works v. N.L.R.B.* (1996) 517 U.S. 781, 790.)

Fruit Co., Inc. (1996) 22 ALRB No. 4; *Arnaudo Bros., LP* (2014) 40 ALRB No. 3, p. 14.)

Decades of legislative acquiescence to the Board's consistent rejection of employers' attempts to avoid their duties under the Act based on claims of union "abandonment" further confirm the Board's interpretation is consistent with the ALRA. "[T]he Legislature is presumed to be aware of a long-standing administrative practice . . . . If the Legislature, as here, makes no substantial modifications to the act, there is a strong indication that the administrative practice [is] consistent with the legislative intent." (*Thornton v. Carlson* (1992) 4 Cal.App.4th 1249, 1257, quotations omitted.) Likewise, "[i]t is a well-established principle of statutory construction that when the Legislature amends a statute without altering portions of the provision that have previously been judicially construed, the Legislature is presumed to have been aware of and to have acquiesced in the previous judicial construction." (*Marina Point, Ltd. v. Wolfson* (1982) 30 Cal.3d 721, 734.) Here, although the Legislature has amended the ALRA several times, it has taken no action to override the Board's consistent rejection of the "abandonment" defense or the "certified until decertified" doctrine on which the Board's rulings are based. (See, e.g., Stats. 1994, ch. 1010, § 181; Stats. 2004, ch. 788, § 13; Stats. 2011, ch. 697.)

2. The ALRA's "Certified Until Decertified" Doctrine and Rejection of the "Abandonment" Defense Apply to MMC

When the MMC Statute was enacted in 2002, the Board's "certified until decertified" rule and the Board's rejection of the abandonment defense were already well-established under the ALRA. In enacting MMC as part of the ALRA, the Legislature gave no indication that it intended to depart from these longstanding rules. (See §§ 1164, subd. (a), 1164.11.) Indeed,

the MMC Statute was enacted precisely to address the problem of dormant certifications, in which the parties had not concluded a contract for years—or decades—following an election. (See SB 1156 Analysis, p. 7; AB 2496 Analysis, pp. 7-8; Historical and Statutory Notes, 44A West's Ann. Labor Code (2011) foll. § 1164, p. 401.) Moreover, the MMC Statute's requirement of a "*renewed* demand to bargain" plainly implies a bargaining hiatus prior to MMC. (See § 1164, subd. (a), emphasis added.)

Further, since the MMC Statute's enactment, the Board has consistently held that a union's apparent inactivity or absence from the fields—even if prolonged—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.) The Board's determination in this case follows its long-standing administrative interpretation of the MMC Statute, which is entitled to deference. (*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]; *Am. Coatings Assn., Inc. v. S. Coast Air Quality Dist.* (2012) 54 Cal.4th 446, 461 [court "accords great weight and respect to the administrative construction"]; *Gay Law Students Assn. v. Pac. Tel. & Tel. Co.* (1979) 24 Cal.3d 458, 491 ["[c]onsistent administrative construction of a statute over many years, particularly when it originated with those charged with putting the statutory machinery into effect, is entitled to great weight"].)

The Legislature has implicitly acquiesced in the Board's interpretation of the MMC Statute, because if the Legislature disagreed with the Board it could and almost certainly would have amended the statute. (See *Thornton v. Carlson*, *supra*, 4 Cal.App.4th at p. 1257.) Most notably, the Board first rejected "abandonment" as a defense to MMC in 2003, yet when the

Legislature amended the MMC Statute in 2011, it *expanded* the circumstances in which MMC may be invoked and did not include an "abandonment" exception to MMC or otherwise override the Board's long-standing interpretation of the Act. (See *Pictsweet Mushroom Farms*, *supra*, 29 ALRB No. 3, at pp. 10-11; Stats. 2011, ch. 697 [Sen. Bill No. 126].)

Finally, the Court of Appeal's creation of new decertification rules for the purposes of MMC is unnecessary, as the ALRA already provides appropriate mechanisms to address a union's unwillingness or inability to represent the bargaining unit. First, consistent with NLRA precedent, a union's express disclaimer of interest or defunctness may terminate its certification. (See, e.g., *Pictsweet Mushroom Farms*, *supra*, 29 ALRB No. 3, at p. 6; § 1148.) Second, a union's extended absence from the fields (or return following such absence) may prompt a decertification drive or rival election—the ALRA's statutory mechanisms for terminating a certification or replacing a union.[17] (§ 1156.7, subd. (c).) But as discussed above, consistent with the ALRA's express legislative purpose, the employer plays no role in this election process.[18] (See § 1140.2.)

Here, the UFW was certified in 1992 and has not been decertified or displaced by election. (CR 2, 23.) The Board's determination that UFW

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[17] The Court of Appeal's concern that "a decertification option would often be too late to stop the MMC process" is misplaced. (Slip Op., p. 37.) 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).) Moreover, the Legislature set the required waiting period between a "renewed demand to bargain" and an MMC request (see § 1164, subd. (a)), and accordingly any concerns about this timeframe should be directed to the Legislature.

[18] An employer may, however, use the ALRA's unfair labor practice procedures to bring a disengaged union to the bargaining table and may unilaterally implement bargaining proposals if the union fails to respond. (See, e.g., *Dole Fresh Fruit Company*, *supra*, 22 ALRB No. 4, at pp. 16-18.)

had standing to request MMC notwithstanding Gerawan's allegations of "abandonment" is consistent with the ALRA's plain language, legislative policy, and the Board's long-standing, judicially approved interpretation of the Act.

B. The Court of Appeal's Holding That Employers May Raise Claims of Union "Abandonment" in Opposition to MMC Requests Is in Error

The Court of Appeal recognized the ALRA's "certified until decertified" rule and express limitations on employer discretion in choosing bargaining representatives, but concluded these rules did not apply to MMC because—in the court's view—MMC is entirely "a postbargaining process." (Slip Op., pp. 32-34, 41.) In reaching this conclusion, the Court of Appeal erred in two key respects.

First, the Court of Appeal erred in concluding that MMC is not a part of the collective bargaining process under the ALRA. The ALRA does not draw a distinction between MMC and bargaining, and the Legislature made clear that MMC is part of bargaining. As explained, 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). Consistent with the Legislature's focus on bargaining, MMC may only be requested by an employer or "labor organization certified as the exclusive bargaining agent of a bargaining unit" (§ 1164, subd. (a))—the same scope as the Act's general duty to bargain. (Cf. § 1153, subds. (e), (f) [duty to bargain applies only to a "labor organizations certified" under the Act].) This legislative history and statutory language thus confirm the Legislature intended MMC to be an essential element of the collective bargaining process, not entirely independent of it.

That the Legislature intended MMC to be a component of the ALRA's bargaining process is also consistent with the historical use of interest arbitration for the resolution of collective bargaining disputes in other labor fields. (See generally Elkouri & Elkouri, *supra*, at p. 22-4 ["[a]rbitration of interest disputes may be viewed more as an instrument of collective bargaining"].) This Court has previously recognized that "collective bargaining and issues arbitration are together a dynamic process." (*City of Vallejo*, *supra*, 12 Cal.3d at p. 614, quotations omitted.) Courts in other states have similarly held that interest arbitration is part and parcel of the collective bargaining process. (See, e.g., *Kitsap County Deputy Sheriffs' Guild v. Kitsap County*, *supra*, 353 P.3d at p. 193 ["Because 'the Legislature did not intend statutory interest arbitration to displace the negotiating process . . . it is more appropriate to view interest arbitration not as a substitute for collective bargaining, but as an instrument of the collective bargaining process' itself"], quoting *City of Bellevue v. Int'l Assn. of Fire Fighters, Local 1604* (Wash. 1992) 831 P.2d 738, 742; *Borough of Lewistown v. Pennsylvania Labor Relations Bd.* (Pa. 1999) 735 A.2d 1240, 1244 ["the collective bargaining process under [the statute] includes binding interest arbitration where impasse is reached in negotiations"].) To divorce MMC from the ALRA's bargaining processes is to ignore the very purpose of MMC (and interest arbitration generally): to facilitate the resolution of *bargaining* disputes.

Second, even if MMC were considered separate from "bargaining," there is still no sound reason to depart from the "certified until decertified" doctrine or the Board's consistent rejection of the "abandonment" defense. (See, e.g., *Highland Ranch v. Agricultural Labor Relations Bd.*, *supra*, 29 Cal.3d 848, 859 ["construction of a statute by the officials charged with its administration must be given great weight," quotations omitted].) The Court of Appeal's interpretation creating a different set of certification rules

for MMC overlooks the history of agricultural collective bargaining, which prompted the need for MMC, and the Legislature's declared purpose in enacting the MMC Statute.

Indeed, the policy reasons for prohibiting employers from interfering with employees' designation of their bargaining representatives under the ALRA apply with equal, if not greater, force with respect to MMC. As discussed, MMC was intended to remedy a "broken system," in which nearly 60 percent of union elections never result in a contract, and bargaining may languish for decades. (See Historical and Statutory Notes, 44A West's Ann. Labor Code (2011) foll. § 1164, p. 401.) The Legislature expressly declared that "a need exists for a mediation procedure in order *to ensure a more effective collective bargaining process* between agricultural employers and agricultural employees, and thereby more fully attain the purposes of the [ALRA] . . . ." (Stats. 2002, ch. 1145, § 1, emphasis added.) To allow employers to disrupt or avoid MMC by unilaterally raising claims of union "abandonment" would weaken the entire collective bargaining process by removing much of the incentive for good faith renewed bargaining that MMC provides. (See § 1164, subd. (a).)

The Court of Appeal's holding that employers may challenge a certified union's standing to request MMC based on the employer's belief that the union has "abandoned" the bargaining unit creates an entirely new conception of union certification under the ALRA, which ascribes different meanings to the same statutory language depending on the stage of bargaining. This novel interpretation of the MMC Statute is contrary to the ALRA's plain language and the Legislature's intent and should be rejected.

CONCLUSION

The judgment of the Court of Appeal should be reversed.

Dated: November 17, 2015

Respectfully submitted,

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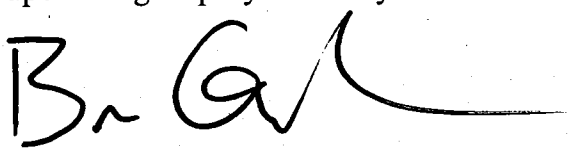

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CERTIFICATE OF COMPLIANCE

I certify that the attached Opening Brief on the Merits uses a 13-point Times New Roman font and contains 13,668 words.

Dated: November 17, 2015

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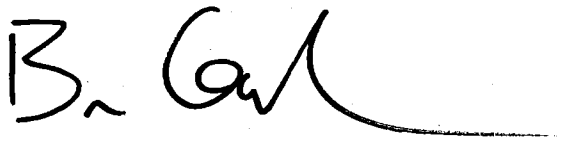

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DECLARATION OF SERVICE BY E-MAIL and OVERNIGHT COURIER

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 November 16, 2015, I served the attached **OPENING BRIEF ON THE MERITS** 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 November 16, 2015, at Sacramento, California.

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