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18 STATE OF CALIFORNIA

19 AGRICULTURAL LABOR RELATIONS BOARD

20 GERAWAN FARMING INC.,	)	Case Nos.: 2012-CE-041-VIV
	)	2013-CE-007-VIS
21 Respondent,	)	2013-CE-010-VIS
	)	
22 and	)	<b>GENERAL COUNSEL'S</b>
	)	<b>OPPOSITION TO GERAWAN</b>
	)	<b>FARMING, INC.'S MOTION TO</b>
23 UNITED FARM WORKERS OF	)	<b>DISQUALIFY BOARD MEMBER</b>
24 AMERICA	)	<b>ISADORE HALL III</b>
	)	
25 Charging Party.	)	

1 **I. INTRODUCTION**

2 In its second attempt in this case to disqualify an ALRB employee, Gerawan Farming,  
3 Inc. (Gerawan) claims that due process requires the disqualification of Agricultural Labor  
4 Relations Board Member Isadore Hall III (Member Hall) because of his mere attendance at a  
5 labor rally in Los Angeles in 2014. The UFW, UNITE-HERE, UFCW, the LA County  
6 Federation of Labor and a number of State and City elected officials also attended the event.

7 The event apparently had three components: a rally where marchers gathered and listened  
8 to speakers, a four-block march to city hall, and a city council meeting where leaders of the  
9 march requested the City Council to endorse a resolution (“Resolution”). The rally was  
10 supported by the LA County Federation of Labor—an umbrella organization of unions from all  
11 sectors in Los Angeles.<sup>1</sup> The Resolution called on Gerawan to implement the union contract that  
12 the Agricultural Labor Relations Board (ALRB or Board) had already ordered into effect.<sup>2</sup> The  
13 evidence presented indicates that Member Hall, along with a number of other local and state  
14 politicians listened to speakers at the rally and marched four blocks. Member Hall did not make  
15 any public speeches, he did not sign the Resolution, and he does not appear to have even entered  
16 the City Council building.<sup>3</sup> Member Hall’s only direct public statement about this rally was that  
17 by being there, he was teaming up with influential Los Angeles labor leader Maria Elena Durazo,  
18 “for Los Angeles County workers.<sup>4</sup>” Member Hall said nothing about the City Council’s  
19 Resolution and there is no evidence that he directly advocated in favor of the Resolution.

20 Due process only requires the disqualification of a decisionmaker where there is evidence  
21 of actual bias, shown by concrete facts and clear averments. (*Withrow v. Larkin* (1975) 421 U.S.  
22 35, 47, emphasis added.) An appearance of bias is insufficient. (*Ibid.*) Member Hall need not be  
23 disqualified merely because he attended a labor rally years before he assumed office. To  
24 disqualify Member Hall, Gerawan must present sufficient evidence to show that Member Hall

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26 <sup>1</sup> See: thelafed.org

27 <sup>2</sup> *Gerawan Farming, Inc.* (2013) 39 ALRB No. 17.

28 <sup>3</sup> The General Counsel did not communicate with Member Hall regarding Gerawan’s motion or this opposition. The facts presented are those provided by Gerawan or found in other public sources.

<sup>4</sup> David Schwarz Declaration ISO Motion to Disqualify (“Schwarz Decl.”) Exhibit C.

1 has already pre-judged the facts and the law as to Gerawan bargaining behavior between January  
2 and August of 2013. (*Gai v. City of Selma* (1998) 68 Cal.App.4th 213, 220.) His presence at a  
3 labor rally about the MMC Contract is not enough to meet Gerawan’s burden of proof.

4 Even if the language in the Resolution could be attributed directly to Member Hall, it is  
5 insufficient to show that Member Hall has “prejudged” this matter to the point of establishing  
6 actual bias. (*Antoniu v. SEC* (8th Cir. 1989) 877 F.2d 721.) The Resolution contained vague  
7 statements about Gerawan’s thirty year history with the UFW and directly addressed only the  
8 MMC contract—which is not at issue here. There is nothing in the Resolution to suggest a  
9 concern with surface bargaining or any of Gerawan’s proposals beyond what was a matter of  
10 public record. Gerawan’s motion to disqualify Member Hall falls far short of meeting its burden  
11 and offers no evidence that Member Hall has prejudged the facts and law or to suggest that there  
12 is any reason why he cannot carry out his duties as an impartial adjudicator. As such, this  
13 motion should be denied.

## 14 **II. STATEMENT OF FACTS**

15 Isadore Hall III served as an elected official during the 16-year period prior to his January  
16 2017 appointment to the ALRB. Member Hall served in the State Senate from December 2014 to  
17 November, 2016, and in the State Assembly from December 2008 to November 2014. During  
18 all of his public service in State Senate and Assembly, Member Hall represented an urban  
19 segment of Southern Los Angeles County. In October 2014, Member Hall in the midst of a  
20 successful campaign for a State Senate seat in a special election. . (*McGreevy, Isadore Hall wins*  
21 *special election for state Senate seat*, L.A. Times (Dec. 9, 2014).)<sup>5</sup>

22 Maria Elena Durazno--wife of the deceased, former head of the LA County Federation of  
23 Labor (“County Fed”) Miguel Contreras--has been referred to as “the single most influential  
24 individual in Los Angeles politics.”<sup>6</sup> Ms. Durazo put herself and the County Fed behind the rally  
25 and march at LA’s Cathedral of Angels on October 22, 2014.<sup>7</sup>

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27 <sup>5</sup> Available at <http://www.latimes.com/local/political/la-me-pc-isadore-hall-state-senate-seat-20141209-story.html>.

28 <sup>6</sup> Declaration of Silas Shawver ISO Opposition to Motion to Disqualify (“Shawver Decl.”) Exhibit 1.

<sup>7</sup> Shawver Decl. Exh. 1.

1 The event consisted of three parts: a rally with speakers, a four block march, and a  
2 meeting with the LA City Council to request the adoption of a resolution. The UFW's photos of  
3 the event show that the rally was well attended by a variety of labor, community and political  
4 leaders as well as by the media.<sup>8</sup> Member Hall attended the rally, along with other political  
5 figures. Photos on the UFW's website depicting the event show easily recognizable figures such  
6 as Congresswoman Judy Chu, Assemblymember (now Speaker) Anthony Rendon, and LA City  
7 Council President Herb Wesson (a former speaker of the Assembly). Also present were City  
8 Council member Bob Blumenfield and Curran Price Jr. as well as representatives from Clergy &  
9 Laity United for Economic Justice and the ANSWER LA Coalition.<sup>9</sup> The union presence went  
10 beyond just the UFW and photographs depict attendees sporting t-shirts that said UFCW and  
11 UNITE-HERE (another national union). From the UFW's photos it appears that UFW President  
12 Arturo Rodriguez, City Councilmembers Bob Blumenfield and Curran Price, and Maria Elena  
13 Durazo spoke at the rally. Member Hall seems to have just been a member of the crowd.

14 There is no evidence that speakers said anything about Gerawan's bargaining proposals  
15 or tactics at or away from the bargaining table. By the time this rally happened, bargaining over a  
16 contract had been finished for over a year. The focus was on the MMC contract that was ordered  
17 in to effect after August 2013 (the end of the relevant period for the General Counsel's complaint  
18 in this matter.) From the signs and statements about the rally, it appears that the message of the  
19 rally and march was to request that Gerawan follow the law and implement the MMC contract.<sup>10</sup>  
20 For example, City Council President Wesson said that on that day he had stood with the UFW in  
21 their fight for economic justice and human rights and to urge the City Council to adopt a  
22 resolution calling upon Gerawan to:

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<sup>8</sup> Shawver Decl. Exh. 1.

27 <sup>9</sup> Ibid.

28 <sup>10</sup> Ibid.

1 meet basic standards of conduct including refraining from violating state  
2 or federal laws such as labor relations law, anti-discrimination laws, and  
3 minimum wage and hour laws and to immediately implement the union  
4 contract issued by the neutral mediator and the state of California.<sup>11</sup>

5 It is not clear whether the Wesson's statement about the Resolution were made during the  
6 rally or during the actual City Council meeting.

7 After the rally, the group marched four blocks to the City Hall building. Member Hall,  
8 along with other elected officials, walked several blocks carrying a UFW flag. There is no  
9 evidence that he made any public statement about Gerawan, about the Resolution, or about the  
10 UFW. Member Hall did post on social media following the event and expressed that he  
11 appreciated hearing Maria Elena Durazo speak about her background as a daughter of farm  
12 workers and that by attending the rally he was showing his support for "LA County Workers."<sup>12</sup>

13 During the City Hall meeting, the City Councilmembers discussed the Resolution and  
14 heard from members of the public who supported it and who opposed it.<sup>13</sup> The Resolution was  
15 adopted unanimously. There is no evidence that Member Hall attended the City Council meeting.  
16 It appears that Member Hall either left before getting to City Hall or left before the City Council  
17 session began. There are numerous pictures of the labor supporters in the City Hall meeting on  
18 the UFW's website and Member Hall does not appear in any of them.<sup>14</sup> Further, Member Hall  
19 does not appear in the pictures posted by the UFW depicting a celebration after the vote.<sup>15</sup>

20 The Resolution speaks for itself.<sup>16</sup> The meaning of the Resolution, however, is highly  
21 ambiguous and subject to interpretation. The Resolution makes several statements that are a  
22 matter of record. For example: that the UFW won an election in 1990; that the parties  
23 participated in the MMC process and that the Board approved the mediator's report as the

24 <sup>11</sup> Schwarz Decl. Exh. B.

25 <sup>12</sup> Schwarz Decl. Exhibit C. This is most reasonably interpreted as meaning not that Mr. Hall thought that the "Prima  
26 workers" were from LA County, but rather that his presence demonstrated his support for the LA County Federation  
27 of Labor, who seemed to be a co-sponsor of the event.

28 <sup>13</sup> An official video of the full City Council session is available at: <https://www.lacity.org/your-government/audiovideo/council-meeting-video>

<sup>14</sup> Shawver Decl. Exh. 1.

<sup>15</sup> *Ibid.*

<sup>16</sup> Schwarz Decl. Exh. D.

1 collective bargaining agreement; that the General Counsel had filed several complaints alleging a  
2 variety of unfair labor practices; and certain facts (albeit incomplete) about the history of the  
3 petitions to decertify the UFW at Gerawan.

4 The final prefatory statements in the Resolution involve the MMC Contract. It makes  
5 claims about the financial impact on Gerawan's employees by the MMC Contract not being put  
6 in to effect, specifically that employees have been losing money since July 1, 2013 when the  
7 MMC contract was to go in to effect. The Resolution does not say that Gerawan had engaged in  
8 bad faith bargaining before that date or that its employees had lost money because of Gerawan's  
9 bad faith bargaining before July 2013.

10 Finally, the Resolution urges Gerawan to implement the MMC contract and refrain from  
11 violating state or federal laws, such as labor relations laws, anti-discrimination laws, and  
12 minimum wage laws.<sup>17</sup> On November 19, 2013—almost a year before the Resolution was  
13 adopted—the ALRB Board had ruled that the MMC Contract should take effect immediately.  
14 The LA City Council voted and unanimously adopted the Resolution.

15 Two days after the rally, Member Hall issued a communication indicating that he was  
16 endorsed by former Senate President John Burton in his Senate campaign.<sup>18</sup> Included in that  
17 announcement was a list of over 25 unions or employee associations that also endorsed him,  
18 including the UFW. This announcement provides no indication of when the UFW endorsed  
19 him.<sup>19</sup> Gerawan argues that Exhibit G is a statement from Member Hall about the UFW  
20 endorsing him in his campaign for Senate. However, the text shows that this is about his  
21 campaign for a Congressional seat in 2016—two years after he attend the rally. It is irrelevant.<sup>20</sup>

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24 <sup>17</sup> Schwarz Decl. Exh. D.

25 <sup>18</sup> Schwarz Decl. Exh. F.

26 <sup>19</sup> Gerawan claims that Hall was endorsed by the UFW two days after the rally, but offers no evidence to support  
27 this claim. (Gerawan Motion to Disqualify p. 18:21.)

28 <sup>20</sup> Gerawan included in its moving papers a letter from Senator Andy Vidak indicating that he heard from other  
people that Member Hall had threatened some growers. This is all hearsay, and cannot be considered as evidence for  
purposes of this motion. Letters recounting anonymous hearsay reports of a conversation are not reliable evidence  
and do not assist Gerawan in its attempt to establish actual bias. CA Code Evid. § 1201.

1 **III. ARGUMENT**

2 **A. Disqualification is Only Required Where Evidence Shows the Existence of**  
3 **Actual Bias or Circumstances that Demonstrate the Probability of Actual Bias**

4 Due process requires the disqualification of a decision maker only under two  
5 circumstances: (1) if that decision maker is actually biased against a party or (2) if “the  
6 probability of actual bias on the part of the judge or decision maker is too high to be  
7 constitutionally tolerable.” *People v. Freeman* (2010) 47 Cal. 4th 993, 996 (quoting *Caperton v.*  
8 *A. T. Massey Coal Co. Inc.* (2009) 556 U.S. 868, 872). Mere appearance of bias is insufficient to  
9 raise due process concerns.<sup>21</sup> (*Gai v. City of Selma* (1998) 68 Cal.App.4<sup>th</sup> 213, 221; *Freeman,*  
10 *supra*, 47 Cal. 4th at 1000-1001; *Andrews v. ALRB* (1981) 28 Cal. 3d 781, 791.)

11 Actual bias against a litigant is difficult to discern, as the inquiry is whether a judge’s  
12 complex internal thought process was biased in some way. (*Caperton, supra*, 556 U.S. at 883.)  
13 The rare cases where due process requires disqualification due to actual bias typically arise  
14 where oral or written statements by the decision-maker or their behavior during the hearing  
15 indicate that they have prejudged the matter before them. (*See e.g. Antoniu v. SEC* (8th Cir.  
16 1989) 877 F.2d 721; *Stivers v. Pierce* (9th Cir. 1995) 71 F.3d 732, 741-746.) In such situations,  
17 litigants are not merely wondering what the decision-maker’s process was; the decision-maker  
18 has demonstrated that they prejudged the matter or were otherwise clearly biased against a party.

19 To disqualify Member Hall in this matter, Gerawan must overcome the “presumption of  
20 honesty and integrity in those serving as adjudicators” by proving that Member Hall is actually  
21 prejudiced against Gerawan and it must do so through concrete facts and clear averments.  
22 (*Withrow, supra*, 421 U.S. at p. 47; *Haas v. County of San Bernadino* (2002) 27 Cal.4th 1017,  
23 1026.) Further, Gerawan must demonstrate that any such prejudice is sufficient to impair  
24 Member Hall’s impartiality. (*Gai, supra*, 68 Cal.App.4th at 221.)

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27 <sup>21</sup> Appearance of bias may be addressed under state or local law, but it is not a due process concern. *Freeman, supra*,  
28 47 Cal. 4th at 1000-1001.

1           Where actual bias cannot be established, decision-makers may be disqualified based on a  
2 *probability* of bias only where the circumstances “...would offer a possible temptation to the  
3 average man as a judge to forget the burden of proof required to convict the defendant, or which  
4 might lead him not to hold the balance nice, clear and true between the State and the accused.”  
5 (*Caperton, supra*, 556 U.S. at p. 78; *People v. Cowan* (2010) 50 Cal.4th 401, 457.) This inquiry  
6 is an objective one and has only been met in three types of cases: where the decision-maker has a  
7 direct pecuniary interest in the matter; in criminal contempt proceedings; and where a litigant  
8 before the decision-maker was a recent and substantial financial contributor to the judge’s  
9 campaign. (*Freeman, supra*, 47 Cal. 4th at p. 996; *Caperton, supra*, 556 U.S. 868.) While there  
10 is a possibility that a sufficient probability of bias could be found in an additional type of case,  
11 the United States Supreme Court has cautioned against the expansion of this form of  
12 disqualification that should only be used where extreme facts are involved. (*Caperton, supra*,  
13 556 U.S. at p. 887.) The California Supreme Court has followed that admonition. (*Freeman*,  
14 *supra*, 47 Cal. 4th at p. 1006; *Cowan, supra*, 50 Cal.4th at p. 457.) No extreme facts have been  
15 alleged in this case.

16           **B. Gerawan Has Not Shown that Member Hall Has Prejudged the Law or Facts**

17           1. Gerawan Cannot Show that Member Hall Has Prejudged this Matter Because  
18           He Has Not Made Any Statements About this Matter.

19           To disqualify Member Hall, Gerawan must show actual bias. It is not enough to show  
20 that he did something that makes him look biased or makes it appear that he has prejudged the  
21 law or the facts. It is Gerawan’s burden to show that Member Hall must be disqualified because  
22 the evidence proves that he actually reached a legal conclusion in this case before reviewing the  
23 facts and evidence in the record as a member of the Board.

24           Gerawan’s evidence in support of actual bias is paper-thin. The fact that then candidate  
25 Hall went to a County Fed-supported labor rally in support of the UFW does not prove that he  
26 has reached the conclusion that during the period of January to August 201 Gerawan engaged in  
27 surface bargaining and unlawfully refused to bargain over the terms and conditions of its FLC  
28



1 employees. Member Hall's participation in the 2014 rally objectively tells us nothing about his  
2 ideas on the issues of this case. Gerawan has provided no case law that supports disqualification  
3 in the absence of unambiguous statements or behavior that indicates that an adjudicator has pre-  
4 judged a matter.

5 In *Antoniou v. SEC*, while a matter was pending before the Securities Exchange  
6 Commission ("SEC") and where the SEC was to make a determination as to whether Mr.  
7 Antoniu should be permanently barred from associating with a stock broker, Commissioner Cox  
8 of the SEC gave a speech where he said that Mr. Antoniu was an "indifferent" violator of the  
9 SEC law who was permanently barred from associating with a broker-dealer. In its decision,  
10 issued after Commissioner Cox's speech, the SEC found that Antoniu's misconduct was not a  
11 temporary lapse of judgment, but a "carefully conceived scheme..." The SEC also found that  
12 based on the "egregious and protracted nature of Antoniu's misconduct, we conclude that the  
13 public interest requires that Antoniu be barred from association with any broker or dealer."  
14 (*Antoniou, supra*, 877 F.2d at p. 723-24.) In short, while the matter was pending before him,  
15 Commissioner Cox made statements that showed that he had already reached final conclusions  
16 on the key facts and law: that Antoniu was a serial violator of securities laws and that the proper  
17 remedy was a permanent bar. Commissioner Cox made direct and specific statements about the  
18 law and facts of a matter as it was being briefed and argued by the parties. Commissioner Cox's  
19 statement left no doubt as to his positions and prejudgment of the issues.

20 In *Adoption of Richards*, a judge expressed in writing that a couple who was deaf should  
21 not be allowed to adopt a child, long before hearing evidence on the issue. (*Adoption of Richards*  
22 (1967) 251 Cal.App.2d 222, 232.) Prior to the submission of the social worker and doctor reports  
23 which supported the adoption, the judge expressed that he was "...concerned about this  
24 case...[that he] couldn't go through with it." The Judge stated that "...this adoption should be  
25 nipped in the bud." Not only did the judge demonstrate hostility and prejudice against people  
26 with disabilities adopting children, he showed that he was set on making sure that the adoption  
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28

1 was not approved, regardless of the evidence presented. (*Ibid.*) His written statements related  
2 directly to the issues in the case that he was about to decide and were unambiguous.

3 In contrast to the concrete written statements in *Antoniou* and *Adoption of Richardson*,  
4 Member Hall's attendance at the rally is ambiguous. There is no evidence that Member Hall was  
5 involved in organizing the rally, that he had any knowledge about who was to speak or what they  
6 would say, or that he signed any such statements. The best evidence of Member Hall's thoughts  
7 about the rally are his own statements. Gerawan has identified no statements that indicate that  
8 Member Hall had formed any opinion about Gerawan's bargaining behavior from January to  
9 August 2013. Gerawan has provided one social media post of Member Hall where he mentions  
10 the rally.<sup>22</sup> In that post, Member Hall stated that he was inspired by Maria Elena Durazo's speech  
11 and that he wants to continue to work with her to "empower California's working people."<sup>23</sup> It  
12 said nothing about the bargaining history at issue in this matter.

13 Unlike the cases cited by Gerawan, there is no evidence of any direct verbal or written  
14 statements made by Member Hall that indicate that he has formed any opinion about the bad  
15 faith bargaining allegations currently at issue before the Board or that he was even aware of the  
16 specific allegations or issues. As cases Gerawan raised establish, the evidence does not come  
17 close to showing through "concrete facts and clear averments" that Member Hall has prejudged  
18 the facts and law as to Gerawan's bargaining behavior from January to August, 2013. (*Withdraw*,  
19 *supra*, 421 U.S. at p. 47.)

20 The present case has nothing to do with the validity or enforcement of the MMC contract.  
21 All of the relevant facts at issue in the present case occurred prior to when the Mediator issued  
22 his report. The question of the validity of the report was already before the Board and has now  
23 gone to the Court of Appeal and to the Supreme Court. The issues in this case have to do with  
24 bargaining behavior and positions before the MMC contract was ordered in to effect.<sup>24</sup>

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26 <sup>22</sup> Schwarz Decl. Ex. C.

27 <sup>23</sup> Schwarz Decl. Ex. C.

28 <sup>24</sup> It is not necessary to argue over whether Member Hall's attendance at the rally indicates prejudgment as to the validity of the MMC contract, because that is irrelevant. For one, members Shiroma and Rivera Hernandez have

1 Furthermore, the generic request that Gerawan follow the law (and in Herb Wesson's  
2 words—labor laws, health and safety laws, wage and hour laws and discrimination laws) is not  
3 evidence of any prejudgment as to whether Gerawan has already failed to follow the law, and  
4 particularly failed to comply with its duty to bargain during the specific period in question.  
5 Unlike the cases that Gerawan cites where the decision-maker's statements reveal his disposition  
6 as to the precise issues he is about to rule on, here, at best, there is nothing more than a general  
7 showing of support for labor rights. The evidence does not show actual bias---instead, it suggests  
8 that Member Hall appeared at the rally in question for the purpose of expressing his general  
9 support for workers and no evidence provided by Gerawan indicates that he had formed any  
10 opinion on the merits of this case.

11 2. Even if the City Council's Resolution Could Be Imputed to Member  
12 Hall it is Insufficient to Show Actual Bias.

13 It is a major stretch to attribute actual bias to Member Hall from the language of a LA  
14 City Council Resolution which he did not sign, publicly speak in favor of, or even attend the City  
15 Council meeting where it was adopted. Even if Member Hall's general support of the resolution  
16 can be inferred from his four-block march with the UFW, this is insufficient to require  
17 disqualification under due process. (*Gai, supra*, 68 Cal.App.4th at p. 221, Disqualification is  
18 only required where there is concrete evidence that a decision-maker has actually prejudged a  
19 matter before him, as shown through his direct statements and actions. (*Ibid.*) Nonetheless, even  
20 if Member Hall had written the City Council Resolution or signed a petition including the exact  
21 same language, Gerawan would still fail to meet its burden of showing actual bias.

22 The language of the Resolution itself does not indicate a prejudgment of the facts in this  
23 case. For example, the Resolution states that Gerawan has committed egregious violations of  
24 California's Labor Laws—but it does not say when. Is it referring to past ALRB decisions from  
25 1992 and 1995 finding that Gerawan committed numerous, arguably serious and egregious unfair

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27 \_\_\_\_\_  
28 already judged the MMC contract as that issue was before them in 2013. Two, the law and the relevant facts do not  
substantially overlap with those currently before the Board.

1 labor practices?<sup>25</sup> It does not specify. Is it stating that the failure to implement the MMC contract  
2 is an egregious violation? Maybe. Is it stating that Gerawan has committed egregious violations  
3 based on the allegations that were being tried in the concurrent ALRB hearing at the time which  
4 related primarily to the decertification election? That is also possible, but it is ambiguous. Was it  
5 related to Gerawan's proposals about just cause, right to work, union obligations, farm labor  
6 contractors and its fait accompli interim wage increases? It seems unlikely, but Gerawan assumes  
7 that it was.

8         The Resolution also claims that Gerawan has thwarted major efforts to negotiate a union  
9 contract since that time. The Resolution does not explain if this statement is in relation to  
10 Gerawan's unfair labor practices in the 1990s, its support of the decertification effort, or its bad  
11 faith negotiations with the UFW in 2013. It could be referring to any or all of those issues. Thus,  
12 even if the specific statements in the Resolution were attributable to Member Hall, they are too  
13 ambiguous to show actual bias in the instant case.

14         Gerawan must show specific facts to overcome the presumption of honesty and integrity  
15 to which Member Hall is entitled. (*Withrow, supra*, 421 U.S. at p. 47.) This means that Member  
16 Hall receives the benefit of the doubt when it comes to determining whether his mere presence at  
17 a march in support of the resolution shows that he has already reached legal and factual  
18 conclusions as to the issues in this case. Even if the Board decides that the specific statements in  
19 the Resolution are attributable to Member Hall based on his presence at the march, Gerawan's  
20 entire argument hinges on the most sinister (and frankly, unlikely) interpretations of the language  
21 in the resolution in order to eke out a claim of prejudgment by Member Hall. However, the  
22 presumption of honesty and integrity prohibits this manipulation of the facts for purposes of  
23 disqualifying Member Hall.

24         The following table demonstrates how the presumption of honesty and integrity should be  
25 applied in this case

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27  
28 <sup>25</sup> *Gerawan Ranches, Inc.* (1992) 18 ALRB No. 16; *Gerawan Ranches, Inc.* (1995) 21 ALRB No. 6

Resolution Language	Gerawan's Interpretation	Presumption of Honesty and Integrity Interpretation
Gerawan has committed "egregious violations of California labor laws."	Gerawan has engaged in surface bargaining and illegally sought to exclude FLC employees from the benefits of the contract.	The Board has found in the past that Gerawan has committed unfair labor practices.
The General Counsel has filed four complaints alleging a variety of unfair labor practices by Gerawan.	Gerawan is guilty as charged.	There are several pending cases against Gerawan on various subjects.
The Gerawans have thwarted efforts to negotiate a contract since the election in 1990.	Gerawan has committed bad faith bargaining which has prevented the consummation of a collective bargaining agreement.	Since the 1990 election, Gerawan has pursued legal challenges to the UFW's representative status and to the validity of the MMC contract.

There is other language in the Resolution that, according to Gerawan, amounts to prejudging as to the validity of the MMC Contract or whether Gerawan unlawfully assisted in the election.<sup>26</sup> However, if having judged Gerawan on those matters in the past should disqualify Member Hall from participating in the present case, then members Shiroma and Rivera-Hernandez must also be disqualified. They have undisputedly judged Gerawan and determined that the MMC contract was valid and that Gerawan unlawfully assisted in the decertification effort.<sup>27</sup>

The above chart shows that not only does Gerawan fail to give Member Hall the benefit of the doubt, it presents very dubious interpretations of the language in the Resolution. Gerawan ignores the presumption of honesty and integrity and instead claims that disqualification is required if any statements bear "the possibility of interpretation" as prejudgment on Gerawan. To support this, Gerawan cites a 1941 Third Circuit decision addressing whether an employer received a fair and impartial NLRB hearing when a member of the NLRB Board had acted on

<sup>26</sup> Gerawan's motion p. 15.

<sup>27</sup> *Gerawan Farming, Inc.* (2013) 39 ALRB No. 5; *Gerawan Farming, Inc.* (2013) 39 ALRB No. 11; *Gerawan Farming, Inc.* (2013) 39 ALRB No. 13; *Gerawan Farming, Inc.* (2013) 39 ALRB No. 16; *Gerawan Farming, Inc.* (2013) 39 ALRB No. 17.

1 behalf of the union involved in a strike against that employer. (*Berkshire Employees Ass'n v.*  
2 *NLRB* (3rd Cir. 1941) 121 F. 2d. 235.) Gerawan misrepresents the holding of the case. That  
3 Court never held that a member should be disqualified solely based on statements that bear “the  
4 possibility of interpretation” as being a prejudgment of the facts and law of a case. The  
5 “possibility of interpretation” was used as a basis to allow for further inquiry as to whether there  
6 was bias. (*Ibid.* at 238-39.) Furthermore, the basis for possible disqualification in that case was  
7 not the existence of statements showing prejudgment of the case. It was to show whether  
8 disqualification was required because evidence showed that the member had acted on behalf of  
9 the union in the same dispute, similar to “a lawyer who has represented a client in an endeavor to  
10 get a settlement of a claim and, before the claim is settled, is appointed to the bench and sits in  
11 the very case as judge.” (*Ibid.* at 239.) Gerawan simply has no legal support for its attempt to  
12 twist ambiguous statements into proof of disqualifying prejudgment of the facts and law of the  
13 case.

14 None of the authorities presented by Gerawan offer scenarios where an official was  
15 disqualified for having prejudged a matter based on the official’s presence at a public event. In  
16 *1616 Second Ave. Restaurant*, the Court found that the official’s statements “could only be  
17 regarded...as evidence of Chairman Duffy’s belief that petitioner had in fact violated the law...”  
18 (*1616 Second Ave. Restaurant v. NY State Liquor Auth.* (1990) 75 N.Y. 158, 164 (emphasis  
19 added, *stating that* to be disqualified, an official must have “taken a public position about  
20 specific facts at issue in a pending adjudicatory proceeding.”)) Here, it cannot be said that  
21 Member Hall’s statements or those he is arguably associated with, could only be regarded as  
22 statements about the specific legal and factual issues that are before the Board in this case.

23 **C. Gerawan Has Not Shown that any of Member Hall’s Past Statements or**  
24 **Actions Create a Probability of Actual Bias.**

25 Recusal due to the probability of actual bias occurs in extraordinary situations where  
26 courts are faced with “extreme facts.” (*Caperton, supra*, 556 U.S. at p. 887). These rare  
27 occasions are reviewed under an objective standard and have been found in only three situations,  
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1 none of which are present here. (*Freeman, supra*, 47 Cal.4th at p. 996; *Caperton, supra*, 556  
2 U.S. 868.) The United States Supreme Court has found an unconstitutionally high probability of  
3 actual bias has where a decision-maker has “direct, personal, substantial, pecuniary interests in a  
4 case,” where a judge is enmeshed in criminal contempt proceedings, and where the judge’s  
5 political campaign had recently received a significant financial contribution from a litigant  
6 before it. (*Caperton, supra*, 556 U.S. 868; *Freeman, supra*, 47 Cal.4th at p. 1006.) The  
7 California Supreme Court has declined to find due process concerns in other circumstances,  
8 noting that the United States Supreme Court’s decision in *Caperton* was peppered with “repeated  
9 admonitions that finding such a violation in this sphere is extraordinary, the clause operates only  
10 as a ‘fail-safe’ and only in the context of extreme facts.” (*Freeman, supra*, 47 Cal.4th at p. 1006.)

11 The alleged behavior of Member Hall does not involve any of the three types of interests  
12 previously found to require disqualification under due process due to the probability of actual  
13 bias. Gerawan has not alleged that Member Hall has any direct, personal, substantial pecuniary  
14 interests that would be affected by the resolution of this matter. This matter is not a criminal  
15 contempt proceeding and Mr. Hall has not been involved in any other role in this litigation.  
16 Further, Member Hall is no longer an elected official and Gerawan has not alleged that Member  
17 Hall ever received significant recent financial contributions from either party.

18 Finally, Gerawan has failed to argue or explain how the circumstances here are so  
19 extreme as to require finding apparent bias in a new category of cases. It cannot do so. The facts  
20 here are not extreme: they involve an elected official attending a labor rally. Probability of actual  
21 bias only occurs in circumstances that would tempt “the average man as a judge to forget the  
22 burden of proof required to convict the defendant, or which might lead him not to hold the  
23 balance nice, clear and true between the State and the accused.” (*Caperton, supra*, 556 U.S. at p.  
24 878; *Cowan, supra*, 50 Cal.4th at p. 457.) Member Hall, while running for State Senate in a pro-  
25 labor district, attended a march with multiple unions and a number of other local political  
26 figures. Mr. Hall made no public statements at the march and did not sign the specific petition  
27 presented to the City Council. An individual’s mere attendance at a labor rally would not tempt  
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1 an average person as a judge to refrain from acting in an impartial role in a hearing that is  
2 occurring over two years later. These are not the extreme facts that *Caperton* and *Newtown*  
3 reference. Thus, Mr. Hall is not subject to disqualification on this matter.

4 **D. No Stay of this Case Is Necessary**


5 There is no reason to issue an immediate stay of the underlying matter given that the  
6 matter is not yet before the Board and the deadline to file exceptions to the ALJ Decision has  
7 been extended until May 25, 2016. This is more than two weeks after this motion will have been  
8 fully briefed by the parties. Further, Member Hall is not prohibited from participating in the  
9 consideration of this motion. Gerawan has argued that Government Code section 11512 prevents  
10 Member Hall from participating in the consideration of this motion. However, that provision  
11 applies only to agencies that were “created on or after July 1, 1997.” (Gov. Code § 11501(b).)  
12 The ALRB was created in 1975<sup>28</sup>, therefore, section 11512 does not apply and the  
13 Administrative Procedures Act does not prohibit Member Hall from participating in the  
14 consideration of this motion.

15 **IV. CONCLUSION:**

16 For all the foregoing reasons, the General Counsel requests that this motion be denied.

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19 AGRICULTURAL LABOR RELATIONS BOARD  
20 JULIA L. MONTGOMERY  
21 General Counsel

22 DATED: MAY 8, 2017

23   
24 \_\_\_\_\_  
25 NANCY CRAIG  
26 Assistant General Counsel

27 \_\_\_\_\_  
28 <sup>28</sup> <https://www.alrb.ca.gov/>.



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**State Of California**  
**Agricultural Labor Relations Board**  
**PROOF OF SERVICE BY MAIL**  
(8 Cal.Code Regs. Sec. 20164)

I am a citizen of the United States and employed in the County of Sacramento. I am over the age of eighteen years and not a party to the within entitled action. My business address is: 1325 J Street, Suite 1900 Sacramento CA 95814.

On May 8, 2017, I served the within **GENERAL COUNSEL'S OPPOSITION TO GERAWAN FARMING INC.'S MOTION TO DISQUALIFY BOARD MEMBER ISADORE HALL III**. Case Nos. 2012-CE-041-VIS, 2013-CE-007, and 2013-CE-010-VIS on the parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Sacramento, California, addressed as follows:

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Executed on May 8, 2017, at Sacramento, California, I declare under penalty of perjury that the foregoing is true and correct.

  
\_\_\_\_\_  
AUDREY HSIA