

1979

Third Annual Report of the Agricultural Labor Relations Board for the Fiscal Year Ended June 30, 1979

Agricultural Labor Relations Board

Follow this and additional works at: http://digitalcommons.law.ggu.edu/caldocs_agencies



Part of the [Labor and Employment Law Commons](#)

Recommended Citation

Agricultural Labor Relations Board, "Third Annual Report of the Agricultural Labor Relations Board for the Fiscal Year Ended June 30, 1979" (1979). *California Agencies*. Paper 277.

http://digitalcommons.law.ggu.edu/caldocs_agencies/277

This Cal State Document is brought to you for free and open access by the California Documents at GGU Law Digital Commons. It has been accepted for inclusion in California Agencies by an authorized administrator of GGU Law Digital Commons. For more information, please contact jfischer@ggu.edu.

THIRD ANNUAL REPORT
OF THE
AGRICULTURAL LABOR
RELATIONS BOARD

FOR THE FISCAL YEAR ENDED

JUNE 30, 1979

KFC
589
. A4
A8
1979

KFC
589
.A4
A8
1979

617-68

LAW LIBRARY
GOLDEN GATE UNIVERSITY

THIRD ANNUAL REPORT

OF THE

AGRICULTURAL LABOR
RELATIONS BOARD

FOR THE FISCAL YEAR ENDED

JUNE 30, 1979

80-11-70

AGRICULTURAL LABOR RELATIONS BOARD

Members of the Board

GERALD A. BROWN, *Chairman*

ROBERT B. HUTCHINSON¹

JOHN P. MCCARTHY

HERBERT A. PERRY

RONALD L. RUIZ

RALPH FAUST, *Executive Secretary*

ANN BAILEY, *Deputy Executive Secretary*

CLARK BENNETT, *Chief of Administration*

Office of the General Counsel

BOREN CHERTKOV, *General Counsel*

DENNIS M. SULLIVAN, *Deputy General Counsel*

ELLEN LAKE, *Chief of Litigation*²

¹ Resigned April 30, 1979.

² Appointed October 1, 1979 to succeed Marvin J. Brenner who was appointed Administrative Law Officer.

LETTER OF TRANSMITTAL

AGRICULTURAL LABOR RELATIONS BOARD
Sacramento, California

As provided in Section 1143 of the Agricultural Labor Relations Act of 1975, I submit herewith the Third Annual Report of the Agricultural Labor Relations Board for the fiscal year ended June 30, 1979, 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

This Annual Report provides general information about the Agricultural Labor Relations Act and Board. It is not intended to provide legal advice to follow in any particular fact situation. As this Report is not an official statement of the law, the statements and viewpoints expressed herein cannot be considered binding upon the board or its general counsel.

TABLE OF CONTENTS

CHAPTER	Page
I. Operations of the Agricultural Labor Relations Board in Fiscal Year July 1, 1978 to June 30, 1979	1
A. Summary	1
B. Administration	2
C. Operational Highlights.....	3
1. Unfair Labor Practices	3
2. Representation Cases	4
3. Elections	4
4. Decisions Issued	4
5. Court Litigation	4
D. Legislative Developments	5
E. Strike Related Activities	5
F. Agency Communications.....	6
II. Representation Cases	9
A. Preliminary Determinations.....	9
1. Employer Status	9
2. Peak Employment	10
3. Eligibility Period.....	11
4. Decertification	11
B. Conduct of the Election	11
1. Eligibility List	11
2. The Ballot.....	12
3. Alleged Bias	12
C. Conduct Affecting the Results of an Election	13
1. Access	13
2. Violence and Threats	14
3. Misrepresentation.....	14
4. Promises and Grants of Benefits	14
5. Other	14
6. Non-party Conduct	14
D. Employee Status and Eligibility	15
1. Procedure	15
2. Agricultural Employee Status	15
3. Economic Strikers	15
4. Eligibility	16
III. Unfair Labor Practice Cases.....	17
A. Preliminary Determinations.....	17
1. Agricultural Employees	17
2. Agricultural Employers.....	18
3. Agency	18
4. Labor Organization	18
5. Jurisdiction	19

B.	Types of Unfair Labor Practices	19
1.	Employer Interference with Employee Rights	19
a.	Surveillance and the Impression of Surveillance	19
b.	Interrogation	20
c.	Violence and Threats	20
d.	Grants and Promises of Benefits.....	20
e.	Denial of Access	21
f.	Employee List	22
g.	Other Forms of Interference.....	22
2.	Employer Assistance and Domination of Labor Organizations	23
3.	Employer Discrimination in Conditions of Employment	24
4.	Employer Discrimination for Participation in Board Proceedings.....	26
5.	Union or Employer Refusal to Bargain	26
6.	Arranging Employment for the Purpose of Voting	27
7.	Employer Bargaining with an Uncertified Union	27
8.	Union Unfair Labor Practices	28
C.	Remedial Order	28
1.	Backpay and Reinstatement	28
2.	Litigation Costs.....	29
3.	Access	29
4.	Make-whole	30
D.	Procedure	30
1.	Limitations Period	30
2.	Other	31
IV.	Agricultural Labor Relations Board Litigation	33
A.	Constitutionality of Judicial Review under the Act	33
B.	Review of Board Decisions.....	34
C.	Pre-Petition List Cases.....	35
D.	Relationship of the Board and the Courts	36
1.	Court Review of Representation Decisions	36
2.	Concurrent Jurisdiction in Eviction Cases	36
E.	Injunctions.....	37
V.	Appendices	39
Appendix A:	New Procedures of the Agricultural Labor Relations Board.....	39
Appendix B:	Statistical Tables	41
Appendix C:	Cases Heard by the Agricultural Labor Relations Board in Fiscal Year 1978-79	49
Appendix D:	Decisions Rendered by the Agricultural Labor Relations Board in Fiscal Year 1978-79	55
Appendix E:	Agricultural Labor Relations Board Litigation Results in Fiscal Year 1978-79	59
Appendix F:	Fiscal Report for Fiscal Year 1978-79	61

I

OPERATIONS OF THE AGRICULTURAL LABOR RELATIONS BOARD IN FISCAL YEAR JULY 1, 1978 TO JUNE 30, 1979

A. Summary

The Agricultural Labor Relations Board (ALRB or board) is an independent State agency which was created in 1975 by the Legislature to administer a new statute governing relations between labor unions and agricultural employers in the State of California. This statute, the Agricultural Labor Relations Act (ALRA or Act), came into being at a time when agricultural labor disputes had created unstable and potentially volatile conditions in the state which were a threat to California's agricultural economy.

The purpose and object of the ALRA is to ensure peace in the agricultural fields by guaranteeing justice for all agricultural workers and stability in agricultural labor relations. It seeks to achieve these ends by providing orderly processes for protecting, implementing, and enforcing the respective rights and responsibilities of employees, employers, and labor organizations in their relations with one another. The overall job of the ALRB is to achieve this goal through administration, interpretation, and enforcement of the ALRA.

ALRB members are Chairman Gerald A. Brown, Ronald L. Ruiz, Herbert A. Perry, and John P. McCarthy. Board member Robert B. Hutchinson resigned in April, 1979, and the vacancy was not filled before the end of the fiscal year. Boren Chertkov served as general counsel throughout the fiscal year.

In its statutory assignment, the ALRB has two principal functions: (1) to determine and implement, through secret-ballot elections, the free democratic choice by employees as to whether they wish to be represented by a union in dealing with their employers and, if so, by which union; and (2) to prevent and remedy unlawful acts and conduct, called unfair labor practices (ULPs), by either employers or unions or both.

The ALRB processes charges of unfair labor practices and petitions for

employee elections which are filed in the eight regional and subregional offices. These offices are located in Fresno, Delano, San Diego, El Centro, Salinas, Oxnard, Santa Maria and Sacramento.

The Act's unfair labor practice provisions place certain restrictions on actions of employers and labor organizations in their relations with employees, as well as with each other. Its election provisions include arrangements for conducting and certifying results of representation elections held to determine whether agricultural employees wish to select a representative to engage in collective bargaining, on their behalf, with their employer.

In handling unfair labor practice cases and election petitions, the ALRB is concerned with the resolution of labor disputes either by way of voluntary all-party settlements, or through its quasi-judicial proceedings, or by means of secret-ballot employee elections.

The ALRB has no independent statutory power to enforce its decisions and remedial orders. It may, however, seek enforcement in the superior courts, and parties to ALRB cases also may seek judicial review of board decisions and orders in the courts of appeal.

This agency's authority is divided between the five-member board, which acts primarily as a quasi-judicial body in deciding cases on formal records, and the general counsel, who is responsible for the investigation of charges and petitions, the conduct of elections, the issuance and prosecution of formal complaints in ULP cases, and the exercise of general supervision over the officers and employees in the regional and subregional offices of the agency.

For the conduct of its formal hearings in unfair labor practice cases, the ALRB employs administrative law officers who hear cases and issue decisions which include findings of fact, determinations of credibility, conclusions of law, and recommendations to the board as to the resolution of the issues. Any party to a case may appeal an administrative law officer's decision to the board by the filing of exceptions. If no exceptions are filed, the administrative law officer's decision and remedial order are adopted by the board.

As previously noted, all ULP charges and representation petitions coming to the ALRB are filed, investigated, and processed in the agency's regional and subregional offices. To afford the public the best possible service on a local level, the ALRB now has eight field offices statewide. Regional directors, in addition to investigating and processing unfair labor practice and representation cases, also have authority to determine which unit (or units) of employees is (or are) appropriate for collective bargaining purposes, to conduct elections, and to investigate and report on challenged ballots and post-election objections. There are provisions for appeal of such representation and election issues to the board.

B. Administration

In administering California's basic farm labor relations law, the ALRB does not initiate cases. The board may act only on the basis of charges or petitions filed by farm workers, agricultural employers, farm labor unions,

or other organizations or individuals outside of the agency. During fiscal year 1979, the ALRB processed a record 911 cases of all types. The largest segment of case filings consisted of 814 charges alleging that employers, or unions, or both, had committed unfair labor practices in violation of the Agricultural Labor Relations Act. This total was 9.7% greater than the previous record of 742 charges processed in fiscal year 1978.

In the other major category of cases, those in which the ALRB was asked to conduct secret-ballot elections among employees to settle questions concerning worker representation, 97 petitions were filed and investigated, and 67 representation elections were conducted among some 5,640 agricultural employees. In 46 of those elections, a majority of the voters chose a labor organization to represent them in collective bargaining with their employer.

The end product of case processing in this agency is the decision of the five-member board in unfair labor practice proceedings and representation matters. In fiscal 1979 the board issued an all-time high of 113 decisions, including 71 decisions in unfair labor practice cases contested as to their facts and/or the applicability of the law. The board found violations in 54 (76%) of those cases and dismissed the complaint in 17 others (24%). The board entertained five formal procedural motions filed by parties to ULP cases. The board also issued decisions in 42 representation cases, including 11 which involved challenged ballots. In resolving the 37 cases which involved post-election objections, the board set aside the election in 8 cases (22%), and dismissed the objections and certified the election in 29 others (78%).

C. *Operational Highlights*

1. Unfair Labor Practices

In fiscal year 1979, 814 unfair labor practice charges were filed with the ALRB, an increase of 9.7% over the 742 filed in fiscal year 1978.

Unfair labor practice charges against employers increased to 659, a two percent increase from the 645 of fiscal year 1978. ULP charges against unions increased to 143, an 83% increase over the 78 filed in the preceding year.

In fiscal year 1979, the agency adopted "cases closed" as a measure of productivity. In that year, 694 unfair labor practice charges were closed. One percent of these cases were settled or adjusted, 17% were withdrawn before issuance of complaint, 31% were dismissed after investigation for lack of merit, and 49% were incorporated into complaints.

In fiscal year 1979, ALRB regional offices, acting on behalf of the general counsel, issued 161 complaints, a 40% increase over the 115 issued in the preceding year. Of the complaints issued, 83% were against employers, and 17% were against unions.

Administrative law officers issued 43 decisions, compared with 81 issued during the previous year, and conducted 76 hearings compared with 97 in fiscal 1978.

At the end of fiscal year 1979, there were 411 unfair labor practice cases

being processed in various stages by the ALRB. At the beginning of that year, there were 291 cases pending.

2. Representation Cases

The ALRB received 104 representation cases in fiscal year 1979, including 80 representation petitions, 17 decertification petitions, and 7 petitions for unit clarification. The 104 representation cases filed during fiscal year 1979 represented a 30% decrease from the 148 petitions filed during the preceding year.

A total of 93 representation cases were closed in fiscal 1979, a 42% decrease from the 160 closed in fiscal year 1978.

3. Elections

A total of 5,640 employees exercised their right to vote in representation elections conducted by the ALRB in fiscal 1979, compared with 9,302 voters in elections conducted in fiscal 1978. Unions won 46 or 69% of 67 elections. The conclusive ballotings included representation elections, in which employees selected or rejected a labor organization as their bargaining agent, and decertification elections, in which the issue was whether an incumbent union would continue to represent the employees.

Of the seven decertification elections conducted, one resulted in continued representation of 239 employees by the union, and four resulted in the union being rejected by the employees. The results of one election remained uncertain pending the resolution of challenged ballots, and in one election the ballots were stolen and never counted.

4. Decisions Issued

Dealing effectively with the remaining cases reaching it from state-wide filings after dismissals, withdrawals, settlements, and adjustments in earlier processing stages, the board issued a total of 113 decisions involving allegations of unfair labor practices and issues relating to employee representation, compared to the 83 decisions issued during fiscal year 1978, an increase of 36%.

A breakdown of board decisions follows:

Total board decisions	113
Unfair labor practice decisions	71
Representation decisions.....	37
Other decisions	5

Emphasizing the steadily mounting unfair labor practice caseload facing the board was the fact that in fiscal year 1979 approximately 49% of all charges filed and 91% of all cases in which a hearing was conducted reached the five-member board for decision.

5. Court Litigation

During fiscal year 1979, the California Supreme Court decided two cases which directly affected the ALRB. The board's position was sustained in full in one case and in part in the other. In the state court of appeal, the board prevailed in nine of fourteen cases decided. Of the remaining five matters, the board was partially successful in three and lost the other two.

Many ALRB cases are still pending review in the California appellate courts. Because the standards for judicial review of board decisions were clarified by the California Supreme Court during this fiscal year, the number of court decisions involving ALRB matters is expected to increase sharply in the coming year.

D. Legislative Developments

Thirty-eight bills to amend the Agricultural Labor Relations Act or to otherwise affect relations between employees, labor unions, growers, and this agency were introduced during fiscal year 1979. Of the eleven bills which were introduced prior to July 1, 1978, and acted upon during the last six months of 1978, eight were voted down, and three became law. The remaining 27 bills were introduced in 1979. Of these, as of June 30, 1979, one passed the Legislature, but had not been acted upon by the Governor, and 16 were still under legislative consideration.

Three bills became law in 1978. The first required the agency to maintain a 24-hour "hot-line" telephone service at all times at its principal office, and to maintain such a service in regional offices during representation elections conducted under strike conditions. This new law also extended the effective date on a hot-line service law beyond its original limit of December 31, 1979. The second amended the Penal Code to make it a misdemeanor for a person to refuse to leave private premises when requested except when engaged in lawful union activity. The third bill requires ALRB employees to perform their duties in an objective and impartial manner.

E. Strike-Related Activities

The agency's activities during fiscal year 1979 were affected significantly by the strike which arose out of contract negotiations between the United Farm Workers and lettuce and vegetable growers in the southern and central parts of the state. Unfair labor practice charges filed by both sides, and injunctions sought by this agency in order to minimize the potential for violence and property damage, contributed greatly to the agency's workload through fiscal 1978-79.

The labor dispute developed because of the parties' inability to reach a collective bargaining agreement. The California ALRA, like the Federal NLRA after which it is patterned, protects the rights of workers to strike, and protects the employer's right to continue operations during the strike. The strike itself was a lawful activity. Employees may withhold their services and publicize the dispute; and companies may continue to harvest and market lettuce. Such activities conducted in an orderly fashion do not violate any law and may not be enjoined.

Under the ALRA, agency personnel cannot attend bargaining sessions, engage in collective bargaining, or write contracts for the parties. Moreover, the agency cannot require the parties to make specific concessions, determine wages at which farm employees will work, or fix prices that will determine a grower's profits.

However, the agency could, and did, take certain steps to enforce the unfair labor practice provisions of the law to protect the interests of employees, growers and unions. Common threads run through the agency's strike-related activities in Imperial, Fresno, Ventura, Contra Costa, and Monterey counties. The agency moved expeditiously in its handling of unfair labor practice charges, investigating allegations by contacting all parties, and attempting to minimize the potential for violence by seeking, as appropriate, immediate injunctive relief in court, upon approval of the five-member board. Eight injunctions were obtained against growers, eight against unions, and four against both the union and growers. Over 150 separate contempt-of-injunction cases were handled by regional office personnel, involving violations of board initiated court injunctions. The agency also attempted to resolve problems through informal agreements, both prior to initiation of formal court proceedings and in the compliance stage. In addition, the agency maintained flexible procedures to encourage communications among all parties to the dispute. By encouraging peaceful and orderly expression of views, the incidence of violent outbursts was minimized.

Extensive statements detailing the agency's strike-related activities were presented by the general counsel and board in response to inquiries from Special California Senate and Assembly committees which investigated the strike.

F. *Agency Communications*

During fiscal year 1979, an Office of Agency Communications (OAC) was established and given responsibility for coordinating agency comments on proposed budgets and legislation, developing and carrying out external education programs, and assuring the legal validity and propriety of extra-agency communications. The OAC was also charged with coordinating regional office information programs and public relations efforts, and overseeing the agency's relations and communications with growers, farm workers, unions, and law enforcement agencies.

The agency information programs are designed to explain the new rights, obligations, protections and procedures of the ALRA relating to unfair labor practices, representation and decertification elections, and other provisions of the Act. In addition, the OAC developed and distributed explanatory materials, handbooks, and leaflets, prepared radio tapes, and participated in speaking engagements to groups of farmers and farmworkers throughout the state. These programs were conducted in English, Spanish, Arabic, Punjabi, Korean, Tagalog, Ilocano, and other languages. The OAC also served as a liaison to other governmental agencies, including the Department of Agriculture and Consumer Services, Employment Development Department, Department of Education, and Department of Health.

The ALRB expanded its grower-information efforts during fiscal 1979. Headquarters staff continued to seek grower groups interested in obtaining information about the Act and ALRB services, while regional office personnel developed their own contacts with grower groups. In some

cases, information programs were set up by groups organized through government agencies such as EDD or Cooperative Extension. In other cases, programs were developed through nongovernmental groups such as local Farm Bureaus, production associations, and nurseries. Radio and television programs were used as forums to answer questions and provide background information.

Another major area of outreach was the agency's effort to conduct and establish working relations with law enforcement agencies throughout the state. As city police and county sheriffs' offices regularly handle labor-related activities, representatives of the agency continued to conduct statewide and local orientation programs with groups of sheriffs and city police, including Kings, Tulare, Stanislaus, Fresno, Ventura, Monterey and San Joaquin counties. These presentations included explanations of the ALRA, descriptions of the agency's access regulations and post-election access rights, and discussions of unfair labor practice violations, procedures for handling such cases, coordination of investigation and prosecution of unfair labor practices with local law enforcement and investigation and prosecution of civil and criminal law violations. In the counties affected by the strike activities, regional office staff developed more formal liaison procedures with local law enforcement officials and district attorneys for handling of injunctions and other strike-related matters.

II

REPRESENTATION CASES

The ALRA requires an employer to bargain with the representative chosen by a majority of its employees in the bargaining unit.¹ The employer may not, however, bargain with a representative until it has been certified by the board as the choice of a majority of the employees.² The board certifies a representative after conducting a secret ballot election in which the employees designate their choice of bargaining representative.³ The ALRA requires the board to conduct such an election within seven days after the filing of an election petition by or on behalf of a majority of the employees.⁴ One of the requirements for filing an election petition is that the number of employees currently employed by the employer is not less than 50 percent of the peak agricultural employment for the current calendar year.⁵ Once certified by the board, the bargaining agent is the exclusive representative of all the employees for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment and other conditions of employment.⁶ The ALRA also empowers the board to conduct elections to decertify incumbent bargaining agents who have previously been certified by the board.⁷

This chapter concerns decisions of the board which deal with the process of selecting a bargaining representative.

A. *Preliminary Determinations*

1. *Employer Status*

The board in two cases determined that crop owners and not custom harvesters were the agricultural employers of harvest workers.⁸ In *Joe Maggio, Inc.*, the board found a long-standing employment relationship between the workers and the crop owner and noted that the harvester's supervisory services were of the kind often provided by labor contractors, who are expressly excluded from the definition of "agricultural employer."⁹ In *Mel Finerman Co.* the board based its decision on the crop owner's substantial and permanent interest in the ongoing agricultural

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

² CAL. LAB. CODE §1153 (f) (1975).

³ CAL. LAB. CODE §1156.3 (1975).

⁴ CAL. LAB. CODE §1156.3(a) (1975).

⁵ CAL. LAB. CODE §1156.3(a) (1) (1975).

⁶ CAL. LAB. CODE §1156 (1975).

⁷ CAL. LAB. CODE §1156.7(c) (1975).

⁸ *Joe Maggio, Inc.*, 5 ALRB No. 26 (1979); *Mel Finerman Co./Circle Two*, 5 ALRB No. 28 (1979).

⁹ CAL. LAB. CODE §1140.4(c) (1975).

operation, and on the close ties between the owner and the harvester, 90 percent of whose work was performed for the crop owner.

2. Peak Employment

Under §1156.3(a) of the Act, a petition for certification must allege that the number of workers employed at the time of the filing of the petition is not less than 50 percent of the employer's peak employment for the current calendar year. The board has approved the use of two methods of determining peak employment. In the first, the number of individual employees who worked during the pre-petition payroll period is compared to the number of individual employees working during the peak payroll period.¹⁰ The second, called the *Saikhon* method, attempts to eliminate distortions in peak figures caused by high turnover by comparing the average number of "employee days" in the pre-petition payroll period with the average number of "employee days" during the peak period.¹¹

In *California Lettuce Co.*, the Board upheld the regional director's determination of peak, finding it appropriate, in using the *Saikhon* formula, to consider only the three days actually worked in the pre-petition payroll period and not the six days of the entire period.¹² The three days in which no work occurred were found to be "unrepresentative" because no work was available owing to external conditions, such as bad weather.

In *Charles Malovich*, the regional director determined that the employer was at 50 percent of peak during the pre-petition period by considering prior payroll records and evidence of crop and acreage statistics.¹³ After the election but before the hearing on objections, the employer actually reached peak and it became apparent that the regional director's determination was mathematically incorrect. The board dismissed the employer's exception to the determination of peak, holding that in cases in which peak occurs after the election ("prospective peak"), the standard of review will be whether the regional director's decision was a reasonable one in light of the information available at the time of the election. Setting aside elections solely on the basis of "hindsight" information, the board found, would result in disenfranchisement and delay, without helping to achieve a more representative result in future elections.

In *Domingo Farms*, another case involving prospective peak, the board concluded that the analysis in *Malovich* also applied where actual peak was reached after the hearing but before the hearing examiner's opinion was issued.¹⁴

When the employer fails to provide complete and accurate payroll lists to the regional director, and there is sufficient evidence to support an allegation of peak, the board has held that the regional director may presume that a petition is timely.¹⁵

In *Bonita Packing Co.*, the board found the peak figure to be an estimate of peak employment over a period of time lasting longer than one payroll

¹⁰ *Donley Farms, Inc.*, 4 ALRB No. 66 (1978).

¹¹ *Mario Saikhon, Inc.*, 2 ALRB No. 2 (1976).

¹² 5 ALRB No. 24 (1979).

¹³ 5 ALRB No. 33 (1979).

¹⁴ 5 ALRB No. 35 (1979).

¹⁵ 8 CAL. ADMIN. CODE §20310(e) (1978); *Filice Estates Vineyards*, 4 ALRB No. 71 (1978).

period.¹⁶ Given the inherent difficulties involved in calculating peak employment in a fluctuating workforce, the board found that an electorate which fell short of 50 percent of the peak figure by a margin of two was not unrepresentative and upheld the election. In *Wine World, Inc.*, the board upheld the reasoning of *Bonita*, but found that a margin of error of seven percent was too great to provide for a representative election and ruled the petition to have been untimely.¹⁷

3. Eligibility Period

In a case in which a runoff election took place one and one-half years after the original election, the board held that the appropriate eligibility period was the payroll period immediately preceding the notice of the runoff election, and not the period preceding the filing of the original petition.¹⁸

When an employer has some workers who are on a regular periodic payroll and others who are paid daily, the appropriate payroll period for determining peak and eligibility for both groups is the regular payroll period immediately preceding the filing of the petition.¹⁹

4. Decertification

Section 1156.7(d) provides that a petition to decertify a collective bargaining agent may be filed during the year preceding the expiration of a collective bargaining agreement which would otherwise bar an election because of the contract bar provision of §1156.7(c). In *M. Caratan, Inc.*, a petition to decertify was filed three months after the signing of a one-year contract.²⁰ The board dismissed the petition, holding that the one year open period for filing decertification petitions was intended to apply to contracts of longer duration. To apply it to one-year contracts, the board reasoned, would frustrate the purpose of the contract-bar provision, which is to create a period of stability in which a bargaining relationship may be established. The board ruled that, in the case of one-year contracts, petitions for decertification may be filed during the last 30 days of the contract. Members McCarthy and Hutchinson dissented, and would have permitted decertification petitions to be filed during the last 12 months of a contract, regardless of its duration.

B. Conduct of the Election

1. Eligibility List

In *Harry Singh & Sons*, the employer's inadequate record-keeping prevented it from providing an accurate and complete list of the names and addresses of all employees on the pre-petition payroll as required by the regulations.²¹ The board held that, because the failure to submit an adequate list would frustrate the identification of eligible voters, the regional

¹⁶ 4 ALRB No. 96 (1978).

¹⁷ 5 ALRB No. 41 (1979).

¹⁸ Jack T. Baillie Co., 4 ALRB No. 47 (1978).

¹⁹ Jack Bros. & McBurney, Inc., 4 ALRB No. 97 (1978).

²⁰ 4 ALRB No. 68 (1978).

²¹ 4 ALRB No. 63 (1978); 8 CAL. ADMIN. CODE §20310(d) (2) (1975), re-enacted as 8 CAL. ADMIN. CODE §20310(a) (2) (1978).

director did not abuse his discretion in invoking the presumption provided for in the regulations that all persons who appeared to vote, were not challenged, and provided adequate identification, were eligible to vote.²²

An election was set aside in a case in which 81 of the 236 employees on the eligibility list were unreachable because the employer did not provide their current street addresses.²³ Because many of the employees did not work immediately before the election and could only have been reached at home, and because the election was a close one, the faulty list was held to have affected the outcome of the election.

2. *The Ballot*

The board ruled that the failure to provide ballots in Korean to Korean-speaking voters did not warrant setting aside the election in *Sunnyside Nurseries, Inc.*²⁴ Noting that the Act gives the board discretion whether to provide ballots in languages other than Spanish and English, the board held that its obligation is to provide a ballot which designates choices in such a way that voters can recognize them. It found that this obligation had been met by the use at the election of a handdrawn sample ballot in Korean and an explanation of the ballot by a Korean interpreter.

3. *Alleged Bias*

The board declined to set aside elections in two cases which it was alleged that board agents engaged in conduct which was biased in favor of one of the parties. In *Mike Yurosek & Sons, Inc.*, a board agent was charged with making statements critical of the employer at a pre-election conference.²⁵ *Paul W. Bertuccio* involved alleged expressions of support for the UFW by board agents and the use of a state car to promote the union.²⁶ The board held that these isolated incidents, even if they had occurred, would not have created an atmosphere which would have rendered improbable a free choice by the voters.

In *Monterey Mushroom, Inc.*, the board affirmed a hearing examiner's ruling that a board agent's questioning of an employee about problems with his employer did not show bias against the employer and that a board agent's presence at a union hall on unrelated business while an organizing meeting was being conducted did not warrant setting aside the election without a showing that the agents aligned themselves with the union.²⁷

The board affirmed a ruling by a hearing examiner in *The William Mosesian Corp.*, that an election should be set aside because of electioneering by a board agent and union conduct.²⁸ The hearing examiner concluded that the agent's statements to approximately 20 voters on the day of the election deprived voters of an atmosphere in which they could freely cast their votes, and that the statements could have affected the outcome of

²² 8 CAL. ADMIN. CODE §20310(e) (1) (C) (1978).

²³ *Salinas Lettuce Farmers' Cooperative*, 5 ALRB No. 21 (1979).

²⁴ 4 ALRB No. 88 (1978).

²⁵ 4 ALRB No. 54 (1978).

²⁶ 4 ALRB No. 91 (1979).

²⁷ 5 ALRB No. 2 (1979).

²⁸ 4 ALRB No. 60 (1978).

the election as well as undermining confidence in the integrity of the election process.

C. Conduct Affecting the Results of an Election

1. Access

The board's access rule grants specific numbers of union representatives access to employees on the employer's premises at specific times.²⁹

The board refused to overturn an election in a case in which the union proved a single post-Act denial of access by the employer.³⁰ The board held that the burden was on the union to show that effective access had not been otherwise obtained.

Interference with the access and activities of a union organizer on one occasion by a supervisor and by an official of another union was not found to be sufficient grounds for overturning the results of an election in *Point Sal Growers and Packers*.³¹

In a case in which expanded access had been granted as a remedy for an earlier unfair labor practice, the board upheld a hearing examiner's finding that the employer had failed to prove that the union had exceeded the expanded access limits.³² The board also ruled that the provision in the regulations that speech alone is not disruptive of agricultural operations applies to instances of expanded access as well as to access periods provided for in the regulations.³³

In *Ranch No. 1, Inc.*, the board found that minimal violations of the access rule by a union did not intimidate or coerce employees in the exercise of their free choice and thus did not warrant setting aside the election.³⁴

The facts alleged in *Ranch No. 1* and in *Sam Andrews, supra*, were also the basis for motions to deny access to the union involved, pursuant to §20900(e)(5)(A) of the regulations.³⁵ In *Ranch No. 1* the board determined that in considering such motions it must balance the right of access against the property rights of the employer, and concluded that it will grant denials of access if one of the following criteria is met: (1) significant disruption of agricultural operations; (2) intentional harassment of the employer or employees; (3) intentional or reckless disregard of the limits of the access rule. In this case an organizer was found to have stayed in the field beyond the proper access period, disrupted operations, and disregarded access limitations. The board ordered this organizer barred for 60 days from organizing in the area governed by the Fresno regional office.

In *Sam Andrews*, the board found that its criteria for sanctions were not met by whatever slight and technical violations of the access rule may have occurred.

²⁹ 8 CAL. ADMIN. CODE §20900 (1978).

³⁰ *Mid-State Horticulture*, 4 ALRB No. 101 (1978).

³¹ 4 ALRB No. 105 (1978).

³² *Sam Andrews' Sons*, 4 ALRB No. 59 (1978).

³³ 8 CAL. ADMIN. CODE §20900(e)(4)(C) (1978).

³⁴ 5 ALRB No. 1 (1979).

³⁵ 8 CAL. ADMIN. CODE §20900(e)(5)(A) (1978); *Ranch No. 1, Inc.*, 5 ALRB No. 36 (1979); *Sam Andrews' Sons*, 5 ALRB No. 38 (1979).

2. *Violence and Threats*

Statements by employees that workers who did not sign authorization cards might be fired were threats, but, in view of the fact that they were not attributable to the union, the board did not find that they created an atmosphere of intimidation which would have affected the outcome of the election.³⁶ Similarly, statements by employees who were union supporters that other employees would lose their jobs if the union won the election were not found to have frightened or intimidated voters.³⁷ In these cases, the board attached significance to the fact that the statements were made by non-parties.

In a case in which a union organizer was alleged to have physically threatened a foreman at a labor camp, the board held that the threat, even if made, was an isolated occurrence, was heard by few, if any, voters, and could have not affected the outcome of the election.³⁸

3. *Misrepresentation*

Union offers of legal help to workers detained by the Immigration and Naturalization Services (INS) were not found to be misrepresentations in *Paul W. Bertuccio*.³⁹ The employer made no showing that the union did not, in fact, offer such assistance nor did it show that legal help would be of no value to undocumented workers.

4. *Promises and Grants of Benefits*

In two cases in which union organizers offered assistance to workers detained by the INS, the board found that the offers were not coercive.⁴⁰ In neither case was the assistance offered contingent on membership or support of the union before the election. In both cases, employees would have understood that the help promised was affected by events and decisions beyond the union's control and was, therefore, of uncertain value.

5. *Other*

A statement by a union organizer accusing the employer of calling the INS on the day of the election was found not to have affected the outcome of the election; no evidence was presented that any employees heard the statement.⁴¹

6. *Non-party Conduct*

Presence of INS agents on the employer's premises one half hour before an election was not found to be grounds for setting the results of the election aside.⁴² Voter turnout was high despite the raid; no confusion or fear was evident at the polls; INS activity was quickly checked by a board agent and a party representative; and there was no evidence that any party summoned the INS.

³⁶ *Select Nursery*, 4 ALRB No. 61 (1978).

³⁷ *Tequesquet Vineyards*, 4 ALRB No. 102 (1978); *San Diego Nursery Co.*, 5 ALRB No. 43 (1979).

³⁸ *Desert Harvest Co.*, 5 ALRB No. 25 (1979).

³⁹ 4 ALRB No. 91 (1978).

⁴⁰ *Paul W. Bertuccio, id.*; *Veg-a-Mix*, 5 ALRB No. 14 (1979).

⁴¹ *Tequesquet Vineyards*, 4 ALRB No. 102 (1978).

⁴² *Id.*

In reiterating its position that actions of non-parties have less effect on the outcome of an election than do the actions of parties, the board has dealt in several cases with issues of agency and ratification. In *Select Nursery*, members of an employee organizing committee who solicited authorization cards and distributed leaflets were found not to be union agents because their union involvement was entirely voluntary and undertaken on their own initiative.⁴³ In *San Diego Nursery Co.*, the board found that no “apparent authority” had been granted by the union to members of an organizing committee which would cause voters to believe the committee was acting for the union.⁴⁴ In this case, the board stressed the independent nature of the committee, which had been formed on the employees’ own initiative, and which conducted most of the organizing campaign alone, with some assistance and advice from the union. The board also found it significant that the committee was not sought out by the union as its sole contact with workers.

In another case the board refused to find a union supporter to be a union agent based on his solicitation of authorization cards, nor did it find that the union had ratified his acts of electioneering at the polls.⁴⁵

D. *Employee Status and Eligibility*

1. *Procedure*

The board found no denial of due process in a case in which a challenge to a voter’s eligibility was sustained on grounds different from those on which it was originally made, since all parties had the opportunity to except to the regional director’s determinations.⁴⁶

2. *Agricultural Employee Status*

In *Stribling’s Nurseries, Inc.*, the board decided that certain employees who worked exclusively for a separately organized landscaping division of the employer were not agricultural employees within its jurisdiction.⁴⁷ The landscaping division was found to be a commercial operation because at least 35 percent of the horticultural goods it used came from non-employer sources.

In another case, the board found that mechanics who did maintenance work for both the employer’s agricultural operation and its commercial packing shed were engaged in “mixed work” and therefore were agricultural employees.⁴⁸ The mechanics were included in the bargaining unit except as to the portion of their work done in the commercial packing shed.

3. *Economic Strikers*

Economic strikers are eligible to vote, including those who went on strike during the 36 months before the effective date of the Act, if the

⁴³ 4 ALRB No. 61 (1978).

⁴⁴ 5 ALRB No. 43 (1979).

⁴⁵ Tequesquet Vineyards, 4 ALRB No. 102 (1978).

⁴⁶ Jack T. Baillie Co., 4 ALRB No. 47 (1978).

⁴⁷ 4 ALRB No. 50 (1978).

⁴⁸ Joe Maggio, Inc., 4 ALRB No. 65 (1978).

election is held within 18 months after that date.⁴⁹ The board has held that the 18 months period did not run during the hiatus in the board's first year of operation which was caused by lack of funds.⁵⁰

Pre-Act economic strikers are eligible to vote if they worked during either the payroll period immediately preceding the expiration of a contract, or the payroll period immediately preceding the commencement of a strike, or if they were seasonal employees who joined the strike rather than returning to work at the usual time of year. Employees who quit work on their own accord before either of the two applicable payroll periods are not eligible.⁵¹ Overruling an earlier decision, the board has held that an employee who joins a strike after its commencement may still acquire economic striker status.⁵²

In order to maintain their eligibility, economic strikers must not abandon the strike or their interest in their struck jobs. A striker who returns to work for the struck employer before the election has abandoned the strike and is not eligible as an economic striker.⁵³ The board will not find, however, that acceptance of work elsewhere establishes abandonment of interest in a struck job.⁵⁴

In *Roberts Farms, Inc.*, the board rejected an employer's contention that certain economic strikers were ineligible because business conditions made it unlikely that they would have been rehired.⁵⁵ A challenge on this basis will be upheld only if the employer proves that the strikers' positions were permanently eliminated before the election.

4. Eligibility

Workers are not eligible to vote if they were not employed during the last payroll period preceding the filing of the petition for certification.⁵⁶ Like an employee on vacation or sick leave, a worker absent during the eligibility period because of the illness of a dependent child is eligible to vote.⁵⁷ An employee who has been unlawfully discharged before the eligibility period is still an eligible voter, unless it can be demonstrated that, even absent the unlawful discharge, the employee would not have worked during the eligibility period.⁵⁸

⁴⁹ CAL. LAB. CODE § 1157 (1975).

⁵⁰ Coachella Imperial Distributors, 5 ALRB No. 18 (1979).

⁵¹ Franzia Bros. Winery, 4 ALRB No. 100 (1978).

⁵² *Id.*; Roberts Farms, 5 ALRB No. 22 (1979).

⁵³ Mid-State Horticulture Co., 4 ALRB No. 101 (1978).

⁵⁴ D. M. Steele, 5 ALRB No. 11 (1979).

⁵⁵ 5 ALRB No. 22 (1979).

⁵⁶ CAL. LAB. CODE § 1157 (1975).

⁵⁷ Karahadian & Sons, Inc., 5 ALRB No. 19 (1979).

⁵⁸ *Id.*

III

UNFAIR LABOR PRACTICE CASES ¹

The ALRA gives agricultural employees the right to self organization.² It also defines certain conduct on the part of employers and labor organizations, which interferes with that right, as unfair labor practices.³ The ALRA empowers the board to prevent unfair labor practices.⁴ A person may file a charge alleging that an unfair labor practice has been committed. Charges are filed with the regional office of the board in the area where the alleged unfair labor practice occurred. When a charge is filed, the regional office conducts an investigation and if it appears that the charge has merit, the regional office will prosecute the case. If the board ultimately finds that an unfair labor practice has been committed, it can issue a cease and desist order, require affirmative action including reinstatement of employees with or without back pay and making employees whole for the loss of pay resulting from the employer's refusal to bargain, or order other relief as will effectuate the policies of the ALRA.⁵

This chapter concerns decisions of the board which deal with unfair labor practice issues.

A. *Preliminary Determinations*

1. *Agricultural Employees*

In a case in which an earlier NLRB decision had found two short-haul truckers to be non-agricultural employees of the employer, a custom harvester, the board ordered them excluded from the bargaining unit.⁶ It upheld, however, the hearing officer's finding of a refusal to bargain as to the employer's harvest employees.

In *Sierra Citrus Assn.*, a truck driver who transported and repaired fruit bins for a farmers' cooperative which harvested and packed fruit for its members but held no land in cultivation was found not to be an agricul-

¹ Board decisions cited in this section which were acted upon by the courts during the fiscal year 1978-79 are noted in the litigation section.

Judicial decisions affecting the ALRB cases which were issued after June 30, 1979 are not mentioned in this report, with the exception of decisions of the California Supreme Court and unappealed decisions of the courts of appeal which overrule board decisions. Any such judicial decisions issued as of the time this report went to press are cited in footnotes.

² CAL. LAB. CODE § 1152 (1975).

³ CAL. LAB. CODE §§ 1153, 1154, 1154.5 and 1154.6 (1975).

⁴ CAL. LAB. CODE §§ 1160, et seq. (1975).

⁵ CAL. LAB. CODE § 1160.3 (1975).

⁶ Romar Carrot Co., 4 ALRB No. 56 (1978).

tural employee, and therefore not the victim of an unfair labor practice.⁷

2. *Agricultural Employers*

In *San Diego Nursery Co.*, the board affirmed the hearing officer's finding that a nursery which was the primary grower of stock it later sold as its own end-product was an agricultural employer within the meaning of the Act and therefore liable for its failure to submit a pre-petition list.⁸

The board found that an association of citrus growers which directed and supervised the harvests of its members was the primary employer of certain employees and therefore chargeable with unfair labor practices committed against them.⁹ The board rejected the respondent's argument that another organization, which performed payroll accounting and operated a labor camp, was the employer of the harvest workers, finding that the first association had a more substantial and permanent interest in the agricultural operation and exercised greater control over the employees' terms and conditions of employment.

3. *Agency*

The board held an employer liable for a labor camp manager's actions in physically evicting union organizers from the camp in *Frank A. Lucich Co.*¹⁰ Although the manager was not a supervisor, he was paid by the employer to manage the camp, was aware of the employer's preferences in the coming election, and acted in accordance with them. The same result was reached in another case, in which an independent labor camp owner, whose camp was used as a center for many of the workday's activities, was found to be an agent of the employer.¹¹

In *Paul W. Bertuccio*, the board held the employer liable for acts of an employee who, although not a supervisor, had been placed in a position of some authority over employees.¹² The board found that it was reasonable for other employees to believe that the employee in question was acting as an agent of the employer when she committed an unfair labor practice at a meeting of employees which the employer gave her permission to hold.

The board adopted a hearing officer's finding in *Perry's Plants, Inc.*, that an employee was a supervisor and an agent of the employer because, although a substantial portion of her time was spent on normal production duties, she directed a crew, had a voice in the transfer and termination of employees and, with the employer's knowledge, used its facilities to call a plant-wide meeting to expound her anti-union views.¹³

4. *Labor Organization*

In *Superior Farming Co.*, the board affirmed a hearing officer's finding that an employer-formed organization was a labor organization within the

⁷ 5 ALRB No. 12 (1979).

⁸ 4 ALRB No. 43 (1978).

⁹ Corona College Heights Orange & Lemon Assn., 5 ALRB No. 15 (1979).

¹⁰ 4 ALRB No. 89 (1978).

¹¹ The Garin Co., 5 ALRB No. 4 (1979).

¹² 5 ALRB No. 5 (1979).

¹³ 5 ALRB No. 17 (1979).

meaning of § 1140.4(f) and § 1153(b) of the Act.¹⁴ The organization was formed to work with management to improve “working conditions, safety, health, morale, efficiency and production,” and the representatives of the organization dealt with management on wage rates and working conditions.

In another case, the board reversed a hearing officer’s finding that a group formed by workers was not a labor organization because it had no formal structure.¹⁵ The board construed the term “labor organization” broadly and held that no formal organizational structure is necessary, nor need plans for representation have come to fruition in order that a group be considered to be a labor organization. The statute requires only that there be employee participation and the group have a purpose of dealing with the employer concerning wages, hours and working conditions.

5. *Jurisdiction*

In *Mario Saikhon, Inc.*, the board found it had subject matter jurisdiction over an unlawful discharge which occurred in Arizona.¹⁶ The respondent was an agricultural employer within California, whose principal place of business was in the state; the employee had been hired in California, had performed a substantial amount of work there, and had been discharged because of protected concerted activity which occurred in California. On this record, the board found that the state of California had the power to provide relief and that the language of the Act indicated that the legislature had intended that the board do so.

B. *Types of Unfair Labor Practices*

1. *Employer Interference with Employee Rights*

a. *Surveillance and the Impression of Surveillance*

In *Salinas Greenhouse Co.*, the board found that surveillance of a supervisor who, along with his wife, engaged in organizational activity was not a violation as to the supervisor because he was not an employee covered by the Act; however, the surveillance tended to interfere with the organizational efforts of employees in the supervisor’s presence and thus violated § 1153(a).¹⁷

The board refused to find that a supervisor’s presence at union meetings held in public areas of a labor camp where the supervisor lived constituted surveillance.¹⁸

The board has continued to find that employer conduct violates the Act if it is calculated to impress an employee with the idea that the employer has kept a sufficiently close watch to enable him to know about the employee’s union activities.¹⁹ It did not find, however, that such an impression was created in a case in which a supervisor, in an angry exchange of

¹⁴ 5 ALRB No. 6 (1979).

¹⁵ Royal Packing Co., 5 ALRB No. 31 (1979).

¹⁶ 4 ALRB No. 72 (1978).

¹⁷ 4 ALRB No. 64 (1978).

¹⁸ M. Caratan, 5 ALRB No. 16 (1979).

¹⁹ Mel-Pak Vineyards, Inc., 5 ALRB No. 13 (1979).

remarks with a heckler at a public meeting, accused the heckler of being a paid union agent.²⁰

b. *Interrogation*

The board has found that interrogation about an employee's union sympathies constitutes a violation of the Act, even though the conversation is amicable.²¹

In *Mel-Pak Ranches*, the employer distributed a leaflet soliciting employees' names and addresses which stated that the list would be made available to union organizers who would visit the workers at their homes.²² The board found that the leaflet constituted unlawful interrogation, because the workers were in effect being asked to disclose their attitudes for or against the union by giving or refusing to give the information.

c. *Violence and Threats*

The board has continued to find that physical restraint and threats of violence directed against union organizers violate § 1153(a) of the Act.²³

The board found no violation in one case in which an employer representative shoved a union attorney in response to a vulgar remark.²⁴ The board noted that the incident occurred after an election and held there was no substantial connection between the incident and employees' exercise of protected rights.

Acts or threats of violence²⁵ or of legal action²⁶ or economic threats²⁷ directed against employees for engaging in protected activity or for participating in board proceedings also are violations of § 1153(a).

In two cases in which employers distributed identical leaflets to employees, the board upheld the hearing officers' decisions that the leaflets did not contain threats.²⁸ The language in the leaflets was based on language which the NLRB had found to be noncoercive.²⁹ The board agreed with the hearing officers that there was insufficient evidence that the leaflets were distributed in an atmosphere of fear or that the language was stronger in Spanish than in English. The board rejected any implication that the language of the leaflets would necessarily be considered noncoercive in all contexts.

d. *Grants and Promises of Benefits*

The board decided several cases in which it found that promises or grants of benefits during an organizing campaign interfered with employees' exercise of their rights.³⁰ In *Karahadian Ranches, Inc.*, the board

²⁰ M. Caratan, 4 ALRB No. 83 (1978).

²¹ Abatti Farms, Inc., 5 ALRB No. 34 (1979).

²² 4 ALRB No. 78 (1978).

²³ Salinas Greenhouse Co., 4 ALRB No. 64 (1978) (physical ejection from worksite by security guards); Frank A. Lucich Co., 4 ALRB No. 89 (1978) and The Garin Co., 5 ALRB No. 4 (1979) (ejection from labor camp); O. P. Murphy Produce Co., 4 ALRB No. 106 (1978) (physical threats, threats of arrest, repeated photographing of organizer); Mario Saikhon, Inc., 5 ALRB No. 44 (1979) (assaulting organizer with truck).

²⁴ George Lucas & Sons, 4 ALRB No. 86 (1978).

²⁵ Mario Saikhon, Inc., 5 ALRB No. 44 (1979).

²⁶ Abatti Farms, Inc., 5 ALRB No. 34 (1979).

²⁷ Filice Estates Vineyards, 4 ALRB No. 81 (1978); Frank A. Lucich Co., 4 ALRB No. 89 (1978); M. Caratan, 5 ALRB No. 16 (1979); Mel-Pak Vineyards, Inc., 5 ALRB No. 13 (1979).

²⁸ Karahadian Ranches, Inc., 4 ALRB No. 69 (1978); Mel-Pak Ranches, 4 ALRB No. 78 (1978).

²⁹ Airporter Inn Hotel, 215 NLRB 824, 88 LRRM 1032 (1974).

³⁰ Dave Walsh Co., 4 ALRB No. 84 (1978) (employer promised employees a party if Teamsters won election and gave free food to employees before election); John Elmore, Inc., 4 ALRB No. 98 (1978) (employer representative promised permanent employment if union lost election); Royal Packing Co., 5 ALRB No. 31 (1979) (employees given new medical plan during campaign); Mario Saikhon, Inc., 5 ALRB No. 44 (1979) (employer gave employees a whiskey and steak party to encourage employees to vote for Teamsters).

found that the employer did not violate the act by offering employees a new medical plan and wage increases.³¹ The medical plan was found to be a substitute for similar benefits employees would lose upon expiration of a pre-Act collective bargaining agreement, and the wage increases were shown to have been in line with the employer's customary practice.

e. *Denial of Access*

Denial of access permitted by the board's "access rule" is a violation of § 1153(a). The rule permits access for one hour before work begins, including time during which employees congregate and receive instructions if they are not paid for this period.³² Organizers may not be denied access under the rule to employees on company buses used to transport them to the workplace.³³

The board found no violation where the evidence showed that the employer denied access to union organizers after other organizers had taken access pursuant to the rule.³⁴

The board has continued to find that granting greater access to one union than to another violates the Act. If greater access is permitted to one union by reason of a current collective agreement, such access must be used for the purpose of servicing the contract, and not to disseminate campaign propaganda.³⁵

Because the access rule applies only to the workplace,³⁶ the board has dealt with access to labor camps owned or controlled by employers or their agents on the theory that the right of access to employees' homes flows directly from § 1152 of the Act.³⁷ For this reason, the injunction against the operation of the access rule which was in force during September 1975 was held by the board not to permit denials of access to labor camps.³⁸

In one case, an employer was found to have violated § 1153(a) by denying organizers admittance to the camp's barracks, although permitting access to other areas of the camp, since the barracks were the employees' homes.³⁹ Another employer committed an unfair labor practice when it refused to permit organizers to drive to a remote section of its farm where employees camped out in crude shelters.⁴⁰

In *O. P. Murphy Produce Co.*, the board granted a right of post-certification access to the workplace to certified collective bargaining representatives, based on the rationale for the access rule and on the Act's purpose of encouraging collective bargaining.⁴¹ Denial of such access at reasonable times and places, after notice by the certified representatives, will be found to be a violation of § 1153(a).

³¹ 5 ALRB No. 37 (1979).

³² Mario Saikhon, Inc., 5 ALRB No. 44 (1979).

³³ Abatti Farms, Inc., 5 ALRB No. 34 (1979).

³⁴ Dave Walsh Co., 4 ALRB No. 84 (1978).

³⁵ *Id.*

³⁶ George Lucas & Sons, 4 ALRB No. 86 (1978).

³⁷ Frank A. Lucich Co., 4 ALRB No. 89 (1978).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Nagata Brothers Farms, 5 ALRB No. 39 (1979).

⁴¹ 4 ALRB No. 106 (1978).

f. *Employee List*

The board has consistently held that an employer's failure to submit a timely, accurate and complete list of employees' names and addresses pursuant to § 20910 of the regulations is a *per se* violation of the Act. In recent cases, the board ordered a recalcitrant employer to provide for the union to have access to its employees for one hour during regularly scheduled work hours for the purpose of conducting organizing activities,⁴² but denied this remedy where the union succeeded in qualifying for an election and received a majority of the votes⁴³ and where a union had won an election and been certified by the time the case was decided by the board.⁴⁴

g. *Other Forms of Interference*

Supervisors are not protected against discrimination by § 1153(c) of the Act, but actions taken against them by employers may violate § 1153(a) if they interfere with employees' exercise of their protected rights. In *M. Caratan, Inc.*, the board found that the discharge of a supervisor did not violate § 1153(a), since the supervisor's pro-union activities were not well known to the employees, and the employees would not assume that the supervisor was discharged for union sympathies.⁴⁵ In *Dave Walsh Co.*, a supervisor was discharged after a dispute with a Teamster representative in which he took a position favoring the terms of a UFW contract over a Teamster contract.⁴⁶ The board found that this discharge violated the Act because it was part of the employer's concerted campaign to undermine employee rights, and the employees had heard that the supervisor was to be discharged for public criticism of a Teamster agent.

In *Royal Packing Co.*, the hearing officer found that the employer had violated § 1153(a) by promoting a foreman to the position of supervisor, since the promotion implied to the employees that support for the union favored by the employer, or for no union, would result in work advancement.⁴⁷ The board disagreed, however, and dismissed the allegation, finding that the foreman's promotion had no tendency to interfere with employees' § 1152 rights.

In *Tex-Cal Land Management, Inc.*, the board disagreed with the hearing officer and found no violation of the Act when an employee who was active in the union was assigned to clean portable toilets, nor was a violation found when the employer directed hunters to shoot the employee's pigeons.⁴⁸ The board found no connection between these events and the employee's union activity.

The board also refused to find a violation where an employer asked employees to remain after work on the day before the election to hear a campaign speech in which he offered his views on unions in general and on the specific unions involved in the election.⁴⁹

⁴² San Diego Nursery Co., 4 ALRB No. 93 (1978).

⁴³ Ranch No. 1, Inc., 5 ALRB No. 3 (1979).

⁴⁴ Point Sal Growers and Packers, 5 ALRB No. 7 (1979).

⁴⁵ 4 ALRB No. 83 (1978).

⁴⁶ 4 ALRB No. 84 (1978).

⁴⁷ 5 ALRB No. 31 (1979), reversed on other grounds in *Royal Packing v. ALRB*, 101 Cal. App. 3d 826 (1980).

⁴⁸ 5 ALRB No. 29 (1979).

⁴⁹ Jack G. Zaninovich, 4 ALRB No. 82 (1978).

Violations of § 1153 (a) were found where a supervisor took union documents from an employee and destroyed them,⁵⁰ and where a supervisor posted at a labor camp a copy of unfair labor practice charges filed against the employer and said that the employees who had signed the charges were trying to ruin his job.⁵¹

In *O. P. Murphy Produce Co.*, the board rejected the hearing officer's broad ruling that an attorney's questions about the immigration status of employees during an ALRB proceeding violated the Act because they had a chilling effect on testimony.⁵² The board found, however, that the questions had been properly excluded because they were irrelevant.

In *M. B. Zaninovich*, the board held that, regardless of the employer's motive, its application of a negative seniority rule to employees who had failed to make timely application for work under an ALRB settlement agreement violated § 1153 (a) because the rule, in effect, punished employees for participating in board proceedings.⁵³

2. *Employer Assistance and Domination of Labor Organization*

Section 1153 (b) of the Act makes it unlawful for an employer "to dominate or interfere with the formation or administration of any labor organization or contribute financial or any other support to it." A finding of a violation requires a determination that the extent of the employer's involvement is so great as to infringe upon the free exercise of employees' § 1152 rights.⁵⁴ Such a determination will be based on an examination of the nature and number of the employer's interferences and a consideration of the totality of its conduct.⁵⁵ The notion that conduct must also warrant setting aside an election in order to support a finding of unlawful assistance or domination was rejected in *Mario Saikhon, Inc.*⁵⁶

In most of the cases where unlawful assistance was found, the violation involved grants of unequal access. In *Jack G. Zaninovich*, access was granted to one union but denied to another.⁵⁷ In *Royal Packing Co.*, both unions were granted access, but one was given additional access opportunities as well as assistance in soliciting authorization cards.⁵⁸ In *Louis Caric & Sons*, one union was completely denied access while the other was given unlimited access along with active support by the employer.⁵⁹

In two of these cases employers attempted to rely on provisions in contracts made with incumbent unions to permit increased access.⁶⁰ The board held that the employers had the burden of proving that the union representatives limited their activities to "legitimate union business" as authorized by the contract, and that such business did not include organizing activities.

⁵⁰ *Mario Saikhon, Inc.*, 5 ALRB No. 44 (1979).

⁵¹ *M. Caratan, Inc.*, 4 ALRB No. 83 (1978).

⁵² 4 ALRB No. 62 (1978).

⁵³ 4 ALRB No. 70 (1978).

⁵⁴ *Louis Caric & Sons*, 4 ALRB No. 108 (1978).

⁵⁵ *George Lucas & Sons*, 4 ALRB No. 86 (1978).

⁵⁶ 5 ALRB No. 44 (1979).

⁵⁷ 4 ALRB No. 82 (1978).

⁵⁸ 5 ALRB No. 31 (1979).

⁵⁹ 4 ALRB No. 108 (1978).

⁶⁰ *Louis Caric & Sons, id; Royal Packing Co.*, 5 ALRB No. 31 (1979).

Employer domination of a union was found in *Superior Farming Co.*, where the employer initiated the formation and administered the meetings of a labor organization.⁶¹ The board held that good faith or lack of anti-union animus is no defense to an unlawful assistance charge—in employer dominated unions the guaranteed right of effective representation is frustrated regardless of motive.

3. *Employer Discrimination in Conditions of Employment*

Most of the unfair labor practice cases decided by the board involved § 1153(c) of the Act, which prohibits discrimination in hiring, tenure of employment or other terms and conditions of employment in order to encourage or discourage union membership.

In several cases involving discrimination charges, the issue has been the motivation of the employer. In *Martori Bros. Distributors*, the board found that an employer's discharge of a pro-union crew and supervisor was motivated by its desire to rid itself of union supporters in its workforce and that this motivation was amply proved by evidence of its anti-union animus.⁶² The board thus found it unnecessary to reach the question of whether the employer's act was so "inherently destructive"⁶³ of employees' rights as to do away with the requirements of proving motivation.

The board held in *Superior Farming Co.* that an employer's campaign against Proposition 14, a ballot measure which would have made the "access rule" part of the state constitution, and which was strongly supported by the United Farm Workers Union, could not be used as evidence of the employer's anti-union animus.⁶⁴ There was, however, other evidence of animus sufficient to support a finding of unlawful discrimination in the discharge of two union supporters.

In *Kaplan Fruit and Produce Co.*, the board upheld a hearing officer's finding that an employer violated § 1153(c) by discharging a crew boss, and consequently his crew, because the employer was substantially motivated by a desire to retaliate against the crew for their union activities and to weaken the union's collective bargaining position.⁶⁵ The officer found that proof of the employer's business justification was based largely on hearsay and conjecture, and concluded that even if some justification for the discharge existed, a finding of illegal discrimination was justified if an antiunion motive was a factor in the discharge.

The board overturned a hearing officer's finding that the discharge of six union activists did not violate the Act because no showing had been made concerning the union sympathies of their replacements.⁶⁶ Citing NLRB precedent,⁶⁷ the board concluded that the discharge was unlawful because no business justification for it had been offered.

In *Mario Saikhon, Inc.*, the board reversed a hearing officer's finding of discriminatory discharge in which he relied on the NLRB's "small plant

⁶¹ 5 ALRB No. 6 (1979).

⁶² 4 ALRB No. 80 (1978).

⁶³ NLRB v. Great Dane Trailer, Inc., 388 U.S. 26, 33 (1967).

⁶⁴ 5 ALRB No. 6 (1979).

⁶⁵ 5 ALRB No. 40 (1979).

⁶⁶ George Arakelian Farms, Inc., 5 ALRB No. 10 (1979).

⁶⁷ NLRB v. Great Dane Trailer, Inc., 388 U.S. 26 (1967).

doctrine" to infer the employer's knowledge of the discharged employee's union activity.⁶⁸ Noting that the doctrine did not eliminate the need for proof of the employer's knowledge, the board held that it did not apply in *Saikhon* because no active organizing was taking place, and because the nature of the work involved made it unlikely that the supervisor observed more than one employee at a time.

George Arakelian Farms involved a charge that the employer had constructively discharged an employee by assigning him to more onerous work.⁶⁹ The board held that the new assignment was motivated by anti-union animus and therefore amounted to unlawful discrimination, but it refused to find a constructive discharge, holding that the new duties were not so unpleasant as to manifest an intention to cause the employee to quit. A constructive discharge was found in *M. Caratan, Inc.*⁷⁰ The board found that, as a result of union activity, the employer assigned two employees to do work which injured their hands and that it was reasonable and foreseeable that they would quit rather than perform the assigned risk.

The board dealt with the issue of no-distribution rules in *Karahadian Ranches, Inc.*, in which it held, citing NLRB precedent, that such a rule, even if valid on its face, may not be applied to prohibit conduct which does not interfere with work, even when the employees are paid for such nonworking time.⁷¹ Accordingly, the discharge of an employee for handing a union button to another while waiting to begin work was found to be a violation of § 1153(c).

The board found no violation in a case in which employees were discharged for leaving the field to protest working conditions.⁷² The action violated a no-strike provision of the existing collective bargaining agreement and involved an issue which was subject to grievance procedures under the agreement.

Several of the board's decisions involved allegations of discriminatory failure to hire or rehire. In two cases involving the *O. P. Murphy Company* the board upheld a hearing officer's decision that the company discriminated against all the members of several families whom it refused to rehire because of the union activity of some family members.⁷³

The board ruled in two cases that it is not necessary for the general counsel to prove, as part of a prima facie case of refusal to hire or rehire, that an application was made for an available job, if the employer had made it impossible to file such an application or had made it clear that applications would be futile.⁷⁴ In *Kawano, Inc.*, the board also held that, in the case of discrimination against a group of employees, the burden of proof of discrimination is met by a showing that the group was discriminated against and that each named discriminatee is a member of the group. Statistical evidence may be used to show such discrimination.

The board has ruled that eviction from company housing may be an act

⁶⁸ 4 ALRB No. 107 (1978).

⁶⁹ 5 ALRB No. 10 (1979).

⁷⁰ 4 ALRB No. 83 (1978).

⁷¹ 5 ALRB No. 37 (1979).

⁷² *Bruce Church, Inc.*, 5 ALRB No. 45 (1979).

⁷³ *O. P. Murphy Produce Co.*, 4 ALRB No. 62 (1978); *O. P. Murphy Produce Co.*, 4 ALRB No. 106 (1978).

⁷⁴ *Kawano, Inc.*, 4 ALRB No. 104 (1978); *Abatti Farms, Inc.*, 5 ALRB No. 34 (1979).

of discrimination if the housing is provided to workers for free or at a minimal rate.⁷⁵ Discontinuance of work breaks in retaliation for a union election victory was found to violate the Act in *John Elmore, Inc.*⁷⁶ In this case, however, the board declined to order the employees to be reimbursed for their extra work time because it found that the breaks were originally instituted as an unlawful grant of benefits during an organizing campaign.

An employer was found to have discriminated in hiring in order to encourage union membership in violation of § 1153(c) when it hired two crews for the purpose of voting for a particular union in an upcoming election.⁷⁷

4. *Employer Discrimination for Participation in Board Proceedings*

Section 1153(d) of the Act prohibits an employer from discharging or otherwise discriminating against an employee "because he has filed charges or given testimony" under the Act. In *O. P. Murphy Produce Co.* and *Albert C. Hansen*, the board, following NLRB precedent, held that evidence that an employer knew at the time of a discharge that an employee had recently filed a complaint with the board, or had testified at a recent unfair labor practice hearing, is sufficient to establish a prima facie violation of § 1153(d).⁷⁸ In *Hansen*, the employer was able to rebut such proof by demonstrating that the employee was discharged for cause. In *Murphy*, the employer's defense that the employee's application for work was misfiled was held not sufficient to rebut the prima facie showing of a violation.

5. *Union or Employer Refusal to Bargain*

The Board considered several cases involving charges of refusal to bargain in good faith, in violation of § 1153(e). Most of the cases dealt with "technical refusals," in which the employers stipulated that they refused to negotiate in order to obtain judicial review of the board's certification of the bargaining agent.⁷⁹ In one such case, the board ruled that the duty to bargain was not tolled pending the outcome of an appeal of the board's decision in an earlier unfair labor practice case which could have affected the certification of the bargaining agent for the respondent's employees.⁸⁰

In *Robert H. Hickam*, the board decided that the employer had refused to bargain in good faith by engaging in dilatory tactics and refusing to provide relevant information to the union.⁸¹ The board found that the employer's claim that it was engaged in a technical refusal to bargain was unjustified, given the fact that it made the claim only after an unfair labor

⁷⁵ Filice Estate Vineyards, 4 ALRB No. 81 (1978).

⁷⁶ 4 ALRB No. 98 (1978).

⁷⁷ Mario Saikhon, Inc., 5 ALRB No. 44 (1979).

⁷⁸ O. P. Murphy Produce Co., 4 ALRB No. 106 (1978); Albert C. Hansen, 5 ALRB No. 46 (1979).

⁷⁹ Superior Farming Co., 4 ALRB No. 44 (1978); D'Arrigo Bros. of California, 4 ALRB No. 45 (1978); Waller Flowerseed Co., 4 ALRB No. 49 (1978); High & Mighty Farms, 4 ALRB No. 51 (1978); C. Mondavi & Sons, 4 ALRB No. 52 (1978); George Arakelian Farms, 4 ALRB No. 53 (1978); Kyutoku Nursery, Inc., 4 ALRB No. 55 (1978); Adam Farms, 4 ALRB No. 76 (1978); Sunnyside Nurseries, Inc., 5 ALRB No. 23 (1979).

⁸⁰ Adam Farms, *id.*

⁸¹ 4 ALRB No. 73 (1978).

practice charge was filed, nine months after the union's first negotiating request.

In *Hemet Wholesale, Inc.*, the board upheld a hearing officer's finding of bad faith bargaining by the employer which was based on: failure to provide relevant information to the union, failure to meet with the union regularly and promptly, failure to respond adequately to union proposals, refusal to bargain about several mandatory subjects and offering new proposals which excluded items previously agreed upon.⁸² The hearing officer also found that the employer's unilateral grant of a wage increase during negotiations was a *per se* violation of § 1153 (e). A similar increase was found to be a violation in *Romar Carrot Co.*⁸³

In *O. P. Murphy Produce Co.*, the board, in holding that bargaining agents had a right to reasonable post-certification access, ruled that the extent of such access, although not a mandatory subject of bargaining, is a matter for negotiation between the parties.⁸⁴ Refusal by the employer to permit any post-certification access, or unreasonable conduct by either party in connection with such access which delays contract negotiations, will be evidence of refusal to bargain in good faith.

6. Arranging Employment for the Purpose of Voting

Section 1154.6 of the Act makes it an unfair labor practice for an employer or labor organization willfully to arrange for persons to become employees for the primary purpose of voting in an election. The board found that an employer had violated this section when, immediately before an election, it discharged an openly pro-union crew and replaced them with another crew whose attitude it expected to be less favorable to the union.⁸⁵ A violation was also found in *Mario Saikhon, Inc.*, in which two crews were hired on the condition that they not support the union.⁸⁶ The crews were paid more than regular crews and were retained after their ineptitude was discovered by the employer. In *Royal Packing Co.*, the board held that the employer did not violate the Act by hiring two crews it knew to be pro-Teamster, because the crews were hired permanently, were qualified to perform the work and were not chosen primarily on the basis of their preference for the Teamsters.⁸⁷

A union violated § 1154.6 when an organizer transported five of its supporters to the ranch and arranged for their employment shortly before an election.⁸⁸ The employer was also found to have violated the Act because of its knowledge of and acquiescence in the scheme.

7. Employer Bargaining with an Uncertified Union

Section 1153 (f) makes it an unfair labor practice for an employer to recognize or bargain with a labor organization which is not certified. The board upheld a hearing officer's finding that an employer had violated this

⁸² 4 ALRB No. 75 (1978).

⁸³ 4 ALRB No. 56 (1978).

⁸⁴ 4 ALRB No. 106 (1978).

⁸⁵ Martori Bros. Distributors, 4 ALRB No. 80 (1978).

⁸⁶ 5 ALRB No. 44 (1979).

⁸⁷ 5 ALRB No. 31 (1979).

⁸⁸ Dave Walsh Co., 4 ALRB No. 84 (1978).

section when it met with a company dominated organization to discuss, among other matters, wage structure, work times and safety.⁸⁹

8. *Union Unfair Labor Practices*

Section 1154(a) (1) prohibits union restraint or coercion of employees in the exercise of their protected rights. In two cases involving picket line conduct, the board held that insults and abusive language shouted at employees did not violate the Act, nor did an incident in one of the cases in which an employee who urged others to return to work was threatened with loss of employment.⁹⁰ Noting that the section requires a showing of more than interference with employees' rights, the board recognized that rough language was to be expected on a picket line, and that the union was in no position to carry out the threat.

In a case involving alleged threats and violence directed against union organizers of another union, the board established the standard by which it would judge such conduct: it must be established that there has been an actual physical attack or threat of bodily harm or violence that reasonably tends to coerce or restrain employees in the exercise of protected rights.⁹¹

Sections 1154(d) (3) and 1154(h) prohibit a union which is not the certified bargaining representative from using picketing or other means to force an employer to recognize or bargain with it. In *Julius Goldman's Egg City* the Teamster's union was found to have violated these sections by picketing the employer for recognition when the board had certified another union as the bargaining representative.⁹² The Teamsters' contention that the board improperly certified the other union was rejected because the issue had been previously litigated before the board.

In *Sam Andrews' Sons*, the Teamsters had a pre-Act contract with the employer.⁹³ After negotiations held pursuant to a wage reopener clause broke down, the union struck and picketed the employer for two days. The board held that the contract was valid under § 1.5 of the Act and that the union was not in violation of § 1154(h) either by bargaining with the employer over contract terms or by using economic sanctions to strengthen its bargaining position. Section 1.5 was, the board held, intended to insulate stable bargaining relationships established before the enactment of the ALRA from the prohibitions of § 1154(h).

C. *Remedial Orders*

1. *Backpay and Reinstatement*

In a case in which there was uncertainty as to the extent of backpay owed each discriminatee whom the employer refused to rehire, the board established a rebuttable presumption that each employee would have worked the same number of hours as had been worked in the year before

⁸⁹ Superior Farming Co., 5 ALRB No. 6 (1979).

⁹⁰ K. K. Larson, 4 ALRB No. 42 (1978); Sam Andrews' Sons, 4 ALRB No. 46 (1978).

⁹¹ Salinas Lettuce Farmers Cooperative, 5 ALRB No. 21 (1979).

⁹² 5 ALRB No. 8 (1979).

⁹³ 4 ALRB No. 46 (1978).

the discrimination took place. The burden was on the respondent to show, during backpay proceedings, diminution of its backpay obligation because of lack of openings or a discriminatee's unavailability.⁹⁴

In *George Arakelian Farms*, the board ordered reinstatement and backpay for an entire crew which had been illegally laid off, including some employees who had been absent from work on the day of the layoff.⁹⁵ The absent workers were regular members of the crew, and did not return to work after the layoff date.

In *Butte View Farms*, the board dealt with several issues arising out of backpay calculations.⁹⁶ It held that when lack of information in the record makes the *Sunnyside Nurseries*⁹⁷ rule of calculation on a daily basis inappropriate, calculation on a weekly basis will be permitted. The board also ruled that employers are liable for expenses, such as travel and moving expenses, incurred by discriminatees in a search for other work. For the reasons set forth in *Sunnyside Nurseries* with respect to backpay calculations, the board found it inappropriate to follow the NLRB's practice of calculating such expenses on a quarterly basis, and will do so on a daily or, as here, a weekly basis. The board also found it inappropriate to use the NLRB's method of reimbursing such expenses by deducting them from gross interim earnings. This method results in no reimbursement for expenses if an employee has no interim earnings in a particular quarter. The board held that it will order employees to be reimbursed for expenses incurred by reason of unlawful discrimination regardless of whether interim pay was earned. The board also held, relying on NLRB precedent, that a discriminatee who is a student is not automatically disqualified from eligibility for backpay merely because she or he returned to school during the backpay period.

2. Litigation Costs

The board continued to decline to award litigation costs and attorneys' fees to prevailing parties in unfair labor practice cases, in one case overturning a hearing officer's award of costs to the respondent.⁹⁸ In no case did the board find a party's position to be so lacking in merit as to justify such an award.

3. Access⁹⁹

As part of the remedy for its bad faith bargaining, the employer in *Robert Hickam* was ordered to permit union representatives to enter its property to talk to employees for a 30-day period or until a contract was signed, whichever came first.¹⁰⁰ The board noted that it had been three years since the union had been able to talk to employees at their job-site.

⁹⁴ *Kawano, Inc.*, 4 ALRB No. 104 (1978).

⁹⁵ 5 ALRB No. 10 (1979).

⁹⁶ 4 ALRB No. 90 (1978).

⁹⁷ 3 ALRB No. 42 (1977).

⁹⁸ *Golden Valley Farming*, 4 ALRB No. 79 (1978).

⁹⁹ In November 1979, the Court of Appeal, Fifth District, decided *Pandol & Sons v. ALRB*, 98 Cal. App. 3d 580 (5th Dist., Ct. App. 1979), in which it held that the board could not remedy an employer's unfair labor practice by ordering access to an employer's field unlimited as to the number of union organizers. In *Jack Pandol and Sons*, 6 ALRB No. 1 (1980), the board revised its order to permit access to the employer's property to two organizers for every fifteen employees in each work crew.

¹⁰⁰ 4 ALRB No. 73 (1978).

An employer which had rendered unlawful assistance to one union and interfered with the organizing efforts of another was ordered to permit the second union to take one hour of access during the regularly scheduled work time and to allow the union two organizers per crew in addition to the number already permitted by the regulations.¹⁰¹

4. *Make-Whole*¹⁰²

The Board held in *Superior Farming Co.* that the make-whole remedy provided for in § 1160.3 and interpreted in *Perry Farms, Inc.*, applies to cases of technical refusal to bargain as well as to cases of bad faith bargaining.¹⁰³ Concluding that the purpose of the remedy is to compensate employees and not to punish employers, the board held that the employer's state of mind is irrelevant to the imposition of the remedy. The board refused to adopt the hearing officer's use of a "frivolous/debatable" standard, and ruled that the employer, and not the employees, should bear the cost of the delay in negotiations created by the employer's challenge to the board's certification. Member McCarthy, in dissent, would have denied imposition of the make-whole remedy in cases in which an employer refuses to bargain solely as a means to obtain judicial review of its legally and factually debatable claim of improper certification.

In *Superior Farming* and later cases, the board noted that the data used to calculate the basic make-whole wage in *Adam Dairy* and *Perry Farms* may no longer be valid, owing to rising costs and wages and the passage of time.¹⁰⁴ The board therefore directed the regional director in each case to investigate and determine a new basic make-whole wage.

In *Robert Hickam*, the board ordered the regional director to arrive at a fair make-whole award for piece rate workers by examining evidence relating to both a basic wage rate computation and a percentage increase computation.¹⁰⁵

The board has refused to order the payment of dues to a certified union as part of a make-whole award.¹⁰⁶

D. Procedure

1. *Limitations Period*

Section 1160.2 provides that no complaint may issue on a charge which is filed more than six months after the occurrence of the unfair labor practice alleged. In *John Elmore, Inc.*, the board upheld a hearing officer's ruling that this section did not require the dismissal of allegations added to an amended complaint issued in February 1977, on the basis of charges filed in February and March 1976.¹⁰⁷ The board found that the allegations in the amended complaint were related, in nature and in time, to the

¹⁰¹ *Louis Caric & Sons*, 4 ALRB No. 108 (1978).

¹⁰² In December 1979, the California Supreme Court decided *J. R. Norton v. ALRB*, 26 Cal. 3d 1 (1979), in which it held that when an employer refuses to bargain in order to test the validity of certification, the Board must evaluate the applicability of the make-whole remedy on a case-by-case basis.

¹⁰³ *Superior Farming Co.*, 4 ALRB No. 44 (1978); *Perry Farms, Inc.*, 4 ALRB No. 25 (1978).

¹⁰⁴ *Perry Farms, id.*, *Adam Dairy*, 4 ALRB No. 24 (1978).

¹⁰⁵ 4 ALRB No. 73 (1978).

¹⁰⁶ *Robert Hickam, id.*

¹⁰⁷ 4 ALRB No. 98 (1978).

subject matter of the initial charge, and that the respondent was not prejudiced by their inclusion. The board also noted that at the hearing the hearing officer indicated to the respondent that he would entertain a motion for postponement to allow more time for the preparation of a defense to the allegation, but that no such motion was made.

In *Corona College Heights Orange and Lemon Assn.*, the board affirmed the hearing officer's dismissal of four allegations of illegal conduct which occurred more than six months before the charges were filed.¹⁰⁸

The board affirmed the conclusion of the hearing officer in *Bruce Church, Inc.*, that a charge filed more than six months after an unlawful discharge took place was nevertheless timely filed because the employee did not learn about the discharge for several months after it occurred.¹⁰⁹ The six-month period does not begin to run until a discriminatee knows, or reasonably should know, of the illegal activity.

2. Other

In *Hemet Wholesale Co.*, the board, although it agreed with the hearing officer that the employer had violated the Act by refusing to bargain in good faith, did not issue a remedial order because the union and the employer had entered into a private settlement agreement disposing of all the issues in the case.¹¹⁰ The board found that this agreement was in accordance with the policies of the Act and also noted that the employer had terminated its agricultural operations in the period between the issuance of the hearing officer's decision and the issuance of the board's decision.

In *Frank Lucich Co.*, the board overturned a hearing officer's ruling which granted the motion of the general counsel to conform the pleadings to proof.¹¹¹ The board ruled that the motion should have been denied because the general counsel had failed to serve the motion on the respondent as required by the regulations.¹¹²

In *Edwin Frazee, Inc.*, and in *Abatti Farms, Inc.*, the board found that the decision of the hearing officers failed to meet the minimum standards set forth in *S. Kuramura, Inc.*¹¹³ The board in *Frazee* reviewed and considered the record evidence, concluded that the general counsel had failed to prove any of the statutory violations alleged in the complaint, and dismissed the complaint. In *Abatti*, the board afforded the hearing officer's decision only as much probative value as it warranted in the areas where it was deficient, and made independent factual findings on objective bases where witness demeanor was not a factor. The board concluded that the respondent had committed numerous violations of §§ 1153(c) and (a) of the Act.

In *Mel-Pak Vineyards, Inc.*, the board affirmed the ruling of the hearing officer denying the respondent's motion to dismiss the complaint in its entirety based on the failure of the charging party to submit declarations

¹⁰⁸ 5 ALRB No. 15 (1979).

¹⁰⁹ 5 ALRB No. 45 (1979).

¹¹⁰ 4 ALRB No. 75 (1978).

¹¹¹ 4 ALRB No. 89 (1978).

¹¹² 8 CAL. ADMIN. CODE § 20240(a) (1978).

¹¹³ *Edwin Frazee, Inc.*, 4 ALRB No. 94 (1978); *Abatti Farms, Inc.*, 5 ALRB No. 34 (1979); *S. Kuramura*, 3 ALRB No. 49 (1977).

in support of its charges as required by the regulations.¹¹⁴ The hearing officer based his ruling on the facts that the charging party did comply with the regulation after the respondent pointed out the deficiency in the record; no new evidence or allegations were raised in the tardy declaration; and the respondent was not prejudiced by the earlier noncompliance.

¹¹⁴ 5 ALRB No. 13 (1979); 8 CAL. ADMIN. CODE § 20213 (1978).

IV

AGRICULTURAL LABOR RELATIONS BOARD LITIGATION

During the 1978-79 fiscal year, the California Supreme Court decided two cases which directly affected the ALRB. The board's position was sustained in full in one case and in part in the other. In the state courts of appeal, the board prevailed in nine out of fourteen cases decided. Of the remaining five matters, the board was partially successful in three and lost the two other cases. Many issues are still pending in the California appellate courts. Because the standards for judicial review of board decisions were clarified by the state supreme court during this fiscal year, the number of court decisions involving ALRB matters should sharply increase in the coming year.

A. Constitutionality of Judicial Review Under the Act

The most important court decision affecting the ALRB during the fiscal year was *Tex-Cal Land Management, Inc. v. ALRB*,¹ issued May 24, 1979, in which the California Supreme Court upheld the constitutionality of the ALRA's judicial review scheme established by Cal. Lab. Code §1160.8.

The court's landmark decision had three effects. First, it sustained the constitutionality of the provision of the Act which places review of board decisions in the court of appeal, rather than in the superior court. Second, it upheld application of the substantial evidence standard for review of board decisions. This test, which requires courts to uphold broad findings if they are supported by substantial evidence on the record as a whole, accords the kind of finality to board decisions which appellate courts give to the decisions of superior courts.

Third, the court held that a petition for review pursuant to §1160.8 is in the nature of an extraordinary writ rather than an appeal. Consequently, a court of appeal may summarily deny a petition without oral argument or written opinion if the court determines that the petition has no merit. When such a summary denial occurs, the court ruled, the board must enforce its order in a superior court. If the court of appeal hears oral argument and issues an opinion sustaining the board decision, the order is enforced in the court of appeal.

By permitting court review to begin in the court of appeal and by authorizing summary denial of groundless petitions, the supreme court

¹ 24 Cal. 3d 335 (1979).

preserved the streamlined character of the legislatively-designed review scheme. By upholding the validity of the substantial evidence review standard, the high court underscored the legislature's intention that the ALRB serve "as one of those agencies presumably equipped or informed by experience to deal with a specialized field of knowledge, whose findings within that field carry the authority of an expertness which courts do not possess and therefore must respect."²

Issuance of *Tex-Cal* freed the courts of appeal to begin considering the backlog of petitions from this and previous fiscal years being held in abeyance by the courts pending determination of the constitutionality of the review scheme. Thus, as the fiscal year closed, the courts were preparing to review several years' worth of board law.

B. Review of Board Decisions

Despite the delay engendered by *Tex-Cal*, ten ALRB unfair labor practice decisions were fully reviewed by the courts. The board's decisions were sustained in whole in eight cases and in part in a ninth. One board decision was overturned.

In *Tex-Cal*, the Supreme Court upheld the board's finding that an employer committed an unfair labor practice by forcibly excluding union organizers from company property in violation of the access regulation. The court also held that the board-ordered remedies, including a requirement that the employer read and mail a notice to its employees, were within the board's broad remedial discretion.³

In *Sunnyside Nurseries, Inc. v. ALRB*, the Court of Appeal for the First Appellate District, Division One, sustained the board's finding that the employer interfered with its employees' exercise of protected rights by threatening reprisals and promising benefits.⁴ However, the court refused enforcement of the board's conclusion that the company dominated a labor organization, and found insufficient evidence to support the board's finding of discriminatory discharges. The court also invalidated the remedial order, which permitted union organizers in unlimited numbers to enter the company's property for 30 days.

In *Perry Farms, Inc. v. ALRB*, the Court of Appeal for the Third Appellate District overturned a board decision adjudging the employer guilty of refusal to bargain because the court held the board had paid insufficient attention to evidence of substantial disenfranchisement of voters during the representation election.⁵

In seven other cases, the courts of appeal summarily dismissed petitions for review, thereby upholding the board decisions appealed from. Petitions for hearing were denied by the California Supreme Court in all seven cases. Five of the cases dealt primarily with the sufficiency of the evidence to support the board's findings. The two others decided major legal matters.

² *Id.* at 346, quoting *Universal Camera Corp. v. Labor Bd.*, 340 U.S. 474, 488 (1951).

³ 3 ALRB No. 14 (1977), *enf'd* 24 Cal. 3d 335 (1979).

⁴ 3 ALRB No. 42 (1977), *enf'd* in part, 93 Cal. App. 3d 922 (1979), *hg. den.* Aug. 22, 1979.

⁵ 4 ALRB No. 25 (1978), *enf. den.* 86 Cal. App. 3d 448 (1978), *hg. den.* Jan. 24, 1979.

The five cases raising substantial evidence issues were: *Dave Walsh v. ALRB*, where the board found unlawful discharges, interrogation, and hiring of employees for the purposes of voting;⁶ *Garin Company v. ALRB*, where the board held that the operator of a labor camp was acting as an agent of the employer when he unlawfully denied access to the camp;⁷ *Martori Bros. Distributors v. ALRB*, where the board held that the company had discriminatorily discharged a supervisor and his crew for union activities and had hired another foreman and crew for the primary purpose of voting in an election;⁸ *John Elmore v. ALRB*, where the board found an illegal promise of benefits and discriminatory layoffs and refusals to rehire;⁹ and *Ron Nunn Farms v. ALRB*, where the board concluded that the employer illegally refused to rehire 12 employees who were part of two extended families which had been active in a 1975 election campaign.¹⁰

Significant legal questions were at issue in *O. P. Murphy v. ALRB*¹¹ and *San Diego Nursery, Inc. v. ALRB*.¹² *Murphy* established a presumption that union representatives were entitled to post-certification access during bargaining. *San Diego Nursery* dealt with the propriety of the board's pre-petition list rule. In both cases, the courts of appeal denied petition for hearing. In *Murphy*, a petition for certiorari to the United States Supreme Court was also rejected. *San Diego Nursery* is discussed further in the next section.

C. Pre-Petition List Cases

After several years of inconclusive litigation concerning the board's pre-petition list regulation,¹³ the validity of the rule has been upheld by one court of appeal.

In *San Diego Nursery Co., Inc. v. ALRB*, *supra*, the board held that the employer had violated Cal. Lab. Code §1153(a) by refusing to provide a pre-petition list of its employees' names and addresses after a union filed a notice of intention to organize. The employer filed a petition for review, challenging the regulation as an unconstitutional invasion of its employees' right of privacy, contrary to NLRB precedent, and beyond the board's statutory authority. The Court of Appeal for the Fourth Appellate District, Division One, summarily denied the petition, which is a ruling on the merits.¹⁴ The California Supreme Court denied the employer's petition for hearing.

Meanwhile, three other cases raising the validity of the rule are pending in the Court of Appeal for the Fourth Appellate District, Division Two. In *Laflin & Laflin v. ALRB*, *Harry Carian Sales v. ALRB*, and *Richard Peters*

⁶ 4 ALRB No. 84 (1978), rev. den. by Ct. App., 2d Dist., Div. Four, Jan. 9, 1979, hg. den., Feb. 1, 1979.

⁷ 5 ALRB No. 4 (1979), rev. den. by Ct. App., 4th Dist., Div. One, May 23, 1979, hg. den. June 27, 1979.

⁸ 4 ALRB No. 80 (1978), rev. den. by Ct. App., 4th Dist., Div. One, June 22, 1979, hg. den., July 26, 1979.

⁹ 4 ALRB No. 98 (1978), rev. den. by Ct. App., 4th Dist., Div. One, May 21, 1979, hg. den. June 27, 1979.

¹⁰ 4 ALRB No. 34 (1978), rev. den. by Ct. App., 1st Dist., Div. Four, Nov. 13, 1978, hg. granted Dec. 13, 1978; retransferred to Ct. App., 1st Dist., Div. Four, July 5, 1979, rev. den. July 23, 1979, hg. den. Sept. 12, 1979.

¹¹ 4 ALRB No. 106 (1978), rev. den. by Ct. App., 1st Dist., Div. Four, April 19, 1979, hg. den. June 14, 1979, cert. den. Nov. 5, 1979.

¹² 4 ALRB No. 93 (1978), rev. den. by Ct. App., 4th Dist., Div. One, May 21, 1979, hg. den., July 12, 1979.

¹³ 8 CAL. ADMIN. CODE §20910(c) (1978).

¹⁴ *People v. Western Air Lines, Inc.*, 42 Cal. 2d 621, 630-1 (1954).

Farms, Inc. v. ALRB,¹⁵ the employers argue that the board's unfair labor practice findings against them for violation of the regulation must fall because of the rule's alleged invalidity.

Several of the employers in those cases were also defendants in still another matter concerning the regulation. In *ALRB v. Laflin & Laflin*, the board sought a restraining order from the superior court ordering compliance with the regulation. That court denied the board's request. On appeal, the Court of Appeal for the Fourth Appellate District, Division Two, did not decide the validity of the regulation, but held only that the trial court did not abuse its discretion in denying injunctive relief. The Supreme Court denied the board's petition for hearing.¹⁶

D. Relationship of the Board and the Courts

1. Court Review of Representation Decisions

In a number of prior cases, courts have dismissed actions seeking review of board decisions in representation cases on the well-established ground that such decisions are not final orders and hence are not directly reviewable under Labor Code §1160.8.¹⁷ This trend continued in this fiscal year.

In *Franzia Brothers Winery v. ALRB*, the employer sought direct review in the California Supreme Court of a board decision on challenged ballots. The Supreme Court transferred the case to the Court of Appeal for the First Appellate District, which dismissed the petition.¹⁸ The Court of Appeal for the Second Appellate District, Division One, also denied a petition for writ of mandate filed by Bonita Packing Co., seeking immediate review of a board certification decision interpreting the statutory definition of "peak".¹⁹

In *Cadiz v. ALRB*, the Court of Appeal for the Fifth Appellate District affirmed this general rule but concluded that the particular issue raised—one of statutory interpretation—fell within an exception applicable where the board has committed a clear error of law by misinterpreting a "clear and mandatory" provision of the Act and the party challenging the board's action has no realistic hope of eventual court review following an unfair labor practice order.²⁰ On the merits, the court held that Labor Code §1156.7 makes decertification petitions timely during the entire last year of a collective bargaining agreement, even where the contract was only for one year. Consequently, the court ordered the ALRB to set aside an order dismissing a decertification petition filed during the fourth month of a one-year contract.

2. Concurrent Jurisdiction in Eviction Cases

Prior cases have established that the board has exclusive jurisdiction over unfair labor practice cases, and that a party may not go to court and

¹⁵ 4 Civ. 20242, 20243, 20244, all seeking review of 4 ALRB No. 28 (1978).

¹⁶ 89 Cal. App. 3d 651 (1979), hg. den. May 17, 1979.

¹⁷ See, e.g., *Nishikawa Farms, Inc. v. Mahony*, 66 Cal. App. 3d 781 (1977).

¹⁸ 4 ALRB No. 100 (1978), trans. by Supreme Ct., Feb. 16, 1979, pet. den. by Ct. App., 1st Dist., Div. One, Feb. 23, 1979.

¹⁹ 4 ALRB No. 96(1978), pet. den. by Ct. App., 2d Dist., Div. One Jan. 31, 1979. The court's order of denial cited *Nishikawa Farms, Inc. v. Mahony*, *supra*, note 17.

²⁰ 92 Cal. App. 3d 365 (1979), hg. den., July 27, 1979.

thereby short circuit the unfair labor practice proceedings.²¹ In *Vargas v. Municipal Court*, an employer commenced unlawful detainer proceedings in the municipal court against discharged employees living on company property at the same time that the board was considering whether the discharges and evictions were unfair labor practices in retaliation for union activities. The California Supreme Court held that the municipal court has discretion to stay the unlawful detainer action pending completion of the unfair labor practice proceedings but, on the facts of this case, where the board has closed down for lack of funds without rendering a decision in the unfair labor practice matter, the municipal court did not abuse its discretion by completing the eviction action. The court held, however, that the municipal court's determinations would not be res judicata in the board's proceedings.²²

E. Injunctions

Section 1160.4 authorizes the board to petition for injunctive relief to enjoin the commission of unfair labor practices while unfair labor practice proceedings are pending before the board. The board used this power on a number of occasions to stop alleged violations of the Act arising out of the statewide lettuce strike.

Suing in Imperial, Monterey, Ventura, Fresno, and Contra Costa Counties, the board obtained 17 injunctions during the fiscal year against both employers and the striking United Farm Workers of America to halt illegal strike activities which constituted unfair labor practices. Injunctions against employers typically prohibited them from threatening or injuring pickets on their property, brandishing firearms in the presence of pickets, driving vehicles so as to menace or assault pickets, or placing private security guards or guard dogs near the picketline. The union was generally enjoined from injuring persons or property, obstructing vehicles, possessing firearms, picketing in excessive numbers, and trespassing. Injunctions obtained in Monterey County contained a provision permitting union organizers in limited numbers to enter company property before and after work and during lunch, to speak with replacement workers. This provision was similar to the board's access rule.²³

Nineteen contempt proceedings were instituted to punish alleged violations of the injunctions.

²¹ *United Farm Workers v. Superior Court*, 72 Cal. App. 3d 268 (1977).

²² 22 Cal. 3d 902 (1978).

²³ See 8 CAL ADMIN. CODE § 20900(e) (3) and (4).

APPENDIX A

NEW PROCEDURES OF THE AGRICULTURAL LABOR RELATIONS BOARD

At a public meeting on December 21, 1978, the board adopted several changes and additions to its regulations which became effective on February 26, 1979.

In addition to making changes in §20293 (8 Cal. Admin. Code §20393), governing procedures for board review of dismissals of representation petitions and objections petitions, the board added new sections at 8 Cal. Admin. Code §§20363(c) and 20370(n), which list the contents of the record before the board in representation cases. The board also established new procedures for backpay proceedings (8 Cal. Admin. Code §20290) and for elections under strike conditions (8 Cal. Admin. Code §20377) and clarified the rule in §20274(a) concerning the production of previous declarations made by witnesses at unfair labor practice proceedings.

APPENDIX B: STATISTICAL TABLES

I. Fiscal Year July 1, 1978–June 30, 1979 Elections

A. Petitions for Elections ¹

	<i>San Diego</i>	<i>Indio</i>	<i>El Centro</i>	<i>Fresno</i>	<i>Delano</i>	<i>Salinas</i>	<i>Oxnard</i>	<i>Santa Maria</i>	<i>Sacramento</i>	<i>Total</i>
1. Filed:										
RC ²	7	0	6	5	8	21	21	9	3	80
RD ²	0	0	3	1	6	6	1	0	0	17
2. Withdrawn:										
RC	0	0	1	0	4	1	1	1	0	8
RD	0	0	0	0	0	1	0	0	0	1
3. Dismissed:										
RC	2	0	3	1	0	1	1	1	0	9
RD	0	0	1	1	3	2	1	0	0	8
4. Elections Held:										
RC	5	0	2	4	4	17	18	8	2	60
RD	0	0	2	0	3	2	0	0	0	7

¹ The number of petitions withdrawn, dismissed, and resulting in elections held does not equal the number of petitions filed because of the carryover of workload from one fiscal year to the next.

² RC—Representation; RD—Decertification

B. Votes Cast ¹

	<i>San Diego</i>	<i>Indio</i>	<i>El Centro</i>	<i>Fresno</i>	<i>Delano</i>	<i>Salinas</i>	<i>Oxnard</i>	<i>Santa Maria</i>	<i>Sacramento</i>	<i>Total</i>
No Union	17	0	186	41	329	818	169	218	121	1,899
United Farm Workers of America	98	0	169	89	144	1,348	186	0	17	2,051
Fresh Fruit and Vegetable Workers	0	0	24	0	0	0	0	0	0	24
International Union of Agricultural Workers	0	0	0	18	0	0	304	338	0	660
Independent Union of Agricultural Workers	0	0	0	0	0	331	0	0	0	331
Other Unions	2	0	0	5	41	0	56	0	113	217
Challenged Ballots	17	0	144	12	31	193	20	21	20	458
Total	134	0	523	165	545	2,690	735	577	271	5,640

¹ Data are extracted from representation and decertification elections that were held during Fiscal Year 1978-1979.

Data cannot be extracted from one election in which the ballot box was stolen and from one election in which the ballots were impounded.

C. Elections Not Objected To ¹

	<i>San Diego</i>	<i>Indio</i>	<i>El Centro</i>	<i>Fresno</i>	<i>Delano</i>	<i>Salinas</i>	<i>Oxnard</i>	<i>Santa Maria</i>	<i>Sacramento</i>	<i>Total</i>
No Union Victories ²	0	0	0	1	2	0	0	2	0	5
United Farm Workers of America Victories	0	0	0	1	0	7	1	0	0	9
Fresh Fruit and Vegetable Workers Victories	0	0	1	0	0	0	0	0	0	1
International Union of Agricultural Workers Victories	0	0	0	0	0	0	6	0	0	6
Independent Union of Agricultural Workers Victories	0	0	0	0	0	3	0	0	0	3
Other Unions Victories	1	0	0	0	1	0	0	0	0	2
Total	1	0	1	2	3	10	7	2	0	26
Total Voters	3	0	31	133	226	1,498	166	143	0	2,200

¹ Data are extracted from elections held during Fiscal Year 1978-1979 only. Data do not reflect two elections in which determinative challenged ballots are unresolved because the parties are not required to file objections until the determining challenged ballots have been resolved. Data also do not reflect one election in which the ballot box was stolen and one election in which the ballots were impounded.

² "Victory" means the ballot choice which received a majority of the votes cast.

D. Elections Objected To ¹

	<i>San Diego</i>	<i>Indio</i>	<i>El Centro</i>	<i>Fresno</i>	<i>Delano</i>	<i>Salinas</i>	<i>Oxnard</i>	<i>Santa Maria</i>	<i>Sacramento</i>	<i>Total</i>
No Union Victories ²	0	0	1	1	0	4	1	0	1	8
United Farm Workers of America Victories	4	0	1	0	2	3	2	0	0	12
Fresh Fruit and Vegetable Workers Victories	0	0	0	0	0	0	0	0	0	0
International Union of Agricultural Workers Victories	0	0	0	1	0	0	3	8	0	12
Independent Union of Agricultural Workers Victories	0	0	0	0	0	0	0	0	0	0
Other Unions Victories	0	0	0	0	0	0	1	0	1	2
Total	4	0	2	2	2	7	7	8	2	34
Total Voters	131	0	97	32	126	1,038	341	683	271	2,719

¹ Data reflect elections in which the objections were filed during Fiscal Year 1978-1979. Data do not reflect two elections in which determinative challenged ballots are unresolved.

² "Victory" means the ballot choice which received a majority of the votes cast.

E. Elections Involving More Than One Union ¹

	<i>San Diego</i>	<i>Indio</i>	<i>El Centro</i>	<i>Fresno</i>	<i>Delano</i>	<i>Salinas</i>	<i>Oxnard</i>	<i>Santa Maria</i>	<i>Sacramento</i>	<i>Total</i>
No Union Victories ²	0	0	0	0	0	1	0	0	1	2
United Farm Workers of America Victories	0	0	0	0	0	0	1	0	0	1
International Union of Agricultural Workers Victories	0	0	0	1	0	0	4	2	0	7
Independent Union of Agricultural Workers Victories	0	0	0	0	0	0	0	0	0	0
Other Unions Victories	0	0	0	0	0	0	1	0	0	1
Total	0	0	0	1	0	1	6	2	1	11
Total Voters	0	0	0	24	0	64	257	193	97	635

¹ Data reflect elections held during Fiscal Year 1978-1979 in which more than one union was involved on the ballot. Data does not reflect one election in which the ballots were impounded.

² "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 ¹

	<i>San Diego</i>	<i>Indio</i>	<i>El Centro</i>	<i>Fresno</i>	<i>Delano</i>	<i>Salinas</i>	<i>Oxnard</i>	<i>Santa Maria</i>	<i>Sacramento</i>	<i>Total</i>
No Union Victories ²	0	0	1	0	2	3	0	0	0	6
United Farm Workers of America Victories	4	0	1	1	1	10	2	0	0	19
Total	4	0	2	1	3	13	2	0	0	25
Total Voters	131	0	97	120	389	2,057	143	0	0	2,937

¹ Data reflect elections held during Fiscal Year 1978-1979 in which only the United Farm Workers of America and No Union were on the ballot. Data do not reflect three elections in which challenged ballots are unresolved.

² "Victory" means the ballot choice which received a majority of the votes cast.

G. Elections Involving Unions and No Union ¹

	<i>San Diego</i>	<i>Indio</i>	<i>El Centro</i>	<i>Fresno</i>	<i>Delano</i>	<i>Salinas</i>	<i>Oxnard</i>	<i>Santa Maria</i>	<i>Sacramento</i>	<i>Total</i>
No Union Victories ²	0	0	0	2	2	0	2	2	0	8
International Union of Agricultural Workers Victories	0	0	0	0	0	0	6	4	0	10
Independent Union of Agricultural Workers Victories	0	0	0	0	0	3	0	0	0	3
Fresh Fruit and Vegetable Workers Victories	0	0	1	0	0	0	0	0	0	1
Christian Labor Association Victories	1	0	0	0	0	0	0	0	0	1
International Brotherhood of Teamsters Victories	0	0	0	0	1	0	0	0	0	1
Total	1	0	1	2	3	3	8	6	0	24
Total Voters	3	0	31	21	156	415	319	384	0	1,329

¹ Data reflect elections held during Fiscal Year 1978-1979 in which only one union and No Union appeared on the ballot, excluding the United Farm Workers of America. Data do not reflect one election in which the ballot box was stolen or one election in which the challenged ballots are unresolved.

² "Victory" means the ballot choice which received a majority of the votes cast.

II. Fiscal Year July 1, 1978-1979
Unfair Labor Practice Complaints—Action Taken ¹

	<i>San Diego</i>	<i>Indio</i>	<i>El Centro</i>	<i>Fresno</i>	<i>Delano</i>	<i>Salinas</i>	<i>Oxnard</i>	<i>Santa Maria</i>	<i>Sacramento</i>	<i>Total</i>
Charges Filed	36	19	130	43	124	315	71	8	68	814
Charges into Complaint	25	16	61	14	74	102	26	1	26	345
Complaints Issued	9	7	36	8	24	51	19	0	7	161
Complaints Withdrawn Prior to Hearing	0	1	2	2	1	0	0	0	0	6
Complaints Dismissed Prior to Hearing	0	0	0	1	0	1	0	0	0	2
Complaints Settled Prior to Hearing	1	1	4	2	4	7	3	0	1	23
Hearings Opened	8	5	9	4	14	24	11	1	3	79
Complaints Settled At Hearing	3	1	1	1	2	7	4	0	0	19
Complaints Settled After Hearing	0	0	1	0	1	1	2	0	0	5
Board Decisions Issued	7	6	13	13	8	17	2	1	3	71

¹ Data reflect actual work performed during Fiscal Year 1978-1979. Because the Agency is actively working on cases from each of the previous fiscal years, there will be discrepancies between the data reported.

APPENDIX C

Cases Heard By

THE AGRICULTURAL LABOR RELATIONS BOARD

in Fiscal Year 1978–1979

I. REPRESENTATION CASES ¹

Beringer Brothers.....	75-RC-50-S
California Lettuce Co.....	78-RC-4-E(R) ²
Gabriel De Leon Farms	78-RC-12-SM
Desert Harvesting	78-RC-9-E, 78-RC-9-1-E *
Domingo Farms	78-RC-7-SM
The Garin Company	78-RC-18-M
Knudsen Dairy Partner, Ltd. #3.....	78-RC-6-D
H. H. Maulhardt Packing Co.	79-RC-1-OX
Mayfair Packing Co.....	78-RC-2-D
Merrill Farms.....	78-RC-19-M
Point Sal Growers & Shippers	78-RC-3-SM
Sakata Ranches	78-RC-17-M
San Diego Nursery Co.	78-RC-10-X

¹ Representation cases which were consolidated with unfair labor practice or procedural motion cases are listed in Part II of this Appendix.

² The combination of numbers and letters following each case listed in this Appendix is the board's docket number for that case. The first two numbers indicate the year in which a petition or a charge was filed; the next two letters indicate the type of case involved; the next set of numbers indicates the chronological sequence of cases of that type filed in a particular region or sub-region in a particular year; the last letter or letters indicate the region or sub-region in which a case originated. The docket number for the first case in this list, for example, shows that it was the fiftieth representation election case to be filed in the Sacramento region in 1975. The following abbreviations are used in docket numbers:

75—1975; 76—1976

77—1977; 78—1978

79—1979

CE—Charge against employer

CL—Charge against labor union

PM—Procedural motion

RC—Representation Case

RD—Representation Case—Decertification

UC—Unit Clarification

1—Chronological sequence of election cases in a particular region

C—Coachella

D—Delano

E—El Centro

EC—El Centro

E (R)—El Centro

F—Fresno

IN—Indio

M—Salinas

OX—Oxnard

OX (SM)—Oxnard/Santa Maria

R—Riverside

S—Sacramento

SAL—Salinas

SD—San Diego

SM—Santa Maria

V—Ventura

X—San Diego

* Indicates that representation petition was amended.

Taylor Farms	78-RC-11-V
Verde Produce, Inc.....	79-RC-1-EC
Veg-A-Mix.....	78-RC-5-M

II. UNFAIR LABOR PRACTICE AND CONSOLIDATED CASES ³

Abatti Farms, Inc./Abatti Produce, Inc.....	78-CE-53-E, 78-CE-53-1-E *, 78-CE-53-2-E *, 78-CE-55-E, 78-CE-56-E, 78-CE-58-E, 78-CE-60-E, 78-CE-60-1-E *, 78-CE-61-E, 79-CE-5-EC, 78-RD-2-E
American Foods	78-CE-27-X, 78-CE-28-X
San Andrews & Sons	77-CE-63-D, 77-CE-68-D, 77-CE-74-D, 77-CE-92-D, 77-CE-95-D, 77-CE-98-D, 77-CE-98-1-D *, 77-CE-100-D, 77-CE-130-D, 77-CE-142-D, 77-CE-177-D, 77-CE-183-D, 77-CE-231-D, 78-CE-3-D
Bud Antle, Inc.	77-CE-154-E
Apco, Inc./Armstrong Nurseries.....	77-CE-257-D, 77-CE-262-D
As-H-Ne Farms, Inc.	78-CE-1-SM
Jack T. Baillie Co., Inc.	78-CE-102-M, 77-RC-14-M
Bee-Bee Produce, Inc.....	79-CE-6-OX
Bee-Bee Produce, Inc.....	78-CE-28-V, 78-CE-28-1-V *
Bee-Bee Produce, Inc.....	78-CE-32-V, 78-CE-35-V
Paul W. Bertuccio (Bertuccio Farms)	77-CE-54-M, 77-CE-64-M, 77-CE-67-M, 77-CE-68-M, 77-CE-69-M, 77-CE-70-M, 77-CE-70-1-M *, 77-CE-74-M
Paul W. Bertuccio (Bertuccio Farms)	78-CE-138-M, 78-CE-138-1-M *
John V. Borchard/All American Farms	78-CE-33-E, 78-CE-33-1-E *, 78-CE-48-E
Cardinal Distributing Co.	78-CE-1-C
Louis Caric & Sons.....	77-CE-31-D, 77-CE-31-1-D *, 77-CE-31-2-D *, 77-CE-31-3-D *, 77-CE-31-4-D *
Cattle Valley Farms	78-CE-13-C, 78-CE-14-C, 78-CE-16-C, 78-CE-16-1-C *, 78-CE-16-2-C *, 79-CE-3-IN, 79-CE-4-IN, 79-CE-4-1-IN *, 79-CE-8-IN, 79-CE-9-1-IN *
Chino Greenhouses, Inc.....	78-CE-35-X, 78-CE-36-X, 78-CE-37-X
Chualar Partners.....	78-CE-39-M, 78-CE-53-M
Bruce Church, Inc.....	78-CE-141-M, 78-CE-141-1-M *
Cossa & Sons	79-CE-2-SAL, 78-RC-12-V

³ "Consolidated" hearings are those in which more than one unfair labor practice charge, or unfair labor practice charges and challenges to an election concerning the same ranch, are heard.

* Indicates that unfair labor practice charge was amended.

J. J. Crosetti, Inc.....	79-CE-20-EC
Cuyama Dairy	78-CE-79-D
Dalgeco Produce	78-CE-152-M, 78-CE-152-1-M *
John Elmore Farms, Kudu, Inc. & Robert Ranch	77-CE-4-SM, 77-CE-4-1-SM *, 77-CE-5-SM, 77-CE-5-1-SM *
John Elmore.....	78-CE-40-E
Enn's Packing Co.	77-CE-38-F
Foster Poultry Farms.....	78-CE-4-F, 78-CE-6-F, 78-CE-7-F, 78-CE-8-F, 78-CE-9-F, 78-CE-10-F
Garin Co.	78-CE-45-M, 78-CE-45-1-M *, 78-CE-45-2-M *, 78-CE-83-M, 78-CE-84-M
Garin Co.	78-CE-86-M, 78-CE-92-M
Giunarra Vineyards.....	77-CE-48-D, 77-CE-50-D, 77-CE-58-D, 77-CE-80-D 77-CE-82-D, 77-CE-84-D, 77-CE-85-D, 77-CE-88-D, 77-CE-93-D, 77-CE-105-D, 77-CE-111-D, 77-CE-113-D, 77-CE-118-D, 77-CE-123-D, 77-CE-125-D, 77-CE-128-D, 77-CE-132-D, 77-CE-135-D, 77-CE-135-1-D *, 77-CE-140-D, 77-CE-141-D, 77-CE-144-D, 77-CE-146-D, 77-CE-150-D, 77-CE-151-D, 77-CE-151-1-D *, 77-CE-155-D, 77-CE-163-D, 77-CE-165-D, 77-CE-170-D, 77-CE-182-D, 77-CE-189-D, 77-CE-191-D, 77-CE-192-D, 77-CE-193-D, 77-CE-194-D, 77-CE-197-D, 77-CE-198-D, 77-CE-202-D, 77-CE-203-D, 77-CE-203-1-D *, 77-CE-207-D, 77-CE-211-D, 77-CE-218-D, 77-CE-219-D, 77-CE-222-D, 77-CE-234-D, 77-CE-235-D, 77-RC-16-D
Golden Valley Farming	78-CE-33-D
Julius Goldman's Egg City.....	78-CE-3-V
Gourmet Farms.....	78-CE-46-E
Hansen Farms	78-CE-22-F
Hobco	78-CE-153-M
I.U.A.W.....	78-CL-17-M
Inland Ranch & Western Ranch	78-CE-23-M, 78-CE-28-M, 78-CE-40-M, 78-CE-54-M, 78-RC-4-M
J-L Farms	78-CE-167-M, 79-CE-5-SAL, 79-CE-6-SAL, 79-CE-7-SAL, 79-CE-8-SAL, 79-CE-9-SAL, 79-CE-11-SAL, 79-CE-12-SAL, 79-CE-13-SAL, 79-CE-14-SAL, 79-CE-15-SAL, 79-CE-16-SAL, 79-CE-17-SAL

* Indicates that unfair labor practice charge was amended.

Jack Brothers & McBurney, Inc.	78-CE-47-E
Kaplan's Fruit & Produce Co., Inc.	77-CE-188-D, 77-CE-188-1-D *
Kawano, Inc.	77-CE-28-X, 77-CE-28-A-X*, 77-CE-42-X
Kirschenmann Farms & King-Pak Farms, Inc.	78-CE-26-D, 78-CE-26-1-D *
Kirschenmann Farms & King-Pak Farms, Inc.	78-CE-39-D, 78-CE-66-D
George A. Lucas & Sons	77-CE-138-D, 77-CE-138-1-D*, 78-CE-34-D, 78-CE-35-D, 78-CE-61-D, 78-CE-20-F, 78-CE-42-D
George A. Lucas & Sons	78-CE-72-D
Matsui Nursery, Inc.	78-CE-70-M
Mayfair Packing Co.	78-CE-38-D, 78-CE-45-D, 78-CE-45-1-D*, 78-CE-52-D, 78-CE-54-D, 78-CE-57-D, 78-CE-58-D, 78-CE-60-D, 78-CE-64-D, 78-CE-68-D, 78-CE-69-D, 78-CE-70-D 78-CE-71-D, 78-CE-71-1-D*, 78-CE-73-D
Merrill Farms.	78-CE-85-M, 78-CE-94-M, 78-CE-114-M, 78-CE-116-M
Mid-State Horticulture	78-CE-32-D
Minnehoma Land & Farming Co.	77-CE-116-D, 77-CE-116-1-D*, 77-CE-137-D, 77-CE-169-D, 77-CE-200-D, 77-CE-232-D, 77-CE-238-D, 77-CE-241-D, 77-CE-245-D, 77-CE-246-D, 77-CE-247-D, 77-CE-249-D, 77-RC-15-D
Miranda Mushroom Farm	78-CE-3-M, 78-CE-5-M, 78-CE-7-M, 78-CE-8-M, 78-CE-9-M, 78-CE-12-M, 78-RC-2-M
Missakian Vineyards.	78-CE-43-D, 78-CE-43-1-D*, 78-CE-43-2-D*, 78-CE-43-3-D*, 78-CE-53-D, 78-CE-59-D
Monterey Mushroom, Inc.	78-CE-11-M, 78-CE-13-M, 78-CE-14-M, 78-CE-15-M, 78-CE-16-M, 78-CE-18-M, 78-CE-19-M, 78-CE-20-M, 78-CE-21-M, 78-CE-22-M, 78-CE-27-M, 78-CE-34-M, 78-CE-46-M, 78-CE-58-M, 78-CE-59-M, 78-CE-64-M, 78-CE-71-M, 78-CE-74-M
O. P. Murphy & Sons	78-CE-113-M, 78-CE-113-1-M * 79-CE-222-SAL, 79-CE-234-SAL, 79-CE-263-SAL, 79-CE-330-SAL
Nish Noroian Farms.	78-CE-10-E, 78-CE-62-E, 79-CE-34-EC, 78-RD-3-E
J. R. Norton	77-CE-106-E, 77-CE-179-E

* Indicates that unfair labor practice charge was amended.

Oceanview Farms, Inc.	78-CE-39-X
Pacific Mushroom Farms	78-CE-67-M, 78-CE-67-1-M*, 78-CE-137-M
Pappas Ranch	78-CE-14-F
Patterson Farms, Inc.	78-CE-12-S, 78-CE-12-1-S*, 78-CE-13-S, 78-CE-13-1-S*, 78-CE-14-S, 78-CE-14-1-S*, 78-CE-16-S, 78-CE-16-1-S*, 78-CE-20-S, 78-CE-20-1-S*, 78-CE-21-S, 78-CE-22-S, 78-CE-26-S, 78-CE-26-1-S*
Rivcom Corporation.....	79-CE-1-OX, 79-CE-4-OX
Roberts Farms, Inc.	79-CE-7-D, 79-CE-9-D
Royal Packing Co.	78-CE-14-E
Ruline Nursery	78-CE-50-X, 79-CE-3-SD, 79-CE-5-SD, 79-CE-5-1-SD*, 79-CE-8-SD, 79-CE-9-SD
S-F Growers	76-CE-6-M, 76-CE-10-V, 77-CE-2-V, 77-CE-3-V
San Diego Nursery Co.	78-CE-46-X, 78-CE-47-X, 79-CE-10-SD, 79-CE-16-SD
San Clemente Ranch, Inc.	78-CE-20-X, 78-CE-22-X, 78-CE-34-X
Santa Clara Farms/Santa Clara Produce	78-CE-29-V, 78-CE-30-V, 78-CE-30-1-V*, 78-CE-7-SM
Santa Clara Farms/Santa Clara Produce	79-CE-7-OX
Seabreeze Berry Farms.....	78-CE-14-V, 78-RC-5-V
Select Nurseries, Inc.	77-CE-24-X, 77-CE-24-A-X*, 77-CE-30-X, 78-CE-9-X, 78-CE-10-X, 78-CE-10-A-X*, 78-CE-15-X, 78-CE-25-V
Sun Harvest, Inc.	79-CE-25-OX
Sunnyside Nurseries.....	77-CE-77-M
Sunnyside Nurseries.....	79-CE-1-SAL, 79-CE-10-SAL, 79-CE-27-SAL, 79-CE-56-SAL
Ten-Ho Co.....	78-CE-8-C
Tenneco West	79-CE-5-IN
Ukegawa Brothers	75-CE-59-R, 75-CE-59-A-R*, 76-CE-18-R, 76-CE-18-A-R*, 76-CE-49-R
Ukegawa Brothers	77-CE-26-X, 77-CE-26-A-X*, 78-CE-14-X
UFW/Whitney Farms	77-CL-10M, 77-PM-3-M
UFW/Santa Clara Farms, Inc.....	78-CL-8-V
UFW/Marcel Jojola	79-CL-23-EC
UFW/J. Jesus R. Conchola	78-CL-14-M
UFW/California Coastal Growers	79-CL-15-SAL
Veg-A-Mix.....	78-CE-72-M, 78-CE-75-M
Waller Flowerseed Co.	78-CE-63-M
Western Conference of Teamsters #186.....	78-CL-7-V
Marko Zaninovich	77-CE-256-D

* Indicates that unfair labor practice charge was amended.

APPENDIX D

Decisions Rendered by

The Agricultural Labor Relations Board

in the Fiscal Year 1978-1979

<i>Case Name</i>	<i>Opinion Number</i>
Kelvin Keene Larson, aka K. K. Larson.....	4 ALRB No. 42
White River Farms.....	4 ALRB No. 43
Superior Farming Co., Inc.	4 ALRB No. 44
D'Arrigo Brothers of California	4 ALRB No. 45
WCT Local 946/Sam Andrews & Sons	4 ALRB No. 46
Jack T. Baillie Co., Inc.	4 ALRB No. 47
Robert H. Hickam	4 ALRB No. 48
Waller Flowerseed Co.	4 ALRB No. 49
Stribling Nurseries	4 ALRB No. 50
High & Mighty Farms.....	4 ALRB No. 51
C. Mondavi & Sons dba Charles Krug Winery.....	4 ALRB No. 52
George Arakelian Farms.....	4 ALRB No. 53
Mike Yurosek & Son, Inc.....	4 ALRB No. 54
Kyutoku Nursery, Inc.	4 ALRB No. 55
Romar Carrot Co.	4 ALRB No. 56
Phelan & Taylor Produce Co.	4 ALRB No. 57
S & F Growers	4 ALRB No. 58
Sam Andrews' Sons	4 ALRB No. 59
The William Mosesian Corp.	4 ALRB No. 60
Select Nursery Inc.	4 ALRB No. 61
O. P. Murphy & Sons	4 ALRB No. 62
Harry Singh & Sons.....	4 ALRB No. 63
Salinas/Carmel Greenhouse.....	4 ALRB No. 64
Joe Maggio, Inc.	4 ALRB No. 65
Donley Farms, Inc.	4 ALRB No. 66
Security Farms	4 ALRB No. 67
M. Caratan, Inc.	4 ALRB No. 68
Karahadian Ranches, Inc.	4 ALRB No. 69
M. B. Zaninovich	4 ALRB No. 70
Filice Estate Vineyards.....	4 ALRB No. 71
Mario Saikhon, Inc.	4 ALRB No. 72
Robert H. Hickam	4 ALRB No. 73
Sunny Slope Farms	4 ALRB No. 74
Hemet Wholesale, Inc.	4 ALRB No. 75
Adam Farms	4 ALRB No. 76
Hiji Brothers, Inc.	4 ALRB No. 77
Mel-Pak Ranches.....	4 ALRB No. 78
Golden Valley Farming	4 ALRB No. 79
Martori Brothers Dist.....	4 ALRB No. 80
Filice Estate Vineyards.....	4 ALRB No. 81
Jack G. Zaninovich.....	4 ALRB No. 82
M. Caratan, Inc.	4 ALRB No. 83
Dave Walsh Co.	4 ALRB No. 84

<i>Case Name</i>	<i>Opinion Number</i>
Kitayama Brothers Nursery	4 ALRB No. 85
George Lucas & Sons	4 ALRB No. 86
Albert C. Hansen dba Hansen Farms	4 ALRB No. 87
Sunnyside Nursery	4 ALRB No. 88
Frank A. Lucich Co., Inc.	4 ALRB No. 89
Butte View Farms	4 ALRB No. 90
Paul W. Bertuccio/Bertuccio Farms	4 ALRB No. 91
D'Arrigo Brothers of California	4 ALRB No. 92
San Diego Nursery Co., Inc.	4 ALRB No. 93
Edwin Frazee, Inc.	4 ALRB No. 94
Tanaka Brothers	4 ALRB No. 95
Bonita Packing Co., Inc.	4 ALRB No. 96
Jack Brothers & McBurney, Inc.	4 ALRB No. 97
John Elmore, Inc.	4 ALRB No. 98
Desert Automated Farming/Marshburn Farms	4 ALRB No. 99
Franzia Brothers Winery	4 ALRB No. 100
Mid-State Horticulture	4 ALRB No. 101
Tepusquet Vineyards.....	4 ALRB No. 102
Anton Caratan & Sons	4 ALRB No. 103
Kawano, Inc.	4 ALRB No. 104
Point Sal Growers & Packers	4 ALRB No. 105
O. P. Murphy Co., Inc.	4 ALRB No. 106
Mario Saikhon, Inc.	4 ALRB No. 107
Louis Caric & Sons.....	4 ALRB No. 108
Ranch No. 1, Inc.	5 ALRB No. 1
Monterey Mushroom, Inc.	5 ALRB No. 2
Ranch No. 1, Inc.	5 ALRB No. 3
The Garin Company	5 ALRB No. 4
Paul W. Bertuccio/Bertuccio Farms	5 ALRB No. 5
Superior Farming Co., Inc.	5 ALRB No. 6
Point Sal Growers & Packers	5 ALRB No. 7
Julius Goldman's Egg City	5 ALRB No. 8
Prohoroff Poultry Farms.....	5 ALRB No. 9
George Arakelian Farms.....	5 ALRB No. 10
D. M. Steele dba Valley Vineyards	5 ALRB No. 11
Sierra Citrus Association.....	5 ALRB No. 12
Mel-Pak Vineyards, Inc.	5 ALRB No. 13
Veg-A-Mix.....	5 ALRB No. 14
Corona College Heights Orange & Lemon Association.....	5 ALRB No. 15
M. Caratan	5 ALRB No. 16
Perry's Plants Inc.	5 ALRB No. 17
Coachella Imperial Distributors	5 ALRB No. 18
Karahadian & Sons, Inc.	5 ALRB No. 19
Jackson & Perkins Rose Co.....	5 ALRB No. 20
Salinas Lettuce Farmers Cooperative	5 ALRB No. 21
Roberts Farms	5 ALRB No. 22
Sunnyside Nurseries, Inc.	5 ALRB No. 23
California Lettuce Company.....	5 ALRB No. 24
Desert Harvest Co.	5 ALRB No. 25
Joe Maggio, Inc.	5 ALRB No. 26
Tenneco West, Inc.	5 ALRB No. 27
Mel Finerman Co./Circle Two.....	5 ALRB No. 28
Tex-Cal Land Management.....	5 ALRB No. 29

<i>Case Name</i>	<i>Opinion Number</i>
Mario Saikhon, Inc.	5 ALRB No. 30
Royal Packing Co.	5 ALRB No. 31
Mel-Pak Vineyards, Inc.	5 ALRB No. 32
Charles Malovich	5 ALRB No. 33
Abatti Farms, Inc.	5 ALRB No. 34
Domingo Farms	5 ALRB No. 35
Ranch No. 1, Inc./SPUDCO.	5 ALRB No. 36
Karahadian Ranches, Inc., et al.	5 ALRB No. 37
Sam Andrews' Sons	5 ALRB No. 38
Nagata Brothers Farms	5 ALRB No. 39
Kaplan Fruit & Produce Co., Inc.	5 ALRB No. 40
Wine World, Inc., dba Beringer Vineyards	5 ALRB No. 41
Inland & Western Ranch	5 ALRB No. 42
San Diego Nursery, Co., Inc.	5 ALRB No. 43
Mario Saikhon, Inc.	5 ALRB No. 44
Bruce Church, Inc.	5 ALRB No. 45
Albert C. Hansen	5 ALRB No. 46

APPENDIX E

ALRB Litigation Results in Fiscal Year 1978-1979

	ALRB ¹ Upheld	Mixed Result	Adverse Ruling
<i>California Supreme Court</i>			
po ² 1. Vargas v. Municipal Ct. (1978) 22 Cal.3d 902 (amicus)		1	
po 2. Tex-Cal Land Mgmt. v. ALRB (1979) 24 Cal.3d 335 3:14 ³	1		
<i>California Court of Appeal</i>			
(a) <i>Petitions for Review Decided</i>			
po 1. Perry Farms v. ALRB (1978) 86 Cal.App.3d 448 (hg den) 4:25			1
2. Dave Walsh Co. v. ALRB (1979) (hg den) 4:84	1		
3. Martori Bros. v. ALRB (1979) (hg den) 4:80	1		
4. Ron Nunn Farms v. ALRB (1979) (hg den) 4:34	1		
5. Garin Co. v. ALRB (1979) (hg den) 5:4	1		
6. John Elmore, Inc. v. ALRB (1979) (hg den) 4:98	1		
po 7. Sunnyside Nurseries v. ALRB (1979) 93 Cal.App.3d 922 (hg den) 3:42		1	
8. O. P. Murphy v. ALRB (1979) (hg den, cert den) 4:106	1		
9. San Diego Nursery v. ALRB (1979) (hg den) 4:93	1		
(b) <i>General Cases Decided</i>			
1. Bonita Packing Co. v. ALRB (1979) 4:96	1		
2. Franzia Bros. Winery v. ALRB (1979) 4:100	1		
po 3. ALRB v. Laflin & Laflin (1979) 89 Cal.App.3d 651 (hg den)			1
po 4. Cadiz and Caratan v. ALRB (1979) 92 Cal.App.3d 365 (hg den) 4:68			1
<i>Totals</i>			
Supreme Court	1	1	
Court of Appeal	9	1	3
GRAND TOTAL	10	2	3

¹ The "ALRB Upheld" heading indicates cases in which the Board's position has been affirmed by the courts. This includes cases in which the courts have summarily denied petitions for review of Board orders. "Mixed Result" includes those cases in which a court has—either by its judgment or by its rationale—given partial approval to the Board's reasoning and/or to the result sought by the Board, while rejecting other aspects of the Board's position. This category includes petition for review cases in which the Board's final order was only partially enforced. "Adverse Ruling" indicates cases in which the Board's position has been rejected.

² "o" indicates that an opinion issued; "po" indicates a published opinion; "t" indicates that petition for review was denied because it was not timely filed.

³ The notation "3:14" indicates that the case concerns Board decision 3 ALRB No. 14.

APPENDIX F

Financial Report for Fiscal Year 1978-79

<i>Description</i>	<i>Allotment</i>	<i>Expenditures</i>
PERSONAL SERVICES		
Salaries and Wages	\$3,867,003.00	\$3,503,376.32
Staff Benefits	1,154,247.00	927,560.95
Temporary Help	250,075.00	124,016.27
Temporary Help (ALO)	301,313.00	106,508.38
Overtime	25,000.00	19,277.05
Total Personal Services	\$5,597,638.00	\$4,680,738.97
OPERATING EXPENSES AND EQUIPMENT		
General Office Expense	\$250,000.00	\$213,054.85
Printing	5,800.00	5,687.59
Communications	289,600.00	203,292.11
Travel In-State	818,600.00	535,239.57
Travel Out-of-State	1,900.00	1,882.15
Consulting And Professional Services	70,000.00	46,939.07
Facilities Operation	290,000.00	288,278.69
Equipment	95,000.00	92,874.50
Board Hearings	850,100.00	645,300.43
Total Operating Expenses and Equipment	\$2,671,000.00	\$2,032,548.96
Total Expenditures	\$8,268,638.00	\$6,713,287.93
Unscheduled Reimbursements	\$0	\$(10,364.67)
Total General Fund	\$8,278,638.00	\$6,702,923.26