At a IAS Term of the Albany County Supreme Court, held in and for the County of Albany, in the City of Albany, New York, on the 31 day of January, 2018.

PRESENT: HON. RICHARD J. MCNALLY, JR.
JUSTICE

STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

CRISPIN HERNANDEZ, WORKERS' CENTER OF CENTRAL NEW YORK, and WORKER JUSTICE CENTER OF NEW YORK,

Plaintiffs,

-against-

DECISION AND ORDER
Index No.: 2143-16

THE STATE OF NEW YORK and GOVERNOR ANDREW CUOMO, in his official capacity,

Defendants.

NEW YORK FARM BUREAU, INC.,

Intervenor-Defendant.

APPEARANCES: NEW YORK CIVIL LIBERTIES UNION FOUNDATION
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MCNALLY, J.

The New York Farm Bureau ("Farm Bureau") moves for an order dismissing the complaint pursuant to CPLR 3211(a)(7) alleging the plaintiffs have failed to state a cause of action. The plaintiffs and the defendants, State of New York and Governor Andrew Cuomo ("State") oppose the motion to dismiss and maintain the farm worker exclusion of the New York State Labor Relations Act is unconstitutional.

In 1935, the National Labor Relations Act ("NLRA"), also known as the Wagner Act, was enacted by Congress and granted private sector employees the right to organize and collectively bargain for improved working conditions. Agricultural workers were excluded from the provisions of the Wagner Act. In 1937, the New York State Labor Relations Act ("SLRA") was enacted which provided for collective bargaining for employees in the private sector. A farm laborer exemption was created pursuant to SLRA § 701.30. The Farm Bureau claims the SLRA mirrors the agricultural exemption embodied in the NLRA to protect family farms from the burdens of collective bargaining. The Farm Bureau contends Congress was reluctant to extend collective bargaining rights to farm laborers due to "the unique challenges of farming, including the seasonal nature of farm labor and the perishability of crops." Challenges to the SLRA farm labor exemption have been introduced in the New York State Legislature for many years without success. In 1991, the SLRA was subsequently renamed the New York State Employment Relations Act ("SERA").

On May 10, 2016, the plaintiffs commenced this action seeking a declaratory judgment finding that the exclusion of farm workers from the protections of SERA violates farm workers' rights to organize and collectively bargain. The plaintiffs maintain this exemption denies farm workers their equal protection and due process rights and is unconstitutional pursuant to Article 1, Section 17 of the New York State Constitution. Article 1, Section 17 grants employees "the right to organize and to bargain collectively".

The State defendants have failed to answer the complaint and have expressed their support of the relief sought by the plaintiffs. In an Order dated October 14, 2016, this Court granted the Farm Bureau's motion to intervene pursuant to CPLR § 1013. The Farm Bureau now seeks to dismiss the complaint for failure to state a cause of action pursuant to CPLR § 3211(a)(7).

The Farm Bureau alleges collective bargaining would create a disproportionate hardship for farmers due to the seasonality of their labor forces, the perishability of their products and the low prices farmers receive for their goods. The Farm Bureau alleges the plaintiffs are attempting to bypass the legislative process by commencing this action and alleging violations of the State Constitution. The Farm Bureau claims all legislative attempts to repeal the statutory farm laborer exemption over the past twenty years have failed. The Farm Bureau maintains proposed legislation repealing the exemption is currently pending before the New York State Legislature. The Farm Bureau contends the Legislature's decision to maintain the exemption has a rational basis and is not discriminatory. The Farm Bureau alleges Section 17 of the Constitution was not intended to invalidate existing legislation because the statute did not extend collective bargaining rights to all categories of employees. The Farm Bureau contends the plaintiffs seek to revise the SERA exemption despite the Legislature's objection. In addition, the Farm Bureau maintains plaintiffs and the State have politicized this issue.

Plaintiffs contend the SERA exclusion of farm workers is subject to heightened review and scrutiny as it was enacted for discriminatory purposes. Plaintiffs allege the NLRA and SERA were enacted to preclude blacks from the progressive labor reforms of the New Deal and to appease Southern Democrats. Plaintiffs argue the exemption of farm workers from collective bargaining was racially motivated. Plaintiffs claim the agricultural industry has changed since the 1930's as a result of mechanization and consolidation of farms and no longer need special protections. The plaintiffs contend farm workers "often lack lawful immigration status and

cannot vote, speak little or no English, live in isolation on their employer's land, and are predominantly racial and ethnic minorities from out of State." Plaintiffs and the State defendants allege the SERA farm worker exclusion violates equal protection of the law as the farm workers are a vulnerable class of workers.

The State defendants oppose the motion to dismiss the complaint and maintain SERA's exemption of farm workers from coverage impairs the fundamental rights of farm workers to organize. The State "agrees with the plaintiff herein that the exclusion of farm workers from the protections of SERA violates the right to equal protection guaranteed by the New York State Constitution." The State claims history and tradition demonstrates the fundamental right to organize and bargain collectively for all employees. The State contends farm workers have no means to exert their constitutional rights and are vulnerable to interference or retaliation if they attempt to exercise that right. The State claims the exemption is overly broad as the size of farms have changed and no compelling government interest has been demonstrated.

The respondents move to dismiss the complaint for failure to state a cause of action pursuant to CPLR § 3211(a)(7). In response to a motion pursuant to CPLR§ 3211, the pleadings shall be liberally construed, the facts alleged accepted as true, and every possible favorable inference given to plaintiff (*Leon v Martinez*, 84 NY2d 83 [1994]). On such a motion, the court is limited to examining the pleading to determine whether it states a cause of action (*Guggenheimer v Ginzburg*, 43 NY2d 268 [1977]). A motion to dismiss pursuant to CPLR § 3211(a)(7) will fail if, taking all facts alleged as true and according them every possible inference favorable to the plaintiff, the complaint states in some recognizable form any cause of action known to our law (*AG Capital Funding Partners. L.P. v State St. Bank and Trust Co.*, 5 NY3d 582 [2005]). The Court's sole inquiry is whether the facts alleged in the complaint fit within any cognizable legal theory (*Mazzoi v Kyriacou*, 98 AD3d 1088 [2d Dept 2012]). Whether the petition/complaint will later survive a motion for summary judgment, or whether the plaintiffs

will ultimately be able to prove their claims, plays no part in the determination of the motion to dismiss (*EBC I, Inc. v Goldman, Sachs & Co.*, 5 NY3d 11 [2005]).

In 1937, the State Legislature enacted the SLRA which mirrored the 1935 federal NLRA. The purpose of the legislation was to grant employees "the right of self-organization, to form, join or assist labor organizations, [and] to bargain collectively through representatives of their own choosing . . ." (*see*, Labor Law § 703). The statute defined the term "employees" who would be covered by the SLRA. Exceptions were created for certain employees like domestics or caregivers of children or the elderly. The statute also created an exception for "any individuals employed as farm laborers" (*see,* Labor Law § 701(3)).

"The primary consideration of the courts in the construction of statutes is to ascertain and give effect to the intention of the Legislature" (*see*, Statutes § 92). A Court's objective in construing a statute is to discern and apply the will of the Legislature, not the Court's own perception of what might be equitable (*Matter of Perry v Novello*, 99 NY2d 180 [2002]; *Matter of Sutka v Conners*, 73 NY2d 395 [1989]). A statute should be "read and given effect as it is written by the Legislature, not as the Court may think it should or would have been written if the Legislature had envisaged all the problems and complications which might arise" (*Parochial Bus Systems v Board of Education*, 60 NY2d 539 [1983]).

Article 1, Section 17 of the New York State Constitution provides in relevant part: "Employees shall have the right to organize and to bargain collectively through representatives of their own choosing." The Constitution does not define the term "employees". Labor Law § 701(3) defines the term employees and details those employees who are exempt. Article 1 Section 17 did not create new bargaining rights for those employees who were expressly excluded by the NLRA or the SERA (*McGovern v Local 456, Int'l Bhd. of Teamsters, Chauffeurs & Warehousemen & Helpers of* Am., 107 F. Supp2d 311 [SDNY 2000]; *Trustees of Columbia Univ. v Herzog*, 269 AD 24 [1st Dept 1945]). In addition, the plaintiffs and the State

have failed to demonstrate that the NLRA and SERA exclusions violate the equal protection clause (*Railway Mail Assn. v Corsi*, 293 NY 315 [1944], *affirmed* 326 U.S. 88 [1945]). The Court finds the exclusion in the SERA mirrored the NLRA and the Legislature carved out an agriculture exception for farm workers (*Committee of Interns & Residents v New York State Labor Relations Board,* 420 F. Supp. 826 [SDNY 1976]). As a result, farm laborer employees are excluded from the provisions of the Labor Law and any challenges thereto must be dismissed. (*O'Reilly v Cahill*, 28 AD2d 527 [1st Dept 1967]). In addition, the plaintiffs and the State have not demonstrated that the Labor Law statues are racially discriminatory or that farm workers are a suspect class entitled to constitutional protections.

Any changes to the SERA should emanate with the New York State Legislature as "the legislative power of this state shall be vested in the senate and the assembly" (NY Const. Article III, Section 1; *Clark v Cuomo*, 66 NY2d 185, 189 [1985]). The separation of powers "requires that the Legislature make the critical policy decisions, while the executive branch's responsibility is to implement those policies" (*Saratoga County Chamber of Commerce v Pataki*, 100 NY2d 801 [2003]).

The Court has reviewed the parties remaining contentions and concludes they either lack merit or are unpersuasive given the Court's determination (*Hubbard v County of Madison*, 71 AD3d 1313 [3d Dept 2010]).

Accordingly, the motion to dismiss the complaint is granted.

This shall constitute the Decision and Order of the Court. This Decision and Order is being returned to the attorneys for the Farm Bureau. The signing of this Decision, Order and Judgment shall not constitute entry or filing under CPLR 2220. All original supporting documentation is being filed with the Albany County Clerk's Office. Counsel are not relieved

from the applicable provisions of that rule relating to filing, entry, and notice of entry.

SO ORDERED AND ADJUDGED.

ENTER.

Dated: January 31st, 2018
Albany, New York

RICHARD J. MCNALLY, JR.
Supreme Court Justice

Papers Considered:

1. Notice of Motion dated November 11, 2016; Affirmation of Brian J. Butler, Esq. dated November 11, 2016 with annexed Exhibits A & B and 1-4; Memorandum of Law dated November 11, 2016;

2. Plaintiffs' Memorandum of Law dated January 13, 2017;

3. Defendants' Memorandum of Law dated January 13, 2017;

4. Reply Memorandum of Law dated February 23, 2017;

5. Amicus Curiae Brief of Columbia Law School Human Rights Clinic dated January 20, 2017;

6. Amicus Curiae Brief of Pacific Legal Foundation dated January 26, 2017.