



AGRICULTURAL LABOR RELATIONS BOARD

Mandatory Mediation and Conciliation

Conference on NAFTA, H-2A,
Immigration, and the ALRB

UC Davis Law School
Friday, April 13, 2018.

MANDATORY MEDIATION AND CONCILIATION

- Most significant amendment to the ALRA
- Governor Davis signed into law in 2002 two companion bills SB 1156 and AB 2596
- Purpose to provide a process for unions and employers that were unable to reach a collective bargaining agreement (CBA)
- Hundreds of certifications where no CBA existed and existing remedies for bargaining violations were insufficient.



MMC By The Numbers

- 22 MMC Requests
- 16 Employers
- 12 contracts reached: 9 mediator set one or more provision
- 5 appealed to District Courts of Appeal
- 2 cases heard: Held constitutional in 3rd DCA (*Hess*) and unconstitutional in 5th DCA (*Gerawan*)

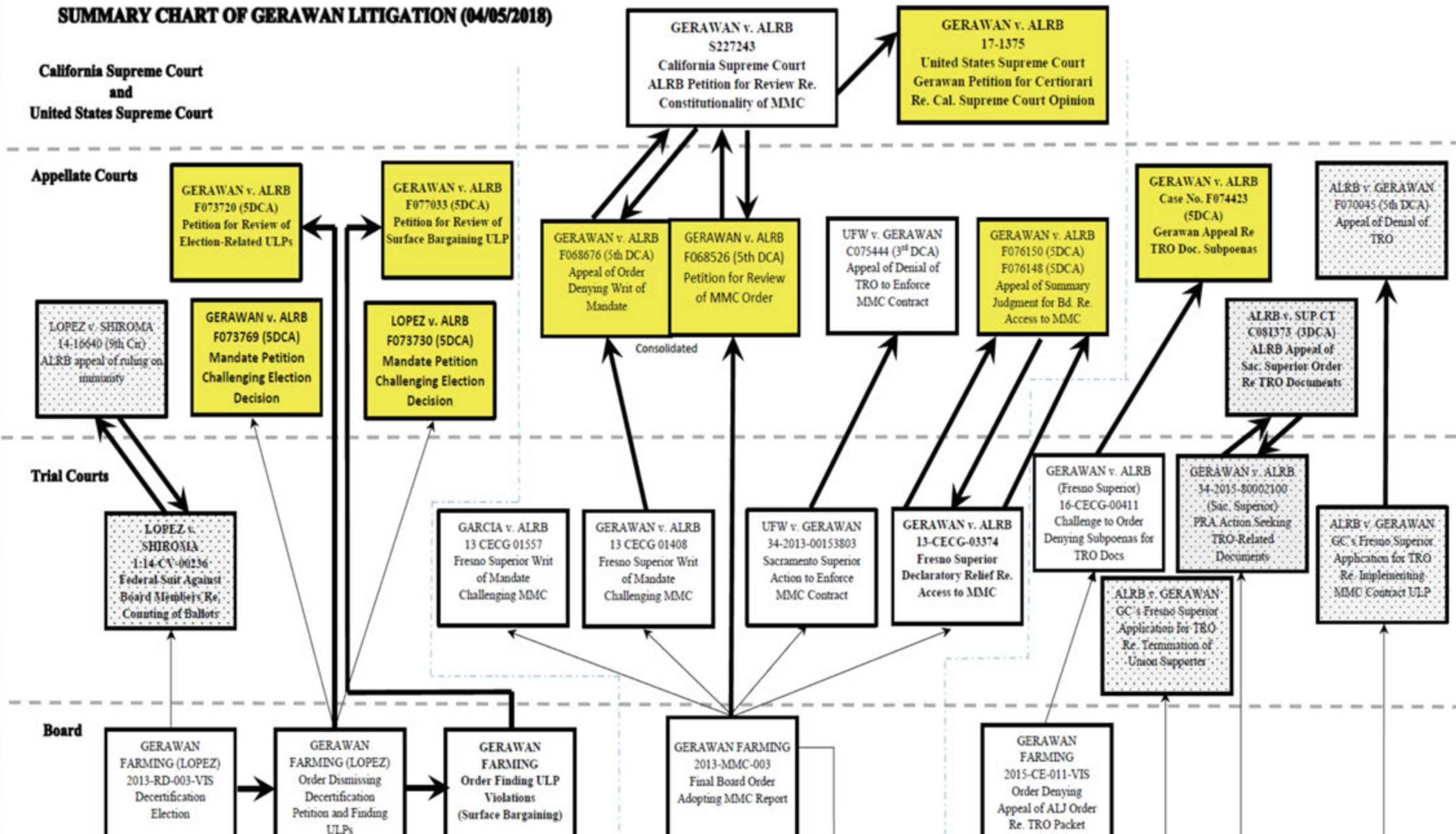
SUMMARY CHART OF GERAWAN LITIGATION (04/05/2018)

California Supreme Court and United States Supreme Court

Appellate Courts

Trial Courts

Board



REQUIREMENTS FOR MMC REFERRAL

- Employer employs 25 or more employees during any calendar week in the preceding year.
- File request 90 days from initial or renewed demand to bargain. For older certifications:
 - 1) Parties failed to reach agreement for at least one year
 - 2) Employer has committed an unfair labor practice
 - 3) No previous certified bargaining agreement (CBA)

REFERRAL OR NO REFERRAL?

- 25 employee provision requires 25 or more agricultural employees for an entire seven-day week, rather than at any point during a week. *Frank Pinheiro Dairy* 35 ALRB No. 5 (2009-MMC-002)
- MMC statute places no time limit on the age of the ULP in question. *San Joaquin Tomato Growers, Inc.* 37 ALRB No. 5 (2011-MMC-001)
- A ULP under appellate review is sufficient to meet requirement. *Perez Packing, Inc.* (2014) 40 ALRB No. 1 (2014-MMC-001)



REFERRAL OR NO REFERRAL? (continued)

- MMC requirement that there have been no CBA between the parties refers only to existing parties to a collective bargaining relationship. *Pictsweet Mushroom Farms 29 ALRB No. 3 (2003-MMC-002)*
- An alleged 11- year union absence does not constitute abandonment of the unit sufficient to void the certification. *Pictsweet Mushroom Farms 29 ALRB No. 3 (2003) (2003-MMC-002)*
- The parties' intent will determine whether a CBA the parties negotiated but never signed constitutes a binding contract. *San Joaquin Tomato Growers, Inc. (2012) 38 ALRB No. 2 (2011-MMC-001)*

RULES GOVERNING MEDIATION PROCESS

- State laws pertaining to confidentiality in mediation does not apply to MMC arbitration sessions. *Hess Collection Winery* (2003) 29 ALRB No. 6 (2003-MMC-001)
- Mediator has broad authority to control the conduct of the MMC process. Rules of evidence need not be observed and mediator may reopen the record for good cause. *Ace Tomato Co., Inc.* (2012) 38 ALRB No. 6 (2012-MMC-001)
- Not arbitrary or capricious to make wage rates retroactive to the effective date of the MMC contract when necessary to provide the crews with the benefit of their work. *Ace Tomato Co., Inc.* (2012) 38 ALRB No. 6 (2012-MMC-001); *San Joaquin Tomato Growers, Inc.* (2012) 38 ALRB No. 7 (2011-MMC-001)

LIMITS ON MEDIATOR AUTHORITY

- May not “remand” the parties for further negotiations as he is charged with resolving all issues. *ARNAUDO BROS., INC.* (2014) 40 ALRB No. 9 (2013-MMC-001)
- CBA may not contain a provision prohibiting the employer from disparaging the union. *GERAWAN FARMING, INC.* (2013) 39 ALRB No. 16 (2013-MMC-003)
- May not contain a provision making the contract binding on any successor employer. *GERAWAN FARMING, INC.* (2013) 39 ALRB No. 16 (2013-MMC-003)



LIMITS ON MEDIATOR AUTHORITY (continued)

- May not order a delay in terms based upon the mediator's belief that employees may no longer support the certified union. *Arnaudo Bros., Inc.* (2014) 40 ALRB No. 7 (2013-MMC-001)
- An individual employee does not have a constitutional right to attend MMC proceedings. *Gerawan Farming, Inc.* (2013) 39 ALRB No. 13 (2013-MMC-003)
- The Board may not seek immediate enforcement of its order where no reviewing court has issued a judgment affirming the Board order and the time for seeking review has not expired. *Ace Tomato Co., Inc.* (2012) 38 ALRB No. 8 (2012-MMC-001)