AGRICULTURAL LABOR RELATIONS BOARD
CASE DIGEST SUPPLEMENT
VOLUME 39 (2013)

201.02 "Punchers" at a strawberry operation who credited piece-rate workers for each box of berries picked were not supervisors under the ALRA because they did not responsibly direct work, they did not use independent judgment, and they did not have authority to reward workers.
Corralitos Farms, LLC, 39 ALRB No. 8

202.01 Land ownership alone does not confer employer status. A land owner must act as an employer for any employees working on his or any other land owner's land, or must act in the interest of an employer in relation to its agricultural employees, to be considered a statutory employer.
RBI PACKING, LLC, 39 ALRB No. 3

202.01 The failure to find a land owner a statutory employer precludes the finding of joint employer status between that land owner and an employer.
RBI PACKING, LLC, 39 ALRB No. 3

202.09 "Punchers" and other non-supervisory employees at a strawberry operation were not agents of an employer because under all of the circumstances the employees would not have reasonably perceived the individuals in question to be acting on the employer's behalf.
CORRALITOS FARMS, LLC, 39 ALRB No. 8

202.09 Family connections with supervisory personnel do not themselves establish agency.
CORRALITOS FARMS, LLC, 39 ALRB No. 8

202.11 Successorship status, and any ensuing bargaining obligation resulting therefrom, is a question of law; it cannot be avoided or conferred solely by contract. As noted by the California Supreme Court, the Board has "adopted the cautious, case-by-case common law approach to successorship questions recommended by federal decisions," citing *San Clemente Ranch, Ltd. v. Agricultural Labor Relations Board* (1981) 29 Cal.3d 874, 888.
RBI PACKING, LLC, 39 ALRB No. 3

202.12 The failure to find a land owner a statutory employer precludes the finding of joint employer status between that land owner and an employer.
RBI PACKING, LLC, 39 ALRB No. 3

202.13 Land ownership alone does not confer employer status. A land owner must act as an employer for any employees working on his or any other land owner's land, or must act in the interest of an employer in relation to its agricultural employees, to be considered a statutory employer.
RBI PACKING, LLC, 39 ALRB No. 3

202.13 The Board has found that it should attach the bargaining obligation not to the party with the stability and long-term interest in the land used for agriculture, but to the party with the "substantial long-term interest in the ongoing agricultural operation," citing *Rivcom Corporation v. Agricultural Labor Relations Board* (1983) 34 Cal.3d 743, 768; *S & J Ranch, Inc.* (1984) 10 ALRB No. 26 at p. 7.
RBI PACKING, LLC, 39 ALRB No. 3

204.01 "Punchers" at a strawberry operation who credited piece-rate workers for each box of berries picked were not supervisors under the ALRA because they did not responsibly direct work, they did not use independent judgment, and they did not have authority to reward workers.
Corralitos Farms, LLC, 39 ALRB No. 8

204.03 It is clear the Board intends to closely scrutinize the job duties of alleged supervisors, where the statutory indicators relied upon are the assignment and/or responsible direction of the work of other employees. *Kawahara Nurseries, Inc.* (2011) 37 ALRB No. 4, applying *Oakwood Healthcare, Inc.* (2006) 348 NLRB 686 [180 LRRM 1257] and *Croft Metals Inc.* (2006) 348 NLRB 717 [180 LRRM 1293]. Thus, where an alleged supervisor is not involved in such hallmark supervisory functions such as hiring, firing, laying off, recalling, disciplining or promoting employees, a strong showing will have to be made that work assignments and directions are not of a routine nature and require the exercise of independent judgment. ALJD at pp. 41-42.
SOUTH LAKES DAIRY FARM, 39 ALRB No. 1

204.03 Conclusory evidence will not establish the elements of statutory work assignments or direction of work. Rather, specific instances showing the nature of the assignments and direction of work must be shown. *Kawahara Nurseries, Inc.* (2011) 37 ALRB No. 4; *Golden Crest Healthcare Center* (2006) 348 NLRB 727, 731. ALJD at p.42
SOUTH LAKES DAIRY FARM, 39 ALRB No. 1

204.03 "Punchers" at a strawberry operation who credited piece-rate workers for each box of berries picked were not supervisors under the ALRA because they did not responsibly direct work, they did not use independent judgment, and they did not have authority to reward workers.
Corralitos Farms, LLC, 39 ALRB No. 8

204.04 Supervisory authority is not established by sporadic instances thereof. *Bowne of Houston, Inc.* (1986) 280 NLRB 1222 [122 LRRM 1347]; *Montgomery Ward & Co., Incorporated* (1972) 198 NLRB 52 at pp. 55-58 [80 LRRM 1814]. ALJD at p. 43.
SOUTH LAKES DAIRY FARM, 39 ALRB No. 1

204.04 National Labor Relations Board (NLRB) precedent is clear that an isolated incidence of effectively recommending a hire does not, in and of itself, confer supervisory status on an employee, citing *Frenchtown Acquisition Company v. NLRB* (6th Cir. 2012) 683 F.2d 298, 310; *NLRB v. Dole Fresh Vegetables* (6th Cir. 2003) 334 F.3d 478, 487.
SOUTH LAKES DAIRY FARM, 39 ALRB No. 1

204.08 The fact that employees believe that an individual is a supervisor, without a showing of statutory authority, will not, in itself, establish that status, even if that belief is caused by the employer designating the individual by that title. *Kawahara Nurseries, Inc.* (20110 37 ALRB No. 4; *PHI, Inc. d/b/a/ Polynesian Hospitality Tours* (1989) 297 NLRB 228 at fn. 3 [133 LRRM 1218], enf'd. (C.A.D.C., 1990) 920 F.2d 71 [135 LRRM 3238]. ALJD at p. 43.
SOUTH LAKES DAIRY FARM, 39 ALRB No. 1

304.01 When an employee files a petition for decertification, the regional director must conduct an investigation and if the petition is not valid because, for example the showing of employee interest was insufficient, the petition should be dismissed.
ARNAUDO BROTHERS, LP, 39 ALRB No. 9

307.01 An employer's ongoing participation in Mandatory Mediation and Conciliation does not bar a decertification election among its employees.
ARNAUDO BROTHERS, LP, 39 ALRB No. 9

307.06 If there is an outstanding unfair labor practice complaint that would make it impossible for employees to exercise their choice in a free and uncoerced manner, then the election is "blocked" and the petition is dismissed.
ARNAUDO BROTHERS, LP, 39 ALRB No. 9

307.06 Regional director's action of considering whether an election should be blocked by a pending unfair labor practice complaint before deciding whether or not the petition was valid was procedurally improper.
ARNAUDO BROTHERS, LP, 39 ALRB No. 9

307.06 Under the ALRA and the Board's regulations, the issue of the validity of an election petition must be investigated and decided before it would be proper to consider whether an election that would result from a valid petition would be blocked by a pending unfair labor practice complaint.
ARNAUDO BROTHERS, LP, 39 ALRB No. 9

307.06 Although regional director's action of determining whether decertification petition was blocked by pending unfair labor practice complaint before determining whether the petition itself was valid was procedurally improper the Board dismissed the petition because, even if it was determined to be valid, the pending complaint would result in the petition being dismissed in any event.
ARNAUDO BROTHERS, LP, 39 ALRB No. 9

307.06 Although *Cattle Valley Farms* (1982) 8 ALRB No. 24 states that the regional director is to consider whether a petition is blocked by a pending unfair labor practice complaint "immediately" upon the filing of a petition, it is implicit that the statement applies to situations where a valid petition was filed and the Board disapproved any contrary interpretation.
ARNAUDO BROTHERS, LP, 39 ALRB No. 9

307.06 A conclusion by the Regional Director that that the showing of interest in support of an election petition was insufficient or tainted by employer misconduct are reasons to dismiss a petition, not to block an election.
ARNAUDO BROTHERS, LP, 39 ALRB No. 9

307.06 A complaint alleging that the employer has unlawfully refused to bargain generally warrants blocking of an election.
ARNAUDO BROTHERS, LP, 39 ALRB No. 9

307.06 In the course of determining whether a pending unfair labor practice complaint is sufficient to block an election, the Board is not permitted to "look behind" the face of a complaint and attempt to evaluate its merits but must assume that the allegations contained therein are true.
ARNAUDO BROTHERS, LP, 39 ALRB No. 9

307.06 Complaint alleging that employer failed to provide requested information, including employee contact information, which could impede the union's ability to communicate with employees, and refused to meet and bargain with the union for approximately six months was sufficient to block decertification election.
ARNAUDO BROTHERS, LP, 39 ALRB No. 9

307.06 Where a decertification petition is "blocked" by a pending unfair labor practice complaint, the petition is dismissed.
ARNAUDO BROTHERS, LP, 39 ALRB No. 9

308.01 An employer's ongoing participation in Mandatory Mediation and Conciliation does not bar a decertification election among its employees.
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308.03 An employer's ongoing participation in Mandatory Mediation and Conciliation does not bar a decertification election among its employees.
ARNAUDO BROTHERS, LP, 39 ALRB No. 9

309.02 Where it is found that an employer has instigated or initiated a decertification effort, the petition itself is tainted and the election must be set aside. (*Peter D. Solomon and Joseph R. Solomon dba Cattle Valley Farms/Transco Land and Cattle Co*. (1983) 9 ALRB No. 65.) However, in order to find instigation or initiation of decertification, the evidence must show that the employer implanted the idea of decertification in the minds of employees who later pursued decertification. *(Ibid.; Abatti Farms, Inc. and Abatti Produce, Inc.* (1981) 7 ALRB No. 36; *Sperry Gyroscope Co., a Division of Sperry Rand Corp.* (1962) 136 NLRB 294.) Where the evidence falls short of establishing that the employer initiated or implanted the idea of decertification, there is no violation. (*Abatti Farms, Inc. and Abatti Produce, Inc., supra*, 7 ALRB No. 36; *Southeast Ohio Egg Producers* (1956) 116 NLRB 1076.)
D'ARRIGO BROS. CO. OF CALIFORNIA, 39 ALRB No. 4

309.02 Employer's suggestion of decertification to employee does not constitute instigation where the facts showed that the employee did not discuss with his fellow employees the content of his conversations with the employer, nor was there any evidence of any connection between the conversations and the decertification effort carried out by other employees two or three months later. Therefore, on these facts it was not shown that the employer implanted the idea of decertification in the minds of employees who later pursued the decertification effort.
D'ARRIGO BROS. CO. OF CALIFORNIA, 39 ALRB No. 4

309.02 A conclusion by the Regional Director that that the showing of interest in support of an election petition was insufficient or tainted by employer misconduct are reasons to dismiss a petition, not to block an election.
ARNAUDO BROTHERS, LP, 39 ALRB No. 9

314.09 The Regional Director is required to give as much notice of an election as is reasonably possible under the circumstances of each case. (*J. Oberti, Inc.* (1984) 10 ALRB No. 50.) The Board does not require that election notices be given individually to each potential voter. (*Sun World Packing Corporation* (1978) 4 ALRB No. 23.) The very short time constraints of the Agricultural Labor Relations Act (ALRA or Act), which requires an election to be held within seven days of the filing of a petition, as well as matters such as peak employment and showing of interest that the Board agents have to determine, all make the giving of notice of the time and place of the election difficult. (*Gilroy Foods, Inc.* (1997) 23 ALRB No. 10.) Thus, an objection based on inadequate notice will generally be dismissed unless the objecting party can show that an outcome-determinative number of voters were disenfranchised. (*Ibid.*, citing *R.T. Englund Company* (1976) 2 ALRB No. 23.)
D'ARRIGO BROS. CO. OF CALIFORNIA, 39 ALRB No. 4

314.09 No violation for brief delay in providing list of laid-off employees where the evidence was insufficient to show that the election notices could have been mailed to those employees even without the delay.
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316.05 No violation for brief delay in providing list of laid-off employees where the evidence was insufficient to show that the election notices could have been mailed to those employees even without the delay.
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D'ARRIGO BROS. CO. OF CALIFORNIA, 39 ALRB No. 4

316.07 The Board concluded that the NLRB's rule set forth in *Peerless Plywood Co.* (1953) 107 NLRB 427, which prohibits unions and employers from making election speeches to massed assemblies of employees within 24 hours before an election, does not apply under the ALRA because of the unique circumstances surrounding ALRB elections.
CORRALITOS FARMS, LLC, 39 ALRB No. 8

316.06 Union's election objection dismissed for failure to state prima facie case where allegation of unlawful misrepresentation regarding Union dues by a former employee of the Employer, who also was a former Union organizer, was not supported by declarations from the Union stating when the Union became aware of the alleged misrepresentation. Evidence indicated Union became aware of alleged misrepresentation approximately nine days before election, and Board has held in *Gallo Vineyards* (2008) 34 ALRB No. 6, at p. 25, that four days is sufficient time to respond to a misrepresentation.
DOLE BERRY NORTH, 39 ALRB No. 18

316.10 During the 24 hours prior to an election, the National Labor Relations Board (NLRB) prohibits employers from making election speeches to employees on company time where attendance is mandatory (so-called "captive audience" speeches). (*Peerless Plywood Co.* (1953) 107 NLRB 427.) The ALRB has not adopted the *Peerless Plywood* rule, but has not definitively rejected it. (*San Clemente Ranch* (1999) 25 ALRB No. 5, pp. 7-8; *Yamada Bros.* (1975) 1 ALRB No. 13, p. 2.)
D'ARRIGO BROS. CO. OF CALIFORNIA, 39 ALRB No. 4

316.10 The Board, following NLRB precedent, declined to adopt a total ban of captive audience speeches during election campaigns.
CORRALITOS FARMS, LLC, 39 ALRB No. 8

316.13 Union's election objection dismissed for failure to state prima facie case where allegation of unlawful promise of benefits by a former employee of the Employer, who also was a former Union organizer, was not supported by declarations stating that the declarants or any other employees believed that the person making the alleged unlawful promise was speaking on behalf of Employer.
DOLE BERRY NORTH, 39 ALRB No. 18

316.18 Merely permitting the circulation of the petition on company time or allowing employees to discuss, during working hours, getting rid of a union has been held insufficient to support a finding of active employer instigation of, or participation and assistance in, a decertification campaign. However, it is objectionable if the employer discriminates in favor of anti-union activity. (*Nash De Camp Company* (1999) 25 ALRB No. 7, *TNH Farms, Inc.* (1984) 10 ALRB No. 37, *Jack or Marion Radovich* (1983) 9 ALRB No. 45, ALJ dec. pp. 53-57; *Interstate Mechanical Laboratories, Inc.* (1943) 48 NLRB 551, 554; *Curtiss Way Corporation* (1953) 145 NLRB 642.)
D'ARRIGO BROS. CO. OF CALIFORNIA, 39 ALRB No. 4

316.18 Where decertification supporters had been allowed to solicit signatures during work time without repercussion despite a well-known company policy against solicitation of any kind during work time that otherwise was enforced strictly and union supporters were denied that opportunity, it is reasonable to conclude that allowing decertification supporters to violate that policy would have created the impression that the company was sponsoring or at least supporting the solicitation of signatures in favor of decertification.
D'ARRIGO BROS. CO. OF CALIFORNIA, 39 ALRB No. 4

316.18 Though employee soliciting signatures for a decertification petition had served as a temporary foreman in other crews, there was insufficient evidence that the members of the crew in which he was soliciting reasonably would have viewed him as a temporary foreman or otherwise would have been seen as acting on behalf of the employer while soliciting signatures in that crew.
D'ARRIGO BROS. CO. OF CALIFORNIA, 39 ALRB No. 4

316.19 Where unlawful assistance was found to have directly affected the same approximate percentage of eligible voters as in *Gallo Vineyards, Inc.* (2004) 30 ALRB No. 2 (Gallo) and, as in *Gallo*, the employer assistance in circulating a decertification petition would be an act of significant interest that can be presumed to have been disseminated to other employees, the petition itself was tainted and therefore had to be dismissed and the election set aside.
D'ARRIGO BROS. CO. OF CALIFORNIA, 39 ALRB No. 4

316.19 Employer's suggestion of decertification to employee does not constitute instigation where the facts showed that the employee did not discuss with his fellow employees the content of his conversations with the employer, nor was there any evidence of any connection between the conversations and the decertification effort carried out by other employees two or three months later. Therefore, on these facts it was not shown that the employer implanted the idea of decertification in the minds of employees who later pursued the decertification effort.
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316.19 Where it is found that an employer has instigated or initiated a decertification effort, the petition itself is tainted and the election must be set aside. (*Peter D. Solomon and Joseph R. Solomon dba Cattle Valley Farms/Transco Land and Cattle Co.* (1983) 9 ALRB No. 65.) However, in order to find instigation or initiation of decertification, the evidence must show that the employer implanted the idea of decertification in the minds of employees who later pursued decertification. *(Ibid.; Abatti Farms, Inc. and Abatti Produce, Inc.* (1981) 7 ALRB No. 36; *Sperry Gyroscope Co., a Division of Sperry Rand Corp.* (1962) 136 NLRB 294.) Where the evidence falls short of establishing that the employer initiated or implanted the idea of decertification, there is no violation. (*Abatti Farms, Inc. and Abatti Produce, Inc., supra*, 7 ALRB No. 36; *Southeast Ohio Egg Producers* (1956) 116 NLRB 1076.)
D'ARRIGO BROS. CO. OF CALIFORNIA, 39 ALRB No. 4

317.05 The Board concluded that the NLRB's rule set forth in *Peerless Plywood Co*. (1953) 107 NLRB 427, which prohibits unions and employers from making election speeches to massed assemblies of employees within 24 hours before an election, does not apply under the ALRA because of the unique circumstances surrounding ALRB elections.
CORRALITOS FARMS, LLC, 39 ALRB No. 8

319.05 The failure to find a land owner a statutory employer precludes the finding of joint employer status between that land owner and an employer.
RBI PACKING, LLC, 39 ALRB No. 3

323.08 Union's election objection dismissed where allegation that Employer included names of two workers as signatories of decertification petition who had not signed said petition was unsupported where Union provided two declarations in Spanish stating that declarants had not signed the petition; however, declarations failed to state that declarants' names were in fact on the petition, and there was no declaration or other evidence that the declarants' or any other employees' signatures had actually been forged on the petition or stating who allegedly forged said signatures.
DOLE BERRY NORTH, 39 ALRB No. 18

324.01 Where ballots were impounded, the Board set for hearing only election objections that were of the nature that a ballot count was irrelevant and held the remaining objections (for which a prima facie was supported by declarations) in abeyance pending a ballot count and/or resolution of parallel ULP charges.
GERAWAN FARMING, INC., 39 ALRB No. 20

324.02 Where ballots were impounded, the Board set for hearing only election objections that were of the nature that a ballot count was irrelevant and held the remaining objections (for which a prima facie was supported by declarations) in abeyance pending a ballot count and/or resolution of parallel ULP charges.
GERAWAN FARMING, INC., 39 ALRB No. 20

400.01 Employer knowledge of an employee's union activity need not be established directly, but may rest on circumstantial evidence from which a reasonable inference of knowledge may be drawn, such as (1) the timing of the alleged discriminatory action; (2) the respondent's general knowledge of union activities; (3) animus; and (4) disparate treatment, citing *Montgomery Ward & Co.* (1995) 316 NLRB 1248, 1253).
SOUTH LAKES DAIRY FARM, 39 ALRB No. 1

400.01 General knowledge of union activities, in itself, does not establish employer knowledge that a particular employee has engaged in such activities. ALJD at p. 47.
SOUTH LAKES DAIRY FARM, 39 ALRB No. 1

404.03 The Board, following NLRB precedent, declined to adopt a total ban of captive audience speeches during election campaigns.
CORRALITOS FARMS, LLC, 39 ALRB No. 8

404.03 The Board concluded that the NLRB's rule set forth in *Peerless Plywood Co.* (1953) 107 NLRB 427, which prohibits unions and employers from making election speeches to massed assemblies of employees within 24 hours before an election, does not apply under the ALRA because of the unique circumstances surrounding ALRB elections.
CORRALITOS FARMS, LLC, 39 ALRB No. 8

414.07 Employer violated the Act when it failed to recall members of a crew who had previously engaged in protected concerted activity when employer deviated from promised recall procedures and the employer failed to show it would have taken the same action in the absence of protected concerted activity.
H & R GUNLUND RANCHES, INC., 39 ALRB No. 21

414.01 Where the General Counsel preponderantly established that the discriminatee's protected activity at least partially motivated the decision to terminate her, the prima facie case was established.
PREMIERE RASPBERRIES, LLC dba DUTRA FARMS, 39 ALRB No. 6

414.01 In a case where the allegation is a discriminatory refusal to recall or rehire, the General Counsel must prove, in addition to the other elements of a prima facie case of retaliation for protected concerted activity, that the employee applied for an available position for which she was qualified and was unequivocally rejected.
H & R GUNLUND RANCHES, INC., 39 ALRB No. 21

414.01 In a case involving discriminatory failure to rehires, where the employer had a practice or policy of contacting former employees to offer them re-employment, an element of the prima facie case can be satisfied by the General Counsel proving that the employer failed to contact alleged discriminatee at a time when work was available.
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414.03 Where the General Counsel preponderantly established that the discriminatee's protected activity at least partially motivated the decision to terminate her, the prima facie case was established.
PREMIERE RASPBERRIES, LLC dba DUTRA FARMS, 39 ALRB No. 6

414.03 The Board considers a variety of factors in determining the true motive for an adverse action, such as: (1) The timing, or proximity, of the adverse action to the activity; (2) disparate treatment; (3) failure to follow established rules or procedures; (4) cursory investigation of the alleged misconduct; (5) false or inconsistent reasons given for the adverse action, or the belated addition of reasons for the adverse action; (6) the absence of prior warnings; and (7) the severity of punishment for the alleged misconduct. (*Aukeman Farms* (2008) 34 ALRB No. 2 at p. 5, *citing Miranda Mushroom Farm, Inc., et al.* (1980) 6 ALRB No. 22 and *Namba Farms, Inc.* (1990) 16 ALRB No. 4).
PREMIERE RASPBERRIES, LLC dba DUTRA FARMS, 39 ALRB No. 6

414.04 The employer violated the Act when it discharged a grape pruning crew when they engaged in a brief work stoppage to protest a reduction in piece rates.
H & R GUNLUND RANCHES, INC., 39 ALRB No. 21

414.04 The employer violated the Act when it laid off, after a two-day reinstatement, a crew that had filed a ULP charge for discriminatory discharge where the layoff was motivated by the filing of the ULP charge and the employer's stated reasons for the abrupt discharge were pretextual.
H & R GUNLUND RANCHES, INC., 39 ALRB No. 21

414.04 Employer violated the Act when it failed to recall members of a crew who had previously engaged in protected concerted activity when employer deviated from promised recall procedures and the employer failed to show it would have taken the same action in the absence of protected concerted activity.
H & R GUNLUND RANCHES, INC., 39 ALRB No. 21

417.05 The employer violated the Act when it laid off, after a two-day reinstatement, a crew that had filed a ULP charge for discriminatory discharge where the layoff was motivated by the filing of the ULP charge and the employer's stated reasons for the abrupt discharge were pretextual.
H & R GUNLUND RANCHES, INC., 39 ALRB No. 21

420.27 The Board found record evidence was insufficient to show that the employer violated the Act by failing to retain individuals who had engaged in protected concerted activity to perform off-season work. The record did not indicate whether these individuals asked for work and were available, nor did the record indicate that they applied for work and were rejected.
H & R GUNLUND RANCHES, INC., 39 ALRB No. 21

421.03 In a case involving discriminatory failure to rehire, where the employer had a practice or policy of contacting former employees to offer them re-employment, an element of the prima facie case can be satisfied by the General Counsel proving that the employer failed to contact alleged discriminatee at a time when work was available.
H & R GUNLUND RANCHES, INC., 39 ALRB No. 21

421.04 Employer knowledge of an employee's union activity need not be established directly, but may rest on circumstantial evidence from which a reasonable inference of knowledge may be drawn, such as (1) the timing of the alleged discriminatory action; (2) the respondent's general knowledge of union activities; (3) animus; and (4) disparate treatment, citing *Montgomery Ward & Co.* (1995) 316 NLRB 1248, 1253).
SOUTH LAKES DAIRY FARM, 39 ALRB No. 1

421.07 Absent direct evidence of employer knowledge, employer knowledge may be established by circumstantial evidence. In determining whether knowledge has been established, it is appropriate to examine the record as a whole. The primary factors considered are the timing of the adverse action with respect to the union activity, the employer's general knowledge that employees are engaging in organizational activity, the employer's animus toward such activity, and whether the reasons advanced for the adverse action are pretexts, citing *Regional Home Care, Inc.* (1999) 329 NLRB 85 [166 LRRM 1117]; *Glasforms, Inc.* (2003) 339 NLRB 1108 [173 LRRM 1156]. ALJD at p. 46
SOUTH LAKES DAIRY FARM, 39 ALRB No. 1

421.07 Employer knowledge of an employee's union activity need not be established directly, but may rest on circumstantial evidence from which a reasonable inference of knowledge may be drawn, such as (1) the timing of the alleged discriminatory action; (2) the respondent's general knowledge of union activities; (3) animus; and (4) disparate treatment, citing *Montgomery Ward & Co.* (1995) 316 NLRB 1248, 1253).
SOUTH LAKES DAIRY FARM, 39 ALRB No. 1

421.07 General knowledge of union activities, in itself, does not establish employer knowledge that a particular employee has engaged in such activities. ALJD at p. 47.
SOUTH LAKES DAIRY FARM, 39 ALRB No. 1

421.10 Where it is shown that the employer's proffered reasons are pretextual, the employer fails by definition to show that it would have taken the same action for those reasons, absent the protected conduct, and there is no need to perform the second part of the *Wright Line* analysis -- whether the employer would have taken the same action even in the absence of the employee's protected activity. (*Limestone Apparel Corp.* (1981) 255 NLRB 722, enf'd. (6th Cir. 1982) 705 F.2d 799).
PREMIERE RASPBERRIES, LLC dba DUTRA FARMS, 39 ALRB No. 6

421.10 The employer violated the Act when it laid off, after a two-day reinstatement, a crew that had filed a ULP charge for discriminatory discharge where the layoff was motivated by the filing of the ULP charge and the employer's stated reasons for the abrupt discharge were pretextual.
H & R GUNLUND RANCHES, INC., 39 ALRB No. 21

421.15 The Board found record evidence was insufficient to show that the employer violated the Act by failing to retain individuals who had engaged in protected concerted activity to perform off-season work. The record did not indicate whether these individuals asked for work and were available, nor did the record indicate that they applied for work and were rejected.
H & R GUNLUND RANCHES, INC., 39 ALRB No. 21

422.02 The employer violated the Act when it laid off, after a two-day reinstatement, a crew that had filed a ULP charge for discriminatory discharge where the layoff was motivated by the filing of the ULP charge and the employer's stated reasons for the abrupt discharge were pretextual.
H & R GUNLUND RANCHES, INC., 39 ALRB No. 21

435.13 A mere claim of privilege will not support an employer's categorical refusal to supply information requested by a certified union. The party asserting confidentiality has the burden of proof.
BUD ANTLE, INC., 39 ALRB No. 12

435.13 An employer has a statutory obligation to provide, on request, relevant information a union needs to perform its duties as certified bargaining representative, including information pertaining to the decision to file grievances. Where a union's request is for information pertaining to employees in the bargaining unit, that information is presumptively relevant.
BUD ANTLE, INC., 39 ALRB No. 12

436.01 An employer has a statutory obligation to provide, on request, relevant information a union needs to perform its duties as certified bargaining representative, including information pertaining to the decision to file grievances. Where a union's request is for information pertaining to employees in the bargaining unit, that information is presumptively relevant.
BUD ANTLE, INC., 39 ALRB No. 12

436.01 Under the ALRA, because employees of a farm labor contractor (FLC) are part of the bargaining unit, information about the terms and conditions of FLC employees' work is presumptively relevant and subject to disclosure.
BUD ANTLE, INC., 39 ALRB No. 12

436.01 The duty to bargain in good faith requires an employer to make a reasonable and diligent effort to comply with a union's request for relevant information. That the information is in the possession of a labor contractor is no defense. The standard for defining what is relevant is a liberal one, requiring only that the information "be directly related to the union's function as a bargaining representative and that it appear reasonably necessary for the performance of that function." [See citations in decision.]
PEREZ PACKING, INC., 39 ALRB No. 19

436.01 Failure to bargain in good faith by failing to provide information relevant and necessary to collective bargaining does not independently constitute a violation of section 1157.3. However, section 1157.3 is relevant to the extent that, because it requires employers to maintain specified information as required for Board purposes, such information by definition must be available to provide to the certified bargaining representative if the information also is necessary and relevant to collective bargaining. If the requested information is necessary and relevant to collective bargaining, the duty prescribed by section 1157.3 negates any defense based on a failure to possess or obtain the information.
PEREZ PACKING, INC., 39 ALRB No. 19

436.02 Unreasonable delay in providing information constitutes a violation. (*Cardinal Distributing Co. v. ALRB* (1984) 159 Cal. App. 3d 758, 768-769; *Mario Saikhon, Inc.* (1987) 13 ALRB No. 8; *As- H-Ne Farms* (1978) 6 ALRB No. 9.) Delay of nearly one year was extraordinary and clearly unreasonable.
PEREZ PACKING, INC., 39 ALRB No. 19

436.05 An employer cannot escape responsibility for responding to a union's information request by merely asserting that the information is in the hands of a third party. Rather, the employer must show: 1) it did not have possession or control of the information; and 2) it had attempted to obtain the information from the 3rd party and had been rebuffed.
BUD ANTLE, INC., 39 ALRB No. 12

436.06 A mere claim of privilege will not support an employer's categorical refusal to supply information requested by a certified union. The party asserting confidentiality has the burden of proof.
BUD ANTLE, INC., 39 ALRB No. 12

436.06 A union is entitled to information about temporary hired because information regarding those individuals who perform the same tasks as rank and file employees in the bargaining unit relates directly to the policing of the contract terms.
BUD ANTLE, INC., 39 ALRB No. 12

436.06 When a certified union requests relevant information and employer asserts the information is privileged, the burden is on the employer to prove trade secret privilege exists and must show how disclosure would injure the business.
BUD ANTLE, INC., 39 ALRB No. 12

436.07 Failure to bargain in good faith by failing to provide information relevant and necessary to collective bargaining does not independently constitute a violation of section 1157.3. However, section 1157.3 is relevant to the extent that, because it requires employers to maintain specified information as required for Board purposes, such information by definition must be available to provide to the certified bargaining representative if the information also is necessary and relevant to collective bargaining. If the requested information is necessary and relevant to collective bargaining, the duty prescribed by section 1157.3 negates any defense based on a failure to possess or obtain the information.
PEREZ PACKING, INC., 39 ALRB No. 19

436.07 Accurate employee list with current addresses, employees' classifications, and employee-foremen crew breakdowns all were relevant and necessary for collective bargaining and the failure to provide this information in a timely manner was a violation of the duty to bargain.
PEREZ PACKING, INC., 39 ALRB No. 19

436.07 The National Labor Relations Board (NLRB) and the reviewing courts consider information such as addresses and classifications, as well as information generally regarding wages, hours and other terms and conditions of employment of unit employees, as presumptively relevant. (See, e.g., *Metro Health Foundation, Inc.* (2003) 338 NLRB 802, 803; *Maple View Manor* (1996) 320 NLRB 1149, 1151; *Procter & Gamble Mfg. Co. v. NLRB* (8th Cir. 1979) 603 F.2d 1310, 1315; *San Diego Newspaper Guild v. NLRB* (9th Cir. 1977) 548 F.2d 863, 867.) It is then the employer's burden to prove any lack of relevance. (*Contract Carriers Corp*. (2003) 339 NLRB 851, 858.)
PEREZ PACKING, INC., 39 ALRB No. 19

436.07 The provision of addresses where employees reside in the off-season was responsive to an information request made during the off-season, and the failure to provide local addresses for all employees at that time was not a deficiency in the response.
PEREZ PACKING, INC., 39 ALRB No. 19

436.07 Response to request for employee addresses in which 31% of the addresses were defective and of no use to the union constituted a significant failure to provide an accurate and useful list and impaired substantially the union's ability to communicate with employees, which is the reason address lists are considered necessary and relevant. (*As- H-Ne Farms* (1978) 6 ALRB No. 9, at p. 5.) Therefore, the deficiencies in the list are sufficient to constitute a breach of the employer's duty to provide necessary and relevant information.
PEREZ PACKING, INC., 39 ALRB No. 19

449.03 When a certified union requests relevant information and employer asserts the information is privileged, the burden is on the employer to prove trade secret privilege exists and must show how disclosure would injure the business.
BUD ANTLE, INC., 39 ALRB No. 12

451.01 It is well-established that evidence of conduct that is time-barred or is otherwise not subject to adjudication on the merits may be admissible as background to shed light on the character of the events that properly are being litigated. (*Nash de Camp Co.* (1999) 25 ALRB No. 7, citing ALRB v. *Ruline Nursery Co.* (1981) 115 Cal.App.3d 1005, 1014.)
D'ARRIGO BROS. CO. OF CALIFORNIA, 39 ALRB No. 4

451.01 Section 1160.2 mandates that "[n]o complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the board and the service of a copy thereof upon the person against whom such charge is made . . . ." and the Board does deem it appropriate that the dates of service and filing of charges be included in complaints.
PREMIERE RASPBERRIES, LLC dba DUTRA FARMS, 39 ALRB No. 6.

452.01 Section 1160.2 mandates that "[n]o complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the board and the service of a copy thereof upon the person against whom such charge is made . . . ." and the Board does deem it appropriate that the dates of service and filing of charges be included in complaints.
PREMIERE RASPBERRIES, LLC dba DUTRA FARMS, 39 ALRB No. 6.

452.06 The Board overturned the ALJ's finding that two entities functioned as a single integrated enterprise when this issue was never alleged in the complaint and the issue was not fully litigated.
BUD ANTLE, INC., 39 ALRB No. 12

455.03 The Board does more than merely give "some deference" to an ALJ's credibility determinations. The Board will not disturb credibility resolutions based on demeanor unless the clear preponderance of the evidence demonstrates they are in error, citing to *United Farm Workers of America (Ocegueda)* (2011) 37 ALRB No. 3; *P.H. Ranch* (1996) 22 ALRB No. 1; *Standard Drywall Products* (1950) 91 NLRB 544, *enf'd* (3d Cir. 1951) 188 F.2d 362.
SOUTH LAKES DAIRY FARM, 39 ALRB No. 1

455.03 In instances where credibility determinations are based on things other than demeanor, such as reasonable inferences, consistency of witness testimony, or the presence or absence of corroboration, the Board will not overrule the ALJ's credibility determinations unless they conflict with well-supported inferences from the record considered as a whole, citing to *United Farm Workers of America (Ocegueda)* (2011) 37 ALRB No. 1; *S & S Ranch* (1996) 22 ALRB No. 7.
SOUTH LAKES DAIRY FARM, 39 ALRB No. 1

455.03 It is both permissible and not unusual to credit some but not all of a witness's testimony. (*Suma Fruit International (USA), Inc.* (1993) 19 ALRB No. 14, citing 3 Witkin, Cal. Evid. (3d ed. 1986) sec. 1770, pp. 1723-1724.)
D'ARRIGO BROS. CO. OF CALIFORNIA, 39 ALRB No. 4

455.03 Where ALJ discussed the testimony in great detail, noted which portions of the testimony which witnesses he found credible, along with making implicit and explicit judgments based on demeanor and on the plausibility of testimony, there is no comparison to the *pro forma* conclusions rejected by the Board in *S. Kuramura, Inc.* (1977) 3 ALRB No. 49
D'ARRIGO BROS. CO. OF CALIFORNIA, 39 ALRB No. 4

455.03 The Board will not disturb credibility resolutions based on demeanor unless the clear preponderance of the evidence demonstrates they are in error. (*United Farm Workers of America (Ocegueda)* (2011) 37 ALRB No. 3; *P.H. Ranch* (1996) 22 ALRB No. 1; *Standard Drywall Products* (1950) 91 NLRB No. 544, enf'd (3d Cir. 1951) 188 F.2d 362.)
PREMIERE RASPBERRIES, LLC dba DUTRA FARMS, 39 ALRB No. 6

455.03 In instances where credibility determinations are based on factors other than demeanor, such as reasonable inferences, consistency of witness testimony, or the presence or absence of corroboration, the Board will not overrule the ALJ's credibility determinations unless they conflict with well-supported inferences from the record considered as a whole. (*United Farm Workers of America (Ocegueda)* (2011) 37 ALRB No. 3; *S & S Ranch* (1996) 22 ALRB No. 7).
PREMIERE RASPBERRIES, LLC dba DUTRA FARMS, 39 ALRB No. 6

455.03 It is both permissible and not unusual to credit some but not all of a witness' testimony.
Corralitos Farms, LLC, 39 ALRB No. 8

455.03 The Board overturned the ALJ's finding that two entities functioned as a single integrated enterprise when this issue was never alleged in the complaint and the issue was not fully litigated.
BUD ANTLE, INC., 39 ALRB No. 12

455.03 ALJ who reviewed record and issued decision but was not the ALJ who conducted the hearing did not improperly make credibility determinations where the determinations were based not on demeanor, but on the facial believability and consistency of the testimony, testimony which was not refuted.
PEREZ PACKING, INC., 39 ALRB No. 19

457.02 The standard for hearing a motion for reconsideration of a Board decision is that the moving party show extraordinary circumstances, i.e., an intervening change in the law or evidence previously unavailable or newly discovered.
SOUTH LAKES DAIRY FARM, 39 ALRB No. 2

457.02 The Board declined to hear for the first time in a motion for reconsideration an issue of procedural fairness not argued in post-hearing briefing or briefing in support of exceptions.
SOUTH LAKES DAIRY FARM, 39 ALRB No. 2

457.02 Motions filed before the Board in which facts not in the record are alleged should be accompanied by a declaration filed under penalty of perjury by a person with personal knowledge of those facts.
SOUTH LAKES DAIRY FARM, 39 ALRB No. 2

459.01 Where the ALJ stated on the record that he would not find an unfair labor practice based on Employer's refusal to reinstate an employee in the face of a preliminary injunction while the Employer was appealing section 1160.4(c) of the Act, the new anti-stay provision that applies to injunctive relief, the Board reversed the ALJ's finding of such an unfair labor practice as "contrary to elementary constitutional principles of procedural due process." (*Sunnyside Nurseries, Inc. v. Agricultural Labor Relations Board* (1979) 93 Cal. App. 3d 922, 933-934).
PREMIERE RASPBERRIES, LLC dba DUTRA FARMS, 39 ALRB No. 6

461.02 The Board stated that interest on backpay would be calculated on a compounded daily basis set forth in *Kentucky River Medical Center* (2010) 356 NLRB No. 8 as clarified in *Rome Electrical Services* (2010) 356 NLRB No. 38 rather than the simple interest formerly used by the NLRB and ALRB.
H & R GUNLUND RANCHES, INC., 39 ALRB No. 21

464.01 In the Board's decision on a 3rd revised makewhole specification, the Board found that the makewhole principal was calculated in accordance with previous decisions: (2012) 38 ALRB No. 4 as revised by (2012) 38 ALRB No. 12.
SAN JOAQUIN TOMATO GROWERS, INC., 39 ALRB No. 14

464.01 The Board found that it was not necessary that a makewhole specification specifically identify state and federal tax withholding deductions. The Employer will be responsible for determining proper tax and withholding for each worker (but see 39 ALRB No.15).
SAN JOAQUIN TOMATO GROWERS, INC., 39 ALRB No. 14

464.01 In a supplemental decision on a makewhole award, the Board reiterated that it is an employer's responsibility to determine its responsibilities under state and federal tax laws to comply with such laws.
SAN JOAQUIN TOMATO GROWERS, INC., 39 ALRB No. 15

464.01 The Board clarified that its previous decision at 39 ALRB No. 14 to state that consistent with past practice, the employer is required to withhold amounts required by law from the makewhole principal before remitting the total net amount the ALRB.
SAN JOAQUIN TOMATO GROWERS, INC., 39 ALRB No. 15

466.01 Referral to Mandatory Mediation and Conciliation (MMC) is not available as a remedy in unfair labor practice or election objection cases. In creating the MMC process, the Legislature carved out an exception to the general rule that the Board may not compel parties to agree to terms of a contract, but did not alter the Board's remedial authority in unfair labor practice or election objection cases. Rather, a discrete process was created, subject to the circumstances set forth in the MMC provisions (Lab. Code §§ 1164-1164.13) and available only upon a request for MMC filed under those provisions. Therefore, if the Board sets aside an election due to unlawful employer assistance, the MMC process may be invoked only upon a formal request filed pursuant to Labor Code section 1164 and subject to the limitations therein.
D'ARRIGO BROS. CO. OF CALIFORNIA, 39 ALRB No. 4

500.10 Where the ALJ stated on the record that he would not find an unfair labor practice based on Employer's refusal to reinstate an employee in the face of a preliminary injunction while the Employer was appealing section 1160.4(c) of the Act, the new anti-stay provision that applies to injunctive relief, the Board reversed the ALJ's finding of such an unfair labor practice as "contrary to elementary constitutional principles of procedural due process." (*Sunnyside Nurseries, Inc. v. Agricultural Labor Relations Board* (1979) 93 Cal. App. 3d 922, 933-934).
PREMIERE RASPBERRIES, LLC dba DUTRA FARMS, 39 ALRB No. 6

600.01 Motions filed before the Board in which facts not in the record are alleged should be accompanied by a declaration filed under penalty of perjury by a person with personal knowledge of those facts.
SOUTH LAKES DAIRY FARM, 39 ALRB No. 2

600.02 It is well-established that evidence of conduct that is time-barred or is otherwise not subject to adjudication on the merits may be admissible as background to shed light on the character of the events that properly are being litigated. (*Nash de Camp Co.* (1999) 25 ALRB No. 7, citing ALRB v. *Ruline Nursery Co.* (1981) 115 Cal.App.3d 1005, 1014.)
D'ARRIGO BROS. CO. OF CALIFORNIA, 39 ALRB No. 4

600.03 The failure of a witness to deny allegations may lead to an adverse inference, but if, under the circumstances, such inference is not appropriate, it need not be taken. ALJD at p.11, n.4
SOUTH LAKES DAIRY FARM, 39 ALRB No. 1

600.03 In order to establish a prima facie case of unlawful retaliation against employees for engaging in union activity, the General Counsel must show that the employees engaged in such activity, the employer had knowledge thereof (or suspected this), and the union activity was a motivating factor in in adverse employment decision. Once the prima facie case has been established, the burden shifts to the employer to show that the adverse action would have been taken, even absent the union activity, citing to *Wright Line, A Division of Wright Line, Inc.* (1980) 251 NLRB 1083 [105 LRRM 1169], enf'd (CA 1, 1981) *NLRB v. Wright Line, Inc.*, 662 F.2d 899 [108 LRRM 2513, cert. denied (1982) 455 U.S. 989 [109 LRRM 2079]. ALJD at p. 45
SOUTH LAKES DAIRY FARM, 39 ALRB No. 1

600.04 Absent direct evidence of employer knowledge, employer knowledge may be established by circumstantial evidence. In determining whether knowledge has been established, it is appropriate to examine the record as a whole. The primary factors considered are the timing of the adverse action with respect to the union activity, the employer's general knowledge that employees are engaging in organizational activity, the employer's animus toward such activity, and whether the reasons advanced for the adverse action are pretexts, citing *Regional Home Care, Inc.* (1999) 329 NLRB 85 [166 LRRM 1117]; *Glasforms, Inc.* (2003) 339 NLRB 1108 [173 LRRM 1156]. ALJD at p. 46
SOUTH LAKES DAIRY FARM, 39 ALRB No. 1

600.14 The Board does more than merely give "some deference" to an ALJ's credibility determinations. The Board will not disturb credibility resolutions based on demeanor unless the clear preponderance of the evidence demonstrates they are in error, citing to *United Farm Workers of America (Ocegueda)* (2011) 37 ALRB No. 3; *P.H. Ranch* (1996) 22 ALRB No. 1; *Standard Drywall Products* (1950) 91 NLRB 544, *enf'd* (3d Cir. 1951) 188 F.2d 362.
SOUTH LAKES DAIRY FARM, 39 ALRB No. 1

600.14 In instances where credibility determinations are based on things other than demeanor, such as reasonable inferences, consistency of witness testimony, or the presence or absence of corroboration, the Board will not overrule the ALJ's credibility determinations unless they conflict with well-supported inferences from the record considered as a whole, citing to *United Farm Workers of America (Ocegueda)* (2011) 37 ALRB No. 1; *S & S Ranch* (1996) 22 ALRB No. 7.
SOUTH LAKES DAIRY FARM, 39 ALRB No. 1

600.14 The uncontradicted testimony of a witness may be discredited, even if not disputed by the supervisor or agent alleged to have made a statement contrary to his employer's interest. ALJD at p. 11, n. 5.
SOUTH LAKES DAIRY FARM, 39 ALRB No. 1

600.16 The presence of an Assistant General Counsel at a meeting between union counsel and worker-witnesses would not waive any attorney-client privilege that otherwise would attach.
D'ARRIGO BROS. CO. OF CALIFORNIA, 39 ALRB No. 4

600.16 Generally, the union, not its individual members, is the client of a union retained attorney. (*Benge v. Superior Court* (1982) 131 Cal.App.3d 336, 345; *Peterson v. Kennedy* (9th Cir. 1985) 771 F.2d 1244, 1258.) This is true even as to individuals who are the subject of a grievance being litigated by an attorney retained by the union. (See, e.g., *Peterson v. Kennedy, supra*, 771 F.2d 1244, at p. 1258.) However, the privilege would attach where circumstances reflect the seeking or imparting of legal advice. (*Benge v. Superior Court, supra,* 131 Cal.App.3d 336, at p. 347.) Therefore, where no evidence was introduced that the meetings between union members or crew representatives and the union attorney in preparation for an evidentiary hearing involved the securing of legal advice, the factual predicates for the attorney-client privilege under existing law were not established.
D'ARRIGO BROS. CO. OF CALIFORNIA, 39 ALRB No. 4

600.16 Though the ALJ erred in finding that conversations between the union's attorney and union member or crew representative witnesses were covered by the attorney-client privilege, the employer failed to show that it was prejudiced by this ruling. The employer failed to indicate the type of questions it would have asked or otherwise explain how it was prejudiced. Furthermore, the Board's review of the record does not indicate that the worker witnesses called by the General Counsel or union testified in a manner which reflected improper preparation. Instead, all of the witnesses, whether fully credited or not, testified in a manner that reflected their individual perspective on events that they claimed to witness. Thus, there was nothing about the manner or content of the testimony that indicated that fuller cross-examination about the witnesses' meetings with counsel would have uncovered anything of use in challenging their credibility.
D'ARRIGO BROS. CO. OF CALIFORNIA, 39 ALRB No. 4

602.01 Though employee soliciting signatures for a decertification petition had served as a temporary foreman in other crews, there was insufficient evidence that the members of the crew in which he was soliciting reasonably would have viewed him as a temporary foreman or otherwise would have been seen as acting on behalf of the employer while soliciting signatures in that crew.
D'ARRIGO BROS. CO. OF CALIFORNIA, 39 ALRB No. 4

608.01 Authorities concerning intervention in judicial fora may be used as guidance in determining whether intervention is appropriate in an MMC cases but are persuasive only insofar as they are consistent with the purpose and structure of MMC, with is quasi-legislative in nature.
GERAWAN FARMING, INC., 39 ALRB No. 11

608.01 California Code of Civil Procedure section 387 governing intervention in civil court cases does not apply directly to MMC proceedings and, although the Board may look to it for guidance, it is persuasive only insofar as it is consistent with the purpose and structure of MMC.
GERAWAN FARMING, INC., 39 ALRB No. 11

700.01 Referral to Mandatory Mediation and Conciliation (MMC) is not available as a remedy in unfair labor practice or election objection cases. In creating the MMC process, the Legislature carved out an exception to the general rule that the Board may not compel parties to agree to terms of a contract, but did not alter the Board's remedial authority in unfair labor practice or election objection cases. Rather, a discrete process was created, subject to the circumstances set forth in the MMC provisions (Lab. Code §§ 1164-1164.13) and available only upon a request for MMC filed under those provisions. Therefore, if the Board sets aside an election due to unlawful employer assistance, the MMC process may be invoked only upon a formal request filed pursuant to Labor Code section 1164 and subject to the limitations therein.
D'ARRIGO BROS. CO. OF CALIFORNIA, 39 ALRB No. 4

700.01 Under Article 3, Section 3.5 of the California Constitution, administrative agencies such as the ALRB have no authority to declare a statute unconstitutional or invalid or to refuse to enforce a statute based upon its alleged unconstitutionality absent an appellate court decision holding the statute unconstitutional. *Hess Collection Winery* (2003) 29 ALRB No. 6 at 6-7. Accordingly, an employer's arguments that the MMC process violated its constitutional due process rights were not considered.
GERAWAN FARMING, INC., 39 ALRB No. 5

700.02 An employer's ongoing participation in Mandatory Mediation and Conciliation does not bar a decertification election among its employees.
ARNAUDO BROTHERS, LP, 39 ALRB No. 9

700.04 Labor Code § 1164.11 subdivision (a) requires only that the parties failed to reach agreement for at least one year after the initial request to bargain and does not require that the labor organization engaged in "good faith and sustained" bargaining efforts over that period.
GERAWAN FARMING, INC., 39 ALRB No. 5

700.06 Labor organization's showing that the employer committed unfair labor practices in connection with the election that resulted in the labor organization's certification, including a refusal to bargain in the post-election pre-certification period was sufficient to meet the requirement of Labor Code § 1164.11 subsection (b) that the employer "has committed an unfair labor practice."
GERAWAN FARMING, INC., 39 ALRB No. 5

700.08 Labor organization's showing that the employer committed unfair labor practices in connection with the election that resulted in the labor organization's certification, including a refusal to bargain in the post-election pre-certification period was sufficient to meet the requirement of Labor Code § 1164.11 subsection (b) that the employer "has committed an unfair labor practice."
GERAWAN FARMING, INC., 39 ALRB No. 5

700.02 The Board rejected the employer's argument that a labor organization's alleged abandonment of the workers it was certified to represent for over 20 years forfeited the labor organization's right to request MMC was rejected. The Board has previously considered and rejected this type of argument. *Dole Fresh Fruit Company* (1996) 22 ALRB No. 4; *Pictsweet Mushroom Farms* (2003) 29 ALRB No. 3; *San Joaquin Tomato Growers, Inc*. (2011) 37 ALRB No. 5; *F&P Growers Assn. v. ALRB* (1985) 168 Cal.App.3d 667, 672-674.
GERAWAN FARMING, INC., 39 ALRB No. 5

701.06 Section 20407, subdivision (a) of the Board's regulations states that "[m]ediation shall proceed in accordance with California Labor Code section 1164, subdivisions (b), (c) and (d)." Labor Code section 1164, subdivision (c) specifically provides, inter alia, that "[u]pon appointment, the mediator shall immediately schedule meetings at a time and location reasonably accessible to the parties and that mediation shall proceed for a period of 30 days." Neither the Board's regulations nor Labor Code section 1164 provides for such a broad grant of authority to a mediator that he or she can completely stop the MMC process. Matters such as questions of representation that might or could affect the MMC process would be resolved by the Board.
ARNAUDO BROTHERS, INC., 39 ALRB No. 7

701.09 Where it was unclear whether the parties had mutually agreed to extend the MMC process beyond sixty days provided by statute, the Board declined to impose a remedy for a late-filed mediator's report.
GEORGE AMARAL RANCHES, INC., 39 ALRB No. 10

701.10 Intervention of a bargaining unit employee in MMC proceedings held between his employer and the certified bargaining representative was not appropriate.
GERAWAN FARMING, INC., 39 ALRB No. 11

701.10 Employee seeking to intervene in MMC proceedings between his employer and the certified bargaining representative was not a "party" within the meaning of Board regulation 20130.
GERAWAN FARMING, INC., 39 ALRB No. 11

701.10 To the extent that California Code of Civil Procedure section 387 governing intervention in civil court cases applies to MMC cases, an employee seeking to intervene in MMC between his employer and the certified bargaining representative did not have "an interest" in the proceedings that could be distinguished from the interest of any other bargaining unit member and any interest he may have had was represented by the certified bargaining representative.
GERAWAN FARMING, INC., 39 ALRB No. 11

701.10 Intervention of a bargaining unit employee in MMC proceedings between his employer and the certified bargaining representative would be inconsistent with the structure of MMC and would undermine its functioning.
GERAWAN FARMING, INC., 39 ALRB No. 11

701.10 There is no public right of access to MMC proceedings under the First Amendment of the Constitution, citing the "experience and logic" test of *Press-Enterprise Co. v. Superior Court of Cal.* (1986) 478 U.S. 1 ("*Press-Enterprise II").*
GERAWAN FARMING, INC., 39 ALRB No. 13

701.10 Mandatory Mediation and Conciliation ("MMC") is more akin to a labor contract negotiation, and there is no known tradition of labor contract negotiations being open to the public, even those involving public employees.
GERAWAN FARMING, INC., 39 ALRB No. 13

701.10 There is no public right of access to Mandatory Mediation and Conciliation ("MMC") proceedings under Article I, section 3 and the Bagley-Keene Open Meetings Act, Government Code section 11120 et seq.
GERAWAN FARMING, INC., 39 ALRB No. 13

701.10 Although the Board's regulations provide for motions for reconsideration in unfair labor practice and representation proceedings (Cal. Code Regs., tit. 8, §§ 20286(c) and 20393(c), respectively) and do not expressively provide for review of a Board interlocutory order in an MMC proceeding, the Board treated the petition for reconsideration as a motion for reconsideration subject to the same standard of review as motions for reconsideration under the relevant regulations sections cited above.
GERAWAN FARMING, INC., 39 ALRB No. 13

701.12 Where it was unclear whether the parties had mutually agreed to extend the MMC process beyond sixty days provided by statute, the Board declined to impose a remedy for a late-filed mediator's report.
GEORGE AMARAL RANCHES, INC., 39 ALRB No. 10

702.01 A petition for review of a mediator's report filed pursuant to Labor Code section 1164.3, subdivision (a) (3) may be granted upon a showing of a prima facie case that a provision in the mediator's report is arbitrary or capricious in light of the findings of fact. The fact that the mediator's report was untimely is not a finding of fact that will establish a prima facie case under Labor Code section 1164.3, subdivision (a) (3)
GEORGE AMARAL RANCHES, INC., 39 ALRB No. 10

702.03 A petition for review of a mediator's report filed pursuant to Labor Code section 1164.3, subdivision (a) (3) may be granted upon a showing of a prima facie case that a provision in the mediator's report is arbitrary or capricious in light of the findings of fact. The fact that the mediator's report was untimely is not a finding of fact that will establish a prima facie case under Labor Code section 1164.3, subdivision (a) (3)
GEORGE AMARAL RANCHES, INC., 39 ALRB No. 10

702.03 The Board struck an Employer's Response to a Petition for Review of a Mediator's Report, as neither the applicable statutory and regulatory provisions provided for such a response, nor was one requested by the Board.
GEORGE AMARAL RANCHES, INC., 39 ALRB No. 10

702.03 Propriety of response filing in which party offered to withdraw two proposals on provisions not resolved by the mediator in order to expedite a final Board order need not be addressed where the matter already was to be remanded to the mediator to resolve other issues.
GERAWAN FARMING, INC., 39 ALRB No. 16

702.04 Language prohibiting disparagement of union must be stricken from an imposed contract because it is inconsistent with an employer's free speech rights under Labor Code section 1155.
GERAWAN FARMING, INC., 39 ALRB No. 16

702.04 Under existing law, a successor employer, though bound by the bargaining obligation, is not bound by an existing contract unless it adopts or assumes the contract. Clause restricting that right by purporting to make the contract binding on a successor employer must be stricken from imposed contract.
GERAWAN FARMING, INC., 39 ALRB No. 16

702.06 A petition for review of a mediator's report filed pursuant to Labor Code section 1164.3, subdivision (a) (3) may be granted upon a showing of a prima facie case that a provision in the mediator's report is arbitrary or capricious in light of the findings of fact. The fact that the mediator's report was untimely is not a finding of fact that will establish a prima facie case under Labor Code section 1164.3, subdivision (a) (3)
GEORGE AMARAL RANCHES, INC. 39 ALRB No. 10

702.06 Remand appropriate to allow mediator to clarify his intent where language in provision fixed by the mediator is inconsistent with his earlier findings.
GERAWAN FARMING, INC., 39 ALRB No. 16

702.08 Propriety of response filing in which party offered to withdraw two proposals on provisions not resolved by the mediator in order to expedite a final Board order need not be addressed where the matter already was to be remanded to the mediator to resolve other issues.
GERAWAN FARMING, INC., 39 ALRB No. 16

702.08 Remand appropriate to allow mediator to clarify his intent where language in provision fixed by the mediator is inconsistent with his earlier findings.
GERAWAN FARMING, INC., 39 ALRB No. 16