California Supreme Court Upholds Mandatory First Contract Arbitration For Farmworkers

One of Jerry Brown's signature achievements during his first term of office was securing the passage of the California Agricultural Labor Relations Act of 1975 (ALRA). Farmworkers are excluded from coverage under the National Labor Relations Act, and the ALRA was the first (and still only) state statute to establish a comprehensive system for protecting the right of farmworkers to form unions and engage in collective bargaining. The ALRA has fallen short of its promise, however, due in part to the seasonal and migratory characteristics of farm labor, which pose obstacles to union organization and stable bargaining relationships and which tempt growers opposed to unionization to engage in delay tactics to keep unions at bay. For those who viewed the ALRA as a model for enhancing the lives of farmworkers, whose wages and working conditions are among the lowest of any group in the state, the results have been disappointing. Early this year, the chairperson of the Agricultural Labor Relations Board (ALRB), William Gould, resigned his office less than three years into his term, observing that during his tenure, only one petition for unionization came before the board and that 99% of field workers are not unionized.

In 2002, the state legislature sought to rejuvenate the ALRA by amending the statute to include "mandatory mediation and conciliation" provisions (MMC).[1] The MMC requires the parties to meet before a neutral mediator in circumstances where a union has been certified by the ALRB as the bargaining representative for a grower's employees, but negotiations have failed to produce even a first contract. If the parties do not reach agreement on all terms through mediation, the mediator resolves the disputed terms and submits a proposed contract to the ALRB. The ALRB can then impose that contract on the parties, thus converting mediation into mandatory arbitration. The ALRB's determination is subject to review, on limited grounds, through writ to the Court of Appeal.

Legislative findings behind the MMC asserted that, in about 60 percent of the cases

where a labor union had been certified, agricultural employers had not agreed to a contract. The theory behind the MMC was that the availability of mandatory arbitration would both lessen the incentive for growers to drag their feet in negotiations in the hope that the union's majority would dissipate as well as produce an equitable basis for a stable relationship in the future. The theory barely had time to be tested, however, before it was attacked by growers claiming (among other things) that the statute was unconstitutional as a denial of equal protection and an improper delegation of legislative authority. The Third District Court of Appeal in a 2-1 decision upheld the statute in *Hess Collection Winery v. Agricultural Labor Relations Board* (2006),[2] but the Fifth District reached a contrary conclusion in *Gerawan Winery v. Agricultural Labor Relations Board* (2015).[3] The California Supreme Court granted review in the latter case to consider both Gerawan's constitutional claim and its statutory claim that, by its own delay, the union had abandoned its right to seek mediation. The court, in a unanimous opinion by Justice Goodwin Liu, decided both the constitutional and statutory issues in favor of the union.[4]

The court began by considering a constitutional issue that the Court of Appeal found unnecessary to address—that compulsory interest arbitration, while permitted in the public sector, is categorically impermissible in the private sector because it forces employers into arbitration without their consent. The *Gerawan* court characterized this claim as an assertion that the statute violates "substantive due process" and thereby rejected it, noting that both federal and California courts had long abandoned substantive judicial review of economic regulation that meets rational basis standards and does not otherwise offend the applicable constitution.[5]

Gerawan claimed that the statute, on its face, violated both federal and state constitutional equal protection guarantees by imposing upon it, "as a class of one,"[6] terms and conditions of employment not imposed upon other growers. Acknowledging that California's equal protection principle might require a different analysis than the federal Constitution in "some cases" (as in the court's same-sex marriage decision),[7] the court held that both federal and state standards called for a rational basis test for classifications in areas of social and economic policy when no suspect class exists or no fundamental rights are at stake. Assuming without deciding that an equal protection claim could be asserted by a plaintiff who was

intentionally treated differently than other similarly situated persons without a reasonable basis for doing so, the court concluded there was a rational basis for vesting a mediator with authority to make individualized determinations based on non-arbitrary criteria that served the legislature's legitimate interest in tailoring agreements to the unique circumstances of each employer. Moreover, this being a facial challenge, there was no evidence that the criteria had been improperly applied.

California's constitution provides for separating the powers of state government, prohibiting persons charged with the exercise of one power from exercising either of the others, except as otherwise permitted under the state constitution.[8] It has long been accepted, however, that delegation of legislative power to agencies is permissible when accompanied by standards that adequately guide administrative discretion and permit judicial review.[9] The *Gerawan* court, in a careful analysis, concluded that the MMC criteria and procedures met those requirements.

In addition to its constitutional claims, Gerawan argued that the union had abandoned its right to seek arbitration under the MMC by its own dilatory behavior. The argument, it must be acknowledged, had a certain facial appeal. Gerawan is one of California's largest growers, employing thousands of workers to grow, harvest, and pack grapes on Gerawan's 120,000 acres in the San Joaquin valley. The ALRB conducted an election among the employees in 1990 and, after rejecting various challenges to the election, certified United Farm Workers (UFW) as bargaining representative in 1992. Cesar Chavez, on behalf of the union, sent a letter requesting negotiations, which Gerawan "formally accept[ed],"[10] but then, according to Gerawan, union representatives did not respond. In 1994, UFW made a second request to negotiate, and there was a bargaining session with no agreement. UFW representatives said they would revise the union's proposal and contact Gerawan about future negotiations, but Gerawan said that nothing happened until 2012 when the UFW sought to renew negotiations. Gerawan asked the union to explain its absence of more than 17 years, but the union declined to do so, and the record in the case also failed to provide a reason. Gerawan nevertheless proceeded to negotiations, holding more than 10 bargaining sessions in early 2013, but the parties failed to reach an agreement; it was then that the union requested to mediate under the MMC.

The ALRB refused to consider Gerawan's abandonment claim, basing its decision on precedent that disallows an abandonment defense to the employer's duty to bargain so long as the union remains certified as the bargaining representative. Under the ALRA, a union may become decertified as bargaining representative by a majority vote of the employees in an election held pursuant to petition by the current employees or by a rival union., In fact, at one point, Gerawan's employees did file a petition to decertify UFW, but the ALRB set aside that effort on the basis of evidence that Gerawan had unlawfully inserted itself into the campaign. Gerawan, acknowledging the Board's "certified until decertified" rule,[11] argued that the rule should not apply to the MMC because it is a process that occurs *after* bargaining, but the court disagreed, characterizing interest arbitration as part of the bargaining process. The court upheld the Board's position on the basis of deference to agency interpretation as well as the state legislature's failure to amend the statute when faced with the interpretation as applied to the MMC and the policies of the ALRA. While applying the Board's interpretation may mean that an employer must go to mediation and arbitration with a union that is no longer supported by any of the current employees, the legislature might reasonably view this as a better outcome than a rule that provides the employer with an incentive to resist meaningful bargaining and avoid its obligation to engage in the MMC process.

The union's unexplained absence from bargaining for 17 years certainly seems bizarre, but it is not unique. In a companion case to *Gerawan* in which the MMC was not involved, the court applied the ALRB's "certified until decertified" rule to reject the employer's defense to bargaining with the UFW after an absence of 24 years.[12] From supposedly reliable accounts not part of the record in either case, the UFW was undergoing massive turmoil during this period.[13] William Gould, in his letter of resignation as chair of the ALRB, wrote that the ALRA is "now irrelevant to farmworkers, in particular, because for the most part, they are not aware of the provisions, procedures, and rights contained in the law."[14] Whatever the explanation, the present state of affairs is deeply disappointing. The court's opinion in *Gerawan* creates at least the possibility of jump-starting the potential created by California's unique experiment in the fields.

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[1] Cal. Code Regs. §§ 20400-08; 20450.

[2] *Hess Collection Winery v. Agricultural Labor Relations Board* (2006) 140 Cal.App.4th 1584.

[3] *Gerawan Winery v. Agricultural Labor Relations Board* (2015) 230 Cal.App.4th 1024.

[4] *Gerawan Farming, Inc. v. Agricultural Labor Relations Board*, 2017 WL 5662395.

[5] See Grodin, et al., The California Constitution, (2nd ed. 2016) pages 49-51.

[6] *Gerawan Farming, Inc.*, 2017 WL 5662395, at *8.

[7] *Gerawan Farming, Inc.*, 2017 WL 5662395, at *6.

[8] Cal Const., art. III § 3.

[9] *People v. Wright* (1982) 30 Cal.3d 70 ("An unconstitutional delegation of legislative power occurs when the Legislature confers upon an administrative agency unrestricted authority to make fundamental policy decisions.").

[10] *Gerawan Farming, Inc.*, 2017 WL 5662395, at *4.

[11] *Gerawan Farming, Inc.*, 2017 WL 5662395, at *2.

[12] *Tri-Fanucchi Farms v. Agricultural Labor Relations Board*, 2017 WL 5662396.

[13] See Pawel, The Union of their Dreams: Power, Hope and Struggle in Cesar Chavez's Farmworker Movement (2009); Garcia, From the Jaws of Victory: The Triumph and Tragedy of Cesar Chavez and the Farm Workers Movement (2012).

[14] A copy of Gould's official resignation letter is available online at: http://documents.latimes.com/read-william-goulds-resignation-letter/.