



September 12, 2018

CONTACT: David Schwarz
(310) 277-1010 and DSchwarz@irell.com

Gerawan Applauds the California Supreme Court's Decision to Affirm the Right of Farmworkers to Have Their Votes Counted

Fresno, CA — The California Supreme Court today unanimously rejected a bid by the United Farm Workers of America (UFW) and the California Agricultural Labor Relations Board (ALRB) to overturn a court order [directing the ALRB to count the ballots](#) in one of the largest decertification elections in California agricultural labor history.

The UFW won an election at Gerawan in 1990. In 1995, the UFW inexplicably disappeared without attempting to bargain for a contract. [After returning in 2012](#), the UFW demanded that the ALRB impose a contract that would require Gerawan farmworkers to pay the UFW to keep their jobs. The decertification election was held on November 5, 2013, [after a majority of Gerawan farmworkers](#) asked to decide whether to oust the UFW as their bargaining representative.

At the request of the UFW, the ALRB refused to count the ballots, concluding that it is “impossible to know” whether the workers’ request for an election represented their “true sentiments” when it came time to vote.

On May 30, 2018, the California Court of Appeal in Fresno reversed the Board, and directed it to count the ballots. “Unfortunately,” the court said, “the Board was apparently so zealous to punish this employer, it lost sight of the importance of the election itself” and “unnecessarily disenfranchised the workers without any meaningful consideration of whether the employer’s conduct reasonably impacted the worker’s freedom of choice in the election.”

Continued...

The UFW and the ALRB asked the California Supreme Court to reverse this decision, claiming that the court lacked the power to “interfere” with the ALRB’s oversight of elections. “Today’s decision reaffirms the fundamental principle that open and transparent government is an essential check against the arbitrary exercise of official power,” said David A. Schwarz, counsel for Gerawan.

Dan Gerawan, co-owner of Gerawan Farming, applauded today’s decision: “Our family has consistently maintained that we will honor the results of the election, once we know the election results. We hope that the ALRB will finally do the same, and immediately count the ballots.”

###

Excerpts from the [court decision](#) the ALRB and UFW wanted the California Supreme Court to overturn:

- “Contrary to the Board’s heavy-handed approach to this issue, it has long been recognized that although the state has power to regulate unions and labor relations, it must not trespass upon the domains set apart for free speech and free assembly’ in how it applies such laws.” (p. 81)
- “[T]he Board sought to justify its result with the perplexing statement that ‘it is impossible to know whether the signatures gathered in support of the decertification petition represented the workers’ true sentiments.’ The . . . Board’s inability to divine the employees’ subjective motives for signing the petition is not a basis to either strike the petition or nullify the election.” (p. 131, n. 120).
- “We find the Board’s secretive approach troubling, especially in light of the fundamental principle that open and transparent government are an essential check against the arbitrary exercise of official power.” (p. 110, n. 106)
- “In view of these serious concerns that may arise where (as here) the Board refuses to tally election ballots, we call upon the Legislature to consider whether legislative action is needed to prevent such occurrences in future cases.” (p. 110, n. 106)
- “[W]e are convinced that the [Board’s] approach is fatally inconsistent with the ALRA because it fails to accord sufficient value, weight and importance to the employees’ fundamental right to choose via secret ballot election. Indeed, it virtually ignores that right.” (p. 123)