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ALRB PUBLIC MEETING LITIGATION REPORT

DATE: December 8, 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 October 13, 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: The Court issued an order on October 14 extending the time to grant or deny review to November 20. On October 28, the Court issued an order denying the petition. The appellate court issued its remittitur to the Board on October 30. This litigation now is final.

California Appellate Courts

► ***Smith Packing, Inc. v. ALRB*, Second District Court of Appeal, [Case No. B308102](#)**

Summary: Petition for writ of review of the Board's decision in 46 ALRB No. 3, in which the Board found the employer unlawfully terminated a group of employees for engaging in concerted protected activity.

Status: Smith Packing filed its petition for writ of review on October 14. The Board filed the certified record on October 26. On November 25, Smith Packing filed an application for an extension of time to file its opening brief from November 30, 2020, to January 14,

2021, which the court granted on December 2. The Board's respondent's brief will be due 35 days after Smith Packing's opening brief is filed.

► ***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 reply brief on November 16. On December 1, the court issued a writ of review. The matter now is pending scheduling of oral argument.

► ***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 its reply to the Board's and Gerawan's opposition briefs on November 4. Also on November 4, the court issued an order granting the Board's motion to file the supplemental brief and providing the UFW 20 days to respond. On November 24, Gerawan filed a motion for leave to respond to the ALRB's supplemental brief and an accompanying response. The court issued an order on November 25 deferring ruling on Gerawan's motion pending consideration of the merits of the UFW's petition. On December 1, the court issued a writ of review. The case now is pending scheduling of oral argument.

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 reply to the Board's opposition brief on October 15. On October 21 the case was distributed for conference on November 6. The matter was re-listed for the November 13 conference. On November 13, the Court issued an order granting certiorari. On November 24, petitioners filed a motion to dispense with the requirement of a joint appendix, which was granted by the Court on December 7. On December 2, petitioners filed a blanket consent to the filing of amicus briefs. Petitioners' opening brief on the merits is due no later than December 28, and respondents' brief on the merits is due

30 days after the opening brief is filed. Amicus briefs are due 7 days after the brief for the party whom the amicus supports. The matter is tentatively scheduled for oral argument on the Court's February argument calendar (Feb. 22-24 or Mar. 1-3, 2021).