

Case No. 227243

SUPREME COURT  
**FILED**

APR 25 2016

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**IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA**

Frank A. McGuire Clerk

Deputy

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GERAWAN FARMING, INC.,  
Petitioner,

v.

AGRICULTURAL LABOR RELATIONS BOARD,  
Respondent,

UNITED FARM WORKERS OF AMERICA,

Real Party in Interest.

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

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

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**REAL PARTY IN INTEREST UNITED FARM WORKERS OF  
AMERICA'S SECOND MOTION FOR JUDICIAL NOTICE**

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## SECOND MOTION FOR JUDICIAL NOTICE

Pursuant to Rules 8.520(g) and 8.252(a) of the California Rules of Court and Evidence Code §459, Real Party in Interest United Farm Workers of America (“UFW”), moves for judicial notice of Exhibits 1, 2, and 3 to the accompanying Declaration of Mario Martinez.

Exhibit 1 is a true and correct copy of the Decision and Order of the Agricultural Labor Relations Board in *Gerawan Farming, Inc.* (April 15, 2016) ALRB Case No. 2013-RD-003-VIS (42 ALRB No. 1), holding that Gerawan Farming’s extensive illegal actions and misconduct tainted the entire decertification effort in a related election matter, and dismissing the election due to that serious misconduct.

Exhibit 2 is the text, as amended in the California Assembly Committee on Labor and Employment, on May 04, 2015, of Assembly Bill 1389, “AB-1389 Agricultural labor relations: unfair labor practices” (hereafter “AB 1389”), introduced by Assembly Member Jim Patterson, February 27, 2015, with principal coauthor, Assembly Member Grove, and coauthor, Assembly Member Chávez.<sup>1</sup>

Exhibit 3 is a state legislative record of the vote of May 06, 2015 and the bill history, in the Assembly Committee on Labor and Employment, during which AB 1389 failed to pass out of the Committee: “Do pass and be re-referred to the Committee on Appropriations [FAIL].”<sup>2</sup> The bill history shows the bill died on January 31, 2016. The record contained in Exhibit 3 has been published by the California legislature at

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<sup>1</sup> As of April 21, 2016, AB 1389 is available for download at:  
<[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160AB1389](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB1389)>

<sup>2</sup> As of April 21, 2016, the vote on AB 1389 is available for download at:  
<[http://leginfo.ca.gov/pub/15-16/bill/asm/ab\\_1351-1400/ab\\_1389\\_vote\\_20150506\\_000001\\_asm\\_comm.html](http://leginfo.ca.gov/pub/15-16/bill/asm/ab_1351-1400/ab_1389_vote_20150506_000001_asm_comm.html)>

www.leginfo.ca.gov and a summary also published at <https://leginfo.legislature.ca.gov>.<sup>3</sup>

Evidence Code §459(a) provides that a “reviewing court may take judicial notice of any matter specified in Section 452.” As discussed below, these documents are subject to judicial notice pursuant to Evidence Code §452(c), which provides for judicial notice of “[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.”

Official acts include “records, reports and orders of administrative agencies.” *Ordlock v. Franchise Tax Bd.* (2006) 38 Cal.4<sup>th</sup> 897, 911, fn.8; *see also Fowler v. Howell* (1996) 42 Cal.App.4<sup>th</sup> 1746, 1750 (permitting the court to take judicial notice of the records and files of a state administrative board); *Sosinsky v. Grant* (1992) 6 Cal.App.4<sup>th</sup> 1548, 1563, fn. 8 (permitting the court to take judicial notice that a court made a particular ruling). The ALRB is a governmental agency (*see* Labor Code §1141), and the official acts of the ALRB, including the decision submitted here, is therefore the proper subject of judicial notice. *See* Evid. Code 452(c); *see also, e.g., United Teachers of Los Angeles v. Los Angeles Unified Sch. Dist.* (2012) 54 Cal.4<sup>th</sup> 504, 528; *Evans v. City of Berkeley* (2006) 38 Cal.4<sup>th</sup> 1, 7; *Pac. Lumber Co. v. State Water Res. Control Bd.* (2006) 37 Cal.4<sup>th</sup> 921, 928.

The Decision and Order of the Agricultural Labor Relations Board in *Gerawan Farming, Inc.* (April 15, 2016) ALRB Case No. 2013-RD-003-VIS (42 ALRB No. 1) is properly the subject of judicial notice as an administrative ruling in a related case. As explained in UFW’s Reply Brief,

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<sup>3</sup> As of April 21, 2016, the ballot on AB 1389 is available for download at: <[https://leginfo.legislature.ca.gov/faces/billVotesClient.xhtml?bill\\_id=201520160AB1389](https://leginfo.legislature.ca.gov/faces/billVotesClient.xhtml?bill_id=201520160AB1389)>. The bill history for 1389 is available for download at: <[https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill\\_id=201520160AB1389](https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=201520160AB1389)>



the ALRB Decision and Order is relevant to several matters in this appeal. It is relevant as background evidence to the Court's consideration of Gerawan's abandonment "defense" in MMC because it shows, as found by the ALRB, that Gerawan's purported protection of employee free choice was nothing more than a refusal to bargain with UFW. The ALRB found that Gerawan was "guilty" of engaging in "extensive misconduct" by "committ[ing] numerous unfair labor practices," "support[ing] the decertification efforts, and in so doing, unlawfully undermin[ing] the very principle of free choice it so earnestly argues that the decertification represented." *Gerawan Farming, Inc.* (2016) 42 ALRB No. 1, at 8-9; *see also id.* at 75 (Gould concurr. opn.) ("view[ing] this case as intertwined with its initial rejection of its obligation to bargain . . . explains all too well what it is about: since the Employer's own interest in not bargaining with the Union could only be achieved by decertification, it did what it could to ensure that an election could be held. It now insists that in finding that what it did was unlawful, we are depriving its employees of their right to choose.").

The ALRB once again reaffirmed its long-standing rule that "abandonment" cannot be used as a means by which an employer can challenge a Union's representative status. 42 ALRB No. 1, at 57 ("[t]he Board has held that, under the ALRA, an employer's claim that a certified union was inactive with respect to the employer and/or bargaining unit employees, even for an extended period of time, does not establish a defense to the duty to bargain (frequently referred to as an 'abandonment' defense)."

Finally, the ALRB decision is also relevant because the Fifth District and Gerawan claim the ALRB created a "crisis of representation" by ordering the MMC contract into effect at the same time it ordered that the election take place. The ALRB decision shows that the decertification

efforts did not represent genuine employee dissatisfaction with the Union; rather they were proof of Gerawan's illegal attempts to avoid its bargaining obligations.

The California State Assembly and its Committee on Labor and Employment is a governmental legislative body, and the official acts of the legislature, including the introduction, amendments and vote on AB 1389, and its history, submitted here, are also therefore the proper subject of judicial notice, as "Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States."

[Evid. Code §452(c); *see also* Evid. Code §452.5]

The two documents sought to be judicially noticed as Exhibits 2 and 3 are relevant to the actions taken by the Legislature rejecting an amendment of the ALRA that would have required the Agricultural Labor Relations Board to decertify a union for "abandoning or failing to represent a bargaining unit for 3 or more years." (*Legislative Counsel's Digest*, AB-1389(1), *as amended* May 04, 2015). In *Dole Fresh Fruit Company* (1996) 22 ALRB No. 4, at p. 16, the Board stated that it could not

"extend its present regulations or case law precedents in regards to initiating an abandonment procedure without distorting the express directives of the ALRA and invading the province of the Legislature. Since California is a code state, the power to enact and amend statutes is constitutionally entrusted to the Legislature and not to the judiciary or any quasi-judicial subdivision of the executive branch. Thus . . . the Legislature [] is [where] employers must look."

Gerawan Farming argues that the ALRA permits the courts to recognize an "abandonment defense" or abandonment procedure in MMC. For more than 30 years, the ALRB has rejected that position. Exhibits 2 and 3 demonstrate that, as recently as 2015, the Assembly Labor and Employment Committee considered amending the ALRA to provide an abandonment procedure, but the proposed legislation did not make it out of the Committee. The

Legislature's failure to amend the ALRA to provide an abandonment procedure is relevant to the question of whether or not the Legislature accepted or ratified the ALRA's and the courts' interpretations that employers cannot raise an abandonment "defense" in support of their refusal to bargain.

For these reasons, UFW respectfully requests that the Court take judicial notice of the documents discussed above.

Dated: April 25, 2016

SCOTT A. KRONLAND  
DANIELLE E. LEONARD  
ALTSHULER BERZON LLP

MARIO MARTÍNEZ  
THOMAS P. LYNCH  
MARTÍNEZ AGUILASOCHO &  
LYNCH, APLC

By: /s/ Mario Martinez

Mario Martinez

Counsel for Real Party in Interest  
United Farm Workers of America

Case No. 227243

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

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**DECLARATION OF MARIO MARTINEZ IN SUPPORT OF  
REAL PARTY IN INTEREST UNITED FARM WORKERS OF  
AMERICA'S SECOND MOTION FOR JUDICIAL NOTICE**

SCOTT A. KRONLAND (SBN  
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mmartinez@farmworkerlaw.com

*Counsel for Real Party in Interest United Farm Workers of America*

## DECLARATION OF MARIO MARTINEZ

I, Mario Martinez, hereby declare as follows:

1. I am a partner at Martinez Aguilasocho & Lynch, A Professional Law Corporation and one of the attorneys for Real Party in Interest United Farm Workers of America (“UFW”).
2. Attached as Exhibit 1 is a true and correct copy of the Decision and Order of the Agricultural Labor Relations Board in *Gerawan Farming, Inc.* (April 15, 2016) ALRB Case No. 2013-RD-003-VIS (42 ALRB No. 1).
3. Attached as Exhibit 2 is a true and correct copy of the text of the Assembly Bill 1389, as amended in the California Assembly Committee on Labor and Employment on May 04, 2015, “AB-1389 Agricultural labor relations: unfair labor practices,” introduced by Assembly Member Jim Patterson, February 27, 2015, with principal coauthor, Assembly Member Grove, and coauthor, Assembly Member Chávez. The text for AB 1389 contained in Exhibit 2 has been published by the California Legislature and is available for download at  
<[https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201520160AB1389](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160AB1389)>
4. Attached as Exhibit 3 is a true and correct copy of a state legislative record of the vote of May 06, 2015, and the bill history, in the California Assembly Committee on Labor and Employment, in which AB 1389 failed the Motion and did not pass out of the Committee: “Do pass and be re-referred to the Committee on Appropriations.” The bill history indicates the bill died on January 31, 2016. The unofficial ballot for AB 1389 contained in Exhibit 3 has been published by the California Legislature and is available for download at:  
<[https://leginfo.legislature.ca.gov/faces/billVotesClient.xhtml?bill\\_id=201520160AB1389](https://leginfo.legislature.ca.gov/faces/billVotesClient.xhtml?bill_id=201520160AB1389)>

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[https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill\\_id=201520160AB1389](https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=201520160AB1389)

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct to the best of my knowledge.

Executed in Riverside County, California this 25th day of April,  
2016.

/s/ Mario Martinez

**PROOF OF SERVICE**

**Case:** *Gerawan Farming, Inc. v. ALRB*,  
Supreme Court Case No. S227243  
Fifth App. Dist. Nos. F068526 and F068676

I am employed in the City and County of San Francisco, California. I am over the age of eighteen years and not a party to the within action; my business address is 177 Post Street, Suite 300, San Francisco, California 94108. On April 25, 2016, I served the following document(s):

**REAL PARTY IN INTEREST UNITED FARM WORKERS OF AMERICA'S SECOND MOTION FOR JUDICIAL NOTICE**

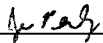
on the parties, through their attorneys of record, by placing true copies thereof in sealed envelopes addressed as shown below for service as designated below:

- (A) By First Class Mail: I placed the envelope, sealed and with first-class postage fully prepaid, for collection and mailing following our ordinary business practices. I am readily familiar with the practice of Altshuler Berzon LLP for the collection and processing of correspondence for mailing with the United States Postal Service. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Mail Postal Service in San Francisco, California, for collection and mailing to the office of the addressee on the date shown herein.

Method of Service	Addressee	Party
A	David Abba Schwarz Michael A. Behrens Irell & Manella LLP 1800 Avenue of the Stars, #900 Los Angeles, CA 90067-4276	Gerawan Farming, Inc.
A	C. Russell Georgeson Georgeson, Belardineli & Noyes 7060 N. Fresno Street, Suite 250 Fresno, CA 93720	Gerawan Farming, Inc.
A	Ronald H. Barsamian Barsamian Saqui and Moody 1141 W. Shaw Ave, Suite 104 Fresno, CA 93704	Gerawan Farming, Inc.

A	Agricultural Labor Relations Board 1325 J Street, Suite 1900B Sacramento, CA 95814-2944	Agricultural Labor Relations Board
A	Jose Antonio Barbosa Agricultural Labor Relations Board 1325 "J" Street, Suite 1900 Sacramento, CA 95814-2944	Agricultural Labor Relations Board
A	Benjamin Matthew Glickman Office of the Attorney General 1300 I Street, Suite 125 P. O. Box 944255 Sacramento, CA 94244	Agricultural Labor Relations Board

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this April 25, 2016, at San Francisco, California.

  
 \_\_\_\_\_  
 Jean Perley



STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

GERAWAN FARMING, INC., ) Case No. 2013-RD-003-VIS  
) 39 ALRB No. 20  
Employer, )  
)  
and )  
)  
SILVIA LOPEZ, )  
)  
Petitioner, )  
)  
and )  
)  
UNITED FARM WORKERS OF )  
AMERICA, )  
)  
Certified Bargaining Representative. )

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GERAWAN FARMING, INC., ) Case No. 2012-CE-041-VIS, et al.  
)  
Respondent, )  
)  
and )  
) 42 ALRB No. 1  
UNITED FARM WORKERS OF )  
AMERICA, ) (April 15, 2016)  
)  
Charging Party. )

**DECISION AND ORDER**

On September 17, 2015, Administrative Law Judge (ALJ) Mark R. Soble issued the attached recommended decision and order. This is a case in which related election objections and unfair labor practice allegations were consolidated for hearing.

The ALJ found that employer Gerawan Farming, Inc. (Gerawan or Employer), violated the Agricultural Labor Relations Act (ALRA or Act)<sup>1</sup> by supporting and assisting the gathering of signatures for a decertification petition. This assistance and support included giving preferential access to decertification supporters by allowing them to circulate the decertification petition during work time while prohibiting supporters of the United Farm Workers of America (UFW) from circulating a pro-UFW petition during work time, and by granting the decertification petitioner, Silvia Lopez (Petitioner or Lopez), a “virtual sabbatical” to run the decertification campaign and gather signatures for the decertification petition. In addition, the ALJ found that the Petitioner’s group violated the rights of other workers by blocking company entrances on September 30, 2013, as a means to collect approximately 1,000 signatures on the decertification petition.

The ALJ found that Lopez solicited and received an unlawful \$20,000 donation from the California Fresh Fruit Association (CFFA), and that Lopez’s legal team assisted in this transaction. The ALJ found that Gerawan knew about this donation beforehand based on powerful circumstantial evidence, and that it was complicit with the CFFA. The ALJ found that the CFFA’s conduct in this regard violated section 1155.4 of the Act.

The ALJ also found that Gerawan committed unfair labor practices by its enhanced efforts to directly solicit grievances and by making a well-timed unilateral wage increase.

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<sup>1</sup> The ALRA is codified at California Labor Code section 1140, et seq.

The ALJ concluded that, given the totality of the circumstances and Gerawan's unlawful actions, it was impossible to know whether the signatures gathered in support of the decertification petition represented the workers' true sentiments. The ALJ further concluded that the misconduct created an environment which would have made it impossible for true employee free choice when it came time to vote. As the ALJ concluded that Gerawan's unlawful and/or objectionable conduct tainted the entire decertification process, he recommended dismissing the decertification petition, setting aside the election, and remedying Gerawan's numerous unfair labor practices.

Gerawan, the Petitioner, the UFW, and the ALRB General Counsel all timely filed exceptions to the ALJ's decision.<sup>2</sup> The matter was ultimately submitted to

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<sup>2</sup> Petitioner additionally filed a "Petition to Disqualify" Board Member Shiroma while this matter was pending with the Board. The Board has considered the various bases cited by Petitioner in support of her disqualification motion and finds them to be without merit. Petitioner's claim that Member Shiroma is disqualified in this matter based on an alleged "failure to supervise" the Board's former General Counsel ultimately belies a fundamental misunderstanding of the distinct roles and functions of the Board and its General Counsel under the Act, and, moreover, is unsupported by any evidence demonstrating any actual bias by Member Shiroma for or against a party in this case. (Lab. Code, § 1149; *Stirling v. Agricultural Labor Relations Board* (1987) 189 Cal.App.3d 1305, 1309-1310 ["Under the Agricultural Labor Relations Act the prosecutorial and adjudicatory roles are separate. The General Counsel is the prosecutor, and hence is independent of the Board in this function"].) Petitioner's next claim that Member Shiroma must be disqualified based on a prior ruling issued by the Board in a separate, unrelated matter involving Gerawan also must be rejected. (*Kreling v. Superior Court* (1944) 25 Cal.2d 305, 310-311 ["It is well settled in this state that the expressions of opinion uttered by a judge, in what he conceives to be a discharge of his official duties, are not evidence of bias or prejudice"]; see also *National Labor Relations Board v. Donnelly Garment Co.* (1947) 330 U.S. 219, 236-237 ["it is not the rule of judicial administration that ... a judge is disqualified from sitting in a retrial because he was reversed on earlier rulings. We find no warrant for imposing upon administrative agencies a stiffer rule, whereby examiners would be disintitled to sit because they ruled

(Footnote continued)

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(Footnote continued)

strongly against a party in the first hearing”].) Finally, there is no merit in Petitioner’s claim that Member Shiroma must be disqualified in this matter based on a financial or personal conflict of interest stemming from her past political contributions or industry contacts. Petitioner produces no evidence demonstrating that Member Shiroma has any personal financial interest in this matter. Thus, no basis for disqualification exists under the Political Reform Act. (Gov. Code, § 87100; Cal. Code Regs., tit. 2, § 18700, subd. (a).) Regarding Member Shiroma’s past political contributions and industry contacts, Petitioner again produces no evidence of prejudgment or bias by Member Shiroma in this case. To establish personal bias requiring recusal, Petitioner must produce evidence that Member Shiroma has prejudged or appraised a party personally. (*Morongo Band of Mission Indians v. State Water Resources Control Board* (2009) 45 Cal. 4th 731, 741 [presumption of impartiality by agency adjudicators “can be overcome only by specific evidence demonstrating actual bias or a particular combination of circumstances creating an unacceptable risk of bias”]; *Today’s Fresh Start, Inc. v. Los Angeles County Office of Education* (2013) 57 Cal.4th 197, 219 [“Absent a financial interest, adjudicators are presumed impartial”].) Allegations concerning Member Shiroma’s prior professional relationships and political contacts are not sufficient to show personal bias requiring recusal. (*Morongo Band of Mission Indians, supra*, 45 Cal.4th at p. 741; *People v. Vasquez* (2006) 39 Cal.4th 47, 63-64 [personal connections and relationships generally do not require recusal]; *People v. Carter* (2005) 36 Cal.4th 1215, 1243; see *Bud Antle, Inc.* (1976) 2 ALRB No. 35 at p. 4; see also *Pennsylvania v. International Union of Operating Engineers* (E.D.Pa. 1974) 388 F. Supp. 155, 159 [judge’s “background and associations” not sufficient to show personal bias requiring recusal]; *Sofford v. Schindler Elevator Corp.* (D.Colo. 1997) 954 F.Supp. 1457, 1458 [judge is “obligated not to recuse [himself or herself] where the facts do not give fair support to a charge of prejudgment,” and finding that “[p]rior professional relationships and the impressions arising out of them” do not constitute evidence of personal bias or prejudice requiring recusal]; *United States v. Nackman* (9th Cir. 1998) 145 F.3d 1069, 1076.) In sum, neither the past political affiliations, contributions, or professional relationships identified by Petitioner nor the insinuations she draws from them constitute evidence of actual bias to mandate Member Shiroma’s recusal in this case. (*Sataki v. Broadcasting Board of Governors* (D.D.C. 2010) 733 F.Supp.2d 54, 64 [allegations of bias based on judge’s “alleged political affiliations ... are legally insufficient to warrant or justify disqualification]; *United States v. De Castro-Font* (D.P.R. 2008) 587 F.Supp.2d 353, 360-361 [judge’s past political contributions, without any accompanying “specific corroboratory evidence of bias,” do not provide a basis for recusal].) Accordingly, the Board denies Petitioner’s motion to disqualify Member Shiroma.

the Board when replies to exceptions and supporting briefs were filed by all parties on December 21, 2015. As explained below, we affirm the ALJ's factual findings and legal conclusions in full, except as modified below.<sup>3</sup>

### **Discussion and Analysis**

Under the ALRA, in contrast to the National Labor Relations Act (NLRA), under no circumstances may an employer file for an election, nor, again in contrast to the NLRA, may it withdraw recognition from a certified union based on a good faith belief that the union has lost majority support. (*F & P Growers Association v. ALRB* (1983) 168 Cal.App.3d 667.) Rather, except in very limited circumstances where a union disclaims interest in representing employees or becomes defunct, a union can be decertified only through an election initiated by employees. (*Dole Fresh Fruit Company* (1996) 22 ALRB No. 4; *Pictsweet Mushroom Farms* (2003) 29 ALRB No. 3.)

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<sup>3</sup> A number of the exceptions to the ALJ's decision urge the Board to overturn the ALJ's credibility determinations. We have carefully examined the record, and find no basis for disturbing the ALJ's credibility determinations. The Board will not disturb credibility resolutions based on demeanor unless the clear preponderance of all the relevant evidence demonstrates that they are in error. (*United Farm Workers of America (Ocegueda)* (2011) 37 ALRB No. 3; *P.H. Ranch* (1996) 22 ALRB No. 1; *Standard Drywall Products* (1950) 91 NLRB 544.) In instances where credibility determinations are based on factors other than demeanor, such as reasonable inferences, consistency of witness testimony, or the presence or absence of corroboration, the Board will not overrule the ALJ's credibility determinations unless they conflict with well-supported inferences from the record considered as a whole. (*S & S Ranch, Inc.* (1996) 22 ALRB No. 7.) In addition, it is both permissible and not unusual to credit some but not all of a witness's testimony. (*Suma Fruit International (USA), Inc.* (1993) 19 ALRB No. 14, citing 3 Witkin, Cal. Evidence (3d ed. 1986) §1770, pp. 1723-1724.) In the instant case, the ALJ made numerous, and even-handed credibility determinations based on demeanor of the witnesses, the weight of the evidence, established or admitted facts, inherent probabilities, and reasonable inferences drawn from the record as a whole. He generally explained his credibility resolutions in detail in making his factual findings.

The court in *F & P Growers Association* approved the Board's rejection under the ALRA of an employer's ability to withdraw recognition of a certified union based on an alleged good faith doubt of majority support, relying largely on the statutory prohibition on voluntary recognition of unions and the lack of any provision for employer-initiated election petitions. In that context, the court concluded that those differences from the NLRA reflect a policy against employers being active participants in determining with which union it shall bargain. (*F & P Growers Association, supra*, 168 Cal.App.3d at pp. 676-677.) In contrast to the NLRA, the Legislature and the Governor were particularly concerned when drafting the ALRA with keeping the employer out of the electoral process, and drafted the provisions of the Act relating to certification and decertification of unions in a manner fundamentally inconsistent with the procedures established in the NLRA. Thus, under the ALRA only employees may initiate the process to select or remove a union, without exception.

Notwithstanding the above-described differences between the ALRA and the NLRA, under both Acts the law is clear that an employer may not solicit its employees to circulate or sign decertification petitions, and it may not threaten or otherwise coerce employees in order to secure their support for such petitions. The decision regarding decertification and the responsibility to prepare and file a decertification petition belongs solely to the employees. "Other than to provide general information about the process on the employees' unsolicited inquiry, an employer has no legitimate role in that activity, either to instigate or to facilitate it." (*Armored Transport,*

*Inc.* (2003) 339 NLRB 374, 377, citing *Harding Glass Co.* (1995) 316 NLRB 985, 991.)

In *Process Supply, Inc.* (1990) 300 NLRB 756, 758, the NLRB stated that:

The law is clear that an employer must stay out of any effort to decertify an incumbent union. After all, the employer is duty bound to bargain in good faith with that union. Although an employer may answer specific inquiries regarding decertification, the Board has found unlawful an employer's assistance in the circulation of such a petition where the employees would reasonably believe that it is sponsoring or instigating the petition. Such unlawful assistance includes planting the seed for the circulation and filing of a petition, providing assistance in its wording, typing, or filing with the Board, and knowingly permitting its circulation on worktime. (See *Marriott In Flite Services* (1981) 258 NLRB 744, 768-769; *Silver Spur Casino* (1984) 270 NLRB 1067, 1071; *Weiser Optical Co.* (1984) 274 NLRB 961; *Central Washington Hospital* (1986) 279 NLRB 60, 64.)

It is therefore unlawful for an employer to initiate a decertification petition, solicit signatures for the petition, or lend more than minimal support and approval to the securing of signatures and the filing of the petition. While an employer does not violate the Act by rendering what has been termed "ministerial aid," its actions must occur in a "situational context free of coercive conduct." In short, the essential inquiry is whether "the preparation, circulation, and signing of the petition constituted the free and uncoerced acts of the employees concerned." (*Eastern States Optical Co.* (1985) 275 NLRB 371, 372.)

The National Labor Relations Board (NLRB) has held that an employer cannot rely on a decertification petition tainted by managers' widespread and conspicuous solicitation of employee signatures as the basis for withdrawing recognition

of a certified union. (See, e.g., *Caterair International* (1992) 309 NLRB. 869, enfd. in relevant part and remanded in part *Caterair International v. NLRB* (D.C. Cir. 1994) 22 F.3d 1114; *Shen Lincoln Mercury Mitsubishi, Inc.* (1996) 321 NLRB 586, 595.)

After a petition is filed, the employer has the right to campaign but must refrain from making threats of force or promises of benefits. (*S & J Ranch* (1992) 18 ALRB No. 2.) In *Auciello Iron Works v. NLRB* (1996) 517 U.S. 781, the United States Supreme Court cautioned that, where an employer champions its employees' right to choose against their certified bargaining representative, the Board is entitled to view the employer's actions with suspicion. (*Id.* at p. 790.) Those words now resonate emphatically, given the facts of the instant case and the extensive findings of illegal conduct by the ALJ.

Turning back to the facts of the instant case, while we affirm a number of key findings and conclusions by the ALJ rejecting the contentions of the General Counsel and UFW (1) that evidence establishes that the employer *instigated* the decertification effort; (2) that Lopez was hired by Gerawan to lead the decertification effort; and (3) that Lopez acted as the employer's agent to instigate decertification, we nonetheless conclude that the ALJ correctly held that Gerawan committed numerous unfair labor practices.

Although we find that Petitioner Lopez began the decertification campaign on her own initiative, we also find that, over time and in a variety of ways, Gerawan unlawfully inserted itself into the campaign. Gerawan discriminatorily permitted anti-Union signature gathering during worktime while prohibiting pro-Union activity of the same kind, and granted Lopez and other signature gatherers what the ALJ colorfully and



properly characterized as a “virtual sabbatical” wholly out of keeping with Gerawan’s policy on leaves of absence. Gerawan extended the same immunity from discipline for missing work to other signature gatherers while continuing to enforce such policies among the rest of the crew. It tacitly approved an unlawful work blockage, which, although instigated by the decertification supporters, directly facilitated the gathering of the signatures required for the showing of interest. It colluded with the CFFA to make arrangements for the decertification petition supporters to travel by bus to Sacramento in order to protest the dismissal of the first decertification petition, and thus condoned employees taking time off from work to join the protest. It granted a wage increase during the decertification campaign and unlawfully solicited grievances. In all these ways, Gerawan sent clear signals that it supported the decertification efforts, and in so doing, unlawfully undermined the very principle of free choice it so earnestly argues that the decertification effort represented.

**1. There is Insufficient Evidence of Employer Instigation of the Decertification Effort.**

The ALJ found that the record did not support a finding that Gerawan instigated the decertification effort. The General Counsel and the UFW urge the Board to reverse the ALJ on this issue. For the reasons discussed below, we decline to overturn the ALJ, and uphold his finding that there is not sufficient evidence to support a finding of employer instigation.

The UFW argues that the evidence supports the finding that Lopez was hired for the purpose of being the lead decertification proponent. Primarily, the UFW

argues that Lopez's version of the events regarding the start of the decertification campaign was implausible, and they point out that Lopez did not become an employee until at least June 25, 2013. (TR: 46:66.)<sup>4</sup>

The General Counsel argues that the ALJ failed to consider whether Lopez acted as Gerawan's agent when she started the decertification effort. The General Counsel reasons that because Lopez acted as Gerawan's agent, Gerawan is liable for unlawful instigation of decertification effort by virtue of her actions under the Supreme Court of California's pronouncements in *Vista Verde Farms v. ALRB* (1981) 29 Cal.3d 307.

The UFW also argues that the record as a whole serves as sufficient evidence to support the finding that Gerawan planted the idea of decertification in the workers' minds. The UFW points to the flyers and mailers that Gerawan began sending its workers in the fall of 2012 as evidence of instigation. The UFW argues that Gerawan's conduct in sending the flyers/mailers is similar to that in *Armored Transport, Inc., supra*, 339 NLRB 374, where the NLRB held that a series of letters distributed by the employer to employees unlawfully undermined the union and influenced employees to file a decertification petition.

Where it is found that an employer has instigated or initiated a decertification effort, the petition itself is tainted and the election must be set aside. (*D'Arrigo Bros., Inc.* (2013) 39 ALRB No. 4, citing *Peter D. Solomon and Joseph R.*

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<sup>4</sup> Citations to the hearing transcript are abbreviated as "TR" followed by the volume number, followed by the page number.

*Solomon dba Cattle Valley Farms/Transco Land and Cattle Co. (Cattle Valley Farms)* (1983) 9 ALRB No. 65.) However, in order to find instigation or initiation of decertification, the evidence must show that the employer implanted the idea of decertification in the minds of employees who later pursued decertification. (*Abatti Farms, Inc. and Abatti Produce, Inc.* (1981) 7 ALRB No. 36; *Sperry Gyroscope Co., a Division of Sperry Rand Corp.* (1962) 136 NLRB 294.) Where the evidence falls short of establishing that the employer initiated or implanted the idea of decertification, there is no violation. (*Abatti Farms, Inc. and Abatti Produce, Inc., supra*, 7 ALRB No. 36; *Southeast Ohio Egg Producers* (1956) 116 NLRB 1076.)

**a. The Record Does Not Support a Finding that Lopez was Hired for the Purpose of Leading the Decertification Effort.**

The ALJ stated that there were four factors suggesting the need to evaluate whether Lopez's decision to become the decertification petitioner was her independent decision. (ALJ Dec. at p. 15.) First, Lopez's boyfriend, Mario Montez, was a supervisor at Gerawan during all of 2013, and from 2009 to 2013 Lopez and Montez lived in the same house. Second, while Lopez did not work for Gerawan in 2010, 2011, 2012 or the first half of 2013, she decided to become the decertification petitioner prior to her beginning work date. Third, when Lopez did begin working at Gerawan, she actually worked very few hours between July 2013 and November 2013. Finally, two of Lopez's daughters were hired by Gerawan shortly after the decertification effort began.

The structure of the ALJ's decision makes it somewhat difficult to tell what ultimate conclusions the ALJ drew from his discussion of these four factors. However,

toward the end of his decision the ALJ states his reasons for his conclusion that the company did not instigate the decertification petition, and in so doing states that Lopez decided to become the decertification petitioner before she was hired by Gerawan in 2013. (ALJ Dec. at p. 176.) The ALJ accepted that, in the absence of any evidence to the contrary, it was Lopez's own idea to become the decertification petitioner.

The ALJ found most of Lopez's testimony to be unreliable. (ALJ Dec. at p. 16, fn 15.) Specifically, the ALJ discredited Lopez's claim that she and Montez never discussed the UFW, as well as her denial that she told Montez she was going to seek work at Gerawan in 2013. On the other hand, the ALJ found no evidence establishing that Montez encouraged Lopez to become the decertification petitioner.

Lopez testified that she attempted to attend a mediation session in Modesto between Gerawan and the UFW on June 11, 2013, with her son-in-law, Angel Lopez, who spoke disparagingly of the UFW. (TR: 46:65-67.) There were other Gerawan workers present in Modesto. Lopez testified that she decided on this date to take the lead role of opposing the UFW. (TR: 46:135-136.)<sup>5</sup> Several weeks later she began working at Gerawan.

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<sup>5</sup> Lopez specifically testified as follows: "At the moment we really didn't know who we were going to fight against. But yes, on that day I made the decision to do things, well, to take on the legal actions. I made that decision." In response to a follow up question by the ALJ, she confirmed that she did not know what decertification meant at the time, but she knew she was going to take the lead role in getting rid of the union. Then, in response to the ALJ's question about why she, as someone who did not work at the company, wanted to become the leader, Lopez said: "Because all of the persons there [at the location of the MMC hearing] said 'let it be Donna [sic] Silvia be the one to help  
(Footnote continued)

We find that the record does not contain direct evidence that Lopez was hired specifically to lead the decertification effort. Lopez's own testimony about how she came to be employed at Gerawan is not particularly helpful, and Lopez's direct crew boss, Reynaldo Villavicencio, did not testify. Jose Erevia, whose job duties included many human resources functions, testified that he first met Silvia Lopez out in the field after he was called out by her foreman to speak with her, which was after Lopez already had been hired. (TR: 76:108.)

Ultimately, the evidence in the record falls short of supporting a finding that Gerawan hired Lopez specifically to lead the decertification effort.

**b. The Record Does Not Support the Conclusion that Gerawan Instigated the Decertification Campaign Through Lopez as its Agent.**

As summarized above, the General Counsel argues that the ALJ failed to consider whether Lopez acted as Gerawan's agent when she initiated and conducted the decertification effort. The General Counsel argues that if Lopez acted as Gerawan's agent, then Gerawan is liable for the unlawful instigation of the decertification effort by virtue of Lopez's actions.

In *Vista Verde Farms, supra*, 39 Cal.3d 307, the California Supreme Court discussed the circumstances under which employers may be held responsible for acts carried out by non-supervisors under the ALRA. Citing NLRA precedent, the court

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(Footnote continued)

us.” (TR: 46:135-136.) Later on in the hearing she testified that she came to work at Gerawan specifically to help Angel Lopez get rid of the union. (TR: 47: 121.)

stated that such liability “does not depend on rigid application of principles of *respondeat superior*” and, rather, that “in determining [an employer’s] responsibility for the acts of others, the rules of agency shall be given a liberal construction.” (*Id.* at p. 320.)

Employers are liable not only for actions that they expressly authorize, but also for actions that are impliedly authorized and for “actions which are within the ‘apparent authority’ of the actor.” (*Ibid.*) As discussed above, the evidence does not support a finding that Gerawan hired Lopez for the purpose of leading a decertification effort among its employees. Nor do we find sufficient evidence in the record to conclude that, in leading the decertification effort, Lopez was acting pursuant to Gerawan’s specific direction or authorization. The issue, therefore, becomes whether Lopez’s actions may be imputed to Gerawan on a theory of apparent authority, as discussed in *Vista Verde Farms*.

Under the ALRA, an employer may be held responsible for the actions of non-supervisors, even where the employer has not directed, authorized, or ratified such actions if: (1) The workers reasonably could believe that the coercing individual was acting on behalf of the employer; or (2) the employer has gained an illicit benefit from the misconduct and realistically has the ability either to prevent the repetition of such misconduct in the future or to alleviate the deleterious effect of such misconduct on the employees’ statutory rights. (*Vista Verde Farms, supra*, 29 Cal.3d at p. 322.) The NLRB has stated that if an employee with apparent authority circulates a decertification petition, the employer is accountable under settled principles of agency. (*Technodent Corporation* (1989) 294 NLRB No. 83.)

In *Vista Verde Farms*, the California Supreme Court noted the parallels between the ALRA and the NLRA, summarized a long line of consistent federal authority adopting a liberal approach to employer responsibility for acts of agents or quasi-agents, and arrived at the above standard under which the question of employer responsibility is viewed from the standpoint of the affected employees and is not governed by common law agency principles. Relying on *I. A. of M. v. Labor Board* (1940) 311 U.S. 72 and *H. J. Heinz Co. v. Labor Board* (1941) 311 U.S. 514, the court in *Vista Verde Farms* stated: “[Whether] or not the drafters of the ALRA intended to go beyond the liberal principles articulated in the federal cases, we think that it is clear that in general an employer’s responsibility for coercive acts of others under the ALRA, as under the NLRA, is not limited by technical agency doctrines or strict principles of *respondeat superior*, but rather must be determined, as *I. A. of M.* and *Heinz* suggest, with reference to the broad purposes of the underlying statutory scheme.” (*Vista Verde Farms*, 29 Cal.3d at p. 322.)

In *Superior Farming Co. v. ALRB* (1984) 151 Cal.App.3d 100, 122-123, the Fifth District Court of Appeal stated that “[t]he facts of each case must be closely scrutinized to determine the apparent authority of the alleged agent from the standpoint of the individuals affected by the improper conduct. No rule, including that enunciated in *Vista Verde Farms*, should be applied mechanically without regard to circumstances, reasonableness, and fairness.”

In *S & J Ranch, supra*, 18 ALRB No. 2, the Board applied *Vista Verde Farms*, in analyzing the status of a crew leader who circulated a decertification petition as an agent for the employer. The Board found that the employee in question had at least

apparent authority to act on behalf of management, and cited Labor Code section 1165.4

which states:

For the purpose of this part, in determining whether any person is acting as an agent of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

The Board affirmed the ALJ's conclusion that the employer unlawfully instigated and supported a decertification effort through two employees and two labor consultants. The Board in that case deemed persuasive general testimony by other employees that they considered one of the employees in question to have authority to direct and correct work. Moreover, the employee circulated the decertification petition openly in the fields during work hours, making it appear that his efforts had the employer's "blessing." (*S & J Ranch, supra*, 18 ALRB No. 2 at p. 7.)

The General Counsel argues that, as in *S & J Ranch*, Lopez openly circulated the petition during work time. When she was gathering signatures, Lopez wore street clothes rather than work clothes, and wore her hair loose. The ALJ acknowledged that other employees would have recognized that Lopez was not dressed to do field work. (ALJ Dec. at p. 59.) The General Counsel also points to the facts that Lopez and other signature gatherers wore laminated name badges with the words "Gerawan Farming" when they gathered signatures. (ALJ Dec. at p. 154.)

The General Counsel points to other evidence that it contends reasonably would leave employees with the impression that Lopez was acting on behalf of the



company. During the campaign, Jose Erevia came to Lopez's crew several times to speak privately with Lopez in view of other workers. (TR: 14:73-75; TR: 76:22-23.) The ALJ credited the testimony of Norma Yolanda Macias Lopez in Raquel Villavicencio's crew, who recalled a meeting during work hours with Oscar Garcia and the Labor Relations Institute's Evelyn Fragoso where the disadvantages of the union were discussed. During the meeting Lopez handed out anti-union T-shirts.

The General Counsel also points out that Lopez's message clearly aligned with Gerawan's. For example, Adela Castillo testified that Lopez addressed her crew and told the workers that they should support the company by signing the decertification petition (TR: 10:132.) However, in *Nish Noroian Farms* (1982) 8 ALRB No. 25 at p. 10, the Board held that mere anti-union animus was not sufficient to identify a decertification petitioner as an agent of an employer.

The General Counsel reasons that under all of the circumstances, Lopez reasonably would have been perceived by other workers as acting on behalf of management, and thus urges the Board to find that Lopez acted as Gerawan's agent under the first prong of *Vista Verde Farms*.

Gerawan argues that there is not enough evidence to support the General Counsel's agency theory, and that it is not sufficient that "employees believed that the alleged agents were authorized by the alleged principle, to engage in the acts and conduct attributed to them." (Citing *Arakelian Enterprises, Inc.* (1994) 315 NLRB 47, 61 [ALJ's decision].) Rather, apparent authority exists only where there has been "some manifestation by the principal to the third parties that supplies a reasonable basis for

believing that the principal authorized the agent to do the acts in question.” (*Alliance Rubber Co.* (1987) 286 NLRB 645, 648, fn. 4; *Service Employees Local 87* (1988) 291 NLRB 82, 83.)

In this case, Gerawan argues there was no evidence that the employees reasonably believed Lopez was Gerawan’s agent based on her work-time signature gathering. Gerawan points to the testimony of Javier Blanco who stated that he understood that his right to choose in the election was protected, and that he told Lopez twice that he did not wish to sign the decertification petition. (TR: 35:18, 21, 98.) Also, in contrast to *Technodent Corp.*, *supra*, 294 NLRB 924, relied on by the General Counsel, where an employee gave others the impression that he spoke for the employer, Gerawan points out that none of the witnesses in the instant case stated that they felt that Lopez had the power to discipline them, that they had to obey her orders, or that she would report them to the company if they did not comply with her requests.

The question of whether Lopez was Gerawan’s agent presents a close question. On the one hand, as discussed further below, Lopez clearly was given preferential treatment, including being given a “virtual sabbatical” of almost two and a half months by the employer to circulate the decertification petition. She began missing work without consequence in August 2013, despite having been hired in late June 2013, and despite the company employment handbook’s provisions for discipline for excessive absences. The NLRB has held that an employer’s failure to disavow and/or discipline an employee for conduct engaged in with company knowledge may warrant an inference of apparent authority. (*Technodent Corp.*, *supra*, 294 NLRB 924, 926, citing *Haynes*

*Industries* (1977) 232 NLRB 1092, 1099-1100.) Similarly, an employer's permitting an employee to use company time for the employee's election-related activities is an indication that the employee acts for the employer. (*MGR Equipment Corp.* (1984) 272 NLRB 353, 358-359; *F.W.I.L. Lundy Bros. Restaurant* (1980) 248 NLRB 415, 431.)

On the other hand, there is no direct testimony from workers who said that they believed that Lopez's actions were authorized by Gerawan. In *S & J Ranch*, while the alleged agent circulated the decertification petition openly in the fields during work hours as Lopez did, there was also general testimony by other employees that they considered the alleged agent to have authority to direct and correct work. Similarly, in *V.B. Zaninovich* (1983) 9 ALRB No. 54, the Board found agency not only based upon the worker in question openly circulating a decertification petition during work time in front of supervisors, but also upon other circumstances such as the facts that other workers knew the employee in question as a "second foreman," the employee in question regularly communicated work orders to the crew, and on one occasion he disciplined the whole crew.

On this record, when considered from the standpoint of Gerawan's field workers, the evidence falls short of supporting a finding that under all the circumstances the other workers reasonably would have believed Lopez to be Gerawan's agent.

**c. The Record Does Not Support a Finding that Gerawan Instigated the Decertification Effort Through the Flyers and Mailers that Began in October 2012.**

The UFW also argues that the company pushed workers to start a decertification campaign through the mailer and flyer campaign that it began after the

Union requested negotiations in October 2012. The UFW points to a mailer sent by the company to workers on November 30, 2012, and argues that this flyer clearly was directed at prompting a decertification campaign. (GC Exhibit 4.) This mailer began with the question “When do we vote?” and gives the ALRB’s number so workers can contact the agency for an explanation of why there is no vote planned. Other mailers and flyers followed with similar messages.<sup>6</sup> The UFW argues that Gerawan’s conduct in sending the flyers/mailers is similar to that in *Armored Transport, Inc.*, *supra*, 339 NLRB 374. In that case, the employer sent employees four letters which instructed workers to go to the NLRB and request an election. The NLRB found that the employer did much more than merely provide information or ministerial assistance to its employees, and that the letters unlawfully undermined the union and influenced employees to reject the union as their bargaining representative. The NLRB held that “although the letters did not expressly advise the employees to get rid of the union, such express appeals are not necessary to establish that an employer effectively solicited decertification and thereby violated Section 8(a)(1) of the Act.” (*Armored Transport, Inc.*, *supra*, 339 NLRB 374, 378, citing *Wire Products Mfg. Corp.* (1998) 326 NLRB 625, 626.)

In *Wire Products Mfg. Corp.*, the employer sent out a letter that informed employees that “a decertification petition is being circulated and that employees may sign the petition in nonproduction areas, during breaks and before and after work.” The letter

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<sup>6</sup> The ALJ did not find that the mailers and flyers implanted the idea of decertification in employees’ minds; however, he did find that the mailers and flyers amounted to an enhanced effort to directly solicit grievances, a finding which we uphold.

concluded by wishing employees “Good Luck.” Accompanying the letter was an attachment titled: “FED UP? If you are dissatisfied with union representation the attached list of questions and answers will help you understand your legal opportunities to do something about it!” In addition to providing accurate information about how to decertify the union, the attachment set forth the purported disadvantages of union representation and the relative advantages of decertification over merely quitting or deauthorizing the union. It also contained a sample petition with suggested language for decertifying the union. The NLRB found that the letter and attachment, when considered in the context of the employer's other unfair labor practices, unlawfully undermined the union and influenced employees to reject the union as their bargaining representative. (*Wire Products Mfg. Corp.*, *supra*, 326 NLRB 625, 626.)

Gerawan argues that, in contrast to the flyers distributed in *Armored Transport*, its flyers only gave background information about how the UFW came to be involved and information about the local ALRB office. A review of Gerawan’s flyers makes it clear that they contain more than just background information.<sup>7</sup> Nevertheless, they do not contain the type of overt messages found in *Armored Transport, Inc.* and *Wire Products Mfg. Corp.* We find that the record before us does not support the UFW’s contention that Gerawan instigated the decertification effort through the flyers.

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<sup>7</sup> For example, several flyers contain the statement “The UFW says that they already represent you because of a vote that happened 22 years ago even though you didn’t even work here (and some of you were not even born yet).” (GC Exhibits 2, 3, 4, and 6). GC Exhibit 7 is a flyer with a statement in red print that says “[the UFW] did not care for 19 years, now suddenly they do not want us to communicate with you like we could before.”

In sum, on this record, the evidence falls short of establishing that the employer initiated or implanted the idea of decertification in the decertification Petitioner's mind and we uphold the ALJ's conclusion with respect to this issue.

**2. Unlawful Assistance With and Support of the Decertification Campaign**

**a. Allowing the Decertification Proponents to Gather Signatures in the Crews During Work Time Constituted Unlawful Assistance.**

The ALJ found that Farm Labor Contractor (FLC) crew boss Jose Evangelista signed the decertification petition on behalf of 18-20 crew members in mid-September 2013, and told them what he did. The ALJ also found there was work time signature gathering in six direct hire crews. He stated that "in the absence of other violations, [he] would have found that the work-time signature gathering was an unfair labor practice, but that, by itself, it fell slightly short of the standard to set aside an election as discussed in the *D'Arrigo* and *Gallo* cases." (ALJ Dec. at p. 179; *D'Arrigo Bros. of California*, (2013) 39 ALRB No. 4, pp. 28-29; *Gallo Vineyards, Inc.* (2004) 30 ALRB No. 2.)

In *Gallo Vineyards, Inc.*, *supra*, 30 ALRB No. 2, the Board concluded that there was unlawful assistance with a decertification petition where the petition was circulated during work time with the obvious approbation of the two foremen, thus giving employees the impression of open support by Gallo for the decertification effort.

In *D'Arrigo Bros. of California*, *supra*, 39 ALRB No. 4, the Board found that unlawful assistance in circulating a decertification petition in four crews was

sufficient to warrant dismissing the decertification petition and setting aside the election.

In the *D'Arrigo* matter, the Board also found that union supporters were denied the opportunity to circulate a pro-union petition during work time, although the employer permitted decertification signature solicitation. The evidence also showed that D'Arrigo had a well-known company policy against solicitation of any kind during work time that otherwise was strictly enforced. The fact that the company allowed only the decertification proponents to violate that policy reasonably created the impression of company sponsorship or support.

In *Process Supply, Inc.*, *supra*, 300 NLRB 756, 759, the NLRB found an employer had violated the NLRA where a decertification petition was circulated on work time with the knowledge and acquiescence of management officials and the employee solicitor was not warned or disciplined for his work time solicitation.

As discussed above, the ALJ in this case found work time signature gathering by decertification supporters in seven crews, and found that in at least five crews pro-union workers were denied permission by crew bosses to circulate pro-UFW petitions during work time. As in the *D'Arrigo* matter, Gerawan crew bosses allowed only the decertification supporters to violate the no work time solicitation policy in Gerawan's company handbook. (GC Exhibit 47, Bates number 8551.)

The evidence supports the conclusion that Gerawan discriminated in favor of decertification activity. This disparate treatment of pro-decertification workers reasonably could create the impression that the company was sponsoring, or at least supporting, the solicitation of signatures in favor of decertification. Therefore, we find

that Gerawan was responsible for assisting the circulation of the decertification petition in those instances where supervisors allowed the circulation on work time.

Gerawan argues that the allegations of work time signature gathering were “trumped up” and involved only *de minimis* assistance. In support of its argument, Gerawan cites *Be-Lo Stores v. NLRB* (4th Cir. 1997) 126 F.3d 268, 284, which held that isolated, sporadic examples of solicitation are not enough to establish disparate treatment. In that case, the alleged violations stemmed from unlawful conduct by a single supervisor toward a single employee, and as a consequence less than 6% of the workforce was affected.

Here, the ALJ found, consistent with *Be-Lo Stores*, that the work time signature gathering by itself fell short of the standard to set aside an election as discussed in *D’Arrigo, supra*, 39 ALRB No. 4 and *Gallo Vineyards, Inc., supra*, 30 ALRB No. 2. However, what occurred in this case certainly was more extensive than the single isolated unlawful act in *Be-Lo Stores*. Moreover, when viewed along with the entire record, the work time signature gathering is strong evidence supporting a pattern of pervasive disparate treatment and assistance by the employer.

Finally, Gerawan argues that the allegations of discrimination against UFW supporters were based almost entirely on failed attempts to entrap supervisors to permit work time signature gathering. However, the ALJ correctly found that even if the requests to circulate the pro-union petitions were motivated by a desire to prove that the company would treat union supporters differently than those who supported the decertification effort, it does not change the fact of disparate treatment of decertification



and pro-UFW activity that actually occurred in the application of company policy.

*(D'Arrigo Bros. of California, supra, 39 ALRB No. 4, p.14.)*

The UFW and the General Counsel argue that work time signature gathering in the crews was more extensive than the ALJ found. The General Counsel argues that the ALJ should have found that there was work time signature gathering in five crews where he made no findings at all with respect to signature gathering. These were the crews of Rafael Rodriguez, Rigoberto Hernandez, Alejandro Vasquez (a FLC crew boss), Reynaldo Villavicencio, and Ramiro Cruz.<sup>8</sup>

With respect to Reynaldo Villavicencio's crew, Francisco Severiano (whom the ALJ found to be credible when he testified about Lopez's absences, tardiness, and phone calls from the field) testified that he saw Lopez collect signatures in Villavicencio's crew at least twice during work time. (TR: 14:52-55.) His testimony was contradicted only by Lopez's testimony. It is not clear why the ALJ did not mention this particular testimony of Severiano's, but the ALJ found his testimony generally credible, and found Lopez generally not credible. We find merit in the General Counsel's exception with respect to work time signature gathering in Villavicencio's crew.

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<sup>8</sup> We decline to find that there was work-time signature gathering in the crews of Rigoberto Hernandez, Rafael Rodriguez and Ramiro Cruz. With respect to the crew of Rigoberto Hernandez, the testimony was that signature gathering went five minutes past the lunch break, which is not significant. With respect to Rafael Rodriguez's and Ramiro Cruz's crew, the testimony cited by the General Counsel was about break time rather than work-time signature gathering.

The ALJ did not make any findings regarding the crew of FLC crew boss Alejandro Vasquez. The General Counsel points to the testimony of worker Javier Blanco. Blanco testified that Lopez came to this crew during work time, that crew boss Vasquez asked workers to gather where Lopez was, and that Lopez walked around to each crew member and asked him or her to sign the petition. (TR: 35:14-19.) Crew boss Vasquez did not testify, and no other witness contradicted this testimony. Gerawan does not deny that Blanco testified as described, instead arguing that this incident did not have any effect on the election because FLC crews were no longer working when the election took place.<sup>9</sup> We find merit in the General Counsel's exception with respect to work time signature gathering in the FLC crew of Alejandro Vasquez.<sup>10</sup>

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<sup>9</sup> Gerawan mistakenly argues that the ALJ made a general finding that all actions in the FLC crews had little impact on the electorate because they were not working at the time of the election. The ALJ found only that with respect to a unilateral wage increase proposed for FLC crews, that increase was unlikely to have a coercive effect on workers' choice in the election. Unlawful assistance with signature gathering, on the other hand, did have an impact on whether the signatures on the decertification petition represented workers' true sentiments.

<sup>10</sup> The General Counsel argues that the ALJ should have found work time signature gathering in the crews of Sonia Martinez, Israel Lopez, Jorge Rueda, Jose Cabello, Jose Carrillo, Antonio Sanchez, Raquel Villavicencio and Alfredo Zarate. (The UFW also argues that there was work-time signature gathering in the Lopez, Rueda and Cabello crews.) The General Counsel points out that in Raquel Villavicencio's crew, Victoria Abonza (whose name is not mentioned in the ALJ decision) testified that her crew boss allowed crew members to collect signatures during work time, and also that two other members of the crew asked Abonza for her signature after the lunch break. (TR: 16:182-195) However, a review of Abonza's testimony indicates that the other workers asked for her signatures just as the lunch break was ending which is not significant, and is likely why the ALJ did not mention Abonza's testimony in his decision. With the exception of Raquel Villavicencio's crew, reversing the ALJ's conclusions would mean overturning the ALJ's credibility determinations. We have  
(Footnote continued)

**b. The ALJ Properly Found that the “Grape Checkers”  
Were not Supervisors or Agents of Gerawan.**

The General Counsel excepts to the ALJ’s “complete omission of any analysis or conclusion regarding grape checkers’ apparent supervisory authority.” Later in the General Counsel’s brief in support of its exceptions, the General Counsel argues that the ALJ’s decision does not analyze the “abundant testimony supporting a finding that the checkers acted as Gerawan’s agents in 2013.” The ALJ found that the checkers were not supervisors under the standards set forth in *Oakwood Healthcare, Inc.* (2006) 348 NLRB 686. However, the General Counsel argues that this conclusion did not prevent the ALJ from analyzing whether Gerawan could be held liable for the checkers’ actions as non-supervisory agents under *Vista Verde Farms, supra*, 29 Cal. 3d 307 and *Omnix International Corporation* (1987) 286 NLRB 425, 427. The General Counsel argues that the ALJ should have found that Gerawan unlawfully assisted with signature gathering through the grape checkers who collected signatures during lunch time.

The ALJ specifically found that although there was some credible testimony that the grape checkers had the authority unilaterally to suspend an employee for small, dirty or poorly colored grapes, the more credible testimony was that in 2012 and 2013 the checkers merely reported any issue with the grapes to a supervisor who then decided what remedy, if any, was needed. (ALJ Dec. at pp. 39-40.)

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(Footnote continued)

carefully examined the record, and find no basis for disturbing the ALJ’s credibility determinations with respect to these crews.

Gerawan argues that the General Counsel did not point to any testimony where a worker stated that he or she believed the checkers had the authority to speak on Gerawan's behalf when they gathered signatures. Gerawan points to testimony about the checkers' role as messengers. For example, Supervisor Lucio Torres testified that the checkers convey messages to the workers and it is important that a checker "can speak clearly and that they--- they have a sense or knack for talking to the people." (TR: 101:113.) Dan Gerawan testified that the checkers "carry out instructions given to them. Sometimes that may include somewhat of a messenger role. To the extent that even it's not uncommon for the person receiving that discipline to blame an inspector or checker, but in fact all they're doing is messaging and carrying out their role as inspecting and applying standards." (TR: 67:61-62.)

Gerawan argues that the General Counsel did not meet its burden of establishing an agency relationship with regard to the specific conduct that is alleged to be unlawful, and cites to *Suburban Elec. Engineers/contractors, Inc.* (2007) 351 NLRB 1. In that case, the NLRB found that the General Counsel "provided no basis for a reasonable employee belief that [the employee in question] -- in soliciting employee views about the Union or in promulgating an overly broad no-solicitation rule -- was reflecting company policy." (*Suburban Elec. Engineers/contractors, Inc., supra*, 351 NLRB 1, 2, citing *Pan Oston Co.* (2001) 336 NLRB 305.)

We agree with Gerawan that there is not sufficient evidence in the record that workers reasonably believed the checkers spoke on Gerawan's behalf when they collected signatures on the decertification petition.

**c. Gerawan Unlawfully Assisted and Supported the Decertification Campaign Through Favorable Treatment of Lopez and Other Decertification Signature Gatherers.**

In *Abatti Farms, supra*, 7 ALRB No. 36, relied on by the ALJ, the Board found that the decertification petition was tainted because there was ample evidence in the record of the employer's pervasive assistance with the decertification effort where: 1) proponents of the petition were granted leaves of absence and other benefits (such as large bonuses) to facilitate circulation of the petition; 2) the employer sponsored a holiday party where the petition was circulated in the presence of supervisors; and 3) the employer brought the decertification petitioner together with legal counsel chosen by the employer so the petitioner could consult with him.

The Board found that the evidence in *Abatti Farms* fell short of supporting a finding of employer instigation. However, the Board found there was ample evidence in the record of the employer's pervasive assistance with the decertification effort. The Board concluded that the petitioner received special favorable treatment because of his involvement in the decertification campaign.

The evidence in *Abatti Farms* that supported the Board's conclusion that the entire decertification effort was tainted is strikingly similar to that in the instant case. For example, the employer in *Abatti Farms* not only gave the decertification petitioner an extended leave of absence to campaign, but also "abetted him in his decertification efforts by ensuring that he lost nothing because of the time he spent campaigning." The Board was not persuaded by the employer's attempts to dispel the inference of unlawful interference by pointing to evidence of its liberal leave policy because, in stark contrast to

this claim, another worker received harsh treatment for her one-day leave of absence for union business.

In the instant case, we agree with the ALJ's finding that Lopez was granted a "virtual sabbatical" of almost two and a half months by the employer to circulate the decertification petition. She began missing work without consequence in August 2013, despite having been hired in late June 2013, and despite the company employment handbook's provisions for discipline for excessive absences.<sup>11</sup>

There is no evidence that Lopez and the other signature gatherers were paid by Gerawan for the time they did not work in the fields. However, they remained employed despite their extended absences (thereby effectively preserving their ability to access employees in the fields), and there is ample evidence of Gerawan's disparate treatment of the Petitioner and her supporters.

For example, the ALJ credited the testimony of Lopez's fellow crew member, Francisco Serviano, who testified about Lopez's frequent absences, his observations of Lopez arriving late and leaving early, and her frequent cell phone conversations occurring during work hours. Serviano also testified that on two occasions

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<sup>11</sup> Lopez admitted that she did not work very much in the fields from June 25, 2013 to November 5, 2013. (TR: 53:29.) The ALJ concluded that between August 12, 2013 and October 20, 2013, Lopez worked only a total of 83 hours or 8.3 hours per week. In contrast, during the same time period other workers were working as much as 55 hours in a week. (GC Exhibit 67.) Shortly after the decertification effort began, two of Lopez's daughters, Lucretia and Belen were hired by Gerawan. Lucretia and Belen Lopez also helped gather signatures for the decertification petition, and the record shows that both worked significantly fewer hours than other employees. Also, Alecia Diaz Reyes testified that she took more than fifteen days off to gather signatures in the Reedly crews, and another four or five days off to gather signatures in the Kerman crews.

he mentioned Lopez's absences to Villavicencio, who told Serviano to do his work and that he (Villavicencio) couldn't do anything about Lopez. In contrast, Villavicencio refused to rehire crew member Innocensio Bernal because he took off two days in a row. Bernal credibly testified that Villavicencio told him that the company did not want people missing that much work.<sup>12</sup>

The ALJ also noted that the company employment manual (GC Exhibit 47) provides for discipline in instances of excessive absences, tardiness or long lunch breaks. The manual states that employees may not take a leave of absence without advance written approval by the company.

Gerawan's argument that Lopez's extended absences did not demonstrate unlawful assistance and support because the company took a very flexible approach in enforcing its attendance policy is not persuasive in light of the credited evidence in the record. Crew boss Villavicencio's treatment of Innocensio Bernal is inconsistent with the relaxed approach Gerawan argues existed. In addition, the ALJ specifically did not credit the testimony of Villavicencio's sister Raquel, stating, "as for Raquel Villavicencio, I certainly did not believe her utopia scenario, where workers are never warned or disciplined, and may leave work early or miss work in great abundance with neither scrutiny nor consequences." (ALJ Dec. at p.133.)<sup>13</sup>

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<sup>12</sup> The ALJ properly drew an adverse inference from Gerawan's failure to call Villavicencio as a witness to explain why Lopez was treated differently from other crew members.

<sup>13</sup> GC Exhibit 48, Bates numbers 834 and 837, are records of disciplinary action taken against field workers that also undercut Gerawan's argument that its attendance  
(Footnote continued)

In sum, there is ample evidence of favorable treatment given to Lopez and other workers as they gathered signatures on the decertification petition, and this readily supports an inference of discrimination in favor of decertification when viewed in context of the record as a whole.

**d. The Employer's Tacit Approval of the September 30, 2013 Work Blockage Supports a Finding of Unlawful Assistance and Disparate Treatment. In Addition, There is Authority for Imputing Liability for the Petitioner's Group's Violation of the Act to Gerawan.**

Gerawan and Petitioner argue that the company's hands were essentially tied and that intervention to stop the September 30, 2013, blockage of work entrances was not a viable option because Gerawan's supervisors had been told by the company and by the ALRB not to interfere with petitioning efforts or any protected concerted activity. Gerawan argues that it was erroneous for the ALJ to insinuate that the supervisors' failure to cut the tape and move the ladders blocking company entrances showed that they supported signature gathering, and both Gerawan and the Petitioner emphasize how chaotic the situation was. These arguments ring hollow. The record supports the ALJ's conclusion that the employer acquiesced to the unlawful work blockage by Petitioner's group. As a result, the Petitioner's group gathered 800-1,000

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(Footnote continued)

policy was loosely enforced. The first record is of an action taken against a worker in Francisco Maldonado's crew on July 26, 2013, in which a worker left work early without telling his crew boss. The second was issued on August 8, 2013, against a worker in Emma Cortez's crew who failed to notify the crew boss of absences.



signatures for the decertification petition in time to file it with the ALRB Regional Office before the harvest season came to an end.

The ALJ concluded that the decertification proponents blocked the ranch entrances because they were convinced that it was their only hope to gather the signatures they needed after the Regional Director dismissed the first petition. The ALJ found that it was readily apparent to the foremen and supervisors that it was solely the decertification proponents who blocked the entrances, and the ALJ properly attributed this knowledge to the company. While the ALJ found that there was no credible evidence that the company actually helped the Petitioner's group organize the blockage, the company foremen and supervisors did nothing to stop it, instead behaving in a way that the ALJ observed to be "surreal," and idly sitting by until called in for a meeting at the office.

Jose Erevia testified that he received a phone call at about 6:00 a.m. from Gerawan security officer Tony Martinez informing him that a worker protest was underway and that it was not the union. (TR: 76:37-38.) Erevia then sent a text or an email to the Gerawans and to company counsel, Mike Mallery. (TR: 76:38.) Erevia recalled speaking to Mike Gerawan on the phone and Mike expressing anger and asking Erevia "what the hell [or heck] was going on?" (TR: 76:96.) Yet, substantial evidence relied upon by the ALJ established that Gerawan's management did nothing to stop the protest, did nothing to resume harvest operations, never investigated who was responsible for blocking the entrances, and never disciplined any workers involved in instigating the blockage despite the fact that company property (such as ladders) was used to block entrances. (TR: 63:161-162; TR: 92:250.) Substantial evidence establishes that instead of

communicating with his field supervisors about how to manage the situation (other than a quick initial call to supervisor Nick Boos to find out what was happening), Mike Gerawan took an oddly hands-off approach, even leaving the ranch for 45 minutes to go to lunch, and communicating throughout the day only with company counsel Mike Mallery. (TR: 92:82-86.)

It is undisputed that the work blockage on September 30, 2013, caused a huge disruption in Gerawan's operations during the busiest time of the year. Dan Gerawan estimated that the financial loss due to the work stoppage was between \$100,000 and \$200,000. (TR: 92:243.) Not only was fruit not harvested on this day, Gerawan paid workers reporting pay. (TR: 62:259.)

Gerawan argues that it did not give permission to workers to walk off the job on September 30, and did not "allow" the collection of signatures by the Petitioner's group. However, the fact that the company acquiesced to the blockage orchestrated by the decertification proponents reasonably created the impression of company sponsorship or support.

While Dan Gerawan's statement in a press release (GC Exhibit 34, Bates number 7226) issued later in the day on September 30, 2013, may have fallen short of outright praise for the decertification effort, implicit in his message is that the workers were forced to take such a "drastic action to have their voices heard" because the ALRB's Regional Director dismissed the first decertification petition five days previously. The press release also communicated that the company approved of the Petitioner's efforts to stand up for the workers' fundamental right to choose. Of course,

these statements benevolently championing workers' rights failed to acknowledge the fact that the rights of other workers not to participate in the work blockage, and to work for a full day's pay were not respected. Thus, it is reasonable to view Gerawan's supposedly neutral support for workers' "right to choose" as disingenuous. (*Auciello Iron Works, supra*, 517 U.S. at p. 790 ["The Board is accordingly entitled to suspicion when faced with an employer's benevolence as its workers' champion against their certified union"].) Indeed, Dan Gerawan gave an interview following the September 30, 2013 blockage with local radio host Ray Appleton, in which he agreed with Appleton that Gerawan was lucky to have an employee like Lopez. (TR: 62:170-171.)

The ALJ found that the decertification Petitioner's group, Gerawan Employees for a Free Election (GEFE), met the definition of a labor organization found within ALRA section 1140.4(f),<sup>14</sup> and that the Petitioner's organization violated ALRA sections 1152 and 1154 when it restrained or coerced other employees who did not want to participate in the protest by blocking the work entrances.<sup>15</sup> Ultimately, we need not address this issue and the ALJ's interpretation of a "labor organization." The fact is that

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<sup>14</sup> Cal. Lab. Code section 1140.4(f) defines a labor organization as any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists, in whole or in part, for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work for agricultural employees.

<sup>15</sup> The ALJ cited *North American Meat Packers Union* (1987) 287 NLRB 720 and *International Association of Machinists and Aerospace Workers* (1970) 183 NLRB 1225. These cases address union responsibility for strike misconduct, and state that blocking of access by placing physical barriers to the workplace constitutes restraint and coercion of employees in violation of Section 8(b)(1)(A) of the Act.

the conduct was itself unlawful and contrary to Gerawan's rules. Thus, Gerawan's proffered justification for not intervening—that its supervisors and crew bosses were trained not to interfere with worker protests—is without merit.

Although the ALJ did not impute liability for the violations committed by the Petitioner's group to Gerawan, we find there is authority for doing so. The NLRB has held that an employer violates Section 8(a)(1) if it condones threats of physical violence or assaults by employees on other employees because of their union or antiunion sympathies. (*Newton Brothers Lumber Co.*, (1953) 103 NLRB 564, 569; *Fred P. Weissman Co.* (1946) 69 NLRB 1002, enf'd. (6th Cir. 1948) 170 F.2d 952, cert. denied (1949) 336 U.S. 972.) "The Act imposes an affirmative duty upon an employer to insure that its obligation to maintain discipline in the [work place] and to provide its employees with the opportunity to work without interference from their coworkers is not delegated or surrendered to any union or antiunion group, and an employer who acquiesces in the exclusion of employees from [the work place] by such a group will be regarded as having discriminated against the excluded employees in violation of Section 8(a)(3)." (*Newport News Shipbuilding* (1978) 236 NLRB 1499, 1506-1507.)

Even where conduct by the interfering group is not violent or cannot be characterized as an assault, it can still be coercive. The NLRB has held that it is not required that the action meet the legal definition of assault. It is sufficient that the action restrains or coerces employees in the exercise of their rights under Section 7 of the Act. (*Multi Color Industries* (1995) 317 NLRB 890, 897; *Refuse Compactor Service* (1993)

311 NLRB 12, 19; *City Market, Inc.*, (2003) 340 NLRB No. 151; *Newton Bros. Lumber Co., supra*, 103 NLRB 564, 567.)

Based on these authorities, we find that Gerawan's tacit approval of the blockage supports a finding of unlawful assistance and disparate treatment.

**3. Gerawan Was Complicit in the California Fresh Fruit Association's Financial Support of the Decertification Effort.**

The first decertification petition was filed on September 18, 2013. On September 25, 2013, that petition was dismissed. Shortly thereafter, CFFA President Barry Bedwell made the CFFA credit card available to Petitioner's counsel Joanna MacMillan so workers could go to Sacramento on chartered buses on October 2, 2013, to attend a protest spearheaded by the decertification petitioner's group. The ALJ discusses testimony regarding how this came to pass in great detail in pages 27-35 of his decision. It is undisputed that on October 1, 2013, the CFFA executive committee authorized up to \$20,000.00 to assist the decertification effort.<sup>16</sup>

The ALJ cited *United Farm Workers of America v. Dutra Farms* (2000) 83 Cal.App.4th 1146, in support of his finding that the CFFA's monetary support was unlawful under section 1155.4 of the ALRA.<sup>17</sup>

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<sup>16</sup> Gerawan is a dues paying member of the CFFA, and Dan Gerawan testified that in 2013 Gerawan paid \$15,000 in membership fees and between \$5,000 and \$15,000 in fees for CFFA's Export Program. (TR: 62:52.) Gerawan's Vice President, George Nickolich, serves on the CFFA's Board of Directors, but there is no allegation that Nickolich took part in approving CFFA's financial support of the trip. (TR: 62:51)

<sup>17</sup> The ALJ found that the CFFA's monetary support was unlawful under section 1155.4 of the ALRA. To the extent that the ALJ found that the CFFA violated section 1155.4 of the ALRA, this finding was beyond the scope of his authority as the CFFA is  
(Footnote continued)

In that case, the court pointed out that the definition of “agricultural employer” in section 1140, subdivision (c), should be liberally construed, and the ALJ reasoned that as the CFFA is an association of agricultural employers, section 1155.4 was applicable.<sup>18</sup>

Although the ALJ concluded that Dan Gerawan knew about CFFA’s donation before the trip to Sacramento based upon “powerful” circumstantial evidence in the record, the ALJ did not make a finding that CFFA’s actions in providing material assistance to the decertification effort should be imputed to Gerawan. Therefore, there was no finding that Gerawan itself unlawfully provided financial assistance to the Petitioner via the CFFA. Based on the record before us, including the ALJ’s factual findings, we find that Gerawan, through its complicity with the CFFA, provided unlawful support for the decertification effort.

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(Footnote continued)

not a party to the instant case. As CFFA was not named in the charge or complaint, there can be no finding that the association committed a ULP. However, while we reverse the ALJ’s finding that the CFFA, a nonparty, violated the Act, we by no means condone its actions and interference in the decertification efforts of Gerawan’s employees. In the context of election objections, the Board is obligated to consider “all factors which would make and impartial election impossible... regardless of their source.” (*Automotive Controls Corp.* (1967) 165 NLRB 450, 462.)

<sup>18</sup> Section 1155.4 provides, in relevant part, “It shall be unlawful for any agricultural employer or association of agricultural employers, or any person who acts as a labor relations expert, adviser, or consultant to an agricultural employer, or who acts in the interest of an agricultural employer, to pay, lend, or deliver, any money or other thing of value to any of the following: ... (c) Any employee or group or committee of employees of such employer in excess of their normal compensation for the purpose of causing such employee or group or committee directly or indirectly to influence any other employees in the exercise of the right to organize and bargain collectively through representatives of their own choosing.”

While there is no direct evidence that the CFFA made the donation at Gerawan's request, there is ample circumstantial evidence supporting the inference that Dan Gerawan and Bedwell communicated about the trip, and that Dan Gerawan knew about the CFFA's payment for the trip ahead of time.

Bedwell admitted that he knew Lopez was a leader of the decertification effort and that she had filed a decertification petition on September 18, 2013. (TR: 33:291; TR: 33:79.) He first met Lopez when she traveled to Sacramento with Dan Gerawan, at Dan Gerawan's invitation, in August 2013. The ALJ found that the record supported the conclusion that Dan Gerawan regularly emailed Bedwell updates during the first (September 18, 2013) decertification petition process. The ALJ did not credit Bedwell's testimony that he and Dan Gerawan never talked directly about the CFFA paying for Gerawan workers to go to Sacramento. In fact, the ALJ found that starting in 2012, Dan Gerawan began talking to Bedwell almost daily. (TR: 62:55.) Indeed, the ALJ found that the record was "replete with constant communication between Gerawan and Bedwell during the days leading up to October 1, 2013." The General Counsel submitted exhibits which show email communications between Bedwell, Gerawan, and CFFA lobbyist Louie Brown. (GC Exhibits 32, 33, 34, and 37.)

The ALJ stated that there were three factors taken together that led him to reach the "inescapable conclusion that Bedwell surely communicated with Gerawan about its expenditures for the chartered buses on October 2, 2013." First, the ALJ found it significant that Bedwell took three to four hundred workers away from work on one of the busiest days of the year, and just two days after the September 30, 2013 workplace

blockage that prevented a day's work. Second, Gerawan's own staff made inquiries about charter buses just a day or two before the October 2, 2013 trip (it was staff from the law firm representing Petitioner that ultimately made the bus reservation). Third, and most telling, Gerawan did not email or otherwise communicate to Bedwell about the workers leaving work and traveling to Sacramento. The ALJ reasoned that had Dan Gerawan not known about the bus trip ahead of time, and had not known Bedwell and the CFFA were paying for the trip, he would have emailed Bedwell to tell him what was happening. Indeed, upon learning that the CFFA was behind the bus trip, Dan Gerawan never contacted Bedwell to complain about the CFFA removing Gerawan's employees from the worksite, without prior notice or authorization, during such a busy season. Gerawan admitted it would be a violation of company policy for someone to arrange for buses on Gerawan's property to pick up his employees and take them away from work without prior authorization. Yet, Gerawan did nothing about the bus trip after learning about it, and no employees were disciplined for their (purportedly) unexcused absences from work. (See TR: 62:252-263.)

The CFFA's support of the decertification effort was done in plain sight of Gerawan, yet Gerawan sat idly by and did nothing to prevent or distance itself from it. In these circumstances, an employer can be held liable for the actions of a third party. Just as the California Supreme Court found in *Vista Verde Farms*, an employer may be held liable for actions directed towards its employees, even if not directed, authorized, or ratified by the employer, where (1) the workers reasonably could believe the offending party acted on behalf of the employer or reflects the employer's policy, or (2) where the



employer gains an illicit benefit from the wrongful conduct and realistically could prevent the conduct or alleviate its harmful effects on the employees' rights. (*Vista Verde Farms, supra*, 29 Cal.3d at pp. 312, 322.)

Gerawan's employees reasonably could believe Gerawan was responsible for arranging the October 2, 2013 bus trip, or at least authorized and supported it. Many workers boarded the buses to Sacramento on Gerawan property near the office. Office manager Projkovsha, who testified that she had called about bus reservations just a day or two before the October 2, 2013 trip, testified that she was awakened by a phone call at 5:15 or 5:30 a.m. on the morning of October 2, 2013, and was told that there were buses parked in front of the Ranch 22 office on the street. She learned later in the day that these buses had gone to Sacramento. (TR: 100:32-33.) Worker Alecia Diaz Reyes testified that she saw the buses to Sacramento parked outside of the Gerawan office. (TR: 56:93) Carlos Uribe and Casmiro Gomez also testified that the buses were on Gerawan property by the Gerawan office. (TR: 51:70; TR: 67:147.)

Several workers testified that they learned about the trip from other co-workers. (TR: 40:87; TR: 43:44; TR: 45:160; TR: 54:39.) Word of mouth and text messaging between workers appears to be the primary way workers learned about the Sacramento trip, but there was also testimony that workers learned about the bus trip through their crew bosses. Crew boss Gabriel Suarez testified that he received a call on October 1, 2013, from Gloria Mendez who told him to tell his crew that there was no work the next day because they had to go to Sacramento. Suarez testified that he communicated this to his crew of 25. (TR: 102:97.)

Armando Elenes of the UFW testified that he was told by workers that the company was organizing a protest in Sacramento, and that he watched from the road as workers boarded buses near the Gerawan office. (TR: 30:101.) While it appears that Silvia Lopez told Angel Lopez that Bedwell had paid for the Sacramento trip (TR: 73:56), it does not appear that this was common knowledge. Worker Areli Sanchez testified that it did not occur to her to ask who paid for the buses. (TR: 43:74.) Regardless of who paid for the buses, employees reasonably could believe that Gerawan authorized and supported the trip, including the financial arrangements to make it possible even if not directly responsible for them.

Moreover, Gerawan stood to benefit from the decertification efforts to oust the UFW – a goal Gerawan shared, which we can infer from the abundant evidence of its unlawful assistance and support for the decertification efforts – and Gerawan certainly could have prevented the bus trip from occurring or could have repudiated it. Instead it did nothing. The record contains no evidence that Gerawan terminated, disciplined, reprimanded, or punished in any way any of the approximately 400 employees who attended the trip and failed to report to work that day. According to Dan Gerawan's testimony, this mass exodus from work was a complete surprise to him, and he claimed to have found out about it later that morning. The trip, according to Dan Gerawan's testimony, was unauthorized, and in violation of company rules. Yet Gerawan took no action whatsoever to communicate to its employees (or anyone else, for that matter) its disapproval of the trip, that the trip was not authorized by Gerawan, or that Gerawan did not support or condone the protest or mass absences from work.

From the point of view of the average employee, we find it reasonable that one would believe that Gerawan paid for the trip and arranged for the charter buses to pick up workers next to the company office, or at least authorized and condoned such actions, and gave employees who went to Sacramento permission to leave work on a busy harvest day without consequence. In these circumstances, Gerawan can be held liable for the unlawful support provided to the decertification proponents.

In a similar vein, the NLRB has found that an employer can be found liable for unlawful assistance when it enlists a third party to do what it cannot do itself. In *The Kobacker Company d/b/a Pic Way Shoe Mart* (1992) 300 NLRB 84, an employer was found to have unlawfully sponsored, supported and encouraged the decertification petition by acting through a labor consultant. An employee expressed to the employer her interest in getting rid of the union. The employer told the employee that it could not be involved as a company, but contacted a labor consultant directly and requested that the consultant call the employee. According to the holding of the Board, by contacting the consultant to request aid for the employees' decertification efforts, and by accepting the employees' petitions and forwarding them to the consultant, the employer did more than merely provide ministerial aid to its employees.

In *Vic Koenig Chevrolet* (1996) 321 NLRB 1255, the Board, following *Pic Way Shoe Mart*, 300 NLRB 84, found that an employer provided unlawful assistance to its employees in their efforts to remove a union as their bargaining representative not only when the employer provided the employees with concrete aid in their decertification effort, but also where the employer acted as a go-between in the furtherance of that effort.

As discussed above, while there is no direct evidence that Gerawan affirmatively enlisted the CFFA to provide monetary support to the decertification effort, the record amply supports the drawing of an inference that Gerawan was aware in advance of CFFA's plans to fund the October 2, 2013 bus trip, and, at the very least, tacitly approved CFFA's activities. In fact, given the evidence discussed above, including in particular the evidence that Gerawan undertook its own efforts and inquiries to procure transportation arrangements for the CFFA-funded Sacramento trip, the record further supports a finding that Gerawan did not merely tacitly approve CFFA's support for the decertification effort, but rather actively worked in concert with CFFA's efforts.

Moreover, even to the extent that Gerawan's role in CFFA's support of the decertification effort could be described as merely passive, there is precedent for imputing to an employer actions taken by third parties even where there is no evidence that the employer affirmatively sought the input of the third party. (See, e.g., *Vista Verde Farms, supra*, 29 Cal.3d at pp. 312, 322.) In *Richlands Textile, Inc.* (1975) 220 NLRB 615, a representative from the North Carolina Assembly sent a letter to workers at a plant with the message that the plant could close if the union won. There was no evidence that the employer asked the assemblyman to write the letter or that there was any communication at all between the assemblyman and employer before the assemblyman wrote the letter. The employer only learned of the letter after the fact from one of its employees. Despite all this, the NLRB imputed liability to the employer:

As a general proposition a respondent cannot be held responsible for statements by third parties who are not its agents. Nor ordinarily, would a respondent be

under an obligation to take any action regarding utterances by third parties. However ... the instant Respondent, when [the] letter came to its attention ... did have an obligation to repudiate effectively what the letter stated the Company would do if the employees voted for the Union. By not fulfilling this obligation the Company acquiesced in and ratified by its silence the policy attributed to the Company by [the assemblyman]. (*Id.* at p. 618.)

In support of this finding, the Board in *Richlands Textile* concluded an average employee reasonably would believe the message conveyed by the assemblyman's letter to be true. (*Richlands Textile, supra*, 220 NLRB 615 at p. 618.) Thus, the Board found the employer had an affirmative obligation to repudiate the letter, and by not doing so the employer "in effect acquiesced in and ratified by its silence and inaction" the message conveyed by the letter. (*Ibid.*) The NLRB in *Colonial Corporation of America* (1968) 171 NLRB 1553, 1553-1554, similarly found an employer liable under a "failure to repudiate" theory based on a locally publicized news article regarding the impact of an organizing drive on the employer's operations. In fact, the employer in that case, much like Dan Gerawan here, responded to the news publication only by purporting to support the rights of citizens to express themselves freely. (*Id.* at p. 1560.)

Likewise, the Court of Appeals for the Eighth Circuit in *Colson Corp. v. National Labor Relations Board* (8th Cir. 1965) 347 F.2d 128, 137-138, found an employer liable for the actions of certain local businessmen during an organizing drive at the employer's business. There, a group of local businessmen were contacting the employer's employees to persuade them to vote against the union. The employer was

aware of the conduct and stood idly by for several weeks until it finally posted a notice purporting to distance itself from the conduct of the local group. That notice stated that the actions of the local group were “done on the businessmen’s own initiative and that they were not authorized by the Company to speak on behalf of The Colson Corporation.” (*Id.* at p. 137, fn. 1.) The NLRB rejected the employer’s contention that the notice sufficiently repudiated the local group’s actions, and the Eighth Circuit agreed, finding that the local group acted in the employer’s interest and that “[t]he notice did not repudiate the previous unlawful conduct nor did it state that such conduct was against company policy.” (*Ibid.*; see *Vista Verde Farms, supra*, 29 Cal.3d at p. 328 [citing *Colson Corp.*, and noting that an employer risks unfair practice liability when it does not “publicly repudiate improper conduct and take action to reprimand” the wrongdoer].)

We find the foregoing principles applicable here when reviewing the actions of the CFFA and Gerawan with respect to the October 2, 2013 bus trip. Even though evidence of ratification is not necessary to hold an employer liable for unfair practices in these circumstances (see *Vista Verde Farms, supra*, 29 Cal.3d at p. 312), we conclude that Gerawan additionally can be held liable under apparent authority and ratification theories for the CFFA-funded bus trip. Gerawan ratified the CFFA’s actions by standing by and doing nothing to repudiate or disassociate itself from such actions.

An agency relationship may be created under the doctrine of apparent authority in circumstances where the principal, by affirmative conduct or “by want of ordinary care, causes a third person to believe another is his agent who is not really employed by him.” (Civ. Code, §§ 2298, 2300; see *Service Employees Local 87 (West*

*Bay Maintenance*) (1988) 291 NLRB 82, 83 [apparent authority created where principal through its action or inaction causes a third party to believe the alleged agent acted on its behalf].) Moreover, a party's failure to repudiate or disassociate itself from the conduct of a third party can be deemed as affirming, and thereby ratifying, such prior conduct even if not originally authorized by the party. (*West Bay Maintenance, supra*, 291 NLRB 82, 83.) The NLRB in *West Bay Maintenance* held a union liable for unlawful secondary picketing under both apparent authority and ratification theories. In that case, the picketers carried signs bearing the union's local number and the union was aware of it. Yet, the union "took no steps effectively to disassociate itself from the picketing" in circumstances where it should have known that the conduct of the picketers gave the impression the union authorized the picket. (*Ibid.*) The NLRB further found the union's inaction and failure to repudiate the unlawful picketing constituted ratification of the unlawful acts. (*Ibid.*; see also *Teamsters Local 85 (San Francisco Newspaper)* (1971) 191 NLRB 107, 110 [union liable where it took no action "reasonably calculated to disavow the picketing," and by its inaction effectively gave the impression it "adopted, supported and ratified" the pickets].)

As discussed above, Gerawan's conduct, or lack thereof, gave employees the impression that it authorized or supported the October 2, 2013 bus trip and protest, and employees reasonably could have understood that. Indeed, Gerawan took no action at all following the bus trip to repudiate or disavow it or to discipline any of the employees for their supposedly unexcused absence from work.

Accordingly, we find Gerawan unlawfully supported Lopez and the decertification effort by its affirmance and ratification of the CFFA's financial contributions. Gerawan's conduct, or lack thereof, further contributed to an atmosphere that made it impossible for an impartial election to be held.

Gerawan argues that the CFFA's "partial financing" of the October 2, 2013 bus trip was not a violation. In this respect, Gerawan contends that the CFFA's financing was protected activity because it was in furtherance of the employees' efforts to express their grievances to the Board (citing *NAACP v. Button* (1963) 371 U.S. 415, 434-437). Gerawan also cites to "*Novotel*" (*52nd Street Hotel Assocs.*) (1996) 321 NLRB 624 [modified on other grounds by *In re Stericycle, Inc.* (2011) 357 NLRB No. 61]), in which the NLRB held that a union's support and funding of an employment suit by non-union member employees was protected activity under the First Amendment, and was not an unlawful conferral of a benefit.

Gerawan argues that this same principle applies to financial contributions to facilitate access to the electoral process. (Citing to *Lawrence Security, Inc.* (1974) 210 NLRB 1048, [union's offer to reimburse employees for parking at election was in furtherance of the electoral process]; *Federal Silk Mills* (1954) 107 NLRB 876, 877 [union's \$3.00 payment to employee carpool drivers was not objectionable].)

Gerawan further argues that the ALJ's reading of section 1155.4 was implausible. Gerawan contends that a violation of section 1155.4, subdivision (c) requires a showing that the employer paid an employee for the purpose of influencing their fellow employees in the exercise of the right to organize and bargain collectively



through representatives of their own choosing. Gerawan argues that merely giving something of value is not sufficient by itself to be a violation, rather, there must be the intent to influence choice.

Finally, Gerawan argues that the approximately \$6,000 from CFFA to pay for “no union” t-shirts did not violate section 1155.4, subdivision (c) of the Act. Gerawan cites *Mann Packing* (1990) 16 ALRB No. 15, at page 8, for its statement that the mere distribution of campaign propaganda, unaccompanied by any pressure on employees to express a choice in wearing them, is not a ULP, nor is it grounds to set aside an election. Gerawan also argues that the T-shirts did not constitute an unlawful benefit designed to influence employees’ choice, and were merely inexpensive campaign propaganda.

(Citing *NLRB v. Dickenson Press, Inc.* (6th Cir. 1998) 153 F.3d 282, 286; *NLRB v. Coca-Cola Bottling Co. Consol.* (4th Cir. 1997) 132 F.3d 1001, 1005.)<sup>19</sup>

The Petitioner similarly argues that the assistance provided by the CFFA did not interfere with free choice. Petitioner contends that the CFFA’s assistance constituted mere ministerial aid, was simply assistance of workers in the expression of their predetermined objective, and as such, was not a violation. (Citing *Consolidated Rebuilders, Inc.* (1968) 171 NLRB 1415, 1417; *Washington Street Foundry* (1983) 268 NLRB 338, 339; *WTVC* (1960) 126 NLRB 1054, 1057; *Hazen & Jaeger Funeral Home* (1953) 95 NLRB 1034; *Poly Ultra Plastics* (1977) 231 NLRB 787, 790.) Petitioner

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<sup>19</sup> We agree that under the authority cited by Gerawan, the CFFA’s purchase of T-shirts alone was permissible because there is no evidence that there was pressure on employees to express a choice by wearing them.

argues that employees involved in the decertification effort were resolved in their objection to the union long before the CFFA got involved.

In *Dutra Farms, supra*, 83 Cal.App.4th 1146, the court acknowledged that section 1155.4 does not violate the First Amendment. By prohibiting employers from giving “things of value,” the statute imposes only an incidental restriction on speech, which is no greater than necessary to preserve the important interest of preventing corruption and coercion in the collective bargaining process. Employers and employees are otherwise free to express their views about unionization.

The employers in *Dutra Farms* also argued that there was no evidence that their donations were made for the purpose of influencing any employees. The court found those arguments to be without merit. The undisputed facts revealed that the UFW was the exclusive bargaining agent for thousands of employees employed by agricultural employers in California. The rival union that received the donations engaged in various activities to oppose the UFW. These activities included public marches and demonstrations. The employers were aware that the rival union opposed the UFW. The court found that such facts satisfied the statutory “for the purpose of” requirement and further held that section 1155.4(c) does not require evidence that the donations caused the recipient to engage in any particular conduct, or require evidence that the thing of value was used in a particular setting. (*Dutra Farms, supra*, 83 Cal.App.4th at pp. 1159-1150.)

The cases cited by Gerawan in support of its argument that the CFFA’s subsidizing of the Sacramento bus trip was permissible assistance intended to facilitate

access to the electoral process are inapposite. In *Lawrence Security, Inc., supra*, 210 NLRB 1048, the union's offer to reimburse voters for parking fees so they could park near the polling site on the day of the election was not objectionable because it was open to all voters, and the union did not know the identities of those who took advantage of this offer until after the election. Similarly, a \$3.00 payment to carpool drivers to help employees get to the polling place was permissible in *Federal Silk Mills, supra*, 107 NLRB 876 because the payment reimbursed drivers for their travel costs and helped all workers participate in the election. In contrast, payments offered to employees as a reward for coming to vote in the election and that exceed reimbursement for travel expenses constitute objectionable conduct. (*NLRB v. Good Shepard Home* (1998) 145 F.3d 814.)

In the instant case, the more than \$13,000 in expenditures for the bus trip to Sacramento (which included over \$4,000 in expenditures for snacks and lunch for the employees, in addition to the transportation expenses) did not neutrally facilitate workers' access to polling places. The money subsidized a large pro-decertification protest. The identities of workers who went on the trip would have been known not only by others in the workplace, but also by Gerawan. The decertification petition was not filed until twenty-three days after the trip, so it is reasonable to infer that signatures were still being gathered during and after the trip.<sup>20</sup> In contrast to the minimal amounts that reimbursed

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<sup>20</sup> Worker Marissa Chavez testified that she signed a sheet when she got off the bus in Sacramento that "was kind of like the signatures one," referring to other sheets used to obtain employee signatures for the decertification petition. (TR: 57: 86.)

voters for their travel expenses in the above cited cases, the CFFA's financial donation to the decertification was significant.<sup>21</sup>

The cases cited by Petitioner in support of her argument that the CFFA's donation was simply assisting workers in the expression of their predetermined objective are also inapposite. In *Washington Street Foundry, supra*, 268 NLRB 338, the Board found that it was not objectionable that the employer gave a petitioner the day off and a ride to the NLRB regional office to file the petition where the employer's agent was traveling to the regional office anyway, and there was no impact on employees' willingness to sign the petition because they had already signed it. Similarly, in *Poly Ultra Plastics* (1977) 231 NLRB 787, the employer, upon request of a petitioning employee, helped with the wording on the decertification petition. This was not objectionable conduct because it was limited to aiding employees with their predetermined objective, and this limited assistance was not witnessed by any other employees. In contrast, in *Dayton Blue Print Co., Inc.* (1971) 193 NLRB 1100, the Board found that where an employer assisted in drafting a petition, granted time off with pay and provided transportation so the petitioner could file the petition at the regional office, the employer substantially contributed to the filing of the petition to such an extent that the petition was invalid. (*Id.* at 1108.)

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<sup>21</sup> See, for instance, *Harris v. Quinn* (2014) 134 S.Ct. 2618, in which the United States Supreme Court has placed significance on the amount of monies at issue in its discussion of sovereignty.

The magnitude of the CFFA's donation stands in stark contrast to the minimal assistance provided in the cases cited by Petitioner. Bedwell, on behalf of the CFFA, had publically expressed opposition to the dismissal of the first decertification petition and support for the decertification effort. (TR: 33:114, 291.) As the ALJ concluded, the news of multiple charter buses carrying hundreds of workers to Sacramento and the approximately \$3,500 in meals provided on the trip would no doubt have been widely disseminated among the work force. This powerful message, just two days after the work blockage caused by the protests Gerawan did nothing to stop, would have spread among the workforce in the three weeks leading up to the filing of the second decertification petition on October 25, 2013,<sup>22</sup> and the ALJ so found. As stated above, petition signatures were presumably being gathered during and after the bus trip. It simply cannot be said that CFFA's donation did not directly or indirectly influence other workers in the exercise of their rights to sign or not sign the decertification petition.

Moreover, an unlawful purpose behind the donation given to the decertification proponents so they could hold a rally at Board headquarters can be presumed under *NLRB v. Exchange Parts Company* (1964) 375 U.S. 405, and cases that follow. For example, the Ninth Circuit has held that there is a presumption of illegal motive adhering to wage increases granted prior to an election. (*NLRB v. Anchorage Times Publ'g Co.* (9th Cir. 1981) 637 F.2d 1359, 1366-68.) In this case, the funds provided by the CFFA ran in one direction in favor of the decertification proponents.

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<sup>22</sup> Even Dan Gerawan admitted that "word spread like wildfire throughout the company" when discussing the October 2, 2013 bus trip. (TR: 62: 254.)

Accordingly, we find Gerawan liable for the financial support and assistance provided by the CFFA to the decertification proponents for the October 2, 2013 bus trip in violation of Labor Code section 1155.4.

**4. Neither the ALRB Nor Gerawan Training Efforts Remedied the Taint of Gerawan's Subsequent Unfair Labor Practices.**

Gerawan argues that the ALJ improperly barred evidence regarding the impact of the “remedial” noticing and training conducted by Regional Director Silas Shawver in late August 2013,<sup>23</sup> including the representations Shawver made to the Superior Court after the noticing and training had been done.<sup>24</sup> Gerawan argues that the

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<sup>23</sup> In late August 2013, ALRB agents acting under the supervision of Regional Director Shawver took access at Gerawan to advise farmworkers of their right to support or oppose the decertification of the UFW. ALRB staff spoke to over 2,000 workers on August 28 and 29, 2013, and Mr. Shawver personally conducted training for Gerawan's supervisors and crew bosses on August 24, 2013. Gerawan voluntarily allowed the access and noticing after injunctive relief (TRO) proceedings pursuant to section 1160.4 of the ALRA were initiated by the General Counsel in Fresno Superior Court.

<sup>24</sup> Gerawan attaches as an “exhibit” to its exceptions brief, transcripts from hearings on injunctive relief in front of Superior Court Judge Jeffrey Hamilton on August 21, 2013 and September 11, 2013. Gerawan has not made a formal request for the Board to take judicial notice of the transcripts, rather, Gerawan states in footnote 10 on page 21 of its brief that the Board can take judicial notice of such documents. Gerawan has attempted to introduce these transcripts as attachments previously. First, Gerawan attached the transcripts to its brief to the ALJ in support of its opposition to the General Counsel's petition to revoke Gerawan's January 16, 2015 subpoena of Regional Director Shawver. The ALJ indicated that he had looked at the attached transcripts, that the transcripts appeared to contain solely arguments made by attorneys, and that he did not consider arguments made by attorneys as evidence. The ALJ indicated he was returning the transcripts to Gerawan because he did not believe it was helpful to have them as part of the record. (TR: 86: 11-12.) When the General Counsel sought special permission for interim Board review of the ALJ's ruling on the subpoena, Gerawan again attached the transcripts as exhibits to its February 23, 2015 opposition to the General Counsel's application to the Board. We find that the ALJ made a proper evidentiary ruling when he excluded the transcripts.

training done by Shawver may be presumed to have remedied any taint. Thus, Gerawan argues, the General Counsel failed to carry its burden of showing that a free election was impossible. Moreover, Gerawan argues that Shawver's statements to the Superior Court about the efficacy of the training were judicial admissions and are binding on the Board. (Citing *Horn v. Atchison, Topeka and Santa Fe Ry. Co.* (1964) 61 Cal.2d 602, 605-606; *In re Rebekah R.* (1994) 27 Cal.App.4th 1638, 1649-1650.)

As indicated above, we find that the ALJ properly excluded transcripts containing Regional Director Silas Shawver's testimony during TRO hearings in front of Fresno Superior Court Judge Jeffrey Hamilton on August 21, 2013, and September 11, 2013. In addition, the ALJ did allow Shawver to testify at length during the hearing, but properly excluded as irrelevant Shawver's opinion about the efficacy of the training because that issue was for the ALJ to decide as the trier of fact. Gerawan's counsel agreed with the ALJ's ruling on this issue at the hearing. (See TR: 86:19-21.)

The ALJ also allowed multiple witnesses, including crew bosses to testify about the ALRB training, and Gerawan had the opportunity to examine those witnesses, so its contention that it was prejudiced by the ALJ's exclusion of evidence on this issue is without merit.

To the extent Shawver or other Board agents may have given advice during the trainings, the Board is not bound by informal or impersonal advice given to parties by Board agents. (*Ivaldi v. NLRB* (9<sup>th</sup> Cir. 1994) 48 F.3d 444, 451; *Capitol Temptrol Corp.* (1979) 243 NLRB 575, 589, fn 59; *Stokely Van Camp, Inc. and Bordo Products, Inc.* (1961) 130 NLRB 869, 871.)

Gerawan also argues that by agreeing to the ALRB training, it remediated, if not entirely disavowed any alleged misconduct. As an affirmative defense, this “*Passavant* disavowal” operates under narrow circumstances to relieve an employer of liability for unlawful conduct. (*Passavant Mem. Area Hospital* (1978) 237 NLRB 138; *J.R. Norton Co.* (1984) 162 Cal.App.3d 692.) However, for such a repudiation to be an effective defense, several requirements must be met, including that there must be no unlawful conduct by the employer after publication of the repudiation. (*Action Min., Inc./Sanner Energies, Inc.* (1995) 318 NLRB 652, 654; *Gaines Elec. Co.* (1992) 309 NLRB 1077, 1081; *J.R. Norton Co., supra*, 162 Cal.App.3d at p. 697.)

Here, even assuming that the other elements of the *Passavant* defense were satisfied, unlawful conduct continued to occur after the August 2013 noticing. For example, Lopez continued to be given a virtual sabbatical to collect signatures, Gerawan tacitly approved of the September 30, 2013 work blockage, Gerawan allowed the CFFA to remove 400 workers on October 2, 2013, and grape packers were given an unlawful unilateral wage increase.<sup>25</sup> Accordingly, we reject Gerawan’s argument that the ALRB training precludes any finding that Gerawan violated the Act.

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<sup>25</sup> In addition, an employer wishing to establish a *Passavant* defense must establish several other elements, including that its disavowal was timely, unambiguous, and specific to the coercive conduct. (*Passavant Mem. Area Hospital, supra*, 237 NLRB 138, 138-139.) The employer must also give employees assurances that the employer will not interfere with employee rights in the future. (*Ibid.*) It is questionable whether Gerawan could establish the other elements of the *Passavant* defense. However, given our conclusion that Gerawan continued to engage in unlawful conduct after August 2013, we need not reach those issues.



We therefore find that Gerawan's argument that the ALRB training precludes a finding that Gerawan violated the Act is without merit.

**5. The ALJ Properly Rejected Gerawan's Abandonment Defense.**

The ALJ properly rejected Gerawan's argument that "abandonment" by the union was a defense per se in his September 25, 2014 order. He also properly ruled that evidence would not be permitted for the purpose of trying to establish whether or not the UFW became inactive at the company. The Board has held that, under the ALRA, an employer's claim that a certified union was inactive with respect to the employer and/or bargaining unit employees, even for an extended period of time, does not establish a defense to the duty to bargain (frequently referred to as an "abandonment" defense). (See e.g. *Dole Fresh Fruit Co.* (1996) 22 ALRB No. 4; *San Joaquin Tomato Growers, Inc.* (2011) 37 ALRB No. 5; *F & P Growers Assn., supra*, 168 Cal. App. 3d 667; *Tri-Fanucchi Farms* (2014) 40 ALRB No. 4.) Under the ALRA, except in cases where the union has disclaimed interest or has become defunct, a certified union remains certified until removed or replaced through a decertification election. (*Dole Fresh Fruit Co., supra*, 22 ALRB No. 4; *Nish Nororian Farms, supra*, 9 ALRB No. 25; *Montebello Rose Co. v. ALRB* (1981) 119 Cal. App.3d 1, 23-28.) We uphold the ALJ's handling of this argument.

**6. The ALJ Properly Found that the Wage Increase for Grape Packing Workers Was a Violation of the Act and that It Would Have Had a Coercive Effect.**

On October 25, 2013, the day that the second decertification petition was filed, Mike Gerawan unilaterally increased the piece rate for field grape packers from

\$1.25 per box to \$1.50 per box. Mike Gerawan conceded that the reason for the increase was an encouragement and a reward. The ALJ reasoned that this “well-timed” increase, along with the free food given to workers would have created a celebratory atmosphere that workers would have “unmistakably attributed to company joy over the decertification petition filing.”

Gerawan argues that the one-day piece rate increase for the grape packing workers was a standard and necessary step to protect perishable crops. The General Counsel argues that Gerawan’s claim that the increased piece rate was within the “dynamic status quo” of piece rates for the grape packers was not a defense because Board precedent requires such raises to be automatic, not at the supervisor’s discretion. (*Kaplan’s Fruit and Produce Co.*(1980) 6 ALRB No. 36.) In contrast, Mike Gerawan testified that the piece rate increase was discretionary. (TR: 92: 29-30.)

The General Counsel also argues that Gerawan’s assertion that it had a past practice of changing daily packing rates within a range depending on several factors, including extended work hours, is actually not supported by Mike Gerawan’s testimony, as he testified that he changes rates based on the quality of the grapes. (TR: 92:30.) In further support of its position, General Counsel points to the testimony of worker Alma Delia Patino who testified that it was only when there was not enough fruit did the piece rate increase so employees could make enough for the day. (TR: 8:19.) There was no evidence that on October 25, 2013 the quality or quantity of grapes had changed.

We uphold the ALJ on this issue and find that the wage increase would have had a coercive effect on workers’ free choice in the election. Granting benefits to

employees in an effort to influence a representation election is clearly an unfair labor practice: “The danger inherent in well-timed increases in benefits is the suggestion of the fist in the velvet glove. Employees are not likely to miss the inference that the source of benefits now conferred is also the source from which future benefits must flow and which may dry up if it is not obliged.” (*Exchange Parts Company, supra*, 375 U.S. at p. 409; see also *NLRB v. Stephen Dunn & Assocs.* (9th Cir. 2001) 241 F.3d 652, 666 [“a wage increase (or grant of a benefit) designed to impact the outcome of a representation election is a ‘hallmark’ violation of the NLRA and is as ‘highly coercive’ in its effect as discharges or threats of business failure.”].) There is a presumption of illegal motive adhering to wage increases granted prior to an election (*Anchorage Times Publ’g Co., supra*, 637 F.2d at pp. 1366-68.)

**7. Gerawan Directly Solicited Grievances and Engaged in Direct Dealing Through Mailers, Flyers, Pay Stub Attachments and the October 2013 DVD.**

The ALJ found that after the fall of 2012, when the UFW requested bargaining, the aggressiveness and quantity of Gerawan-issued flyers, messages, mailers and pay stub information directly soliciting employee grievances increased markedly. Most of the flyers came prior to the UFW requesting Mandatory Mediation and Conciliation (MMC) on March 29, 2013. The documents give Jose Erevia’s phone number and email address and contain the message that workers could resolve any problems by calling Erevia. Each mailer is described in detail at pages 10-14 of the ALJ’s

decision.<sup>26</sup> The ALJ concluded that Gerawan significantly altered its past practices, and that Gerawan's enhanced effort to directly solicit grievances was an unfair labor practice. (Citing *Carbonneau Industries* (1977) 228 NLRB 597, 598, fn 2.)

Gerawan argues that the information that it distributed was not impermissible, and that the company informed employees of important workplace changes and advised employees to contact the ALRB with any questions about the union. Gerawan argues that the frequency of the mailers only changed because workers had "frequently asked questions" about the union after it reappeared in 2012. Gerawan cites to *Edwin Frazee, Inc.* (1974) 4 ALRB No. 94, in support of its position that where there is a change in circumstances that affects employer and workers alike, it is expected that workers will have questions and want answers from their employer. Gerawan states that the mailers were not sent during an organization campaign, but were distributed up to a year before the election and months before the decertification effort (the last mailer was sent in April 2013). Gerawan also argues that the DVD distributed to workers in October 2013 contained no unlawful content.

The General Counsel argues that Gerawan did solicit grievances during an organizing campaign, and cites authority holding that the solicitation of grievances during

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<sup>26</sup> A flyer dated March 20, 2013 (GC Exhibit 5) states that the company is giving workers a fifty cents an hour raise, effective immediately. The flyer states that Ray, Mike and Dan Gerawan made the pay raise decision and that they hope that the union will not delay the decision. On March 23, 2013, another flyer (GC Exhibit 10) was sent announcing that the hourly pay raise would be a full dollar instead of fifty cents. Implicit is the message that not only did the union not negotiate the raises on behalf of workers, but also that the union could interfere and try to stop the increases.

an organizing campaign creates a rebuttable presumption that the employer is going to remedy them. (*Aladdin Gaming, LLC* (2005) 345 NLRB 585, 607; *Torbitt & Castleman, Inc.* (1996) 320 NLRB 907; *DTR Industries* (1993) 311 NLRB 833, enf'd (6th Cir. 1994) 39 F.3d 106.)

The General Counsel argues that UFW's campaign began in October 2012, when it requested employee contact information from Gerawan. Gerawan's "multifaceted media campaign" began shortly thereafter, including mailers, creation of a new toll-free employee hotline where workers could leave anonymous comments (see GC Exhibits 6 and 12), and distribution of paystubs directing workers to contact Jose Erevia with any grievances in the summer of 2013. The distribution of the DVD (Union Exhibit 9) occurred shortly before the election, and the General Counsel argues that the DVD solicited grievances because it showed Gerawan representatives telling workers that "there are many ways for you to let us know about issues without having to wait for the union to come around and hope they will listen."

The General Counsel argues that the solicitation of grievances was not a continuation of past practice, rather, it was a significant alteration of its past manner, method, aggressiveness or frequency of solicitation. (*Lasco Industries, Inc.* (1975) 217 NLRB 527; *Reliance Electric Co., Madison Plant Mechanical Drivers Division* (1971) 191 NLRB 44, 46.)

The NLRB has ruled in the following situations that an employer cannot rely on past practice to justify solicitation of employee grievances where the employer significantly alters its past manner and methods of solicitation. This includes: soliciting

grievances more frequently than regularly done in the past (*Grede Foundries, Inc. (Milwaukee)* (1973) 205 NLRB 39); searching out grievances more carefully than before (*Rotek, Incorporated* (1971) 194 NLRB 453); initiating group discussions of employee grievances where the employer had merely discussed grievances on an individual basis previously (*Flight Safety, Inc.* (1972) 197 NLRB 223); and the installation of a suggestion box where one had not previously been located (*H. L. Meyer Company, Inc.* (1969) 177 NLRB 565).

Here, Gerawan offered no evidence that it had a past practice of directly contacting employees with such frequency. The consistent message of the flyers/mailers/DVD was that the union was not necessary and/or that the union would ignore or delay the resolution of worker's issues. The new toll-free employee hotline is a present-day equivalent to the suggestion box.

There is ample support in the record that Gerawan engaged in the direct solicitation of grievances, and we uphold the ALJ on this issue.

The UFW also argues that Gerawan's efforts to bypass the union through seeking to resolve problems directly with employees was impermissible direct dealing, citing *NLRB v. Pratt & Whitney Air Craft* (2nd Cir. 1986) 789 F.2d 121, 134, and *McFarland Rose Production* (1980) 6 ALRB No. 18 at pp.7-8.

While the ALJ did not specifically make a finding of direct dealing, there is authority for doing so. In *Allied-Signal, Inc.* the NLRB stated that "[i]t is well settled that the Act requires an employer to meet and bargain exclusively with the bargaining representative of its employees, and that an employer who deals directly with its

unionized employees or with any representative other than the designated bargaining agent regarding terms and conditions of employment violates Section 8(a)(5) and (1). Direct dealing need not take the form of actual bargaining. As the Board made clear in *Modern Merchandising* (1987) 284 NLRB 1377, 1379, the question is whether an employer's direct solicitation of employee sentiment over working conditions is likely to erode 'the Union's position as exclusive representative.'" (*Allied-Signal, Inc.* (1992) 307 NLRB 752, 753.)<sup>27</sup> As the ALJ found, the "gravamen of the message [in the flyers] was that the UFW was worthless and impotent." (ALJ Dec. at p. 182.) Thus, in addition to upholding the ALJ's finding of unlawful solicitation of grievances, we also find that Gerawan engaged in impermissible direct dealing.

#### **8. The Record Does Not Support a Finding that Gerawan Made Unlawful Threats of Closure.**

Both the General Counsel and the UFW argue that the ALJ should have found that there was sufficient evidence to support a finding that the company issued unlawful threats of closure or bankruptcy. The General Counsel excepts to the ALJ's blanket discrediting of the testimony of witnesses who testified about threats of company shutdown. (ALJ Dec. at p. 183)

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<sup>27</sup> See also *Dole Fresh Fruit, supra*, 22 ALRB No. 4 at p. 14 [employer's bargaining obligation with the union remains in effect even if the union appears "dormant"]. As the Board explained in that case: "In such circumstances, employers are not free to act as if there is no such representative, as, for example, when implementing unilateral changes in working conditions. An employer who contemplates changes in employees' wages, hours or other terms and conditions of employment, but fails to notify and offer to bargain with the certified representative before implementing such changes risks being charged with having violated the duty to bargain." (*Ibid.*)

The General Counsel and UFW point to the testimony of Roberto Zamudio, who testified that crew boss Jose Torres told a coworker that, because of the union, the company was going to tear out its trees and replace them with alfalfa. (TR: 10:192-193.) However, as Gerawan points out, Zamudio was not part of the conversation he testified about, and he was likely out of ear shot and did not hear what was said. Similarly, Juan Jiminez testified that he overheard crew boss Benigno Gonzalez say that the company would chop down its fruit trees and replace them with almond trees. Jiminez was also likely out of ear shot of the conversation as he was 35 feet away. (TR: 23: 10-11.) The testimony of Zamudio and Jiminez demonstrate why it was discredited by the ALJ.

The above determinations were based upon the ALJ's assessment of credibility, and we do not find a basis in the record for disturbing them. Therefore, we uphold the ALJ's finding that there were no unlawful threats of closure made by Gerawan.

**9. The Record Does Not Support a Finding of Unlawful Interrogation.**

The General Counsel argues that the ALJ did not provide a clear resolution to the charge that Gerawan unlawfully interrogated employees about their union support. Indeed, the heading for Section I, on page 182 of the ALJ's decision, reads: "Company Solicitation of Grievances Against the Union and Unlawful Interrogation of Workers About Union Support." However, the discussion under that heading only includes the ALJ's conclusions with respect to the solicitation issue. It is not clear why the allegations of interrogation were not discussed by the ALJ. It is possible that he inadvertently



omitted this discussion. There is also no mention of an unlawful interrogation finding among the ALJ's final conclusions on page 186 of his decision.

The General Counsel argues that the distribution of the flyers and mailers beginning in the fall of 2012 which instructed workers to call Jose Erevia about any concerns or issues also constituted interrogation because workers would have had to reveal their pro or anti-union positions to Erevia. In support of this argument, the General Counsel cites to *Laflin & Laflin, et al.* (1978) 4 ALRB No. 28 in which the Board found interrogation where an employer required its employees to fill out information cards with their personal information and to check a box as to whether the employee was willing to supply any information to the union that was not included on the card.

We find merit in Gerawan's argument that the General Counsel's comparison of the flyers and mailers to the required form in *Laflin & Laflin* is unavailing. The flyers did not require that employees convey their sentiments about the union to Gerawan, rather they provided a phone number and urged employees to call Jose Erevia with concerns. While we find that the flyers constituted direct solicitation of grievances as discussed above, they do not rise to the level of interrogation.

The General Counsel also argues that there was credited testimony regarding interrogation and threats by crew bosses of union supporters. For example, the ALJ credited the testimony of Alejandro Paniagua who was told by an assistant crew boss to remove his UFW T-shirt, and who was told by his crew boss that he was authorized to stop Paniagua from working. (ALJ Dec. at p. 60.) The ALJ also credited Gustavo Vallejo

who heard co-workers speak of wanting to have union supporters fired, and who heard one worker threaten to kill any union supporters in the crew. When Vallejo, feeling intimidated by this threat, reported it to his crew boss, Santos Rios, Rios just laughed and did nothing about it. (ALJ Dec. at pp.117-118, 120.)

With respect to Paniagua's testimony, it may support a finding of disparate treatment, but not unlawful interrogation. Vallejo's testimony involves a crew boss condoning a threat of violence, also not interrogation of workers about their union support. Therefore, we find that the record does not support a finding that Gerawan unlawfully interrogated employees about whether or not they supported the UFW.

#### **10. Petitioner's Due Process and "Lopsided" Investigation Allegations Have No Merit.**

The decertification Petitioner did not file separate exceptions to the ALJ's decision as required by Board regulation section 20282. Rather, she filed a brief describing her general and specific disagreements with the ALJ's decision.<sup>28</sup> The introductory part of the decertification Petitioner's brief argues that the General Counsel and the Regional Director engaged in unethical conduct, that there were due process

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<sup>28</sup> Board regulation 20282, subsection (a)(1), provides: "The exceptions shall state the ground for each exception, identify by page number that part of the administrative law judge's decision to which exception is taken, and cite to those portions of the record which support the exception." The Board has held that failure to comply with Regulation 20282 is grounds for dismissing exceptions. (*George Amaral Ranches, Inc.* (2014) 40 ALRB No. 10 at p. 13 citing *Lassen Dairy, Inc.* (2009) 35 ALRB No. 7, p. 2, fn. 1; see also *S & J Ranch, Inc.* (1992) 18 ALRB No. 2.) However, the Board has declined to dismiss exceptions where compliance with the regulation is sufficient to allow the Board to identify the exceptions and the grounds therefore and address them on their merits. (*George Amaral Ranches, Inc., supra*, 40 ALRB No. 10 at p. 13, citing *Lassen Dairy, supra*, 35 ALRB No. 7.)

violations, and a lopsided investigation. (Pet. Br., pp. 6-15.) This argument was not presented as a specific exception to the ALJ's decision, but was part of Petitioner's appeal to the Board to overturn the ALJ and order the ballots counted. In support of her arguments, Petitioner cites to various authorities regarding criminal prosecutions and prosecutorial misconduct in criminal proceedings which are not applicable in ALRB proceedings.

The General Counsel argues that the Petitioner's assertions are false and that this argument is an attempt to distract from the ALJ's findings of unlawful employer conduct.

This was not a topic addressed by the ALJ, except that on page 5 in footnote 4 of his decision the ALJ expressed a general concern about the length of time the General Counsel's investigation took, and he expressed the opinion that the General Counsel's amended consolidated complaint, coming less than three weeks before the hearing start date had the general feel of "trial by ambush." Also in footnote 5 on pages 5 and 6, the ALJ expressed his concern about the fact that the Regional Director gave photocopies of confidential petition signatures to a proposed expert witness (the witness did not testify as she was struck by the ALJ).

Ultimately, Petitioner's allegations of bias on the part of the General Counsel and Regional Director were not litigated in the hearing,<sup>29</sup> and they are not

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<sup>29</sup> On September 11, 2014, before the hearing began, Gerawan indicated that its attorneys would call Mr. Shawver as a witness. On September 18, 2014, the General Counsel filed a Motion in Limine to exclude such testimony, and the ALJ denied in part  
(Footnote continued)

directly before the Board at this time. In any event, a review of hearing transcripts and of the ALJ decision itself reveals that the ALJ handled the hearing and evaluated the evidence presented in an even-handed manner. The Board hereby affirms the decision of the ALJ except as modified by the above discussion.

### **Conclusion**

In sum, we conclude that the ALJ correctly held that Gerawan engaged in objectionable conduct and committed numerous unfair labor practices. Although we affirm the ALJ's conclusion that Gerawan did not instigate the decertification effort, we agree that Gerawan improperly inserted itself into the campaign. Gerawan discriminatorily permitted anti-Union signature gathering during worktime while prohibiting pro-Union activity of the same kind. Gerawan granted Lopez a "virtual sabbatical" to conduct the decertification effort. Gerawan did not discipline signature gatherers for missing work, but continued to enforce its absence policies among the rest of the crew. Gerawan tacitly approved an unlawful work blockage, which, although instigated by the decertification petitioner supporters, directly facilitated the gathering of the signatures for the showing of interest. Gerawan colluded with the CFFA to make

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(Footnote continued)

and granted in part the GC's motion. (Pre-Hearing Conference Order, dated September 25, 2014, at page 3.) The ALJ specifically held that he would allow the testimony of ALRB staff with personal knowledge of information which could assist the ALJ in determining whether or not, as a matter of law, the workers did or did not have free choice when it came to casting their ballots in the decertification election. The ALJ also made it clear that he would not allow any party to call witnesses for the purposes of putting the General Counsel's or regional staff's motives or competence on trial. No appeal of this ruling was filed.

arrangements for the decertification petitioners to travel by bus to Sacramento in order to protest the dismissal of the first decertification petition, thus condoning employees' taking time off from work to join the protest. Finally, Gerawan granted a wage increase during the decertification campaign and unlawfully solicited grievances.

Given the totality of the circumstances and Gerawan's unlawful actions, we conclude that it is impossible to know whether the signatures gathered in support of the decertification petition represented the workers' true sentiments. We affirm the ALJ's conclusion that Gerawan's unlawful and/or objectionable conduct tainted the entire decertification process, we adopt his recommended remedy dismissing the decertification petition, and setting aside the election, and we adopt the ALJ's recommended order.

### **ORDER**

The Agricultural Labor Relations Board hereby orders that Respondent, GERAWAN FARMING, INC., its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Aiding, assisting, participating in or encouraging any decertification campaign; and,

(b) In any similar or related manner interfering with, restraining, or coercing, any agricultural employees in the exercise of their rights guaranteed by California Labor Code section 1152.

2. Take the following affirmative steps which are found necessary to effectuate the purposes of the Agricultural Labor Relations Act:

- (a) Sign the attached Notice to Agricultural Employees on page 192 of the attached decision of the Administrative Law Judge and, after its translation by a Board agent into the appropriate languages, reproduce sufficient copies in each language for the purposes set forth below;
- (b) Prepare copies of the attached Notice, in all appropriate languages, by placing a copy of such Notice in a plain stamped or metered envelope, with the ALRB's return address, addressed individually to each and every agricultural worker employed by Respondent during the time period of November 13, 2012 to September 17, 2015, and submit such addressed, stamped envelopes to the Visalia ALRB Regional Director (or Acting Regional Director) for her to mail within thirty (30) days after the Board's Order becomes final;
- (c) Post copies of the Notice, in all appropriate languages, in conspicuous places on its property for a sixty-days period, the specific dates and location of posting to be determined by the Visalia ALRB Regional Director, and exercise due care to replace any Notice which has been altered, defaced, covered or removed;
- (d) Provide a copy of the attached Notice, in all appropriate languages, to each agricultural employee hired by Respondent

during the twelve-months period following the date that the Order becomes final;

(e) Upon request of the Visalia ALRB Regional Director, provide the Regional Director with the dates of the present and next peak season. Should the peak season already have begun at the time the Regional Director requests peak season dates, Respondent shall inform the Regional Director of when the present peak season began and when it is anticipated to end, in addition to informing the Regional Director of the anticipated dates of the next peak season;

(f) Arrange for Board agents to read the attached Notice in all appropriate languages to the assembled agricultural employees of Respondent on company time, at times and places to be determined by the Visalia ALRB Regional Director. Following the reading, Board agents shall be given the opportunity, outside the presence of management and supervisors, to answer any questions that the employees may have regarding the Notice of their rights under the Act. The Visalia ALRB Regional Director shall determine a reasonable rate to be paid by Respondent to all non-hourly wage employees to compensate them for time lost at this reading and during the question and answer period; and,

(g) Within thirty (30) days after the date that this Order becomes final, Respondent shall notify the Visalia ALRB Regional Director

in writing of the steps that Respondent has taken to comply with it.  
Upon request of the Regional Director, Respondent shall notify him  
periodically thereafter in writing as to what further steps it has taken  
in compliance with this Order.

DATED: April 15, 2016

William B. Gould IV, Chairman

Genevieve A. Shiroma, Member

Cathryn Rivera-Hernandez, Member



Chairman Gould, CONCURRING:

The findings and principles in the instant case do not present new issues which are different from or beyond those set forth in hundreds, indeed thousands of cases addressed by the NLRB and our ALRB which follows “applicable precedent” of the former, during these past 81 years. But I write separately to address the Employer’s arguments concerning the ALJ’s failure to take into account the context in which this election took place. I believe it is especially important to address these since we affirm those portions of the ALJ decision which, according to the Employer<sup>30</sup>, are dismissive of that context.

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<sup>30</sup> “When the Board deemed abandonment irrelevant to the MMC process, it set in motion an unseemly race, which pitted the workers’ freedom of choice against the threat of a Board- imposed contract, based on the results of a 1990 election. This foreclosed the workers’ ability to show the lack of “any objective basis presuming the existence of employee support for the union.” (Employer’s Brief in Support of Exceptions to ALJ’s Decision, at p. 5.)

“An election conducted close to a quarter century ago is not a fair measure of the majority support of an absentee union, or the workers’ desire to remain saddled with the UFW once it reappeared. Those facts would explain why the workers wanted an election, and would undermine any claim that they were improperly coerced into asking for one.” (Employer’s Brief in Support of Exceptions to ALJ’s Decision, at p. 5.)

“The ALJ’s decision recasts the workers’ exercise of their First Amendment rights to travel to Sacramento into an unlawful attempt to “influence employees.” But financial assistance in furtherance of any First Amendment advocacy is no less protected than the speech itself. Nor is it correct to conclude, [as we now do] that a futile effort by workers to speak to the Board somehow improperly assisted the decertification effort hundreds of miles away. Workers are allowed to petition this Board. That they were rebuffed only adds to the absurdity of the charge. Had these workers known that the price of that bus ride would be the forfeiture of their right

(Footnote continued)

In tracing the roots of this case to the application of our long-standing and judicially approved application of the “certified until decertified” rule, the Employer has linked its own opposition to having to bargain with the UFW to its employees’ right to decertify it. It is the responsibility of this Board to insure that the employer’s desire to rid itself of its obligation to bargain is not confused with the employees’ right to decertify a union with the assistance of their employer. In affirming the ALJ’s finding that the Employer did not instigate the decertification drive, we do not ignore the fact set forth in the evidence presented in these proceedings, that the Petitioner began, on her own, the campaign that has led us to where we are today. But in affirming the findings of the ALJ that the Employer colluded with the CFFA to protest the dismissal of the first decertification petition and by affirming the ALJ’s finding that standing by while workers blocked the entrance to its fields so that the Petitioner could obtain the necessary showing

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(Footnote continued)

to vote, most would have stayed home.” (Employer’s Brief in Support of Exceptions to ALJ’s Decision, at p. 6.)

“The September 30 walkout was an authentic expression of frustration, directed at a union and the staff of this agency. The ALJ cynically labels it a “work blockage.” He sees no dignity in their unity in the face of frustrating circumstances. He sees evidence of a conspiracy to intimidate their fellow workers, while ignoring their sincere, appropriate and legitimately expressed desire for self-determination. He labels the walkout an unfair labor practice so as to cast a concerted demand for an election a reason not to have one.” (Employer’s Brief in Support of Exceptions to ALJ’s Decision, at p. 6.)

of interest, we have found that the Employer powerfully signaled to its employees that it approved and supported their efforts. As is fully discussed in the Board's decision, under the law, it may not do this.

The Board cannot permit an employer to become the benevolent champion of its employee's rights. Asking this Board to view this case as intertwined with its initial rejection of its obligation to bargain, as Employer insists it must be viewed, explains all too well what it is about: since the Employer's own interest in not bargaining with the Union could only be achieved by decertification, it did what it could to ensure that an election could be held. It now insists that in finding that what it did was unlawful, we are depriving its employees of their right to choose. It is possible that, had the employees been aware of the consequences of accepting the assistance of their employer, they would not have done so, but unless this Board ignores the distinction between merely giving directions about how to get where someone wants to go and taking them there, this election must be set aside, and violations of the ALRA's unfair labor practice prohibitions must be found. Just as it is the case that allowing "employers to rely on employees' rights in refusing to bargain with the formally designated union is not conducive to industrial peace," *NLRB v Financial Institution Employees* (1986) 475 US 192, 198; *Fall River Dyeing and Furnishing Corp.* (1987) 328 US 27, 38, an employer cannot assist a decertification campaign in order to achieve its goal of avoiding bargaining with that union.

Though the decertification was filed by employees, by the ways found by the ALJ, and affirmed by our decision, the employer became a principal party to that

effort. To certify the results of this election would be to make the Employer the “benevolent champion” of those rights. As a unanimous Supreme Court noted in *Auciello Iron Works v. NLRB*, *supra*, 517 US 781, 790, in an opinion authored by Justice David Souter, the Board must be on guard when an employer, in the guise of being a “benevolent champion” of worker rights, seeks to free itself from an obligation it regards as an imposition. In finding that there was substantial interference in the free exercise of the employees’ rights to have an election, I follow the guiding vision of Senator Robert Wagner—the NLRA’s principal architect and proponent in 1935-- in describing the goal of the Act, which is that the struggle for a voice in industry through the process of collective bargaining is part of the struggle for democracy and self-expression.

The bedrock of national labor policy, and the ALRA which was shaped in its wake and image, is that such interference was and is not only the enemy of self-organization aspiration of workers throughout most of the private sector in the United States, but was also inherently inconsistent with the autonomy and independence of free labor organizations and the collective bargaining process itself.<sup>31</sup>

The idea here is that labor policy promotes democracy in the workplace.

And just as oppressive tactics engaged in by private parties as well as the state in the

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<sup>31</sup> William B. Gould IV, *Assessing the NLRB’s Impact and Political Effectiveness: Politics and the Effect on the NLRB’s Adjudicative and Rulemaking Process*, (2015) 64 Emory L.J. 1501. For discussions of its very beginnings see, for instance, Leon Keyserling, *The Wagner Act: Its Origin and Current Significance*. (1960) 29 George Washington L.Rev. 199; J. Warren Madden, *The Origin and Early History of the National Labor Relations Board* (1960) 29 George Washington L.Rev. 234.

civic life of the Nation in the political process contravene free choice for voters both in this country and in well-known instances of authoritarianism abroad, so also were the same principles to be deemed applicable to the employment relationship and the reduction of inequality between employer and employee.

Senator Wagner stated:

The struggle for a voice in industry through the process of collective bargaining is at the heart of the struggle for the preservation of political as well as economic democracy in America. Let men become the servile pawns of their masters in the factories of the land and there will be destroyed to the bone and sinew of resistance to political dictatorship. But let men know the dignity of freedom and self-expression in their daily lives, and they will never bow to tyranny in any quarter of their national life.<sup>32</sup>

Senator Wagner also believed that effective collective bargaining required separation of powers between management and labor reasoning that “only representatives who are not subservient to the employer can act freely in the name of employees.”<sup>33</sup> This focus upon and promotion of autonomous labor organizations and consequent hostility to company unions is why the law forbids “assistance” to and “domination” of labor organizations. Such conduct is inconsistent with the free organizational rights and protected concerted activity for employees.

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<sup>32</sup> New York Times Magazine, May 9, 1937, p. 23.

<sup>33</sup> 78 Cong. Rec. 3443 (1934), Statement of Sen. Wagner.

It is this national labor policy<sup>34</sup> that prompted the United States Supreme Court, speaking through Justice David Souter, to elucidate the NLRA's allegiance to "industrial peace and stability" which fosters the "... orderly resolution of labor disputes between workers and employees." (*Auciello Iron Works, Inc. v. NLRB, supra*, 517 U.S. 781, 790.) But, said the Court, expressing adherence to this policy by both itself and its predecessors:

We have rejected the position that employers may refuse to bargain whenever presented with evidence that their employees no longer support their certified union. "To allow employers to rely on employees' rights in refusing to bargain with the formally designated union is not conducive to [industrial peace], it is inimical to it." (Citing *Brooks v. NLRB* (1954) 348 U.S. 96, 103.) The Board is accordingly 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. There is nothing unreasonable in giving a short leash to the employer as vindicator of its employees' organizational freedom. *Auciello Iron Works, Inc. v. NLRB, supra*, 517 U.S. 781, 790.

These words have particular applicability to the voluminous and carefully detailed findings of fact made by the ALJ in the proceeding before us. We are entitled to, again paraphrasing the language of the United States Supreme Court considerable "suspicion" when faced with . . . [this] employers' benevolence as its "workers' champion." Though the decertification petition was filed by employees – as it must be

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<sup>34</sup> Irving Bernstein, "The New Deal Collective Bargaining Policy," (1950). Cf., Bernstein, "The Turbulent Years: A History of the American Worker, 1933-1941," (1960).

under the ALRA - the employer was a principal party involving and supporting workers' rights in this proceeding. The voluminous record and numerous findings of the ALJ in this case clearly establish the illegal conduct of Gerawan, and the fact that it is guilty of extensive misconduct under the ALRA.

As the Board's opinion notes, we do not rest our opinion solely upon the federal labor law jurisprudence which has emerged these past 81 years -- notwithstanding similarities between the two statutes and our obligation to follow "applicable precedent." (Lab. Code § 1148.) Here, as under the NLRA, "employee free choice" is thwarted by the attempt to fashion an "intermediate electoral challenge" to an incumbent certified union. (*Caterair International* (1996) 322 NLRB 64, 67; cf., *Heartland Human Services v. NLRB* (7<sup>th</sup> Cir. 2014) 746 F.3d 802 (Judge Posner writing for a unanimous panel).

The ALRA is more expansive than the NLRA in its protection of employee self-organizational rights and imposes greater limitations upon employer involvement in and the fostering of decertification campaigns maintained against a previously recognized union. (See Herman M. Levy, "The Agricultural Labor Relations Act of 1975- La Esperanza de California para el Futuro" (1975) 15 Santa Clara L. Rev. 783.)

Echoing in substantial part the preamble of the National Labor Relations Act, the ALRA states 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, to negotiate the terms and conditions of their employment, and to be free from the interference, restraint, or coercion of employees 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 protection.” (Cal. Lab. Code, § 1140.2.)

While all industrialized countries in Western Europe and Japan subscribe to the same basic policies enshrined in 1935, no legal framework has endured in such a fundamentally unmodified form as that of the United States.<sup>35</sup> The overriding element in our policy is to limit employer involvement in what should be the manifestation of free choice at the ballot box.

The record of illegal misconduct in this case by which conduct the employer unlawfully inserted itself into the electoral process through a variety of means including disparate treatment of employee activity on its property<sup>36</sup> is amply documented by the thorough, deliberate and carefully balanced findings and conclusions of the ALJ.

This Board reviews the ALJ findings – supported in this instance by substantial evidence and much more – against the backdrop of not only the ALRA but also the NLRA, upon which the former is substantially based, as well as Senator Wagner’s above quoted language which explains the purpose in limiting employer involvement in what should be the exercise of employee free choice. The fact that the NLRA and Senator Wagner’s commentaries were written just as the storm clouds of the 1930’s gathered so ominously must never be forgotten. But, as the instant case well

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<sup>35</sup> Gould, “Assessing the NLRB’s Impact and Political Effectiveness: Politics and the Effect on the NLRB’s Adjudicative and Rulemaking Process,” (2015) 64 Emory L.J. 1501.

<sup>36</sup> Gould, “The Question of Union Activity on Company Property,” (1964) 18 Vanderbilt L. Rev. 73.



demonstrates, today in 2016, 81 years after Senator Wagner's philosophy became national labor policy, this Board's duty and charge from the Legislature and the Governor remain constant and vital. For it is the ALRA which is designed to promote the democratic process. A principal vehicle through which the implementation of that policy can be obtained is Section 1153(b) which prohibits employer conduct which dominates or interferes with the "formation or administration of any labor organization or contribute[s] financial or other support to it." Similarly, as relevant to the employer conduct in this case, the prohibition against interference, restraint or coercion of any employee as well as discrimination which has as its objects the encouragement or discouragement of union membership set forth in Section 1153(c) was breached in numerous instances.

These findings, amply supported by the ALJ opinion and the record and affirmed by the Board today, do not involve or establish the application of new principles of law. The many instances of infringement of these rights by Gerawan is what this case is about. Through our careful and meticulous examination of the record and the ALJ's numerous findings predicated upon substantial evidence, the Board has discharged its statutory duty to ensure employee free choice and the democratic process in the workplace.

## CASE SUMMARY

GERAWAN FARMING, INC.  
(Silvia Lopez, Petitioner)  
(United Farm Workers of America,  
Certified Bargaining Representative)

42 ALRB No. 1  
Case Nos. 2013-RD-003-VIS  
(39 ALRB No. 20)  
2013-CE-041-VIS, et al.

### Background

On October 25, 2013, Silvia Lopez (Petitioner) filed a petition to decertify the United Farm Workers of America (UFW) as the bargaining representative of the agricultural employees of Gerawan Farming, Inc. (Employer). An election was held on November 5, 2013. The ballots were impounded pending resolution of election objections and related unfair labor practice complaints, which were consolidated for hearing.

### ALJ Decision

The Administrative Law Judge (ALJ) found that Gerawan violated the Agricultural Labor Relations Act (ALRA or Act) by supporting and assisting the gathering of signatures for the decertification petition. This assistance and support included giving preferential access to decertification supporters by allowing them to circulate the decertification petition during work time while prohibiting supporters of the United Farm Workers of America (UFW) from circulating a pro-UFW petition during work time, and by granting Petitioner a “virtual sabbatical” from work to run the decertification campaign. In addition, the ALJ found that the Petitioner’s group violated the rights of other workers by blocking company entrances on September 30, 2013, as a means to collect signatures on the decertification petition.

The ALJ found that Petitioner received an unlawful \$20,000 donation from the California Fresh Fruit Association (CFFA). The ALJ found that Gerawan knew about this donation beforehand and that it was complicit with the CFFA. The ALJ found that the CFFA’s conduct in this regard violated section 1155.4 of the Act. The ALJ also found that Gerawan committed unfair labor practices by its enhanced efforts to directly solicit grievances and by making a well-timed unilateral wage increase.

The ALJ concluded that, given the totality of the circumstances, it was impossible to know whether the signatures gathered in support of the decertification petition represented the workers’ true sentiments. The ALJ further concluded that the misconduct created an environment which would have made it impossible for true employee free choice when it came time to vote. As the ALJ concluded that Gerawan’s unlawful and/or objectionable conduct tainted the entire decertification process, he recommended dismissing the decertification petition, setting aside the election, and remedying Gerawan’s unfair labor practices.

### **Board Decision**

The Board affirmed the ALJ's conclusion that Gerawan's unlawful and/or objectionable conduct tainted the entire decertification process, and adopted his recommended remedy dismissing the decertification petition, setting aside the election and adopted his conclusion that numerous unfair labor practices had been committed by Gerawan.

Although the Board affirmed the ALJ's conclusion that the evidence did not support a finding that Gerawan instigated the decertification effort, the Board affirmed the ALJ's findings that Gerawan improperly inserted itself into the campaign by discriminatorily permitting decertification petition signature gathering during worktime while prohibiting pro-Union activity of the same kind. In addition, Gerawan did not discipline signature gatherers for missing work, but continued to enforce its absence policies among the rest of the crews. The Board affirmed the ALJ's findings that Gerawan tacitly approved an unlawful work blockage, which, although instigated by the decertification petition supporters, directly facilitated the gathering of the signatures for the showing of interest. The Board also affirmed the ALJ's findings that Gerawan unlawfully granted a wage increase during the decertification campaign and unlawfully solicited grievances.

In addition, the Board found that there was worktime signature gathering in two additional crews than beyond those found by the ALJ. The Board also found that Gerawan was liable for the violations committed by the Petitioner's group during the work blockage. With respect to the ALJ's finding that the CFFA violated section 1155.4, the Board concluded this finding was beyond the scope of the ALJ's authority as the CFFA is not a party to the instant case. However, the Board held Gerawan liable for the financial support and assistance provided by the CFFA to the decertification proponents in connection with a bus trip and protest in Sacramento. The Board found Gerawan colluded with the CFFA to make arrangements for the decertification petitioners to travel by bus to Sacramento to attend a protest in support of the decertification effort, and condoned the employees' taking time off from work in violation of Labor Code section 1155.4.

Chairman Gould concurred with the majority and wrote separately to highlight both the fact that hundreds, if not thousands of cases, presenting the same legal issues over the past 81 years have come before both the National Labor Relations Board (NLRB) and this Board, and also to stress the standards established by the National Labor Relations Act's (NLRA) principal architect, Senator Robert Wagner, and Gerawan's breach of them

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This Case Summary is furnished for information only and is not an official statement of the case, or of the ALRB.

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

GERAWAN FARMING, INC.,	)	Case No.	2013-RD-003-VIS
	)		(39 ALRB No. 20)
Employer,	)		
	)		
and	)		
	)		
SILVIA LOPEZ,	)		
	)		
Petitioner,	)		
	)		
and	)		
	)		
UNITED FARM WORKERS OF	)		
AMERICA,	)		
	)		
Certified Bargaining Representative.	)		
	)		
<hr/>	)		
GERAWAN FARMING, INC.,	)		
	)		
Respondent,	)	2012-CE-041-VIS	2013-CE-041-VIS
	)	2012-CE-042-VIS	2013-CE-042-VIS
and	)	2012-CE-046-VIS	2013-CE-043-VIS
	)	2012-CE-047-VIS	2013-CE-044-VIS
UNITED FARM WORKERS OF	)	2013-CE-007-VIS	2013-CE-045-VIS
AMERICA,	)	2013-CE-009-VIS	2013-CE-055-VIS
	)	2013-CE-025-VIS	2013-CE-058-VIS
Charging Party.	)	2013-CE-027-VIS	2013-CE-060-VIS
	)	2013-CE-030-VIS	2013-CE-062-VIS
	)	2013-CE-038-VIS	2013-CE-063-VIS
<hr/>	)	2013-CE-039-VIS	

**DECISION OF THE ADMINISTRATIVE LAW JUDGE**

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This matter was heard by Mark R. Soble, Administrative Law Judge (“ALJ”), State of California Agricultural Labor Relations Board (“ALRB”), at the State of California Building, 2550 Mariposa Mall, Fresno, California 93610, and at the Radisson and Doubletree Hotels in downtown Fresno, on one hundred and five (105) hearing days starting on September 29, 2014, and ending on March 12, 2015.<sup>1</sup>

### **ISSUE(S)**

The overall question in this matter is whether the employer, Gerawan Farming, Inc. (“Gerawan”), committed unfair labor practices or other objectionable conduct with respect to the decertification election that was held on November 5, 2013. The scope of this hearing was strictly limited by the Board’s Administrative Order No. 2014-27, dated September 19, 2014.

### **FINDINGS OF FACT**

#### **A. Jurisdiction, Procedural History and Background**

##### **1. Jurisdiction**

Gerawan admits that, at all relevant times, it was an employer within the meaning of California Labor Code section 1140.4, subdivision (c). (Respondent’s Answer to Amended Consolidated Complaint, dated September 15, 2014) At all relevant times, the UFW was a labor organization as defined by California Labor Code section 1140.4, subdivision (f).<sup>2</sup>

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<sup>1</sup> There are 105 volumes totaling 20,248 pages of hearing transcripts.

<sup>2</sup> At the prehearing conference call on Tuesday afternoon, September 9, 2014, Gerawan admitted to the general labor organization status of the UFW, but did not  
(Footnote continued....)

## 2. Procedural History

The General Counsel filed its Amended Consolidated Complaint, dated September 9, 2014, and, on or about September 15, 2014, the Respondent filed its answer to the Amended Consolidated Complaint. On October 25, 2013, petitioner Silvia Lopez filed a petition for decertification.<sup>3</sup> On October 28, 2013 and October 31, 2013, respectively, the Visalia ALRB Regional Director first dismissed the petition and then blocked the election, based on theories of a pending bargaining agreement and pendency of unfair labor practice complaints. On October 28, 2013, and November 1, 2013, the Board issued Orders vacating these Regional Director decisions and ordering that the election go forward. A decertification election was held on November 5, 2013. The ballots were impounded so there is presently no available tally of ballots.

The United Farm Workers of America (“UFW”), Gerawan and petitioner Lopez all filed election objections. On December 19, 2013, the Board set some of

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(Footnote continued)

admit that the UFW represented its workers during June 2013 to November 2013. (Prehearing Conference Order, dated September 10, 2014, at page three, lines eight to ten.)

<sup>3</sup> On September 18, 2013, petitioner Silvia Lopez filed a petition for decertification, along with a supplemental filing on September 23, 2013. On September 25, 2013, the Visalia ALRB Regional Director dismissed this petition for decertification. Given that there was less than five weeks between the time when the first petition was filed and October 25, 2013, which was when the second petition was filed, any company aiding or assisting of the September 2013 petition, if found, might have the same impact on workers’ free choice as if it was connected to the October 25, 2013 petition.

these election objections for hearing. (39 ALRB No. 20) After taking over ten months to complete its investigation, on September 9, 2014, the General Counsel filed an Amended Consolidated Complaint.<sup>4</sup> On September 15, 2015, Gerawan filed an Answer to the Amended Consolidated Complaint. On September 19, 2015, the Board issued an administrative order to sever the amended, consolidated complaint and to expedite hearing of portions of the matter. (Administrative Order No. 2014-27, dated September 19, 2014)

Prehearing conferences were held on this matter on Wednesday afternoon, August 20, 2014, Tuesday afternoon, September 9, 2014, Thursday afternoon, September 11, 2015, and Monday morning, September 22, 2014, with the last of those dates occurring in person in Fresno in the presence of a court reporter.

Prehearing conference orders were issued on multiple dates, including August 21, 2014, September 10, 2014, September 12, 2014, September 23, 2014<sup>5</sup>, and

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<sup>4</sup> Witnesses typically have their best recollection prior to extensive passage of time. Aside from the ALJ's general concern over the length of the investigation, the ALJ also felt that the General Counsel's specific timing of the amended consolidated complaint, e.g., September 9, 2014, less than three weeks before the long-established hearing date of September 29, 2014, had the general feel of trial by ambush. Under those circumstances, the General Counsel itself should have simultaneously offered to stipulate to continue the hearing for an additional brief interval of time, subject to the approval of the Board and/or Executive Secretary, rather leaving the other parties with the unpalatable choice of seeking a short continuance and being falsely perceived as the party causing a delay in the proceedings or otherwise scrambling in just a few days to review the twenty-eight pages amended consolidated complaint and prepare their theory of the case for the prehearing conference calls.

<sup>5</sup> In this Prehearing Conference Order, due to the seasonal nature of agricultural employment, the ALJ offered special accommodations by which the UFW, Gerawan and Petitioner could call a limited number of witnesses out of the usual order. The ALJ  
(Footnote continued....)



September 25, 2014<sup>6</sup>. Following a joint request for an extension from all of the parties, paper copies of the post-hearing briefs in this matter were physically received at the ALRB on Tuesday, May 26, 2015.

### 3. Background

Gerawan is the largest tree fruit grower in California both in terms of number of employees and in terms of the amount of fruit that it grows. (62 RT 59:3-6) Gerawan's "West side ranches" are in the Kerman area and Gerawan's "East side ranches" are in the Reedley/Sanger area. (Exhibits SCGX-1, SGCX-2, and GCX-94)

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(Footnote continued)

also expressed his significant concern about the Visalia ALRB Regional Director providing photocopies of confidential petition signatures to a third party that had been retained as a potential testifying expert witnesses. The ALJ struck the proposed testifying expert witness not only because her name was not timely submitted, but also because disclosing confidential petition signatures to the parties, so that they could effectively cross-examine the testifying expert, would completely undermine worker confidence in the confidentiality of petition signatures. The ALJ believes that as a general rule it is inappropriate for the Regional Director to show the confidential petition signatures to a third party absent an Order from the Board or a Court. This is especially true in the instant hearing where the evidence of support required by California Labor Code section 20390, subdivision (c) was not at issue in this matter.

<sup>6</sup> In this prehearing conference order, the ALJ granted in part, and rejected in part, a UFW *motion in limine* to exclude evidence in support of Gerawan's "abandonment" defense. The ALJ followed the Board's reasoning in *Gerawan Farming*, (2013) 39 ALRB No. 5, at pages three and four, which rejected the proposed abandonment defense. The ALJ therefore excluded evidence for the purposes of trying to establish the truth of whether or not the UFW became inactive at Gerawan Farming or not. Any statements in the briefs as to the alleged inactivity of the UFW are simply not supported by the record because none of the parties were given the opportunity to introduce evidence in that regard. Rather, the ALJ solely allowed workers to testify whether or not they felt abandoned by the UFW, using the concept of abandonment in a lay person or colloquial sense, rather than as a legal conclusion. Generally, the ALJ limited counsel to inquiring during the time period of three or four years prior to the election when inquiring with witnesses as to when they first heard about union issues.

Gerawan harvests peaches, nectarines, plums, apricots, table grapes and wine grapes. (62 RT 23:19-24<sup>7</sup>, and 74 RT 125:1-7 and 92 RT 10:1-22) Nectarines are typically harvested from mid-May to early September. (62 RT 24:9-21) Peaches are typically harvested from early May to early October. (62 RT 24:7-17)

On a busy day during the peach harvest, Gerawan will have between thirty and fifty-five crews out in the fields. (62 RT 27:19-22, 77 RT 37:5-20, and 92 RT 47:20-24) Approximately five to fifteen of those crews would be farm labor contractor (“FLC”) crews. (92 RT 48:6-8) Most crews have between twenty and fifty workers. (62 RT 27:23-25) The workers use ladders to pick the peaches. GCX-16 is comprised of two photographs of these ladders. (Exhibit GCX-16<sup>8</sup>) The fruit is then put in buckets and the buckets are then put on trailers moved by small tractors. Stone fruit is packed in packing houses and table grapes are packed in the fields. (62 RT 9:19-10:11)

The harvesting of grapes typically begins approximately at the time when the harvesting of peaches is completed, resulting in table grapes typically being harvested from early October until late November. (62 RT 24:22-25:9) During the

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<sup>7</sup> Court Reporter’s Transcript, volume sixty-two, at page 23, lines 19-24, is abbreviated as 62 RT 23:19-24.

<sup>8</sup> The official exhibit numbers are the numbers on the white label attached by the ALJ to the exhibit. These numbers are the same as the numbers on the ALJ’s exhibit list. Pursuant to past direction, the ALJ assigned exhibit numbers in the order that the exhibits were identified at the hearing. Many of the General Counsel’s exhibits were pre-marked with a different number.

harvesting of table grapes, most workers are paid piece rate regardless of whether they are doing picking or packing. (74 RT 163:2-6)

In 2013, Gerawan was a member of the California Grape and Tree Fruit League (the "Fruit League"), which is now known as the California Fresh Fruit Association. (62 RT 50:21-51:1) At that juncture, Gerawan has been a member of the Fruit League for approximately four or five years. (62 RT 53:23-54:1) In 2013, Gerawan made \$20,000 to \$30,000 in payments to the Fruit League, including \$15,000 in membership fees and dues, another \$5,000 to \$15,000 for export programs, and possibly some amount of money to the Grape league's political action committee. (62 RT 52:1-53:4) Gerawan vice president George Nickolich serves on the Fruit League's Board of Directors. 62 RT 51:2-7) Dan Gerawan has known Barry Bedwell since he became president of the Fruit League, which was about a decade ago. (62 RT 54:14-17) Starting in December 2012, Dan Gerawan began talking to Bedwell almost daily. (62 RT 55:14-19)

#### **4. Company Supervisors**

Gerawan does not dispute that the following individuals meet the standard of "supervisor" as defined by California Labor Code section 1140.4, subdivision (j):

i. Owners and officers Ray Gerawan, Star Gerawan, Dan Gerawan (witness # 94), and Mike Gerawan (witness # 117). (62 RT 8:19-23);

ii. Field managers Nick Boos, Jose ("Lolo") Pizano, Antonio Franco, Steve Boos and Doug Zweigle. (62 RT 21:7-17, 77 RT 33:10-34:3 and 77 RT 36:8-14) Antonio Franco manages the trees on the West side. Nick Boos

manages the vines on the West side. (77 RT 20:6-10) Jose “Lolo” Pizano manages the trees on the East side. (77 RT 19:23-20:2)

iii. Field supervisors Juan Acal, Jose Becerra, Phil Braun, Jose Camargo, Guadalupe (“Lupe”) Elizondo, Jesus Elizondo, Rafael Gomez, Pedro Gonzales, Angie Guzman, Tony Martinez, Jorge Mendoza, Mario Montes (witness # 53), Mario Navarro, Roy Rhyne, Pedro Rosas and Lucio Torres (witness # 126). (77 RT 31:23-32:23 and 77 RT 35:1-16)

iv. All crew bosses or foreman, and assistant crew bosses during the times when the assistant crew boss directed a portion of the crew in a different physical location than the crew boss was situated. An example of this would be when the crew boss directs workers packing grapes at edge of the fields, and the assistant crew boss directs members of that crew picking grapes within the fields. The record is replete with examples that Gerawan crew bosses have almost unfettered discretion when it comes to hiring, assigning tasks, and enforcement of attendance and tardiness policies. Crew bosses are authorized to request discipline. (74 RT 143:6-7)

v. Human resources and office managers: Jose Erevia (witness # 99), Oscar Garcia Bonilla (witness # 116), and Tatiana Projkovska (witness # 124). Erevia’s formal title is Employee Outreach and Regulatory Compliance Manager. (74 RT 105:11-13) In 2013, Garcia was Gerawan’s Human Resource Director. (91 RT 8:19-21) Notwithstanding their formal job titles, it was Erevia and not Garcia who had primary responsibility for human resources matters involving field

employees. (91 RT 11:2-7) In 2013, Projkovska served as Gerawan's office manager. (100 RT 8:17-20)

**B. In 2012, Gerawan Began Distributing Mailings and Flyers to Its Workforce That Described the UFW Unfavorably**

Following elections on May 9, 1990, and May 15, 1990, the Board certified the UFW as the bargaining representative for Gerawan agricultural workers. (*Ray and Star Gerawan et al.* (1992) 18 ALRB No. 5)<sup>9</sup> In October 2012, the UFW sent a letter to Gerawan seeking negotiations on behalf of the company's agricultural workers. (62 RT 56:18-22, 62 RT 83:25-84:2 and 67 RT 62:21-24) Starting the next month, November 2012, Gerawan began distributing a series of hard-hitting mailers and flyers to workers that described the UFW unfavorably.<sup>10</sup> The materials were typically provided in both Spanish and English.

The first of these mailers<sup>11</sup> was distributed on November 13, 2012 to approximately five thousand employees. (Exhibits J-1, page 1, and GCX-2) This mailer was signed by Ray, Mike and Dan Gerawan, on company letterhead, and

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<sup>9</sup> During the hearing, Respondent's counsel stated that the company is not raising a defense based upon the name of the entity charged in the General Counsel's amended consolidated complaint. (62 RT 48:6-49:14)

<sup>10</sup> In addition to hiring multiple law firms, Gerawan hired multiple media consultants and political consultants to deliver their internal and external messages, including the Labor Relations Institute, Farm Employer Labor Service, and Kathy Eide.

<sup>11</sup> The words mailer and flyer will be used interchangeably. If you review exhibit J-1, pages one to three, the column on the far details the method of distribution for each mailer. Exhibit J-1 is a joint exhibit to which all of the parties stipulated and which the ALJ admitted as evidence.

stated “As your employer, we did not want [to give your personal information to the UFW,] but we have no control over this.”

The next mailer was distributed on November 22, 2012 to approximately five thousand employees. (Exhibits J-1, page 1, and GCX-3) This mailer was on company letterhead and was in a question and answer format. The mailer states that the workers will probably have to give some of their earnings to the UFW as this is generally required by UFW contracts. The mailer states that the UFW may try to mislead workers into thinking that the company will pay the dues, but it is actually the workers who must pay the union. The mailer states that the company does not want this to happen, but that it is not the company’s decision to make. The mailer gives multiple telephone numbers if a worker wants to contact the Agricultural Labor Relations Board (“ALRB”), as well as telephone numbers for the local State Assemblyman and State Senator.

The third mailer in November 2012 was distributed on November 30, 2012 to approximately five thousand employees. (Exhibits J-1, page 1, and GCX-4) This mailer was on company letterhead and was in a question and answer format. The mailer states in bold font: “There is no vote planned.” Clearly, the company is trying to put the concept of an election in the minds of the recipients. The mailer gives the telephone number for the ALRB, saying “If you want to know why there is no vote planned, you can call the ALRB . . . and have them explain how elections are scheduled and conducted.” The mailer states that UFW contracts generally require workers to give some of their money to the UFW in the form of dues or fees. The

mailer adds, "The union may tell you that the company will pay the money, but in fact the money is paid by you." The mailer states that Ray, Mike and Dan Gerawan do not want this to happen.

On December 10, 2012, Gerawan distributed a two-page flyer to approximately five thousand employees. (Exhibits J-1, page 2, and GCX-6) This flyer asserts that except for one meeting 20 years ago, the UFW had not contacted the company. The flyer again emphasizes the UFW contracts generally require the workers to give some of their money to the UFW in the form of dues or fees. The flyer notes that "The answer is no, Ray, Mike and Dan do not want this to happen." The flyer talks about the fact that "there is no vote planned" and that the ALRB is the appropriate agency to contact if you want to know why there is no vote planned.

On December 21, 2012, Gerawan distributed a one-page flyer with the company logo to approximately five thousand employees. (J-1, page 2, and GCX-9) This flyer states that the owners have always been willing to negotiate, but the union went away twenty years ago. The flyer points the workers to the ALRB if they have any questions, and provides the ALRB's telephone number.

On February 22, 2013, Gerawan distributed a one-page flyer with the company logo to approximately five thousand employees.<sup>12</sup> (Exhibits J-1, page 2, and GCX-7) The flyer purportedly attaches a copy of a lawsuit filed by Gerawan against the UFW. The flyer states that the UFW has told workers that money will be

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<sup>12</sup> The flyer mistakenly shows the date of February 22, 2012, but the parties have stipulated that it was actually distributed on February 22, 2013.

taken from their paychecks. The flyer also states that the UFW is trying to limit company communications with workers. Finally, the flyer attacks the employment status and tenure of the worker representatives in attendance. The flyer encourages workers to call the ALRB to see if they can help.

On March 20, 2013, Gerawan distributed a one-page flyer with the company logo to approximately five thousand employees. (Exhibits J-1, page 2, and GCX-5) This flyer states the company is giving a fifty cents hourly pay raise. The flyer states that the pay raise decision was made by Ray, Mike and Dan, just like always, and that they trust that the union will not delay their decision. The flyer is very clearly trying to emphasize that the decision was made solely by the company owners and that the UFW presence and negotiations deserve no credit for the pay raise.

On March 23, 2013, Gerawan distributed a one-page flyer with the company logo to approximately five thousand employees. (J-1, page 2, and GCX-8) This flyer alleges that Gerawan workers make more money than workers at other companies in the industry. The flyer gives Jose Erevia's name, telephone number and email address.

Just eight days after sending the March 20, 2013 mailer, which announced a fifty cents hourly pay raise, the company sent another mailing on March 28, 2013 stating that the pay increase would be for a full dollar, from \$9.00 to \$10.00 (rather than \$9.50 as stated on March 20, 2013). This one-page flyer with the company logo states that it is from Ray, Mike and Dan Gerawan. The mailer was sent to



approximately five thousand employees. (Exhibits J-1, page 3, and GCX-10) The flyer gives Jose Erevia's name, telephone number and email address.

The next day, on March 29, 2013, Gerawan sent another mailer, also announcing the one dollar pay raise in a one-page flyer format, with the company logo, and stating that it is from Ray, Mike and Dan Gerawan. (Exhibits J-1, page 3, and GCX-11) The flyer gives Jose Erevia's name, telephone number and email address.

On April 26, 2013, the company distributed a mailer to approximately five thousand employees stating that the "union will require you to pay them 3% of your wages." The mailer also stated that "The union wants us to fire you if you don't give them some of your money for dues." This mailer included the company logo, a telephone number for Ray, Mike and Dan Gerawan, and a telephone number and email address for Jose Erevia. (Exhibits J-1, page 3, and GCX-12)

**C. In March 2013, Gerawan Manager Jose Erevia Invited Worker Carlos Uribe Estrada to a Negotiation Session**

In March 2013, company manager Jose Erevia invited worker Carlos Uribe Estrada, witness # 80, to attend one of the negotiation sessions. (51 RT 127:11-130:3 and 76 RT 144:9-145:9) Note that Uribe uses the word "invite" (51 RT 128:15-20), but Erevia does not. In an answer to a single question, Erevia denied four separate times that he had invited Uribe to the negotiations, but also conceded that he gave Uribe information about the location, date and time of the negotiation session. (76 RT 144:13-145:9) I credited Uribe's testimony on that subject. That

same month, worker Carlos Uribe Estrada left work early to attend a negotiation session.<sup>13</sup> (51 RT 126:3-10 and GCX-71) While Uribe was not the petitioner in this matter, he did later participate as one of the signature gatherers. (51 RT 18:11-14) But there was no evidence suggesting that Uribe encouraged Silvia Lopez to begin the decertification effort.

**D. Multiple Factors Exist Suggesting the Need to Evaluate Whether or Not Silvia Lopez Made an Independent Decision to Become the Decertification Petitioner**

There are four factors that require a discussion of why Silvia Enedina Lopez, witness # 79, became the decertification petitioner. The first factor is that her boyfriend was a Gerawan supervisor. The second factor is that while Silvia Lopez did not work for Gerawan during 2010, 2011, 2012 or during the first half of 2013, she decided that she would become the decertification petitioner prior to when she began work at Gerawan on or slightly after June 25, 2013. (46 RT 65:4-9) The third factor is that Silvia Lopez worked very few hours for the company during July 2013 through November 2013. The fourth factor is that shortly after Silvia Lopez began the decertification drive, two of her daughters were hired by the company. (47 RT 19:14-21)

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<sup>13</sup> In contrast, when the UFW requested the company allow three or four workers to leave early to attend a negotiation session, the request was denied. (Exhibit GCX-18 and 24 RT 107:18-109:24)

I find that, at all times during 2013, Silvia Lopez had a boyfriend named Mario Montez, who was witness # 53. During most or all of the time during 2009 through 2013, Ms. Lopez and Mr. Montez lived in the same house. (46 RT 33:10-14, 46 RT 28:11-13, 52 RT 188:5-8 and 53 RT 10:6-9) At all times in 2013, Mr. Montez was a supervisor at Gerawan. (46 RT 33:25-34:2) There was no testimony at hearing to show that Mr. Montez ever discussed the union with Silvia Lopez.<sup>14</sup> In fact, the opposite was true. The testimony by Silvia Lopez and Mario Montez was stilted and rigid, and collectively suggested that the pair never discussed work topics with each other. In fact, Lopez denied telling Montez that she was going to seek a position at Gerawan in 2013. I found that testimony to be unpersuasive.<sup>15</sup> But the fact that Lopez and Montez probably had conversations about what was taking place is not the same establishing that Supervisor Montez encouraged Lopez to become the decertification petitioner.

It is undisputed that Silvia Lopez did not work at Gerawan during 2009-2012 and the first half of 2013. (46 RT 21:11-22:14) On June 11, 2013, Silvia Lopez traveled to attempt to attend a mediation session between Gerawan and the UFW in Modesto, along with her son-in-law, Angel Lopez, who was witness # 98. (46 RT

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<sup>14</sup> Silvia Lopez testified that she does not recall discussing the UFW with Montez at any time during 2010 to 2013. (53 RT 14:2-16) Silvia even denies telling Montez when her daughter was arrested at an anti-UFW protest. (52 RT 14:18-20)

<sup>15</sup> As will be discussed later in this decision, I discredited most of Silvia Lopez's testimony. Silvia Lopez conceded that she lied during her interview with Regional Director Silas Shawver. (52 RT 27:10-33:12, 52 RT 82:2-85:19, 52 RT 113:22-114:12 and 52 RT 115:10-13)

65:10-13) Silvia states that her son-in-law told her that the UFW was treating the workers like animals and would be taking some of their wages away. (46 RT 67:20-68:2)

This date of the mediation session was several weeks before Silvia Lopez started working at Gerawan in 2013.<sup>16</sup> (46 RT 116:8-10) Silvia testified that she attended because Angel did not want to drive all the way there himself. (46 RT 66:22-67:2) Silvia's daughter, Lucerita, who was Angel's wife, also came along even though she did not work at Gerawan. (46 RT 116:11-17) Also traveling with Silvia, Angel and Lucerita was Gerawan worker Felix Hernandez Eligio, who was witness # 82. (46 RT 118:12-119:8) It was at this mediation that Silvia Lopez met attorney Paul Bauer for the first time. Silvia states that on the date of the mediation session, she decided that she was going to take on the lead role of opposing the union. (46 RT 135:11-17)

Prior to starting with Gerawan in July 2013, Lopez tried selling Herbalife products on a commission basis. Lopez claimed that one of her reasons to going to work for Gerawan was that her physical health precluded her from regular work and Gerawan's relaxed attendance policies would accommodate her condition. (53 RT 58:14-59:7) I did not find this testimony persuasive. The daily routine of the

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<sup>16</sup> In fact, Silvia did not ask a foreman about working at Gerawan in 2013 until the first day when she started work, which occurred several weeks after she traveled to Modesto for the mediation session. (47 RT 6:4-6)

agricultural worker working in the vineyards or trees is physically demanding work, much more physically demanding than sales or retail work.

Lopez conceded that she did not work very much in the fields during June 25, 2013 and November 5, 2013. (53 RT 29:12-18) In fact, for the ten week period from August 12, 2013 to October 20, 2013, Lopez only worked only eighty-three hours<sup>17</sup>, or an average of 8.3 hours per week. (Exhibit GCX-67) In contrast, during that same time period, some other workers were working as much as fifty-five hours in a week. (Exhibit GCX-67)

After Silvia Lopez began collecting signatures, Gerawan hired Silvia's daughters Belen Elsa Solano Lopez, who was witness # 91, and Lucerita<sup>18</sup> Lopez. (46 RT 17:23-18:4, 47 RT 19:14-21 and 47 RT 23:14-24:15) Both of those daughters also helped collect signatures for the decertification effort. (47 RT 33:7-20) After initially working as crew labor, Belen was later hired by the company as a grape-checker, despite having missed forty out of fifty-four days. (61 RT 132:6-133:19, 61 RT 172:13-18, Exhibit GCX-49 and Exhibit GCX-67) In fact, for the four week period from August 12, 2013 to September 15, 2013, her third through sixth weeks on the job, Belen only worked 38.75 hours, or an average of 9.7 hours per week, during a time period where some other workers were working 50-55 hours

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<sup>17</sup> In fact, even this figure of eighty-three hours worked may be inflated by including four hours of reporting time that the company acknowledges paying almost all of the workers on the day of a protest occurring on September 30, 2013.

<sup>18</sup> Lucerita Lopez is also sometimes referred to as "Lucero". (50 RT 188:25-189:7)

in a week. (Exhibit GCX-67) In fact, an analysis of Exhibit GCX-67 suggests a high correlation to dates when Silvia was absent and when Belen was absent. The most plausible conclusion is that the absences for Silvia and Belen were related to the decertification effort rather than the two women simultaneously having health issues. Moreover, the absence of two workers at the same time would seemingly impact the crew greater than the absence of only one person.

The General Counsel presented no credible evidence that Silvia Lopez or her daughters were ever paid for hours that they did not work, other than the four hours of reporting time noted in footnote # 16. The General Counsel also presented no evidence of “off-the-books” payments to Silvia Lopez or her family.<sup>19</sup>

**E. Many of the Key Decertification Leaders or Signature Gatherers Had Relatives Who Were Company Supervisors**

Many of the key decertification leaders or signature gatherers had immediate relatives or household members who were company supervisors or foreman. Mario Montez was a Gerawan supervisor. His girlfriend was Silvia Lopez the petitioner.

In 2013, at least some of the time, Silvia’s daughters, Belen Elsa Solano Lopez, who

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<sup>19</sup> Almost two months after the hearing started, the General Counsel issued a subpoena to Wells Fargo Bank for Silvia Lopez’s bank records. (Exhibit GCX-103) I did not give any weight to the business records declaration from Wells Fargo Bank which states that they were unable to find any accounts for Silvia Lopez. (Exhibit GCX-100) The General Counsel could have obtained account information from Silvia Lopez either during its investigation stage or even during their examination of Lopez at hearing. Between the limited information that the General Counsel gave Wells Fargo to work with, and the lack of a witness to describe the specific search parameters taken by the bank, I found that business records declaration to be unreliable.

was witness # 91, and Lucerita Lopez, lived in the same house as her mother Silvia and Mario Montez. Silvia's son-in-law Angel Lopez also lived in that same house.

Gisela Judith Castro Lopez, who was witness # 92, was very active in the decertification effort. Castro's husband is Gerawan crew boss Bartolo Ortiz, who was witness # 101. Rolando Padilla, who was witness # 83, was very active in the decertification effort. Rolando's brother is Gerawan crew boss Jesus Padilla.

Martina Rojas Rodriguez, witness # 85, was an outspoken advocate of decertification. Martina's father is Gerawan crew boss Candalario Rojas Gonzales, who was witness # 123. Other workers likely recognized many of the decertification leaders and signature gatherers as relatives or household members of Gerawan supervisors and crew bosses.

On the other hand, nepotism runs rampant at Gerawan. There was extensive testimony showing that the majority of the crew bosses had relatives working at the company and many of them supervised their own relatives. There was some credible testimony that at least a few crew bosses generally favored family members on all aspects of employment. If relatives of crew bosses are treated especially well that might be an alternative explanation as to why such workers were more likely to actively oppose the union.

**F. The Decertification Proponents Seem Genuine in Their  
Animosity for the UFW and ALRB Regional Director**

A single persuasive witness may be more persuasive than a multitude of less credible witnesses. That being said, the company did not call a single non-

supervisory workers as part of its case. The petitioner presented testimony from twenty-five non-supervisory workers plus herself. Six of the twenty-six witnesses are among those individuals that were either related to or lived with Gerawan supervisors or crew bosses.

As will be discussed later in this decision, I generally discredited much of the specific testimony of several of the petitioner's witnesses because those witnesses flat-out lied, and repeatedly, not only during General Counsel investigative interviews, but also, best as I can tell, but then again at the administrative hearing, as to the nature and coordination of the earlier lies. Additionally, at the prehearing conference, the petitioner deliberately failed to disclose critical facts known to her which, when added to the other lying, demonstrates a clear pattern of deliberate deception.<sup>20</sup>

But while the concealment at the prehearing conference and the untruthfulness during the investigative interviews and hearing testimony causes me to discredit much of the specifics of the testimony of certain witnesses, I also sensed

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<sup>20</sup> In my Prehearing Conference Order, dated September 10, 2013, I found that the General Counsel failed to include enough detail in its theory of its case and ordered the General Counsel to file a written brief to that end by no later than September 15, 2014. The ALRB regulations require all counsel to outline their case in great detail. (ALRB Regulation section 20249, subdivision (c)(1).) While the other parties had limited time to see and analyze the General Counsel's amended consolidated complaint, they still had ten months after the election to prepare and summarize the facts known to their own clients. For example, petitioner Silvia Lopez was well aware of the fact that she was involved in blocking company work entrances on September 30, 2013. Trial by ambush is not permitted and the failure to fully disclose factual and/or legal theories of the case at the prehearing conference may be an appropriate basis for adverse inferences or sanctions. (ALRB Regulation section 20249, subdivision (d).)



a genuine and strong animosity from these same witnesses toward the UFW and ALRB Visalia Regional Director. In fact, the vast majority of petitioner's witnesses seemed to have this anger and disdain toward both the union and the Regional Director. The decertification proponents felt that the Regional Director had cheated them and this encouraged them to redouble their efforts and, if needed, to break rules or laws to achieve their end. By itself, I do not find this dishonesty, or this zeal, to be indicia of company instigation. Even if the Regional Director had legitimate and highly persuasive bases to dismiss the first decertification petition, many of the decertification proponents may have been unaware or sincerely disbelieving of those reasons. This demonstrates the need for a Regional Director to effectively communicate his or her basis for rejecting a petition, to the extent that it can be done without infringing upon workers' confidence that petition signatures will be kept absolutely confidential.

**G. After Dan Gerawan Introduced Petitioner Silvia Lopez to Fruit League President Barry Bedwell, the Fruit League Proceeded to Serve as Financial Muscle for the Decertification Effort**

**1. Dan Gerawan Invited Five or Six Decertification Advocates to meet him in Sacramento for a Lobbying Trip**

On August 14, 2013, Dan Gerawan invited five or six workers to go to Sacramento so that they, along with Dan, his wife Norma, and Fruit League President Barry Bedwell, could lobby Members of the State Legislature. (33 RT 40:5-7 and 62 RT 175:25-177:8) Barry Bedwell has been president of the Fruit League since July

2003. (33 RT 203:15-17) Bedwell admitted that the Fruit League is “an association of agricultural employers”.<sup>21</sup> (33 RT 290:9-12) Per Bedwell, Gerawan is one of the largest peach growers in the United States. (33 RT 217:18-22) Gerawan is also one of the largest growers among the Fruit League members. (33 RT 217:23-218:1) Bedwell knew that Dan Gerawan was concerned that the workers were not getting the right to vote. (33 RT 81:16-19 and 33 RT 82:8-11)

Gerawan asked Jose Erevia to identify for him employees who would oppose Senate Bill 25, and within a day Erevia gave him of list of prospects. (62 RT 177:6-178:8) Dan Gerawan worked with Barry Bedwell and Fruit League lobbyist Louie Anthony Brown, Jr., who is with the law and lobbying firm of Kahn, Soares and Conway, to put together a list of legislators to contact. (33 RT 38:4-8 and 62 RT 190:16-191:20) Dan Gerawan stated that the list of employees included Silvia Lopez, Rolando Padilla, Carlos Uribe Estrada, Jose de la Rosa, and Rosa Madrigal. (62 RT 194:13-195:3) Dan Gerawan could not recall if a Rigoberto or an Andres was on the list. (62 RT 194:24-195:2) Carlos Uribe confirmed that he went along with Silvia Lopez, Rolando Padilla, Jose de la Rosa, plus an additional man and an additional woman. (51 RT 151:9-17) Gerawan called each of the workers for the first time no more than twelve hours before the early morning departure time the next day, giving each of the workers the address for Fruit League lobbyist Louie Brown who was a full

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<sup>21</sup> In the past, the Fruit League has provided training to its members regarding “union avoidance”. (33 RT 237:10-25)

one hundred and eighty miles away in Sacramento. (62 RT 197:16-22 and 62 RT 204:5-10)

When owner Dan Gerawan called Uribe on the telephone and invited him to go to Sacramento, this was the first time that Gerawan had ever called Uribe. (51 RT 136:18-137:5) Gerawan told Uribe that it was important to speak with people in Sacramento about the problems with the union, and Uribe agreed to go. (51 RT 137:3-9) Dan Gerawan gave Uribe a list of names to call. (51 RT 158:12-159:25) At Gerawan's direction, they met at an office where the workers were provided with a free lunch. (51 RT 162:20-163:17) Uribe stated that the workers went to tell the legislators that they wanted to have an election and get rid of the union. (51 RT 137:17-21, 51 RT 154:2-22 and 51 RT 166:10-14) Uribe said that all of the workers expressed those sentiments to the legislators in the presence of Dan Gerawan. (51 RT 137:17-24 and 51 RT 154:2-22)

During the six to seven hours of meetings with legislators and staffers in Sacramento, Dan Gerawan admitted hearing the workers raise the topic of wanting to vote. (62 RT 217:1-16, 62 RT 224:11-13 and 62 RT 227:12-13) Silvia Lopez admitted speaking out against the UFW while in Sacramento, telling Legislators that the UFW had abandoned Gerawan workers. (47 RT 73:2-10) Carlos Uribe Estrada testified that Barry Bedwell was there with Dan Gerawan and the workers for about half of this

time.<sup>22</sup> (62 RT 225:3-6) Bedwell does not speak Spanish. (33 RT 42:8-10) The first time that Bedwell met with Silvia Lopez was when she traveled to Sacramento, at Dan Gerawan's invitation, on August 14, 2013. (33 RT 254:12-21) Bedwell knew that Silvia Lopez filed a decertification petition on September 18, 2013. (33 RT 79:7-9) Bedwell also knew that Silvia Lopez was a leader of the decertification effort. (33 RT 291:7-10) Other than Silvia Lopez, Bedwell was unable to name any of the workers with who he spent several hours. (33 RT 43:23-44:1) Bedwell did recall that the workers were unambiguous in their remarks that they wanted to get rid of the union and that they did not see value in its presence at Gerawan. (33 RT 48:4-14 and 33 RT 49:21-24) Dan Gerawan and the workers had lunch at Fruit League lobbyist Louie Brown's office, apparently paid for by the Fruit League or the lobbyist. (47 RT 80:13-81:6, 51 RT 163:12-17 and 62 RT 226:16-24)

Dan Gerawan made it clear that he did not want to give up the names of people who spoke during their trip to Sacramento and that it created a difficult situation for him. (62 RT 218:11-12 and 62 RT 221:4-5) Dan Gerawan even went so far as to state on the record that he was reluctant to "snitch out" the workers in a proceeding which might result in their ballots being destroyed. (62 RT 244:20-23) Dan Gerawan explained that it was hard for him to candidly answer questions because he felt that the purpose of the hearing was to destroy the workers' ballots. (62 RT 218:4-6) Dan Gerawan repeatedly emphasized that he was worried that the information that he would

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<sup>22</sup> On that same day, the Fruit League provided "lunchboxes", with fresh fruit in them, as gifts to the Members of the State Legislature. (33 RT 40:3-25)

give would be used to destroy the ballots. (62 RT 218:10-11 and 62 RT 220:20-221:2)

If the UFW remains, Dan Gerawan is concerned that his family will no longer be able to run the company as a “meritocracy”. (62 RT 145:1-2)

Worker Rolando Padilla went even further.<sup>23</sup> Padilla denied that Dan Gerawan had called him. (65 RT 75:14-16) Rolando Padilla denied that Gerawan had invited Padilla to Sacramento. (65 RT 75:17-19) Ronald Padilla then became very defensive when he was asked if he had met Dan Gerawan in Sacramento, first deflecting the question with a question of his own, but then denying having met Dan Gerawan in Sacramento. (65 RT 75:20-25) Padilla later said that he did travel to Sacramento with other workers, but that it was “totally false” that Gerawan was there at all. (65 RT 76:1-5) Then when asked by the ALJ if he might have gone with Silvia Lopez, Carlos Uribe Estrada and Rosa Madrigal to Sacramento in mid-August 2013, Padilla responded that “he didn’t remember very well. (65 RT 117:9-17) Then, upon further examination, Padilla conceded that it was possible that he went and ran into Dan Gerawan and his wife while “walking down the street”. (65 RT 118:1-13) When asked if he attended a meeting in Sacramento where Dan Gerawan was present, Rolando Padilla continued to be evasive, stating that he couldn’t remember because he often travels with friends to Washington and Las Vegas. (65 RT 118:16-119:3) Padilla then conceded that he remembered going into the Capitol, but that the one thing he could say

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<sup>23</sup> The first day that Rolando Padilla show up to testify he wore a t-shirt that said “Count our votes”. (65 RT 113:6-12) Padilla expressed his strong concern that Gerawan would go bankrupt if there was a union present. (65 RT 113:22-114:9)

for sure is that Dan Gerawan was not present. (65 RT 119:8-17) Rolando Padilla was clearly lying throughout his testimony. It was brutal.<sup>24</sup>

**2. After the Regional Director Dismissed the First Petition, The Fruit League Flexed Its Financial Muscle in Coordination with Petitioner Silvia Lopez**

Throughout the process of the first decertification petition, Dan Gerawan provided Bedwell and Fruit League lobbyist Louie Brown with regular email updates, many attaching documents. (33 RT 102:11-17 and 33 RT 103:6-8) Shortly after the Regional Director dismissed the first decertification petition, Bedwell called into the radio show of conservative talk show host Ray Appleton to express the League's opposition to the dismissal of the first petition and supporting the decertification effort by Silvia Lopez. (33 RT 114:6-19 and 33 RT 291:20-23) On that same day, Dan Gerawan sent an email to Bedwell thanking him for his performance on the radio show. (Exhibit GCX-34, bates # 0007273.) Dan Gerawan told Bedwell about the September 30, 2013 protest, sending information as well as attaching the company press release issued that same day. (33 RT 118:1-11)

Bedwell understood that decertification was the main issue for the workers. (33 RT 76:6-9) Bedwell said the point of the October trip was for workers to express that

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<sup>24</sup> Suffice it to say, I did not find Rolando Padilla to be a credible witness. Padilla denied knowing that any of his colleagues had blocked Gerawan entrances despite that his car also did so. (65 RT 122:18-123:11) Padilla also testified that while on the day of the work blockage his car blocked one of the entrances to the Gerawan property, it was purely inadvertent because his car just "suddenly died" in that particular spot, with no advance difficulty to him. (65 RT 123:16-125:9)

they did not see value in being represented by the union. (33 RT 77:18-23) Bedwell knew that Gerawan could not legally pay for those expenditures. (33 RT 246:23-247:247:6) Bedwell also admitted knowing that there were legal provisions restricting the Fruit League's involvement in decertification matters. (33 RT 290:13-291:3)

On October 1, 2013, the day after the September 30<sup>th</sup> protest, Bedwell made his work credit card (that is, the Fruit League's credit card) available so that the workers could go to Sacramento on October 2, 2013. (33 RT 78:1-10, 33 RT 79:11-15 and 33 RT 118:23-119:5) Bedwell says that on October 1, 2013 he received a call Kent Stevens at Sunview Vineyards asking him if the Fruit League could help the workers go to Sacramento. (33 RT 78:12-79:3) Even though Bedwell was in Washington, D.C. at the time, he was able within one or two hours to get the Fruit League Executive Committee to authorize expenditures of up to twenty thousand dollars to support the decertification effort. (33 RT 122:8-22) Bedwell understood that the effort was trying to get the buses to go the very next day. (33 RT 131:4-19) Bedwell knew that it would be multiple buses and at least hundreds of workers would be going. (33 RT 134:19-135:10 and 33 RT 161:24-162:2)

That same day, Bedwell then called talk show host Ray Appleton and obtained contact information for attorney Joanna MacMillan, who represented Silvia Lopez. (33 RT 123:1-16 and 33 RT 129:20-23) Also on the same day, Bedwell then spoke with attorney MacMillan, giving her his credit card number and authorizing her to use it. (33 RT 123:1-20, 33 RT 136:7-12, 33 RT 161:9-14 and 33 RT 245:20-23) Bedwell told MacMillan that the Fruit League would pay for the workers transportation expenses,

including food for the workers, up to twenty thousand dollars. (33 RT 133:11-13 and 33 RT 136:13-24) Bedwell denies telling MacMillan that a Washington, D.C. political donor would be reimbursing them. (33 RT 288:17-289:1)

Bedwell understood that MacMillan used the Fruit League credit card for charter bus expenditures of \$6,366 to Classic Charter and \$3,468 to Golden Eagle Charter, which totals \$9,834. (33 RT 141:1-142:18 and Exhibit GCX-34) The Classic Charter invoice shows that the reservation was confirmed on October 1, 2013, with a destination of the ALRB Offices at 1325 "J" Street, 19<sup>th</sup> Floor, Sacramento, California. (Exhibit GCX-30) The Classic Charter expenditure of \$6,366 includes \$750 for candy bars, chips, sodas and waters. (Exhibit # GCX-30) Bedwell also understood that MacMillan used the Fruit League credit card to buy food for the Gerawan workers, including \$1,850 for Gordito Burrito and \$1,664 for Juanito's Mexican Restaurant, which totals \$3,514. (33 RT 141:18-143:7 and Exhibit GCX-35) Thus, the Fruit League made expenditures totaling \$13,348.00 in support of the decertification effort on October 2, 2013.

The testimony of three witnesses suggests that Gerawan had inquired about bus availability and prices immediately before this trip. Mary Louise Patterson, who is also known by her maiden name of Louise Villagrana, and who was witness # 56, has been the office manager at Classic Charter for the past fourteen years. (31 RT 265:5-7 and 31 RT 266:19-267:7) Louise remembered that Tatiana Projkovska, who was witness # 124, had in the past booked buses for Gerawan, but not for law firm McCormick Barstow. (31 RT 283:1-285:23) UFW executive assistant Jeanette Christina



Mosqueda, who was witness # 55, recalled learning via email from Louise that, at the time in question, Tatiana from Gerawan had inquired about buses, but that McCormick Barstow had booked them. (31 RT 209:4-6 and 31 RT 211:16-25) Both Louise and Mosqueda identified Exhibit GCX-28 as a true copy of their email exchange on Wednesday morning, October 2, 2013, which was the day of the trip. (31 RT 214:6-9, 31 RT 274:7-276:16 and 31 RT 277:11-24) In those emails, Louise told Mosqueda that Tatiana called for a quote and then Classic Charter took 200 persons up to Sacramento for McCormick Barstow.<sup>25</sup> (Exhibit GCX-28) Louise and Mosqueda have never met in person. (31 RT 269:11-14) Mosqueda did not contact the Golden Eagle bus company. (31 RT 243:24-244:7) I found both Mosqueda and Louise to be credible witnesses and fully credited their testimony.

Projkowska was been employed with Gerawan since 2008 and serves as their office manager. (100 RT 8:8-18 and 100 RT 48:22-49:2) Projkowska admitted that she contacted Classic Charter sometime between Monday, September 30, 2013 and Wednesday, October 2, 2013. (100 RT 30:11-22 and 100 RT 61:1-21) Projkowska also admitted that by the end of September 2013 the East side packing plant was not packing. (100 RT 56:12-19) Projkowska also admitted calling Golden Eagle about buses on or about Friday, September 27, 2013. (100 RT 30:23-31:8 and 100 RT 61:20-25) On Wednesday, October 2, 2013, at around 5:15 a.m. or 5:30 a.m. in the morning,

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<sup>25</sup> In a report to the Fruit League on October 15, 2013, Bedwell indicated that 300-400 employees were bused to Sacramento to protest outside the ALRB offices and to meet with political leaders at the Capitol. (Exhibit GCX-40, bates # 0007259)

Projkowska learned that multiple buses were parked outside the company offices, but she did not take any action. (100 RT 32:16-33:9) Dan Gerawan indicated that he learned about the buses later that morning. (62 RT 253:12-21) Gerawan testified that it sounded “right” that about four hundred workers went to Sacramento on the buses. (62 RT 255:2-7)

On October 30, 2013, Bedwell sent an email to the Fruit League Executive Committee requesting approval of using Fruit League discretionary funds to support the decertification effort at Gerawan. (33 RT 149:1-15) Bedwell explained that the expenditures relate directly to the union decertification effort of our member’s employees, and made reference to the second decertification petition filed on October 25, 2013. (33 RT 149:20-150:4 and Exhibit GCX-36, bates # 0007260) Bedwell requested approval for approximately \$5,800 to \$6,000 for up to two thousand t-shirts requested by Silvia Lopez with the “say no the union” message. (Exhibit GCX-36, bates # 0007260, 33 RT 155:20-25, 33 RT 250:12-21, and 55 RT 50:13-51:19) Specifically, the shirts said “No UFW”, inside a circle, with a slash over it. (52 RT 180:1-3) Silvia Lopez was the person who told Bedwell how much the t-shirts would cost. (33 RT 157:4-20) There is an October 28, 2013 invoice from Gloria’s Sports in Madera for 1,178 t-shirts totaling \$5,890.00. (See Exhibit GCX-38, bates # 0007241, 33 RT 185:14-19, and 55 RT 52:20-54:23) Bedwell’s name is on the invoice. (See

Exhibit GCX-38<sup>26</sup>, bates # 0007241, and 33 RT 18612-187:15) The Fruit League files show that the invoice was authorized for payment by Fruit League bookkeeper Vicky Jones on October 30, 2013. (See Exhibit GCX-38, bates # 0007241, and 33 RT 188:19-22) On October 31, 2013, the Fruit League issued check # 8803 in the amount of \$5,890.00 to Margarito Cano Morales for the t-shirts. (See Exhibit GCX-38, bates # 0007240, and 33 RT 156:15-18) As soon as Silvia Lopez received the t-shirts, she began distributing them to her co-workers. (55 RT 54:24-55:2) In total, then, the Fruit League spent \$19,238.00 to support the decertification proponents, including the \$13,348 on October 2, 2013 and the \$5,890.00 on October 31, 2013. These expenditures were clearly made at the behest of petitioner Silvia Lopez, who by this juncture had a bevy of attorneys at her disposal.<sup>27</sup> The employer's association, that is the Fruit League, was happy to serve as financial muscle for petitioner. Bedwell denied that the Fruit League received any money from outside sources to pay for the buses or t-shirts. (33 RT 245:7-12)

Bedwell claims that he does not know when Dan Gerawan became aware of the Fruit League paying for his workers to leave the work site to go to Sacramento and that Dan never directly talked to him about it. (33 RT 162:19-163:63:8 and 33 RT 269:14-

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<sup>26</sup> Exhibit GCX-38 is identical to Exhibit ALJ-3. Due to this case lasting 105 days with 130 witnesses, there were a couple of instances where it was more expeditious to mark an exhibit again then to search for it among a myriad of documents.

<sup>27</sup> There is no footnote # 27.

270:1) I did not find credible Bedwell's testimony regarding his alleged non-communication with Dan Gerawan on this subject.

The record is replete with constant communication between Gerawan and Bedwell during the days leading up to October 1, 2013. Exhibit GCX-33 is an email from Dan Gerawan to Barry Bedwell and Fruit League lobbyist Louie Brown dated September 19, 2013, at 9:00 p.m. Exhibit GCX-32 is an email from Dan Gerawan to Barry Bedwell and Fruit League lobbyist Louie Brown dated September 22, 2013, at 5:08 p.m. Exhibit GCX-34 is an email from Dan Gerawan to Barry Bedwell and Fruit League lobbyist Louie Brown dated September 24, 2013, at 4:53 p.m. Exhibits U-8 and Exhibit GCX-37 are emails from Dan Gerawan to Barry Bedwell dated October 3, 2013, at 4:38 p.m. and 4:44 p.m., respectively. (33 RT 169:7-15, Exhibit U-8, bates # 0007277, and Exhibit GCX-37, bates # 0007281) Exhibit GCX-37 also shows multiple emails from Dan Gerawan to Barry Bedwell on October 7, 2013, and Bedwell responds to Gerawan just one minute after Dan's second email. (Exhibit GCX-37, bates # 0007282) In this email exchange, Gerawan encourages Bedwell to change his language for a newspaper opinion-editorial piece and Bedwell acquiesces. (Exhibit GCX-37, bates # 0007282, 33 RT 174:22-25)

For three reasons, when taken into account together, I reach the inescapable conclusion that Bedwell surely communicated with Gerawan about its expenditures for the chartered buses on October 2, 2013. First, Bedwell was taking away three to four hundred workers from Gerawan on one of the busiest days of the year, and just two days after the blockage that prevented a day's work. Second, Gerawan staff made

inquiries for charter buses just a day or two before the October 2, 2013 trip, despite conceding that the East side packing was mostly shut down, eliminating an alternative explanation as to why the buses might be needed. Third, and most telling, Dan Gerawan did not send an email to Barry Bedwell regarding the three to four hundred workers leaving the work site to go to Sacramento for the day. Had Dan Gerawan heard about this and not known that Barry Bedwell and the Fruit League were providing the financial muscle, he would have otherwise emailed Bedwell to tell him what was transpiring. In tandem, these three sets of circumstances, along with the demeanor of the witnesses, make it clear cut to me that there was some level of communication between Bedwell and Gerawan regarding the October 2, 2013 expenditures supporting the decertification effort.

Bedwell also tailored his answers to avoid admitting obvious facts. For example, in his testimony, Bedwell initially refused to acknowledge that the workers seeking a vote were the workers who wanted to get rid of the union. (33 RT 271:13-273:18) In the Fruit League's annual report, it readily acknowledges that it "took the lead" in calling for the decertification votes to be counted. (33 RT 289:2-290:8) On the other hand, the Fruit League did not provide any financial support to workers at Gerawan who supported retention of the union. (33 RT 84:3-5)

For the past fourteen years, Areli Sanchez Fierros, who was witness # 75, worked for Gerawan. (42 RT 160:10-19) Sanchez was one of many witnesses who saw anti-union t-shirts at multiple events prior to the election. (43 RT 32:11-12, 43 RT 43:22-25 and 43 RT 47:1-49:3) When Sanchez went on the bus to Sacramento prior to

the election, she did not know who paid for the bus. (43 RT 74:3-11) Sanchez recalled that on the bus there were free snacks including candy and chips. (43 RT 74:12-17) However, when the bus stopped at Gordito Burrito, Sanchez made it sound like the stop was just to use the restrooms. (43 RT 75:5-10) Generally, Sanchez was a very confident witness who answered questions at a quick pace. I credited most of her testimony, but discredited her statement to the extent that it implies that workers just used the restroom at Gordito Burrito.

#### **H. Legal Support to the Decertification Effort**

In 2013, Petitioner Silvia Lopez was supported by two law firms. One of these firms was the Walter and Wilhelm Law Group of Fresno, of which attorney Paul J. Bauer was the lead contact. The other law firm was McCormick Barstow of Fresno, of which attorney Anthony Peter Raimondo, who was witness # 50, was the lead contact. By the time of the hearing, Raimondo was no longer part of the McCormick Barstow law firm. (27 RT 58:4-6) The primary associate working with Raimondo on this matter was Joanne MacMillan, who was witness # 57. In the amended consolidated complaint, dated September 9, 2013, the General Counsel alleged that Gerawan provided the McCormick Barstow legal support to Petitioner, but makes no such allegation as to Walter and Wilhelm.

There was no evidence in the record to support the idea that Gerawan directly paid either McCormick Barstow or Walter and Wilhelm. Attorney Raimondo testified that the firm collected no money on the case. (27 RT 68:23-24 and 27 RT 87:14-19) Attorney MacMillan recalled Raimondo joking about not getting paid. (32 RT 143:7-

17) No witness provided testimony to the contrary. No did any witness or document support the concept that Gerawan paid the Walter and Wilhelm law firm.

A second theory proffered by the General Counsel was that because, in 2013, attorney Raimondo represented one or two farm labor contractors that did work on Gerawan fields that same year. Under the specific facts of this case, the theory fails by an especially wide margin. Raimondo has been representing Sunshine Agricultural Services for several years. (27 RT 125:6-10) However, Raimondo testified that he did not represent Sunshine with respect to any matters involving Gerawan. (27 RT 127:13-23)

The General Counsel also raised an even more tenuous theory. Many years back, Raimondo was an associate at the law firm of one of the company's attorneys, Ronald Barsamian. They also pointed out that Raimondo and MacMillan put a huge amount of time into this case and insinuated that no attorneys would work that much for free. I found those arguments thoroughly unpersuasive. Raimondo could have been representing Silvia Lopez to generate future business, out of animus toward the General Counsel, or had a sincere to assist Silvia Lopez. It is not important for me to know Raimondo's reasoning so long as neither Gerawan nor any employer association paid for his legal services. While some of Raimondo's answers on other subjects were purposefully phrased to advocate his client's position, I fully credit Raimondo's testimony that neither he nor his law firm received any money from Gerawan, Silvia Lopez or third parties.

My significant concern with the attorneys of Silvia Lopez was that they helped facilitate the twenty thousand dollars donation to the decertification campaign by Barry Bedwell and the Fruit League. (32 RT 208:19-210:7) The Fruit League of course had its own separate attorneys. But the topic of that monetary influx to the decertification campaign is discussed elsewhere in this decision.

**I. Unilateral Increases of Wages and Benefits**

**1. Unilateral Increase of Farm Labor Contractor Wages**

In June 2013, Gerawan raised the wages of its farm labor contractor (“FLC”) employees from eight dollars an hour to nine dollars an hour. Company manager Jose Erevia, who was witness # 99, testified that 2013 was the first year that Gerawan paid FLC hourly wages that were greater than the minimum wage. (76 RT 160:7-11) Guadalupe Morales, who was witness #51, was the owner of Sunshine Agricultural Services. Morales testified that the nine dollars an hour figure was proposed by Gerawan. (28 RT 16:10-12) In contrast, company manager Jose Erevia, claimed that it was the FLC owners and not Gerawan that sought the wage increase. (76 RT 160:3-161:24) Company owner Dan Gerawan testified that the UFW was given no advance notice as to this FLC employee wage increase. (64 RT 152:19-153:11)

While I did not find Morales to be a particularly credible witness, I can think of no motivation for her to have been purposefully misleading on this topic. In contrast, the company had an obvious motive to have denied having unilaterally raised FLC wages at that juncture. For that reason, on this topic, I credited the testimony of



Morales over the testimony of Erevia. However, I will note that the evidence seems to indicate that no FLC crews were still working by the time that the election was held.

**2. Unilateral Increase of Field Grape-Packer Piece-Rate**

Worker Reina Ibañez, who was witness # 14, testified that on October 25, 2013, many employees left work in the middle of the day to go to a protest outside the Fresno courthouse. (11 RT 93:5-93:22) This was the day that the second decertification petition was filed. By the time that the workers returned, co-owner Michael Raymond Gerawan, who was witness # 117, unilaterally increased the piece-rate for field grape-packers from \$1.25 per box to \$1.50 per box. (92 RT 29:22-32:10 and Exhibit # GCX-42) Gloria Mendez, who was witness # 115, testified that the company also gave the workers free pizza and tacos that day. (90 RT 151:20-152:10 and 95 RT 23:22-24:2) Michael Gerawan was credible in testifying that the piece-rate was sometimes changed due to the quality of the grapes. (92 RT 30:10-15) Michael Gerawan testified that his reason for increase on October 25th was as encouragement and a reward. (92 RT 29:22-25)

**3. Upgrades to the Friday Free Fresh Fruit Program**

The company had a program in which it distributed free fresh fruit on some Fridays at the end of the work day. There was ample testimony that this program existed in some form for many years. The most persuasive testimony was that the free fruit was previously left out in large bins for the workers to pick out in a self-serve fashion. (9 RT 32:1-33:9) By 2013, the fruit was put on tables under shade and there were sometimes fruit-flavored beverages. (9 RT 33:19-36:3) There was also

persuasive testimony that one of the purposes for these fruit give-aways was to reduce theft of fruit from the fields.

**4. Employee Benefit Program**

In 2013, the company provided workers with a flyer that offered discounts with various stores and vendors like Costco and DirecTV. There is no evidence that the company paid anything for these discounts and there was no evidence that these discounts were better than deals otherwise available to a worker. There was insufficient evidence presented at hearing to establish that these discounts were true “benefits” rather than just advertised specials that the company was passing along.

**J. The General Counsel and UFW Failed to Establish that Grape-Checkers are Supervisors**

At this juncture, there is no need for me to give a detailed recital of Oakwood Healthcare, Inc. (2006) 348 NLRB 686 and its progeny. There are assistant supervisors in the peach trees who some workers refer to as “checkers” and those individuals are undisputed supervisors. But the “checkers” in the grapes are not supervisors. In 2013, the grape-checkers, who are sometimes called quality control crew, or “QC”, had no ability to hire, fire or discipline employees. (101 RT 63:15-65:24) Nor could the grape-checkers responsibly direct work or reassign a worker to another task. There was some credible testimony that in past years, the grape-checkers had the authority to unilaterally suspend an employee for small, dirty or poorly colored grapes, and also some credible testimony that the grape checkers did not have such authority even in prior years. The more credible testimony was that in 2012 and 2013,

the grape checkers merely reported the issue with the grapes to a supervisor who then decided what remedy, if any, was needed.

The grape-checker positions had some advantages and disadvantages over picking and packing grapes during the vineyard harvest. The grape pickers and packers worked at a piece rate and often made more money than the hourly rates paid for either grape-checkers or non-supervisory peach tree work. On the other hand, the grape-checker work was less physically demanding.

**K. There was Credible Evidence that One FLC Foreman Signed Himself or Collected Decertification Petition Signatures, But the Evidence as to the Second FLC foreman was not Persuasive**

**1. FLC Crew of Jose Evangelista**

In Fall 2013, Jesus Madrigal, who was witness # 3, worked for a FLC called Sunshine Agricultural Services. (5 RT 9:6-14) Madrigal's crew picked peaches at Gerawan on the West side.<sup>28</sup> (5 RT 9:15-10:7 and 34 RT 8:6-16) Madrigal's foreman was Jose Evangelista. (5 RT 10:2-18 and 34 RT 8:20-22) Jose Evangelista

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<sup>28</sup> Guadalupe Morales, who was witness # 51, also confirmed that Evangelista's crew worked on Gerawan property in 2013. (28 RT 12:4-11) She is the owner of Sunshine Agricultural Services. (28 RT 9:8-25) I generally discredited her testimony for two reasons. First, Morales initially denied that she received that name of attorney Spencer Hipp from attorney Anthony Raimondo and then later conceded Raimondo had given her a list of five names including Hipp. (28 RT 36:14-39:17) Second, I found incredible Morales' story about how her business records had all been stolen in a burglary right after she had boxed them up to send to the ALRB Regional Office two or three days before the ALRB's deadline. (28 RT 44:17:-51:1)

is sometimes known as Jose Angelrico. (34 RT 15:22-25) The size of the crew was approximately eighteen to twenty workers. (5 RT 10:19-22 and 34 RT 15:23-25)

A woman gave Evangelista a piece of paper in mid-September 2013 around the lunch hour. (34 RT 19:3-22 and 34 RT 21:5-7) Madrigal states that Evangelista told crew members that he had signed a paper on their behalf regarding the union. (5 RT 14:4-17:12 and 5 RT 18:20-19:16) Evangelista later told Madrigal that he had signed against the union. (5 RT 29:24-30:9) Jose Evangelista, who was witness # 58, corroborated some of Madrigal's account, but was not sure as to the paper's purpose. (34 RT 18:14-25:2) Evangelista indicated that he initially thought that the paper might have been related to safety training, but no training had been conducted on that day or the preceding day. (34 RT 21:8-24:12) I found Madrigal to be the more persuasive witness and I credited his testimony in its entirety.

Jose Evangelista's crew stopped working at Gerawan during the first week of October 2013 so none of the crew members would have voted in the November 5, 2013 decertification election unless in the interim they had obtained a position with a Gerawan direct hire crew. (34 RT 8:14-16)

**2. FLC Crew of Israel Lopez.**

In August through approximately October 2, 2013, Priciliano Sanchez worked for a FLC crew. (12 RT 23:21-24:4) The name of the FLC was R & T Grafting, and the crew boss was Israel Lopez. (12 RT 22:5-10 and 22:24-23:3) The crew size was approximately twenty workers. (12 RT 24:10-13) Sanchez stated that Lopez told the crew to pick up their checks from the contractor near the Gerawan office. (12

RT 25:3-7) Sanchez stated that he recognized the FLC owner because he had seen him before.<sup>29</sup> The FLC “owner” than asked the crew members to sign a paper to get rid of the union. (12 RT 26:24-27:7)

Sanchez emphasized three separate times that he believes that Gerawan treats workers like “animals”. (12 RT 19:18-23, 12 RT 42:10-14 and 12 RT 43:17-22) Sanchez felt that Gerawan treated him and his son unfairly back when he worked for the company during 2008-2009. (12 RT 42:15-43:11) I did not find Sanchez to be a credible witness.

**L. Signature Gathering During Work Hours by Crew**

**1. Direct Hire Crew of Jose Luis Cabello Abraham**

Four witnesses testified with respect to work-time signature gathering in the crew of Jose Luis Cabello Abraham. These four persons were Jose Donaldo Guevara, Jacinto Carrasco Aquino, Carlos Uribe Estrada and Jose Luis Cabello Abraham. I did not find any of these four witnesses to be particularly credible and thus I do not draw any conclusions as to whether or not there was any signature gathering during work time in the crew of Jose Luis Cabello Abraham.

In 2013, Jose Donaldo Guevara, who was witness # 44, worked for Gerawan in the Reedley/Sanger area in the crew of Jose Cabello. (22 RT 57:6-18)

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<sup>29</sup> Rosa Zepeda, who was witness # 52, testified that she was the president of R & T Grafting. (28 RT 109:8-16) However R & T had a male field supervisor named Horacio Gomez. (28 RT 112:19-22) My reason for discrediting Sanchez is not the discrepancy as to the owner’s gender, which could easily be explained by Sanchez mistaking Gomez as the owner, but rather due to Sanchez’ bias as a result of his strong animosity for Gerawan based upon his past experience working for the company.

Cabello's nickname is "El Toca," which means to touch or to play. (89 RT 28:11-17) About five minutes after the lunch break ended, which would be 10:35 a.m., Guevara saw four women talking with one of his colleagues, Hacinto Carrasco Aquino (witness # 87) and give him some paper. (22 RT 59:2-62:4) Cabello was about five steps away from Guevara. (22 RT 63:20-64:4) Guevara then saw the women similarly give some papers to persons in another nearby crew. (22 RT 64:13-23) At approximately 11:00 a.m., Carrasco asked Guevara to sign a paper to get rid of the union. (22 RT 66:4-16) Guevara saw Carrasco gather about four signatures. (22 RT 67-9-17) At the time, Guevara states that Cabello was approximately twenty-five feet away. (22 RT 66:23-67:7) Guevara alleges that Carrasco and Raul Zamora asked for signatures almost every day. (22 RT 68:18-69:11) I did not credit this statement. Some of the times that Raul asked him for signatures were during work time when Guevara was pruning or suckering. (22 RT 69:18-70:21) During the times when signatures were collected, Guevara often saw Cabello give papers to Carrasco and a tractor driver named Raul. (22 RT 73:2-74:9) In the final days of October 2013, Guevara states that he heard supervisor Jose "Lolo" Pizano respond to a worker that they did not want the union there. (22 RT 76:5-79:15)

Jacinto Carrasco Aquino, who was witness # 87, started working for Gerawan in 2004 and has worked there every year thereafter. (57 RT 112:21-113:5) Carrasco is sometimes called "Chinto". (57 RT 143:18-19 and 51 RT 105:15-17) The name of Carrasco's significant other is Alecia Diaz Reyes, who was witness #

84. (57 RT 167:5-6) In July 2013, Carrasco began gathering signatures to oppose the union. (57 RT 126:2-23) Diaz was also collecting signatures, but mostly in the Kerman area. (57 RT 130:19-131:1) Diaz did sometimes come to the Reedley area to collect signatures there. (57 RT 131:7-17) Diaz spent more time collecting signatures than Carrasco. (57 RT 131:22-24) Both Carrasco and Diaz began collecting signatures at about the same date. (57 RT 131:2-6)

Carrasco states that he gathered signatures on work days during his lunch time. (57 RT 128:15-129:6 and 57 RT 167:10-13) Carrasco mostly collected signatures from other crews, stating that he only gathered signatures from his own crew on a single occasion. (57 RT 129:7-11) In 2013, Carrasco left work early on two occasions to travel to the ALRB Visalia Regional Office. (57 RT 186:5-189:2) But on other occasions, Carrasco stated that the trips to Visalia were in 2014, not 2013. (57 RT 134:21-135:5 and 57 RT 189:11-21) When Carrasco was around seventeen years-old, he worked for a different agricultural employer and also volunteered for the UFW in his spare time. (57 RT 149:6-151:4) Carrasco stopped volunteering for the UFW in 2003 because he was unhappy with paying fifteen dollars a month for a UFW membership identification card. (57 RT 151:9-21 and exhibit ALJ-4) Carrasco states that he has kept the UFW card all these years out of respect for Cesar Chavez. (57 RT 156:23-157:22) I did not find Carrasco credible when he remembered the specific block number that his crew was working in when the UFW first arrived or the exact number of workers in his crew that date. (57 RT 160:23-162:9) Nor did I find Carrasco credible when he testified that his significant

other, Alecia Diaz Reyes, witness # 84, never told him that she was responsible for blocking entrances at work. (57 RT 176:7-10)

Carlos Uribe Estrada, who was witness # 80, started working for Gerawan in 1996 and has worked there every year thereafter. (51 RT 8:14-21) I find that Uribe worked in the Reedley/Sanger area in the crew of Jose Cabello (Exhibit # ALJ-5, Bates numbers 00011004-000110125), even though the transcript indicates that he testified that his crew boss was Jose Carillo. (51 RT 8:22-9:12) Uribe understood from Silvia Lopez that they had to collect signatures and take them to Sacramento in order to keep the union out. (51 RT 18:1-19) Uribe states that he and Carrasco collected signatures in the Sanger area at lunch time and after work. (51 RT 22:13-23:2 and 51 RT 24:10-12) They went to nearby crews at lunch time and to a nearby store after work. (51 RT 24:20-25:22) Uribe recalls having gone to other crews for signatures a total of between ten and fifteen occasions. (51 RT 26:4-15) Uribe collected signatures at the store on approximately five occasions but did not remember the name of the store. (51 RT 30:11-31:7) The furthest that he had to travel at lunch time to collect signatures was approximately eight minutes in one direction. (51 RT 27:1-4)

Uribe remembers that the UFW visited his crew at lunch time approximately between five and ten times. (51 RT 34:10-35:6) Uribe claims that as of the date of his testimony, he did not know who was responsible for blocking the company entrances in Kerman on the day of the protest. (51 RT 42:7-43:8) Uribe and some of his crew mates told Cabello that they were stopping work without



giving a reason, and they then went to the protest from approximately 9:00 a.m. to 2:00 p.m. (51 RT 44:22-46:16) Uribe indicated that they went to the protest because Silvia had told them that the foremen were included in the earlier signatures, so they would gather new signatures at the protest so that the ALRB could see that the foremen were not included. (51 RT 48:4-12) Uribe saw Chairez and other female workers collecting signatures at the protest. (51 RT 79:15-22) Uribe also left work early to go to a Visalia protest that Silvia told him about. (51 RT 60:14-63:21)

In 2013, Uribe also missed work to attend a protest in Sacramento. (51 RT 119:19-120:4) In early 2013, Uribe attended a mediation session in Modesto between the company and the UFW. (51 RT 109:9-17) Uribe states that he learned about the mediation session from a truck driver whose name he could not remember. (51 RT 109:18-110:18) Uribe had no idea why this truck driver invited him in particular to attend the mediation session. (51 RT 110:24-111:1) Uribe did not see Silvia Lopez there that day. (51 RT 111:17-19)

Jose Luis Cabello Abraham was witness # 112. Cabello started as a crew boss in 1992, and he has held that position from that time until the present. (89 RT 8:16-17 and 89 RT 32:8-10) The size of his crew is approximately thirty-five persons. (Exhibit # ALJ-5, Bates numbers 00011004-000110125) His crew was on the East side, which was the Reedley/Sanger area. (89 RT 9:23-10:1) His brother Eliberto Cabello also works in his crew. (89 RT 10:23-11:3) Cabello has a spouse who works in the Gerawan packing house. (89 RT 28:22-29:2) Cabello had two assistants or helpers, one of who was Raul Zamora. (89 RT 15:25-16:14) Cabello

denies that some ladies ever dropped off papers to Carrasco. (89 RT 22:8-11) When asked about an occasion when Raul Zamora asked for Guevara's signature, Cabello immediately stated that the requested signature was for a paycheck even though the question did not specify a date or time period. (89 RT 22:23-23:11 and 89 RT 49:20-22) Cabello denied ever seeing crew member Carlos Uribe collecting signatures. (89 RT 26:15-19) Cabello denies Jose "Lolo" Pizano stated that the company did not want the union, claiming that Cabello and Pizano only talked about work. (89 RT 25:8-21) Cabello denied knowing that the union issue was important to the company. (89 RT 33:24-34:5) Cabello states that he normally ate lunch in his van and that he never saw anyone from the union visit his crew nor anyone opposed to the union. (89 RT 50:21-51:23) In fact, Cabello claimed that he first learned that there were workers collecting signatures to get rid of the union in November 2013. (89 RT 43:12-17) Cabello did not remember if when interviewed by the General Counsel in September 2013 whether they asked him anything about the union. (89 RT 45:15-46:10)

## **2. Direct Hire Crew of Jose Jesus Carillo**

Three witnesses testified with respect to work-time signature gathering in the crew of Jose Jesus Carillo. These three persons were Cesar Garcia Gomez, Angel Rincon Solorzano and Jose Jesus Carillo. I did not find any of these four witnesses to be particularly credible and thus I do not draw any conclusions as to whether or not there was any signature gathering during work time in the crew of Jose Jesus Carillo.

Cesar Garcia Gomez, who was witness # 2, started working for the company in May 2010. (3 RT 58:12-14) In 2013, Garcia worked for two different foreman, Leonel Nuñez Martinez, who was witness # 106, and Jose Jesus Carillo, who was witness # 110. (3 RT 62:1-3) The nickname for Nuñez is the “tiger”. (84 RT 25:6-13) Garcia stated that he worked for Carillo from the end of June 2013 to November 2013. (3 RT 64:6-9) In Summer 2013, Garcia allegedly heard Carillo speak to four workers about collecting decertification signatures. (3 RT 67:13-71:7) The conversation took place at 6:10 a.m. or 6:15 a.m., prior to the 6:30 a.m. work start time that day, and the sun had already begun to rise. (3 RT 67:25-68:6) The four crew workers included two tractor drivers, Angel Rincon Solorzano, nicknamed “Tamales”, who was witness # 77, and Pedro, and two regular workers, Jose Luna, who was known as “Aurelio”, and Aurelio’s brother Edward, whose nickname was “Chaquetas”. (3 RT 68:21-69:9, 3 RT 70:18-23, 3 RT 115:4-13 and 45 RT 82:3-4) Shortly thereafter, Rincon and Aurelio asked Garcia to sign a decertification petition to get rid of the union. (3 RT 75:2-13) Garcia also saw the pair ask seven to fifteen other workers to sign, finishing up about seven minutes before work started. (3 RT 75:14-76:15) After that day, Garcia was asked to sign a decertification petition on four more occasions. (3 RT 78:20-24) The first of these other occasions was allegedly two to five days after the original time, and took place during work hours between 7:14 a.m. and 7:45 a.m. (3 RT 79:13-80:11) On this occasion, Carillo was approximately six to eight rows away. (3 RT 83:3-9) Garcia estimates that it is seven to eight feet between two rows of peach trees. (4 RT 88:22-89:6 and 4 RT

93:10-94:2) On that occasion, Garcia states that he saw Rincon and Aurelio approach fifteen to twenty workers after he himself was asked. (3 RT 84:10-15 and 3 RT 139:22-25)

On cross-examination, Garcia stated that it was Pedro and Aurelio who he saw soliciting the signatures that day. (4 RT 67:6-10, 4 RT 70:12-14 and 4 RT 101:8-11) Garcia states that it was another six to eight weeks later the next time that they asked him for his signature. (3 RT 86:19-21) On that occasion, Garcia was asked by Rincon and Pedro for his signature during work hours between 11:15 a.m. and 11:45 a.m. (3 RT 86:8-11 and 3 RT 88:12-14) Garcia also states that on a Friday, Carrillo indicated that there would possibly be a work stoppage the next day to protest the union. (3 RT 93:21-96:8) Garcia states that his crew worked the next day, but that there was a work stoppage the following Monday. (3 RT 96:23-97:13) On that day, Garcia states that he arrived at around 6:05 a.m. and he saw three forepersons standing around, and he also saw Silvia Lopez collecting signatures. (3 RT 98:12-99:12) The three forepersons were Jose Jesus Carrillo, Leonel Nuñez Martinez and Francisco Maldonado Chavez, witness # 104. (3 RT 98:19-24) Garcia states that he was asked for his signature that day between eight and twelve times. (3 RT 107:15-20) Garcia states that he heard Carrillo talk about the decertification signatures with Rincon, Pedro, Aurelio Luna and Chaquetas on approximately six to eight other occasions. (3 RT 117:13-119:7) In one of the conversations that Garcia heard, Carrillo stopped those four workers and told them to go to a September protest at the intersection of I-145 and Central. (3 RT 120:4-121:10) Garcia later

gave a declaration to the UFW but did not remember it until it was put before him. (3 RT 174:15-19, 3 RT 205:18-22 and 4 RT 27:23-28:24) Garcia stated that he and Carrillo had argued, and Carrillo told him that if the union did not come in, Garcia would be among the first to be fired and that the company would replace fruit trees with almond trees. (4 RT 109:23-110:16)

Garcia also states that, in August and September, Dan Gerawan spoke to the workers on three occasions and on one of the occasions, Dan Gerawan “indirectly” told the workers to vote against the union. (4 RT 111:12-112:19, 4 RT 129:3-4 and 4 RT 192:7-13) Garcia later described the last meeting as having taken place in November approximately one to two weeks before the election. (4 RT 168:7-20) On one of those three occasions, Dan’s wife, Norma Linda, and brother, Michael, were also present, as was Jose Erevia. (4 RT 131:7-132:6 and 4 RT 160:20-25) Garcia remembers Michael Gerawan speaking in Spanish, although later he acknowledged that it might have been Dan speaking in Spanish instead. (4 RT 140:12-141:25)

Angel Rincon Solorzano, who was witness # 77, started working for the company in 1996. (44 RT 113:15-22) His nickname is “Tamales”, because he used to sell tamales out in the fields. (45 RT 47:7-11) He has worked in Carrillo’s crew since 1999. (45 RT 19:9-12) Rincon decided that he would collect signatures to get rid of the union. (44 RT 130:19-131:2) Rincon got the idea to do this after he saw women at the company collecting signatures. (44 RT 131:3-12) Signature gatherers gave him a telephone number for Silvia Enedina Lopez, who was witness #

79. (44 RT 132:9-133:23) Rincon received the signature sheets from Silvia Lopez and her son-in law, Angel Lopez, who was witness # 98. (45 RT 27:14-23 and 45 RT 93:13-16) After collecting signatures, Rincon then gave his signature sheets to Silvia Lopez or Angel Lopez. (44 RT 135:8-25) Rincon's wife Erica Solano also collected decertification signatures. (45 RT 80:15-22) Rincon states that Carillo told him that he did not want to see anyone collecting signatures from crew members during lunch time. (45 RT 85:9- 87:25) Rincon states that he was not involved in causing the work stoppage that occurred in September 2013. (44 RT 145:1-10) Rincon states that he never asked anyone as to who was responsible for the blockage. (45 RT 62:10-12)

While testifying on Friday, December 5, 2014, Rincon stated that on the day of the work stoppage, at around 7:00 a.m. to 7:30 a.m., which was an hour after he had initially arrived to work and observed the blockage and log-jammed cars, Rincon saw a single worker on a tractor across Central. (44 RT 170:2-171:17 and 45 RT 30:9-11) Rincon did not remember the name of this person. (44 RT 170:22-25) On Monday, December 8, 2014, Rincon claimed that the worker was Eleazar Mulato, witness # 10. (45 RT 28:19-29:12) Rincon admitted that he had discussed the topic on the telephone with co-worker Eduardo Luna, also known as "Chaquetas", in between his testimony. (45 RT 29:13-24 and 45 RT 47:12-16) Rincon stated that no supervisors were in the area when that occurred. (45 RT 31:5-7) On the day of the work stoppage, Rincon saw people gathering signatures for the decertification effort, so he asked them for sheets of paper and joined them in the

signature gathering. (44 RT 149:25-151:11 and 44 RT 169:7-10) One of the workers who gave him signature sheets was "Chairez". (45 RT 107:24-108:6) Three or four women were there with him collecting signatures. (45 RT 60:24-61:1) They collected signatures during what would have been their normal working hours but for the blockage. (45 RT 68:2-4)

Jose Jesus Carrillo, who was witness # 110, started working for Gerawan in 2006 and first became a foreman in 2009. (87 RT 117:7-22) In 2013, his crew worked on the West side, near Kerman. (87 RT 119:13-21) His typical crew size was twenty-five to thirty workers. (87 RT 121:22-24) On the one or two days that he might have been sick, either Pedro Esparza or Eduardo Luna would have been left in charge of the crew. (87 RT 122:24-123:9)

On the day of the work stoppage, between 7:00 a.m. and 9:00 a.m., which was after work would have started, Carrillo saw about eighty to one hundred feet away a worker from Maldonado's crew block Branch Avenue by moving a single tractor. (88 RT 8:6-10:5 and 88 RT 41:25-42:1) The tractor was not locked or tied down in any way, so anyone who wanted to move that tractor could have hopped onto it and moved it. (88 RT 62:1-18) Any even without that tractor there, foot traffic was already impeding anyone from going forward. (88 RT 63:24-64:3) Carillo did not call his supervisor, Antonio Franco, until between 8:00 a.m. and 9:00 a.m. (88 RT 10:20-11:7) Carillo then went to have lunch with Franco and foreman Maldonado. (88 RT 11:21-12:3) Carillo then received a call from someone at the

office telling him to go there. (88 RT 13:21-14:5) Carillo could not remember the name of the person from the office who had called him. (88 RT 13:24-25)

In the office, Carillo participated in a conference call with the other crew bosses and company's attorneys, where the attorneys told the crew bosses to write down what they had seen on a sheet of paper. (88 RT 15:21-15:25) Carillo then left to go home for the day, without making any inquiries as to the workers who had rode to work with him that morning. (88 RT 16:1-13) Carillo denied knowing that the people blocking the entrances that day were against the union. (88 RT 55:17-21) Carillo states that no one mentioned the day's events during the ride to work the next morning. (88 RT 16:14-16:19)

Carillo remembered two or three other days when multiple crew members left early and some came back to work before the day ended, with at least one of these occasions occurring before the decertification vote. (88 RT 17:22-18:19 and 88 RT 20:7-21:3) None of the workers were disciplined for leaving early. (88 RT 53:6-8) Carillo remembers a time when one of the owners came to speak with his crew. (88 RT 22:17-25) Carillo remembered very little of what was said at the meeting because he purposefully walked away when the owner and his wife was talking, nor did Carillo recall if more than one crew was present. (88 TR 24:10-25:1) But Carillo denied knowing beforehand what management was there to speak about. (88 RT 25:2-5) Carillo denied talking to his crew about the decertification petition and collecting signatures. (88 RT 29:9-15) Carillo denied knowing that Dan



Gerawan wanted the workers to have the right to choose whether or not to be represented. (88 RT 40:13-16)

### **3. Direct Hire Crew of Maria Emma Salvador de Cortez**

The allegation with respect to crew boss Maria Emma Salvador Cortez is not that she allowed signature gathering during work time, but rather that she stood with anti-union protesters on the day of the work blockage, which was September 30, 2015.

In 2013, Salvador Alatorre, who was witness # 41, was an ALRB Regional Office field examiner (sometimes called a Board agent). Alatorre saw restrooms set up near the protest on September 30, 2013. (21 RT 13:13-21 and 21 RT 44:14-24) Alatorre described the pro-UFW group he saw that day as fewer than fifty persons. (21 RT 65:10-21) Shortly before 1:00 p.m. that day, Alatorre saw a separate group of ten or fewer people protesting with signs on Central, and identified crew boss Emma Cortez as one of the people in that group. (21 RT 34:15-37:17) Alatorre had interviewed Cortez a few days prior to the work blockage. (88 RT 140:4-11 and 88 RT 154:9-19) Alatorre took a picture of her license plate. (21 RT 36:11-14, 88 RT 155:23-156:5, and exhibit GCX-93, pages two through four)

Maria Emma Salvador de Cortez, who was witness # 111, began working at Gerawan in 1991, and became a foreperson in 2007. (88 RT 77:13-19) Cortez had a son, Antonio Cortez, who worked in her crew. (88 RT 77:20-24) Cortez was unable to work on the day of the blockade and protest. (88 RT 91:10-13) After being told by a non-supervisory worker that there was no work that day, Cortez

simply sat in her car for six or seven hours with the windows rolled up, neither moving nor speaking with anyone on her cellular telephone that she had with her. (88 RT 95:15-97:10, 88 RT 100:14-102:23, 88 RT 102:25-103:2, 88 RT 110:5-7 and 158:19-159:17) The next day, no one asked or spoke to Cortez about what had happened nor did Cortez herself ask anyone else what had happened. (88 RT 110:23-112:11) It is not believable that Cortez stayed in her car and called no one and received no calls for six hours at Central & Goldenrod streets.

I credited all of Alatorre's testimony as to Cortez, and discredited all of Cortez's testimony as to her activities on the day of the September 30, 2013 work blockage. However, I do note that from Alatorre's testimony, we have no way of knowing if Cortez merely stopped for a couple of minutes to talk to some of the protesting workers or if, alternatively, Cortez took a more active role. I also discredit the testimony of Felix Hernandez Eligo, who was witness #82, as to his claim of having seen Salvador Alatorre waiving a UFW flag that day.

#### **4. Direct Hire Crew of Martin Elizondo Cruz**

Six witnesses testified with respect to work-time signature gathering in the crew of Martin Elizondo Cruz. These six persons were Gustavo Vallejo, Jorge Aguirre, Justino Meza, Maria Gonzales Espinoza, Alejandro Paniagua Chavez and Martin Elizondo Cruz. I found the five worker witnesses to be more credible than crew boss Martin Elizondo Cruz.

Gustavo Vallejo, who was witness # 1, worked for Gerawan during 1997 to 2014. (1 RT 159:9-10) In addition to being a regular worker, Vallejo was

also a grape checker during 1998 to 2006. (1 RT 164:2-9) During calendar year 2013, Vallejo worked in the crews of Martin Elizondo and Santos Rios. (1 RT 167:22-168:1) In 2013, Vallejo was in Martin Elizondo's crew during the months of April through September. (1 RT 168:2-4) The crew had approximately thirty-two workers. (1 RT 194:24-195:1) Vallejo stated that he recalled an occasion when three persons came to his crew to collect signatures at approximately 1:40 p.m. in the afternoon. (1 RT 206:21-207:6) On direct examination, Vallejo described this event as occurring in April 2013, but on cross-examination Vallejo conceded that it might have occurred in another month such as July 2013. (1 RT 197:13-15 and 2 RT 202:11-204:23) At this time, Elizondo's crew had just finished thinning trees at Ranch 20-C and foreman Elizondo was giving out instructions for starting work at Ranch 21-B. (1 RT 203:16-20) Vallejo saw two workers sign the petition while Elizondo was giving the work instructions. (1 RT 216:4-10) Elizondo told his crew workers to wait until he was done giving his instructions. (2 RT 214:21-215:4) Vallejo had seen these same three persons come to his crew on the preceding day at the end of the work day, but the crew ignored the three people because it was the end of the day. (1 RT 197:13-23 and 1 RT 201:22-202:1)

Jorge Aguirre, who was witness # 23, worked for Gerawan from 1997 through 2014. (14 RT 174:8-16) His spouse is Maria Gonzales Espinosa, witness # 34. (18 RT 141:4-5) In 2013, he worked for crew bosses Manuel Ramos and Martin Elizondo, in that order. (14 RT 176:6-20) Aguirre remembers an occasion when worker Rolando Padilla, who was witness # 83, came to Elizondo's crew to collect

decertification petition signatures. (14 RT 177:4-178:10) Padilla sought the signatures for ten to fifteen minutes right after the lunch break had ended. (14 RT 180:16-21 and 14 RT 181:7-9) Aguirre also recalled an occasion when two ladies and a man came to Elizondo's crew to collect decertification petition signatures. (14 RT 182:17-19, 14 RT 185:12-15 and 14 RT 187:2-5) He recalls them getting a few signatures while his foreman conducted a class. (14 RT 184:24-185:16) The three people remained there for about five to eight minutes after the class ended. (14 RT 190:3-5)

Aguirre also remembered an additional occasion when two people came to Elizondo's crew for signatures after they had moved from the peaches to the grapes. (14 RT 193:8-194:10) On one occasion, Aguirre himself asked Elizondo for permission to collect signatures from the crew. (14 RT 195:18-196:1) Aguirre claims that he told Elizondo that he wanted during work time to collect signatures to have the union "come in" and that Elizondo denied his request, saying that he would have to go to the office to seek permission. (14 RT 195:21-196:7 and 14 RT 204:11-14) Later that day, Aguirre states that Elizondo received and read out loud a typed letter from the office which stated that Elizondo did not have the authority to grant permission for people to collect signatures and that anyone seeking permission would need to go to the office. (14 RT 198:15-199:12 and 14 RT 205:8-10) Aguirre was terminated from the company in 2014. (14 RT 202:20-23)

Justino Meza, who was witness # 28, worked for Gerawan from 2007 through mid-November 2013. (16 RT 123:20-124:1) In 2013, Meza was in Martin

Elizondo's crew. (16 RT 124:9-13) Meza rode to work with a colleague named Isabel. (16 RT 124:18-125:9) Meza alleges that Isabel told him sometime between July and August 2013 that he had received papers for collecting signatures from Elizondo. (16 RT 125:10-126:1 and 16 RT 128:20-22) Meza also says that Isabel told him that if the union came in, the company would knock down the trees and give the land to the State. (16 RT 126:1-5) The next day, Meza saw Isabel collecting signatures prior to the start of a work day, putting the materials away when work started. (16 RT 131:6-8 and 16 RT 133:14-25)

On the day of the blockage, Meza recalls Martin Elizondo telling crew workers to go over to Interstate 145 where the workers are going to gather. (16 RT 142:5-10) Meza later joined the pro-union workers that were protesting and went to the UFW offices to give a declaration. (16 RT 144:13-146:6) Meza also remembered a second day when there was no work and he heard rumors that workers were going to Visalia. (16 RT 147:2-153:15 and 16 RT 156:18-157:8) Hearsay evidence is admissible when allegations are additionally supported by other corroborating evidence. Although counsel did not object during the hearing, this "double hearsay" is sometimes less reliable. Here, the witness is testifying as to what a second person stated that a third person had told him. None of the parties indicated that they tried to subpoena "Isabel" but were unable to do so. Martin Elizondo Cruz, witness # 103, did not remember whether or not he had a worker named Isabel in his crew in 2013, but denied asking any worker to collect signatures. (80 RT 48:25-49:13)

Maria Gonzales Espinoza, who was witness # 34, started working at Gerawan in 1997. (18 RT 112:14-15) She is the wife of Jorge Aguirre, who was witness # 23. (18 RT 141:4-5) In 2013, Gonzales picked grapes in Elizondo's crew. (18 RT 113:19-21) This would have been well after August 4, 2013. Gonzales recalled a single day where, half an hour into working, a woman, who she did not recognize, wearing clean clothes and dress boots, asked her to sign a paper to get rid of the union. (18 RT 115:12-116:12) The significance of the attire is that presumably most workers intending to work on a particular day would wear certain clothing and footwear in the fields due to the nature of the work.

Gonzales remembers one occasion when she went to work but work was canceled. (18 RT 120:10-12) On that morning, Gonzales recalls outdoor lamp/heaters and people chanting "out with the union". (18 RT 121:12-122:5 and 18 RT 123:11-124:13) She heard someone on a megaphone saying that they were going to a location, possibly Visalia, and inviting people to join them. (18 RT 124:14-21) After waiting at work for a couple of hours, supervisor Lucio Torres, who was witness # 126, told the approximately five remaining workers that they could work for the day with Raquel Villavicencio's crew. (18 RT 130:1-132:13) Her husband was among the workers that remained to work. (18 RT 141:1-3) At the end of her testimony, Gonzales wished to explain that she was worried by coming and testifying that it might impact her future ability to work at Gerawan. (18 RT 145:8-146:18) Respondent's counsel objected to her making that comment at the end of her testimony. (18 RT 146:5 and 18 RT 147:20-148:4)

Alejandro Paniagua Chavez, who was witness # 64, worked for Gerawan from 2010 to 2014. (36 RT 118:9-14) In 2013, he worked in Elizondo's crew. (36 RT 119:8-9) Paniagua indicated that a co-worker named Refugio Ochoa had filled in for Martin Elizondo on some occasions when Elizondo was sick. (36 RT 120:8-14) In 2013, on a day when they were picking plums, Refugio Ochoa told Paniagua to remove his red UFW t-shirt, and that Paniagua would now no longer be considered a friend. (36 RT 120:18-121:6 and 36 RT 123:2-5) Paniagua also stated that on one occasion Elizondo pulled him aside for five or ten minutes to tell him that Elizondo had the authorization to stop him from working. (36 RT 124:22-126:14) Paniagua understood this to mean that he could lose his job because of his wearing the UFW t-shirt. (36 RT 123:10-125:13) Paniagua also remembered two women and one man collecting signatures on a Saturday when he was waiting in line to get his paycheck from his foreman. (36 RT 132:3-134:14 and 36 RT 150:18-25)

Martin Elizondo Cruz, who was witness # 103, worked for Gerawan from 1985 to 2014. (80 RT 9:11-15) Elizondo became a crew boss in 1998 and served in that capacity in 2013. (80 RT 18-23) At first, Martin stated that he only had a single brother, supervisor Guadalupe Elizondo, who worked at Gerawan in 2013. (80 RT 14:13-22) In 2013, Elizondo's crew normally worked on the East side. (80 RT 145:17-19) Guadalupe was Martin's direct supervisor when his crew was on the West side. (80 RT 16:14-22) Martin later admitted that he also had a second brother, supervisor Jesus Elizondo, who worked at Gerawan. (80 RT 15:23-16:9) Martin does not remember anyone other than crew counters and ALRB

staff visiting his crew in 2013. (80 RT 21:9-22:19) Martin remembers that his crew was working at block 123A on the West side on the day of the work blockage in late September 2013. (80 RT 22:21-23:12) Three of the four workers who Elizondo regularly drove to work in 2013 were tractor drivers. (80 RT 25:20-26:2) On the day of the work blockage, upon arriving at around 5:30 a.m., Martin saw ladders and ribbons blocking an entrance near the tractor. (80 RT 23:19-20 and 80 RT 25:12-26:20) Martin called his brother Guadalupe who told him that he was on his way and to just wait. (80 RT 26:25-27:5) Elizondo indicated that he could have easily removed the ribbon and gone through the entrance, but he did not for fear of being scolded. (80 RT 27:22-25) Elizondo claimed that he had no idea who had blocked the entrance. (80 RT 28:11-13)

At around 8:30 a.m. or 9:00 a.m., one of the counters told Martin and two other nearby foremen to go to the office. (80 RT 28:25-29:17) At the office, Martin saw as many as about fifteen other crew bosses simultaneously present. (80 RT 39:16-19) Martin denies seeing Silvia Lopez on the day of the work blockage, contrary to her recollection. (48 RT 160:7-161:21, 55 RT 36:19-37:1 and 81 RT 83:8-22) Martin tried to answer more than one question with a general denial before the company's counsel had even finished the question. (See for example 80 RT 43:7-11) Martin alleges that Gustavo Vallejo, who was witness # 1, did not work for his crew in 2013. (80 RT 43:24-44:1 and 81 RT 64:11-16) Exhibit GCX-88 includes the workers in Martin's crew, which is crew number 342, for the week ending August 4, 2013. (Exhibit GCX-88 and 81 RT 76:18-20) These workers



include Gustavo Vallejo (second page, fourteenth name from the top), Jorge P. Aguirre (first page, twenty-fifth name from the top), Justino Meza Meza (first page, fourth name from the bottom), Alejandro Paniagua Chavez (second page, fourth name from the top), and Isabel H. Zavala (second page, sixteenth name from top). (Exhibit GCX-88)

Martin could only remember a single occasion, regardless of the time of day, when someone came to his crew to collect signatures. (80 RT 45:25-46:5) Martin identified that person as Rolando Padilla, the brother of Jesus Padilla, and Martin recalled that Rolando collected signatures from his crew during a lunch break. (80 RT 46:4-14) In contrast, Silvia Lopez recalls talking to Martin Elizondo when she went to his crew on the East side to collect signatures with Clara Cornejo (nicknamed "Carla"), witness # 78, and Alecia Diaz Reyes, witness # 84. (55 RT 36:19-37:1 and 45 RT 113:1-23) Martin denied that Rolando collected any signatures from his crew during work time. (36 RT 47:10-16)

Martin admitted that Jorge Aguirre, witness # 23, had asked him for permission to collect signatures, and Martin alleges that he told Jorge that he could do it during breaks and before and after work, just not during work time. (80 RT 47:18-48:5) Martin claims that he did not know whether or not Aguirre supported or opposed the union (81 RT 20:12-18 and 81 RT 28:8-25), but in a prior declaration Martin stated that until Aguirre spoke with him, he had not known that Aguirre supported the union. (Exhibits U-14 and U-15) Martin could not remember whether or not in 2013 his crew had a worker named "Isabel". (80 RT 48:25-49:5) Martin

denied ever giving any worker a piece of paper and asking him or her to collect signatures. (80 RT 49:7-13) Martin denied knowing someone named Maria Gonzales Espinoza who worked at Gerawan in 2013 (80 RT 49:17-19 and 81 RT 68:19-23), but her name shows up among punch cards for his crew for the date of October 14, 2013. (Exhibit GCX-89) Martin then conceded that Gonzales-Espinoza might have been among the pickers with his crew. (81 RT 77:21-78:13) Martin did remember Alejandro Paniagua as a former worker in his crew, but denied that Paniagua ever told him that co-workers were teasing him about his UFW t-shirt. (80 RT 49:25-50:8)

#### **5. Direct Hire Crew of Cirilo Gomez**

Two worker witnesses testified with respect to work-time signature gathering in the crew of Cirilo Gomez. These two persons were Macario Ogarrio and Raul Perez Salazar. Foreman Cirilo Gomez was not called as a witness by any of the parties. Two other witnesses, Horacio Ramirez Reyes and Manuel Barrientos, were called in an effort to discredit Ogarrio and Salazar. One other witness, Armando Elenes, was asked some questions relating to Ramirez and Barrientos. I completed discredited the testimony of four witnesses, Ogarrio, Salazar, Ramirez and Elenes for the reasons that will be discussed below, but found Barrientos generally credible but not having a very detailed recollection. As a consequence, I do not find any evidence of work-time signature gathering in the crew of Cirilo Gomez.

Macario Ogarrio, who was witness # 35, worked for Gerawan from 2010 to September 2013. (18 RT 152:7-10) Ogarrio described two women who came to his crew to do signature gathering two times in late August 2013 during the lunch break. (18 RT 172:9-175:17) Ogarrio described two women, different from the ones described above, gathering signatures at one of the Friday free fresh fruit give-aways as only being six to seven meters from Dan Gerawan and nine to ten meters from Gerawan's spouse. (18 RT 163:21-164:5) I discredited this statement based on other more persuasive witness testimony that both decertification and UFW proponents were always further away than that from where the fruit was being given away. Ogarrio was also vague with respect to his memory of having collected signatures from crew member about a non-union issue, recalling only that it was something for Washington. (18 RT 164:10-18 and 18 RT 184:24) Ogarrio recalled asking his foreman for permission to distribute some union flyers during work time, but he did not show the flyers to Gomez or tell Gomez anything about their source or content. (18 RT 166:3-168:6)

Raul Perez Salazar, who was witness #43, worked for Gerawan for approximately three to four years. (21 RT 169:15-22 and 22 RT 9:16-10:1) Salazar recalled people from outside his crew regularly visiting the crew to solicit signatures. (21 RT 171:24-172:2) Salazar describes one of these people as a forelady who worked in the grapes, but he does not remember the forelady's name. (21 RT 172:3-18) Salazar later described the scene differently, stating that the forelady only directed other workers to collect the signatures rather than directly gathering some of

them herself. (21 RT 189:22-190:3) Upon cross-examination, Salazar seemingly stated that one of the women with the forelady was Silvia Lopez. (21 RT 192:15-20) Salazar states that he had seen the forelady arranging her crew in the fields and also heard comments from other crew members regarding her status. (21 RT 178:6-180:24) Salazar described this forelady as being overweight, neither particularly short nor particularly tall, 45-50 years old, lighter-colored skin and reddish-brown hair. (21 RT 188:9-189:2) Salazar states that after collecting signatures, the forelady gave the papers to his foreman, Cirilo Gomez. (21 RT 172:19-173:6) But upon cross-examination, Salazar then stated that it was Silvia Lopez who gave the papers to Gomez, thereafter changing it back to being the nameless forelady that did so. (21 RT 197:9-198:1) Then, upon further questioning, Salazar stated that Silvia Lopez did not visit his crew on the same day as the forelady. (21 RT 198:12-22 and 22 RT 20:9-12) On one day that Silvia Lopez visited his crew, Salazar recalls a co-worker signing the petition with the name "Pancho Villa", though no one in his crew had that name. (22 RT 13:25-14:7) But then Salazar seemingly backtracked and stated that co-workers would just say they were going to write "Pancho Villa". (22 RT 18:21-19:1) When Silvia Lopez visited his crew, Salazar recalls that she was wearing an identification card. (22 RT 30:10-15)

Horacio Ramirez Reyes, who was witness # 96, was previously a worker and UFW crew representative at Dole Berry North. (68 RT 87:6-16) In January 2012, Ramirez became a UFW organizer for eight months at T.T. Miyasaka in the Salinas/Watsonville area. (68 RT 88:20-89:24) Next, Ramirez went to work

for three or four months at Corralitos Farms. (68 RT 90:1-24) Ramirez explained that he was recruited to pretend to be an ordinary worker at Corralitos when in fact he was simultaneously on the UFW payroll. (68 RT 91:9-13) Next, Ramirez was hired by the UFW to be an organizer at Gerawan. (68 RT 91:24-92:15) Ramirez indicated that his UFW supervisor was Guadalupe Corona. (68 RT 93:5-11) Corona told him that when he went from the Salinas area to the Fresno/Madera area his supervisor would then be Armando Elenes, who was witness # 49. (68 RT 93:24-94:6)

As part of his UFW training, Ramirez alleges that the UFW taught him how to take statements from workers and how to explain to workers what was needed in the statement for it to be useful. (68 RT 97:6-100:11) Ramirez did not recall Elenes directly saying that the organizers should tell the workers to lie, but he felt that Elenes insinuated it. (69 RT 77:14-21 and 69 RT 83:6-23) However, Ramirez did not put all of his training into practice. (69 RT 20:6-17) If something else was needed to make a worker's charge useful, Ramirez would explain what element was missing. (68 RT 100:13-102:4) Ramirez recalled an instance where a worker indicated that he would say whatever was needed. (68 RT 102:6-9) Ramirez recalled this worker being in the crew of Cirillo Gomez. (68 RT 114:25-120:15) In total, Ramirez took three or four statements from workers that would get forwarded to UFW paralegals. (68 RT 114:9-21) Ramirez drafted a couple pre-declaration forms, but only the attorneys or paralegals drafted the declarations. (69 RT 127:17-128:20 and 69 RT 132:17-21) Ramirez states that he told all of these three or four

workers to lie. (69 RT 78:16-24) When asked in a non-leading manner, Ramirez was completely unable to recall the names of Ogarrio or Salazar. However, when asked in a pointedly leading manner as to whether Ogarrio and Salazar were among the three to four Gomez crew workers with whom he spoke, Ramirez responded affirmatively. (69 RT 85:19-91:23)

Ramirez described how he received a called from a worker seemingly out of the blue asking him to testify at the hearing. (69 RT 98:5-106:3 and 69 RT 162:7-164:21) Ramirez indicates that he then invited his coworker Manuel Barrientos, who was witness # 97, to also share his experience. (69 RT 111:19-112:17 and 69 RT 159:18-25) Ramirez acknowledged testifying at the Corralitos hearing in Salinas in November 2012. (69 RT 172:11-21) Ramirez denied lying at the Corralitos hearing. (69 RT 173:10-17) Having reviewed the hearing transcript in Corralitos Farm, 39 ALRB No. 8, Case No. 2012-RC-004-SAL et seq., I note that Ramirez testified under oath that he had always been a strawberry picker and withheld divulging that he had worked for the UFW either before or during his time at Corralitos.<sup>30</sup> (Corralitos, 1 RT 122:6-22)

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<sup>30</sup> The Board should consider referring to the State Bar of California the issue of whether or not, at the time of the Corralitos hearing, any UFW trial counsel had actual knowledge that Ramirez was on the UFW payroll while he was working at Corralitos. If any counsel, UFW or otherwise, had actual knowledge of this relationship, their silence on that matter could be construed as deception, and thus might be an appropriate subject for State Bar review. In any event, it is my holding that, prospectively, UFW counsel are directed to disclose, both generally at the prehearing conference, and specifically before the hearing testimony of that particular witness, if they are calling  
(Footnote continued....)

Manuel Javier Barrientos, who was witness # 97, became a UFW organizer in June 2011. (70 RT 22:1-4) Barrientos was assigned by the UFW to work as an organizer at Gerawan from January 2013 to October 25, 2013. (70 RT 23:13-14 and 70 RT 28:16-24) Barrientos testified that he saw workers who were unjustly fired at Gerawan, but later modified his testimony to say that he only learn of the firings through the comments of other workers. (70 RT 36:7-23) When workers came to Barrientos with possible company violations, he never told the workers to lie. (70 RT 41:18-24) Nor did Barrientos ever tell a worker to alter his statement to UFW paralegals. (70 RT 44:22-45:4)

When he was trained by Armando Elenes, organizers were told that they needed to use “creativity” in their work, but Barrientos never actually saw organizers put this into practice. (70 RT 68:24-69:10 and 70 RT 75:24-75:8) Barrientos states that he never heard other UFW organizers tell workers to tell lies. (70 RT 48:10-13) Barrientos and Ramirez were friends who often ate dinner together in 2013. (70 RT 97:24-25) Barrientos did recall Horacio Ramirez telling him that he had told workers to tell lies in the crew of Cirilo Gomez, but he did not remember the names of the workers involved. (70 RT 48:24-49:14, 70 RT 52:7-17 and 70 RT 53:20-55:7) But later Barrientos stated that Ramirez did not tell him that he had told witnesses to tell lies, only that he had manipulated the circumstances.

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(Footnote continued)

any worker witness who was simultaneously on the payroll of both a grower and the UFW itself.

(70 RT 60:12-18) Barrientos also vaguely remembered UFW organizer Jose Higuera talking about being able to bring in more statements and telling a worker to change his statement. (70 RT 48:3-20) Barrientos indicated that he left the UFW in October 2013 when he was told that his pay would no longer include a supplement for being from Salinas instead of Madera. (70 RT 75:22-76:9, 94 RT 195:13-196:7 and 94 RT 199:20-23) On cross-examination, I found that Barrientos was candid when he admitted that petitioner's attorney had paid for his lunch. (70 RT 96:7-8)

Armando Elenes has been a National Vice President for the UFW since 2008. (24 RT 25:5-18 and 34 RT 26:11-15) Elenes has worked for the UFW from 1997 to 2003 and from 2006 to the present. (24 RT 25:5-13) In 2013, Elenes was also responsible for organizing new members and bringing them into the union, especially in the San Joaquin Valley. (24 RT 26:21-27:5) He noted that the UFW had re-requested negotiations with Gerawan on October 12, 2012. (24 RT 30:9-12) On cross-examination, Elenes indicated that he was unable to give an estimate as to the UFW's number of dues-paying members in 2013. (30 RT 65:15-66:11) As a key leader of the UFW, who was tasked with bringing in new members, knowing how many dues-paying members that you have is the type of information you simply need to know. (30 RT 66:15-17) In this instance, the number of workers at Gerawan, and thus also the number of potential dues-paying members, is very large, in the multiple thousands. Most probably Elenes was concerned about conceding the smallness of existing UFW membership, especially in comparison to the number of Gerawan workers at stake. Thus, I reach the inescapable conclusion that Elenes was



lying when he stated that he was unable to give an estimate as to the number of UFW dues-paying members. (30 RT 67:5-68:2) As a result, for me, this seriously undermined the credibility of Elenes as to his other answers.

In late 2012 and 2013, Elenes was in charge of running the Gerawan organizing campaign. (94 RT 146:21-23) There were three lead organizers or coordinators, Oscar Mejia, Nancy Oropeza and Everardo Vidales. (94 RT 147:1-20 and RT 150:20-25) There were fifteen to twenty organizers under the three coordinators. (94 RT 152:16-24) Elenes testified that he probably had approximately fifteen meetings with the organizers. (94 RT 154:4-156:2) Elenes indicated that he may have given some training to the organizers on how to take a statement from a worker-witness. (94 RT 171:8-172:3 and 94 RT 185:23-186:7) Elenes denied ever instructing organizers to coach employees to give more definite-sounding statements when the worker was uncertain as to some details. (94 RT 173:5-10 and 94 RT 184:3-15) I gave less weight to most of Elenes answers given my distrust of his earlier testimony regarding the number of dues-paying UFW members.

#### **6. Direct Hire Crew of Benigno Gonzalez Medina**

Two worker witnesses testified with respect to work-time signature gathering or assistance in the crew of Benigno Gonzalez Medina. These two persons were Marina Cruz and Juan Diego Jimenez. Foreman Benigno Gonzalez Medina was also called as a witness. As noted below, I completely discredited the testimony of Marina Cruz. With respect to Mr. Jimenez, I found that he was truthful, but not

particularly reliable with respect to his recollection of specific details. As a consequence, I do not find any evidence of work-time signature gathering in the crew of Benigno Gonzalez Medina. I do find, based upon a preponderance of the evidence, that foreman Benigno Gonzalez Medina did let some of his crew members occasionally use his Chevrolet Suburban, and that on one occasion, the crew members rode in the Suburban to go to a protest. I further find that Benigno knew, or had reason to know, where the crew members were going on that occasion, given that about half of his workers simultaneously left and that one worker asked him if he should go to the protest. (89 RT 107:1-6, RT 152:12-18 and RT 161:11-24)

Marina Cruz, who was witness # 6, worked for Gerawan from 1997 to 2013. (6 RT 109:1-10) Cruz remembers seeing foreman Benigno Gonzalez Medina at a Sacramento protest. (6 RT 200:19-201:1)

Juan Diego Jimenez, who was witness # 30, worked for Gerawan in 2013. (17 RT 7:25-8:5) Please note that the court reporter's transcript, Volume 23, incorrectly lists the first name for Mr. Jimenez as "Jose", when his first name is actually "Juan". (17 RT 5:14-15) Jimenez recalled his foreman's name as Benigno Hernandez. (17 RT 8:24-9:5) Jimenez recalled three women, ages twenty-five to thirty-five, coming to his crew about five minutes before lunch ended and staying about five minutes into the work time. (17 RT 10:1-7 and 17 RT 15:14-17) Jimenez did not see any of the three women talk to his crew boss. Jimenez described Benigno as approximately thirty-five feet away. (17 RT 12:13-19) Jimenez indicated that after he declined to sign, the women took out a California

identification card and said that she was here legally and he was not. (17 RT 21:23-22:4) The woman also gave him a card for her attorneys, which Jimenez gave to "Oscar" with the union. (17 RT 22:7-15) Jimenez also alleges that a friend, "Celestino", told him that the women threatened the friend, but I discredited that part of his testimony as unreliable hearsay. (17 RT 30:6-33:11) Jimenez recalled another instance when Benigno asked some of the crew if they were going to the Visalia protest. (17 RT 44:4-46:10) Jimenez recalls that Benigno loaned his Chevrolet Suburban to a crew member who drove some of the workers to the protest. (17 RT 46:14-25) Jimenez himself went back in the Suburban, though he went to the protest in a different vehicle. (17 RT 47:14-18) Jimenez testified that, from a distance of thirty-five feet, he heard a portion of a conversation between Benigno and a co-worker in which Benigno mentioned cutting down the fruit trees and replacing them with almond trees. (23 RT 10:21-11:13) Jimenez admitted that he could only hear part of the conversation. (23 RT 11:19-25)

Benigno Gonzalez Medina, who was witness # 113, has worked at Gerwan from 1993 through the present. (89 RT 56:23-57:7) Benigno has two brothers who are also crew bosses, Emetario and Esteban. (89 RT 59:12-15 and 89 RT 157:23-158:5) Benigno's brother-in-law was supervisor Jose Becerra. (89 RT 58:25-59:7 and 89 RT 60:11-15) Benigno's brother Pedro was also a supervisor. (89 RT 158:2-5) Benigno has other relatives working for Gerawan as well. Benigno confirmed that he drove a Chevrolet Suburban. (89 RT 76:1-2 and 89 RT 119:14-16) Benigno denied being in Sacramento at a protest. (89 RT 103:19-22) I credited

Benigno's testimony on that subject and discredited the testimony of Marina Cruz on that subject. Benigno stated that he did not ever encourage workers to go to a protest. (89 RT 107:1-21 and 89 RT 121:20-25) Benigno admitted to loaning his Chevrolet Suburban to workers on eight or ten occasions in 2013. (89 RT 120:16-121:14) Benigno claimed that, on one day, when the workers left early, he heard the workers yelling, but that he did not pay attention to what they were saying. (89 RT 140:7-18) Moreover, Benigno knew or had reason to know where half of his crew was simultaneously going, especially given that Benigno concedes that one worker asked him, "Mr. Crew Boss, do you want me to go to the protest?" (89 RT 107:1-6, RT 152:12-18 and RT 161:11-24) Benigno denied ever telling a worker that, if the union came in, that fruit trees would be replaced with almond trees. (89 RT 123:22-25)

#### **7. Direct Hire Crew of Emetario Gonzalez Medina**

One worker witness testified with respect to assistance in the crew of Emetario Gonzalez Medina. This person was Marina Cruz. Foreman Emetario Gonzalez Medina was also called as a witness. As noted below, I completely discredited the testimony of Marina Cruz.

As noted above, Cruz worked for Gerawan from 1997 to 2013. (6 RT 109:1-10) Cruz testified that Emetario Gonzalez offered to pay her cash out of his pocket if she would go to a protest in Visalia. (6 RT 205:1-15) Cruz then went to the protest and spent a couple of hours outside the ALRB Visalia Regional Office. (6 RT 209:22-25) On redirect examination, Cruz was not sure if this protest was

before or after the election. (7 RT 23:5-11) On the other hand, Cruz thought that the protest was in “October”, which would presumably have been October 2013, since her testimony was on October 6-7, 2014. (7 RT 23:14-16 and 7 RT 38:17-20) Cruz did not recall much detail about what the protesters chanted, although she did mention the topic of counting the votes. (6 RT 209:14-17 and 7 RT 39:10-16) She states that Emetario Gonzalez paid her the next week in the form of a \$100 bill. (6 RT 210:19-211:16) Cruz did not see Emetario give cash to any of the other workers. (7 RT 21:23-22:3) The company suspended Cruz on two occasions in 2012. (7 RT 16:17-20) First, I did not find credible the testimony regarding the cash payment from Emetario. Second, notwithstanding her testimony about counting the votes, I did not find persuasive evidence one way or the other as to whether this protest occurred before versus after the election. Of course, this latter point is moot if my credibility determination as to Cruz is otherwise left undisturbed.

Foreman Emetario Gonzalez Medina, who was witness # 100, started working at Gerawan in 1982, and became a foreman in 1987. (78 RT 9:17-25) Emetario indicated that Cruz worked in his crew in the grapes in 2013, and also worked in his crew a couple of years prior to that time. (78 RT 34:4-14) Emetario denied offering to pay Cruz for going to a Visalia protest. (78 RT 38:1-12) Emetario further denied encouraging her to go to the protest, and denied that Cruz had asked him for money. (78 RT 68:18-69:12) Emetario also denied that in 2013 he gave cash, or loaned money, to Cruz for any purpose. (78 RT 131:14-22) On this specific subject, I credit the testimony of Emertario, but not that of Cruz.

## 8. Direct Hire Crew of Jose Octavio Jaimes

Two worker witnesses testified with respect to assistance in the crew of Jose Octavio Jaimes. These workers were Elias Hernandez and Adolfo Medina. Foreman Jose Octavio Jaimes was also called as a witness. I mostly found all three of these witnesses to be credible and found that their testimony, while slightly divergent, could be mostly reconciled as compatible.

Elias Hernandez, who was witness # 47, worked for Gerawan from 2010 through 2014. (22 RT 150:21-151:4) In 2013, the foreman for his crew was Jose Jaimes. (22 RT 151:11-24) One day, Hernandez saw a worker, Rolando, blocking the entrance, saying that the workers could not enter. (22 RT 153:14-16) Hernandez did not recall Rolando's last name, but did recall that Rolando's brother was a foreman. (22 RT 153:17-23) Hernandez indicated that Rolando's car, a red Honda, was blocking the entrance, as were some wooden stakes. (22 RT 154:25-155:24) In Rolando Padilla's later testimony, Rolando indicated that he had a four-cylinder Honda Accord. (65 RT 79:18-21) Hernandez indicated that his brother inquired with Jaimes as to what was going on. (22 RT 157:20-22) While hearsay is often admissible if bolstered by other evidence, in this instance, I found more persuasive Jaimes direct testimony than any recollection by Hernandez as to what his brother may have said. Hernandez states that later Jaimes told workers that they could go to the protest or go home. (22 RT 157:23-158:10) Hernandez also remembered another date, prior to the election, when Evelyn Fragosa came to his

crew during work time and delivered an anti-union message. (22 RT 163:16-165:14 and 22 RT 166:15-20)

Adolfo Medina, who was witness # 68, worked for Gerawan for multiple years. (38 RT 76:24-77:6 and 38 RT 94:23-95:1) In 2013, Medina exclusively worked in the crew of Jose Jaimes. (38 RT 77:16-18) Jaimes also sometimes served as Medina's ride provider. (38 RT 78:8-15) On one occasion between September and November, at approximately 4:00 p.m., Jaimes took his passengers to a protest at the intersection of Highway 145 and Central Avenue. (38 RT 79:14-82:7) Medina, who seemed very nervous on the stand, indicated that he saw women at the protest gathering signatures to support the decertification effort. (38 RT 80:23-81:20) After about thirty or forty minutes, Medina then called Jaimes to say that he was hungry. (38 RT 82:9-13) Five or ten minutes later, Jaimes swung by in his brown van and picked up the workers from the protest. (38 RT 82:13-14) Medina admitted that he had been suspended by the company in August 2014. (38 RT 103:12-25)

Jose Octavio Jaimes, who was witness # 125, started working for Gerawan as a crew boss in approximately 2000 and continued to hold that position in 2013. (100 RT 167:20-168:8) On the day of the work blockage, Jaimes was driving a Gerawan van and saw the entrance where you get the tractors blocked by two cars. (100 RT 176:4-23) Jaimes could not remember for sure whether or not Adolfo Medina worked that day. (100 RT 188:18-189:2) Jaimes also remembered a day when three of his male workers individually asked to leave work early to attend a

protest in Visalia. (101 RT 16:2-17:7 and 101 RT 52:8-13) Jaimes allowed the workers to go, telling them to put away their ladder and shears. (101 RT 18:15-23 and 101 RT 48:6-16) While the workers did not tell Jaimes what the protest was about, he knew that it was likely related to the union decertification because he was familiar with several earlier protests in that regard. (101 RT 52:14-54:4) Jaimes denied seeing Elias Hernandez or his brother on the day of the work blockage. (101 RT 19:5-22) With respect to the testimony of Adolfo Medina, Jaimes did concede that there was a day, at the end of the work day at approximately 4:00 p.m., where some of his passengers (other than Medina) asked to be dropped off at Highway 145 and Central Avenue, where a protest was occurring. (101 RT 21:24-22:9) It certainly is possible that these other workers spoke to Jaimes outside of the presence of Medina. According to foreman Jaimes, Medina got out with the other workers. (101 RT 22:10-12) This protest occurred at an earlier date in the year than the work blockage. (101 RT 23:1-5) Consistent with the testimony from Hernandez, Jaimes did remember a woman visiting her crew who was a former union employee in October or November 2013, but stayed about fifty feet away when she spoke. (101 RT 42:24-43:14)

**9. Direct Hire Crew of Eugenio Lopez Sanchez**

Two worker witnesses testified with respect to assistance in the crew of Eugenio Lopez. These workers were Alberto Bermejo and Jesus Alacron Urzua. Foreman Eugenio Lopez Sanchez was also called as a witness. I did not find any of



these three witnesses to be highly credible. As a consequence, I did not find any evidence of assistance on the part of foreman Eugenio Lopez Sanchez.

Alberto Bermejo, who was witness # 4, worked for Gerawan from 2011 through 2014. (5 RT 78:18-21) In 2013, Bermejo's foreman was Alfredo Zarate. (5 RT 79:13-15) Please note that when the transcript refers to Bermejo discussing Martin Allesandro, that this actually refers to Martin Elizondo. On the day of the work blockage, Bermejo saw a crew boss at the intersection of Highway 145 and Central Avenue where the protesters were gathered. (5 RT 159:18-21) The foreman at the protest was Eugenio Lopez Sanchez, who is sometimes known by the nickname of "El Amigaso", which means close friend. (5 RT 159:22-160:19)

Jesus Alacron Urzua, who was witness # 25, worked for Gerawan in 2012 and 2013. (15 RT 110:21-111:4) In 2013, Urzua worked in the crew of foreman Eugenio Lopez Sanchez. (15 RT 112:8-10) Urzua testified that he heard Eugenio and his brother Alvino, a regular worker in the crew, talking with each other and saying bad things about the union. (15 RT 114:14-115:4) I am skeptical of this testimony because Urzua conceded that he was about thirty-five feet away from the two brothers when they were talking. (15 RT 116:13-22 and 15 RT 125:19-20) On another occasion, Urzua recalls Eugenio telling him and one of Eugenio's brothers to stop arguing about the union. (15 RT 117:1-18) Urzua also remembered one occasion when Silvia Lopez came to his crew to collect signatures and brought her son along. (15 RT 140:10-18 and 15 RT 146:23-24) Urzua described the son as being the approximate age of a "student" and Silvia said she brought him along so

that he could see what his mother was doing. (15 RT 140:16-18) I do credit this portion of Urzua's testimony. Silvia Lopez also conceded that she did take her seventeen years-old son, Roman, on company property on one occasion. (46 RT 31:5-32:9 and 46 RT 48:17-19) Silvia stated that she took her son to work that day so that she could get him a tri-tip sandwich at a nearby place that he liked. (46 RT 48:12-15) The company's employee manual prohibits bringing children or non-employed family members on to the property. (Exhibit GCX-47, bates # 0008552, and exhibit R-13). Urzua indicated that they were in eyeshot of Eugenio Lopez, who is not related to Silvia. (15 RT 141:10-13 and 97 RT 159:23-160:3) There was no evidence presented that disciplinary action was ever taken against Silvia Lopez or any of the other signature gatherers for bringing a minor child to work. However the Respondent's counsel elicited persuasive testimony showing that in 2012 another worker was in fact suspended for a full week for bringing a minor to work. (9 RT 194:3-18)

Eugenio Lopez Sanchez, who was witness # 121, began working for Gerawan in 1988, and has been a foreman for the past dozen years. (97 RT 133:10-17) In 2013, Eugenio had several relatives who worked in his crew, including brothers Alvino and Esteban, and nephews Javier and Adolfo. (97 RT 138:1-11) Both of his brothers are tractor drivers for the crew. (97 RT 143:13-16) Eugenio summarily denied making any comments about the union, allowing any worker, including his brothers, to insult a colleague, and knowing the identity of Silvia Lopez back in 2013. (97 RT 157:25-160:17) Eugenio did say that he may have heard

workers talking about Silvia when he was “going by in [his] car”. (98 RT 33:17-34:14) Eugenio did recall seeing Urzua wearing a UFW t-shirt toward the end of 2013. (97 RT 168:7-9) Eugenio denied that Urzua told him that Eugenio’s brothers made fun of his support for the union. (97 RT 168:20-23) Eugenio even denied knowing whether his own brothers supported or opposed the union. (98 RT 75:25-76:6) At the time of the work blockage, Eugenio denied knowing that it had anything to do with the unionization issue. (98 RT 6:21-24) Eugenio states that he did not call a supervisor to ask what was happening. (98 RT 25:16-21) Eugenio also states that when he ate lunch on the day of the blockage with several other foremen, none of them talked about what was happening that day. (98 RT 78:15-79:17)

#### **10. Direct Hire Crew of Francisco Maldonado Chavez**

Three worker witnesses testified with respect to assistance in the crew of Francisco Maldonado Chavez. These workers were Eleazar Mulato, Rafael Marquez, and Salvador Perez Rangel. Foreman Francisco Maldonado Chavez was also called as a witness.

Eleazar Mulato, who was witness # 10, worked for Gerawan during 2010 through 2013. (8 RT 190:3-191:3) At all pertinent times, his crew boss was Francisco Maldonado Chavez. (8 RT 190:15-25) Mulato indicated that his crew was all-male. (9 RT 10:13-20 and 82 RT 89:17-19) The company sent Mulato a letter in the mail which, in Spanish, talked about the union. (8 RT 194:9-196:24, 8 RT 212:8-10, and Exhibit GCX-2) In total, Mulato recalled receiving approximately seven such letters from the company. (8 RT 217:23-218:6) Mulato recalled an

instance when the union topic came up with his foreman when Mulato was receiving a morning ride to work in Maldonado's Chevrolet Suburban. (8 RT 219:1-19) The other passengers in the vehicle were also members of his crew, but Mulato thought the other workers were sleeping in the car. (8 RT 220:11-17) Mulato testified that Maldonado asked him about the union, and that Mulato responded positively about it. (8 RT 219:20-25) Mulato stated that Maldonado then told him that Ray Gerawan would cut down all of the trees if the union came into the company. (8 RT 220:1-10) Mulato indicated that he participated in the union-company negotiations. (8 RT 220:21-222:16)

The first time that Mulato heard a woman gather anti-union signatures in his crew, he neither talked to her nor saw her. (9 RT 14:5-16:3) This testimony was too limited to be verified or tested. Nor did I find persuasive the hearsay evidence as to this occurrence. (9 RT 16:4-17:3) The second time that Mulato heard a woman gather anti-union signatures in his crew, he also did not see her. (9 RT 17:18-21) Mulato heard the woman talking to a co-worker, Alejandro, and then he heard co-worker Rafael Marquez join the conversation. (9 RT 17:30-21:7) Mulato testified that the woman told Marquez that if the workers did not sign the petition the company would cut down the trees and the workers would no longer have jobs. (9 RT 21:10-13) Mulato states that he heard Marquez ask the woman for her name, and that she responded by asking why he wanted to know. (9 RT 21:20-22:5) This subject matter was further addressed by witness Rafael Marquez, as noted below.

Mulato states that on one occasion in 2013, he asked Maldonado for permission to collect signatures during work hours. (9 RT 25:12-19) Foreman Maldonado denied Mulato's request. (9 RT 26:1-27:21) Given the context, it was logical for Maldonado to conclude that Mulato was asking collect signatures related to the union issue. I credited Mulato's testimony on this subject. I do assume that Mulato's request was a purposeful attempt to try to show that the company would treat union supporters differently than decertification proponents.

Mulato explained that in past years, the company had given away some free fruit, although some was over-ripe. (9 RT 28:1-33:9) In the past years, the unattended fruit was put in large bins and the workers had to bring their own bags and pick through the fruit of varying qualities like "chickens". (9 RT 32:1-33:9) There were no shade coverings or free beverages in the past years. (9 RT 32:9-24) In 2013, Mulato indicated that the fruit was of nicer quality and presentation, free bags and beverages were provided, and the area was shaded. (9 RT 33:19-36:3)

Prior to the work blockage, Mulato did not move any tractors. (9 RT 123:22-24) At one point, several hours after the blockage was initiated, Mulato sat on a tractor for a few minutes to try to get a better view of where the entrance was blocked. (9 RT 125:6-9) At the time, foreman Francisco Maldonado was about one hundred feet away. (9 RT 82:21-25) Nothing stopped Maldonado from immediately moving the tractor. (81 RT 131:1-4)

I find that Mulato had absolutely nothing to do with the early morning work blockage. The work blockage was done solely by anti-union workers. While

falsely denying it during investigative interviews, at the hearing and under oath, the decertification proponents readily and repeatedly admitted that they were solely responsible for the blockage, and it is disingenuous for any party to suggest otherwise. Indeed, I find that the decertification proponents initiated the blockage primarily because they were convinced that this was their only hope to timely gather the signatures that they needed after the Regional Director dismissed their first decertification petition. There was no credible evidence that the company assisted the Petitioner with respect to the work blockage, although it was immediately and readily apparent to the company foremen and supervisors, upon arriving to work that day, that it was the solely the anti-union workers who blocked the entrances, thus denying all workers the opportunity to do their jobs and receive ordinary wages that day.

Rafael Marquez, who was witness # 20, worked for Gerawan from 2011 to the present. (13 RT 80:15-19) From 2011 to 2013, Marquez worked in the crew of foreman Francisco Maldonado. (13 RT 81:14-16) Similar to Mulato, Rafael Marquez recalls a female worker approaching Alejandro Perez. (13 RT 102:6-9) But unlike Mulato who described this occurring during work time, Marquez described it taking place during a break. (13 RT 102:10-11) I credit that testimony. Marquez then spoke with the signature gatherer and indicated his support for the union. (13 RT 105:6-11) Marquez indicated that the worker soliciting signatures did not leave until at least ten minutes past the end of the break. (13 RT 108:7-14) Marquez recalled that on this day, foreman Francisco Maldonado was out and his

brother Daniel Maldonado had been left in charge. (13 RT 102:25-103:3) I credit this portion of Rafael's testimony, but there was not sufficient evidence to demonstrate one way or the other whether or not Daniel Maldonado overheard the conversation. None of the parties called Daniel Maldonado as a witness.

Marquez also indicated that in December 2012, foreman Francisco Maldonado told him that the union would take sixty dollars from each worker. (13 RT 90:12-18) Marquez also testified that, in December 2012, Maldonado told him that he had heard Supervisor Antonio Franco say that "the union could pass under his balls". (13 RT 90:20-91:19) I am not crediting this hearsay statement and could not even weigh its importance without knowing further context. Moreover, none of the parties called Supervisor Antonio Franco as a witness.

Marquez testified that he asked foreman Francisco Maldonado for permission to collect signatures so that they can have a contract. (13 RT 139:2-17) Juan Cruz was also present. (13 RT 139:23-25) Maldonado told Marquez that he could collect signatures during break time but not during work time. (13 RT 139:18-20)

On the day of the work blockage, Marquez eventually went to Highway 145 and Central Avenue to support the union. (13 RT 162:9-25) One worker threatened to beat him up. (13 RT 163:8-11) Marquez was also pushed by a decertification supporter, but he was not hurt. (13 RT 163:1-5 and 13 RT 223:18-224:7)

Salvador Perez Rangel, who was witness # 46, worked for Gerawan during 2008 to 2013. (22 RT 118:15-19) Perez worked in the crew of Francisco Maldonado. (22 RT 119:1-8) Perez recalled an occasion when Silvia Lopez came to his crew to solicit signatures at lunch time. (22 RT 121:11-17) Silvia Lopez came with another woman and a young girl who appeared to be six or seven years old. (22 RT 120:10-121:6)

Perez also recalled riding in Francisco Maldonado's car on the morning of the work blockage. (22 RT 129:16-130:2) Maldonado received two phone calls. (22 RT 130:3-131:7) After the first call, Maldonado told the people in the car that the union had closed the work entrance. (22 RT 130:15-18) After the second call, Maldonado told the people in the car that it was people of the company who had closed the entrances. (22 RT 130:22-131:7)

Francisco Maldonado Chavez, who was witness # 104, has worked for Gerawan from 1996 to the present. (81 RT 88:17-89:6) Maldonado states that, in 2013, he did not know Silvia Lopez, nor did he know that she was gathering signatures. (81 RT 110:8-23) Maldonado confirmed the general recollection of Salvador Perez as to the two female signature-gatherers who had brought to the crew a very young girl. (81 RT 114:4-24) Maldonado states that he called the office to let them know that the women had brought a child to the field, but by the time someone from the office came by, the two well-dressed women and the young girl had already left. (81 RT 114:25-116:1 and 82 RT 83:9-14)



Maldonado also confirmed that he told Marquez and Mulato that they could collect signatures at lunch time, but did not approve it for during working hours. (82 RT 19:3-12) Maldonado denied telling Mulato that if the union came in, Ray Gerawan would cut down all of the trees. (82 RT 17:24-18:16) I credited Maldonado's recollection on that topic. Maldonado denied ever telling Marquez that the union would take sixty dollars per month from the workers. (82 RT 22:20-23:1) By some point in 2013, Maldonado knew that Marquez was a strong supporter of the union. (82 RT 51:4-6) But even in 2012, I find it unlikely that Maldonado made that comment to Marquez. Maldonado remembered giving Perez rides to work during part of 2013, but he did not recall giving Perez a ride to work on the date of the work blockage. (81 RT 122:3-25 and 82 RT 64:5-11) In this instance, I will credit Maldonado. There was some implication that Maldonado may have stopped giving rides at some point to Mulato and Perez. If so, that would have likely occurred prior to the time of the work blockage.

#### **11. Direct Hire Crew of Sonia Ynez Martinez**

Three worker witnesses testified with respect to assistance in the crew of Sonia Ynez Martinez. These workers were Marina Cruz, Fidel Garcia Ortega, and Areli Sanchez Fierros. Crew boss Sonia Ynez Martinez was also called as a witness.

Marina Cruz, who was witness # 6, worked for Gerawan from 1997 to 2013. (6 RT 109:1-10) As discussed earlier, I completely discredited the testimony of Cruz regarding the cash payment that she allegedly received from foreman Emetario Gonzalez Medina. I also discredited her testimony where she purportedly

remembered seeing foreman Benigno Gonzalez Medina at a Sacramento protest. Here, Cruz testified that she saw crew boss Sonia Ynez Martinez receive a decertification petition from worker Virgina Chairez and passed it around to her crew for signatures. (6 RT 172:2-18) Cruz states that the petition was circulated shortly after the work day had started, and just after Martinez had conducted a morning class on avoiding heat stroke. (6 RT 162:23-163:16 and RT 169:17-19) The transcript is replete with palpable references to worker Virginia Chairez collecting decertification signatures during non-work time. None of the parties called Chairez as a witness. Nonetheless, I completely discredited the testimony of Marina Cruz on this subject. It is not that I think Cruz confused a training class paper with the decertification petition. Rather, I completely discredited the testimony of Marina Cruz because the remainder of the testimony on a variety of other subjects rang so false.

Fidel Garcia Ortega, who was witness # 45, worked for Gerawan during 2004 to 2013. (22 RT 94:18-20) In 2013, the crew boss for Ortega was Sonia Ynez Martinez. (22 RT 96:6-7) Ortega recalled Martinez telling workers during a training class that she would come by later with a paper for workers to sign. (22 RT 98:5-19) Garcia was only able to recall her saying that the paper was for signing if a worker was in favor of the company. (22 RT 98:5-14 and 22 RT 100:9-19) Martinez then asked Ortega to sign a blank piece of paper. (22 RT 99:15-100:23)

For the past fourteen years, Areli Sanchez Fierros, who was witness # 75, worked for Gerawan. (42 RT 160:10-19) I previously discussed some of her mostly credible testimony with respect to one of the bus rides to Sacramento. In 2013, Sanchez worked in the crew Sonia Ynez Martinez. (42 RT 160:20-21) Sanchez indicated that she did not see anyone in her crew collect signatures during work time. (43 RT 24:4-5) Sanchez, who collected signatures to get rid of the union, recalled going to a protest at the Visalia Regional Office where staff posted a sign that said "no public restrooms". (43 RT 28:16-25) Sanchez also recalled that the company sometimes gave workers free coffee and bread, and also sometimes free pizza if the workers were there late at night. (43 RT 73:2-10)

Sonia Ynez Martinez, who was witness # 102, has been employed by Gerawan for the past seven years. (79 RT 100:6-7) In 2010, Martinez became a crew boss. (80 RT 155:7-9) I conclude that Martinez was exaggerating when she stated that during one month the UFW visited her crew on every single day at lunch time. (79 RT 113:12-23) Martinez testified that the visits bothered her because she could not eat her lunch in peace, but rather had to separate herself from the workers if the union visited. (79 RT 114:5-12) Martinez denied ever having members of her crew sign a document related to the union. (79 RT 125:6-21 and 79 RT 128:10-22) She did have crew members sign papers related to safety training sessions. (79 RT 125:22-126:4)

On the day of the work blockage, Martinez and six to eight crew members were able to reach the block at which they were scheduled to work, but

they were unable to work due to the absence of bathrooms and water. (79 RT 133:17-135:5) Martinez informed the office that she and some of the workers were able to reach the work site. (80 RT 134:23-135:22 and 80 RT 138:15-139:1) Martinez did not recall Dan Gerawan or his wife meeting with her crew in previous years, but in 2013, she recalls at least one of the two visiting her crew on a monthly basis. (79 RT 115:22-119:19 and 80 RT 59:7-60:24) Martinez has known worker Virginia Chairez for five or six years, but she denied having any conversations with Chairez in 2013, other than morning salutations. (80 RT 86:15-16, 80 RT 70:4-71:6 and 80 RT 88:14-20) Martinez testified that she saw papers being passed out, and that the people bringing the papers had pens, but that she did not see any actual signing. (80 RT 110:3-9)

Having discredited the testimony by Marina Cruz, and taking into account the brevity and lack of specificity as to the testimony of Fidel Garcia Ortega, I find that it was not established that crew boss Martinez solicited signatures for the decertification petition. This finding is corroborated by the testimony of Areli Sanchez Fierros.

## **12. Direct Hire Crew of Gloria Mendez**

Seven worker witnesses testified with respect to assistance in the crew of Gloria Mendez. These workers were Alma Delia Patiño, Severiano Salas, Gerardo Giñez, Reina Ibañez, Fermin Lopez, Maria Hinojoa de Lopez, and Gabriel Suarez. Crew boss Gloria Mendez was also called as a witness.

Alma Delia Patiño, who was witness # 8, worked for Gerawan from 2007 to 2014. (7 RT 205:9-20) In 2013, Patiño worked in the crew of Gloria Mendez. (7 RT 206:20-21 and 7 RT 207:23-208:5) Her husband, Severiano Salas, also worked in that crew. (7 RT 209:25-210:4 and 8 RT 83:17-84:17) He worked for Gerawan from 1999 to 2013. (8 RT 82:6-20) Patiño recalls during work hours a co-worker from her crew, Erika Solano<sup>31</sup>, asking her to sign a decertification petition. (7 RT 218:20-23) Specifically, Patiño recalled them being asked for signatures between 11:00 a.m. and noon, and Salas testified that Solano asked them for signatures at approximately 11:00 a.m. (7 RT 221:1-7 and 8 RT 86:14-18) Patiño told Solano that the two of them could go and check with her husband, who was about eight to twenty feet away. (7 RT 212:4-13 and 7 RT 218:24-219:8) Salas indicated that they would not sign the petition at the moment and Solano responded that it was fine. (7 RT 219:17-20)

Severiano Salas<sup>32</sup>, who was witness # 9, essentially corroborated the testimony of his wife, Patiño. (8 RT 85:23-96:1) Salas testified that crew boss Martinez was approximately three to five rows of peach trees away when he spoke with Solano, and that Martinez was looking in a direction perpendicular to his

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<sup>31</sup> There is no evidence that Erika Solano is related to the Petitioner or her daughter, Belen Elsa Solano Lopez. (95 RT 61:13-23)

<sup>32</sup> In her testimony, Gloria Mendez noted that on at least one occasion in 2013, she had Salas take a small part of the crew with him when the crew members needed to be split up. (90 RT 99:19-100:7) So presumably, in Gloria's eyes, Salas was a trusted member of the crew.

location. (8 RT 96:14-99:7) Patiño also recalled crew boss Martinez at a distance of approximately three to five rows of peach trees. (7 RT 225:4-226:5 and 8 RT 69:2-8) Patiño estimated the distance from row to row (tree trunk to tree trunk) as being twelve feet. (8 RT 66:22-68:20)

Gerardo Giñez, who was witness # 11, worked for Gerawan from approximately 2007 to 2013. (9 RT 212:12-17) He recalled a day when two women asked for his signature during work time at around 11:00 a.m. (9 RT 224:8-18) Giñez did not know the name of either of the women. (9 RT 225:19-25) The women did not explain the purpose of the signature, so he declined to sign. (9 RT 224:11-13) Giñez later heard comments from co-workers that the signatures were to oppose the union. (9 RT 225:12-18) Giñez also recalled an incident from a day when he was working in a different crew washing trays. (9 RT 216:4-24) When Giñez was washing trays, he worked an evening shift. (9 RT 213:2-15) On one evening, Giñez recalls a person named Julio, who he believed was in charge of packing the grapes, telling him that they were going to close up the yard entrances so that the morning workers could not enter. (9 RT 218:3-15) As a result, Giñez would need to leave using an alternative route. (9 RT 218:10-12 and 9 RT 220:18-22)

Reina Ibañez, who was witness # 14, worked for Gerawan from approximately 2009 to 2013. (11 RT 63:6-14) Ibañez is the sister of Gerardo Giñez, who was witness # 11. (11 RT 139:19-140:6) Reina's crew boss was Gloria Mendez. (11 RT 63:15-17) Gloria's husband worked in their crew. (11 RT 111:8-10) Similar to Patiño and Salas, Ibañez described Erika Solano soliciting

decertification petition signatures during work hours. (11 RT 141:2-142:12) Ibañez also described an occasion when co-worker Martha Rojas<sup>33</sup> encouraged workers to leave in the middle of the afternoon to go to a Fresno protest at the courthouse. (11 RT 93:5-93:22) After the workers returned to work at 5:30 p.m., the company gave all of the workers free tacos and pizza, whether they had stayed and worked or if they had left to go to the protest. (11 RT 99:6-22 and 11 RT 100:20-23)

Ibañez also addressed two other topics where I discredited her testimony. First, Ibañez recalled Mendez making negative comments about the union. (11 RT 120:11-121:19) Second, Ibañez recalled seeing Mendez and Rojas discuss paperwork that was later given to Erika Solano. (11 RT 127:6-13) But Ibañez was more than fifty feet away from the pair when this conversation took place. (11 RT 127:18-128:12)

Fermin Lopez, who was witness # 60, worked for Gerawan from approximately 1993 to 2013. (34 RT 146:9-16) In October 2012, Fermin Lopez recalled crew boss Martinez making negative comments about the union and its plans to take three percent of the workers' money. (34 RT 154:1-11) However, Lopez later indicated that Martinez did not make those comments directly to him.

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<sup>33</sup> Martha Rojas Rodriguez, who was witness # 85, worked for Gerawan from 1994 through 2013. (56 RT 120:23-121:3) She is the daughter of crew boss Candalario Rojas Gonzales, who was witness # 123, nicknamed "Calabazo". (56 RT 161:21-162:5, 99 RT 46:10-47:21 and 99 RT 79:17-19) Rojas works most of the year for crew boss Gloria Mendez. (56 RT 122:3-4 and 56 RT 171:1-5) Rojas explained her opposition to the union, in part, as that she is "not a little girl who needs someone to represent me." (56 RT 127:2-12)

(34 RT 154:14-16) Lopez also did not see Martinez make those comments to his wife, Patricia. (34 RT 154:17-155:5) Consequently, I found Fermin's testimony to be unreliable hearsay. On the day of the work blockage, Fermin Lopez eventually went to the protest to support the union. (34 RT 155:21-24) His wife also attended. (34 RT 155:25-156:1) They had a UFW flag outside their car when they drove by some of the anti-union protesters at shortly after noon. (34 RT 165:18-166:1) Fermin heard a rock hit the side of his car. (34 RT 166:2-10) While I believe Fermin's testimony that his car was hit by a rock near the protesters, there was no persuasive testimony as to the specific identity of the rock-thrower.

Maria Hinojosa de Lopez, who was witness # 71, worked for Gerawan from approximately 2001 to 2013. (39 RT 128:20-129:5) Hinojosa worked in the crew of Gloria Mendez in 2012 and 2013. (39 RT 130:15-22 and 39 RT 132:11-19) Hinojosa could not recall if she had heard of the UFW in 2012. (39 RT 134:4-5) The first time that Hinojosa heard about the UFW was in 2013 when the ALRB came to her workplace and spoke for about fifteen minutes. (39 RT 135:1-18) Hinojosa recalled during worktime in July 2013 owner Dan Gerawan and his wife speaking to her crew on one occasion. (39 RT 147:14-23) Dan Gerawan told the crew that the union had come in twenty years ago, that he did not know why they went away, and that now the union had returned. (39 RT 147:24-148:3) Hinojosa recalled the chronology of the two events to be that first the ALRB came to her crew and then afterward Dan Gerawan came to speak to them. (39 RT 148:4-16) Both of these visits were before September when she gathered signatures to support the



decertification effort. (39 RT 141:8-142:5) Hinojosa recalled the company providing free pizza twice in 2012 when the workers were there late at night packing grapes. (39 RT 179:1-4) She did not recall the company providing free coffee, bread or tacos in 2013. (39 RT 180:22-181:25) Hinojosa received a “no union” t-shirt before the election. (39 RT 189:20-190:4)

Gabriel Suarez, who was witness # 128, worked for Gerawan from approximately 2008 to 2014. (102 RT 145:3-5) His crew boss was Gloria Mendez. (102 RT 84:8-9) In 2013, Suarez was an assistant crew boss on those occasions when the crew was split up, but in 2014, he was only a regular worker and never assistant crew boss. (102 RT 130:21-131:19) In 2013, even when the crew was not split up, Suarez described himself as a supervisor or lead person for a subset of approximately fifteen workers. (102 RT 83:21-14, 102 RT 121:9-11 and 103 RT 185:12-186:10) There are no company documents which describe this arrangement and Suarez himself concedes that he was not paid any extra when the crew was together, only when the crew was more formally split up. (102 RT 120:1-4)

Suarez states that on the day of the work blockage, Mendez told him to take some workers to the protest. (102 RT 90:1-12) Suarez also testified that Mendez told him about the protest the day before, and that it was common knowledge. (102 RT 91:2-6) On the day of the blockage, Suarez then told some of the workers, perhaps as many as forty, that they needed to go and support the company. (102 RT 92:21-25 and 102 RT 96:1-6) On that day, the crew was not split, although, as discussed earlier, Suarez himself would characterize it as that he

had a sub-set of workers under his supervision. (102 RT 123:1-9) Suarez admitted that Jose Erevia had provided training for crew bosses and assistant crew bosses to stay uninvolved, but he felt obligated to comply with his immediate supervisor, Mendez. (102 RT 116:21-117:12 and 102 RT 164:13-20) Suarez admitted that he was very unhappy with Mendez for allowing workers to spread untrue rumors about him. (102 RT 129:23-130:1 and 103 RT 144:1-5)

I believe that Suarez was mostly sincere about feeling mistreated by the company, Mendez and his co-workers. But whether his feelings of persecution have a genuine basis or not, there were times when his testimony rang untrue. For example, Suarez denied owing a co-worker two hundred dollars, when no one had previously mentioned an amount in controversy. (103 RT 177:25-178:20) I find it more likely than not that Gabriel's feelings caused him to embellish his testimony. For that reason, I discredited all of his testimony.

Gloria Mendez, who was witness # 115, worked for Gerawan from approximately 1999 to 2014. (90 RT 96:12-22) From approximately 2004 to 2014, Mendez served as a crew boss. (90 RT 97:1-2 and 90 RT 162:14-16) Mendez has several relatives who worked in her crew, including her son, Luis Miguel Rodriguez, her daughter Anabelle Zavala, her father-in-law, Luis Zavala, and her niece, Maite Daza. (90 RT 97:9-19 and 90 RT 160:24-161:5) Mendez had two other nieces, Christina Torres and Gloria Torres, who worked in her crew in either 2012 and/or 2013. (90 RT 161:9-24) As a crew boss, Mendez can decide on her own to hire workers. (90 RT 175:15-17, 90 RT 176:18-21 and 90 RT 177:21-24) In 2013, her

assistant crew boss or helper was Gabriel Suarez. (90 RT 99:2-8 and 90 RT 111:2-4) There was a two month stretch when the crew was formally split and Suarez was in charge of a part of it. (90 RT 168:14-169:24) For this time period, the parties stipulated that Suarez was a statutory supervisor. (95 RT 29:7-12)

On the day of the work blockage, September 30, 2013, Mendez recalls seeing her whole crew at the blocked entrance chanting that they would not work. (90 RT 134:15-18, 90 RT 137:24-138:2 and 95 RT 64:17-23) Mendez told her supervisor that there was a car blocking the entrance, but did not mention the workers. (90 RT 189:23-190:3) After the workers left, Mendez went home, taking her son and father-in-law with her. (90 RT 138:20-139:7, 90 RT 140:22-24 and 90 RT 192:21-25) Mendez recalls a separate occasion, on October 25, 2013, when some of her workers began spontaneously chanting "let's go" and "we'll be right back". (90 RT 143:15-144:14 and 95 RT 7:20-21) Mendez concedes that she said nothing in response. (95 RT 7:22-25) Mendez also concedes that her supervisor was present. (95 RT 8:21-22) Then, the majority of her workers left from 10:30 a.m. until approximately noon. (90 RT 143:20-23 and 90 RT 144:15-21) Mendez later conceded that she might not have recalled the correct time that the workers left and departed. (95 RT 15:12-19, 95 RT 17:21-23 and 95 RT 62:12-64:3; see also Exhibit GCX-59, bates numbers 2141-2147)

Mendez denied ever seeing workers solicit signatures during work hours. (90 RT 149:5-10, 90 RT 151:1-4, 90 RT 154:21-155:3, and 90 RT 156:19-23) Mendez also denied telling Suarez about the work blockage a day in advance. (95

RT 50:25-51:3) Mendez recalled that on October 25, 2013 when the workers had left early and then came back was a day when the company gave free pizza and tacos to the workers in the evening. (90 RT 151:20-152:10 and 95 RT 23:22-24:2) The workers who had left mid-day were permitted to partake in the free pizza and tacos. (95 RT 26:14-24)

Having discredited all of the testimony from Suarez, along with a small portion of that from Ibañez and Lopez, I left with reconciling the remainder of the worker testimony with the general denials made by crew boss Mendez. Certainly, I am persuaded that worker Erika Solano did solicit decertification petition signatures during work time. This contention was persuasively made by Patiño, Salas and Ibañez. Given Salas' testimony that Mendez was looking perpendicular to the workers, and the general denial by Gloria herself, I do not find the evidence sufficient to conclude crew boss Mendez actually saw Solano gathering the signatures. I also believed Ibañez when she testified that worker Marta Rojas encouraged workers to go to the October 25, 2013 protest at the Fresno courthouse. Ibañez had a better memory of the time when this took place than did Mendez. Moreover, none of the parties elicited persuasive testimony from Rojas about this incident. I conclude that Mendez obviously saw the workers leaving *en masse*, in dereliction of typical protocol, and chose to do nothing. A higher ranking company supervisor was also present, and workers obviously interpreted the combined silence from supervisors as a message that they could leave with impunity to attend the mid-afternoon protest.

### **13. Direct Hire Crew of Francisco Mendoza**

Three worker witnesses testified with respect to assistance in the crew of foreman Francisco Mendoza. These workers were Adela Castillo, Valerio Velazquez Lopez, and Leonidon Mendoza Morales. Crew boss Francisco Mendoza was not called as a witness by any of the parties.

Adela Castillo, who was witness # 12, worked for Gerawan for two months in 2013. (10 RT 82:7-83:21) She may have also worked for a couple days back in 2012. (10 RT 171:25-172:15) In 2013, Castillo's foreman was Francisco Mendoza. (10 RT 82:25-83:2) Castillo recalls a couple soliciting decertification petition signatures during work hours. (10 RT 95:4-21) Castillo did not know the name of either person. (10 RT 96:24-97:1) Castillo recalls that she was lifting buckets of peaches at the time. (10 RT 97:9-15 and 10 RT 164:16-21) Castillo recalls that the signature gatherers were not dressed in typical work clothes. (10 RT 103:6-104:18) After the two people spoke with her, they proceeded to the next row and began talking to other workers. (10 RT 107:2-12) Castillo did not hear the conversations between the two people and the workers in the next row, nor did she see anyone sign anything. (91 RT 108:13-15 and 10 RT 110:6-111:17) Castillo did not know the location of foreman Mendoza when this activity took place. (10 RT 115:21-116:1) Castillo recalled a second instance in October 2013 that occurred at the end of the lunch break. (10 RT 116:8-23) A man asked her to sign the decertification petition right before she went back to work. (10 RT 127:7-20) Castillo had seen this man before with a megaphone at a protest, but she did not

know his name. (10 RT 117:14-23) Castillo also recalled hearing that one reason that the company gave away certain fruit was because previously workers would take it and the company needed to have security check the worker's bags. (10 RT 163:2-17)

Valerio Velazquez Lopez, who was witness # 26, worked for Gerawan from 1999 to 2014, except for the years 2001 to 2006. (15 RT 203:8-15 and 15 RT 224:16-21) In 2013, Velazquez worked in the crew of Francisco Mendoza. (15 RT 204:4-8) Velazquez remembered three separate days when Sylvia Lopez asked him to sign a decertification petition. (15 RT 210:6-220:11) None of these three times were during work hours, but rather were either at the end of the day or at lunch time. (15 RT 209:14-17, 15 RT 210:24-25 and 15RT 218:11-19) When Velazquez refused to sign the petition, Lopez called him "ignorant". (15 RT 211:2-16) Velazquez also states that Lopez tied getting piece-rate wages to signing the petition, and that if workers did not sign, the vineyards would be replaced with almonds. (15 RT 218:23-219:14) There was no testimony that an owner or other statutory supervisor would have overheard these alleged threats. Velazquez noted that almond trees are less labor intensive than grape vineyards. (15 RT 219:25-220:3)

Leonidon Mendoza Morales, who was witness # 38, worked for Gerawan from 2008 to 2014. (20 RT 23:16-25) In 2013, Mendoza worked for crew bosses Francisco Mendoza and Mayte Serrano. (20 RT 24:16-17) Francisco Mendoza is Leonidon's uncle. (20 RT 25:12-17) Leonidon is not related to supervisor Jaime Mendoza. (20 RT 36:5-9) Leonidon served on the UFW's

negotiating committee. (20 RT 46:18-47:7) Leonidon recalled one occasion in October 2013 when Jose Erevia and Jaime Mendoza came to his crew with a chart showing that the company paid high wages and how much the union would take away. (20 RT 35:11-14 and 20 RT 36:21-37:18) Leonidon recalled a second occasion, perhaps three to four days after the earlier incident, when supervisor Oscar Garcia came to his crew with a woman whose name Leonidon could not recall. (20 RT 38:4-8 and 20 RT 35:18-20) Oscar urged the workers to support the company over the union and the woman made disparaging remarks about the union. (20 RT 38:24-39:13) I conclude that this woman was Labor Relations Institute consultant Evelyn Fragoso. Finally, Leonidon recalls a single day, November 1, 2013, when work was cancelled at approximately 7:00 a.m. that morning. (20 RT 25:21-25 and 20 RT 29:9-31:2) His crew had been scheduled to tie plastic to the grapevines. (20 RT 28:12-29:8) After the supervisor met with the two crew bosses on site, Francisco Mendoza advised his crew that there would be no work that day. (20 RT 29:17-32:4) Shortly thereafter, a woman told the workers that there would be a protest in Visalia and invited them to attend. (20 RT 32:23-25) Leonidon did not know the name of the woman, but believed that she was a non-supervisory worker. (20 RT 33:1-9 and 20 RT 43:13-18)

I credited all of the testimony of Adela Castillo. With respect to Velasquez, I credited all of the testimony, except for the part where Silvia Lopez allegedly stated that the vineyards might be replaced with almonds and regarding piece-rate wages. Leonidon Mendoza was a difficult witness to gauge the

credibility. Leonidon was very candid that he was a strong supporter of the union, and that he had served on the UFW's negotiating committee, so he certainly carries a strong pro-UFW bias. But I found all of his testimony about the two separate meetings in the fields, where Jose Erevia, Jaime Mendoza, and Oscar Garcia were present, respectively, to be credible. I also credit his testimony that the workers were invited to a Visalia protest on November 1, 2013, but I am not persuaded that his crew boss made any mention of the protest, especially given that Leonidon was likely known to his uncle as a strong union supporter.

#### **14. Direct Hire Crew of Telesforo Mendoza**

Jaime Montaña Dominguez was the only witness who testified with respect to Telesforo Mendoza. Crew boss Telesforo Mendoza was not called as a witness by any of the parties.

Jaime Montaña Dominguez, who was witness # 7, worked for Gerawan from approximately 2011 to 2014. (7 RT 45:14-17) Montaña was sometimes called by the nickname "Palmiero". (7 RT 105:24-106:1) In 2013, Montaña worked in the crews of Telesforo Mendoza and Jesus Padilla. (7 RT 46:18-47:5) He changed crews from Padilla to Mendoza after getting sick for three days. (7 RT 97:5-21) While he was technically assigned to Mendoza, Montaña was building structures for packing under the direction of "Julio". (7 RT 98:10-100:3) While he was working, Montaña recalls a woman coming and asking for his signature. (7 RT 101:15-112:4) Montano testified that the woman was Silvia Lopez. (7 RT 109:25-111:1) Montaña saw Lopez speak with Mendoza immediately before



she came to speak with him. (7 RT 104:15-105:21) After asking Montaña for his signature, he saw her ask two of his co-workers and then returned to Mendoza. (7 RT 107:16-108:5) Montaña testified that Mendoza came over and told him “not to be a fool,” that he need to give his signature or the company “would go broke”. (7 RT 111:10-23)

In the absence of any evidence refuting the recollection of Montaña, I credited his testimony as to his conversation with Telesforo Mendoza.

**15. Direct Hire Crew of Leonel Nuñez Martinez**

Two worker witnesses, Armando Flores Cruz and Rulber Gonzales, gave pertinent testimony with respect to the crew of foreperson Leonel Nuñez Martinez. Foreperson Nuñez also testified. While the testimony of Gonzales and Nuñez was quite different, it is nonetheless undisputed by either of them that foreperson Nuñez allowed worker Virginia Chairez to advocate for the decertification drive during work time.

Armando Flores Cruz, who was witness # 18, first worked for Gerawan in 2001. (12 RT 197:19-23) Flores worked for Gerawan in 2013, serving in the crew of foreman Leonel Nuñez. (12 RT 197:24-198:13) Flores recalled an occasion in October 2013 when a woman asked for his signature during work hours. (12 RT 199:23-200:7) Flores did not know the name of the woman. (12 RT 204:17-19) The woman told Flores that the signature related to the union taking three percent of the money from the workers’ checks. (12 RT 202:3-10) Flores did not know the location of foreman Nuñez when the woman solicited his signature, although he did

see Nuñez and the woman exchange greetings shortly thereafter. (12 RT 206:22-209:13)

Rulber Gonzales, who was witness # 32, worked for Gerawan from 1997 to 2013. (17 RT 185:12-23 and 17 RT 223:22-224:1) On a day when Gonzales was in the crew of Nuñez, he saw Virginia Chairez come to the crew. (17 RT 190:1-7 and 17 RT 195:15-25) While the crew was working, Chairez asked Gonzales to sign the decertification petition. (17 RT 197:11-17) Chairez then asked approximately four other workers to sign the petition. (17 RT 198:1-23) Chairez then asked Nuñez to gather his crew, which he did. (17 RT 199:4-24) Gonzales then recalled that Nuñez said negative things about the union, and told the crew that if the union came in, the company could cut workers' hours or even go bankrupt. (17 RT 200:13-20) Chairez then passed a clipboard around to the workers for signatures. (17 RT 201:10-23) This meeting and the signing thereafter took place during work time. (17 RT 201:24-202:3) Nuñez was angry at the workers who did not sign the petitioners and threatened to fire the "gossipers". (17 RT 204:6-205:5)

Leonel Nuñez Martinez, who was witness # 106, worked for Gerawan from 1984 to 2015, and became a foreman in approximately 1991. (83 RT 89:9-24) Leonel's nickname is "El Tigre" or the "tiger". (84 RT 25:6-13) Leonel has a cousin, Ramiro Cruz, who is also a crew boss. (83 RT 101:1-9 and 84 RT 41:11-20) Leonel had two brothers who served in his crew as his helpers or assistants. (83 RT 98:8-24) Leonel also had a third brother, Gamaliel, in his crew. (84 RT 62:5-8) Leonel's son, Sergio, also worked in his crew, as did his nephew, Miguel. (83 RT

100:13-102:19, 84 RT 25:16-18 and 84 RT 62:9-14) When his crew did thinning and picking in the peaches, it typically had between thirty and thirty-eight workers. (83 RT 94:5-13) Nuñez recalled that his crew voted in the election. (83 RT 108:24-109:1) Nuñez recalled that the crew bosses had a meeting with Jose Erevia, “but not more than one month before the election.” (83 RT 110:13-17) Nuñez later revised that estimate to six to eight weeks from when Jose Erevia first met with the crew bosses until the date of the election. (84 RT 92:9-15) Nuñez also recalled that the ALRB came to speak to his crew on a later date than Erevia. (83 RT 113:3-12)

During work time, Nuñez recalls Virginia Chairez coming and speaking to her crew. (83 RT 118:2-12 and 84 RT 94:1-6) Nuñez claims that he thought she was there on behalf of the company, but I do not find that credible as Nuñez concedes that he “gave her permission” and told Chairez to be “brief”. (83 RT 118:17-19, 83 RT 124:21-24 and 84 RT 47:15-25) If Chairez was there at the direction of a manager or supervisor, Nuñez would not have been granting her permission to speak nor telling her to be brief. (84 RT 103:1-4) While company “counters” (attendance people from the office) sometimes came to Leonel’s crew to obtain signatures, they did not ever speak to the crew as a whole for several minutes. (83 RT 127:10-12) On cross-examination, Nuñez testified that he gave his crew the option of listening to Chairez, which also undermines his purported explanation. (84 RT 46:10-22 and 84 RT 100:5-21) Moreover, Nuñez had never seen Chairez work as a counter or a checker in the trees. (84 RT 39:12-15 and 84 RT 70:17-10) Nuñez walked away but could see Chairez talking to his crew. (83 RT 119:2-14) After

Chairez was done speaking, Nuñez could hear the workers talking about whether it was in their best interest to support the union or to support the company. (83 RT 120:10-25) Nuñez also saw Chairez obtaining signatures from some of his crew members. (83 RT 121:6-18) Nuñez and Chairez then exchanged “good-byes” and she left. (83 RT 121:23-122:2) Nuñez does not know if Chairez was ever disciplined for collecting signatures during work hours. (84 RT 97:20-23) At the time, Nuñez was very good friends with Rulber Gonzales, who worked in his crew on that particular day since Nuñez had an opening. (83 RT 130:21-131:25, 84 RT 27:12-28:18 and 84 RT 94:12-15)

I conclude that the most plausible scenario is that Nuñez did call the crew together as testified by Rulber Gonzales. Nuñez then turned control of the meeting over to Chairez and allowed her to solicit signatures from his crew during work time. While I do not credit Rulber Gonzales’ specific statement that Nuñez suggested during the meeting that the union could lead to the company’s bankruptcy, nor do I find Leonel Nuñez to be even slightly credible when Nuñez claimed that he altogether misunderstood the purpose of the visit from Chairez.

#### **16. Direct Hire Crew of Jesus Padilla Martinez**

Five worker witnesses, Jaime Montaña Dominguez, Feliciano Valdivia, Guadalupe Barajas, Cresencio Vargas Rendon, and Rolando Padilla, gave pertinent testimony with respect to the crew of foreperson Jesus Fernando Padilla Martinez. Foreperson Jesus Padilla also testified.

Jaime Montaña Dominguez, who was witness # 7, worked for Gerawan from 2011 to 2014. (7 RT 45:14-17) In 2013, Montaña worked in the crew of Jesus Padilla and also briefly in the crew of Telesforo Mendoza. (7 RT 47:1-5) Montaña testified that, in 2013, Jesus Padilla once asked him and two co-workers if they belonged to the union. (7 RT 48:6-23) Montaña testified that about half of the crew, or twelve out of twenty-five workers, were related to Jesus Padilla. (7 RT 50:14-25) Padilla had approximately four brothers and eight nephews working for him. (7 RT 51:1-52:4) One of the brothers of Jesus Padilla is named Rolando Padilla. (7 RT 55:5-10, 7 RT 68:19-24 and 7 RT 182:21-182:1) Montaña testified as to three times when Rolando Padilla returned late from his lunch break. (7 RT 57:4-13) In a couple of these instances, Rolando had sought decertification petition signatures from his crew and then left going toward a nearby crew. (7 RT 57:24-66:23 and 7 RT 73:10-74:23) Montaña testified that Jesus Padilla let him leave work early on two occasions, but told him that he would need approval from the office if he needed to leave early again. (7 RT 70:15-72:10) I credited all of the testimony of Jaime Montaña Dominguez.

Feliciano Valdivia, who was witness # 17, worked for Gerawan from March 2012 to 2014. (12 RT 59:5-60:7) In 2013, Valdivia worked in the crew of foreman Jesus Padilla. (12 RT 60:20-21 and 12 RT 61:7-21) There were approximately thirty-two workers in Padilla's crew. (12 RT 62:23-63:1) Among the workers in the crew were Jesus' brothers Rolando, Juan, Nathan and Beto. (12 RT 63:5-10) Rolando Padilla worked as a field worker similar to Valdivia. (12 RT

76:13-15) Valdivia indicated that Jesus Padilla showed strong favoritism toward crew workers who were his relatives. (12 RT 163:24-164:2) Valdivia testified that he saw Rolando Padilla leave to collect signatures on many days for an hour or an hour and a half. (12 RT 76:2-20 and 12 RT 83:7-15) Because Rolando Padilla took a yellow folder with him when he was gone for the longer time periods, Valdivia concludes that Rolando was out collecting decertification petition signatures. (12 RT 77:3-83:25) Valdivia testified that if he (Valdivia) had to leave early, Jesus Padilla would call the office, but if Rolando missed time, Jesus would not call the office. (12 RT 84:17-21)

Valdivia also described an incident where both Jesus Padilla and Rolando Padilla solicited a decertification petition signature from a co-worker, Lupe Avila. (12 RT 68:10-71:23) I found Feliciano Valdivia absolutely sincere in that he felt Jesus Padilla treated his family members better than the other crew members. However, Valdivia's strong feelings about Jesus Padilla gave me some reservation as to fully crediting his testimony. As a consequence, I am crediting Valdivia's testimony only to the extent that it corroborates Montaño's testimony. Thus, I find that Rolando Padilla did take approximately two or three slightly extended lunches, and that there is persuasive circumstantial evidence that Rolando collected signatures in those instances. I do not credit the remainder of Valdivia's testimony.

Guadalupe Barajas, who was witness # 63, worked for Gerawan from approximately 2009 to 2013. (36 RT 98:18-25) Barajas worked in the crew of foreman Jesus Padilla. (36 RT 99:18-19) Barajas testified that Rolando Padilla told

him that the union would not be coming to Gerawan because the company does not want it and that the union “head honcho” had “sold out to Gerawan”. (36 RT 101:8-17) I credited this testimony from Barajas, but there is no evidence that foreman Jesus Padilla heard this conversation.

Cresencio Vargas Rendon, who was witness # 66, worked for Gerawan in 2013. (37 RT 95:10-25) Vargas worked in the crew of foreman Jesus Padilla. (37 RT 96:1-5) Vargas saw Rolando Padilla collect signatures from his crew both during the break and during work. (37 RT 99:1-20, 37 RT 115:3-18 and 37 RT 117:6-11) Vargas testified that Rolando told him that he would be going to other crews afterward. (37 RT 99:24-100:2) On multiple occasions, Vargas saw Rolando return back from lunch late. (37 RT 118:2-12) Rolando told him that he did not tell his brother what he did when he was gone late. (37 RT 148:8-12) Vargas also recalls Rolando repeatedly telling him that “we don’t want the union here, we’re the Padillas here”. (37 RT 113:13-23) Prior to the decertification election, Rigoberto Padilla took Vargas to a protest in Visalia. (37 RT 124:1-13 and 37 RT 141:10-12) Rigoberto is Jesus Padilla’s son. (37 RT 124:12-13) Rolando had told Vargas about the protest earlier in the morning and Jesus Padilla told workers that they could either go or stay and work. (37 RT 124:14-125:8 and 37 RT 125:21-126:4) Jesus Padilla told Vargas that he had to go and that Rigoberto would drive him. (37 RT 127:1-10 and 37 RT 138:12-16) Rigoberto drove Jesus Padilla’s minivan to the protest. (37 RT 201:15-17 and 37 RT 213:12-215:7) Like Valdivia, Vargas sincerely felt that Jesus Padilla treated his family members better than other crew

members. (37 RT 159:1-5) Additionally, I found that Vargas did not have a good memory for details like dates. For example, Vargas first described the Visalia protest that he attended as in August 2013. (37 RT 124:4-5) Later in his testimony, Vargas described that same protest as being twenty days before the election. (37 RT 141:13-18) Vargas also described the ALRB Visalia office as being the union's office. (37 RT 139:12-17) As a consequence, I am crediting Vargas' testimony only to the extent that it corroborates Montañó's testimony.

Rolando Padilla, who was witness # 83, worked for Gerawan from 2001 to 2014. (55 RT 93:2-5) Rolando has always worked in the crew of foreman Jesus Padilla. (55 RT 94:21-95:10 and 65 RT 40:17-21) At the beginning of 2013, his crew had thirty-six to forty workers. (55 RT 98:18-21) Jesus Padilla is his brother. (65 RT 40:11-16) Rolando claimed that in 2013, he did not spend any days off with his brother, other than on holidays. (65 RT 91:6-18) Rolando had other brothers who were workers in the crew including Arnulfo Juan Padilla, Edelberto ("Beto") Padilla and Enrique Padilla. (65 RT 85:18-87:11 and 65 RT 115:9-19) Rolando is also related to Rigoberto Padilla, who worked in his crew. (65 RT 87:12-24) Rigoberto is Jesus Padilla's son. (65 RT 106:22-25) Rolando stated that he could not recall the names of his cousins that worked in his crew. (65 RT 92:3-9)

Rolando explained that he did not want to give money to the union and that he did not even want to give money in church. (55 RT 96:1-7) Rolando testified that he heard from his coworkers that they were afraid that if the union comes in, the company would go bankrupt and the workers would lose their jobs.



(55 RT 100:1-11 and 65 113:13-114:5) The first time that Rolando heard or saw about collecting decertification petition signatures when was the ALRB visited his crew. (55 RT 104:6-105:21) Rolando states that he gathered signatures on approximately fifteen different days. (55 RT 109:3-6 and 65 RT 13:9-13) Rolando explained how he had sued a person in his crew, Fidel Lopez, affiliated with the UFW. (55 RT 114:24-115:23, 55 RT 116:14-16 and 65 RT 73:7-74:14) Rolando testified that Lopez told him the “President of the Union had already paid two black men to [kill him]” and that “they had contacts with very dangerous people in Mexico”. (65 RT 73:22-74:1) Rolando’s attorney was Paul Bauer. (65 RT 71:1-5) Rolando obtained Paul Bauer’s name from Silvia Lopez. (65 RT 103:7-16) Rolando alleged that he could not recall whether or not he began gathering signatures before or after meeting attorney Paul Bauer. (65 RT 72:1-8)

On the day of the work blockage, Rolando saw perhaps eighty to ninety percent of the field workers in attendance, perhaps two thousand or more people. (65 RT 24:21-25:9) He was there from approximately 7:00 a.m. to 3:00 p.m. (65 RT 27:2-28:15) He saw people gathering signatures at the protest that day, although he could not remember whether he himself collected any signatures on that date. (65 RT 83:2-18)

When asked about Montañó recollection that Rolando sometimes returned late from his lunch break, Rolando alleged that Montañó likes to drink, is a bad worker, and that “all of what he says is totally false and wrong”. (65 RT 53:19-

54:14) Rolando also claimed that Valdivia was friends with the person that Rolando had sued. (65 RT 63:1-11)

As I noted earlier in this decision, Rolando denied knowing that any of his colleagues had blocked Gerawan entrances despite that Rolando's car itself was blocking one of the entrances. (65 RT 122:18-123:11) Rolando sought to explain that his car just "suddenly died" in that particular spot, coincidentally happening to block a work entrance, with no advance difficulty to him. (65 RT 66:9-23, 65 RT 78:18-79:21, 65 RT 93:15-22 and 65 RT 123:16-125:9) Instead, I credit the testimony of witness #1, Gustavo Vallejo, who states that he saw worker Rolando Padilla block an entrance with his car and with ladders. (2 RT 36:7-36:18) Vallejo states that Rolando Padilla told him that he was blocking the entrance because they were going to have a strike. (2 RT 37:2-5)

Moreover, Rolando was clearly lying when he discussed his travel to Sacramento with other workers, claiming that it was "totally false" that owner Dan Gerawan was there at all. (65 RT 76:1-5) Rolando indicated that Dan Gerawan would be lying if he said that he called Rolando and invited him to go to Sacramento. (65 RT 105:6-10) Rolando extended his deception further by testifying that that it was possible that he went to Sacramento and coincidentally ran into Dan Gerawan and his wife while "walking down the street". (65 RT 118:1-13) I concluded that Rolando frequently lied during his testimony and discredited all of it.

Jesus Fernando Padilla Martinez, who was witness # 105, worked for Gerawan from 1988 to 2014. (82 RT 95:21-96:10) Jesus has been a crew boss since

1998. (82 RT 96:13-14) His crew size when working in the trees was typically thirty to forty workers. (82 RT 101:24-102:9) Jesus had at least eleven relatives in his crew. (83 RT 80:25-81:13) The crew size might double when the crew was assigned to the grapes. (82 RT 102:11-103:3) Jesus denied ever discussing the union with his wife, son or brothers. (82 RT 120:24-121:13) Jesus had multiple meetings with Jose Erevia, and also a meeting with ALRB staff, in which he learned about the decertification issue. (82 RT 113:15-117:10)

Jesus knew that his brother Rolando opposed the union because Jesus was aware of a dispute between Rolando and another worker. (83 RT 48:23-49:18) Jesus conceded seeing Rolando collect signatures during a lunch break, but indicated that he did not know the purpose of that signature gathering. (83 RT 52:23-53:4)

When Jesus arrived on the morning of the work blockage, he saw approximately twenty workers blocking a field entrance. (82 RT 128:20-129:25) There were also vehicles blocking the entrance. (82 RT 130:1-19) The protesters were yelling "protest" and that they did not want the union to come into the company. (82 RT 130:22-131:3 and 83 RT 56:10-14) The protesters had signs. (82 RT 132:2-4) Jesus also saw protesters at three more entrances yelling that they did not want the union to come into the company. (82 RT 131:16-132:1) Accordingly, I find that crew boss Jesus Padilla had reason to believe that the persons blocking that entrance were workers opposed to the UFW and supporting the decertification effort. Jesus testified that later that day, he received separate calls from his brother Rolando and son Rigoberto that they had gone over to the protest at Highway 145. (82 RT

132:17-133:19) After Jesus parked near the office, he saw his brothers Arnulfo and Edelberto walk toward the protest at Highway 145. (82 RT 127:25-128:3 and 82 RT 139:16-25) The crew bosses had a speakerphone call with Jose Erevia and a male attorney named Mike. (82 RT 140:13-141:8) Afterwards, the crew bosses were given a blank sheet of paper to explain what they saw. (82 RT 142:20-143:3 and 83 RT 71:25-73:4) Later that day, Jesus saw some entrances blocked with wood pallets and yellow tape. (83 RT 10:9-11:4) By the next day, Jesus did not see any blocked entrances. (83 RT 13:20-23)

Jesus recalls a morning prior to the election when his whole crew of approximately thirty-five workers left in the middle of the day to go to Visalia. (83 RT 12:20-15:6) Jesus indicates that he advised supervisor Jose Camargo as to what had happened. (83 RT 60:10-22) Jesus did not issue or recommend any discipline for the workers who had left that day. (83 RT 62:6-11) Jesus also recalled a second occasion when perhaps half of his crew left in the middle of the day and then those workers returned to resume work prior to the end of the day. (83 RT 19:11-20:15) Jesus conceded that his brother Rolando would sometimes leave during the work day, but contended that Rolando never told him the reason that he was going. (83 RT 22:22-24:23) Jesus recalled one time when the telephone call-in system for work assignments included information from Dan Gerawan telling the workers that they have the right to choose. (83 RT 35:16-21) Dan Gerawan and his wife also personally visited his crew and told workers that they were free to make their own

decision. (83 RT 35:22-36:17) Jesus must have been in the bathroom when Dan Gerawan and a politician spoke with his brother Rolando. (83 RT 39:23-42:18)

I credited Jesus Padilla's observations on the day of the work blockage. I do not credit Jesus Padilla's denials as to knowing that his brother Rolando was an active opponent of the union. Rolando is very talkative and has a strong personality and I am confident that everyone in their crew knew Rolando's position on the issue of decertification. Given that Jesus saw his brother Rolando collecting signatures at lunch time, and knew that Rolando had a significant dispute with another crew member over the union issue, it would have been reasonable for him to conclude that one possible reason for Rolando's occasional extended lunch was to collect signatures. I discredit Jesus Padilla's statement that he let any worker come and go as they please. But there is insufficient evidence to show whether Jesus simply favored his family members as a general practice, or if instead such favoritism was more narrowly tailed to the union issue.

#### **17. Direct Hire Crew of Jose Manuel Ramos**

Worker Juan Manuel Juarez Hernandez testified with respect to the crew of foreperson Jose Manuel Ramos. Foreperson Ramos also testified.

Juan Manuel Juarez Hernandez, who was witness # 27, worked for Gerawan from approximately 2008 to 2014. (16 RT 8:18-22) His crew boss was always Manuel Ramos. (16 RT 9:12-16) Juarez recalls Ramos asking him privately what he thought about the union. (16 RT 16:17-21 and 16 RT 17:13-16) Ramos told him that the workers were free to do whatever they thought was in their best interest.

(16 RT 16:22-25) Juarez recalled three times when Silvia Lopez came to his crew to collect signatures. (16 RT 25:7-20) Juarez learned her identity after she had left. (16 RT 26:7-17) Juarez recalls that Lopez stayed approximately seven minutes past the break on each of the three occasions. (16 RT 29:9-35:19) Juarez complained to Ramos, but only after Silvia had already left. (16 RT 34:4-20) Juarez states that on one occasion, Silvia tried to leave papers with Ramos, but he declined to take them. (16 RT 43:3-7)

Juarez also indicated that he saw Ramos' son-in-law, who had the nickname "Cookies", collecting signatures in the vineyard during worktime. (16 RT 108:21-109:7 and 16 RT 112:7-13) Juarez said that he saw the son-in-law solicit signatures from approximately twenty persons that were as many as eight or nine rows away. (16 RT 109:21-110:3) I discredited this testimony because it seems unlikely that Juarez could have seen what was taking place eight to nine rows away. There was testimony in the hearing that workers generally did not have ladders in the vineyards. It would have been unlikely that Juarez could see eight or nine rows away by looking over the vines. Nor was I persuaded by his explanation that by stooping, Juarez could see under the vines and see what was occurring. (16 RT 111:8-15)

Jose Manuel Ramos, who was witness # 122, worked for Gerawan from 1978 to 2015. (98 RT 92:8-16) Ramos has been a crew boss for approximately eighteen years. (98 RT 92:17-22) In April through June 2013, his crew had forty to forty-five workers. (98 RT 97:13-98:5) Ramos recalled Dan Gerawan and his wife

visiting his crew in 2013. (98 RT 117:3-11) Dan Gerawan told the crew that the union had contacted the company, but that there was nothing that he could do about it. (98 RT 117:21-24) Ramos testified that as of the date of his testimony, he was unaware that workers at Gerawan had gathered signatures to get rid of the union. (99 RT 32:25-33:13)

Ramos did not seem adept at recalling details, particularly dates. Ramos seemed to recall the incorrect year that multiple events occurred. When giving his testimony in March 2015, Ramos was often unable to correctly select between 2012, 2013 and 2014 as the year that various events occurred. For example, Ramos incorrectly stated that the ALRB came to his crew in June 2012. (98 RT 103:3-21) As another example, Ramos initially denied that his crew worked in the vineyards in 2013, yet company records persuasively indicated to the contrary. (99 RT 6:13-14 and 99 RT 7:25-9:20) Moreover, Ramos erroneously recalled that the work blockage occurred in September 2014. (99 RT 28:1-17) Given the multiple inaccuracies in his testimony, I discredited all of it. Given that I completely discredited the testimony of both Juarez and Ramos, I did not find any evidence of company assistance with respect to the crew of Jose Manuel Ramos.

#### **18. Direct Hire Crew of Santos Efrian Rios**

Worker Gustavo Vallejo testified with respect to the crew of foreperson Santos Efrian Rios. Foreperson Rios also testified.

As I previously noted when discussing the crew of Martin Elizondo, Gustavo Vallejo, who was witness # 1, worked for Gerawan during 1997 to 2014. (1

RT 159:9-10) With respect to the crew of Santo Rios, Vallejo testified that he saw Santos Rios give some papers to his brother Oscar Rios, who worked in his crew, and that Santos told Oscar to gather signatures. (1 RT 229:25-231:10) When Vallejo heard this he was about three rows of trees, or thirty-five feet distance, away from the two brothers. (1 RT 231:21-232:8) Vallejo states that he later saw Oscar obtain fifteen signatures from crew members. (1 RT 233:17-234:7) None of the parties called Oscar Rios as a witness.

Vallejo recalled a day when he went to work, arriving at 5:30 a.m., and the entrances were blocked with ladders. (1 RT 235:12-17 and 1 RT 235:22-236:8) At that time, Santos Rios had just recently become his crew boss. (1 RT 168:20-23, 2 RT 45:16-17 and 2 RT 148:3-9) In mid-October, the crew had approximately thirty-five workers. (2 RT 155:23-156:2) Vallejo left in his vehicle at around 7:00 a.m., taking with him the workers who typically rode with him. (2 RT 40:12-16, 2 RT 45:10-23, 2 RT 46:23-25 and 2 RT 245:2-8) Shortly thereafter, Vallejo received a phone call from foreman Santos Rios, asking Vallejo why he took his three riders from the work site. (2 RT 41:2-45:19) Vallejo states that a couple days later Rios told him not to take workers away from a strike. (2 RT 46:5-17) Also two days after the work stoppage, the brother of a crew boss began driving the workers who previously paid Vallejo for a ride. (2 RT 53:24-54:12 and 2 RT 251:7-15)

Vallejo indicated that he stopped working at Gerawan because after Rios' crew shifted from the Sanger area to the Kerman area, his co-workers verbally intimidated him for supporting the union. (2 RT 139:24-141:11, 2 RT 144:19-145:2



and 2 RT 166:2-15) Vallejo states that foreman Santos Rios laughed when Vallejo told him about his concerns. (2 RT 145:3-146:5) From December 2013 to February 2014, Vallejo went back to Elizondo's crew and then Vallejo left the company. (2 RT 182:10-185:1) During his testimony, Vallejo indicated that three persons, a man and two women, tried to intimidate him during a break and indicated that Vallejo would face consequences for his testimony. (2 RT 100:12-102:21) The man, in the presence of the two women, told Vallejo that he would go to Vallejo's church and talk to Vallejo's supervisor at his new job. (2 RT 102:21-115:17) Vallejo identified the two women as audience members that petitioner stipulates were her daughters, Belen Solano and Rose Hilda Solano. (2 RT 109:12-24 and 2 RT 124:19-125:3)

Santos Efrian Rios, who was witness # 108, worked for Gerawan from 2000 through 2015. (85 RT 66:22-67:3) Rios testified that he became a crew boss in approximately 2011. (85 RT 67:6-11) In 2013, Santos' brother Oscar worked in his crew. (85 RT 67:15-18 and 85 RT 69:16-18) Santos called Oscar his "assistant". (85 RT 79:5-80:1) There was insufficient evidence presented at hearing to designate Oscar as having supervisory status, so for analytical purposes, I treat him as if he was an ordinary worker.

Santos recalls when a lady came to speak to his crew who was an ex-union employee. (85 RT 95:2-24) Santos testified that the lady told the crew that the things that the union was promising were lies. (85 RT 95:25-96:2) Santos remembers that the lady was accompanied by a young man named Oscar, which was easy for him to remember because it was the same name as his brother. (85 RT 96:5-

7) It was a thirty-minutes long meeting, possibly during work time. (85 RT 96:20-21 and 86 RT 156:6-13) I conclude that this man was witness # 116, Oscar Garcia Bonilla and that the woman was Labor Relations Institute consultant Evelyn Fragoso.

On the day of the work blockage, Rios testified that he eventually went to the office and completed a statement for the company. (85 RT 109:19-110:5) When he left the office, Santos claims that he had no idea why the entrances had been blocked. (85 RT 110:15-25 and 86 RT 107:22-25) But Santos obviously knew that the blockage was related to the union issue, because while he felt uncomfortable getting out near where the workers were yelling, he saw no problem in his passengers doing so. (85 RT 155:18-156:3) In fact, Santos' passengers walked toward the group and immersed themselves in it. (86 RT 98:6-8) Moreover, on the day of the work blockage, Santos did not call a manager or supervisor to advise them of what was taking place. (86 RT 63:14-18)

Santos conceded that he did give his brother Oscar papers to get crew signatures on one or two occasions, but alleged that the papers were not connected to the decertification effort. (85 RT 115:7-22) Santos did not recall whether or not Vallejo gave rides to other crew members, and did not recall talking to him. (85 RT 131:15-21) Santos also did not recall Vallejo, or anyone else, ever reporting to him having been verbally harassed by other workers. (86 RT 151:2-16) On the three or four occasions when workers came to Santos with questions about the union, he told them to call Jose Erevia with the company. (85 RT 142:22-143:24)

While I credited Gustavo Vallejo's testimony as to the crew of Martin Elizondo, his testimony as to Santos Rios was slightly less persuasive. But between the two, Vallejo and Santos Rios, I credited Vallejo over Rios with one exception, which was that I was not persuaded by Vallejo's testimony that Santos gave decertification petition signatures sheets to his brother Oscar. I felt that it was appropriate to report in the decision the testimony by Vallejo with respect to the alleged witness intimidation tactics by the daughters of Silvia Lopez, namely Belen Solano and Rose Hilda Solano. But I did not believe this hearing was the appropriate forum to investigate such allegations, and limited inquiry on it, so I make no credibility determinations related to that issue. The summary of that testimony is contained in this decision solely so the Board may decide if it wishes to refer that topic to the appropriate authority for investigation.

**19. Direct Hire Crew of Antonio Sanchez**

Two workers, Juan Cruz Lopez and Hilario Rocha Salas, testified with respect to the crew of foreperson Antonio Sanchez. None of the parties called Antonio Sanchez as a witness.

Juan Cruz Lopez, who was witness # 24, worked for Gerawan from 2010 through 2014. (15 RT 12:7-12 and 15 RT 98:13-15) In 2013, his crew boss was Antonio Sanchez. (15 RT 12:14-15) Lopez credibly testified that he asked foreman Sanchez for permission to solicit pro-union signatures. (15 RT 25:23-26:11) His request was denied. (15 RT 26:10-11) On the day of the work blockage, Lopez saw an entrance blocked by ribbons, a car, and workers. (15 RT 38:2-39:22)

The workers were holding multiple professionally-made signs that said "let us vote". (15 RT 41:23-42:10 and 15 RT 61:7-16) None of the workers blocking the entrance had a pro-UFW sign. (15 RT 98:9-12) There were also some ladies there with clipboards collecting signatures. (15 RT 42:11-15)

Hilario Rocha Salas, who was witness # 59, worked for Gerawan from 2012 through 2014. (34 RT 76:21-77:3) The first foreperson for whom Rocha worked in 2013 was Antonio Sanchez. (34 RT 78:11-15) Rocha testified that, on one day, Sanchez told the crew that they could leave early by half an hour, and still get paid, in order to go to a strike. (34 RT 84:21-85:10) The purpose of the protest was to remove the union. (34 RT 88:7-18) None of the parties presented or addressed time records for the crew of Antonio Sanchez for the pertinent days that might have bolstered or undercut Rocha's testimony.

Rocha recalled workers collecting decertification petition signatures from his crew during work hours on three occasions. (34 RT 100:22-101:8) On the first such occasion, a man came to his crew at around 9:00 a.m. (34 RT 101:21-102:2) He did not know the man's name and was unable to describe him other than his being younger and possibly around twenty-five years old. (34 RT 101:16-20 and 34 RT 103:17-104:3) As to the second occasion described by Rocha, some young women visited his crew, but it was actually during lunch time. (34 RT 105:7-20) In the third instance, some younger men came by, but Rocha was unable to describe them. (34 RT 106:23-107:21)

Rocha also claimed that, in 2012, he heard crew boss Emma Sanchez tell some workers that the company did not want the union to be there. (34 RT 89:1-4) Rocha also claims to have heard her tell some workers that if the union came in, they would bring failure, and that the company would cut down the trees. (34 RT 90:1-9) On cross-examination, Rocha indicated that these comments were made during April or May 2012. (34 RT 128:3-19) I do not credit this testimony because the union does not appear to have been an issue at that juncture.

As previously noted, none of the parties called foreperson Sanchez as a witness. I am crediting all of the testimony of Juan Cruz Lopez, but none of the testimony of Hilario Rocha Salas. In the absence of time records, Rocha's testimony about getting paid for half an hour to attend the one protest is insufficiently reliable, given the other inaccuracies in his testimony.

#### **20. Direct Hire Crew of Raquel Villavicencio**

Four workers, Norma Yolanda Macias Lopez, Jovita Hernandez Eligio, Clara Cornejo, and Alecia Diaz Reyes, testified with respect to the crew of foreperson Raquel Villavicencio. Raquel Villavicencio also testified as a witness.

Norma Yolanda Macias Lopez, who was witness # 37, worked for Gerawan from 2012 through 2014. (19 RT 128:13-19) In 2013, her crew boss was Raquel Villavicencio. (19 RT 129:1-13) Macias credibly recalled a meeting during work hours in which Oscar Garcia and Labor Relations Institute consultant Evelyn Fragoso were present. (19 RT 149:2-150:16 and 19 RT 153:6-10) Fragoso explained that the union was lying about helping the workers and that they just

wanted the three percent. (19 RT 150:17-25) That same day, her crew was given a compact disc with the lady saying some of the same things that she said at the meeting. (19 RT 151:14-152:1) Also at the meeting, Silvia Lopez and Jovita Eligio gave away free t-shirts that said "no to the union". (19 RT 152:7-15) I credited Macias' recollection regarding distribution of the compact discs and t-shirts.

Jovita Hernandez Eligio, who was witness # 72, worked for Gerawan from approximately 2003 to 2014. (40 RT 23:11-13) In 2013, her crew boss was Raquel Villavicencio. (40 RT 25:7-12) Eligio learned about the union when her paystub told her that the union was going to be taking away three percent of her paycheck. (40 RT 26:13-27:23) Eligio initialed recalled that she gathered signatures in more than one calendar year, but a few days later indicated that the signature gathering had only been during a single calendar year. (41 RT 175:18-21 and 42 RT 10:14-22) Eligio gathered decertification petition signatures from many crews, perhaps in total, eleven or twelve different crews. (40 RT 39:24-40:7 and 41 RT 181:14-17) As to these eleven or twelve crews, Eligio estimates that she went to them an average of at least two times each. (41 RT 182:6-9) Eligio only visited crews at lunch time prior to when the regional director rejected the first group of signatures. (41 RT 182:22-25) When going to other crews at lunch time, Eligio claimed that pro-union supporters made offensive and/or sexist comments to her. (40 RT 46:2-15)

Eligio testified that Silvia Lopez, Angel Lopez, and herself, purposefully planned the work blockage. (40 RT 47:7-9) Eligio also discussed the

blockage in advance with Clara Cornejo. (41 RT 19:9-13) Eligio testified that Silvia Lopez, Angel Lopez, and herself, were among the people who physically blocked work entrances on September 30, 2013 so that workers were unable to enter company property and work. (40 RT 47:18-48:1) In total, there were approximately fifteen workers who as a group who deliberately blocked the work entrances. (40 RT 50:10-14) On the day of the work blockage, Eligio arrived at the company property at approximately 3:30 a.m. (40 RT 52:21-23) Eligio states that she brought red and yellow ribbon or tape that she had purchased with cash at a local store on Sunday evening at 8:00 p.m. (40 RT 54:1-10, 41 RT 22:7-13 and 41 RT 27:11-14) Eligio conceded that this ribbon looked identical to the type used at Gerawan. (41 RT 136:16-19) After leaving the ribbon with some of her co-workers, she then placed her car blocking the entrance to which she had been assigned. (40 RT 54:13-18) Eligio knew that some people might recognize her car or license plate since she had been collecting a lot of signatures. (41 RT 40:2-14) Thereafter, Eligio and a lot of other people began gathering decertification petition signatures. (40 RT 56:3-6) Eligio herself began gather signatures at 8:00 a.m. (41 RT 179:1-5) Eligio saw maybe 2,000 people at Highway 145 and Central, and perhaps twenty-five that were supporting the union.<sup>34</sup> (40 RT 62:2-3 and 40 RT 64:14-16) Eligio had time to look

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<sup>34</sup> Eligio claimed that a female co-worker who supported the union, Lupe Martinez, had threatened and followed her. (40 RT 65:23-25) According to Jovita's brother, Felix Hernandez Eligio, who was witness # 82, and who also worked at Gerawan, his sister never told him about someone from the union threatening her. (54 RT 140:6-9)

at every one of the two thousand people and she was sure that none of them were crew bosses. (41 RT 180:1-6) Eligio stated that of the two thousand workers protesting against the union, she had seen every single one of them working for the company. (41 RT 157:8-16 and 41 RT 179:13-19) But of the twenty-five people supporting the union, she only recognized five or six of them. (40 RT 64:15-16 and 41 RT 157:17-20)

Eligio acknowledged that on approximately three days that she did not work, she nonetheless went to company property to collect signatures. (41 RT 10:18-11:12) All of the crews that Eligio ever visited to collect signatures took lunch at the same time as her crew, which was 10:00 a.m. to 10:30 a.m. (41 RT 13:9-15) Eligio noted that workers are not allowed to bring a child to work. (40 RT 93:1-4) Her co-workers Clara Cornejo and Alecia Diaz would also collect decertification petition signatures. (41 RT 16:21-17:5) Eligio recalls being given a free "No UFW" t-shirt, as well as distributing such t-shirts to other workers. (41 RT 42:9-46:14 and 41 RT 175:2-3)

Eligio acknowledged lying when she was previously interviewed in July 2014 by the ALRB regional staff at the office of petitioner's legal counsel. (41 RT 84:1-8, 41 RT 89:23-24 and 41 RT 176:18-20) Eligio testified "Why would I tell him the truth if [Shawver] is not listening to us. It makes no sense for me to tell him the truth if he wasn't going to pay attention to us, anyhow." (41 RT 90:13-19) Eligio also claimed that she was afraid that Shawver would call immigration on her. (42 RT 8:2-12) Eligio states that she was also worried that the company might fire



her for causing the blockage. (42 RT 9:15-24) But Eligio denied ever telling Silvia Lopez that she had lied to the ALRB about the blockage. (41 RT 186:21-25) Eligio claimed that she did not know whether Silvia Lopez or Angel Lopez told the ALRB about their involvement in planning and implementing the blockage. (41 RT 186:5-12 and 42 RT 16:25-18:16)

Clara Cornejo, who was witness # 78, worked for Gerawan from approximately 2007 to 2014. (45 RT 115:24-116:8) Her nickname is "Carla". (45 RT 113:18-23) In 2013, her crew boss was Raquel Villavicencio. (45 RT 116:9-10) Cornejo first heard about the UFW when they came to her crew promising to help get immigration documents for workers who needed them. (45 RT 117:17-119:16) Union organizers also told her that workers could get better wages with the union, but Cornejo believed that better wages than what the company already offered were impossible. (45 RT 137:1-6) In 2013, Cornejo collected signatures from more than ten different crews. (45 RT 124:20-126:17) Cornejo only collected signatures at lunch time. (45 RT 126:21-23 and 45 RT 129:22-25) She took the whole day off from work to go to Reedley to collect signatures on approximately ten occasions. (45 RT 130:11-15 and 49 RT 12:6-11) Cornejo did not recall why Silas Shawver invalidated the first batch of signatures. (45 RT 134:1-21)

On the day of the work blockage, Cornejo arrived at 4:00 a.m. to block an entrance to Gerawan fields. (45 RT 144:2-5 and 45 RT 145:9-13) Cornejo blocked the entrance with her car and some tape. (45 RT 146:11-17) Cornejo recalls discussing the idea of a blockage with Jovita and others perhaps four or five days

beforehand. (45 RT 153:4-12 and 45 RT 154:18-19) One of the purposes of the work blockage was to gather more signatures. (45 RT 157:21-24 and 45 RT 188:21-24) The co-workers who did the blocking later collected signatures at the protest that day. (45 RT 158:13-21) According to Cornejo, some of the protesters held signs, and more than fifty of the signs appeared to be professionally-printed. (45 RT 192:6-11 and 45 RT 195:10-16) Two days later, Cornejo went in a bus to Sacramento to protest outside the ALRB offices. (45 RT 160:1-15 and 45 RT 161:16-17) Cornejo had heard that the bus was paid for by or through “Ray” at the KMJ radio station, but she did not recall from whom she had heard that information. (45 RT 191:14-23)

When Cornejo was interviewed by ALRB Regional Office staff, she denied participating in the work blockage. (49 RT 6:9-15) Cornejo had petitioner’s counsel present at the interview. (49 RT 8:20-22 and 49 RT 49:16-21) Cornejo claims that none of her co-workers told her that they were going to deny having participated in the blockage in their own interviews with ALRB Regional Office staff. (49 RT 7:5-10) Cornejo testified that she did not see any reason to tell the truth to ALRB Regional Office staff when Silas Shawver was just playing around with them. (49 RT 9:20-22 and 49 RT 10:16-18)

Alecia Diaz Reyes, who was witness # 84, worked for Gerawan from approximately 2012 to 2014. (56 RT 8:4-15) In 2013, her crew boss was Raquel Villavicencio. (56 RT 9:18-23) In 2013, her crew was located in Kerman. (56 RT 10:16-18) Her boyfriend is Jacinto Carrasco Aquino, who was witness # 87. (56 RT

15:24-16:11) Her boyfriend used to work for the UFW and he spoke negatively of them. (56 RT 15:17-19 and 56 RT 53:10-13) Diaz gathered signatures with her friend Clara Cornejo, who was sometimes known as Carla. (56 RT 18:2-15) Diaz took more than fifteen whole days off from work to go to Reedley to collect signatures. (56 RT 93:17-22, 56 RT 96:4-6 and 56 RT 107:7-10) On those days, Diaz visited between ten and twenty different crews. (56 RT 99:12-20) Diaz also took four or five whole days off to gather signatures from Kerman-area crews. (56 RT 101:15-17) Diaz recalled that Jovita Eligio, witness # 72, and Virginia Chairez, who was not called as a witness, were both active in gathering signatures. (56 RT 114:21-25)

Diaz participated in the blockage of company entrances. (56 RT 36:13-16, 56 RT 37:10-17 and 56 RT 69:21-24) During her first conversation with Carla beforehand about blocking the entrances, they talked about collecting new decertification petition signatures. (56 RT 81:18-21) When people came to the entrance where Diaz was stationed, she told them that she was blocking it. (56 RT 72:6-9) Diaz also told them that they needed to have a bigger strike to get the ALRB's attention. (56 RT 70:17-25) She saw some signs that were professionally printed that day. (56 RT 41:18-20 and 56 RT 88:1-10) Diaz and her co-workers gathered signatures on the day of the work blockage. (56 RT 42:1-6) Alecia said that Carla and Jovita both told her that they had been interviewed by the ALRB Regional Office staff, but neither of them told her that during such interviews they had lied. (56 RT 85:4-21)

On one occasion, a co-worker who supported the UFW began handing out a pro-union flyer shortly prior to lunch. (56 RT 60:15-17) As soon as foreperson Villavicencio saw this, Villavicencio sent the worker back to where she should be working. (56 RT 60:18-19) When Diaz took a bus to go protest in Sacramento, the bus was parked in front of the company office. (56 RT 90:24-91:1) She did not pay anything to take the bus, and was provided with burritos, snacks, chips and water. (56 RT 91:15-92:15) Carla told her that the food that day came from donations on behalf of an English-language radio station. (56 RT 92:16-20) Diaz assumed that the buses fell into the same category. (56 RT 93:8-12)

Raquel Villavicencio, who was witness # 119, worked directly for Gerawan as a crew boss from approximately 2002 to 2014. (95 RT 80:1-5) Her crew was sometimes as large as fifty to sixty workers. (95 RT 99:2-8) Villavicencio testified that she always has exactly as many workers who want to work as there are spots for workers. (95 RT 155:1-4) During 2010 through 2013, Villavicencio does not recall ever turning down a person who sought work in her crew. (95 RT 155:6-12) During 2008 through 2013, Villavicencio has never disciplined or suspended a worker. (95 RT 161:4-21 and 96 RT 32:3-12) Instead, Villavicencio stated that she has the discretion to do what she thinks is appropriate. (96 RT 39:16-22) Her assistant crew boss was Benjamin Gallardo Rodriguez, who was witness # 48. (95 RT 85:9-15) The parties stipulated that, in 2013, Gallardo was also a statutory supervisor. (23 RT 45:15-46:17) At times, Gallardo supervised part of the crew physically separated from Villavicencio and the remainder of the crew. (95 RT

85:16-19) Villavicencio had a sister, Ana Maria, sister-in-law, Gemma, and nephew, Miguel, who worked in her crew. (95 RT 90:13-91:5) Raquel Villavicencio also had a brother, Reynaldo Villavicencio, who was a crew boss. (95 RT 92:6-16) None of the parties called Reynaldo Villavicencio as a witness.

Raquel recalled an occasion before the election when her crew had already started work, packing grapes, when a significant amount of her crew all left at once. (95 RT 124:14-23) The crew members just began chanting "let's go" and left, some telling her not to let anyone touch their packing area. (95 RT 125:2-10) On that occasion, perhaps forty-five of her sixty workers left. (95 RT 126:10-18) While the workers were missing, supervisor Lupe Elizondo walked by and just shrugged his shoulders. (96 RT 96:12-19) Maybe fifteen of the forty workers who left returned later in the day. (95 RT 127:1-5) Villavicencio claims that she did not know where the workers went, she did not ask them, and they did not tell her anything. (95 RT 128:7-22) Villavicencio denied being friends with Jovita and Carla, testifying that "All the workers are the same to me." (95 RT 131:24-133:10) Villavicencio stated that Jovita and Carla would just tell that they are going to stop work and would leave. (95 RT 135:18-25) Villavicencio never talked to Jovita or Carla about the large amount of work that they were missing. (95 RT 163:13-17) When asked if Jovita missed thirty-six full days of work between June 1, 2013, and September 20, 2013, Villavicecio responded that she did not remember. (96 RT 42:9-13) When asked if Carla missed twenty-two full days of work between June 1, 2013, and September 20, 2013, Villavicecio stated that she could not force her to

show up to work. (96 RT 43:6-13) When asked if Alecia missed thirty-four full days of work between June 1, 2013, and September 20, 2013, Villavicecio stated that she does not count the days and that it would be “inhumane” to force someone to work. (96 RT 43:17-25) Villavicecio made it sound like she was helpless and powerless to inquire why workers were routinely leaving in the middle of the day. (95 RT 159:1-10) Villavicecio similarly made it sound like she had no recourse if a worker was routinely absent. (95 RT 158:3-13) Jovita Eligio never complained to her that Lupe Martinez was bothering her. (96 RT 23:1-5) Villavicecio recalled Lupe Martinez as being “quiet”. (96 RT 23:8-14)

On the day of the work blockage, Villavicecio did not think about whether or not it might be related to the union issue. (95 RT 169:7-9) Villavicecio testified that she understood Jose Erevia’s past instructions to require her to leave whenever there was a large group of people. (95 RT 168:21-24) However, Villavicecio did not call Jose Erevia upon arrival to the blocked entrance to tell him what she saw. (95 RT 169:4-6) Villavicecio states that she tried calling several supervisors, but most of them did not answer. (95 RT 104:8-10) Villavicecio did reach Vidal, but he did not give her any instructions. (95 RT 104:19-22 and 9 RT 105:15-16) Villavicecio testified that she did not receive any calls or text messages from her crew. (95 RT 106:15-107:9 and 95 RT 112:11-13) Villavicecio then left to get a cup of coffee, later going to the office. (95 RT 110:3-4 and 95 RT 113:18-25) Upon cross-examination, Villavicecio conceded that she did not go inside the

store to get a cup of coffee, but rather simply parked in back and waited. (96 RT 78:24-79:7)

Villavicencio recalls one day when Oscar Garcia came and made a presentation to her crew. (96 RT 26:2-6) Villavicencio testified that, despite multiple meetings conducted by Jose Erevia, she did not know what the election was about or that it had anything to do with the union. (96 RT 57:19-21 and 96 RT 58:2-21) Upon re-direct examination, Villavicencio both conceded and denied that she knew there was a group getting signatures to try to get rid of the union. (96 RT 112:10-12 and 96 RT 115:11-15) Villavicencio identified exhibit GCX-76 as the red tape that the company used in the fields. (96 RT 97:21-98:23) She noted that the tape is easily ripped or torn with a person's bare hands. (96 RT 101:13-16)

I credited the testimony of Eligio, Cornejo and Diaz that they were among the principal architects of the September 30, 2103 work blockage at Gerawan blockage, along with Silvia Lopez and Angel Lopez. The testimony at the hearing overwhelming showed that it was the decertification proponents who were solely responsible for the blockage of workplace entrances. But when it came to other topics, such as their motives for conducting the blockage, and for lying to the ALRB Regional Office staff, I mostly discredited the testimony of Eligio and Cornejo. It is not just that the pair was caught lying, which is a given. I asked Eligio and Cornejo if they spoke to one another before lying to the Regional Office staff and they denied doing so. It stands to reason that if Silvia Lopez, Angel Lopez, Eligio, Cornejo, and others were going to an ALRB interview and intended to lie, they would first check

with their co-conspirators to ensure uniformity in their responses. I credited Diaz as to her testimony that, during her first conversation with Carla beforehand about blocking the entrances, they talked about collecting new decertification petition signatures. I conclude that the workers decided that, due the Regional Director rejecting their earlier batch of signatures, the work blockage was the only means by which they could timely gather the large number of signatures required in a short time period. Before too long, winter would be upon them and worker layoffs would escalate. The work blockage was a deliberate and calculated effort to quickly obtain signatures as their number of signature gatherers was otherwise not great enough to timely finish the task using only during the thirty-minute lunch break as was done the first time. As for Raquel Villavicencio, I certainly did not believe her utopia scenario, where workers are never warned or disciplined, and may leave early or miss work in great abundance with neither scrutiny nor consequences.

Villiavicencio, like other crew bosses, surely recognized that the walk-outs and blockages were initiated by the proponents of the union decertification effort.

#### **21. Direct Hire Crew of Reynaldo Villavicencio**

Five workers, Francisco Serviano, Innocensio Bernal, Bernardo Magaña Elias, Silvia Enedina Lopez, and Belen Elsa Solano Lopez, testified with respect to the crew of foreperson Reynaldo Villavicencio. Surprisingly, none of the parties called Reynaldo Villavicencio as a witness.

Francisco Serviano, who was witness # 21, worked for Gerawan from approximately 2008 to 2014. (14 RT 7:9-11) With the exception of one day, in



2013, Serviano's crew boss was Reynaldo Villavicencio. (14 RT 9:7-9) His crew had thirty-five to forty workers. (14 RT 38:14-16) The crew typically worked on the West side, near Kerman. (14 RT 152:16-17) Silvia Lopez started in his crew in June or July 2013. (14 RT 10:8-11) Serviano recalled that Lopez drove a Toyota Avalon. (14 RT 39:13-14) For about a month and a half, Lopez typically missed two or three days of work every week. (14 RT 43:20-44:13) Lopez was slightly late to work approximately forty percent of the time. (14 RT 27:10-17) Serviano recalls a single time when he was five or ten minutes late for work when Reynaldo told him that there could be consequences if he made a habit of being late, but no action was taken against him. (14 RT 64:1-24) Lopez also left earlier than the rest of the crew on many occasions. (14 RT 29:4-20 and 14 RT 42:5-7) There would be other times that Serviano did not actually see Lopez leave early, but by the time the workers took their next break, she was already gone. (14 RT 43:7-11)

On two occasions, Serviano mentioned Silvia's absence to his crew boss, Reynaldo Villavicencio. (14 RT 59:22-60:20) Reynaldo told Serviano to do his work and that he could not do anything about it. (14 RT 60:21-61:14) Serviano does not know if Reynaldo complained to Silvia about her attendance because Reynaldo usually had those types of conversations with the worker in private. (14 RT 70:14-19)

At least three or four times, Serviano worked in the same row as Lopez. (14 RT 14:23-25) Serviano recalled that Silvia Lopez was slow at her work. (14 RT 14:4-5) Serviano testified that Lopez left her row many times, starting on

even the first morning that she worked, and also repeatedly had long cell phone conversations. (14 RT 16:10-24) Serviano indicated that majority of the telephone calls were in English. (14 RT 23:4-5) Serviano speaks a little bit of English, but speaks Spanish better. (14 RT 5:11-19) On Silvia's second day of work, she told Serviano that one of the telephone calls was with her attorney. (14 RT 24:15-19) Serviano claims that Silvia also told him about telephone calls to co-workers in other crews. (14 RT 25:12-15) Serviano's conversations with Silvia were in Spanish. (14 RT 157:1-11) All of the other workers in his crew also sometimes used their cell phone while they were working. (14 RT 147:6-20)

Perhaps a week or two after Silvia started with his crew, Silvia's daughter, Belen, also began coming to the crew in Silvia's car. (14 RT 97:3-12) In 2013, Belen worked in the crew for approximately three months. (14 RT 98:2-4) Later, during the 2013 grape harvest, Belen worked as a checker. (14 RT 99:1-10) Serviano also met another daughter of Silvia Lopez who was working as a checker during the 2013 grape harvest. (14 RT 126:10-18) I credited all of the portions of Serviano's testimony that are summarized in this sub-section.

The testimony of Innocensio Bernal, who was witness # 22, was very short as to its length, but not small as to its importance. Bernal worked for Gerawan for three seasons. (14 RT 164:5-7) In 2013, his crew boss was Reynaldo Villavicencio. (14 RT 164:22-23) On a Friday, Bernal asked Villavicencio to take off a Saturday because his spouse was in the hospital. (14 RT 165:3-24) Villavicencio approved Bernal taking off the Saturday. (14 RT 165:15-17) On

either Friday or Saturday, Bernal then asked Villavicencio if he could take off the next Monday to meet with his immigration attorney. (14 RT 166:4-15)

Villavicencio denied his request. (14 RT 166:10-22) Villavicencio told Bernal that he couldn't have Bernal missing so much work, that the company didn't want people missing that much work. (14 RT 166:10-12) Bernal did not further work at Gerawan in 2013, because when he called Villavicencio to inquire, he was told that they were not taking any more people. (14 RT 167:6-9) Bernal was not asked any cross-examination questions and, as previously noted, Reynaldo Villavicencio was not called as a witness by any of the parties. I fully credited the testimony of Innocencio Bernal.

Bernardo Magaña Elias, who was witness # 74, worked for Gerawan from 2008 to 2014. (42 RT 24:1-14) The first three years Magaña worked for a contractor at the company, the last four years Magaña worked directly for Gerawan. (42 RT 24:3-14) In June and July 2013, his crew boss was Reynaldo Villavicencio. (42 RT 25:10-17) In 2013, Magaña had several relatives working in Villavicencio's crew. (42 RT 104:4-9) Magaña also briefly worked for Reynaldo Villavicencio during October to early November. (42 RT 27:16-25) As for August and September 2013, Magaña gave conflicting testimony as to whether he worked for Villavicencio or instead shifted to the crew of Ramiro Cruz. (42 RT 26:17-18 and 42 RT 100:24-103:18) If Magaña was mistaken, I believe that he was simply confusing 2012 and 2013, and not being deceptive about his crew assignment. Magaña testified that when he first saw UFW organizers, they told him "we're going to take three

percent”. (42 RT 31:14-32:15 and 42 RT 140:13-17) Magaña also remembered the people from the union telling him in August 2013 that the workers “needed to sign a contract and that if [they] did not sign the contract, [they] would be fired”. (42 RT 36:11-19 and 42 RT 38:1-5) Magaña also recalled people from the union telling him to vote for them and they would give the workers immigration documents. (42 RT 39:5-11) One day before the election, Magaña left work early to go to a protest in Visalia. (42 RT 66:25-67:1 and 42 RT 68:4-8) Magaña just told Villavicencio that he was leaving, and Villavicencio told him to write the reason on his punch card. (42 RT 69:7-21 and 42 RT 134:22-24) Magaña recalled receiving a free t-shirt prior to the election. (42 RT 148:16-22) I am skeptical of Magaña’s testimony that when union organizers first made contract with him, the first words that they uttered were that “we’re going to take three percent”. Similarly, I am skeptical of Magaña’s testimony that the union told him that workers would be fired if they did not sign a contract. It would have been in the UFW’s interest to focus only on the positive aspects of union membership, and to not emphasize any costs or disadvantages. I did credit Magaña’s testimony that Villavicencio told him to write the reason for leaving early on his punch card, to which Magaña repeatedly testified.

Petitioner Silvia Enedina Lopez<sup>35</sup>, who was witness # 79, did not work at Gerawan during 2010, 2011 or 2102. (46 RT 21:23-22:14) Silvia does not

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<sup>35</sup> Some of my discussion of the testimony of Silvia Lopez is located in the earlier section of this decision regarding factors requiring scrutiny of Silvia’s role as the decertification petitioner.

remember if she worked for Gerawan in 2008 or 2009. (46 RT 21:8-13) Silvia believes that the first year that she worked at Gerawan was in 1997 or 1998. (46 RT 18:16-19) Silvia conceded that, in 2013, she may have publicly overstated the length of time that she had worked for Gerawan. (50 RT 43:14-18, 50 RT 52:13-16 and 50 RT 58:11-20) Silvia testified that she described herself as a fifteen-year Gerawan worker because that is how long she was aware of the company. (50 RT 52:17-21) I did not find that explanation to be credible. From 2010 forward, Silvia's first day working at Gerawan was in June or July 2013. (46 RT 65:4-9) In 2013, Silvia started working in the crew of Reynaldo Villavicencio. (47 RT 6:4-6) In 2013, Silvia only worked in the grapes, not the peaches. (53 RT 154:6-8) Her crew ordinarily worked six days a week, with Sunday off. (50 RT 162:11-18) Shortly thereafter, her daughter Belen also joined this crew. (50 RT 176:5-14 and 50 RT 180:3-5)

I previously discussed that Silvia worked very few hours in 2013. Yet Silvia was never disciplined for excessive absences. (50 RT 125:5-7) Silvia admitted that she started working at Gerawan specifically to help her son-in-law get rid of the union. (50 RT 121:1-3) Silvia testified that she spent more time working on the decertification effort than actually working in the fields. (50 RT 123:1-11) Nonetheless, Silvia testified that even if she had not become involved in the union issue, she would have gone to work at Gerawan in 2013. (50 RT 120:15-20) At one juncture, Silvia testified that she expected to work fifty hours a week. (50 RT 88:4-5) Silvia agreed that from June 25, 2013 to November 5, 2013, she probably missed

about sixty percent of the work days. (50 RT 154:22-155:2) And even on those days that she did work between June 25, 2013 and September 28, 2013, Silvia either started late or left early about half of the time. (50 RT 160:7-12)

Silvia gave contradictory testimony which suggested that, due to long-term pre-existing health conditions, she was unable to regularly work. (50 RT 88:21-89:4 and 50 RT 123:20-124:7) Specifically, Silvia claimed that she could not easily lift her right leg without being in pain. (50 RT 147:9-12) Silvia testified that she also had pain in her arms, but that the pain in her right leg is greater. (50 RT 148:25-149:3) Silvia gave varying testimony as to whether this pain was constant or intermittent. Silvia claimed that this pain was one of the reasons that she went to work at Gerawan in 2013, because she knew the company was not tough on attendance. (53 RT 58:24-59:2 and 53 RT 93:5-11) I did not find credible Silvia's explanation that, due to her leg pain, she purposefully picked a job that would involve strenuous physical labor because she perceived Gerawan to have a relaxed attendance policy. Moreover, Silvia and Belen often missed the same days of work, which presumably would have had a greater impact on the crew if two workers did not show up.

Silvia has four children, Belen, Lucerita, Rose Hilda and Roman. (46 RT 17:23-18:4) In 2012, Silvia lived with Gerawan supervisor Mario Montez. (46 RT 28:11-16) Her daughter, Lucerita, and her son-in-law, Angel Lopez, also lived in the same residence as Silvia and Mario. (46 RT 29:11-20 and 46 RT 112:12-13) Lucerita is Angel's wife. (61 RT 13:7-8) On different occasions, Angel, Lucerita,

Belen and Rose Hilda assisted Silvia in decertification petition signature gathering. (46 RT 30:9-19, 47 RT 33:7-20, 47 RT 148:10-23 and 50 RT 18:23-19:24) Rose Hilda did not work for Gerawan in 2013, although she worked there in a previous year. (46 RT 30:1-4) In 2013, Silvia also had a sister, Guadalupe, who worked as a grape checker at Gerawan. (46 RT 61:24-62:2) On one occasion, Silvia took her son Roman to Gerawan properties when she was either gathering signatures or giving out flyers. (46 RT 31:5-16) At that time, Roman was seventeen years-old. (46 RT 48:17-19) In October or November 2012, which was during the time of the grape harvest, Angel told Silvia that the union was coming to Gerawan. (46 RT 34:25-35:11 and 46 RT 45:14-16) Even though Silvia did not work at Gerawan at that juncture, she never mentioned her conversation with Angel to Mario. (46 RT 37:13-17) In fact, Silvia testified that she has never discussed the union with Mario. (46 RT 46:15-17)

Silvia conceded that it was possible that attorney Paul Bauer represented her before she began working at Gerawan in 2013. (47 RT 146:12-17) Silvia has never paid Bauer for his services. (53 RT 78:24-79:2) Silvia also testified that she is unaware of any third party having paid her attorneys for their services. (53 RT 83:16-22) In her first or second week at Gerawan in 2013, Silvia began collecting decertification petition signatures. (47 RT 143:7-11) In July 2013, Silvia had approximately seven workers helping her to collect decertification petition signatures. (47 RT 147:14-16) Later, there were more workers involved. Her son-

in-law called those workers “Los Burritos”<sup>36</sup>. (47 RT 150:10-24 and 52 RT 77:22-25) It was between one and two months after Silvia first met with attorney Paul Bauer that she first met with attorney Anthony Raimondo. (46 RT 150:13-21) Before the first petition was filed, Silvia also had contact with Anthony Raimondo’s associate attorney, Joanna MacMillan. (46 RT 152:8-22) On September 30, 2013, the day of the work blockage, they collected between eight hundred and one thousand decertification petition signatures. (47 RT 152:15-153:5 and 52 RT 120:12-19)

After the first petition was rejected, Silvia Lopez knew that she had a limited time period to try to file a second decertification petition if she wanted to do it that year. This is because the law requires such a petition to be filed during a period of peak employment, or what Ms. Lopez described as the being the “harvest season”. (48 RT 18:14-19) Less than five days passed from that dismissal of the first decertification petition before Silvia Lopez planned a work blockage. (48 RT 19:1-17 and 52 RT 77:20-22) Lopez denied planning the work blockage in order to collect signatures. (48 20:25-21:3) I do not find that denial to be credible. The number of workers that voluntarily attended protests after work, or even during work, was far fewer than the number when the option of working was unavailable to any worker.

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<sup>36</sup> In his testimony, Angel Lopez testified that people call Felix Eligio Hernandez by the nickname “El Burrito”. (71 RT 46:24-25)



It was Silvia's idea to block the company entrances. (53 RT 160:21-22) Silvia Lopez first discussed the blockage plan with her daughter, Lucerita, and her son-in-law, Angel Lopez. (48 RT 112:17-25) Silvia also discussed the work blockage with Jovita beforehand. (48 RT 127:21-23) Angel gave Silvia red tape to use for the blockage on the day before. (48 RT 155:11-13) The work blockage took place on Monday, September 30, 2013. Silvia's daughter, Belen, went with her when she went to implement the blockage. (48 RT 150:5-6) Silvia used her Toyota Avalon to block one of the company entrances. (48 RT 156:21-25) She and her daughter also tied red ribbon to ladders to block four other adjacent entrances. (48 RT 164:2-16, 48 RT 166:6-14 and 48 RT 168:11-13) At the location blocked by Silvia's car, Belen and Rosa Madrigal were also present. (48 158:8-159:2) This is the same Rosa Madrigal who Dan Gerawan had previously invited to go to Sacramento along with Silvia Lopez.

Silvia Lopez testified that when she was interviewed by ALRB Regional Office staff in July 2014, with her own legal counsel also present for the interview, she deliberately lied and stated that she had no idea who caused the work blockage. (48 RT 112:1-9, 52 RT 30:18-25, 52 RT 82:2-18, 52 RT 85:9-19 and 55 RT 48:15-49:9) Silvia testified that she "[did not] remember how many things [that she] lied to Silas about". (52 RT 83:23-84:4) Silvia states that her reason for lying was both to protect her son-in-law and because she did not trust Silas Shawver. (52 RT 84:11-14) However, Silvia could have achieved that end by being truthful about her own involvement in the blockage and only lying as to whether or not her son-in-

law was a co-conspirator. (52 RT 114:5-12) Silvia testified that, more than anything, she lied because she did not trust Shawver. (52 RT 115:10-13 and 53 RT 95:12-96:4) Silvia also testified that she was afraid that Shawver would report her to the police or the company.<sup>37</sup> (53 RT 96:22-25)

Silvia claims that she did not tell Jovita Eligio that she (Silvia) lied to the ALRB Regional Office staff. (48 RT 120:8-10) Silvia also testified that Jovita never told her (Silvia) that Jovita lied to the ALRB Regional Office staff. (48 RT 120:11-15 and 55 RT 44:8-24) I reject the credibility of this testimony. It would accomplish nothing for Silvia to lie unless she knew that her co-conspirators were also going to lie when interviewed by the ALRB Regional Office staff. Moreover, during the September 2014 prehearing conference, when her counsel provided Petitioner's mandatory discussion of the facts and issues of the case, the Petitioner continued to conceal that she had any involvement in the planning and implementation of the work blockage.

In addition to the financial support from the Fruit Association, discussed earlier in this decision, Silvia Lopez confirmed her receipt of financial support from the Center for Worker Freedom ("CWF"). (50 RT 22:2-11) However, based upon a preponderance of the evidence, I find that the CWF contributions were after the election. (50 RT 26:2-10)

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<sup>37</sup> See Exhibit GCX-34, bates number 0007276, for the Gerawan press release issued on the day of the work blockage, September 30, 2013. The press release suggests that the protesters are workers who wanted to vote on decertification and Dan Gerawan himself is quoted speaking supportively of those workers.

Belen Elsa Solano Lopez, who was witness # 91, is the daughter of Petitioner Silvia Lopez. During her testimony, Belen sometimes seemed disoriented, looking in odd directions away from all of the parties. Belen indicated that she was sick, but able to competently testify. (61 RT 11:9-19) Belen recalls working for Gerawan for the first time in the latter half of July 2013. (59 RT 79:12-18 and 61 RT 119:2-11) Company records show her actual start date to be on August 2, 2013. During Spring 2013, Belen worked for Home Depot in a seasonal sales associate position for two or three months. (61 RT 31:2-21) During 2010 to 2012, Belen did not do any agricultural work. (61 RT 30:21-25)

Belen's crew boss was Reynaldo Villavicencio. (59 RT 80:7-11) Belen's mother, Silvia, was also in this crew. (59 RT 80:12-14) Silvia and Belen sometimes carpooled together. (59 RT 109:18-22, 61 RT 129:6-8 and 61 RT 151:14-16) The crew typically worked in the Kerman area. (59 RT 80:15-17) Belen only worked in the vineyards, not in the trees. (61 RT 26:1-9) My detailed discussion of Belen's spotty attendance record is located in the earlier section of this decision regarding factors requiring scrutiny of Silvia's role as the decertification petitioner. While on the witness stand, Belen was somewhat evasive on this topic. Belen stated that they worked full days, but qualified her answer to say that they did not work full days if it was hot out or if they collected signatures. (61 RT 37:21-38:7 and 61 RT 133:17-18) Belen also indicated that she missed about ten days of work related to the decertification activities such as signature gathering and protests. (61 RT 136:3-15)

In October 2013, Belen left Reynaldo Villavicencio's crew to become a checker in the grapes. (59 RT 81:3-82:23, 61 RT 132:6-10 and 61 RT 161:2-4) Belen's sister, Lucerita, also became a grape-checker in 2013. In this decision, I interchangeably use the terms "checker" and "quality control worker". The witnesses called by the General Counsel and the UFW predominantly used the former term, the witnesses called by the company and the Petitioner predominantly used the latter phraseology. Sometimes quality control was abbreviated as "QC". (61 RT 160:14-17) Any difference or disagreement in the precise name of the position is inconsequential for purposes of analyzing the position's duties. As discussed elsewhere in this decision, I find that the grape-checker positions were non-supervisory. Belen states that she was interviewed for the checker position by supervisor Lucio Torres. (59 RT 85:8-87:5 and 61 RT 56:8-10) Belen states that Lucio did not ask her how long she had worked for Gerawan. (61 RT 171:1-4) Belen testified that she earned the same hourly rate as a checker as she had previously earned in the crew of Reynaldo Villavicencio. (61 RT 26:22-27:8) For his part, Lucio Torres, who was witness # 126, states that he had as many as twenty to twenty-three grape-checkers working under him during 2013. (101 RT 72:9-12) Torres claims that he accepted every person who requested to be a grape-checker who showed up at the required training class. (101 RT 72:23-73:17)

Belen testified that she first heard about the union when she began working at Gerawan. (59 RT 91:11-13 and 61 RT 48:20-24) I discredit this testimony. It is much more plausible that Belen heard about the union from one of

her family members before she started at Gerawan. Belen indicates that her family shared their feelings about the union with her only after she started working at Gerawan. (59 RT 95:22-25) Belen states that she saw signature gathering at her crew before she had ever discussed the topic with her mother. (59 RT 97:10-17 and 61 RT 43:12-18) Belen herself began gathering signatures shortly after she started working at Gerawan. (59 RT 100:11-17, 61 RT 43:2-5 and 61 RT 144:12-23) Belen would sometimes leave with her mother before lunch to collect signatures and then thereafter not return to her crew. (61 RT 38:21-39:5)

Belen recalled that the work blockage occurred in approximately August 2013 and that the election was near Halloween in 2013. (61 RT 8:5-8 and 61 RT 21:13-22:4) Belen herself blocked several company entrances, using ladders and tape. (61 RT 8:14-19, 61 RT 9:9-12 and 61 RT 68:19-20) Later in the morning, Lucerita called Silvia and Belen to tell them that Angel had been arrested. (61 RT 12:17-23) When Silvia and Belen arrived, Angel was sitting in the back of the Sheriff's vehicle. The officer handcuffed Belen and put her in the patrol car with Angel. (61 RT 15:5-22) (61 RT 15:2-3) Belen states that she and the Deputy Sheriff "cussed" each other out. (61 RT 16:5-9 and 61 RT 19:3-5) The police then released Angel but took Belen to the jail because "she was being aggressive." (61 RT 19:9-12) Belen believes that her sister invited the media to the September 30, 2013 protest, but she was not certain. (61 RT 90:19-22 and 61 RT 91:10-17) Belen spoke to the media that day about the protest, but did not mention that she was responsible for blocking company entrances. (61 RT 84:14-17) Belen does not remember

anyone from the company offices asking if she was involved with the blockage. (61 RT 81:18-82:2) I generally discredited the testimony of Belen Solano as unreliable. Belen often gave unresponsive answers to proffered questions. Moreover, with respect to several pertinent events, Belen's memory was inconsistent and lacking in details.

## **22. Direct Hire Crew of Alfredo Luis Zarate**

Three workers testified regarding the crew of Alfredo Luis Zarate. These workers were Alberto Bermejo, Juan Cruz Lopez, and Agustine Garcia Rodriguez. Foreman Alfredo Luis Zarate also testified at the hearing.

Alberto Bermejo, who was witness # 4, started working for Gerawan in 2011. (5 RT 78:18-19) In 2013, Alberto's crew boss was Alfredo Luis Zarate. (5 RT 79:13-15) Five or six minutes before the 8:30 a.m. morning break, Bermejo saw two women, names unknown, about nine rows away, six trees into the row. (5 RT 91:15-17, 5 RT 93:10-16, 5 RT 94:2-14 and 5 RT 120:16-20) Bermejo estimated that the peach trees were seventeen to eighteen feet apart. (6 RT 15:3-16:2) Bermejo testified that Zarate was roughly half way in between him and women. (5 RT 100:25-101:7) After the morning break was called, Bermejo spoke to the two women, and they told him they were collecting signatures to decertify the union. (5 RT 102:3-18) Given the distance and intervening objects involved, I was not persuaded that Bermejo could tell what the women were doing until he saw them after the break was called.

Juan Cruz Lopez, who was witness # 24, started working for Gerawan in 2010. (15 RT 12:10-11) I previously discussed some of his testimony in the subsection discussing the crew of Antonio Sanchez. On a day in October 2013 when the crews of Sanchez and Zarate were near one another, Juan and his co-worker Arnulfo Lopez asked Zarate if the crews were going to get sent to the grapes. (15 RT 22:20-24:1) Juan recalled Zarate responding that he did not know, but that if they did not, it was their fault due to the union involvement. (15 RT 24:2-6)

Agustine Garcia Rodriguez, who was witness # 36, started working for Gerawan in 2010. (19 RT 8:6-13) In 2013, Garcia's crew boss was Alfredo Luis Zarate. (19 RT 9:11-13) Garcia did not personally see anyone gather signatures during work hours at his crew. (19 RT 63:17-20) Garcia became involved with the UFW and attended most of the contract negotiations. (19 RT 56:4-20) Garcia testified that Zarate told him that if the union was successful, the employer would take down the peach and nectarine trees. (19 RT 57:9-18 and 19 RT 60:13-18) Garcia states that during the time of the 2013 peach harvest, he and a co-worker, Alberto Bermejo, asked Zarate for permission to gather signatures during work hours, with Zarate rejecting their request. (19 RT 62:19-63:16) Garcia also recalls one instance when Zarate told him to take off his pro-UFW button. (19 RT 59:18-20)

Alfredo Luis Zarate, who was witness # 107, worked directly for Gerawan from 2008 to 2014. (84 RT 110:12-111:2) Zarate has been a crew boss during all of this time period. (84 RT 111:3-18) On the day of the September 30,

2013 work blockage, Zarate saw people blocking the entrance but did not ask them why they were blocking it. (84 RT 146:25-147:19) For the next two to three hours, Zarate did not contact anyone with the company. (84 RT 147:20-23 and 85 RT 20:19-25) Zarate's crew worked for about two more weeks after the blockage. (85 RT 17:10-13)

Zarate did not recognize the name of Juan Cruz Lopez. (84 RT 150:16-24 and 85 RT 7:16-19) However, Zarate denied telling Juan Cruz Lopez that a crew might not get work in the grapes due to its union involvement. (85 RT 6:24-7:12) Zarate recalled that both Bermejo and Garcia would wear UFW attire. (85 RT 19:15-20:3 and 85 RT 36:5-25) Zarate also denied telling Agustine Garcia Rodriguez that the employer would cut down the trees if the union succeeded. (85 RT 8:22-25) Lastly, Zarate denied telling Agustine to take off his pro-UFW button. (85 RT 9:10-13)

Zarate confirmed that Alberto Bermejo and Agustine Garcia Rodriguez asked him for permission to gather signatures during working hours. (85 RT 61:6-18) Zarate told them that they could collect signatures during the break times or rest times, but not during working hours. (85 RT 61:19-23)

I found that Juan Cruz Lopez and Alfredo Luis Zarate were both generally credible witnesses. As to the alleged conversation between the two of them, I credit Zarate's testimony as the more persuasive of the two. I also credited Zarate's testimony that he did not ask Agustine Garcia Rodriguez to remove his pro-UFW button.



### 23. Direct Hire Crew of Estella Aceves

Gisela Judith Castro Lopez, who was witness # 92, worked directly for Gerawan from 1998 through 2014. (60 RT 8:12-21) In 2013, her crew boss was Estella Aceves. (60 RT 8:22-23) In 2013, Estella's crew was large, with approximately eighty workers. (60 RT 131:5-7) Her husband is crew boss Bartolo Ortiz, who was witness # 101. (79 RT 21:25-22:5) Gisela decided to unite with Angel Lopez to collect signatures and distribute flyers. (60 RT 14:21-24) She would get the flyers from Silvia Lopez and others. (60 RT 14:3-10) The group that organized a lot of the signature gathering included herself, Silvia Lopez, Angel Lopez, Jovita Eligio, Clara Cornejo and Virginia Chariez. (60 RT 146:12-147:3)

Gisela testified that she remembered a meeting before the blockage where a tall, blonde "American man" came and donated professionally printed posters in English. (60 RT 73:1-13, 60 RT 74:5-9 and 60 RT 75:6-8) Gisela only speaks Spanish, but co-workers told her that the signs said "we want to vote". (60 RT 6:1-3 and 60 RT 73:14-18) Gisela did not know the man's name, but recalls him saying that he represented an organization. (60 RT 75:21-24) On that occasion, the tall, blond American man also took t-shirts to them. (60 RT 74:7-9)

Gisela stated that she and other workers, including Silvia Lopez and Angel Lopez, planned the work blockage. (60 RT 16:14-17:3) They knew that they had a limited amount of time in 2013 to collect signatures for the second petition. (60 RT 82:10-13) Gisela suggested using the Gerawan colored tape or ribbon that was used at work, which she had available in her van. (60 RT 19:3-21:2 and 60 RT

137:1-17) Gisela gave six rolls of the tape to Angel Lopez. (60 RT 21:16-22 and 60 RT 88:4-16) A similar roll of red tape was marked as Exhibit GCX-76. (60 RT 138:14-139:24) When she left early on the day of the blockage, he husband did not notice because he had been drinking the evening before. (60 RT 120:16-22) On the day of the blockage, Gisela was there for a few hours, and she gathered more signatures than she had ever gathered in her life. (60 RT 22:5-14) Gisela also saw Silvia Lopez gathering signatures that day. (60 RT 89:11-14) Even as her crew boss arrived at the block entrance, she and Angel Lopez were collecting signatures. (60 RT 86:1-15 and 60 RT 109:9-13) No one from the company ever asked her to move her car that was blocking an entrance. (60 RT 87:15-17) However, there was a “neighbor” who had a house near there who told them to move a car because it was blocking his entrance to his property. (60 RT 87:19-21 and 60 RT 116:18-117:10) The neighbor threatened to call the police. (60 RT 117:23-24) On the day of the blockage, Gisela also distributed flyers. (60 RT 24:7-10)

The group doing the blockage “agreed that [they] weren’t going to tell the truth, ever.” (60 RT 16:18-19, 60 RT 81:18-20 and 60 RT 101:10-25) After the work blockage, Gisela told her husband about her involvement. (60 RT 121:7-15 and 60 RT 123:25-124:8) Bartolo responded that he did not want Gisela getting involved, and did not want any problems. (60 RT 121:13-15) After Silvia Lopez was interviewed by the ALRB Regional Office staff, she told Gisela “that she had denied everything because that’s what [they] had agreed upon”. (60 RT 103:1-9) Gisela indicated that when she was interviewed by Silas Shawver, she lied and

denied having anything to do with the blockage. (60 RT 104:1-6 and 60 RT 106:15-20) Gisela then told Silvia Lopez that she had lied to Silas Shawver. (60 RT 150:25-151:3) Gisela testified that she lied to Shawver because she and the other workers do not trust him. (60 RT 104:8-14) Gisela states that Shawver also “spooked” her children and little dog. (60 RT 104:11-14)

I credited all of Gisela Castro’s testimony, including those topics where it directly contradicted the testimony of Silvia Lopez.

**24. Testimony of Angel Lopez (Petitioner’s Son-in-Law)**

Angel Lopez, who was witness # 98, worked directly for Gerawan from 2009 through 2014. (71 RT 11:23-25) Angel testified that, “I am blessed to work at that great company.” (71 RT 10:20-22) His wife is Lucerita Lopez, who is the daughter of Petitioner Silvia Lopez. (71 RT 25:4-7 and 71 RT 25:16-21) Angel could not remember the first year that Lucerita worked for Gerawan. (74 RT 81:14-16) From 2009 to 2015, he and his wife lived in the same home as Silvia Lopez and Mario Montes. (73 RT 163:16-21) In 2013, his crew bosses included Bartolo Ortiz, Juan Berdejo and Francisco Maldonado. (71 RT 11:5-11) For three months, Angel also worked as a forklift driver directly for supervisor Lupe Elizondo. (71 RT 126:13-128:7)

In December 2012, Angel played soccer with some of his work colleagues and they asked him about the union. (71 RT 21:25-22:11) Angel explained that when a student asks a teacher a question, they must be prepared, so he investigated the issue. (71 RT 18:14-23) When Angel has questions, he tries to ask

people who are at least twice his age. (71 RT 23:12-13) Angel spoke with his wife's grandfather, Mario Lopez, who told him that unions are good for nothing and steal from people. (71 RT 24:16-25:3) Specifically, Mario Lopez told him that "some people prepare or educate themselves to steal from the poor". (71 RT 27:7-8) Mario Lopez is the father of Silvia Lopez. (71 RT 26:24-27:1) None of the parties called Mario Lopez as a witness. Silvia Lopez told him that the union was a bunch of crooks and, on top of that, the union was against the immigrants. (73 RT 161:6-18)

A co-worker invited Angel Lopez to a half-hour long meeting in Fresno where he saw both Armando Elenes and Jose Erevia. (71 RT 31:12-14, 71 RT 33:21-23 and 71 RT 37:1-2) Angel does not remember the co-worker's name. (71 RT 42:8-12) Armando Elenes told Angel that he could not sit at a particular table, but rather needed to sit in the corner. (71 RT 31:6-11) Angel was offended by that requirement. (71 RT 38:4-8) Angel recalls that the meeting was held in English and the parties negotiated regarding the workers like they were "some small animals". (71 RT 32:19-23) The same unnamed co-worker later invited him to a subsequent meeting in Modesto. (71 RT 42:4-7)

Silvia Lopez drove Angel, Lucerita and Felix Eligio to the Modesto meeting in her Toyota Avalon. (71 RT 46:4-47:6) At the time, Silvia did not work for Gerawan. (71 RT 52:18-20 and 74 RT 35:25-36:4) They went to the wrong location, but they ran into this "great person, Paul [Bauer], the attorney". (71 RT 48:2-7) The group then went to the correct location, but was not permitted to enter. (71 RT 48:17-18) They then asked for Paul Bauer's help and he gave them an

appointment at his Fresno office. (71 RT 48:19-22 and 71 RT 49:21-25) Angel went to the meeting with Paul Bauer, along with Silvia, Lucerita, Belen Solano, Jovita Eligio Hernandez, Rosa Madrigal and Martina. (71 RT 57:13-59:14) Paul Bauer told them that he wanted “one person to be in front of all of this”. (71 RT 65:15-16) Bauer ultimately just represented Silvia as the Petitioner. (71 RT 66:20-23)

The group then took the initiative to gather signatures to decertify the union. (71 RT 119:20-21) Angel himself collected signatures on between ten and twenty different days. (71 RT 123:16-20) Approximately three of the times when Angel went to collect signatures, he wore a laminated name badge with the words “Gerawan Farming” on it. (73 RT 138:22-139:1) Some of the other signature gatherers, including Silvia Lopez, had a similar badge. (74 RT 91:7-15) Exhibit GCX-83 is a photograph of Angel Lopez wearing that badge. (Exhibit GCX-83) On one day, Angel and Rolando Padilla took off from work to go to different crews to recruit signature gathering help. (71 RT 130:9-25) Angel tried to identify possible sympathizers by asking them “Are you willing to give three percent, to give away your money, or would you rather open up an account for your child so that there’s money when he’s older?” (73 RT 123:12-18)

Angel was disappointed in Silas Shawver because Shawver denied their petition. (71 RT 135:16-17) Angel and some of his closest co-workers then decided to block the company entrances. (71 RT 141:16-20) Angel called approximately six co-workers and they then called approximately nine more co-

workers. (71 RT 142:20-143:8) Three of the people that Angel called were Felix Eligio Hernandez and two of Felix's relatives. (71 RT 143:9-23) In the calls, he and the co-workers planned blocking the company entrances to achieve the work stoppage. (71 RT 147:12-16) Angel spoke with Silvia Lopez before he called the other people. (71 RT 144:14-21) One of the reasons that they did the blockage was because they had a short period of time to collect the signatures.<sup>38</sup> (71 RT 145:16-146:4 and 74 RT 60:3-10) Jovita Eligio Hernandez told him that they were able to collect over one thousand decertification petition signatures on the day of the work blockage. (74 RT 69:3-6)

On the day of the blockage, Angel's co-workers told the police that Angel was in charge of the work blockage. (74 RT 72:5-11) On that day, a police officer told him that he needed to move the cars blocking the company entrances. (73 RT 20:22-25) When Angel tried to move his personal car, it would not start. (73 RT 21:7-8) The police officer then told Angel to get out of his car and handcuffed him. (73 RT 21:11-13) Shortly thereafter Silvia Lopez and Belen Solano arrived. (73 RT 24:23-25) Angel described Belen as having a "very aggressive nature". (73 RT 25:2-4) Later that day, at the protest, Angel saw ALRB field examiner Salvatore Alatorre driving a van displaying the ALRB logo near the protesters. (73 RT 45:21-22) Some of the protesters began pounding and banging on the van. (73 RT 46:7-9)

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<sup>38</sup> On the day of the blockage, September 30, 2013, at 9:53 a.m., Petitioner's attorney Paul Bauer issued a press release about the protest, stating the location of the protesting workers and noting that the workers were gathering signatures. (See Exhibit GCX-39, bates number 0007300)

Angel states that he was the last person to leave the protest that day. (73 RT 47:23-25)

Angel testified that next they decided to go to talk to the ALRB in Sacramento because they knew that they could not trust Silas Shawver. (73 RT 50:14-16) Silas Shawver even refused to let the protesting workers use the bathrooms at the Visalia office because he said that there were too many workers there. (73 RT 50:18-19 and 73 RT 129:15-17) In 2014, Angel was interviewed by the ALRB Regional Office staff, in the presence of Petitioner's legal counsel. (73 RT 51:8-19 and 74 RT 38:4-9) During this interview, Angel lied to the ALRB Regional Office staff, and told them that he was not involved with blocking the entrances to the company's fields. (73 RT 51:20-52:1) Angel stated that he lied because Silas Shawver had lied to the workers and wouldn't do anything for them. (73 RT 52:5-12) In his testimony, Angel emphasized that, if he was under the same circumstances, he would lie again to Silas Shawver. (73 RT 124:24-125:5, 73 RT 129:25-130:3 and 74 RT 37:15-21)

Angel Lopez testified that he never told his mother-in-law that he was interviewed by Silas Shawver. (74 RT 85:3-6) Nor did Silvia Lopez tell him that the ALRB staff had interviewed her. (74 RT 84:18-85:2) Nor did Angel ever have such discussions with Jovita Eligio Hernandez or Gisela Castro. (74 RT 85:11-24) I do not believe Angel's testimony on this topic. At a minimum, I am confident that Angel and Silvia discussed with each other the circumstances of their investigative interviews by the ALRB Regional Office staff.

Silvia Lopez arranged the October 2, 2013 trip to Sacramento “some days prior”. (73 RT 56:5-7) At this juncture, Angel may have been directly working for supervisor Lupe Elizondo. (73 RT 62:23-63:2) Silvia told Angel that “Barry Bedwell” had donated the seven or eight buses that were parked outside the company office. (73 RT 54:13-56:21 and 74 RT 71:16-18) In Sacramento, they went to the ALRB and then the Capitol. (73 RT 58:18-19) Outside the ALRB building, they were met by Antonio Barbosa and a “very nice” lady. (73 RT 59:1-3) Only the workers with California identification were allowed to enter the ALRB building. (73 RT 59:14-17) Angel heard that those workers were told that they needed to talk with Silas Shawver in Visalia. (73 RT 59:21-23) The workers then went to see the Governor. Angel testified that when he opened the door, all he saw was officers laughing. (73 RT 60:5-10) Then six or seven workers were allowed to go in to speak with a staff person. (73 RT 60:16-20) Afterward, the workers also knocked on the doors of Members of the State Legislature. (73 RT 61:1-3) Angel testified that, on this trip to Sacramento, attorney Joanna MacMillan brought food to all of the workers. (74 RT 80:1-4 and 74 RT 82:21-83:7)

After the second petition was denied, Angel and some of his co-workers hid some of the tractors and wheelbarrows to facilitate another Visalia protest. (73 RT 64:12-67:20, 73 RT 69:13-14 and 74 RT 71:23-72:1) An upset supervisor, “Gus” or “Gustavo”, came by and asked who was responsible and his co-workers responded “Angel”. (73 RT 70:1-7 and 73 RT 73:21-22) Angel heard the supervisor on his cellphone mention his name, “Angel Lopez”. (73 RT 70:25-71:1)



Angel said that he was hiding and afraid because Gustavo was tall and knew karate. (73 RT 70:8-17 and 73 RT 71:3-5) Angel and his wife then left for Visalia. (73 RT 75:10-12) Angel believes that approximately nine hundred workers protested at the ALRB Regional Office in Visalia that day. (73 RT 77:25-78:2) Angel was never disciplined by the company for his role in either the blockage of company entrances or the hiding of company equipment. (73 RT 146:14-17)

Angel testified that there was one time prior to the election when he was interviewed by Univision. (73 RT 103:22-104:7) Angel knew that Gisela Castro was married to foreman Bartolo Ortiz and that Rolando Padilla was the brother of foreman Jesus Padilla. (74 RT 84:7-17) Angel recalled receiving a t-shirt that said "No UFW" on it prior to the election. (74 RT 83:8-14) Angel also testified that he received a DVD from the company regarding the union, but Angel threw the DVD away without watching it. (74 RT 17:7-25)

## **25. Testimony of Jorge Rueda**

Jorge Rueda, who was witness # 15, worked at Gerawan from 2006 to 2013. (11 RT 162:23-163:5) When Rueda worked directly for the company, he was a non-supervisory worker. In 2013, during the summer and fall months, Rueda was a crew boss from a farm labor contractor called Ramirez and Sons. (11 RT 164:14-25 and 32 RT 7:7-11) His crew had between fifty and sixty workers. (11 RT 165:4-6 and 32 RT 7:24-8:1) By the time that Rueda met with ALRB Regional Office staff, he worked for a different farm labor contractor, Mid-Valley, which did not work on Gerawan properties. (11 RT 249:13-252:21 and 32 RT 65:8-11)

In spring 2012, Rueda recalled receiving a leaflet from the company about the union. (32 RT 12:4-8) On cross-examination, Rueda corrected himself and noted that it was spring 2013 when he had received this leaflet. (32 RT 68:20-24) When Rueda was a crew boss, two women, Jovita Eligio Hernandez and Virginia Chairez, came to his crew during work hours soliciting decertification petition signatures. (32 RT 12:18-14:9) None of the parties called Virginia Chairez as a witness. Rueda heard the women tell his crew members to sign a paper to get rid of the union. (32 RT 15:16-20) By the time Rueda saw the two women, they appeared to be finishing up, and he only saw them there collecting signatures for five to ten minutes of work time. (32 RT 17:15-18:7 and 32 RT 51:4-8) At no time did Rueda ask the women to leave. (32 RT 20:17-18) In fact, Rueda testified that he signed a paper for Chairez before she explained to him the paper's purpose. (32 RT 27:7-15) In the brief moment before they left, Rueda did not ask them to remove his signature from the paper. (32 RT 114:5-20)

Rueda testified as to a second occasion when Silvia Lopez came to his crew collecting signatures, arriving ten minutes after the lunch hour had ended. (32 RT 20:19-23:8) Silvia was there for about fifteen minutes and told Rueda that she could not talk with him. (32 RT 24:20-25:2) Rueda estimated that Silvia collected fifteen signatures because that all of these workers came up to talk with him afterwards. (32 RT 54:1-25) Rueda also heard supervisor Lupe Elizondo tell a co-worker that if the union came in, the company would remove all of the vineyards. (32 RT 35:10-25)

On November 1, 2013, which was Rueda's birthday, he was working as a direct hire employee for the company. (11 RT 261:24-262:1) Rueda worked in the crew of Juan Berdejo. (11 RT 257:20-21 and 32 RT 76:23-77:1) Rueda saw company entrances blocked with cars, tractors and red tape. (11 RT 256:8-12 and 11 RT 263:12-15) Berdejo told Rueda that they were going to a protest in Visalia. (11 RT 257:22-24) Rueda saw supervisor Gasol and grape-checker Virginia Chairez directing people to go to the protest. (11 RT 260:8-17) I discredited this testimony because there was no other testimony that workers' cars were used to block company entrances on November 1, 2013, just on September 30, 2013.

While I believe that Jovita and Chairez came to Rueda's crew to gather signatures in 2013, and that there was a protest on November 1, 2013, I found the remainder of Rueda's testimony too unreliable to credit. Moreover, Rueda's farm labor contractor crew was no longer working at Gerawan by the time of the election.

#### **26. Testimony of Sandalio Ruperto Santos**

Sandalio Ruperto Santos, who was witness # 40, worked in 2013 for a farm labor contractor called R & T Grafting, owned by Rosa Zepeda, who was witness # 52. (20 RT 190:13-191:9 and 28 RT 109:5-110:2) His crew only worked on Gerawan property for two or three weeks. (20 RT 190:1-12) Santos only recalls the foreman's first name, Sylvano. (20 RT 191:17-20) Santos recalls his foreman asking him to sign a paper to get rid of the union. (20 RT 192:23-193:7) Santos is a long-time friend of UFW organizer Antonio Cortes. (20 RT 212:13-23 and 20 RT 214:22-25) None of the parties called Sylvano as a witness. While no testimony

was presented to contradict Santos' testimony, I did not find it sufficiently detailed or reliable to credit it. Moreover, Sylvano's farm labor contractor crew was no longer working at Gerawan by the time of the election.

**M. Meetings for Training and Advocacy**

There were several types of training and meetings that warrant mention. First, both the company and the ALRB provided training to Gerawan workers regarding issues related to the Agricultural Labor Relations Act. Second, the company conducted multiple waves of captive audience meetings with the non-supervisory workers, including a later wave which directly urged the workers to vote "No Union".

**1. Training Meetings**

Jose Erevia, who was witness # 99, was the Gerawan Employee Outreach and Regulatory Compliance Manager. (74 RT 105:10-13) Erevia explained that his position included a lot of human resources functions. (74 RT 110:6-8 and 74 RT 112:10-22) Starting in approximately the year 2000, Erevia reported directly to Dan Gerawan and Mike Gerawan. (74 RT 111:11-16) Erevia indicated that in the past couple years, the owners and their legal counsel have had increased demands for information related to the union presence. (74 RT 114:1-13) Erevia testified that the company did not have a written version of an organizational chart. (74 RT 132:22-25)

Erevia explained that the chain of command is the owners, then the managers, then the supervisors, and then the crew bosses. (74 RT 132:21-143:5)

While the parties stipulated that crew bosses are statutory supervisors, Erevia made clear that the crew bosses had the authority to interview and recommend the hiring of workers, to re-hire workers, to select an assistant crew boss, to request discipline, and to direct work assignments. (74 RT 147:4-148:9) The peach tree crews typically had between twenty-five and forty workers. (74 RT 150:7-14) In the vineyards, the crews typically had between thirty and sixty-seven workers. (74 RT 152:12-13) The crews in the vineyards would sometimes be split in half with the crew boss typically supervising the workers packing the grapes, and an assistant crew boss supervising the workers picking the grapes inside the vineyards. In October 2012, Dan Gerawan told Erevia that he was going to need to decide whether or not that he would recognize the union. (75 RT 209:15-17)

Over a two-day period, Erevia went to most or all of the crews and read a script. (75 RT 35:1-36:18) In the meetings and the flyers, workers were told that they could take their questions to Erevia. On November 16, 2012, Erevia held meetings with supervisors and crew bosses and told them to refer all worker questions about the union directly to him. (75 RT 87:19-88:4 and Exhibit R-2) There were also meetings on April 10, 2013, August 22-24, 2013, and September 12, 2013. (75 RT 98:6-127:19; see also Exhibits R3-R8, Exhibits GCX-77 and 85, and Exhibit U-11)

At the August 24, 2013 meeting, ALRB Visalia Regional Director Silas Shawver made an hour-long presentation to the supervisors and crew bosses. (75 RT 121:20-122:25 and 94 RT 48:25-49:1) In late August 2013, Erevia also

coordinated with Shawver to provide training to the non-supervisory workers. (76 RT 76:12-18)

Erevia also testified as to meetings when Dan and Norma Gerawan visited the crews in late September 2013. (75 RT 138:8-9) On the morning of the blockage, Erevia did not call any crew bosses.<sup>39</sup> (77 RT 108:15-19) Jose Erevia, Oscar Garcia and others also had meetings with the crews during the time period of October 30-31, 2013. (76 RT 13:2-14:12) Erevia stated that he was not present when Labor Relations Institute consultant Evelyn Fragoso spoke with the crews. (76 RT 17:6-12) Erevia also testified that he was not involved in the distribution of the company DVD urging workers to vote “No Union”. (76 RT 157:22-25)

Silas Marvin Shawver, who was witness # 118, became a licensed attorney in 2006 and began his employment with the ALRB on April 30, 2012.<sup>40</sup>

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<sup>39</sup> However, crew boss Sonia Martinez indicated that Erevia had a conference call with a large number of crew bosses that morning, a meeting that was confirmed by subsequent testimony. (80 RT 75:21-78:9) The company took the position that the contents of that conference call, and the written statements completed by crew bosses, were attorney-client privileged material. After a lengthy discussion of the matter, the parties were given the opportunity to file briefs on the issue. (82 RT 34:15-44:24) Ultimately, I found the privilege to apply to both the contents of the conference call and to the contents of the crew boss statements handwritten on the day of the blockage. (See California Evidence Code section 954; California Code of Civil Procedure section 2018.030; also *Coito v. Superior Court* (2012) 54 Cal. 4th 480) This privilege is typically only waived if the company puts the content of the conversation at issue in the case, e.g., using advice of counsel as a legal defense to wrongdoing.

<sup>40</sup> In my Prehearing Conference Order dated September 12, 2014, I allowed both Regional Director Silas Shawver and Petitioner’s counsel Anthony Raimondo to remain as lead counsel even though both were expected to be called as witnesses during the course of the hearing. My Order prohibited counsel from examining or cross-examining witnesses whose testimony would foreseeably overlap with their own  
(Footnote continued....)

(94 RT 106:13-16 and 94 RT 96:5-11) Shawver became the ALRB Visalia Acting Regional Director in January 2013 and became the permanent Regional Director in mid-August 2013. (94 RT 112:3-12) Shawver testified that he is fluent in Spanish. (94 RT 24:1-4)

Shawver was the only ALRB staff present for the August 2013 training of the Gerawan statutory supervisors. (94 RT 12:9-12, 94 RT 49:2-6, and 94 RT 114:8-12) This training was actually done in two separate meetings covering the same material, with some supervisors attending the meeting in Kerman and the others attending the meeting in Reedley. (94 RT 22:22-23:4 and 94 RT 75:7-13) Erevia was present for the two meetings with the crew bosses. (94 RT 76:19-20)

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(Footnote continued)

testimony. This ruling was necessary to avoid a substantial continuance in this matter. For the future, however, I have serious reservations regarding a Regional Director serving as the General Counsel's lead prosecutor in an election matter. Pursuant to ALRB Regulation section 20370, subdivision (c), a Regional Director may participate in an investigative hearing to the extent necessary to ensure that the evidentiary hearing is fully developed. In the case of a consolidated election case, the election objections and unfair labor practice allegations are often inextricably intertwined. By assuming the "hat" as the General Counsel's lead prosecutor in a consolidated election case, the Regional Director may simultaneously become an unadulterated advocate for one side over the other as to the election objections, which then undermines the Regional Director's ability to be persuasive as a potential percipient witness. I will further note that, throughout the hearing, ALRB regional attorneys and UFW counsel would often pass post-it notes back and forth to one another. Regional attorneys and UFW counsel would also sometimes huddle during short breaks in the testimony. I am certainly not suggesting that this collaboration is inherently inappropriate in all instances when you have a government prosecutor and a charging party. However, the record should make clear, should the General Counsel and UFW attempt to characterize their litigation strategy as completely independent, that portrayal would be inaccurate.

Shawver prepared an outline for the meeting, but testified that he did not still have that outline. (94 RT 24:21-25:12)

Teams of ALRB staff were used to meet with the non-supervisory workers. (94 RT 80:8-20 and 94 RT 114:16-17) There were no company supervisors present when the teams met with the non-supervisory workers. (94 RT 85:22-86:6) Shawver testified that the teams explained about the ALRB as an agency, its role, the workers' rights, and how workers could contact them. (94 RT 92:3-14) Shawver also testified that the teams gave the workers a short flyer discussing their rights and options, and providing contact information for the ALRB. (94 RT 89:4-17)

I generally credited Shawver's testimony as to the content of this training, but I am skeptical that he would not have retained his outline for such a high-profile matter.

## **2. Advocacy Meetings**

Oscar Garcia Bonilla, who was witness #116, worked for Gerawan from September 2010 through September 2014. (91 RT 8:22-24 and 91 RT 10:23-24) Garcia served as Gerawan's human resource director. (91 RT 10:7-9) Dan Gerawan was Garcia's immediate supervisor. (91 RT 46:20-23) Gerawan told him many times that it was important that the workers get a chance to vote on whether or not to be represented by the union. (91 RT 117:9-24) Gerawan also expressed that view in company press releases. (91 RT 117:23-24) Garcia is unaware of any company investigation as to the blockage of company entrances. (91 RT 110:12-16)



Garcia testified that he and Jose Erevia made presentations to forty or fifty crews about how the union dues would impact their wages. (91 RT 15:9-21, 91 RT 72:1-11 and 91 RT 74:12-16)

In a later wave of captive audience meetings, Garcia also introduced Labor Relations Institute consultant Evelyn Fragoso to approximately fifty crews. (91 RT 26:17-27:15) These were mandatory work-time meetings. (91 RT 102:14-103:12) Fragoso told her story of how she used to be a union organizer, why she was opposed to the unions, and that the unions made false promises. (91 RT 60:19-20, 91 RT 61:22-25 and 91 RT 102:12-13) There was also a DVD produced and distributed. Dan Gerawan directed Garcia to work with the Labor Relations Institute to produce this DVD. (91 RT 22:4-11) The DVD conveyed the ownership's opinion or preference about the election results. (91 RT 20:22-21:7) The ownership's message was that they preferred that the workers vote against the union. (91 RT 21:8-12) The DVD is exhibit U-9. The DVD had a sleeve that was exhibit U-10. Garcia watched the DVD multiple times before it was disseminated. (91 RT 124:24-113:2) The company distributed approximately two thousand DVDs directly to the field workers. (91 RT 28:4-8 and 91 RT 34:2-5)

When I asked Dan Gerawan if he remembered if the DVD had a no union sign with a slash through it, Gerawan answered that he would be "shocked" if anything like that was in the DVD. (64 RT 81:22-25) Gerawan then added that he would be "shocked" and "surprised" if the DVD had a message to vote against the union. (64 RT 82:1-10) Garcia flatly refuted Gerawan's testimony. Once the DVD

was completed, Garcia emailed a link to the DVD to Dan Gerawan for his approval. (91 RT 25:12-16 and 91 RT 32:14-16) Even before that, the script had been emailed to Gerawan. (91 RT 69:1-9) Upon further examination, Garcia repeated that Gerawan approved the DVD. (91 RT 39:20-41:18) Even before seeing the script, Garcia knew that the message would be to oppose the union because the company preferred to deal directly with the workers. (91 RT 81:14-23)

I generally credited the testimony of Oscar Garcia. With respect to Dan Gerawan's knowledge of the content of the DVD, I specifically credit the testimony of Oscar Garcia and discredit the testimony of Dan Gerawan. Dan Gerawan would not have sent two thousand DVDs to his workers without first watching it. Garcia first sent the script, and later the link to the final product, directly to Dan Gerawan for his review and approval. Gerawan approved it. While Garcia was not standing over Gerawan's shoulder when he reviewed the script and final product, I do not believe that Gerawan would have approved the DVD without reviewing either the script or the final product. Nor do I believe that this is just a memory lapse on Dan Gerawan's part. Rather, I find that Dan Gerawan was being dishonest in his testimony expressing shock and surprise that the DVD urged the workers to vote "no union".

#### **N. Wall Street Journal Article**

In a September 2013 Wall Street Journal article, Dan Gerawan is quoted as saying "I don't think [the company] will survive" if the Governor signs Senate Bill 25. The article, which appears to be an editorial or opinion piece,

authored by Allysia Finley, explains that Dan Gerawan and his brother still toil in the fields alongside the workers, but that a union contract may force them out of business. Dan Gerawan testified that, in a telephone conversation, he told Finley that part of her piece was “not an accurate portrayal”, but conceded that he had originally said that Senate Bill 25 “could put [them] out of business”. (62 RT 86:13-88:1) Gerawan later posted this article on his company’s website. (62 RT 88:2-4 and 67 RT 44:24-45:1) There is no evidence that the posting included a Spanish-language translation of the article. Gerawan testified that he did not actually believe that his company would go bankrupt if the mediator’s proposed contract was imposed. (67 RT 45:5-9) There was no evidence presented that the workers actually read this article, nor that the workers were influenced by it.

### **ANALYSIS AND CONCLUSIONS OF LAW**

The decertification process gives workers an opportunity to reject union representation. (California Labor Code section 1152) It is an unfair labor practice for an agricultural employer to interfere with agricultural employees in the exercise of organizing, unionization or decertification. (California Labor Code sections 1152 and 1153, subdivision (a).) Interference and coercion does not turn on the employer or supervisor’s motive or success, but rather whether it can be reasonably said that the misconduct tends to interfere with the free exercise of worker rights. (*Merrill Farms v. ALRB* (1980) 113 Cal.App.3d 176, 184; *M.B. Zaninovich v. ALRB* (1981) 114 Cal.App.3d 665, 679)

I am well aware that the length of the General Counsel's investigation in terms of months puts more distance between actual events and the date of testimony. This in turn makes it more difficult for witnesses for all parties to have a precise recollection of minor details. The recollection of those minor details sometimes plays a critical role in an administrative law judge's assessment of witness credibility when two witnesses describe mutually exclusive scenarios. A very long hearing such as this one, spanning one hundred and five days, and with one hundred and thirty witnesses, also means that the administrative law judge is forced to compare the testimony of one witness who testified in October 2014 with another witness who testified in March 2015. Ironically enough, I am confident that these concerns have minimal impact on my ability to make many of the critical factual findings and analysis. The reason for this is because many of these facts are, more or less, ultimately undisputed by the parties.

**A. IN OCTOBER 2013, THE CALIFORNIA FRESH FRUIT ASSOCIATION AND BARRY BEDWELL GAVE TWENTY THOUSAND DOLLARS TO PETITIONER SILVIA LOPEZ TO SUPPORT THE DECERTIFICATION EFFORT**

The direct financial support from Barry Bedwell and the California Fresh Fruit Association to Petitioner Silvia Lopez is undisputed. By inviting her to Sacramento, Dan Gerawan introduced Silvia Lopez to Barry Bedwell. Barry Bedwell and the California Fresh Fruit Association, an association of agricultural

employers, later gave twenty thousand dollars to Petitioner Silvia Lopez to support the decertification effort. By this time, Petitioner Silvia Lopez had a veritable bevy of attorneys, including Anthony Raimondo, Joanne MacMillan and Paul Bauer. The California Fresh Fruit Association is a sophisticated entity with its own legal counsel and lobbyists. Silvia's legal team allowed her to knowingly accept twenty thousand dollars from an association of agricultural employers, one of which Gerawan itself was a dues-paying member, to pay for buses, food and t-shirts. There can be no doubt of widespread dissemination of news of the bus trip and meals. The visual image of the t-shirts purchased by the Fruit Association also surely spread to most or all of the work force in a forceful cascade effect.

California Labor Code section 1155.4 states as follows:

1155.4. It shall be unlawful for any agricultural employer or association of agricultural employers, or any person who acts as a labor relations expert, adviser, or consultant to an agricultural employer, or who acts in the interest of an agricultural employer, to pay, lend, or deliver, any money or other thing of value to any of the following:

- (a) Any representative of any of his agricultural employees.
- (b) Any agricultural labor organization, or any officer or employee thereof, which represents, seeks to represent, or would admit to membership, any of the agricultural employees of such employer.
- (c) Any employee or group or committee of employees of such employer in excess of their normal compensation for the purpose of causing such employee or group or committee directly or indirectly to influence any other employees in the exercise of the right to organize and bargain collectively through representatives of their own choosing.
- (d) Any officer or employee of an agricultural labor organization with intent to influence him in respect to any of his actions, decisions, or duties as a representative of agricultural employees or as such officer or employee of such labor organization.

The California Court of Appeal has provided a detailed discussion of the history and purpose of California Labor Code section 1155.4. (*United Farm Workers of America v. Dutra Farms* (2000) 83 Cal. App. 1146) In that case, a group of two agricultural employers provided a worker group opposing the UFW both \$500 in cash and \$1,163 in the form of portable toilet rentals for a protest. (*Id.* at 1150) After noting that Section 1155.4 was enacted as part of the Agricultural Labor Relations Act (“ALRA”), and the ARLA’s modeling after the National Labor Relations Act, the court explains that Section 1155.4 was modeled after 29 United States Code section 186. (*Id.* at 1153)

In finding Section 1155.4 applicable to the facts before it, the court expressed the importance of avoiding a loophole that would undermine the ALRA’s purposes. (*Id.* at 1155) The court points out that California Labor Code section 1140, subdivision (c), states that the term “agricultural employer” shall be liberally construed to include any association of persons engaged in agriculture. (*Id.*) In the instant case, Barry Bedwell testified under oath that the California Fresh Fruit Association is “an association of agricultural employers”. (33 RT 290:9-12) The court also notes that federal courts have applied 29 United State Code section 186 expansively so that its goals are strengthened rather than weakened. (*Id.* at 1156) The court also rejected the argument that Section 1155.4 unconstitutionally infringes upon free speech rights of employees and employers to make and solicit donations. (*Id.* at 1160) Finally, the court notes that while Section 1155.4 describes violations

as “unlawful”, the same misconduct may also be considered an unfair labor practice under the broad definitions of unfair labor practices in Section 1153. (*Id.* at 1162)

**B. FROM AUGUST 12, 2013 TO OCTOBER 20, 2013,  
GERAWAN GAVE SILVIA LOPEZ A “VIRTUAL  
SABBATICAL” TO FACILITATE CIRCULATION OF  
THE DECERTIFICATION PETITIONS**

The Board has affirmed that an extended leave of absence from work to circulate petitions may comprise unlawful company assistance. (*Abatti Farms, Inc.* (1981) 7 ALRB 36) The Gerawan employment manual states that no leave of absence may be taken without advance written approval by the Company. (Exhibit GCX-47, bates number 0008565) The manual also provides for possible discipline in instances of excessive absences, tardiness, or long lunch breaks. (Exhibit GCX-47, bates number 0008557) It also bans the solicitation or distribution of literature during work hours on company property except as authorized by the company or the law. (Exhibit GCX-47, bates number 0008551) Exhibit R-13 is the Spanish version of Exhibit GCX-47

In the instant case, it is undisputed that, for the ten week period from August 12, 2013 to October 20, 2013, Lopez only worked an average of 8.3 hours per week, when other workers were working fifty hour weeks. During this time, Lopez was a visible and regular presence on company property collecting signatures. Silvia’s daughter Belen assisted her in collecting signatures. From, August 12, 2013 to September 15, 2013, Belen only worked an average of 9.7 hours per week. At one

point, Belen had missed forty out of fifty-four days. It was thus evident to their colleagues that Silvia and Belen could miss work with impunity, but still travel almost at will upon company property. Belen was a new Gerawan employee and Silvia had not worked there for years. Even when Silvia brought a minor child on company property, she was not disciplined. Yet Innocensio Bernal, who worked in the same crew, lost his position by simply taking off two days in a row. The company did not call crew boss Reynaldo Villavicencio as a witness to try to explain this disparate treatment.<sup>41</sup> But when the UFW requested the company to allow three or four workers to leave early to attend a negotiation session, the request was denied.

**C. WHEN THE PETITIONER WAS ALMOST OUT OF TIME TO COLLECT NEEDED SIGNATURES BEFORE THE 2013 PEAK SEASON ENDED, THE COMPANY ALLOWED HER TO PHYSICALLY BLOCK THE COMPANY ENTRANCES AND TO COLLECT ONE THOUSAND SIGNATURES DURING WORK HOURS THAT DAY**

Due to the impending winter season, Silvia Lopez and her legal team knew that they had a limited amount of time to collect signatures in 2013 before it was no longer a time of “peak” agricultural employment. Rather than waiting until

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<sup>41</sup> A party’s failure to explain why it did not call an important witness may support drawing an adverse inference. (*Martin Luther King, Sr. Nursing Center* (1977) 231 NLRB 15, footnote # 1)



spring 2014, Silvia Lopez, her son-in-law, and other key signature gatherers set up a plan to physically block company entrances, with their personal cars, ladders and a flimsy colored ribbon that was used to mark trees. I do not find that the company knew about the blockage until it actually occurred. However, some of the crew bosses acknowledged being able to tell that it was the anti-union protesters who blocked specific company entrances. Under the totality of the circumstances, that was the only plausible conclusion. Most of the crew bosses did not even bother to ask the workers why the entrances were physically blocked. Almost surreally, some crew bosses did not even call their supervisors for direction, but rather idly sat until called for a meeting at the office, the content of which meeting the company permissibly chose to keep cloaked under attorney-client privilege law. The knowledge of these supervisors is attributed to the company.

The company did nothing to open the entrances (like using scissors or even bare hands to cut the red ribbon) and instead issued a press release that day essentially praising the employees for holding a protest. The Petitioner's group meets the definition of a labor organization found within California Labor Code section 1140.4, subdivision (f). As a result, it was an unfair labor practice under California Labor Code sections 1154 and 1152 for Petitioner's group to block company entrances and, in so doing, to restrain or coerce other employees who may wish to refrain from such activities. (*North American Meat Packers Union* (1987) 287 NLRB 720; *International Association of Machinists and Aerospace Workers* (1970) 183 NLRB 1225)

As discussed elsewhere, pro-UFW workers asked crew bosses for permission to collect signatures during work hours and were denied. Perhaps the pro-UFW workers should have asked for permission to have a whole special day to collect signatures because, indeed, that is what the decertification group received. Based upon the testimony of Dan Gerawan and Mike Gerawan, I conclude with absolute certainty that the company would not have voluntarily agreed to let the pro-UFW workers pick a day to physically block the company entrances.

Having covered these three issues, I will now address individually all of the categories of unfair labor practices and election objections that were before me at this consolidated election hearing.

**D. INSTIGATION (Charge # 42 and E.O. # 1)**

I find no persuasive evidence of company instigation in this matter. There is no evidence that Jose Erevia's meeting with Carlos Uribe Estrada had any impact on Silvia Lopez becoming the petitioner. There was no evidence of any special or secret payments by the company to Silvia Lopez, Angel Lopez, their legal team, or to any of the signature gatherers. Thus, to find company instigation, I would have to conclude as follows: (a) the company mailers and flyers manipulated the friends of Angel Lopez into questioning the union presence, (b) their inquiries then resulted in Angel talking with his mother-in-law and wife's grandfather, and (c) those conversations led to Silvia becoming the decertification petitioner. This line of reasoning is not frivolous in a theoretical sense, but I am not persuaded that causation was sufficiently proven in the instant case to show instigation. Because I

find that Silvia Lopez decided to become the decertification petitioner before either she or her daughter Belen was hired by the company in 2013, I also reject the possibility that Belen's hiring was a company enticement that could comprise instigation.

**E. CIRCULATION OF PETITION AND FLYERS, AND  
COERCION OF WORKERS INTO SIGNING PETITION  
(Charge # 27 and E.O. # 1)**

As noted at pages forty to forty-one of this decision, I find that FLC crew boss Jose Evangelista signed the decertification petition "on behalf of" eighteen to twenty crew members.<sup>42</sup> I also find that he told the crew members what he did.

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<sup>42</sup> I also wish to address the subject matter of my Order in this case, dated November 3, 2014. That Order denied the General Counsel's request to use at the hearing confidential evidence of employee support, denied the General Counsel's objection to using the official interpreter to translate non-English declarations, and denied the UFW's proposed testimony as to the employer's change of a medical provided network. On September 23, 2014, I issued an order striking the General Counsel's proposed handwriting expert witness Patricia Fisher. In the September 23, 2014 order I noted that the ALRB represents to the public that petition signatures are kept confidential. I found that the confidentiality of the petition signatures, and maintaining worker confidence in that confidentiality, was the greater interest than the admittedly useful, relevant aspect of using those signatures to show possible involvement by company supervisors. In the November 3, 2014 order, I specifically note that the last sentence of ALRB Regulation section 20300, subdivision (j)(2), which discusses evidence of employee support submitted in connection with a petition for certification, states that "Authorization cards or other showing of interest shall be held confidential". Pursuant to ALRB Regulation section 20390, subdivision (e), the procedures set forth for processing certification petitions also apply to decertification petitions. For that reason, I found that the evidence of employee support discussed in ALRB Regulation section 20390, subdivision (c), must also be held confidential. In my order, I concluded that it is inappropriate for the Regional Director to provide or show confidential evidence of employee support to anyone, other than for the purpose of

(Footnote continued....)

I also found that there was work time signature gathering in six direct hire crews, namely, the crews of Martin Elizondo Cruz (decision, pages 55-63), Gloria Mendez (decision, pages 89-97), Francisco Mendoza (decision, pages 98-101), Telesforo Mendoza (decision, pages 101-102), Leonel Nuñez Martinez (decision, pages 102-105), and (6) Santos Efrian Rios (decision, pages 116-120). For the reasons discussed below, I find that the work-time signature gathering seemed slightly less egregious in this case than what I had found occurred during the D'Arrigo consolidated election hearing that I conducted back in 2011. (D'Arrigo Bros. of California (2013) 39 ALRB No. 4)

In D'Arrigo, there were 1,665 agricultural workers who were eligible to vote in the election. (D'Arrigo Bros. of California (2013) 39 ALRB No. 4, ALJ decision at page 4) There are approximately thirty-six workers in a romaine hearts harvesting crew. The crew works with a large harvesting machine. The machine does not actually remove the romaine hearts from the ground, the cutters do that task. Rather, the harvesting machine enables the workers to complete all of the tasks in the

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(Footnote continued)

assisting his or her administrative investigation to determine if there is an inadequate showing of employee support, or as part of a referral to a prosecuting authority for a perjury investigation and/or prosecution, in the absence of advance approval from either the Board or an administrative law judge. The General Counsel's objection to using the official interpreter to translate non-English declarations was denied pursuant to ALRB Regulation section 20274, subdivision (a), which specifically mandates such a process. The UFW's proposed testimony regarding the employer's change of a medical provider network was denied because that topic was the subject matter of UFW election objection number twenty, which the Board had already dismissed in its decision at 39 ALRB No. 20, at page twenty-two.

field, items such as cleaning the romaine hearts, sealing them in a bag, and placing them in a box, etc. The configuration is such so that the crew foreperson or supervisor can typically, with a little bit of movement, see all of the subordinate workers at their stations.

Even with the FLC crew layoffs before the election, the Gerawan workforce was larger than that of D'Arrigo. With Gerawan, during the course of the year, most of the crews worked in the peach trees or the vineyards. In the peach trees, the workers are separated by a greater distance and there are trees partially or completely obstructing the vision of some crew members from others. A crew boss typically cannot see all of his or her workers at the same time. The same is true for crews picking or pruning in the vineyards. A worker or crew boss cannot see all of his or her co-workers or subordinates without substantial movement. As a result, it is not surprising to me that for two of the Gerawan crews, namely those of Gloria Mendez and Francisco Mendoza, where I found work-time signature gathering, there was nonetheless no persuasive evidence that such signature gathering was actually seen by the crew boss.

Each of the cases had an instance where a crew boss deliberately introduced a signature gatherer to his or her crew. In D'Arrigo, this was crew boss Santiago Quinteros. (D'Arrigo Bros. of California (2013) 39 ALRB No. 4, ALJ decision at pages 16-17) With Gerawan, this was crew boss Leonel Nuñez.

Generally, the length or duration of the work-time signature gathering in Gerawan was not very great. The reality is that the workers only had a thirty-minute lunch break and the core group of signature gatherers was not that large as a percentage of the workforce. Going from one crew to a nearby crew typically took at least five to ten minutes. This left very little time for a worker to collect signatures.

Another noteworthy aspect of the D'Arrigo case was that petitioner Alvaro Santos admitted that he did the job of the cutters while they removed their gloves to sign. (*D'Arrigo Bros. of California* (2013) 39 ALRB No. 4, ALJ decision at page 29) There was no such equivalent circumstance in Gerawan.

As previously discussed in this decision, I find that the grape-checkers are not supervisors. In 2013, the grape-checkers, who are sometimes called quality control crew, or "QC", had no ability to hire, fire or discipline employees. (101 RT 63:15-65:24) Nor could the grape-checkers responsibly direct work or reassign a worker to another task. (*Oakwood Healthcare, Inc.* (2006) 348 NLRB 686) Thus, any lunch-time signature gathering by grape-checkers was permissible.

In the absence of any other violations, I would have found that the Gerawan work-time signature gathering was an unfair labor practice, but that, by itself, it fell slightly short of the standard to set aside an election as the Board discussed in the *D'Arrigo* and *Gallo* cases. (*D'Arrigo Bros. of California* (2013) 39 ALRB No. 4, at pages 28-29; *Gallo Vineyards, Inc.* (2004) 30 ALRB No. 2)

**F. GERAWAN ALLOWED ALLOWED PRO-  
DECERTIFICATION WORKERS TO CIRCULATE A  
PETITION DURING WORK HOURS, BUT DID NOT  
ALLOW PRO-UFW WORKERS TO DO SO  
(Charge # 39 and E.O. # 2)**

There was persuasive credible evidence that pro-UFW workers requested permission from their crew bosses to circulate pro-UFW petitions during work time, and that the foremen rejected those requests. As noted in the D'Arrigo case:

The record indicates that this [request] was motivated in large part by a desire to prove that the company would treat pro-union workers differently than those who supported the decertification effort. As the ALJ observed, the fact that the plan was hatched in the hopes of catching company supervisors treating their side differently does not change the fact that it reflects disparate treatment of decertification and pro-UFW activity in the application of company policy.

(D'Arrigo Bros. of California (2013) 39 ALRB No. 4, at page 14)

**G. UNILATERAL FLC WAGE INCREASES (Charge # 25  
and E.O. #s 9 and 10)**

As noted early in this decision, I credited the testimony of FLC owner Guadalupe Morales that the wage increase to nine dollars an hour was proposed by Gerawan, not by the FLC. While I find that this was a unilateral wage increase, I also find that this was unlikely to have had a significant effect on the electorate as

most or all of the FLC crews had been laid off by the time of the decertification election on November 5, 2013.

**H. UNILATERAL GRAPE-PACKER WAGE INCREASES  
AND NO NOTICE OR OPPORTUNITY TO BARGAIN  
OVER THE SAME (Charges # 58 and 60, and E.O. #s 11  
and 12)**

On the day that the second decertification petition was filed, co-owner Michael Gerawan unilaterally increased the piece-rate for field grape-packers from \$1.25 per box to \$1.50 per box. Gloria Mendez testified that the company also gave the workers free pizza and tacos that day. Michael Gerawan was credible in testifying that the piece-rate was sometimes changed due to the quality of the grapes, but conceded that his reason for increase on October 25th was as encouragement and a reward.

Some of the workers left in the middle of the day on October 25, 2013, to participate in a protest timed to announce the filing of the second decertification petition. This may have resulted in the need for workers to stay later that evening to finish packing the grapes. There was credible testimony that the grapes need to be packed quickly to be marketable. The company gave the piece-rate increase for that day to workers who left mid-day for the protest as well as to those workers who stayed and worked the whole day. The “well-timed” piece-rate increase, along with the free pizza and tacos, likely created a celebratory atmosphere that workers would have unmistakably attributed to company joy over the decertification petition filing.



**I. COMPANY SOLICITATION OF GRIEVANCES  
AGAINST THE UNION AND INTERROGATION OF  
WORKERS ABOUT UNION SUPPORT  
(Charges # 46 and 55, and E.O. #s 17 and 18)**

Gerawan impermissibly distributed a multitude of mailers, flyers, business cards and pay stubs which repeated the message that workers could successfully resolve their issues by calling Jose Erevia. The gravamen of this message was that the UFW was worthless and impotent. Some of these materials also gave purported contact information for the owners.

None of the parties presented any persuasive evidence to show that mailers, flyers and business cards were distributed in similar quantity and aggressiveness prior to the union issue escalating in fall 2012. The company also used this process to cull a list of anti-union employees to accompany Dan Gerawan on his trip to Sacramento.

An employer who has had a past policy and practice of soliciting employee grievances may continue such a policy and practice during an organizational campaign. (*Carbonneau Industries* (1977) 228 NLRB 597, at page 598, footnote # 1, citing *Lasco Industries, Inc.* (1975) 217 NLRB 527 and *Reliance Electric Company, Madison Plant Mechanical Drivers Division* (1971) 191 NLRB 44, 46) However, an employer cannot rely on past practice to justify solicitation of employee grievances where the employer significantly alters its past manner, method, aggressiveness or frequency of solicitation. (*Carbonneau Industries* (1977)

228 NLRB 597, at page 598, footnote # 2, citing *Grede Foundries, Inc.* (1973), 205 NLRB 39; *Rotek, Incorporated* (1971) 194 NLRB 453; *Flight Safety, Inc.* (1972) 197 NLRB 223 and *H. L. Meyer Company, Inc.* (1969) 177 NLRB 565)

**J. DISCOUNT PROGRAMS, THREATS OF GOING OUT  
OF BUSINESS, AND ALLEGED VIOLENCE  
(Charges # 43, 62 and 63, and E.O. #s 19, 21 and 32)**

I did not find persuasive evidence that the discount program was anything other than discounts generally available to the public. While a few witnesses claimed to hear company supervisors make specific comments about the company going out of business, I generally discredited that testimony. There was no evidence that any of the workers read the *Wall Street Journal* opinion piece purportedly quoting Dan Gerawan. The article or a link may have been posted on the company website, but there was no evidence that a Spanish language version was made readily available. Nor was there any evidence that workers would have found comments on the possible demise of the company to be credible.

With respect to the allegations of purported violence, I found them unpersuasive. The limited pushing and shoving that occurred at the September 30, 2013 protest was not significant. It appeared to come in the context of crowd members jockeying for position and was relatively tame. While it is very unfortunate that, on that same date, someone threw a rock at the car of Fermin Lopez, there was no persuasive testimony as to the specific identity of the rock-thrower, let alone evidence that a company supervisor saw the incident.

### **K. CAPTIVE AUDIENCE MEETINGS AND DVDs**

As I described on page 166 of this decision, Oscar Garcia introduced Labor Relations Institute consultant Evelyn Fragoso to approximately fifty crews. These were mandatory work-time meetings where Fragoso explained why she was opposed to the unions, and that the unions made false promises. The company also gave field workers two thousand copies of a professionally-produced DVD which conveyed the ownership's message to vote against the union. I discussed the captive audience issue in the D'Arrigo decision. (D'Arrigo Bros. of California (2013) 39 ALRB No. 4, ALJ decision at pages 88-89) While such presentations may not constitute a stand-alone violation, when placed in tandem with other unfair labor practices or objectionable conduct, then the presentations may reinforce or even amplify the consequences of the other misconduct.

### **L. ABANDONMENT**

On Thursday, September 18, 2014, the UFW filed a Motion in Limine to exclude evidence in support of Respondent's "abandonment" defense. Opposition papers were filed with respect to the motion by the Petitioner and Respondent on Friday, September 19, 2014, and Monday, September 22, respectively. In my Order dated Thursday, September 25, 2014, I granted the motion in part and denied it in part. In my Order, I granted the motion in that I rejected the Respondent's argument as being a defense *per se*. I also ruled that evidence would not be permitted for the purpose of trying to establish the truth of whether or not the UFW became inactive at Gerawan Farming. The Respondent had unsuccessfully raised that issue in the

mandatory mediation and conciliation matter. (Gerawan Farming (2013) 39 ALRB No. 5, at pages three and four) I also made clear that my Order permitted workers to testify that they felt abandoned by the UFW, using the concept of abandonment solely in a lay person or colloquial sense, rather than as a legal conclusion. (Order dated September 25, 2013, at page two) During the hearing, I addressed this topic again and reaffirmed my ruling in the September 25, 2013 prehearing order. (17 RT 241:8-242:1 and 17 RT 260:25-262:8) Generally speaking, I disallowed testimony about facts taking place more than four or five years before the decertification election. As a result, the record does not include evidence as to whether there was abandonment or not, should the Board or another court find that to be a viable legal defense to some or all of the findings.<sup>43</sup>

#### **M. ROLE OF THE ADMINISTRATIVE LAW JUDGE**

To the extent that any of Petitioner's or Respondent's briefs may be construed as requesting the administrative law judge to find portions of the ARLA unconstitutional, those arguments are rejected as beyond the authority of the administrative law judge. Moreover, where the Board issued a decision heard only

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<sup>43</sup> Since the end of the hearing, there are two court decisions that have issued warranting mention. The first case is a Fifth Appellate District Court of Appeal decision in *Gerawan Farming, Inc. v. ALRB* (May 14, 2015) 236 Cal. App. 4th 1024. However, that case is not citable as it was superseded by a grant of review. (*Gerawan Farming, Inc. v. ALRB* (July 8, 2015) 2015 Cal. LEXIS 4797) The second case is a Fifth Appellate District Court of Appeal decision in *Tri-Fanucchi Farms v. ALRB*, (May 14, 2015) 236 Cal. App. 4th 1079. This decision is also not citable as it was superseded by a grant of review. (*Tri-Fanucchi Farms v. ALRB* (August 19, 2015) 2015 Cal. LEXIS 5635)

by three members, and one Board Member concurred or dissented, the undersigned administrative law judge is going to apply the law directed by the majority. (See *Iowa Beef Packers* (1963) 144 NLRB 615, 616, enfd. in part 331 F.2d 176 (8<sup>th</sup> Cir. 1964))

#### N. CONCLUSION AND REMEDIES

By providing unlawful assistance to the decertification effort, Gerawan committed unfair labor practices under California Labor Code section 1153. This assistance included allowing work-time signature gathering and granting the petitioner a “virtual sabbatical” to run the decertification campaign. Gerawan also committed unfair labor practices by its enhanced efforts to directly solicit grievances and by making a “well-timed” unilateral wage increase.

Petitioner Silvia Lopez solicited and received an unlawful twenty thousand dollars donation from the California Fresh Fruit Association, an association of agricultural employers of which Gerawan was a prominent dues-paying member. Her legal team, specifically attorney Joanna MacMillan, assisted in this transaction. There is powerful circumstantial evidence to suggest that the company knew about this donation beforehand. The Petitioner also violated the rights of other workers by blocking company entrances on September 30, 2013 as a means to collect approximately one thousand signatures from workers that day.

Given the totality of these circumstances, and especially in tandem, the unlawful actions of the California Fresh Fruit League, Gerawan Farming, and Petitioner Silvia Lopez make it impossible to know if the signatures collected

represent the workers' true sentiments. Similarly, the misconduct created an environment which would have made it impossible for true employee free choice when it came time to vote.

As a result of the employer's unlawful support and assistance, I am setting aside the decertification election and dismissing the decertification petition. (*Abatti Farms* (1981) 7 ALRB No. 36, at page 15) Given that the unlawful conduct tainted the entire decertification process, any election results would not sufficiently reflect the unrestrained free expression of the bargaining unit members.

Dated: September 17, 2015.

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MARK R. SOBLE  
Administrative Law Judge, ALRB

## ORDER

The Agricultural Labor Relations Board hereby orders that Respondent, GERAWAN FARMING, INC., its officers, agents, successors and assigns, shall:

1. Cease and desist from:
  - (a) Aiding, assisting, participating in or encouraging any decertification campaign; and,
  - (b) In any similar or related manner interfering with, restraining, or coercing, any agricultural employees in the exercise of their rights guaranteed by California Labor Code section 1152.
  
2. Take the following affirmative steps which are found necessary to effectuate the purposes of the Agricultural Labor Relations Act:
  - (a) Sign the attached Notice to Agricultural Employees on page 192 of this decision and, after its translation by a Board agent into the appropriate languages, reproduce sufficient copies in each language for the purposes set forth below;
  - (b) Prepare copies of the attached Notice, in all appropriate languages, by placing a copy of such Notice in a plain stamped or metered envelope, with the ALRB's return address, addressed individually to each and every

agricultural worker employed by Respondent during the time period of November 13, 2012 to September 17, 2015, and submit such addressed, stamped envelopes to the Visalia ALRB Regional Director (or Acting Regional Director) for her to mail within thirty (30) days after the Board's Order becomes final;

- (c) Post copies of the Notice, in all appropriate languages, in conspicuous places on its property for a sixty-days period, the specific dates and location of posting to be determined by the Visalia ALRB Regional Director, and exercise due care to replace any Notice which has been altered, defaced, covered or removed;
- (d) Provide a copy of the attached Notice, in all appropriate languages, to each agricultural employee hired by Respondent during the twelve-months period following the date that the Order becomes final;
- (e) Upon request of the Visalia ALRB Regional Director, provide the Regional Director with the dates of the present and next peak season. Should the peak season already have begun at the time the Regional Director requests peak season dates, Respondent shall inform the Regional Director of when the present peak season began



and when it is anticipated to end, in addition to informing the Regional Director of the anticipated dates of the next peak season;

- (f) Arrange for Board agents to read the attached Notice in all appropriate languages to the assembled agricultural employees of Respondent on company time, at times and places to be determined by the Visalia ALRB Regional Director. Following the reading, Board agents shall be given the opportunity, outside the presence of management and supervisors, to answer any questions that the employees may have regarding the Notice of their rights under the Act. The Visalia ALRB Regional Director shall determine a reasonable rate to be paid by Respondent to all non-hourly wage employees to compensate them for time lost at this reading and during the question and answer period; and,
- (g) Within thirty (30) days after the date that this Order becomes final, Respondent shall notify the Visalia ALRB Regional Director in writing of the steps that Respondent has taken to comply with it. Upon request of the Regional Director, Respondent shall notify him

periodically thereafter in writing as to what further steps  
it has taken in compliance with this Order.

**NOTICE TO AGRICULTURAL EMPLOYEES**

After investigating a charge that was filed in the Visalia Regional Office of the Agricultural Labor Relations Board (ALRB), the General Counsel of the ALRB issued a complaint alleging that we, Gerawan Farming, Inc., had violated the law. After a hearing at which all parties had an opportunity to present evidence, the Board found that we did violate the Agricultural Labor Relations Act (Act) by assisting, supporting, and encouraging the decertification campaign.

The ALRB has told us to post and publish this Notice.

The Agricultural Labor Relations Act is a law that gives you and all other farm workers in California the following rights:

1. To organize yourselves;
2. To form, join or help a labor organization or bargaining representative;
3. To vote in a secret ballot election to decide whether you want a union to represent you;
4. To bargain with your employer about your wages and working conditions through a union chosen by a majority of the employees and certified by the ALRB;
5. To act together with other workers to help and protect one another; and
6. To decide not to do any of these things.

Because you have these rights, we promise that:

**WE WILL NOT** assist, support, or encourage any decertification campaign.

**WE WILL NOT** interfere with employees exercising their rights under the Act in any similar or related matter, nor coerce or restrain employees from exercising such rights

DATED: \_\_\_\_\_

Gerawan Farming, Inc.

By: \_\_\_\_\_  
(Representative) (Title)

If you have any questions about your rights as farm workers or about this Notice, you may contact any office of the ALRB. One office is located at 1642 W. Walnut Avenue, Visalia, CA 93277. The telephone number for the Visalia ALRB Regional Office is (559) 627-0995.

This is an official notice of the Agricultural Labor Relations Board, an agency of the State of California.

**DO NOT REMOVE OR MUTILATE**

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD  
PROOF OF SERVICE BY MAIL  
(1013a, 2015.5 C.C.P.)

I am a citizen of the United States and a resident of the County of Alameda. I am over the age of eighteen years and not a party to the within entitled action. My business address is: 1515 Clay Street, 7<sup>th</sup> Floor, Oakland, CA 94612. On April 15, 2016, I caused to be served the following document:

**BOARD DECISION AND ORDER**

on the parties listed below, through their attorneys of record, by placing true copies thereof in sealed envelopes addressed as shown below for service as designated below:

**VIA CERTIFIED MAIL**

David A. Schwarz  
IRELL & MANELLA LLP  
1800 Avenue of the Stars, Suite 900  
Los Angeles, CA 90067-4276

Anthony Raimondo  
RAIMONDO & ASSOCIATES  
7080 N. Marks Ave., Suite 117  
Fresno, CA 93711

Ronald H. Barsamian  
BARSAMIAN & MOODY  
1141 West Shaw Avenue, Suite 104  
Fresno, CA 93711

Paul J. Bauer  
WALTER & WILHELM LAW GROUP  
205 E. River Park Circle, Suite 410  
Fresno, CA 93720

Mario Martinez  
MARTINEZ AGUILASOCHO & LYNCH  
P.O. Box 11208  
Bakersfield, CA 93389

Michael P. Mallery  
General Counsel  
Gerawan Farming, Inc.  
7108 N. Fresno St., Suite 450  
Fresno, CA 93720

**VIA U.S. MAIL**

Delia Martinez  
Visalia ALRB Regional Office  
1642 W. Walnut Ave.  
Visalia, CA 93277-5348

Julia L. Montgomery  
General Counsel  
Agricultural Labor Relations Board  
1325 J Street, Suite 1900  
Sacramento, CA 95814

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

April 15, 2016

  
\_\_\_\_\_  
Declarant

AMENDED IN ASSEMBLY MAY 4, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1389**

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**Introduced by Assembly Member Patterson  
(Principal coauthor: Assembly Member Grove)  
(Coauthor: Assembly Member Chávez)**

February 27, 2015

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~~An act to add Section 1164.1 to the Labor Code, relating to employment. An act to amend Sections 1154 and 1164 of, and to add Section 1164.1 to, the Labor Code, relating to employment.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1389, as amended, Patterson. ~~Agricultural Labor Relations Act: binding mediation. Agricultural labor relations: unfair labor practices.~~

(1) Existing law establishes the right of agricultural employees to form, join, or assist labor organizations to engage in collective bargaining activities with agricultural employers regarding wages, working conditions, or other aspects of employment. Existing law prohibits a labor organization or its agents from engaging in specified unfair labor practices.

This bill would additionally prohibit a labor organization from abandoning or failing to represent a bargaining unit for 3 or more years. This bill would require the Agricultural Labor Relations Board to decertify a labor organization that violates this provision.

(2) Existing law specifies the time for filing a declaration by an agricultural employer or a certified labor organization representing agricultural employees that the parties have failed to reach a collective bargaining agreement, thus triggering mandatory mediation. Once triggered, the mediation under these provisions is immediately scheduled

*at a time and location reasonably accessible to the parties and proceeds for 30 days, with an additional 30-day extension upon the mutual agreement of the parties.*

*This bill would deem members of the bargaining unit to be parties for the purposes of the mediation.*

Existing law establishes the conditions and time periods under which an agricultural employer, as defined, or a certified labor organization representing agricultural employees may file a declaration with the Agricultural Labor Relations Board stating that the parties have failed to reach a collective bargaining agreement, thus triggering a board order for mandatory mediation.

Existing law authorizes a party, within 60 days of the order by the Agricultural Labor Relations Board taking effect, to file an action to enforce the order. Existing law prohibits an order of the board from being stayed during the pendency of any appeal of the order unless the appellant demonstrates that he or she is likely to prevail on the merits and that he or she will be irreparably harmed by implementation of the board's order.

This bill would condition the effect and enforcement of an order resulting from the binding mediation on the order being approved by a majority of the members of the affected bargaining unit.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1154 of the Labor Code is amended to  
2 read:

3     1154. It shall be an unfair labor practice for a labor organization  
4 or its agents to do any of the following:

5     (a) To restrain or coerce:

6     (1) Agricultural employees in the exercise of the rights  
7 guaranteed in Section 1152. This paragraph shall not impair the  
8 right of a labor organization to prescribe its own rules with respect  
9 to the acquisition or retention of membership therein.

10    (2) An agricultural employer in the selection of his or her  
11 representatives for the purposes of collective bargaining or the  
12 adjustment of grievances.

13    (b) To cause or attempt to cause an agricultural employer to  
14 discriminate against an employee in violation of subdivision (c)

1 of Section 1153, or to discriminate against an employee with  
2 respect to whom membership in such organization has been denied  
3 or terminated for reasons other than failure to satisfy the  
4 membership requirements specified in subdivision (c) of Section  
5 1153.

6 (c) To refuse to bargain collectively in good faith with an  
7 agricultural employer, provided it is the representative of his *or*  
8 *her* employees subject to the provisions of Chapter 5 (commencing  
9 with Section 1156) of this part.

10 (d) To do either of the following: (i) To engage in, or to induce  
11 or encourage any individual employed by any person to engage  
12 in, a strike or a refusal in the course of his *or her* employment to  
13 use, manufacture, process, transport, or otherwise handle or work  
14 on any goods, articles, materials, or commodities, or to perform  
15 any services; or (ii) to threaten, coerce, or restrain any person;  
16 where in either case (i) or (ii) an object thereof is any of the  
17 following:

18 (1) Forcing or requiring any employer or self-employed person  
19 to join any labor or employer organization or to enter into any  
20 agreement which is prohibited by Section 1154.5.

21 (2) Forcing or requiring any person to cease using, selling,  
22 transporting, or otherwise dealing in the products of any other  
23 producer, processor, or manufacturer, or to cease doing business  
24 with any other person, or forcing or requiring any other employer  
25 to recognize or bargain with a labor organization as the  
26 representative of his *or her* employees unless such labor  
27 organization has been certified as the representative of such  
28 employees. Nothing contained in this paragraph shall be construed  
29 to make unlawful, where not otherwise unlawful, any primary  
30 strike or primary picketing.

31 (3) Forcing or requiring any employer to recognize or bargain  
32 with a particular labor organization as the representative of his *or*  
33 *her* agricultural employees if another labor organization has been  
34 certified as the representative of such employees under the  
35 provisions of Chapter 5 (commencing with Section 1156) of this  
36 part.

37 (4) Forcing or requiring any employer to assign particular work  
38 to employees in a particular labor organization or in a particular  
39 trade, craft, or class, unless such employer is failing to conform

1 to an order or certification of the board determining the bargaining  
2 representative for employees performing such work.

3 Nothing contained in this subdivision (d) shall be construed to  
4 prohibit publicity, including picketing for the purpose of truthfully  
5 advising the public, including consumers, that a product or products  
6 or ingredients thereof are produced by an agricultural employer  
7 with whom the labor organization has a primary dispute and are  
8 distributed by another employer, as long as such publicity does  
9 not have an effect of inducing any individual employed by any  
10 person other than the primary employer in the course of his *or her*  
11 employment to refuse to pick up, deliver, or transport any goods,  
12 or not to perform any services at the establishment of the employer  
13 engaged in such distribution, and as long as such publicity does  
14 not have the effect of requesting the public to cease patronizing  
15 ~~such~~ *the* other employer.

16 However, publicity which includes picketing and has the effect  
17 of requesting the public to cease patronizing ~~such~~ *the* other  
18 employer, shall be permitted only if the labor organization is  
19 currently certified as the representative of the primary employer's  
20 employees.

21 Further, publicity other than picketing, but including peaceful  
22 distribution of literature which has the effect of requesting the  
23 public to cease patronizing ~~such~~ *the* other employer, shall be  
24 permitted only if the labor organization has not lost an election for  
25 the primary employer's employees within the preceding 12-month  
26 period, and no other labor organization is currently certified as the  
27 representative of the primary employer's employees.

28 Nothing contained in this subdivision (d) shall be construed to  
29 prohibit publicity, including picketing, which may not be prohibited  
30 under the United States Constitution or the California Constitution.

31 Nor shall anything in this subdivision (d) be construed to apply  
32 or be applicable to any labor organization in its representation of  
33 workers who are not agricultural employees. Any such labor  
34 organization shall continue to be governed in its intrastate activities  
35 for nonagricultural workers by Section 923 and applicable judicial  
36 precedents.

37 (e) To require of employees covered by an agreement authorized  
38 under subdivision (c) of Section 1153 the payment, as a condition  
39 precedent to becoming a member of such organization, of a fee in  
40 an amount which the board finds excessive or discriminatory under



1 all circumstances. In making such a finding, the board shall  
2 consider, among other relevant factors, the practices and customs  
3 of labor organizations in the agriculture industry and the wages  
4 currently paid to the employees affected.

5 (f) To cause or attempt to cause an agricultural employer to pay  
6 or deliver, or agree to pay or deliver, any money or other thing of  
7 value, in the nature of an exaction, for services which are not  
8 performed or not to be performed.

9 (g) To picket or cause to be picketed, or threaten to picket or  
10 cause to be picketed, any employer where an object thereof is  
11 either forcing or requiring an employer to recognize or bargain  
12 with a labor organization as the representative of his *or her*  
13 employees, or forcing or requiring the employees of an employer  
14 to accept or select—~~such~~ *the* labor organization as their  
15 collective-bargaining representative, unless such labor organization  
16 is currently certified as the representative of such employees, in  
17 any of the following cases:

18 (1) Where the employer has lawfully recognized in accordance  
19 with this part any other labor organization and a question  
20 concerning representation may not appropriately be raised under  
21 Section 1156.3.

22 (2) Where within the preceding 12 months a valid election under  
23 Chapter 5 (commencing with Section 1156) of this part has been  
24 conducted.

25 Nothing in this subdivision shall be construed to prohibit any  
26 picketing or other publicity for the purpose of truthfully advising  
27 the public (including consumers) that an employer does not employ  
28 members of, or have a contract with, a labor organization, unless  
29 an effect of such picketing is to induce any individual employed  
30 by any other person in the course of his *or her* employment, not  
31 to pick up, deliver, or transport any goods or not to perform any  
32 services.

33 Nothing in this subdivision (g) shall be construed to permit any  
34 act which would otherwise be an unfair labor practice under this  
35 section.

36 (h) To picket or cause to be picketed, or threaten to picket or  
37 cause to be picketed, any employer where an object thereof is  
38 either forcing or requiring an employer to recognize or bargain  
39 with the labor organization as a representative of his *or her*

1 employees unless such labor organization is currently certified as  
2 the collective-bargaining representative of such employees.

3 (i) *To abandon or fail to represent the bargaining unit for a*  
4 *period of three years or more. The board shall decertify a labor*  
5 *organization that violates this subdivision.*

6 (†)

7 (j) Nothing contained in this section shall be construed to make  
8 unlawful a refusal by any person to enter upon the premises of any  
9 agricultural employer, other than his or her own employer, if the  
10 employees of ~~such~~ the employer are engaged in a strike ratified or  
11 approved by a representative of ~~such~~ the employees whom ~~such~~  
12 the employer is required to recognize under this part.

13 *SEC. 2. Section 1164 of the Labor Code is amended to read:*

14 1164. (a) An agricultural employer or a labor organization  
15 certified as the exclusive bargaining agent of a bargaining unit of  
16 agricultural employees may file with the board, at any time  
17 following (1) 90 days after a renewed demand to bargain by an  
18 agricultural employer or a labor organization certified prior to  
19 January 1, 2003, which meets the conditions specified in Section  
20 1164.11, (2) 90 days after an initial request to bargain by an  
21 agricultural employer or a labor organization certified after January  
22 1, 2003, (3) 60 days after the board has certified the labor  
23 organization pursuant to subdivision (f) of Section 1156.3, or (4)  
24 60 days after the board has dismissed a decertification petition  
25 upon a finding that the employer has unlawfully initiated,  
26 supported, sponsored, or assisted in the filing of a decertification  
27 petition a declaration that the parties have failed to reach a  
28 collective bargaining agreement and a request that the board issue  
29 an order directing the parties to mandatory mediation and  
30 conciliation of their issues. "Agricultural employer," for purposes  
31 of this chapter, means an agricultural employer, as defined in  
32 subdivision (c) of Section 1140.4, who has employed or engaged  
33 25 or more agricultural employees during any calendar week in  
34 the year preceding the filing of a declaration pursuant to this  
35 subdivision.

36 (b) Upon receipt of a declaration pursuant to subdivision (a),  
37 the board shall immediately issue an order directing the parties to  
38 mandatory mediation and conciliation of their issues. The board  
39 shall request from the California State Mediation and Conciliation  
40 Service a list of nine mediators who have experience in labor

1 mediation. The California State Mediation and Conciliation Service  
2 may include names chosen from its own mediators, or from a list  
3 of names supplied by the American Arbitration Association or the  
4 Federal Mediation Service. The parties shall select a mediator from  
5 the list within seven days of receipt of the list. If the parties cannot  
6 agree on a mediator, they shall strike names from the list until a  
7 mediator is chosen by process of elimination. If a party refuses to  
8 participate in selecting a mediator, the other party may choose a  
9 mediator from the list. The costs of mediation and conciliation  
10 shall be borne equally by the parties.

11 (c) Upon appointment, the mediator shall immediately schedule  
12 meetings at a time and location reasonably accessible to the parties.  
13 Mediation shall proceed for a period of 30 days. Upon expiration  
14 of the 30-day period, if the parties do not resolve the issues to their  
15 mutual satisfaction, the mediator shall certify that the mediation  
16 process has been exhausted. Upon mutual agreement of the parties,  
17 the mediator may extend the mediation period for an additional  
18 30 days. *Members of the bargaining unit shall be considered*  
19 *parties for purposes of this subdivision and shall be entitled to*  
20 *attend all meetings scheduled by the mediator.*

21 (d) Within 21 days, the mediator shall file a report with the  
22 board that resolves all of the issues between the parties and  
23 establishes the final terms of a collective bargaining agreement,  
24 including all issues subject to mediation and all issues resolved by  
25 the parties prior to the certification of the exhaustion of the  
26 mediation process. With respect to any issues in dispute between  
27 the parties, the report shall include the basis for the mediator's  
28 determination. The mediator's determination shall be supported  
29 by the record.

30 (e) In resolving the issues in dispute, the mediator may consider  
31 those factors commonly considered in similar proceedings,  
32 including:

33 (1) The stipulations of the parties.

34 (2) The financial condition of the employer and its ability to  
35 meet the costs of the contract in those instances where the employer  
36 claims an inability to meet the union's wage and benefit demands.

37 (3) The corresponding wages, benefits, and terms and conditions  
38 of employment in other collective bargaining agreements covering  
39 similar agricultural operations with similar labor requirements.

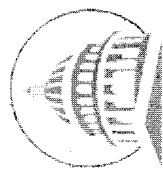
1 (4) The corresponding wages, benefits, and terms and conditions  
2 of employment prevailing in comparable firms or industries in  
3 geographical areas with similar economic conditions, taking into  
4 account the size of the employer, the skills, experience, and training  
5 required of the employees, and the difficulty and nature of the  
6 work performed.

7 (5) The average consumer prices for goods and services  
8 according to the California Consumer Price Index, and the overall  
9 cost of living, in the area where the work is performed.

10 **SECTION 1.**

11 *SEC. 3.* Section 1164.1 is added to the Labor Code, to read:

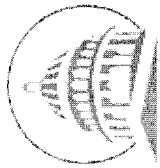
12 1164.1. An order issued by the mediator, the board, or the court  
13 that would impose the terms of binding mediation pursuant Section  
14 1164 shall not take effect or be enforceable until it is approved by  
15 a majority of the agricultural employees of the bargaining unit  
16 affected by the order.



California  
LEGISLATIVE INFORMATION

**AB-1389 Agricultural labor relations: unfair labor practices. (2015-2016)**

Date	Result	Location	Ayes	Noes	NVR	Motion
05/06/15	(PASS)	Asm Labor and Employment	7	0	0	Reconsideration.
<p><b>Ayes:</b> Chu, Harper, Roger Hernández, Low, McCarty, Patterson, Thurmond</p> <p><b>Noes:</b></p> <p><b>No Votes Recorded:</b></p>						
05/06/15	(FAIL)	Asm Labor and Employment	2	5	0	Do pass and be re-referred to the Committee on [Appropriations]
<p><b>Ayes:</b> Harper, Patterson</p> <p><b>Noes:</b> Chu, Roger Hernández, Low, McCarty, Thurmond</p> <p><b>No Votes Recorded:</b></p>						



**AB-1389 Agricultural labor relations: unfair labor practices. (2015-2016)**

Date	Action
02/01/16	From committee: Filed with the Chief Clerk pursuant to Joint Rule 56.
01/31/16	Died pursuant to Article IV, Sec. 10(c) of the Constitution.
05/06/15	In committee: Set, first hearing. Failed passage. Reconsideration granted.
05/05/15	Re-referred to Com. on L. & E.
05/04/15	From committee chair, with author's amendments: Amend, and re-refer to Com. on L. & E. Read second time and amended.
03/23/15	Referred to Com. on L. & E.
03/02/15	Read first time.
03/01/15	From printer. May be heard in committee March 31.
02/27/15	Introduced. To print.