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ALRB PUBLIC MEETING LITIGATION REPORT

DATE: April 13, 2021
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 February 9, 2021 meeting.

Petitions for Writ of Review of Unfair Labor Practice Decisions

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: The Board filed its respondent's brief on February 18. On March 8, petitioner filed an application for a two-week extension of time to file its reply brief, which the court granted on March 9. Petitioner filed its reply brief on March 29. This case now is fully briefed and pending issuance of an order dismissing the petition or issuing a writ of review.

► ***California Artichoke and Vegetable Growers Corp. dba Ocean Mist Farms v. ALRB, Sixth District Court of Appeal, [Case No. H048797](#)***

Summary: Petition for writ of review of the Board's decision in 46 ALRB No. 5, in which the Board found the employer unlawfully suspended a group of employees for engaging in protected concerted activity.

Status: The Board filed the certified record on March 8. Petitioner's opening brief is due April 12. The Board's respondent's brief is due May 17.

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: After the Board filed its opposition brief on February 5, amicus briefs in support of the Board were filed by: National Employment Law Program, et al. (Feb. 10); Property Law Professors (Feb. 11); UFCW Western States Council and Teamsters Joint Council 7 (Feb. 11); Legal Historians (Feb. 12); U.S. Senators Whitehouse, Merkley, Blumenthal, Booker, and Padilla (Feb. 12); Constitutional Accountability Center (Feb. 12); International Lawyers Assisting Workers Network, et al. (Feb. 12); Virginia, Colorado, Connecticut, Delaware, D.C., Hawaii, Illinois, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont, and Washington (Feb. 12); AFL-CIO (Feb. 12); SEIU (Feb. 12); Local Governments (Feb. 12); UFW (Feb. 12); and California Rural Legal Assistance, Inc., et al. (Feb. 12). Also, on February 12 the United States filed a letter with the Court reversing its prior position in favor of petitioners and asserting the Board’s regulation does not constitute a per se taking. Petitioners’ reply brief was filed March 8. The Court heard oral arguments on March 22, and the case now is pending issuance of an opinion.