

**A HANDBOOK ON THE
CALIFORNIA
AGRICULTURAL LABOR
RELATIONS LAW**

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This booklet has been prepared to provide general guidance about the law and procedures under the Agricultural Labor Relations Act. It is not intended to provide legal advice or be controlling in every situation that could arise under the Act

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Section I. GENERAL INFORMATION

THE PURPOSE OF THE ACT

In 1975, the California State Legislature passed the Agricultural Labor Relations Act guaranteeing certain rights to California farm workers. The purpose of the Act is to "ensure peace in the agricultural fields by guaranteeing justice for all agricultural workers and stability in labor relations." The Act states that it is the policy of the State of California to encourage and protect the right of farm workers to act together to help themselves, to engage in union organizational activity and to select their own representatives for the purpose of bargaining with their employer for a contract covering their wages, hours, and working conditions. The law prohibits the employers from interfering with these rights, protects the rights of workers to be free from restraint or coercion by unions or employers, and it prohibits unions from engaging in certain types of strikes and picketing.

The Agricultural Labor Relations Board is the agency which administers the Act and protects the rights of agricultural employees in various ways. For example, the Act creates a method by which workers may select a union or other representative to bargain with their employer if they wish. Agents of the Board conduct secret ballot elections to determine whether workers wish to be represented and if so, by whom. Also, the Act gives authority to the ALRB to investigate, process and take to trial employers or unions who engage in actions which the Act describes as "unfair labor practices" (ULPs). When Board employees conduct an investigation and obtain enough evidence to show that an unfair labor practice has been committed, a "complaint" is issued and a hearing is held at which each party has a right to present its side of the case. The Act guarantees the rights of employees to engage in, or to refrain from, union activities or "concerted activities," such as acting together to help or protect each other in matters related to their employment,

including their wages, hours or working conditions. Actions by an employer or a labor organization which prevent employees from exercising their free choice in a Board election may result in setting aside the election and conducting a new election. Such actions may also be unfair labor practices.

DOES THE ALRA APPLY TO YOU?

The Agricultural Labor Relations Act applies only to agricultural employers, agricultural employees and labor organizations which represent agricultural employees. Those who are not engaged in agriculture and are not agricultural employers are not touched by the Act. The Act defines the term agriculture as “farming in all its branches . . . [including] the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural or horticultural commodities, the raising of livestock, bees, fur-bearing animals, or poultry, and any practices performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market and delivery to storage or to market or to carriers for transportation to market.

WHO IS AN AGRICULTURAL EMPLOYER?

The term agricultural employer includes any person, association or group engaged in agriculture, and any person acting directly or indirectly in the interests of such an employer, or of any grower, cooperative grower, harvesting association, hiring association or land management group, as well as any person who owns or leases or manages land used for agricultural purposes. An agricultural employer is responsible for the acts of its supervisors or other persons with supervisory authority over employees. When a labor contractor is engaged by an agricultural employer, the employer is responsible for the acts of the labor contractor, its foreman, other supervisors and any other agents acting on his/her behalf.

A supervisor is defined in the Act as . . . “any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or the responsibility to direct them or to adjust their grievances or effectively to recommend such actions.” In most circumstances, supervisors are not entitled to the rights and protections set forth in the Act.

WHO IS AN AGRICULTURAL EMPLOYEE?

Agricultural employees, as defined in the Act, are those engaged in agriculture or in any functions which a farmer performs as an incident to or in connection with farming operations. For example, an office clerical employee or a bookkeeper is an agricultural employee if he or she keeps records or books which are incidental to a farming operation.

WHAT IS AN AGRICULTURAL LABOR UNION?

The Act defines a union or labor organization as any organization or group in which employees participate and which has a purpose of dealing with employers about grievances, labor disputes, wages, hours, and working conditions of agricultural employees. Although labor organizations are responsible for the acts of their agents and employees, an agricultural employee does not become an agent of a labor organization merely by joining or supporting the union. Appearing in the next section are some words used in the Act and in this Guide, along with definitions and some explanatory comments.

TERMS USED IN THIS GUIDE

Access - The right of employees to be contacted at their workplace so that they may receive information about their rights under the Act or about union representation and collective bargaining. The access regulations permit union organizers to talk to employees on their employer’s property at limited times which do not interfere with their work.

For further details about access, see the discussion in section II below on the ELECTION PROCESS.

Authorization Card - A card signed by an employee, authorizing a labor organization to be the representative of the signer in seeking an election. These cards may be used to determine showing of interest (see section II below).

Bargaining Unit - All of an employer's employees who are engaged in agricultural work, and those who have jobs which are incident to the employer's agricultural operations, usually constitute the bargaining unit. If a majority of the employees who vote in an ALRB election select a union as their bargaining representative, that union will represent and bargain for *all* employees of the employer including those who did not vote in the election, those who voted against the union, and those who are hired after the election in jobs which are part of the bargaining unit. If the employer and the union bargain and agree on a contract, that contract will cover and apply to all of the employees and job positions in the bargaining unit.

Certification - Official recognition by the Board of the results of an election. Certification also means the Board's official recognition of a labor organization's right to represent employees in a bargaining unit in bargaining or negotiating with their employer. A "no-union" certification bars another election in that bargaining unit for twelve months from the date of the election. Only *certified* labor organizations have a legally enforceable right to represent employees.

Collective Bargaining - Negotiations between the employer and the certified labor organization concerning wages, hours and working conditions. These negotiations must be in "good faith," and all subjects raised by a party regarding terms and conditions of employment *must* be discussed. The result of such negotiations, if agreement is reached, is a "collective bargaining agreement" or contract legally binding on all the parties.

Concerted Activities - Conduct by two or more employees, acting together, for mutual aid and protection. Such activities are protected by the Act whether or not they involve union membership or activity.

Party - Where only an election is involved, party refers either to the employer or to the labor organization(s) on the ballot. Where an unfair labor practice is involved, the General Counsel is a party because the General Counsel tries the case. The other parties to an unfair labor practice case include the person or organization who filed the charge, and the person or organization being charged.

Peak of Season - The payroll period during which an employer employs the largest number of employees for that calendar year. A petition for an election may be filed only when employment is at least at 50 percent of peak.

Petitioner - An agricultural employee, a group of employees or labor organization which seeks to be certified by the Board, and petitions the Board, asking it to hold an election. Once such a petition is filed, another labor organization may, upon a 20 percent "showing of interest," (see section II) "intervene" and be placed on the ballot in the election.

Showing of Interest - Valid signatures of eligible employees in a bargaining unit in support of a labor organization's petition for an election, or intervention.

Unfair Labor Practice - Any action by an employer or a labor organization which has the effect of restraining or coercing employees in the exercise of their rights guaranteed by the Act. An unfair labor practice can be committed by anyone who under the law may be considered as an agent of a union or an employer.

Field Examiner - An agent of the ALRB who investigates unfair labor practice charges, conducts elections and performs other related duties in the field offices of the ALRB. Often referred to as a “Board agent.”

HOW THE ALRB IS ORGANIZED

The five members of the Agricultural Labor Relations Board or ALRB are appointed by the Governor and confirmed by the California State Senate. These five members, together with the Executive Secretary and the attorneys and clerks employed by the Board, constitute the staff of the Board. The job of the Board is similar to that of a court. It makes final decisions concerning the validity of elections and unfair labor practices. Objections to elections are initially heard before Investigative Hearing Examiners. Unfair Labor Practice cases are initially heard by Administrative Law Judges (ALJs). Their decisions and recommendations may be appealed to the Board.

The office of the General Counsel is separate from the Board and its staff. The General Counsel is appointed by the Governor and subject to confirmation by the Senate. The General Counsel supervises the field office personnel as well as administrative staff in the headquarters office. The headquarters of the ALRB is in Sacramento. In addition, there are Regional offices in El Centro, Salinas and Visalia. A list of these offices together with addresses and phone and fax numbers is located in Section V. of this handbook.

The ALRB does not have the power to conduct elections until a person or labor organization files a “petition” with one of its regional offices. Similarly, the ALRB cannot initiate unfair labor practice charges on its own. Charges must be filed by some individual, corporation, or labor organization.

Section II. THE ELECTION PROCESS

THE ELECTION CAMPAIGN

Farm workers under Labor Code section 1152 have the right to unite and campaign for a union; the right to elect a representative by secret ballot to speak for all employees with management about wages, hours and working conditions; the right to have their representative recognized by management as the bargaining agent and be dealt with in good faith; the right to act together without interference or discrimination to solve the problems faced by farm workers; and the right to refrain from any or all of these activities. The secret ballot election is the first step in this guarantee and protection for the exercise of workers' rights. By casting individual votes in a secret ballot election, farm workers *choose* whether or not they wish to be represented by a labor organization in bargaining with their employer.

ACCESS

In order to make an intelligent choice, employees must have access to information and the opportunity to hear both sides in an election campaign. The access regulations of the ALRB are meant to insure that farm workers, who often may be contacted only at their work place, have an opportunity to be informed with minimal interruption of working activities. The Board regulates and enforces these rights by setting certain hours and times when representatives of labor organizations may be present on the employer's property: one hour before and after work, and one hour during the lunch break. The Board has limited the number of organizers to two for each crew of 30 or fewer, three for each crew of 31 to 45, four for each crew of 46 to 60, etc. A labor organization can take access only for four 30-day periods in a single calendar year. When a labor organization wishes to take access, it fills out a form, called a Notice of Intent to Take Access, and delivers a copy to the employer's office or to its manager or one of the

supervisors. The union then files the notice at the nearest ALRB office. Once the notice is filed, the workers have a right to meet with, talk to, and receive literature from union organizers at their work site during the hours already mentioned.

PRE-PETITION EMPLOYEE ADDRESS LISTS

Such lists are necessary both to insure that farm workers are able to make their decision with respect to union representation after full discussion of the issues, and to help the Board to resolve election cases more efficiently. The Board has concluded that pre-petition lists will result in more efficient resolution of its election cases, because growers and unions can spot potential disagreements over the appropriate units or voter eligibility well before an election takes place. In order to obtain this list, a labor organization must complete a Notice of Intent to Organize or N.O. This notice is served on the employer and filed at the nearest ALRB office in the same manner as the Notice of Intent to Take Access described above. Unlike the Notice of Intent to Take Access, however, the Notice of Intent to Organize must be accompanied by authorization cards signed by at least 10 percent of the employees in the unit. These cards are held by the ALRB in confidence and are not, under *any* circumstances, divulged to an employer, another labor organization, or the public. This rule was established to protect workers from possible retaliation from a union or an employer for expressing their interest in a particular union, or for wanting a secret ballot election. Once the N.O. is filed, the employer must, within five days, submit to the local ALRB office the names and most recent local residence addresses of his or her employees. The authorization cards will then be checked against the list of employees submitted by the employer. If the regional director determines that at least 10 percent of the employees have signed authorization cards, the union will receive the list of employees and their addresses from the local ALRB office.

FILING FOR AN ELECTION

The next step in the election process occurs when an employee, group of employees, or labor organization files a Petition for Certification of Representative at the nearest ALRB office after serving a copy on the employer. The petition must show that a majority of the employer's current agricultural employees desire an election in which they can decide whether they want a particular labor organization to represent them in dealing with an employer. This petition must state that the employer is at least at 50 percent of peak employment, that there has not been a valid election within the previous 12 months (election bar), that no other labor organization is currently certified (certification bar), and that no certified labor organization has a contract with an employer that has more than 12 months to run (contract bar). If the employer contests these statements, their accuracy will be investigated; if they are accurate, an election will be held within seven days.

A petition may not be filed by an employer or a representative of an employer or anyone acting in the interest of or with the support of an employer. Choosing a labor union is entirely the concern of employees and employers are prohibited from interfering in any way with the organization or administration of a union.

COMMUNICATING WITH THE PARTIES

When a petition is brought into an ALRB office, it is given a "docket number," and assigned to a field examiner. The docket number is made up of the year in which the petition is filed, the type of case, letters to indicate the office in which it was filed, and a number to indicate the order in which it was filed. For example, 77-RC-2-EC was the second petition (2) filed in El Centro (EC) for a representation case (RC) (an election) in 1977 (77). It is helpful to use the docket number and the employer's name when asking the ALRB about a specific case. As soon as the petition is filed, the field

examiner will contact the employer, usually by telephone, to advise him or her of the official time and day of filing, of his or her rights and obligations, and to explain the election procedure.

The Act and the Board regulations require that agricultural employers maintain complete and accurate lists of names, current residence addresses, and job classifications for all agricultural employees whose names appear on their payroll, as well as for persons working for the employer as part of a family or other group for which the name of only one group member appears on the payroll. A P.O. Box number or a street address at which the employee is not currently living is not acceptable. This list must include all nonsupervisory employees on the payroll during the period which ended immediately preceding the filing of the petition, including those hired through a labor contractor. An employer is responsible for the list of his/her agricultural employees provided by a labor contractor or other agents. The list will be used by the field examiner to determine the showing of interest, peak, and as the basis for a voter list during the election.

EMPLOYER'S WRITTEN RESPONSE

The employer is obligated to provide this information to the ALRB office where the petition was filed, within 48 hours of the filing of the petition. If the employer challenges the accuracy of any of the allegations in the petition or claims that the petition was filed when the number of employees constituted less than 50 percent of peak agricultural employment for the calendar year, he or she must provide information to support these contentions in the written response. If the employer's failure to submit information prevents the finding of these facts, the regional director will assume one or more of the following:

- 1)there is adequate employee support for the petition;
- 2)the petition is timely filed with respect to the employer's peak of season, and/or;

3) all persons who appear to vote in the election who are not challenged by any other party and who provide adequate identification are eligible voters.

INVESTIGATION BY THE FIELD EXAMINER

Before an election may be held, the field examiner must also investigate and determine whether the bargaining unit is appropriate and whether the petitioner has made a sufficient showing of interest. The requirement that an election be conducted within seven days forces the investigation to be made at the same time the field examiner is contacting the parties and preparing for an election. Unless the investigation discloses information that would require dismissal of the petition, the field examiner will recommend to the regional director that an election be held.

THE APPROPRIATE BARGAINING UNIT

Under the Act, the only appropriate bargaining unit consists of all the non-supervisory agricultural employees of an employer, except where the employer has farming operations in two or more areas which are geographically removed from one another. In this case the Board must determine whether the election should include employees at more than one geographical location.

THE SHOWING OF INTEREST

The showing of interest requirement is met when the petition is accompanied by valid signatures from a majority of the currently employed employees in the appropriate bargaining unit. The showing of interest may consist of either union authorization cards, which are signed and dated, authorizing the union to be the representative of the signer in seeking an election, or a petition to the same effect signed by employees, with each signature dated. Both are kept confidential. Once the field examiner receives the employee list from the employer, the names submitted with the petition will be compared to the list. If any party contends that the showing of interest was obtained by fraud, coercion or employer assistance, or that the signatures are not genuine, it must submit declarations to the

regional director signed under penalty of perjury, in support of its contentions within 72 hours of the filing of the petition.

INTERVENTION BY OTHER UNIONS

If any union other than the union filing the petition obtains signed authorization cards or other evidence of support from 20 percent of the employees in the bargaining unit, at least 24 hours prior to the election, it will be permitted to intervene and appear on the ballot, and the workers may choose between two or more unions, or vote to have no union.

THE PRE-ELECTION CONFERENCE

The pre-election conference, which usually occurs at least 24 hours prior to the election, provides an opportunity for all parties to an election to discuss who is eligible to vote, who will be observers, when and where the voting will take place, how and when different groups or crews will come to the polls, and any other unresolved issues concerning the election. Usually participants include attorneys or legal representatives for the parties to the election, the employer, supervisors, union organizers, workers who may serve as observers or advisors for the parties, and Board agents from the local ALRB office.

In light of the fact that the law makes the Board and its agents responsible for conducting a proper election, the Board agent's decisions will be final, subject to review by the Board. However, the parties may make suggestions and recommendations concerning the particulars of the election. When the details of the election are settled, a Notice and Direction of Election is issued, and the parties are expected to distribute copies to all employees.

ELECTION DAY

Board agents usually arrive about 30 minutes before the polls are scheduled to open. Portable voting booths are erected and tables for identifying and challenging voters are set up. A ballot box is constructed at the election site by the Board agent in order to allow everyone to see that there is absolutely nothing in the ballot box before the voting starts. Once the

polling area has been inspected to assure there is no campaign material present, the parties are asked to leave. Management representatives and supervisors are not allowed in the polling area during the voting period, nor are union organizers, attorneys, or legal representatives. Only workers who are waiting to vote, observers, and Board agents may be present. Campaigning is prohibited in the voting area, but voters may talk with each other while standing in line waiting to vote.

The observers are eligible voters or non-supervisory employees designated by the parties to have the responsibility of helping to insure that the election is run properly. Observers help the Board agents identify voters, check their names off the eligibility list, and see that the security of the ballot box is maintained.

After the observers are instructed and ready to proceed, the voters line up and come forward to the identification table. They present their identification to the observers and the Board agent at the table, their names are marked off the eligibility list, and each is given a ballot. Each voter steps into the voting booth, marks his or her ballot, folds it, steps out of the voting booth, puts the ballot in the ballot box, and leaves the polling area.

If any observer wishes to challenge an employee's right to vote, and the challenge is allowed by the Board agent, then that person will vote a "challenged ballot." Challenged voters vote a secret ballot, but their ballots are kept separate and will not be counted until their eligibility has either been agreed upon by the parties or determined by the Board.

After every eligible voter who wishes to vote has done so, and the agreed-upon time to close the polls has arrived, the Board agent seals the ballot box with tape. Each observer signs his or her name across the tape so that no one can open the ballot box without it being detected.

THE TALLY OF THE BALLOTS

The next step is to count the votes and determine the results of the election. This occurs soon after the election, when all the sealed ballot boxes are brought together and a representative from each of the parties is present. The observers remain with the Board agent to insure that the ballot box is secure. The ballot box is inspected by the parties to make sure that no one has opened it. Then the ballot box is opened and the challenged ballot envelopes are removed by the Board agent and put aside.

The Board agent in charge of the election encourages the parties to resolve as many of the challenges as possible. If the parties agree to allow a challenged voter's ballot to be counted, then the Board agent removes the ballot from the envelope in such a way that no one can see how the challenged ballot was marked, and mixes it with the ballots remaining in the box. If, on the other hand, the parties agree that a certain challenged ballot should not be counted, then that envelope is set aside and will not be opened. Those challenged ballots on which there is no agreement are put aside and resolved only if there are enough challenges to affect the outcome of the election. The votes are now ready to be counted. The actual count (or "tally") of the ballots is performed in public. There is one tally sheet for each choice on the ballot: that is, no union, union X, and union Y (if there is an intervenor). Each observer marks a tally sheet for some party other than the one he or she represented as an observer. To ensure accuracy, each party may have a representative observe the person tallying that party's results. Then, all the unchallenged ballots are removed from the box, and one at a time are unfolded and displayed to all who are observing the tally. The Board agent calls out the vote for each ballot. Any ballot which does not give a clear indication of the voter's intent is void. After all the ballots are counted a second time to insure accuracy, a "Tally of Ballots" form giving the results of the election is issued to the parties and filed with the ALRB.

CHALLENGED BALLOTS

After the tally, the Board agent calculates whether the challenged ballots will make a difference in the outcome of the election. If the outcome would be the same, it is not necessary to resolve and count them. For example, if the results are: 80 votes for union X, 60 votes for no union, and 10 challenged ballots, the 10 challenges are not resolved or counted. On the other hand, if the results were: 72 votes for no union, 70 votes for union X, and 8 challenged ballots, either union X or the no union votes could have a majority, depending on the challenged ballots. In such a case, the challenges must be resolved and the ballots counted to determine the outcome.

To resolve challenged ballots, Board agents investigate the eligibility of each challenged voter. The regional director then writes a "Report on Challenged Ballots," in which he or she discusses the eligibility of each challenged voter, and recommends to the Board either that the challenge be over-ruled and the vote counted, or that the challenge be sustained and the vote not counted. This report is served on all parties to the election, and they may have five days in which to file "exceptions," or disagreements, with the regional director's recommendations. If no exceptions are filed the ballots are resolved according to the report. If the number of ballots which the parties and the regional director agree should be counted is sufficient to affect the outcome of the election, a new ballot count will take place immediately. Otherwise, the Board will review the regional director's report and the parties' exceptions and will issue a decision resolving the disagreements and ordering a new tally of ballots. The parties are invited to attend this ballot count, after which an "Amended Tally of Ballots" is issued showing the results of the new count. Similarly, if the parties accept the recommendation that a ballot not be counted, it will be set aside. If the agreed upon resolution of challenges results in a majority of votes for one choice, and the remaining unresolved challenges could not change the result of the election if counted, it will not be necessary to resolve the challenges upon which the parties and the regional director disagree.

POST-ELECTION OBJECTION PROCEDURE

Within five days after the Tally of Ballots is issued, any person may file with the Board a petition to set aside the election, called an election objections petition. The petition may assert one or more of the four following grounds for setting aside an election:

- 1) allegations made in the election petition were incorrect;
- 2) the Board or regional director improperly determined the geographical scope of the bargaining unit;
- 3) the election was not conducted properly; and
- 4) misconduct occurred which affected the results of the election.

The petition must be accompanied by sworn declarations describing in detail the facts upon which the petition is based. In addition to being filed with the Executive Secretary of the Board, the petition must be filed with the regional director and served on the parties to the election by registered or certified mail. The Executive Secretary then reviews the election objections petitions and decides, using prior Board decisions, the Board's administrative regulations and National Labor Relations Board precedent, where applicable, whether to dismiss any of the objections or to set them for an administrative hearing. Objections not accompanied by sufficient factual support, or not filed on time, or which are not based on adequate grounds, will be dismissed, with reasons given and cases and regulations cited. Objections that, if true, would permit the Board to set aside an election will be set for an administrative hearing. Dismissal of an election objections petition in its entirety or in part may be appealed to the Board by filing a "Request for Review". The Board then determines if some or all of the objections dismissed by the Executive Secretary should be set for hearing. If a request for review of a complete dismissal of any election objections petition is not filed, the Board will certify the results of the election.

The Executive Secretary will set the time and place for a public investigative hearing on objections not dismissed to be conducted by an Investigative Hearing Examiner designated

by the Executive Secretary. These hearings are less formal than Unfair Labor Practice hearings. Parties may either represent themselves or retain an attorney. As soon as possible after the close of the hearing, the Investigative Hearing Examiner will issue a decision, including findings of fact, a statement of reasons in support of the findings, conclusions of law, and a recommended disposition. The decision is served on the parties, who then have the opportunity to file exceptions within 10 days. If exceptions are filed, the other parties have an opportunity to file a response to the exceptions within 7 days. If no exceptions are filed, the Hearing Examiner's decision becomes the decision of the Board. If exceptions are filed, the Board will consider the entire record in the case, hearing record, examiner's decision, exceptions, and any response to exceptions. The Board will then deliberate and render a final decision. Decisions of the Board are published and available to the public. Each decision is numbered according to the year and order in which it was issued. For example, 3 ALRB 60 is the 60th decision issued in the third year of the ALRB. Upon resolution of the objections, the Board certifies the results of the election. If a labor organization is certified, generally it will remain the collective bargaining representative of the employees in the unit until they decide otherwise in another election, and another election may not be held in that bargaining unit for at least one year from the date of certification. In the case of a "no-union" vote, the one-year election bar begins with the date of the election.

DECERTIFICATION OF A UNION

A labor organization becomes the exclusive representative of the employees of an employer for purposes of collective bargaining and related matters upon certification by the ALRB as exclusive representative after having received a majority of the votes cast by employees in a secret ballot election. Thereafter, pursuant to Labor Code section 1156.3(a) or 1156.7, the employees may remove the representative by majority vote. An election conducted by the Board for that purpose, since it terminates the certification of the incumbent representative, is called a decertification election.

DECERTIFICATION ELECTION PROCEDURES

The ALRB procedures for conducting a decertification election are similar to those for conducting a representation election. Upon the filing of a petition requesting that the incumbent union be decertified, accompanied by the signatures of at least 30 percent of the workers in the bargaining unit if there is a valid contract between the union and the employer, and at least 50 percent if there is no contract the ALRB staff will investigate the petition and determine whether an election should be held. The petition for decertification must include the same information as that required for a Petition for Certification, except that the union which has already been certified must be identified. The bargaining unit named in the petition must be exactly the same as the one for which the election was originally held.

TIME LIMITS

Decertification petitions may be filed only if there has not been a valid election or issuance of a certification of representative within 12 months of when the petition is filed. In addition, the statute provides that a petition must be filed when the number of agricultural employees is not less than 50 percent of the employer's peak agricultural employment for the current calendar year, and where there is a contract in place that would otherwise bar the holding of an election, the petition will not be deemed timely unless it is filed during the year preceding the expiration of the contract.

Section III. UNFAIR LABOR PRACTICES

The purpose of establishing an Unfair Labor Practice (ULP) procedure is to prevent employers and unions from interfering with, restraining or coercing farm workers in the exercise of their rights as defined by the ALRA. At any time during the processing of unfair labor practice charges or complaints, the

parties may settle the case, thereby minimizing both legal expenses and the amount of monetary damages that may be owing.. The agency encourages settlement agreements at any time during the unfair labor practice process.

EMPLOYER UNFAIR LABOR PRACTICES

Under the Law, it is the exclusive right of employees to decide whether or not they wish to be represented by a union. In an effort to ensure an atmosphere free from threats, coercion and intimidation the law specifically declares certain acts by an employer to be unfair labor practices. An employer is responsible for the unfair labor practices committed by any person acting directly or indirectly in the interests of the employer including supervisors, agents, and labor contractors engaged by the employer.

Under Section 1153(a) of the Act, it is an unfair labor practice for an employer to interfere with, restrain or coerce agricultural employees in the exercise of their protected rights. Any attempt by the employer to tamper with, control or dominate the free choice of employees as to whether or not they wish to organize or be represented by a labor organization is a violation of the Act and therefore an unfair labor practice. Speeches, leaflets, booklets, or other communications which threaten employees with physical abuse, lay-offs, reduced wages, loss of wages, loss of work, job transfers, etc. violate the Act because they are threats of force or reprisal. The U.S. Supreme Court has held that during an election campaign granting of benefits or promising to raise wages, improve working conditions, make promotions or provide health insurance or other benefits violate the Act because they may imply a threat that such benefits will also be taken away if a representative is elected, or because they make voting for a representative seem irrelevant or unnecessary. The following are common examples of employer interference, restraint and coercion. The employer, his or her agents, forepersons, supervisors or labor contractors may not:

- threaten to fire employees if they organize, vote for, or join a union, or if they engage in activities on behalf the union;

- threaten to harm workers or their property if they join or vote for a union;
- question employees about their union, activities or their support of a union;
- spy on or engage in surveillance of employees, or threaten or appear to do so, while they are engaging in union activities, such as talking to organizers or other workers about a union;
- offer or give employees higher wages, better working conditions, or increased benefits in order to influence workers' votes or support for a union;
- prohibit employees from engaging in union activities during breaks, lunch period, or before or after work, while on the employer's property;
- deny access to union organizers during the time periods established by the Board, or refuse to turn over current lists of employees' names and current residence addresses when requested by the Board;
- intimidate or prohibit employees from wearing union buttons, insignia or other symbols at work;
- in any other way interfere with, coerce or restrain employees in the exercise of their rights under the Act.

It is an unfair labor practice under Section 1153(b) of the Act for an employer to dominate or interfere with the formation or administration of any labor organization or to contribute financial aid or any other support to it. The purpose of this section is to ensure that the labor organization which represents the employees is their own, acting on their behalf and in their interest. The employer may not create or control a "company union," or help one labor organization over another by giving money or any other kind of special privilege or support to the preferred organization. An employer or his or her agents, including supervisors, violates this section by:

- pressuring employees to join a preferred labor organization, except under a lawful union security clause;
- organizing, aiding or supporting a union or committee of employees seeking to represent workers concerning wages, hours and working conditions;

- asking employees or applicants for employment to sign authorization cards;
- giving a preferred labor organization extra time on company property in which to organize employees before an election while denying another organization a similar opportunity; and
- giving special privileges or information to one labor organization which are denied another, except under a lawful collective bargaining agreement.

It is an unfair labor practice under Section 1153(c) of the Act for an employer to discriminate in regard to hiring, or firing, or any term or condition of employment, so as to encourage or discourage membership in any labor organization. Under this section an employer may not treat any employee or potential employee differently because of union affiliation, involvement in union activities or support of any labor organization. Thus, when an employer conditions hiring or continued employment on the employee's attitude towards unionization or support or activity on behalf of a particular union, the employer has engaged in an unfair labor practice.

An employer who discharges or punishes employees for filing grievances or because of union activity, or otherwise discriminates against employees by requiring them to work apart from other employees, transferring them to lower paying or less desirable jobs, or requiring them to use tools or instruments which make their labor more difficult because of their union affiliation or union activity, violates the Act because such actions tend to discourage union membership.

It is an unfair labor practice under Section 1153(d) of the Act for an employer to discharge or discriminate against an employee because the employee has filed charges or given testimony under the Act. This means that an employer may not layoff, suspend, take action against, or in any other way discriminate against an employee because he or she has filed a charge, or a petition, attended or testified in a proceeding involving the ALRB, or given evidence or information in an ALRB investigation. It is an unfair labor practice under Section 1153 (e) of the Act for an employer to refuse to

bargain in good faith with a union that has been certified by the ALRB as the collective bargaining representative of the employees. While the ALRA does not require the parties to reach an agreement, both parties must make an honest, sincere effort to reach agreement on a contract. The duty to bargain in good faith includes the following:

- meeting at reasonable times and places;
- an obligation to discuss all “mandatory subjects” of bargaining, including wages, hours, working conditions, union security, pensions, bonuses, safety conditions, group insurance, grievance procedures, seniority, discharge, layoff, discipline of employees and arbitration;
- an employer must furnish information to the union which is relevant and necessary to the union’s exercise of its duty to bargain over mandatory subjects;
- an employer must not make unilateral changes in wages, hours, and working conditions without prior consultation with the union, or giving the union an opportunity to bargain about the proposed changes;
- not engaging in conduct during bargaining which indicates the lack of a good faith intention to reach an agreement.

It is also an unfair labor practice under Section 1153(f) of the Act for an employer to recognize, bargain with, or sign a collective bargaining agreement with a union that has not been certified by the ALRB. It is unlawful under Section 1155.4 of the Act for an employer to make money payments or to give any other things of value, to unions, union officials or employees, with an intent to influence them with respect to any of their actions, decisions or duties as representatives of agricultural employees.

UNION UNFAIR LABOR PRACTICES

The Act also prohibits unfair labor practices by unions. The law prohibits restraint, coercion, and discrimination by unions as well as certain kinds of boycotts, picketing, and strikes. Section 1154(a)(1) of the Act makes it an unfair labor practice for a labor organization to restrain or coerce agricultural employees in the exercise of their protected rights under the Act. This provision, regulating union conduct, is similar to

Section 1153(a) of the Act, which regulates employer conduct in the same general area. The following are examples of restraint and coercion by a union:

- threatening employees with force and violence on the picket line or in connection with a strike;
- threatening employees with force or violence for refusing to support the union, for refusing to sign cards, for making statements against the union, etc.;
- threatening employees with bodily injury or loss of employment if they do not support a strike;
- entering into a contract with an employer when the union is not certified as the bargaining representative of the employees;
- threatening employees with arrest, deportation, loss of work, seniority or other benefits for supporting or refusing to support a union.

Under Section 1154(a)(2) of the Act, it is an unfair labor practice for a labor organization to restrain or coerce an agricultural employer in the selection of his or her representative for the purpose of bargaining and adjustment of grievances. An employer is entitled to freely choose his or her representatives, including supervisors, for the purpose of bargaining and dealing with the union, applying the contract and handling grievances on the job.

It is an unfair labor practice under Section 1154(b) of the Act for a labor organization to cause or attempt to cause an agricultural employer to discriminate against an employee. For example, a collective bargaining agreement may require an employer to hire only through a union hiring hall and it may also require all employees of that employer to join the union after they have worked for at least five days. A union could violate this section by refusing non-union members the use of its hiring hall.

It is an unfair labor practice under Section 1154(c) of the Act for a certified labor organization to refuse to bargain collectively in good faith with the employer. This section imposes on unions the same duty to bargain in good faith as is imposed on the employer.

Section 1156.3(e) of the Act provides that the Board shall decertify a labor organization if the U.S. Government's Equal Employment Opportunity Commission has found that the labor organization has engaged in discrimination on the basis of race, color, national origin, religion or sex, during the period of its present certification.

It is an unfair labor practice under Section 1154(e) of the Act for a labor organization to charge employees excessive or discriminatory membership fees. In determining whether the fee is excessive or discriminatory, the Board must consider the practices and customs of labor organizations in agriculture, and the wages currently paid the employee concerned. For example, the following conduct could be prohibited by this section: charging a membership fee which is unreasonably large in relation to the amount earned by the employee; charging a membership fee to one group of employees which is substantially higher or lower than the membership fee charged another group of employees.

STRIKES, PICKETING AND ECONOMIC BOYCOTTS

Strikes, picketing, and economic boycotts are permitted under the Act, except that under certain circumstances, such activity may constitute unfair labor practices. Section 1154(d) of the Act prohibits strikes, picketing and economic boycotts where an object is to force an employer or self-employed person to join any labor organization or employer organization.

Under Section 1154(d) of the Act, a "secondary boycott" exists when a union engages in, or induces or encourages individuals to engage in, a strike and picketing against a neutral or secondary employer (one with which that union

does not have a labor dispute). Although it is lawful under the Act for a union to picket or strike the primary employer (one with which it has a legitimate labor dispute), the Act prohibits attempts by the union to force any other employer, person, or manufacturer with whom it does not have a dispute to cease dealing with the primary employer.

The Act specifically permits publicity, including picketing, for the purpose of truthfully advising the public and consumers that a product or ingredient of a product is produced by an agricultural employer (the primary employer) with whom the union has a primary dispute and is distributed by another employer (the secondary employer). A union's picketing of the secondary employer is lawful as long as it does not have an effect of inducing any individual employed by that employer to cease delivering or performing services, etc., for the secondary employer and as long as such publicity does not have the effect of requesting the public to cease patronizing the secondary employer.

However, publicity which includes picketing and has the effect of requesting the public to cease patronizing the secondary employer is permitted if the union is currently certified as the representative of the primary employer's employees.

UNFAIR LABOR PRACTICES OF UNIONS AND EMPLOYERS

Section 1154.5: "Hot Cargo" Agreements: Where a union represents the employees of an employer, Section 1154.5 makes it an unfair labor practice for both the employer and the union to enter into a contract by which the employer agrees to cease doing business with any other person or to cease dealing in the products of any other employer.

The law specifies two exceptions to this prohibition. Agreements between a union and an employer by which the employer agrees not to handle a supplier's products are specifically permitted when the union has been certified to

represent the supplier's employees but no collective bargaining agreement between such supplier and such labor organization is in effect. In addition, this "hot cargo" prohibition does not apply to an agreement between a labor organization and an agricultural employer relating to the contracting or subcontracting of work to be done at the site of the farm and related operations.

Section 1154.6 of the Act makes it an unfair labor practice for an employer or a union or their agents, to arrange for persons to become employees for the primary purpose of voting in an election. Section 1153(c) of the Act allows an employer and a labor union which is the certified representative of the employees, to enter into a contract which requires all employees covered by the contract to become union members 5 or more days after being hired. A "union shop clause" or "union security clause," in a contract is one in which the employer and the union agree that all employees will be required to join the union after 5 days or more of employment. Although such clauses are legal, they are not included in all labor contracts, and employees may not be required to join a union unless there is such a clause in effect. Employees may not be required to join the union before they are employed. Section 1153(c) also states that no agricultural employees shall be required to pay dues to two unions during any single calendar month.

This section of the law also contains a provision which prohibits unions from refusing to accept or continue an employee as a member except in compliance with a constitution or by-laws which offer all members full and fair rights to speech, assembly, equal voting and membership privileges and due process for all members and applicants.

REMEDIES FOR UNFAIR LABOR PRACTICES

The Board is empowered to correct violations which may hinder the employees' right to organize, engage in collective bargaining and concerted activities, and cast their vote free

from threats, coercion, restraint or interference. The party found to be in violation of the Act may be subject to a remedial order issued by the Board, providing, for example:

- restoring employees to the position they would have been in but for the unfair labor practice; for example, making them whole for any pay or other money losses;
- reinstatement and backpay for wrongfully discharged workers;
- posting and reading a notice to workers which explains that the party has engaged in an unfair labor practice and listing the specific unlawful activities which it engaged in;
- allowing organizers to speak to workers on the employer's property beyond the usual time restrictions;
- providing bulletin boards of the employer's property for union communications;
- in cases where but for the bad faith of one party or another a contract would have been reached, the Board is authorized by statute to make employees whole for the losses they suffered in not having a contract covering them;
- barring a union agent from engaging in organizing activities for one year in a certain region;

AGRICULTURAL EMPLOYEE RELIEF FUND

Effective January 1, 2002, the Act was amended to establish the Agricultural Employee Relief Fund (Fund). When the Board finds that an employer has committed an unfair labor practice and orders monetary relief, the monies owed are collected and distributed to the employees harmed by the unfair labor practice. If employees to whom the monies are owed cannot be located within two years after collection of the monies on their behalf, then those monies are deposited in the Fund. The Fund is then used to pay employees the in other cases where the Board has not been able to collect the full amount owed by their employer because the employer is bankrupt, has gone out of business, or is otherwise unable to pay. The monies in the Fund are distributed once a year to all employees eligible for payments.

The amount of money in the Fund will vary from year to year. Employees will receive payments from the Fund for five years, or until they are paid all that was owed to them by their employer, whichever comes first.

UNFAIR LABOR PRACTICE PROCEDURES

Anyone who believes that an unfair labor practice has been committed may file a charge at the local ALRB office. (Forms for filing charges are available at local offices.) The person or organization filing a charge (“charging party”) must serve a copy of it, by certified or registered mail or personal service, on the party claimed to have committed the unfair labor practice (“charged party”).

The charge must contain the charging and charged parties’ names, addresses, and telephone numbers (if available) and a short statement describing the facts allegedly constituting an unfair labor practice. Attached to the copy filed at the local ALRB office there must be a proof of service, i.e., a sworn statement of when and how the charge was sent to or served on the charged party. As an alternative, the regional director will offer to serve the charge on the charged party, but will not assume the legal responsibility for timely or proper service. The charge may be accompanied by sworn statements from any witnesses to the commission of the alleged unfair labor practices, giving details as to time, place, other witnesses, if any, and the specific actions, statements or events which constitute the unfair labor practice. These sworn statements are held in strict confidence until the witness testifies at the hearing.

In the case of unfair labor practices, the first question investigated is whether there appears to be a basis for the charge. This investigation is performed by a field examiner who first contacts the charged party to notify him or her that a charge has been filed in the local office, and then interviews the charging party’s witnesses, inspects records, and puts together a picture of what occurred from the pieces of information obtained.

If, after investigating the charging party's case, the field examiner believes there is a reasonable basis for the charge, he or she contacts the charged party to hear its side of the story.

If the regional director concludes that there is insufficient evidence to prove that an unfair labor practice has been committed, the charge will be dismissed after the charging party has been given an opportunity to withdraw the charge. The charging party then has a right to appeal within 10 days to the General Counsel of the ALRB. If the General Counsel upholds the dismissal, the decision is final. The General Counsel may, however, return the issue to the local office for further investigation or may direct the local office to issue a complaint.

If the regional director believes there is enough evidence to prove that an unfair labor practice has been committed, then he or she prepares a "complaint." The complaint is a legal document which states specifically the conduct which is alleged to be an unfair labor practice, including dates, times, places and names of the people involved. Before the complaint is issued, however, the charged party is usually contacted to explore the possibility of a settlement. (See below.) If the charged party refuses to settle, the complaint is issued and a copy of it is filed with the Executive Secretary of the Board, who will then assign an Administrative Law Judge (ALJ) to decide the case after a public hearing is held.

SETTLEMENTS

A settlement is a mutual agreement by the parties to resolve the issues of an unfair labor practice charge and may be entered into at any time between the filing of the charge and issuance of a decision by the Board. The parties may enter into either informal or formal settlement agreements. The informal agreement is one which does not require specific approval by the Board. If the charged party does not comply with the terms of an informal settlement agreement, the agreement may be set aside and the case will then go to trial before an Administrative Law Judge. On the other hand, if the charged party does not comply with a formal settlement agreement, the

Board will seek to compel compliance through an enforcement order issued by an appropriate court.

UNFAIR LABOR PRACTICE HEARING

When there is no settlement, the Executive Secretary selects a hearing site, assigns an ALJ to hear the case, and arranges for necessary interpreters and court reporters. The hearings are open to the public. At the hearing, each party has an opportunity to present evidence and question witnesses, make motions, and submit oral and written arguments to the ALJ.

The ALJ issues his or her decision following receipt of the parties' post-hearing briefs. The ALJ's decision will include findings of fact and conclusions of law. If the ALJ concludes that a ULP has been committed, then the decision will include a remedy, or set of instructions, intended to cure whatever damage may have been caused by the commission of the ULP. If an employee has been discharged for union activity, for example, the remedy may include an offer of reinstatement to his or her position, with full seniority restored, back pay, and the posting, distribution, and reading of a "notice to employees" containing a promise not to discharge any employees for union activity in the future.

POST-HEARING APPEALS AND THE DECISION

After an ALJ's decision has issued and served on all parties in the case, each party has 20 days to file exceptions to the decision, and mail copies to all the other parties. If no one files exceptions, the Board adopts the ALJ's decision, though it cannot be cited as precedent in future cases. If exceptions are filed, then the other parties have 10 days to file a response to the exceptions. Once all the filings are complete, the Board, acting as a reviewing court, reviews the record, deliberates, and renders a decision. The Board's decisions, after being served on the parties to the case, are published and made available to the public. The Board's decisions in ULP cases may be appealed to the California Court of Appeals.

Section IV. MANDATORY MEDIATION

Effective January 1, 2003, the Act was amended to provide for mandatory mediation in selected circumstances where the parties have been unable to reach a collective bargaining agreement (contract). The mediator tries to help the union and the employer reach agreement on a contract, but if that is not successful, the mediator issues a report that contains the terms of a contract.

The law applies only if the employer has employed 25 or more agricultural employees during any calendar week in the year preceding the filing of the request for mediation. If the union was certified after January 1, 2003, the mediation process may be triggered where at least 180 days have elapsed after the initial demand to bargain. If the union was certified before January 1, 2003, the process may be triggered 90 days after a renewed demand to bargain, and where the following conditions are met:

- a) the parties have failed to reach agreement for at least one year after the union made its initial demand to bargain;
- b) the employer has committed an unfair labor practice; and
- c) the parties have not previously had a binding contract between them.

Once a mediator is selected, the mediation will continue for 30 days, with an option for an extension of 30 days if agreed by both parties. If this process does not result resolution of all issues to the mutual satisfaction of the parties, the mediator will certify that the process has been exhausted. Thereafter, the mediator will have 21 days to file a report that establishes the terms of a collective bargaining agreement. The parties can file a request that the Board review the mediator's report. The Board's decision is subject to review by the appellate courts.

Section V. CONCLUSION

CONCLUSION

The purpose of this guide has been to give you general information about the functions and procedures of the Agricultural Labor Relations Board. If you have any specific questions or need assistance, you may telephone, write or visit one of the local ALRB offices.

ALRB OFFICE LOCATIONS

ALRB HEADQUARTERS

915 Capitol Mall, 3rd Floor

Sacramento, CA 95814

Phone (916) 653-2690

Fax (916) 653-2743

EL CENTRO REGIONAL OFFICE

319 South Waterman Avenue

El Centro, CA 92243-2215

Phone (760) 353-2130

Fax (760) 353-2443

SALINAS REGIONAL OFFICE

342 Pajaro Street

Salinas, CA 93906-2039

Phone (831) 769-8031

Fax (831) 769-8039

VISALIA REGIONAL OFFICE

1642 West Walnut Avenue

Visalia, CA 93277-5348

Phone (559) 627-0995

Fax (559) 627-0985

FOR ADDITIONAL INFORMATION:

1-800-449-3699