



NY Farmworkers Win Collective Bargaining Rights – Will Other States Follow Suit?

Insights

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In a groundbreaking decision, a New York state appeals panel just extended union organizing rights to farmworkers, perhaps setting the stage for other states to do the same. While farmworkers have traditionally been exempted from the National Labor Relations Act (NLRA) since the statute's inception, states can supplement the federal law by, for example, granting agricultural workers the rights to organize and bargain collectively. A split panel did just that with its May 23 decision, finding that the farmworker exclusion from the New York State Employee Relations Act (SERA), which was passed in 1937, violated the state constitution.

New York employers will now need to adjust to this new reality, while employers in other states should pay attention to this development in the event similar sweeping rights for farmworkers are put in place elsewhere.

Case Background And Current Legislative Efforts

In 2016, a group of farmworkers sued the state of New York alleging that SERA's exemption of farm labor from the definition of "employee" violated the state constitution – specifically a 1938 amendment guaranteeing "employees" the right to organize. The state refused to defend against the suit and the New York Farm Bureau intervened, winning at the trial court level.

The workers and the state, which was previously a defendant in the case, appealed. The appeals court overturned the lower court decision on the grounds that the drafters of the constitutional amendment failed to specifically incorporate SERA's definition of "employee."

Eliminating the farmworkers exemption is part of ongoing legislative efforts targeting New York's Ag growers and dairy farmers. In recent weeks, New York's Senate has held hearings regarding the Farmworkers Fair Labor Practices Act, which would also eliminate the exemption from collective bargaining, as well as extend overtime pay and other mandatory employee benefits to farmworkers.

What This Means For New York Farmers

If the opinion withstands appeal or related legislation is passed, farmworkers in the Empire State will enjoy the right to organize, bargain, and strike. Agricultural employers in New York should also beware that SERA protects employees' rights to engage in these organizing activities and to engage in organizing activity. This essentially means that employees cannot be retaliated against for acting in concert to improve their terms and conditions of employment.

Doing so can subject employers to unfair labor practice charges resulting in orders that employees be reinstated and paid backpay if they are found to have been wrongfully discharged. In fact, the lead plaintiff in the case decided last week alleged that he was fired from his job for trying to pursue better working conditions. Consequently, farmers and their supervisory employees will need to become well versed on their legal obligations in consultation with labor counsel.

Agricultural Exemptions Under Attack Elsewhere

These developments are indicative of a growing trend of states granting farmworkers' rights not otherwise available under federal law. Ten other states currently extend some form of organizing rights to farmworkers. Many, however, merely address the unique nature of farming, including limits on the right to strike during critical business periods and on union access to property and furnished housing.

For example, Arizona restricts the circumstances under which unions may call strikes, picket agricultural employers, or boycott products. In addition, it prohibits secondary boycotts (i.e., where a labor organization encourages those who process, transport, or otherwise handle an agricultural commodity after it has left the farm of origin to stop doing so) and organizational pickets (i.e., pickets or boycotts to force (1) an employer to recognize or bargain with a specific labor organization, or (2) an employer's employees to accept a particular labor organization). Kansas similarly bars lockouts, organizational pickets, and strikes during livestock marketing or critical production or harvesting periods.

As last week's court decision stands, no such limitations would exist in New York, and the Farmworkers Fair Labor Practices Act likewise contains no special protections for agricultural employers.

Conclusion

Agricultural employers face many uncertainties in their businesses including weather, unstable commodity pricing, foreign competition, and labor shortages. Increased state regulatory and court decisions that fail to fully consider the unique nature of the agricultural business can present additional challenges.

We will continue to monitor further developments and provide updates. In the meantime, please contact your Fisher Phillips attorney if you have any questions.

This Legal Alert provides an overview of a specific state court decision. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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Joshua H. Viau
Co-Regional Managing Partner
404.240.4269
[Email](#)

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