

**AGRICULTURAL LABOR RELATIONS BOARD**

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**CALIFORNIA SUPREME COURT ISSUES DECISION IN CONSTITUTIONAL  
CHALLENGE TO MANDATORY MEDIATION AND CONCILIATION  
STATUTE**

On November 27, 2017, the California Supreme Court issued its opinion in *Gerawan Farming, Inc. v. Agricultural Labor Relations Board*, a case involving a constitutional challenge to the Mandatory Mediation and Conciliation statute (“MMC”) of the Agricultural Labor Relations Act (“ALRA”). The Legislature added the MMC statute (Lab. Code, § 1164 et seq.) to the ALRA (Lab. Code, § 1140 et seq.) in 2002 after finding that the ALRA had failed to result in widespread adoption of collective bargaining agreements. To ensure a more effective collective bargaining process, the MMC statute thus provides for compulsory interest arbitration. This process allows for a neutral mediator/arbitrator to determine the terms and conditions of employment to include in a collective bargaining agreement between an employer and labor organization to the extent the parties otherwise unable to agree on such terms.

This case arises out of Mandatory Mediation and Conciliation (“MMC”) proceedings between Gerawan Farming, Inc. (“Gerawan”) and the United Farm Workers of America (“UFW”) in 2013. The UFW was certified as the exclusive bargaining representative of Gerawan’s agricultural employees in 1992. The parties’ initial bargaining efforts did not produce a collective bargaining agreement, and it appears there were no communications between the two from 1995 until October 2012, when the UFW served Gerawan with a renewed request to bargain. On March 29, 2013, the UFW filed with the Agricultural Labor Relations Board (“ALRB” or “Board”) a request for referral to MMC. Gerawan opposed the request, including on the basis that the UFW had abandoned its status as the certified bargaining representative of Gerawan’s agricultural employees. The Board dismissed Gerawan’s “abandonment” defense and ordered the parties to MMC. The parties participated in MMC proceedings before a mediator, which eventually resulted in a Board order adopting the terms of a second mediator’s report setting forth the terms of a collective bargaining agreement between Gerawan and the UFW.

Gerawan commenced this litigation challenging the Board’s orders and asserting various constitutional and statutory defenses, including that the MMC statute violates substantive due process by imposing arbitration without an employer’s consent, the equal protection clauses of the United States and California Constitutions, constitutes an improper delegation of legislative authority to a private mediator, and that the Board unlawfully ordered Gerawan to MMC because the UFW had abandoned its status as the employees’

certified bargaining representative. The Fifth District Court of Appeal issued an opinion in May 2015 finding that the MMC statute violated equal protection and constituted an improper delegation of legislative authority. The appellate court also concluded that the Board improperly dismissed Gerawan's defense to referral to MMC on the basis that the UFW had abandoned the bargaining unit.

The California Supreme Court granted review and today issued an opinion reversing the appellate court's determinations. The Court concluded that the MMC statute does not violate due process, equal protection, or constitute an unconstitutional delegation of legislative power. The Court also affirmed long-standing Board and judicial precedent consistently holding that union "abandonment" cannot be asserted as a defense to referral to MMC or to otherwise justify an employer's refusal to bargain.

The Supreme Court remanded the case to the appellate court for further proceedings consistent with the opinion. The opinion will become final 30 days after issuance.

The full text of the California Supreme Court's opinion is available here:  
<http://www.courts.ca.gov/opinions/documents/S227243.PDF>

### **CALIFORNIA SUPREME COURT ISSUES DECISION IN TRI-FANUCCHI "ABANDONMENT" CASE**

On November 27, 2017, the California Supreme Court issued a decision in a case reviewing a decision of the Agricultural Labor Relations Board (the "ALRB" or "Board") and involving the issue of union "abandonment" and bargaining makewhole. (*Tri-Fanucchi Farms v. ALRB*; Case No. S227270) The decision affirms the Board's holding that, under the Agricultural Labor Relations Act (the "ALRA" or "Act"), an agricultural employer may not refuse to bargain with a certified union based upon a claim that the union was inactive or absent for a period of time (known as the "abandonment" defense). Reversing the contrary opinion of the Fifth District Court of Appeal, the Supreme Court also upheld the Board's award of bargaining makewhole as an appropriate remedy for the unlawful refusal to bargain in this case.

The case stems from allegations that agricultural employer Tri-Fanucchi Farms ("Tri Fanucchi") unlawfully refused to bargain with the certified representative of its employees, the United Farm Workers of America (the "UFW") in violation of the ALRA. The UFW was certified to represent Tri-Fanucchi's employees in 1977. Tri-Fanucchi contended that, beginning in 1988, the UFW ceased representing the bargaining unit and remained inactive for the next 24 years. In 2012, the UFW demanded to bargain and Tri-Fanucchi refused, contending that the UFW had "abandoned" the bargaining unit

and that, therefore, Tri-Fanucchi was no longer obligated to bargain with the UFW. In April 2014, the Board issued a decision and order (Tri-Fanucchi Farms (2014) 40 ALRB No. 4) finding that, under established Board law, union inactivity does not relieve an employer of its duty to bargain where the bargaining unit employees have not chosen to remove or replace the union through the Board's election processes. The Board further found that, under the circumstances presented, an award of "makewhole" was appropriate to restore to Tri-Fanucchi's employees' wages lost as a result of Tri-Fanucchi's unlawful refusal to bargain.

Tri-Fanucchi sought review of the Board's decision with the Fifth District Court of Appeal. On May 14, 2015, the appellate court issued a decision upholding the Board's decision concerning the "abandonment" issue but reversing the Board's award of makewhole. The Court held that the Board's rejection of the abandonment defense was consistent with the Board's own precedent and with prior appellate precedent. However, the appellate court disagreed with the Board's makewhole determination, finding that the Board's conclusion that Tri-Fanucchi's position did not further the policies and purposes of the Act was incorrect. The appellate court found, to the contrary, that Tri-Fanucchi's litigation had the beneficial effect of clarifying the law and, therefore, makewhole was not appropriate.

Both Tri-Fanucchi and the Board sought review in the California Supreme Court. The Supreme Court granted review and oral arguments were held on September 5, 2017. In a unanimous opinion, the Supreme Court upheld the appellate court's conclusion rejecting the "abandonment" defense. Consistent with its opinion issued the same day in a companion case involving Gerawan Farming, Inc. (Case No. S227243), the Supreme Court held that an employer under the ALRA "cannot . . . unilaterally declare that it will refuse to engage with the union because it believes the union has abandoned its employees" because "the ALRA reserves the power to select the union representative to the employees and labor organizations alone." The Supreme Court also reversed the appellate court's opinion on the makewhole issue and affirmed the Board's makewhole award. The Supreme Court emphasized the breadth of the Board's discretion to award makewhole in appropriate cases and the limited scope of judicial review over such decisions. The Supreme Court concluded that, in reversing the Board's makewhole award while failing to apply the correct deferential standard of review, the appellate court "improperly assumed the Board's remedial authority."

The Supreme Court remanded the case to the appellate court for further proceedings consistent with the opinion. The opinion will become final 30 days after issuance.

The full text of the California Supreme Court's opinion is available here:  
<http://www.courts.ca.gov/opinions/documents/S227270.PDF>