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ALRB PUBLIC MEETING LITIGATION REPORT

DATE: October 13, 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 August 11, 2020 meeting.

Petitions for Writ of Review of Unfair Labor Practice Decisions

California Supreme Court

► ***Gerawan Farming, Inc. v. ALRB*, California Supreme Court, [Case No. S264099](#)**

Summary: Petition for review of the appellate court's opinion affirming 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. (*Gerawan Farming, Inc. v. ALRB* (2020) 52 Cal.App.5th 141.)

Status: Gerawan filed a petition for review in the California Supreme Court on August 24. The Board filed its answer on September 14. Gerawan filed its reply on September 23. The deadline for the Court to order review is October 23.

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: On August 12, the parties filed a stipulation to extend the time for filing the Board's respondent's brief and Wonderful's reply brief, which the Court granted the same day. Per

the stipulation, the Board filed its respondent's brief on September 21. Wonderful's reply brief is due November 16.

► ***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 Board filed its respondent's brief on October 9, and Gerawan filed its brief in opposition to the petition that same day. The UFW's reply brief is due November 3.

Other Board Litigation

United States Supreme Court

► ***Cedar Point Nursery and Fowler Packing Co., Inc. v. Hassid, et al.*, U.S. Supreme Court, [Case No. 20-107](#)**

Summary: The growers seek review of the Ninth Circuit's opinion rejecting their argument the Board's access regulation (Cal. Code Regs., tit. 8, § 20900) violates the Fifth Amendment's Takings Clause. (*Cedar Point Nursery v. Shiroma* (9th Cir. 2019) 923 F.3d 524; see also *Cedar Point Nursery v. Shiroma* (9th Cir. 2020) 956 F.3d 1152 [order denying petition for rehearing en banc].)

Status: The growers filed a petition for writ of certiorari in the United States Supreme Court on July 29, 2020. On August 18, the Board filed a request for an extension of time to respond to the petition from September 2 to October 2, which the Court granted on August 19. Amicus briefs in support of the petition have been filed by the California Farm Bureau Federation (Aug. 27); Pelican Institute for Public Policy (Aug. 31); Mountain States Legal Foundation (Sept. 2); The Cato Institute and the National Federation of Independent Business Small Business Legal Center (Sept. 2); Institute for Justice (Sept. 2); American Farm Bureau Federation (Sept. 2); Southeastern Legal Foundation (Sept. 2); and the States of Oklahoma, Arizona, Arkansas, Kentucky, Missouri, Nebraska, and Texas (Sept. 2). The Board filed its response to the petition on October 2.