

1981

Annual Report to the Legislature 1980-81

Agricultural Labor Relations Board

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AGRICULTURAL LABOR RELATIONS BOARD

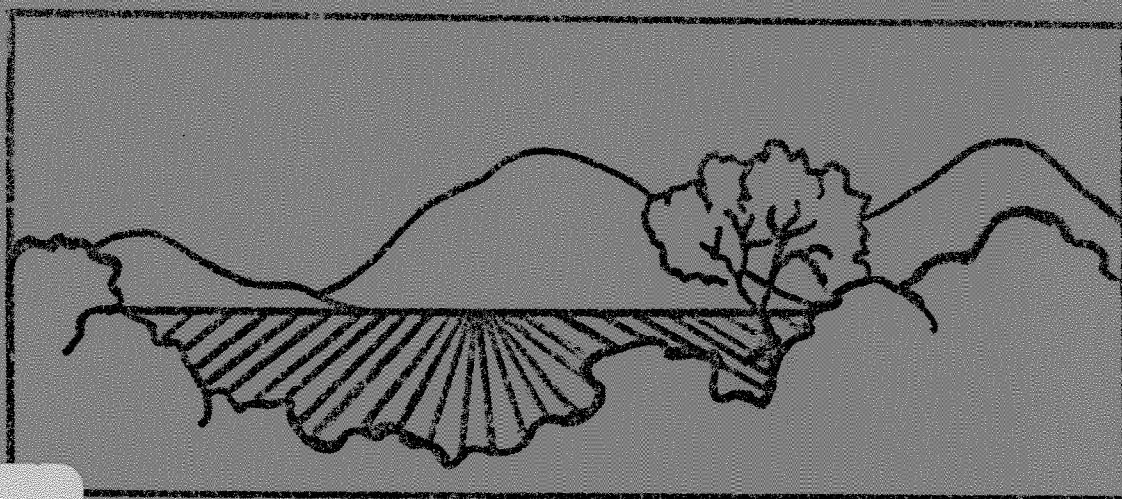


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FIFTH ANNUAL REPORT

OF THE

AGRICULTURAL LABOR
RELATIONS BOARD

FOR THE FISCAL YEAR ENDED

JUNE 30, 1981

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AGRICULTURAL LABOR RELATIONS BOARD

Members of the Board

RONALD L. RUIZ, Acting Chairman^{1/}

HERBERT A. PERRY
JOHN P. MCCARTHY

JEROME R. WALDIE^{2/}
ALFRED H. SONG^{3/}

Jorge Carrillo, Executive Secretary
Jorge Leon, Deputy Executive Secretary^{4/}

Clark Bennett, Chief of Administration

Office of the General Counsel

BOREN CHERTKOV, General Counsel

Dennis M. Sullivan, Deputy General Counsel
Manuel M. Medeiros, Chief of Litigation Unit^{5/}
James E. Flynn, Chief of Unfair Labor Practice Unit^{6/}
Shirley Trevino, Chief of Operations

1. Appointed August 11, 1980.
2. Appointed April 20, 1981.
3. Appointed April 17, 1981.
4. Appointed February 23, 1981.
5. Appointed June 1, 1981.
6. Appointed June 26, 1981.

I

OPERATIONS OF THE AGRICULTURAL LABOR RELATIONS BOARD IN FISCAL YEAR JULY 1, 1980 TO JUNE 30, 1981

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 violent conditions in the State and 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. The Act seeks to achieve these ends by providing orderly processes for protecting, implementing, and enforcing 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 during fiscal year 1980-81 were Acting Chairman Ronald L. Ruiz, Herbert A. Perry, and John P. McCarthy. The vacancies created by the Senate's failure to confirm chairman Gerald A. Brown and Board member Ralph Faust were filled by the appointment of Alfred H. Song and Jerome R. Waldie in April 1981. 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 regional and subregional offices. These offices are located in Fresno, Delano, San Diego, El Centro, Salinas, Oxnard, and Santa Maria.

The Act's unfair labor practice provisions place certain restrictions on actions of employers and labor organizations in their relationships 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 (ALOs) 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 ALO's decision to the Board by the filing of exceptions. If no exceptions are filed, the ALO'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 service on a local level, the ALRB maintained seven field offices statewide during the fiscal year 1980-81. 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. There are provisions for appeal of such representation and election issues to the Board.

B. OPERATIONAL HIGHLIGHTS

1. Unfair Labor Practices

In fiscal year 1980-81, there were 938 unfair labor practice charges filed with the ALRB. Of this amount 846 charges were filed against employers and 92 charges were filed against unions.

In fiscal year 1980-81, the ALRB regional offices, acting on behalf of the General Counsel, issued 105 complaints and either settled, dismissed or permitted the withdrawal of 577 charges before issuance of a complaint.

Administrative Law Officers issued 82 decisions and conducted 100 hearings in fiscal year 1980-81.

2. Representation Cases

The ALRB received 140 petitions in fiscal year 1980-81 including 7 decertification petitions and 2 unit

clarification petitions.

3. Elections

A total of 6,224 employees exercised their right to vote in representation elections conducted by the ALRB in fiscal year 1980-81. Of the 65 elections held that year 27 were union victories and 6 were no-union victories. The conclusive balloting 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 4 decertification elections conducted, two resulted in continued representation of employees by the incumbent union, and two resulted in the union being rejected by the employees.

4. Decisions Issued

Dealing effectively with the remaining cases reaching it from statewide filings after dismissals, withdrawals, settlements, and adjustments in earlier processing stages, the Board issued a total of 43 decisions involving allegations of unfair labor practices and issues relating to employee representation. Of the 43 Board decisions issued, 35 were unfair labor practice decisions and 8 were representation decisions.

C. LEGISLATIVE DEVELOPMENTS

Twenty bills to amend the Agricultural Labor Relations Act were considered by the California Legislature during fiscal year 1980-81. Eight of these bills died in committee.

One bill, AB 2359 became law. It states that the Board may not grant immunity in any case where it finds that a district attorney has reasonable grounds for objecting to such grant of immunity. Another bill, which would have changed the union security provision of the ALRA, was vetoed by the Governor. No attempt was made to override the veto. The bill which would have extended the agency's 24-hour telephone hot-line service died on the Senate inactive file. At the close of the fiscal year 1981, nine bills were awaiting some action by the Legislature. Eight of these bills were pending in a Legislative committee. One of these bills was awaiting action on the Assembly Floor.

The Senate confirmed the Governor's appointment of Jerome R. Waldie to a five-year term and Alfred H. Song to a four-year term on the Agricultural Labor Relations Board. Board member Song was appointed to fill the unexpired term of Gerald A. Brown, the former Chairman of the Board.

D. AGENCY COMMUNICATIONS

During fiscal year 1980-81, the Office of Agency Communications (OAC) continued to develop and carry out external education programs, and to assure the legal validity and propriety of extra-agency communications. The OAC also coordinated regional office information programs and public relations efforts, and oversaw the Agency's communications with growers, farmworkers, unions, law enforcement agencies, and the general public.

The Agency information programs are designed to explain the rights, responsibilities, protections and

procedures of the ALRA relating to unfair labor practices, representation and decertification elections, and other provisions of the law. In addition, the OAC developed and distributed explanatory materials, handbooks, and leaflets, prepared radio tapes, and participated in speaking engagements presented 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.

The ALRB continued to expand its employer-information efforts during fiscal year 1980-81. Headquarters OAC staff sought out grower groups interested in obtaining information about the Act and ALRB services, while regional office personnel developed their own contacts with the agricultural community. In some cases, information programs were set up by groups organized through government agencies such as EDD, Cooperative Extension, or County Agriculture Commissioners. In other cases, programs were developed through non-governmental groups such as local grower organizations, production associations, and nurseries. Radio and television programs were used as forums to answer questions and provide background information.

The OAC information program included the provision of information regarding Board decision, court decisions, election results, status reports on unfair labor practice cases, Agency personnel changes, the vegetable industry strike, and other materials of interest to these groups.

The OAC received and responded to requests for information from universities, students (high school, college, graduate school), church groups, growers, unions, central labor councils, attorneys for the parties, and law enforcement agencies.

A very important area of outreach was the Agency's ongoing effort to develop more regular contacts and closer liaison with local police and sheriff's departments. OAC continued to implement a statewide plan to improve relations with law enforcement agencies and to assist them in developing a better understanding of the provisions of the state farm labor law.

Pursuant to the statewide plan, OAC conducted in fiscal year 1980-81 information, orientation and training programs with representatives from the office of the State Attorney General and law enforcement officials in the following jurisdictions: the sheriff's department in the counties of Santa Clara, San Benito, Kern, Imperial, San Diego, Riverside, Monterey, Santa Barbara, San Luis Obispo, Ventura and Contra Costa; police departments in the cities of Salinas, Holtville, Gonzales, Soledad, King City, Hollister, Santa Maria, Lompoc, Simi, Santa Paula, Port Hueneme, Ventura, Fillmore, San Luis Obispo, Paso Robles, Arroyo Grande and Gilroy; and district attorney offices for the counties of Imperial, Monterey, San Benito and San Luis Obispo.

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The OAC issued a number of press releases regarding activities of the Agency, and served as a source of information for numerous media groups interested in the operation of the ALRB.

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 representatives.^{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

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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).

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. Timely Filing of Election Petitions

In Phelan and Taylor Produce Co.,^{8/} the Board for the first time confronted the issue of whether to adopt the National Labor Relations Board (NLRB) premature extension doctrine. Where the expiration date of a collective bargaining agreement is extended by both parties, only the original agreement and expiration date will serve as a contract bar to a petition filed by a rival union.

The Board examined the NLRB rationale in promoting stability in the ongoing relationship between the employer and the union and noted the NLRB's equal concern

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5. Cal. Lab. Code §1156.3(a)(1) (1975).
 6. Cal. Lab. Code §1156 (1975).
 7. Cal. Lab. Code §1156.7(c) (1975).
 8. 7 ALRB No. 8 (1981).

for the right of employees to seek a change of representatives after the lapse of a reasonable time. Hence, the NLRB developed the premature extension doctrine to provide employees and rival unions certainty as to the proper time to file an election petition.^{9/}

In reviewing the facts of the case the Board held that the doctrine was applicable NLRB precedent which should be followed by the ALRB pursuant to section 1148 of the Act. Applying the doctrine to the instant case the Board held that the election petition was timely filed and certified the United Farm Workers of America, AFL-CIO (UFW) as the exclusive representative of all the agricultural employees of Phelan and Taylor.

2. Bargaining Unit

In Coastal Growers Association and S & F Growers,^{10/} two long-established cooperative harvesting associations entered into separate collective bargaining agreements with the UFW. After the elections and certification, various grower-members withdrew their memberships in their respective associations. The UFW requested the Board to clarify its previous certification and to hold each individual grower-member jointly and severally bound by its associations' collective bargaining agreement.

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9. Witchita Union Stockyards Co. (1942) 40 NLRB 369 [10 LRRM 65]; New England Telephone & Telegraph Co. (1969) 179 NLRB 527 [72 LRRM 1392].
10. 7 ALRB No. 9 (1981).

In affirming the Investigative Hearing Examiner's (IHE) decision, the Board held that each association was the sole employer of its harvest employees and it was improper to include employees of former grower-members in either of the certified bargaining units. Therefore, the UFW's petition was dismissed.

The dissent contended that the relationships among the associations, their members, and the packing houses with which they did business established that the citrus associations as agricultural employers could not provide the stability necessary to fulfill the purposes of the Act. Projected within the dissent was the possibility that the failure to bind the grower-members to the associations or the the bargaining agreement could result in additional members leaving, ultimately dissolving the association, and leaving the union with no entity with which to bargain.

B. CONDUCT OF ELECTIONS

1. Pre-Petition and Eligibility Lists

Once a Petition for Certification is filed by a union the employer is obligated to respond to the petition within 48 hours of such filing. One of the duties of the employer is to provide, Board agents conducting the election, a complete and accurate employee list representing the employer's agricultural workers employed during the payroll period immediately preceding the filing of the Petition for Certification.

If an employer fails to comply with the above-mentioned requirement and such failure frustrates the Regional Director's

determination of eligible voters, the Regional Director may invoke the presumption that all persons not challenged by the Board agent or by a party other than the employer at the election are eligible to vote.^{11/}

In Harry Carian Sales,^{12/} the Board upheld the Regional Director's decision to invoke the presumption of voter eligibility when the employer refused to provide the required employee list within the prescribed period prior to the election.

2. Late Opening of Polls

In H. H. Maulhardt Packing Company,^{13/} the employer objected to the election because the polls opened between 20 to 60 minutes late. Following its earlier decisions in Hatanaka and Ota Company,^{14/} Admiral Packing,^{15/} and H & M Farms,^{16/} the Board held that before the late opening of the polls could be the basis for setting aside an election there must be an affirmative showing of voter disenfranchisement. Since there was no clear evidence that any eligible voter left before the polls opened, the Board dismissed the objection.

C. CONDUCT AFFECTING RESULTS

1. Electioneering and Presence of Parties

In S. A. Gerrard Farming Corporation,^{17/} the employer

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11. 8 Cal. Admin. Code section 20310(e)(1)(C).
 12. 6 ALRB No. 55 (1980).
 13. 6 ALRB No. 42 (1980).
 14. 1 ALRB No. 7 (1975).
 15. 1 ALRB No. 20 (1975).
 16. 2 ALRB No. 19 (1975).
 17. 6 ALRB No. 49 (1980).

moved to set aside an election based on allegations that UFW observers had engaged in certain conduct, i.e. making statements to and winking at voters during the election which affected the outcome of the election. The employer asserted that such conduct amounted to instructions to the prospective voters to vote in favor of the UFW and such electioneering tainted the election.

The Board, in affirming the IHE's decision, rejected the employer's arguments and held that case law had determined that in order for statements to be grounds for setting aside an election, the statements by observers must be of such character as to affect the free choice of the voters in the election.^{18/} In examining the facts of this case the Board held that there was insufficient evidence that the statements or conduct had affected the voters in exercising their freedom of choice. The Board dismissed the objection.

2. Violence and Threats

A supervisor's statement that certain fields would be taken away resulting in lost jobs if the UFW should win the election was determined to have a coercive impact upon the outcome of the election.^{19/}

The Board, in making its decision, was concerned with balancing the competing interests of the employer's freedom of speech rights with the rights of employees guaranteed under section 1152 of the Act. In ruling on the case the

18. Harden Farms, (1976) 2 ALRB No. 30 and Kawano Farms, (1977) 3 ALRB No. 25.

19. Sears and Schuman Co., Inc., (1980) 6 ALRB No. 39.

Board considered the coercive impact of "unfounded" predictions upon employees economically dependent on their employer.

The facts of the case revealed that the supervisor failed to indicate that any job losses would be due to the act of a third party, over which the employer had no control. In addition he failed to indicate whether the employer would attempt to mitigate such effects by leasing land from someone else. Taken in this context the supervisor's statements left employees with the impression that a UFW victory would only result in a loss of jobs. Since the threat of losing jobs was determined to have a coercive effect on the employees, the election was set aside.

3. Non-Party Conduct

In determining whether the conduct of a person is sufficient to set aside an election, the standard used is whether the individual's conduct created an atmosphere where employees cannot freely and intelligently choose their bargaining representative. In H. H. Maulhardt Packing, Co.,^{20/} the Board reaffirmed that in weighing an individual's conduct a different standard is used for parties than is used for non-parties. Following past decisions, the Board stated that the conduct of a non-party is accorded less weight than that of a party in determining whether the above-mentioned standard for setting aside an election is met.^{21/}

20. 6 ALRB No. 42 (1980).

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

Issues which the Board confronted in S. A. Gerrard Farming Corp.^{22/} were whether a person who engaged in alleged questionable conduct was an agent of the UFW, and if not, whether he had the apparent authority to act for the union.

In determining whether a person has authority or apparent authority to act on behalf of a principal, the Board, in following past decisions, held that it will consider whether any act or omission of any principal, however subtle, has given employees reasonable cause to believe an agency relationship exists.^{23/} Upon examining the facts, the Board agreed with the IHE's conclusion that although the person in question was an ardent and enthusiastic UFW supporter, the union took no action which would indicate it had granted authority to the individual to represent the UFW. Failing to establish agency or reasonable cause to believe an agency relationship existed, the person's conduct was that of a non-party and his conduct was accorded less weight in determining whether the standard to set aside an election had been met.

4. Surveillance and Interference

In E & J Gallo Winery, Inc.,^{24/} the employer, throughout the pre-election period, monitored UFW activity by interfering with the surveilling union meetings and photographing employees at union meetings. Since the employer could not produce any

22. 6 ALRB No. 49 (1980).

23. Vista Verde Farms, (1977) 3 ALRB No. 91; Paul W. Bertuccio & Bertuccio Farms, (1979) 5 ALRB No. 5.

24. 7 ALRB No. 10 (1981).

substantial business reasons to justify the conduct, the Board found such actions to be in violation of the Act and set aside the election.

5. Interference with Party's Campaign

In Giannini and Del Chiaro Co.,^{25/} the Board held the UFW's peaceful and non-violent picketing did not prevent an employer from communicating with its employees. In support of the holding of the Board was the fact that the employer produced no evidence that UFW sympathizers physically interfered with his attempts to speak with the employees.

Compare the situation in Harry Carian Sales,^{26/} where, during the UFW's attempt to rebut the employer's election-eve speech, employer's supervisors shouted down the UFW speakers refusing to allow them to speak. Such conduct was held to interfere with a party's campaign.

6. Promises and Gifts

Promises and gifts offered prior to an election may be viewed as a subtle form of coercing employees to vote a certain way. In Harry Carian Sales,^{27/} the promise of benefits such as improved working conditions and better wages, announced at the peak of the pre-election campaign, was held to be in violation of the Act.

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25. 6 ALRB No. 38 (1980).
26. 6 ALRB No. 55 (1980).
27. 6 ALRB No. 55 (1980).

7. Board Agent Misconduct

Alleged misconduct of a Board agent was an issue the Board confronted in H. H. Maulhardt Packing Co.^{28/} The employer contended that a Board agent refused to allow an employee to serve as an observer, thus abusing his discretion. The Board, in affirming the conclusions of the IHE, found that 8 Cal. Admin. Code section 20350(b) gives a Board agent the discretion to determine the number of observers each party may have. Since the facts disclosed that there was a sufficient number of observers present, the IHE held that the Board agent's conduct was not an abuse of discretion.

8. Unlawful Assistance

In E & J Gallo Winery,^{29/} respondent had conducted surveillance of the UFW while not surveilling Teamster activities. In addition, respondent granted preferential access to the Teamsters, distributed Teamster campaign materials, and was found to have disrupted UFW meetings but not Teamster meetings. Such conduct was held to constitute unlawful assistance to a union.

D. VOTER CHALLENGE PROCEDURES

The UFW in E & J Gallo Winery,^{30/} lodged a second challenge to a voter's eligibility after the Regional Director's investigation concluded that the original challenge lacked merit. Subsequent challenges, the UFW contended, were

28. 6 ALRB No. 42 (1980).
29. 7 ALRB No. 10 (1981).
30. 6 ALRB No. 60 (1980).

permissible under the decision in Jack T. Baillie Co.^{31/}

The Board rejected the UFW's contention that Baillie sanctioned subsequent challenges. In so deciding, the Board stated that to grant subsequent challenges would allow an impermissible post-election challenge thus encouraging delays in an already lengthy process.

E. EMPLOYEE STATUS AND ELIGIBILITY

1. Eligibility

The Board in Giannini and Del Chiaro,^{32/} rejected an employer's challenge to 18 voters who the employer alleged quit when they went on strike. In its decision the Board reaffirmed that under section 1157 of the Act all agricultural employees whose names appear on the applicable payroll period shall be eligible to vote.

Similar issues involving leave of absences and sick leave met with the same Board conclusions of voter eligibility in E & J Gallo Winery.^{33/}

2. Agricultural Employees

In Crown Point Arabians,^{34/} the employer argued unsuccessfully that his employees were not agricultural employees as defined by the Act. The employer operated a stud farm, maintained a stable of Arabian stallions, and offered breeding services to independent owners of mares.

31. 4 ALRB No. 47 (1978).
32. 6 ALRB No. 38 (1980).
33. 6 ALRB No. 60 (1980).
34. 6 ALRB No. 59 (1980).

The breeding, boarding, training, feeding, and general care of all horses stabled on the employer's farm convinced the Board that the employees were engaged in "raising livestock" a category of agricultural activity set forth in the Act.^{35/} In addition, certain employees who carried on the maintenance of the employer's grounds were also found to be engaged in agricultural work since such activity is incident to the employer's primary farming operation.

35. Labor Code section 1140.4(a).

III

UNFAIR LABOR PRACTICE CASES

The ALRA gives agricultural employees the right to self organization.^{1/} It also defines certain conduct on the part of employers and labor organizations, which interferes with that right, as unfair labor practices.^{2/} The ALRA empowers the Board to prevent unfair labor practices.^{3/} 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.^{4/}

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1. Cal. Lab. Code §1152 (1975).
 2. Cal. Lab. Code §§1153, 1154, 1154.5 and 1154.6 (1975).
 3. Cal. Lab. Code §§1160, et seq. (1975).
 4. Cal. Lab. Code §1160.3 (1975).

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

A. PRELIMINARY DETERMINATIONS

1. Agency

In a residential picketing case, United Farm Workers of America, AFL-CIO (California Coastal Farms),^{5/} the Board found that a union member's threats to a strikebreaking replacement worker at a public laundromat were not such a deviation from his earlier residential picketing, which had been planned and authorized by the union at a morning rally, as to warrant a finding that the agency relation had terminated.

The Board in E & J Gallo Winery, Inc.,^{6/} held that a security guard took pictures under circumstances which would lead reasonable people to believe he was carrying out the employer's policies. Furthermore, where an employer follows a practice of systematic surveillance of union organizers by its agents and guards while the organizers were speaking with employees, the intimidating effect upon employees cannot be disputed and the employer must be held responsible even if it had no knowledge of and did not authorize the specific incident involved.

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5. 6 ALRB No. 64 (1980).

6. 7 ALRB No. 10 (1981).

B. TYPES OF UNFAIR LABOR PRACTICES

1. Employer Interference With Employee Rights

a. Discharge or Refusal to Rehire for Engaging in Protected Activity

In Giannini and Del Chiaro Co.,^{7/} the Board found a violation of section 1153(a) in an employer's discharge of an employee for coming to the aid of a fellow employee in a dispute with a supervisor, as long as the employee's conduct was not indefensible in the context of the grievances involved.

In Tenneco West,^{8/} the Board upheld the hearing officer's conclusion that an employer's refusal to rehire 21 employees after a brief protected work stoppage protesting the change from a guaranteed hourly wage to a piece rate violates section 1153(a).

In Julius Goldman's Egg City,^{9/} pre-Act economic strikers who had been "rehired" pursuant to a settlement agreement with the union, were later laid off and not reinstated due to loss of seniority. The Board found that the employees had not knowingly waived their seniority rights when they were rehired under the agreement and, consequently, that stripping them of their seniority violated section 1153(a). Although the strikers signed a written notice on rehire stating that they understood they were being rehired not reinstated, the administrative law officer (ALO) found the notice was ambiguously worded and could not, therefore, form the basis of a waiver.

7. 6 ALRB No. 38 (1980).

8. 6 ALRB No. 53 (1980).

9. 6 ALRB No. 61 (1980).

In another Tenneco West case,^{10/} the Board upheld the hearing officer's finding that the employer did not discharge two employees due to their involvement in protected concerted activities or for support of a union but rather for intentional destruction of grape vines.

The Board in Hansen Farms,^{11/} overturned the hearing officer's finding that the employer had unlawfully discharged an employee because of his concerted activities. The employee had led a concerted protest against the crew's "rider", a worker assigned to assist employees who fell behind in their work. The Board found that the employee's act of insubordination in refusing to obey a work order which the employee felt was unfair and in directing an obscenity at the foreman, was the cause of her dismissal, and not her concerted activity seven weeks earlier.

The Board in Lawrence Scarrone,^{12/} overturned the hearing officer's finding that two employees had not been discharged for engaging in protected concerted activities. The Board stated that in order to establish that an employer violated section 1153(a) of the Act by discharging or otherwise discriminating against one or more employees with respect to hire, tenure, or working conditions, it must be proven by a preponderance of the evidence that the employer knew, or at least believed, that the employees had engaged in protected

10. Tenneco West, Inc. (1981) 7 ALRB No. 12.

11. 7 ALRB No. 2 (1981).

12. 7 ALRB No. 13 (1981).

concerted activity and discharged or otherwise discriminated against the employees for that reason.

The Board found that in this case one of the discharged employees had engaged in protected concerted activity when she acted as spokesperson for other employees in presenting their demands for higher wages, and that the other employee had engaged in protected concerted activity by participating in the work stoppage to support the first employee's wage demand.

In Yamamoto Farms,^{13/} the Board held that an employee's conduct involving a yelling incident and insubordination toward a foreman was not protected concerted activity and that his discharge was not based on his earlier role as spokesman for the crew during negotiations with the employer. The Board held, however, that the employer violated section 1153(a) of the Act by discharging the aforementioned worker's co-worker and friend because they, along with other co-workers, protested the first discharge and threatened to organize the workers in a protest. The employer's discharge of the co-workers tended to coerce, restrain and interfere with the rights of employees to engage in activities for their mutual aid or protection.

In Harry Carian Sales,^{14/} the Board reversed two separate hearing officers' findings of unlawful surveillance where testimony regarding the supervisor's surveillance of an organizer was confusing and inconsistent, where there was no

13. 7 ALRB No. 5 (1981).

14. 6 ALRB No. 55 (1980).

evidence that a supervisor's merely standing near an organizer conversing with a worker constituted surveillance, and where an employer lawfully documented union organizers' violation of the access regulation by photographing them, without first advising them of the violation. The Board did uphold two unlawful surveillance findings when (1) the employer's foreman followed union organizers from camp to camp (on one occasion entering an employee's kitchen) and stood within a few feet of organizers while they collected authorization cards and (2) the employer's explanation for his protracted personal appearance in the field during the access period was found to be a pretext.

In Sunnyside Nurseries,^{15/} the Board reversed a hearing officer's finding of unlawful surveillance where a supervisor attended union meetings by invitation of employees and without objection to his presence and without reporting back to the employer.

In Porter Berry Farms,^{16/} the Board held that the employer's conduct in photographing a UFW march at the employer's property, in which several of its employees participated, was isolated in nature and would not tend to interfere with the employees' section 1152 rights.

Member Ruiz dissented from the majority's conclusion that the employer's conduct in photographing the march, shortly after its anti-union speech telling the workers not to

15. 6 ALRB No. 52 (1980).

16. 7 ALRB No. 1 (1981).

participate in the march, was de minimis. Member Ruiz concluded that such conduct interfered with the employees' section 1152 rights and warranted a remedial order.

In E & J Gallo Winery, Inc.,^{17/} the Board held that the employer unlawfully surveilled and interfered with the union activities of its employees on numerous occasions during the pre-election period by photographing and closely monitoring their communications and meetings with UFW organizers. The Board concluded that neither documentation of UFW access to its employees, which the employer intended to use for a media campaign, nor a desire to identify individual organizers constituted a substantial business justification sufficient to out-weigh the negative effect on the employees' rights. The Board also found that the employer's surveillance was not justified by its asserted concern for safety as nothing in the record indicated a significant potential for violence.

Additional violations were found in Gallo regarding security guards' photographing and otherwise surveilling employees in conversations with union organizers, soliciting of employees' signatures on a form requesting union organizers to leave the employees' housing area, as well as a supervisor's attendance at and disruption of a union meeting, where nothing in the UFW's organizing activities suggested that the employer's supervisors were welcome to attend.

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17. 7 ALRB No. 10 (1981).

b. Interrogation

In Giannini & Del Chiaro Co.,^{18/} the Board affirmed the hearing officer's conclusion that a partner-supervisor's statement to a worker, "You're a Chavista," constituted unlawful interrogation because he appeared to await a reply after making the statement.

In Bee & Bee Produce, Inc.,^{19/} the Board found that an employer's post-certification polling of his employees violated section 1153(a) because the employer had no reason to think the union was not supported by a majority.

In Harry Carian Sales,^{20/} the Board affirmed a hearing officer's conclusion that circulation of employee information cards during an organizational campaign in which there was extensive evidence of anti-union animus and repeated commitment of unfair labor practices by the employer amounted to unlawful interrogation. Although the cards were innocuous on their face, the newly-added provision requiring the employee to elect whether or not the information should remain confidential could be interpreted as a mandatory disclosure of employees' attitudes toward the union and therefore tended to chill the employees' exercise of organizational rights.

c. Violence and Threats

In Harry Carian Sales,^{21/} the Board affirmed the hearing officer's conclusion that neither union violations of the access rule nor allegedly intentional blocking of the employer's truck

18. 6 ALRB No. 38 (1980).

19. 6 ALRB No. 48 (1980).

20. 6 ALRB No. 55 (1980).

21. 6 ALRB No. 55 (1980).

by union organizers' cars justified the employer's violence. Physical assaults against union organizers by the employer and his foreman during the organizational campaign, in full view of other employees, were also found to violate section 1153(a), as were other threats of discharge and deportation.

d. Grants and Promises of Benefits

Also in Harry Carian Sales, supra, the Board upheld the hearing officer's conclusion that implementing a wage increase two days after a UFW-sponsored march through Coachella Valley was an unlawful grant of a benefit and that promises of benefits made by the employer in an election night speech was likewise unlawful even though made in response to employees' questions.

e. Denial of Access

In Sunnyside Nurseries,^{22/} the Board affirmed the hearing officer's finding that the presumption in favor of post-certification access established by the Board in O. P. Murphy,^{23/} had been rebutted by evidence that the union had adequate alternative means of communication with the nursery's year round non-migratory employees through the union communication committee and by leafletting at the main gate. The employer's denial of access was therefore not unlawful.

In Harry Carian Sales,^{24/} the denial of lunch-time access from 9:30 to 10:30 a.m., which was the employees' de facto

22. 6 ALRB No. 52 (1980).
23. 4 ALRB No. 106 (1978).
24. 6 ALRB No. 55 (1980).

lunch hour, was held to be unlawful.

f. Other

In Signal Produce Co.,^{25/} the Board found that delivery of a warning letter to a union supporter and employee member of the negotiating committee after he had participated in a two-day protected work stoppage amounted to a violation of section 1153(a) and (c), and the employer was ordered to expunge the letter from the employee's personnel file.

In Harry Carian Sales,^{26/} the Board found various employer conduct during an organizational campaign to have interfered with employee rights in violation of section 1153(a), including vulgar and derogatory comments made by the employer to a union organizer and dissemination of a leaflet with a thinly disguised message likening female organizers to prostitutes. The Board also rejected the employer's contention that a foreman's refusal to allow union organizers to speak with his own daughter, a crew worker, was privileged by the family relationship.

In C. J. Maggio,^{27/} the Board reversed the decision of a hearing officer and held that attaching a UFW flag to the employer's truck was not protected activity so that discharging and laying off the responsible workers did not violate the Act. The Board reasoned that the right to engage in union activity does not extend to the right to use the employer's property,

25. 6 ALRB No. 47 (1980).

26. 6 ALRB No. 55 (1980).

27. 6 ALRB No. 62 (1980).

citing the NLRB case Cashaway Lumber, Inc.,^{28/} and rejected the hearing officer's conclusion that the relevant test of protected activity was its effect on the company's operations.

In Vessey and Company, Inc.,^{29/} the Board upheld the dismissal of a complaint by the hearing officer on the ground that the General Counsel failed to establish that posting "no trespass" signs constituted interference with, restraint, or coercion of employees in the exercise of their section 1152 rights. This failure of proof made it unnecessary to determine whether the signs were posted on private or public property.

2. Employer Assistance and Domination of Labor Organization

In E & J Gallo Winery, Inc.,^{30/} the Board held that the employer violated Labor Code section 1153(a) and (b) by its surveillance of UFW organizing activities while permitting Teamster activities to progress without interference, by providing the Teamsters with preferential access to its employees and property, by campaigning on behalf of the Teamsters and by condoning and/or assisting the Teamsters' coercive actions against UFW employee-supporters. The Board concluded that the disparate treatment was part of a pattern of unlawful assistance to the Teamsters.

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28. 202 NLRB 79 (1978).
29. 7 ALRB No. 6 (1981).
30. 7 ALRB No. 10 (1981).

3. Employer Discrimination in Conditions of Employment

a. Discharge and Layoff

In several cases the Board found the employers' justifications for the layoffs and discharge of union adherents to be pretextual. In two of the cases, J & L Farms^{31/} and Harry Carian Sales,^{32/} employment records discredited the employers' seniority defense. In the former case, evidence of a three-year break in service of a retained employee convinced the hearing officer and Board that the use of original hire dates to regulate layoffs was mere pretext to mask a discriminatory motive. In Harry Carian, the Board found that the employer's decision to lay off only those employees who did not live in company housing was motivated by the fact that they were the primary union supporters in the workforce. The employer's attempted business justification of seasonal shift in operations was discredited by evidence that the number of non-company-housed employees was radically different from the number required to be laid off for the seasonal change. Finally, Harry Carian's justification for discharging a pro-union crew was defeated where records used by the employer to prove the crew was slow were suspect, having been prepared for litigation. Other discrediting factors included suspicious timing, deviation from the normal disciplinary procedures and evidence that a bitter anti-union campaign replete with unfair

31. 6 ALRB No. 43 (1980).

32. 6 ALRB No. 55 (1980).

labor practices had been waged by the employer.

In Sunnyside Nurseries, Inc.,^{33/} the employer's failure to investigate contradictory allegations regarding an alleged altercation between a union supporter and his supervisor defeated its defense against a union supporter's discriminatory discharge claim. The Board noted that evidence of anti-union motivation is not needed to prove a violation of section 1153(c) if a legitimate business justification is not established.

Finally in Associated Produce Distributors,^{34/} the Board rejected an employer's defense that it discharged an undocumented union supporter because he could have been picked up by the Immigration & Naturalization Service (INS) which would have subjected the employer to criminal prosecution under the Federal Labor Contractor Act for employing him. The hearing officer found the defense to be pretextual, citing evidence that the employer had knowingly hired undocumented workers and lack of evidence that the employer was subject to the jurisdiction of the Farm Labor Contractor Act.

In two cases, layoffs of union supporters were found to be justified by business necessity. In Sam Andrews' Son,^{35/} the alleged discriminatee was laid off after his first day of work pursuant to a pre-existing layoff order. The employer's conceded knowledge at the time of hire of the employee's union

33. 6 ALRB No. 52 (1980).

34. 6 ALRB No. 54 (1980).

35. 6 ALRB No. 44 (1980).

activities helped to prove the employer's business justification defense, that he would have retained the employee, absent the need to cut back on labor. In Sunnyside Nurseries,^{36/} the lay-off of temporary poinsettia workers was held to be justified by seasonal considerations.

In E & J Gallo Winery, Inc.,^{37/} the Board held that the employer violated Labor Code section 1153(a) and (c) by discharging two employees because of their union activities and/or sympathies in inciting a work stoppage.

b. Refusal to Hire or Rehire

Most of the cases involving discriminatory discharge and layoffs also include allegations of discriminatory refusal to hire or rehire. The Board's conclusion in Associated Produce Distributors,^{38/} regarding the failure to rehire undocumented union supporters was identical to the resolution of the same employees' discriminatory discharge claim.

In J & L Farms,^{39/} the failure to rehire the union adherents who were found to have been unlawfully laid off was deemed justified by the fact that no tractor drivers were needed at the time rehire was sought. The fact that a supervisor had later been utilized as a tractor-driver was held not to defeat the employer's defense. Similarly, in Harry Carian Sales,^{40/} the Board affirmed the hearing officer's finding that

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- 36. 6 ALRB No. 52 (1980).
 - 37. 7 ALRB No. 10 (1981).
 - 38. 6 ALRB No. 54 (1980).
 - 39. 6 ALRB No. 43 (1980).
 - 40. 6 ALRB No. 55 (1980).

claims of discriminatory refusals to rehire unlawfully laid-off workers were not supported by evidence that work was available.

In Sam Andrews' Sons,^{41/} a violation of section 1153(c) was found not as to the lay-off of a union supporter, which was found to be justified, but by the company's failure to rehire him when the operation expanded later in the season. The Board held that the supervisor's promise to recall the discriminatee was not complied with, although the work force was expanded, and that the promise obviated the need for the employee to apply for rehire.

c. Other Forms of Discrimination

The Board held in Giumarra Vineyards, Inc.,^{42/} that the employer violated section 1153(a) and (c) of the Act by disciplining an employee for engaging in union activity and protected concerted activities. The Board found that the discriminatee was disciplined because of her leadership of a work stoppage and her conversation about the UFW. The evidence established that the discriminatee's work was "passable" and had not deteriorated prior to her receiving the disciplinary slip. In her five years of employment with the employer, the discriminatee had received no warning slips prior to the date of certain conversations about the union. The Board also found that, in regard to three other employees, the evidence was insufficient to establish that the employer issued disciplinary slips only to the leaders of a walkout in retaliation for their concerted activity.

41. 6 ALRB No. 44 (1980).

42. 7 ALRB No. 7 (1981).

The Board did find that the employees were engaged in concerted activity protected by section 1152 of the Act when they sought a meeting with Giumarra regarding their grievance. However, the Board held that the employer did not violate section 1153(a) of the Act by refusing to meet with the employees. The employer was not unreasonable in refusing to meet with the crew, and the subsequent walkout by the employees was voluntary.

4. Union or Employer Refusal to Bargain

In two cases, the Board found that the employers had not engaged in bad faith or surface bargaining, although they had committed per se violations of section 1153(e) by instituting unilateral wage changes. In Kaplan's Fruit & Produce,^{43/} the Board reversed the hearing officer's decision that negotiations which had taken 37 months to produce 32 contract provisions were in bad faith. The Board held that the UFW was partially responsible for the delay. The fact that bargaining commenced shortly after certification, that the employer offered full counter-proposals at the second meeting and that the parties met 37 times and agreed to 32 contract provisions evidenced the employer's good faith, despite findings of unilateral wage changes and discriminatory discharges. In the same case, charges of bad faith bargaining by the union, allegedly evidenced by the union's picketing of the employer's produce stand, were rejected.

43. 6 ALRB No. 36 (1980).

In John F. Adam, Jr.,^{44/} the duty to bargain was held not to be tolled by the appeal of an unfair labor practices decision.

In Signal Produce Co.,^{45/} the duty to bargain over changes in employment conditions was held to begin at the time the union won a ballot tally and continued during the pendency of post-election objections.

In Sunnyside Nurseries,^{46/} the Board reversed the hearing officer's decision that an employer had no duty to bargain regarding the hiring after an election but before certification of a crew of temporary poinsetta workers.

In Colace Brothers, Inc.,^{47/} the Board reversed a hearing officer's decision that an employer illegally failed to bargain, during a strike and after expiration of a collective bargaining agreement, concerning changes in recall procedures and notices. The Board held that during an economic strike, the duty to bargain does not extend to decisions regarding the hiring of temporary replacement workers.

In Tex-Cal Land Management Inc.,^{48/} the Board upheld the hearing officer's decision that the employer had violated section 1153(e) and (a) by refusing to sign the final typed copy of a collective bargaining contract it had previously agreed to and initialed. The Board held that a refusal by the employer to sign a valid collective bargaining contract

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- 44. 6 ALRB No. 40 (1980).
 - 45. 6 ALRB No. 47 (1980).
 - 46. 6 ALRB No. 52 (1980).
 - 47. 6 ALRB No. 56 (1980).
 - 48. 7 ALRB No. 11 (1981).

reached by the parties is per se violative of the duty to bargain in good faith since such conduct tends to be especially disruptive of the collective bargaining process.

5. Union Unfair Labor Practices

In a series of cases growing out of strike activity in the Salinas and Imperial Valleys in the summer of 1979, the Board upheld the hearing officers' decisions that the union had violated section 1154(a)(1) by harassing and picketing in large numbers the residences of replacement workers or potential replacement workers. In the first case UFW, AFL-CIO (Jojola),^{49/} filed by the Chief of Police of El Centro, the Board expressly adopted the NLRB case finding a section 8(b)(1) violation in union picketing and demonstrating in front of homes of non-striking employees.^{50/} The Board also cited "our tradition of respect for the domestic sanctuary" and two U.S. Supreme Court cases upholding state-employment relations board prohibition of union picketing of employee domiciles.^{51/} Member Ruiz, concurring, cited the equal protection analysis of a new United State Supreme Court case,^{52/} arguing that constitutionally permissible restrictions on speech may not be based on either the content or subject matter of the speech. Member McCarthy, also concurring, argued that

49. 6 ALRB No. 58 (1980).

50. United Mechanics Union Local 150-F (Furworkers), 151 NLRB No. 386 (1975).

51. Allen Bradley Local 1111 v. Wisconsin Labor Relations Board, (1942) 315 U.S. 740 and Auto Workers v. Wisconsin Labor Relations Board, (1956) 351 U.S. 266.

52. Carey v. Brown, (1980) 100 S. Ct. 2286.

residential picketing is per se coercive. In two other residential picketing cases,^{53/} the Board rejected the hearing officer's suggestion that the Board establish time, place and manner limitations on residential picketing and announced its intention to review residential picketing cases on a case-by-case basis.

In the case brought against the UFW by Admiral Packing Co.,^{54/} the Board held that the test to be applied in the determination of whether or not a labor organization has committed a section 1154(a)(1) violation is whether the labor organization's conduct reasonably tends to coerce or restrain employees in their statutory right to engage in, or refrain from engaging in, union activities or other protected concerted activities. The Board concluded that neither a union's intent nor the subjective effect of its conduct on employees is relevant to a determination as to whether the union's conduct constituted an unfair labor practice.

C. REMEDIAL ORDERS

1. Backpay

In J & L Farms,^{55/} the Board rejected the hearing officer's use of the NLRB's F. W. Woolworth Co.^{56/} formula for computing

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53. UFW, AFL-CIO, (Salinas Police Department), (1980) 6 ALRB No. 63 and UFW, AFL-CIO, (California Coastal Farms), (1980) 6 ALRB No. 64.
54. UFW, AFL-CIO (Admiral Packing Co.), (1981) 7 ALRB No. 3.
55. 6 ALRB No. 43 (1980).
56. F. W. Woolworth Co., 90 NLRB 289 (1950).

back pay in favor of computation on a daily basis in order to better reflect the turnover and erratic patterns of agricultural employment.

2. Access

Pursuant to the holding of the Fourth District Court of Appeal in its order remanding the remedy in Prohoroff Poultry Farms to the Board, the order formerly providing for a specified period of expanded access, unlimited as to number of organizers, was amended to provide for two organizers per 15 workers.^{57/}

3. Cease and Desist Order

Pursuant to remand from the Fifth District Court of Appeal, the Board reconsidered its broad cease and desist order in Louis Caric & Sons and modified it.^{58/} Following NLRB precedent, the Board announced its intention to issue broad orders only when the respondent demonstrates a proclivity to violate the Act.

4. Make-Whole

In six cases, the Board considered the appropriateness of ordering make-whole relief in technical refusal to bargain situations in the light of the California Supreme Court's holding in J. R. Norton v. ALRB.^{59/} In three of the cases, the make-whole remedy was deemed appropriate and in three it was rejected. In Ranch No. 1, Inc.^{60/} make-whole was granted because the employer's bad faith was inferred from the fact that it had presented no

57. 6 ALRB No. 45 (1980).

58. 6 ALRB No. 50 (1980).

59. 26 Cal 3d. 1 (1979).

60. 6 ALRB No. 37 (1980).

evidence that the union's violation of the access rule had any effect on the election, despite the fact that the Board did grant the employer's motion to deny access, filed simultaneously with its objection petition.

In John F. Adam, Jr.,^{61/} the Board, on remand, re-affirmed a make-whole award where there had been no "technical" refusal to bargain because the employer's only excuse for refusing to bargain was its erroneous argument that judicial appeal of an unfair labor practice decision tolled the duty to bargain. The Board noted that granting make-whole relief in such a case would not conflict with the policy fostering judicial relief that the Supreme Court was concerned with in J. R. Norton.

The Board ordered make-whole in Ron Nunn,^{62/} finding that the employer was not in a reasonable litigation posture in objecting to the election. The objections consisted of challenges to the showing of interest and to the validity and constitutionality of several regulations and statutory provisions, jurisdictional challenges, factual allegations unsupported by declarations, and allegations of isolated incidents of misconduct which could not possibly have affected the election.

In the other three cases, the Board declined to order the make-whole remedy, finding that the litigation postures of the employers in their election objections were reasonable. In Triple E. Produce Corp.,^{63/} the Board admitted its erroneous

61. 6 ALRB No. 40 (1980).

62. 6 ALRB No. 41 (1980).

63. 6 ALRB No. 46 (1980).

failure to properly consider the effect of threats alleged to have been made by union organizers while in violation of the access rule, due to the employer's failure to state the threats as a separate objection from the access violation.

In Bee & Bee Produce,^{64/} the Board held that it was reasonable for the employer to believe that the union's violation of the express terms of a re-run election settlement agreement with the union which had been approved by the Board was grounds to set aside the election.

In Waller Flowerseed,^{65/} the employer had argued that because the election was held after the seven-day period had run, the Board did not have jurisdiction to conduct the election. During the pendency of the appeal, Radovich v. ALRB was decided holding to the contrary.^{66/} The Board held that although Court of Appeals' decisions are not binding on other districts, once Radovich was decided, the employer's argument could not support a continuing refusal to bargain, and it ordered the make-whole remedy to date from the issuance of Radovich.

In both Ranch No. 1,^{67/} and Ron Nunn,^{68/} the Board ordered the backpay make-whole computations to be made pursuant to an updated study of the relevant local union contract rates.

The issue of ordering make-whole for a per se refusal to bargain was addressed by the Board in Kaplan's Fruit &

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- 64. 6 ALRB No. 48 (1980).
 - 65. 6 ALRB No. 51 (1980).
 - 66. 72 Cal. App. 3d. 36 (1977).
 - 67. 6 ALRB No. 37 (1980).
 - 68. 6 ALRB No. 41 (1980).

Produce Company.^{69/} Although the Board indicated that the make-whole remedy might be available where bad faith was established, it held that it would be inappropriate and largely ineffectual in that case, due to the unilateral wage raises which had already occurred.

5. Bargaining Order and Certification

For the first time, in Harry Carian Sales,^{70/} the Board certified the union and imposed a bargaining order on the employer after the union had lost an election. Affirming the decision of the hearing officer, the Board adopted the NLRB Gissel^{71/} remedy and held that "where the union had obtained authorization cards from a majority of the unit employees and the employer is found to have committed serious unfair labor practices that interfere with the election processes and tend to preclude the holding of a fair (second) election, certification and a bargaining order are appropriate remedies." The ALRA prohibition of bargaining with a non-certified union was analyzed in the light of the past abuses it sought to cure (sweetheart contracts) and found not to preclude the Gissel remedy.

6. Extension of Certification

In Ranch No. 1, Inc.,^{72/} the Board ordered the extension of the union's certification for "one year from the date on which the employer commences to bargain in good faith" as part of a make-whole remedy for bad faith refusal to bargain with a

69. 6 ALRB No. 36 (1980).

70. 6 ALRB No. 55 (1980).

71. Gissel Packing Co. v. NLRB, (1969) 395 U.S. 575, 594.

72. 6 ALRB No. 37 (1980).

certified union.

D. ATTORNEYS FEES AND COSTS

In Tenneco West, Inc.,^{73/} the Board rejected the hearing officer's recommendation to award litigation costs and attorney's fees to the employer where the General Counsel had not established a prima facie case. The Board found that the General Counsel's issuance of the complaint was based on his reasonable belief that the allegations therein were true and held that the conduct of the litigation by the General Counsel was not frivolous. The Board did not reach the question of whether it has authority to award litigation costs and attorney's fees to a respondent exonerated of unfair labor practices alleged in a complaint, a question left open in S. L. Douglass.^{74/}

E. PROCEDURE

1. Limitations

In Ron Nunn Farms^{75/} and Julius Goldman's Egg City,^{76/} the Board rejected the employers' statute of limitations defenses, finding that the unfair labor practices charged, namely, refusal to bargain and forfeiture of seniority of discriminatees on re-instatement, were continuing violations.

2. Dismissal of Complaint or Charges

In Sam Andrews' Sons,^{77/} the Board rejected the hearing

73. 7 ALRB No. 12 (1981).

74. 3 ALRB No. 59 (1977).

75. 6 ALRB No. 41 (1980).

76. 6 ALRB No. 61 (1980).

77. 6 ALRB No. 44 (1980).

officer's recommendation that charges settled prior to the hearing be dismissed. The Board reasoned that charges are not pleadings or allegations in a complaint and thus are not subject to dismissal by the hearing officer. Severance of the two settled cases sua sponte by the hearing officer or on motion of the General Counsel was suggested as the appropriate course of action.

In Tenneco West, Inc.,^{78/} the Board upheld the hearing officer's recommendation to dismiss the complaint finding that the General Counsel did not meet his burden of establishing a prima facie case of discriminatory discharge.

3. Pre-Emption

In Waller Flowerseed Co.,^{79/} the Board considered the effect of the Fifth District Court of Appeal's decision in Radovich v. ALRB^{80/} on an employer's duty to bargain. The Board held that the Radovich decision, which rejected the employer's contention that the seven day election requirement was jurisdictional, although not binding on other courts in other districts, put the employer on notice that its argument was not reasonable, subjecting it to a make-whole order dating from the issuance of the Court of Appeal's decision.

4. Pleadings and Notice

In two cases the Board reversed the hearing officer's findings of unfair labor practices, not properly pleaded in the

78. 7 ALRB No. 12 (1981).

79. 6 ALRB No. 51 (1980).

80. 72 Cal. App. 3d. 36 (1979).

complaint, which involved conduct substantially different from that pleaded and which were litigated during the representation phase of the hearing without the presence of the General Counsel.^{81/} In one case, Harry Carian Sales, the Board noted segregation of representation and unfair labor practice issues is not always necessary, and suggested that "the approach may sometimes be detrimental to a full exploration of the circumstances surrounding the election" and may lead employers to believe the conduct litigated during the representation part of the hearing could only be the basis for setting aside the election, and not for a finding of violations of the Act.

On remand from the Fourth District Court of Appeal, the Board in Signal Produce Co.^{82/} reconsidered whether the employer's unilateral grant of a wage increase, an issue not pleaded in the complaint, had been fully litigated at the unfair labor practice hearing. The Board held that the issue had not been fully litigated as a separate violation of section 1153(e) because the hearing officer had admitted the evidence, over objection by the employer, for the limited purpose of background information regarding the surface bargaining violation, which was specifically alleged in the complaint.

In Porter Berry Farms,^{83/} during the course of the hearing, the General Counsel was granted leave to amend the complaint to allege that the employer unlawfully gave a

81. Giannini & Del Chiaro, (1980) 6 ALRB No. 38, and Harry Carian Sales, (1980) 6 ALRB No. 55.

82. 7 ALRB No. 4 (1981).

83. 7 ALRB No. 1 (1981).

threatening speech and engaged in unlawful surveillance of its employees.

The Board found that the ALO's granting of the motion to amend the complaint to add another violation of section 1153(a) was proper, since the charge and original complaint included a section 1153(a) allegation and the parties had received adequate notice of the new allegation.

IV

AGRICULTURAL LABOR RELATIONS BOARD LITIGATION

A. INTRODUCTION

Fiscal year 1980-81 saw a slight decline in court litigation from the 1979-80 period. There were a total of 30 court decisions, 28 of which were decisions of the Courts of Appeal. Of that 28, 25 were on petitions for review of final Board orders. The appellate courts issued 10 published opinions, one of which was later ordered unpublished by the Supreme Court, which itself issued two published opinions.

In this fiscal year, employers sought review from adverse Board decisions in 90 percent of the cases, accounting for ^{1/}19 of the 21 petitions for review filed. This marks an

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1. Ranch No. 1 (1980) 6 ALRB No. 37, Giannini & Del Chiaro (1980) 6 ALRB No. 38, John F. Adam Jr. & Richard E. Adam (1980) 6 ALRB No. 40, Ron Nunn Farms (1980) 6 ALRB No. 41, J & L Farms (1980) 6 ALRB No. 43, Sam Andrews Sons (1980) 6 ALRB No. 44, Prohoroff Poultry Farms (1980) 6 ALRB No. 45, Triple E Produce (1980) 6 ALRB No. 46, Signal Produce Co. (1980) 6 ALRB No. 47, Bee & Bee Produce Co. (1980) 6 ALRB No. 48, Tenneco West (1980) 6 ALRB No. 53, Associated Produce Dist. (1980) 6 ALRB No. 54, Harry Carian Sales (1980) 6 ALRB No. 55, Signal Produce (1981) 7 ALRB No. 4, Giumarra Vineyards (1981) 7 ALRB No. 7, E & J Gallo Winery (1981) 7 ALRB No. 10, Tex-Cal Land Mgt. (1981) 7 ALRB No. 11, Tenneco West (1981) 7 ALRB No. 12, Lawrence Scarrone (1981) 7 ALRB No. 13.

increase over the 70 percent review rate in fiscal year 1979-80. The United Farm Workers of America, AFL-CIO filed petitions for review of two Board decisions.^{2/} In 13 cases, either the unfair labor practice complaint was dismissed, the Board decision was issued pursuant to court remand and simply became part of another proceeding, or no person sought review of the decision.^{3/}

Compilations of the Board's litigation record during this fiscal year and throughout the agency's six-year history appear in Appendixes E and F.

B. THE CALIFORNIA SUPREME COURT

In fiscal year 1980-81, the Supreme Court decided two cases involving review of Board decisions: Vista Verde Farms v. Agricultural Labor Relations Bd.^{4/} and Andrews v. Agricultural Labor Relations Bd.^{5/}

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2. Kaplan's Fruit & Produce Co. (1980) 6 ALRB No. 36, Bee & Bee Produce, Inc. (1980) 6 ALRB No. 48.
 3. Louis Caric & Sons (1980) 6 ALRB No. 50, Waller Flowerseed Co. (1980) 6 ALRB No. 51, Sunnyside Nurseries (1980) 6 ALRB No. 52, Colace Brothers (1980) 6 ALRB No. 56, Abatti Farms, Inc. (1980) 6 ALRB No. 57, United Farm Workers (Marcel Jojola) (1980) 6 ALRB No. 58, Julius Goldman's Egg City (1980) 6 ALRB No. 61, C. J. Maggio (1980) 6 ALRB No. 62, United Farm Workers (Salinas Police Dept.) (1980) 6 ALRB No. 63, United Farm Workers (California Coastal Farms) (1980) 6 ALRB No. 64, Porter Berry Farms (1981) 7 ALRB No. 1, United Farm Workers (Admiral Packing Co.) (1981) 7 ALRB No. 3, Yamamoto Farms (1981) 7 ALRB No. 5.
 4. 29 Cal.3d 307 (1981).
 5. 28 Cal.3d 781 (1981).

In Vista Verde Farms (1977) 3 ALRB No. 91, the Board held that an agricultural employer could be held liable for his labor contractor's conduct under both traditional "quasi-agency" principles found in federal precedent and, alternatively, under a "strict liability" interpretation of Labor Code section 1140.4(c).

The High Court upheld the Board's determination, ruling that an employer may be held liable for conduct which employees may reasonably believe was either engaged in on the employer's behalf or reflected the employer's policy, even when it is not shown that the employer actually directed, authorized, or ratified the improper conduct--and, even when the conduct is that of a labor contractor. The Court held that Labor Code section 1140.4(c), which excludes labor contractors from the term "agricultural employer," cannot be read to shield labor contractor misconduct from Board scrutiny. However, the Court also declined to accept the Board's "strict liability" theory, stating that section 1140.4(c), which deems the employer engaging the labor contractor to be the employer "for all purposes" under the Act, cannot be interpreted as creating a more stringent standard of employer liability for labor contractor misconduct than is applicable to similar misconduct by other persons, such as supervisors.

In Andrews v. Agricultural Labor Relations Bd., the Supreme Court did not reach the merits of the employer's challenge to the Board's unfair labor practice order. In the Court of Appeal, the employer had argued that the ALO should

have been disqualified because of an alleged appearance of bias stemming from the fact that he was a temporary hearing officer, simultaneously engaged in private practice. The employer argued that the ALO's practice was of a nature as would cast doubt upon his ability to be impartial. The employer contended that, because of the ALO's failure to disqualify himself, the entire decision of the Board was void. The Court of Appeal agreed,^{6/} and the Supreme Court ordered the case transferred to itself for consideration.

The Supreme Court held that the ALO did not err in refusing to disqualify himself, rejecting the employer's contentions that the Board's regulation, like Code of Civil Procedure section 170.6, gave the employer the right to automatically disqualify the hearing officer. The Court also held that, even if a philosophical viewpoint could be inferred from the nature of the ALO's practice or his clients--a fact which the Court was unwilling to concede--that would be no ground for disqualification.

The High Court ruled that, even if it were accepted that a judicial officer's political or legal views could create an appearance of bias, mere appearance of bias is not sufficient for disqualification. This is true even if the judicial officer is not permanent, but engages in a part-time law practice.

6. 2 Civ. No. 51483 (Jan. 24, 1980), hg. granted March 27, 1980.

The Supreme Court retransferred the case to the Court of Appeal for consideration of the merits of the employer's challenge to the Board's order.

C. REVIEW OF BOARD DECISIONS IN THE COURT OF APPEAL

The intermediate appellate courts reviewed a total of 23 Board decisions in fiscal year 1980-81.^{7/} Published opinions enforcing the Board's order in whole or in part issued in five cases. In a sixth case, the Court of Appeal initially issued a published opinion enforcing the Board's order, but that opinion was ordered unpublished by the Supreme Court.^{8/} The remaining 17 appellate court decisions sustained the Board's action by summarily denying the petition for review.

Petitions for hearing were filed in 14 of these 23 cases; all petitions were denied.

1. Published Appellate Court Decisions

In George Arakelian Farms, Inc. v. Agricultural Labor Relations Bd.,^{9/} the Court of Appeal for the Fourth Appellate District, Division Two, by a 2-1 vote, reversed all but one of the Board's findings of unfair labor practices. The most significant aspect of the decision is its ruling that "stronger" evidence may be required to support a Board finding when that finding is contrary to the interim recommendation of the ALO.

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7. The two Supreme Court decisions were also proceedings to review Board decisions.
 8. Sunnyside Nurseries, Inc. v. Agricultural Labor Relations Bd., 1 Civ. No. 46725 (Mar. 19, 1981).
 9. 111 Cal.App.3d 258 (1980), reversing in part 5 ALRB No. 10 (1979), hg. den. Jan. 14, 1981.

In Merrill Farms v. Agricultural Labor Relations Bd.,^{10/} the Court of Appeal for the First Appellate District, Division Three, affirmed the Board's finding that a supervisor committed an unfair labor practice. However, the court annulled the Board's order for the reason that there was no evidence that the supervisor's unlawful statement was anything more than an isolated, off-hand comment, heard only by one crew. This opinion, too, issued on a 2-1 vote.

In Jasmine Vineyards, Inc. v. Agricultural Labor Relations Bd.,^{11/} the Court of Appeal for the Fifth Appellate District, also in a 2-1 decision, affirmed the Board's decision that the employer had wrongfully discriminated against one union and in favor of another. Rejecting the employer's challenge to the remedy, the court also ruled that the Board must be given relatively free rein in determining which remedy will best effectuate the purposes of the Act; only when remedies are patently outside the Board's authority can a reviewing court interfere.

The Board's remedial authority was also addressed in another decision of the Fifth Appellate District, M. B. Zaninovich v. Agricultural Labor Relations Bd.^{12/} There, the Court of Appeal found that, given the facts in that case, the Board's order providing for mailing and reading, on company time, of a notice

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10. 113 Cal.App.3d 176 (1980), vacating 5 ALRB No. 58 (1979), hg. den. Mar. 13, 1981.
 11. 113 Cal.App.3d 968 (1980), enforcing 6 ALRB No. 17 (1980).
 12. 114 Cal.App.3d 665 (1981), affirming 4 ALRB No. 70 (1978), mod. in part 6 ALRB No. 23 (1980), hg. den. Mar. 11, 1981.

to employees was punitive rather than remedial. The court observed that the conduct which was the basis for the Board's order was isolated and that, in the absence of evidence from which it reasonably may be inferred that other workers acquired knowledge of the misconduct, it cannot be said that an unfair labor practice had the effect of inhibiting other employees in the future exercise of their rights under the Act. The court, however, did affirm the Board's finding that the employer wrongfully refused to rehire three employees.

Montebello Rose Co. Inc. v. Agricultural Labor
13/ Relations Bd. was another decision of the Court of Appeal for the Fifth Appellate District. The opinion is the first published opinion treating the issue of surface bargaining. A unanimous court affirmed the Board's finding that the employer had bargained in bad faith and had engaged in discriminatory discharges of employees. In addition to these findings, the court disposed of other important issues: (1) the court affirmed the Board's ruling that an employer's duty to bargain with a certified union continues after the expiration of the initial certification year; (2) the court held that the six-month limitation period (Lab. Code, sec. 1160.2) did not apply to restrict the period during which the make-whole remedy could be imposed; (3) the court ruled that communications between an employer and its attorney-negotiator relating to the conduct of negotiations are not privileged.

13. 119 Cal.App.3d 1 (1981), enforcing 5 ALRB No. 64 (1979), hg. den. Aug. 7, 1981.

2. Unpublished Appellate Court Opinions

Only one unpublished opinion reviewing a Board order issued in fiscal year 1980-81, Sunnyside Nurseries, Inc. v. Agricultural Labor Relations Bd.^{14/} That decision, a 2-1 decision by the Court of Appeal for the First Appellate District, Division Three, affirmed the Board's determination that steps taken by ALRB agents in 1975 had effectively advised the employer's Korean workers of voting procedures, even though Korean language ballots failed to arrive on time for the election. The court also affirmed the Board's determination that the union had made no improper racial appeal during the election campaign. The case was remanded to the Board to determine whether to award make-whole.

3. Decisions Summarily Denying Petitions For Review

As has been the case in previous years, most appellate court decisions upholding Board orders came in the form of decisions summarily denying petitions for review of Board orders. This procedure was approved by the Supreme Court in Tex-Cal Land Management, Inc. v. Agricultural Labor Relations Bd.^{15/} Although a decision summarily denying a petition for review cannot be cited as precedent, the decision does constitute a ruling on the merits.^{16/}

14. 1 Civ. No. 46725 (Mar. 18, 1981). The decision initially issued certified for publication but was ordered unpublished by the Supreme Court.

15. 24 Cal.3d 335 (1979).

16. Consumers Lobby Etc. v. Public Utilities Commission
(1979) 25 Cal.3d 891.

In Frank Lucich Co., Inc. v. Agricultural Labor
17/
Relations Bd. and High & Mighty Farms v. Agricultural Labor
18/
Relations Bd., the courts refused to overturn the Board's findings that the employers had unlawfully denied access to and had assaulted organizers. The latter case also involved an unlawful discriminatory discharge for union activities.

In Louis Caric & Sons v. Agricultural Labor Relations
19/
Bd., the Court of Appeal refused to reverse the Board's ruling that the employer engaged in unlawful surveillance and gave the Teamsters Union unlawful assistance. Earlier the court had remanded the case to the Board to determine whether the Board's cease and desist order was overbroad. After remand, the Board issued a supplementary decision narrowing the scope of the cease and desist order. The modified order was upheld
20/
by the court.

In five cases, Board findings that employers had unlawfully discriminated against employees for union activities were upheld: Tex-Cal Land Mgt., Inc. v. Agricultural Labor
21/
Relations Bd., Louis Caric & Sons v. Agricultural Labor
22/
Relations Bd., California Coastal Farms v. Agricultural Labor

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17. 4 ALRB No. 89 (1978), review den. by Ct. App., 5th Dist., Aug. 11, 1980.
 18. 6 ALRB No. 34 (1980), review den. by Ct. App., 4th Dist., Div. 2, Oct. 17, 1980, hg. den. Nov. 26, 1980.
 19. 4 ALRB No. 108 (1978), remanded by Ct. App., 5th Dist., Aug. 13, 1980.
 20. 6 ALRB No. 50 (1980), review den. by Ct. App., 5th Dist., Oct. 16, 1980.
 21. 5 ALRB No. 29 (1979), review den. by Ct. App., 5th Dist., Aug. 12, 1980.
 22. 6 ALRB No. 2 (1980), review den. by Ct. App., 5th Dist., Oct. 27, 1980.

23/
Relations Bd., Sam Andrews' Sons v. Agricultural Labor Relations
24/ Bd., and J & L Farms v. Agricultural Labor Relations Bd. 25/

In Pappas & Co. v. Agricultural Labor Relations
26/ Bd., Jack Bros. & McBurney v. Agricultural Labor Relations
27/ Bd., and Miranda Mushroom v. Agricultural Labor Relations
28/ Bd., the appellate courts refused to overturn Board decisions that the employers had unlawfully discriminated against employees for engaging in protected concerted activities.

Orders of summary denial issued in two cases in which the Board found that the employees had engaged in unlawful surface bargaining: O. P. Murphy & Sons v. Agricultural Labor
29/ Relations Bd. and AS-H-NE Farms v. Agricultural Labor Relations
30/ Bd. In both cases, the Board had ordered the companies to make their employees whole for losses resulting from the unlawful refusal to bargain.

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23. 6 ALRB No. 25 (1980), review den. by Ct. App., 1st Dist., Div. 4, Dec. 17, 1980, hg. den. Jan. 14, 1981.
 24. 6 ALRB No. 44 (1980), review den. by Ct. App., 2nd Dist., Div. 1, Feb. 17, 1981.
 25. 6 ALRB No. 43 (1980), review den. by Ct. App., 1st Dist., Div. 1, May 18, 1981, hg. den. June 17, 1981.
 26. 5 ALRB No. 52 (1979), review den. by Ct. App., 5th Dist., Oct. 16, 1980, hg. den. Nov. 26, 1980.
 27. 6 ALRB No. 12 (1980), review den. by Ct. App., 4th Dist., Div. 1, Nov. 13, 1980, hg. den. Dec. 24, 1980.
 28. 6 ALRB No. 22 (1980), review den. by Ct. App., 1st Dist., Div. 1, April 6, 1981.
 29. 5 ALRB No. 53 (1979), review den. by Ct. App., 1st Dist., Div. 2, June 18, 1980, hg. den. July 16, 1980.
 30. 6 ALRB No. 9 (1980), review den. by Ct. App., 5th Dist., Oct. 16, 1980, hg. den. Nov. 12, 1980.

The make-whole remedy as applied in "technical" refusal to bargain cases was also the subject of appellate court litigation during this fiscal year. In the 1979 case of J. R. Norton Co. v. Agricultural Labor Relations Bd.,^{31/} the Supreme Court ruled that the make-whole provision of Labor Code section 1160.3, authorizing the Board to order an employer to make its employees whole for injury resulting from unlawful refusal to bargain, may not be applied as a matter of course in technical refusal to bargain cases--cases in which an employer refuses to bargain for the sole purpose of obtaining judicial review of an election certification. The Court remanded the case to the Board for establishment of standards governing award of make-whole relief in such cases.

Pursuant to the Supreme Court's remand, the Board issued a supplementary decision in J. R. Norton,^{32/} setting forth a two-pronged test for determining the propriety of a make-whole award in "technical" cases: First, was the employer's litigation posture reasonable? and, second, did the employer's refusal to bargain represent a good faith pursuit of judicial review? The employer sought review of the Board's decision in the Court of Appeal, but the court refused to overturn the Board's decision.^{33/}

31. 24 Cal.3d 335 (1979).

32. 6 ALRB No. 26 (1980).

33. 6 ALRB No. 26 (1980), review den. by Ct. App., 4th Dist., Div. 1, Jan. 7, 1981, hg. den. Mar. 14, 1981.

The Board's subsequent award of make-whole relief in technical refusal to bargain situations has been affirmed by two appellate courts: Kyutoku Nursery v. Agricultural Labor Relations Bd.^{34/} and C. Mondavi & Sons v. Agricultural Labor Relations Bd.^{35/}

The Court of Appeal also upheld the Board's certification in Charles Malovich v. Agricultural Labor Relations Bd.^{36/}, a technical refusal to bargain case in which the Board declined to include make-whole relief in its remedial order.

D. REVIEW OF OTHER BOARD ACTIONS

1. Injunctive Relief Under Section 1160.4

Four appellate court decisions addressed matters other than final orders of the Board in unfair labor practice proceedings. Three related to issues arising in superior court proceedings for injunctive relief pursuant to Labor Code section 1160.4.

In California Coastal Farms v. Agricultural Labor Relations Bd.^{37/}, the Board had obtained an injunction limiting residential picketing by striking UFW employees. The employer contending that the superior court should have prohibited residential picketing entirely, sought review in the Court of

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- 34. 6 ALRB No. 32 (1980), review den. by Ct. App., 1st Dist., Div. 3, Dec. 12, 1980, hg. den. Mar. 2, 1981.
 - 35. 6 ALRB No. 30 (1980), review den. by Ct. App., 1st Dist., Div. 1, May 20, 1981, hg. den. June 24, 1981.
 - 36. 6 ALRB No. 29 (1980), review den. by Ct. App., 5th Dist., June 18, 1981.
 - 37. 111 Cal.App.3d 734 (1980).

Appeal. It argued that the Board could not seek injunctive relief limiting residential picketing in the absence of a regulation governing that conduct. The court rejected the employer's argument, holding that nothing in the language of the Agricultural Labor Relations Act indicates that the Board must control picketing--or any other unfair labor practice--by regulation of general application, rather than by adjudication on a case-by-case basis.

In Agricultural Labor Relations Bd. v. Ruline Nursery Co.,^{38/} the Board has successfully sought injunctive relief restraining the employer from taking disciplinary actions against certain employees who had participated in ALRB proceedings. The company sought review of the injunction in the Court of Appeal. The court affirmed the superior court order and set forth the standards to be applied by superior courts in evaluating Board petitions for provisional relief pending the outcome of the administrative proceedings.

In Agricultural Labor Relations Bd. v. California Coastal Farms,^{39/} the Board had obtained an injunction limiting the terms and conditions under which union representatives could take access to an employer's property for the purpose of communicating with non-striking employees. As it had with respect to residential picketing, the employer sought review of the injunction on the ground that, in the absence of a

38. 115 Ca.App.3d 1005 (1981).

39. 1 Civ. No. 47320. Hearing was granted by the Supreme Court after the close of the fiscal year, thereby vacating this previously published opinion.

regulation governing "strike access," the superior court was without jurisdiction to issue an order which permitted even limited strike access. Declining to follow the reasoning in the residential picketing case, however, this division of the Court of Appeal accepted the employer's argument and vacated the injunction.^{40/}

2. Superior Court Interference With
Pending Unfair Labor Practice Proceedings

In California Coastal Farms v. Doctoroff,^{41/} the Court of Appeal reviewed a superior court's refusal to interfere in pending unfair labor practice proceedings. The employer had sought disqualification of the ALO, and, when the officer refused to disqualify himself, the employer sought injunctive relief. The superior court refused to issue an injunction on the ground of a lack of jurisdiction. The Court of Appeal affirmed, holding that a party seeking judicial review of an unfair labor practice proceeding must first exhaust all available administrative remedies, and thereafter take any complaint to the Court of Appeal in a proceeding under Labor Code section 1160.8.

40. In an unpublished decision, the court relied upon its decision in Agricultural Labor Relations Bd. v. California Coastal Farms to vacate an injunction which restrained the employer from denying reasonable limited access to union representatives for the purpose of communicating with non-striking employees.
(Agricultural Labor Relations Bd. v. Bruce Church, Inc.
(1981 1 Civ. No. 47703.)

41. 117 Cal.App.3d 156 (1981).

E. FEDERAL COURT ACTIONS

One new federal court action was filed in fiscal year 1980-81, Fresh International Corp., et al. v. Agricultural Labor Relations Bd.^{42/} The employer in that action sought an injunction to restrain pending unfair labor practice proceedings on the ground that the information subpoenaed by the General Counsel and the inquiry to be made by the Board were preempted by the Federal Employee Retirement Income Security Act of 1974 (ERISA). The General Counsel had charged that Fresh International Corporation and Bruce Church, Inc., had unlawfully made employer contributions to employee benefit plans without first negotiating with the certified union.

On February 6, 1981, Judge Earl Gilliam denied the requested Temporary Restraining Order.

F. INJUNCTION LITIGATION

1. Injunctions Under Section 1160.4

Section 1160.4 empowers the Board, in its discretion, after issuance of an unfair labor practice complaint against an employer or a labor organization, to petition a superior court for appropriate temporary relief or restraining order in aid of the unfair labor practice proceeding pending before the Board. In fiscal year 1980-81, the Board filed nine petitions for temporary relief.

42. Civ. No. 81-0116-G(M) (S.D. Cal.).

In Agricultural Labor Relations Bd. v. Sugar Loaf Berries,^{43/} the superior court issued a temporary restraining order prohibiting the employer from hiring, or continuing in its employ, new workers until the employer first offered the positions to 60 members of a crew which the employer had allegedly discharged for engaging in a work stoppage. The employer stipulated to entry of a preliminary injunction.

In Agricultural Labor Relations Bd. v. Western Ag. Properties, Inc.,^{44/} the superior court found reasonable cause to believe that the employer had unlawfully discriminated against employees for participating in ALRB proceedings, a violation of Labor Code section 1153(d). The General Counsel had alleged that the employer retaliated against these employees by refusing to permit them to camp on company property--a practice which had been permitted in the past. The superior court issued a temporary restraining order restraining the employer from prohibiting these employees from camping on property not yet developed into avocado groves and further prohibiting the employer from discharging employees who did camp on the undeveloped property. A preliminary injunction issued without opposition from the employer.

In Agricultural Labor Relations Bd. v. Holtville Farms, Inc. and Growers Exchange, Inc.,^{45/} the superior court granted the Board's request for an injunction restraining the

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- 43. Monterey County Superior Court No. 76219.
 - 44. San Diego County Superior Court No. N17270.
 - 45. Imperial County Superior Court No. 2606.

two companies (alleged by the General Counsel to be joint employers) from refusing to bargain with the certified labor organization about the effects of going out of business, from subcontracting bargaining unit work, and from refusing to reinstate employees who had been laid off as a result of the decision to subcontract bargaining unit work.

In Agricultural Labor Relations Bd. v. Ukegawa Brothers, Inc.,^{46/} the Board sought an injunction to restrain the employer from preventing UFW organizers from entering or crossing property owned or leased by the employer. The organizers sought access through this property in order to reach Ukegawa employees who were camped in adjoining brush and hillsides. The General Counsel and the employer negotiated an access agreement, obviating the need for a temporary restraining order.

In two cases, Agricultural Labor Relations Bd. v. J. R. Norton Co.^{47/} and Agricultural Labor Relations Bd. v. D'Arrigo Brothers,^{48/} the superior court declined to grant the Board's request for injunctive relief to restrain the employers from continuing to give effect to wage increases which, the General Counsel alleged, were unlawfully implemented without bargaining with the certified labor organization. The court also declined to grant the Board's request for an order restraining the employers from implementing unilateral wage increases in the future without first bargaining with the union.

46. San Diego County Superior Court No. 457073.

47. Monterey County Superior Court No. 76325.

48. Monterey County Superior Court No. 76326.

In Agricultural Labor Relations Bd. v. William Yamano,^{49/} a temporary restraining order was sought to restrain the employer from refusing to rehire employees who had participated in a recently concluded strike. The Board's request for a temporary restraining order was withdrawn as a result of settlement of the unfair labor practice case.

In Agricultural Labor Relations Bd. v. Bennie Yamane Farms,^{50/} the superior court found no probable cause to support a request for an injunction which sought to restrain the employer from refusing to rehire employees who had participated in a strike.

2. Private-Party Injunctions

The Court of Appeal for the First Appellate District, Division One, issued an opinion in Bertuccio v. Superior Court^{51/} which held that a superior court has jurisdiction to entertain an action for injunctive relief, at the suit of a grower, against alleged threats of violent conduct and obstruction of access by a labor organization; provided, however, that the superior court must condition the exercise of that jurisdiction, as a matter of equitable discretion, upon a showing that the plaintiff has filed unfair labor practice charges with the ALRB, so as to give the agency an opportunity to participate in the proceedings or to seek its own relief.

49. San Benito County Superior Court No. 11458.

50. Santa Clara County Superior Court No. 460179.

51. 118 Cal.App.3d 363 (1981).

The decision became final shortly before the close of the fiscal year and it therefore remains to be seen what impact the decision will have on labor-related injunction litigation.

APPENDIX A

NEW PROCEDURES OF THE AGRICULTURAL LABOR RELATIONS BOARD

(Amendments to ALRB Regulations)

1. The Board adopted an amendment to section 20900 (e)(1)(C) of its regulations by filing an emergency regulation with the Secretary of State on June 19, 1980. The purpose of the emergency regulation was to correct a technical error in the section by changing the literal wording to conform to the Board's interpretation of the regulation to allow access to a rival union during the 13 months preceding the expiration of an existing collective bargaining agreement. The Monterey County Superior Court had interpreted the regulation to allow rival union access only during the last month of an agreement, and had enjoined the Board from interpreting it differently.

On June 23, 1980, the Board issued a Notice of Proposed Change and invited comments from interested persons. On September 25, 1980, the Board also held a public meeting at which such persons were given an opportunity to make oral presentations. Some of the comments received from the public led the Board to amend the emergency regulation. The final

amendment to section 20900(e)(1)(C) was approved by the Secretary of State for adoption on November 13, 1980. It became effective on November 17, 1980.

The final amendment which incorporated suggestions from the public requires the Board to count four access periods for each rival union within the 13 month period preceding the expiration of the agreement rather than counting by calendar year which in some cases may entitle rival unions to more than four access periods if the last 13 months of an agreement falls within two different calendar years. The Board also deleted reference to Labor Code section 1156.7(c) since this section refers only to the filing of a petition by employees, and access by employees is not regulated by section 20900 of the Board's regulations.

2. On March 28, 1981, the Board repealed its Conflict of Interest Code contained in sections 21200 - 21255 of its regulations and adopted a new section 21200 revising the agency's Conflict of Interest Code.

APPENDIX B: STATISTICAL TABLES

I. FISCAL YEAR JULY 1, 1980 - JUNE 30, 1981 ELECTIONS

A. Petitions for Elections^{1/}

	San Diego	El Centro	Fresno	Delano	Salinas	Oxnard	Total
1. Filed:							
RC ^{2/}	5	3	1	13	96	15	133
RD ^{2/}	1	1	1	1	1	2	7
2. Withdrawn:							
RC	0	0	0	4	35	1	40
RD	0	0	0	0	0	0	0
3. Dismissed:							
RC	0	1	0	0	20	6	27
RD	0	1	0	0	1	1	3
4. Elections Held:							
RC	5	2	1	6	41	6	61
RD	1	0	0	1	0	2	4

1. The number of petitions withdrawn, dismissed, and resulting in elections 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/}

	San Diego	El Centro	Fresno	Delano	Salinas	Oxnard	Total
No Union	99	37	2	806	579	374	1,897
United Farm Workers Of America	28	38	0	689	2,123	384	3,262
Fresh Fruit and Vegetable Workers	0	0	0	0	0	0	0
International Union of Agricultural Workers	0	0	0	59	0	133	192
Independent Union of Agricultural Workers	0	0	0	0	35	0	35
Other Unions	43	21	2	0	0	0	66
Challenged Ballots	15	10	1	150	565	31	772
Total	185	106	5	1,704	3,302	922	6,224

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1. Data is extracted from representation and decertification elections held during Fiscal Year 1980-81. Data cannot be extracted from one election in which the ballots were impounded. Data includes four elections in which determinative challenged ballots are unresolved.

C. Elections Not Objected To^{1/}

	San Diego	El Centro	Fresno	Delano	Salinas	Oxnard	Total
No Union Victories ^{2/}	1	0	0	2	0	2	5
United Farm Workers of America Victories	0	0	0	1	10	1	12
Fresh Fruit and Vegetable Workers Victories	0	0	0	0	0	0	0
International Union of Agricultural Workers Victories	0	0	0	0	0	0	0
Independent Union of Agricultural Workers Victories	0	0	0	0	1	0	1
Other Unions Victories	4	0	0	0	0	0	4
Total	5	0	0	3	11	3	22
Total Voters	20	0	0	708	863	515	2,106

1. Data is extracted from elections held during Fiscal Year 1980-1981 for which no objections were filed.

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

D. Elections Objected To^{1/}

	San Diego	El Centro	Fresno	Delano	Salinas	Oxnard	Total
No Union Victories ^{2/}	1	0	0	0	1	2	4
United Farm Workers of America Victories	0	1	0	4	26	2	33
Fresh Fruit and Vegetable Workers Victories	0	0	0	0	0	0	0
International Union of Agricultural Workers Victories	0	0	0	0	0	1	1
Independent Union of Agricultural Workers Victories	0	0	0	0	0	0	0
Other Unions Victories	1	1	0	0	0	0	2
Total	2	1	0	4	27	5	40
Total Voters	169	106	0	996	2,254	407	3,932

1. Data is extracted from elections held during Fiscal Year 1980-1981 for which objections were filed. Data do not reflect four elections in which determinative challenged ballots are unresolved and one election in which the ballots were impounded.

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

E. Elections Involving More Than One Union^{1/}

	San Diego	El Centro	Fresno	Delano	Salinas	Oxnard	Total
No Union Victories ^{2/}	1	0	0	2	0	1	4
United Farm Workers of America Victories	0	0	0	0	0	1	1
International Union of Agricultural Workers Victories	0	0	0	0	0	1	1
Independent Union of Agricultural Workers Victories	0	0	0	0	0	0	0
Other Unions Victories	0	0	0	0	0	0	0
Total	1	0	0	2	0	3	6
Total Voters	165	0	0	641	0	359	1,165

1. Data is extracted from elections held during Fiscal Year 1980-1981 in which more than one union was involved on the ballot.

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/}

	San Diego	El Centro	Fresno	Delano	Salinas	Oxnard	Total
No Union Victories ^{2/}	0	0	0	0	0	0	0
United Farm Workers of America Victories	0	1	0	5	37	2	45
Total	0	1	0	5	37	2	45
Total Voters	0	71	0	1,063	3,049	480	4,663

1. Data is extracted from elections held during Fiscal Year 1980-1981 in which only the United Farm Workers of America and No Union appeared on the Ballot. Data do not reflect three elections in which determinative 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/}

	San Diego	El Centro	Fresno	Delano	Salinas	Oxnard	Total
No Union Victories ^{2/}	1	0	0	0	0	3	4
International Union of Agricultural Workers Victories	0	0	0	0	0	0	0
Independent Union of Agricultural Workers Victories	0	0	0	0	1	0	1
Fresh Fruit and Vegetable Workers Victories	0	0	0	0	0	0	0
Other	4	1	0	0	0	0	5
Total	5	1	0	0	1	3	10
Total Voters	20	35	0	0	68	83	206

1. Data is extracted from elections held during Fiscal Year 1980-1981 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 determinative challenged ballots are unresolved.

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

II. FISCAL YEAR JULY 1, 1980 -- June 30, 1981

Unfair Labor Practice Complaints - Action Taken ^{1/}

	San Diego	El Centro	Fresno	Delano	Salinas	Oxnard	Sacramento	Total
Charges Filed	105	116	41	257	377	42	0	938
Charges into Complaint	52	85	5	80	197	5	2	426
Complaints Issued	13	21	4	21	39	5	2	105
Complaints Withdrawn Prior to Hearing	0	2	0	1	6	1	0	10
Complaints Dismissed Prior to Hearing	0	1	0	0	2	0	0	3
Complaints Settled Prior to Hearing	1	2	2	5	7	4	1	22
Hearings Opened	10	21	3	18	28	3	4	87
Complaints Settled at Hearing	2	5	0	5	4	1	1	18
Complaints Settled After Hearing	0	0	0	0	0	0	0	0
Board Decisions Issued	1	8	2	7	12	3	2	35

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1. Data reflect actual work performed during Fiscal Year 1980-1981. 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 1980-1981

I. Election Cases ^{1/}

Christopher Farms	80-RC-5-SAL
Grow Art	80-RC-13-SAL
Joseph Gubser Co.	80-RC-47-SAL
Sam H. Hatai	80-RC-43-SAL
Heritage Mushroom Farms	80-RC-86-SAL
Jessie Farms/Jesus Sanchez	80-RC-87-SAL
San Justo Ranch/Frank Wyrick Farms	80-RC-46-SAL
K. Kamimoto	80-RC-34-SAL
Keystone Seed Co.	80-RC-15-SAL
Robert Lindeleaf Ranch	80-RC-54-SAL
Nash De Camp	80-RC-7-D
W. G. Pack, Jr.	80-RC-72-SAL
Vessey Foods, Inc.	80-RC-3-SAL

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1. These cases are those in which the first day of hearing occurred during fiscal year 1980-1981.

The following abbreviations are used in this list:

80 - 1980
RC - Representation Case
D - Delano
SAL - Salinas

II. Unfair Labor Practice and Consolidated^{1/} Cases

Bill Adams Farms	80-CE-47-OX(SM)
Admiral Packing	79-CE-375-SAL
Alpine Produce	80-CE-61-SAL
Sam Andrews & Sons	80-CE-20-D
Sam Andrews & Sons	80-CE-156-D
Bud Antle, Inc.	79-CE-395-SAL
George Arakelian Farms	79-CE-168-EC
Ardvark Ranch	79-CE-79-EC
Arnaudo Bros., Inc.	75-CE-21-S/75-RC-21-S
Associated Rose Growers, Inc.	79-CE-60-D
B & B Farms	79-CE-37-S
Paul W. Bertuccio/Farms	77-CE-54-M
Paul W. Bertuccio/Farms	79-CE-140-SAL
Harry Boersma Dairy	80-CE-95-SD
Joseph L. Calderon	80-CE-143-D
California Artichoke & Vegetable Growers Corp.	80-CE-80-SAL/ 80-RC-1-SAL
California Coastal Farms	79-CE-66-EC
California Coastal Farms	79-CE-352-SAL
California Coastal Farms	80-CE-20-SAL
M. Caratan	80-CE-80-D
Bruce Church, Inc.	79-CE-87-SAL
L. E. Cooke Co.	80-CE-117-D
D'Arrigo Bros.	80-CE-204-EC
D'Arrigo Bros. of CA	79-CE-181-SAL
Del Mar Mushroom, Inc.	79-CE-204-SAL

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1. "Consolidated" hearings are those in which more than one unfair labor practice charge, or unfair labor practice charges and election or unit clarification cases are heard.

The following abbreviations are used in this list:

75	- 1975
76	- 1976
77	- 1977
78	- 1978
79	- 1979
80	- 1980
RC	- Representation Case
CE	- Charge against employer
CL	- Charge against labor union
D	- Delano
EC	- El Centro
F	- Fresno
OX	- Oxnard
S	- Sacramento
M, SAL	- Salinas
OX(SM)	- Santa Maria
X, SD	- San Diego

Foster Poultry Farms	80-CE-24-F
Frudden Enterprises	79-CE-338-SAL
Giumarra Vineyards	80-CE-7-D
Golden Valley Farming	78-CE-33-D
Gourmet Harvesting & Packing Co.	79-CE-131-EC
Robert H. Hickam	78-CE-8-D
Robert H. Hickam	80-CE-105-D
High & Mighty Farms	80-CE-239-EC
Inland & Western Ranches	80-CE-72-SAL
J & L Farms	79-CE-434-SAL
Kirschenmann Farms/King-Pak Farms, Inc.	78-CE-26-D
Kitayama Bros. Nursery	79-CE-40-S
Kyutoku Nursery	80-CE-74-SAL
Lewis Gardens (Babbitt Engineering & Machinery)	79-CE-7-SD
Lu-Ette	79-CE-4-EC
Joe Maggio, Inc.	79-CE-98-EC
Jesus Martinez Ranch	77-CE-15-X
Mini Ranch	80-CE-101-D
Mission Packing Co.	79-CE-350-SAL
	79-RC-20-SAL
Monrovia Nursery	80-CE-90-SD
C. Mondavi & Sons	76-CE-8-S
Mushroom Farms, Inc.	80-CE-13-SAL
Nash De Camp Co.	80-CE-56-D
J. R. Norton	79-CE-78-EC
J. R. Norton	80-CE-16-EC
J. R. Norton	80-CE-12-SAL
Oak Meadows Mushrooms	80-CE-71-SAL
Stephanie Olivera (Lay-Mor Pullet Ranch)	80-CE-345-SAL
N. A. Pricola Produce	79-CE-155-EC
Royal Packing Co.	80-CE-15-EC
Ruline Nursery	80-CE-61-SD
Mario Saikhon	79-CE-70-EC
Salinas Valley Ind. Growers Assoc.	80-CE-239-SAL
San Clemente Ranch	79-CE-12-SD
San Martin Mushroom Farms	80-CE-268-SAL
Sandrini Bros.	80-CE-154-D
Sierra Citrus Assoc.	79-CE-16-F
Ed Silva Harvesting Co.	79-CE-295-SAL
Southdown Land Co.	80-CE-65-SAL
South Western Ranch Mgt./	80-CE-52-SD
Western Agricultural Properties	
Steak-Mate, Inc.	80-CE-210-SAL
Sugar Loaf Berries	80-CE-89-SAL
Sun Harvest, Inc.	80-CE-29-SAL
Sun Harvest, Inc.	80-CE-6-SD
Sunnyside Nurseries, Inc.	79-CE-210-SAL
Sumner Peck Ranch, Inc.	80-CE-23-D
Superior Farming Co.	80-CE-54-D
Tex-Cal Land Mgt. Co.	79-CE-84-D
Tex-Cal Land Mgt. Co.	80-CE-119-D
TMY (Yanikura)	80-CE-71-SD

UFW/Sam Andrews & Sons	79-CL-37-EC
UFW/Gourmet Harvesting & Packing	79-CL-22-EC
UFW/Joe Maggio, Inc.	79-CL-3-EC
UFW/Vessey & Co., Inc.	79-CL-77-EC
Ukegawa Bros.	80-CE-44-SD
United Packing Co.	80-CE-16-F
John Van Wingerden (Dutch Bros.)	75-CE-211-M
Venus Ranches, Inc.	79-CE-60-EC
Verde Produce Co.	79-CE-215-EC
Dave Walsh Co.	79-CE-431-SAL
Yamamoto Farms	80-CE-6-OX
Yuma Sonora Harvesting	80-CE-4-OX
Mike Yurosek & Sons	80-CE-103-EC

APPENDIX D

Decisions Rendered By

THE AGRICULTURAL LABOR RELATIONS BOARD

in Fiscal Year 1980-1981

<u>Case Name</u>	<u>Opinion Number</u>
Kaplan's Fruit & Produce	6 ALRB No. 36
Ranch No. 1, Inc.	6 ALRB No. 37
Giannini & Del Chiaro Co.	6 ALRB No. 38
Sears & Schuman	6 ALRB No. 39
Adam Farms	6 ALRB No. 40
Ron Nunn Farms	6 ALRB No. 41
H. H. Maulhardt	6 ALRB No. 42
J & L Farms	6 ALRB No. 43
Sam Andrews' Sons	6 ALRB No. 44
Prohoroff Farms	6 ALRB No. 45
Triple E. Produce	6 ALRB No. 46
Signal Produce	6 ALRB No. 47
Bee & Bee Produce, Inc.	6 ALRB No. 48
S. A. Gerrard Farming Corp.	6 ALRB No. 49
Louis Caric & Sons	6 ALRB No. 50
Waller Flowerseed	6 ALRB No. 51
Sunnyside Nurseries	6 ALRB No. 52
Tenneco West	6 ALRB No. 53
Associated Produce Dist.	6 ALRB No. 54
Harry Carian	6 ALRB No. 55
Colace Bros.	6 ALRB No. 56
Abatti Farms, Inc.	6 ALRB No. 57
Marcel Jojola	6 ALRB No. 58
Crown Point Arabians	6 ALRB No. 59
E. J. Gallo Winery	6 ALRB No. 60
Julius Goldman's Egg City	6 ALRB No. 61
C. J. Maggio	6 ALRB No. 62
UFW/Salinas Police	6 ALRB No. 63
UFW/California Coastal	6 ALRB No. 64
Porter Berry Farms	7 ALRB No. 1
Hansen Farms	7 ALRB No. 2
UFW/Admiral Packing	7 ALRB No. 3
Signal Produce	7 ALRB No. 4
Yamamoto Farms	7 ALRB No. 5
Vessey & Co.	7 ALRB No. 6
Giumarra Vineyards, Inc.	7 ALRB No. 7
Phelan & Taylor Produce Co.	7 ALRB No. 8
Coastal Growers Assoc./S. & F. Growers	7 ALRB No. 9
E. & J. Gallo Winery	7 ALRB No. 10
Tex-Cal Land Management, Inc.	7 ALRB No. 11
Tenneco West, Inc.	7 ALRB No. 12
Lawrence Scarrone	7 ALRB No. 13
Franzia Bros.	7 ALRB No. 14

APPENDIX E

ALRB LITIGATION RESULTS FOR FISCAL YEAR 1980-81

<u>ALRB^{1/}</u>	<u>Mixed</u>	<u>Adverse</u>
<u>Upheld</u>	<u>Result</u>	<u>Ruling</u>

U.S. Supreme Court

U.S. Court of Appeals

U.S. District Courts

1. Fresh International v. ALRB (1981)	1
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California Supreme Court

po ^{2/} 1. Sam Andrews' Son v. ALRB (1981) 28 Cal.3d 781 (3:45) ^{3/}	1
po 2. Vista Verde Farms v. ALRB (1981) 29 Cal.3d 307 (3:91)	1

California Court of Appeal

(a) Now Pending in Supreme Ct.^{4/}

Highlands Ranch & Sam Clemente Ranch (1980) (5:54)	1
Martori Bros. Dist. (1980) (5:47)	1

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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 "3:45" indicates that the case concerns Board decision 3 ALRB No. 45.
 4. The granting of a hearing by the California Supreme Court vacates a Court of Appeal decision. The now-vacated Court of Appeal result for each case now pending in the Supreme Court is indicated in brackets, and is not included in the totals.

		<u>ALRB</u>	<u>Mixed</u>	<u>Adverse</u>
		<u>Upheld</u>	<u>Result</u>	<u>Ruling</u>
(b) <u>General Cases Decided</u>				
po	1. California Coastal Farms v. ALRB (1980)	1		
po	2. ALRB v. Ruline Nursery (1981)	1		
po	3. California Coastal Farms v. Doctoroff (1981)	1		
po	4. California Coastal Farms v. ALRB (1981)			1
o	5. Bruce Church v. ALRB (1981)			1
po	6. Bertuccio v. Superior Ct. (UFW) (1981) 118 Cal.App.3d (amicus) (hg.den.)		1	
(c) <u>Petitions for Review Decided</u>				
	1. Frank Lucich Co., Inc. (1980) (4:89)	1		
	2. Tex-Cal Land Mgmt., Inc. (1980) (5:29)	1		
	3. Pappas & Co. (1980) (hg.den.) ^{5/} (5:52)	1		
	4. AS-H-NE Farms, Inc. (1980) (hg.den.) (6:9)	1		
	5. Louis Caric & Sons (1980) (4:108)	1		
	6. High & Mighty Farms (1980) (hg.den.) (6:34)	1		
po	7. George Arakelian Farms, Inc. (1980) 111 Cal.App.3d 258 (hg.den.) (5:10)		1	
	8. Louis Caric (1980) (6:2)	1		
	9. O. P. Murphy Produce (1980) (hg.den.) (5:63)	1		
	10. Jack Bros. & McBurney (1980) (hg.den.) (6:12)	1		
	11. California Coastal Farms (1980) (hg.den.) (6:25)	1		
po	12. Merrill Farms (1980) 113 Cal.App.3d 176 (hg.den.) (5:58)			1
	13. Kyutoku Nursery, Inc. (1980) (hg.den.) (4:55; 6:32)	1		
po	14. Jasmine Vineyards (1980) 113 Cal.App.3d 968 (3:74; 6:17)	1		
	15. J. R. Norton (1981) (hg.den.) (6:26)	1		
po	16. M. B. Zaninovich (1981) 114 Cal.App.3d 665 (4:70)		1	
	17. Sam Andrews' Sons (1981) (6:44)	1		
o	18. Sunnyside Nurseries, Inc. (1981) (hg.den.) (5:23)	1		
	19. Miranda Mushroom, Inc. (1981) (hg.den.) (6:22)	1		
	20. C. Mondavi (1981) (hg.den.) (6:30)	1		
	21. J & L Farms (1981) (hg.den.) (6:43)	1		
po	22. Montebello Rose (1981) (5:64)	1		
	23. Charles Malovich (1981) (6:29)	1		

5. "Hg. den." indicates that a hearing was denied by the California Supreme Court.

	<u>ALRB</u> <u>Upheld</u>	<u>Mixed</u> <u>Result</u>	<u>Adverse</u> <u>Ruling</u>
<u>Totals</u>			
U.S. Supreme Court	-	-	-
U.S. Court of Appeals	-	-	-
U.S. District Court	1	-	-
California Supreme Court	2	-	-
California Court of Appeal	23	3	3
(a) Now Pending in Supreme Court ^{6/}	[1]	[1]	[-]
(b) General Cases Decided	(3)	(1)	(2)
(c) Petitions for Review Decided	<u>(20)</u>	<u>(2)</u>	<u>(1)</u>
GRAND TOTAL	26	3	3

6. See footnote 4 above.

APPENDIX F

CUMULATIVE ALRB LITIGATION RESULTS

	1 ALRB Upheld	Mixed Result	Adverse Ruling
<u>U.S. Supreme Court</u>			
1. Kubo and Pandol v. ALRB (1976) 429 U.S. 802	1		
<u>U.S. Court of Appeals</u>			
o ² 1. Cel-A-Pak v. ALRB (1978)	1		
<u>U.S. District Courts</u>			
1. Encinitas Floral v. ALRB (1975)	1		
o 2. Dodd v. ALRB (1975)	1		
3. Perry v. ALRB (1976)	1		
o 4. Borchard v. ALRB (1977)	1		
o 5. Cel-A-Pak v. ALRB (1977)	1		
o 6. Cel-A-Pak v. ALRB (1979)	1		
o 7. Western Growers Assoc. v. Brown (1980)	1		
8. Fresh International v. ALRB (1981)	1		
<u>California Supreme Court</u>			
po 1. ALRB v. Superior Ct. (1976) 16 Cal. 3d 392	1		
po 2. Belridge Farm v. ALRB (1978) 21 Cal.3d 551	1		
po 3. Vargas v. Municipal Ct. (1978) 22 Cal.3d 902 (amicus)		1	
po 4. Tex-Cal Land Mgmt v. ALRB (1979) 24 Cal.3d 335 (3:14) ³	1		
po 5. J.R. Norton v. ALRB (1979) 26 Cal.3d 1 (4:39)		1	
po 6. Kaplan's Fruit & Produce v. Superior Ct. (1979) 26 Cal.3d 60 (amicus)		1	
po 7. Sam Andrews' Sons v. ALRB (1981) 28 Cal. 3d 781 (3:45)	1		
po 8. Vista Verde Farms v. ALRB (1981) 29 Cal.3d 307 (3:91)	1		
<u>California Court of Appeal</u>			
(a) <u>Now Pending in Supreme Ct.</u> ⁴			
1. Highland Ranch & San Clemente (1980) (5:54)		(1)	
2. Martori Bros. Distributors (1980) (5:47)	(1)		

	1 ALRB Upheld	Mixed Result	Adverse Ruling
<u>(b) General Cases Decided</u>			
o 1. Mahony v. Superior Ct. (Corda) (1975)	1		
2. Bacchus Farms v. ALRB (1976)	1		
3. Andrews v. ALRB (1977)	1		
4. Mt. Arbor Nurseries v. ALRB (1977)	1		
po 5. Nishikawa Farms v. Mahony (1977)			
66 Cal. App.3d 781	1		
6. Howard Rose v. ALRB (1977)	1		
o 7. Superior Farming v. Mahony (1977)	1		
o 8. White River Farms v. Mahony (1977)	1		
po 9. Cesare & Sons v. ALRB (1977)	1		
72 Cal.App.3d (hg den) ⁵	1		
po10. Radovich v. ALRB (1977) 72 Cal.App.3d			
36 (hg den)	1		
po11. UFW v. Superior Ct. (Mt. Arbor			
Nurseries) (1977) 72 Cal.App.3d			
268 (amicus)	1		
12. Nish Noroian v. Superior Ct. (ALRB)			
(1978)	1		
po13. People v. Medrano (1978) 78 Cal.			
App.3d 198 (amicus)		1	
o14. ALRB v. Henry Moreno (1978)		1	
o15. ALRB v. Superior Ct. (Laflin)			
(1978) (hg den)			1
po16. ALRB v. Laflin & Laflin (1979)			
89 Cal.App.3d 651 (hg den)			1
17. Bonita Packing Co. v ALRB (1979)			
(4:96)	1		
po18. Cadiz and Caratan v. ALRB (1979)			
92 Cal.App.3d 365 (hg den) (4:68)			1
po19. Dessert Seed Co. v. Brown (1979)			
96 Cal.App.3d 69		1	
20. Franzia Bros. Winery v. ALRB (1979)			
(4:100)	1		
po21. San Diego Nursery v. ALRB (1979)			
100 Cal.App.3d 128		1	
po22. Yamada Bros. v. ALRB (1979)			
99 Cal.App.3d 112			1
o23. ALRB v. S. Kuramura, Inc. (1979)			
(3:49)	1		
24. Royal Packing v. ALRB & UFW (1980)	1		
25. E & J Gallo Winery v. Superior Court			
& ALRB (1980) (5:57)	1		
26. C. Mondavi v. ALRB (1980) (3:65)	1		
27. ALRB v. UFW (Clyde Cornell)(1980)	1		
po28. California Coastal Farms v. ALRB			
(1980) 111 Cal.App.3d 734	1		

	1 ALRB Upheld	Mixed Result	Adverse Ruling
po 29. ALRB v. Ruline Nursery (1981) 115 Cal.App.3d 1005	1		
po 30. California Coastal Farms v. Doctoroff 117 Cal.App.3d 156	1		
po 31. California Coastal Farms v. ALRB (1981)			1
o 32. Bruce Church v. ALRB (1981)			1
po 33. Bertuccio v. Superior Ct. (UFW) (1981) 118 Cal.App.3d 363 (amicus)(hg den)		1	
(c) <u>Petitions for Review Decided</u>			
1. S. Kuramura, Inc. v. ALRB (1977) (hg den) (3:49)	1		
2. Rod McLellan v. ALRB (1977) (hg den) (3:71)	1		
3. Hemet Wholesale v. ALRB (1977) (3:47)	1		
t 4. UFW v. ALRB (Kyutoku) (1977) (3:30)	1		
t 5. Frudden Produce/Whitney Farms v. ALRB (1977) (3:68)	1		
po (t) 6. UFW v. ALRB (Robert S. Andrews) (1977) 74 Cal.App.3d 347 (3:45)	1		
po (t) 7. Jackson & Perkins v. ALRB (1978) 77 Cal.App.3d 830 (3:36)	1		
o 8. Arnaudo v. ALRB (1978) (3:78)	1		
t 9. American Foods v. ALRB (1978) (4:49)	1		
10. UFW v. ALRB (Baillie) (1978) (3:85)	1		
11. Adam Farms v. ALRB (1978) (4:12)	1		
o 12. Sacramento Nursery Growers, Inc. (1978) (3:94)	1		
po 13. Perry Farms v. ALRB (1978) 86 Cal.App.3d 448 (hg den) (4:25)			1
14. O.P. Murphy v. ALRB (1979) (hg den, cert. den.) ⁶ (4:106)	1		
15. Ron Nunn Farms v. ALRB (1979) (hg den) (4:34)	1		
16. Dave Walsh Co. v. ALRB (1979) (hg den) (4:84)	1		
17. Martori Bros. v. ALRB (1979) (hg den) (4:80)	1		
18. Merzoian Bros. v. ALRB (1979) (3:62)	1		
19. San Diego Nursery v. ALRB (1979) (hg den) (4:93)	1		
20. John Elmore, Inc. v. ALRB (1979) (hg den) (4:98)	1		
21. Garin Company v. ALRB (1979) (hg den) (5:4)	1		
22. Bertuccio Farms v. ALRB (1979) (hg den) (5:5)	1		
23. Prohoroff Poultry Farms v. ALRB (1979) (hg den) (5:9)	1		

	ALRB Upheld	Mixed Result	Adverse Ruling
24. Nagata Bros. v. ALRB (1979) (hg den, cert. den) (5:39)	1		
25. Mario Saikhon, Inc. v. ALRB (1979) (5:44)	1		
26. Bruce Church, Inc. v. ALRB (1979) (hg den) (5:45)	1		
27. S & F Growers v. ALRB (1979) (5:50)	1		
28. Dutch Bros. v. ALRB (1979) (3:80)	1		
29. Robert H. Hickam v. ALRB (1979) (4:73)	1		
30. Belridge Farms v. ALRB (1979) (hg den) (4:30)	1		
31. McCoy's Poultry v. ALRB (1979) (hg den) (4:15)	1		
t 32. Marshburn Farms v. ALRB (1979) (4:99)	1		
po 33. Sunnyside Nurseries v. ALRB (1979) 93 Cal.App.3d 922 (hg den) (3:42)		1	
po 34. Pandol & Sons v. ALRB (1979) 98 Cal.App.3d 580 (3:29)		1	
po 35. Butte View Farms v. ALRB (1979) 95 Cal.App.3d 961 (4:90)	1		
36. Santa Clara Farms v. ALRB (1980) (5:67)	1		
37. Jesus Martinez v. ALRB (1980) (5:51)	1		
38. Security Farms v. ALRB (1980) (4:67)	1		
po 39. Royal Packing Co. v. ALRB (1980) 101 Cal.App.3d 826 (5:31)		1	
t 40. Oceanview Farms v. ALRB (1980) (hg den) (5:71)	1		
o 41. Dan Tudor v. ALRB (1980) (3:69)			1
po 42. Mel-Pak Ranches v. ALRB (1980) (4:78)			1
43. C. Mondavi v. ALRB (1980) (hg den) (4:52)	1		
44. Superior Farming Co. v. ALRB (1980) (5:6)	1		
45. Adam Dairy v. ALRB (1980) (4:24)	1		
46. D'Arrigo Bros. v. ALRB (1980) (hg den) (4:45)	1		
47. Kaplan's Fruit & Produce v. ALRB (1980) (hg den) (5:40)	1		
48. M. Caratan, Inc. v. ALRB (1980) (5:16)	1		
49. Tenneco West, Inc. v. ALRB (1980) (hg den) (3:92)	1		
50. Tenneco West, Inc. v. ALRB (1980) (hg den) (4:16)	1		
51. M. Caratan v. ALRB (1980) (4:83) (6:14)	1		
po 52. Prohoroff Poultry Farms v. ALRB (1980) (hg den) (3:87)		1	

	ALRB Upheld	Mixed Result	Adverse Ruling
53. Kawano, Inc. v. ALRB (1980) (hg den) (4:104)	1		
54. C. Mondavi & Sons v. ALRB (1980) (5:53)	1		
po 55. Abatti Farms, Inc. v. ALRB (1980) (hg den) (5:34)		1	
56. Frank Lucich Co., Inc. (1980) (4:89)	1		
57. Tex-Cal Land Mgmt., Inc. (1980) (5:29)	1		
58. Pappas & Co. (1980) (5:52)	1		
59. AS-H-NE Farms, Inc. (1980) (6:34)	1		
60. Louis Caric & Sons (1980) (4:108)	1		
61. High & Mighty Farms (1980) (6:34)	1		
62. Frank Lucich Co., Inc. (1980) (4:89)	1		
63. Tex-Cal Land Mgmt., Inc. (1980) (5:29)	1		
64. Pappas & Co. (1980) (hg den) (5:52)	1		
65. AS-H-NE Farms, Inc. (1980) (hg den) (6:9)	1		
66. Louis Caric & Sons (1980) (4:108)	1		
67. High & Mighty Farms (1980) (hg den) (6:34)	1		
po 68. George Arakelian Farms, Inc. (1980) 111 Cal.App.3d 258 (hg den) (5:10)		1	
69. Louis Caric (1980) (6:2)	1		
70. O. P. Murphy Produce (1980) (hg den) (5:63)	1		
71. Jack Bros. & McBurney (1980) (hg den) (6:12)	1		
72. California Coastal Farms (1980) (hg den) (6:25)	1		
po 73. Merrill Farms (1980) 113 Cal.App.3d 176 (hg den) (5:58)			1
74. Kyutoku Nursery, Inc. (1980) (hg den) (4:55; 6:32)	1		
po 75. Jasmine Vineyards (1980) 113 Cal. App.3d 968 (3:74; 6:17)	1		
76. J. R. Norton (1981) (hg den) (6:26)	1		
po 77. M. B. Zaninovich (1981) 114 Cal.App.3d 665 (4:70)		1	
78. Sam Andres' Sons (1981) (6:44)	1		
o 79. Sunnyside Nurseries, Inc. (1981) (hg den) (5:23)	1		
80. Miranda Mushroom, Inc. (1981) (hg den) (6:22)	1		
81. C. Mondavi (1981) (hg den) (6:30)	1		
82. J & L Farms (1981) (hg den) (6:43)	1		
po 83. Montebello Rose (1981) (5:64)	1		
84. Charles Malovich (1981) (6:29)	1		

<u>Totals</u>	¹ <u>ALRB Upheld</u>	<u>Mixed Result</u>	<u>Adverse Ruling</u>
U.S. Supreme Court	1	-	-
U.S. Court of Appeals	1	-	-
U.S. District Court	8	-	-
California Supreme Court	5	3	-
California Court of Appeal	95	12	10
(a) Now Pending in Supreme Court ⁷	[1]	[1]	-
(b) General Cases Decided	(22)	(5)	(6)
(c) Petitions for Review Decided	<u>(73)</u>	<u>(7)</u>	<u>(4)</u>
<u>Grand Total</u>	110	15	10

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 order. "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.
4. The granting of a hearing by the California Supreme Court vacates a Court of Appeal decision. The now-vacated Court of Appeal result for each case pending in the Supreme Court is indicated in brackets, and is not included in the totals.
5. "hg den" indicates that a hearing was denied by the California Supreme Court.
6. "Cert. den." indicates that certiorari was denied by the U.S. Supreme Court.
7. See footnote 4.

APPENDIX G

	<u>ALLOTMENT</u>	<u>EXPENDITURES</u> <u>TO DATE</u>
Personal Services		
Salary & Wages	\$ 4,991,581.00	\$ 4,266,161.05
Staff Benefits	1,429,421.00	1,267,437.77
Temporary Help	196,394.00	59,718.66
Temporary Help (ALO's)	259,606.00	259,606.00
Overtime	<u>25,133.00</u>	<u>25,133.00</u>
Total Personal Services	\$ 6,902,135.00	\$ 5,878,056.48
Operating Expense & Equipment		
General Office Expense	\$ 263,100.00	\$ 263,048.66
Printing	29,600.00	29,568.15
Communications	256,200.00	242,897.86
Travel-In-State	648,610.00	595,606.32
Travel-Out-of-State	3,710.00	2,181.83
Consulting & Professional Services	64,200.00	60,260.80
Facilities Operation	359,600.00	359,573.78
Equipment	75,440.00	73,487.74
Board Hearings	<u>645,182.00</u>	<u>400,132.96</u>
Total Operating Expenses & Equipment	\$ 2,345,642.00	\$ 2,026,758.10
Total Expenditures	\$ 9,247,777.00	\$ 7,904,814.58
Unscheduled Reimbursements	\$ -0-	\$ (15,080.56)
Total	\$ 9,247,777.00	\$ 7,889,734.02