

Gerawan case bringing a quiet revolution in California labor law

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Californians have become accustomed to slow-moving problems. Think of the long-brewing pension crisis, the intractable drought or the disappointing second-year performance of Covered California, just to name a few.

But a breakthrough could be around the bend in one of the state's longest-running political battles.

Surprisingly enough, the drama is playing out in a realm where conflict isn't supposed to happen at all. On one side is Gerawan Farms, an established Central Valley operation that's the nation's largest grower of peaches. On the other is the state Agricultural Labor Relations Board. Back in 1992, United Farm Workers secured the right to represent Gerawan's workers. But after negotiations fizzled, UFW went AWOL – and watched its membership rolls plummet.

Three years ago, UFW came roaring back, touching off a bizarre sequence of contentious events that drew in the ALRB and caused Gerawan employees to protest against the UFW's sudden effort to unionize them. In 2013, workers even held a vote to formally decertify UFW.

The ALRB was originally created to supply a steady hand amid labor disputes. But rather than guiding the process to an orderly conclusion, the ALRB threw the employees' votes in a lockbox and allowed an arbitrator to impose a union contract on Gerawan.

That's when a group of workers filed federal suit. One would think that the ALRB would consider setting a more reasonable, prudent course. Instead, it doubled down. Some ALRB staffers, unwilling to accept that non-union employees could really prefer working that way, racked up an eye-popping tab putting the screws to Gerawan. According to a recent analysis by MB Public Affairs, the ALRB will have spent some \$7.5 million in public money on Gerawan cases by the end of June. Put another way, keeping those decertification ballots under impound has cost about \$2,800 per vote.

All told, the ALRB has swelled its staff and its spending to a point where roughly 40 percent of its budget is allocated toward beating Gerawan and its employees. Part of the problem is that UFW's central claim – tampering and intimidation during the decertification process – is so hard to prove. But the bigger problem is that the ALRB has allowed itself to be drawn into scandal by becoming an enforcer for UFW.

The ALRB's general counsel, Sylvia Torres-Guillen, is at the center of the ideological shift. Although a state appeals court recently invalidated the provision ALRB used to impose a union contract on Gerawan, she set the ALRB on course to appeal.

Torres-Guillen has been adept at using the ALRB to pursue UFW's objectives. But her office has now been rocked by a whistleblower's revelations, conveyed directly to ALRB chairman William Gould IV. The whistleblower's allegations are damning – accusing Torres-Guillen and her staff of submitting “false or misleading sworn statements to the Board in order to get agency authorization to file enforcement proceedings against Gerawan,” according to the FlashReport website.

Although the whistleblower has taken care to protect his or her identity, we do know that he or she is a field investigator at ALRB's regional office in Visalia, ground zero for the battle against Gerawan. The office's director is one Silas Shawver, an attorney so sympathetic with UFW that a state superior court judge had to admonish him in 2013 for appearing “in cahoots” with the union. Because Shawver has enjoyed the protection of Torres-Guillen, however, his role has continued – making him an easy target for Gerawan

employees protesting ALRB this month. At a recent gathering outside Leland Stanford Mansion in Sacramento, one poster showed a photo of Shawver dressed in garb bearing UFW's distinctive logo.

It's Shawver who's at the center of an employee's claims that the ALRB, not Gerawan, did the intimidating during the 2013 decertification vote. According to their sworn statements, Shawver used his authority on voting day to isolate the ballots of about a third of the workforce – action taken at the behest of UFW, which claimed Gerawan had illegally packed its employees' crews with anti-union workers masquerading under the names of fired pro-union workers. UFW still hasn't furnished evidence backing up these serious claims, but Shawver chose to act without any.

Under Torres-Guillen's leadership, it has seemed all but certain that the ALRB would continue the fight against Gerawan indefinitely. But the whistleblower's surprise intervention has shaken up the case by introducing politics into the grinding legal battle. Gov. Jerry Brown, well known for his canny ability to outmaneuver fellow Democrats when he so chooses, appears to have decided that now is just such an occasion. Without warning, Brown has abruptly shifted the ALRB's general counsel, Sylvia Torres-Guillen, into his own office, giving her the role of special counsel.

Although Torres-Guillen is by no means an enemy of Brown, his action signals that he thinks it's in California's interest that he keep her as close as possible. Observers have picked up on the likely significance of the change, which jolts UFW's biggest ALRB supporters out of their protected power positions. On Twitter, the Sacramento Bee's Dan Walters called the move a "possible win" for Gerawan. Although the Fresno Bee cautioned that the impact remained "unclear," the paper noted the subtext: "Torres-Guillen has been sparring with the ALRB's new chairman ... who has wanted to take back some of the wide powers she had been granted previously."

The political machinations surrounding the ALRB are now poised to outpace the legal ones. By bringing Torres-Guillen's run to an end, Brown has cleared the way for new chairman William Gould to rein in the office of general counsel. That will inevitably shift power away from UFW's allies on ALRB staff, and quite possibly lead to further reassignments or personnel changes. Though it's hard to read Gould's mind, it's not difficult to imagine the chairman becoming increasingly reluctant to gamble two-fifths of the Board's budget on an undertaking as controversial – and perhaps tainted – as the case against Gerawan.

If Brown's reassignment of Torres-Guillen produces a likely domino effect against ALRB's UFW allies, a potent precedent will be set against compulsory unionization.

Even today, when it seems like litigation rules all, sometimes politicians can make a sweeping impact on the law just by moving a finger.