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ALRB PUBLIC MEETING LITIGATION REPORT

DATE: June 23, 2020
TO: Agricultural Labor Relations Board
FROM: Todd M. Ratshin, Chief Board Counsel

This report discusses updates and developments that have occurred in litigation matters involving the Board since its January 30, 2019 meeting.

Petitions for Writ of Review of Unfair Labor Practice Decisions

California Supreme Court

- ▶ ***Premiere Raspberries, LLC v. ALRB*, California Supreme Court [Case No. S259773](#) [Sixth District Court of Appeal, [Case No. H046223](#)]**

Summary: Petition for review of the appellate court's order denying review of the Board's decision in 44 ALRB No. 9, in which the Board awarded bargaining makewhole relief for the employer's refusal to bargain with the United Farm Workers of America.

Status: The appellate court issued an order on December 17, 2019, denying Premiere's petition for writ of review. Premiere filed a petition for review in the California Supreme Court on December 23, 2019. The Court issued an order denying review on January 2, 2020. This litigation now is final.

California Appellate Courts

- ▶ ***Wonderful Orchards, LLC v. ALRB*, Fifth District Court of Appeal, [Case No. F081172](#)**

Summary: Petition for writ of review of the Board's decision in 46 ALRB No. 2, in which the Board found the employer unlawfully terminated a group of employees for engaging in protected concerted activity.

Status: Wonderful filed its petition for writ of review on May 21, 2020. The court issued a notice to the Board on May 28 directing the Board to prepare and file the certified record by June 8. On June 3, the court granted a request by the Board for a two-week extension of time to file the certified record. The Board filed the certified record on June 12.

Wonderful's opening brief is due 35 days after the certified record is filed (July 17). The Board's respondent's brief will be due 35 days after the opening brief is filed, and Wonderful's reply brief will be due 25 days thereafter.

► ***United Farm Workers of America v. ALRB, Fifth District Court of Appeal, [Case No. F080469](#)***

Summary: Petition for writ of review of the Board's decisions in 45 ALRB Nos. 8 and 4, in which the Board found the United Farm Workers of America unlawfully threatened to picket Gerawan Farming, Inc. if it did not recognize and bargain with the union, which had been decertified as the employees' bargaining representative in the Board's decision in 44 ALRB No. 10.

Status: The UFW filed a petition for writ of review on December 23, 2019. On January 21, 2020, the court ordered the Board to prepare and file the certified record. The Board filed the certified record on January 31, 2020. After several extensions of time granted by the court, the UFW's opening brief now is due July 6, 2020. The Board's respondent's brief will be due 35 days after the opening brief is filed, and the UFW's reply brief will be due 25 days thereafter.

► ***P & M Vanderpoel Dairy v. ALRB, Fifth District Court of Appeal, [Case No. F077513](#)***

Summary: Petition for writ of review of the Board's decision in 44 ALRB No. 4, involving an award of backpay to an unlawfully terminated employee.

Status: The court issued a writ of review on September 19, 2018. The court heard oral argument from the parties on April 22, 2020. On May 8, the court issued an unpublished opinion affirming the Board's decision. The opinion became final on June 7, and any petition for review in the California Supreme Court was due June 17. No such petition was filed, and the Board now is awaiting issuance of the appellate court's remittitur.

► ***Gerawan Farming, Inc., Fifth District Court of Appeal, [Case No. F077033](#)***

Summary: Petition for writ of review of the Board's decision in 44 ALRB No. 1, in which the Board found that Gerawan committed unfair labor practices by engaging in surface bargaining with the United Farm Workers of America and by insisting on the exclusion of workers employed by farm labor contractors from the terms of a collective bargaining agreement.

Status: On January 13, 2020, the court issued a letter requesting supplemental briefing from the parties regarding whether the UFW's decertification has any effect on the issues in this case. Gerawan filed its letter brief on January 23. The Board and UFW each filed responsive letter briefs on February 3. Gerawan did not file a reply. On March 13, the court issued an oral argument waiver notice, and all parties filed requests for oral argument on March 18. On May 6, the court issued a scheduling order notifying the parties the matter was set for oral argument on June 16, 2020, at 1:30 p.m. The court heard oral arguments on June 16, and the case was submitted. The parties now are awaiting issuance of the court's opinion.

Mandatory Mediation and Conciliation Litigation

California Supreme Court

- ▶ ***Premiere Raspberries, LLC v. ALRB*, California Supreme Court [Case No. S259772](#) [Sixth District Court of Appeal, [Case No. H046221](#)]**

Summary: Petition for review of the appellate court's order denying review of the Board's decision in 44 ALRB No. 8, in which the Board ordered a collective bargaining agreement determined through mandatory mediation and conciliation into effect.

Status: The appellate court issued an order on December 17, 2019, denying Premiere's petition for writ of review. Premiere filed a petition for review in the California Supreme Court on December 23, 2019. The Court issued an order denying review on January 2, 2020. This litigation now is final.

- ▶ ***Gerawan Farming, Inc. v. ALRB*, California Supreme Court, [Case No. S258961](#) [Fifth District Court of Appeal, [Case No. F076148](#) (Consolidated with *Lupe Garcia v. ALRB*, Fifth District Court of Appeal, Case No. F076150)]**

Summary: Petition for review from appellate court opinion holding there is no constitutional right of access to mandatory mediation and conciliation proceedings under the Agricultural Labor Relations Act.

Status: On July 19, 2019, the appellate court issued a letter to the parties requesting briefing on whether the decertification of the United Farm Workers of America as the exclusive representative of Gerawan's agricultural employees had any effect on the issues in this case. Gerawan and Garcia filed a joint letter brief on July 30, and the Board filed its letter brief on August 2. The appellate court heard oral arguments on September 17, 2019, and issued an opinion certified for publication on September 24, 2019. (*Gerawan Farming, Inc. v. ALRB* (2019) 40 Cal.App.5th 241.) The court concluded Gerawan lacked standing in this litigation, and dismissed its claims. On the merits of Garcia's access claims, the court held there is no constitutional right of public access to MMC proceedings. The opinion became final on October 24, 2019. Both Gerawan and Garcia filed petitions for review in the California Supreme Court on November 4, 2019. The Board filed an answer to the petitions for review on November 22. Gerawan and Garcia filed a joint reply brief on December 2. On January 2, 2020, the Court extended its time for granting or denying review to January 31. On January 15, the Court issued an order denying the petitions for review. The appellate court issued its remittitur on January 16, and this litigation now is final.

Other Board Litigation

United States Court of Appeals

- ▶ ***Cedar Point Nursery and Fowler Packing Co. v. Shiroma, et al.*, U.S. Court of Appeals, Ninth Circuit, Case No. 16-16321**

Summary: Complaint for injunctive and declaratory relief seeking an order to overturn the Board's access regulation (Cal. Code Regs., tit. 8, § 20900) on constitutional grounds under

the Fourth and Fifth Amendments. Plaintiff growers appeal from the district court's order dismissing their constitutional claims.

Status: The appellate court issued an opinion on May 8, 2019, rejecting the growers' constitutional claims. (*Cedar Point Nursery v. Shiroma* (9th Cir. 2019) 923 F.3d 524.) The growers filed a petition for rehearing en banc on June 21, 2019, and the California Farm Bureau Federation filed an amicus brief in support of the petition on July 8. On July 15, the court issued an order directing the Board to file a response to the petition. The Board filed its response on September 4. On April 29, 2020, the court issued an order denying the petition for rehearing en banc. (*Cedar Point Nursery v. Shiroma* (9th Cir. 2020) 956 F.3d 1152.) The deadline to file a petition for writ of certiorari in the United States Supreme Court is July 28, 2020.

California Appellate Courts

► ***Gerawan Farming, Inc. v. ALRB*, Fifth District Court of Appeal, [Case No. F074423](#)**

Summary: Petition for writ of mandate to compel Board to reverse an administrative law judge's ruling revoking subpoenas served by Gerawan in an unfair labor practice proceeding. Gerawan appeals the superior court's judgment dismissing the case after sustaining a demurrer filed by the Board without leave to amend.

Status: On February 6, 2019, the court issued an unpublished opinion granting the Board's motion to dismiss the appeal as moot. The deadline for a petition for review to be filed in the California Supreme Court was March 18, 2019, and no petition was filed. The court issued its remittitur on April 8, 2019, and the litigation is complete.