

FIRST ANNUAL REPORT
OF THE
AGRICULTURAL LABOR
RELATIONS BOARD

FOR THE FISCAL YEARS
ENDED JUNE 30,

1976

and

JUNE 30,

1977

AGRICULTURAL LABOR RELATIONS BOARD

Members of the Board

GERALD A. BROWN, *Chairman*¹

ROBERT B. HUTCHINSON²

RICHARD JOHNSON, JR.³

HERBERT A. PERRY⁴

RONALD L. RUIZ⁵

RALPH FAUST, *Executive Secretary*⁶

ANN BAILEY, *Deputy Executive Secretary*⁷

CLARK BENNETT, *Chief of Administration*⁸

Office of the General Counsel

HARRY J. DELIZONNA, *General Counsel*⁹

DENNIS M. SULLIVAN, *Deputy General Counsel*¹⁰

FRED A. GALLEGOS

DENNIS M. SULLIVAN

*Chief of Operations*¹¹

*Chief of Litigation*¹²

¹ Appointed June 20, 1976, as Board member to succeed Leroy Chatfield, who resigned April 2, 1976, and as Chairman to succeed Roger Mahoney, who resigned as Chairman June 20, 1976.

² Appointed June 20, 1976, to succeed Joseph Ortega, who resigned January 30, 1976.

³ Resigned September 30, 1977.

⁴ Appointed April 25, 1977, to succeed Roger Mahoney, who resigned from the Board December 15, 1976.

⁵ Appointed June 20, 1976, to succeed Joseph Grodin, who resigned April 30, 1976.

⁶ Appointed February 16, 1977, to succeed Annie Gutierrez who resigned February 16, 1977.

⁷ Appointed June 23, 1977, to succeed Ralph Faust, who resigned February 16, 1977.

⁸ Appointed September 1, 1977, to succeed C. David Willis, who resigned August 5, 1977.

⁹ Appointed June 20, 1977, to succeed Walter Kintz, who resigned April 16, 1977.

¹⁰ Appointed May 27, 1977, to succeed Jettold Schaeffer, who resigned March 31, 1976.

¹¹ Appointed November 1, 1977, to succeed Maurice Jourdan, who was transferred February 21, 1977.

¹² Promoted to Deputy General Counsel May 27, 1977. Appointed Chief of Litigation on November 2, 1976, to succeed Robert LeProhn, who was transferred March 5, 1976.

LETTER OF TRANSMITTAL

AGRICULTURAL LABOR RELATIONS BOARD
Sacramento, California
January 24, 1978

As provided in section 1143 of the Agricultural Labor Relations Act of 1975, I submit herewith the First Annual Report of the Agricultural Labor Relations Board for the fiscal years ended June 30, 1976, and June 30, 1977, and a list containing the names, salaries, and duties of all employees and officers in the employ or under the supervision of the board.

GERALD A. BROWN, *Chairman*

THE GOVERNOR OF CALIFORNIA
THE LEGISLATURE OF THE STATE OF CALIFORNIA
Sacramento, California

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I

Introduction—The California Agricultural Labor Relations Act

A. Enactment And Purposes

The Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act of 1975 was signed into law by Governor Edmund G. Brown Jr., on June 5, 1975, and became effective on August 28, 1975. The legislation was enacted in order to set forth the policy of the State of California with regard to agricultural labor relations and to define the rights, powers and duties of agricultural employers and their employees and of labor organizations desiring to represent such employees.

The preamble and first sections of the Act define the state's policy concerning agricultural labor relations:

In enacting this legislation the people of the State of California seek to ensure peace in the agricultural fields by guaranteeing justice for all agricultural workers and stability in labor relations.

This enactment is intended to bring certainty and a sense of fair play to a presently unstable and potentially volatile condition in the state . . .¹

It is hereby stated to be the policy of the State of California to encourage and protect the right of agricultural employees to full freedom of association, self-organization, and designation of representatives of their own choosing, to negotiate the terms and conditions of their employment and to be free from the interference, restraint, or coercion of employers, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.²

¹ 1975 Cal. Stats. 3d Ex. Sess. ch. 1 § 1.

² CAL. LAB. CODE § 1140.2 (1975).

B. Provisions

1. The Board

The Agricultural Labor Relations Act (ALRA) provides for the creation of a five-member board appointed by the Governor with the advice and consent of the Senate (Cal. Lab. Code § 1141).³ Each board member serves for a five-year term and is eligible for reappointment.

The board is a quasi-judicial entity empowered to hold secret ballot representation elections, to investigate and adjudicate election misconduct charges, and to certify the results of the elections. The board is also authorized to investigate and adjudicate unfair labor practice charges against agricultural employers and labor organizations (§ 1142) and to promulgate rules and regulations necessary to carry out the provisions of the Act (§ 1144).

2. Rights of Agricultural Employees

Section 1152 of the Act states the fundamental rights of agricultural employees:

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

3. Unfair Labor Practices

The Act protects the rights of agricultural employees by prohibiting, as unfair labor practices, certain conduct by agricultural employers or labor organizations (§§ 1153-1154).

An employer may not:

- 1) interfere with, restrain or coerce agricultural employees in the exercise of their rights guaranteed in § 1152;
- 2) dominate, or interfere with, or contribute support to any labor organization;
- 3) discriminate in regard to the hiring, tenure, or any term or condition of employment in order to encourage or discourage membership in any labor organization;
- 4) discharge or otherwise discriminate against an agricultural employee because he or she has filed charges or given testimony under the Act;
- 5) refuse to bargain collectively in good faith with a labor organization certified under the Act as the duly chosen representative of employees;
- 6) recognize, bargain with, or enter into a collective bargaining agreement with any labor organization not certified pursuant to the Act;
- 7) enter into certain types of agreements with a labor organization whereby the employer agrees to cease doing business with any other person ("hot cargo" agreements);

³ References in parentheses are to Cal. Lab. Code unless otherwise indicated.

8) arrange to hire employees for the primary purpose of voting in an election under the Act;

9) pay anything of value to any agricultural labor organization for the purpose of influencing it in its representation of agricultural employees or pay anything of value to such employees to influence them in the exercise of their right to select a union to represent them.

A labor organization may not:

- 1) restrain or coerce agricultural employees in the exercise of their rights guaranteed in § 1152 or restrain or coerce an agricultural employer in the selection of its representative for the purpose of collective bargaining or the adjustment of grievances;
- 2) cause an agricultural employer to discriminate against an employee for reasons related to membership in a labor organization;
- 3) refuse to bargain collectively in good faith with an agricultural employer if the labor organization is the duly certified representative of the employees;
- 4) engage in specified types of conduct in the course of strikes, picketing, and secondary boycotts;
- 5) charge employees an excessive or discriminatory union membership fee;
- 6) cause an agricultural employer to pay anything of value for services which are not actually performed;
- 7) picket an employer to force it or its employees to recognize and accept the labor organization as the employees' collective bargaining representative if the union is not certified under the Act;
- 8) enter into certain types of agreements with an employer whereby an employer agrees to cease doing business with any other person ("hot cargo" agreements);
- 9) arrange to have employees hired for the primary purpose of voting in an election under the Act;
- 10) request or receive any payments by agricultural employers made for the purpose of influencing the labor organization's actions as a representative of agricultural employees.

4. Labor Representatives and Elections⁴

The election process is set in motion by the filing of a petition accompanied by the authorizing signatures of a majority of employees employed during the period when the employer is operating at at least fifty percent of its peak agricultural employment for the current year. (§ 1156.3.)

The Act provides for intervention in an election by a labor organization supported by at least twenty percent of the agricultural employees in the bargaining unit. There are also provisions for the post-election adjudication of objections to the representation petition, the scope of the bargaining unit and the conduct of the election or conduct affecting the results of the election. Runoff elections and decertifications of collective bargain-

⁴ A detailed summary of the board's regulations governing procedures for conducting representation elections is contained in Appendix A.

ing agents are also provided for in the Act. (§§ 1156-1157.)

5. Prevention of Unfair Labor Practices and Judicial Review and Enforcement⁵

When the board finds that an unfair labor practice has been or is being committed, it must issue a cease and desist order, and it has the authority to order such other relief as it finds appropriate, including reinstatement with or without backpay for discharged or demoted employees and make whole relief for loss of pay resulting from an employer's refusal to bargain. (§ 1160.3.)

The board has the power to petition the appropriate superior court for temporary relief or a restraining order after an unfair labor practice complaint issues and before the board renders a final decision on the unfair labor practice. (§ 1160.4.)

Orders of the board are not self-enforcing. To secure compliance, the board must petition the appropriate superior court to enforce the board's orders by injunction or other means. Although the statute has not yet been judicially interpreted, § 1160.8 appears to state that the board may seek enforcement of an order after thirty days from the date of issuance of the order if no person aggrieved by the order has sought review in the appropriate court of appeals during that time. If review is sought, the court of appeals has jurisdiction to grant the board temporary relief or a restraining order and to enter decrees enforcing, modifying or setting aside the board's order in whole or in part. (§ 1160.8.)

6. Suits Involving Employers and Labor Organizations

Section 1165 of the Act provides that agricultural employers or labor organizations may bring suits in appropriate superior courts for violations of collective bargaining agreements.

⁵ A detailed summary of the board's regulations governing the procedures for investigating and adjudicating unfair labor practice charges is contained in Appendix A.

II

The Structure of the Agricultural Labor Relations Board

A. The Board

The Agricultural Labor Relations Board (ALRB) consists of five members, appointed by the Governor for five-year terms; one of the board members is designated by the Governor to act as chairperson. The board's principal office is in Sacramento, but it may meet and exercise its powers anywhere in California. Any member may be removed from office by the Governor, upon notice and hearing, but only for neglect of duty or malfeasance in office. Each board member has a staff which includes legal counsel and secretarial personnel. (§§ 1141 and 1142). The powers and responsibilities of the board are described above.

B. The Executive Secretary

The executive secretary is appointed by the board pursuant to § 1145 of the Act and serves as its chief administrative and executive officer. The executive secretary also acts as professional consultant to the board on major legal and policy matters, plans and directs the management of the board's case load and serves as liaison to the general counsel. The person holding this position represents the board in appearances before the legislature and in conferences with unions, employers, and officials of other state agencies.

The executive secretary supervises a staff whose major responsibilities are the screening and hearing of election objections and the processing of all motions concerning representation cases. The office of the executive secretary is located in Sacramento. Its staff consists of the executive secretary, the deputy executive secretary and several staff units: a hearing unit, an election objections screening unit, a legal unit, a grower and union liaison unit, a language services unit and a clerical unit. Each of the attorneys who staff the office of the executive secretary performs duties in the hearing, legal, and election objections screening units.

The grower and union liaison unit is staffed by an information officer and assistants who provide information on the functioning of the agency in response to outside inquiries. The language services unit meets all the language interpretation needs of the board, which include arranging for document translations and hearing interpreters.

The clerical unit consists of six operations: hearing and calendaring—

which arranges for election objections hearings; docket and opinion control—which monitors the progress of cases that have been sent to the board for its opinion; legal service—which performs clerical functions for the legal staff; file control—which oversees the filing of all cases under the board's jurisdiction; the board secretary—who documents all communications sent to or received from the board; and the steno and typing pool.

C. The General Counsel

Pursuant to § 1149 of the Act, the general counsel of the ALRB is appointed by the Governor, subject to confirmation by a majority of the Senate, for a term of four years. The general counsel exercises general supervision over the officers, attorneys, field examiners, and clerical staffs in the agency's regional offices. The general counsel has the authority, on behalf of the board, to investigate unfair labor practice charges, to issue unfair labor practice complaints on such charges, and to prosecute such complaints before the board. It is also the general counsel's function to represent the board in court in actions brought against the board and in actions brought by the board to enforce its orders. The regional office staffs are responsible for conducting farmworker elections and investigating unfair labor practice charges.

The general counsel has final authority with respect to the issuance and prosecution of complaints. Once an unfair labor practice complaint issues, however, and the case is heard before an administrative law officer, the board makes the final decision whether an unfair labor practice was actually committed and determines the appropriate remedy. The dismissal of a petition for an election by a regional director and all disputes concerning representation matters may be appealed to the board.

1. Central Office

The central office of the general counsel is located in Sacramento and is staffed by the general counsel, the deputy general counsel, the chief of litigation, the chief of operations, a legal staff and a clerical staff.

The deputy general counsel assists the general counsel in planning, organizing, directing and reviewing the work of the staff. The deputy acts on behalf of the general counsel in his or her absence.

The chief of litigation plans, organizes and directs the litigation work of the legal staff, under the direction of the general counsel. This officer also directs the work of the representation, review, and administrative law staff units. The chief of litigation also acts as an advisor to the general counsel on litigation matters.

The chief of operations coordinates the policies, programs and operations of the regional offices. This officer assists the general counsel and deputy general counsel in formulating operating objectives and in implementing those objectives by assuring the effective functioning of the regional offices. The legal staff assists the chief of litigation by writing briefs, representing the board in court and doing other legal work related to board litigation.

2. Regional Offices

The ALRB is empowered by § 1142 of the Act to establish regional offices throughout California to carry out its duties. The board may delegate to the personnel of these offices the power to determine appropriate bargaining units, to investigate representation questions, to conduct representation elections and to investigate unfair labor practice charges.

Regional offices have been established in Sacramento, Salinas, Fresno and San Diego, and sub-regional offices have been established in Delano, Santa Maria, Oxnard, El Centro and Coachella. Sub-regional offices may be closed down during periods of inactivity in their areas or opened in new areas where increased agricultural labor activity occurs in the future.

Each regional or sub-regional office is staffed by a regional director or sub-regional director, legal counsel, field examiners ("board agents"), and a clerical staff. The responsibilities of regional directors are discussed in Appendix A on "Procedures." The regional legal counsel are primarily responsible for the litigation activities of the region; the board agents conduct the local representation elections and investigate local unfair labor practice charges.

D. Office of Administration

The office of administration is located in Sacramento; it provides full staff services to the agency. The administration consists of several units: personnel, management analysis, budgeting and accounting, and business services. There are also document reproduction and intermittent clerical pool services for the central Sacramento offices of the agency.

The chief of administration is responsible for supervising the activities of the agency's personnel office, advising the management level of the agency on administrative matters, and directing and supervising the budgeting operations of the agency. The assistant chief of administration supervises the accounting and business services offices, assists the staff in the interpretation of state policies and regulations and assists the chief of administration in developing policies and procedures and in preparing the agency's budget.

The personnel office is responsible for employer-employee relations within the agency, affirmative action in hiring, job classification and salary determinations, and counseling concerning all personnel problems. The personnel office also maintains all employee records and develops the agency's personnel policies. All of the agency's full-time employees are hired in conformity with California State Personnel Board rules. The personnel office of the agency conducts interviews and creates an eligibility list for each job classification; new employees are chosen from these lists.

The accounting office is responsible for recording all budgetary allotments, encumbrances and expenditures and for auditing and preparing documents regarding payments by the state controller. The accounting office also prepares reconciliations and reports required by management personnel within the agency and by outside control agencies. Other responsibilities include management of the agency's revolving fund and technical assistance to staff members regarding rules for expenditure of funds.

The business services office orders and inventories all supplies, equipment and services needed by the agency. It leases regional office sites and transfers equipment between regions. All the routine service functions for the agency, including mail delivery, document reproduction and supply delivery are performed by this office.

III

The History of the Agricultural Labor Relations Board

A. Fiscal Year July 1, 1975 to June 30, 1976

1. The First Board: August 28, 1975 to April 2, 1976

On July 26, 1975, approximately one month before the ALRA became effective, Governor Edmund G. Brown Jr., appointed five individuals to the new board and also appointed a general counsel. All were duly confirmed by the State Senate. Roger Mahony, auxiliary bishop of the Fresno Roman Catholic Diocese and secretary of a national bishops' committee on farm labor, was appointed chairman. LeRoy Chatfield, the Governor's director of administration; Joseph Grodin, a professor of law at Hastings College of Law, University of California; Richard Johnsen, Jr., executive vice-president of the Agricultural Council of California; and Joseph Ortega, the executive director of the Model Cities Center for Law and Justice in Los Angeles, were appointed to the other positions on the board. Walter Kintz, a supervising attorney for the San Francisco regional office of the National Labor Relations Board, was appointed to the position of general counsel.

The new Agricultural Labor Relations Board held its first official meeting at the state capitol in Sacramento on August 29, 1975. The most critical problems facing the board were the hiring and training of a staff and the adoption of procedural rules and regulations to handle the anticipated flood of unionizing activities that would hit the new agency immediately after the effective date of the Act. At the meeting the board approved the first staffing assignments and appointed Annie Gutierrez, an attorney and former judge from the Imperial Valley, as its executive secretary. The board also adopted emergency rules and regulations governing representation elections and unfair labor practices. One of these regulations was an access rule which generated a great deal of controversy during the life of the first board.

The access rule gave union organizers the right to enter an agricultural employer's property for the purpose of soliciting support from employees. The right to access was carefully limited with respect to time, place and number of organizers. Two organizers per crew were allowed to enter an employer's property for one hour three times each day: before and after work and during the lunch hour. They were prohibited from interfering with the farming operations. The rule was premised on National Labor

Relations Board (NLRB) and court decisions which establish similar access rights where, owing to the remoteness of the work location, alternative methods of communication with workers are ineffective.

At the same meeting, the board also voted to allow symbols representing labor unions and a symbol for the choice of "no union" to be used on the election ballots. The purpose was to maximize voter participation among farm workers who are unable to read.

Four days after the first meeting, on September 2, 1975, the ALRB accepted the first election petitions filed under the Act. On September 5, 1975, the first farm workers representation election was held at the Molera Packing Company in Salinas, California. By the end of its first month of operation, the board had conducted 194 elections in which more than 30,000 agricultural employees had voted. Also in the first month approximately 500 unfair labor practice charges were filed in the regional offices. During the same period, election objections involving approximately 150 of the elections were filed with the board.

By January 1976, after five months of operation, the board had received 604 election petitions and had conducted 423 elections involving approximately 50,000 farm workers. Objections had been filed in eighty percent of the elections held. During the same period, 988 unfair labor practice charges were filed; of these, complaints were issued on 254 charges. By contrast, after its first ten months of operation, the NLRB had conducted 31 representation elections involving 7,734 employees, and objections had been filed in thirty percent of those elections. During the same ten-month period the NLRB received 865 unfair labor practice charges and issued 334 complaints.¹

When the ALRB members were appointed in July of 1975, they faced the task of building an entirely new organization that could handle the tremendous volume of work that was generated when the Act went into effect. Within a few weeks' time the new board moved into offices, hired a clerical staff, wrote emergency regulations, developed the materials and procedures necessary for processing elections and unfair labor practices, and arranged to open six regional and sub-regional offices.

Because of the short start-up time and the unique nature of its work, it was impossible for the board to staff its central and regional offices with trained personnel through normal State Civil Service procedures. As a result, the State Personnel Board authorized the board to hire most of its initial staff on a temporary special consultant basis for a limited period while civil service tests were prepared that were suited to the needs of the new agency. Every employee hired on this basis was individually reviewed and approved by State Personnel Board analysts. Administrative and clerical personnel were hired from existing Civil Service lists or were transferred from other state agencies into permanent Civil Service positions. During its first month of existence, the board employed ninety-one new employees; their training was given top priority. Former National Labor Relations Board personnel were brought in to conduct workshops for the new staff on running elections and organizing regional offices.

¹ 1 NLRB ANN. REP. (1976).

The board relied primarily on ad hoc hearing officers, hired on a case-by-case basis, to preside over unfair labor practice and election objections hearings. A pool of fifty-four hearing officers was created. Most were experienced arbitrators, labor law professors, attorneys, former NLRB employees, and state and federal labor relations officials.

On October 1, 1975, a task force of fourteen outside attorneys and investigators was appointed by the board to assist the regional offices in clearing the rapidly increasing backlog of unfair labor practice cases. The task force, under the direction of Samuel Cohen, a San Jose attorney, worked with the board for several months, spending the majority of its time in the field investigating and trying unfair labor practice complaints.

From September, 1975 through January, 1976, the board concentrated on conducting elections, processing election objections, certifying labor organizations as exclusive representatives, and investigating and hearing unfair labor practice charges.

The activities of the agency had a profound impact on the interests of four distinct groups: the approximately 250,000 farm workers in California, the state's growers, the United Farm Workers of America, AFL-CIO, and the Western Conference of Teamsters. Other participants in the elections were locals of the Amalgamated Meatcutters and Butcher Workmen of North America, AFL-CIO, and of the Christian Labor Association. However, these labor organizations won only a small percentage of the total votes cast in the elections held up to the end of January, 1976.

The first five months of the board's existence were marked by charges by the United Farm Workers, the Teamsters, and the growers, alleging that the board members and staff were inexperienced, inefficient or biased. In addition, several lawsuits were filed challenging the constitutionality of the board's access rule and the constitutionality of the Agriculture Labor Relations Act itself.

Despite the charged atmosphere in which the board was operating, the agency continued to carry out its statutory functions. The problem which eventually interrupted the work of the agency involved its budget.

In May of 1975, a first-year budget of \$1.3 million was developed for the ALRB by State Director of Finance, Roy M. Bell. It was approved by the State Legislature as part of the 1975-1976 state budget in late June of 1975. Neither the board members nor the general counsel participated in preparing the initial budget since they were not named by the Governor until a month later. Within the first month of the board's operation, the board and the general counsel realized that the original appropriation was drastically insufficient. On October 8, 1975, the board chairman and the general counsel requested the assistance of the Department of Finance to deal with the budget situation. Thereafter, the board and the general counsel concluded that a deficiency appropriation in the amount of \$3.8 million would be necessary in order to implement and enforce the new Act. However, because the Legislature had adjourned on September 12, 1975, and would not reconvene until January 1, 1976, it was decided to seek a loan of \$1.25 million from the State Emergency Fund to enable the agency to carry on its operations until the Legislature reconvened. The loan was a stopgap measure to allow the board to remain in existence until

the Legislature passed the full deficiency appropriation.

On October 24, 1975, pursuant to a resolution of the board, Chairman Roger Mahony and General Counsel Walter Kintz signed a Certification of Deficiency, thereby certifying the need for a loan. The loan of \$1.25 million was obtained immediately, before the depletion of the original \$1.3 million allocation. The loan was sufficient to fund the agency's operations until February 6, 1976. On that date, in the absence of a deficiency appropriation from the Legislature, the board was forced to shut down all of its regional offices, lay off most of its employees, cease holding elections and hearings, and stop investigating charges and issuing complaints on unfair labor practices.

Although the board had early recognized the inadequacy of its original budget, mandatory provisions in the ALRA precluded the board from slowing the pace of its operations to conserve its insufficient funds. The Act provides that the board must hold a representation election within seven days of the filing of a petition for certification if a bona fide question of representation is found to exist. The Act gave the board no discretion to decide whether it could afford to conduct an election upon an appropriate petition. The Act also provides that the board must hold a hearing to determine whether an election should be certified whenever a valid, timely petition is filed alleging facts sufficient to set aside the election. The unexpectedly large number of unfair labor practice charges filed also resulted in numerous hearings. As early as the middle of October 1975, an average of ten to twelve hearings per day were being conducted statewide. The cost of these functions contributed to the early depletion of the board's funds.

On January 6, 1976, the entire staff of the agency was given thirty-day notices of termination. On January 16, 1976, the board cancelled all scheduled hearings, ceased accepting election petitions and cancelled all investigations of unfair labor practice charges. This was done in order to concentrate the board's funds on maintaining a skeleton staff to work on certifying the elections already held and to continue receiving unfair labor practice charges. On February 6, 1976, the agency's regional offices ceased operations, and the Department of Finance allotted the board \$130,000 to close down. All files were sent to the central office in Sacramento for storage, leases were terminated, and regional personnel were laid off.

A core staff of approximately twenty-five persons, including the board members, the general counsel and staff attorneys continued to work in the Sacramento headquarters office. On March 5, 1976, all employees were terminated with the exception of the board members, the general counsel, the deputy general counsel, the executive secretary, the chief of administration and two secretaries. On April 2, 1976 these remaining employees were laid off, and the Agricultural Labor Relations Board ceased all operations. All files were stored, the offices were closed and the leases terminated.

During the period between February 6 and the termination of all staff members on April 2, the board continued its work. It issued fifteen formal decisions and screened a number of unresolved elections cases in which objections were pending. The principal activity of the first board during

its final sixty days was the development of a plan for "start-up" operations when funds for the agency again became available. The board believed such a plan was needed because many operational problems in the first five months were caused by an insufficient initial start-up period. The board prepared an extensive redrafting of its rules and regulations and prepared training manuals to educate board agents and to make the operations of the regional offices more efficient. Particular attention was paid to streamlining election procedures and the hearing process in election objection cases. The board wrote a code of conduct for employees and established procedures for handling charges of bias against the agency's employees.

When the first Agricultural Labor Relations Board ceased operations on April 2, 1976, 423 farm worker elections had been held. Objections had been filed in 340 of the elections. The first board had issued certifications in 167 elections when the agency closed, leaving more than half the board's election processing work in limbo.

Of the 873 unfair labor practice charges filed by April 2, 1976, 221 had been withdrawn or dismissed, complaints had issued on 250 of the charges, 42 had been settled, and an additional 271 were under investigation. Hearings had begun or had been completed in 62 cases involving 113 unfair labor practice charges.

2. The Interim Period: April 3, 1976 to June 30, 1976

The State Legislature debated the issue of an emergency appropriations bill for the ALRB throughout the spring of 1976. Several bills were introduced, but no funding was forthcoming until the Legislature began to consider the 1976-1977 state budget in May of 1976. In late May, the Assembly passed a proposed budget which excluded all funding for the agency, but the Senate, in early June, voted to approve a budget which included a \$6.68 million appropriation for the Agricultural Labor Relations Board.

On June 21, 1976, a Joint Legislative Conference Committee, appointed to resolve budget discrepancies between the Senate and Assembly, approved the \$6.68 million appropriation for the agency. The Senate passed the revised budget three days later, but the Assembly again defeated the funding. In the last days of June, before the budget deadline, the Assembly agreed on a compromise measure which would fund the board. The \$6.68 million figure was approved when members of the Assembly who had wished to see provisions of the Act changed, instead agreed to the creation of a Joint Committee to Oversee the Agricultural Labor Relations Board. After the full Legislature agreed to the funding and to the creation of the Joint Oversight Committee, the board was reactivated on July 2, 1976, when Governor Brown signed the state budget.

The Joint Oversight Committee consists of five members of the Senate and five members of the Assembly who are responsible for studying and analyzing all facts relating to the ALRB and for periodically reporting their findings to the full Legislature. The resolution creating the Oversight Committee enumerated fourteen areas of immediate concern to the

Legislature relating to the board's operations. Among these concerns were modification of the board's regulations, especially the access rule; development of a code of conduct applicable to all employees of the agency; development of procedures to expedite election objections and unfair labor practice charges; and creation of improved training programs for the agency's staff. The Joint Oversight Committee was formed in January 1977, and held its first public hearing in Sacramento on March 4, 1977. Assemblyman Floyd Mori was appointed chairman of the Committee. The other appointed members were: Senators David Roberti, John Dunlap, Rose Ann Vuich, John Stull and Ray Johnson; Assemblymen Tom Suitt, Richard Alatorre, Howard Berman and Gordon Duffy.

During the period between the shutdown of the first board and the refunding of the agency, vacancies had opened up on the board and in the office of the general counsel. Board Member LeRoy Chatfield resigned on April 2, 1976, to serve as special assistant to the Governor. On April 16, General Counsel Walter Kintz returned to the San Francisco office of the NLRB as a staff attorney, and Board Member Joseph Grodin resigned on April 30, to resume teaching at the Hastings School of Law in San Francisco. Board Member Joseph Ortega had resigned earlier in the spring of 1976.

In late May, Secretary of Agriculture and Services Rose Bird released a list of candidates being considered by Governor Brown for appointment to the vacant positions; the Governor announced his appointments on June 20. Gerald A. Brown, who had thirty years of NLRB experience as a field examiner, regional director and member of the NLRB and who was also a lecturer at the University of Texas and an arbitrator, was appointed as chairman of the new board, immediately replacing Bishop Roger Mahony in that capacity. Mahony would leave the board by the end of the year to resume duties in his Fresno diocese. The other two appointees to the new Agricultural Labor Relations Board were Robert B. Hutchinson, an attorney in private civil practice in San Mateo and vice president of the California Trial Lawyers Association, and Ronald L. Ruiz, a former deputy district attorney for Alameda County and a private criminal practice attorney in San Jose. Richard Johnsen, Jr., retained his membership on the board. The Governor also named as new general counsel Harry Delizonna, a San Jose attorney and part-time law professor at the University of Santa Clara.

The debate in the State Legislature over emergency funding for the ALRB was still continuing when, in March of 1976, the United Farm Workers of America, AFL-CIO, announced that it had begun collecting signatures on an initiative to be placed on the ballot in the November 1976, statewide election. The initiative incorporated the existing Agricultural Labor Relations Act, with a number of amendments; its enactment would repeal the Act of 1975 and replace it with the amended statute as the Agricultural Labor Relations Act of 1976. The major proposed amendments permanently incorporated the board's access regulation into the statute and revised the access restrictions; required the board to provide accurate employer-compiled lists of employees' names and addresses to any person who filed a "notice of intent" to petition for an election,

authorized the board to award treble damages in settlement of unfair labor practices; and required the State Legislature to appropriate whatever funding was necessary to carry out the provisions of the Act. Enactment of the initiative would also bar all legislative changes to the Act; the statute could only be amended through another initiative measure. On May 29, 1976, Secretary of State March Fong Eu announced that the United Farm Workers' initiative, which became popularly known as "Proposition 14," had qualified to be placed on the ballot in the November general election.

Another development which would have an impact on the operations of the second Agricultural Labor Relations Board was the start of talks in June 1976 between the United Farm Workers and the Western Conference of Teamsters, designed to end their long-running jurisdictional dispute over which union should represent the different categories of agricultural laborers. The history of the first board had been marked by hotly-disputed elections in which both unions had fought to represent the same bargaining units. The discussions, participated in by representatives of the Governor, the two unions and grower interests, attempted to draw jurisdictional lines between the two unions. The United Farm Workers sought jurisdiction over field workers, leaving to the Teamsters jurisdiction over packing shed workers, truck drivers and workers in other processing activities. The talks continued throughout the summer of 1976, during the start-up phase of the second board.

B. Fiscal Year July 1, 1976 to June 30, 1977

1. The Start-up Period: July 1, 1976 to November 30, 1976

The newly-appointed second Agricultural Labor Relations Board and its general counsel met in executive session for the first time on July 12, 1976, in Sacramento. The board faced the task of substantially reorganizing the agency in preparation for its return to full operation. There were no staff members and no offices, and all the agency's files from the first year of operation were in storage.

The first employees hired were Annie Gutierrez, who was reinstated as executive secretary to the board, a chief of administration, and a public information officer. Several clerical employees were also hired, on a temporary basis, to begin organizing the agency's files.

For the first few weeks of its existence, the new board devoted its energies to hiring new employees, planning staff training sessions, considering revisions of the rules and regulations, reorganizing its central and regional offices, and studying the areas of concern raised in the Legislature's resolution creating the Joint Oversight Committee.

Because of the length of the shutdown period, many of the employees of the first board had sought and found other jobs; about half of the original employees returned to work for the second board. A lengthy start-up period of hiring and training was therefore required when the new board began its work. Except for the employees hired on a temporary basis to engage in start-up operations, all new staff members were hired from

State Civil Service eligibility lists compiled after tests were conducted in compliance with State Personnel Board rules. The number and classifications of positions filled were determined according to a study of program requirements and workload standards that had been carried out before the shutdown. In its initial hiring, the second board employed 54 attorneys, 57 field examiners, and 48 support staff personnel. The board also hired, on a part-time basis, a pool of ad hoc administrative law officers to hear the backlog of unfair labor practice complaints that had occurred as a result of the shutdown.

The new board also drafted a proposed code of conduct for its employees in response to the Legislature's resolution creating the Joint Oversight Committee. The proposed code detailed conduct that was considered to conflict with the duties of the board's staff: improper use of information, misuse of position, acceptance of gifts, improper business relationships, and specified personal conduct. The code also established a procedure for filing charges with the board against agency employees who engage in misconduct. The code of conduct was unanimously adopted by the new board at its first public meeting, held on August 11, 1976.

The State Senate confirmed the appointments of Board Chairman Gerald Brown, Members Robert Hutchinson and Ronald Ruiz, and General Counsel Harry Delizonna on August 25, 1976. After their confirmations, the new board members spent much of the first weeks of September acquainting themselves with California agriculture by visiting the principal growing regions in the state on educational tours conducted by the Department of Food and Agriculture.

September also brought the first public discussion of the new board's proposed revisions of the rules and regulations governing its operations. A full week of public hearings was held in Sacramento, and extensive position statements were presented by representatives of interested unions, growers and public agencies. Following the hearings, the board studied and redrafted the regulations several times. At its second public meeting on October 13, 1976, the new board unanimously adopted a revision of most of its regulations. Substantial changes were made in the regulations governing the election process, post-election objections, and the processing of unfair labor practice charges. Many of the changes affecting procedural requirements were made in response to the comments submitted by interested parties at the public hearings.

A major issue that was not resolved at the October 13 meeting was the need for revision of the access rule. A week earlier, the United States Supreme Court had upheld the access rule, dismissing an appeal challenging its constitutionality. But the principal reason for delaying action on the rule was that the initiative sponsored by the United Farm Workers, Proposition 14, included substantial revisions of the access rule and contained a rule requiring an employer to give a union pre-petition employee lists upon the filing of a notice of intent to organize. If Proposition 14 passed, these regulations would become statutory provisions incorporated within the Agricultural Labor Relations Act. The board declined to propose new rules governing these matters until the initiative was voted on in November. The board members and the general counsel took no public position

on the initiative.

On November 2, 1976, Proposition 14 was defeated by California voters by a margin of 62.2 to 37.8 percent. As a result, the statutory scheme of the 1975 Agricultural Labor Relations Act remained intact, and complete responsibility for revision of the access and pre-petition list rules was left in the hands of the board.

On November 24, 1976, the board held a public meeting at which it presented substantially revised regulations governing access and pre-petition lists. The regulations, which are discussed in Appendix A on "Procedures," were adopted by the board at that meeting.

During September 1976 the board issued its first formal decisions on elections which had taken place under the first board but which had not yet been certified. The first unfair labor practice complaint of the newly-formed agency was issued by General Counsel Delizonna on August 27. The board decided at its first meeting that no petitions for elections would be accepted by the agency until it had had a chance to reopen its regional offices and train its new staff. The date aimed for to reopen the election process was December 1, 1976.

The selection of new regional directors was announced at the board's second public meeting on October 13, 1976. Several weeks later the locations of the new regional offices in Sacramento, Fresno, Salinas and San Diego were announced. The offices began accepting election petitions on December 1, 1976.

The delay in reopening the regional offices gave the second board the opportunity to train its new staff and to deal with the backlog of uninvestigated unfair labor practice charges that had been left when the agency shut down in April. Several training workshops were held in October 1976. They were designed to teach the staffs of the general counsel and the regional offices to process elections and unfair labor practice charges and to teach the executive secretary's staff to conduct election objections hearings.

The training of the general counsel and regional personnel consisted of an intensive two-week orientation program conducted in Sacramento. The newly-hired attorneys and field examiners were given detailed manuals on conducting elections and investigating unfair labor practice charges. Each of these agency functions was explained in depth at lectures and in small group discussions. The staff also attended sessions in which they were given an overview of the history of agriculture in California. Lectures on agricultural geography and economics, farm processes and mechanization, labor history and the ethnic patterns of California farm workers were presented. In addition, mock interviews, pre-election conferences and elections were held to give the new board agents practice in performing the tasks they would encounter in the field.

This initial board agent training was supplemented by on-the-job training conducted at the regional level by each office. Immediately following the orientation program in October 1976, all attorneys hired by the general counsel remained in Sacramento for a two-day seminar on the Act and the regulations. A second seminar for attorneys was held in December 1976, to study the experiences gained in the first weeks of renewed farm

worker organizing activities.

The legal staff of the office of the executive secretary also participated in a training program in October of 1976. A one-week workshop run by experienced board employees and the Administrative Law Training Center was conducted to train the staff to act as investigative hearing examiners in proceedings involving election objections. The sessions included analyses of the applicable regulations, discussions of the relevant rules of evidence, and a mock hearing held before experienced attorneys.

The board recognized that, however thorough its initial training program might be, it was no substitute for the actual experience of carrying out the agency's functions. The month of November 1976, was spent organizing the regional offices and clearing away part of the backlog of election and unfair labor practice cases in preparation for resuming full operations on December 1.

2. December 1, 1976 to June 30, 1977

On December 1, 1976, the regional field offices opened in Sacramento, Salinas, Fresno and San Diego. During the year, seasonal organizing activities led to the creation of sub-regional offices in El Centro, Coachella, Delano, Oxnard and Santa Maria. The first election conducted after the reopening of the agency was held at the Cottage Garden Nursery in Eureka. Election petitions were soon being filed throughout the state, although not in nearly the volume that occurred when the first board opened its doors in August 1975. The first board conducted 423 elections between August 28, 1975, and February 6, 1976. The second board conducted 188 elections between December 1, 1976, and June 30, 1977. It should be noted that the period during which the first board held elections involved months of more concentrated agricultural employment than the period during which elections were held by the second board.

Personnel developments included the resignation of former Board Chairman Roger Mahony who returned to his work as auxiliary bishop of the Fresno Catholic Diocese on December 15, 1976. The vacancy on the board was not filled until April 1977, when Governor Brown appointed Herbert A. Perry, a labor arbitrator and professor of economics at California State University, Sacramento. In early February 1977, Executive Secretary Annie Gutierrez announced that she was resigning to become a member of President Carter's White House Staff for Domestic Policy. Her position was filled by Ralph Faust, an attorney who had worked for the California Rural Legal Assistance organization before joining the ALRB in January 1976, as Deputy Executive Secretary.

Pursuant to the Political Reform Act of 1974, the board adopted a conflict of interest code in early 1977. The code requires the board to report annually to the State Fair Political Practices Commission the names of all its employees who "make or participate in making decisions which may materially affect any financial interest." Under the code, these employees must make an annual disclosure of any "financial interests that may foreseeably be materially affected by their decisions." In addition, these employees must disqualify themselves from "making or participating in the

making of any decision which foreseeably may have a material financial effect on any reportable interest of that employee."

In January of 1977, the ALRB also revised its code of conduct for agency employees and its procedure for dealing with charges of bias or misconduct against employees. Between January 1, 1977, and June 30, 1977, ten charges were filed by agricultural employers and three by labor organizations, alleging bias or misconduct on the part of board agents in the regional offices. One other such charge was filed by another agency employee. Following investigations under the board's procedures, seven of the charges were dismissed on findings of no bias or misconduct. As of the date of this report, one of the remaining charges has been returned to the charging party with a request for more specific information, and the other six charges are still under investigation.

The office of the general counsel conducted a third training program in June 1977, for attorneys under its supervision in the central Sacramento and the regional offices. An outside consultant conducted training sessions on the presentation of unfair labor practice cases. A plan for a comprehensive training program for general counsel staff is being prepared at the date of this report. In addition, since October 1976, the office of the general counsel has paid for the attendance of fifty-seven of its employees in outside training courses including Spanish classes for paralegals, management seminars, and secretarial courses.

Employees in the board's central offices in Sacramento have been attending a series of seminars on California agriculture. These seminars, which may be expanded to reach the staffs in the regional offices, are designed to examine all aspects of agriculture in each of the principal agricultural counties in the state.

Another personnel development during the current year was the emergence of an employee association, the Agricultural Labor Relations Board Workers Union. The union has elected officers and holds membership meetings. Its principal activity to date has been the negotiation of a grievance procedure for the agency's employees.

Profound changes in the agricultural labor scene in California were brought about in March of 1977, when the United Farm Workers of America, AFL-CIO, and the Western Conference of Teamsters entered into a jurisdictional agreement after more than a decade of negotiations. The agreement, which lasts for five years and covers thirteen western states, gives the United Farm Workers a free hand in organizing all farm workers who come within the jurisdiction of the ALRB. The pact leaves to the Teamsters the organizing of workers who are covered by the National Labor Relations Act, such as cannery workers and most truck drivers. Packing sheds that handle only an individual farmer's produce are to be organized by the United Farm Workers; "commercial" sheds which handle the produce of more than one farmer will be organized by the Teamsters. The agreement also provides that contracts negotiated by the Teamsters since 1970 covering farm workers within the jurisdiction of the Agricultural Labor Relations Board will not be renewed when they expire.

There were two immediate results of the jurisdictional pact: the Teamsters Union withdrew many of its pending election petitions, and it re-

quested that the board stop processing all other matters related to Teamster involvement in ALRB elections. A further consequence of the agreement was the emergence of two new unions seeking to represent farm workers under the Act. These unions, called the Independent Union of Agricultural Workers and the International Union of Agricultural Workers, were formed by two separate groups of former Teamster Union employee-organizers who opposed the Teamsters' withdrawal from the representation of farm workers covered by the Agricultural Labor Relations Act. The two unions have actively participated in elections under the Act.

The Joint Committee to Oversee the Agricultural Labor Relations Board held its first hearing on March 4, 1977, in Sacramento. Board Chairman Gerald Brown and General Counsel Harry Delizonna testified on behalf of the agency. Brown discussed the current board's efforts to deal with the types of difficulties encountered by the first board. He outlined the current board's activities relating to personnel hiring and training, the agency's code of conduct, the revision of the rules and regulations, the backlog of election objection and unfair labor practice cases, and the agency's revised budget procedures. Delizonna discussed at length the hiring practices of the reactivated agency.

The Joint Oversight Committee met once more before the close of the fiscal year, on June 4, 1977, in Indio. At this second hearing the Committee heard testimony from nearly fifty growers, union officials and farm workers on the following topics: board agent incompetence, board procedures for handling election objections and unfair labor practice charges, the high cost of the administrative hearings, and the board's procedures for handling extension of certification requests.

The State Legislature's concern over the budgetary problems of the first board impelled the new board to compute its funding needs for fiscal year 1977-1978 with care. The budget proposal was primarily based on workload projections for a first full year of operation. A figure of \$8.8 million was eventually included in the 1977-1978 state budget for the agency.

In the fall of 1976, the board established a grower-union liaison unit in the office of the executive secretary in order to implement portions of the Legislature's resolution creating the Joint Oversight Committee. The resolution called for the development of methods for providing technical information and assistance to parties affected by the Act. The types of assistance enumerated in the resolution included informing parties about the board's regulations and procedures, keeping parties up-to-date on the status of cases and increasing public awareness and understanding of the Act's provisions.

The grower-union liaison unit consists of a liaison officer, who directs the operation of the unit; a technical assistant, who is responsible for maintaining records on the legal status of every complaint and election case before the agency and for producing on-going statistical analyses of the agency's cases and workload; an outreach assistant, who is responsible for disseminating information to growers; and a support staff employee, who handles all incoming requests for information.

In its initial phase, the grower-union liaison unit concentrated on re-

sponding to requests for information from the general public and from individuals and organizations affected by the Act. Most of these calls were from growers and their attorneys concerning the status of particular cases, interpretations of the regulations, requests for background information and requests for board decisions. Similar calls came from unions and their lawyers. Most of the requests solicited general information about the Act and regulations and specific information about individual cases and the agency's activities. For several months, the unit devoted its full time to disseminating this information by phone and by mail.

In the spring of 1977, the unit entered a new phase of outreach activities called "external education." It is currently preparing a publication which will serve as a lay guide to the Act. The guide, which will contain a thorough step-by-step discussion of the agency's election, post-election and unfair labor practice procedures, is more than a revision of "The Small Farmer's Guide to the ALRA," originally published in July 1976, by the State Department of Food and Agriculture. It will be useful to agricultural workers and members of the general public as well as to growers.

The unit has also developed a course designed to educate growers about the Act and the agency's procedures. This course was first taught in March and April 1977, in Davis, California, at two full-day sessions; one for growers only and one for growers' attorneys. Half-day courses were conducted in Firebaugh and Five Points, California, for growers and ranch managers. The liaison officer taught these sessions, as well as a full-day workshop for agricultural specialists employed by the State Employment Development Department. These specialists, called "agri-business representatives," work full-time with farmers, educating them about federal and state regulatory labor laws. The specialists who participated in the course are employed in the major agricultural counties in the state: Stanislaus, Monterey, Fresno, Kings, Tulare, Kern, Riverside, San Diego and Imperial.

Another new activity of the grower-union liaison unit is a series of public information talks delivered by the liaison officer to interested community groups. The unit also provides statistical information concerning the work of the agency to two grower newspapers: the weekly "Agricultural Employers' Labor Report" published by the Agriculture Department of the California Chamber of Commerce and the monthly publication of the Farm Employers' Labor Service, a subscription service which advises farmers on labor affairs.

The grower-union liaison unit continues to deliver information about the agency's activities in response to requests from the public. The principal recipients of this information are growers, legal firms representing growers, agricultural labor unions, individual farm workers, universities and students, and community residents who are concerned about the implementation of the Agricultural Labor Relations Act.

Another aspect of the board's "external education" effort is the development of an effective system for informing farm workers of their rights under the ALRA. The early election experiences in the regional offices indicated the need for such an educational program. Board agents found that the short time requirements governing elections provided very little

time for notifying workers about the voting, much less about their organizational rights. Bilingual leafleting and radio announcements made by regional personnel were two of the first methods used to deal with the problem. The board contributed to the emerging education effort by including remedies in its unfair labor practice decisions which required employers found guilty of such practices to distribute notices informing their employees of their rights. Board agents were also directed to go on the property of these employers to conduct question and answer sessions with the employees concerning the Act and its protections.

Although the techniques for educating farm workers vary depending upon the different regional experiences, several methods are being used regularly throughout the state: board agents pay visits to workers' homes, appear on local radio and television talk shows, make announcements through the media, and distribute notices and leaflets in public places. The board agents concentrate their activities during the peak season, attempting to reach all the farm workers in a particular area during that period. These initial efforts at worker education have raised some problems involving board agent access to employers' property and the interruption of work when agents need to speak with employees during working hours.

In the period between the start-up of full operations under the second Agricultural Labor Relations Board on December 1, 1976, and the close of the fiscal year on June 30, 1977, the agency concentrated its efforts in two areas: clearing the backlog of cases from the 1975-1976 period and processing the new cases initiated since December 1, 1976.

Of the 793 unfair labor practice charges left unresolved when the agency shut down in April 1976, 243 were incorporated into 158 complaints; 93 charges were settled; and 364 were withdrawn or dismissed. Of the 158 complaints issued, hearings have been completed in 72 cases; 57 were settled; and 28 have been scheduled for hearing.

Since December 1, 1976, 652 new unfair labor practice charges have been filed; 162 complaints have been issued; 20 charges were settled; and 199 charges were withdrawn or dismissed.

Prior to the shutdown, the first board conducted 423 elections. At the close of the 1976-1977 fiscal year 246 of these elections had been certified; 33 were set aside; 21 objections were dismissed as moot, and 13 petitions were withdrawn; and 110 cases were in some stage of the board's appellate process. Since the agency reopened on December 1, 1976, 188 new elections have been held. Of these, 77 have been certified by the board, and 111 are currently being processed for certification.²

² A summary of statistics showing the Agricultural Labor Relations Board's unfair labor practice and election activities from August 28, 1975 to June 30, 1977 is included in Appendix B.

IV

Representation Cases

The ALRA requires that an employer bargain with the representative elected by a majority of its employees in the bargaining unit.¹ To date, most of the cases decided by the board have involved the election and certification of bargaining representatives. Several representation case decisions by the board in this initial period have interpreted the peak of season and bargaining unit provisions of the Act, but the majority of cases have involved objections to conduct of the elections or to conduct affecting their outcome.

Because the provisions of the NLRA and the ALRA differ significantly in respect to selection of bargaining representatives, the board has been confronted with issues of first impression in its cases involving peak, unit determination, and timing of elections. Furthermore, the board has recognized that it must consider objections and the possibility of new elections in a novel context in which varying labor requirements and the Act's own peak provisions may prevent new elections for a year or more.

A. Preliminary Determinations

1. Employer Status

The ALRB defines "agricultural employer" broadly, but it specifically excludes from that definition "... any person functioning in the capacity of a labor contractor [as defined by §1682]."²

The employer status issue has generally been raised by the question of whether a "custom harvester" is an employer or a labor contractor under the Act. In one case, the board found that although a custom harvester was a "labor contractor" within the meaning of §1682, it was also an agricultural employer because it supplied costly equipment in addition to manual labor and assumed responsibility for getting the crop to the processor, and because its fee was not directly related to labor costs, but was based on the "entire service" provided.³ In another case the board found that the contractor was not a custom harvester and therefore not an employer because the extent of his services was providing manual labor for a fee.⁴

In *Napa Valley Vineyards Co.*,⁵ the board determined that a land management company could be an agricultural employer even though it held

¹ CAL. LAB. CODE §§1153(e) and 1156 (1975).

² CAL. LAB. CODE §1140.4(e) (1975).

³ *Kotchevar Bros.*, 2 ALRB No. 45 (1976).

⁴ *Cardinal Distributing Co.*, 3 ALRB No. 23 (1977).

⁵ 3 ALRB No. 22 (1977).

a labor contractor's license. The company was responsible for the day-to-day operations of the vineyards it farmed, and exercised immediate control over the workers and their working conditions. The board found that it would be in the best interests of the workers to enable them to negotiate with this company as their employer.

2. Peak Employment

Under §1156.3(a) of the Act, a petition for certification must allege that "the number of agricultural employees currently employed by the employer named in the petition, as determined from his payroll immediately preceding the filing of the petition, is not less than 50 percent of his peak agricultural employment for the current calendar year." If the board finds that such an allegation is incorrect, it will refuse to certify the election.

In *Mario Saikhon Inc.*,⁶ a union filed a petition alleging that the employer currently employed 120 employees. This petition was dismissed by the sub-regional director on the ground that the employer's peak agricultural employment was in excess of 360. The union filed a second petition alleging 165 persons were currently employed, and again the regional director dismissed the petition as untimely filed. These dismissals were appealed.

The board rejected the employee count method used by the regional director, at least where there is high turnover, and concluded "that the proper method for measuring level of employment for purposes of determining peak employment is to take an average of the number of employee days worked on all the days of a given payroll period."⁷ Thus, for the purposes of peak, the board found no distinction between an employer who, at its period of highest employment, employs 100 different individuals on each day of a payroll period and an employer who, at its highest employment period, employs the same 100 individuals throughout a payroll period. Each employer has a peak of 100. Under *Saikhon*, the peak period is averaged and the payroll period is averaged to determine whether the payroll period reflects 50 percent of peak.

In *Ranch No. 1, Inc.*,⁸ the board set aside the election because it concluded, using the *Saikhon* method, that the employer's payroll for the period immediately preceding the filing of the petition did not reflect 50 percent of peak agricultural employment. The board did, however, interpret §1156.4 of the Act⁹ to require consideration of crop and acreage statistics "only when it is alleged that peak will occur at some future point in the calendar year."¹⁰ When it is contended that peak has already occurred within a current calendar year "a comparison between employment figures in the two relevant payrolls will fully reveal whether the petition for certification was timely filed. No supplemental data concerning crop or acreage statistics is necessary to make the purely mathematical computation. . . ."¹¹

⁶ 2 ALRB No. 2 (1976).

⁷ *Id.*, at 4.

⁸ 2 ALRB No. 37 (1976).

⁹ §1156.4 provides in part that "peak agricultural employment for the prior season shall alone not be a basis for such determination, [whether a petition is timely filed] but rather the board shall estimate peak employment on the basis of acreage and crop statistics which shall be applied uniformly throughout the State of California and upon all other relevant data."

¹⁰ 2 ALRB No. 37, at 3, n.6 (1976).

¹¹ *Id.*, at 3.4.

In *Luis A. Scattini & Sons*,¹² the board was faced with an employer who had two widely different payroll periods. The regular Scattini employees were paid every two weeks. Labor contractor employees hired by Scattini were paid daily. Essentially, the board applied the *Saikhon* method and suggested two possibilities for dealing with the differing payroll periods. One method was simply to add the total number of regular and labor contractor employees working each day during the two relevant two-week payroll periods and divide by the number of days therein. The board recognized that this might produce distorted results if the peak period were significantly shorter than the two week payroll period in which it fell.

Another method was to compute the average number of employee days worked separately for the two classes of workers. For the regular workers a two-week period would be used. For those paid daily, the board suggested that they might proceed by analogy to §20355 of the regulations.¹³ These sections provide that when an employer's payroll period is less than five days, the relevant payroll period for the purpose of determining eligibility is presumed to be at least five days long. If this approach were used, the board would compute the average of labor contractor employees over five working days. During the period alleged to constitute peak, the board would use the five consecutive days with the highest number of labor contractor employees. For the comparative period preceding the filing of the petition, the board would either use the five consecutive days of highest labor contractor employment within the two-week period preceding the filing of the petition, or use employment figures from the five working days immediately before the filing of the petition.

The board did not choose any particular method in *Scattini* because, under either method proposed, the petition was timely filed. In more recent cases, the board has implicitly suggested that methods other than *Saikhon* and *Scattini* may be valid.

In *Valdora Produce Co.*,¹⁴ the employer objected that the petition was not timely filed. The employer supplied information that at peak it employed 329 workers and that at the time of filing the petition, 153 people were employed. However, the board determined that the employer erroneously excluded 13 names from the eligibility list. When these 13 individuals were added to the 153 names already on the list, the total 166 was more than 50 percent of 329. Accordingly, the board dismissed the employer's objection as to peak. The board did not engage in the averaging suggested by *Saikhon*, *Ranch No. 1* or *Scattini*.

In a similar case, *Kawano Farms, Inc.*,¹⁵ the employer alleged that peak would occur after the time the petition was filed. The employer provided information that in the year before peak employment was 796 and also provided crop and acreage statistics. At the hearing in late 1975 testimony

¹² 2 ALRB No. 43 (1976).

¹³ 8 CAL. ADMIN. CODE §20355 (1975), re-enacted as §20352 (1976).

¹⁴ 3 ALRB No. 8 (1977).

¹⁵ 3 ALRB No. 25 (1977).

placed the 1975 peak at 930. The employer had submitted a list of employees after the petition was filed showing 649 employees who appeared on the payroll period immediately preceding the service of the petition. The board thus concluded that the employer was well at peak. As in *Valdora*, the board did not engage in the averaging process described in earlier cases.

3. Bargaining Unit

The ALRA, unlike the NLRA, does not give the board discretion to determine the scope of the bargaining unit along craft and plant lines. The Act requires that the bargaining unit "shall be all the agricultural employees of the employer."¹⁶ The statute gives the board discretion to determine the scope of the bargaining unit or units only "[i]f the agricultural employees of the employer are employed in two or more noncontiguous geographical areas" Notwithstanding the statutorily limited kinds of unit determinations the board is empowered to make, a variety of unit problems have arisen under the Act.

In *Eugene Acosta*,¹⁷ the board considered the appropriateness of a unit consisting of the employees of 156 individual agricultural employers doing business in various parts of the state. Although noting that single employer units are presumptively appropriate under the Act, the board indicated that under some circumstances it would consider a multi-employer unit appropriate. With respect to the unit petitioned for, however, the board held that there was insufficient history of bargaining on a multi-employer basis and that what prior bargaining history there was did not provide sufficient evidence that a majority of the workers in the claimed unit desired to be represented by the Teamsters who were petitioning for the unit.

The only unit determinations specifically authorized by the Act are determinations of the appropriateness of the unit where an employer has operations in two or more noncontiguous geographical areas. In *Egger & Ghio Co.*,¹⁸ the earliest case to treat this matter, the board held that two ranches of the same employer located ten miles away from each other were not in noncontiguous geographical areas, but were in a single definable agricultural production area. Considerations relied upon to assess the unity of the agricultural production area were the similarity of water supply, labor pool, and climatic and other growing conditions. The board noted that these factors were not exclusive. The board further found that several of the factors relied upon by the NLRB in finding a community of interest, and therefore an appropriate single unit, were present.

In *John Elmore Farms*,¹⁹ the board held that separate operations of an employer need not be contiguous to be in a single definable agricultural production area. The fact that operations are in a single definable agricultural production area will be a significant consideration in determining the appropriateness of a single unit. The factors looked to in *Egger &*

Ghio—water supply, labor pool, climate and other growing conditions—are of the sort which affect the time of peak employment and have direct relevancy to the fostering of stable collective bargaining. Left open in *Elmore* was the question of what the relevant factors might be in a unit determination when employers' operations are not in a single definable agricultural production area.

In *Napa Valley Vineyards Co.*,²⁰ the board reiterated that the single definable agricultural production area would not be the exclusive test for appropriateness of the unit, but would be a significant factor. In considering the appropriateness of a single unit of one employer who had employees in both the Napa and Sonoma Valleys, the board also relied upon the prior bargaining history on a single unit basis and the union's organizational efforts.

We note here that prior bargaining history on a single unit basis covering these employees and the fact that the union has petitioned for and organized on the basis of a single unit are additional factors that indicate a single unit is appropriate.²¹

The finding that places groups of employees in a single definable agricultural production area merely reflects that the location of the land, the nature of the soil, the climate and the available human and natural resources dictate that the crops grown, the labor force used and the time of peak employment will generally be the same. The combination of these factors within a single definable agricultural production area makes it appropriate for all the employees to be in a bargaining unit.

In *Bruce Church, Inc.*,²² the board considered the appropriateness of a statewide unit of employer operations conducted in the Salinas Valley, the San Joaquin Valley, the Imperial Valley and the Santa Maria Valley. Although decided prior to *Napa* and *Elmore*, this case was decided after *Egger & Ghio* and gives an indication of the factors the board will look to in determining the appropriateness of the unit when locations are clearly not contiguous or in a single definable agricultural production area. Factors announced in *Bruce Church* include the relation of the geographic locations to each other, the extent to which administration is centralized, the extent to which employees share common supervision, the extent of interchange among the employees at different locations, the nature of the work performed at the various locations of the employer, the similarity of wages, hours and working conditions, and the pattern of bargaining history. The board found a statewide unit of all of the employer's employees in an operation devoted nearly 90 percent to lettuce, where administration was highly centralized, where collective bargaining has historically been conducted on a statewide basis, where the skills of employees are principally the same, where a permanent workforce performs approximately 75 percent of the employer's operations, moving from valley to valley with the crops, and where the fact of a collective bargaining history since 1970 indicates similarity of wages, hours and working conditions.

¹⁶ CAL. LAB. CODE §1156.2 (1975).

¹⁷ 1 ALRB No. 1 (1975).

¹⁸ 1 ALRB No. 17 (1975).

¹⁹ 3 ALRB No. 16 (1977).

²⁰ 3 ALRB No. 22 (1977).

²¹ *Id.*, at 13.

²² 2 ALRB No. 38 (1976).

The other type of unit problem involves nominally separate employers who are claimed, because of joint ownership or other common operations, to constitute a single unit. In *Louis Delfino Co.*,²³ four separate operations located in a single geographic area were held to be appropriately a single unit based upon such considerations as similarity of operations, interchange of employees, common management, common labor relations policy, and common ownership.

4. Showing of Interest

Section 1156.3(a) of the Act requires that a petition for certification be accompanied by evidence of support of a majority of the current employees. The board has followed NLRB policy in regarding matters that relate to the sufficiency of employee support as non-reviewable.²⁴ In *Louis Delfino Co.*,²⁵ the board stated, however, that it will overturn an election where there is evidence that board error (in this case, error in unit determination) precluded the gathering of a sufficient showing of interest to support a motion to intervene. Before the adoption of current regulations requiring that allegations of fraud, coercion or employer assistance be submitted to the regional director for a non-reviewable determination,²⁶ the board in two cases reviewed objections based on showing of interest in which it was alleged that the union told employees that they must sign cards in order to vote. The board dismissed the objections on a finding that this statement could refer to the necessity of a showing of interest before an election could be held and that this was not false or misleading, and that, in one case, the statements, made by an unidentified person to a small number of employees, were not of such a nature as to require the election to be set aside.²⁷

B. Conduct of the Election

When presented with objections alleging error or misconduct in the conduct of the election, the board has considered whether the conduct could have prejudiced the parties or affected the outcome of the election. Following are discussions of specific kinds of conduct to which the board has applied this test to determine if the election should be set aside.

1. Communication with the Parties

The board has stated that board agents should not deliberately bypass counsel who represent the parties, but has ruled that under the rigid time constraints of the election it would be inappropriate to impose an absolute obligation for board agents to communicate with parties only through their attorneys.²⁸

²³ 3 ALRB No. 2 (1977).

²⁴ Jack or Marion Badovich, 2 ALRB No. 12 (1976).

²⁵ 3 ALRB No. 2 (1977).

²⁶ 8 CAL. ADMIN. CODE §20300(j) (4) and (5) (1976).

²⁷ Skyline Farms, 2 ALRB No. 40 (1976); TMY Farms, 2 ALRB No. 58 (1976).

²⁸ Coachella Growers, Inc., 2 ALRB No. 17 (1976).

2. Amendment of Petition

In an early case the board ruled that an amendment to a petition for certification which corrected the name of the employer had been properly granted and did not prejudice the employer.²⁹

3. Agreements Between the Parties

Frequently the parties to an election will make agreements before an election about certain matters, such as time, place or observers. The board has recognized such an agreement, even if it differs from provisions in the regulations, if it facilitates the conduct of the election,³⁰ but alleged violations of such an agreement will be carefully scrutinized to safeguard against prejudice.

4. Eligibility Lists

Upon the filing of a petition for certification, the employer is required to provide the board with a complete and accurate list of the names, addresses and job classifications of all employees.³¹ This list aids in determining whether the statutory requirements of peak employment and showing of interest have been met, and it serves as a basis for determining voter eligibility. Additionally, the list, like the NLRB's "Excelsior list"³² helps the unions participating in the election to communicate with eligible voters and to determine what names on the list they wish to challenge at the election.³³

In several early cases the board ruled that where the employer's failure to exercise due diligence in obtaining and supplying the necessary information results in defects in the list which substantially impair its utility, grounds may exist for setting the election aside.³⁴ Elections were set aside in two cases where the eligibility list was submitted late and was defective because of lack of current residence addresses.³⁵

5. Regulation of Election Campaign

In *Borgia Farms*,³⁶ the employer was instructed by a board agent not to talk to workers before the pre-election conference. The board found the employer's reliance on this instruction to be reasonable in light of the employer's presumed lack of knowledge about the recently passed Act, and held that its failure to communicate with its employees deprived them of the opportunity to weigh the alternatives before them. The election was overturned.

6. Observers

The regulations provide that each party to an election may be represented by observers of its own choosing. Observers must be employees

²⁹ Molera Agricultural Group, 1 ALRB No. 4 (1975).

³⁰ Perez Packing, Inc., 2 ALRB No. 13 (1976).

³¹ 8 CAL. ADMIN. CODE §20310(a) (2) (1976).

³² Excelsior Underwear Inc., 156 NLRB 1236 (1966).

³³ Yoder Bros., 2 ALRB No. 4 (1976).

³⁴ *Id.*

³⁵ Valley Farms, 2 ALRB No. 42 (1976); Mapes Produce Co., 2 ALRB No. 54 (1976). See also La-Elite Farms, 2 ALRB No. 49 (1976).

³⁶ 2 ALRB No. 32 (1976).

who are eligible to vote or any other persons agreed to by all parties. The board agent has discretion to determine the number of observers. Objections to another party's observers must be registered with the supervising board agent before the beginning of the election.³⁷

When an observer is challenged by a party, the board agent in charge of the election is responsible for determining whether the observer is qualified to serve.³⁸ The board has refused to disturb the decision of the board agent absent showing of prejudice.³⁹ Similarly, a board agent's mistake in allowing an imbalance in the number of observers was not found to be sufficient reason to overturn an election where this disparity did not create an impression of bias or otherwise affect the outcome of the election.⁴⁰

Where an objection is based on a conversation between an observer and a voter, the board has inquired into the substance of the conversation to determine whether it would have an effect on the voter's free choice.⁴¹ In *Gonzales Packing Co.*,⁴² this was applied to an objection that an observer spoke in Spanish to waiting voters. The board ruled that the incident did not constitute misconduct sufficient to set aside the election, absent evidence of electioneering or a showing that the incident otherwise influenced the election.

The board has also ruled that the wearing of campaign buttons by observers, though improper, does not constitute grounds for setting aside an election.⁴³

7. The Ballot

The format of the ballot is set out in the board's regulations.⁴⁴ Any labor organization which has a distinctive symbol or emblem may register the emblem with the board for use on the ballot in elections in which that organization is a party. The symbol for "no union" is a circle with "No" inside it and a diagonal slash through the "No" and the circle. An employer is not permitted to use its own symbol to indicate the "no union" choice, because a company is not synonymous with "no union." A worker can feel loyalty to the employer yet still wish to be represented by a union.⁴⁵

There is no requirement that sample ballots must be provided to a party making such a request.⁴⁶ This practice, which deviates from the procedure of the NLRB, is necessary since parties may intervene up to 24 hours before an election and, as a result, ballots are often printed just a few hours before the election.

The board's regulations outline a procedure for parties to request appropriate foreign language ballots.⁴⁷ Failure to provide ballots in a particular

³⁷ 8 CAL. ADMIN. CODE §20350(b) (1976).

³⁸ Yamada Bros., 1 ALRB No. 13 (1975).

³⁹ Missakian Vineyards, 3 ALRB No. 3 (1977).

⁴⁰ O. P. Murphy & Sons, 3 ALRB No. 26 (1977).

⁴¹ Harden Farms, 2 ALRB No. 30 (1976). See also discussion of "electioneering", *infra*.

⁴² 2 ALRB No. 48 (1976).

⁴³ Chula Vista Farms, 1 ALRB No. 23 (1975).

⁴⁴ 8 CAL. ADMIN. CODE §21000 (1976).

⁴⁵ Samuel S. Vener Co., 1 ALRB No. 10 (1975).

⁴⁶ Kawano Farms, Inc., 3 ALRB No. 25 (1977).

⁴⁷ 8 CAL. ADMIN. CODE §20320 (1976).

language, however, is not a basis for setting aside an election when there is no evidence of disenfranchisement of voters.⁴⁸

8. Notice of Election

The ALRA requires that after a petition is filed and the ensuing investigation reveals that a question of representation exists, an election must be held within a maximum of seven days. The board has held that once a petition is served, the employer is on notice that an election may be held within seven days.⁴⁹

Objections that employees had inadequate notice of an election have been analyzed on the basis of the actual number of eligible workers who voted. The board has dismissed such objections when a substantial number of those eligible actually voted.⁵⁰

In *Jack or Marion Radovich*,⁵¹ the board held that in order to establish that voters were disenfranchised through lack of notice, it must be shown that employees who otherwise might have voted did not do so because they did not receive notice of the election. One way of doing this would be to show that eligible voters did not work between the time the notice was posted at the work place and the election. In one such case, however, the board found that a late notice objection raised by the employer was not a sufficient basis for overturning the election because the employer's own misconduct in failing to provide addresses for over half its employees was a contributing factor to the inadequate notice.⁵²

In *R. T. Englund Co.*,⁵³ the board dismissed an objection of insufficient notice to workers where the number of eligible workers who did not vote was insufficient to affect the outcome of the election.

9. Timeliness of Election

The Act requires the board to hold an election within seven days of the filing of the petition.⁵⁴ The board has found that the purpose of this requirement is to insure that a maximum number of eligible voters can vote. Thus, absent a showing of prejudice by the objecting party or evidence that employees were prevented or deterred from voting because of the delay, an election held beyond the seven day maximum will not be set aside.⁵⁵ In order to be grounds for overturning the election, the delay must be shown to have caused prejudice which could have been outcome determinative or to have been founded on board agent bias.⁵⁶

The board set aside several elections which were held after the seven day limit, where the record revealed no compelling reason for the delay and where there was evidence that voters were disenfranchised.⁵⁷

In *V. V. Zaninovich*,⁵⁸ the board set aside an election which was held

⁴⁸ C. Mondavi & Sons, 3 ALRB No. 65 (1977).

⁴⁹ Carl Joseph Maggio, Inc., 2 ALRB No. 9 (1976).

⁵⁰ Yamano Bros. Farms, 1 ALRB No. 9 (1975); Kawano Farms, Inc., 3 ALRB No. 25 (1977).

⁵¹ 2 ALRB No. 12 (1976).

⁵² Lu-Ette Farms, 2 ALRB No. 49 (1976).

⁵³ 2 ALRB No. 23 (1976).

⁵⁴ CAL. LAB. CODE §1156.3(a) (1975).

⁵⁵ Klein Ranch, 1 ALRB No. 18 (1975).

⁵⁶ Jake J. Cesare & Sons, 2 ALRB No. 6 (1976).

⁵⁷ Ace Tomato Co., Inc., 2 ALRB No. 20 (1976); Mapes Produce Co., 2 ALRB No. 54 (1976); Vista Verde Farms, 3 ALRB No. 19 (1977).

⁵⁸ 1 ALRB No. 24 (1975).

on the morning of the fourth day after the petition was filed. It found that the board agent had abused his discretion in setting the election so soon, since evidence was presented that another labor union intended to intervene and had a sufficient showing of interest. The board held that the board agent's emphasis on speed deprived workers of an opportunity to select among bargaining agents.

10. Time and Place of Election

The regulations give the board agent supervising the election reasonable discretion to set the exact times and places of the election.⁵⁹ The board has set aside elections only where the evidence demonstrates a substantial possibility that a number of voters sufficient to affect the outcome of the election failed to vote because of the late opening or early closing of the polls.⁶⁰

In evaluating the choice of election sites, the board has used a standard of whether the site had an intimidating effect on employees. Absent such a showing, the board has declined to set aside an election on the basis of where it was held.⁶¹

11. Identification of Voters

Under the regulations, voters are required to show identification which the board agent, in his or her discretion, deems adequate.⁶² The board held that it was not an abuse of discretion to refuse to use handwriting samples for identification,⁶³ but that it was improper to refuse to accept payroll check stubs or social security cards as identification.⁶⁴

12. Challenged Ballots

Although substantive questions of eligibility and employer status must be raised through the challenged ballot process,⁶⁵ the board will entertain post-election objections alleging that the board agent's administration of the challenged ballot procedures during the election affected the outcome. In *Kawano Farms*,⁶⁶ the board ruled that it is proper for an agent to provide challenged ballots to shed employees and clericals for a later ALRB determination of whether such workers were "agricultural employees" within the meaning of Labor Code §1140.4(b). Since another basis for challenging a prospective voter is that the person's name is not on the eligibility list,⁶⁷ the board also indicated in *Kawano* that an agent's refusal to provide challenged ballots to such employees may be grounds for setting aside an election.

The improper handling of challenged ballots has sometimes necessitated the overturning of an election. In *Hatanaka & Ota Co.*,⁶⁸ the board set

⁵⁹ 8 CAL. ADMIN. CODE §20350(a) (1976).

⁶⁰ *Hatanaka & Ota Co.*, 1 ALRB No. 7 (1975); *Melco Vineyards*, 1 ALRB No. 14 (1975); *United Celery Growers*, 2 ALRB No. 27 (1976).

⁶¹ *Bud Antle, Inc.*, 3 ALRB No. 7 (1977).

⁶² 8 CAL. ADMIN. CODE §20355(c) (1976).

⁶³ *R.T. Englund Co.*, 2 ALRB No. 23 (1976).

⁶⁴ *Bud Antle, Inc.*, 3 ALRB No. 7 (1977). The election in this case was not set aside since the number of voters disenfranchised would not have affected the results.

⁶⁵ *Hemet Wholesale*, 2 ALRB No. 24 (1976).

⁶⁶ 3 ALRB No. 25 (1977).

⁶⁷ 8 CAL. ADMIN. CODE §20355(a) (8) (1976).

⁶⁸ 1 ALRB No. 7 (1975).

aside an election where the board agent placed all the challenged ballots in one envelope, so that after the challenges were resolved, there was no way of separating the ballots of eligible voters from those who had been found not to be eligible. When a board agent allowed six challenged voters to place unidentifiable ballots into the ballot box, the board set aside the election because this number was outcome determinative.⁶⁹ The proper procedure for counting overruled challenged ballots is to remove them from the challenge envelopes and mingle them with other ballots before counting, thus preserving the secrecy of individual ballots.⁷⁰

13. Procedures at Polls

Confusion at the polls has not been held to be grounds for setting aside an election, absent a showing of voter disenfranchisement sufficient to affect the outcome of the election or evidence that ballots had been tampered with. In its analysis of the early representation elections the board took into account the fact that elections were being held in the fields and many workers were voting for the first time. The cases include allegations of confusion caused by a board agent's reorganizing lines to speed up the voting and temporarily closing polls to restore order, and by buses bringing workers to the polls faster than they could vote, resulting in long delays.⁷¹ The fact that a crap game was engaged in by waiting voters was found to be insufficient grounds for overturning an election.⁷²

Absent evidence of any tampering with the ballots or evidence that more ballots were cast than the number of voters voting, the board dismissed objections that board agents sometimes left blank ballots unattended.⁷³

A board agent's speaking in Spanish to Spanish-speaking workers is not only proper, but sometimes necessary.⁷⁴ Agents should translate such statements to observers when requested to do so.

The design of the voting booth, which might have permitted others to see how a voter was voting, was ruled insufficient to set aside an election, absent evidence that anyone did see how another voted.⁷⁵ The board in this case also held that "doubling up" of more than one voter in the booth at the same time in several instances, when disruption of voting was not shown, was not conduct which had an adverse impact on the election.

14. Alleged Bias

The ALRB has consistently reiterated the principle that while any bias or appearance of bias by board agents is improper, the standard for setting aside an election is a showing of an adverse impact on the validity of the ballots as a measure of employee choice.⁷⁶ Thus, alleged board agent misconduct at the tally of ballots could not have affected the results of the

⁶⁹ *Agro Crop*, 3 ALRB No. 64 (1977).

⁷⁰ *McFarland Rose Production Co.*, 2 ALRB No. 44 (1976).

⁷¹ *Bud Antle, Inc.*, 3 ALRB No. 7 (1977); *Superior Farming Co.*, 3 ALRB No. 35 (1977).

⁷² *D'Arrigo Bros. of Calif.*, 3 ALRB No. 37 (1977).

⁷³ *Id.*

⁷⁴ *Hemet Wholesale*, 2 ALRB No. 24 (1976).

⁷⁵ *D'Arrigo Bros. of Calif.*, 3 ALRB No. 37 (1977).

⁷⁶ *Coachella Growers, Inc.*, 2 ALRB No. 17 (1976); *Hemet Wholesale*, 2 ALRB No. 24 (1976); *Kawano Farms, Inc.*, 3 ALRB No. 25 (1977); *D'Arrigo Bros. of Calif.*, 3 ALRB No. 37 (1977).

election.⁷⁷ In *Salinas Marketing Cooperative*,⁷⁸ a charge was made that a board agent wore a belt buckle bearing the UFW insignia to a pre-election conference. The board found that the emblem was, in fact, the American Eagle and that in any event no employees could have seen the buckle.

15. Tally of Ballots

The board's approach to objections to the conduct of the tally of ballots has been to dismiss absent evidence that an impropriety in the ballot count occurred or that a substantial possibility of impropriety existed.⁷⁹ Inadequate notice of the tally has not been found in itself to be a sufficient ground to overturn an election.⁸⁰ Evidence that two representatives of a party touched the ballot box is similarly insufficient.⁸¹

The board ruled in *Lawrence Vineyards Farming Corp.*⁸² that, to be timely, an objection to the counting of specific ballots must be made at the time the ballots are counted in order to segregate them. Failure to object at that time constitutes a waiver.

The "majority vote" requirement of Labor Code §1156 refers to a majority of those casting ballots, not to a majority of eligible voters.⁸³

C. Conduct Affecting the Results of an Election

In evaluating objections based on conduct which affected the results of the election, the board has generally based its determination on whether the conduct reasonably could have affected the outcome of the election. Because of the extraordinary circumstances under which elections must be held, (seven day time limit, voting often in the fields, requirement that elections be held while at least 50 percent of the peak work force is employed) the board has not found it appropriate to adopt the "laboratory conditions" standard⁸⁴ of the NLRB.⁸⁵ The board has analyzed specific types of misconduct on a case-by-case basis in the following ways.

I. Access

The board's so-called "access rule" grants specific numbers of union representatives access to the premises of an agricultural employer at specific times for the purpose of meeting and talking with employees.⁸⁶

Union objections that organizers were denied access under this rule have been dismissed upon a failure to prove that the property they were ejected from was the employer's,⁸⁷ and when it was shown that organizers were attempting to talk to employees while they were working rather than at lunch time.⁸⁸ Upon the finding of a "systematically implemented"

directive to deny access by organizers, however, the board has set aside an election.⁸⁹ An election was also set aside when, among other incidents of misconduct, organizers were denied access to the employer's buses which transported employees to work.⁹⁰

When discriminatory access is alleged, the board inquires first whether the union receiving the preferential treatment has a contract with the employer. If a contract provides for access to employees during working hours for "legitimate union business" the board will assume that visits are for such purposes unless evidence is produced to show that campaigning took place.⁹¹ Allowing an incumbent union to take access while denying access to another union has been held to be grounds for setting aside an election.⁹²

Denial of access to an employer's labor camp, although not coming under the access regulation, can be grounds for setting aside an election. Such conduct violates workers' rights to self-organization under Labor Code §1152.⁹³

Upon an allegation of "excess access" taken by union organizers, the board has held that violations of the access rule do not per se constitute misconduct affecting the results of an election. To determine whether such conduct affected the results, the board will look at the possibility of disadvantage to other unions or of any intimidating or coercive impact on workers.⁹⁴

2. Electioneering and Presence of Parties

Many objections to elections have been filed on the basis of campaigning on the day of the election in and around the polling areas. Although the cases break down into many categories, the board has generally held that campaigning alone, absent intimidation or evidence of prejudice, is not conduct which requires setting aside an election.

a. Outside the Polling Area

The presence of union organizers and conversations between organizers, observers and workers are not sufficient to overturn an election.⁹⁵ The presence of organizers one-half mile from the polls, waving banners, shouting slogans and singing songs did not warrant overturning an election,⁹⁶ nor did the presence of press photographers about one hundred feet from barricades around the voting area in the first election held under the ALRA.⁹⁷

In several cases, a party has objected to another party keeping "check-off lists," outside the polling area, of voters approaching the polls. Such lists

⁷⁷ Hemet Wholesale, 2 ALRB No. 24 (1976).

⁷⁸ 1 ALRB No. 26 (1975).

⁷⁹ J.R. Norton Co., 1 ALRB No. 11 (1975).

⁸⁰ R.T. Englund, 2 ALRB No. 23 (1976); Hiji Bros., 3 ALRB No. 1 (1977).

⁸¹ Interharvest, Inc., 1 ALRB No. 2 (1975).

⁸² 3 ALRB No. 9 (1977).

⁸³ Lu-Ette Farms, 2 ALRB No. 49 (1976); Kawano Farms, Inc., 3 ALRB No. 25 (1977).

⁸⁴ General Shoe Corp., 77 NLRB 124 (1938).

⁸⁵ D'Arrigo Bros. of Calif., 3 ALRB No. 37 (1977).

⁸⁶ 8 CAL. ADMIN. CODE §20900 et seq. (1976).

⁸⁷ A & N Zaninovich, 1 ALRB No. 21 (1975).

⁸⁸ Tomooka Bros., 2 ALRB No. 52 (1976); K.K. Ito Farms, 2 ALRB No. 51 (1976).

⁸⁹ Oshita Inc., 3 ALRB No. 10 (1977).

⁹⁰ Sam Andrews' Sons, 3 ALRB No. 45 (1977).

⁹¹ Souza and Boster, 2 ALRB No. 57 (1976).

⁹² Sam Andrews' Sons, 3 ALRB No. 45 (1977).

⁹³ Id.

⁹⁴ K.K. Ito Farms, 2 ALRB No. 51 (1976).

⁹⁵ Herota Bros., 1 ALRB No. 3 (1975); Green Valley Produce Cooperative, 1 ALRB No. 8 (1975); Yamano Bros. Farms, 1 ALRB No. 9 (1975); Lawrence Vineyards Corp., 3 ALRB No. 9 (1977); Veg-Pak Inc., 2 ALRB No. 50 (1976); John Elmore Farms, 3 ALRB No. 16 (1977).

⁹⁶ Missakian Vineyards, 3 ALRB No. 3 (1977).

⁹⁷ Molera Agricultural Group, 1 ALRB No. 4 (1975).

have often been kept in connection with the voting of economic strikers. The board has ruled that absent a context of coercion, intimidation or surveillance this conduct is not sufficient to set aside an election. The board contrasted the agricultural setting with the industrial setting common to NLRB cases and found that the greater difficulty in notifying workers under the ALRA justified these systems of insuring that eligible workers have notice of the election and an opportunity to vote.⁹⁸

b. Before Polls Open

In several cases, the board has found that campaigning on election day before the polls open or before balloting begins is not sufficient grounds to overturn an election.⁹⁹

c. Campaign Materials

Display of campaign materials outside the voting area has generally been found to be either not improper electioneering or not sufficient conduct to warrant overturning an election. Board decisions have dealt with the display of a union flag and distribution of leaflets outside the polling area,¹⁰⁰ and bumper stickers on cars and buses.¹⁰¹

Passing out buttons before the polls opened was found not to be grounds to overturn an election, nor was the wearing of buttons by the voters.¹⁰²

Similarly, distribution of campaign buttons within the polling area, absent evidence that voters were pressured or threatened, is not a basis for setting the election aside.¹⁰³

d. Presence Inside Polling Area

The presence of employees who remain in the polling area after voting has not been ruled to be grounds for setting aside an election,¹⁰⁴ nor has parties' mere presence inside the polling area while voting was taking place been found to be conduct which requires that the election be overturned. Objections based on the presence of the employer for fifteen to twenty minutes, the presence of supervisors, or the presence of an employer's security guards, absent evidence of intimidation, have been dismissed.¹⁰⁵

Conversations between representatives of parties and voters in the polling area while voting is in progress have presented a more difficult question.¹⁰⁶ The board has found the agricultural setting inappropriate for application of the NLRB's "Milchem Rule," which holds that conversa-

⁹⁸ *Toste Farms, Inc.*, 1 ALRB No. 16 (1975); *D'Arrigo Bros. of Calif.*, 3 ALRB No. 37 (1977).

⁹⁹ *Admiral Packing Co.*, 1 ALRB No. 20 (1975); *California Coastal Farms*, 2 ALRB No. 26 (1976); *United Celery Growers*, 2 ALRB No. 27 (1976).

¹⁰⁰ *William Dal Porto & Sons Inc.*, 1 ALRB No. 19 (1975).

¹⁰¹ *Herota Bros.*, 1 ALRB No. 3 (1975); *Veg. Pak Inc.*, 2 ALRB No. 50 (1976); *O. P. Murphy & Sons*, 3 ALRB No. 26 (1977); *Bud Antle Inc.*, 3 ALRB No. 7 (1977).

¹⁰² *J. P. Murphy & Sons*, 3 ALRB No. 26 (1977).

¹⁰³ *D'Arrigo Bros. of Calif.*, 3 ALRB No. 37 (1977).

¹⁰⁴ *Chula Vista Farms*, 1 ALRB No. 23 (1975); *Hemet Wholesale*, 2 ALRB No. 24 (1976); *Superior Farming Co.*, 3 ALRB No. 35 (1977).

¹⁰⁵ *V. B. Zaminovich & Sons*, 1 ALRB No. 22 (1975); *Bud Antle, Inc.*, 3 ALRB No. 7 (1977).

¹⁰⁶ See also discussion of "observers" *supra*.

tions between parties and voters are objectionable per se and a basis for overturning an election regardless of the content of the conversation. Instead, the ALRA requires a showing that such conversations had an effect on the outcome of the election.¹⁰⁷ In one case, however, the board set aside an election when the observers had refused to cease talking to voters when asked to do so by the board agents.¹⁰⁸

3. Violence and Threats

The right of employees to self-organization and the right to form and join labor unions are denied if an election is held in an atmosphere of fear and intimidation. The board has set aside an election when necessary "to insure that the employees have an opportunity to express their choice of a bargaining agent free of intimidation."¹⁰⁹ Elections were set aside when representatives of one union made an unprovoked attack on representatives of another union in the presence of workers,¹¹⁰ when supervisors threatened workers that they could lose their jobs if the union won,¹¹¹ and when the photograph of a discharged employee was prominently displayed in the guardhouse of a labor camp.¹¹²

In looking at threats, the board has emphasized that there must be some showing that the threat tended to affect the outcome of the election.¹¹³ In applying this test, the board will give less weight to statements and conduct of nonparties. In *Takara International*,¹¹⁴ when rumors were spread by several employees who were not union agents and few, if any, workers were directly threatened, the board found that the evidence did not indicate a pervasive atmosphere of fear and confusion. The board reasoned that misconduct by a party is more destructive of a healthy atmosphere, since parties have far greater economic strength and institutional power than individuals and their actions are therefore more coercive of employees.

4. Misrepresentation

When presented with objections alleging misrepresentation in election campaigns, the board has expressed doubt, but has not squarely decided, concerning the applicability of the NLRB's *Hollywood Ceramics*¹¹⁵ rule in an agricultural setting.¹¹⁶ The rule was developed as a part of the "laboratory conditions" standard which the board has declined to adopt. In evaluating alleged misrepresentations, the board has considered whether the statements were part of an organized campaign, and whether the opposing party had an opportunity to reply,¹¹⁷ whether the hearers could reasonably believe that the party speaking knew the true facts,¹¹⁸ and whether

¹⁰⁷ *Superior Farming Co.*, 3 ALRB No. 35 (1977).

¹⁰⁸ *Perez Packing, Inc.*, 2 ALRB No. 13 (1976).

¹⁰⁹ *Phelan & Taylor Produce*, 2 ALRB No. 22, at 4 (1976).

¹¹⁰ *Id.*

¹¹¹ *Hansen Farms*, 2 ALRB No. 61 (1976); *Sam Andrews' Sons*, 3 ALRB No. 45 (1977).

¹¹² *Silver Creek Packing Co.*, 3 ALRB No. 13 (1977).

¹¹³ *Jack or Marion Radovich*, 2 ALRB No. 12 (1976).

¹¹⁴ 3 ALRB No. 24 (1977).

¹¹⁵ 140 NLRB 221 (1962). This case was recently overruled in *Shopping Kart Food Mart, Inc.*, 228 NLRB 190 (1977).

¹¹⁶ *Samuel S. Vener Co.*, 1 ALRB No. 10 (1975).

¹¹⁷ *Jake J. Cesare & Sons*, 2 ALRB No. 6 (1976).

¹¹⁸ *Jack or Marion Radovich*, 2 ALRB No. 12 (1976).

the statements were not a misrepresentation at all, but mere campaign propaganda or promises,¹¹⁹ or statements which were ambiguous, but nevertheless accurate under some reasonable interpretations.¹²⁰

5. Promises and Grants of Benefits

The board has adopted the standard set out by the United States Supreme Court in analyzing an employer's grants of benefits before an election. Finding that favors bestowed by an employer before an election may improperly influence employees in their choice of a bargaining agent, the board cited the Supreme Court decision in *NLRB v. Exchange Parts*.¹²¹

The danger inherent in well-timed increase in benefits is the suggestion of the fist inside the velvet glove. Employees are not likely to miss the inference that the source of benefits now conferred is also the source from which future benefits must flow and which may dry up if it is not obliged.¹²²

Upon finding that an employer had established a health insurance plan for his shed workers within weeks of intense union activity and approximately one and one-half months before an election, the board set aside the election.¹²³

The coercive effects of promises of benefits must be balanced against the rights to free speech.¹²⁴ In evaluating pre-election promises of benefits, the board cited the "economic realities test" adopted by the NLRB in *Dal-Tex Optical*.¹²⁵ There, the national board looked to the "economic realities of the employer-employee relationship" and evaluated pre-election statements on the basis of (1) the relationship between the speaker and the hearer, and (2) the message that was actually conveyed. Using this standard, the ALRB in *Hansen Farms*¹²⁶ found that an employer's pre-election promises of better wages and benefits and the hiring of more crews were an unfair use of the employer's economic position and the message conveyed to employees was that the promises were contingent on the outcome of the election. Ruling that the promises tended to interfere with the free choice of voters, the board set the election aside.

In a case in which a union's waiver of dues was charged to be an unfair "promise of benefits," the board cited the U.S. Supreme Court in *NLRB v. Savair Manufacturing Co.*,¹²⁷ stating that an unconditional waiver of fees which remains open after an election is valid.¹²⁸ Such an action is not an unlawful promise of benefits since it was not offered only to workers who joined the union before the election.

¹¹⁹ *Tomooka Bros.*, 2 ALRB No. 52 (1976); *Dessert Seed Co.*, 2 ALRB No. 53 (1976).

¹²⁰ *TMY Farms*, 2 ALRB No. 58 (1976).

¹²¹ 375 U.S. 405, 409 (1964).

¹²² Quoted in *Hansen Farms*, 2 ALRB No. 61 at 13 (1976).

¹²³ *Oshita, Inc.*, 3 ALRB No. 10 (1977).

¹²⁴ CAL. LAB. CODE §1155 (1975).

¹²⁵ 137 NLRB 1782 (1962).

¹²⁶ 2 ALRB No. 61 (1976).

¹²⁷ 414 U.S. 270 (1973).

¹²⁸ *Samuel S. Vener Co.*, 1 ALRB No. 10 (1975).

6. Surveillance and Interrogation

The board has held that the burden is on the complaining party to show that an employer's presence was for the purpose of improper surveillance. It will not be presumed that an employer's presence in the field is for the prohibited purpose of surveillance.¹²⁹ Similarly, an employer's presence in a car some distance from an election site is not enough to establish improper surveillance.¹³⁰

In *Sam Andrews' Sons*,¹³¹ the board found that improper surveillance discouraged employees from affiliating with a union and because of this and other incidents of misconduct set aside the election. It was found that the employer had hired a security guard who was present when organizers tried to talk to employees before work in the mornings, and who followed and remained with one of the work crews each day. Additionally, on at least two occasions a foreman stood within hearing distance of union organizers and refused to leave when asked to do so.

In the same case, the board found that a foreman's questioning of employees about their support of a union tended to discourage employees from union affiliation. The election was set aside on the basis of the totality of the employer's misconduct.

7. Discharge of Employees

The board has found that discharge of an employee for union activities is grounds for setting aside an election. Firing a worker for union activity before an election, the board reasoned, cannot help but chill the desire of voters to support the union.¹³²

8. Third Party Conduct

In one early case, the board was presented with an objection that a crowd of 150 to 200 persons prevented union representatives from making a pre-election inspection of a voting site. Finding that the crowd had not intentionally interfered, and that the union representatives made no effort to reach the site on foot, the board dismissed the objection.¹³³

In the area of threats, the board has held that threats made by non-parties will be accorded less weight in determining effect on the election than threats made by parties.¹³⁴

D. Objections Procedure

Proper subjects for review by post-election objections are: (1) the allegations made in the petition for certification were incorrect; (2) the board improperly determined the scope of the bargaining unit; (3) the election was not properly conducted; (4) misconduct occurred which affected the results of the election.¹³⁵ Objections to the constitutionality of the Act or

¹²⁹ *Tomooka Bros.*, 2 ALRB No. 52 (1976).

¹³⁰ *Lawrence Vineyards Corp.*, 3 ALRB No. 9 (1977).

¹³¹ 3 ALRB No. 45 (1977).

¹³² *Valley Farms*, 2 ALRB No. 42 (1976).

¹³³ *Interharvest, Inc.*, 1 ALRB No. 2 (1975).

¹³⁴ *Takara International, Inc.*, 3 ALRB No. 24 (1977).

¹³⁵ CAL. LAB. CODE §1156.3(c) (1975).

to the rules and regulations are not proper subjects for review under the objections procedure.¹³⁶ The board will defer ruling on objections relating to the classification of certain employees as agricultural when the same question is pending before the NLRB and the number of employees in dispute is insufficient to affect the outcome of the election.¹³⁷

Normally employee status issues are dealt within the challenged ballot process. In *Hemet Wholesale*,¹³⁸ however, the board stated that an objection that certain categories of employees had been excluded from the notice of election could be entertained if it were shown that exclusion from the notice could have deterred voting by a number of employees sufficient to affect the outcome of the election.

Objections to an election must be filed within five days after an election.¹³⁹ The board has ruled that filing timely objections will not, absent unusual circumstances, permit a party to raise new objections based on later discovered facts after the filing period has expired.¹⁴⁰

The board's regulations provide that an objections petition filed with the board shall be accompanied by a declaration of service of the objections petition and any accompanying declarations or detailed statements of fact upon all other parties.¹⁴¹ The board has ruled that untimely service of the objections is not necessarily grounds for dismissing the petition if the parties are offered reasonable opportunity to respond to the detailed allegations.¹⁴²

The practice, under §20365 of the regulations, of screening objections and dismissing those which are unsupported by declarations or which fail to state a prima facie case was upheld in *Kawano Farms, Inc.*¹⁴³

E. Employee Status and Eligibility

1. Procedure

Questions of whether a prospective voter or group of voters are "agricultural employees" within the meaning of § 1140.4(b) of the Act may occasionally arise as a question of unit determination if the group of employees whose status is questioned works in an area which is geographically separated from the employer's agricultural operation—for example, if they are workers in a packing shed which is not located on the farm. Normally, however, questions of employee status are treated as eligibility questions, and must be raised by the challenged ballot procedure during the election in order to be preserved for later determination.¹⁴⁴ Objections to the election on the basis of the status of voters will not be entertained, unless it is alleged that the regional director's description of the unit could have deterred a significant number of potentially eligible employees from

voting.¹⁴⁵ The board will not resolve objections based on status and eligibility if the number of voters involved would not be sufficient to affect the outcome of the election, but it may treat such objections as motions to clarify the bargaining unit.¹⁴⁶

2. Agricultural Employee Status

Problems of agricultural employee status have arisen over workers such as packing shed employees, truck drivers, and mechanics who do not work directly cultivating or harvesting crops, but who are alleged to be engaged in "practices . . . performed by a farmer or on a farm as an incident to or in conjunction with . . . farming operations . . ." which are included in the definition of "agriculture" in Labor Code § 1140.4(a). Generally, the board has found such workers to be agricultural employees if their work is done in connection with the actual growing of crops by their own employer. In *Carl Joseph Maggio, Inc.*¹⁴⁷ packing shed workers were found not to be agricultural employees when ten percent of the produce they packed had not been grown by their employer. The board has sometimes found ownership of the crops to be significant. Employees who pack produce for a custom harvester which does not own the crops it harvests and packs have been held not to be agricultural workers.¹⁴⁸ Workers who do the harvesting for such an employer, however, are agricultural employees.¹⁴⁹

In addition to considering the employer's relation to the products it handles the board examines the relation of the employee's work to actual farming operations. In *Maggio*, a mechanic who serviced farming and field equipment was found to be an agricultural employee, but a mechanic who serviced equipment in the packing shed, which had been found to be a commercial operation, was not. Mechanics who serviced both farm machinery and machinery in a commercial packing shed, however, were found to be agricultural employees when the bulk of their work was performed on the farm machinery.¹⁵⁰

In determining which employees are agricultural employees, the board is bound to follow the precedents of the NLRB, the courts and the U.S. Department of Labor.¹⁵¹ When presented with allegations that truck drivers and other employees whose status was pending before the NLRB had been wrongfully included in the bargaining unit,¹⁵² the board has deferred a determination pending the NLRB's resolution of the issue.¹⁵³ The board did find, in *Dairy Fresh Products Co.*,¹⁵⁴ that truck drivers who worked full time transporting their employer's products to market were agricultural employees.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ 2 ALRB No. 9 (1976).

¹⁴⁹ Associated Produce Distributors, 2 ALRB No. 47 (1976).

¹⁵⁰ Mann Packing Co., 2 ALRB No. 15 (1976).

¹⁵¹ *Id.*

¹⁵² CAL. LAB. CODE §§ 1140.4(a) and (b); Mr. Artichoke, Inc., 2 ALRB No. 5 (1976).

¹⁵³ The board has not been presented with the issue of the status of these employees in a context in which their votes could have affected the outcome of the election.

¹⁵⁴ Associated Produce Distributors, 2 ALRB No. 47 (1976); but see Employer Members of Grower-Shipper Vegetable Association, 230 NLRB No. 150 (1977), in which the NLRB decided the issue. The effect on board rulings has not been determined.

¹⁵⁵ 2 ALRB No. 55 (1976).

¹³⁶ Gonzales Packing Co., 2 ALRB No. 48 (1975).

¹³⁷ Associated Produce Distributors, 2 ALRB No. 47 (1976).

¹³⁸ 2 ALRB No. 24 (1976).

¹³⁹ CAL. LAB. CODE § 1156.3(c) (1975).

¹⁴⁰ TMY Farms, 2 ALRB No. 58 (1976).

¹⁴¹ 8 CAL. ADMIN. CODE § 20365(a) (1976).

¹⁴² Souza and Boster, Inc., 2 ALRB No. 57 (1976).

¹⁴³ 2 ALRB No. 25 (1977).

¹⁴⁴ Hemet Wholesale, 2 ALRB No. 24 (1976).

Managerial and confidential employees and supervisors have been held to be implicitly excluded from the definition of agricultural employees.¹⁵³ The board will not find an employee to be "managerial" upon a mere assertion that a "special relationship" exists with the employer or that the employee lacks a "community of interests" with other employees,¹⁵⁶ or upon a showing, without other facts, that the employee works beyond the harvest season and is paid differently from other employees.¹⁵⁷ Clerical employees have been found to be agricultural if their work is incidental to farming, consisting, for example, of inventory or book and record keeping.¹⁵⁸

In determining whether an employee is a supervisor, the board will look to whether the employee is empowered to exercise independent judgment in directing the actions of other employees. Receiving complaints from employees or transmitting orders to them, or possessing "higher visibility" among employees, without more, is not enough to confer supervisor status.¹⁵⁹ In a case in which the employees were found to have had the authority to transfer, to order employees to do certain work, to issue warnings and threaten discharge, and to perform several other similar duties, and in which the two were perceived by other employees to be supervisors, the board found them to be supervisors, despite the fact that they were not paid as supervisors.¹⁶⁰

3. Economic Strikers

Economic strikers are eligible to vote under Labor Code § 1157, but certain time limits are placed on their eligibility. Workers who go on strike after August 29, 1975, (the effective date of the Act) are eligible to vote for twelve months after the beginning of the strike. Workers who went on strike during the thirty-six months before August 29, 1975, are eligible to vote in elections held within eighteen months of that date. To date, the board's decisions on economic striker eligibility have involved only the latter category of "special" economic strikers.

The board has held that challenged economic strikers have the burden of establishing that their names appear on the payroll immediately preceding the strike and that they went on strike at the commencement of the strike.¹⁶¹ Once these facts are established, the voter is presumptively eligible, and the challenger has the burden of proving ineligibility because of preelection abandonment of interest in the strike.¹⁶² Abandonment of interest after the election does not render a voter ineligible.¹⁶³ The board will presume that a worker's interest in the struck job continues, despite

¹⁵³ Hemet Wholesale, 2 ALRB No. 24 (1976); Prohoroff Poultry Farms, 2 ALRB No. 56 (1976).

¹⁵⁶ Salinas Greenhouse Co., 2 ALRB No. 21 (1976).

¹⁵⁷ Anderson Farms Co., 3 ALRB No. 48 (1977).

¹⁵⁸ Hemet Wholesale, 2 ALRB No. 24 (1976); Dairy Fresh Products Co., 2 ALRB No. 55 (1976).

¹⁵⁹ Dairy Fresh Products Co., 2 ALRB No. 55 (1976).

¹⁶⁰ Dairy Fresh Products Co., 3 ALRB No. 70 (1977).

¹⁶¹ George Lucas & Sons, 3 ALRB No. 5 (1977); Lawrence Vineyards, 3 ALRB No. 9 (1977); Marlin Brothers, 3 ALRB No. 17 (1977).

¹⁶² Marlin Bros., *id.* The board intends to follow the standards of *Pacific Tile and Porcelain Co.*, 137 NLRB 1358 (1962) in determining abandonment. George Lucas & Sons, 3 ALRB No. 5 (1977).

¹⁶³ Lawrence Vineyards, 3 ALRB No. 9 (1977).

the fact that the worker may have found full-time work elsewhere. Reapplication for the struck job, however, must be explained before eligibility can be determined.¹⁶⁴

4. Eligibility

Even if a worker is an agricultural employee, he or she may be found to be ineligible to vote for other reasons. Section 20350(b) of the regulations excludes from eligibility the parents, children or spouses of employers and major stockholders. The board has held that other relatives, such as brothers-in-law, are not included in this limitation,¹⁶⁵ nor are any relatives of supervisors.¹⁶⁶

Workers are not eligible to vote if they were not employed during the last payroll period prior to the filing of the petition.¹⁶⁷ Overruling an earlier decision,¹⁶⁸ the board in *Rod McLellan Co.*¹⁶⁹ held that an employee who is on unpaid sick leave or holiday during the eligibility period may vote if it is found that the employee actually held a current position during the relevant payroll period. In making this determination the board will consider employment history and continuing payments into insurance, retirement or other benefit funds, as well as other evidence of continuing employment.

¹⁶⁴ Marlin Brothers, 3 ALRB No. 17 (1977).

¹⁶⁵ Salinas Greenhouse Co., 2 ALRB No. 21 (1976).

¹⁶⁶ Kern Valley Farms, 3 ALRB No. 4 (1977).

¹⁶⁷ CAL LAB. CODE § 1157 (1975).

¹⁶⁸ Yoder Bros., 2 ALRB No. 4 (1976).

¹⁶⁹ 3 ALRB No. 6 (1977).

V

Unfair Labor Practice Cases

To date, most board decisions about unfair labor practices have involved conduct which occurred during an organizing campaign. Thus, the bulk of decisions deals with surveillance, interrogation, threats, increase in benefits, denial of access and discriminatory discharges. Discriminatory refusals to rehire may also be unfair labor practices.

It is also an unfair labor practice to refuse to bargain with a certified bargaining representative or an employer.¹ Because of the short time the Act has been in effect, the board has not yet decided any such cases. It is expected that cases involving allegations of refusal to bargain will reach the board with increasing frequency.

Labor Code §1152 guarantees employees the right to organize themselves, to assist, join, or form labor organizations, to bargain collectively and to refrain from any of these activities. Labor Code §1153(a) makes it an unfair labor practice for any employer to interfere with, restrain, or coerce agricultural employees in the rights guaranteed to them under §1152.

Aside from violations of §1153(a), the other main area of violations considered by the board has been violations of §1153(c). This section of the Act makes it an unfair labor practice for any agricultural employer to discriminate in regard to the hiring or tenure of employment, or any term or condition of employment, when such discrimination is intended to encourage or discourage membership in any labor organization.

A. Status of Violators

Conduct deemed to be an unfair labor practice must be attributed to either an employer or a labor organization. Section 1140.4(c) defines "agricultural employer" as "any person acting directly or indirectly in the interest of an employer in relation to an agricultural employee. . . ." Thus an employer may be liable for acts committed by supervisors or agents of the employer. A labor organization, defined in §1140.4(f), may be liable for acts of its agents.

1. Employers

In *Whitney Farms*,² the board dismissed a complaint against a labor contractor because it was not an employer within the meaning of §§1140.4(c) and 1153. However, the board found the employer guilty of

certain unfair labor practices which occurred in the labor contractor's labor camp, even though it had no employees at the time the events occurred. The board held that "(a)n employer who violates the rights of an employee, whether or not there is an employment relationship between the employer and the employee, has committed an unfair labor practice."³ In addition, in this case the labor contractor was found to be a supervisor for the employer, and the board held, "the acts of a supervisor may be imputed to an employer, even if the acts were not authorized or ratified."⁴

Following NLRB precedent, the board found an agricultural employer responsible for unfair labor practices when an employee of the employer who was not a manager or supervisor called sheriffs to arrest organizers and the employer failed to disavow the acts of the employee.⁵

In *Western Tomato Growers & Shippers, Inc.*,⁶ an individual not directly connected with the employer physically prevented organizers from entering the fields. The board held that those who act in the interest of an employer are chargeable with violations of the Act and found that this individual had violated §1153(a).

2. Union Agents

When charges are filed against a union, an agency relationship must be established between the perpetrator and the union. In *Western Conference of Teamsters, Locals 1173 and 946 (Zaninovich)*,⁷ the union was held responsible for the unlawful acts of its business agents in threatening employees and was also held accountable for establishing a pattern of misconduct followed by striking employees, even when specific activity could not be attributed to agents of the union.

B. Types of Unfair Labor Practices

1. Surveillance

Surveillance of employee activities which has a reasonable tendency to affect employees' exercise of their rights violates §1153(a).⁸ In several cases, the board has not found sufficient evidence of surveillance. For example, in *Dan Tudor & Sons*,⁹ the board upheld the finding of the administrative law officer that conduct which was incidental to normal supervision did not amount to surveillance. However, a ULP was found in another case, in which a supervisor photographed and tape recorded 40 employees and a UFW organizer while they talked during lunch.¹⁰ In *Merzolan Brothers Farm Management*,¹¹ the board agreed with the administrative law officer that a ranch manager who arrived at a supervisor's request, sat in his pickup approximately 15 feet from the place where the

² *Id.*, at 4.

³ *Id.*, at 5.

⁴ *Venus Ranches*, 3 ALRB No. 55 (1977).

⁵ 3 ALRB No. 51 (1977).

⁶ 3 ALRB No. 57 (1977).

⁷ *Merzolan Bros. Farm Management*, 3 ALRB No. 62 (1977).

⁸ 3 ALRB No. 69 (1977).

⁹ *Anderson Farms Co.*, 3 ALRB No. 67 (1977).

¹¹ 3 ALRB No. 62 (1977).

¹ CAL LAB. CODE §1153(c) (1975).

² 3 ALRB No. 68 (1977).

union organizer was talking with workers, left the door of his truck open, visibly held a paper and pencil, and watched employees for 5 to 10 minutes, violated §1153(a).

2. Interrogation

The board found an unfair labor practice when after an election the employer asked employees to affirm that their vote was not the product of coercion on the part of the employer.¹² The board found that since the questioning was not aimed at probative answers to questions in the course of pre-trial investigations of ULPs, but was a "blanket" mass employee corroboration of a general legal conclusion, it was a violation of §1153(a). Although NLRB precedent has allowed employers to carry out limited questioning of employees in order to prepare a defense to a hearing before the board, the employer's conduct in this case was not relevant to pending charges nor was it of sufficient probative value to justify the risk of intimidation.

In *Valley Farms*,¹³ the board found a violation when the employer questioned five workers about their conversation with a union representative and told the five not to vote.

3. Threats and Violence

Resort to physical violence is normally a violation of the Act. When violence occurs in preventing union organizers' access to workers, it is doubly violative of §1153(a) because, in addition to involving physical abuse, it deprives workers of the right to receive information about the exercise of their rights under the Act.¹⁴ The board has found violations of §1153(a) when a labor contractor made threats of violence even though he did not carry them out.¹⁵

In a related area, the board has found a constructive discriminatory discharge when, because of union membership or activities, the employer creates or imposes such onerous conditions on an employee's continued employment that the employee quits. In *Merzoian Brothers*,¹⁶ such a violation of the Act was found when an employee left his job because a supervisor threatened to fight and kill him after he received campaign material from union representatives.

The board has held that tearing up a union leaflet in the presence of employees violates §1153(a) of the Act.¹⁷ This can be seen as intimidating, threatening behavior as well as an interference with the right to receive information.

4. Grants of Benefits

The board has followed NLRB precedent in concluding that granting wage increases or improving benefits during an organizational campaign may interfere with employees' protected rights since "interference is no

¹² *Anderson Farms Co.*, 3 ALRB No. 67 (1977).

¹³ 2 ALRB No. 41 (1976).

¹⁴ *Anderson Farms Co.*, 3 ALRB No. 67 (1977).

¹⁵ *Id.*

¹⁶ 3 ALRB No. 62 (1977).

¹⁷ *Tex-Cal Land Management, Inc.*, 3 ALRB No. 14 (1977).

less interference because it is accomplished through allurement rather than coercion."¹⁸

The board approved an administrative law officer's conclusion that as a matter of law an increase in wages and establishment of a health insurance program before the effective date of the Act did not by itself violate §1153(a) or any other section of the Act. The board also approved the conclusion that the increase, if lawful when it occurred, could not be rendered unlawful at a later date by a "continuing violation" theory designed to solve a statute of limitations problem. However, evidence of the reason for such a wage increase may "shed light on the true character of matters occurring within the limitations period. . . ."¹⁹

Announcement of a wage increase and the initiation of a health insurance plan after the effective date of the Act and in the midst of an organizing campaign was found to be a violation of §1153(a), although the benefits were retroactive and took effect one day before the effective date of the Act.²⁰

In *Anderson Farms Co.*,²¹ the board held that granting benefits shortly before an election with the intention of inducing employees to vote against the union is a coercive exercise of the employer's economic leverage, and creates an inference by employees that source of the benefits conferred is the source from which future benefits must flow. The benefits were not made known to the workers until just before the election even though they had gone into effect several months earlier, and a large percentage of the work force informed of the plan were not eligible for the benefits because they were hired by a labor contractor.

5. Denial of Access

Many unfair labor practice cases decided by the board have dealt with denial of access. It is a violation of §1153(a) to deny access which is sought within the limits of the "access rule."²² The board has found no unfair labor practice when union organizers who attempted to talk to employees while they were working were prevented from entering the fields.²³ In a case where more organizers attempted to take access than the regulations permitted, however, the board held that the employer must give the union a chance to comply with the regulations before seeking to remove them.²⁴

When organizers are denied access to labor camps, rather than to the workplace, the board has found violations of §1153(a) based upon *United Farm Workers of America v. Superior Court, (Buak Fruit Co.)*,²⁵ and upon the reasons for the access rule. The board has found a violation when organizers were denied access to employer's labor camps, and when a labor contractor leasing a labor camp from an employer enforced the

¹⁸ *Kawano, Inc.*, 3 ALRB No. 54, at 4 (1977), quoting from *NLRB v. Crown Can Co.*, 138 F. 2d 262, 267 (8th Cir. 1943). See also *NLRB v. Exchange Parts Co.*, 375 U.S. 405 (1964).

¹⁹ *Id.*, quoting from *Local 1424 Machinists Union v. NLRB*, 363 U.S. 411, 416 (1960).

²⁰ *Butte View Farms*, 3 ALRB No. 50 (1977).

²¹ 3 ALRB No. 67 (1977).

²² 8 CAL. ADMIN. CODE §20900 (1975).

²³ *S.L. Douglass*, 3 ALRB No. 59 (1977).

²⁴ *Tex-Cal Land Management, Inc.*, 3 ALRB No. 14 (1977).

²⁵ 14 Cal. 3d 902, 537 P.2d 1237, 122 Cal. Rptr. 877 (1975).

employer's no access policy.²⁶ The board has also held, when the employer argued that its denial of access was in good faith because the constitutionality of the access rule was before the court, that it need not inquire into the motive for denial of access.²⁷

In *Pinkham Properties*,²⁸ the board held that §20900.5(c) of the regulations allows two organizers per crew of up to 30 workers and one additional organizer for each increment of 15 or fewer workers.

6. Distribution of Literature

In *Jack Pandol and Sons*,²⁹ the board held that distribution of literature is sufficiently related to the language of the access rule to be reasonably included within it, and said "that the distribution of literature is 'fully within the sweep of our rule as it furthers the goal of effectively informing agricultural employees about the issues impacting upon the question of unionization.'"³⁰

7. Employee Lists

Under §20910 of the regulations, employees are required to submit to the board accurate lists of employee names and addresses when a union has filed a notice of intention to organize. The board has held that a refusal to supply such a list is a per se violation of §1153(a) because of the crucial importance of such lists in protecting employees' rights to receive information in their homes as well as at the work place.³¹

8. Discriminatory Discharges, Layoffs and Transfers

Discriminatory layoffs, discharges or transfers may violate both §1153(a) and 1153(c). They are §1153(a) violations if they interfere with, coerce or restrain agricultural employees in the exercise of rights guaranteed them. They are §1153(c) violations if they discriminate in regard to hiring, tenure or terms and conditions of employment in order to discourage or encourage union membership.

The NLRB has held that "[i]n the absence of a showing of anti-union motivation, an employer may discharge an employee for a good reason, a bad reason, or for no reason at all."³² Employees are not insulated from discharge. It is only when the employee's union activities or beliefs are the motive for discharge that §1153(c) is violated. The general counsel has the burden of establishing anti-union motivation.³³

Noting that it is seldom possible to prove anti-union motivation by direct evidence, the board has held that it may draw "reasonable inferences from the established facts in order to ascertain the employer's true motive."³⁴ A showing of economic justification for a layoff will not preclude a finding that union adherents were included among those laid off because of anti-

²⁶ *Whitney Farms*, 3 ALRB No. 68 (1977).

²⁷ *Jackson & Perkins Co.*, 3 ALRB No. 36 (1977).

²⁸ 3 ALRB No. 15 (1977).

²⁹ 3 ALRB No. 29 (1977).

³⁰ *Id.*, at 2, quoting from *Tex-Cal Land Management, Inc.*, 3 ALRB No. 14, at 16 (1977).

³¹ *Henry Moreno*, 3 ALRB No. 40 (1977).

³² *Borin Packing Co.*, 208 NLRB 280 (1974).

³³ *Lu-Ette Farms, Inc.*, 3 ALRB No. 38 (1977).

³⁴ *S. Kuramura, Inc.*, 3 ALRB No. 49, at 12 (1977).

union animus,³⁵ nor will a showing of justifiable grounds for discharging a certain employee prevent a finding of discriminatory intent if it is shown that the employee would not have been fired "but for" his or her union activity.³⁶

Even without a finding of anti-union motivation, a discharge, layoff, or transfer may impinge on employee rights guaranteed by §1152 and thus violate §1153(a). In *Maggio-Tostado, Inc.*,³⁷ the administrative law officer found that the employer had violated §§1153(a) and 1153(c). The board disagreed with the officer's finding as to some of the employees and concluded that there was not sufficient evidence on the record about the relationship of the discharge of the employees to the question of unionization and the employer's knowledge of union sentiments of the employees. Although not finding a §1153(c) violation, the board did find a §1153(a) violation because the evidence showed that the employees had been discharged for engaging in concerted activities.

9. Refusal to Rehire

Discriminatory refusal to rehire violates §1153(c). As with discharges, anti-union animus must be shown. Without a showing of such anti-union motivation there may still be a §1153(a) violation. In *Resetar Farms*,³⁸ the board sustained the administrative law officer's conclusion that §1153(c) was not violated because there was no indication of anti-union motivation. However, the employer's refusal to rehire interfered with the employees' exercise of their rights to mutual aid and protection in protesting certain work conditions.

In *Kyutoku Nursery, Inc.*,³⁹ the union charged that the employer had committed unfair labor practices when it refused to grant two requests to reinstate striking employees. The board found that the first refusal was not an unfair labor practice, because the first request was conditioned on an agreement by the employer to deal with the union on wages. By the time of the second request, all the employees had been permanently replaced. The general counsel argued that these workers, whose strike resulted in an expedited election under §1156.3 of the Act, should not be treated similarly to "economic" strikers who, under NLRB precedent, need not be rehired if they have been permanently replaced. If "recognitional" strikers could be permanently replaced before an election was held, it was argued, their right to strike for an expedited election would be meaningless. The board rejected this argument on the ground that workers have no "right" to an expedited election, and held that "recognitional" strikers, like economic strikers, have the right to be reinstated until they are permanently replaced.

10. Unlawful Assistance and Unfair Labor Practices by a Union

A few cases have dealt with alleged violations of Labor Code §1153(b),

³⁵ *Tex-Cal Land Management, Inc.*, 3 ALRB No. 14 (1977).

³⁶ *S. Kuramura, Inc.*, 3 ALRB No. 49 (1977).

³⁷ 3 ALRB No. 33 (1977).

³⁸ 3 ALRB No. 18 (1977).

³⁹ 3 ALRB No. 30 (1977).

which prevents employer domination of, interference with, or assistance to a union. In all these cases, the board has found insufficient evidence of unlawful assistance.

Three cases to date have dealt with union unfair labor practices under §1154 of the Act. In *Teamsters Union Local 865*,⁴⁰ and in *Western Conference of Teamsters, Local 946 (Mello-dy Ranch)*,⁴¹ the board found violations of §1154(a) when Teamster organizers assaulted UFW organizers. In *Western Conference of Teamsters, Locals 1173 and 946 (Zaninovich)*,⁴² the union was found to have violated employees' rights under §1154(a) (1) when, among other things, it used threats and force in an attempt to get them to join a strike.

C. Remedial Orders

Section 1160 of the Act empowers the board to prevent any person from engaging in an unfair labor practice. Section 1160.3 directs the board, upon the finding that a person has engaged in or is engaging in an unfair practice, to issue

an order requiring such person to cease and desist from such unfair labor practice, to take affirmative action, including reinstatement of employees with or without backpay, and making employees whole, when the board deems such relief appropriate, for the loss of pay resulting from the employer's refusal to bargain, and to provide such other relief as will effectuate the policies of this part.

In contrasting this mandate to the comparable section of the NLRA, the ALRB has stated that this Act bestows "far broader remedial powers."⁴³ Speaking generally of its remedial powers the board went on to say:

Given the uniqueness of agricultural labor and the breadth of our law, we will not be regimented by NLRB precedent in fashioning effective remedies.⁴⁴

Pursuant to this broad power, the board has used a number of standard remedies which have been used by the NLRB and has developed several new remedial orders appropriate to the violation found to have been committed.

1. Notice to Workers

The most often used remedies developed by the board have involved the Notice to Workers. In *Tex-Cal Land Management, Inc.*,⁴⁵ the board adopted a standard notice form which explains to farm workers in non-technical language the rights given by the Act and the fact that a hearing has taken place before the board. The notice, which is signed by the party who has been found to have committed a violation, must list the specific

⁴⁰ 3 ALRB No. 60 (1977).

⁴¹ 3 ALRB No. 52 (1977).

⁴² 3 ALRB No. 57 (1977).

⁴³ *Resettar Farms*, 3 ALRB No. 18 (1977).

⁴⁴ *Id.*, at 3.

⁴⁵ 3 ALRB No. 14 (1977).

activities which will no longer be engaged in, and must be read to employees in English and Spanish or other appropriate languages during work time by a company representative or a board agent. A board agent must be given the opportunity to answer questions from employees about the notice and their rights under the Act.

Since *Tex-Cal*, reading, posting and individual distribution of the notice have been ordered in almost every case in which a violation has been found.

2. Reinstatement and Backpay

The board has consistently ordered reinstatement with backpay and interest upon a finding of a discriminatory discharge under §1153(c) of the Act. In a case of discriminatory demotion⁴⁶ the board ordered that the worker be reinstated to his former position and receive as backpay the difference between what he would have earned in that position and what he earned in the lower-paying position. In another case⁴⁷ the board ordered that employees who had been transferred to other jobs in violation of §1153(c) be restored to their former positions.

The formula for computing backpay was revised by the board in its decision in *Sunnyside Nurseries, Inc.*⁴⁸ Earlier, the board had used the standard NLRB formula adopted in *F.W. Woolworth Co.*,⁴⁹ which reimbursed workers for backpay owed less net earnings on a quarterly basis. The new formula calculates the amount of backpay owed on a daily basis, a method the board deemed more appropriate in the agricultural setting.

The board has maintained the NLRB policy⁵⁰ of awarding interest on backpay at the rate of 7 percent per year.

3. Remedies for Denial of Access

The board's remedies for violations of the "access rule" by employers are designed to restore to the workers, as far as possible, the lost opportunity to talk to organizers and to hold a representation election.

In several cases of denial of access, the board has ordered the employer to allow access by that union without any restriction on the number of organizers.⁵¹ This remedy was awarded "[i]n order to compensate for the long period of time in which organizers were denied any chance to approach and talk to employees at work."⁵²

In two other cases of access denial, the board ordered the respondent to allow the union access at any time employees were not working throughout the full working day.⁵³ In both of these cases, the number of

⁴⁶ *Sam Andrews' Sons*, 3 ALRB No. 45 (1977).

⁴⁷ *Hemet Wholesale*, 3 ALRB No. 47 (1977).

⁴⁸ 3 ALRB No. 42 (1977).

⁴⁹ 90 NLRB 289 (1950).

⁵⁰ *Isis Plumbing and Heating Co.*, 138 NLRB 716 (1962).

⁵¹ *Jack Pandol and Sons, Inc.*, 3 ALRB No. 29 (1977), where the respondent was found to have prevented access by subjecting union organizers to citizen's arrest; *Jackson & Perkins Co.*, 3 ALRB No. 36 (1977), where the respondent was found to have directed sheriffs to detain organizers when they appeared at lunch time and to have used trucks and machinery to prevent organizers from entering the property; *Anderson Farms Co.*, 3 ALRB No. 67 (1977), where organizers were encircled and detained by supervisors and mechanics until the sheriff arrived, arrested the organizers, and searched and towed their cars.

⁵² *Jackson & Perkins Co.*, 3 ALRB No. 36 (1977).

⁵³ *Sam Andrews' Sons*, 3 ALRB No. 45 (1977), where UFW organizers were denied access to employer's buses at all times while Teamsters Union organizers were permitted access for the purpose of electioneering during periods other than those provided for by the "access rule"; *Western Tomato Growers & Shippers, Inc.*, 3 ALRB No. 51 (1977), where the employer, bearing firearms and threatening serious bodily harm, denied union organizers access to the UFW.

union organizers was limited to the usual number allowed by the regulations.

In three cases of notably egregious conduct,⁵⁴ the board ordered the respondent to provide employees with a period of regular working time (one or two hours) during which the union could talk to and organize the workers, who were to receive regular pay but were not to work during the period. This remedy was deemed necessary to compensate for the employers' interference with their employees' right to speak with union organizers.⁵⁵

In order to compensate for the respondents' interference with the employees' right to talk to union organizers and the union's effort to get a showing of interest, the board has also ordered respondents in access denial cases to give the union employee lists as required by §20910 of the regulations without the required showing of interest.⁵⁶

The board has also ordered a respondent to inform all its supervisors of the right of access as set forth in the regulations.⁵⁷

4. Remedies for Refusal to Provide Employee Lists

Section 20910(c) of the regulations requires an employer to submit an employee list to the regional office of the ALRB within five days from the date a notice of intention to organize has been filed. In two cases in which employers did not file these lists, the board ordered remedies which would enable organizers to communicate with employees as they might have done had the lists been provided.⁵⁸ These remedies included providing the ALRB with an employee list as required by §20910(c); providing the union with an employee list when the next harvest began and every two weeks thereafter; and allowing access without some of the restrictions in §20900 on time and number of organizers.

5. Miscellaneous Remedies

Other specific remedies have been ordered to cure the effects of certain unfair labor practices. In two cases⁵⁹ the board adopted the administrative law officer's order to make a bulletin board available to the union for a specified period of time, and to give the union a list of all employees who would receive the notice to workers. Additional access periods were also granted in these cases. In *Sunnyside Nurseries*, the board found that this remedy was necessary to give the union an opportunity to reorganize employees after the unlawful discharge of 25 percent of the known union supporters. In *Hemet Wholesale*, the additional access period was deemed necessary because the respondent promulgated an unlawful no-solicitation rule, committed other serious unfair labor practices, and then discharged leading union supporters.

⁵⁴ Jackson & Perkins Co., 3 ALRB No. 36 (1977) [three one-hour periods]; Sam Andrews' Sons, 3 ALRB No. 45 (1977) [two hours]; Anderson Farms Co., 3 ALRB No. 67 (1977) [one hour].

⁵⁵ Anderson Farms, *id.* at 27.

⁵⁶ Sam Andrews' Sons, 3 ALRB No. 45 (1977); Venus Ranches, 3 ALRB No. 55 (1977); Anderson Farms Co., 3 ALRB No. 67 (1977).

⁵⁷ Venus Ranches, 3 ALRB No. 55 (1977).

⁵⁸ Henry Moreno, 3 ALRB No. 40 (1977); Yeji Kitigawa, 3 ALRB No. 44 (1977).

⁵⁹ Sunnyside Nurseries, 3 ALRB No. 42 (1977); Hemet Wholesale, 3 ALRB No. 47 (1977).

In *Sam Andrews' Sons*,⁶⁰ the board ordered the employer to pay all members of a particular crew for three hours of work which they lost as a result of violations of §§1153(a) and (c) of the Act.

In another case,⁶¹ the board ordered the respondent, who had used firearms and threats of bodily injury to prevent union organizers from talking to workers, to send a letter of apology to the workers and the union organizers present during the three days of this conduct.

In *AS-H-NE Farms*,⁶² the respondent was ordered to destroy and give no effect to all copies of an "employment information sheet," which was characterized by the board as a "yellow dog contract," that is, one in which the employee essentially agrees not to engage in union activity as a condition of employment.

In a case which involved extensive unfair labor practices,⁶³ the respondent was ordered to develop a method of compiling and maintaining accurate lists of the names and addresses of all employees, including those paid through labor contractors, as required by the regulations. Additionally, because the respondent's violations required the setting aside of a relatively close election with high voter turnout, the board ordered that the union be permitted to petition for an election without being required to make the usual showing of interest.

Finally, in a case involving an unprovoked physical attack and verbal abuse by agents of one union against a rival union, the board barred an agent of the respondent union from engaging in organizing activities for one year in the region where the attack occurred.⁶⁴

6. Litigation Costs

The issue of awarding attorney's fees and litigation costs has been addressed several times by the board. Although the ALRB claimed discretion to grant attorney fees and costs similar to that possessed by the NLRB in the first unfair labor practice opinion issued,⁶⁵ it declined to make the award in that case, and so far has awarded attorney's fees and litigation costs in only one case. In *Teamsters Local Union 865*,⁶⁶ the board let stand the administrative law officer's award of attorney's fees and costs made against a labor union for a course of conduct amounting to frivolous litigation in defending a charge of an unprovoked attack on rival union organizers.

⁶⁰ 3 ALRB No. 45 (1977).

⁶¹ Western Tomato Growers & Shippers, Inc., 3 ALRB No. 51 (1977).

⁶² 3 ALRB No. 53 (1977).

⁶³ Anderson Farms Co., 3 ALRB No. 67 (1977).

⁶⁴ Western Conference of Teamsters 946 (Mello-Dy Ranch), 3 ALRB No. 52 (1977).

⁶⁵ Valley Farms, 2 ALRB No. 41 (1976).

⁶⁶ 3 ALRB No. 60 (1977).

VI

Agricultural Labor Relations Board Litigation

During the first two years of the Agricultural Labor Relations Act, the board appeared as a party or as amicus curiae in 61 court cases, of which 45 were decided at the date of this report. With the exception of the litigation concerning the pre-petition list (discussed below) and a small number of other cases in which the superior courts refused to grant discretionary relief, such as issuance of injunctions or enforcement of subpoenas, the board has never lost a case.

During this period, only one judicial decision, the access case which was ultimately decided by the United States Supreme Court, has determined the substantive validity of an action by the board. Most of the other litigation involving the agency has been devoted to preserving the board's right to make decisions free from interference by federal and state courts.

As a result, the board is in the process of establishing three doctrines important to the Agricultural Labor Relations Act: (1) the abstention doctrine, which requires a federal court to defer to proceedings pending before state courts or administrative tribunals; (2) the preemption doctrine, which provides that a labor board has exclusive jurisdiction over conduct which is arguably protected or prohibited by its governing labor relations statute and that courts lack jurisdiction to adjudicate such conduct; and (3) the doctrine of *Boire v. Greyhound Corp.*¹ and *Leedom v. Kyne*,² which holds that board election decisions are not directly reviewable but may be subject to court review only after an unfair labor practice order has issued against an employer who has refused to bargain.

A. Access

On August 29, 1975, the ALRB adopted regulations governing union organizers' access to employers' premises. The first suit seeking to enjoin the access rule, *Pandol & Sons v. Brown*,³ was filed in United States District Court on September 3, 1975. A three-judge court, which convened on September 5, 1975, ruled that the federal court should abstain from considering the issues until after the state courts had had an opportunity to construe and rule on the access regulation.

On September 8, 1975, a group of Fresno-area growers filed a petition for writ of mandate in Fresno Superior court seeking to compel the ALRB to vacate the access rule.⁴ The court held the rule invalid on constitutional

and statutory grounds and commanded the board to vacate the regulation. On September 10, 1975, a similar action seeking to enjoin the access rule was filed by Tulare County growers in the Tulare County Superior Court,⁵ and a temporary restraining order issued.

The ALRB then filed an original petition for writ of mandate in the California Supreme Court, asking the Court to uphold the validity of the access regulation and to stay the superior court orders pending final decision. Four days later, the Court issued the requested stay. On March 4, 1976, the Supreme Court upheld the validity of the access regulation against all constitutional and statutory challenges.⁶

Both groups of plaintiffs filed appeals to the United States Supreme Court. On October 4, 1976, the Court granted the board's motions to dismiss for lack of a substantial federal question, which was a decision on the merits.⁷

The decision of the California and United States Supreme Courts sustained a broad rule-making power on behalf of the ALRB and showed significant deference to the board's findings concerning the differences between the agricultural and industrial settings. The California Supreme Court decision was the first judicial interpretation of Labor Code § 1148, which requires the board to follow "applicable precedents of the National Labor Relations Act." The Court held that "precedents" means substantive NLRB law and that the ALRB was not bound by NLRB procedures. The Court also interpreted "applicable" to give the ALRB broad discretion to determine where the unique agricultural context rendered NLRB precedent irrelevant.

B. Judicial Intervention in ALRB Processes

1. Abstention

The access case marked the first time a federal court applied the abstention doctrine to the ALRA, permitting the ALRB and the state courts to interpret the ALRA free from federal court interference. Since then, three other decisions by United States district courts have applied the abstention doctrine to federal court suits seeking to enjoin the ALRB.

In *Dodd v. ALRB*,⁸ the plaintiff, representing a class of truck drivers who delivered agricultural products from farms to distributors in the Salinas Valley, sued to enjoin the board from including them in bargaining units of agricultural employees on the grounds that federal law preempted the field and that their inclusion in the agricultural unit would deprive them of contractual, statutory and constitutional rights. The district court dismissed the complaint on abstention grounds, holding that "the intervention by a federal court at this point may effect a needless interference with the state's administrative processes."

In *Cel-A-Pak v. California ALRB*,⁹ the employer sought to enjoin the

¹ 376 U.S. 473 (1964).

² 358 U.S. 184 (1959).

³ No. 75-165 Civ. (F.D. Cal., Sept. 5, 1975).

⁴ *Kulso v. Mahony*, No. 172296 (Fresno Super. Ct., Sept. 10, 1975).

⁵ *Pandol & Sons v. Mahony*, No. 80521 (Tulare Super. Ct., Sept. 10, 1975) (temporary restraining order).

⁶ *ALRB v. Superior Court*, 16 Cal. 3d 392, 546 P.2d 733, 129 Cal. Rptr. 229 (1976).

⁷ *Kulso v. ALRB*, 429 U.S. 802 (1976).

⁸ No. 75-1883 (N.D. Cal., Oct. 22, 1975).

⁹ No. 76-2381 (N.D. Cal., Apr. 28, 1977), appeal docketed, No. 77-2373 (9th Cir. June 23, 1977).

board from certifying an election among its employees and from prosecuting an unfair labor practice charge filed against it. The plaintiff contended that its workers were within the jurisdiction of the NLRA, despite a contrary ruling on that point by the NLRB. Alternatively, it argued that if some of its workers were agricultural employees, their exemption from the NLRA was unconstitutional. The district court held that Cel-A-Pak's workers were agricultural and therefore with the ALRB's jurisdiction. It also found the NLRA's exemption of agricultural workers constitutional. On all other issues it abstained and dismissed the action. The employer has appealed to the Ninth Circuit Court of Appeals.

In *John V. Borchard v. ALRB*,¹⁰ the district court applied the abstention doctrine when an employer sought to have a pending ALRB unfair labor practice proceeding transferred to a federal bankruptcy court. The court held that "in recognition of the need for comity between federal and state jurisdictional grants and in compliance with the doctrine of abstention," liability in the unfair labor practice case should be determined by the ALRB. The court also held, however, that if the employer were found liable for the unfair labor practices, the court would decide whether it or the ALRB would determine the amount of damages to be awarded. The court retained exclusive jurisdiction to determine the priority of the union's claims in the bankruptcy proceeding.

2. Preemption

The application of the NLRA doctrine of preemption to the ALRA is pending in several appellate courts. In *Vargas v. Municipal Court*,¹¹ the California Supreme Court faces the issue whether a municipal court may entertain an employer's action to evict discharged employees living in company housing while the ALRB is deciding an unfair labor practice case charging that the employees were fired for union activities. Application of the preemption doctrine would allow the ALRB to adjudicate the lawfulness of the employer's conduct in the unfair labor practice proceeding before the employees could be forced from their housing.

The preemption doctrine was applied to the ALRA by the California Court of Appeal in *UFW v. Superior Court of Kern County*.¹² The appellate court ordered the lower court to dismiss an action for declaratory relief brought by two employers to determine if they had a duty to bargain with the UFW after the expiration of the certification year. Applying the preemption doctrine, the court of appeal found that the issues raised by the employer could be decided by the board in an unfair labor practice proceeding and held that the board has exclusive primary jurisdiction over all phases of the administration of the ALRA involving unfair labor practices. The board appeared as amicus curiae, arguing for application of the preemption doctrine.

The preemption issue is also pending in the state court of appeal in *People v. Medrano*,¹³ in which two union organizers were convicted of

criminal trespass while visiting a labor camp to inform camp residents of an upcoming ALRB election. The board contends, as amicus curiae, that the organizers were engaged in activity protected by the ALRA and cannot be judicially punished for such conduct.

3. Judicial Intervention in ALRB Election Proceedings

In interpreting the National Labor Relations Act, the United States Supreme Court has held that board orders in election cases are reviewable only on appeal from a subsequent unfair labor practice order for refusal to bargain.¹⁴ However, the Court established a narrow exception to this doctrine in *Leedom v. Kyne*,¹⁵ permitting direct review of an election decision where the NLRB had clearly acted in excess of its delegated powers and contrary to a specific statutory prohibition.

The applicability of this doctrine of indirect judicial review to the ALRA has been considered in several cases before the California state courts of appeal. In each, the court followed the federal precedent. The first such decision was *Mahony v. Gillespie*¹⁶ in which the court vacated a temporary restraining order against an election issued by the Imperial County Superior Court. In an unpublished opinion, the appellate court stated, "We are satisfied judicial intervention at this stage of election proceedings is not permitted (Act §§§ 1156.3, 1160.8 and 1160.9), and the employer must be relegated to his post-election remedy provided in §§ 1156.3 and 1158."

Another court of appeal reached the same conclusion in *Nishikawa Farms, Inc. v. Mahony*,¹⁷ in which an employer sought in Solano County Superior Court to compel the ALRB to set aside a union certification on the ground that the union had not presented a satisfactory showing of interest. In a two-pronged decision the court held that the superior court lacked jurisdiction to review certification proceedings and that, consistent with NLRB precedent, showing of interest was not reviewable.

In *Radovich v. ALRB*,¹⁸ the court applied the reasoning of *Nishikawa Farms* to reject two employers' contentions that California superior courts have jurisdiction to review ALRB certification orders directly. The employers also argued that even if such jurisdiction did not exist in all cases, this case fell within the *Leedom v. Kyne*¹⁹ exception because the ALRB has directed an election without a sufficient showing of interest and had wrongfully dismissed certain post-election objections. The appellate court held that the *Kyne* exception was inapplicable because showing of interest is nonreviewable and the Act permits the board to dismiss objections which are legally insufficient.

4. Judicial Intervention in ALRB Unfair Labor Practice Proceedings

Two issues have arisen concerning the availability of judicial review at various stages of the unfair labor practice proceedings short of a final

¹⁰ No. 76-2604 (S.D. Cal., May 17, 1977).

¹¹ *McAnally Enterprises v. Vargas*, No. 43299 (Riverside Mun. Ct., March 29, 1977); *hearing granted sub. nom. Vargas v. Municipal Court*, L.A. No. 30732 (Sup. Ct., Feb. 4, 1977).

¹² 72 Cal. App. 3d 268, 140 Cal. Rptr. 87 (1977).

¹³ No. 54-167c (San Joaquin County Mun. Ct., Nov. 13, 1975); *certified to Ct. App.*, No. 3 Crim 8962 (Ct. App., 3d App. Dist., Sept. 30, 1976).

¹⁴ *AFL v. NLRB*, 308 U.S. 401 (1940); *Boire v. Greyhound*, 376 U.S. 473 (1964).

¹⁵ 358 U.S. 184 (1958).

¹⁶ 4 Civ. No. 14699 (Ct. App., 4th App. Dist., Nov. 13, 1975).

¹⁷ 60 Cal. App. 3d 781, 136 Cal. Rptr. 233 (1977).

¹⁸ 72 Cal. App. 3d 36, 140 Cal. Rptr. 24 (1977).

¹⁹ 358 U.S. 184 (1958).

decision by the board. In *Belridge Farms v. ALRB*²⁰ the California Supreme Court is considering whether the refusal of the ALRB general counsel to issue an unfair labor practice complaint is subject to review by the courts. Under the NLRA, the courts have held that such dismissals are not reviewable. In *UFW v. Superior Court of Kern County*,²¹ the appellate court held that the superior court lacked jurisdiction to decide issues which could be raised in unfair labor practice proceedings before the board.

The Merced Superior Court applied the holding of *UFW v. Superior Court* in *E. & J. Gallo Winery v. ALRB*,²² in which the employer sought to enjoin the board from continuing to prosecute an unfair labor practice case against it until the board had granted the company full pre-trial discovery. The court held that it lacked jurisdiction to enjoin the ALRB proceedings and that judicial review of the board's discovery policy was available in the court of appeal on appeal from the board's order in the administrative proceeding.

C. Immunity

In *Perry v. ALRB*,²³ an employer brought a federal action claiming that his constitutional rights to associate and to bear a gun were violated when the board initiated an unfair labor practice proceeding against him for leading an armed posse which repelled union organizers attempting to gain access. The case was dismissed by the court on the grounds that the regional director who issued the complaint was protected by prosecutorial immunity and that the board and its members were protected by judicial immunity.

D. Enforcement of Subpoenas for Pre-petition Lists

The board has encountered significant difficulty in judicially enforcing its regulation requiring employers to submit pre-petition lists of employees' names and addresses.²⁴ The board is seeking appellate review of three decisions of the Riverside County Superior Court questioning the validity and enforceability of the regulation.

In *ALRB v. Henry Moreno*,²⁵ the employer contended that the regulation was invalid and that it had no employee list conforming to the requirements of the regulation. The court denied the board's application to enforce a subpoena duces tecum for the list, on the ground that the employer did not have the subpoenaed list and therefore was unable to comply.

In the companion cases of *ALRB v. Harry Carian*,²⁶ and *ALRB v. Laflin*,²⁷ the court refused to enforce two subpoenas for pre-petition lists,

²⁰ 5 Civ. No. 2826 (Ct. App., 5th App. Dist., Jan. 10, 1976); hearing granted, L.A. No. 30594 (Sup. Ct., March 24, 1976).

²¹ 72 Cal. App. 3d 268, 140 Cal. Rptr. 87 (1977).

²² No. 55794 (Merced Super. Ct., Aug. 8, 1977).

²³ No. 75-823 (E.D. Cal., May 17, 1976).

²⁴ 8 Cal. Admin. Code, § 20910(c).

²⁵ Indio No. 23012 (Riverside County Super. Ct., May 5, 1977); 4 Civ. 19026 (Ct. App., 4th App. Dist., filed May 27, 1977).

²⁶ Indio No. 23504 (Riverside County Super. Ct., June 6, 1977).

²⁷ Indio No. 23566 (Riverside County Super. Ct., June 6, 1977).

holding that the regulation was unauthorized by the ALRA, violated the constitutional right of privacy and could not be enforced by means of a subpoena.

In *ALRB v. Laflin & Laflin*,²⁸ the court refused to issue an injunction ordering several Coachella employers to comply with the regulation.

E. Petitions for Review under Labor Code § 1160.8

Labor Code § 1160.8 provides that final decisions in unfair labor practice cases may be judicially reviewed if the aggrieved party files a petition in the court of appeal.²⁹ Six petitions have been filed raising a variety of issues, ranging from the propriety of the board's remedies to the sufficiency of the evidence on which the board's decision is based. Only one of these petitions has been acted upon; it was dismissed on technical grounds.³⁰

F. Petitions for Injunctive Relief under Labor Code § 1160.4

Section 1160.4 of the statute authorizes the board to petition for injunctive relief in superior court, after issuance of an unfair labor practice complaint, to prevent continuance of the unfair labor practice.³¹

The board has filed thirteen petitions for injunctive relief. In nine cases, the board sought temporary and preliminary injunctions against employers who refused to respect the access rights of union organizers. In three of these cases,³² the courts refused to grant injunctive relief. In one case,³³ the court issued a temporary restraining order granting conditional union access, but it refused to issue a preliminary injunction after the employer complied with the access rule. In four cases,³⁴ the courts granted temporary or preliminary injunctions against employers who continued to deny organizers the access permitted by the board's rule. In one case,³⁵ the court enjoined an employer from engaging in violence towards union organizers seeking access.

The board has petitioned in four cases for injunctive relief against employer misconduct, such as surveillance, interrogation, threats, discriminatory discharges and interference with union organizing activities.³⁶ The

²⁸ Indio No. 23881 (Riverside County Super. Ct., June 17, 1977).

²⁹ Any person aggrieved by the final order of the board granting or denying in whole or in part the relief sought may obtain a review of such order in the court of appeal having jurisdiction over the county wherein the unfair labor practice in question was alleged to have been engaged in, or wherein such person resides or transacts business, by filing in such court a written petition requesting that the order of the board be modified or set aside. Such petition shall be filed with the court within 30 days from the date of the issuance of the board's order. Upon the filing of such petition, the court shall . . . have jurisdiction of the proceeding . . . CAL. LAB. CODE § 1160.8 (1975).

³⁰ United Farm Workers of America, AFL-CIO v. ALRB, Petition for Review of Kyutoku Nursery, Inc., 3 ALRB No. 30 (1977), 1 CIV. No. 41308 (Ct. App., 1st App. Dist., June 13, 1977).

³¹ The board shall have power upon issuance of a complaint as provided in § 1160.2 charging that any person has engaged in or is engaging in an unfair labor practice, to petition the superior court in any county wherein the unfair labor practice in question is alleged to have occurred, or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. CAL. LAB. CODE § 1160.4 (1975).

³² ALRB v. Joseph E. Gallo, No. 51482 (Merced Super. Ct., settled Dec. 13, 1976); ALRB v. Pandol & Sons, No. 80746 (Tulare Super. Ct., Oct. 8, 1975); ALRB v. Jackson & Perkins Co., No. 138476 (Kern Super. Ct., Dec. 23, 1975).

³³ ALRB v. Armstrong Nurseries, No. 1833373 (Kern Super. Ct., Jan. 20, 1976).

³⁴ ALRB v. M.V. Pista & Co., No. 57326 (Santa Cruz Super. Ct., Oct. 10, 1975); ALRB v. Alfred Gagnon, Tepusquet Vineyards, et al., No. SM 17433 (Santa Barbara Super. Ct., Oct. 23, 1975); ALRB v. Frudden Produce, No. 72085 (Monterey Super. Ct., Nov. 7, 1975); ALRB v. Deardorff-Jackson Co., No. 59828 (Ventura Super. Ct., Nov. 7, 1975).

³⁵ ALRB v. Henry Moreno, Indio No. 23842 (Riverside Super. Ct., June 24, 1977).

³⁶ ALRB v. Joseph E. Gallo, supra n. 32; ALRB v. M.V. Pista & Company, supra n. 34; ALRB v. Frudden Produce, id.; ALRB v. Deardorff-Jackson Company, id.

requested relief was granted in all but one case.³⁷

In two cases, both brought against the Western Conference of Teamsters, the board obtained injunctions prohibiting the Teamsters from violent picketing of employers' premises.³⁸

The board sought an injunction directing one employer to provide a pre-petition list after the filing of a notice of intent to organize.³⁹ The issue of the propriety of a temporary restraining order was rendered moot by the filing of a petition for certification by the union.

The board sought provisional reinstatement of discriminatees and temporary injunctive relief against interference with employee rights under Labor Code § 1152 against one employer during the 1977 harvest season.⁴⁰ An administrative law officer had already heard the unfair labor practice case and had issued a decision finding that the employer had committed such practices, but the board had not yet rendered an opinion on the case. The superior court denied the board's petition for relief, but the employer later rehired the discriminatees after the board upheld the law officer's findings.

³⁷ ALRB v. Joseph E. Callo, *supra* n. 32.

³⁸ ALRB v. Western Conference of Teamsters (Growers Exchange), No. 72756 (Monterey Super. Ct., August 21, 1976);

ALRB v. Western Conference of Teamsters (Zaninovich), No. 83416 (Tulare Super. Ct., Sept. 17, 1976).

³⁹ ALRB v. Jack Brothers and McBurney, Inc., No. 1787 (Imperial County Super. Ct., settled Dec. 15, 1976).

⁴⁰ ALRB v. Hemet Wholesale, No. 119799 (Riverside Super. Ct., settled June, 1977).

Appendix A

The Procedures of the Agricultural Labor Relations Board

A. Rules and Regulations of the Board

1. History

The ALRB is empowered by § 1144 of the Act to, "from time to time, make, amend and rescind . . . such rules and regulations as may be necessary to carry out the provisions" of the Act.

The ALRA became effective on August 28, 1975. The following day, the newly-appointed board conducted its first official meeting in Sacramento. At that meeting, the board adopted emergency regulations governing all the statutory functions of the new agency. During October, November and December of 1975, the board conducted public hearings in Sacramento, Fresno, Salinas, and El Centro, in order to receive oral and written statements from interested parties regarding proposed revisions of, and amendments to, the emergency regulations. Statements were received from individual growers, representatives of growers' associations, representatives of the United Farm Workers and Teamsters unions, officials from county farm bureau offices, and individual farm workers.

On March 4, 1976, the California Supreme Court upheld the validity of the board's access regulation, which gave labor union representatives a limited right to enter the premises of agricultural employers in order to engage in organizational activities with agricultural employees. The court, in a 4 to 3 decision, overturned lower state court rulings that had enjoined enforcement of the access rule and ordered the board to vacate the regulation on the ground that it was invalid for constitutional and statutory reasons. The State Supreme Court held that the access rule did not violate the constitution. The regulation was found to satisfy the due process clause because "it cannot be said that an access regulation designed to assist self-organization by workers lacks a reasonable relation to a valid public goal; and . . . it is neither arbitrary nor discriminatory. . . ."¹

The court also held that the ALRB's creation of a limited right of access by means of a detailed and specific regulation was valid under the Act because it did not conflict with the legislature's intent concerning the board's powers.

The board held a public meeting on March 10, 1976, in order to discuss proposed modifications of the access rule and its other regulations. Shortly after this time the board became inoperative and the agency ceased to

¹ ALRB v. Superior Court, 16 Cal. 3d 392, 546 P.2d 733, 128 Cal. Rptr. 229 (1976).

function due to lack of funds. The first public meeting of the reconstituted board took place on August 11, 1976, after the agency was refunded for fiscal year 1976-1977. During the interim period, new proposed regulations had been drafted; they were presented to the public at the August 11 meeting.

Statements from interested parties about revisions of the regulations were again received at hearings held in September 1976. In the first week of October 1976, the United States Supreme Court upheld the access rule, dismissing an appeal filed by two growers challenging its constitutionality. The appeal was dismissed by the court for want of a substantial federal question.² At a public meeting held on October 13, 1976, the board adopted revised rules and regulations. At another public meeting, held on November 24, 1976, the board adopted a substantially revised access rule. The regulations, as adopted on these dates, have remained in effect to the time of this report.

The regulations govern the board's two main functions: to prevent any person from engaging in any unfair labor practice (Labor Code § 1153, et seq.) and to conduct and certify representation elections. (Labor Code § 1156, et seq.) The procedure under each section is here considered separately.

2. Unfair Labor Practice Procedures

The investigation and processing of allegations that unfair labor practices have been committed begin with the filing, in the appropriate regional office, of a charge that such practices have been or are being committed. Any person may file such a charge. (8 Cal. Admin. Code § 20200.)³ The charge must be supported by written declarations of witnesses to the unfair labor practice.

After a charge has been filed, it is investigated by the regional director, with the assistance of the regional field examiners. The field examiners generally interview witnesses for both the charged and the charging parties and conduct all other necessary investigation. (§ 20216.) The investigating agent then prepares a full report of the investigation, including recommendations on all allegations, and submits it to the regional director. The regional director has the authority to dismiss an unfair labor practice charge in whole or in part, and must do so if he or she concludes, following the investigation, that there is no reasonable cause to believe that an unfair labor practice has been committed or that there is insufficient evidence to support the charge. (§ 20218.) The charging party may also voluntarily withdraw a charge, if the regional director gives written consent. (§ 20212.)

If the regional director determines that there is reasonable cause to believe that an unfair labor practice has been or is being committed, he or she issues a complaint. If the regional director determines that the charge should be dismissed, in whole or in part, a written notice stating the decision and the reasons for it is sent by the regional director to the

parties. (§ 20218.) The charging party then has the right to appeal the dismissal to the general counsel within ten days. The charging party must respond to all the deficiencies in the charge pointed out by the regional director in his or her decision to dismiss the charge. (§ 20219.) After investigation and review of the dismissal, the general counsel may uphold the regional director's decision to dismiss the charge, or may remand the charge to the charging party for further evidence, or may issue an unfair labor practice complaint. (§§ 20219-20220.) The decision to dismiss a charge is not reviewable by the board; the decision to issue a complaint is ultimately reviewable by the board in its decision on the merits of an unfair labor practice proceeding.

After an unfair labor practice charge has been filed, and before a complaint has been issued by the general counsel, the charging and charged parties may decide to enter into an informal settlement of the charges. The settlement agreement must be approved by the regional director before the charges can be withdrawn, but no full board approval is required. Both informal and formal settlement agreements should substantially resolve all the unfair labor practices charges.

When an unfair labor practice complaint is issued by the general counsel, a copy is sent to the charged party, who then has ten days to file an answer. The complaint may be amended before or during the subsequent investigative hearing. (§§ 20222, 20230.) All motions by the parties regarding the complaint are filed with the executive secretary before or after the hearing. The executive secretary or the administrative law officer assigned to the case rules on all motions; rulings on the motions are not appealable, except at the board's discretion. However, a ruling which dismisses a complaint in its entirety is reviewable by the board. (§ 20240.)

The general counsel, the parties, or the board on its own motion, may move to consolidate in one hearing more than one charge or complaint or a complaint and election objections concerning the same ranch. Charges or complaints against one party may be severed and more than one hearing held.

After the issuance of the unfair labor practice complaint, the parties may agree to enter into a formal settlement agreement. This is a written stipulation calling for remedial action in adjustment of all the unfair labor practices charged and providing that, on approval by the board, a board order in conformity with its terms will issue. Ordinarily, the agreement provides for a consent entry on a court judgment enforcing the order. If the settlement is submitted after the hearing has opened, the administrative law officer hearing the case, as well as the board, must approve the settlement. In all cases, the general counsel must be a party to the agreement. The charging party need not agree to the settlement as long as the board finds that the agreement fully remedies the alleged unfair labor practices, but the charged party is a necessary signatory.

The board does not approve a formal settlement agreement unless it disposes of all of the allegations and unless the remedies fully carry out the purposes of the Act. If the settlement is not approved by the board, the case resumes the status it had before the agreement was executed. The agreement may be revised to conform to the board's requirements and

² *Kubo v. ALRB*, 429 U.S. 802 (1976).

³ References in parentheses are to 8 Cal. Admin. Code unless otherwise indicated.

resubmitted to the board. (§ 20248.)

When there is a conflict in the evidence on which an unfair labor practice complaint is based, a public evidentiary hearing must be held. If there is no conflict in the evidence, the parties may file briefs with the board or request permission to make oral arguments on their legal positions. (§ 20260.) The hearing is conducted by an administrative law officer designated by the board. The board or a board member has the authority to preside, but this has not yet occurred. The administrative law officer has the responsibility to take all actions necessary to a full factual inquiry into the question of whether or not the charged party has committed an unfair labor practice. (§ 20262.)

The board's regulations provide for the taking of depositions by witnesses, witness fees, the issuance and revocation of subpoenas, and the holding of prehearing conferences between the administrative law officer and the parties.

The administrative law officers who preside at the unfair labor practice hearings have been selected from a pool of persons from outside the agency who specialize in labor relations. The decision to use such persons was based on NLRB experience which showed that type of staff to be superior to personnel with generalized training. A proposed transfer of the hearing responsibility to the State Office of Administrative Hearings was rejected by the board in 1976 because of the recognized need for specially-trained administrative law officers and because studies showed substantially higher costs per hearing day at the Office of Administrative Hearings than under the system used by the board.

The board has worked with the State Personnel Board to develop a new civil service job classification for permanent Agricultural Labor Relations Board administrative law officers. At the date of this report, the test has been given and a civil service eligibility list has been created. Permanent administrative law officers will be selected from this list.

The board's regulations provide that an administrative law officer may be disqualified on grounds of bias or prejudice. The officer or any party having knowledge of such grounds for disqualification has the responsibility to report that fact to the executive secretary. The disqualification request must be made before the hearing formally opens. If the administrative law officer agrees to his or her disqualification, the executive secretary appoints a replacement. If, however, the officer refuses to disqualify himself or herself the hearing continues, but the party requesting disqualification may file exceptions to the hearing on this ground after the administrative law officer has issued his or her decision. (§ 20263.)

The language services unit of the office of the executive secretary provides necessary interpreter services for the unfair labor practice hearings. All interpreters whose services are used have been certified through testing conducted by the unit. Language services has provided interpreters for witnesses who speak Spanish, Portuguese, Tagalog, Korean, and Arabic dialects, among other languages.

The parties to an unfair labor practice hearing are the general counsel, who prosecutes the case on behalf of the board, and the charged party. The charging party and other persons may intervene. The parties have the

right to appear at the hearing, call and cross-examine witnesses and introduce evidence. The hearing is conducted in accordance with the California Evidence Code. (§§ 20268-20269, 20272.)

Unfair labor practice hearings are routinely recorded by a licensed court reporter service. The parties to the hearing and the board may request copies of the transcript of a hearing from the reporting service, in order to prepare for the post-hearing phases of the case. (§ 20276.)

After the close of the unfair labor practice hearing, any party may, within ten days, file a post-hearing brief discussing its legal and factual position. (§ 20278.) The administrative law officer then files with the executive secretary a decision on the case, which must contain the officer's findings of fact, conclusions of law and the reasons for the conclusions. If the administrative law officer finds that an alleged unfair labor practice has not been committed, the decision dismisses the complaint in whole or in part. If an unfair labor practice is found to have been committed, the officer's decision contains an order for affirmative remedial action by the charged party. Once the decision is filed, the case is deemed transferred to the board for its consideration. (§§ 20279-20280.)

Any party to the case may file exceptions to the administrative law officer's decision with the executive secretary within twenty days after the filing of the decision. The exceptions must be accompanied by a supporting brief. Any party opposing such objections has ten days to respond with an answering brief. (§ 20282.) A voluntary, formal settlement of the charges, as discussed above, may be entered into by the parties at this stage, if approved by the board.

If no exceptions are filed to the administrative law officer's decision within twenty days after it has been rendered, the decision automatically becomes the opinion of the board. However, the law officer's statement of reasons in support of the decision, unless expressly adopted by the board, does not become binding precedent for future unfair labor practice cases. If the administrative law officer's decision is excepted to by one or more parties, the board must review the legal and factual findings and determine whether the findings are supported by a preponderance of the evidence presented at the hearing. (§ 20286.) If the board finds that no unfair labor practice has been committed, the complaint is dismissed. If an unfair labor practice is found, the board issues the administrative law officer's decision, either unchanged or as modified by the board. The board's opinion contains an order directing the charged party to cease and desist from such practices and to take specific affirmative action to remedy each unfair labor practice found to have been committed.

Any party aggrieved by the final order of the board granting or denying the relief sought has the right to seek review of the order, within thirty days, in the state court of appeals having jurisdiction over the area where the unfair labor practice was alleged to have been committed. The court has jurisdiction to enforce, modify or set aside the board's order, in whole or in part, and it may also grant the board temporary relief when appropriate. The statute appears to state that if the thirty-day period for review of the board's order has lapsed and the order has not been complied with, and the respondent has not sought relief in the court of appeals, the

general counsel, on behalf of the board, may seek enforcement in the superior court of the county where the unfair labor practice occurred. The court has the power to enforce the order against the person failing to comply, by means of an injunction or other process. (Labor Code § 1160.8.)

3. Representation Certification Procedures

The most common means by which a person or organization may become the exclusive collective bargaining representative of agricultural workers under the ALRA is the secret ballot election. The representative is chosen by a majority of the employees in a specific bargaining unit and is then certified by the board. (Labor Code § 1156.)

A representation certification case is initiated by the filing of a written petition either signed by, or accompanied by authorization cards signed by, a majority of the currently employed employees in the bargaining unit sought. The purpose of the petition is to obtain a secret ballot election to determine whether or not the employees in the bargaining unit wish to be represented by a collective bargaining agent. The petition is filed in the regional office having jurisdiction over the geographical area in which all or part of the unit encompassed by the petition is located. Prior to filing the petition in the regional office the petition must be served on the employer of the unit employees. (§ 20300.)

The petition for certification may be filed by an individual agricultural employee or a group of agricultural employees, or by an individual or labor organization acting on their behalf. A petition may not be filed by an employer or a representative of an employer. Once filed, a petition may be withdrawn only with the consent of the regional director. (§ 20300(h).)

The petition must describe the bargaining unit which the petitioner seeks to represent. The Act states that a proper bargaining unit must include all the agricultural employees of the employer. (Labor Code § 1156.2.) If the agricultural employees of the employer are employed in two or more "noncontiguous" geographical areas, the board must determine the scope of the appropriate unit or units. (Labor Code § 1156.2.)

The petition must allege that the number of agricultural laborers employed in the payroll period immediately preceding the filing of the petition amounts to at least fifty percent of the employer's peak agricultural employment for the current calendar year. (Labor Code § 1156.3(a)(1).) The petition must also allege that no valid representation election has been held in the bargaining unit within the preceding twelve months, that no labor organization is currently certified as the exclusive collective bargaining representative of the employees in the unit, and that there is no existing collective bargaining agreement covering the unit employees. (Labor Code § 1156.3(a)(2)-(4).) If each of these requirements is met, the petition establishes that a "bona fide question of representation" exists.

After the petition for certification is filed in the regional office, the regional director conducts an administrative investigation to determine whether: (1) the employer and employees involved are within the board's

jurisdiction; (2) there exists an adequate showing of employee support for the petition to warrant an election; (3) an appropriate bargaining unit is sought; and, (4) a "bona fide question of representation" in fact exists. If all these requirements are met a representation election can be held. The investigation is made by telephone, by personal contact, and in a few instances by mail. The Act seeks to expedite the election process in the fluid agricultural industry by requiring that an election be held within a maximum of seven days after the filing of the petition. (Labor Code § 1156.3(a).) The regional director therefore begins to investigate the petition immediately upon filing. If the regional director determines, from the face of the petition, or after investigation, that any of the above-enumerated requirements for a valid certification petition does not exist, the regional director dismisses the petition. If at any time before the election it becomes apparent that the petition is deficient, it is dismissed by the regional director. The dismissal may be reviewed by the board, upon a written request for review, filed within five days, by the party whose petition was dismissed. (§§ 20300(i), 20393.)

The ALRB has jurisdiction to hold elections only among "agricultural employees" of "agricultural employers," as these terms are defined in Labor Code §§ 1140.4(b) and (c). The regional director determines whether the employer and employees named in the petition for certification meet the Act's definitions. In appropriate cases, the regional National Labor Relations Board office is contacted to ascertain whether it has asserted jurisdiction over the employer or employees in question. If so, the petition is outside the jurisdiction of the ALRB.

An adequate showing of employee support for the petition consists of authorization cards, dated and signed by a majority of the currently-employed employees in the bargaining unit, or dated signatures on the petition by the same number of employees. Authorizations must be dated within the twelve months preceding the filing of the petition. The purpose of these requirements is to prevent unnecessary expenditure of board time and money in holding elections when most employees do not want one. The authorization cards or other showing of interest are held in strictest confidence by the regional director; the director's determination of the adequacy of the showing of interest is not reviewable, either by the board or by the courts.

The regional director can only investigate the showing of interest by comparing the employees' signatures to the list of agricultural workers employed by the employer during the relevant payroll period, which is the period immediately preceding the filing of the petition for certification. The regional director receives the employer's payroll records pursuant to a board regulation which requires an employer to submit to the regional office, within forty-eight hours after being served with the petition for certification, certain written information. The required information includes a complete and accurate list of the names, addresses and job classifications of all agricultural employees employed during the relevant payroll period; the names of the employees employed each day during the relevant payroll period and the hours worked by each; and the payroll period dates and number of employees occurring at the peak employment

period for the calendar year in the unit sought by the petition. (§ 20310.) If the employer fails to comply with the requirement to submit this information, the regional director has the discretion to invoke presumptions that there is adequate employee support for the petition, that the petition is timely filed, and that all persons who appear to vote with adequate identification and without challenge by another party are eligible voters. (§ 20310(e).)

The regional director determines whether there is an adequate showing of employee support for the certification petition by checking the authorization cards or petition signatures against the names on the employee list submitted by the employer. The regional director may solicit from the petitioner or any party intervening in the election its position with respect to the accuracy and completeness of the employee list. When the number of employees on the employer's list conflicts with the number alleged in the petition, the regional director independently ascertains the number of people actually working in the relevant payroll period by checking the employer's payroll records and by talking to the employees, the labor organizations, and any labor contractors involved. The regional director determines the showing of interest by calculating the average daily number of employees during the relevant payroll period and comparing the authorization signatures to determine if the petitioner has submitted signatures from at least fifty percent of that number. (§ 20300(j).)

If the regional director determines that the showing of interest is insufficient, he or she may grant the petitioning party an additional 24-hour period to submit additional evidence of showing of interest. If the deficiency is not corrected the petition is dismissed. If another party contends that the showing of interest was obtained by fraud, coercion or employer assistance, the party is allowed to submit evidence in support of its contention. If the regional director finds that the evidence creates reasonable cause to believe the showing of interest is tainted, an investigation is conducted, and the petition is dismissed unless the number of untainted signatures satisfies the interest requirement. (§ 20300(j).)

A determination as to whether the appropriate bargaining unit is sought by the certification petition is made by the regional director when a petition is filed for a unit including employees at multiple locations or for a unit including only one location of an employer who has employees at other locations. In some cases, it may be decided that employees in such "noncontiguous" geographical bargaining units should be divided into separate bargaining units. In other cases, it may be found appropriate to include all employees in a single bargaining unit. In his or her investigation, the regional director considers such factors as the geographical relationship of the areas, the contact between employees in the different areas, the extent to which the employees have common supervision, the similarity or dissimilarity of the work performed and the terms and conditions of employment in the different areas, and the pattern of bargaining history among the employees. If the unit sought in the petition is found to be inappropriate, the petition is dismissed.

Petitions for certification sometimes seek a unit consisting of the employees of several employers or of an employer association. The board has

found, in each of these cases to date, that a single-employer unit is more appropriate. When a bargaining unit petitioned for includes employees of a "commercial" packing shed—one which packs a significant amount of produce for other employers—such employees are not considered to be "agricultural workers" and are always excluded from the unit. If shed employees pack only the produce of their employer, and the shed is on or adjacent to the ranch, the employees are considered to be "agricultural employees" and must be included in the unit. If this type of shed is in a "noncontiguous" geographical area, the board has the discretion to include or exclude the employees from the unit.

The regional director's investigation of whether a "bona fide question of representation" exists establishes whether or not the petition for certification was timely filed. The central issue is whether the petition was filed when the number of agricultural workers employed by the employer during the payroll period immediately preceding the filing of the petition was at least fifty percent of the employer's peak agricultural employment for the current calendar year. A peak issue arises when the employer or an intervenor in the election alleges that the requisite peak employment period did not exist when the petition was filed.

If the employer or an intervenor contends that peak employment occurred during the current calendar year, prior to the filing of the petition, the regional director investigates the peak issue by a mathematical computation. The regional director obtains employment statistics for the earlier period claimed to constitute peak and compares them to the statistics in the payroll period immediately preceding the filing of the petition to determine whether the current employment figure is at least fifty percent of employment during the earlier period. If the contention is that peak employment will occur at some time in the current calendar year, after the filing of the petition, the regional director must project peak for the year. To do so, he or she examines the employer's employment records for the prior season to determine when peak occurred the previous year. In addition, the Act directs the regional director to take into consideration standard state acreage and crop statistics and other relevant data to determine whether the employer's or intervenor's claims regarding peak appear reasonable and reliable when compared with the statistics on other local growers of the same crop.

If it clearly appears from the regional director's investigation that the petition was not timely filed in relation to peak, the petition is dismissed. (Labor Code § 1156.4.) If not, the issue does not preclude an election, but it may be more fully litigated in post-election proceedings.

If the regional director's investigation of the petition for certification reveals that the requirements of the Act have been met, a representation election can be conducted. Section 1156.3(b) of the Act allows any other labor organization to intervene in the election and appear on the ballot by filing a petition for intervention at least twenty-four hours before the election. Labor organizations which wish to intervene may be apprised of the filing of a certification petition on a particular ranch by consulting the public docket kept in each regional office. Each petition filed is logged into the docket. The intervention petition must be accompanied by au-

thorization cards signed by at least twenty percent of the employees in the bargaining unit. The regional director investigates intervention petitions in the same manner as petitions for certification; the showing of employee support and the bargaining unit sought are verified. Deficiencies in the petition may be corrected up to twenty-four hours prior to the time of the election.

When a second union files a petition for certification accompanied by a majority showing of interest for all or a portion of a bargaining unit for which an earlier petition is already on file, the second document is termed a cross petition. If the cross petition seeks a different unit, the regional director determines which petition seeks the appropriate unit, and the petition seeking the improper unit is dismissed. If both petitions seek the same appropriate unit, both are considered cross petitions. (§ 20330.)

The Act makes it mandatory that ballots in all the board's elections be both in English and in Spanish. The board is also directed to make available, where practicable, ballots in any other language requested by the petitioner, an intervenor, the employer, or any agricultural employee eligible to vote in the election. The Act requires every ballot, except in run-off elections between labor organizations, to include a choice of "No Labor Organizations." (Labor Code § 1156.3(a).) This is designed to implement the section of the Act which states that employees have the right to refrain from collective bargaining activities.

A pre-election conference is scheduled at least twenty-four hours before the commencement of the election unless, in a particular case, the regional director directs otherwise. (§ 20350(d).) The purposes of the conference are to permit the parties to discuss the manner in which the election will be conducted and to permit the regional board agent assigned to supervise the election to apprise the parties of their obligations and rights with regard to the election. Representatives from the petitioner, the employer and any intervenor attends. The conference results in a determination of the time, date, place and other conditions of the election. Voter eligibility issues and the manner in which employees are to be notified of the election are also discussed. The board agent who is in charge of the election conducts the pre-election conference. He or she makes all final determinations regarding the election conditions. The date, time and place decided on are chosen to permit the maximum number of eligible employees to vote. The election must be held within seven days of the filing of the petition for certification. (Labor Code § 1156.3(a).)

Following the pre-election conference, the board agent issues a "Direction and Notice of Election," in Spanish and English, which states the location, date, and hour of polling. The notices are posted in conspicuous places on the employer's premises and are distributed to all parties and to as many employees as can be reached by all persons involved in the election.

At the election, a sufficient number of regional board agents are in attendance to ensure that the voting proceeds efficiently. This is especially important when the polling site must be moved to several locations to assure maximum voter participation. Each party is permitted to be represented at the polling place by an equal number of election observers of

its own choosing; the observers are usually designated at the pre-election conference. The observers must be either employees of the employer who are eligible to vote or any person agreed to by all parties in writing. (§ 20350(b).) Parties may waive the opportunity to be represented by observers, either expressly or by default. Observers assist in the conduct of the election by acknowledging eligible voters, challenging allegedly ineligible voters, and overseeing the distribution of ballots to voters and the integrity of the ballot box.

Those persons eligible to vote in an election held under the ALRA are all agricultural employees of the employer whose names appear on the employer's payroll during the payroll period immediately preceding the filing of the petition for certification. Other eligible voters are employees who were on paid sick leave or paid vacation during the relevant payroll period and employees who would have been on the payroll but for the employer's unfair labor practices. All economic strikers are eligible to vote, but a striker who has been permanently replaced is not eligible to vote in any election conducted more than twelve months after the commencement of the strike. The Act gives the board jurisdiction to adopt eligibility rules for economic strikers who participated in strikes against agricultural employers within 36 months prior to the effective date of the Act.

Persons ineligible to vote in elections held under the Act are supervisory, managerial and confidential employees; guards; and close family relations to the employer. If a voter's name is not on the official eligibility list and he or she is not recognized by all the observers, or if the voter has insufficient identification or is challenged by the board agent or an observer for other reasons, the voter votes a challenged ballot. Challenged ballots are segregated until the eligibility question is resolved. A valid challenge must be based on "good cause," which consists of a statement of the grounds for the challenge, supported by evidence submitted within twenty-four hours of the closing of the polls. If the board agent in charge of the election concludes that a challenge is not for "good cause," he or she may reject the challenge. (§ 20355.)

As soon as possible after the completion of the balloting, the board agent in charge of the election arranges for the counting of the ballots. All parties are encouraged to have representatives present and the counting is open to the public. A copy of the ballot tally and a list of all persons who cast challenged ballots is served on each party at the conclusion of the count. (§ 20360.) If the tally shows that challenged ballots cast are sufficient in number to affect the outcome of the election the regional director conducts an investigation to determine the eligibility of the challenged voters. The regional director issues a report on the investigation to the board, and this report becomes final if no party files exceptions. If exceptions are filed the case is transferred to the board for final decision. (§ 20363.)

If at the time a petition for certification is filed a majority of the employees in the bargaining unit are engaged in a strike, the Act requires the board to use all due diligence to hold an election within forty-eight hours of the filing of the petition. Such an election is given precedence over the holding of any other election. (Labor Code § 1156.3(a).) In any election

in which no party receives a majority of the valid votes cast, a runoff election between the two choices receiving the most votes must be held within seven days after the date of the first election. Only those voters eligible to vote in the first election may vote in the runoff. If the election results in a tie vote, the election is deemed void, and a new petition for certification is required to recommence the election process. (§ 20375.) Rerun elections may be conducted in two situations: where circumstances make it physically impossible to determine the outcome of the first election; and where objections were filed to the first election, all parties consent in writing to a rerun, and the regional director determines that a rerun would further the purposes of the Act. (§ 20372.)

Within five days after the service of the tally of ballots on the parties, any person may file with the board a signed petition objecting to the election on one or more of the following grounds: (1) that allegations made in the petition for certification were incorrect; (2) that the geographical scope of the bargaining unit was improperly determined; (3) that the election was improperly conducted; or (4) that misconduct affecting the results of the election occurred. (Labor Code § 1156.3(c).) If no objections are filed within five days, and if the challenged ballots are not sufficient in number to be determinative of the outcome of the election, the election results are certified by the board. (§ 20380.)

Petitions objecting to the geographical scope of the bargaining unit or to the allegations in the certification petition must be accompanied by a statement of the facts and law relied on. Petitions objecting to the conduct of the election or to misconduct affecting the results of the election must be supported by declarations which, standing alone, would constitute sufficient grounds for the board to refuse to certify the election. The executive secretary screens the objections petitions, dismisses any portions which are procedurally or substantively deficient, and sets the remaining portions for further investigation or hearing. A public investigative hearing must be held when the executive secretary determines that there are substantial and material factual issues in dispute. An order by the executive secretary dismissing portions of the petition is subject to review by the board on a request for review filed within five days by the petitioning party. (§§ 20365 and 20393.)

An investigative hearing examiner appointed by the executive secretary conducts the hearing on an objections petition filed pursuant to Labor Code § 1156.3(c). Because a regional hearing officer is prohibited by the Act from making recommendations concerning the evidence presented at a hearing, the board has centralized this function in the board offices in Sacramento. The use of hearing examiners from the board offices has been found to be more efficient because such officers can make credibility resolutions and recommendations. The parties can then focus on the crucial issues in the case by filing exceptions to the hearing examiner's decision. The burden of litigating post-election objections is on the parties. The parties and the hearing examiner may call and cross-examine witnesses and introduce evidence. The hearing examiner rules on all motions relating to the hearing. The hearing is not conducted under technical rules of evidence; any relevant evidence which "is of the sort upon which respon-

sible persons are accustomed to rely in the conduct of serious affairs" is admissible. The hearing is tape-recorded, and the hearing examiner has the power to cite any person for contempt. The provisions of the board's regulation governing the issuance and revocation of subpoenas in unfair labor practice hearings applies also to election objections hearings. Post-hearing briefs are not filed unless the investigative hearing examiner so directs. (§§ 20370(a)-(e).)

Following the hearing, the hearing examiner issues a decision which includes findings of fact, a statement of reasons in support of the findings, conclusions and recommended dispositions of the objections. If timely exceptions to the decision are not filed, the decision becomes the final opinion of the board. The statement of reasons in support of the decision does not become binding precedent on future cases unless expressly adopted by the board. (§ 20370(f).) If the hearing examiner's unchallenged decision recommends dismissal of the objections, the election is certified by the board. If the decision recommends upholding the objections, the board sets the election aside.

Any party may file exceptions to the hearing examiner's decision within ten days after its issuance. (§ 20370(g).) Responses to exceptions and cross-exceptions may also be filed. If exceptions are filed the case is transferred to the board for decision. The board makes the final decision either to dismiss the objections, in which case the election is certified, or to uphold the objections, in which case the election is set aside. (§ 20370(h).)

Once a labor organization is certified as the exclusive bargaining representative pursuant to the election process outlined above, both it and the employer are under a duty to bargain in good faith with each other concerning the signing of a collective bargaining agreement. (Labor Code §§ 1153(e), 1154(c).) If a certified labor organization believes that the employer has failed to bargain in good faith, it may file a petition with the executive secretary between the ninetieth and the sixtieth day preceding the expiration of twelve months following the date of certification. The employer has an opportunity to respond. If the board finds that the employer has not bargained in good faith, it may extend the certification for up to one additional year, effective immediately upon the expiration of the twelve-month period following the initial certification. (Labor Code § 1155.2(b).) The granting of an extension of certification does not constitute evidence that an unfair labor practice has been committed. (§ 20382.) This remedy for failure to bargain is unique to this Act; the NLRA contains no such provision.

The ALRA also gives agricultural employees the right to decertify a labor union which currently represents them and which is a party to a valid collective bargaining agreement. (Labor Code § 1156.7(c).) A representation decertification case is initiated by the filing of a petition, signed by at least thirty percent of the agricultural employees in the bargaining unit, seeking a secret ballot election to determine whether the employees wish to decertify the union that represents them. Such a petition may be filed only by an agricultural employee or by a group of employees; it may not be filed by a labor organization or by an employer. The decertification petition must contain the same allegations as those required in a petition

for certification; it may only be filed at the same peak period as required for a petition for certification. No valid election can have been conducted in the unit within the twelve months immediately preceding the filing of the petition, and the labor organization which the petition seeks to decertify must have a collective bargaining agreement with the employer which will expire within twelve months. The election and post-election procedures are the same as those for certification elections. A majority of the votes cast is sufficient to withdraw the labor organization's certification. (§ 20390.)

4. Access Regulations

The ALRB's access regulations (§ 20900 et seq.) were promulgated to implement the state's policy to encourage and protect the right of agricultural employees to engage in self-organizing activities. The board found that labor unions seeking to organize agricultural employees do not have available alternative channels of effective communication with such employees. Therefore, the board adopted rules creating a limited right of non-employee union organizers to enter the premises of an agricultural employer for the purpose of soliciting the employees' support.

Access is available to a labor organization for no more than four thirty-day periods in one calendar year; each period commences upon the filing, in the appropriate regional office, of a written notice of intention to take access. If a petition for certification is filed the right of access continues until the fifth day following the tally of ballots or until the tenth day following the filing of any objections to the election. Union organizers may enter the employer's property to speak with employees for a period of one hour before work begins, one hour after work ends and not more than one hour while the employees eat lunch. Access is limited to two organizers for each work crew and one additional organizer for every fifteen workers exceeding thirty employees in one crew.

The access regulations also provide for voluntary agreements on access between the employer and a labor organization; such agreements may vary the limitations created in the regulations. There are also provisions remedying violations of the access rules by union organizers or interferences by an employer.

The access rules prohibit all non-employee access to certain areas on ranches where highly sensitive agricultural operations are conducted, such as dairy farms, poultry and egg farms, and nurseries.

Section 20910 of the board's regulations permits labor organizations to receive "pre-petition employee lists." A labor organization that has filed a valid notice of intent to take access may file within 30 days a notice of intention to organize the agricultural employees of the same employer. The notice of intent to organize must be accompanied by authorizing signatures of at least ten percent of the employer's current employees. Within five days after the filing of a notice of intent to organize, the employer must submit to the regional office a list of its employees' names, addresses and job classifications. Once the regional director has determined that the ten percent showing of interest has been satisfied, he or she makes a copy of the employee list available to the filing labor organiza-

Appendix B: Statistical Tables

I. Fiscal Year July 1, 1975–June 30, 1976 Elections

A. Petitions for Elections (1975–1976)

	<i>Fresno</i>	<i>Salinas</i>	<i>Sacramento</i>	<i>Riverside</i>	<i>El Centro</i>	<i>Total</i>
1. Filed	148	263	63	81	49	604
2. Dismissed	11	36	0	2	11	60
3. Withdrawn	35	33	17	10	4	99
4. Cross-Petitions	3	19	0	0	0	22
5. Elections	99	175	46	69	34	423

B. Votes Cast (1975-1976)

	<i>Fresno</i>	<i>Salinas</i>	<i>Sacramento</i>	<i>Riverside</i>	<i>El Centro</i>	<i>Total</i>
No Union	2,743	2,054	1,302	1,264	302	7,665
Western Conference of Teamsters	4,182	5,320	283	745	929	11,459
United Farm Workers	6,740	8,904	2,421	2,850	2,095	23,010
Other Unions	26	24	14	231	382	677
Unresolved Challenged Ballots	2,143	1,233	727	505	393	5,001
Total	15,834	17,535	4,747	5,595	4,101	47,812

C. Elections Not Objected To (1975-1976)

	<i>Fresno</i>	<i>Salinas</i>	<i>Sacramento</i>	<i>Riverside</i>	<i>El Centro</i>	<i>Total</i>
1. No Union Victories *	1	0	2	1	0	4
2. Western Conference of Teamsters Victories *	4	1	0	2	0	7
3. United Farm Workers Victories *	16	26	4	6	0	52
4. Other Union Victories *	1	1	2	6	12	22
Total	22	28	8	15	12	85
Total Voters	1,698	2,300	245	461	452	5,156

* "Victory" means the ballot choice which received a majority of the votes cast.

D. Elections Objected To (1975-1976)

	<i>Fresno</i>	<i>Salinas</i>	<i>Sacramento</i>	<i>Riverside</i>	<i>El Centro</i>	<i>Total</i>
1. No Union Victories *	9	11	6	3	0	29
2. Western Conference of Teamsters Victories *	19	72	2	12	3	108
3. United Farm Workers Victories *	34	54	23	34	17	162
4. Other Union Victories *	0	3	0	0	1	4
5. Challenged Ballots Determinative	15	9	7	5 ¹	1	37
Total	77	149 ¹	38	54	22	340 ¹
Total Voters	14,136	15,235	4,502	5,134	3,649	42,656

* "Victory" means the ballot choice which received a majority of the votes cast.

¹ One election in Riverside (75-RC-69-R) ended in a tie between the United Farm Workers and the Teamsters.

² Two petitions in Salinas (75-RC-79-M and 75-RC-222-M) resulted in four separate elections.

E. Elections Involving More Than One Union (1975-1976)

	<i>Fresno</i>	<i>Salinas</i>	<i>Sacramento</i>	<i>Riverside</i>	<i>El Centro</i>	<i>Total</i>
1. No Union Victories *	1	3	0	0	0	4
2. Western Conference of Teamster Victories *	17	44	1	6	3	71
3. United Farm Workers Victories *	13	43	1	11	8	76
4. Other Union Victories *	1	0	0	0	1	2
5. Challenged Ballots Determinative	12	3	2	1	1	19
Total	44	93	4	18	13	172
Total Voters	9,894	12,830	533	1,406	2,817	27,480

* "Victory" means the ballot choice which received a majority of the votes cast.

**F. Elections Involving Only the Western Conference of
Teamsters and No Union on the Ballot (1975-1976)**

	<i>Fresno</i>	<i>Salinas</i>	<i>Sacramento</i>	<i>Riverside</i>	<i>El Centro</i>	<i>Total</i>
1. Western Conference of Teamsters Victories *	6	31	1	7	0	45
2. No Union Victories *	0	2	1	0	0	3
3. Challenged Ballots Determinative	0	0	1	0	0	1
Total	6	33	3	7	0	49
Total Voters	317	680	114	246	0	1,357

* "Victory" means the ballot choice which received a majority of the votes cast.

**G. Elections Involving Only the United Farm Workers
and No Union on the Ballot (1975-1976)**

	<i>Fresno</i>	<i>Salinas</i>	<i>Sacramento</i>	<i>Riverside</i>	<i>El Centro</i>	<i>Total</i>
1. United Farm Workers Victories *	40	45	28	31	9	153
2. No Union Victories *	7	5	5	3	0	20
3. Challenged Ballots Determinative	2	3	2	1	0	8
Total	49	53	35	35	9	181
Total Voters	5,605	3,978	4,002	3,600	832	18,017

* "Victory" means the ballot choice which received a majority of the votes cast.

II. Fiscal Year July 1, 1976-June 30, 1977 Elections

A. Petitions for Elections (1976-1977)

	<i>Fresno</i>	<i>Delano</i>	<i>Salinas</i>	<i>Santa Maria</i>	<i>Sacramento</i>	<i>San Diego</i>	<i>El Centro</i>	<i>Coachella</i>	<i>Oxnard</i>	<i>Total</i>
1. Filed	5	9	12	1	3	145	22	17	7	221
2. Dismissed	1	1	6	0	0	1	2	1	0	12
3. Withdrawn	0	0	3	0	1	7	3	6	1	21
4. Elections Held	4	8	3	1	2	137	17	10	6	188
a. Dairy Elections										
(1) Number of Elections	1	2	0	0	0	137	0	0	0	140
(2) Number of Voters	44	5	0	0	0	374	0	0	0	423
b. Non-Dairy Elections										
(1) Number of Elections	13	6	3	1	2	0	17	10	6	48
(2) Number of Voters	899	315	271	134	97	0	2,869	2,902	1,145	8,632

B. Votes Cast (1976-1977)

	<i>Fresno</i>	<i>Delano</i>	<i>Salinas</i>	<i>Santa Maria</i>	<i>Sacramento</i>	<i>San Diego</i>	<i>El Centro</i>	<i>Coachella</i>	<i>Oxnard</i>	<i>Total</i>
1. No Union	343	60	74	5	39	37	305	686	287	1,836
2. United Farm Workers	449	233	153	33	0	0	2,160	1,557	802	5,387
3. Christian Labor Association	0	4	0	0	0	298	0	0	0	302
4. International Brotherhood of Teamsters Local 63*	38	0	0	0	0	36	0	0	0	74
5. Other Unions	0	0	42	93	53	0	179	97	0	464
6. Unresolved Challenged Ballots	113	23	2	3	5	3	225	562	56	992
Total	943	320	271	134	97	374	2,689	2,902	1,145	9,055

* International Brotherhood of Teamsters Local 63 is a dairy employees local not affiliated with the Western Conference of Teamsters.

C. Elections Not Objected To (1976-1977)

	<i>Fresno</i>	<i>Delano</i>	<i>Salinas</i>	<i>Santa Maria</i>	<i>Sacramento</i>	<i>San Diego</i>	<i>El Centro</i>	<i>Coachella</i>	<i>Oxnard</i>	<i>Total</i>
1. No Union Victories*	0	0	0	0	0	7	0	0	0	7
2. United Farm Workers Victories*	0	1	1	0	0	0	3	2	3	10
3. Christian Labor Association Victories*	0	2	0	0	0	115	0	0	0	117
4. International Brotherhood of Teamsters Local 63 ¹ Victories*	1	0	0	0	0	9	0	0	0	10
5. Other Union Victories*	0	0	0	0	0	0	0	0	0	0
6. Challenged Ballots Determinative	0	0	0	0	0	0	0	0	0	0
Total	1	3	1	0	0	131	3	2	3	144
Total Voters	44	78	142	0	0	331	862	810	512	2,779

* "Victory" means the ballot choice which received a majority of the votes cast.

¹ International Brotherhood of Teamsters Local 63 is a dairy employees local not affiliated with the Western Conference of Teamsters.

D. Elections Objected To (1976-1977)

	<i>Fresno</i>	<i>Delano</i>	<i>Salinas</i>	<i>Santa Maria</i>	<i>Sacramento</i>	<i>San Diego</i>	<i>El Centro</i>	<i>Coachella</i>	<i>Oxnard</i>	<i>Total</i>
1. No Union Victories*	1	0	0	0	0	4	1	0	1	7
2. United Farm Workers Victories*	2	5	1	0	0	0	11	2	2	23
3. Christian Labor Association Victories*	0	0	0	0	0	1	0	0	0	1
4. International Brotherhood of Teamsters Local 63 ¹ Victories*	0	0	0	0	0	0	0	0	0	0
5. Other Union Victories*	0	0	1	1	2	0	2	0	0	6
6. Challenged Ballots Determinative	0	0	0	0	0	1	0	6	0	7
Total	3	5	2	1	2	6	14	8	3	44
Total Voters	899	242	129	134	97	43	2,007	2,092	633	6,276

* "Victory" means the ballot choice which received a majority of the votes cast.

¹ International Brotherhood of Teamsters Local 63 is a dairy employees local not affiliated with the Western Conference of Teamsters.

E. Elections Involving More Than One Union (1976-1977)

	<i>Fresno</i>	<i>Delano</i>	<i>Salinas</i>	<i>Santa Maria</i>	<i>Sacramento</i>	<i>San Diego</i>	<i>El Centro</i>	<i>Coachella</i>	<i>Oxnard</i>	<i>Total</i>
1. No Union Victories*	0	0	0	0	0	0	0	0	0	0
2. United Farm Workers Victories*	0	0	1	0	0	0	2	0	0	3
3. Other Union Victories*	0	0	1	1	0	0	1	0	0	3
4. Challenged Ballots Determinative	0	0	0	0	0	0	0	2	0	2
Total	0	0	2	1	0	0	3	2	0	8
Total Voters	0	0	129	134	0	0	465	696	0	1,424

* "Victory" means the ballot choice which received a majority of the votes cast.

F. Elections Involving Only the United Farm Workers and No Union on the Ballot (1976-1977)

	<i>Fresno</i>	<i>Delano</i>	<i>Salinas</i>	<i>Santa Maria</i>	<i>Sacramento</i>	<i>San Diego</i>	<i>El Centro</i>	<i>Coachella</i>	<i>Oxnard</i>	<i>Total</i>
1. No Union Victories*	1	0	0	0	0	0	1	0	1	3
2. United Farm Workers Victories*	2	6	1	0	0	0	12	4	5	30
3. Challenged Ballots Determinative	0	0	0	0	0	0	0	4	0	4
Total	3	6	1	0	0	0	13	8	6	37
Total Voters	899	315	142	0	0	0	2,387	2,006	1,145	7,094

* "Victory" means the ballot choice which received a majority of the votes cast.

**G. Elections Involving Only the Christian Labor Association
and No Union on the Ballot (1976-1977)¹**

	<i>Fresno</i>	<i>Delano</i>	<i>San Diego</i>	<i>Total</i>
1. No Union Victories	0	0	9	9
2. Christian Labor Association Victories*	0	2	117	119
3. Challenged Ballots Determinative	0	0	1	1
Total	0	2	127	129
Total Voters	0	5	333	338

* "Victory" means the ballot choice which received a majority of the votes cast.
Statistics are included for three regions only.

**H. Elections Involving Only Teamsters Local 63
and No Union on the Ballot (1976-1977)¹**

	<i>San Diego</i>	<i>Fresno</i>	<i>Total</i>
1. No Union Victories *	1	0	1
2. International Brotherhood of Teamsters Local 63 * Victories *	9	1	10
Total	10	1	11
Total Voters	39	44	83

* "Victory" means the ballot choice which received a majority of the votes cast.

¹ Statistics are included for two regions only.

* International Brotherhood of Teamsters Local 63 is a dairy employees local not affiliated with the Western Conference of Teamsters.

I. Elections Involving Unions Other Than the United Farm Workers, the Christian Labor Association and Teamsters Local 63 on the Ballot (1976-1977) ¹

	<i>Sacramento</i>	<i>El Centro</i>	<i>Total</i>
1. No Union Victories *	0	0	0
2. Other Union Victories *	2	1	3
3. Challenged Ballots Determinative	0	0	0
Total	2	1	3
Total Voters	97	17	114

* "Victory" means the ballot choice which received a majority of the votes cast.

¹ Statistics included for two regions only.

III. Fiscal Year July 1, 1975-June 30, 1976 Unfair Labor Practice Complaints

A. Action Taken During Fiscal Year 1975-1976

	<i>Fresno</i>	<i>Salinas</i>	<i>Sacramento</i>	<i>Riverside</i>	<i>El Centro</i>	<i>Total</i>
1. Complaints Issued	45	53	17	19	24	158
2. Complaints Settled	3	8	0	4	3	18
3. Hearings Completed	13	15	3	5	1	37
4. Complaints Withdrawn Absent Settlement	0	2	0	0	0	2
5. Board Decisions Issued	1	0	0	0	0	1
6. 1975-1976 Cases Closed as of June 30, 1976	4	10	0	4	3	21

B. Action Taken During Fiscal Year 1976-1977

	<i>Fresno</i>	<i>Salinas</i>	<i>Sacramento</i>	<i>Riverside</i>	<i>El Centro</i>	<i>Total</i>
1. Complaints Settled	17	14	7	4	11	53
2. Final Hearing Officer Decisions Not Excepted to by Parties	0	2	0	0	0	2
3. Complaints Withdrawn Absent Settlement	2	0	2	1	3	8
4. Board Decisions Issued	6	8	2	3	1	20
5. Cases Unresolved as of June 30, 1977	16	19	6	7	6	54
6. 1975-1976 Cases Closed as of June 30, 1977	25	24	11	8	15	83

IV. Fiscal Year July 1, 1976-June 30, 1977 Unfair Labor Practice Complaints

A. Action Taken During Fiscal Year 1976-77

	<i>Fresno</i>	<i>Delano</i>	<i>Salinas</i>	<i>Sacramento</i>	<i>San Diego</i>	<i>El Centro</i>	<i>Coachella</i>	<i>Oxnard</i>	<i>Total</i>
1. Complaints issued	29	7	27	7	21	25	37	9	162
2. Complaints withdrawn absent settlement	0	1	0	0	0	1	1	2	5
3. Complaints settled	9	1	7	1	11	7	8	2	46
4. Board decisions issued	0	0	0	0	0	0	4	0	4
5. Final hearing officer decisions not excepted to by parties	0	0	1	0	1	0	0	0	2
6. Cases unresolved as of June 30, 1977	20	5	19	6	9	17	24	5	105
7. 1976-1977 cases closed as of June 30, 1977	9	2	8	1	12	8	13	4	57

Appendix C

Cases Heard By

The Agricultural Labor Relations Board

August 28, 1975 to June 30, 1977

I. Election Cases

Abatti Produce Co./Abatti Farms, Inc.	76-RC-17-E (R) ¹
Ace Tomato Co., Inc.	75-RC-17S
Admiral Packing Co.	75-RC-103-M
Bud Antle, Inc.	75-RC-19-M
Bud Antle, Inc.	75-RC-31-M
Apollo Farms	75-RC-127-M
Associated Produce Distributors.....	75-RC-64-M
Bacchus Farms	75-RC-64-F
Sam Barbic	75-RC-44-F
Bee and Bee Produce, Inc.	75-RC-79-M
Bee and Bee Produce, Inc.	75-RC-229-M
Betteravia Farms	75-RC-60-M
Bonita Packing	75-RC-140-M
John V. Borchard	75-RC-1-E
Borgia Brothers Ranch	75-RC-6-R
Tom Buratovich and Sons	75-RC-49-F
C & V Farms	75-RC-52-M
Cal-Pak Citrus	75-RC-58-R
California Coastal Farms, Inc.	75-RC-49-M
Anton Caratan and Sons.....	75-RC-21-F, 75-RC-42-F
Cel-A-Pak	75-RC-90-M
Certified Egg Farms	75-RC-25-M
Jake Cesare & Sons	75-RC-47-F
Chula Vista Farms, Inc.	75-RC-1-R
Bruce Church, Inc.	75-RC-2-M, 75-RC-28-M, 75-RC-39-M, 75-RC-118-M, 75-RC-119-M

¹ The following abbreviations are used in this list:

75 - 1975

76 - 1976

77 - 1977

RC - Representation Case

1 - Chronological sequence of election cases in a particular region.

E - El Centro

F - Fresno

I - Imperial

M - Salinas

R - Riverside

S - Sacramento

X - San Diego

Appendix

Bruce Church, Inc.	76-RC-19-E (R)
Coachella Growers, Inc.	75-RC-57-R
Coachella Ranches	76-RC-10-R
E. G. Corda	75-RC-2-E
J. J. Crosetti Co.	75-RC-13-M
Dairy Fresh Products Co.	75-RC-16-R
William Dal Porto and Sons.....	75-RC-14-S
Louis Delfino Co.	75-RC-47-M, 75-RC-55-M, 75-RC-83-M, 75-RC-84-M, 75-RC-85-M, 75-RC-86-M, 75-RC-88-M
E. Dell'Aringa and Sons	75-RC-46-S
Dessert Seed Co., Inc.	75-RC-19-R
R. F. Donovan	75-RC-62-M
E & L Farms	75-RC-128-M
Eckel Produce Co.	75-RC-94-M
Egger & Ghio Co.	75-RC-2-R
John Elmore.....	75-RC-6-I
John Elmore Farms	75-RC-38-M
R. T. Englund Co.	75-RC-35-M
Filice Estate Winery	75-RC-224-M
Giannini and Del Chiaro	75-RC-89-M
Green Valley Produce Cooperative.....	75-RC-9-M
H & M Farms	75-RC-77-M
Hansen Farms	75-RC-17-M
Harden Farms of California.....	75-RC-95-M
Hashimoto Brothers Nursery.....	75-RC-10-R
Hatanaka and Ota	75-RC-1-S
Hemet Wholesale Co.	75-RC-5-R
Herrick-Parks.....	75-RC-24-F
High and Mighty Farms	75-RC-10-I
Hiji Brothers, Inc.....	75-RC-3-M
Holtville Farms, Inc.	75-RC-36-R
Inland Ranch Co.	75-RC-47-M, 75-RC-83-M, 75-RC-85-M, 75-RC-86-M, 75-RC-88-M
Interharvest, Inc.	75-RC-8-M
K. K. Ito Farms	75-RC-6-M
Kawano, Inc.	75-RC-8-R
Klein Ranch	75-RC-20-S
Knego Ranch	75-RC-208-M
Konda Brothers.....	75-RC-22-F
Kotchevar Ranch	75-RC-80-F
La Brucherie Ranch.....	75-RC-12-R
Lawrence Vineyards	75-RC-18-F, 75-RC-40-F
A. Leonardini and Sons.....	75-RC-47-M, 75-RC-83-M, 75-RC-85-M, 75-RC-86-M, 75-RC-88-M
Let-Us-Pak	75-RC-45-M
Lu-Ette Farms, Inc.	75-RC-41-R
Rod McLellan Co.	75-RC-227-M
Carl Joseph Maggio, Inc.	75-RC-18-M
Mann Packing Co.	75-RC-36-M
Mapes Produce Co.	75-RC-23-M
Marlin Brothers.....	75-RC-71-F
Marshburn Brothers.....	75-RC-9-R
H. H. Maulhardt Packing Co.	75-RC-129-M

Melco Vineyards, aka Melikian and Sons Ranch	75-RC-62-F
Mid-State Horticulture Co.	75-RC-51-F
Missakian Vineyards.....	75-RC-69-F
Molera Packing Co.	75-RC-15-M
O. P. Murphy.....	75-RC-145-M
Napa Valley Vineyards	75-RC-29-S
J. R. Norton Co.	75-RC-16-M
J. R. Norton Co.	76-RC-20-E(R)
Ronald Nunn Farms.....	75-RC-42-S
Oshita, Inc.	75-RC-48-M
Pacific Farms.....	75-RC-31-S
Stephen Pavich and Sons	75-RC-56-F
Perez Packing, Inc.	75-RC-15-F
Phelan and Taylor Produce Co.	75-RC-4-M
Jack M. Radovich	75-RC-46-F
Ranch #1	75-RC-75-F
Resetar Farms	75-RC-147-M
Riverview Farms.....	75-RC-23-R
Royal Packing Co.	75-RC-33-M
Salinas Marketing Cooperative	75-RC-65-M
Ralph Samsel	75-RC-41-M
Sandrini Brothers	75-RC-57-F
Luis A. Scattini and Sons	75-RC-55-M
Sea Mist Farms	75-RC-84-M
Sears Schuman Co.	75-RC-54-M
Sierra Vineyards	75-RC-90-F
Silver Creek Packing Co.	75-RC-16-F
Skyline Farms	75-RC-18-R
Souza and Boster	75-RC-167-M, 75-RC-168-M
D. M. Steel, dba Valley Vineyards.....	75-RC-35-F
Stribling's Nurseries, Inc.	76-RC-7-F
Sun World Packing Co.	75-RC-42-R
Sunnyside Nurseries, Inc.	75-RC-184-M
Superior Farming Co.	75-RC-2-F
Takara International, Inc., dba Niedens Hillside Floral	75-RC-11-R
Tani Farms.....	75-RC-61-M
Tenneco Farming Co.	75-RC-39-F
TMY Farms	75-RC-13-R
Tamooka Brothers	75-RC-104-M
Joe Toste	75-RC-11-S
Triple E. Produce Corp.	75-RC-49-S
William Ueki Rauch.....	75-RC-78-F
United Celery Growers.....	75-RC-78-M
United Rauch.....	75-RC-47-M, 75-RC-83-M, 75-RC-86-M, 75-RC-88-M
Veg-Pak, Inc.	75-RC-11-M
Vista Verde Farms	75-RC-5-S
Waller Flower Seed	75-RC-37-M
R. C. Walter and Sons.....	75-RC-82-F
West Coast Farms.....	75-RC-12-M
Western Rauch	75-RC-47-M, 75-RC-83-M, 75-RC-85-M, 75-RC-86-M, 75-RC-88-M

Westra Dairy Farms.....	77-RC-2-X
Wine World, Inc., dba Beringer Brothers Vineyards	75-RC-50-S
Yamada Brothers	75-RC-26-S
Yamano Brothers Farms, Inc.	75-RC-7-R
Yoder Brothers of California, Inc.	75-RC-24-M
A & N Zaninovich	75-RC-26-F
V. B. Zaninovich and Sons.....	75-RC-11-F, 75-RC-26-F
V. V. Zaninovich.....	75-RC-61-F

II. Unfair Labor Practice and Consolidated Cases

Abatti Farms, Inc.	75-CE-60-E(R) *
	76-CE-45-E(R), 76-CE-49-E(R)
	76-CE-51-E(R), 76-CE-60-E(R)
	76-CE-63-E(R), 76-CE-72-E(R)
	76-CE-73-E(R)
Adam Farms	75-CE-226-M, 75-RC-212-M
Adams Dairy	76-CE-15-M, 76-CE-36-M
Agman, Inc., dba Spring Valley Farms.....	75-CE-64-R, 75-CE-64-A-R
	75-RC-54-R
Agro Crop.....	75-CE-207-M, 75-RC-211-M
	76-CE-3-V
Akitomo Nursery	75-CE-164-M
American Foods, Inc.	77-CE-9-V
Anderson Farms Co.	75-CE-9-S, 75-RC-15-S
Sam Andrews' Sons	75-CE-32-R, 75-CE-36-R
	75-CE-40-R, 75-CE-4-I
	75-CE-7-I, 75-CE-17-I
	75-CE-19-I, 75-CE-24-I
	75-CE-35-I, 75-CE-39-I
	75-CE-2-E, 75-RC-131-F
San Andrews' Sons	75-CE-138-F, 75-CE-140-F
	75-CE-166-F, 76-CE-1-F
Sam Andrews' Sons	76-CL-32-E, 76-CL-32-1-E
	76-CL-33-E, 76-CL-34-E
	76-CL-34-1-E
Bud Antle, Inc.	76-CE-24-M
Armstrong Nurseries, Inc.	75-CE-155-F, 75-CE-160-F
	75-CE-162-F, 75-CE-165-F
	76-CE-9-F, 76-CE-9-1-F
	76-CE-78-F, 76-CE-78-1-F
Arnaudo Brothers, Inc.	75-CE-21-S
AS-H-NE Farms	75-CE-163-M

* The following abbreviations are used in this list:

75—1975

76—1976

77—1977

CE—Charge Against Employer

CL—Charge Against Labor Union

I—Chronological sequence of unfair labor practice cases in a particular region.

C—Coachella

D—Delano

E—El Centro

F—Fresno

I—Imperial

M—Salinas

R—Riverside

S—Sacramento

V—Ventura

X—San Diego

LA—Indicates that unfair labor practice charge was amended.

"Consolidated" hearings are those in which more than one unfair labor practice charge, or unfair labor practices charges and challenges to an election concerning the same ranch, are heard.

Associated Produce Distributors.....	75-CE-195-M
Bacchus Farms	75-CE-169-F
Richard Bagdasarian, Inc.....	77-CE-7-C, 77-CE-7-1-C
	77-CE-10-C
Richard Bagdasarian, Inc.....	77-CE-31-C, 77-CE-78-C
	77-CE-148-C, 77-CE-149-C
	77-CE-192-C
Jack T. Baillie Co., Inc.	75-CE-234-M
Belridge Farms	75-CE-80-F, 75-CE-80-2-F
Tom Bengard Ranch, Inc.	75-CE-143-M
J. R. Blake	75-CE-105-F, 75-CE-107-F
Bonita Packing Co.	75-CE-147-M
John V. Borchard	75-CE-11-I, 75-CE-41-I
J. G. Boswell Co.	77-CE-4-D
Brady Enterprises, Inc.	75-CE-34-I, 75-CE-42-I
	76-CE-6-E(R)
Brock Research, Inc.	76-CE-88-E(R)
Buena Ventura Flower Co.	76-CE-7-V, 76-CE-19-V
Buena Ventura Lemon Co.	76-CE-99-E
Butte View Farms	75-CE-7-S
Cal-Western Vine Corp.	75-CE-17-R, 75-CE-34-R
	75-CE-47-R, 75-CE-15-R
	76-RC-70-R
M. Caratan, Inc.	75-CE-54-F
Harry Carian	76-CE-37-R, 77-CE-34-C
	77-CE-41-C, 77-CE-54-C
Harry Carian	77-CE-47-C
Louis Caric & Sons.....	75-CE-39-F
Chooljian Brothers	75-CE-163-F, 75-CE-164-F
	75-CE-168-F
Chualar Partners.....	76-CE-13-M
Chula Vista Farms	75-CE-50-R, 75-CE-50-A-R
Bruce Church Inc./Valhi Inc., aka Southdown Land Co./McCarthy Farming Co., a corp./McCarthy Farming Co., a partnership	75-CE-55-1-F, 75-CE-55-3-F
	75-CE-55-4-F, 75-CE-124-M
Bruce Church, Inc.	75-CE-124-M, 75-CE-192-M
	75-CE-197-M, 75-CE-33-R
	75-CE-33-A-R, 75-CE-25-I
	75-CE-28-I, 75-CE-48-I
	75-CE-55-F, 75-CE-56-F
	75-CE-139-F, 75-CE-55-4-F
Bruce Church, Inc.	76-CL-8-M, 76-CL-8-1-M
	76-CL-8-2-M, 76-CE-27-M
	76-CE-27-1-M
Bruce Church, Inc.	77-CE-13-M
E. G. Corda Ranches	75-CE-40-I, 75-CE-75-E(R)
	76-CE-84-E(R), 76-CE-145-E(R)
Corona College Heights Orange and Lemon Associa- tion	76-CE-47-R, 77-CE-2-X
Cozza Farms, Inc.	75-CE-46-R
C & V Vegetable Farms.....	77-CE-20-M
Dairy Fresh Produce Co.	76-CE-32-R, 76-CE-32-1-R
	76-CE-44-R, 76-CE-64-R

D'Arrigo Brothers of California	75-CE-32-I
D'Arrigo Brothers of California	75-CE-59-E(R)
D'Arrigo Brothers of California	75-CE-95-F
D'Arrigo Brothers of California	75-CE-140-M
D'Arrigo Brothers of California	76-CE-17-E(R), 77-CE-44-E(R)
Deardorff-Jackson Co.	75-CE-206-M
Dessert Seed Co.	76-CE-41-E(R), 76-CE-42-E(R)
.....	76-CE-43-E(R)
S. L. Douglass	75-CE-116-F
Egger & Ghio, Inc.	75-CE-52-R, 76-CE-52-R
.....	76-CE-54-R
John Elmore, Inc.	76-CE-75-E(R), 76-CE-75-1-E(R)
.....	76-CE-75-2-E(R), 76-CE-75-3-E(R)
.....	76-CE-77-E(R), 77-CE-115-E(R)
.....	77-CE-115-1-E(R)
El Rancho Farms	75-CE-149-F, 75-CE-167-F
.....	75-CE-167-1-F, 75-CE-167-2-F
Eto Farms and Frazier Ranch, Inc.	76-CE-21-M, 76-CE-22-M
Farrior Farms, Inc.	76-CE-19-F
Filice Estates Vineyards	76-CE-12-M
Mel Finerman Co., Inc.	75-CE-118-M, 75-CE-119-M
.....	75-CE-130-M, 75-CE-130-A-M
.....	76-CE-25-R
Edwin Frazee, Inc.	76-CL-17-M
Fresh Fruit and Vegetable Workers, Local P-78-A ..	75-CE-138-M
Frudden Produce, Inc.	75-CE-262-M
Garin Co.	76-CE-13-V
Julius Goldman's Egg City	76-CE-42-R
Jerry Gonzalez	77-CE-3-M
Gonzales Packing Co.	75-CE-57-E(R), 75-CE-63-E(R)
Graeser-Peplis Co.	75-CE-66-E(R), 75-CE-67-E(R)
.....	76-CE-32-E(R), 76-CE-32-1-E(R)
.....	76-CE-17-M
Growers Exchange, Inc.	76-CL-11-1-M
Growers Exchange, Inc.	76-CE-3-M
Albert C. Hansen, dba Hansen Farms	75-CE-238-M
Hansen Farms	76-CE-40-M
Albert C. Hansen, dba Hansen Farms	75-CE-55-2-F
Hanson Ranch	75-CE-10-S, 75-CE-14-S
Hatanaka and Ota	75-CE-12-R, 75-CE-12-A-R
Hemet Wholesale Co.	75-CE-39-R
.....	76-CE-65-R
Hemet Wholesale Co.	76-CE-75-F
Robert Hickam	75-CE-109-F, 75-CE-119-F
Robert Hickam	75-CE-31-R
Highland Ranch	75-CE-11-V
Hiji Brothers, Inc.
Ernest Homen, et al., dba Esquivel and Sons/Dennis
Fruden, dba Fruden Produce Co.	75-CE-244-M
Huyck Brothers and Edward Wineman	75-CE-217-M, 75-CE-225-M
Jack Brothers and McBurney, Inc.	76-CE-100-E, 76-CE-106-E
.....	76-CE-128-E, 76-CE-138-E
.....	75-CE-143-F
Jackson and Perkins Co.	76-CE-70-F
Jackson and Perkins Rose Co.	75-CE-64-F
Jasmine Vineyards, Inc.

Kaplan Ranch	76-CE-7-F
Karahadian Ranches, Inc.	77-CE-8-C
Karahadian Inc./Karahadian & Sons Inc.	77-CE-40-C, 77-CE-73-C
.....	77-CE-89-C, 77-CE-94-C
.....	77-CE-107-C, 77-CE-109-C
.....	77-CE-115-C
Kash, Inc.	75-CE-32-F, 75-CE-90-F
Kawano, Inc.	75-CE-13-R, 75-CE-25-R
Kern Valley Farms	75-CE-118-F, 75-CE-118-1-F
.....	75-CE-125-F, 75-CE-127-F
.....	75-CE-170-M
Mitch Knego Ranch	75-CE-110-M, 75-CE-149-M
Koyama Farms	76-CE-1-M
Morika Kuramura	75-CE-133-M
S. Kuramura, Inc.	75-CE-115-M
Kyutoku Nursery, Inc.	77-CE-18-M
Kyutoku Nursery, Inc.	77-CE-52-C
Laflin and Laflin, aka Laflin Date Gardens	75-CE-8-V, 75-CL-9-V
Laguna Marketing, Inc./Coastal Farms, Inc.	75-RC-81-M
.....	77-CE-19-C
K. K. Larson	77-CE-2-S
Lassen Canyon Nursery	76-CE-76-F, 76-CE-77-F
L. D. Properties, Inc.	77-CE-7-M
Lesco Seed and Chemical, Inc.	75-CE-43-R, 75-CE-43-A-R
Lewis Gardens, Inc.	75-CE-45-F
George Lucas and Sons	75-CE-19-F
Frank A. Lucich Co., Inc.	75-CE-9-I
Lu-Ette Farms, Inc.	75-CE-7-R, 75-CE-10-R
McAnally Enterprises, Inc.	75-CE-27-A-R
.....	76-CE-69-F, 76-CE-73-F
McFarland Rose Production Co.	76-CE-73-1-F, 76-CE-73-2-F
.....	75-CE-151-M, 75-CE-227-M
Rod McLellan Co.	75-CE-232-M, 75-CE-264-M
.....	76-CE-50-M
Rod McLellan Co.	75-CE-120-M
Carl Joseph Maggio, Inc.	75-CE-18-I
Joe Maggio, Inc.	75-CL-2-I
Joe Maggio, Inc.	75-CE-23-R, 75-CL-6-R
Maggio-Tostado, Inc.	75-CE-41-R
Maggio-Tostado, Inc.	75-CE-13-S, 75-CE-28-S
Mapes Packing Co./Mapes Produce Co.	75-CE-32-S, 75-CE-34-S
.....	75-CE-29-I, 75-CE-33-I
.....	76-CE-39-E(R), 76-CE-95-E(R)
.....	76-CE-20-E(R)
.....	75-CE-70-E(R), 75-CE-79-E(R)
Marini Farms	76-CE-52-F, 76-CE-52-1-F
Marlin Brothers, Inc.	75-CE-45-R
Jesus Martinez Ranch	77-CE-12-E(R), 77-CE-19-E(R)
Martori Brothers Distributors	77-CE-6-C
Mel-Pak Ranch	77-CE-57-C, 77-CE-60-C
Mel-Pak Ranch	77-CE-69-C, 77-CE-71-C
.....	77-CE-77-C
Mello-Dy Ranch	75-CL-180-M
Mello-Dy Ranch	75-CE-168-M

William Mendoza	75-CE-57-R
Merzoian Brothers Farm Management Co., Inc./ Poplar Grape Growers/St. Agnes Vineyards, Inc./Elmco Vineyards, Inc.	75-CE-35-F
Isamu Minami/Noboru Iriyama/Yaichiro Minami, dba Security Farms	75-CE-3-M, 75-CE-122-M 75-CE-148-M
Minnehoma Land and Farming Co.	76-CE-81-F
Henry Moreno	77-CE-3-C
Henry Moreno	77-CE-58-C
Charlie Brown and Henry Moreno	76-CE-34-1-R, 76-CE-35-1-R
Frances P. Murphy, dba O. P. Murphy and Sons ...	76-CE-33-M
Nagata Brothers Farms, Inc.	76-CE-11-R, 76-CE-50-R
Napa Valley Vineyards, aka Vinifera	75-CE-30-S
North Indio Farms	76-CE-33-R
Oceanview Farms, Inc.	75-CE-48-R, 75-RC-14-R
Oki Nurseries	76-CE-5-S
Ortega Brothers	75-CE-18-S
P & P Farms	76-CE-23-M
Pandol and Sons	75-CE-86-F, 75-CE-89-F
Patterson Farms, Inc.	75-CE-51-S, 76-CE-4-S 76-CE-7-S, 76-CE-10-S
Patterson & Hale Fruit Co.	77-CE-10-D, 77-CE-25-D
Perry Farms, Inc.	76-CE-1-S
Richard Peters Farms	77-CE-26-C, 77-CE-46-C
Richard Peters	77-CE-76-C
Phelan and Taylor Produce Co.	75-CL-109-M
Pinkham Properties	75-CE-88-F
M. V. Pista & Co.	75-CE-162-M
Pleasant Valley Vegetable Co-op	76-CE-6-V
Prohoroff Poultry Farms	75-CE-38-R
Prohoroff Poultry Farms	76-CE-26-R
Jack or Marion Radovich	76-CE-22-F
Resetar Farms	75-CE-171-M
Romar Carrot Co.	76-CE-35-M
Howard Rose Co.	76-CE-4-R, 76-CE-41-R
Royal Packing Co.	76-CE-101-E, 76-CE-102-E 76-CE-103-E, 76-CE-104-E 76-CE-108-E, 76-CE-112-E 76-CE-119-E, 76-CE-121-E 76-CE-122-E, 76-CE-129-E 76-CE-137-E, 77-CE-2-E 77-CE-11-E, 77-CE-23-E 77-CE-31-E, 77-CE-36-E 77-CE-66-E
S & F Growers	76-CE-6-M, 76-CE-10-V 77-CE-2-V, 77-CE-3-V
Mario Saikhon, Inc.	75-CE-3-I, 75-CE-12-I 75-CE-23-I
Mario Saikhon, Inc.	77-CE-56-E
Mario Saikhon, Inc.	77-CE-128-E, 77-CE-130-E
Salinas Green House Co./Carmel Green House Co.	75-CE-137-M, 75-CE-158-M 75-CE-160-M, 75-RC-222-M
Salinas Lettuce Farmers Co-op	75-CE-202-M, 75-RC-134-M

Santa Clara Farms, Inc./Santa Clara Produce, Inc.	75-CE-166-M
Scotts Valley Mushroom Co.	76-CE-41-M
Select Nurseries, Inc.	75-CE-11-R, 75-CE-11-A-R
Southdown Land Co.	75-CE-257-M
Stenderup Farms	75-CE-50-F, 75-CE-68-F
Jack Stowell, Jr.	76-CE-1-R, 76-CE-98-E(R) 76-RC-2-R
Sunnyside Nurseries, Inc.	75-CE-150-M, 75-CE-150-A-M 75-CE-205-M, 75-CE-218-M 75-CE-218-A-M
Sunnyside Nurseries, Inc.	76-CE-5-M, 76-CE-11-M 76-CE-39-M, 76-CE-42-M 76-CE-43-M, 77-CE-1-M
Sunridge Nurseries, Inc.	77-CE-7-F
Tanaka Brothers	75-CE-165-M, 75-CE-10-V
Teamster Local 946	75-CL-265-M
Tejon Agricultural Partners	76-CE-3-F, 76-CE-4-F 76-CE-8-F, 76-CE-10-F 76-CE-11-F, 76-CE-18-F 76-CE-24-F, 76-CE-82-F 76-CE-82-1-F, 77-CE-5-F 77-CE-14-F, 77-CE-16-F 77-CE-17-F, 77-CE-19-F 77-CE-25-F, 77-CE-32-F 77-CE-33-F, 77-CE-5-D 77-CE-14-D, 77-CE-21-D 77-RC-3-F
Tenneco Farming Co., aka Heggeblade-Margulas	76-CE-12-R
Tenneco West, Inc.	77-CE-2-C, 77-CE-16-C 77-CE-21-C
Tenneco West, Inc.	77-CE-51-C
Tex-Cal Land Management, Inc.	75-CE-24-F, 75-CE-52-F 75-CE-85-F, 75-CE-100-F
Tex-Cal Land Management Co.	76-CE-36-F, 76-CE-49-F 76-CE-65-F, 76-CE-65-1-F
Terra Bella Vineyards	77-CE-26-F
Trefethen Vineyards	75-CE-2-S
Trefethen Vineyards	75-CE-35-S, 76-CE-16-S
Trimble and Sons, Inc.	77-CE-28-F
Dan Tudor and Sons	75-CE-34-F
Livachich Uchimura Farms	76-CE-30-R, 76-CE-67-X
United Celery Growers	75-CL-157-M
Valdora Produce Co., et al.	75-CE-74-R
Valhi, Inc., aka Southdown Land Co.	75-CE-55-F
Valley Farms and Rose J. Farms	75-CE-28-F, 75-CE-28-1-F 75-CE-62-F, 75-CE-63-F
Case Vander Eyk, Jr.	77-CE-7-X
John Van Wingerden, dba Dutch Brothers	75-CE-211-M, 75-CE-2-V 76-CE-14-V
Samuel S. Vener Co.	75-CE-18-R
Venus Ranches	76-CE-28-R
Vista Verde Farms, Inc.	75-CE-5-S, 75-CE-23-S 75-CE-49-S, 75-CE-50-S
Dave Walsh Co.	75-CE-146-M, 75-CE-231-M

Watanabe Ranch.....	75-CE-111-M
Wente Brothers.....	75-CE-241-M
Western Tomato Growers and Shippers, Inc./Stock- ton Tomato Co., Inc., et al.	75-CE-1-S
Whitney Farms, et al.	75-CE-242-M
George Yamamoto and Koichi Yamamoto.....	76-CE-16-R
Mike Yurosek and Sons, Inc.	77-CE-26-E, 77-CE-46-E 77-CE-47-E, 77-CE-52-E 77-CE-53-E, 77-CE-59-E 77-CE-60-E, 77-CE-83-E 77-CE-85-E
Jack G. Zaninovich.....	75-CE-41-F
Marco B. Zaninovich	76-CE-38-F
V. B. Zaninovich and Sons, Inc.	76-CL-4-F, 76-CL-6-F

Appendix D

Decisions Rendered by

The Agricultural Labor Relations Board

August 28, 1975 to June 30, 1977

<i>Case Name</i>	<i>Opinion Number</i>
Eugene Acosta, et al.....	1 ALRB No. 1
Interharvest, Inc.	1 ALRB No. 2
Herota Brothers	1 ALRB No. 3
Molera Agricultural Group	1 ALRB No. 4
Certified Egg.....	1 ALRB No. 5
Herbert Buck Ranches, Inc.	1 ALRB No. 6
Hatanaka & Ota Co.	1 ALRB No. 7
Green Valley Produce Cooperative.....	1 ALRB No. 8
Yamano Brothers Farms.....	1 ALRB No. 9
Samuel S. Vener Co.	1 ALRB No. 10
J. R. Norton Co.....	1 ALRB No. 11
West Foods, Inc.	1 ALRB No. 12
Yamada Brothers	1 ALRB No. 13
Melco Vineyards.....	1 ALRB No. 14
West Coast Farms.....	1 ALRB No. 15
Toste Farms.....	1 ALRB No. 16
Egger & Ghio Co., Inc.....	1 ALRB No. 17
Klein Ranch.....	1 ALRB No. 18
William Dal Porto & Sons, Inc.....	1 ALRB No. 19
Admiral Packing	1 ALRB No. 20
A & N Zaninovich	1 ALRB No. 21
V. B. Zaninovich & Sons.....	1 ALRB No. 22
Chula Vista Farms	1 ALRB No. 23
V. V. Zaninovich.....	1 ALRB No. 24
Sam Barbic	1 ALRB No. 25
Salinas Marketing Cooperative.....	1 ALRB No. 26
Waller Flower Seed Co.	1 ALRB No. 27
J. J. Crosetti Co., Inc.....	2 ALRB No. 1
Mario Saikhon, Inc.	2 ALRB No. 2
Sunnyside Nurseries, Inc.	2 ALRB No. 3
Yoder Brothers	2 ALRB No. 4
Mr. Artichoke, Inc.....	2 ALRB No. 5
Jake J. Cesare & Sons	2 ALRB No. 6
Sears-Schuman Co.....	2 ALRB No. 7
M. V. Pista & Co.	2 ALRB No. 8
Carl Joseph Maggio, Inc.....	2 ALRB No. 9
Ralph Samsel Co.	2 ALRB No. 10
Tom Buratovich and Sons	2 ALRB No. 11
Jack or Marion Radovich	2 ALRB No. 12
Perez Packing	2 ALRB No. 13

<i>Case Name</i>	<i>Opinion Number</i>
R. C. Walter and Sons	2 ALRB No. 14
Mann Packing Co., Inc.	2 ALRB No. 15
Borchard Farms	2 ALRB No. 16
Coachella Growers	2 ALRB No. 17
Cal Pack Citrus Co.	2 ALRB No. 18
H & M Farms	2 ALRB No. 19
Ace Tomato Co.	2 ALRB No. 20
Salinas Greenhouse	2 ALRB No. 21
Phelan and Taylor Produce	2 ALRB No. 22
R. T. Englund	2 ALRB No. 23
Hemet Wholesale	2 ALRB No. 24
Eckel Produce	2 ALRB No. 25
California Coastal Farms	2 ALRB No. 26
United Celery Growers	2 ALRB No. 27
Sam Andrews Co.	2 ALRB No. 28
Royal Packing	2 ALRB No. 29
Harden Farms	2 ALRB No. 30
Hashimoto Nursery	2 ALRB No. 31
Borgia Farms	2 ALRB No. 32
Jerry Gonzales Farms	2 ALRB No. 33
Konda Brothers	2 ALRB No. 34
Bud Antle	2 ALRB No. 35
E & L Farms	2 ALRB No. 36
Ranch #1	2 ALRB No. 37
Bruce Church	2 ALRB No. 38
Apollo Farms	2 ALRB No. 39
Skyline Farms	2 ALRB No. 40
Valley Farms	2 ALRB No. 41
Valley Farms	2 ALRB No. 42
Scattini & Sons	2 ALRB No. 43
McFarland Rose Production	2 ALRB No. 44
Kotchevar Brothers	2 ALRB No. 45
United Celery Growers, Inc.	2 ALRB No. 46
Associated Produce Distributors	2 ALRB No. 47
Gonzales Packing Co.	2 ALRB No. 48
Lu-Ette Farms	2 ALRB No. 49
Veg-Pak, Inc.	2 ALRB No. 50
K. K. Ito Farms	2 ALRB No. 51
Tomooka Brothers	2 ALRB No. 52
Dessert Seed Co.	2 ALRB No. 53
Mapes Produce	2 ALRB No. 54
Dairy Fresh Products	2 ALRB No. 55
Prohoroff Poultry Farms	2 ALRB No. 56
Souza & Boster, Inc.	2 ALRB No. 57
TMY Farms	2 ALRB No. 58
Patterson Farms, Inc.	2 ALRB No. 59
Let-Us-Pak	2 ALRB No. 60
Hansen Farms	2 ALRB No. 61
Anton Caratan & Sons	2 ALRB No. 62
Ueki Ranch	2 ALRB No. 63
Hiji Brothers, Inc.	3 ALRB No. 1
Louis Delfino Co., et al.	3 ALRB No. 2
Missakian Vineyards	3 ALRB No. 3

<i>Case Name</i>	<i>Opinion Number</i>
Kern Valley Farms	3 ALRB No. 4
George Lucas & Sons	3 ALRB No. 5
Rod McLellan Co.	3 ALRB No. 6
Bud Antle, Inc.	3 ALRB No. 7
Valdora Produce Co.	3 ALRB No. 8
Lawrence Vineyards Farming	3 ALRB No. 9
Oshita, Inc.	3 ALRB No. 10
Tex-Cal Land Management, Inc.	3 ALRB No. 11
Cossa & Sons	3 ALRB No. 12
Silver Creek Packing Co.	3 ALRB No. 13
Tex-Cal Land Management, Inc.	3 ALRB No. 14
Plukham Properties	3 ALRB No. 15
John Elmore Farms	3 ALRB No. 16
Marlin Brothers	3 ALRB No. 17
Resetar Farms	3 ALRB No. 18
Vista Verde Farms	3 ALRB No. 19
Tenneco Farming Co.	3 ALRB No. 20
Giumarra Vineyards Corporation	3 ALRB No. 21
Napa Valley Vineyards Co.	3 ALRB No. 22
Cardinal Distributing Co.	3 ALRB No. 23
Takara International (Niedens)	3 ALRB No. 24
Kawano Farms, Inc.	3 ALRB No. 25
O. P. Murphy & Sons	3 ALRB No. 26
Bonita Packing Co.	3 ALRB No. 27
Kaplan Fruit & Produce	3 ALRB No. 28
Jack Pandol & Sons, Inc.	3 ALRB No. 29
Kyutoku Nursery, Inc.	3 ALRB No. 30
D'Arrigo Brothers Co. of California, Reedley District #3	3 ALRB No. 31
Mitch Knego	3 ALRB No. 32
Maggio-Tostado, Inc.	3 ALRB No. 33
D'Arrigo Brothers of California, Reedley District #3	3 ALRB No. 34
Superior Farming Co.	3 ALRB No. 35
Jackson & Perkins Co.	3 ALRB No. 36
D'Arrigo Brothers of California	3 ALRB No. 37
Lai-Ette Farms, Inc.	3 ALRB No. 38
Sahara Packing Co.	3 ALRB No. 39
Henry Moreno	3 ALRB No. 40
Ortega Brothers Farms	3 ALRB No. 41
Sunnyside Nurseries, Inc.	3 ALRB No. 42
Hansen Farms	3 ALRB No. 43
Kitagawa, et al.	3 ALRB No. 44
Sam Andrews Sons	3 ALRB No. 45
Albert Missakian, dba Missakian Vineyards	3 ALRB No. 46
Hemet Wholesale	3 ALRB No. 47
Anderson Farms Co. (ANDCO)	3 ALRB No. 48
S. Kuramura, Inc.	3 ALRB No. 49
Butte View Farms	3 ALRB No. 50
Western Tomato Growers & Shippers, Inc., Stockton Tomato Co., Inc., and Ernest Perry	3 ALRB No. 51
Western Conference of Teamsters, Local No. 946 (Mello-Dy Ranch)	3 ALRB No. 52

Appendix E

Accounting Reports for Fiscal Years 1975-1976 and 1976-1977

I. July 1, 1975 to June 30, 1976

<i>Description</i>	<i>Allotment</i>	<i>Expenditures</i>	<i>Encumbrances</i>	<i>Budget allotment unencumbered</i>
Labor Relations Board				
Personal Services				
Temporary Help		\$1,026,326.52		\$1,026,326.52
Retirement		78,007.59		78,007.59
Health & Welfare		11,740.83		11,740.83
O.A.S.D.I.		47,595.33		47,595.33
Object Total		1,163,670.27		1,163,670.27
Operating Expense				
General Operating Expense		35.00		35.00
General Office Expense		218,997.01		218,997.01
Library Expense		11,836.59		11,836.59
SS-Office Machine Services		8,192.15		8,192.15
SS-Reproduction Services		5,998.58		5,998.58
SS-Xerox, OB #1		9.60		9.60
SS-Mail & Messenger, OB #1		6.30		6.30
SS-Mail & Postage, OB 8&9		1,683.23		1,683.23
SS-Intermittent Employee Pool		2,652.00		2,652.00
SS-Interagency Messenger		1,030.00		1,030.00
Office Copier Operating Costs		2,008.00		2,008.00
Office Relocation Expense		71.00		71.00
Office Relocation Expense		2,316.09		2,316.09
Printing Expense		1,254.06		1,254.06
Lease Line Charges		11,290.60		11,290.60
Toll Charges		55,645.42		55,645.42
Message Unit Charges		1,580.99		1,580.99
Telephone Equip & Other Chgs		27,700.75		27,700.75
Telegraph & Teletype		12,875.53		12,875.53
Postage		9,096.65		9,096.65
Travel Expense		196,495.52		196,495.52
Overtime Meals		24.00		24.00
Employee Moving Expense		1,853.57		1,853.57
Rented Vehicles		67,260.61		67,260.61
Taxed Air Travel In-State		6,491.63		6,491.63
Rent—Building Space		65,559.87		65,559.87
Rent—Conference Room		4,385.58		4,385.58
Maintenance & Repair of Bldgs.		25.36		25.36
Gen. Maintenance Expense		265.00		265.00
Utilities		242.77		242.77
Contractual & Consultative Svcs.		2,787.50		2,787.50

I. July 1, 1975 to June 30, 1976 — (Continued)

Description	Allotment	Expenditures	Encumbrances	Budget Allotment Unencumbered
Contractual Services		\$577,421.82		\$577,421.82
Procurement Services		1,959.75		1,959.75
Legal Services		2,093.00		2,093.00
Space Mgmt Services		11,697.24		11,697.24
Police Services		8,315.36		8,315.36
Expendable Equipment		71,857.71		71,857.71
Administrative Services		29,205.80		29,205.80
Fiscal Services		21,850.05		21,850.05
Personnel Services		18,709.22		18,709.22
Equipment Operating Costs		25.95		25.95
Equipment Rental		30,553.82		30,553.82
Freight		196.27		196.27
Advertising Expense		76.65		76.65
Object Total		1,493,633.60		1,493,633.60
Equipment				
Equipment		41,494.69		41,494.69
Object Total		41,494.69		41,494.69
0 Thru 4 Subtotal		2,698,798.56		2,698,798.56
Reimbursements/Revenue		26,617.71		26,617.71
Unscheduled Reimbursements		19.10		19.10
Object Total		26,636.81		26,636.81
Sub-Function Total	\$2,673,517.00	\$2,672,161.75		\$1,355.25

II. July 1, 1976 to June 30, 1977

Description	Allotment	Current Month Expenditures	Expenditures To Date	Encumbrances	Unencumbered Balance
PERSONAL SERVICES					
Salaries and Wages					
Salaries and Wages, 1st Quarter	\$146,193.00	\$	\$146,191.70	\$	\$1.30
Salaries and Wages, 2nd Quarter	663,498.00		663,494.96		3.04
Salaries and Wages, 3rd Quarter	727,083.00		727,080.66		2.34
Salaries and Wages, 4th Quarter	726,872.00	0	726,871.67	0	.33
Staff Benefits	875,300.00		502,910.15		372,389.85
Temporary Help	659,485.00		454,840.48		204,644.52
Salary Savings	784,181.00		0		784,181.00
Total Personal Services	\$4,582,612.00	\$0	\$3,221,389.62	\$0	\$1,361,222.38
OPERATING EXPENSE & EQUIPMENT					
General Office Expense					
Reproduction	\$95,075.00	\$	\$95,064.05	\$	\$10.95
Greyhound	6,600.00		4,371.70		2,228.30
Library	41,860.00	0	41,857.41	0	2.59
Equipment Rental	16,600.00		16,519.48		80.52
Miscellaneous	3,600.00		2,986.99		613.01
Supplies	106,200.00		103,095.62		3,104.38
Court Costs	46,800.00		42,027.64		4,772.36
Training	54,000.00		29,553.87		24,446.13
Total General Office Expense	\$370,735.00	\$0	\$335,476.76	\$0	\$35,258.24
Printing					
General	\$10,200.00	\$0	\$8,818.67	\$0	\$1,381.33
Opinions	11,500.00		133.56		11,366.44
Total Printing	\$21,700.00	\$0	\$8,952.23	\$0	\$12,747.77

II. July 1, 1976 to June 30, 1977—(Continued)

<i>Description</i>	<i>Allotment</i>	<i>Current Month Expenditures</i>	<i>Expenditures To Date</i>	<i>Encumbrances</i>	<i>Unencumbered Balance</i>
Communications					
Telephone	\$54,400.00	\$	\$50,448.10	\$	\$3,951.90
Long Distance	94,325.00		94,307.10		17.90
ATSS	26,000.00	0	19,322.27	0	6,677.73
Telegraph	9,000.00		194.77		8,805.23
Postage	28,660.00		28,650.85		9.15
	<u>\$212,385.00</u>	<u>\$0</u>	<u>\$192,923.09</u>	<u>\$0</u>	<u>\$19,461.91</u>
Travel In-State					
Travel Expense	\$354,600.00	\$	\$354,447.74	\$	\$152.26
Rental Vehicles	146,000.00	0	142,549.35	0	3,450.65
Air Travel	29,000.00		25,317.03		3,682.97
Employee Moving	43,000.00		42,777.64		222.36
Total Travel In-State	<u>\$572,600.00</u>	<u>\$0</u>	<u>\$565,091.76</u>	<u>\$0</u>	<u>\$7,508.24</u>
Travel Out-of-State					
Travel Expense	\$1,700.00	\$0	\$1,369.30	\$0	\$330.70
Air Travel	1,200.00		0		1,200.00
Total Travel Out-of-State	<u>\$2,900.00</u>	<u>\$0</u>	<u>\$1,369.30</u>	<u>\$0</u>	<u>\$1,530.70</u>
Consultant & Professional Services					
Consultant Services	\$29,000.00	\$0	\$22,746.87	\$0	\$6,253.13
Interagency Services	47,000.00		14,506.75		32,493.25
Total Consultant & Professional Svcs.	<u>\$76,000.00</u>	<u>\$0</u>	<u>\$37,253.62</u>	<u>\$0</u>	<u>\$38,746.38</u>
Facilities Operations					
Rent	\$186,775.00	\$	\$186,760.46	\$	\$14.54
Alterations	94,200.00	0	80,057.05	0	14,142.95
Moving—Inter-Office	8,100.00		7,769.78		330.22
Total Facilities Operations	<u>\$289,075.00</u>	<u>\$0</u>	<u>\$274,587.29</u>	<u>\$0</u>	<u>\$14,487.71</u>
Equipment					
Major Equipment	\$198,800.00	\$0	\$163,624.55	\$0	\$35,175.45
Minor (Expendable)	67,200.00		67,112.65		87.35
Total Equipment	<u>\$266,000.00</u>	<u>\$0</u>	<u>\$230,737.20</u>	<u>\$0</u>	<u>\$35,262.80</u>
Board Hearings					
Transcripts	\$363,605.00	\$	\$339,575.58	\$	\$24,029.42
Interpreters	79,000.00	0	38,682.08	0	40,317.92
Facilities	54,000.00		28,981.45		25,018.55
Travel	74,000.00		45,198.02		28,801.98
Total Hearings	<u>\$570,605.00</u>	<u>\$0</u>	<u>\$452,437.13</u>	<u>\$0</u>	<u>\$118,167.87</u>
Total Operating Expense & Equipment	<u>\$2,382,000.00</u>	<u>\$0</u>	<u>\$2,098,828.38</u>	<u>\$0</u>	<u>\$283,171.62</u>
Total Expenditures	<u>\$6,964,612.00</u>	<u>\$0</u>	<u>\$5,320,218.00</u>	<u>\$0</u>	<u>\$1,644,394.00</u>
Reimbursements					
Unscheduled	\$0	\$0	\$(3,268.47)	\$0	\$3,268.47
Total Reimbursements	<u>\$0</u>	<u>\$0</u>	<u>\$(3,268.47)</u>	<u>\$0</u>	<u>\$3,268.47</u>
Total General Fund	<u>\$6,964,612.00</u>	<u>\$0</u>	<u>\$5,316,949.53</u>	<u>\$0</u>	<u>\$1,647,662.47</u>

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