Superior Court of California
County of Kern

Date: 07/18/2024 **Time: 8:00 AM - 5:00 PM**

BCV-24-101649

WONDERFUL NURSERIES LLC VS AGRICULTURAL LABOR RELATIONS BOARD ET AL

Courtroom Staff

Honorable: Bernard C. Barmann, Jr. **Clerk:** Vanessa Cofield

NATURE OF PROCEEDINGS: RULING - PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION AGAINST RESPONDENTS/DEFENDANTS AGRICULTURAL LABOR RELATIONS BOARD ("BOARD"), VICTORIA HASSID, ISADORE HALL III, BARRY BROAD, RALPH LIGHTSTONE, CINTHIA N. FLORES, SANTIAGO AVILA-GOMEZ, AND YESENIA DE LUNA (COLLECTIVELY "DEFENDANTS") AND REAL PARTY IN INTEREST UNITED FARM WORKERS OF AMERICA ("UFW"); HERETOFORE SUBMITTED ON JUNE 12, 2024

Ruling on matter submitted June 12, 2024

Plaintiff's motion for preliminary injunction against Respondents/Defendants Agricultural Labor Relations Board ("Board"), Victoria Hassid, Isadore Hall III, Barry Broad, Ralph Lightstone, Cinthia N. Flores, Santiago Avila-Gomez, and Yesenia de Luna (collectively "Defendants") and Real Party in Interest United Farm Workers of America ("UFW").

Plaintiff Wonderful Nurseries, LLC ("Wonderful") seeks to enjoin Defendants and UFW from:

(1) enforcing the "Certification of Investigation of Validity of Majority Support Petition and Proof of Support" issued by the Board in the underlying administrative matter, *In the Matter of Wonderful Nurseries, LLC (Employer), and United Farm Workers of America (Petitioner)*, ALRB Case No. 2024-RM-002; and

(2) continuing to conduct proceedings in the underlying administrative matter.

The relevant facts are not in dispute. The parties' disagreements are essentially over questions of law, including this court's jurisdiction in this case and Wonderful's contention that the Majority Support Petition ("MSP") process violates constitutional rights, including due process rights, such that this court should step in and halt the ongoing administrative proceedings of the Board being conducted in the wake of the UFW's Majority Support Petition to be recognized as the bargaining representative for Wonderful's agricultural employees.

Summaries of Parties' Arguments

Wonderful's Position

Wonderful contends this case demonstrates the constitutional folly of certifying a union with no

investigation of the proof of majority support, even in the face of overwhelming evidence that UFW representatives fraudulently induced Wonderful farm workers to sign authorization cards, citing to paragraphs 55-63 of the Complaint. According to Wonderful:

> Neither the Regional Director's majority support "Tally" nor the Certification acknowledges the declarations submitted by 20 percent (or over 140) of Wonderful's farm workers. Though the facts they allege vary, the recurring theme is the same: Many of the workers felt lied to, including those never intending to authorize the union to represent it in contract negotiations. Per the Board, the MSP statute does not allow for any pre-certification investigation, other than a numerical comparison of card signatures and the employer's payroll roster. ([Complaint], ¶¶148-149.) Yet, the Board, through its Regional Director, did investigate – not to invalidate (or to even question) cards based on the declarants' detailed allegations of fraud, but to cull the employer's payroll roster to disenfranchise employees she believed were not eligible to vote, thereby allowing the UFW to squeak by on a 51% margin of majority support—a mere seven votes, or 327 cards out of 640 employees.) (*Id*., ¶¶ 64-72.)

(Plaintiff Wonderful Nurseries LLC's Memorandum of Points and Authorities in Support of Motion for Preliminary Injunction ("Wonderful Ps&As"), at pp. 10-11.)

Wonderful contends it is likely to prevail on the merits because Labor Code section 1156.37 abridges fundamental rights and liberty and property interests and because the MSP "certify first, investigate later" statutory scheme violates due process, both facially and as applied to Wonderful. Wonderful also contends that the interim harm to Wonderful in the absence of a preliminary injunction outweighs any "theoretical" harm caused by a preliminary injunction and that the public interest favors preserving the status quo pre-certification.

In support of its position that Section 1156.37 abridges fundamental constitutional rights and liberty and property interests Wonderful makes five points. First, Wonderful argues that "§1156.37(e) fails to provide safeguards to minimize the risk that a union will be imposed upon the nonconsenting majority of farm workers and the employer." (Wonderful Ps&As at p. 12.) As Wonderful describes the process, "the union is summarily certified based on the *ex parte* presentation of evidence, without first affording the employer (or workers) the right to be heard. It also systematically undermines (or altogether discards) basic procedural safeguards to protect the employees' 'fundamental right' to decide for themselves whether to designate a bargaining representative of the workers' own choosing." (*Id*. (citation omitted).)

Second, Wonderful asserts that "the employer cannot rebut the presumptive validity of the card authorizations because the MSP statute prohibits the employer and its employees (but not the union) from seeing the cards. (§1156.37(e)(2); Compl., ¶139.)" (Wonderful Ps&As at pp. 12-13.) Wonderful argues that "[d]ue process requires an opportunity to challenge the authenticity of the evidence as well as the circumstances under which the signatures were obtained ***before*** the union is certified." (*Id.* at p. 13 (citing *Harry Carian Sales v. ALRB* (1985) 39 Cal.3d 209, 233 & fn.19).)

Third, Wonderful contends that "suppressing disclosure of evidence of majority support from employers and workers constitutes viewpoint discrimination, because it selectively denies their First Amendment right to receive government information available to the petitioning union." (Wonderful Ps&As at p. 13.) Wonderful further contends that this not only burdens employer speech but, in the context of challenging the certification itself, it effectively restricts employer speech altogether. (*Id*., (citing Compl., ¶¶209-212; *Boardman v. Inslee* (9th

Cir. 2020) 978 F.3d 1092, *cert. denied,* 142 S. Ct. 387 (2021).)

Fourth, Wonderful argues that "because §1156.37(e)(2) bars judicial review of the Board's findings of majority support, it provides no check against arbitrary administrative action. . . . It also violates the separation of powers and the Judicial Powers Clause of the California Constitution, because it divests the 'essential' judicial power from the courts, and thus constitutes 'an unconstitutional seizure of judicial power.'" (Wonderful Ps&As at pp. 13-14 (citing *Communities for a Better Env't v. Energy Res. Conservation & Dev. Comm'n* (2020) 57 Cal.App.5th 786, 814).)

Fifth, Wonderful asserts that, "if (as §1156.37 states) the MSP process is an 'election,' and the authorization cards are to be treated as 'ballots,' the statute cannot be reconciled with the State Constitution's directive that '[v]oting shall be secret,' (See Cal. Const., art. II, §7), since the 'candidate' knows the identities of those casting 'votes.'" (Wonderful Ps&As at p. 14.)

Regarding due process, Wonderful contends the MSP statutory scheme violates due process facially and as applied. First, Wonderful describes the opportunity to be heard as a "fundamental requirement" of due process which "must be granted at a meaningful time and in a meaningful manner." (Wonderful Ps&As at p. 14 (citing *Armstrong v. Manzo* (1965) 380 U.S. 545, 552; *Ryan v. Calif. Interscholastic Federation-San Diego Section* (2001) 94 Cal.App.4th 1048, 1072).) Wonderful points out that the right to prior notice and hearing is intended to minimize substantively unfair or mistaken deprivations of liberty or property. (*Id*. (citing *U.S. v. James Daniel Good Real Property* (1993) 510 U.S. 43, 53; *Fuentes v. Shevin* (1972) 407 U.S. 67, 80-81).) Wonderful asserts that there is no dispute that the MSP statute does not provide a pre-deprivation hearing or any opportunity to be heard. "While §1156.37(f) allows for the theoretical ***possibility*** of challenging the certification in a ***discretionary***, post-deprivation hearing, the statute ***requires*** the Board to withhold the evidence necessary to rebut the presumptive validity of the certification." (*Id*.)

Wonderful contends the certification "fundamentally alters the business and economic relationships between agricultural employers and farm workers, and interferes with protected liberty and property interests." (*Id*. at p. 15.) Specifically, the certification "extinguishes the individual employee's power to order his own relations with his employer, and creates a power vested in the chosen representative to act in the interests of all employees." (*NLRB v. Allis-Chalmers Mfg. Co.* (1967) 388 US. 175, 180; see also *Porter v. Quillin* (1981) 123 Cal.App.3d 869, 874.) Wonderful contends that the certification necessarily interferes with the freedom of association of both farm workers and employers, as well of their right not to have the State dictate the terms of their relationship through the mandatory mediation and conciliation (MMC) forced contracting process.

Next, Wonderful argues the risk of an erroneous determination is substantial. Supporting allegations are in paragraphs 147-155 and 167-170 of the Complaint. Wonderful identifies six reasons there is a substantial risk of an erroneous determination. "First, the union is under no obligation to provide verified proof of the authenticity of the cards, such as notarized signatures. (Compl., ¶¶150-151.) The cards are not shown to the persons best situated to recognize the names and to identify the signatures on the cards – i.e., the employer or the worker (whose signature may be forged). There is no statutory requirement to conduct any investigation beyond the Board's *in camera* comparison of the names on cards with the employer's current payroll roster." (Wonderful Ps&As at p. 16.)

"Second, §1156.37 shifts the burden of proof to the objecting party to demonstrate why the certification should be revoked. . . . Here, the union's one-sided, untested, *ex parte* proffer is ***conclusive*** for purposes of certification. There is no right to a "post-election" hearing, unless the objecting party meets its "heavy burden" of showing not only "an error, impropriety, or misconduct occurred sufficient to warrant revocation of the labor organization's certification," but that the improprieties "were 'sufficiently material to have affected the outcome of the process. . . . This magnifies the risk of error, because it relieves the union of making even a *prima facie* showing as to the ***authenticity*** of the signatures." (*Id*. at p. 17.)

"Third, according to the Board, §1156.37 'establish[es] "a presumption in favor of certification."' (Compl., ¶¶79, 171.) To overcome that presumption, the employer must rebut the legitimacy of the card authorization signatures, which the Board ***also*** "presumes [are] valid unless their legitimacy is called into question by the presentation of objective evidence." (Compl., Ex. 14, at p. 282.) Thus, the MSP statute piles presumption upon presumption ***and*** suppresses the evidence necessary for the employer to meet its burden of proof." (*Id*.)

Fourth, the "untested, unverified, *ex parte* showing by the party *with a vested interest in obtaining monopoly control over the farm workers' bargaining rights*" is a "secret, one-sided determination of facts decisive of rights," and therefore fundamentally unfair. (*Id* (citing *Joint Anti-Fascist Refugee Committee v. McGrath* (1951) 341 U.S. 123, 170-172 (conc. opn., Frankfurter, J.).) According to Wonderful, "[t]he risk of error due to bias is obvious." (*Id.*)

"Fifth, the MSP statute provides no mechanism to mitigate the risk of irreparable harm, or to otherwise abate the legal effect of the certification ***before*** it threatens to impose significant, non-recoverable costs and expenses on the employer and their employees." (Id. at p. 18 (citing *Birkenfeld v. City of Berkeley* (1976) 17 Cal.3d 129, 171).) "According to the Board, it has ***no*** discretion to defer issuance of the certification, even when presented with outcome determinative evidence of fraud and forgeries, or to stay the legal effect of the certification pending the resolution of the election objections process." (*Id*. (citing Compl., ¶158.).

Sixth, "any delay in the revocation of a certification that was based on the erroneous determination presents serious due process concerns." (*Id*. (citing Compl., ¶¶162-166).) Wonderful points out that, "Section 1156.37(f)(2) fails to prescribe a deadline (or any guideline) for the completion of the evidentiary hearing before the Investigative Hearing Examiner, a time limit for filing post-hearing exceptions briefs, or a date by which the Board must issue a decision. Yet, the filing of election objections does not suspend the legal effect of the certification. (§1156.37(f)(3).)" (Wonderful Ps&As at p. 19.) In the event the Board upholds an erroneous certification, Wonderful contends it would be faced with the "constitutionally intolerable choice between continuing to absorb nonrecoverable costs of compliance with an unlawfully issued certification, or to 'bet the farm . . . by taking the violative action before testing the validity of the law,' . . . by refusing to bargain and facing an unfair labor practice charge." (*Id*. (citations omitted.)

Wonderful also argues that the public interest in streamlining union certifications cannot outweigh the employee's right to freely choose their own bargaining representative. "As interpreted by the Board, the MSP statute presumes the validity of card authorizations proffered by a self-interested labor organization which, in effect, harvests the 'ballots' in its own 'election.' (Compl., ¶79 & Ex. 14, at p. 272.) This is antithetical to the fundamental purpose of representational proceedings under the ALRA, which is ***not*** to certify unions, but to vindicate the right of farm workers to ***freely designate*** the bargaining representative ***of their own choosing***." (Wonderful Ps&As at p. 20.) "A process that precludes any pre-deprivation hearing (as well as withholds evidence regarding and precludes judicial review of the findings of validity of that proof) . . . would . . . deny due process and disenfranchise workers. Streamlining and expediting is no justification for the summary nature of the *ex parte* MSP process." (*Id*.) "No emergency or exigent circumstances justify the summary deprivation of Wonderful's rights, particularly since the UFW had been collecting cards for over a year before filing its MSP, without any Board oversight as to how those signatures were solicited." (*Id*.)

Lastly, in support of its position that the MSP process violates constitutional rights on its face, Wonderful argues that the MSP process subverts the right to secret ballot guaranteed by the California Constitution by giving the union control over how votes are cast and over the evidence reflecting the results of voting. Because voting is a fundamental right, Wonderful contends that the MSP's elimination of secret ballots in favor of card check is subject to strict scrutiny, meaning that the State must have a compelling interest to justify the infringement of the

right. Wonderful contends that the State has no compelling interest in furthering a biased process that unnecessarily destroys the right to a secret ballot. (*Id*. at p. 21)

Regarding its "as applied" challenge to the MSP statute, Wonderful argues that the Board's refusal to even consider what it concedes are "serious" allegations of farm worker disenfranchisement is a textbook example of an arbitrary and capricious adjudication. Although the Board explained that its statutory authority is limited to counting cards, Wonderful counters that the Board felt free to disregard those statutory limitations by, at UFW's behest, considering evidence to determine that 33 individuals had supervisory authority and therefore should net be included in the bargaining unit and that another seven individuals lacked a community of interest with other Wonderful employees. Thus, Wonderful argues, the Board's selective exercise of its authority was arbitrary and capricious. (*Id.*)

As to interim harms to the parties if a preliminary injunction issues or is not issued, Wonderful argues that "[c]ompliance with an unconstitutional statute constitutes irreparable harm." (Wonderful Ps&As at p. 22 (citing *Hillman v. Britton* (1980) 111 Cal.App.3d 810, 826; *Coffee-Rich, Inc. v. Fielder* (1975) 48 Cal.App.3d 990, 999-1000).) Wonderful contends that it is faced with a dilemma: Wonderful can either refuse to recognize the certification and refuse to bargain with the UFW, thereby risking harm, including the reputational harm of an unfair labor practices charge, civil penalties under §1160.10, and a bond requirement under §1160.11, or they can recognize the certification and bargain with the UFW, which still poses the risk of being forced into the MMC's compelled contracting process. (*Id*.) This type of "Hobson's choice," Wonderful contends, constitutes irreparable harm. (Id. (citing *Morales v. TWA* (1992) 504 U.S. 374, 380-81).)

Wonderful contends the public interest favors preserving the status quo precertification:

> The Board issued the Certification notwithstanding having—before the Certification issued—prima facie (if not overwhelming) evidence of the workers' desire to revoke their authorization cards and of the UFW's alleged fraud in securing their signatures. (Compl., ¶¶75, 77.) Wonderful's workers have a fundamental right to freely choose whether to associate with the UFW; certifying the UFW in disregard of their expressed desire to revoke is not in the public interest. (Compl., ¶171.) To the contrary, the forced imposition of the UFW has not promoted the ALRA's purpose, which as its preamble states, is "to ensure peace in the fields of California by guaranteeing justice for all agricultural workers and stability in agricultural labor relations." Instead, it has led to protests and picketing by workers and against the UFW and the Board. It does not serve the public interest to grant a monopoly over the bargaining rights of Wonderful's farm workers to a union chosen via a process that violates basic constitutional safeguards including, most fundamentally, the constitutional right to freely choose one's bargaining representative. Accordingly, the *status quo ante* should be maintained pending trial in this action."

(Wonderful Ps&As at p. 23.)

In a document filed shortly before the hearing, Wonderful asks that the Court take judicial notice of supplemental authority, Administrative Order 2024-18-P, issued May 24, 2024 in *Wonderful Nurseries LLC v. UFW*, ALRB Case No. 2024-RM-002. The court grants that request.

Respondent/Defendants' Positions

Respondents and Defendants provided a useful summary of the facts leading to the filing of this case at pages 8-10 of Defendants' Response in Opposition to Plaintiff's Motion for Preliminary Injunction.

> Labor Code section 1156.37 sets forth a procedure for certification of a labor organization as the representative for a bargaining unit of agricultural employees "by proof of majority support, through authorization cards, petitions, or other appropriate proof of majority support." (§ 1156.37, subd. (a).) Upon a qualified labor organization's submission of the requisite Majority Support Petition, the . . . Board "immediately commence[s] an investigation regarding the validity of the petition and the proof of support submitted." (*Id.*, subd. (e)(1).) The Board must make "an administrative determination" as to whether the [MSP] meets section 1156.37's requirements within five days of submission. (*Ibid.*) The employer provides information about its current employees for the Board's use in making that determination. (*Id.*, subds. (d), (e)(1).) If after its investigation the Board "determines that the labor organization has submitted proof of majority support and met the requirements" of section 1156.37, "it shall immediately certify the labor organization as the exclusive bargaining representative of the employees in the bargaining unit." (*Id.*, subd. (e)(3).)
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> Pursuant to subdivision (f)(2) of section 1156.37, the board "may administratively rule" on an employers' objections, or it may "conduct a hearing" before doing so.
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> Real Party in Interest United Farm Workers of America (UFW) filed a Majority Support Petition to be recognized as the bargaining representative for Wonderful's agricultural employees on February 23, 2024. . . . On February 29 and March 1, Wonderful submitted redacted declarations that it contended evidenced misconduct by UFW in the card-collection process. . . . The Board, through its Regional Director, promptly informed Wonderful that it was not able to see whether the declarations had been signed, or by whom. (Pet., Ex. 5.) Wonderful began submitting unredacted declarations at approximately 3 p.m. on March 1 (the day the Board's determination was due).
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> As required by subdivision (e)(1) of section 1156.37, the Board's Regional Director issued the findings of its investigation on March 1 . . ., and the Board's Executive Secretary certified UFW as the authorized bargaining representative for Wonderful's agricultural employees on March 4 . . .. In accordance with subdivision (f)(1) of section 1156.37, Wonderful filed a petition objecting to the certification on March 11, 2024. . . . On March 18, the Board issued an order setting six of Wonderful's objections for hearing. Following a number of motions filed by both parties, the administrative hearing began on April 23, 2024, and is ongoing.
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> As the process was unfolding, Wonderful and UFW each filed unfair labor practice charges against each other regarding the certification process. (See Pet., Ex. 14, at p. 8, fn. 6, citing and describing charges.) After determining that reasonable cause existed to believe Wonderful unlawfully assisted in the purported revocation of authorization cards by drafting declarations for

employees and holding mandatory captive audience meetings, the Board's General Counsel filed an unfair labor practices complaint against Wonderful on April 22, 2024.

Before getting to the merits of Wonderful's Petition, Defendants raise a jurisdictional challenge, contending this court lacks jurisdiction over this matter. Defendants point out that "[j]udicial review of Board actions is limited to final orders and directed to the appellate courts in the first instance," and assert that this appellate review "encompasses constitutional challenges actions like those Wonderful raises here." (Defendants' Response at p. 11 (citing Labor Code §§ 1160.8, 1164.5; *Gerawan Farming, Inc. v. ALRB* (2017) 3 Cal.5th 1118, 1130).) Defendants contend that this statutory appellate review deprives this court of jurisdiction to hear this matter at all. (*Id*., at p. 12 (citing *Vapor Blast Manufacturing Co. v. Madden* (7th Cir. 1960) 280 F.2d 205, 209; *Robinson v. Department of Fair Employment and Housing* (1987) 192 Cal.App.3d 1414, 1416; *Griswold v. Mt. Diablo Unified Sch. Dist.* (1976) 63 Cal.App.3d 648, 652-653; *Leek v. Washington Unified School Dist.* (1981) 124 Cal.App.3d 43, 53).)

Defendants contend the ordinary legal process, which Wonderful acknowledges, is adequate and there is no irreparable harm. Defendants dismiss Wonderful's claims that it will suffer "reputational harm" from a technical refusal to bargain, or have to make a "'Hobson's choice'" as being directly foreclosed because the statutory process for obtaining review of Board actions encompasses constitutional challenges. Defendants urge the court to reject Wonderful's efforts to bypass the legislatively mandated review procedures for Board actions because the ALRA provides Wonderful adequate avenues by which to pursue its claims through judicial review at the conclusion of either unfair labor practice or MMC proceedings, assuming they are not resolved during the administrative proceedings themselves. (Defendants' Response at p. 16 (citing *Vapor Blast Manufacturing Co. v. Madden*, *supra*, 280 F.2d at pp. 208-209).)

On the merits, Defendants contend there is no constitutional issue, let alone a plain or substantial one. There is an adequate legal remedy and no irreparable harm, so the court need go no further to deny the motion. Still, Defendants argue, Wonderful cannot meet the second element of the jurisdictional exception or remaining preliminary injunction factors, either.

Defendants argue that Wonderful's due process argument fails because at the ongoing hearing on Wonderful's objections to certification Wonderful may "call, examine, and cross-examine witnesses and [] introduce into the record documentary evidence." (Cal. Code Regs., tit. 8, § 20370, subd. (b).) Defendants also note that Wonderful also has the power to subpoena the testimony of witnesses and the production of documents. (*Id.*, subd. (m) [incorporating Cal Code Regs., tit. 8, § 20250].) And the Investigative Hearing Examiner presiding over that hearing has "the duty to inquire fully into all matters in issue and to obtain a full and complete record." (*Id.*, subd. (b).) Defendants contend that this is plainly sufficient process.

Defendants also argue that here there has been no deprivation of a protected interest in property or liberty. They take issue with Wonderful's assertions that certification itself constitutes deprivation, arguing that all certification does is trigger Wonderful's duty to bargain with the UFW. (Defendants' Response at p. 17 (citing *Schwarz Partners Packaging, LLC v. NLRB* (D.D.C. 2014) 12 F.Supp.3d 73, 81).) Defendants argue that Wonderful's invocation of the possible imposition of a collective bargaining agreement through MMC as a deprivation is misplaced because MMC has been held to be a "quasi-legislative act" which are not subject to due procedural due process requirements. (*Id.* at p. 18 (citing (*Gerawan Farming, Inc. v. ALRB*, *supra*, 3 Cal.5th at pp. 1133, 1139-1140; *California Manufacturers & Technology Assn. v. Office of Environmental Health Hazard Assessment* (2023) 89 Cal.App.5th 756, 776).)

Even if Wonderful is deprived of some protected interest, Defendants argue that the weight of the

government interests at stake and the minimal value of the additional safeguards Wonderful proposes in guarding against erroneous deprivations establish that section 1156.37 provides all process that this "particular situation demands." (Defendants' Response at p. 19 (citing *Barclay Hollander Corp. v. California Regional Water Quality Control Bd.* (2019) 38 Cal.App.5th 479, 510).) Defendants assert that Wonderful's contentions regarding a risk of erroneous deprivation are misplaced because the union's allegation of majority support is made subject to penalty of perjury and can be challenged through the objections process. (*Id*.) Defendants also rebut Wonderful's other constitutional points, arguing, among other things, that Wonderful may not seek to invoke the rights of its employees, that the Board does not selectively deny access to cards on the basis of viewpoint, that longstanding labor law protects the confidentiality of authorization cards, that the Board's determinations are subject to judicial review, and that article II, section 7 of the California Constitution does not apply to representation proceedings under chapter 5 of the ALRA. (Defendants' Response at pp. 20-21.)

Finally, Defendants contend the public interest and balance of equities favor the Board. They point out that the ALRA seeks to "ensure peace in the agricultural fields by guaranteeing justice for all agricultural workers and stability in labor relations" by, among other things, "declar[ing] the right of agricultural employees to organize themselves into unions and to engage in collective bargaining, free from intimidation by either employers or union representatives." (Defendants' Response at p. 21 (citing *Gerawan Farming Inc. v. ALRB*, *supra*, 3 Cal.5th at p. 1131).) Defendants contend that the requested injunction—and this lawsuit as a whole—"undermines a foundational assumption of the Legislature in enacting and amending the ALRA," including the ALRA's deferring judicial review until completion of Board processes. (Defendants' Response at p. 21 (citing *Dessert Seed Co. v. Brown* (1979) 96 Cal.App.3d 69, 74).)

Real Party in Interest UFW's Opposition

UFW largely echoes the points that Defendants raise. Fundamentally, UFW contends the Legislature concluded the MSP procedure would enable farmworkers to choose a union representative without unlawful employer interference and that requiring more pre-certification procedures would delay negotiations and MMC referral, thus recreating the problems the Legislature sought to address. (UFW Opposition at p. 19 (citing *Today's Fresh Start*, 57 Cal.4th at 230).)

Amici

The court received four applications from two agricultural employers (Driscoll's Inc. and Grimmway Enterprises, Inc.) and two employer associations (National Council of Agricultural Employers and Western Growers Association) seeking permission to submit amicus briefs in support of Wonderful's motion for a preliminary injunction. Amicus briefs are common in appellate proceedings but are rare in trial court proceedings, for good reasons. This court recognizes that it may accept amicus briefs in its discretion. Having considered those applications and UFW's opposition to the applications, the court declines to accept the four proposed amicus briefs as the prospective amici do not appear to offer a different perspective on the issues from Wonderful. They all are speaking from the perspective of agricultural employers, like Wonderful and, in the court's view, while their intentions are to be helpful, they are not in a position to assist the court beyond what Wonderful has presented in its own submissions. Additionally, were the court to accept any or all of the proposed amicus briefs, fairness would dictate that the court grant Defendants and UFW leave to file responsive briefs, which would only further delay the court's decision on the motion. The court is not inclined to engage in such delay.

Applicable Law

Preliminary Injunction

"A trial court may grant a preliminary injunction upon a showing that (1) the party seeking the injunction

is likely to prevail on the merits at trial, and (2) the 'interim harm' to that party if an injunction is denied is greater than 'the [interim] harm the [opposing party] is likely to suffer if the ... injunction is issued.' (*SB Liberty, LLC v. Isla Verde Assn., Inc.* (2013) 217 Cal.App.4th 272, 280, [citation] (*SB Liberty*); see [CCP § 527(a)].) These two showings operate on a sliding scale: '[T]he more likely it is that [the party seeking the injunction] will ultimately prevail, the less severe must be the harm that they allege will occur if the injunction does not issue.' (*King v. Meese* (1987) 43 Cal.3d 1217, 1227, [citations] (*King*).)" *Integrated Dynamic Solutions, Inc. v. VitaVet Labs, Inc.* (2016) 6 Cal.App.5th 1178, 1183.

"[T]he burden is on the plaintiff to show harm if the preliminary injunction were not granted. [Citations.]" 6 Witkin, California Procedure (4th Ed.), Provisional Remedies, § 376, p. 305 (emphasis added); see also *Ernie v. Trinity Lutheran Church* (1959) 51 Cal.2d 702, 706. "The plaintiff's showing may be by verified complaint alone if the complaint contains the necessary factual allegations. [Citations.]" 6 Witkin, California Procedure (4th Ed.), Provisional Remedies, pp. 305-306. As it is difficult to make a sufficient showing through a complaint, "the use of affidavits, either alone or as supplementary to the verified complaint, is desirable." 6 Witkin, California Procedure (4th Ed.), Provisional Remedies,* 378, p. 306.

CCP § 526(a)[1] provides the grounds for issuing an injunction. Plaintiff has the burden of showing through verified complaint and/or affidavits that it is likely to prevail at trial & failure to provide interim relief will cause irreparable harm[2]. Per CCP § 527 a preliminary injunction can be made on affidavits that satisfactorily show

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[1] An injunction may be granted in the following cases:

(1) When it appears by the complaint that the plaintiff is entitled to the relief demanded, and the relief . . . consists in restraining the . . . continuance of the act complained of, either for a limited period or perpetually.

(2) When it appears by the complaint or affidavits that the . . . continuance of some act during the litigation would produce . . . great or irreparable injury, to a party to the action.

(3) When it appears, during the litigation, that a party to the action is doing, . . . some act in violation of the rights of another party to the action respecting the subject of the action, and tending to render the judgment ineffectual.

(4) When pecuniary compensation would not afford adequate relief.

(5) Where it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief.

(6) Where the restraint is necessary to prevent a multiplicity of judicial proceedings.

(7) Where the obligation arises from a trust."

[2] "A preliminary injunction is appropriate where a plaintiff is likely to prevail at trial and failure to provide interim relief will cause irreparable harm." Barajas v. City of Anaheim (1993) 15 Cal.App.4th 1808, 1813. "***[T]he burden is on the plaintiff to show harm if the preliminary injunction were not granted.*** [Citations.]" 6 Witkin, California Procedure (4th Ed.), Provisional Remedies, § 376, p. 305 [emphasis added); *see also* Ernie v. Trinity Lutheran Church (1959) 51

sufficient grounds exist for an injunction. Plaintiff's Verified Petition for Writ of Mandate and Complaint ("Complaint") filed on May 13, 2024, is verified.

Labor Code section 1156.37

This case centers around Labor Code §1156.37, which became effective May 15, 2023. Key portions of that statute are set out below:

> (a) A labor organization may become the exclusive representative for the agricultural employees of an appropriate bargaining unit for purposes of collective bargaining with respect to rates of pay, wages, hours of employment, or other conditions of employment by filing a Majority Support Petition with the board alleging that a majority of the employees in the bargaining unit wish to be represented by that organization. The petition shall describe the geographical area that constitutes the unit claimed to be appropriate and shall be accompanied by proof of majority support, through authorization cards, petitions, or other appropriate proof of majority support. Only labor organizations that have filed LM-2 forms for the preceding two years with the federal government and have a collective bargaining agreement covering agricultural employees as defined in Section 1140.4 as of the effective date of this section may file a Majority Support Petition.
> * * *
> (e)(1) Upon receipt of a Majority Support Petition, the board shall immediately commence an investigation regarding the validity of the petition and the proof of support submitted. Within five days of receipt of the petition, the board shall make an administrative determination as to whether the requirements set forth in subdivision (b) are met by the petition and whether the labor organization submitting the petition has provided proof of majority support. In making this determination, the board shall compare the names on the proof of support submitted by the labor organization to the names on the list of currently employed employees provided by the employer. The board shall ignore discrepancies between the employee's name listed on the proof of support and the employee's name on the employer's list if the preponderance of the evidence, such as the employee's address, the name of the employee's foreman or forewoman, or evidence submitted by the labor organization or employee shows that the employee who signed the proof of support is the same person as the employee on the employer's list.
>
> (2) The board shall return proof of majority support that it finds invalid to the labor organization that filed the Majority Support Petition, with an explanation as to why each proof of support was found to be invalid. To protect the

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Cal.2d 702, 706. "The plaintiff's showing may be by *verified complaint alone* if the complaint contains the necessary factual allegations. [Citations.]" 6 Witkin, California Procedure (4th Ed.), Provisional Remedies, § 377, pp. 305-306. As it is difficult to make a sufficient showing through a complaint, "the use of *affidavits*, either alone or as supplementary to the verified complaint, is desirable." 6 Witkin, California Procedure (4th Ed.), Provisional Remedies,§ 378, p. 306.

confidentiality of the employees whose names are on authorization cards or a petition, the board's determination of whether a particular proof of support is valid shall be final and not subject to appeal or review.

(3) If the board determines that the labor organization has submitted proof of majority support and met the requirements set forth in this section, it shall immediately certify the labor organization as the exclusive bargaining representative of the employees in the bargaining unit. An employer's duty to bargain with the labor organization commences immediately after the labor organization is certified.

(4) If the board determines that the labor organization has not submitted the requisite proof of majority support, the board shall notify the labor organization of the deficiency and grant the labor organization 30 days from the date it is notified to submit additional support.

(f)(1) Within five days after the board certifies a labor organization through a majority support election, any person may file with the board a petition objecting to the certification on one or more of the following grounds:
(A) Allegations in the Majority Support Petition were false.
(B) The board improperly determined the geographical scope of the bargaining unit.
(C) The majority support election was conducted improperly.
(D) Improper conduct affected the results of the majority support election.

(2) Upon receipt of a petition objecting to certification, the board may administratively rule on the petitioner's objections or may choose to conduct a hearing to rule on the petitioner's objections. If the board decides to conduct a hearing on the objections, it shall mail a notice of the time and place of the hearing to the petitioner and the labor organization whose certification is being challenged. The board shall conduct the hearing within 14 days of the filing of an objection, unless an extension is agreed to by the labor organization. If the board finds at the hearing that any of the allegations in the petition of the grounds set forth in paragraph (1) are true, the board shall revoke the certification issued under subdivision (e).

(3) The filing of a petition objecting to a majority support election certification shall not diminish the duty to bargain or delay the running of the 90-day period or 60-day period set forth in subdivision (a) of Section 1164.

Lab. Code, § 1156.37 (relevant parts).

Discussion

Jurisdiction

Defendants argue that The ALRA incorporates procedures for challenging a final certification decision by the Board, including review by the Court of Appeal. Despite these express and extensive safeguards, which have been repeatedly upheld, Wonderful seeks a preliminary injunction “restrain[ing] or enjoin[ing] enforcement of” the certification of UFW as the bargaining representative for its agricultural employees and “directing” the Board

"to suspend and cease the pending proceedings in the underlying administrative matter." (Mem., p. 23.) Defendants further contend judicial review of Board actions is limited to final orders and directed to the appellate courts in the first instance. (See, e.g., §§ 1160.8, 1164.5.) That appellate review encompasses constitutional challenges actions like those Wonderful raises here. (See, e.g., *Gerawan Farming, Inc. v. ALRB* (2017) 3 Cal.5th 1118, 1130.

Likewise, UFW challenges jurisdiction arguing that the federal cases Wonderful relies upon involve different statutes governing judicial review of agency action and different claims. Those cases presented "fundamental, even existential" constitutional challenges to the structure of federal administrative agencies themselves. (*Axon Enter. v. FTC* (2023) 143 S.Ct. 890, 897; *see* Wonderful Ps&As at 9 [citing *Axon* and *Seila Law LLC v. CFPB* (2020) 140 S.Ct. 2183, 2196].) Wonderful does not dispute the constitutionality of the Board itself, or the appointment of Board members or hearing officers, but rather takes issue with a specific statutory procedure. Nothing in *Axon* or *Seila Law* establishes that every constitutional objection, like Wonderful's due process claims here, requires immediate judicial review. (*See Loma Linda-Inland Consortium for Healthcare Educ. v. NLRB* (D.C. Cir. May 25, 2023) 2023 WL 7294839, at *11 [rejecting argument to "amplify [*Axon*'s] jurisdictional reach to include every … constitutional objection to agency action"]; *Alpine Sec. Corp. v. Nat'l Sec. Clearing Corp*. (D. Utah Mar. 8, 2024) 2024 WL 1011863, at *5 [no direct review of due process claim "not directed to the structure or very existence of an agency"].) To the contrary, the Supreme Court has held that due process challenges must await final administrative agency orders. (*See Thunder Basin Coal Co. v. Reich* (1994) 510 U.S. 200, 217-18 [no direct review of due process claims where agency's penalty assessments became payable only after full agency and appeals court review, and the penalties for noncompliance were not "sufficiently onerous" or "coercive" to present a "constitutionally intolerable choice"].)

Common to both Defendant's and real party UFW's arguments is that they both contend that Wonderful does not dispute the constitutionality of the Board itself, or the appointment of Board members or hearing officers, but rather takes issue with a specific statutory procedure. Specifically, they both argue that this court does not have jurisdiction in this matter.

Defendants' opposition cites specifically to §§ 1160.8, 1164.5. Under Lab. Code, § 1160.8:

> Any person aggrieved by the final order of the board granting or denying in whole or in part the relief sought may obtain a review of such order in the court of appeal having jurisdiction over the county wherein the unfair labor practice in question was alleged to have been engaged in, or wherein such person resides or transacts business, by filing in such court a written petition requesting that the order of the board be modified or set aside. Such petition shall be filed with the court within 30 days from the date of the issuance of the board's order. Upon the filing of such petition, the court shall cause notice to be served upon the board and thereupon shall have jurisdiction of the proceeding. The board shall file in the court the record of the proceeding, certified by the board within 10 days after the clerk's notice unless such time is extended by the court for good cause shown. The court shall have jurisdiction to grant to the board such temporary relief or restraining order it deems just and proper and in like manner to make and enter a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part, the order of the board. The findings of the board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

Under Lab. Code, § 1164.5:

> (a) Within 30 days after the order of the board takes effect, a party may petition for a writ of review in the court of appeal or the California Supreme Court. If the writ issues, it shall be made returnable at a time and place specified by court order and shall direct the board to certify its record in the case to the court within the time specified. The petition for review shall be served personally upon the executive director of the board and the nonappealing party personally or by service.

Section 1160.8 substantiates Defendant's argument that the court of appeal having jurisdiction over the county where the unfair labor practice in question was alleged would be the appropriate court to file for review of the final order of the Board.

Wonderful contends it is entitled to direct judicial review two ways, both of which have been adequately pled: (1) via a writ of mandate; or (2) based on the allegations and claims being outside of (and collateral to) the administrative enforcement process. The Board does not even address and the UFW gives short shrift to the writ review avenue. Under *Nishikawa Farms, Inc. v. Mahony* (1977) 66 Cal.App.3d 781, 788, writ review is available either where there is a "'substantial showing that Board action has violated the constitutional rights of the complaining party,'" or "'the fact of a statutory violation cannot be seriously argued and where the deviation resulted in a deprivation of a 'right' guaranteed by the Act.'" (Compl., ¶25.) The UFW ignores *Nishikawa Farms*, to instead question the "sugges[tion]" in *Fay v. Douds* (1949) 172 F.2d 720, a case cited by *Nishikawa Farms,* that "merely showing a 'colorable' claim" is enough to obtain review. (UFW Opp., at p. 11 fn. 2.) Regardless of how *Fay v. Douds* has been viewed, Wonderful has alleged "substantial" constitutional claims. Neither the UFW nor the Board has cited authority foreclosing direct judicial review under such circumstances. (See *ALRB v. Sup. Ct. (Gallo Vineyards)* (1996) 48 Cal.App.4th 1489, 1508 [after questioning *Fay v. Douds,* stating that "Gallo has not made any substantial showing that the ALRB denied it due process."].)

Wonderful further contends exhaustion of administrative remedies is not required when a plaintiff makes a ***facial*** constitutional challenge to the statute the agency is applying. (See *Sail'er Inn, Inc. v. Kirby* (1971) 5 Cal.3d 1, 6-7.) There is good reason for this exception because, as the Board has expressly acknowledged, it does not have authority to resolve Wonderful's facial constitutional challenges to the MSP statute. (See Compl., Ex. 14, at pp. 288, 292.)

In *Sail'er Inn, Inc. v. Kirby* (1971) 5 Cal.3d 1, 7 [95 Cal.Rptr. 329, 485 P.2d 529], cited by Wonderful, the Court discusses exceptions to the exhaustion doctrine. There, the Court states:

> Petitioners challenge the constitutionality of the statute on its face; no material facts are disputed. They raise important legal issues of statewide significance. (1) Two of them are placed in the untenable situation of having to choose whether to obey possibly conflicting federal and state laws and face a penalty under the one they choose to disobey. In light of these extraordinary circumstances, it would be improper to require them to exhaust their administrative remedies.

The Court further discusses:

> While ordinarily mandamus will issue only after final order or decision of the administrative agency, a limited number of exceptions to the exhaustion doctrine have long been recognized in this state. (See, e.g., *County of Alpine v. County of Tuolumne* (1958) 49 Cal.2d 787 [322 P.2d 449]; *United States v. Superior Court* (1941) 19 Cal.2d 189 [120 P.2d 26]; *Diaz v. Quitoriano*, 268 Cal.

App.2d 807, 812 [74 Cal.Rptr. 358].)

> The writ of mandate "may be issued by any court ... to any inferior tribunal, corporation, board, or person ... to compel the admission of a party to the use and enjoyment of a *right* or office to which he is entitled, and from which he is unlawfully precluded by such inferior tribunal, corporation, board or person." (Italics added.) (Code Civ. Proc., § 1085.) In a number of cases, mandamus has been held to issue to prohibit official conduct where prohibition would not lie because the threatened official act was not judicial but ministerial in nature. (*Miller v. Greiner*, 60 Cal.2d 827, 830 [36 Cal.Rptr. 737, 389 P.2d 129]; *Perry v. Jordan*, 34 Cal.2d 87 [207 P.2d 47]; *Evans v. Superior Court*, 20 Cal.2d 186 [124 P.2d 820]; see 3 Witkin, Cal. Procedure (1954) § 77, pp. 2575–2577.)

Though the Labor Code does specifically prescribe that a challenge to a Board decision should be through the appropriate court of appeal, here, Wonderful's argument is persuasive in that where there is a substantial facial challenge to the statutory process it would be improper to require the complaining party to exhaust their administrative remedies. The court believes it has jurisdiction to hear this case based on the claims as framed in the pleadings.

Likelihood of prevailing on the merits of the claim

The more likely it is that Plaintiff will ultimately prevail, the less sever must be the harm that they allege will occur if the injunction does not issue.

Due Process violation

In general, although the California and federal Constitution Due Process Clauses have virtually identical language, the case law interpreting and applying those two provisions is not at all equivalent. [See generally Liu, *Brennan Lecture—State Constitutions and the Protection of Individual Rights: A Reappraisal* (2017) 92 NYU L.Rev. 1307]

> Procedural due process under the California Constitution covers a wide variety of situations to which federal due process does not apply. Similarly, the balancing required by the California Constitution to determine the required elements of a hearing (i.e., what "process" is "due") considers four factors, whereas the federal ("*Mathews*") balancing test considers only three; and, as a result, the California Constitution may call for additional procedural protections.

I. California Due Process, California Practice Guide: Administrative Law Ch. 3-I

Wonderful contends there is no dispute that the MSP statute does not provide a pre-deprivation hearing or any opportunity to be heard. While §1156.37(f) allows for the theoretical ***possibility*** of challenging the certification in a ***discretionary***, post-deprivation hearing, the statute ***requires*** the Board to withhold the evidence necessary to rebut the presumptive validity of the certification. Wonderful further contends that its deprivation arose upon the issuance of the certification because it was the result of a constitutionally defective process. Wonderful argues that for purposes of granting preliminary injunctive relief, the objecting party need not await the ultimate outcome of the objections hearing. Instead, this Court must consider three factors to determine whether due process is violated by the lack of any pre-deprivation hearing: (1) "the private interest that will be affected by the official action;" (2) "the risk of an erroneous deprivation of such interest through the procedures

used, and the probable value, if any, of additional or substitute safeguards;" and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." (*Mathews,* 424 U.S. at pp. 334-335.)

UFW contends Wonderful's principal argument is that the MSP statute, on its face, violates Wonderful's procedural due process rights because the ALRB purportedly certifies a union without adequate procedures. But, UFW argues, the demands of due process "do[] not require a hearing, at the initial stage or at any particular point … in an administrative proceeding so long as the requisite hearing is held *before the final order becomes effective*." (*Lusardi Constr. Co. v. Aubry* (1992) 1 Cal.4th 976, 992 [italics added].) In UFW's view, it is premature for Wonderful to argue that the ongoing objections hearing will not provide Wonderful with due process before the Board issues a final, enforceable order.

Looking specifically at § 1156.37(f), the statue provides:

> (f)(1) Within five days after the board certifies a labor organization through a majority support election, any person may file with the board a petition objecting to the certification on one or more of the following grounds:
> (A) Allegations in the Majority Support Petition were false.
> (B) The board improperly determined the geographical scope of the bargaining unit.
> (C) The majority support election was conducted improperly.
> (D) Improper conduct affected the results of the majority support election.

UFW cites to *Lusardi Construction Co. v. Aubry* (1992) 1 Cal.4th 976 [4 Cal.Rptr.2d 837, 824 P.2d 643]. In that case,

> A public hospital district desired to expand its facilities and, in an attempt to control costs, entered into an agreement with a third party corporation for construction of the facilities. The corporation in turn appointed the public entity as its agent for all purposes on the construction project. The public entity, purportedly acting as agent for the third party corporation, then hired a private contractor to construct the project, without entering into the statutorily required stipulations that the contractor pay its employees the prevailing wage rates (Lab. Code, § 1720 et seq.). The public entity advised the contractor that the prevailing wage laws did not apply to the project. When the Director of the Department of Industrial Relations sought to require the contractor to pay prevailing wages, the contractor brought an action for a determination that the prevailing wage statutes could not be applied to it. The trial court granted the contractor injunctive and declaratory relief. The Court of Appeal affirmed, concluding on constitutional and equitable grounds that the director could not enforce the prevailing wage law against the contractor. The Supreme Court reversed the judgment of the Court of Appeal.

The Court goes on to state:

> The Director did not order Lusardi to begin paying the prevailing wage, nor did the Director have any power to do so. The DAS did warn Lusardi that if it did not comply with the statutory apprenticeship requirements, the DAS would initiate "proceedings for determination of willful noncompliance ... pursuant to

> ... section 1777.7 ....” The DAS has not, however, initiated such proceedings.
>
> Thus, what the Director and his designees did in this case was to notify the District and Lusardi that, in the view of the authorities, the project was a public work and the prevailing wage law applied. There is no statute requiring the Director to so notify an awarding body or contractor; apparently the Director did so in the hope that voluntary compliance could avoid the necessity to bring an action under section 1775. But before the Director could bring a court action to recover the amounts due under section 1775, Lusardi sued the Director, claiming its due process rights were violated.
>
> There is apparently no case that is precisely on point. But there is a substantial body of case law that is wholly supportive of the conclusion that a party in Lusardi's situation has no procedural due process rights to notice or a hearing until an executive branch official files formal civil or criminal charges against it.
>
> Thus, in *SEC v. Jerry T. O'Brien, Inc*. (1984) 467 U.S. 735, 742 [81 L.Ed.2d 615, 621, 104 S.Ct. 2720], the high court stated that “because an administrative investigation adjudicates no legal rights,” the due process clause of the federal Constitution is “not implicated ....” In the context of administrative process that, unlike the main procedure at issue here, does include an administrative hearing, the courts have consistently held that “due process do[es] not require a hearing at the initial stage or at any particular point or at more than one point in an administrative proceeding so long as the requisite hearing is held before the final order becomes effective.” (*Opp Cotton Mills v. Administrator* (1941) 312 U.S. 126, 152-153 [85 L.Ed. 624, 640, 61 S.Ct. 524]; see *Hodel v. Virginia Surface Mining & Recl. Assn.* (1981) 452 U.S. 264, 303 [69 L.Ed.2d 1, 33, 101 S.Ct. 2352].)

Here, it appears that the Defendants’ and UFW’s principal arguments regarding due process are not that the MSP certification and objection processes are fair and provide adequate safeguards against erroneous findings but rather that Wonderful’s challenges should wait until the Board issues a final order. Indeed, apart from arguing that the union’s allegation of majority support is made subject to penalty of perjury and can be challenged through the objections process, the Defendants and UFW say very little to counter Wonderful’s many specific complaints about the certification process and the inadequacy of the Board’s objection hearing process, including the lack of an ability to appeal or to seek review of the board’s determination of whether a particular proof of support is valid (See § 1156.37(e)(2)) and the risk of an erroneous determination by the Board due to the constraints on the objection hearing process. By failing to clearly demonstrate the adequacy of the existing statutory and regulatory process, they essentially concede Wonderful’s points about the inadequacy of the process in terms of the ability of Wonderful or the affected employees to test the evidence presented by the union in support of the union’s MSP. (See *Harry Carian Sales v. ALRB* (1985) 39 Cal.3d 209, 234, fn. 19 [due process challenge rejected in part because employer had the “full opportunity” to challenge the validity of union authorization cards].) Instead, Defendants and UFW argue that, ultimately, Wonderful is not deprived of due process because any adverse final order of the Board may be challenged in the ordinary course to the appellate court at a later date, which case law says is adequate. In other words, their primary argument seems to be that even if there are risks of an erroneous certification or inadequate safeguards to prevent fraud or other irregularities in the collection of authorization cards, Wonderful has to wait until later to seek relief in the court of appeal because that is an adequate remedy and therefore not a deprivation of due process.

But the MSP statute as written creates an administrative process that appears to be significantly different from those analyzed in *Lusardi Construction*. Here, the MSP certification operates effectively as a final order in that it triggers significant provisions of the Labor Code that impose substantial obligations on the employer, which obligations remain in effect unless and until the union is replaced or decertified. First, MSP certification immediately triggers the employer's duty to bargain. (Section 1156.37(e)(3). This occurs even before any objection or other hearing process may be invoked. Second, the filing of a petition objecting to an MSP certification does not alter the employer's obligations to bargain or the running of the time periods for a union to request an order directing the parties to MMC. (Section 1156.37(f)(3). Thus, by the initial certification alone, the employer is required to bargain with the union and, if applicable, can be forced into the MMC process, all before having an adequate hearing on the merits of the certification decision and before any opportunity for judicial review of the Board's decisions and actions.

The court finds that Wonderful is likely to prevail on its due process challenges to section 1156.37.

Depravation of liberty or property

UFW contends Wonderful fails to establish such an interest. First, UFW argues Wonderful cannot rely on its employees' purported interests. As such, it is irrelevant that Wonderful asserts that certification of a union "extinguishes the individual employee's power to order his own relations with his employer" and "necessarily interferes" with "the freedom of association of … farmworkers." (MPA at 15-16.) Wonderful's motion identifies only two of its *own* purported interests, neither of which is sufficient for a due process claim. (Wonderful has waived for purposes of this preliminary injunction motion any arguments based on purported interests not raised in its memorandum.)

UFW further contends Wonderful asserts it has a First Amendment interest in "freedom of association" and that certification of a union infringes that interest by "compel[ing] the employer…to associate with a union[.]" (MPA at 9, 15-16.) But the First Amendment protects freedom of "*expressive* association," not economic association. (*See Boy Scouts of Am. v. Dale* (2000) 530 U.S. 640, 648; *Janus v. AFSCME, Council 31* (2018) 585 U.S. 878, 892 [First Amendment protects "[t]he right to eschew association for expressive purposes"].) An employer's legally mandated bargaining relationship with a union is not expressive conduct, and no one would perceive the employer as associating with the union for expressive purposes. (*Janus*, 585 U.S. at 910 ["[W]hen a union negotiates with the employer … the union speaks for the employees, not the employer."].)

Defendants contend all certification does is trigger Wonderful's duty to bargain, and Wonderful identifies no protected property or liberty interest implicated by that duty. Indeed, "[t]he mere certification of the Union does not require the plaintiff to do anything." (*Schwarz Partners Packaging, LLC v. NLRB* (D.D.C. 2014) 12 F.Supp.3d 73, 81.) They further contend the freedom of association protects "against interference with the internal organization or affairs of [a] group" by, for example, "forc[ing] the group to accept members it does not desire," as "[s]uch a regulation may impair the ability of the original members to express only those views that brought them together." (Roberts v. U.S. Jaycees (1984) 468 U.S. 609, 623.) The certification Wonderful seeks to halt does nothing of the sort. It does not compel Wonderful to accept new members or interfere with Wonderful's internal organization.

Wonderful contends the Board argues that the certification is not itself a deprivation because "all certification does is trigger Wonderful's duty to bargain," without acknowledging its immediate legal consequences. (ALRB Opp., at p. 17:23-25.) The certification does trigger a duty to bargain, which itself "continues until the union is replaced or decertified." (*Gerawan Farming, Inc. v. ALRB* (2015) 236 Cal.App.4th 1024, 1041-1042.) But it also ***restrains*** what the employer can do as well (no direct dealing), and what the employer can say (no solicitation of grievances), at least without risking an unfair labor practice charge. (See Lab. Code § 1156.3;

Gerawan, supra, 23 Cal.App.5th at pp. 1205, 1210.) The certification statutorily bars any representation election for at least the initial one-year certification period. (Lab. Code § 1156.6.) And "no CBA may be negotiated or entered into by the employer with any other (not currently certified) labor organization, [since] only a certified labor organization by be a party to a legally valid CBA." (*Gerawan, supra,* 236 Cal.App.4th at p. 1042, fn. 13.)

Since certification of a union following an MSP triggers not only an employer's bargaining obligation but also opens the door to an MMC forced contract process prior to the conclusion of the Board's objection hearing process, and given that no collective bargaining agreement could be negotiated during this "triggered" period of bargaining, these appear to constitute depravations of Wonderful's liberty. Also, as Wonderful points out, it has standing to vindicate the constitutional rights of its workers, including their due process rights and First Amendment rights. (See *Truax v. Raich* (1915) 239 U.S. 33, 39; *Pierce v. Society of Sisters* (1925) 268 U.S. 510, 534-36; *Burns v. State Compensation Ins. Fund* (1968) 265 Cal.App.2d 98, 104; *Virginia v. Am. Booksellers Ass'n, Inc.* (1988) 484 U.S. 383, 393-93.)

Irreparable harm

It is common to speak of the necessity of a showing of threatened "irreparable injury" as the basis for both preliminary and permanent injunctions. (See *Nicholson v. Getchell* (1892) 96 C. 394, 396, 31 P. 265 [proof of inevitable or certain injury is not required; relief is allowed to prevent great and irreparable injury; reversing judgment on demurrer]; *E.H. Renzel Co. v. Warehousemen's Union I.L.A*. 38-44 (1940) 16 C.2d 369, 373, 106 P.2d 1 [mere allegation, without pleading of facts, of injury is insufficient; reversing order granting preliminary injunction]; *Torrance v. Transitional Living Centers for Los Angeles* (1982) 30 C.3d 516, 526, 179 C.R. 907, 638 P.2d 1304 [plaintiff must plead irreparable injury]; *Intel Corp. v. Hamidi* (2003) 30 C.4th 1342, 1352, 1 C.R.3d 32, 71 P.3d 296, citing the text ["in order to obtain injunctive relief the plaintiff must ordinarily show that the defendant's wrongful acts threaten to cause irreparable injuries, ones that cannot be adequately compensated in damages"; reversing order granting permanent injunction]; *Lezama v. Justice Court* (1987) 190 C.A.3d 15, 21, 235 C.R. 238 [prerequisites to injunctive relief are inadequate remedy at law and serious risk of irreparable harm]; *Loder v. Glendale* (1989) 216 C.A.3d 777, 782, 786, 265 C.R. 66 [plaintiff must present evidence of irreparable injury]; *Choice-in-Education League v. Los Angeles Unified School Dist.* (1993) 17 C.A.4th 415, 431, 21 C.R.2d 303 [preliminary injunction was reversed for failure to show real threat of immediate and irreparable interim harm]; 5 Cal. Proc. (6th), Pleading, § 822; on irreparable harm exception to exhaustion doctrine, see supra, § 288; on insufficiency of evidence of illegal expenditure of public funds to show irreparable harm required for preliminary injunction.)

Wonderful argues that Compliance with an unconstitutional statute constitutes irreparable harm. (See *Hillman v. Britton* (1980) 111 Cal.App.3d 810, 826.) Wonderful argues that they are now faced with the following dilemma: (1) Wonderful can refuse to recognize the Certification and refuse to bargain with the UFW, thereby risking the reputational harm of an unfair labor practices charge, civil penalties under §1160.10, and an onerous bond requirement under §1160.11; or (2) Wonderful can recognize the Certification and bargain with the UFW, thereby avoiding an unfair labor practices charge, yet still be at risk of being forced into the MMC's compelled contracting process.

Defendants contend that Wonderful admits the ALRA provides processes allowing for judicial review of its claims. (Wonderful Ps&As, p. 19 & fn. 10, p. 22.) These judicial review provisions provide Wonderful an adequate remedy at law, so Wonderful cannot show irreparable harm. Moreover, because Wonderful may prevail in its ongoing administrative challenge to certification of UFW, resort to such judicial review may ultimately be unnecessary.

UFW contends that they and not Wonderful would suffer irreparable harm if the injunction is granted. UFW contends its goal is to obtain a reasonable first contract that improves workers' economic conditions. (Elenes

Decl. ¶7.) The Legislature intentionally created the MSP and MMC processes with short statutory deadlines and provided that objections do not suspend the employer's duty to bargain or delay referral to MMC. (Labor Code §1156.37(f)(3).)

Wonderful's argument is premised on testing constitutionality of the certification at the beginning of the process, before the legal consequences of certification have fully run their course. They contend that neither the Defendants nor the UFW will suffer irreparable harm. As discussed above, Labor Code §1160.8 provides for eventual review of a final order of the Board. But, given the procedural and evidentiary constraints on the certification and objection hearing processes and the risk of an erroneous determination, coupled with the substantial and enduring duties and obligations imposed on the employer as a result of the certification, the harm suffered by Wonderful if it is forced to comply with a process that is likely unconstitutional while waiting until the Board's final order becomes effective to challenge the certification (which Wonderful credibly contends is erroneous), is largely irreparable.

The court finds that the public interest weighs in favor of preliminary injunctive relief given the constitutional rights at stake in this matter. The Petitioner/Plaintiff has met its burden that a preliminary injunction should issue until the matter may be heard fully on the merits. The court preliminarily enjoins Defendants and UFW from: (1) enforcing the "Certification of Investigation of Validity of Majority Support Petition and Proof of Support" issued by the Board in the underlying administrative matter, and (2) continuing to conduct proceedings in the underlying administrative matter.

Petitioner shall prepare an order consistent with this ruling pursuant to California Rules of Court, Rule 3.1312.

Copy of minute order sent based on Certificate of Service.

MINUTES FINALIZED BY: VANESSA COFIELD *ON:* JULY 18, 2024

WONDERFUL NURSERIES LLC VS AGRICULTURAL LABOR RELATIONS BOARD ET AL
BCV-24-101649

CERTIFICATE OF SERVICE

The undersigned, of said Kern County, certify: That I am a Deputy Clerk of the Superior Court of the State of California, in and for the County of Kern, that I am a citizen of the United States, over 18 years of age, I reside in or am employed in the County of Kern, that I am not a party to the within action and that my business address is , that I served the **Minutes dated July 18, 2024** attached hereto on all interested parties and any respective counsel of record in the within action, following standard Court practices, by: (a) enclosing true copies thereof in a sealed envelope(s) with postage fully prepaid and depositing/placing for collection and delivery in the United States mail at Bakersfield, California; and/or (b) enclosing true copies thereof in a Kern County interoffice envelope(s) and placing for collection and delivery; and/or (c) by posting true copies thereof, to the Superior Court of California, County of Kern, Non-Criminal Case Information Portal (www.kern.courts.ca.gov); and/or (d) electronically transmitting true copies thereof by electronic service or e-mail. Service address(es) are indicated on the attached service list.

Date of Service: July 18, 2024

Place of Service: Bakersfield, CA

Sent from electronic service address: donotreply@kern.courts.ca.gov

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Tara Leal
CLERK OF THE SUPERIOR COURT

Date: July 18, 2024

By: Vanessa Cofield
Vanessa Cofield, Deputy Clerk

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