

# Rising expenses, accusations of bias confront state agency in Gerawan farm-labor conflict

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A long-running beef between [United Farm Workers](#) and Reedley-based [Gerawan Farming Inc.](#) is chewing up millions of dollars in taxpayer funds by the state agency tasked with investigating, prosecuting and refereeing such disputes to protect farm laborers.

Since 2011, when Sylvia Torres-Guillén was appointed by Gov. Jerry Brown as the general counsel for the [California Agricultural Labor Relations Board](#), the agency's budget has increased by almost 90%. Its growth has coincided with — and perhaps has been triggered by — efforts by UFW in 2012 to reassert its right to represent Gerawan's workers and attempts by some of the company's laborers to kick the union out.

Former ALRB General Counsel Sylvia Torres-Guillén. Juan Esparza Loera  
Vida en el Valle

The General Counsel's Office is responsible for investigating charges of unfair labor practices in disputes between farmworkers and growers, bringing complaints before the agency's administrative judges, and going to court if necessary to enforce farm-labor laws. It also oversees union representation elections — such as the one in 1992 in which workers at Gerawan voted for UFW to represent them in collective bargaining, and another in 2013 to decertify the union but for which the 2,600 ballots cast by workers have not been counted.



Torres-Guillén was [removed in June as ALRB general counsel by Brown](#), who named her to be a special counsel to him. The abrupt change happened several months after labor board members severely curtailed her authority to go to court to seek temporary restraining orders against alleged unfair labor practices. Her reassignment also followed the release in February of a [performance audit by the state Department of Finance](#) that found weaknesses in the agency's ability to account for how money was spent, to justify the agency's effectiveness, and expressed concern over the misuse by the General Counsel's Office of limited-term positions.

Gerawan and its supporters have leveled accusations that Torres-Guillén's office was tainted with a pro-UFW bias by attorneys with close ties or allegiance to the union. [Assembly Member Jim Patterson, R-Fresno](#), said he believes that is at least part of the reason why Brown moved her out of her ALRB chores. "I think the buzz turned into quite a bit of noise that I don't think the governor could ignore, and as a result he made some choices," Patterson said. "I thought that the removal of the general counsel...indicated that the governor is paying attention.

"But I don't think it's good enough to just move people around," Patterson added. "That movement has to result in something significant."

The agency maintains that it is unbiased in all of its dealings. "The Agricultural Labor Relations Act requires that all employees of the ALRB perform their duties in an objective and impartial manner without prejudice toward any party," said Mark Woo-Sam, who is the acting general counsel following Torres-Guillén's reassignment. "We take this requirement seriously."

## Ballooning budget

For several years in the mid- to late 2000s, the ALRB's staffing hovered between 30 and 40 employees with a budget that never topped \$6 million. But a 2013 surge in the number of unfair labor practice charges made by UFW against Gerawan and petitions from Gerawan workers for the decertification election prompted Torres-Guillén to ask for a significant increase in staff and budget to handle the growing caseload.

In a [March 2014 budget memo](#), Torres-Guillén sought to boost the budget by more than one-third, from just under \$6 million to more than \$8.1 million, adding four attorneys and one field examiner to the agency's staff. "These additional five positions will help the ALRB address an increased workload over the last two and a half years, the backlog of cases, and the significant workload caused by intense litigation in numerous complex cases involving one of California's largest growers, Gerawan Farming Inc.," she wrote. The additional money was approved in the state's 2014-15 budget.

This year, the agency asked for, and received, an additional 16% increase, boosting the total to almost \$9.5 million — more than double what it was before Torres-Guillén was named as general counsel. The number of authorized positions in the budget this year is equal to 63.5 full-time employees, compared to fewer than 33 before Torres-Guillén's tenure.

\$4,393,000

ALRB spending in 2010-11

32.9

Full-time equivalent positions for ALRB in 2010-11

\$9.457,000

ALRB budget for 2015-16

63.5

Full-time equivalent positions for ALRB in 2015-16

A good chunk of that is related to the UFW-Gerawan dispute, which has its roots in a 1992 election in which workers voted to be represented by the UFW in contract negotiations. Contract talks were never completed back then, however. After nearly two decades, UFW returned to Gerawan to reassert its right to represent workers, emboldened by a 2002 law making it easier to force farm employers into a "mandatory mediated contract" — essentially binding arbitration — when a grower and union cannot reach agreement on a deal.

In 2013, workers at Gerawan petitioned the ALRB for a new election to decertify the union, but the agency's Visalia-based regional director — Silas Shawver, an attorney under Torres-Guillén's auspices — rejected the petition because many signatures were ruled invalid. A second petition effort gathered enough signatures, but Shawver again stepped in, blocking the election because of allegations by the UFW of unfair labor practices by the company. The ALRB eventually overruled Shawver, ordering the election to be held but impounding the ballots while the alleged unfair labor practices were investigated.

"The representation election involved approximately 2,600 Gerawan farm workers and was one of the largest representation elections conducted in ALRB history," Torres-Guillén wrote in her 2014 budget memo. By early 2014, she added, "Gerawan has already consumed extensive ALRB resources, including 3,200 staff hours to conduct a representation election and to conduct preliminary investigations, and involves serious fraud and employer assistance issue as well as over 60 unfair labor practice charges."

The November 2013 election has been clouded by finger-pointing objections — 52 of them altogether — lodged by Gerawan farm worker Silvia Lopez, who petitioned for the election, as well as by the UFW and Gerawan Farming,

alleging misconduct affecting the results of the voting. After months of post-election investigations and hearings that wrapped up in May, an ALRB administrative judge is reviewing evidence and is expected to issue a decision “within a reasonable time, though no exact date can be provided,” said Paul Starkey, the agency’s acting executive secretary. Whether the votes in the election are counted will hinge upon that decision, which is likely to be appealed to the ALRB board and, potentially, appealed further in the state court system — a legal process that could take years.

Patterson, who serves on the Assembly’s budget committee, said he is concerned about the rapid inflation of the ALRB’s budget since 2011. “When bureaucracies get out of control, their budgets explode, and I think we’re seeing that happen here,” he said. “As a legislator and from my time as an executive as [Fresno’s] mayor, this kind of thing is not new to me.”

But the ALRB isn’t the only big spender in the fracas. In her 2014 budget memo, Torres-Guillén noted the threat of being outspent into submission by Gerawan. “The General Counsel faces well-funded opposing counsel in this case,” she said. “The General Counsel cannot and will not shut down the entire agency to litigate one case. If additional funding for positions is not approved, the General Counsel will not be able to move forward in litigating the Gerawan cases.”

Gerawan Farming chief Dan Gerawan did not want to discuss the case, but a spokesman for the company said “our legal fees are in the millions” with a legal team including Los Angeles law firm Irell & Manella. The company also hired a Sacramento public relations firm, MB Public Affairs Inc., to compile and distribute an analysis criticizing ALRB’s budget.

The company won a significant victory in May when the [5th District Court of Appeal ruled that the ALRB unlawfully imposed a “mandatory mediated contract”](#) on Gerawan, ruling that the law allowing the agency to unilaterally force a contract on the company was unconstitutional. The ALRB and UFW have petitioned the California Supreme Court to review the appellate decision.

## **Biased bureaucracy?**

Earlier this year, ALRB Board Chairman William B. Gould IV — who Brown appointed in early 2014 — and his two board colleagues [voted to curtail some of Torres-Guillén’s autonomy](#) by restricting some of the authority that had previously been delegated to the General Counsel’s Office.

Patterson said he was unimpressed by either the board’s new limitations or Brown’s move to relieve Torres-Guillén of her ALRB duties. “It is so obvious that there are deep-seated problems in the agency. This is a surface-level response. That they have to rein in a rogue member of the ALRB demonstrates how deep the problems are. It does at least represent some effort, although rather tepid, to hold the ALRB back.”

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Assembly Member Jim Patterson, R-Fresno

Neither Paul Starkey, who handles media inquiries for the board, nor Gould responded to an email from The Bee asking about:

- What circumstances triggered the board’s decision to limit the general counsel’s authority.
- Whether the board was concerned that Torres-Guillén or her staff had abused their discretion.
- Whether such concerns contributed to or influenced Torres-Guillén’s reassignment to the Governor’s Office.
- What Gould thinks about possible perceptions of bias or conflict of interest in the General Counsel’s Office.
- Whether the board authorized Torres-Guillén to petition the state Supreme Court to review the 5th District Court of

Appeal decision striking down the mandatory mediated contract imposed on Gerawan Farming. The appeal was filed June 23, one day before Brown announced Torres-Guillén's reassignment from the ALRB to his staff.

Torres-Guillén, in reply to email questions from The Bee, defended her staff and the budget increases for the agency.

We have at all times upheld and enforced the law in a fair and just manner.

Former ALRB General Counsel Sylvia Torres-Guillén

"We have at all times upheld and enforced the law in a fair and just manner," she said. "The additional funding was provided to ensure we had the resources necessary to enforce the law and fulfill our mission. I am very grateful to the governor for that support." Torres-Guillén added that there was no connection between her departure and the Gerawan/UFW controversy.

State Senate Agriculture Committee Chairwoman Sen. Cathleen Galgiani, D-Stockton, and Assembly Member Henry T. Perea, D-Fresno, who heads the Assembly's Agriculture Committee, could not be reached for comment on Torres-Guillén's departure from ALRB, inflation of the agency's budget as UFW ramped-up the volume of its complaints against Gerawan Farming, or perceptions of agency bias.

On at least one occasion, as attorneys for Gerawan are eager to point to, a Fresno County Superior Court judge has expressed doubt about the ALRB's impartiality in its dealings between UFW and Gerawan.

In an August 2013 hearing at which the ALRB sought a temporary restraining order against Gerawan, Judge Jeffrey Hamilton said he found it "troubling" that the agency asked for an order restraining the farming company but not the UFW. "The court is very suspect of ...the ALRB's position here," he said. "It almost seems like it's in cahoots....It seems like the ALRB is looking to curtail any comment or activity by Gerawan but not by the UFW." Hamilton ultimately did, however, agree to issue a temporary restraining order in that unfair labor practice case.

And in June, another Fresno County judge, Judge Donald Black, denied the ALRB's request for a temporary restraining order in another alleged unfair labor practice after grilling attorneys about the legal standards the agency must meet and questioning why their investigation into an employee's termination did not include a number of other workers who submitted declarations supporting the company's actions.

Fresno attorney Paul Bauer, representing Silvia Lopez — the Gerawan worker who led the petition effort for an election to decertify UFW — last week fired another salvo at the ALRB in a letter to Shawver. Bauer accused Shawver, a former labor union organizer, and other ALRB attorneys of having conflicts of interest because of their "tight-knit relationships" with UFW.

Shawver did not return a call from The Bee seeking comment on potential bias in the General Counsel's Office. But Woo-Sam, the acting general counsel, said the agency draws its employees from a range of sources, "including those previously employed by private businesses, organized labor, nonprofits and government."

UFW attorney Mario Martinez flatly denied that the ALRB has shown any bias in favor of the union. "Gerawan and other serial farm worker abusers attack as 'biased' any state agency that enforces the law," Martinez said in an email. "Silas Shawver does not have any ties to the UFW and there is no one within the ALRB who has shown bias to the UFW, unless you can define bias as proper enforcement of a law whose purpose...is to encourage and protect the right of farm workers to organize."

Martinez added that he believes Torres-Guillén's departure from the ALRB "has nothing to do with the agency's voluminous cases against Gerawan," and added that the change in general counsel "does not affect the agency's obligation to enforce the law."

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