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100.00 ALRB: OPERATIONS, JURISDICTION, AUTHORITY

100.00 OPERATIONS OF ALRA

100.01 In General; Name; Labor Code Section 1140

100.01 Because of employers' pre-Act voluntary recognition of Teamsters throughout California, bitter struggle ensued between UFW and Teamsters that was "disorderly, occasionally bloody, and never the showplace of self-determination." It has been suggested that this struggle was the "unstable and potentially volatile condition" referred to in Act's Preamble.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

100.01 ALRB proceedings are neither civil actions nor proceedings known to common law.
SANDRINI BROTHERS v. ALRB (1984) 156 Cal.App.3d 878

100.01 ALRA provides for collective bargaining rights of agricultural workers, defines, proscribes and provides sanctions for certain ULP's of agricultural employers, and charges ALRB with authority, and duty, to enforce Act.
SUNNYSIDE NURSERY v. ALRB (1979) 93 Cal.App.3d 922

100.01 Proceedings before ALRB are neither civil actions nor proceedings known to the common law, and absent a statute providing for jury trial in such proceedings, no such right exists.
PERRY FARMS INC. v. ALRB (1978) 86 Cal.App.3d 448

100.01 ALRB is authorized by statute to exercise functions of judicial nature in that it determines controverted facts between private litigants, makes findings, and issues a remedial order or decision.
PERRY FARMS INC. v. ALRB (1978) 86 Cal.App.3d 448

100.02 Retroactive Application

100.02 Pre-Act economic strikers on temporary layoff had a stake in the election and should not be denied a voice in the election merely because they were not working during one of the named payroll periods.
D. M. STEELE, dba VALLEY VINEYARDS, 5 ALRB No. 11

100.02 Where the employer is engaged in the business of harvesting, hauling, packing, and selling broccoli on a contract fee basis to various growers and owns none of the crops for which it provides these services, the Board finds the packing shed to be a commercial shed. The employees of a commercial shed are not agricultural employees and are properly excluded from the unit.
ASSOCIATED PRODUCE DISTRIBUTORS, 2 ALRB No. 47

100.02 Employer's objection to certification of election won by UFW based on agreement with Teamsters executed prior to the effective date of the ALRA is dismissed under Labor Code section 1156.7(a).
ASSOCIATED PRODUCE DISTRIBUTORS, 2 ALRB No. 47

100.03 Statutory Policy; Labor Code Section 1140.2

100.03 Statement of Intent of the Legislature which states an allowed exception to the Act's basic reference for one bargaining unit for all of the agricultural employees of the employer should be strictly construed.
HARRY TUTUNJIAN & SONS, 12 ALRB No. 22

100.03 Section 1156.2 of the Act reflects a legislative preference for broad comprehensive bargaining units.
CREAM OF THE CROP, 10 ALRB No. 43

100.03 The ALRA, which protects associational rights and encourages peaceful collective bargaining for California's farm workers, represents sufficiently important state interest under Younger, and the contrary holding in Martori Bros. v. James-Massengale (9th Cir. 1986) is overruled. (Citing Dayton (1986) 106 S.Ct. 2718.) This interest is underscored by fact that ULP proceedings under Act are initiated by agency of the State, acting as prosecutor, rather than by private parties. Though agricultural employer technically initiated state judicial review proceeding, that is just one procedural step in ULP proceeding initiated when General Counsel filed complaint.
FRESH INT'L. CORP. v. ALRB (9th Cir. 1986) 805 F.2d 1353

100.03 "Peak" requirement of 1156.4 is designed to insure that seasonal workers' representation rights are not determined for them, during "off-season", by year-around worker minority.
RULINE NURSERY CO. v. ALRB (1985) 169 Cal.App.3d 247

100.03 By language of 1156.3, Legislature has in substance established presumption in favor of certification, with burden of proof resting with objecting party to show why election should not be certified.
RULINE NURSERY CO. v. ALRB (1985) 169 Cal.App.3d 247

100.03 In representation cases, ALRB has consistently followed policy of upholding elections unless to do so would clearly violate employee rights or result in unreasonable interpretation or application of Act.
RULINE NURSERY CO. v. ALRB (1985) 169 Cal.App.3d 247

100.03 Steps favoring quick resolution of election proceedings further policy of Act.
RULINE NURSERY CO. v. ALRB (1985) 169 Cal.App.3d 247

100.03 Legislative intent to make 1160.8 exclusive avenue of

judicial review is evident in shortened time limits, option of summary denial, and abbreviated superior court review. Appeal of superior court enforcement would thwart overall intent--to make review speedy and expeditious.
ALRB v. ABATTI PRODUCE, INC. (1985) 168 Cal.App.3d 504

100.03 ALRB remedies are designed to effectuate public policy and not to redress individual injuries of a private nature.
SANDRINI BROTHERS v. ALRB (1984) 156 Cal.App.3d 878

100.03 1152 contains complementary rights to associate and disassociate with concerted activities. The disassociational right, however, may be limited by a union security agreement.
PASILLAS v. ALRB (1984) 156 Cal.App.3d 312

100.03 ALRB has special expertise in not only labor law in its strict sense, but in the actual conduct of labor disputes. Intent was, so far as possible, to relieve judicial system of burden of refereeing labor disputes.
BANALES v. MUNICIPAL COURT (1982) 132 Cal.App.3d 67

100.03 The Superior Court's decision not to bar all strike access was clearly related to a major purpose of the ALRA--to "ensure peace in the agricultural field."
ALRB v. CALIFORNIA COASTAL FARMS, INC. (1982) 31 Cal.3d 469

100.03 ALRA's remedial purpose, as set forth in 1140.2, is to encourage and protect employees' collective bargaining rights.
ALRB v. RULINE NURSERY CO. (1981) 115 Cal.App.3d 1005

100.03 Objectives of state labor policy under ALRA require that rights of employers to buy and sell agricultural businesses be balanced by some protection to employees from a sudden change in employment relationship.
SAN CLEMENTE RANCH, LTD. v. ALRB (1981) 29 Cal.3d 874

100.03 It is well settled that the concept of successorship liability is inherent in the fundamental purpose of labor legislation.
SAN CLEMENTE RANCH, LTD. v. ALRB (1981) 29 Cal.3d 874

100.03 Legislature created bargaining units consisting of all agricultural employees of employer to enhance mobility from low paid to higher paid jobs and to protect growers from bargaining with many different unions.
VISTA VERDE FARMS v. ALRB (1981) 29 Cal.3d 307

100.03 If employers were generally to escape liability for labor contractor misconduct, many protections of ALRA would be nullified. It is unlikely that Legislature enacted a statute that was inherently inoperative.
VISTA VERDE FARMS v. ALRB (1981) 29 Cal.3d 307

100.03 ALRB has duty to supervise and to protect integrity of labor election process.
SAN DIEGO NURSERY CO. v. ALRB (1979) 100 Cal.App.3d 128

100.03 The Board may not change the balance, struck by the legislature, between stable contracts and employee freedom to decertify.
CADIZ v. ALRB (1979) 92 Cal.App.3d 365

100.03 Allowing election at any time during last year of a contract does not destroy purpose of ALRA nor does it lead to absurd results, since a primary purpose of the ALRA is to promote employee free choice.
CADIZ v. ALRB (1979) 92 Cal.App.3d 365

100.03 Declaration of legislator who drafted ALRA was not conclusive as to legislative intent where it only indicated the understanding of one individual and was, at best, ambiguous.
CADIZ v. ALRB (1979) 92 Cal.App.3d 365

100.03 Board's screening procedure serves statutory purpose of giving newly formed unions legitimacy as quickly as possible.
J.R. NORTON CO. v. ALRB (1979) 26 Cal.3d 1

100.03 ALRA designed to make full use of Board's expertise and to minimize delay from judicial review.
TEX-CAL LAND MANAGEMENT, INC. v. ALRB (1979) 24 Cal.3d 335

100.03 To ignore possible disenfranchisement of majority of petitioner's workers violates Board's obligation to protect rights of agricultural workers to organize and bargain.
PERRY FARMS INC. v. ALRB (1978) 86 Cal.App.3d 448

100.03 In order to bring sense of fair play and stability to agricultural labor relations, ALRA creates rights to organize, bargain, and be free from coercion, interference, and discrimination.
ALRB v. SUPERIOR COURT (PANDOL) (1976) 16 Cal.3d 392

100.03 Section 1156.3(c) creates a presumption in favor of certification, whether of a representation or decertification election.
GALLO VINEYARDS, INC., 34 ALRB No. 6

100.03 The federal Worker Adjustment and Retraining Notification Act ("WARN" Act, 29 U.S.C. §§ 2101 et seq.) was not intended to supplant rights employees otherwise enjoy under state law. Therefore, to construe the federal WARN Act as requiring the provision of 60 days' notice of an impending layoff while simultaneously disenfranchising employees under the ALRA who remain employed during that notice period is a strained construction of *both* acts.

NURSERYMEN'S EXCHANGE, INC., 36 ALRB No. 6

100.03 The legislative purpose behind authorizing a strike election to occur within forty-eight hours of the filing of a representation petition was the legislature's recognition of the inherently volatile nature of a strike and the potential for violence and/or disruption in production. A strike election should be held as soon as possible, provided adequate notice is provided to the parties and the employees, no party is prejudiced, and eligible employees are not denied an opportunity to vote. GEORGE AMARAL RANCHES, INC., 38 ALRB No. 5

101.00 APPLICABILITY OF NLRA AND LMRDA PRECEDENT AND OTHER STATUTES; LABOR CODE SECTION 1148

101.01 In General

101.01 In determining the scope of post-Act economic striker eligibility under section 1157, the Board looks to the NLRA (29 U.S.C. 152(3)) for guidance in defining employees who are eligible as economic strikers since it has no relevant regulations in place, but it looks to section 1140.4(h) to define "labor dispute." SAN JOAQUIN TOMATO GROWERS, INC./LCL FARMS, INC., 16 ALRB No. 10

101.01 In determining the scope of post-Act economic striker eligibility under section 1157, the Board looks to the NLRA (29 U.S.C. 152(3)) for guidance in defining employees who are eligible as economic strikers since it has no relevant regulations in place, but it looks to section 1140.4(h) to define "labor dispute." ACE TOMATO CO., INC., 16 ALRB No. 9

101.01 In determining the scope of post-Act economic striker eligibility under section 1157, the Board looks to the NLRA (29 U.S.C. 152(3)) for guidance in defining employees who are eligible as economic strikers since it has no relevant regulations in place, but it looks to section 1140.4(h) to define "labor dispute." TRIPLE E PRODUCE CORP., 16 ALRB No. 5

101.01 Board not required to determine whether NLRB decision in Times Square Stores Corp. (1948) 79 NLRB 361 is applicable precedent under section 1148 since Board would reach same result on basis of section 1149 which grants General Counsel final authority with respect to the investigation of charges and issuance of complaints as well as prosecution of such complaints. Even were Board to follow Times Square, Board does not read NLRB decision so broadly as to require that it defer to General Counsel's discretion when no unfair labor practice charges have been filed. MANN PACKING CO., INC., 15 ALRB No. 11

101.01 Respective duties and spheres of original jurisdiction of the Board and the General Counsel under the ALRA are virtually identical to corresponding provisions in the NLRA i.e., the statutes provide for a clear separation of powers respecting unfair labor practice and representation matters.
MANN PACKING CO., INC., 15 ALRB No. 11

101.01 Similarity of secondary boycott provisions of ALRA to those of NLRA mandates construction of ALRA's provisions in conformity with precedents construing similar provisions of NLRA. (Kaplan's Fruit & Produce Co. v. Superior Court (1979) 26 Cal.3d 60 [160 Cal.Rptr. 745].)
UFW (THE CAREAU GROUP dba EGG CITY), 15 ALRB No. 10

101.01 Board has no basis for concluding that California agriculture generally is less well-suited to arbitration than industries subject to the NLRA.
TEX-CAL LAND MANAGEMENT, INC., 11 ALRB No. 31

101.01 In determining the scope of the section 1154(d)(4) prohibition of jurisdictional picketing, the Board looks to the NLRA for guidance but takes into account the greater protections afforded employee informational picketing and secondary activity under the ALRA.
UNITED VINTNERS, INC., 10 ALRB No. 34

101.01 Section 1148 mandates following applicable decisions under NLRA.
ROGERS FOODS, INC., 8 ALRB No. 19

101.01 An appellate court is guided in its review of orders of the ALRB by decisions under the National Labor Relations Act on which the ALRA was modeled.
VESSEY & COMPANY, INC. v. ALRB (1989) 210 Cal.App.3d 629

101.01 Board properly followed NLRA precedent in extending union's certification after finding that employer had unlawfully refused to bargain.
ADAMEK & DESSERT, INC. v. ALRB (1986) 178 Cal.App.3d 970

101.01 Language of 1156.3 is clearly derived from the NLRA. But NLRA provision is for pre-election hearings on questions of representation--i.e., determinations as to the appropriate bargaining unit--to which there is no comparable ALRA procedure.
LINDELEAF v. ALRB (1986) 41 Cal.3d 861

101.01 Where lawsuit did not arise out of breach of collective bargaining agreement, trial court erred when it sustained defendant's demurrer to complaint based on 1165.
PESCOSOLIDO v. MADDOCK (1985) 172 Cal.App.3d 230

101.01 Where state statute is patterned after federal statute precedents construing federal statute may be relied on to construe state statute.
PESCOSOLIDO v. MADDOCK (1985) 172 Cal.App.3d 230

101.01 Since ALRA is patterned after NLRA, precedents construing NLRA may be used to interpret provisions of ALRA.
PESCOSOLIDO v. MADDOCK (1985) 172 Cal.App.3d 230

101.01 Section 1165(b) does not shield individual union members or agents from liability in cases which do not involve or relate to breach of a collective bargaining agreement.
PESCOSOLIDO v. MADDOCK (1985) 172 Cal.App.3d 230

101.01 Congress developed federal analog to 1165(a) and 1165(b) to permit employers and labor organizations to maintain suits to enforce collective bargaining agreements.
PESCOSOLIDO v. MADDOCK (1985) 172 Cal.App.3d 230

101.01 Section 1160.4 is similar to section 10(j) of NLRA and to Gov. Code section 3541.3 (j) (defining PERB's powers). Hence, cases construing one of these sections provide applicable guidelines in construing others.
ALRB v. TEX-CAL LAND MANAGEMENT, INC. (1985) 165 Cal.App.3d 429

101.01 Because 1148 requires Board to follow NLRA precedent, and because bargaining orders--unlike make-whole relief--were well-established federal precedent when ALRA was passed, Legislature did not need to expressly authorize such bargaining orders.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

101.01 Section 1148 requires only that ALRB follow applicable NLRA precedent; it doesn't limit Board to only such orders or decisions as have precedent under NLRA. Thus, even if Gissel was not "applicable," ALRB could issue such bargaining orders if it believed they were necessary to effectuate purposes of Act.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

101.01 No need to determine whether constitutional right to access exists where access rights are governed by NLRB precedent.
SAM ANDREWS' SONS v. ALRB (1984) 162 Cal.App.3d 923

101.01 ALRA was patterned after NLRA, with changes necessary to meet special needs of California agriculture. Therefore, administrative and judicial interpretations of the federal act are persuasive indicators of the appropriate interpretation of ALRA.
PASILLAS v. ALRB (1984) 156 Cal.App.3d 312

101.01 Court is guided by NLRA precedent, since ALRA modeled after NLRA.
CARL JOSEPH MAGGIO, INC. v. ALRB (1984) 154 Cal.App.3d 40

101.01 ALRA mandates that NLRB precedent, if applicable, be followed.
SUPERIOR FARMING CO. v. ALRB (1984) 151 Cal.App.3d 100

101.01 ALRA modeled in large part after NLRA.
THOMAS S. CASTLE v. ALRB (1983) 140 Cal.App.3d 668

101.01 ALRA in many respects parallels provisions of NLRA.
TRIPLE E PRODUCE CORP. v. ALRB (1983) 35 Cal.3d 42

101.01 Test for superior court injunction under 1160.4 is drawn from NLRA precedent, since 1160.4 is closely modeled after NLRA section 10(j).
ALRB v. CALIFORNIA COASTAL FARMS, INC. (1982) 31 Cal.3d 469

101.01 ALRB correctly followed NLRA precedent as to statute of limitations, since language of ALRA and NLRA are identical.
MONTEBELLO ROSE CO. v. ALRB (1981) 119 Cal.App.3d 1

101.01 Federal precedents on preemption are applicable under ALRA.
BERTUCCIO v. SUPERIOR COURT (1981) 118 Cal.App.3d 363

101.01 Disqualification of an ALJ is subject to NLRA precedent.
CALIFORNIA COASTAL FARMS v. DOCTOROFF (1981) 117 Cal.App.3d 15

101.01 ALRA is modeled after NLRA.
SAN CLEMENTE RANCH, LTD. v. ALRB (1981) 29 Cal.3d 874

101.01 Federal precedents are persuasive indicants of appropriate interpretation of ALRA, due to close modeling of ALRA after NLRA. That principle is codified in 1148.
HIGHLAND RANCH v. ALRB (1981) 29 Cal.3d 848

101.01 Where ALRA modeled closely after NLRA, NLRB precedent is applicable.
VISTA VERDE FARMS v. ALRB (1981) 29 Cal.3d 307

101.01 Since provisions of ALRA relating to judicial review of Board decisions closely parallel those of NLRA, federal decisions concerning such matters are controlling.
YAMADA BROS. v. ALRB (1979) 99 Cal.App.3d 112

101.01 Since provisions of ALRA relating to judicial review of Board decisions closely parallel those of NLRA, federal decisions concerning such matters are controlling.
YAMADA BROS. v. ALRB (1979) 99 Cal.App.3d 112

101.01 NLRA precedent regarding breadth of NLRB's remedial power is applicable precedent under ALRA, because ALRA is closely modeled after NLRA.
BUTTE VIEW FARMS v. ALRB (1979) 95 Cal.App.3d 961

101.01 ALRA incorporates into California law general features of federal preemption doctrine.
KAPLAN'S FRUIT & PRODUCE CO. v. SUPERIOR CT. (1979) 26 Cal.3d 60

101.01 Board's election objection screening procedure modeled after NLRB procedure which has been upheld many times.
J.R. NORTON CO. v. ALRB (1979) 26 Cal.3d 1

101.01 ALRA was modeled on NLRA, and NLRA precedent is applicable in interpreting the ALRA.
PERRY FARMS INC. v. ALRB (1978) 86 Cal.App.3d 448

101.01 Question of when Board order is "final" and therefore appealable is controlled by NLRB precedent, since 1160.8 is closely modeled after NLRA section 10(e).
NISHIKAWA FARMS, INC. v. MAHONY (1977) 66 Cal.App.3d 781

101.01 The Board has consistently rejected use of the NLRB's "reasonable expectation of employment" standard in determining the existence of an employer-employee relationship. Rather, the inquiry has been focused on whether there was an employment relationship during the pre-petition payroll period, as employment during that period is the only statutory requirement for voter eligibility.
NURSERYMEN'S EXCHANGE, INC., 36 ALRB No. 6

101.02 Agriculture Distinguished; NLRA Not Applicable

101.02 A Supreme Court decision directing the NLRB to accommodate its remedial provisions of backpay and reinstatement to equally important federal immigration objectives is not applicable precedent under section 1148 of the Act due to principles of federalism and California's compelling state interest in fully remedying unfair labor practices in agriculture.
RIGI AGRICULTURAL SERVICES, INC., 11 ALRB No. 27

101.02 Truck driver who hauls empty citrus bins to fields for non-profit harvest association and returns filled bins to packing shed is not an agricultural employee within meaning of Labor Code section 1140.4(b). Board cites Guadalupe Carrot Packers dba Romar Carrot Company (1977) 228 NLRB 369 [94 LRRM 1734] for principle that one engaged in secondary agricultural activity, such as truck driving, is not within the purview of section 1140.4(b) unless the work is performed on a farm or by a farmer.
SIERRA CITRUS ASSOCIATION, 5 ALRB No. 12

101.02 Because setting aside elections in the agricultural context carries implications beyond those involved in the normal industrial setting, due to the typically seasonal and often transitory nature of agricultural employment, NLRB cases which strictly construe "laboratory standards" not applicable under ALRA.
SAMUEL S. VENER CO., 1 ALRB No. 10

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NLRB cases which strictly construe "laboratory standards" not applicable under ALRA.
SAMUEL S. VENER CO., 1 ALRB No. 10

101.02 1148 only requires Board to follow "applicable" NLRB precedent. Whether Board has or has not followed other NLRA precedents is not determinative of whether it must follow any particular precedent. Rather, Board needs to determine whether particular NLRB precedent is relevant to unique problems of labor relations on California agricultural labor scene.
F&P GROWERS ASSN. v. ALRB (1985) 168 Cal.App.3d 667

101.02 ALRB need not consider passage of time or employee turnover which occurs between time of ULP's and time of Board's order. NLRB's position--that situation must be appraised as of time of ULP's and that subsequent events should be ignored--is particularly appropriate in ALRA context, where high turnover is inherent.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

101.02 Board need not apply NLRB precedent where peculiar conditions of agricultural make NLRB precedent impractical or unworkable.
WILLIAM DAL PORTO & SONS, INC. v. ALRB (1984) 163 Cal.App.3d 541

101.02 Federal precedent on successorship is generally applicable under the ALRA, except to the extent the federal cases focus on "workforce continuity." Since high turnover is prevalent in agriculture, the federal focus on workforce continuity is not applicable.
BABBITT ENGINEERING & MACHINERY v. ALRB (1984) 152 Cal.App.3d 310

101.02 Under certain circumstances, Board may diverge from NLRA precedent if particular problems within the agricultural context justify such treatment.
TRIPLE E PRODUCE CORP. v. ALRB (1983) 35 Cal.3d 42

101.02 ALRB is not obligated to blindly follow NLRB precedent without regard to significant differences between industrial setting of NLRA and agricultural setting of ALRA. SAN CLEMENTE RANCH, LTD. v. ALRB (1981) 29 Cal.3d 874

101.02 Section 1148 requires only that ALRB follow applicable federal precedents--those that are relevant to particular problems of labor relations on California agricultural scene.
SAN CLEMENTE RANCH, LTD. v. ALRB (1981) 29 Cal.3d 874

101.02 Because of unique circumstances of California's agricultural setting, ALRB was justified in finding that considerations in addition to workforce continuity should play important role in defining successorship under ALRA. Federal successorship decisions are not necessarily

controlling in this context.
SAN CLEMENTE RANCH, LTD. v. ALRB (1981) 29 Cal.3d 874

101.02 NLRA precedent has limited application to election matters, since ALRA is specifically tailored for speedy resolution of representation issues in recognition of special requirements of agriculture.
CADIZ v. ALRB (1979) 92 Cal.App.3d 365

101.02 Board justified in departing from NLRA precedent with respect to use of "check-off" lists at election polling site.
J.R. NORTON CO. v. ALRB (1979) 26 Cal.3d 1

101.02 1148 does not require ALRB to follow NLRB precedents when the particular conditions of agricultural make NLRB precedent inapplicable.
ALRB v. SUPERIOR COURT (PANDOL) (1976) 16 Cal.3d 392

101.03 ALRA Language Different Than NLRA

101.03 As the Agricultural Labor Relations Act (ALRA) differs from the NLRA in that it contains no family-based exclusion from its definition of "agricultural employee" and, aside from a narrow geographic-based exception, requires every bargaining unit to include "all the agricultural employees of the employer," NLRB precedent regarding voting eligibility for employer family members is not "applicable" precedent which the Board is mandated to follow by section 1148 of the ALRA.
BUNDEN NURSERY, INC., 14 ALRB No. 18

101.03 In light of clear statutory language setting forth narrow and precise conditions for eligibility in representation elections, Board rejects NLRB's "reasonable expectation of employment" as a basis for extending eligibility.
THE CAREAU GROUP, DBA EGG CITY, 14 ALRB No. 2

101.03 Given the explicit election requirements set forth in Chapter 5 of the Act, general NLRB election rules not applicable precedents within the meaning of Labor Code section 1148.
HIJI BROTHERS, INC., 13 ALRB No. 16

101.03 In light of clear statutory language setting forth narrow and precise conditions for eligibility in representation elections, Board rejects NLRB's "reasonable expectation of employment" as a basis for extending eligibility.
HIJI BROTHERS, INC., 13 ALRB No. 16

101.03 Inclusion of fringe benefits as part of makewhole award does not violate preemption provision of the Employment Retirement Income Security Act of 1974, 29 U.S.C. section 1001, et seq. (ERISA), since any impact Board's order might have on employee benefit plans would be so tenuous, remote or peripheral that a finding that the ALRA "related to" the plan would be unwarranted.

J. R. NORTON COMPANY, INC., 10 ALRB No. 42

101.03 Gissel bargaining order authority is not rendered inapplicable by U.S. Supreme Court's earlier unrelated conclusion that union can obtain voluntary recognition under NLRA.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

101.03 Bargaining orders may be even more important under ALRA than they are under NLRA, because rerun elections are less feasible in light of peak requirements (1156.4) and 7-day rule (1156.3(c)).
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

101.03 Differences between 1160.3 and NLRA section 10(c) indicate that ALRB was intended to have broader remedial powers than NLRB.
SANDRINI BROTHERS v. ALRB (1984) 156 Cal.App.3d 878

101.03 NLRB precedent regarding retroactive enforcement of union security clauses is not applicable to ALRA, since federal precedent is based on construction of statutory language which does not appear in ALRA.
PASILLAS v. ALRB (1984) 156 Cal.App.3d 312

101.03 1153(c) does not contain the limiting language of NLRA section 8(a)(3), which limits the meaning of "membership" in a union to the payment of dues and fees.
PASILLAS v. ALRB (1984) 156 Cal.App.3d 312

101.03 California Legislature intended to give ALRB broader investigatory powers than NLRB.
SAN DIEGO NURSERY CO. v. ALRB (1979) 100 Cal.App.3d 128

101.03 NLRB precedent regarding "contract bar" not applicable because ALRA specifically creates a contract bar rule in section 1156.7 which diverges from the NLRB practice. In this instance, the ALRA was not modeled after the NLRA, which contains no parallel language on contract bar.
CADIZ v. ALRB (1979) 92 Cal.App.3d 365

101.03 1160.8 differs significantly from sections 10(e) and (f) of NLRA.
TEX-CAL LAND MANAGEMENT, INC. v. ALRB (1979) 24 Cal.3d 335

101.03 ALRA provisions not present in NLRA intended to keep employer out of employee union selection process warrant strict limits on coercive employer solicitation of decertification petition signatures.
GALLO VINEYARDS, INC., 30 ALRB No. 2

101.03 The Board has consistently rejected use of the NLRB's "reasonable expectation of employment" standard in determining the existence of an employer-employee relationship. Rather, the inquiry has been focused on whether there was an employment relationship during the

pre-petition payroll period, as employment during that period is the only statutory requirement for voter eligibility.
NURSERYMEN'S EXCHANGE, INC., 36 ALRB No. 6

101.04 NLRA Substantive Law Applicable

101.04 Even conceding applicability of NLRA access precedent, Board expresses view that unrestricted labor camp access order appropriate because NLRB test for limitations on organizer access in analogous lumber camp setting would allow only restrictions "which are necessary in order to maintain production or discipline." (NLRB v. Lake Superior Lumber Corp. (6th Cir. 1948) 107 F.2d 147.)
SAM ANDREWS' SONS, 11 ALRB No. 29

101.04 Board properly applied federal precedent, in absence of California law, in determining validity of employer's no-solicitation rule.
KARAHADIAN RANCHES, INC. v. ALRB (1985) 38 Cal.3d 1

101.04 Issue of good faith bargaining is one to which ALRB must apply applicable NLRB precedent.
WILLIAM DAL PORTO & SONS, INC. v. ALRB (1984) 163 Cal.App.3d 541

101.04 ALRB must apply NLRB precedent when determining whether denial of union organizer access to company-owned labor camp was violation of ALRA.
SAM ANDREWS' SONS v. ALRB (1984) 162 Cal.App.3d 923

101.04 NLRA precedent on threats made to prospective voters by union organizers during election campaign held applicable to Board elections.
TRIPLE E PRODUCE CORP. v. ALRB (1983) 35 Cal.3d 42

101.04 NLRA precedent regarding determination of lawfulness of discharge is applicable to ALRA under 1148.
KAWANO, INC. v. ALRB (1980) 106 Cal.App.3d 937

101.04 National Labor Relations Board (NLRB) decisions with respect to the policy of excluding student-workers who are primarily students from the category of statutory employee are applicable NLRB precedent.
CALIFORNIA FLORIDA PLANT CO., L.P., 37 ALRB No. 2

101.04 The National Labor Relations Board (NLRB) decisions cited by the Regional Director as grounds for concluding that a student-worker was "primarily a student" and not a statutory employee – Brown University (2004) 342 NLRB 483, Leland Stanford Junior University (1974) 214 NLRB 621, and Adelphi University (1972) 195 NLRB 639 – were applicable precedent but inapposite on their facts. These decisions presumed the existence of an academic relationship between a student-worker and an employer, which was not the case in this matter.
CALIFORNIA FLORIDA PLANT CO., L.P., 37 ALRB No. 2

101.04 The language of section 1140(j) of the ALRA defining the term supervisor is virtually identical to that of section 2(11) of the National Labor Relations Act (NLRA). (29 U.S.C. § 152(11).) Under section 1148 of the ALRA, the Board shall follow applicable precedents of the NLRA with respect to determining supervisor status.
KAWAHARA NURSERIES, INC., 37 ALRB No. 4

101.05 NLRB's Procedural Rules Not Applicable

101.05 The Board is not required by Labor Code section 1148 to follow National Labor Relations Board (NLRB) procedure. *Tex-Cal Land Management, Inc. v. ALRB* (1979) 24 Cal.3d 335, 350-351.
PREMIERE RASPBERRIES, LLC dba DUTRA FARMS, 38 ALRB No. 11

101.06 Resolution of Conflicts between ALRB and Other Federal or State Statutes; Labor Code Section 1166.3(b)

101.06 Respondent failed to establish unauthorized immigration status of fourteen discriminatees, the basic premise from which its "preemption" and "unavailability" arguments were made. For this reason Board declined to address Respondent's contentions, holding that Respondent's refusal to reinstate the discriminatees upon their application to return to work was unwarranted.
PHILLIP D. BERTELSEN, INC., dba COVE RANCH MANAGEMENT, 16 ALRB No. 11

101.06 The ALRB is not preempted by federal law from awarding backpay and reinstatement to undocumented alien discriminatees because full enforcement of ALRB remedial provisions of backpay and reinstatement does not create an actual conflict with federal law nor does such state action obstruct the full effectuation of federal immigration objectives.
RIGI AGRICULTURAL SERVICES, INC., 11 ALRB No. 27

101.06 The Board's jurisdiction in a case involving an employee's utilization of labor commission procedures is not preempted by Labor Code section 98.6(a) which prohibits retaliation for the invocation of those procedures.
ARCO SEED COMPANY, 11 ALRB No. 1

101.06 Marketing commission (Table Grape) is not empowered by its enabling statute, the Ketchum Act, to file unfair labor practice charges, therefore, it has no standing under ALRA to file such charges.
UFW v. ALRB (Table Grape Commission), 41 Cal.App.4th 303 [48 Cal.Rptr.2d 696] (setting aside UFW (Table Grape Commission) (1993) 19 ALRB No. 15)

101.06 The federal Worker Adjustment and Retraining Notification Act ("WARN" Act, 29 U.S.C. §§ 2101 et seq.) was not intended to supplant rights employees otherwise enjoy

under state law. Therefore, to construe the federal WARN Act as requiring the provision of 60 days' notice of an impending layoff while simultaneously disenfranchising employees under the ALRA who remain employed during that notice period is a strained construction of both acts.
NURSERYMEN'S EXCHANGE, INC., 36 ALRB No. 6

101.07 Severability of Provisions; Labor Code Section 1166.3(a)

101.08 Conflicts in Federal Precedent; Between Circuits; Between Circuits and NLRB

101.09 LMRDA Precedent

102.00 SCOPE OF ALRB JURISDICTION

102.01 In General

102.01 Where employees who work in egg packing plant also work in ranch operations raising chickens and gathering eggs, work which is indisputably agricultural, there is at minimum a mixed work situation, whereby Board would have jurisdiction over ranch work even if packing plant work were found to be nonagricultural.
OLSON FARMS/CERTIFIED EGG FARMS, INC., 19 ALRB No. 20

102.01 Where Board's jurisdiction has been determined in a previous adjudication, burden shifts to respondent to provide evidence that intervening changes in facts or law have stripped the Board of jurisdiction.
OLSON FARMS/CERTIFIED EGG FARMS, INC., 19 ALRB No. 20

102.01 Where purchases from outside entities were not typical, were undertaken only because of insufficient supply from respondent's own operations, and were avoided whenever possible, this "outside mix" was not regular and therefore the operations are agricultural even under the standard announced by the NLRB in Camsco Produce Co., Inc. (1990) 297 NLRB 905.
OLSON FARMS/CERTIFIED EGG FARMS, INC., 19 ALRB No. 20

102.01 California Table Grape Commission, a corporation with a legitimate interest in the outcome of these proceedings, is within the statutory definition of persons entitled to file charges with the Board (Lab. Code § 1140.4(d)).
UNITED FARM WORKERS OF AMERICA, 19 ALRB No. 15

102.01 A party's alleged "unclean hands" cannot deprive the Board of jurisdiction to consider charges filed by that party.
UNITED FARM WORKERS OF AMERICA, 19 ALRB No. 15

102.01 Nursery employees who planted seedlings, irrigated, weeded, pruned, sprayed, cut and bunched flowers were engaged in agriculture and subject to jurisdiction of ALRB.

SILVER TERRACE NURSERIES, INC., 19 ALRB No. 12

102.01 Although on occasion outside companies' flowers, which were already packed and ready for sale, were stored in employer's shed and then loaded onto employer's trucks for shipment to employer's second nursery site, such work was not sufficient to make employer's employees subject to NLRB jurisdiction.
SILVER TERRACE NURSERIES, INC., 19 ALRB No. 12

102.01 Although there was a pending NLRB RM proceeding, Board had jurisdiction to determine its own jurisdiction over nursery employees. Board's finding that the employees were engaged in agriculture is consistent with NLRB case law.
SILVER TERRACE NURSERIES, INC., 19 ALRB No. 12

102.01 Board's jurisdiction over individual employees who have been challenged may be investigated and brought before Board in challenge ballot investigation.
SILVER TERRACE NURSERIES, INC. 19 ALRB No. 5

102.01 Board concludes that NLRB has not strictly adhered to its holding in Austin DeCoster d/b/a DeCoster Egg Farms (1976) 223 NLRB 884 [92 LRRM 1120] that any amount of processing of other producers' agricultural products necessarily makes the processing employees commercial rather than agricultural. Subsequent NLRB decisions indicate that the national board has continued to apply the rule established in Olaa Sugar Company, Ltd. (1957) 118 NLRB 1442 [40 LRRM 1400] and The Garin Company (1964) 148 NLRB 1499 [47 LRRM 1175] that employees engaged in the processing of crops will be found to be non-agricultural employees only if a regular and substantial portion of their work consists of processing the crops of a grower or growers other than the grower-employer.
SUNNY CAL EGG & POULTRY, INC., 14 ALRB No. 14

102.01 Since Employer was admittedly an agricultural employer at the time it refused to bargain, Board has jurisdiction to remedy the ULP even though Employer may later have become a commercial, nonagricultural employer.
SUNNY CAL EGG & POULTRY, INC., 14 ALRB No. 14

102.01 Compliance is the appropriate place to determine when, if ever, Employer ceased to be an agricultural employer.
SUNNY CAL EGG & POULTRY, INC., 14 ALRB No. 14

102.01 In granting the General Counsel's motion to correct clerical error, the Board found its omission of eight discriminatees from the remedial orders in Vessey & Co., Inc. (1985) 11 ALRB No. 3 and (1983) 7 ALRB No. 44, was due to clerical error; and issued a Supplemental Decision and Corrected Order substituting the corrected order, including the eight names.
VESSEY & COMPANY, INC., 14 ALRB No. 4

102.01 The Board has authority to correct clerical error in its decision.
ROYAL PACKING COMPANY, 12 ALRB No. 25

102.01 Board's jurisdiction in compliance proceedings extends to finding of continuation after unfair labor practice hearing of bargaining conduct found to be on-going violation in underlying liability decision.
McFARLAND ROSE PRODUCTION, 11 ALRB No. 34

102.01 By analogy to General Counsel's jurisdiction over issues not specifically pleaded in complaint but fully litigated and sufficiently related to allegations in complaint, Board has jurisdiction over continuation of bad faith bargaining after the unfair labor practice hearing without necessity of filing a new charge.
McFARLAND ROSE PRODUCTION, 11 ALRB No. 34

102.01 The Board's jurisdiction in a case involving an employee's utilization of labor commission procedures is not preempted by Labor Code section 98.6(a) which prohibits retaliation for the invocation of those procedures.
ARCO SEED COMPANY, 11 ALRB No. 1

102.01 Board may assert jurisdiction where a California corporation changed its methods for notifying employees at its California operation of employment opportunities in its Arizona operation; California's contacts with the parties and with the matter at issue, and its interests in the proper outcome of the case, were extensive and substantial.
ADMIRAL PACKING COMPANY, 10 ALRB No. 9

102.01 The Board lacks jurisdiction to exclude agricultural workers based on bargaining history or community of interest, in view of the mandate in section 1145.2 of the Labor Code.
J.J. CROSETTI CO., INC., 2 ALRB No. 1

102.01 Although Labor Code '98.6 provides a remedy of reinstatement and reimbursement for lost wages resulting from discrimination against employees who file claims with Labor Commissioner, '1160.9 of ALRA confers exclusive jurisdiction on Board over ULP's arising from concerted activity of employees who act together in filing such claims.
IMPERIAL ASPARAGUS FARMS, INC., 20 ALRB No. 2

102.01 Matter dismissed because, under existing precedent, Board preempted from proceeding to adjudicate merits of unfair labor practice allegations where prior NLRB decision finding employer's packing shed to be commercial operation under the rule adopted in Camsco Produce Co., Inc. (1990) 297 NLRB 905 included factual findings showing that employer packed outside produce during the period up to and including the time of the alleged unfair

labor practices.
GERAWAN FARMING CO., INC., ET AL., 21 ALRB No. 6

102.01 Assertion of prospective jurisdiction by the NLRB preempts ALRB from asserting jurisdiction over an earlier period, absent evidence that the employer's operations had changed, even where ALRB jurisdiction had previously been undisputed.
Bud Antle v. Barbosa, et al., 45 F.3d 1261 (1994)

102.01 Employee who spends substantial amount of time hauling firewood cut from employer's ranches is engaged in "forestry or lumbering operations" and is therefore an agricultural employee as to that work.
WARMERDAM PACKING CO., 24 ALRB No. 2

102.01 ALRB has jurisdiction over employees found to be engaged in agriculture even though NLRB has found, based on vastly different facts, that at a later time the employees were under NLRB jurisdiction. Under the facts before the NLRB, the employer regularly processed other farmers' eggs, while during the period covered by the ALRB decision, the employer stipulated that outside eggs were used only on a rare and emergency basis *(see Camsco Produce Co., Inc.* (1990) 297 NLRB 905).
OLSON FARMS, INC. v. BARBOSA, ET AL., 134 F.3d 933 (1998)

102.01 "Application employees" of commercial producer of fertilizer products were agricultural employees at least when working in fields of ER's grower-customers, performing actual and direct farming (e.g., cultivation and tillage of the soil, fertilizing, and preparing seed beds). Thus, ALRB election will be held upon Union's filing of appropriate petition for certification.
ASSOCIATED-TAGLINE, INC., 25 ALRB No. 6

102.01 As the definition of "agricultural laborer" contained in section 3(f) of the Fair Labor Standards Act on which it is based has not been amended, nor has it been overruled, it was appropriate to apply the analysis of *Farmers Reservoir & Irrigation Co. v. McComb* (1949) 337 U.S. 755, in determining whether a mutual water company's employees were engaged in agriculture.
SUTTER MUTUAL WATER CO., 31 ALRB NO. 4.

102.01 Only employees of a mutual water company who performed flood irrigation, a primary agricultural function, a substantial amount of the time were under the jurisdiction of the ALRB.
SUTTER MUTUAL WATER CO., 31 ALRB NO. 4.

102.01 Employees of a mutual water company not engaged in secondary agriculture, even assuming they could be said to be working on company shareholders' farms via easements held by the water company, because employees' work was not incidental to the farming operations.
SUTTER MUTUAL WATER CO., 31 ALRB NO. 4.

102.01 An administrative agency created by statute is vested only with the powers expressly conferred by the Legislature and cannot exceed the powers granted to it. (Citing *United Farm Workers of America v. ALRB* (1995) 41 Cal.App.4th 303, 314). Therefore, the ALRB is restricted to the definition of "agriculture" set forth in section 1140.4(b).
SUTTER MUTUAL WATER CO., 31 ALRB NO. 4.

102.01 The ALRB, when faced with the situation where an employee spends only a portion of their work time for a single employer engaged in agriculture, consistently has applied the substantiality test found in "mixed work" cases. Where the employer is a sole proprietorship, there is no legal distinction between the employer as business owner and as an individual; therefore, employees who worked part-time at the dairy and part-time as domestic workers may be considered to be working for the same employer.
ARTESIA DAIRY, 33 ALRB No. 3

102.01 Employee who works 25-50% of her time at dairy and the remainder as domestic worker for sole proprietor meets the "substantiality" test and is an agricultural employee eligible to vote.
ARTESIA DAIRY, 33 ALRB No. 3

102.01 Employee who works less than 16% of her time at dairy and the remainder as domestic worker for sole proprietor does not meet the "substantiality" test and is not an agricultural employee eligible to vote.
ARTESIA DAIRY, 33 ALRB No. 3

102.01 Employee who solely performed decorative landscaping work on dairy property without any operational connection to the dairy was not engaged in secondary agriculture because the work was not incidental to or in conjunction with the farming operation.
ARTESIA DAIRY, 33 ALRB No. 3

102.01 Employees of a nursery who work as "merchandisers" at various retail stores which are not owned by the nursery, and who organize, display, water, maintain and care for their employer's plants before they are sold, may be engaged in secondary agriculture because their work can properly be viewed in connection with an incident to the nursery's general enterprise rather than in connection with a separate commercial enterprise.
KAWAHARA NURSERIES, INC., 36 ALRB No. 3

102.01 Employees of a nursery who work as "merchandisers" at various retail stores which are not owned by the nursery, and who regularly merchandise plants from sources other than their employer will fall outside of the Board's jurisdiction and the challenges to the eligibility of these employees to vote in a representation election will be sustained.

KAWAHARA NURSERIES, INC., 36 ALRB No. 3

102.01 Employees of a nursery who work as "merchandisers" at various retail stores which are not owned by the nursery, and who organize, display, water, maintain and care for plants grown only by their employer may be engaged in secondary agriculture. However, if such employees are found to engage in both agricultural and non-agricultural work, it will need to be determined whether these individuals engage in agricultural work a substantial amount of the time to determine whether they fall within the ALRB's jurisdiction.
KAWAHARA NURSERIES, INC., 36 ALRB No. 3

102.01 Three employees of a nursery who work as "merchandisers" at various retail stores not owned by the nursery, organize, display, water, maintain and care for their employer's plants before they are sold, and do not regularly handle plants not owned by their employer, are engaged in secondary agriculture because their work can properly be viewed in connection with an incident to the nursery's general enterprise rather than in connection with a separate commercial enterprise.
KAWAHARA NURSERIES, INC., 37 ALRB No. 4

102.02 Jurisdictional Standards: Refusal of NLRB or ALRB to Take Jurisdiction

102.02 Where the status of truck drivers is pending before the NLRB, the Board will defer making any decision on specific classification. However, the Board will entertain a motion for clarification should the NLRB fail to clarify promptly.
ASSOCIATED PRODUCE DISTRIBUTORS, 2 ALRB No. 47

102.02 A bargaining unit includes all agricultural employees of the employer, including stitchers, folders and gluers. However, in light of pending NLRB action, the ALRB deferred to the NLRB proceedings before processing the petition further.
CAL COASTAL FARMS, 2 ALRB No. 26

102.02 Assertion of prospective jurisdiction by the NLRB preempts ALRB from asserting jurisdiction over an earlier period, absent evidence that the employer's operations had changed, even where ALRB jurisdiction had previously been undisputed.
Bud Antle v. Barbosa, et al., 45 F.3d 1261 (1994)

102.02 ALRB's jurisdiction is restricted to those employees who fall within the definition of agriculture contained in section 1140(a), with the further limitation that they must also be exempt from NLRB jurisdiction. Annual NLRB budget rider prohibiting NLRB from asserting jurisdiction

over certain types of employees of mutual water companies does not affect these jurisdictional limitations.
SUTTER MUTUAL WATER CO., 31 ALRB NO. 4.

102.02 Mutual water employees covered by ALRA only when engaged in flood irrigation. Otherwise, they, along with other employees who do not perform primary agricultural work, are in a "no man's land" not covered by any collective bargaining statute. While this creates an unfair situation, it could be remedied if the California Legislature amended the ALRA to include employees of mutual water companies excluded by the annual NLRB budget rider.
SUTTER MUTUAL WATER CO., 31 ALRB NO. 4.

102.03 Jurisdiction over Out-of-State Conduct

102.03 Where employer's harvest crews worked in California and Arizona during the makewhole period, the employees were entitled to a makewhole remedy only for the period of time when they worked in California.
MARTORI BROTHERS, 11 ALRB No. 26

102.03 Board may assert jurisdiction where a California corporation changed its methods for notifying employees at its California operation of employment opportunities in its Arizona operation; California's contacts with the parties and with the matter at issue, and its interests in the proper outcome of the case, were extensive and substantial.
ADMIRAL PACKING COMPANY, 10 ALRB No. 9

102.03 Board has jurisdiction over a layoff/discharge announced at Arizona work site where employer is a corporation doing business in California as an agricultural employer. Employer has its principal place of business in California, employs a majority of its employees in California, the layoff/discharge at issue arose out of protected concerted activity in California, and employer was duly served with the charge and complaint in California.
MARIO SAIKHON, INC., 4 ALRB No. 72

103.00 CONSTITUTIONALITY OF ALRA

103.01 Federal Issues

103.01 Although Board is not empowered to remedy violation of farm workers' constitutional rights which do not interfere with their section 1152 organizational rights, the constitutional privacy rights at issue in denial of labor camp access are inextricably intertwined with organizational rights and therefore come within the Board's purview.
SAM ANDREWS' SONS, 11 ALRB No. 29

103.01 The ALRB is not preempted by federal law from awarding backpay and reinstatement to undocumented alien discriminatees because full enforcement of ALRB remedial provisions of backpay and reinstatement does not create an actual conflict with federal law nor does such state action obstruct the full effectuation of federal immigration objectives.
RIGI AGRICULTURAL SERVICES, INC., 11 ALRB No. 27

103.01 Labor Code section 1160.3 authorizing makewhole relief for union workers for the loss of pay resulting from an employer's refusal to bargain, does not constitute denial of equal protection as to employers, even though it singles employers out for special remedies.
WILLIAM DAL PORTO & SONS, INC. v. ALRB (1987) 191 Cal.App.3d 1195

103.02 State Issues

103.02 Board rejects contentions that ALRA unconstitutionally confers judicial power upon agency in violation of Article III, section 3 of California Constitution, or that review procedure set forth in section 1160.8 unconstitutionally limits power of courts to renew agency's findings.
PERRY FARMS, INC., 4 ALRB No. 25

103.02 Lab. Code sec 1160.3 authorizing makewhole relief for union workers for the loss of pay resulting from an employer's refusal to bargain, does not constitute denial of equal protection as to employers, even though it singles employers out for special remedies.
WILLIAM DAL PORTO & SONS, INC. v. ALRB (1987) 191 Cal.App.3d 1195

104.00 CONSTITUTIONAL, STATUTORY AUTHORITY OF BOARD

104.01 Authority of Board in General; Validity and Application of Regulations; Adjudication vs. Regulations

104.01 When it is clear from the record that ALJ based his decision upon entire record and gave all parties ample opportunity to present their cases, ALJD is not constitutionally defective.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC. 14 ALRB No. 8

104.01 Modified labor camp access order affects employer/labor camp owner's regulation of non-organizer access only to the extent necessary to protect employees' section 1152 rights.
SAM ANDREWS' SONS, 11 ALRB No. 29

104.01 Although Board is not empowered to remedy violation of farm workers' constitutional rights which do not interfere with their section 1152 organizational rights,

the constitutional privacy rights at issue in denial of labor camp access are inextricably intertwined with organizational rights and therefore come within the Board's purview.
SAM ANDREWS' SONS, 11 ALRB No. 29

104.01 Objections to the constitutionality of the Act and attacks on the regulations of the Board are not proper subjects for review under the Election Objections Procedure.
GONZALES PACKING CO., 2 ALRB No. 48

104.01 Board may develop generally applicable rules by adjudication rather than exclusively through rulemaking.
GALLO VINEYARDS, INC. 21 ALRB No. 3

104.01 As an administrative agency, the ALRB does not have the authority to declare a statute unconstitutional (Art. 3, Sec. 3.5, Cal. Const.)
PICTSWEET MUSHROOM FARMS, 29 ALRB No. 3

104.02 Administrative Procedure Act as Affecting ALRB Jurisdiction and Procedure; Exclusion; Government Code Section 1150.1

104.03 Concurrent or Conflicting Jurisdiction of Board and Other Agencies

104.03 The ALRB is not preempted by federal law from awarding backpay and reinstatement to undocumented alien discriminatees because full enforcement of ALRB remedial provisions of backpay and reinstatement does not create an actual conflict with federal law nor does such state action obstruct the full effectuation of federal immigration objectives.
RIGI AGRICULTURAL SERVICES, INC., 11 ALRB No. 27

104.03 Where the status of truck drivers is pending before the NLRB, the Board will defer making any decision on specific classification. However, the Board will entertain a motion for clarification should the NLRB fail to clarify promptly.
ASSOCIATED PRODUCE DISTRIBUTORS, 2 ALRB No. 47

104.03 The employer's objection based on its claim NLRB has preempted the authority of the ALRB to conduct elections and determine labor representatives is dismissed since it is in the nature of a general attack on the legality of the ALRA and as such is not a proper subject for review under Labor Code section 1156.3(c).
ASSOCIATED PRODUCE DISTRIBUTORS, 2 ALRB No. 47

104.04 Conclusiveness of Prior Determination by Federal Agencies or Other State Agencies

104.04 The ALRB has primary jurisdiction over matters arising under the ALRA. Section 1160.9 of the ALRA provides that

"[T]he procedures set forth in this chapter shall be the exclusive method of redressing unfair labor practices." In Belridge Farms v. ALRB (1978) 21 Cal.3d 551, 558, the California Supreme Court held that this was a codification of the federal law approach recognizing the primary jurisdiction of the NLRB. This was affirmed in Vargas v. Municipal Court (1978) 22 Cal.3d 902, 916 and Kaplan's Fruit & Produce Co. v. Superior Court (1979) 26 Cal.3d 60, 67-68. Therefore, prior decision by Labor Commissioner does not have collateral estoppel effect in ALRB proceeding.
LASSEN DAIRY, INC., 35 ALRB No. 7

104.05 Attorneys Fees and Costs

104.05 Board does not have authority to award attorneys' fees and litigation costs against General Counsel and to a Respondent who has been exonerated of all ULP's alleged in Compliance.
NEUMAN SEED COMPANY, 7 ALRB No. 35

105.00 DIVISION OF AUTHORITY WITHIN ALRB

105.01 Organization of ALRB, In General

105.02 Dual Function of Board, Administrative Law Judges and Other Agents

105.02 In investigating and presenting a case at the compliance phase of the proceedings, the General Counsel is acting as agent for the Board rather than as an independent prosecutor.
McFARLAND ROSE PRODUCTION, 11 ALRB No. 34

105.03 Role of Executive Secretary

105.04 General Counsel of ALRB

105.04 Board not required to determine whether NLRB decision in Times Square Stores Corp. (1948) 79 NLRB 361 is applicable precedent under section 1148 since Board would reach same result on basis of section 1149 which grants General Counsel final authority with respect to the investigation of charges and issuance of complaints as well as prosecution of such complaints. Even were Board to follow Times Square, Board does not read NLRB decision so broadly as to require that it defer to General Counsel's discretion when no unfair labor practice charges have been filed.
MANN PACKING CO., INC., 15 ALRB No. 11

105.04 In investigating and presenting a case at the compliance phase of the proceedings, the General Counsel is acting as agent for the Board rather than as an independent prosecutor.
McFARLAND ROSE PRODUCTION, 11 ALRB No. 34

105.04 General Counsel exercised exclusive prosecutorial discretion in dismissing charge against union; therefore, even if record reflects equal complicity among employer and union, Board is without authority to add the union to the complaint even if it desired to do so.
SUNRISE MUSHROOMS, INC., 22 ALRB No. 2

105.04 Under *Mann Packing Co., Inc.* (1989) 15 ALRB No. 11, in both challenged ballot and election objection cases, the Board will defer to the General Counsel's resolution of the investigation of an unfair labor practice charge where the merits of the issues necessarily decided by the investigation also are determinative of the merits of related issues in the representation case. It is more than the mere existence of identical issues that triggers this rule, as it is well established that conduct sufficient to warrant the setting aside of an election does not necessarily constitute an unfair labor practice, and not all unfair labor practices necessarily constitute conduct sufficient to set aside an election. (See, e.g., *ADIA Personnel Services* (1997) 322 NLRB 994, fn. 2.) Thus, it is only where the issues in the two proceedings are coextensive in terms of their legal merit that the Board is bound by the General Counsel's determination.
RICHARD'S GROVE & SARALEE'S VINEYARD, INC., 33 ALRB No. 7

105.04 Where no related unfair labor practice charges have been filed, the Board retains its full authority to adjudicate all issues involving election objections and challenged ballots. In *Bayou Vista Dairy* (2006) 32 ALRB No. 6, the Board further explained that where a complaint was withdrawn and the underlying unfair labor practice charge dismissed pursuant to a settlement agreement without any admission of liability, it was the legal equivalent of no charge having been filed and the issue could be litigated in election objection proceedings. By extension, the withdrawal of a charge also would not preclude the Board from litigating a parallel issue in an election proceeding.
RICHARD'S GROVE & SARALEE'S VINEYARD, INC., 33 ALRB No. 7

105.04 *Mann Packing Co., Inc.* (1989) 15 ALRB No. 11 reflects a reconciliation of the authority of the General Counsel and the Board that is consistent with both the ALRA and its implementing regulations. The General Counsel's final authority over the investigation of unfair labor practice charges and the issuance of complaints acts as a narrow limitation on the Board's exclusive authority over representation matters. *Mann Packing Co., Inc.* is settled law that is neither manifestly incorrect, nor has it proven unworkable in practice.
RICHARD'S GROVE & SARALEE'S VINEYARD, INC., 33 ALRB No. 7

105.04 The Board upheld the Executive Secretary's dismissal of objections which raised the same facts and allegations contained in unfair labor practice charges previously

dismissed by the General Counsel because the conduct alleged in the objections was of the nature that it could not be objectionable election conduct if it did not also constitute an unfair labor practice (ULP). Under Mann Packing Co, Inc. (1989) 15 ALRB No. 11, the Board must defer to the General Counsel's resolution of a ULP charge where the charge and the related objection are co-extensive in terms of their legal merit.
GALLO VINEYARDS, INC., 34 ALRB No. 6

105.04 The Mann Packing rule is not automatically triggered simply because the facts in a representation proceeding are the same as those in a dismissed unfair labor practice proceeding. The Board has clearly stated that the Board is not bound by the General Counsel's dismissal of a unfair labor practice charge where the Board can find conduct alleged in a related objection objectionable on an independent legal basis.
GALLO VINEYARDS, INC., 34 ALRB No. 6

105.04 The General Counsel's sole authority under section 1149 regarding unfair labor practice charges, regardless of whether the charges result in a complaint or dismissal, is what precludes the Board from addressing election objections based on the same conduct alleged in dismissed unfair labor practice charges if adjudicating those election objections would require factual findings that would inherently resolve the dismissed unfair labor practice charges.
GALLO VINEYARDS, INC., 34 ALRB No. 6

105.05 Delegation of Authority; Panel Decision; Majority or Lack Thereof

105.06 Regional Directors and Other Regional Personnel

105.06 Board allows Regional Director limited intervention in representation matters to ensure that evidentiary record is fully developed and that basis for Board's action is fully substantiated. Limited intervention for above purposes does not authorize regional counsel to engage in partisan advocacy. Prior Board precedent disapproved and overruled to extent "full party" status allowed therein.
KUBOTA NURSERIES, INC., 15 ALRB No. 12

105.06 Board considers inappropriate regional counsel's request for sanctions against employer as result of employer's litigation posture in objections proceeding. The request for sanctions is clear indication that regional counsel exceeded the legitimate bounds of protecting Regional Director's interest, on behalf of Board, in developing full and complete record, and substantiating integrity of Board's election processes.
KUBOTA NURSERIES, INC., 15 ALRB No. 12

105.06 The authority that is vested in the Board's regional directors with respect to unit clarification petitions

derives from Labor Code section 1142(b).
SILVA HARVESTING, INC., 15 ALRB No. 2

105.06 In light of the specific delegation of authority that is permitted under Labor Code section 1142(b) and the explicit directive to regional directors contained in Title 8, California Code of Regulations section 20385(c), it is clear that conclusions and recommendations concerning unit clarification matters are to be made in a report to the Board by regional directors themselves.
SILVA HARVESTING, INC., 15 ALRB No. 2

105.06 Labor Code section 1151 confers on regional directors broad authority to investigate matters arising within the unit clarification process, and such investigatory power permits regional directors to prepare the type of report contemplated by the Board's regulations governing unit clarification petitions.
SILVA HARVESTING, INC., 15 ALRB No. 2

105.06 The ALRA, prior Board decisions, and Board regulations do not confer such broad authority on the Regional Director to dismiss an election petition after an election; to do so would override the mandate of Labor Code section 1156.3, which requires the Board to certify an election unless there are sufficient grounds to do so. Without an evidentiary hearing on election objections raised, there are no sufficient grounds to refuse to certify an election.
NURSERYMEN'S EXCHANGE, INC., 37 ALRB No. 1

105.06 Neither Section 20300(i)(l) of the Board's regulations, nor any of the Board's regulations or case law indicates that the authority of a Regional Director to dismiss an election petition continues after an election is held. (*Bayou Vista Dairy* (2006) 32 ALRB No. 6 at p. 6).
NURSERYMEN'S EXCHANGE, INC., 37 ALRB No. 1

105.06 As noted in *ConAgra Turkey Company* (1993) 19 ALRB No. 11, a Regional Director's decision to hold an election is final and nonreviewable. Rather, any claims that the Regional Director erred in determining the validity of the election petition must be raised in the election objections process.
NURSERYMEN'S EXCHANGE, INC., 37 ALRB No. 1

105.07 Impartial Performance of Duties of Employees

105.07 Legal representative of regional director in unit clarification proceeding who appeared to be soliciting testimony for the purpose of advancing a particular litigation theory conducted himself as if he were an advocate in an adversarial proceeding and thereby exceeded limited participation necessary to defend Board actions and proper role as regional director's representative in purely investigative proceeding.
SILVA HARVESTING, INC., 15 ALRB No. 2

105.07 Respondent cannot refuse to abide by the legal processes of a governmental agency simply because it disagrees with the decisions of the agency or has no faith in its impartiality.
PETER D. SOLOMON and JOSEPH R. SOLOMON dba CATTLE VALLEY FARMS/TRANSCO LAND AND CATTLE CO., 9 ALRB No. 65

105.07 Discovery requests re investigation and disposition of charges and election petition denied as irrelevant to ULP alleging discrimination. Respondent asserted denial of due process and equal protection because Act not enforced in neutral fashion.
ROGERS FOODS, INC., 8 ALRB No. 19

105.07 ULP complaint cannot raise denial of due process or equal protection based on General Counsel's failure to enforce Act in neutral fashion.
ROGERS FOODS, INC., 8 ALRB No. 19

105.07 Testimonial or documentary evidence of regional office bias against Executive Secretary neither relevant nor admissible in ULP proceeding.
ROGERS FOODS, INC., 8 ALRB No. 19

105.07 Total rejection of an opposed view cannot of itself impugn integrity or competence of trier of fact.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC., 7 ALRB No. 36

105.08 Location of Offices

106.00 SELF-IMPOSED RESTRICTIONS ON AUTHORITY OF BOARD

106.01 Board Jurisdiction to Review Dismissal of Complaints

106.01 Since Board has always read Labor Code 1160.3 as requiring it to review entire record upon exceptions to ALJD, argument that it disregard ALJD and reach its own decision upon entire record is rejected where ALJD reasonable.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC., 14 ALRB No. 8

106.02 Board Jurisdiction to Review Settlement Agreements

106.02 Board conditionally approves unilateral formal pre-complaint settlement between General Counsel and respondent union charged with denying good standing to members who refuse to pay CPD dues. Board approved provision for union rebate procedure with escrow account in light of Ellis v. Brotherhood of Railway Employees, etc. (1984) U.S. [116 LRRM 2001], but conditioned its approval on union payment of interest on rebated dues, one year limit on rebate, and elimination of time restrictions for making objection.

UFW/GILES BREAUX, et al., 11 ALRB No. 32

106.02 The Board held that because the parties' private settlement agreement sought to compromise a final Board order over which the Board retained jurisdiction to enforce, the parties were required to present their resolution of the matter as a formal settlement agreement pursuant to the provisions of Board Regulation section 20298(f).
HESS COLLECTION WINERY, 35 ALRB No. 3

106.02 It is the policy of the Board to encourage voluntary settlement agreements; however, the Board's jurisdiction over settlement agreements requires it to enforce public interests, not private rights, and to reject settlement agreements that are repugnant to the Act.
HESS COLLECTION WINERY, 35 ALRB No. 3

106.03 Pendency of Grievance or Arbitration Proceedings, Effect Of

106.03 Because of extreme degree of distrust between parties, deferral to arbitration not appropriate in cases where the employer's actions were designed to undermine the status of the union.
TEX-CAL LAND MANAGEMENT, INC., 11 ALRB No. 31

106.03 Board has no basis for concluding that California agriculture generally is less well-suited to arbitration than industries subject to the NLRA.
TEX-CAL LAND MANAGEMENT, INC., 11 ALRB No. 31

106.04 Conclusiveness of Grievance Settlements or Arbitration Awards

106.05 Crime or Misdemeanor as Unfair Labor Practice

106.06 Interference with Board as Misdemeanor; Labor Code Section 1151.6

106.07 Exhaustion of Remedies

106.07 Board declines to consider whether union expenditures are constitutionally or statutorily compellable from objecting members' dues until members have first paid the dues and availed themselves of the union's rebate procedure.
UFW/GILES BREAUX, et al., 11 ALRB No. 32

200.00 PARTIES AFFECTED; DEFINITIONS

200.00 EMPLOYER-EMPLOYEE RELATIONSHIP UNDER ALRA

200.01 In General; Definitions of Employer and Employee; Labor Code Sections 1140.4(b) and (c)

200.01 Where Board's jurisdiction has been determined in a previous adjudication, burden shifts to respondent to provide evidence that intervening changes in facts or law have stripped the Board of jurisdiction.
OLSON FARMS/ CERTIFIED EGG FARMS, INC., 19 ALRB No. 20

200.01 Where purchases from outside entities were not typical, were undertaken only because of insufficient supply from respondent's own operations, and were avoided whenever possible, this "outside mix" was not regular and therefore the operations are agricultural even under the standard announced by the NLRB in Camsco Produce Co., Inc. (1990) 297 NLRB 905.
OLSON FARMS/CERTIFIED EGG FARMS, INC., 19 ALRB No. 20

200.01 In determining voter eligibility under Labor Code section 1157, an "economic striker" includes any employee "whose work has ceased as a consequence of, or in connection with any current labor dispute, . . . who has not obtained other regular and substantially equivalent employment." (29 U.S.C. 152(3).)
ACE TOMATO COMPANY, INC., 16 ALRB No. 9

200.01 In determining voter eligibility under Labor Code section 1157, an "economic striker" includes any employee "whose work has ceased as a consequence of, or in connection with any current labor dispute, . . . who has not obtained other regular and substantially equivalent employment." (29 U.S.C. 152(3).)
TRIPLE E PRODUCE CORPORATION, 16 ALRB No. 5

200.01 In determining whether contribution of independent growers to overall output of vacuum cooling facility was sufficient to render employees commercial rather than agricultural, Board held that proper measure is amount of produce actually handled by employees rather than amount independent grower had hoped to harvest.
ANDREWS DISTRIBUTION CO., 15 ALRB No. 6

200.01 Since "preparation for market" is included within the secondary definition of agricultural and refers to operations normally performed upon farm commodities to prepare them for the farmer's market (i.e., the wholesaler, processor, or distributor to which the farmer delivers in his products), employees who cool and pack lettuce, a necessary process in the industry, are agricultural employees where they handle produce grown

exclusively by their farmer-employer.
ANDREWS DISTRIBUTION COMPANY, INC., 14 ALRB No. 19

200.01 Where a producer of agricultural commodities rents or owns space in a warehouse or packinghouse located off the farm, and the farmer's own employees there engage in handling or packing only his products for market, such operations are within the secondary meaning of agricultural if performed as an incident to or in conjunction with his farming operations and the employees are engaged in agricultural.
ANDREWS DISTRIBUTION COMPANY, INC., 14 ALRB No. 19

200.01 Wife of supervisor who cooked lunch in her home for husband, Employer and two other employees during eligibility period was not "agricultural employee . . . engaged in agriculture" under Labor Code section 1140.4(a) and (b) and therefore was not eligible to vote.
RON CHINN FARMS 12 ALRB No. 10

200.01 Undocumented aliens are employees as defined by the Act and entitled to assert the protection of the ALRA.
RIGI AGRICULTURAL SERVICES, INC., 11 ALRB No. 27

200.01 An employee need not be an employee of the charged employer in order to be protected against a discriminatory discharge caused by the charged employer; Hudgens v. NLRB, 424 U.S. 507, fn. 3, [91 LRRM 2439, fn. 3], and Lucky Stores, Inc., 243 NLRB 642 [102 LRRM 1057] cited for the rule that a statutory employer may violate 1153(c) and/or (a) with respect to employees other than its own.
SILAS KOOPAL DAIRY, 9 ALRB No. 2

200.01 Term "Ee" in NLRA includes applicants and members of working class generally.
UNITED FARM WORKERS OF AMERICA, AFL-CIO, 6 ALRB No. 58

200.01 Where the Association supervised the harvest, made day-to-day business decisions concerning the harvest, represented the growers in wage-rate negotiations, provided all of the major harvesting equipment, transported the fruit to the packing shed, packed and marketed the fruit, and financed all of the preceding operations, the Board found that the Association should be considered the employer for collective bargaining purposes.
CORONA COLLEGE HEIGHTS ORANGE AND LEMON ASSOCIATION
5 ALRB No. 15

200.01 Labor Code sections 1140.4(c) and 1156.2 require that employees hired through labor contractor and those hired directly be placed in same bargaining unit even if paid on different basis, supervised by different foremen and working different hours harvesting different variety of tomato, unless they work in noncontiguous geographical areas.

TMY FARMS, 2 ALRB No. 58
ACCORD: CARDINAL DISTRIBUTING CO., 3 ALRB No. 23

200.01 Employees who work solely in the farmer's road-side stand not agricultural employees since at least 60 percent of the commodities sold are not grown by employer and thus retail sales are not an incident of his farming operations.
MR. ARTICHOKE, INC., 2 ALRB No. 5

200.01 Employees who work solely in the farmer's road-side stand not agricultural employees since at least 60 percent of the commodities sold are not grown by employer and thus retail sales are not an incident of his farming operations.
SAMUEL S. VENER CO., 1 ALRB No. 10

200.01 Where attributes of "employer" are divided between custom harvester and farm operator, there may be more than one "employer" for statutory purposes, and Board may fix obligation where it will effectuate Act's policies.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

200.01 There is often significant turnover in workforce of an agricultural employer in course of single year. This is due to 5 factors: (1) seasonal nature of employment; (2) migration of employees throughout state; (3) unskilled nature of much of work; (4) prevalent use of labor contractors; and (5) "day-haul" system.
SAN CLEMENTE RANCH, LTD. V. ALRB (1981) 29 Cal.3d 874

200.01 Legislature created bargaining units consisting of all agricultural employees of employer to enhance mobility from low paid to higher paid jobs and to protect growers from bargaining with many different unions.
VISTA VERDE FARMS v. ALRB (1981) 29 Cal.3d 307

200.01 Under ALRA, definition of agricultural employer is to be broadly construed.
PERRY FARMS INC. v. ALRB (1978) 86 Cal.App.3d 448

200.01 Individuals who have separately organized businesses and provide specialized services on an as needed basis, and who are not included on required payroll records of the employer are not agricultural employees within the meaning of section 1140.4, subdivision (b).
SIMON HAKKER, 20 ALRB No. 6

200.01 Employer failed to meet burden to prove nutritionist was employee not given notice of election where record shows only that nutritionist received fixed monthly fee for working on an as needed basis, works for other companies, and that employer could not recall if payments were reported to appropriate authorities in same manner as those to employees.
GH & G ZYSLING DAIRY, 20 ALRB No. 3

200.01 Board may properly assert jurisdiction over employees who spend a substantial amount of work time engaged in what is indisputably agriculture; fact that same employees allegedly perform a substantial amount of nonagricultural work does not mean that they are wholly within NLRB jurisdiction, but only that mixed work situation may exist.
ROYAL PACKING COMPANY, 20 ALRB No. 14

200.01 Worker who volunteers labor for employer as part of rehabilitation program is not an "employee" and therefore is not in the bargaining unit or eligible to vote.
SIMON HAKKER, 20 ALRB No. 6

200.01 Individual who leases acreage to employer and feeds cattle assigned there by employer, in exchange for $200 per month, is not an "employee" and therefore is not in the bargaining unit or eligible to vote.
SIMON HAKKER, 20 ALRB No. 6

200.01 Neighboring farmer who disks fields for employer in exchange for use of equipment on own farm is not an "employee" and therefore is not in the bargaining unit or eligible to vote.
SIMON HAKKER, 20 ALRB No. 6

200.01 Where necessary to determine whether a worker is an employee for purposes of ALRA coverage, the Board will apply the test set forth in S.G. Borello & Sons, Inc. v. Department of Industrial Relations (1989) 48 Cal. 3d 341, and will consider common law right of control factors informed by the policies underlying the ALRA.
ARIE DE JONG dba MILKY WAY DAIRY, 29 ALRB No. 4

200.01 The inquiry into whether a worker is an agricultural employee and therefore covered under the ALRA must, under some circumstances, be conducted as a two-part inquiry: 1) whether the worker is engaged in either primary or secondary agriculture, and 2) whether the worker is an employee of the employer.
ARIE DE JONG dba MILKY WAY DAIRY, 29 ALRB No. 4

200.01 Worker who trimmed cows' hooves at a dairy did so as an employee of his father, an independent contractor, and not as an employee of the dairy; therefore, the worker was ineligible to vote in a representation election at the dairy.
ARIE DE JONG dba MILKY WAY DAIRY, 29 ALRB No. 4

200.01 As the definition of "agricultural laborer" contained in section 3(f) of the Fair Labor Standards Act on which it is based has not been amended, nor has it been overruled, it was appropriate to apply the analysis of *Farmers Reservoir & Irrigation Co. v. McComb* (1949) 337 U.S. 755, in determining whether a mutual water company's employees were engaged in agriculture.

SUTTER MUTUAL WATER CO., 31 ALRB NO. 4.

200.01 Only employees of a mutual water company who performed flood irrigation, a primary agricultural function, a substantial amount of the time were under the jurisdiction of the ALRB.
SUTTER MUTUAL WATER CO., 31 ALRB NO. 4.

200.01 Employees of a mutual water company not engaged in secondary agriculture, even assuming they could be said to be working on company shareholders' farms via easements held by the water company, because employees' work was not incidental to the farming operations.
SUTTER MUTUAL WATER CO., 31 ALRB NO. 4.

200.01 ALRB's jurisdiction is restricted to those employees who fall within the definition of agriculture contained in section 1140(a), with the further limitation that they must also be exempt from NLRB jurisdiction. Annual NLRB budget rider prohibiting NLRB from asserting jurisdiction over certain types of employees of mutual water companies does not affect these jurisdictional limitations.
SUTTER MUTUAL WATER CO., 31 ALRB NO. 4.

200.01 An administrative agency created by statute is vested only with the powers expressly conferred by the Legislature and cannot exceed the powers granted to it. (Citing *United Farm Workers of America v. ALRB* (1995) 41 Cal.App.4th 303, 314). Therefore, the ALRB is restricted to the definition of "agriculture" set forth in section 1140.4(b).
SUTTER MUTUAL WATER CO., 31 ALRB NO. 4.

200.01 Employee who solely performed decorative landscaping work on dairy property without any operational connection to the dairy was not engaged in secondary agriculture because the work was not incidental to or in conjunction with the farming operation.
ARTESIA DAIRY, 33 ALRB No. 3

200.01 Employees of a nursery who work as "merchandisers" at various retail stores which are not owned by the nursery, and who organize, display, water, maintain and care for their employer's plants before they are sold, may be engaged in secondary agriculture because their work can properly be viewed in connection with an incident to the nursery's general enterprise rather than in connection with a separate commercial enterprise.
KAWAHARA NURSERIES, INC., 36 ALRB No. 3

200.01 Employees of a nursery who work as "merchandisers" at various retail stores which are not owned by the nursery, and who regularly merchandise plants from sources other than their employer will fall outside of the Board's jurisdiction and the challenges to the eligibility of these employees to vote in a representation election will

be sustained.
KAWAHARA NURSERIES, INC., 36 ALRB No. 3

200.01 Employees of a nursery who work as "merchandisers" at various retail stores which are not owned by the nursery, and who organize, display, water, maintain and care for plants grown only by their employer may be engaged in secondary agriculture. However, if such employees are found to engage in both agricultural and non-agricultural work, it will need to be determined whether these individuals engage in agricultural work a substantial amount of the time to determine whether they fall within the ALRB's jurisdiction.
KAWAHARA NURSERIES, INC., 36 ALRB No. 3

200.01 Three employees of a nursery who work as "merchandisers" at various retail stores not owned by the nursery, organize, display, water, maintain and care for their employer's plants before they are sold, and do not regularly handle plants not owned by their employer, are engaged in secondary agriculture because their work can properly be viewed in connection with an incident to the nursery's general enterprise rather than in connection with a separate commercial enterprise.
KAWAHARA NURSERIES, INC., 37 ALRB No. 4

200.02 Seasonal or Year-Round, Not Distinguished

200.02 Employer's work force frequently expands exponentially at harvest time.
SAN CLEMENTE RANCH, LTD. v. ALRB (1981) 29 Cal.3d 874

201.00 SPECIAL CLASSES OF EMPLOYEES; GROUPS EXCLUDED FROM ALRA (see section 312)

201.01 Security Guards, Farm Protection Employees

201.02 Managerial and Confidential

201.02 Managerial status may be determined on basis of degree of discretion possessed in the performance of an employee's job duties and, in particular, the extent to which such discretion may be exercised independent of the employer's "set policies and guidelines" or whether the discretion is "restricted by fixed policies established by the employer." SALINAS VALLEY NURSERY, 15 ALRB No. 4

201.02 Although "managerial" employees are not specifically excluded from definition of "employee" in either NLRA or ALRA, U.S. Supreme Court has held that Congress intended that "managerial" employees not be accorded bargaining rights under the NLRA, a position adopted by the ALRB in regulations setting forth basis for challenged ballots including allegation that potential voter is "managerial" employee.
SALINAS VALLEY NURSERY, 15 ALRB No. 4

201.02 Managerial status not conferred upon those who perform routinely, but rather is reserved for those who are closely aligned with management as true representatives of management.
SALINAS VALLEY NURSERY, 15 ALRB No. 4

201.02 Employer's driver-loaders and secretaries found to be agricultural employees within the meaning of the Act and thus included in the certified bargaining unit.
TANI FARMS, 10 ALRB No. 5

201.02 Secretaries found not to be confidential employees under the definition of such employees approved by U.S. Supreme Court in NLRB v. Hendricks (1981) 454 U.S. 170 [108 LRRM 3505]
TANI FARMS, 10 ALRB No. 5

201.02 Office clerical found not to be confidential employee, and thus included in the certified bargaining unit, where employee can overhear all conversations that take place in the office where she works, but no showing was made that she had access to confidential information concerning anticipated changes which may result from collective bargaining negotiations.
KOYAMA FARMS, 10 ALRB No. 4

201.02 Office clerical found to be confidential employee and excluded from bargaining unit where employee actively participates in the resolution of employee complaints and grievances along with management personnel who exercise discretion in labor relations matters.
KOYAMA FARMS, 10 ALRB No. 4

201.02 Challenged ballots of tractor drivers will be overruled where union presented no evidence as to the managerial or confidential status of these employees.
ANDERSON FARMS CO. 3 ALRB No. 48

201.03 Clerical

201.03 Secretary was included in the unit where the bulk of her duties was incidental to the employer's farming operation and she was riot involved in labor relations, except in a purely clerical capacity.
POINT SAL GROWERS AND PACKERS, 9 ALRB No. 57

201.03 Three secretaries not included in unit of agricultural employees where their duties involved only employer's commercial packing shed and other non-agricultural operations.
POINT SAL GROWERS AND PACKERS, 9 ALRB No. 57

201.03 The Board refused to expand access to retail store on employer's premises since there was insufficient evidence to establish that the retail clerks were "agricultural employees."

ROD McLELLAN CO., 3 ALRB No. 71

201.03 Challenged ballots of clerical workers who perform routine clerical work will be overruled where union presented no evidence that they work for operations other than employer's agricultural concerns.
ANDERSON FARMS CO., 3 ALRB No. 48

201.03 A worker who performed simple computer assisted drafting work was engaged in secondary agriculture as her work was incident to or in conjunction with the employer's farming operations.
ARIE DE JONG dba MILKY WAY DAIRY, 29 ALRB No. 4

201.04 Packing Shed; Cooling Facility

201.04 Although egg processor has on occasion supplemented production from its wholly owned laying operations by purchasing eggs from independent outside growers, such purchases will not qualify plant for commercial status and thus exemption from ALRA since purchases either occurred more than five years previously or did not exceed 10 percent of plant's annual output.
CERTIFIED EGG FARMS AND OLSON FARMS, INC., 16 ALRB No. 7

201.04 In determining whether contribution of independent growers to overall output of vacuum cooling facility was sufficient to render employees commercial rather than agricultural, Board held that proper measure is amount of produce actually handled by employees rather than amount independent grower had hoped to harvest.
ANDREWS DISTRIBUTION CO., 15 ALRB No. 6

201.04 Since "preparation for market" is included within the secondary definition of agricultural and refers to operations normally performed upon farm commodities to prepare them for the farmer's market (i.e., the wholesaler, processor, or distributor to which the farmer delivers in his products), employees who cool and pack lettuce, a necessary process in the industry, are agricultural employees where they handle produce grown exclusively by their farmer-employer.
ANDREWS DISTRIBUTION COMPANY, INC., 14 ALRB No. 19

201.04 Where a producer of agricultural commodities rents or owns space in a warehouse or packinghouse located off the farm, and the farmer's own employees there engage in handling or packing only his products for market, such operations are within the secondary meaning of agricultural if performed as an incident to or in conjunction with his farming operations and the employees are engaged in agricultural.
ANDREWS DISTRIBUTION COMPANY, INC., 14 ALRB No. 19

201.04 Employer's mere claim that packing shed employees are not subject to ALRB jurisdiction is a conclusion of law not binding on Board.

RICHARD A. GLASS COMPANY, INC., 14 ALRB No. 11

201.04 Employees of a packing operation which does not pack a significant percentage of produce for independent growers are engaged in agriculture and are eligible to vote in ALRB elections; in determining whether a significant percentage of the produce is packed for independent growers, the total circumstances of employment are relevant.
SEQUOIA ORANGE CO., 11 ALRB No. 21

201.04 Packing shed operation not a commercial enterprise, Employees thereof were engaged in agriculture so their challenged ballots should be counted.
GROW ART, 7 ALRB No. 19

201.04 Packing shed operation not a commercial enterprise, Employees thereof were engaged in agriculture so their challenged ballots should be counted.
GROW ART, 7 ALRB No. 19

201.04 Work done in packing shed is clearly incident to and in conjunction with employer's nursery operation where employer provides no packing services for other growers, nor acts as broker for other growers. Employers only contact with plants produced by other growers involves purchases made to meet its own contract obligations.
TRANSPLANT NURSERY, INC., 5 ALRB No. 49

201.04 Where employer's packing shed functions in manner incident to and in conjunction with employer's horticultural operations, all packing shed workers found to be agricultural employees under section 1140.4(b) and therefore eligible to vote.
TRANSPLANT NURSERY, INC., 5 ALRB No. 49

201.04 In determining whether shed workers are agricultural employees, Board looks to precedents of NLRB courts, and U.S. Dept. of Labor.
TRANSPLANT NURSERY, INC., 5 ALRB No. 49

201.04 An agricultural employer's packing shed may be commercial enterprise beyond Board's jurisdiction if it packs agricultural commodities of other growers in addition to its own.
TRANSPLANT NURSERY, INC., 5 ALRB No. 49

201.04 Where agricultural grower must purchase plants from another grower on ad hoc basis, solely to meet preexisting contract obligations because there is insufficient supply of plants from its own fields, no commercial packing service is provided and inherent agricultural nature of operation remains.
TRANSPLANT NURSERY, INC., 5 ALRB No. 49

201.04 Packing shed Employees properly excluded from bargaining unit where their duties were incidental to agriculture

since they were employed by cooperative and not by a farmer or on a farm.
BONITA PACKING CO., INC. 4 ALRB No. 96

201.04 Where the employer is engaged in the business of harvesting, hauling, packing, and selling broccoli on a contract fee basis to various growers and owns none of the crops for which it provides these services, the Board finds the packing shed to be a commercial shed. The employees of a commercial shed are not agricultural employees and are properly excluded from the unit.
ASSOCIATED PRODUCE DISTRIBUTORS, 2 ALRB No. 47

201.04 Election set aside where packing shed Employees excluded from unit of field workers where number of former could have affected election results.
R.C. WALTER & SONS, 2 ALRB No. 14

201.04 Even if Employer stipulated to unit excluding packing shed Employees, Board not bound by same and had no discretion to exclude same on facts presented.
R.C. WALTER & SONS, 2 ALRB No. 14

201.04 Packing shed Employees were agricultural Employees where they worked only with Employer's grapes on Employer's property and their work was geared to work of the field Employees. One unit appropriate based on legislative intent, and Board had no discretion to exclude shed Employees since they worked on land adjacent to other farmland of Employer.
R.C. WALTER & SONS, 2 ALRB No. 14

201.04 A packing shed employee engaged in packing produce grown not only by the employer, but also grown by others, is not an agricultural employee, even when the proportion of the produce of other rowers to that of the Employer is small.
CARL JOSEPH MAGGIO INC., 2 ALRB No. 9

201.05 Truck Drivers

201.05 Truck drivers employed by labor contractors may be agricultural employees and entitled to vote in ALRB elections if the nature of their employment for the labor contractor is "agricultural," that is, the produce hauled by the truck drivers is primarily the produce of the contracting packing shed.
SEQUOIA ORANGE CO., 11 ALRB No. 21

201.05 Driver-stitcher-loaders were agricultural employees, and included in ALRB-certified unit, where their activities included packing and transporting only the employer's produce to the employer's cooler.
TOMOOKA FARMS, INC., 9 ALRB No. 48

201.05 Driver-stitcher-loaders were agricultural employees, and included in ALRB-certified unit, where their activities

included packing and transporting only the employer's produce to the employer's cooler.
SECURITY FARMS, 9 ALRB No. 47

201.05 Truck driver who hauls empty citrus bins to fields for non-profit harvest association and returns filled bins to packing shed is not an agricultural employee within meaning of Labor Code section 1140.4(b). Board cites Guadalupe Carrot Packers dba Romar Carrot Company (1977) 228 NLRB 369 [94 LRRM 1734] for principle that one engaged in secondary agricultural activity, such as truck driving, is not within the purview of section 1140.4(b) unless the work is performed on a farm or by a farmer.
SIERRA CITRUS ASSOCIATION, 5 ALRB No. 12

201.05 Challenged ballots of 25 truck drivers who have produce for a single grower will be overruled where union presented no evidence that they may be commercial drivers.
ANDERSON FARMS CO., 3 ALRB No. 48

201.05 Where the status of truck drivers is pending before the NLRB, the Board will defer making any decision on specific classification. However, the Board will entertain a motion for clarification should the NLRB fail to clarify promptly.
ASSOCIATED PRODUCE DISTRIBUTORS, 2 ALRB No. 47

201.05 Where the status of truck drivers is pending before the NLRB, the Board will defer making any decision on specific classification. However, the Board will entertain proceedings for clarification or modification of the certification if prompt clarification is not forthcoming from the NLRB.
J.J. CROSETTI CO., INC., 2 ALRB No. 1

201.05 The Board lacks jurisdiction to exclude agricultural workers based on bargaining history or community of interest, in view of the mandate in section 1145.2 of the Labor Code.
J.J. CROSETTI CO., INC., 2 ALRB No. 1

201.05 Truck drivers who hauled hay and feed for dairy cows were agricultural employees within the meaning of ALRA section 1140.4(b) where the drivers' employer was a farmer, and the hauling of feed was incidental to the employer's actual farming operations.
ARIE DE JONG dba MILKY WAY DAIRY, 29 ALRB No. 4

201.05 Truck driver who hauled dairy machinery and equipment was an agricultural employee within the meaning of ALRA section 1140.4(b) where the driver's employer was a farmer, and the equipment was for use in the employer's actual farming operations.
ARIE DE JONG dba MILKY WAY DAIRY, 29 ALRB No. 4

201.06 Mechanics

201.06 Shop employees who spent a regular and substantial portion of their time on activities related to agriculture were included in the bargaining unit with all the agricultural employees of the employer.
SAM ANDREWS' SONS, 9 ALRB No. 24

201.06 Challenged ballots of mechanics and maintenance workers will be overruled where union presented no evidence that these employees were involved in a commercial operation.
ANDERSON FARMS CO., 3 ALRB No. 48

201.06 Mechanics in employer's off-farm repair shop held to be agricultural employees of employer.
CAL COASTAL FARMS, 2 ALRB No. 26

201.06 Mechanic who drives a van around the fields and does minor repair and maintenance work is an agricultural employee.
CARL JOSEPH MAGGIO INC., 2 ALRB No. 9

201.06 Worker who performed specialty work calibrating engines of vehicles used on a dairy was performing work incidental to employer dairy's farming operation and thus was an agricultural employee within the meaning of ALRA section 1140.4(b).
ARIE DE JONG dba MILKY WAY DAIRY, 29 ALRB No. 4

201.07 Relatives

201.07 Title 8, California Code of Regulations, section 20352(b)(5) renders ineligible to vote the children of an employing company's sole shareholders.
BUNDEN NURSERY, INC., 14 ALRB No. 18

201.07 Since the Agricultural Labor Relations Act (ALRA), in sharp contrast to the relevant provisions of the National Labor Relations Act, contains no family-based exclusion from its definition of "agricultural employee", and aside from a narrow geographic-based exception found in section 1156.2 requires every bargaining unit to include "all the agricultural employees of the employer," employer family members who fall within the ALRA's definition of "agricultural employee" are presumptively entitled to vote in unit elections.
BUNDEN NURSERY, INC., 14 ALRB No. 18

201.07 Although Title 8, California Code of Regulations, section 20352(b)(5) removes voting eligibility from the closest relatives of the employer, viz., a parent, child, or spouse, there is no other basis for invoking community of interest considerations in establishing voting eligibility under the Agricultural Labor Relations Act.
BUNDEN NURSERY, INC., 14 ALRB No. 18

201.07 The spouse of an individual who serves as an employing company's vice-president, secretary-treasurer, and

general manager is not ineligible to vote under the provisions of Title 8, California Code of Regulations, section 20352(b)(5) where the corporate officer, though the son of the company's sole shareholders, is not himself a shareholder in the employing company.
BUNDEN NURSERY, INC., 14 ALRB No. 18

201.07 Since the Agricultural Labor Relations Act (ALRA) itself contains no family-based exclusions from voting eligibility, and affords the Board only limited discretion in determining appropriate bargaining units, the Board is unwilling to expand the family-based exclusions from voting eligibility beyond those already set forth in Title 8, California Code of Regulations, section 20352(b)(5).
BUNDEN NURSERY, INC., 14 ALRB No. 18

201.07 The Board found that a Regional Director had erred in upholding challenges to the ballots cast by the daughter-in-law and grandchildren of an employing company's sole shareholders. Neither the daughter-in-law nor the grandchildren of the sole shareholders are within the plainly defined ambit of Title 8, California Code of Regulations, section 20352(b)(5).
BUNDEN NURSERY, INC., 14 ALRB No. 18

201.07 Board upheld Regional Director's recommendation to overrule ballot challenges of voters who were relatives of a supervisor where there was no evidence showing that the challenged voters possessed "a special status closely related to management."
KERN VALLEY FARMS, 3 ALRB No. 4

201.07 Nephews who were foster children living with employer at time of election were the functional equivalent of children and, therefore, excluded from eligibility under Regulation 20352.
ARTESIA DAIRY, 33 ALRB No. 3

201.07 The Board sustained the challenge to the ballot of the son of a trustee of a family trust which is the majority stockholder in the Dairy and found the son was ineligible to vote under Board regulation section 20352(b)(5). The Board reasoned that under the circumstances of this case, the trustee/father exerted the same control over the company as he would if he were a substantial shareholder acting in his individual capacity, therefore the section 20352(b)(5) exclusion was applicable.
LASSEN DAIRY, INC. dba MERITAGE DAIRY, 34 ALRB No. 1.

201.07 5th DCA overrules Artesia Dairy 33 ALRB No. 3 in part by holding that voter eligibility exclusion of “child” in Regulation 20352(b)(5) does not include nephews who were foster children and fully integrated into the family during the time in question. Without explanation, court finds that “child” is a plainly-defined category.
ARTESIA DAIRY v. ALRB (2008) 168 Cal.App.4th 598

201.08 Professionals, Technical and Research Workers

201.08 A worker who performed simple computer assisted drafting work was engaged in secondary agriculture as her work was incident to or in conjunction with the employer's farming operations.
ARIE DE JONG dba MILKY WAY DAIRY, 29 ALRB No. 4

201.09 Students

201.09 National Labor Relations Board (NLRB) decisions with respect to the policy of excluding student-workers who are primarily students from the category of statutory employee are applicable NLRB precedent.
CALIFORNIA FLORIDA PLANT CO., L.P., 37 ALRB No. 2

201.09 The application of the "primarily a student" test under National Labor Relations Board (NLRB) precedent to determine whether a student-worker is a statutory employee presumes the existence of an academic relationship and an employment relationship between the student-worker and the employer.
CALIFORNIA FLORIDA PLANT CO., L.P., 37 ALRB No. 2

201.10 Construction, Land-Cleaning, Land Leveling and Surveying Workers; Labor Code Section 1140.4(b)

201.10 A crew of four men who worked on construction projects at a dairy were found to be construction workers and therefore excluded from coverage of the ALRA under section 1140.4(b). The primary work of the crew members involved specialized skills beyond building rudimentary structures, the crew leader was a former licensed general contractor, the crew was not integrated into the dairy's regular workforce, and had a unique wage scale.
ARIE DE JONG dba MILKY WAY DAIRY, 29 ALRB No. 4

201.11 Domestic Gardeners

201.11 Although a gardener is normally an agricultural employee, a domestic gardener who works only at employers' personal houses is not.
GEORGE LUCAS & SONS, 3 ALRB No. 5

201.12 Labor Camp Cooks, Bus Drivers, Etc.

201.12 Unlike labor camp cooks, wife of supervisor who cooked lunch in her house for husband, Employer and two other employees during eligibility period was "agricultural employee" engaged in secondary farming practices "incidental to or in conjunction with" the Employer's primary farming operation.
RON CHINN FARMS, 12 ALRB No. 10

201.12 A worker whose duties included cleaning restrooms, lunchrooms and offices used by dairy employees was an

agricultural employee within the meaning of ALRA section 1140.4(b) because she spent a regular and substantial amount of time performing work incidental to employer dairy's farming operation.
ARIE DE JONG dba MILKY WAY DAIRY, 29 ALRB No. 4

201.13 Sales Workers

201.14 Other Excluded Employees

201.14 The Board found the employer's landscaping division of a nursery to be a commercial operation since at least 35% of the horticultural goods used by the landscaping division were grown by non-employer sources, and thus held that the landscaping employees outside of Board jurisdiction.
STRIBLING'S NURSERIES, INC., 4 ALRB No. 50

201.14 Dissent: Based on the totality of evidence and Labor Code section 1140.4(b), the landscaping division was not separately organized as an independent productive activity at the time of the election, but was an integral element of the nursery's operations. Thus, the landscaping division employees are agricultural employees and therefore eligible voters.
STRIBLING'S NURSERIES, INC., 4 ALRB No. 50

201.14 Under M. V. Pista and Co. (1976) 2 ALRB No. 8, family or other group members who work during the appropriate period, but who do not appear on the employer's payroll are eligible to vote, despite the existence of an employer rule against more than one person working under one name.
TENNECO WEST, INC., 3 ALRB No. 92

201.14 Dissent: M. V. Pista and Co. (1976) 2 ALRB No. 8, would only apply to those situations where the employer had actual or constructive knowledge that more than one person was working under one name and failed to take action. If the employer could show that he had a strict policy against group working arrangements and made all reasonable efforts to enforce such a policy, then the challenged ballots should be sustained.
TENNECO WEST, INC., 3 ALRB No. 92

201.14 The principal factors to be considered in determining if someone is an employee or an independent contractor are: 1) whether the worker performing services is engaged in a distinct occupation or business, 2) the worker's occupation, with a focus on whether the work is usually done under the direction of the principal or by the specialist without supervision, 3) the skill required in the particular occupation, 4) whether the principal or the worker provides the necessary tools and/or place of work, 5) the length of time necessary for the performance of the services, 6) the method of payment, including whether payment is based on time or on the job

as a whole, 7) whether the work is part of the regular business of the principal, and 8) whether the parties believe they are creating an employer-employee relationship. Also included in the analysis must be factors such as 1) the remedial purpose of the legislation, 2) whether the alleged employees are within the intended reach of the legislation, and 3) the bargaining strengths and weaknesses of each party.
HENRY A. GARCIA DAIRY, 33 ALRB No. 4

201.14 To be covered under the Agricultural Labor Relations Act (ALRA; Labor Code sec. 1140, et seq.), a worker must be engaged in "agriculture" as defined in the statute and be an "employee" rather than an independent contractor. The exception is that under section 1140.4, subdivision (c), workers provided by a labor contractor are deemed to be the employees of the farmer engaging the labor contractor.
HENRY A. GARCIA DAIRY, 33 ALRB No. 4

202.00 WHO IS AN EMPLOYER

202.01 In General; Definition, Labor Code Section 1140.4(c)

202.01 Where joint employers are deemed successors and have adopted predecessor's bargaining agreement but later terminate the joint relationship, remaining employer is bound by contract and duty to bargain where it alone continues an employer relationship vis-à-vis the same unit of employees which continues to work in the same farming operation.
MICHAEL HAT FARMING COMPANY, 17 ALRB No. 2

202.01 Land management company which hires, fires, supervises and disciplines employees engaged in direct farming activities and, in particular, formulates or directs their terms and conditions of employment, is employer in its own right as well as joint employer with actual lessee of land and owner of crop where latter shares or co-determines labor relations policies which govern same employees.
MICHAEL HAT FARMING COMPANY, 17 ALRB No. 2

202.01 The Board may defer addressing the "agricultural employer" issue in a challenged ballot proceeding since the issue may be rendered moot where the resolution of challenges may result in a finding that no union has received a majority of the ballots. (Exeter Packers, Inc. (1982)
8 ALRB No. 95.)
SAN JOAQUIN TOMATO GROWERS, INC./LCL FARMS, INC., 16 ALRB No. 10

202.01 Mere transfer of stock should not materially change an operation so as to require the employer to notify and bargain with the union over the effects of the stock

transaction. (Esmark, Inc. v NLRB (7th Cir. 1989) 887 F.2d 739.)
CERTIFIED EGG FARMS AND OLSON FARMS, INC., 16 ALRB No. 7

202.01 Since NLRA section 2(3) expressly excludes "independent contractors" from the statutory definition of "employee," and since independent contractor status typically is raised as a defense to unfair labor practice allegations in the employment or agency context under the federal scheme, Board declined to adopt the analysis in determining whether one is a single or joint employer in the agricultural context.
ANDREWS DISTRIBUTION COMPANY, INC., 14 ALRB No. 19

202.01 Individual landowners not found to be alter egos of corporation to which they leased their land and then allegedly took it back through lease cancellations where they were not agricultural employers, did not share substantially in ownership and control over any enterprise, and were not structurally or functionally identical to corporation.
TEX-CAL LAND MANAGEMENT, INC., ET AL., 12 ALRB No. 26

202.01 Because section 1154(d)(4) protects "any employer," it is not necessary for Board to determine whether party charging union with unlawful jurisdictional picketing is "agricultural" employer or employer of vineyard workers whose work is in dispute.
UNITED VINTNERS, INC., 10 ALRB No. 34

202.01 "Custom harvester" is a term of art developed to categorize labor suppliers who provide more than the traditional labor contractor; these "labor contractors plus" may be employers of the employees supplied but will not be statutory employers unless they have the substantial long-term interest in the ongoing agricultural operation.
S & J RANCH, INC., 10 ALRB No. 26

202.01 Land management corporation found to be an agricultural employer because it has the substantial long-term interest in the ongoing agricultural operations, demonstrated by corporate ties to the land owners, acquisition of equipment, responsibility for all aspects of the maintenance of the crop and ultimate responsibility for harvesting.
S & J RANCH, INC., 10 ALRB No. 26

202.01 An employee need not be an employee of the charged employer in order to be protected against a discriminatory discharge caused by the charged employer; Hudgens v. NLRB, 424 U.S. 507, fn. 3, [91 LRRM 2489, fn. 3], and Lucky Stores, Inc., 243 NLRB 642 [102 LRRM 1057] cited for the rule that a statutory employer may violate 1153(c) and/or (a) with respect to employees other than its own.
SILAS KOOPAL DAIRY, 9 ALRB No. 2

202.01 Where the Association supervised the harvest, made day-to-day business decisions concerning the harvest, represented the growers in wage-rate negotiations, provided all of the major harvesting equipment, transported the fruit to the packing shed, packed and marketed the fruit, and financed all of the preceding operations, the Board found that the Association should be considered the employer for collective bargaining purposes.
CORONA COLLEGE HEIGHTS ORANGE AND LEMON ASSOCIATION, 5 ALRB No. 15

202.01 The statutory exclusion of farm labor contractors, and the provision that the employer engaging the farm labor contractor shall be deemed the employer of the contractor's employees serves the goal of stability by attaching the bargaining obligation to the entity with the more permanent interest in the ongoing agricultural operation. The factors considered in determining that an entity which is licensed as a labor contractor is nonetheless functioning as a statutory employer are indicia of that permanent interest and prove a basis for a more stable bargaining relationship.
GOURMET HARVESTING & PACKING, 4 ALRB No. 14

202.01 The IHE properly found that although the Employer, in its role as a labor contractor, supplied labor to some growers, its business, taken as a whole, was that of a custom harvester-packer-marketer. It therefore operated beyond a limited labor-contractor function and became an agricultural employer within the meaning of section 1140.4(c).
GOURMET HARVESTING & PACKING, 4 ALRB No. 14

202.01 Custom harvester who supplies nine employers with employees to perform general labor, irrigation, tractor driving and pruning, is designated the employer under the Act. Decisions on terms and conditions of employment are made in conjunction with the owners of the land, or solely by the custom harvester when the land owner is absent. Harvester exercises managerial judgment, provides some equipment and receives a per-acre management fee.
JACK STOWELLS, JR., 3 ALRB No. 93

202.01 Where the employer is engaged in the business of harvesting, hauling, packing, and selling broccoli on a contract fee basis to various growers and owns none of the crops for which it provides these services, the Board finds the packing shed to be a commercial shed. The employees of a commercial shed are not agricultural employees and are properly excluded from the unit.
ASSOCIATED PRODUCE DISTRIBUTORS, 2 ALRB No. 47

202.01 Where attributes of "employer" are divided between custom harvester and farm operator, there may be more than one

"employer" for statutory purposes, and Board may fix obligation where it will effectuate Act's policies.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

202.01 Although labor contractors bear many hallmarks of an employer, Legislature clearly intended to remove contractors from bargaining process and place obligation on better capitalized and more stable growers.
VISTA VERDE FARMS v. ALRB (1981) 29 Cal.3d 307

202.01 An entity that does not engage labor on another's behalf for a fee is not a labor contractor and not exempt from the definition of statutory employer under section 1140.4(c).
HENRY HIBINO FARMS, LLC., 35 ALRB No. 9

202.01 The factors cited in TONY LOMANTO, (1982) 8 ALRB No. 44, to differentiate between labor contractors and custom harvesters, are also relevant in determining which of two possible statutory employers should have collective bargaining responsibility.
HENRY HIBINO FARMS, LLC., 35 ALRB No. 9

202.01 An entity to which collective bargaining responsibility should attach that was not a party to the proceedings in which such a finding was made may not be bound by that finding in subsequent proceedings.
HENRY HIBINO FARMS, LLC.,35 ALRB No. 9

202.02 Cooperative

202.02 Where a production cooperative corporation's sole purpose is to provide workers to another agricultural employer, and the co-op has no intention of managing any agricultural land, the co-op's marginal entrepreneurial risk in the harvest of the crop is insufficient to make it an employer under section 1140.4(c).
SAHARA PACKING COMPANY, 11 ALRB No. 24

202.02 A cooperative association is an agricultural employer under the ALRA if it actually engages in farming activity, such as harvesting.
POINT SAL GROWERS AND PACKERS, 9 ALRB No. 57

202.03 Harvesting Association

202.03 Where a production cooperative corporation's sole purpose is to provide workers to another agricultural employer, and the co-op has no intention of managing any agricultural land, the co-op's marginal entrepreneurial risk in the harvest of the crop is insufficient to make it an employer under section 1140.4(c).
SAHARA PACKING COMPANY, 11 ALRB No. 24

202.03 Where the Association supervised the harvest, made day-to-day business decisions concerning the harvest,

represented the growers in wage-rate negotiations, provided all of the major harvesting equipment, transported the fruit to the packing shed, packed and marketed the fruit, and financed all of the preceding operations, the Board found that the Association should be considered the employer for collective bargaining purposes.
CORONA COLLEGE HEIGHTS ORANGE AND LEMON ASSOCIATION, 5 ALRB No. 15

202.04 Hiring Association

202.05 Land Management Group

202.05 Land management company which hires, fires, supervises and disciplines employees engaged in direct farming activities and, in particular, formulates or directs their terms and conditions of employment, is employer in its own right as well as joint employer with actual lessee of land and owner of crop where latter shares or co-determines labor relations policies which govern same employees.
MICHAEL HAT FARMING COMPANY, 17 ALRB No. 2

202.05 Land management corporation found to be an agricultural employer because it has the substantial long-term interest in the ongoing agricultural operations, demonstrated by corporate ties to the land owners, acquisition of equipment, responsibility for all aspects of the maintenance of the crop and ultimate responsibility for harvesting.
S & J RANCH, INC., 10 ALRB No. 26

202.05 Entity which by agreement with owner has broad responsibility for management and supervision of vineyard is a land management company and therefore an agricultural employer.
MICHAEL HAT FARMING CO. (1992) 4 Cal.App.4th 1037

202.06 Custom Harvester

202.06 Harvesting entity's assumption of some risk of loss during the harvesting process due to payment on a per ton basis and provision some equipment which is not specialized nor particularly costly is insufficient to remove it from the reach of the statutory exclusion of labor contractors. The Act does not differentiate between stable and responsible labor contractors and those who might be described as "fly by night."
SAN JOAQUIN TOMATO GROWERS, INC./LCL FARMS, INC., 19 ALRB No. 4

202.06 The packing shed which engaged three citrus harvesters had the significant long-term interest in the on-going agricultural operation, where the packing shed owned the land, cultivated the crop, determined the timing and extent of the harvest, assigned the harvest work force,

maintained quality control, packed and marketed the crop, and bore the risk of loss, in terms of crop failure, unsuccessful cultivation practices, or adverse market conditions. The three suppliers of labor were more akin to labor contractors than custom harvesters and therefore their workers were considered employees of the packing house.
SEQUOIA ORANGE CO., 11 ALRB No. 21

202.06 "Custom harvester" is a term of art developed to categorize labor suppliers who provide more than the traditional labor contractor; these "labor contractors plus" may be employers of the employees supplied but will not be statutory employers unless they have the substantial long-term interest in the ongoing agricultural operation.
S & J RANCH, INC., 10 ALRB No. 26

202.06 A labor contractor simply providing standard equipment and supervision to its crew is a labor contractor, not a custom harvester; the criteria set forth in Tony Lomanto (1982) 8 ALRB No. 63 are applicable only if a preliminary determination is made that a person is acting as a custom harvester or some other form of agricultural employer.
PAUL W. BERTUCCIO, 10 ALRB No. 16

202.06 The IHE properly found that although the Employer, in its 202.06 role as a labor contractor, supplied labor to some growers, its business, taken as a whole, was that of a custom harvester-packer-marketer. It therefore operated beyond a limited labor-contractor function and became an agricultural employer within the meaning of section 1140.4(c).
GOURMET HARVESTING & PACKING, 4 ALRB No. 14

202.06 Custom harvester who supplies nine employers with employees to perform general labor, irrigation, tractor driving and pruning, is designated the employer under the Act. Decisions on terms and conditions of employment are made in conjunction with the owners of the land, or solely by the custom harvester when the land owner is absent. Harvester exercises managerial judgment, provides some equipment and receives a per-acre management fee.
JACK STOWELLS, JR., 3 ALRB No. 93

202.06 Custom harvester falls within the statutory definition of "agricultural employer" even though some of the functions which he performs are those typically associated with a labor contractor.
KOTCHEVAR BROTHERS, 2 ALRB No. 45

202.06 Although custom harvester had several attributes of "employer", including control over wages and hours, farm operators also managed day-to-day operations and Board did not err in fixing bargaining duty on entity with long-term interest in ongoing operation.

RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

202.06 Where attributes of "employer" are divided between custom harvester and farm operator, there may be more than one "employer" for statutory purposes, and Board may fix obligation where it will effectuate Act's policies.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d. 743

202.06 Custom harvester typically provides labor, equipment, and hauling services, and retains control over hiring, firing, and work management.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

202.06 Since evidence was equivocal and party filing objections to election has burden of proof, employer failed to show that entity providing harvesting crew not given notice of election was a labor contractor rather than a custom harvester. Thus, since it was not shown that the crew were employees of the employer, there was no genuine issue of disenfranchisement.
GH & G ZYSLING DAIRY, 20 ALRB No. 3

202.06 Payment by the ton, risk of loss to roadside, and provision of nonspecialized equipment, while some evidence of custom harvester status, is insufficient to remove harvesting entity from labor contractor exclusion.
SAN JOAQUIN TOMATO GROWERS, INC., 20 ALRB No. 13

202.06 Entity which owns packing shed and, pursuant to its contracts with individual growers, monitors all cultivation practices and is responsible for harvesting, hauling, packing, and marketing of tomatoes is properly assigned the bargaining obligation because it has the substantial long term interest in the agricultural operations, even if entity hired to do harvesting is a custom harvester.
SAN JOAQUIN TOMATO GROWERS, INC., 20 ALRB No. 13

202.06 Alleged custom harvester's contract with grower providing compensation based only on wages for harvest labor plus a percentage override, and no separate compensation for hauling and day-to-day control of harvesting or other specialized services not typical of farm labor contractor, fails to raise issue of fact that alleged custom harvester is more than a farm labor contractor. Day-to-day control was not shown to be critical, and no evidence provided of any highly specialized or costly machinery.
VENTURA COASTAL CORPORATION, 28 ALRB No. 6

202.06 When determining which of two possible statutory employers should have collective bargaining responsibility, the Board looks to which has the more substantial long-term interest in the agricultural operation.
HENRY HIBINO FARMS, LLC., 35 ALRB No. 9

202.06 The factors cited in Tony Lomanto (1982) 8 ALRB No. 44, to differentiate between labor contractors and custom harvesters, are also relevant in determining which of two possible statutory employers should have collective bargaining responsibility.
HENRY HIBINO FARMS, LLC., 35 ALRB No. 9

202.07 Labor Contractor Exclusion; Person Engaging As Employer; Labor Code Section 1682

202.07 Harvesting entity's assumption of some risk of loss during the harvesting process due to payment on a per ton basis and provision some equipment which is not specialized nor particularly costly is insufficient to remove it from the reach of the statutory exclusion of labor contractors. The Act does not differentiate between stable and responsible labor contractors and those who might be described as "fly by night."
SAN JOAQUIN TOMATO GROWERS, INC./LCL FARMS, INC., 19 ALRB No. 4

202.07 The packing shed which engaged three citrus harvesters had the significant long-term interest in the on-going agricultural operation, where the packing shed owned the land, cultivated the crop, determined the timing and extent of the harvest, assigned the harvest work force, maintained quality control, packed and marketed the crop, and bore the risk of loss, in terms of crop failure, unsuccessful cultivation practices, or adverse market conditions. The three suppliers of labor were more akin to labor contractors than custom harvesters and therefore their workers were considered employees of the packing house.
SEQUOIA ORANGE CO., 11 ALRB No. 21

202.07 Entity found not to be a mere labor contractor where it provided expensive specialized equipment, exercised some discretion in the harvesting of the olive crop, provided payroll and benefit services directly to the employees and was paid on a per-ton-harvested basis; however, disqualification from the labor contractor exclusion in the Act does not imply that the entity is the appropriate employer of the employees it provides.
S & J RANCH, INC., 10 ALRB No. 26

202.07 A labor contractor simply providing standard equipment and supervision to its crew is a labor contractor, not a custom harvester; the criteria set forth in Tony Lomanto (1982) 8 ALRB No. 63 are applicable only if a preliminary determination is made that a person is acting as a custom harvester or some other form of agricultural employer.
PAUL W. BERTUCCIO, 10 ALRB No. 16

202.07 Individual who hired employees to harvest tomatoes, paid them wages fixed by grower and provided them with buckets was labor contractor, engaged by agricultural employer of the employees.

EXETER PACKERS, INC., 9 ALRB No. 76

202.07 Person was found to be a labor contractor within the definition of Labor Code 1682 where he provided labor for hoeing, thinning and harvest operations, received a fixed commission over his labor costs, and a fixed fee for the use of his non-specialized equipment; exercising a minor degree of discretion over some production decisions was insufficient to make him something more than a labor contractor.
JORDAN BROTHERS RANCH, 9 ALRB No. 41

202.07 Person was found to be a labor contractor within the definition of Labor Code 1682 where he hired and fired his own employees, managed his own crew on a daily basis, and received a fixed fee per unit of produce harvested.
JORDAN BROTHERS RANCH, 9 ALRB No. 41

202.07 Statement by labor contractor's chief assistant that "she pitied workers who voted for union as immigration police was going to deport them," as well as conduct in arranging for surveillance of crew violates section 1153(c). Conduct attributable to employer. IHED pp. 22-23.
PAUL W. BERTUCCIO and BERTUCCIO FARMS, 5 ALRB No. 5

202.07 The statutory exclusion of farm labor contractors, and the provision that the employer engaging the farm labor contractor shall be deemed the employer of the contractor's employees serves the goal of stability by attaching the bargaining obligation to the entity with the more permanent interest in the ongoing agricultural operation. The factors considered in determining that an entity which is licensed as a labor contractor is nonetheless functioning as a statutory employer are indicia of that permanent interest and prove a basis for a more stable bargaining relationship.
GOURMET HARVESTING & PACKING, 4 ALRB No. 14

202.07 Custom harvester who supplies nine employers with employees to perform general labor, irrigation, tractor driving and pruning, is designated the employer under the Act. Decisions on terms and conditions of employment are made in conjunction with the owners of the land, or solely by the custom harvester when the land owner is absent. Harvester exercises managerial judgment, provides some equipment and receives a per-acre management fee.
JACK STOWELLS, JR., 3 ALRB No. 93

202.07 Where respondent engages a licensed contractor to provide the required labor, and respondent supplies the equipment, determines the rate of pay to the workers, and pays a commission or fee for the contractor's services, the respondent is the agricultural employer of the workers in the contractor's crews.
TENNECO WEST, INC., 3 ALRB No. 92

202.07 The Board's experience has shown that entities such as cooperative growers, harvesting associations, hiring associations, and land management groups frequently are licensed labor contractors; a broad exclusion of any entity holding a labor contractor's license would nullify the specific statutory inclusion of these categories of employers.
ARNAUDO BROS. INC., 3 ALRB No. 78

202.07 Mere holding of farm labor contractor's license is insufficient to exclude person from coverage of ALRA, section 1140.4(c) defining agricultural employers.
NAPA VALLEY VINEYARDS, 3 ALRB No. 22
ACCORD: Dissenting opinion in CARDINAL DISTRIBUTING CO., 3 ALRB No. 23

202.07 Person who provides only workers who do manual harvesting, whose sole function is providing labor for a fee, is a labor contractor.
CARDINAL DISTRIBUTING CO., 3 ALRB No. 23

202.07 Labor contractors are not indispensable parties in ALRB proceedings; reinstatement remedies may be ordered against growers, despite potential interference with contracts to provide labor and absence of labor contractors during hearings.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

202.07 Labor contractor, like lead man, is in strategic position to translate to its subordinates policies and desires of management. Therefore, labor contractor's acts may wield coercive power even if the contractor lacks power to hire, fire, or discipline.
VISTA VERDE FARMS v. ALRB (1981) 29 Cal.3d 307

202.07 Fact that labor contractor was no longer supplying labor on date of unlawful act does not shield employer from liability, since technical agency doctrines do not control in labor relations.
VISTA VERDE FARMS v. ALRB (1981) 29 Cal.3d 307

202.07 Although labor contractors bear many hallmarks of an employer, Legislature clearly intended to remove contractors from bargaining process and place obligation on better capitalized and more stable growers.
VISTA VERDE FARMS v. ALRB (1981) 29 Cal.3d 307

202.07 Payment by the ton, risk of loss to roadside, and provision of nonspecialized equipment, while some evidence of custom harvester status, is insufficient to remove harvesting entity from labor contractor exclusion.
SAN JOAQUIN TOMATO GROWERS, INC., 20 ALRB No. 13

202.07 Since evidence was equivocal and party filing objections to election has burden of proof, employer failed to show that entity providing harvesting crew not given notice of

election was a labor contractor rather than a custom harvester. Thus, since it was not shown that the crew were employees of the employer, there was no genuine issue of disenfranchisement.
GH & G ZYSLING DAIRY, 20 ALRB No. 3

202.07 Compensation in form of percentage override based on wages provided in contract is still a fee for a farm labor contractor under the definitions of Labor Code section 1682. Labor provider alleged to be custom harvester is therefore a farm labor contractor, and therefore excluded from status of an agricultural employer by Labor Code section 1140.4(c).
VENTURA COASTAL CORPORATION, 28 ALRB No. 6

202.07 Responsibility for hiring, supervising, and firing employees and paying them wages specified in contract with grower typical of farm labor contractor function and does not make farm labor contractor a custom harvester or agricultural employer.
VENTURA COASTAL CORPORATION, 28 ALRB No. 6

202.07 An entity that does not engage labor on another's behalf for a fee is not a labor contractor and not exempt from the definition of statutory employer under section 1140.4(c).
HENRY HIBINO FARMS, LLC., 35 ALRB No. 9

202.08 Corporation Officials And Stockholders; Attorneys; Negotiators

202.08 Mere transfer of stock should not materially change an operation so as to require the employer to notify and bargain with the union over the effects of the stock transaction. (Esmark, Inc. v NLRB (7th Cir. 1989) 887 F.2d 739.)
CERTIFIED EGG FARMS AND OLSON FARMS, INC., 16 ALRB No. 7

202.09 Agents

202.09 Circulation of decertification petition by crew leader attributed to employer where employees reasonably perceived crew leader to be acting on behalf of management. Employees perceived crew leader as having the authority to direct their work, petition was circulated openly during work hours, and conduct was consistent with that of labor consultants; workers reasonably perceived personnel employee as acting on behalf of management because she was a person workers normally dealt with on most official matters such as reporting times, immigration, benefits, etc.
S & J RANCH, INC., 18 ALRB No. 2

202.09 Employer acted as an agent and violated the ALRA by participating in blacklisting scheme of agricultural employers, despite the non-agricultural status of the

discriminating employer.
DESSERT SEED COMPANY, INC., 9 ALRB No. 72

202.09 Action of foreman not attributable to employer where foreman's conduct was so inconsistent with the interests of the employer that employees could not reasonably have believed that foreman was acting on behalf of the employer. (Citing Vista Verde Farms v. ALRB (1981) 29 Cal.3d 307.)
MATSUI NURSERY, INC., 9 ALRB No. 42

202.09 Employer is responsible for acts of employee under theory of apparent authority regardless of whether employee is supervisor.
PAUL W. BERTUCCIO and BERTUCCIO FARMS, 5 ALRB No. 5

202.09 It was reasonable for employees to believe worker was acting as agent of employer because of cloak of authority which employer had given to her. Evidence showed also that inter alia; worker was assistant to employer's wife, kept track of employees' time, took daily inventory of cartons, watched over operation, obtained workers' addresses, did not vote in election because she "wasn't supposed to," and was invited to meeting called by top management to discuss union campaign but not allowed to attend new meeting regarding election.
PAUL W. BERTUCCIO and BERTUCCIO FARMS, 5 ALRB No. 5

202.09 Direct that standard for determining employer involvement in and liability for unlawful activity is not an objective test requiring proof of affirmative company participation, but rather depends on employees' subjective perception of employer's actions. Thus, employer may be held liable even if it is completely unaware of coercive conduct of subordinate.
SUPERIOR FARMING CO. v. ALRB (1984) 151 Cal.App.3d 100

202.09 Under ALRA, even when employer has not directed, authorized, or ratified improperly coercive actions directed against its employees, employer may nonetheless be held responsible for ULP (1) if workers could reasonably believe that coercing individual was acting on behalf of employer, or (2) if employer has gained illicit benefit from misconduct and realistically has ability either to prevent repetition of misconduct or to alleviate deleterious effect of misconduct on employees' statutory rights. (Citing Vista Verde Farms v. Agricultural Labor Relations Board. (1981) 29 Cal.3d 307 [172 Cal.Rptr. 720].)
SUPERIOR FARMING CO. v. ALRB (1984) 151 Cal.App.3d 100

202.09 Fact that crew foreman--although not supervisor--acted as conduit to relay and translate management instructions and pay rates makes reasonable crew's assumption that employer had discharged them when foreman delivered that message immediately following his discussion with supervisor; Board therefore properly found employer

liable for crew foreman's actions.
SUPERIOR FARMING CO. v. ALRB (1984) 151 Cal.App.3d 100

202.09 Question of employer liability under ALRA is not governed by common law agency principles. Fact that alleged agent is not supervisor is not controlling on question of agency.
SUPERIOR FARMING CO. v. ALRB (1984) 151 Cal.App.3d 100

202.09 1165.4 and Vista Verde Farms v. ALRB (1981) 29 Cal.3d 307, direct that standard for determining employer involvement in and liability for unlawful activity is not an objective test requiring proof of affirmative company participation, but rather depends on employees' subjective perception of employer's actions. Thus, employer may be held liable even if it is completely unaware of coercive conduct of subordinate.
SUPERIOR FARMING CO. v. ALRB (1984) 151 Cal.App.3d 100

202.09 Even when employer has not directed, authorized, or ratified unlawful acts against its employees, it will be held responsible (1) if employees could reasonably believe that individual was acting on behalf of employer or (2) employer has gained an illicit benefit from misconduct and realistically has ability either to prevent repetition or to alleviate deleterious effect of such misconduct on employees' rights.
VISTA VERDE FARMS v. ALRB (1981) 29 Cal.3d 307

202.09 ALRA clearly intended employers to be bound by acts of their agents, as reflected in 1140.2, 1165(b), and 1165.4.
VISTA VERDE FARMS v. ALRB (1981) 29 Cal.3d 307

202.09 Employer's responsibility for coercive acts of others under ALRA is not limited to technical agency doctrines or strict principles of respondeat superior, but must be determined with reference to broad purposes of underlying statutory scheme.
VISTA VERDE FARMS v. ALRB (1981) 29 Cal.3d 307

202.09 Although irrigator/truck driver who often directed day-to-day work and had general authority to put people to work who had worked the prior season was not a statutory supervisor, employees would reasonably have perceived him as acting as the employer's agent in making threats that employer was going to plant very little acreage and would hire only non-union supporters the following year. Under standards of *Vista Verde Farms v. Agricultural Labor Relations Bd.* (1981) 29 Cal.3d 307, an employer may be held responsible for unlawful conduct by a non-supervisor even if the employer did not direct, authorize or ratify the conduct if the non-supervisor has apparent authority to speak for the employer.
TSUKIJI FARMS, 24 ALRB No. 3

202.09 Irrigator/truck driver who in prior years had notified

returning workers when they could start working, was acting as employer's agent in discouraging discriminatees from following new hiring procedure by telling them they probably would not get work because of their union activities.
TSUKIJI FARMS, 24 ALRB No. 3

202.09 Foremen who assigned work, corrected employee errors, and whose reports on poor employee performance were relied on to discipline employees were supervisors and had apparent authority to speak for employer.
GALLO VINEYARDS, INC., 30 ALRB No. 2

202.10 Receivers And Trustees

202.11 Successor Companies; Alter Egos

202.11 Lack of joint employer relationship between former landowner and former land management company holding the bargaining obligation does not preclude purchaser of land who also operates the ranch from succeeding to bargaining obligation. More consistent with established successorship principles and the policies underlying those principles to focus on who succeeds to the function of the predecessor employer, rather than on the passing of ownership interests.
MICHAEL HAT FARMING CO., 19 ALRB No. 13

202.11 Deemphasis of workforce majority criterion in San Clemente did not dispense with need for some substantial workforce continuity. Lack of any workforce continuity precludes finding successorship.
MICHAEL HAT FARMING CO., 19 ALRB No. 13

202.11 Workforce continuity may not be presumed where employer provides credible, nondiscriminatory business reasons for not hiring any employees of the predecessor.
MICHAEL HAT FARMING CO., 19 ALRB No. 13

202.11 Changes in duties, and complete change in supervisory staff are types of changes which are properly relied on to show lack of continuity of operations; however, other changes which simply made the operation more efficient and reduced labor needs should be given little weight because they did not change the essential nature of the enterprise nor significantly affect employees and their working conditions.
MICHAEL HAT FARMING CO., 19 ALRB No. 13

202.11 Where lessee of vineyards agrees with union's claim that it is a successor employer, hires employee members of the predecessor's certified work force, and adopts existing bargaining agreement, land management firm it engages and which is found to be its joint employer is held to the same successorship obligations.
MICHAEL HAT FARMING COMPANY, 17 ALRB No. 2

202.11 Successor employer liable for remedying predecessor's unfair labor practices where successor had knowledge either of unlawful conduct or merely of pendency of ULP proceedings.
UKEGAWA BROTHERS, et al., 16 ALRB No. 18

202.11 Once successorship is determined, burden is on successor to show it lacked knowledge of predecessor's unfair labor practices. Mere denial of knowledge not controlling if Board can reasonably infer notice from record as a whole.
UKEGAWA BROTHERS, et al., 16 ALRB No. 18

202.11 Mere transfer of stock should not materially change an operation so as to require the employer to notify and bargain with the union over the effects of the stock transaction. (Esmark, Inc. v NLRB (7th Cir. 1989) 887 F.2d 739.)
CERTIFIED EGG FARMS AND OLSON FARMS, INC., 16 ALRB No. 7

202.11 Traditional "successorship" analysis contemplates substitution of one employer for another, that is, where predecessor terminates its existence or otherwise ceases to have any relationship to the ongoing operations of the successor. Thus, successorship analysis inappropriate where change in ownership results from mere transfer of stock among family members of two legal entities without benefit of cash, and where business purpose and operations continue without break or hiatus.
CERTIFIED EGG FARMS AND OLSON FARMS, INC., 16 ALRB No. 7

202.11 No fundamental change in character of business where change in ownership of two entities is result of mere transfer of stock among family members and although one entity may be extinguished, its business purpose and operations continue unabated by remaining entity which has assumed control. Since change in ownership under these circumstances is an exchange of stock, i.e., a change in corporate control, successor employer analysis inappropriate and responsibility for pre-existing contract of former entity devolves upon surviving entity.
CERTIFIED EGG FARMS AND OLSON FARMS, INC., 16 ALRB No. 7

202.11 Board looks to NLRB standard for determining successorship including (1) whether there has been a substantial continuity of the same business operations; (2) whether the new employer uses the same facilities; (3) whether the new employer has the same or substantially the same work force; (4) whether the same jobs exist under the same working conditions; (5) whether the alleged successor employs the same supervisors; (6) whether the same machinery, equipment and processes are used; and (7) whether the same product or services are offered.
GOURMET HARVESTING & PACKING, INC., AND GOURMET FARMS, 14 ALRB No. 9

202.11 A finding of successorship does not require that the

predecessor be taken over in its entirety by the successor, it being sufficient if a part of the predecessor survives in the successor.
GOURMET HARVESTING & PACKING, INC., AND GOURMET FARMS, 14 ALRB No. 9

202.11 Work force majority critical to finding of successorship because essential inquiry is whether operations, as they impinge on union members, remain essentially the same after the transfer of ownership.
GOURMET HARVESTING & PACKING, INC., AND GOURMET FARMS, 14 ALRB No. 9

202.11 In determining whether an employer is a successor or another employer, Board need not find all seven of the traditional NLRB factors present, only enough to warrant a finding that no basic change has occurred in the employing industry.
GOURMET HARVESTING & PACKING, INC., AND GOURMET FARMS, 14 ALRB No. 9

202.11 Although Board is required to consider all circumstances in examining successorship, key factor is whether a majority of the new employer's bargaining unit employees were members of the predecessor's work force at or near the time it ceased operations.
GOURMET HARVESTING & PACKING, INC., AND GOURMET FARMS, 14 ALRB No. 9

202.11 Individual landowners not found to be alter egos of corporation to which they leased their land and then allegedly took it back through lease cancellations where they were not agricultural employers, did not share substantially in ownership and control over any enterprise, and were not structurally or functionally identical to corporation.
TEX-CAL LAND MANAGEMENT, INC., ET AL., 12 ALRB No. 26

202.11 Where post-sale change in a work force is due to gradual employee turnover rather than any "alteration in managerial direction" and where the continuity of operations and supervision was maintained by the new employer, the new employer succeeds to the former employer's bargaining obligation despite the fact that the new employer purchased only a fraction of the land covered by the original unit and only a minority of the seller's employees worked for the purchasers; the part of the unit purchased was the most labor intensive part of the original unit and was broken off from the rest of the unit at an "obvious cleavage line."
SUMNER PECK RANCH, INC., 10 ALRB No. 24

202.11 Where a corporate structure remains intact after a sale of stock and there is general continuity in the business operations, although not necessarily the continuance of all the prior owner's functions, the ALRB, in conformity with the NLRB, finds the criteria of successorship are

inapplicable and will impose a continuing obligation to bargain with the exclusive representative of the employees.
NEUMAN SEED GROWERS, INC., 9 ALRB No. 52

202.11 A sale of stock in a corporation is not generally analyzed under traditional successorship principles, since the uninterrupted nature of the corporate entity and its operations in a sale of stock situation differentiates it from a successorship analysis, where one corporate identity terminates its existence or ceases to have a relationship with the "successor" employer.
NEUMAN SEED GROWERS, INC., 9 ALRB No. 52

202.11 Board will find that an employer is a successor if, based on all relevant factors, the agricultural operation remains essentially the same. Continuity of the labor force will not be determinative because of the high turnover characteristic of seasonal agricultural operations.
RIVCOM CORPORATION and RIVERBEND FARMS, INC., 5 ALRB No. 55

202.11 An agricultural employer is a successor and liable for the unfair labor practices of its predecessor when the agricultural operation itself remains almost identical, where the same land is farmed, the same equipment used and crops produced in essentially the same manner after the change in ownership.
UKEGAWA BROTHERS v. ALRB (1989) 212 Cal.App.3d 1314

202.11 Board may conduct hearing to determine derivative liability after compliance decision has been reviewed by the courts. Proceeding to determine alter ego and successor responsibility is not a primary action to determine violations of law, but rather ancillary enforcement. Superior court erred by staying Board proceedings.
ALRB v. SUPERIOR COURT OF IMPERIAL COUNTY (SAIKHON) (1993) 18 Cal.Rptr.2d 907

202.11 Substantial evidence supports Board's conclusion that land management company was a successor employer obligated to bargain.
MICHAEL HAT FARMING CO. (1992) 4 Cal.App.4th 1037

202.11 The entity that commits an unfair labor practice is liable for its consequences even if the entity has changed form subsequent to commission of the unfair labor practice.
UKEGAWA BROTHERS v. ALRB (1989) 212 Cal.App.3d 1314

202.11 Federal precedent on successorship is generally applicable under the ALRA, except to the extent the federal cases focus on "workforce continuity." Since high turnover is prevalent in agriculture, the federal focus on workforce continuity is not applicable.

BABBITT ENGINEERING & MACHINERY v. ALRB (1984) 152 Cal.App.3d 310

202.11 In successorship analysis, fluctuating nature of agricultural employment requires ALRB to use a more flexible approach to workforce continuity than that used by NLRB.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

202.11 Successorship analysis seeks to determine whether, after a transfer of business control, the previously certified unit is still appropriate and in existence. Criteria include continuity of supervision, similarity of machinery or equipment, retention of employee functions, and, most importantly, continuity of the work force.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

202.11 In view of fact that new employer took over on-going ranch and continued regular operations of business for substantial period of time (4 months) with a workforce made up largely of predecessor's employees, ALRB was justified in imposing bargaining obligation on successor.
SAN CLEMENTE RANCH, LTD. v. ALRB (1981) 29 Cal.3d 874

202.11 Since there are a great variety of factual circumstances in which successorship issues may arise, and because different legal consequences may be at issue in different situations, each successorship case must be decided on a case-by-case basis and not pursuant to a single, mechanical formula.
SAN CLEMENTE RANCH, LTD. v. ALRB (1981) 29 Cal.3d 874

202.11 Because of great seasonal fluctuations in workforce of typical agricultural employer, it would cause unnecessary delay to determine whether successor employees are substantially same as predecessor employees only at the period of peak employment. Therefore, NLRB requirement that new employer's bargaining obligations cannot be determined until "full complement" of employees is hired is not strictly applicable to ALRA.
SAN CLEMENTE RANCH, LTD. v. ALRB (1981) 29 Cal.3d 874

202.11 Need for stability in union representation is increased in a successorship situation, where employees need special protection from changes in policy, organization, and terms and conditions of employment.
SAN CLEMENTE RANCH, LTD. v. ALRB (1981) 29 Cal.3d 874

202.11 In successorship context, employer's attempt to equate "full complement" and "peak employment" is totally unsound.
SAN CLEMENTE RANCH, LTD. v. ALRB (1981) 29 Cal.3d 874

202.11 Because of unique circumstances of California's agricultural setting, ALRB was justified in finding that considerations in addition to workforce continuity should play important role in defining successorship under ALRA.

Federal successorship decisions are not necessarily controlling in this context.
SAN CLEMENTE RANCH, LTD. v. ALRB (1981) 29 Cal.3d 874

202.11 Settlement which released only named respondent and did not fully satisfy the makewhole specification does not preclude derivative liability proceeding against successors, alter egos, etc.
ALRB v. San Benito County Superior Court (Heublein, Inc.) (1994) 29 Cal.App.4th 688 [34 Cal.Rptr.2d 546]

202.11 Since bargaining obligation of an employer who purchased and continued to operate the whole of a predecessor's operations applies to all employees in the certified unit, employer cannot refuse to bargain concerning employees in a specific crop operation on grounds original unit no longer exists due to changes in overall acreage, kinds of crops produced, or employee turnover.
DOLE FRESH FRUIT CO., 22 ALRB No. 4

202.11 Newly named respondent could not have been denied due process where Board has yet to conduct derivative liability hearing or make any findings. Assertion that derivative liability claim is groundless does not allow avoidance of Board proceedings and regular avenue of appellate review to establish relevant facts.
ALRB v. San Benito County Superior Court (Heublein, Inc.) (1994) 29 Cal.App.4th 688 [34 Cal.Rptr.2d 546]

202.11 ALRB has authority, in the first instance, to hold derivative liability hearing to determine if relationship to named respondent is such that derivative liability is appropriate; therefore, Superior Court had no authority to grant writ of prohibition.
ALRB v. San Benito County Superior Court (Heublein, Inc.) (1994) 29 Cal.App.4th 688 [34 Cal.Rptr.2d 546]

202.12 Joint Or Separate Employers; Integrated Or Autonomous Operations

202.12 Although Employer stated that he supervised another company's employees while they worked on his premises, he failed to allege that the two companies shared in determining the hours, wages or other working conditions of the employees or shared the right to hire and fire them. Thus, Executive Secretary properly dismissed Employer's election objection contending that the two companies were joint employers.
G H & G ZYSLING DAIRY, 19 ALRB No. 17

202.12 Where corporation and partnership deal with each other without maintaining arms' length relationship, have identical ownership, management, and closely interrelated operations, and common control of labor relations, they are single employer. Common control of labor relations show by participation of brother who devoted primary attention to partnership's growing operations in

harvesting entity, and his supervision of crew and consultation with brother on major matters affecting harvesting corporation, which included union activity of employees.
ANTHONY HARVESTING, INC., 18 ALRB No. 7

202.12 Board rejects respondent's contention that whereas it once was both a grower and shipper of fresh vegetable commodities, it is now solely a shipper upon finding that the so-called independent growers are not distinct business entities engaged in independent agricultural production, but are components of a unitary grower/shipper organization controlled by respondent.
BUD ANTLE, INC., 18 ALRB No. 6

202.12 Contractual description of the parties' business relationships not necessarily controlling, Board required to examine the underlying reality and concluded that numerous entities comprised single integrated enterprise.
BUD ANTLE, INC., 18 ALRB No. 6

202.12 Alleged independence of various factions of a total enterprise immaterial where one entity exercise "pervasive control over the operation as a whole," citing to S.G. Borello & Sons Inc. v. Department of Industrial Relations (1989) 48 Cal. 3d 341, 359
BUD ANTLE, INC., 18 ALRB No. 6

202.12 No real change in employing entity where Board finds respondent merely modified the manner in which it had in the past controlled growing operations, relinquishing direct management for a form of controlled or centralized management.
BUD ANTLE, INC., 18 ALRB No. 6

202.12 Although respondent entered into complex agreements with ostensibly independent growers, it continued to maintain critical policy and operational control at the highest or executive level over all entities which it had solicited and bound together contractually and financially; facts support Board's finding of single integrated enterprise.
BUD ANTLE, INC., 18 ALRB No. 6

202.12 Where respondent was positioned to meaningfully influence the labor relations policies which governed a significant number of employees who performed services for contract growers, Board correctly questioned asserted independence of the individual growing entities.
BUD ANTLE, INC., 18 ALRB No. 6

202.12 Where packing and marketing concern entered into growing arrangements with ostensibly independent growers under so--called "joint deals" which Board found were not arm's length transactions, and packing concern effectively controlled all aspects of growing operations, Board found that packer and growers comprised a single integrated enterprise.

BUD ANTLE INC., 18 ALRB No. 6

202.12 Where lessee of vineyards agrees with union's claim that it is a successor employer, hires employee members of the predecessor's certified work force, and adopts existing bargaining agreement, land management firm it engages and which is found to be its joint employer is held to the same successorship obligations.
MICHAEL HAT FARMING COMPANY, 17 ALRB No. 2

202.12 Mere transfer of stock should not materially change an operation so as to require the employer to notify and bargain with the union over the effects of the stock transaction. (Esmark, Inc. v. NLRB (7th Cir. 1989) 887 .2d 739.)
CERTIFIED EGG FARMS AND OLSON FARMS, INC., 16 ALRB No. 7

202.12 Single employer status turns on four NLRB factors: (1) common management (2) central control of labor relations, (3) common ownership and financial control, and (4) interrelation of operations. Not all need be present in every case and weight accorded the various factors varies although centralized control generally deemed the most significant and common ownership the least.
CERTIFIED EGG FARMS AND OLSON FARMS, INC., 16 ALRB No. 7

202.12 Single employing enterprise and thus single employer status in agricultural labor context found where same individual owns and/or leases farmland, owns growing company with which it contracts to grow only its own produce, and is sole owner-operator of a packing/cooling facility which processes only its own crops. Facts establish common ownership, financial control, management, interrelations of operations and common labor relations policies exercised by same individual over all entities.
ANDREWS DISTRIBUTION COMPANY, INC., 14 ALRB No. 19

202.12 Since NLRA section 2(3) expressly excludes "independent contractors" from the statutory definition of "employee," and since independent contractor status typically is raised as a defense to unfair labor practice allegations in the employment or agency context under the federal scheme, Board declined to adopt the analysis in determining whether one is a single or joint employer in the agricultural context.
ANDREWS DISTRIBUTION COMPANY, INC., 14 ALRB No. 19

202.12 In determining whether two or more entities are sufficiently integrated so that they may fairly be treated as a single employer, Board adopted four factors set out in Parklane Hosiery Co. (1973) 203 NLRB 597, amended 207 NLRB 991 as follows: (1) functional interrelation of operations; (2) common management; (3) centralized control of labor relations; and (4) common ownership or financial control. Board distinguished joint-employer status which presumes that two or more

entities are independent and separate but which share or co-determine the essential terms and conditions of employment of the employees in question, citing NLRB v. Browning-Ferris Industries (3d Cir. 1982) 691 F.2d 1117
ANDREWS DISTRIBUTION COMPANY, INC., 14 ALRB No. 19

202.12 Individual found to be a mere investor in a single employing enterprise where his 22 percent undivided interest did not impinge on authority of single owner of all other entities involved in making day-to-day decisions, supervising employees and meaningfully determining rates of pay and other terms and conditions of employment.
ANDREWS DISTRIBUTION COMPANY, INC., 14 ALRB No. 19

202.12 The joint-employer concept differs from whether two or more companies are a single employer as it is premised on the recognition that the business entities are in fact separate but for other than labor relations purposes.
ANDREWS DISTRIBUTION COMPANY, INC., 14 ALRB No. 19

202.12 Four nominally separate entities deemed a single employer in agricultural context where all entities commonly guided and controlled by a single personality, with a single labor relations policy, where all entities have common management not found in arm's length relationships existing among non-integrated companies.
ANDREWS DISTRIBUTION COMPANY, INC., 14 ALRB No. 19

202.12 Various other business entities and individuals not found to be a single employer with land management company.
TEX-CAL LAND MANAGEMENT, INC., ET AL. 12 ALRB No. 26

202.12 All three corporations found to be single employer based upon factors of interrelation of operations, common management, centralized control of labor relations, common financial control, and lack of arm's length relationships where an individual had effective control over one corporation, was president of a second corporation and where a third corporation was a subsidiary of the second corporation.
TEX-CAL LAND MANAGEMENT, INC., ET AL., 12 ALRB No. 26

202.12 Corporation and individual who formerly served as its president were not single employer where, although the operations of the individual's own companies were significantly interrelated with those of the corporation, there was an absence of common ownership and insufficient evidence of common management and common control of labor relations.
TEX-CAL LAND MANAGEMENT, INC., 11 ALRB No. 31

202.12 Evidence of common ownership, joint financial management, shared facilities, centralized control of labor relations, and overlapping legal representation shows that respondents did not operate at arm's length as unintegrated enterprises, and were a single employer.

HOLTVILLE FARMS, INC., 10 ALRB No. 49

202.12 Evidence of common ownership, joint financial management, shared facilities and centralized control of labor relations shows that respondents did not operate at arm's length as unintegrated enterprises, and were a single employer.
BEN AND JERRY NAKASAWA d/b/a NAKASAWA FARMS AND B. J. HAY HARVESTING, 10 ALRB No. 48

202.12 In the context of a challenged ballot report, Board found two entities to be an integrated enterprise and hence to constitute a single employer: one entity handled the growing while the other handled the harvesting, packing and selling of the melons; one entity owned the other; and the president and vice president of one played a major role in the management and decision-making of both companies.
PAPPAS AND COMPANY, 10 ALRB No. 27

202.12 Board finds a single integrated enterprise where employer was engaged in both grape and citrus operations and consisted of a corporation, a partnership, and two incorporated individuals who comprised the partnership and owned the corporation's stock.
VALDORA PRODUCE COMPANY and VALDORA PRODUCE COMPANY, INC., 10 ALRB No. 3

202.12 Nursery and Land Management Company owned and managed by the same individuals are single employer despite dissimilarity of operations and skills and lack of functional integration and minimal employee interchange. Pervasive involvement of common owners and managers, as well as single office and clerical and accounting staff, financial interdependence, use of same labor contractor, and other evidence of interrelation distinguish this case from Signal Produce Company and Brock Research, Inc. (1978) 4 ALRB No. 3.
PIONEER NURSERY/RIVER WEST, INC., 9 ALRB No. 38

202.12 Board held that a harvesting operation and its wholly-owned subsidiary farming operation constitute a single integrated agricultural employer.
RIVCOM CORPORATION and RIVERBEND FARMS, INC., 5 ALRB No. 55

202.12 Dissent: Based on the totality of evidence and Labor Code section 1140.4(b), the landscaping division was not separately organized as an independent productive activity at the time of the election, but was an integral element of the nursery's operations. Thus, the landscaping division employees are agricultural employees and therefore eligible voters.
STRIBLING'S NURSERIES, INC. 4 ALRB No. 50

202.12 Nominally distinct entities held to be single integrated enterprise and to comprise one employer for purposes of

Act where:(1) common stock ownership; (2) common officers; (3) identical addresses and telephone numbers; (4) common control, administration, decision making, and labor relations decision and policy making.
PERRY FARMS, INC., 4 ALRB No. 25

202.12 Where three nominally distinct entities were held to be single integrated enterprise, it was not material that two of those three entities had neither been named as respondents nor served with charges or complaints. Board had jurisdiction over all three and could enter remedial order which applied to all three.
PERRY FARMS, INC., 4 ALRB No. 25

202.12 Board will not follow mechanical rule in determining whether single-employer status should apply to two or more firms but will, on case-by-case basis, look to such factors as similarity of operations, interchange of employees, common management, common labor relations, policy and common ownership.
SIGNAL PRODUCE COMPANY, BROCK RESEARCH, INC., 4 ALRB No. 3

202.12 Family ties or partial mutual ownership of two corporations does not per se create presumption of function integration of multiple entities which is necessary to establish joint employer status.
SIGNAL PRODUCE COMPANY, BROCK RESEARCH, INC., 4 ALRB No. 3

202.12 Despite familial relationships among principals of agricultural corporation and agricultural partnership and some sharing in matters of management and labor relations, joint employer status not found in absence of common legal ownership or evidence establishing similarity of operations, interchange of employees and supervisory personnel, like job classifications and wage rates and single payroll and invoicing scheme.
SIGNAL PRODUCE COMPANY, BROCK RESEARCH, INC., 4 ALRB No. 3

202.12 Two entities will not warrant joint or single employer status if they are sufficiently dissimilar in the manner in which they operate, notwithstanding the fact that they produce similar crops.
SIGNAL PRODUCE COMPANY, BROCK RESEARCH, INC., 4 ALRB No. 3

202.12 Multiple entities controlled by essentially same people may be deemed joint employers upon showing that they are functionally integrated.
SIGNAL PRODUCE COMPANY, BROCK RESEARCH, INC., 4 ALRB No. 3

202.12 The fact that one company is an independent operation within a larger company does not prevent the Board from finding that the employees of the independent operation

are the agricultural employees of the larger company.
TENNECO WEST, INC. 3 ALRB No. 92

202.12 Joint Employer status found based on common ownership, common control, and common control of labor relations policy.
ABATTI FARMS, INC. AND ABATTI PRODUCE, INC., 3 ALRB No. 83

202.12 Board found no employment relationship where company other than Employer named in Petition operated as independent contractor using its own leased trucks and equipment whereon workers packed lettuce and transported it to coolers and performed same services for Employer and other growers. Individuals found not to be Employees of Employer and not eligible to vote. Board declined to decide whether they were agricultural Employees.
SAHARA PACKING COMPANY, 3 ALRB No. 39

202.12 Joint employer finding upheld where two companies had same principal owner, integrated operations, common management, interchange of employees.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

202.12 Under NLRB precedent, ALRB acquired jurisdiction over all three entities comprising a single integrated enterprise -- which Board found to be a single employer -- notwithstanding its failure to specifically serve upon each a copy of ULP charge and concurrent failure to list each as a respondent in complaint.
PERRY FARMS INC. v. ALRB (1978) 86 Cal.App.3d 448

202.12 Joint offices, common control over management decisions and labor relations and policies, and vertically integrated structure of operations support conclusions that petitioners constitute one employer within the meaning of the Act.
PERRY FARMS INC. v. ALRB (1978) 86 Cal.App.3d 448

202.12 Two individuals working for lessee on adjoining land leased from employer not disenfranchised by lack of notice of election because evidence showed they were not employees of the employer. Employer's occasional supervision insufficient to establish joint employer relationship and general oversight of operation by employer is insufficient to establish single employer theory where no evidence or centralized control of labor relations or common ownership.
GH & G ZYSLING DAIRY, 20 ALRB No. 3

202.12 Corporation and partnership were single integrated enterprise where partnership owned equipment integral to corporation's operation of plant, obligations between entities were not enforced, common facilities, supplies, professional services and lending institutions were used, and assets were transferred for nominal consideration.
Claassen Mushrooms, Inc. 20 ALRB No. 9

202.12 The Board set for hearing the challenges of two individuals who are the employees of a neighboring farm. The Board ordered the hearing examiner to take evidence on whether the farm, the Dairy and a related business that provides payroll services and equipment to the Dairy and farm constitute a single employer for collective bargaining purposes under the test set forth in Andrews Distribution Company (1988) 14 ALRB No. 19
LASSEN DAIRY, INC. dba MERITAGE DAIRY, 34 ALRB No. 1.

202.13 Lease Arrangements; Joint Ventures; Partnerships

202.13 Individual landowners not found to be alter egos of corporation to which they leased their land and then allegedly took it back through lease cancellations where they were not agricultural employers, did not share substantially in ownership and control over any enterprise, and were not structurally or functionally identical to corporation.
TEX-CAL LAND MANAGEMENT, INC., ET AL., 12 ALRB No. 26

202.13 A land management corporation, whose stock was entirely held by the general partner of partnerships owning agricultural holdings, had substantial interest in those holdings, and was found to be the statutory employer of the employees harvesting crops on these land holdings.
S & J RANCH, INC., 10 ALRB No. 26

202.13 Employment relationship found where one of 3 corporate partners of the general partnership hired labor contractor who harvested crops owned by and grown on land of the partnership. Workers of the labor contractor entitled to vote. Not determinative that the contractor's workers had different hours, were paid on different basis, harvested a different type of tomato than direct Employees or that the contractor Employees were supervised by a Foreman of the contractor.
TMY FARMS, 2 ALRB No. 58

202.13 Where the employer is engaged in the business of harvesting, hauling, packing, and selling broccoli on a contract fee basis to various growers and owns none of the crops for which it provides these services, the Board finds the packing shed to be a commercial shed. The employees of a commercial shed are not agricultural employees and are properly excluded from the unit.
ASSOCIATED PRODUCE DISTRIBUTORS, 2 ALRB No. 47

203.00 MULTI-EMPLOYER ASSOCIATIONS

203.01 In General

203.01 There is a presumption in favor of single employer unit, and unless employers are closely related in ownership and control, a multi-employer unit will only be recognized

where there has been history of collective bargaining on a multi-employer basis.
J.J. CROSETTI CO., INC., 2 ALRB No. 1

203.02 Joining Or Withdrawal From Association

203.03 Validity And Enforcement Of Association Contracts

204.00 SUPERVISORS

204.01 Coverage Of ALRA In General; Definition; Labor Code Sections 1140.4(j) And 1155.7

204.01 Although employee effectively recommended to his employer that latter consider two friends for potential employment, and employer subsequently interviewed and hired them on a trial basis, that is not sufficient basis standing alone to find employee supervisor since employer welcomes such references from all employees including those who clearly are rank-and-file employees.
SALINAS VALLEY NURSERY, 15 ALRB No. 4

204.01 Employee who assists and directs experienced employees in the application of fertilizer, or guides new employees in that task, is a lead person but not a supervisor within the meaning of the Act where fertilizing occupies a small percentage of the employees' overall work week and lead person has no authority to hire, fire, assign, discipline, grant time off or to effectively recommend in that regard.
SALINAS VALLEY NURSERY, 15 ALRB No. 4

204.01 Neither job title nor job classification sufficient to warrant finding an individual to be a supervisor since Board makes such determinations on basis of actual job duties and responsibilities.
SALINAS VALLEY NURSERY, 15 ALRB No. 4

204.01 Transmittal of orders to co-workers, without more, is insufficient to show an employee to be a statutory supervisor.
MAYFAIR PACKING COMPANY 13 ALRB No. 20

204.01 As a general rule, supervisors are not accorded the protections of the ALRA; however, a supervisor may be afforded the protection of the Act when he or she is discharged for having refused to engage in activities proscribed by the Act, or when the discharge of the supervisor is the means by which the employer discriminates against its employees.
SEQUOIA ORANGE CO., 11 ALRB No. 21

204.01 Supervisors are not generally entitled to protections of the Act; an exception exists where supervisor is fired for refusing to commit an unfair labor practice.
GEORGE LUCAS & SONS, 11 ALRB No. 11

(See also 13 ALRB No. 4)

204.01 Spouse who was fired when her foreman husband refused to commit an unfair labor practice is ordered reinstated with backpay.
GEORGE LUCAS & SONS, 11 ALRB No. 11 (See 13 ALRB No. 4)

204.01 The ability to effectively recommend discipline of co-workers coupled with timekeeping obligations, a high rate of pay and other secondary factors supports a conclusion that an employee is a statutory supervisor.
MAYFAIR PACKING COMPANY, 9 ALRB No. 66

204.01 Subforemen who did not direct employees in their work assignments or hire or discharge employees were not supervisors within the meaning of section 1140.4(j).
UKEGAWA BROTHERS, INC., 9 ALRB No. 26

204.01 Where no exceptions taken to Regional Director's recommendations concerning supervisory status of three votes, Regional Director's challenge ballot recommendations approved by Board.
TRANSPLANT NURSERY, INC., 5 ALRB No. 49

204.01 Employees' impressions of another employee's position is only evidence and not an independent factor in finding supervisor status. Relevant factors include: relative earnings, authority to transfer, hire, discharge, assign and direct work, distribute paychecks, excuse absences, validate timecards, and report to management on quality of work of other employees.
DAIRY FRESH PRODUCE 3 ALRB No. 70

204.01 Dissent: Whether an individual appears to possess "ostensible authority in the eyes of other employees" so as to cause other employees to regard him/her as the "boss" is immaterial to the Board's task in determining whether supervisorial power in fact exists.
DAIRY FRESH PRODUCE 3 ALRB No. 70

204.01 Dissent: Occasional performance of supervisory duties does not make an employee a supervisor within the meaning of the Act. A major factor for consideration is the wage differential between the employees found to be supervisors and the remainder of the rank and file.
DAIRY FRESH PRODUCE 3 ALRB No. 70

204.01 Supervisor's conduct attributable to respondent.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

204.01 Board upheld Regional Director's recommendation to overrule ballot challenges of voters who were relatives of a supervisor where there was no evidence showing that the challenged voters possessed "a special status closely related to management."
KERN VALLEY FARMS, 3 ALRB No. 4

204.01 Employee found to be as supervisor based on the following: 1) credited testimony reflecting that the employee had hired employees or at least effectively recommended such actions and had granted requests for time off, 2) the employee's declaration at the time of the election in which he stated that he supervised employees and could recommend hiring and firing, 3) the Employer's admission that at the time the employee was hired it was intended that he would be a supervisor and this was announced to the other employees, 4) the Employer's admission that neither the other employees nor the employee in question was informed that he would not be a supervisor as planned, 5) the employee's listing on payroll records as a "foreman" at the time of the election, and 6) the employee's salary, which was $500 dollars per month more than the next highest paid employee.
ALBERT GOYENETCHE DAIRY, 28 ALRB No. 5

204.01 Dairy employee was found to be a statutory supervisor because employee used independent judgment in performing duties even where duties could be characterized as repetitive. The employee directed daily meetings with his crew and assigned work for the day, made decisions about when to move and treat sick cows, and made decisions about when crew members were to leave for the day.
ARIE DE JONG dba MILKY WAY DAIRY, 29 ALRB No. 4

204.01 The Board makes the determination of whether individuals are supervisors as defined in Labor Code section 1140.4 (j) on the basis of the actual job duties of each employee in question.
KAWAHARA NURSERIES, INC., 36 ALRB No. 3

204.01 The Board will follow and apply recent NLRB precedent interpreting the terms "assign," "responsibility to direct," and "independent judgment" in determining whether or not individuals are supervisors as defined in Labor Code section 1140.4 (j). (*Oakwood Healthcare, Inc.* (2006) 348 NLRB No. 37; *Croft Metals, Inc.* (2006) 348 NLRB No. 38.)
KAWAHARA NURSERIES, INC., 36 ALRB No. 3

204.01 The Board makes the determination of whether individuals are supervisors as defined in Labor Code section 1140.4 (j) on the basis of the actual job duties of each employee in question.
SOUTH LAKES DAIRY FARMS, 36 ALRB No. 5

204.01 The Board will follow and apply recent NLRB precedent interpreting the terms "assign," "responsibility to direct," and "independent judgment" in determining whether or not individuals are supervisors as defined in Labor Code section 1140.4 (j). (*Oakwood Healthcare, Inc.* (2006) 348 NLRB No. 37; *Croft Metals, Inc.* (2006) 348 NLRB No. 38.)

SOUTH LAKES DAIRY FARMS, 36 ALRB No. 5

204.01 Questions of supervisory status are deeply fact-intensive. In determining whether an individual is a statutory supervisor, the Board will inquire into actual duties, not merely titles or job classifications.
FRANK PINHEIRO DAIRY, 36 ALRB No. 1

204.01 The Board makes the determination whether individuals are supervisors as defined in Labor Code section 1140.4 (j) on the basis of the actual job duties of each employee in question.
KAWAHARA NURSERIES, INC., 37 ALRB No. 4

204.01 The Board will follow and apply NLRB precedent interpreting the terms "assign," "responsibly to direct," and "independent judgment" in determining whether or not individuals are supervisors as defined in Labor Code section 1140.4 (j). (*Oakwood Healthcare, Inc.* (2006) 348 NLRB 686; *Croft Metals, Inc.* (2006) 348 NLRB 717.)
KAWAHARA NURSERIES, INC., 37 ALRB No. 4

204.02 Hiring Of Supervisors And Promotion To Supervisory Jobs

204.03 Assignments Or Direction Of Work; Adjustment Of Grievances; Independent Judgment; Responsibility

204.03 Foremen who use independent judgment in directing work, hiring, and granting time off, and were included in meetings with labor consultants planning anti-union campaign are statutory supervisors.
OASIS RANCH MANAGEMENT, INC., 18 ALRB No. 11

204.03 Employee who assists and directs experienced employees in the application of fertilizer, or guides new employees in that task, is a lead person but not a supervisor within the meaning of the Act where fertilizing occupies a small percentage of the employees' overall work week and lead person has no authority to hire, fire, assign, discipline, grant time off or to effectively recommend in that regard.
SALINAS VALLEY NURSERY, 15 ALRB No. 4

204.03 Transmittal of orders to co-workers, without more, is insufficient to show an employee to be a statutory supervisor.
MAYFAIR PACKING COMPANY, 9 ALRB No. 66

204.03 Subforemen who did not direct employees in their work assignments or hire or discharge employees were not supervisors within the meaning of section 1140.4(j).
UKEGAWA BROTHERS, INC., 9 ALRB No. 26

204.03 Alleged discriminatee not a Supervisor where, under labor contractors direction, over saw work of crew and did different labor from crew; reported workers' attendance

to labor contractor and supplied water to crew. No evidence was authorized to hire, fire, transfer or discipline workers or could effectively recommend such actions. As new field worker, unlikely would be given authority requiring exercise of independent judgment. Same pay rate as other members of his crew.
NASH-DE CAMP COMPANY, 8 ALRB No. 5

204.03 It was reasonable for employees to believe worker was acting as agent of employer because of cloak of authority which employer had given to her. Evidence showed also that inter alia; worker was assistant to employer's wife, kept track of employees' time, took daily inventory of cartons, watched over operation, obtained workers' addresses, did not vote in election because she "wasn't supposed to," and was invited to meeting called by top management to discuss union campaign but not allowed to attend new meeting regarding election.
PAUL W. BERTUCCIO and BERTUCCIO FARMS, 5 ALRB No. 5

204.03 Employee with authority to recommend discharge and responsibility to direct work of tomato sorters was supervisor under 1140.4(g).
ANDERSON FARMS COMPANY, 3 ALRB No. 67

204.03 Employee who does not hire or fire other employees, never instructs other employees in their work, but on occasion passed on owner's instructions as to where employees should take lunch break found not to be supervisor within section 1140.4(j).
SAM BARBIC, 1 ALRB No. 25

204.03 Assistant to ranch foreman, though salaried, is not a supervisor where he merely carries out instructions of supervisor and does not exercise independent judgment or have independent authority to exercise any of the duties listed in the definition of supervisor.
TAYLOR FARMS, 20 ALRB No. 8

204.03 Irrigator/truck driver who often directed day-to-day work and had general authority to put people to work who had worked the prior season, was not a statutory supervisor since he did not have authority to exercise discretion or independent judgment over hiring, discharge, discipline, or direction of employees.
TSUKIJI FARMS, 24 ALRB No. 3

204.03 Dairy employee was found to be a statutory supervisor because employee used independent judgment in performing duties even where duties could be characterized as repetitive. The employee directed daily meetings with his crew and assigned work for the day, made decisions about when to move and treat sick cows, and made decisions about when crew members were to leave for the day.
ARIE DE JONG dba MILKY WAY DAIRY, 29 ALRB No. 4

204.03 Foremen who assigned work, corrected employee errors, and whose reports on poor employee performance were relied on to discipline employees were supervisors and had apparent authority to speak for employer.
GALLO VINEYARDS, INC., 30 ALRB No. 2

204.03 Individual who responsibly directs work and in one instance effectively recommended transfer of employee, coupled with ample secondary indicia of supervisorial status, is a supervisor ineligible to vote in representation election.
ARTESIA DAIRY, 33 ALRB No. 3

204.03 The fact that the work supervised is not complex and does not require close attention does not preclude a finding of supervisory status. (*Sourdough Sales, Inc.* (1979) 246 NLRB No. 20; *Colorflo Decorator Products, Inc.* (1977) 228 NLRB 408.)
ARTESIA DAIRY, 33 ALRB No. 3

204.03 The Board will follow and apply recent NLRB precedent interpreting the terms "assign," "responsibility to direct," and "independent judgment" in determining whether or not individuals are supervisors as defined in Labor Code section 1140.4 (j). (*Oakwood Healthcare, Inc.* (2006) 348 NLRB No. 37; *Croft Metals, Inc.* (2006) 348 NLRB No. 38.)
SOUTH LAKES DAIRY FARMS, 36 ALRB No. 5

204.03 The Board will follow and apply recent NLRB precedent interpreting the terms "assign," "responsibility to direct," and "independent judgment" in determining whether or not individuals are supervisors as defined in Labor Code section 1140.4 (j). (*Oakwood Healthcare, Inc.* (2006) 348 NLRB No. 37; *Croft Metals, Inc.* (2006) 348 NLRB No. 38.)
KAWAHARA NURSERIES, INC., 36 ALRB No. 3

204.03 The Board will follow and apply NLRB precedent interpreting the terms "assign," "responsibly to direct," and "independent judgment" in determining whether or not individuals are supervisors as defined in Labor Code section 1140.4 (j). (*Oakwood Healthcare, Inc.* (2006) 348 NLRB 686; *Croft Metals, Inc.* (2006) 348 NLRB 717.)
KAWAHARA NURSERIES, INC., 37 ALRB No. 4

204.03 The Board overruled the challenge to the ballot of a lead worker in nursery's maintenance department who translated for the department supervisor and directed other crew members based on overall assignments given by supervisor because he did not use independent judgment as required by the statutory definition of "supervisor."
KAWAHARA NURSERIES, INC., 37 ALRB No. 4

204.03 The Board overruled the challenge to the ballot of a lead worker at a nursery who directed other workers in her

group how to pull plants from greenhouses to fill orders. Although the record supported the conclusion that she responsibly directed work, her duties involved overseeing routine, recurrent, predictable tasks that did not involve the use of independent judgment as required by the statutory definition of "supervisor."
KAWAHARA NURSERIES, INC., 37 ALRB No. 4

204.03 The Board overruled the challenge to the ballot of a "supervisor's assistant" at a nursery who passed on daily assignments and driving routes to company truck drivers from the supervisor of the department and had limited authority to direct truck drivers to perform discrete tasks, because he did not use independent judgment as required by the statutory definition of "supervisor."
KAWAHARA NURSERIES, INC., 37 ALRB No. 4

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

204.04 Authority Or Recommendations As To Hiring, Firing, Discipline, Promotion, Etc.; Rating Of Subordinates

204.04 Foremen who use independent judgment in directing work, hiring, and granting time off, and were included in meetings with labor consultants planning anti-union campaign are statutory supervisors.
OASIS RANCH MANAGEMENT, INC., 18 ALRB No. 11

204.04 The ability to effectively recommend discipline of co-workers coupled with timekeeping obligations, a high rate of pay and other secondary factors supports a conclusion that an employee is a statutory supervisor.
MAYFAIR PACKING COMPANY, 9 ALRB No. 66

204.04 Subforemen who did not direct employees in their work assignments or hire or discharge employees were not supervisors within the meaning of section 1140.4(j).
UKEGAWA BROTHERS, INC., 9 ALRB No. 26

204.04 Crew bosses are "supervisors" since they have the authority to determine which members of their crews will work on any given days, and the authority effectively to recommend discipline and discharge for poor work.
M. CARATAN, INC. 5 ALRB No. 16

204.04 Supervisor within meaning of Act where individual had authority to recommend discharge and responsibility to direct work of other employees.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

204.04 Employee who does not hire or fire other employees, never instructs other employees in their work, but on occasion passed on owner's instructions as to where employees should take lunch break found not to be supervisor within section 1140.4(j).
SAM BARBIC, 1 ALRB No. 25

204.04 Employee was not supervisor, despite being paid salary, where he had authority to see that certain work was performed but had no authority to hire or fire or otherwise supervise.
BABBITT ENGINEERING & MACHINERY v. ALRB (1984) 152 Cal.App.3d 310

204.04 Irrigator/truck driver who often directed day-to-day work and had general authority to put people to work who had worked the prior season, was not a statutory supervisor since he did not have authority to exercise discretion or independent judgment over hiring, discharge, discipline, or direction of employees.
TSUKIJI FARMS, 24 ALRB No. 3

204.04 Employee found to be a supervisor where, in addition to secondary indicia of supervisory status, credited testimony reflected that he had hired employees or at least effectively recommended such actions and had granted requests for time off.
ALBERT GOYENETCHE DAIRY, 28 ALRB No. 5

204.04 Foreperson who has responsibility to assemble crew has, at least, authority to effectively recommend hiring, and is therefore a supervisor.
RIVERA VINEYARDS, et al., 29 ALRB No. 5

204.04 Foremen who assigned work, corrected employee errors, and whose reports on poor employee performance were relied on to discipline employees were supervisors and had apparent authority to speak for employer.
GALLO VINEYARDS, INC., 30 ALRB No. 2

204.04 Individual who responsibly directs work and in one instance effectively recommended transfer of employee, coupled with ample secondary indicia of supervisorial status, is a supervisor ineligible to vote in representation election.
ARTESIA DAIRY, 33 ALRB No. 3

204.04 The Board will follow and apply recent NLRB precedent interpreting the terms "assign," "responsibility to direct," and "independent judgment" in determining whether or not individuals are supervisors as defined in Labor Code section 1140.4 (j). (*Oakwood Healthcare, Inc.* (2006) 348 NLRB No. 37; *Croft Metals, Inc.* (2006) 348 NLRB No. 38.)
SOUTH LAKES DAIRY FARMS, 36 ALRB No. 5

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

204.05 Instructors And Management Trainees

204.06 Working Foremen And Group Leaders

204.06 Board found "leadman," stipulated by parties not to be supervisor within the meaning of section 1140.4(j), to have acted as employer's agent in circulating petition in opposition to disclosure by employer of employees' names and addresses to union.
V. B. ZANINOVICH & SONS, 9 ALRB No. 54

204.06 Subforemen who did not direct employees in their work assignments or hire or discharge employees were not supervisors within the meaning of section 1140.4(j).
UKEGAWA BROTHERS, INC., 9 ALRB No. 26

204.06 Crew bosses are "supervisors" since they have the authority to determine which members of their crews will work on any given days, and the authority effectively to recommend discipline and discharge for poor work.
M. CARATAN, INC. 5 ALRB No. 16

204.06 Employee with authority to recommend discharge and responsibility to direct work of tomato sorters was supervisor under 1140.4(g).

ANDERSON FARMS COMPANY, 3 ALRB No. 67

204.06 Fact that crew foreman--although not a supervisor--frequently relayed management directives to crew is substantial evidence upon which to conclude that, when foreman told crew they had been discharged, crew members reasonably believed they had, in fact, been discharged. SUPERIOR FARMING CO. v. ALRB (1984) 151 Cal.App.3d 100

204.06 The Board overruled the challenge to the ballot of a lead worker in nursery's maintenance department who translated for the department supervisor and directed other crew members based on overall assignments given by supervisor because he did not use independent judgment as required by the statutory definition of "supervisor." KAWAHARA NURSERIES, INC., 37 ALRB No. 4

204.06 The Board overruled the challenge to the ballot to a lead worker at a nursery who directed other workers in her group how to pull plants from greenhouses to fill orders. Although the record supported the conclusion that she responsibly directed work, her duties involved overseeing routine, recurrent, predictable tasks that did not involve the use of independent judgment as required by the statutory definition of "supervisor." KAWAHARA NURSERIES, INC., 37 ALRB No. 4

204.06 The Board overruled the challenge to the ballot of a "supervisor's assistant" at a nursery who passed on daily assignments and driving routes to company truck drivers from the supervisor of the department and had limited authority to direct truck drivers to perform discrete tasks because he did not use independent judgment as required by the statutory definition of "supervisor."
KAWAHARA NURSERIES, INC., 37 ALRB No. 4

204.07 Assistant, Temporary, Part-Time, Substitute Supervisors

204.07 Worker was a member of the bargaining unit at all times during the year except when he worked as a foreman for a labor contractor who was engaged by the employer during the pruning season; worker performed bargaining unit work and was a member of the bargaining unit during the voter eligibility period. Under these circumstances, the seasonal supervisor rule in Great Western Sugar Company (1962) 137 NLRB 551 [50 LRRM 1186] applied and worker was an agricultural employee and eligible to vote in representation election.
J. OBERTI, INC., et al., 9 ALRB No. 7

204.07 It was reasonable for employees to believe worker was acting as agent of employer because of cloak of authority which employer had given to her. Evidence showed also that inter alia; worker was assistant to employer's wife, kept track of employees' time, took daily inventory of cartons, watched over operation, obtained workers'

addresses, did not vote in election because she "wasn't supposed to," and was invited to meeting called by top management to discuss union campaign but not allowed to attend new meeting regarding election.
PAUL W. BERTUCCIO and BERTUCCIO FARMS, 5 ALRB No. 5

204.07 Statement by labor contractor's chief assistant that "she pitied workers who voted for union as immigration police was going to deport them," as well as conduct in arranging for surveillance of crew violates section 1153(c). Conduct attributable to employer. IHED pp. 22-23.
PAUL W. BERTUCCIO and BERTUCCIO FARMS, 5 ALRB No. 5

204.07 Individual who fills in one day a week as supervisor when regular supervisor has day off, and whose time as acting supervisor constitutes 16.7% of his work time, spends "regular and substantial" time as a supervisor and is a supervisor ineligible to vote in a representation election. The percentage of time the individual holds the authority, not how much time is spent actively asserting the authority, is the relevant consideration.
ARTESIA DAIRY, 33 ALRB No. 3

204.07 An employee who works part of the time as a supervisor is considered a statutory supervisor if the supervisory duties are "regular and substantial." (*Artesia Dairy, supra*, 33 ALRB No. 3 at p. 9; *Oakwood Healthcare, Inc., supra*, 348 NLRB No. 37.) A relevant inquiry is how often the individual holds supervisory authority.
SOUTH LAKES DAIRY FARMS, 36 ALRB No. 5

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.* (2011) 37 ALRB No. 4; *PHI, Inc. d/b/a/ Polynesian Hospitality Tours* (1989) 297 NLRB 228 at fn. 3 [133 LRRM 1218], enfd. (D.C. Cir. 1990) 920 F.2d 71 [135 LRRM 3238]. ALJD at p. 43.
SOUTH LAKES DAIRY FARM, 39 ALRB No. 1

204.08 Notice, Agreement, Admission Or Past Practice As To Authority; Job Title

204.08 It was reasonable for employees to believe worker was acting as agent of employer because of cloak of authority which employer had given to her. Evidence showed also that inter alia; worker was assistant to employer's wife, kept track of employees' time, took daily inventory of cartons, watched over operation, obtained workers' addresses, did not vote in election because she "wasn't supposed to," and was invited to meeting called by top management to discuss union campaign but not allowed to attend new meeting regarding election.
PAUL W. BERTUCCIO and BERTUCCIO FARMS, 5 ALRB No. 5

204.09 Authority Not Exercised

204.10 Attendance At Management Meetings

204.10 Foremen who use independent judgment in directing work, hiring, and granting time off, and were included in meetings with labor consultants planning anti-union campaign are statutory supervisors.
OASIS RANCH MANAGEMENT, INC., 18 ALRB No. 11

204.10 It was reasonable for employees to believe worker was acting as agent of employer because of cloak of authority which employer had given to her. Evidence showed also that inter alia; worker was assistant to employer's wife, kept track of employees' time, took daily inventory of cartons, watched over operation, obtained workers' addresses, did not vote in election because she "wasn't supposed to," and was invited to meeting called by top management to discuss union campaign but not allowed to attend new meeting regarding election.
PAUL W. BERTUCCIO and BERTUCCIO FARMS, 5 ALRB No. 5

204.11 Wage, Rate, Basis Of Pay, Special Benefits Or Privileges

204.11 Dissent: Occasional performance of supervisory duties does not make an employee a supervisor within the meaning of the Act. A major factor for consideration is the wage differential between the employees found to be supervisors and the remainder of the rank and file.
DAIRY FRESH PRODUCE, 3 ALRB No. 70

204.11 Employee was not supervisor, despite being paid salary, where he had authority to see that certain work was performed but had no authority to hire or fire or otherwise supervise. BABBITT ENGINEERING & MACHINERY v. ALRB (1984) 152 Cal.App.3d 310

204.11 Employee found to be a supervisor where, in addition to other secondary indicia of supervisory status and credited testimony reflecting that he had hired employees or at least effectively recommended such actions and had granted requests for time off, he was paid $500 per month than the next highest paid employee.
ALBERT GOYENETCHE DAIRY, 28 ALRB No. 5

204.11 Secondary indicia of supervisory status, such as differences in wages, benefits and titles, supported classifying an employee as a supervisor where the employee's rate of pay was $2.00 to $5.00 per hour more than the rest of the crew and where the employee was the only individual in the crew with the title "herdsman."
ARIE DE JONG dba MILKY WAY DAIRY, 29 ALRB No. 4

204.12 Former Supervisors; Prospective Supervisors

204.12 A supervisor's knowledge of union activity may be imputed to the employer (absent a direct denial) even though the supervisor was a rank and file employee at the time the information was acquired. (ALJ Decision.)
E. W. MERRITT FARMS, 14 ALRB No. 5

204.13 Employer is responsible for acts of employee under theory of apparent authority regardless of whether employee is supervisor.
PAUL W. BERTUCCIO and BERTUCCIO FARMS, 5 ALRB No. 5

205.00 LABOR ORGANIZATIONS

205.01 In General; Definition; Labor Code Section 1140.4(f)

205.01 Independent labor organization was a "labor organization" within the meaning of the Act. It was neither unlawfully dominated or assisted nor successor to any assisted labor organization. Status does not require either formal organizational structure or that proposed representational activities have come to fruition.
ROYAL PACKING CO., 5 ALRB No. 31

205.01 Objection that union is not a labor organization under the ALRA because it already represents nonagricultural employees is dismissed on grounds there is no statutory requirement that a union represent agricultural employees exclusively. (Labor Code §1140.4(f).)
THE HESS COLLECTION WINERY, 25 ALRB No. 2

205.02 Dissolution Or Inactive Status; Successors Unions

300.00 QUESTION CONCERNING REPRESENTATION

300.01 In General, Labor Code Sections 1156-1159

300.01 Proper threshold standard for review by Board of election objections is plainly expressed in regulations: "[a petition for hearing must be] accompanied by a declaration or declarations which, if uncontroverted or unexplained, would constitute sufficient grounds for the Board to refuse to certify election."
LINDELEAF v. ALRB (1986) 41 Cal.3d 861

300.01 ALRA provides only one means for union seeking recognition to obtain it: the secret ballot election. It does not follow, however, that Board is prohibited from issuing remedial bargaining order where ULP's have made free and fair election impossible.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

300.01 Employer's bad faith bargaining during the period prior to the filing of a decertification petition normally precludes the finding of a bona fide question concerning representation.
P.H. RANCH, INC., et al., 21 ALRB No. 13

300.01 Requirements for a bona fide question concerning representation, as set forth in section 1156.3(a)(1) et seq., are not "a jurisdictional prerequisite to Board action; [but] rather...an administrative expedient for determination of whether, generally, further proceedings are warranted." (Citation)
COASTAL BERRY FARMS, LLC., 24 ALRB No. 4

300.01 Regional Director's authority to administratively dismiss election petition under Regulations section 20300(i) for lack of question concerning representation, inappropriate unit or showing of interest ends when election has been conducted.
BAYOU VISTA DAIRY, 32 ALRB No. 6

300.01 As noted in *ConAgra Turkey Company* (1993) 19 ALRB No. 11, a Regional Director's decision to hold an election is final and nonreviewable. Rather, any claims that the Regional Director erred in determining the validity of the election petition must be raised in the election objections process.
NURSERYMEN'S EXCHANGE, INC., 37 ALRB No. 1

300.01 The ALRA, prior Board decisions, and Board regulations do not confer such broad authority on the Regional Director to dismiss an election petition after an election; to do so would override the mandate of Labor Code section 1156.3, which requires the Board to certify an election unless there are sufficient grounds to do so. Without an evidentiary hearing on election objections raised,

there are no sufficient grounds to refuse to certify an election.
NURSERYMEN'S EXCHANGE, INC., 37 ALRB No. 1

300.01 Neither Section 20300(i)(l) of the Board's regulations, nor any of the Board's regulations or case law indicates that the authority of a Regional Director to dismiss an election petition continues after an election is held. (*Bayou Vista Dairy* (2006) 32 ALRB No. 6 at p. 6).
NURSERYMEN'S EXCHANGE, INC., 37 ALRB No. 1

300.01 An election tally showing that the number of employees alleged to have been on strike at the time a representation petition was filed is not a majority of total eligible voters warrants a hearing on the question whether the number of employees on strike at the time the election petition was filed was less than a majority of total eligible voters.
GEORGE AMARAL RANCHES, INC., 38 ALRB No. 5

300.02 Employer Petitions, Not Provided For

300.02 Agricultural employers, their supervisors and agents may not file representation petitions.
M. CARATAN, INC., 9 ALRB No. 33

300.03 Disclaimer By Union; Abandonment Of Unit; Sufficiency In General

301.00 PICKETING, STRIKE, STRIKE THREAT, OR BOYCOTT AS AFFECTING REPRESENTATION QUESTION

301.01 In General

301.01 Board affirmed the IHE's finding that there were aggravated acts of vandalism to employee vehicles but, since conduct not attributable to Union, utilization of third-party standard results in finding that in light of largely peaceful nature of strike and large Union ballot margin, the isolated acts of misconduct were not such that they would serve to taint the atmosphere in which the election was held.
TRIPLE E PRODUCE CORPORATION, 17 ALRB No. 15

301.02 Petitions For Expedited Elections; Labor Code Section 1156.3(a)

301.02 Strike elections place a significant burden on the Board in light of the strict time strictures established by the statute; therefore, the violent or coercive conduct of employees during a strike, which had abated by the time of the election, was insufficient to have affected the outcome of the election.
J. OBERTI, INC., et al., 10 ALRB No. 50

301.02 Board rejects contention of General Counsel that ALRA

embodies a "trade-off" in which employees give up the right to obtain recognition of a union by striking in return for the right to obtain expedited elections and therefore "recognitional" strikers entitled to reinstatement whether or not permanently replaced. Board observed that 48-hour strike election rule not mandatory, only directs Board to give precedence to such cases and to attempt to hold elections within 48 hours.
KYUTO NURSERY, 3 ALRB No. 30

301.03 Organizational Or Recognitional Picketing; Labor Code Section 1154(g) (see section 428)

301.03 Respondent union violated section 1154(d)(3) and (h) of the Act by picketing the employer for recognition when the Board had properly certified another union as the collective bargaining representative of said employees. (ALJD pp. 5-6.)
JULIUS GOLDMAN'S EGG CITY, 5 ALRB No. 8

301.03 Board rejects contention of General Counsel that ALRA embodies a "trade-off" in which employees give up the right to obtain recognition of a union by striking in return for the right to obtain expedited elections and therefore "recognitional" strikers entitled to reinstatement whether or not permanently replaced. Board observed that 48-hour strike election rule not mandatory, only directs Board to give precedence to such cases and to attempt to hold elections within 48 hours.
KYUTOKU NURSERY, 3 ALRB No. 30

302.00 PRE-PETITION MATTERS

302.01 Notice Of Intent To Take Access; Precertification Access (see section 401)

302.01 Other than for conduct constituting an unfair labor practice, pre-certification access will be denied where the conduct shows deliberate or repeated disregard of the Board's access regulations, disruption of production or harassment of employees.
L & C HARVESTING, INC. 19 ALRB No. 19

302.01 Where declaratory support of motion showed no indication of deliberate disregard for access regulations, disruption of work or harassment of employees, no hearing is warranted on motion to dent access.
L & C HARVESTING, INC. 19 ALRB No. 19

302.01 In determining whether Employer violated Union's right to access, Employer's contention that Union had alternative channels for communication with employees irrelevant under ALRA since 8 Cal. Admin. Code section 20900(e)(3)(A) clearly contemplates such access.
ABATTI FARMS INC. 5 ALRB No. 34

302.01 Employer's denial of access policy and actual denials of access interfered with employees' organizational rights guaranteed under Labor Code section 1152 in violation of Labor Code section 1153(c). Employer's defense that it was required to deny organizers access to steady employees who congregated each morning at shop on grounds access would disrupt only opportunity employees had to assemble in one place, since they worked at widely scattered locations, rejected on basis of Board's finding that the gatherings were not work time.
ABATTI FARMS INC., 5 ALRB No. 34

302.01 Where the employer has several work crews which end their work days at different times over a period of several hours, it is not improper for the union to enter the area where each crew reports upon finishing work to contact each crew, even though the total period of such end-of-day access spans several hours.
GOURMET HARVESTING & PACKING, 4 ALRB No. 14

302.01 When opposing union is not disadvantaged by another union's taking excess access, and there is no evidence demonstrating that six incidents of excess access affected employee free choice or the outcome of the election, the election will not be set aside.
DESSERT SEED COMPANY, INC., 2 ALRB No. 53

302.01 The access regulations prescribe a minimum right of access by union organizers to an employer's property; nothing in the rule prevents an employer from agreeing to or acquiescing in additional access by union organizers unless such excess access is acquiesced in on a discriminatory basis.
DESSERT SEED COMPANY, INC., 2 ALRB No. 53

302.01 In spite of inevitable ambiguity, citrus regulations are sufficiently clear to enable appellants to comply.
ALRB v. EXETER PACKERS, INC. (1986) 184 Cal.App.3d 483

302.01 Provision in citrus regulations requiring packing houses to keep the union informed of times and places its crews may be found is reasonably necessary in light of union's difficulties in locating citrus crews and taking access.
ALRB v. EXETER PACKERS, INC. (1986) 184 Cal.App.3d 483

302.01 The purpose of owner/lessee list specified in citrus regulations is to help Board identify employer and determine which employees should be included in bargaining unit.
ALRB v. EXETER PACKERS, INC. (1986) 184 Cal.App.3d 483

302.01 If ALRB is to carry out its statutory duty to protect and supervise election process, its control cannot be limited to events after petition is filed. Rather, Board has appropriately established pre-filing procedures, such as NA's, NO's, and pre-petition lists, in order meaningfully to oversee elections in context of agribusiness and

legislatively imposed time parameters.
SAN DIEGO NURSERY CO. v. ALRB (1979) 100 Cal.App.3d 128

302.01 Distribution of union literature by union organizers is within the activities permitted under the Board's access regulation.
TEX-CAL LAND MANAGEMENT, INC. v. ALRB (1979) 24 Cal.3d 335

302.01 ALRB access regulation, allowing unqualified right to pre-election access by union, is valid because of peculiar characteristics of agriculture workforce.
ALRB v. SUPERIOR COURT (PANDOL) (1976) 16 Cal.3d 392

302.01 Travel time, i.e., the time it takes for either the employees or the union organizers to travel to the location where the actual communication takes place does not count against a union's allotted time for access.
GARGIULO, INC., 23 ALRB No. 5

302.01 Union organizer showed intentional or reckless disregard for the access rules when he led a group of union supporters onto the employer's property in numbers in excess of those authorized by the access regulation. Appropriate remedy is barring access by organizer in region for a specified 60-day period.
GARGIULO, INC., 23 ALRB No. 5

302.01 The access regulation gives a union a limited right to solicit support from employees on the employer's property and it may only bring a limited number of people onto the property to carry out this mission. It is therefore reasonable to hold a union responsible for whomever it invites in with it during access and to prohibit the use of access time for other purposes, such as union-led or sponsored demonstrations, even if some or all of the participants had a right to enter the property if not acting as agents of the union.
GARGIULO, INC., 23 ALRB No. 5

302.01 Since the access regulation itself, at section 20900(e)(4)(C), states that speech alone shall not constitute disruptive conduct, and the access rule is not intended to regulate the content of the union's message, in the absence of evidence of disruption of work, the shouting of obscenities does not constitute a violation of the access regulation.
GARGIULO, INC., 23 ALRB No. 5

302.01 The access period may be staggered when groups of employees finish working at different times. Therefore, organizers did not show intentional or reckless disregard for access rules by remaining on property well after proper end of access period where evidence showed that some employees left fields well after the time asserted in the motion to deny access.
GARGIULO, INC., 23 ALRB No. 5

302.01 Pursuant to Regulation 20900, subdivision (e)(1)(B), each thirty-day access period does not commence until the NA (previously served on the employer) is filed in the appropriate regional office.
MEHL BERRY FARMS, 23 ALRB No. 9

302.01 There is no bar to the filing of an NA or a new election petition due to a pending election case involving the same parties and bargaining unit where the final tally of ballots showed an ostensible "No Union" victory and where more than a year has elapsed since the prior election. In such circumstances, the certification bar could not be triggered by the Board's decision because it could not result in the certification of the union, but only in the setting aside of the election or the certification of the "No Union" result. Nor could the one-year election bar be triggered, as it runs from the date of the election, not from the date the Board determines the validity of the election. Nor does the Board's access regulation bar an NA in these circumstances, as the regulation allows access 30 days prior to the expiration of any bar to the election and makes no exception based solely on an unresolved prior election case.
GUIMARRA VINEYARDS CORP., 32 ALRB No. 4

302.01 After a rival union files a Notice of Intent to Take Access or a petition for election, the incumbent certified union may also take organizational access.
PATTERSON FARMS, INC., 8 ALRB No. 57

302.02 Notice Of Intent To Organize; Pre-Petition Lists; Special Requirements In Citrus Industry

302.02 Employer's unexplained submission of "grossly inadequate" seniority list instead of current pre-petition payroll list constituted grounds to set aside election both in itself and in combination with IUAW/Teamster agents' abuse of incumbent IUAW post-certification access to campaign for Teamsters.
CARL DOBLER AND SONS, 11 ALRB No. 37

302.02 To remedy employer's failure to provide union and Board with adequate pre-petition list, Board ordered employer to provide employee list upon next filing of Notice of Intent to Take Access by union, and also ordered employer to grant union expanded access during period following next filing of Notice of Intent to Take Access.
M. B. ZANINOVICH, INC., 9 ALRB No. 63

302.02 By submitting employee list which omitted substantial number of names and street addresses (only 389 names provided of 700-800 "peak" employees, with no addresses given for 69 and P.O. Box addresses for another 41), respondent violated section 1153(a).
PAUL W. BERTUCCIO and BERTUCCIO FARMS, 5 ALRB No. 5

302.02 Expanded access remedies not warranted where union victory in election indicates that employer's failure to provide list did not prevent successful communication between employees and union standard cease and desist remedy ordered.
PAUL W. BERTUCCIO and BERTUCCIO FARMS, 5 ALRB No. 5

302.02 Employer's use of "employee information" cards to gather preelection petition list petition list information, where employer stated that employees had option of refusing to supply the information, constitutes interrogation in violation of 1153(a) in that the workers were in effect being asked to disclose their attitudes for or against the union by giving or refusing to give their addresses.
LAFLIN AND LAFLIN, et al., 4 ALRB No. 28

302.02 Employer violated section 1153(a) by failing to submit, in accordance with California Code of Regulations, title 8, section 20910(c), a complete list of employees, their current street addresses and job classifications to the Board following service of a Notice of Intention to Organize.
LAFLIN AND LAFLIN, et al., 4 ALRB No. 28

302.02 Standardized remedy for pre-petition list violations set forth in Henry Moreno (1977) 3 ALRB No. 40, modified to allow union one extra organizer per fifteen employees during regular access hours, and to provide one hour of regular working time for union to disseminate information to and conduct organizational activities among employees.
LAFLIN AND LAFLIN, et al., 4 ALRB No. 28

302.02 In California Code of Regulations, title 8, section 20310(a)(2), the phrase "current street address" refers to the place where the employee resides while working for the employer.
LAFLIN AND LAFLIN, et al., 4 ALRB No. 28

302.02 Respondent's failure to provide an accurate list of the names and addresses of its employees, including the labor contractor's employees, is a violation of section 1153(a).
TENNECO WEST, INC., 3 ALRB No. 92

302.02 Substantial clerical errors by the Board in supplying list may be grounds for setting aside election but the omission of two names is not sufficient.
YODER BROTHERS, 2 ALRB No. 4

302.02 It wasn't gross negligence or bad faith to omit nine names through clerical error and erroneous belief of non-inclusion in unit. There was no gross negligence or bad faith where: employer included on list employees who were terminated prior to the applicable payroll period; included alleged supervisors whose capacity was unclear; included alleged guards whose capacity was unclear and

exclusion of other employees under belief that they were not in the applicable unit. Employer was not guilty of bad faith or gross negligence where list contained 13 inaccuracies as to addresses since address verifications were distributed to employees two months before list issued.
YODER BROTHERS, 2 ALRB No. 4

302.02 The purpose of owner/lessee list specified in citrus regulations is to help Board identify employer and determine which employees should be included in bargaining unit.
ALRB v. EXETER PACKERS, INC. (1986) 184 Cal.App.3d 483

302.02 Citrus regulations do not improperly delegate nonreviewable decision-making authority to regional director in contravention of section 1142(b), since only consequences of the regional director's determination are that packinghouses must disclose information required in the regulations and may be put to the expense of an election in an inappropriate unit. That burden is minimal in light of priority placed on speedy elections; furthermore, Board's procedure provides adequate post-election review.
ALRB v. EXETER PACKERS, INC. (1986) 184 Cal.App.3d 483

302.02 In spite of inevitable ambiguity, citrus regulations are sufficiently clear to enable appellants to comply.
ALRB v. EXETER PACKERS, INC. (1986) 184 Cal.App.3d 483

302.02 With filing of notice of intent to organize, employer is put on notice that list of employees with current street addresses will be required. Therefore, even if those employees leave before list is due, it is ULP to fail to produce list.
LAFLIN & LAFLIN v. ALRB (1985) 166 Cal.App.3d 368

302.02 Board regulation requiring employer to furnish union with list of employees' names and addresses--before election is scheduled--is reasonable exercise of rule-making power. Board reasonably considered peculiar problems of communicating with farm workers due to short seasons, 7-day election, and migratory patterns.
CARIAN v. ALRB (1984) 36 Cal.3d 654

302.02 If ALRB is to carry out its statutory duty to protect and supervise election process, its control cannot be limited to events after petition is filed. Rather, Board has appropriately established pre-filing procedures, such as NA's, NO's, and pre-petition lists, in order meaningfully to oversee elections in context of agribusiness and legislatively imposed time parameters.
SAN DIEGO NURSERY CO. v. ALRB (1979) 100 Cal.App.3d 128

302.02 Since Notices of Intent to Organize remain viable for days from the date on which a valid Notice of Intent to Take Access is filed, a deficient showing of interest

will not cause the NO to be dismissed prior to expiration of the NA, and the showing may be perfected at any time during the 30 day pendency of the NA.
DUTRA FARMS, 22 ALRB No. 6

302.03 Worker Education; Board Agent Access; Investigative Authority (see section 401)

302.03 Employer did not violate section 1153(a) by denying access to his premises to Board agents, who had no authority to enter property on work time to distribute information regarding decertification petitions.
JACK OR MARION RADOVICH, 9 ALRB No. 16

302.03 Which affirmed Board's authority to enact regulation permitting union organizers qualified access to employer's property to communicate with employees, it follows that a duly promulgated administrative regulation authorizing uncounted but specifically limited entry on employer's property by ALRB agents in performance of duties imposed by Act (E.g., disseminating information concerning rights and responsibilities under ALRA) would be constitutionally permissible.
SAN DIEGO NURSERY CO. v. ALRB (1979) 100 Cal.App.3d 128

302.03 Among the factors which tend to impede employee free choice is a lack of information concerning choices available.
SAN DIEGO NURSERY CO. v. ALRB (1979) 100 Cal.App.3d 128

302.03 Board's ad hoc administrative policy which directs ALRB agents to conduct "worker education" before election petition is filed (after union has filed notice of intent to organize), is consistent with its pre-election responsibilities under Act and violates no statutory command. However, since "worker education" involves as invasion of property rights, which though not absolute, are nonetheless constitutionally protected, it is necessary that ALRB follow its rule-making procedures to insure that policy is subject to full public scrutiny.
SAN DIEGO NURSERY CO. v. ALRB (1979) 100 Cal.App.3d 128

302.03 Based upon the reasoning and authority of ALRB v. Superior Court (1976) 16 Cal.3d 392, which affirmed Board's authority to enact regulation permitting union organizers qualified access to employer's property to communicate with employees, it follows that a duly promulgated administrative regulation authorizing uncounted but specifically limited entry on employer's property by ALRB agents in performance of duties imposed by Act (E.g., disseminating information concerning rights and responsibilities under ALRA) would be constitutionally permissible.
SAN DIEGO NURSERY CO. v. ALRB (1979) 100 Cal.App.3d 128

302.03 Board's "worker education" program must be disapproved where it results from neither rule-making nor

adjudication, but is policy of limited access arrived at by "administrative ad hoc fiat."
SAN DIEGO NURSERY CO. v. ALRB (1979) 100 Cal.App.3d 128

302.04 Payroll List, Duty To Maintain; Labor Code Section 1157.3

302.04 Employer failed to use diligence in maintaining employee list where addresses obtained on date of hire were never updated and many addresses were post office boxes.
BETTERAVIA FARMS, 9 ALRB No. 46

302.04 List that is approximately 86 percent accurate is sufficient and does not present grounds to set aside election.
No evidence presented regarding employer's diligence in obtaining current employee addresses, nor that union's ability to communicate with voters was substantially impaired by inadequacies of list.
H. H. MAULHARDT PACKING COMPANY, 6 ALRB No. 42

302.04 Election set aside where list supplied by employer was substantially deficient, and an improved list supplied later did not remedy the hardship imposed upon the unions.
ROYAL PACKING CO., 5 ALRB No. 31

302.04 In 8 Cal. Admin. Code 20310(a)(2), the phrase "current street address" refers to the place where the employee resides while working for the employer.
LAFLIN AND LAFLIN, et al., 4 ALRB No. 28

302.04 Employer violated 1153(a) by failing to submit, in accordance with 8 Cal. Admin. Code 20910(c), a complete list of employees, their current street addresses and job classifications to the Board following service of a Notice of Intention to Organize.
LAFLIN AND LAFLIN, et al., 4 ALRB No. 28

302.04 A post-election survey indicating that addresses on the employees list were inaccurate does not warrant setting aside an election. The survey does not relate to the accuracy of the list before the election or to any prejudice to the union in its use of the list to campaign.
BUD ANTLE, INC., 3 ALRB No. 7

302.04 It wasn't gross negligence or bad faith to omit nine names through clerical error and erroneous belief of non-inclusion in unit. There was no gross negligence or bad faith where: employer included on list employees who were terminated prior to the applicable payroll period; included alleged supervisors whose capacity was unclear; included alleged guards whose capacity was unclear and exclusion of other employees under belief that they were not in the applicable unit. Employer was not guilty of bad faith or gross negligence where list contained 13 inaccuracies as to addresses since address verifications

were distributed to employees two months before list issued.
YODER BROTHERS, 2 ALRB No. 4

302.04 The obligation to provide a list of employees under Regulation section 20310(d)(2) is in no way affected by the fact that a particular employer may utilize a labor contractor.
YODER BROTHERS, 2 ALRB No. 4

302.04 The burden of explaining errors in list is on employer. Where the employer has failed to exercise due diligence in obtaining and providing the required information, and the errors are such as to substantially impair the utility of the list in its informational function, the employer's conduct can cause the election to be set aside. Where the list is deficient due to gross negligence or bad faith of employer, and election may be set aside upon a lesser showing of prejudice to the union.
YODER BROTHERS, 2 ALRB No. 4

302.04 Failure of employer to exercise diligence in maintaining accurate and current list for use by Board when requested as mandated by 1157.3 may be grounds for setting aside election. The standard is gross negligence or bad faith.
YODER BROTHERS, 2 ALRB No. 4

302.04 In evaluating an employer's compliance with the requirement to provide an accurate Excelsior list, the ALRB has been somewhat more flexible than the NLRB, in recognition of the special problems agricultural employers face in obtaining accurate, up to date street addresses. The ALRB applies an outcome determinative test and will not presume that a failure to provide a substantially complete list would have a prejudicial effect upon the election.
LEMINOR, INC., et al., 22 ALRB No. 3

302.04 Election results upheld where Excelsior list contained 19 inadequate addresses and the number of votes necessary to change the outcome was 13, where there were no additional circumstances beyond the list's facial deficiencies that would support the conclusion that the outcome of the election would have been affected by the defective list.
LEMINOR, INC., et al., 22 ALRB No. 3

302.04 Essential inquiry is whether faulty Excelsior list would tend to affect the outcome of the election. Where the number of inadequate addresses dwarfs the shift in the number of votes necessary to change the outcome, the election is normally set aside. However, where the number of inadequacies merely exceeds the number of votes necessary to change the outcome by an insubstantial margin, that alone will not result in the election being set aside. Among the other factors to be considered are the actual use of the list by the Union, the efforts of

the Employer to compile an accurate list, and the efforts of Board agents to facilitate the process of providing the list to the Union.
LEMINOR, INC., et al., 22 ALRB No. 3

302.05 Motions To Deny Access

302.05 "Intentional harassment" within the meaning of Ranch No. 1 (1979) 5 ALRB No. 36 is established where the facts reflect that union organizers took access not with the intent to communicate with employees and gather their support, but with an ulterior motive to harass.
GARGIULO, INC., 22 ALRB No. 9

302.05 Blocking of ingress and egress on a public road does not fall within the rubric of access.
GARGIULO, INC., 22 ALRB No. 9

302.05 Allegation that union organizer, along with others, entered the employer's property at improper times and stated that he would decide what the (access) rules were reflects intentional or reckless disregard for Board's access regulations.
GARGIULO, INC., 22 ALRB No. 9

302.05 Declarations showing that union organizers entered property and began inspecting portable toilets, and only spoke with employees after employer told them that was only proper use of access, are sufficient to establish a prima facie case that the UFW organizers showed an intentional and/or reckless disregard for the Board's access regulation by entering the employer's property for the primary purpose of inspecting the property, rather than communicating with the employees about unionization. Where declarations reflect that organizers wore ID badges and do not reflect that organizers represented themselves as being from CAL-OSHA or another governmental health and safety agency, and that organizers tried to present to employer's general manager what was described only as a sheet of paper with a list of violations, allegations that organizers posed as CAL-OSHA agents or attempted to issue counterfeit CAL-OSHA citations are dismissed.
RAMIREZ FARMS, 22 ALRB No. 11

302.05 Board grants hearing in order to determine whether access rule was abused in a manner which would warrant barring union and/or organizers for one year based on employer's demonstrated showing that organizers took access for what appears to have been primary purpose of examining toilet facilities and then served supervisor with a one-page OSHA form in which they noted that employer had failed to post minimum wage requirements.
KUSUMOTO FARMS, 22 ALRB No. 11

302.05 Hearing warranted where facts in supporting declarations showing that union organizers, rather than taking access

to communicate with employees about the union, instead inspected the property and posed as representatives of a governmental health and safety agency when talking to employees. Such facts reflect a prima facie case that the union and its organizers exhibited an intentional or reckless disregard of the access rules.
NAVARRO FARMS, 22 ALRB No. 10

302.05 Bare allegation that group of people were union organizers is insufficient to make conduct attributable to union absent facts reflecting why they were so identified. Violations of property rights by those other than union agents, while subject to trespass laws, do not fall within the Board's jurisdiction.
GARGIULO, INC., 22 ALRB No. 9

302.05 Very brief entry onto employer's property at improper times does not, without more, constitute "significant disruption."
GARGIULO, INC., 22 ALRB No. 9

302.05 The Board will not assume that missing factual elements of a prima facie case which are not addressed in the supporting declarations will be furnished at hearing.
GARGIULO, INC., 22 ALRB No. 9

302.05 In accordance with Ranch No. 1, Inc. (1979) 5 ALRB No. 36 and Dutra Farms (1996) 22 ALRB No. 5, a hearing will not be set unless the supporting declarations accompanying the motion include facts which, if proven, would establish a violation of the access regulations which would warrant the denial of access for some period of time, i.e., one which involved (1) significant disruption of agricultural operations, (2) intentional harassment of an employer or employees, or (3) intentional or reckless disregard of the rules.
GARGIULO, INC., 22 ALRB No. 9

302.05 Board sets forth a procedure requiring that all motions to deny access shall be accompanied by a detailed statement of the facts and law relied upon, and declarations within the personal knowledge of the declarant which, if uncontroverted or unexplained, would support the granting of the motion. The procedure requires the moving party to file and serve the motion and accompanying documents in accordance with Board regulations 20160(a)(2), 20166 and 20168.
DUTRA FARMS, 22 ALRB No. 5

302.05 Employer's motion to bar UFW organizer from taking access to its property is denied for failure to make prima facie showing that organizer violated access regulations. Since regulations do not put employers on notice that they should submit declarations with their motions to deny access, motion is denied without prejudice to refile with supporting declarations.
DUTRA FARMS, 22 ALRB No. 5

302.05 A party who files a motion to deny access may submit a detailed statement of facts in lieu of declarations in support of the motion when service is made upon other parties. The detailed statement of facts should describe the contents of the declarations in sufficient detail to allow an opposing party to prepare itself to counter the motion at an evidentiary hearing.
DUTRA FARMS, 22 ALRB No. 5

302.05 Substantive requirements for a motion to deny access, as set out in Ranch No. 1, Inc. (1979) 5 ALRB No.36, may be read in disjunctive so that any one of three elements set forth therein will be sufficient to find a violation and warrant a denial of access.
NAVARRO FARMS, 23 ALRB No. 1

302.05 Where the Board granted motion to deny access and found organizers had violated rule by using access for purposes other than primarily to communicate with employees, the Board issued a standard cease and desist order as well as a prohibition against the union's taking of access for a 30-day period in the subsequent season.
NAVARRO FARMS, 23 ALRB No. 1

302.05 Violation of access rule where organizers take access for primary purpose of inspecting facilities employer provides for employees and then advising employers of alleged infractions of Cal-OSHA regulations, even though organizers otherwise in compliance with rule.
NAVARRO FARMS, 23 ALRB No. 1

302.05 Violation of access rule where organizers take access for primary purpose of inspecting facilities employer provides for employees and then advising employers of alleged infractions of Cal-OSHA regulations, even though organizers otherwise in compliance with rule.
KUSUMOTO FARMS, 23 ALRB No. 2

302.05 Where the Board granted motion to deny access and found organizers had violated rule by using access for purposes other than primarily to communicate with employees, the Board issued a standard cease and desist order as well as a prohibition against the union's taking of access for a 30-day period in the subsequent season.
KUSUMOTO FARMS, 23 ALRB No. 2

302.05 Violation of access rule where organizers take access for primary purpose of inspecting facilities employer provides for employees and then advising employers of alleged infractions of Cal-OSHA regulations, even though organizers otherwise in compliance with rule.
RAMIREZ FARMS, 23 ALRB No. 3

302.05 Where the Board granted motion to deny access and found organizers had violated rule by using access for purposes

other than primarily to communicate with employees, the Board issued a standard cease and desist order as well as a prohibition against the union's taking of access for a 30-day period in the subsequent season.
RAMIREZ FARMS, 23 ALRB No. 3

302.05 Union organizer showed intentional or reckless disregard for the access rules when he led a group of union supporters onto the employer's property in numbers in excess of those authorized by the access regulation. Appropriate remedy is barring access by organizer in region for a specified 60-day period.
GARGIULO, INC., 23 ALRB No. 5

302.05 The access regulation gives a union a limited right to solicit support from employees on the employer's property and it may only bring a limited number of people onto the property to carry out this mission. It is therefore reasonable to hold a union responsible for whomever it invites in with it during access and to prohibit the use of access time for other purposes, such as union-led or sponsored demonstrations, even if some or all of the participants had a right to enter the property if not acting as agents of the union.
GARGIULO, INC., 23 ALRB No. 5

302.05 Since the access regulation itself, at section 20900(e)(4)(C), states that speech alone shall not constitute disruptive conduct, and the access rule is not intended to regulate the content of the union's message, in the absence of evidence of disruption of work, the shouting of obscenities does not constitute a violation of the access regulation.
GARGIULO, INC., 23 ALRB No. 5

302.05 The access period may be staggered when groups of employees finish working at different times. Therefore, organizers did not show intentional or reckless disregard for access rules by remaining on property well after proper end of access period where evidence showed that some employees left fields well after the time asserted in the motion to deny access.
GARGIULO, INC., 23 ALRB No. 5

302.05 Statement by organizer that he would decide when it was time to leave the employer's property did not reflect intentional or reckless disregard of access rules where, in light of context of statement and failure to prove more serious statement attributed to the organizer a day earlier, the statement took on an innocuous character.
GARGIULO, INC., 23 ALRB No. 5

302.05 Motion to deny post-certification access under Board regulation section 20900 is denied on grounds that the regulation governs only organizational access, not post-certification access. (L & C Harvesting, Inc. (1993) 19

ALRB No. 19; D'Arrigo Brothers, Admin. Order No. 91-7; The Herb Farm, Admin. Order No. 91-5.)
TRIPLE E PRODUCE CORP., 23 ALRB No. 6

302.05 Union response to motions to deny access eliminated, since no such response permitted with regard to analogous procedure governing the screening of election objections and, in light of fact moving party's declarations are presumed true for purposes of determining whether a hearing is warranted, such responses are irrelevant at that stage of the proceeding.
MEHL BERRY FARMS, 23 ALRB No. 9

302.05 Since the requirements for a prima facie case set forth in Dutra Farms include declarations within the personal knowledge of the declarant, sheriff's report relating what witnesses told him is not considered in determining whether to set the matter for hearing.
MEHL BERRY FARMS, 23 ALRB No. 9

302.05 Taking of access prior to filing NA with the regional office (which triggers beginning of access period) and statements of organizers that they did not care if the NA had been filed sufficient to warrant hearing as to whether organizers exhibited intentional or reckless disregard for access regulation.
MEHL BERRY FARMS, 23 ALRB No. 9

302.05 Threats in and of themselves, though deplorable, do not violate the access rule. Instead, intentional harassment is established where the facts reflect that union agents took access not with the intent to communicate with employees and gather their support, but with an ulterior motive to harass. The election objection and unfair labor practice processes are better suited to deal with allegations of threats and other unprotected speech.
MEHL BERRY FARMS, 23 ALRB No. 9

302.05 The Board found a hearing was warranted on an allegation that union agents entered employer’s property without first filing a Notice of Intent to Take Access where declarations submitted in support of Employer’s motion to deny access established prima facie case of intentional or reckless disregard for the Board’s access rule.
SUN PACIFIC COOPERATIVE, INC., 34 ALRB No. 4

302.05 Board set for hearing an allegation that union representatives entered employer’s property during work hours in violation of the access regulations where declarations submitted in support of Employer’s motion to deny access established prima facie case of intentional or reckless disregard for the Board’s access rule.
SUN PACIFIC COOPERATIVE, INC., 34 ALRB No. 4

302.05 Board found declarations submitted in support of employer’s motion to deny access did not support a prima facie case that union agents harassed employees or

significantly disrupted employer's agricultural operations in violation of the Board's access rule, and therefore declined to set these allegations for hearing.
SUN PACIFIC COOPERATIVE, INC., 34 ALRB No. 4

302.05 Board finds no significant disruption of work warranting denial of access where declarations filed in support of motion reflect that 1) twice on the same day an organizer spoke with employees after the proper access period for no more than six minutes and 2) the organizer arrived early on at least two occasions and waited near the crew for 5-15 minutes prior to the meal break, though there was no indication that his early arrival caused any disruption of work.
SUN PACIFIC COOPERATIVE, INC., 34 ALRB No. 5

302.05 Where declarations filed in support of motion reflect that 1) twice on the same day an organizer spoke with employees after the proper access period for no more than six minutes and 2) the organizer arrived early on at least two occasions and waited near the crew for 5-15 minutes prior to the meal break, though there was no indication that his early arrival caused any disruption of work, Board found this insufficient to establish a pattern of de minimis violations reflecting an intentional or reckless disregard for the access rules.
SUN PACIFIC COOPERATIVE, INC., 34 ALRB No. 5

302.06 Investigative Subpoenas

302.06 Subpoena process in the citrus regulations was inadequate to obtain enforcement of regulations because it is slow and cumbersome.
ALRB v. EXETER PACKERS, INC. (1986) 184 Cal.App.3d 483

302.06 California Legislature intended to give ALRB broader investigatory powers than NLRB.
SAN DIEGO NURSERY CO. v. ALRB (1979) 100 Cal.App.3d 128

302.06 Entire election process is an "investigation" within meaning of 1151(a).
SAN DIEGO NURSERY CO. v. ALRB (1979) 100 Cal.App.3d 128

303.00 PEAK

303.01 In General; Labor Code Section 1156.4; Crop And Acreage Statistics

303.01 Where employer did not contest peak prior to the election; had provided its own prospective peak figures and had the opportunity to furnish its own crop and acreage data to support its projection; and where nothing in employer's response would reasonably have alerted the RD that the employer's projection of prospective peak was inaccurate--RD is not required under § 1156.4 to conduct

his own independent inquiry into acreage and crop data to determine whether employer's prospective peak projection was accurate.
SCHEID VINEYARDS AND MANAGEMENT CO., 19 ALRB No. 1

303.01 Where employer made no claim prior to election that it was not at peak; employer indicated there were 121 employees during eligibility period but computer payroll indicated there were 132, and employer never advised RD that the payroll figure was inaccurate--RD reasonably determined employer was at peak without further investigation.
SCHEID VINEYARDS AND MANAGEMENT CO., 19 ALRB No. 1

303.01 Decision of the Fourth District Court of Appeal in Adamek & Dessert, Inc. v. ALRB (1986) 178 Cal.App.3d 979 [224 Cal.Rptr. 366] invalidates regulations of Agricultural Labor Relations Board appearing at Title 8, California Code of Regulations, section 20310(a)(6)(B). Employer wishing to show peak requirement has not been met must first show that actual number of employees working in eligibility period is less than 50% of actual number of employees employed in peak employment period, and if that comparison does not indicate that peak requirement is met, employer must also show that actual number of employees working in eligibility period is less than 50% of average number of employees working in peak employment period. (Adamek & Dessert, Inc., supra, following Mario Saikhon, Inc. (1976) 2 ALRB No. 2).
TRIPLE E PRODUCE CORPORATION, 16 ALRB No. 14

303.01 Issues involving peak employment are not subject to review in challenged ballot proceedings.
ACE TOMATO COMPANY, INC., 16 ALRB No. 9

303.01 Issues involving peak employment are not subject to review in challenged ballot proceedings.
TRIPLE E PRODUCE CORPORATION, 16 ALRB No. 5

303.01 Since, in election matters, the Board is concerned with achieving a representative vote through a representative electorate, Board finds no reason for finding eligible voter not countable for purposes of peak, or finding someone who is countable for peak not eligible to vote. Therefore, aside from a few technical distinctions, the Board will construe Labor Code section 1156.3(a)(1), defining "currently employed" and section 1157, defining "eligible to vote" as synonymous, and will construe precedent interpreting the one provision as being applicable to the other as well.
KUBOTA NURSERIES, INC., 15 ALRB No. 12

303.01 Board finds employee was "currently employed" as that term is used in Labor Code section 1156.3(a)(1) because he continued to enjoy employee status in face of employer's failure to bear burden of demonstrating that employee would not have worked but for his work-related

disability.
KUBOTA NURSERIES, INC., 15 ALRB No. 12

303.01 Employer that alleged that employee eligible to vote was not countable for purposes of the peak determination did not meet burden of establishing that employee would not have worked but for his disability leave because employer did not show (1) that employee voluntarily severed his employment, or (2) that employee was discharged, or (3) that no job was being held open for employee.
KUBOTA NURSERIES, INC., 15 ALRB No. 12

303.01 Although Board considers phrase "as determined from [the employer's] payroll immediately preceding the filing of the petition" in Labor Code section 1156.3(a)(1) and phrase "whose names appear on the payroll applicable to the payroll period immediately preceding the filing of the petition" in Labor Code section 1157 to be synonymous, and therefore construes precedent interpreting the one phrase as applicable in interpreting the other, it does not therefore consider the concepts "currently employed" and "eligible to vote" interchangeable. (See, e.g., Labor Code 1157 [eligibility of economic strikers] and California Code Regulations, title 8, sections 20352 and 20355(a)(1)-(8) [eligibility and election objections].)
KUBOTA NURSERIES, INC., 15 ALRB No. 12

303.01 In election objections proceeding where employer alleges that employee eligible to vote was not on the employer's payroll and therefore not countable for the peak determination, employer bears the burden of overcoming regional director's finding that petition was timely filed as to peak requirement, and of demonstrating why employee eligible to vote should not be counted for purposes of computing peak.
KUBOTA NURSERIES, INC., 15 ALRB No. 12

303.01 As general rule, employee deemed to be "currently employed" within the meaning of Labor Code section 1156.3(a)(1) is one who normally would have worked because there was work available for him or her, as distinguished from an employee who had been laid off, or not yet recalled, because there was no work to be performed by that employee. (Rod McLellan Co. (1977) 3 ALRB No. 6.)
KUBOTA NURSERIES, INC., 15 ALRB No. 12

303.01 Board refused to adopt the dissent's approach in Kamimoto Farms (1981) 7 ALRB No. 45 of comparing the number of eligible voters in the pre-petition period to the average daily number of workers employed at peak; where turnover is a factor during either the pre-petition period or the peak payroll period, or both, a comparison of the average daily number of workers during both the pre-petition and peak periods will provide a more meaningful picture of the representative character of the number of eligible

voters.
TEPUSQUET VINEYARDS, 10 ALRB No. 29

303.01 While an employer is required to provide information most accessible to it, the Regional Director is still responsible to investigate all relevant information and determine if the peak requirement has been met; the Regional Director may properly invoke the presumptions of regulation section 20310(e) only if the employer fails to provide necessary information accessible to it, which failure obstructs or precludes the peak determination.
TEPUSQUET VINEYARDS, 10 ALRB No. 29

303.01 Employer's alleged failure to provide information concerning peak evaluated in light of employer's overall efforts to cooperate with Board agents; evidence indicates that the failure resulted from misunderstanding or lack of clear communication between Board agents and employer.
TEPUSQUET VINEYARDS, 10 ALRB No. 29

303.01 Margin of error of 4.4% or 8% is too great a margin to tolerate in meeting the peak requirement.
TEPUSQUET VINEYARDS, 10 ALRB No. 29

303.01 Employer not precluded from showing that its peak body count in a prior year was different than the one mistakenly represented to Board agents where Board agents should have investigated the substantial difference between the employer's prior peak figures over a two-year period; the employer did not have a sufficient opportunity to explain or investigate the incorrect peak figures relied upon by the Regional Director as the normal body count figure.
TEPUSQUET VINEYARDS, 10 ALRB No. 29

303.01 ALRA section 1156.4 requires the Board to estimate peak. Therefore, in close cases, because of the shortened time periods in an election setting, a Regional Director's estimation of peak, arrived at after only a few days for investigation, will not bind the Board.
WINE WORLD INC., dba BERINGER VINEYARDS, 5 ALRB No. 41

303.01 To the extent that Ranch No. 1, Inc. (1976) 2 ALRB No. 37 which seems to prefer a mathematical formula to determine peak -- is inconsistent with later opinions which treated the complexities of peak questions is a different fashion, Ranch No. 1 is overruled.
WINE WORLD INC., dba BERINGER VINEYARDS, 5 ALRB No. 41

303.01 Where an unusually high post-election peak-employment figure results from unforeseeable weather conditions, the number of employees actually hired in the peak period may not accurately reflect the size of normal, or reasonable predictable, bargaining unit at peak.
CHARLES MALOVICH, 5 ALRB No. 33

303.01 Where as a result of turnover more employees appeared to work than were employed at any time during the employer's peak employment, the Board determined that the petition for certification was timely by employing its Saikhon method of determining average employment during the eligibility period and the week of peak employment. (See IHED.)
E. DELL 'ARRINGA & SONS 3 ALRB No. 77

303.01 In defining its approaches to calculating peak employment, Board should not develop procedures to deal with purely hypothetical problems.
ADAMEK & DESSERT, INC. v. ALRB (1986) 178 Cal.App.3d 970

303.01 Peak employment requirement of 1156.3 refers to current calendar year.
ADAMEK & DESSERT, INC. v. ALRB (1986) 178 Cal.App.3d 970

303.01 Board impermissibly altered terms of section 1156.3(a)(1) when it employed an averaging formula to determine whether employer was at 50% of peak employment for calendar year.
ADAMEK & DESSERT, INC. v. ALRB (1986) 178 Cal.App.3d 970

303.01 "Peak" requirement of section 1156.4 is designed to insure that seasonal workers' representation rights are not determined for them, during "off-season", by a year-around worker minority.
RULINE NURSERY CO. v. ALRB (1985) 169 Cal.App.3d 247

303.01 Pre-petition payroll list is only one of several factors which Board uses to determine whether sufficient portion of employer's workforce is working at time of election (peak).
RULINE NURSERY CO. v. ALRB (1985) 169 Cal.App.3d 247

303.01 Board reasonably interpreted section 1156.4 "current calendar year" to refer to year of eligibility period, not of election petition.
RULINE NURSERY CO. v. ALRB (1985) 169 Cal.App.3d 247

303.01 Key to deciding whether election is timely is whether electorate is representative of bargaining unit which may ultimately be certified; thus an election will be upheld if regional director's determination of peak was reasonable in light of evidence available at the time, even if subsequent events should prove the determination incorrect.
RULINE NURSERY CO. v. ALRB (1985) 169 Cal.App.3d 247

303.01 Peak questions generally arise when employer claims it is not at 50% of a peak that either has already occurred (past peak) or will occur in future (prospective peak).
RULINE NURSERY CO. v. ALRB (1985) 169 Cal.App.3d 247

303.01 Peak requirement is satisfied so long as number of eligible voters is within narrow margin of 50 percent of

the employer's peak.
RULINE NURSERY CO. v. ALRB (1985) 169 Cal.App.3d 247

303.01 Board's regulations section 20310(a)(6)(B) is not binding on the Board in view of holding of court in Adamek & Dessert, Inc. v. ALRB (1986) 178 Cal.App.3d 970 [224 Cal.Rptr. 366] that direction in that regulations section to average the number of employees on the preelection payroll was contrary to the statute, even though rulemaking process to replace the overruled language of section 20319(a)(6) has not finally been concluded.
GALLO VINEYARDS, INC., 21 ALRB No. 3

303.01 Regional Director properly followed Board decision in Triple E Produce, Inc. (1990) 16 ALRB No. 14, by comparing average during peak employment payroll period with the absolute number of employees on the payroll for the payroll period ending immediately preceding the filing of the petition.
GALLO VINEYARDS, INC., 21 ALRB No. 3

303.01 Board may promulgate general rules applicable to peak determination through case-by-case adjudication, and is not required to proceed only by rulemaking under the Administrative Procedures Act (Gov. Code, sec. 11370 et seq.).
GALLO VINEYARDS, INC., 21 ALRB No. 3

303.01 No denial of due process by placing burden on employer to provide information to support contention that petition filed when at less than 50 percent of peak employment.
ALRB v. Superior Court (Gallo Vineyards, Inc.)(1996) 48 Cal.App.4th 1489 [56 Cal.Rptr.2d 409]

303.01 In light of the ambiguous language of section 1156.4, the Board's own interpretation, the employer's failure to present evidence of crop and acreage statistics that it claims the Board did not uniformly apply, and the Scheid decision (22 Cal.App.4th 139) (which held that it is employer's burden to provide crop and acreage statistics and does not suggest that Board has duty to create uniform statistics to be used in calculating peak), there was no plain violation of an unambiguous statute justifying application of Leedom v. Kyne exception.
ALRB v. Superior Court (Gallo Vineyards, Inc.)(1996) 48 Cal.App.4th 1489 [56 Cal.Rptr.2d 409]

303.01 Board is bound by court's holding in Adamek & Dessert, Inc. v. ALRB (1986) 178 Cal.App.3d 970 [224 Cal.Rptr. 366], that it may not use an average of the number of employees on the payroll for the period immediately preceding the filing of the petition to determine peak under section 1156.3(a)(1).
GALLO VINEYARDS, INC., 21 ALRB No. 3

303.01 Board properly examined reasonableness of RD's peak decision when made and disregarded employer's additional

crop and acreage information provided for first time as part of election objections. RD reasonably relied on payroll information, employer's peak projections, and admission on response form that employer was at 50% of peak, even though response form also contained unsupported pre-petition payroll figure that was short of peak.
Scheid Vineyards and Management Co. v. ALRB (1994) 22 Cal. App. 4th 139 [27 Cal.Rptr.2d 36], affirming 19 ALRB No. 1

303.01 Board reaffirms the position it asserted in Gallo Vineyards (1995) 21 ALRB No. 3, wherein it rejected the employer's contention that section 1156.4 mandates the Board to develop uniform statewide crop and acreage statistics to assist in making peak determinations; also reaffirms practice of evaluating prospective peak on the basis of whether Regional Director's decision to go forward with election was reasonable in light of information available at the time. Moreover, it is the responsibility of employers who contend representation petition not timely filed on the basis of future peak to provide information to support such claim.
GALLO VINEYARDS, INC., 23 ALRB No. 7

303.02 Past Peak

303.02 The Board limited the Scattini method (Luis A. Scattini (1976) 2 ALRB No. 43) of calculating peak (i.e., separately averaging an employer's different payrolls) to situations where two or more groups of employees have payroll periods which commence and/or end on different dates.
ADAMEK AND DESSERT, INC., 11 ALRB No. 8

303.02 Body count and Saikhon measures of peak both reasonable measures of timeliness of election petitions and Pet timely if meets either test.
BONITA PACKING CO., INC. 4 ALRB No. 96

303.02 Election not set aside even though number of eligible voters was less than 50% + 1 of peak because peak occurred over period of more than one payroll period and number of Employees in one payroll period is only approximate measure of peak.
BONITA PACKING CO., INC. 4 ALRB No. 96

303.02 Section 1156.4, which requires estimation of peak employment in cases where employer has not yet experienced peak, was not implicated here, where petition for certification was filed two months after employer had experienced its calendar year peak.
ADAMEK & DESSERT, INC. v. ALRB (1986) 178 Cal.App.3d 970

303.02 Regional Director correctly determined peak by comparing body count during eligibility period to the sum of the number of regular employees and highest daily number of

labor contractor employees during peak period, since labor contractor employees had high turnover. Thus, Employer's election objection as to the method used was properly dismissed by Executive Secretary.
WARMERDAM PACKING COMPANY, 20 ALRB No. 12

303.02 Board affirms dismissal of Employer's election objection contending that Regional Director should have compared total hours worked during eligibility period to total hours worked during peak, or should have averaged "man days" of both periods. Such methods of calculating peak are contrary to Board and court precedent. (Adamek & Dessert, Inc. v. ALRB (1986) 178 Cal.App.3d 970.)
WARMERDAM PACKING COMPANY, 20 ALRB No. 12

303.02 The appropriate standard of review to be applied to the Regional Director's determination that an election petition is timely in past peak cases is, as the IHE reasoned, that set forth in Charles Malovich (1979) 5 ALRB No. 33, i.e., whether the Regional Director's determination that the 50 percent of peak employment requirement was met was reasonable in light of the information available at the time of the election.
NURSERYMEN'S EXCHANGE, INC., 38 ALRB No. 1

303.02 The IHE correctly reasoned that, absent any special circumstance or factor, the Regional Director's use of multi-year averaging of peak to determine whether the 50 percent of peak employment requirement had been met in a past peak case was unreasonable.
NURSERYMEN'S EXCHANGE, INC., 38 ALRB No. 1

303.03 Prospective Peak

303.03 Regional Director reasonably computed employer's prospective peak by averaging peak estimates of third parties together with employer's own estimate. Board therefore upholds Executive Secretary's dismissal of employer's election objections.
GREGORY BECCIO dba RIVERSIDE FARMS, 19 ALRB No. 6

303.03 Where number of employees on payroll preceding filing of petition fell below 50% of reasonably projected peak employment, and shortfall exceeded any percentage Board had accepted in the past, Board affirmed IHE's conclusion that peak requirement of ALRA section 1156.4 not met, and set election aside.
ORANGE COUNTY NURSERY, INC., 19 ALRB No. 3

303.03 Where employer did not contest peak prior to the election; had provided its own prospective peak figures and had the opportunity to furnish its own crop and acreage data to support its projection; and where nothing in employer's response would reasonably have alerted the Regional Director that the employer's projection of prospective peak was inaccurate--Regional Director is not required under § 1156.4 to conduct his own independent

inquiry into acreage and crop data to determine whether employer's prospective peak projection was accurate.
SCHEID VINEYARDS AND MANAGEMENT CO., 19 ALRB No. 1

303.03 Where employer made no claim prior to election that it was not at peak; employer indicated there were 121 employees during eligibility period but computer payroll indicated there were 132, and employer never advised Regional Director that the payroll figure was inaccurate--Regional Director reasonably determined employer was at peak without further investigation.
SCHEID VINEYARDS AND MANAGEMENT CO., 19 ALRB No. 1

303.03 Regional Director's prospective peak determination, where he compared average projected peak figures to the actual body count during the pre-petition eligibility period, was reasonable in light of the information available to him. (Triple E Produce Corporation (1990) 16 ALRB No. 14; Charles Malovich (1979) 5 ALRB No. 33.)
ACE TOMATO CO., INC., 18 ALRB No. 9

303.03 Decision of the Fourth District Court of Appeal in Adamek & Dessert, Inc. v. ALRB (1986) 178 Cal.App.3d 979 [224 Cal.Rptr. 366] invalidates regulations of Agricultural Labor Relations Board appearing at Title 8, California Code of Regulations, section 20310(a)(6)(B). Employer wishing to show peak requirement has not been met must first show that actual number of employees working in eligibility period is less than 50% of actual number of employees employed in peak employment period, and if that comparison does not indicate that peak requirement is met, employer must also show that actual number of employees working in eligibility period is less than 50% of average number of employees working in peak employment period. (Adamek & Dessert, Inc., supra, following Mario Saikhon, Inc. (1976) 2 ALRB No. 2).
TRIPLE E PRODUCE CORPORATION, 16 ALRB No. 14

303.03 In prospective peak cases, Board agents should look at the employer's payroll records for peak in prior years, paying particular attention to the most recent year's peak figures, and should consider the impact of any changes in crops, acreage, weather, or any other factors upon the employment needs in the election year; however, an examination should also be made into the representative character of the prior year's peak figures.
TEPUSQUET VINEYARDS, 10 ALRB No. 29

303.03 Regional Director was reasonable in adjusting prior year's peak body count by eliminating group of 21 workers who replaced a crew of workers mistakenly sent home early.
TEPUSQUET VINEYARDS, 10 ALRB No. 29

303.03 The Board held that a standard of reasonableness, based on all information made available to the Board agent,

will be used in determining timeliness of the filing of petition in prospective-peak cases.
CHARLES MALOVICH, 5 ALRB No. 33

303.03 The Board held that, except in extraordinary circumstances, it would not set aside an election or reverse a Regional Director's determination on timeliness of petition if reasonable, based on data available to him during the investigation. E.g., post-election peak-employment figures introduced at a hearing on objections, unavailable to Regional Director, are irrelevant.
CHARLES MALOVICH, 5 ALRB No. 33

303.03 Where as a result of turnover more employees appeared to work than were employed at any time during the employer's peak employment, the Board determined that the petition for certification was timely by employing its Saikhon method of determining average employment during the eligibility period and the week of peak employment. (See IHED.)
E. DELL 'ARRINGA & SONS, 3 ALRB No. 77

303.03 Section 1156.4, which requires estimation of peak employment in cases where employer has not yet experienced peak, was not implicated here, where petition for certification was filed two months after employer had experienced its calendar year peak.
ADAMEK & DESSERT, INC. v. ALRB (1986) 178 Cal.App.3d 970

303.03 Board properly examined reasonableness of RD's peak decision when made and disregarded employer's additional crop and acreage information provided for first time as part of election objections. RD reasonably relied on payroll information, employer's peak projections, and admission on response form that employer was at 50% of peak, even though response form also contained unsupported pre-petition payroll figure that was short of peak.
Scheid Vineyards and Management Co. v. ALRB, (1994) 22 Cal. App. 4th 36 [27 Cal.Rptr.2d 36], affirming 19 ALRB No. 1

303.03 Regional Director properly concluded, based on information available prior to the election, that Employer's labor requirements would not increase sufficiently to render the number of employees on the pre-petition payroll less than half the number for the projected future peak for the same year.
GALLO VINEYARDS, INC. 21 ALRB No. 3

303.03 No denial of due process where Board declined to follow invalidated regulation and had previously announced method in which prospective peak would be calculated in light of invalidation.
ALRB v. Superior Court (Gallo Vineyards, Inc.)(1996) 48 Cal.App.4th 1489 [56 Cal.Rptr.2d 409]

303.03 Contrary to Respondent's contention, while section 1156.4 only prohibits the Board from applying averaging to the number of employees on the pre-petition payroll, Board may continue to measure prospective peak by the averaging method.
GALLO VINEYARDS, INC., 23 ALRB No. 7

303.03 Board reaffirms the position it asserted in Gallo Vineyards (1995) 21 ALRB No. 3, wherein it rejected the employer's contention that section 1156.4 mandates the Board to develop uniform statewide crop and acreage statistics to assist in making peak determinations; also reaffirms practice of evaluating prospective peak on the basis of whether Regional Director's decision to go forward with election was reasonable in light of information available at the time. Moreover, it is the responsibility of employers who contend representation petition not timely filed on the basis of future peak to provide information to support such claim.
GALLO VINEYARDS, INC., 23 ALRB No. 7

304.00 SHOWING OF INTEREST

304.01 In General

304.01 The showing of interest requirement is not reviewable as an election objection; its determination is a purely administrative act.
THOMAS S. CASTLE FARMS, INC., 9 ALRB No. 14

304.01 It is inappropriate for Board to speculate with regard to one party's actual or potential showing of interest.
CARDINAL DISTRIBUTING CO., 3 ALRB No. 23

304.01 Matters relating to sufficiency of employees support shall not be reviewable by Board in any proceeding under Chapter 5 of Act.
CARDINAL DISTRIBUTING CO., 3 ALRB No. 23

304.01 Objections pertaining to the sufficiency of employee support for the petition for certification are not reviewable.
GONZALES PACKING CO., 2 ALRB No. 48

304.01 Whether the petitioning party properly obtained the signatures necessary to demonstrate a showing of interest is not reviewable under the Board's regulations
EGGER & OHIO COMPANY, INC., 1 ALRB No. 17

304.01 "Card majority" refers to unions having authorization cards signed by majority of employees in bargaining unit.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

304.01 Showing of interest is not jurisdictional; it is guideline by which Board determines where there is reasonable expectation that bargaining agent will be

selected.
THOMAS S. CASTLE v. ALRB (1983) 140 Cal.App.3d 668

304.01 Objection based on union's showing of interest is not reviewable by appellate court and does not fall within Leedom v. Kyne exception for intermediate review.
RADOVICH v. ALRB (1977) 72 Cal.App.3d 36

304.01 Sufficiency of showing of interest is never reviewable, since trial of that issue could violate secrecy of employees' choice regarding representation and since showing is not jurisdictional, but merely a step in administrative screening process whereby Board decides whether claim of representation warrants expense and effort of election.
NISHIKAWA FARMS, INC. v. MAHONY (1977) 66 Cal.App.3d 781

304.02 Petitioning Union, Showing By; Labor Code Section 1156.3(a)

304.02 Remedy permitting union to petition for election without being required to make showing of employee support ordinarily required by section 1156.3(c) appropriate where Board set aside relatively close election with high voter turnout, because of employer's extensive ULPs. There is no doubt but that ongoing question of representation exists.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

304.03 Intervening Union, Showing By; Labor Code Section 1156.3(b)

304.04 Authorization Cards, Sufficiency; Fraud Or Coercion In Obtaining Authorization; Forgery

304.04 Testimony was too ambiguous, inconsistent and contradictory to establish that workers were threatened with job loss if they failed to sign authorization cards.
FURUKAWA FARMS, INC., 17 ALRB No. 4

304.04 Intimidation by union during solicitation of authorization cards was not proved.
RON NUNN FARMS, 4 ALRB No. 31

304.05 Change Of Affiliation Or Successor Union; Successor Companies

304.06 Time And Place For Filing Showing Of Interest; Labor Code Section 1156.3(a)(1)

304.06 Showing of interest requirements of 1156.3(a) do not create any employer right not to have election. Neither timeliness nor location of showing of interest are jurisdictional prerequisites to election, and neither issue is subject to direct judicial review.
THOMAS S. CASTLE v. ALRB (1983) 140 Cal.App.3d 668

304.07 Petition By Contracting Or Certified Union Or Union Now

Recognized

304.07 Pre-Act contractual relationship between employer and uncertified union becomes void upon certification of another union by ALRB, and existing contract is thereafter unenforceable.
JOE A. FREITAS & SONS v. FOOD PACKERS (1985) 164 Cal.App.3d 1210

304.08 Conflicting Claims Of Unions; Jurisdictional Disputes; No-Raiding Agreements; Schism In Union

304.09 Decertification Under Section 1156.3

304.09 After certification year expires, assuming no contract bar exists, employees are free under 1156.3 to decertify union whether or not collective bargaining agreement was ever reached.
MONTEBELLO ROSE CO. v. ALRB (1981) 119 Cal.App.3d 1

304.09 Employer's supervisors' coercion of substantial numbers of employees to sign decertification petition in presence of entire crews warrants invalidation of decertification petition. Dissemination may be presumed and impossible to determine how far it spread.
GALLO VINEYARDS, INC., 30 ALRB No. 2

304.10 Decertification Under Section 1156.7

304.10 12-month election bar in 1156.5 and 1156.7(c) precludes an election for one year after certification.
RULINE NURSERY CO. v. AGRICULTURAL LABOR RELATIONS BOARD (1985) 169 Cal.App.3d 247

304.10 Subdivision (b) of section 1156.7 provides that a collective bargaining agreement shall be a bar to a petition for election for the term of the agreement, but in any event such bar shall not exceed three years. Subdivision (c) provides, inter alia, that a petition shall not be deemed timely unless it is filed during the year preceding the expiration of a collective bargaining agreement that would otherwise bar the holding of an election.
GALLO VINEYARDS, INC., 34 ALRB No. 6

304.10 The application of the premature extension doctrine is in keeping with the statutory contract bar provided in section 1156.7(c). To rule otherwise would allow employers and unions to circumvent the filing of decertification petitions by constantly extending collective bargaining agreements. This would frustrate the will of the employees.
GALLO VINEYARDS, INC., 34 ALRB No. 6

305.00 OPERATION OF PRESUMPTIONS

305.01 In General

305.01 While an employer is required to provide information most accessible to it, the Regional Director is still responsible to investigate all relevant information and determine if the peak requirement has been met; the Regional Director may properly invoke the presumptions of regulation section 20310(e) only if the employer fails to provide necessary information accessible to it, which failure obstructs or precludes the peak determination.
TEPUSQUET VINEYARDS, 10 ALRB No. 29

305.01 The Board set aside the election where the Board agent improperly invoked the third presumption, causing the election to be conducted without an eligibility list, enabling ineligible voters to cast ballots, and disenfranchising over 50% of the electorate.
E.C. CORDA RANCHERS, 4 ALRB No. 35

305.01 Even where the employer filed a written response to election petition, where employee list provided was inaccurate and incomplete, presumption of Tit. 8, Calif. Admin. Code, section 20310(e) were properly invoked.
CARDINAL DISTRIBUTING CO., 3 ALRB No. 23

305.01 As part of "El Centro" experiment to expedite elections cases, Board Member Grodin conducted preliminary hearing on objections, made arrangements for supplemental investigation of certain specified facts, and served report of preliminary hearing and supplemental investigation on all parties. On basis of parties' responses to foregoing, Board found absence of any factual disputes requiring an evidentiary hearing and certified results of election.
LU-ETTE FARMS, 2 ALRB No. 49

305.01 Employer’s supervisors’ coercion of substantial numbers of employees to sign decertification petition in presence of entire crews warrants invalidation of decertification petition. Dissemination may be presumed and impossible to determine how far it spread.
GALLO VINEYARDS, INC., 30 ALRB No. 2

306.00 CONTRACT-BAR RULES

306.01 In General; Labor Code Section 1156.7(a) and (b)

306.01 Employer's objection to certification of election won by UFW based on agreement with Teamsters executed prior to the effective date of the ALRA is dismissed under Labor Code section 1156.7(a).
ASSOCIATED PRODUCE DISTRIBUTORS, 2 ALRB No. 47

306.01 Where a collective bargaining agreement had been executed

prior to the effective date of the ALRA the Board ruled that it did not bar a petition for certification.
HAIDEN FARMS OF CALIFORNIA, INC., 2 ALRB No. 30

306.01 No collective bargaining agreement executed prior to the effective date of the ALRA shall operate as a bar to a petition for election.
R.T. ENGLUND COMPANY, 2 ALRB No. 23

306.01 Section 1156.7 clearly allows decertification or rival union petition anytime within last year of collective bargaining agreement, and Board exceeded its authority in fashioning a more limited period for the filing of such petitions.
CADIZ v. ALRB (1979) 92 Cal.App.3d 365

306.01 Section 1156.7(b)(1) codifies NLRB's "bright line" rule that a contract must be in writing and executed by all parties in order to act as a bar to an election petition.
NASH DE CAMP COMPANY, 26 ALRB No. 4

306.01 Subdivision (b) of section 1156.7 provides that a collective bargaining agreement shall be a bar to a petition for election for the term of the agreement, but in any event such bar shall not exceed three years. Subdivision (c) provides, inter alia, that a petition shall not be deemed timely unless it is filed during the year preceding the expiration of a collective bargaining agreement that would otherwise bar the holding of an election.
GALLO VINEYARDS, INC., 34 ALRB No. 6

306.01 There is no California statute addressing the effects of the extension of an existing collective bargaining agreement during the term of the agreement. This was noted in the Board's decision in M. Caratan (1978) 4 ALRB No. 68, rev'd on other grounds, Cadiz v. ALRB (1979) 92 Cal.App.3d 365.
GALLO VINEYARDS, INC., 34 ALRB No. 6

306.01 There was no contract bar to a decertification petition where the only reasonable conclusion from the documents presented was that the agreement between the parties in existence at the time the petition was filed had a duration of one year. A petition filed any time during the term of a one-year collective bargaining agreement is timely.
L. E. COOKE COMPANY, 35 ALRB No. 1

306.01 Under well-settled precedent, effective and expiration dates must be apparent from the face of a collective bargaining agreement for the agreement to serve as a bar to a decertification petition.
L. E. COOKE COMPANY, 35 ALRB No. 1

306.02 60-Day No-Strike Period At End Of Contract, Effect Of; Labor Code Section 1155.3

306.03 Expiration Of Contract

306.04 Contract Extension Or New Agreement Before Reopening Or Termination Date; Premature Extension

306.04 The application of the premature extension doctrine is in keeping with the statutory contract bar provided in section 1156.7(c). To rule otherwise would allow employers and unions to circumvent the filing of decertification petitions by constantly extending collective bargaining agreements. This would frustrate the will of the employees.
GALLO VINEYARDS, INC., 34 ALRB No. 6

306.05 Termination, Modification, Or Reopening Of Contract

307.00 TIME FOR FILING PETITION

307.01 In General

307.01 Where as a result of turnover more employees appeared to work than were employed at any time during the employer's peak employment, the Board determined that the petition for certification was timely by employing its Saikhon method of determining average employment during the eligibility period and the week of peak employment. (See IHED.)
E. DELL ARRINGA & SONS, 3 ALRB No. 77

307.01 Peak employment requirement of 1156.3 refers to current calendar year.
ADAMEK & DESSERT, INC. v. ALRB (1986) 178 Cal.App.3d 970

307.01 Key to deciding whether election is timely is whether electorate is representative of bargaining unit which may ultimately be certified; thus an election will be upheld if regional director's determination of peak was reasonable in light of evidence available at the time, even if subsequent events should prove the determination incorrect.
RULINE NURSERY CO. v. ALRB (1985) 169 Cal.App.3d 247

307.01 Rival union petition may not be filed during ALRA bar period. In contracts lasting four years or less, the bar period ends one year before the contract expiration date. In contracts of four years or longer, the bar period expires at end of third year.
MONTEREY MUSHROOMS, INC. 20 ALRB No. 5

307.01 Under Cadiz v. ALRB (1979) 92 Cal.App.3d 365 [155 Cal.Rptr. 213], the Board cannot rely on NLRB precedent where the language of section 1156.7 differs from the NLRB's case law-based contract bar rules.
MONTEREY MUSHROOMS, INC. 20 ALRB No. 5

307.02 Amendment Of Petition Or Successive Petitions, Effect Of

307.03 Dismissal Or Withdrawal Of Petition, Effect Of

307.04 Circumstances Excusing Delay In Filing Petition

307.05 Waiver Or Estoppel

307.05 Employer's alleged failure to provide requested information concerning peak evaluated in light of employer's overall efforts to cooperate with Board agents; evidence indicates that the failure resulted from misunderstanding or lack of clear communication between Board agents and employer.
TEPUSQUET VINEYARDS, 10 ALRB No. 29

307.05 Employer not precluded from showing that peak body count in a prior year was different than the one mistakenly represented to Board agents where Board agents should have investigated the substantial difference between the employer's prior peak figures over a two-year period; the employer did not have a sufficient opportunity to explain or investigate the incorrect peak figures relied upon by the Regional Director as the normal body count figure.
TEPUSQUET VINEYARDS, 10 ALRB No. 29

307.06 Pendency Of Unfair Labor Practice Charges Or Other Proceedings; "Blocking Charge" Rule

307.06 A Regional Director's decision not to block an election is final and nonreviewable. A party who is aggrieved by conduct the Regional Director found insufficient to block the election may instead file election objections alleging that the conduct indeed interfered with employee free choice. Therefore, recommendation that Board sua sponte invalidate an election on the theory that it should have been blocked is inappropriate.
CONAGRA TURKEY COMPANY, 19 ALRB No. 11

307.06 Regional Director properly blocked decertification election where notice of Employer's unlawful instigation of an support for prior decertification effort had not been communicated to employees prior to the filing of a new petition.
S & J RANCH, INC., 18 ALRB No. 10

307.06 Under Cattle Valley 8 ALRB No. 24, elections may be blocked based on conduct alleged in outstanding complaints, though other conduct alleged in outstanding charges may be considered by the Regional Director in exercising his or her discretion to impound ballots; Denial of access on several occasions one and a half years before scheduled election, without further explanation, is insufficient basis for blocking election.
SUNNYSIDE NURSERIES, INC., 17 ALRB No. 9

307.06 Where employer's unlawful refusal to respond to union

inquiries and to continue bargaining derailed promising negotiations and included the three and half months preceding the decertification election, such conduct would tend to interfere with employee free choice and warrants dismissal of decertification petition.
P.H. RANCH, INC., et al., 21 ALRB No. 13

307.06 *Cattle Valley Farms* 8 ALRB No. 24 authorizes regional director to block election only before the election has been conducted. (*ConAgra Turkey Company* (1993) 19 ALRB No. 11.)
BAYOU VISTA DAIRY, 32 ALRB No. 6

307.06 Board regulations section 20360(c) empowering regional director to impound ballots where necessary to effectuate the policies of the Act does not authorize the regional director to dismiss an election petition in which ballots have been impounded based on a complaint which issued after the election has been conducted.
BAYOU VISTA DAIRY, 32 ALRB No. 6

307.06 The decision of a Regional Director denying a request to block an election is not reviewable. Instead, a party who is allegedly aggrieved by conduct which a regional director found insufficient to block the election may file election objections alleging that the conduct indeed interfered with employee free choice.
GALLO VINEYARDS, INC., 34 ALRB No. 6

307.06 The ALRA, prior Board decisions, and Board regulations do not confer such broad authority on the Regional Director to dismiss an election petition after an election; to do so would override the mandate of Labor Code section 1156.3, which requires the Board to certify an election unless there are sufficient grounds to do so. Without an evidentiary hearing on election objections raised, there are no sufficient grounds to refuse to certify an election.
NURSERYMEN'S EXCHANGE, INC., 37 ALRB No. 1

307.06 Neither Section 20300(i)(l) of the Board's regulations, nor any of the Board's regulations or case law indicates that the authority of a Regional Director to dismiss an election petition continues after an election is held. (*Bayou Vista Dairy* (2006) 32 ALRB No. 6 at p. 6).
NURSERYMEN'S EXCHANGE, INC., 37 ALRB No. 1

307.06 As noted in *ConAgra Turkey Company* (1993) 19 ALRB No. 11, a Regional Director's decision to hold an election is final and nonreviewable. Rather, any claims that the Regional Director erred in determining the validity of the election petition must be raised in the election objections process.
NURSERYMEN'S EXCHANGE, INC., 37 ALRB No. 1

308.00 CERTIFICATION, PRIOR ELECTION, OR OTHER RULING AS BAR

308.01 In General

308.01 Under ALRA, once union has been certified, employer's duty to bargain continues until union has been decertified.
ADAMEK & DESSERT, INC. v. ALRB (1986) 178 Cal.App.3d 970

308.01 Even where there is no change in ownership, agricultural employers frequently experience significant turnover in workforce during single year. Legislature has nonetheless imposed one-year certification bar.
SAN CLEMENTE RANCH, LTD. v. ALRB (1981) 29 Cal.3d 874

308.01 There is no bar to the filing of an NA or a new election petition due to a pending election case involving the same parties and bargaining unit where the final tally of ballots showed an ostensible "No Union" victory and where more than a year has elapsed since the prior election. In such circumstances, the certification bar could not be triggered by the Board's decision because it could not result in the certification of the union, but only in the setting aside of the election or the certification of the "No Union" result. Nor could the one-year election bar be triggered, as it runs from the date of the election, not from the date the Board determines the validity of the election. Nor does the Board's access regulation bar an NA in these circumstances, as the regulation allows access 30 days prior to the expiration of any bar to the election and makes no exception based solely on an unresolved prior election case.
GUIMARRA VINEYARDS CORP., 32 ALRB No. 4

308.02 Period Of Certification Bar; Recertification; Petitions Filed During Certification Year

308.02 If Board does not extend union's certification beyond one-year period, another election may be had at any time following expiration of one-year certification bar.
ADAMEK & DESSERT, INC. v. ALRB (1986) 178 Cal.App.3d 970

308.02 Certification bar expires after one year unless Board has extended certification.
ADAMEK & DESSERT, INC. v. ALRB (1986) 178 Cal.App.3d 970

308.02 One-year certification lapses for election bar purposes, but general duty to bargain does not lapse when year expires. This interpretation gives stability to bargaining relationships, prevents unions from striking to force concessions, is consistent with NLRB presumption of continuing majority status, prevents large gaps in representation, and reduces burden of repeated elections on all parties.
MONTEBELLO ROSE CO. v. ALRB (1981) 119 Cal.App.3d 1

308.02 After certification year expires, assuming no contract bar exists, employees are free under 1156.3 to decertify union whether or not collective bargaining agreement was ever reached.
MONTEBELLO ROSE CO. v. ALRB (1981) 119 Cal.App.3d 1

308.02 Once ALRB certifies union as exclusive bargaining representative, union is guaranteed this representation status for one year. This is known as certification bar, requiring employer to bargain in good faith for entire year.
SAN CLEMENTE RANCH, LTD. v. ALRB (1981) 29 Cal.3d 874

308.02 The provisions of sections 1156.5 and 1156.6 relating to election-bar and certification-bar are incorporated into the decertification provisions of section 1156.7(d).
CADIZ v. ALRB (1979) 92 Cal.App.3d 365

308.02 1155.2(b) merely reflects rule that, following certification, no new election can be held for one year, and that Board can extend period for additional year if Board feels employer has not bargained in good faith.
UNITED FARM WORKERS v. SUPERIOR COURT (MT. ARBOR) (1977) 72 Cal.App.3d 268

308.03 Prior Board Or Court Order Directing Employer Or Union To Bargain; Settlement Agreements

308.03 Bargaining orders are not permanent; once effects of employer's ULP's have worn off, employees are free to file a decertification petition.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

308.04 ALRB Election Within Year; Labor Code Section 1156.5

308.04 12-month election bar in 1156.5 and 1156.7(c) precludes an election for one year after certification.
RULINE NURSERY CO. v. ALRB (1985) 169 Cal.App.3d 247

308.04 The provisions of sections 1156.5 and 1156.6 relating to election-bar and certification-bar are incorporated into the decertification provisions of section 1156.7(d).
CADIZ v. ALRB (1979) 92 Cal.App.3d 365

308.04 There is no bar to the filing of an NA or a new election petition due to a pending election case involving the same parties and bargaining unit where the final tally of ballots showed an ostensible "No Union" victory and where more than a year has elapsed since the prior election. In such circumstances, the certification bar could not be triggered by the Board's decision because it could not result in the certification of the union, but only in the setting aside of the election or the certification of the "No Union" result. Nor could the one-year election bar be triggered, as it runs from the date of the election, not from the date the Board determines the validity of the

election. Nor does the Board's access regulation bar an NA in these circumstances, as the regulation allows access 30 days prior to the expiration of any bar to the election and makes no exception based solely on an unresolved prior election case.
GUIMARRA VINEYARDS CORP., 32 ALRB No. 4

308.05 Extension Of Certification; Labor Code Section 1155.2(b)

308.05 Following the end of the certification year, a request for extension of certification by the union is not required before a previously certified union can require bargaining with the employer.
O. E. MAYOU & SONS, 11 ALRB No. 25

308.05 Certification bar expires after one year unless Board has extended certification.
ADAMEK & DESSERT, INC. v. ALRB (1986) 178 Cal.App.3d 970

308.05 If Board does not extend union's certification beyond one-year period, another election may be had at any time following expiration of one-year certification bar.
ADAMEK & DESSERT, INC. v. ALRB (1986) 178 Cal.App.3d 970

308.05 Board properly extended UFW's certification for one year although union had not filed petition to extend its certification pursuant to 1155.2(b).
ADAMEK & DESSERT, INC. v. ALRB (1986) 178 Cal.App.3d 970

308.05 Board refusal to extend certification under 1155.2(b) is not res judicata as to later-instituted ULP charges, since General Counsel was not a party to initial proceedings and such an interpretation would make unlikely any further use of extension of certification procedure.
MONTEBELLO ROSE CO. v. ALRB (1981) 119 Cal.App.3d 1

308.05 Where Board did not make specific, statutorily-required finding that employer had failed to bargain in good faith, it was precluded from extending union's certification an additional year under 1155.2(b).
YAMADA BROS. v. ALRB (1979) 99 Cal.App.3d 112

308.05 1155.2(b) merely reflects rule that, following certification, no new election can be held for one year, and that Board can extend period for additional year if Board feels employer has not bargained in good faith.
UNITED FARM WORKERS v. SUPERIOR COURT (MT. ARBOR) (1977) 72 Cal.App.3d 268

309.00 DECERTIFICATION AND RIVAL UNION PROCEEDINGS

309.01 In General; Time For Filing; Unit Designated; Labor Code Sections 1156.7(c) and (d)

309.01 Where an 80 acre parcel of almond trees is clearly part

of the Employer's farm and such farmland was located adjacent to the packing shed, the packing shed was contiguous for purposes of the statute and the Board has no discretion to establish more than one bargaining unit. The appropriate bargaining unit would thus consist of both packing shed and field employees.
HARRY TUTUNJIAN & SONS, 12 ALRB No. 22

309.01 An incumbent union must receive a majority vote in a decertification election in order to maintain its status as exclusive representative of the employees in the unit.
RECLAIMED ISLAND LAND COMPANY (RILCO), 9 ALRB No. 71

309.01 The general rule that the bargaining unit in which a decertification election is held must be co-extensive with the unit previously certified not deviated from where there was insufficient evidence that a portion of that bargaining unit had been or should be treated as a separate entity.
MAYFAIR PACKING COMPANY, 9 ALRB No. 66

309.01 Bargaining orders are not permanent; once effects of employer's ULP's have worn off, employees are free to file a decertification petition.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

309.01 After certification year expires, assuming no contract bar exists, employees are free under 1156.3 to decertify union whether or not collective bargaining agreement was ever reached.
MONTEBELLO ROSE CO. v. ALRB (1981) 119 Cal.App.3d 1

309.01 Section 1156.7 clearly allows decertification or rival union petition anytime within last year of collective bargaining agreement, and Board exceeded its authority in fashioning a more limited period for the filing of such petitions.
CADIZ v. ALRB (1979) 92 Cal.App.3d 365

309.01 The provisions of sections 1156.5 and 1156.6 relating to election-bar and certification-bar are incorporated into the decertification provisions of section 1156.7(d).
CADIZ v. ALRB (1979) 92 Cal.App.3d 365

309.01 ALRB correctly interpreted 1156.7(c) to promote stable bargaining relationships and peace in the fields where statute was not clear as to effect of a one-year contract on a decertification petition.
CADIZ v. ALRB (1979) 92 Cal.App.3d 365 (Hopper Dissent.)

309.02 Petition: Sufficiency; Who May File; Instigation By Employer (see section 408)

309.02 In "novel legal question" proceeding pursuant to Title 8, California Code of Regulations, section 20365(e)(8), Board determines threshold jurisdictional issue that Cattle Valley Farms (1982) 8 ALRB No. 24 also allows non-

agricultural employees to file decertification petition under Labor Code section 1156.3(a).
THE CAREAU GROUP dba EGG CITY, 15 ALRB No. 21

309.02 Concurrence: Decertification petitioner, whose ballot was challenged, and who was subsequently ruled to be an ineligible voter may not be entitled to file a decertification petition. Statute clearly limits authorized petitioners to employees only.
LIMONEIRA COMPANY, 13 ALRB No. 13

309.02 Employer unlawfully instigated and assisted its employees in filing a decertification election petition by calling its discontented workers together and referring them to free legal representation, prearranged by the employer to assist the employees in their decertification of the union.
PETER D. SOLOMON and JOSEPH R. SOLOMON dba CATTLE VALLEY FARMS/TRANSCO LAND AND CATTLE CO., 9 ALRB No. 65

309.02 A supervisor-trainee, given temporary supervisory duties, with the authority to independently direct crew assignments for short periods of time and universally seen as the supervisor's brother rather than a co-worker, acted on behalf of the employer in seeking decertification of the exclusive representative.
M. CARATAN, INC., 9 ALRB No. 33

309.02 A decertification petition filed by an employer, supervisor, or an employee acting as an agent of the employer is invalid.
NICK J. CANATA, 9 ALRB No. 8

309.02 Proof of Employer instigation of Decertification Pet requires evidence that Employer implanted idea in mind of Employees.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC., 7 ALRB No. 36

309.02 Not improper for ALO to utilize evidence of Employer's anti-union acts and statements in his consideration of case.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC., 7 ALRB No. 36

309.02 ALO properly considered entire course of campaign in finding unlawful assistance to decertification efforts.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC., 7 ALRB No. 36

309.02 Employer's unlawful assistance to Employees in decertification effort proven by circumstantial evidence that (1) leading proponents of decertification Petition given leaves of absence and other benefits to facilitate their conduct, and (2) Employer's agents assembled Employees for purpose of obtaining signatures in various decertification Petitions.

ABATTI FARMS, INC., and ABATTI PRODUCE, INC., 7 ALRB No. 36

309.02 Only employees or labor organizations are permitted to petition Board for new election to get rid of incumbent union.
F&P GROWERS ASSN. v. ALRB (1985) 168 Cal.App.3d 667

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

309.03 Disclaimer, Effect Of; Withdrawal Or Dismissal Of Petition; Successive Petitions

309.04 Effect Of Decertification

309.04 In a decertification election, where the Board certified that a majority of the valid votes were cast for "no union," the labor organization lost its prior status as the exclusive bargaining representative.
ARROW LETTUCE COMPANY, 14 ALRB No. 7

310.00 RUNOFF AND REPEAT ELECTIONS

310.01 In General; Labor Code Section 1157.2

310.01 The setting aside of an election under the ALRA results

in the dismissal of the election petition. Consistent with the prescription of prompt elections set forth in Labor Code section 1156.3, section 20372 of the Board's regulations allows the Board to direct a rerun election only where circumstances make it physically impossible to determine the outcome of the first election. Alternatively, the Regional Director may order a rerun election with the consent of all parties if an objection or objections to an election are filed and the Regional Director determines that it will further the purpose of the Act to nullify the first election and conduct a rerun election.
GALLO VINEYARDS, INC., 35 ALRB No. 6

310.02 Eligibility And Eligibility Date For Second Election

310.02 In run-off election, employees who worked in the original eligibility period, and thus were eligible to vote in original election, but were terminated prior to the run-off, are not part of "turnover" for purposes of determining whether substantial employee turnover since original election warrants different eligibility period for run-off as provided by Jack T. Baillie Co., Inc. (1978) 4 ALRB No. 47. Such employees were eligible to vote in the original election, and thus are eligible to vote in the run-off.
GERAWAN RANCHES, 16 ALRB No. 8

310.02 Title 8, California Code of Regulations section 20375(a) does not permit agricultural employees who were not employed in the original eligibility period to vote in any subsequent run-off election. In the absence of extraordinary circumstances as specified in Jack T. Baillie Co., Inc. (1978) 4 ALRB No. 47, only employees who were employed in the original eligibility period, and thus eligible to vote in the original election, are eligible to vote in the run-off election.
GERAWAN RANCHES, 16 ALRB No. 8

310.02 Board refused to permit agricultural employees to be considered eligible to vote in run-off election merely because they either previously worked for the employer, and/or worked a substantial number of days in the interval between the end of the eligibility period for the original election and the date of the run-off. Such individualized eligibility determinations are inconsistent with the language and policy of the Agricultural Labor Relations Act.
GERAWAN RANCHES, 16 ALRB No. 8

310.02 Board rejects two and one-half week eligibility period for run-off election between end of eligibility period for original election and run-off. No precedent supports such an eligibility period. If Board approves altered eligibility period for run-off based on Jack T. Baillie Co., Inc. (1978) 4 ALRB No. 47, proper period is payroll period immediately preceding notice of run-off.

GERAWAN RANCHES, 16 ALRB No. 8

310.02 Employer fails to satisfy requirements under Jack T. Baillie Co., Inc. (1978) 4 ALRB No. 47 for altered eligibility period to increase representativeness of run-off election where only six days intervene between original and run-off elections, and turnover within unit is only 18.4%. Six days is not a substantial period of time under Baillie, nor is 18.4% substantial turnover. GERAWAN RANCHES, 16 ALRB No. 8

310.02 (c) Run-off Elections Because of long period of time between original election and subsequent runoff election, and likelihood of substantial employee turnover the original election directed that those eligible to vote shall be those employees appearing on employer's payroll list in period immediately preceding date of issuance of notice of runoff election. Board ordered Regional Director to conduct runoff election when employer is at 50 percent or more of peak employment.
JACK T. BAILLIE COMPANY, INC., 4 ALRB No. 47

310.02 Since the original election occurred within 18 months of the effective date of the ALRA all economic strikers eligible to vote in the original election were held eligible to vote in the re-run.
PANDOL AND SONS, 3 ALRB No. 72

310.02 New eligibility list required for runoff election where long period between original election and runoff.
GH & G ZYSLING DAIRY, 32 ALRB No. 2

310.03 No Majority In First Election

310.03 Where no party receives necessary majority of votes, Board directs Regional Director to conduct runoff election between highest two vote getters.
JACK T. BAILLIE COMPANY, INC., 4 ALRB No. 47

310.03 Where no party will be able to obtain a majority of the valid votes cast no matter how the remaining challenged ballots are resolved the Board declined to resolve the challenges and ordered a re-run election.
PANDOL AND SONS, 3 ALRB No. 72

310.04 Contest Or Vacation Of Second Election

310.05 Certification Of Results Of Election

311.00 ELECTION AND CERTIFICATION OF REPRESENTATIVE

311.01 In General

311.01 Certification relates back to the election which it certifies.
SUMNER PECK RANCH, INC., 10 ALRB No. 24

311.01 In representation cases, ALRB has consistently followed policy of upholding elections unless to do so would clearly violate employee rights or result in unreasonable interpretation or application of Act.
RULINE NURSERY CO. v. ALRB (1985) 169 Cal.App.3d 247

311.01 ALRB has duty to supervise and to protect integrity of labor election process.
SAN DIEGO NURSERY CO. v. ALRB (1979) 100 Cal.App.3d 128

311.01 To ignore possible disenfranchisement of majority of petitioner's workers violates Board's obligation to protect rights of agricultural workers to organize and bargain.
PERRY FARMS INC. v. ALRB (1978) 86 Cal.App.3d 448

311.01 Federal Worker Adjustment and Retraining Notification Act ("WARN" Act, 29 U.S.C. §§ 2101 et seq.) does not require provision of 60 days' notice of an impending layoff while simultaneously disenfranchising employees under the ALRA who remain employed during that notice period.
NURSERYMEN'S EXCHANGE, INC., 36 ALRB No. 6

311.02 Authority Of Courts And Board In General (see sections 501 and 502)

311.02 Under the Agricultural Labor Relations Act, an employer may not obtain immediate judicial review of the Board's decision certifying a union. An employer can seek judicial review only by refusing to bargain with the union.
George Arakelian Farms, Inc. v. ALRB (1989) 49 Cal.3d 1279

311.02 Board impermissibly altered terms of 1156.3(a)(1) when it employed an averaging formula to determine whether employer was at 50% of peak employment for calendar year.
ADAMEK & DESSERT, INC. v. ALRB (1986) 178 Cal.App.3d 970

311.02 In Leedom v. Kyne, NLRB acted in direct violation of specific NLRA provision, and board did not contest claim that it acted in excess of its jurisdiction. The Leedom v. Kyne exception is a narrow one, and even erroneous assertion of authority is insufficient to invoke it.
THOMAS S. CASTLE v. ALRB (1983) 140 Cal.App.3d 668

311.02 Showing of interest requirements of 1156.3(a) do not create any employer right not to have election. Neither timeliness nor location of showing of interest are jurisdictional prerequisites to election, and neither issue is subject to direct judicial review.
THOMAS S. CASTLE v. ALRB (1983) 140 Cal.App.3d 668

311.02 Determination of steps necessary to conduct elections fairly is matter entrusted to Board alone.

SAN DIEGO NURSERY CO. v. ALRB (1979) 100 Cal.App.3d 128

311.02 ALRB has duty to supervise and to protect integrity of labor election process.
SAN DIEGO NURSERY CO. v. ALRB (1979) 100 Cal.App.3d 128

311.02 Court review of non-final Board determinations is available by mandamus where Board violates clear and mandatory provision of Act on where petitioner raises colorable claim that Board has violated constitutional rights. In any case, a prerequisite to equitable relief outside Act is that petitioner have no avenue to ultimate judicial review at culmination of ULP proceedings.
YAMADA BROS. v. ALRB (1979) 99 Cal.App.3d 112

311.02 Although indirect method of reviewing Board's representation decisions imposes significant delay, Congress precisely intended such a delay.
YAMADA BROS. v. ALRB (1979) 99 Cal.App.3d 112

311.02 Court review of non-final Board determination is available by mandamus where Board violates clear and mandatory provision of Act or where petitioner raises colorable claim that Board has violated constitutional rights. In any case, a prerequisite to equitable relief outside Act is that petitioner have no avenue to ultimate judicial review at culmination of ULP proceedings.
YAMADA BROS. v. ALRB (1979) 99 Cal.App.3d 112

311.02 Judicial intervention in ALRB non-final order was appropriate where Board violated an express provision of the statute regarding the timeliness of an election petition and the uncertainty of the election process subjected the employer to a blind choice as to whether to bargain when the contract expired.
CADIZ v. ALRB (1979) 92 Cal.App.3d 365

311.02 Employer cannot obtain immediate review of Board's decision certifying union; it can only obtain review of such election matters after being found guilty of refusing to bargain -- a "technical refusal."
J.R. NORTON CO. v. ALRB (1979) 26 Cal.3d 1

311.02 Under ALRA, order certifying bargaining representative is not final order of ALRB which may be judicially reviewed.
PERRY FARMS INC. v. ALRB (1978) 86 Cal.App.3d 448

311.02 Only way employer may obtain judicial review of election and certification is to refuse to bargain, be found guilty of ULP, and obtain review of election and certification in course of review of ULP decision.
PERRY FARMS INC. v. ALRB (1978) 86 Cal.App.3d 448

311.02 Non-final order of Board may be reviewed only if (1) fact of statutory violation cannot seriously be argued and deviation resulted in deprivation of 'right' guaranteed by the Act, or (2) constitutional rights of complaining

party have been violated. Under exception (2) above, there must be substantial showing that Board action has violated due process or some other constitutional right. Further, continued validity of exception (2) is questionable.
UNITED FARM WORKERS v. SUPERIOR COURT (MT. ARBOR) (1977) 72 Cal.App.3d 268

311.02 Orders in certification proceedings are not directly reviewable in courts, but only become reviewable by resistance to a ULP charge, at which time various issues involved in the certification may be reviewed.
NISHIKAWA FARMS, INC. v. MAHONY (1977) 66 Cal.App.3d 781

311.02 The ALRA, prior Board decisions, and Board regulations do not confer such broad authority on the Regional Director to dismiss an election petition after an election; to do so would override the mandate of Labor Code section 1156.3, which requires the Board to certify an election unless there are sufficient grounds to do so. Without an evidentiary hearing on election objections raised, there are no sufficient grounds to refuse to certify an election.
NURSERYMEN'S EXCHANGE, INC., 37 ALRB No. 1

311.02 Neither Section 20300(i)(l) of the Board's regulations, nor any of the Board's regulations or case law indicates that the authority of a Regional Director to dismiss an election petition continues after an election is held. (*Bayou Vista Dairy* (2006) 32 ALRB No. 6 at p. 6).
NURSERYMEN'S EXCHANGE, INC., 37 ALRB No. 1

311.02 As noted in *ConAgra Turkey Company* (1993) 19 ALRB No. 11, a Regional Director's decision to hold an election is final and nonreviewable. Rather, any claims that the Regional Director erred in determining the validity of the election petition must be raised in the election objections process.
NURSERYMEN'S EXCHANGE, INC., 37 ALRB No. 1

311.03 Union's Right Or Duty To Participate; Designations Of Ballots

311.03 Low turnout alone is not basis for setting aside election where scheduling and mechanical arrangements fair. Board will evaluate on a case by case basis. Board notes NLRB has recently adopted approach similar to that long applied by ALRB.
GERAWAN RANCHES, 18 ALRB No. 5

311.03 Where voters are merely inconvenienced by having to go to polling place where they are not actively employed on day

of election, this is matter of inconvenience and not of preventing voter from voting, and therefore, not grounds for setting aside election.
GERAWAN RANCHES, 18 ALRB No. 5

311.03 The employer was not prejudiced by the Board's use of a black eagle to signify a vote for the UFW and the international symbol for no signifying no union on the ballot.
YAMADA BROTHERS, 1 ALRB No. 13

311.03 Board rejected employee's contention that United Farm Workers of America (UFW) eagle on ballot constituted electioneering by Union in polling area since "use of symbols is necessary to allow illiterate workers to vote" and each of the ballot choices is represented by a symbol, therefore rule does not favor one party over another. NLRB decisions which prohibit distribution of sample ballots marked to indicate a particular choice distinguishable. (See, e.g., Allied Electric Products, Inc. (1954) 109 NLRB No. 177).
SAMUEL S. VENER CO., 1 ALRB No. 10

311.04 "No-Union" Choice

311.04 Board set election aside where word "NO" on the no-union symbol on ballot transposed to read "ON", and voter testimony and mismarked ballot indicated that at least one voter confused thereby.
VISALIA CITRUS PACKERS, 10 ALRB No. 32

311.04 A circle with a diagonal slash is a proper symbol for the "no-union" choice on the ballot, since it represents a long-standing, internationally recognized symbol for "no" which would be familiar to voters, especially those from foreign countries.
EGGER & OHIO COMPANY, INC., 1 ALRB No. 17

311.04 Employee's contention that symbol used to indicate "no union" not clear rejected since circle with a diagonal slash is a long standing, internationally recognized symbol for "no" and thus would be familiar to voters, particularly those from foreign nations.
SAMUEL S. VENER CO., 1 ALRB No. 10

311.04 Since Employee is not synonymous with "no union," Board properly rejected Employee's contention that it should have been permitted to use its own logo. An employee may feel loyalty to his or her employer but still wish to be represented by a union.
SAMUEL S. VENER CO., 1 ALRB No. 10

311.05 Foreign Language Ballots

311.06 Pre-Election Agreements

311.06 The Board will carefully scrutinize any alleged

violations of election agreements (here, an agreement that there would be no campaigning in the busses transporting voters to the polls) in order to safeguard against prejudice to the fairness of the election. The standard used will be whether the violation affected employee free choice.
D'ARRIGO BROS., 3 ALRB No. 37

312.00 ELIGIBILITY TO VOTE

312.01 In General; Labor Code Section 1157 (see section 201)

312.01 An employee who withholds labor as a consequence of, or in connection with, any current labor dispute resulting in a strike is eligible to vote as an "economic striker" where there is an uncontroverted showing that the employee worked in the payroll period preceding the strike, declared herself or himself to be on strike at the time of the election, has not obtained other regular and substantially equivalent employment as of the election, and has not ceased to be an employee by virtue of his or her own unprotected conduct in furtherance of the strike.
ACE TOMATO COMPANY, INC., 16 ALRB No. 9

312.01 An employee who withholds labor as a consequence of, or in connection with, any current labor dispute resulting in a strike is eligible to vote as an "economic striker" where there is an uncontroverted showing that the employee worked in the payroll period preceding the strike, declared herself or himself to be on strike at the time of the election, has not obtained other regular and substantially equivalent employment as of the election, and has not ceased to be an employee by virtue of his or her own unprotected conduct in furtherance of the strike.
TRIPLE E PRODUCE CORPORATION, 16 ALRB No. 5

312.01 Although Board considers phrase "as determined from [the employer's] payroll immediately preceding the filing of the petition" in Labor Code section 1156.3(a)(1) and phrase "whose names appear on the payroll applicable to the payroll period immediately preceding the filing of the petition" in Labor Code section 1157 to be synonymous, and therefore construes precedent interpreting the one phrase as applicable in interpreting the other, it does not therefore consider the concepts "currently employed" and "eligible to vote" interchangeable. (See, e.g., Labor Code 1157 [eligibility of economic strikers] and Cal. Code Regs., tit. 8, §20352 and 20355(a)(1)-(8) [eligibility and election objections].)
KUBOTA NURSERIES, INC., 15 ALRB No. 12

312.01 Since, in election matters, the Board is concerned with achieving a representative vote through a representative

electorate, Board finds no reason for finding eligible voter not countable for purposes of peak, or finding someone who is countable for peak not eligible to vote. Therefore, aside from a few technical distinctions, the Board will construe Labor Code section 1156.3(a)(1), defining "currently employed" and section 1157, defining "eligible to vote" as synonymous, and will construe precedent interpreting the one provision as being applicable to the other as well.
KUBOTA NURSERIES, INC., 15 ALRB No. 12

312.01 Where voter eligibility turns on a finding which is uniquely within the province of the General Counsel's Chapter 6 authority e.g., were employees discriminatorily discharged, as in Agri-Sun Nursery, 13 ALRB No. 19, and thus can only be determined in an unfair labor practice proceeding, Board cannot litigate question in representation proceeding for to do so would usurp General Counsel's section 1149 authority. Board suggests it may nevertheless entertain such questions where there clearly would be no intrusion into General Counsel's authority, such as where no unfair labor practice charges have been filed, and therefore, General Counsel could not exercise section 1149 authority.
MANN PACKING CO., INC., 15 ALRB No. 11

312.01 Given the explicit election requirements set forth in Chapter 5 of the Act, general NLRB election rules not applicable precedents within the meaning of Labor Code section 1148.
HIJI BROTHERS, INC., 13 ALRB No. 16

312.01 Wife of supervisor who cooked lunch in her home for husband, Employer and two other employees during eligibility period was not "agricultural employee . . . engaged in agriculture" under Labor Code section 1140.4(a) and (b) and therefore was not eligible to vote.
RON CHINN FARMS, 12 ALRB No. 10

312.01 To be eligible to vote in a decertification election, an employee must have worked during the eligibility period or otherwise have been shown to be an eligible voter.
MAYFAIR PACKING COMPANY, 9 ALRB No. 66

312.01 Ballot of challenged voter sustained since at least three years had passed between date on which she went on strike and although she declared that she left Employer's employ and would have returned after the strike, she had not in the interim worked for any other employer and such lapse in time is a sufficient basis upon which to conclude that she had withdrawn from the labor market and thus had effectively abandoned her interest in continued employment with Employer.
ROBERTS FARMS, 6 ALRB No. 5

312.01 The Board has recognized that family members who work under a single name are eligible to vote if they actually

work within the eligibility period.
KARAHADIAN & SONS, INC., 5 ALRB No. 19

312.01 Where an employee leaves the picket line to accept employment with the struck employer prior to a representation election, unless the employee is employed during the eligibility period she/he is ineligible to vote in the election.
MID-STATE HORTICULTURE COMPANY, 4 ALRB No. 101

312.01 The Board sustained challenges to several voters where they were not proven to have worked during the eligibility period.
MID-STATE HORTICULTURE COMPANY, 4 ALRB No. 101

312.01 Regional Director did not abuse discretion by invoking presumption in Board Regulation 20310(d)(2) that unchallenged Employees are eligible to vote where Employer had inadequate payroll records and did not submit complete data in timely manner to verify Employee status and voter eligibility.
HARRY SINGH & SONS, 4 ALRB No. 63

312.01 Reckless driving of a car by an employee close to the actual polling area, although disruptive, was not shown to have affected the results of the election.
RON NUNN FARMS, 4 ALRB No. 31

312.01 Under M. V. Pista and Co. (1976) 2 ALRB No. 8, family or other group members who work during the appropriate period, but who do not appear on the employer's payroll are eligible to vote, despite the existence of an employer rule against more than one person working under one name.
TENNECO WEST, INC., 3 ALRB No. 92

312.01 Dissent: M. V. Pista and Co. (1976) 2 ALRB No. 8, would only apply to those situations where the employer had actual or constructive knowledge that more than one person was working under one name) and failed to take action. If the employer could show, that he had a strict policy against group working arrangements and made all reasonable efforts to enforce such a policy, then the challenged ballots should be sustained.
TENNECO WEST, INC., 3 ALRB No. 92

312.01 Board found no employment relationship where company other than Employer named in Petition operated as independent contract using its own leased trucks and equipment whereon workers packed lettuce and transported it to coolers and performed same services for Employer and other growers. Individuals found not to be Employees of Employer and not eligible to vote. Board declined to decide whether they were agricultural Employees.
SAHARA PACKING COMPANY, 3 ALRB No. 39

312.01 The Board overruled challenges to the votes of employees

who were employed by a labor contractor performing work for Tex-Cal during the eligibility period and to employees not shown to be supervisors.
TEX-CAL LAND MANAGEMENT, INC., 3 ALRB No. 11

312.01 Challenged ballot to be counted if it appears that employee who did not work during eligibility period would have worked but for illness or vacation. Factors to be considered include history of employment, continued payments into insurance funds, contributions to pension or other benefit programs, and any other relevant evidence which bears upon the question of whether or not there was a current job or position actually held by him or her during the relevant payroll period.
VALDORA PRODUCE CO., 3 ALRB No. 8

312.01 Employees who are paid, or who are entitled to be paid for work during the pre-petition payroll period are eligible to vote even though their names may not appear on the payroll list.
VALDORA PRODUCE CO., 3 ALRB No. 8

312.01 Employment relationship found where one of 3 corporate partners of the general partnership hired labor contractor who harvested crops owned by and grown on land of the partnership. Workers of the labor contractor entitled to vote. Not determinative that the contractor workers had different hours, were paid on different basis, harvested a different type of tomato than direct Employees or that the contractor Employees were supervised by a Foreman of the contractor.
TMY FARMS, 2 ALRB No. 58

312.01 Here the evidence was contradictory, the Board reserve ruling on the challenge to the vote of an employee.
M.V. PISTA & CO., 2 ALRB No. 8

312.01 Employees appearing on payroll immediately preceding filing of election petition are the ones eligible to vote.
RULINE NURSERY CO. v. ALRB (1985) 169 Cal.App.3d 247

312.01 Worker who volunteers labor for employer as part of rehabilitation program is not an "employee" and therefore is not in the bargaining unit or eligible to vote.
SIMON HAKKER, 20 ALRB No. 6

312.01 Two individuals working for lessee on adjoining land leased from employer not disenfranchised by lack of notice of election because evidence showed they were not employees of the employer. Employer's occasional supervision insufficient to establish joint employer relationship and general oversight of operation by employer is insufficient to establish single employer theory where no evidence or centralized control of labor relations or common ownership.
GH& G ZYSLING DAIRY, 20 ALRB No. 3

312.01 Individual who leases acreage to employer and feeds cattle assigned there by employer, in exchange for $200 per month, is not an "employee" and therefore is not in the bargaining unit or eligible to vote.
SIMON HAKKER, 20 ALRB No. 6

312.01 Neighboring farmer who disks fields for employer in exchange for use of equipment on own farm is not an "employee" and therefore is not in the bargaining unit or eligible to vote.
SIMON HAKKER, 20 ALRB No. 6

312.01 Whether voters have satisfied requirement to provide sufficient identification is within Board agent's discretion. Where voters have provided no identification at all, the investigation must provide sufficient evidence to satisfy the concerns of the Board agent and Regional Director as to the voters' identity. Where neither voters nor parties respond to written requests to provide evidence to satisfy these concerns, Board will sustain challenges for failure to present identification.
OCEANVIEW PRODUCE COMPANY, 20 ALRB No. 10

312.01 Individuals who have separately organized businesses and provide specialized services on an as needed basis, and who are not included on required payroll records of the employer are not agricultural employees within the meaning of section 1140.4, subdivision (b).
SIMON HAKKER, 20 ALRB No. 6

312.01 There is no requirement that those who support the union or vote for the union in an election be members of the union in any capacity or for any length of time.
PETE VANDERHAM DAIRY, INC., 28 ALRB No. 1

312.01 The Board rejected the IHE's conclusion that certain workers lacked a sufficient connection with the employer to take on the status of employees, and emphasized that if workers were agricultural employees of the employer for any time during the eligibility period, this was sufficient to make the workers eligible to vote in a representation election.
ARIE DE JONG dba MILKY WAY DAIRY, 29 ALRB No. 4

312.01 Worker who trimmed cows' hooves at a dairy did so as an employee of his father, an independent contractor, and not as an employee of the dairy; therefore, the worker was ineligible to vote in a representation election at the dairy.
ARIE DE JONG dba MILKY WAY DAIRY, 29 ALRB No. 4

312.01 Section 20355(c) of the Board’s regulations requires that voters present identification deemed adequate by the Board agent and lists five examples of adequate identification documents. Where challenged ballot report indicated that the voters contacted after the election

presented one or more of the specified forms of identification documentation and that the documentation provided by the listed voters was sufficient to satisfy the Board agents as to the voters' identity, there was no need to specify on an individual basis what form or forms of identification each voter presented. Absent a claim that one or more of the types of documents listed in the report was inherently deficient, listing the documents submitted by each voter would add no further factual basis for challenging the Regional Director's conclusions.
GIUMARRA VINEYARDS CORPORATION AND GIUMARRA FARMS INC., 31 ALRB No. 5

312.01 Independent contractor status established even though handyman doing non-agricultural work during eligibility period had no contractors license. Government-issued license not required to establish independent contractor status where other independent contractor indicia are present.
GH & G ZYSLING DAIRY, 32 ALRB No. 2

312.01 Payment records showing payment of gross amounts without indication of tax withholding not of significant probative value in determining whether challenged voters were independent contractors.
GH & G ZYSLING DAIRY, 32 ALRB No. 2

312.01 Declarations stating that employees "work under the direction of" or "receive instructions from" the owner are not inconsistent with independent contractor status and, thus, do not contradict the conclusions in a challenged ballot report that the employees are ineligible to vote.
ARTESIA DAIRY, 32 ALRB No. 3

312.01 The Board has consistently held that the Agricultural Labor Relation Act's prescription for wall to wall bargaining units (absent operations in non-contiguous geographical areas) precludes the consideration of community of interest criteria.
ARTESIA DAIRY, 33 ALRB No. 3

312.01 The ALRB, when faced with the situation where an employee spends only a portion of their work time for a particular employer engaged in agriculture, consistently has applied the substantiality test found in "mixed work" cases. Where the employer is a sole proprietorship, there is no legal distinction between the employer as business owner and as an individual; therefore, employees who worked part-time at dairy and part-time as domestic workers may be considered to be working for the same employer.
ARTESIA DAIRY, 33 ALRB No. 3

312.01 Employee who works 25-50% of her time at dairy and the remainder as domestic worker for sole proprietor meets the "substantiality" test and is an agricultural employee

eligible to vote.
ARTESIA DAIRY, 33 ALRB No. 3

312.01 Employee who works less than 16% of her time at dairy and the remainder as domestic worker for sole proprietor does not meet the "substantiality" test and is not an agricultural employee eligible to vote.
ARTESIA DAIRY, 33 ALRB No. 3

312.01 The principal factors to be considered in determining if someone is an employee or an independent contractor are: 1) whether the worker performing services is engaged in a distinct occupation or business, 2) the worker's occupation, with a focus on whether the work is usually done under the direction of the principal or by the specialist without supervision, 3) the skill required in the particular occupation, 4) whether the principal or the worker provides the necessary tools and/or place of work, 5) the length of time necessary for the performance of the services, 6) the method of payment, including whether payment is based on time or on the job as a whole, 7) whether the work is part of the regular business of the principal, and 8) whether the parties believe they are creating an employer-employee relationship. Also included in the analysis must be factors such as 1) the remedial purpose of the legislation, 2) whether the alleged employees are within the intended reach of the legislation, and 3) the bargaining strengths and weaknesses of each party.
HENRY A. GARCIA DAIRY, 33 ALRB No. 4

312.01 To be covered under the Agricultural Labor Relations Act (ALRA; Labor Code sec. 1140, et seq.), a worker must be engaged in "agriculture" as defined in the statute and be an "employee" rather than an independent contractor. The exception is that under section 1140.4, subdivision (c), workers provided by a labor contractor are deemed to be the employees of the farmer engaging the labor contractor.
HENRY A. GARCIA DAIRY, 33 ALRB No. 4

312.01 Individuals providing services for agricultural employer who have independently organized businesses through which they perform the same service for numerous customers, provide their own equipment, are hired to do a distinct job requiring significant skill and apparently do so without supervision, set their own payment rates, bill their customers through invoices, pay their own taxes, hold themselves out as separate businesses, and are treated by the employer for tax purposes as independent contractors, are independent contractors ineligible to vote. These types of individuals are not within the intended reach of the ALRA. They each have sufficient bargaining strength, by virtue of their independent business and broad customer base, to have an "arms length" relationship with the Employer, without the provision of collective bargaining rights.

HENRY A. GARCIA DAIRY, 33 ALRB No. 4

312.01 While the fact that an individual is not on the regular payroll and/or is paid in cash creates no presumption of ineligibility, irregular payment practices may be probative evidence of independent contractor status when viewed in the context of other evidence and the circumstances as a whole.
HENRY A. GARCIA DAIRY, 33 ALRB No. 4

312.01 The Board has consistently rejected use of the NLRB's reasonable expectation of employment" standard in determining the existence of an employer-employee relationship. Rather, the inquiry has been focused on whether there was an employment relationship during the pre-petition payroll period, as employment during that period is the only statutory requirement for voter eligibility.
NURSERYMEN'S EXCHANGE, INC., 36 ALRB No. 6

312.01 Requirements for voter eligibility were met when employees who received 60-day notice of layoff pursuant to the federal Worker Adjustment and Retraining Notification Act ("WARN" Act, 29 U.S.C. §§ 2101 et seq.) but remained on employer's payroll on paid administrative leave were considered eligible to vote in representation election.
NURSERYMEN'S EXCHANGE, INC., 36 ALRB No. 6

312.01 Federal Worker Adjustment and Retraining Notification Act ("WARN" Act, 29 U.S.C. §§ 2101 et seq.) does not require provision of 60 days' notice of an impending layoff while simultaneously disenfranchising employees under the ALRA who remain employed during that notice period.
NURSERYMEN'S EXCHANGE, INC., 36 ALRB No. 6

312.01 The Board need not inquire further into the circumstances of the employer-employee relationship, nor has it, in cases where employees *were* on the payroll and on some form of paid leave during the applicable payroll period.
NURSERYMEN'S EXCHANGE, INC., 36 ALRB No. 6

312.01 The ALRB Election Manual is not legal authority for determining voter eligibility under the ALRA and should not be cited as such. Rather, the Manual is simply a guide designed to be consistent with existing statutory, regulatory, and case law authorities.
NURSERYMEN'S EXCHANGE, INC., 36 ALRB No. 6

312.01 The fact that a challenged voter was not on the regular payroll and is paid in cash creates no presumption of ineligibility. (*Henry Garcia Dairy* (2007) 33 ALRB No. 4, pp. 10-11; *Artesia Dairy* (2006) 32 ALRB No. 2, p. 5.) It is well-settled that agricultural workers who are not on the regular payroll can still be eligible to vote

if they worked during the eligibility period. (*Valdora Produce Co.* (1977) 3 ALRB No. 8.)
SOUTH LAKES DAIRY FARMS, 36 ALRB No. 5

312.02 Names-And-Addresses (Excelsior) Rule; Eligibility Lists; Stipulations

312.02 A person is eligible to vote regardless of whether his or her name appears on the pre-petition payroll if he or she can demonstrate to the RD that he or she worked for compensation during that period through declaratory or documentary evidence corroborating the declaration of the person claiming eligibility.
ACE TOMATO COMPANY, INC., 16 ALRB No. 9

312.02 A party opposing a claim of eligibility by a person whose name does not appear on the pertinent payroll can rebut the claim by showing that the person did not work for the employer, or that the employer prohibited more than one person working under one payroll name.
SAN JOAQUIN TOMATO GROWERS, INC./LCL FARMS, INC., 16 ALRB No. 10

312.02 A party opposing a claim of eligibility by a person whose name does not appear on the pertinent payroll can rebut the claim by showing that the person did not work for the employer, or that the employer prohibited more than one person working under one payroll name.
ACE TOMATO CO., INC., 16 ALRB No. 9

312.02 Although the NLRB decision in Times Square Corp. (1948) 79 NLRB 361 parallels the provisions of section 1149, the case does not require automatic application, even where same facts and circumstances constitute the basis for an unfair labor practice as well as a representation issue, since conduct sufficient to warrant the setting aside of an election need not rise to the level of an unfair labor practice and not all unfair labor practices necessarily constitute conduct which would reasonably tend to interfere with employee free choice. Board further limits Times Square to situations where unfair labor practice charges have been filed.
MANN PACKING CO., INC., 15 ALRB No. 11

312.02 In order to prevent recurrence of problem of deficient eligibility list being submitted, Board ordered that upon a Notice of Intention to Take Access being filed within 12 months of Board's Order, the employer will furnish the Regional Director with an accurate list of names and current street addresses of its employees, which the Regional Director will then provide to both the union filing the Notice and the incumbent union.
SILVA HARVESTING, INC., 11 ALRB No. 12

312.02 Board applies an outcome determinative test in determining whether to set aside election on the basis of a defective eligibility list. Board set aside election

where employer's eligibility list contained accurate street addresses for only 53 of the 198 named employees, the election results were close, and the defective list caused actual prejudice to the incumbent union so that the list tended to affect the results of the election.
SILVA HARVESTING, INC., 11 ALRB No. 12

312.02 Where eligibility list had 67 post office boxes, 4 non-local addresses, and 10 incorrect addresses out of 307 eligible voters, and employer failed to use due diligence in updating the list or supplying the union with other information in its possession, the utility of the list was substantially impaired and the election was set aside.
BETTERAVIA FARMS, 9 ALRB No. 46

312.02 IHE properly allowed evidence of incorrect addresses on employee list, despite reference in objection to only lack of addresses, since evidence relevant to overall issue of utility of list.
BETTERAVIA FARMS, 9 ALRB No. 46

312.02 Employee eligibility lists are required to insure the orderly conduct of elections by providing a means for eligible voters to be easily identified and by facilitating challenges to ballots on the basis of ineligibility.
MURANAKA FARMS, 9 ALRB No. 20

312.02 An employer may not rely on its own failure to provide eligibility list as grounds for setting aside an election. [Reg. 203b 5(c)(5)]
MURANAKA FARMS, 9 ALRB No. 20

312.02 List that s approximately 86 percent accurate is sufficient and does not present grounds to set aside election. No evidence presented regarding employer's diligence in obtaining current employee addresses, nor that union's ability to communicate with voters was substantially impaired by inadequacies of list.
H. H. MAULHARDT PACKING COMPANY, 6 ALRB No. 42

312.02 Employer's pre-election Employee list inadequate so election set aside.
SALINAS LETTUCE FARMERS COOPERATIVE, 5 ALRB No. 21

312.02 Presumptions in Board Regulation 20310(d) (2) re voter eligibility not penalty but serve to insure Employees' voting rights not delayed by Employer failure to keep and provide adequate information to determine voter eligibility.
KITAYAMA BROS. NURSERY, 4 ALRB No. 85

312.02 Regional Director did not abuse discretion by invoking presumption in Board Regulation 20310(d)(2) that unchallenged Employees are eligible to vote where Employer had inadequate payroll records and did not

submit complete data in timely manner to verify Employee status and voter eligibility.
HARRY SINGH & SONS, 4 ALRB No. 63

312.02 Respondent's failure to provide an accurate list of the names and of its employees, including the labor contractor's employees, is a violation of 1153(a).
TENNECO WEST, INC., 3 ALRB No. 92

312.02 Whether a worker is eligible to vote as an economic striker shall be determined as of the time of the election.
D'ARRIGO BROS., 3 ALRB No. 37

312.02 Even where the employer filed a written response to election petition, where employee list provided was inaccurate and incomplete, presumption of Tit. 8, Calif. Admin. Code, section 20310(e) were properly invoked.
CARDINAL DISTRIBUTING CO., 3 ALRB No. 23

312.02 Employer is required by Labor Code section 1157.3 and 1174(c) and Tit. 8, Calif. Admin. Code, section 20310(a)(2) to maintain accurate list of all employees, including those employed through labor contractor.
CARDINAL DISTRIBUTING CO., 3 ALRB No. 23

312.02 Failure of employer to provide addresses and board agents failure to provide list until day before election, even when union had some addresses and employer pleaded ignorance of duty, warranted overturning election.
VALLEY FARMS, 2 ALRB No. 42

312.02 It wasn't gross negligence or bad faith to omit nine names through clerical error and erroneous belief of non-inclusion in unit. There was no gross negligence or bad faith where: employer included on list employees who were terminated prior to the applicable payroll period; included alleged supervisors whose capacity was unclear; included alleged guards whose capacity was unclear and exclusion of other employees under belief that they were not in the applicable unit. Employer was not guilty of bad faith or gross negligence where list contained 13 inaccuracies as to addresses since address verifications were distributed to employees two months before list issued.
YODER BROTHERS, 2 ALRB No. 4

312.02 The obligation to provide a list of employees under Regulation section 20310(d)(2) is in no way affected by the fact that a particular employer may utilize a labor contractor.
YODER BROTHERS, 2 ALRB No. 4

312.02 Failure of employer to exercise diligence in maintaining accurate and current list for use by Board when requested as mandated by 1157.3 may be grounds for setting aside election. The standard is gross negligence or bad faith.

YODER BROTHERS, 2 ALRB No. 4

312.02 Regional Director can invoke presumption that the petition is timely filed (peak) or that the petition is adequately supported when he believes employee list is incomplete, inflated or inaccurate. Presumptions should be invoked only where failure to provide information frustrates a determination of fact related to the presumption.
YODER BROTHERS, 2 ALRB No. 4

312.02 The burden of explaining errors in list is on employer. Where the employer has failed to exercise due diligence in obtaining and providing the required information, and the errors are such as to substantially impair the utility of the list in its informational function, the employer's conduct can cause the election to be set aside. Where the list is deficient due to gross negligence or bad faith of employer, and election may be set aside upon a lesser showing of prejudice to the union.
YODER BROTHERS, 2 ALRB No. 4

312.02 Substantial clerical errors by the Board in supplying list may be grounds for setting aside election but the omission of two names is not sufficient.
YODER BROTHERS, 2 ALRB No. 4

312.02 In evaluating an employer's compliance with the requirement to provide an accurate Excelsior list, the ALRB has been somewhat more flexible than the NLRB, in recognition of the special problems agricultural employers face in obtaining accurate, up to date street addresses. The ALRB applies an outcome determinative test and will not presume that a failure to provide and will not presume that a failure to provide a substantially complete list would have a prejudicial effect upon the election.
LEMINOR, INC., et al., 22 ALRB No. 3

312.02 Essential inquiry is whether faulty Excelsior list would tend to affect the outcome of the election. Where the number of inadequate addresses dwarfs the shift in the number of votes necessary to change the outcome, the election is normally set aside. However, where the number of inadequacies merely exceeds the number of votes necessary to change the outcome by an insubstantial margin, that alone will not result in the election being set aside. Among the other factors to be considered are the actual use of the list by the Union, the efforts of the Employer to compile an accurate list, and the efforts of Board agents to facilitate the process of providing the list to the Union.
LEMINOR, INC., et al., 22 ALRB No. 3

312.02 Election results upheld where Excelsior list contained 19 inadequate addresses and the number of votes necessary to

change the outcome was 13, where there were no additional circumstances beyond the list's facial deficiencies that would support the conclusion that the outcome of the election would have been effected by the defective list.
LEMINOR, INC., et al., 22 ALRB No. 3

312.02 The eligibility list requirement adopted by the NLRB in *Excelsior Underwear* and by the ALRB in *Yoder Bros.*, serves several functions, one of which is enabling communication between the union and employees eligible to vote. It is the communication function between the employees and the union that Regulations 20310 and 20390 seek to protect as a means of enforcing employees' Section 1152 rights of self-organization. *Laflin & Laflin* (1978) 4 ALRB No. 28 at p. 4 ("[I]mplied in these [Section 1152] rights is the opportunity of workers to communicate with and receive communication from labor organizers about self-organization.").
GALLO VINEYARDS, INC., 35 ALRB No. 6

312.02 Where change of 22 votes necessary to affect outcome, election set aside due to 75 undisputed facially incorrect addresses on the eligibility list, coupled with the evidence that the union relied heavily on the deficient eligibility list and lack of convincing evidence that the deficiencies were mitigated.
GALLO VINEYARDS, INC., 35 ALRB No. 6

312.02 In light of outcome determinative standard applied to defective address list cases, the Board will not refuse to entertain evidence of the actual effect of the faulty list and showing such effect is the burden of the objecting party. Therefore, regardless of whether the number of inadequate addresses "dwarfs" or merely exceeds the shift in the number of votes needed to change the outcome, some inquiry into the effect of the list's deficiencies on the utility of the list is necessary before concluding that there are sufficient grounds to set aside an election. A high number of facially inadequate addresses relative to the number of votes necessary to change the outcome will normally weigh significantly in favor of inferring an outcome determinative effect on the election, but is not in and of itself conclusive.
GALLO VINEYARDS, INC., 35 ALRB No. 6

312.02 While lack of due diligence may be relevant in determining whether an address list is deficient, under an outcome determinative standard it is of no import whether the deficient list was the result of gross negligence or bad faith. Therefore, it does not provide any basis for setting aside an election where the deficiencies in the list and the consequent effect on the union's ability to communicate with employees are not themselves sufficient to warrant setting it aside.
GALLO VINEYARDS, INC., 35 ALRB No. 6

312.03 Date As Of Which Eligibility Is Determined

312.03 While the NLRB conditions voter eligibility on employment during both the eligibility period and the date of the election, the ALRA requires only that a worker be employed at any time during the eligibility period. A workers who is discharged during the eligibility period is eligible to vote.
THE CAREAU GROUP, DBA EGG CITY, 14 ALRB No. 2

312.03 Where several alleged economic strikers could not show that they were on the payroll during the pay period preceding July 29, 1973, the Board held that they were not eligible to vote in the election.
MID-STATE HORTICULTURE COMPANY, 4 ALRB No. 101

312.03 Where several alleged economic strikers could not show that they were on the payroll during the pay period preceding July 29, 1973, the Board held that they were not eligible to vote in the election.
MID-STATE HORTICULTURE COMPANY, 4 ALRB No. 101

312.03 Where several employees applied for work with, or placed their names on a future employment list with the employer prior to are presentation election, they lost their status as economic strikers and were not eligible to vote in the election.
MID-STATE HORTICULTURE COMPANY, 4 ALRB No. 101

312.03 Where an employee leaves the picket line to accept employment with the struck employer prior to a representation election, unless the employee is employed during the eligibility period she/he is ineligible to vote in the election.
MID-STATE HORTICULTURE COMPANY, 4 ALRB No. 101

312.03 Where an employer has a weekly payroll period for one group of employees, and pays other employees on a daily basis, the weekly payroll period is the appropriate eligibility period for both groups of employees.
JACK BROTHERS & MCBURNEY, INC., 4 ALRB No. 97

312.03 Where employer who engaged services of labor contractor adopted latter's payroll scheme in addition to its own, Board sanctioned use of two different eligibility periods: employer's normal payroll period for its permanent employees, and different schedule for seasonal harvest workers supplied to it by labor contractor.
SIGNAL PRODUCE COMPANY, BROCK RESEARCH, INC.,
4 ALRB No. 3

312.03 The eligibility period is the employer's payroll period immediately preceding the filing of the representation petition. Thus, four employees who had last worked eleven days prior to the filing were eligible to vote as the last pay period ran from eleven to five days prior to filing.

UNITED CELERY GROWERS, INC., 2 ALRB No. 46

312.03 Harvesting crew which harvests crop grown by lessee on adjoining land leased from employer, even if unit employees, not disenfranchised where none of varying dates provided by employer as to when the crew worked fell within the pre-petition payroll period.
GH & G ZYSLING DAIRY, 20 ALRB No. 3

312.04 Supervisors And Other Management Personnel

312.04 Challenge to ballot is overruled because of a failure of proof that the voter possessed the standard indicia of supervisory status.
AGRI-SUN NURSERY, 13 ALRB No. 19

312.04 The ability to effectively recommend discipline of co-workers coupled with timekeeping obligations, a high rate of pay and other secondary factors supports a conclusion that an employee is a statutory supervisor.
MAYFAIR PACKING COMPANY, 9 ALRB No. 66

312.04 Transmittal of orders to co-workers, without more, is insufficient to show an employee to be a statutory supervisor.
MAYFAIR PACKING COMPANY, 9 ALRB No. 66

312.04 Worker was a member of the bargaining unit at all times during the year except when he worked as a foreman for a labor contractor who was engaged by the employer during the pruning season; worker performed bargaining unit work and was a member of the bargaining unit during the voter eligibility period. Under these circumstances, the seasonal supervisor rule in Great Western Sugar Company (1962) 137 NLRB 551 [50 LRRM 1186] applied and worker was an agricultural employee and eligible to vote in representation election.
J. OBERTI, INC., et al., 9 ALRB No. 7

312.04 Where no exceptions taken to Regional Director's recommendations concerning supervisory status of three votes, Regional Director's challenge ballot recommendations approved by Board.
TRANSPLANT NURSERY, INC., 5 ALRB No. 49

312.04 Responsibility to direct the work of other employees is one of the statutory indicia of supervisory status, only if the exercise of such authority is not merely of a routine or clerical nature, but requires the use of independent judgment.
KARAHADIAN & SONS, INC., 5 ALRB No. 19

312.04 An individual's belief that she/he is a supervisor is evidence of supervisory status but does not, per se, establish it.
KARAHADIAN & SONS, INC., 5 ALRB No. 19

312.04 Where an employee performs supervisor work at times and non-supervisory work at other times, his/her eligibility to vote does not depend solely on status during eligibility period, but will be evaluated in context of employee's other work as well.
KARAHADIAN & SONS, INC., 5 ALRB No. 19

312.04 The Board sustained a challenge to the vote of an employee where the employee was proven to be a supervisor on facts showing that he directed a crew and made decisions which were not merely routine or clinical in nature.
MID-STATE HORTICULTURE COMPANY, 4 ALRB No. 101

312.04 Where employer did not except to finding that vote was supervisor and offered no evidence to contrary, there is no need for evidentiary hearing, and challenge to ballot is sustained.
JACK T. BAILLIE COMPANY, INC., 4 ALRB No. 47

312.04 The Board overruled challenges to the votes of employees who were employed by a labor contractor performing work for Tex-Cal during the eligibility period and to employees not shown to be supervisors.
TEX-CAL LAND MANAGEMENT, INC., 3 ALRB No. 11

312.04 Even though in the broad sense supervisors may be "agricultural employees," the ALRA implicitly excludes supervisors from its coverage, and the Board's regulations (8 Cal. Admin. Code sec. 20350(b)(1) [now sec. 20352(b)(1)]) expressly prohibits supervisors from voting in elections.
PROCTOROFF POULTRY FARMS, 2 ALRB No. 56

312.04 Employees whose functions are closely aligned with management, such as supervisors, guards, managerial and confidential employees are implicitly excluded from the definition of agricultural employees. Office workers who participate directly in management decisions or assist and act in a confidential capacity to persons responsible for an employer's labor-management policy can be managerial or confidential employees.
HEMET WHOLESALE, 2 ALRB No. 24

312.04 Here the evidence failed to support union claims that certain employees were either supervisors or had been hired primarily to vote in the election the Board overruled the challenges to their votes and ordered their ballots counted.
M. V. PISTA & CO., 2 ALRB No. 8

312.04 Employee who does not hire or fire other employees, never instructs other employees in their work, but on occasion passed on owner's instructions as to where employees should take lunch break found not to be supervisor within section 1140.4(j).
SAM BARBIC, 1 ALRB No. 25

312.04 Dairy employee was found to be a statutory supervisor because employee used independent judgment in performing duties even where duties could be characterized as repetitive. The employee directed daily meetings with his crew and assigned work for the day, made decisions about when to move and treat sick cows, and made decisions about when crew members were to leave for the day.
ARIE DE JONG dba MILKY WAY DAIRY, 29 ALRB No. 4

312.04 Secondary indicia of supervisory status, such as differences in wages, benefits and titles, supported classifying an employee as a supervisor where the employee's rate of pay was $2.00 to $5.00 per hour more than the rest of the crew and where the employee was the only individual in the crew with the title "herdsman."
ARIE DE JONG dba MILKY WAY DAIRY, 29 ALRB No. 4

312.04 Employee who had ceased being a supervisor two years before election did not resume being a supervisor when the day before the election when other employees were purportedly told he was "in charge" of the milking barn when the only authority conferred was to ensure that not all the milkers went to vote at the same time.
GH & G ZYSLING DAIRY, 32 ALRB No. 2

312.04 Individual who fills in one day a week as supervisor when regular supervisor has day off, and whose time as acting supervisor constitutes 16.7% of his work time, spends "regular and substantial" time as a supervisor, is a supervisor ineligible to vote in a representation election. The percentage of time the individual holds the authority, not how much time is spent actively asserting the authority, is the relevant consideration.
ARTESIA DAIRY, 33 ALRB No. 3

312.04 Individual who responsibly directs work and in one instance effectively recommended transfer of employee, coupled with ample secondary indicia of supervisorial status, is a supervisor ineligible to vote in representation election.
ARTESIA DAIRY, 33 ALRB No. 3

312.04 The Board makes the determination of whether individuals are supervisors as defined in Labor Code section 1140.4 (j) on the basis of the actual job duties of each employee in question.
KAWAHARA NURSERIES, INC., 36 ALRB No. 3

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KAWAHARA NURSERIES, INC., 36 ALRB No. 3

312.04 The Board makes the determination of whether individuals are supervisors as defined in Labor Code section 1140.4 (j) on the basis of the actual job duties of each employee in question.
SOUTH LAKES DAIRY FARMS, 36 ALRB No. 5

312.04 The notation "supervisor" on a challenged voter's pay stub is telling, however, neither job title nor classification alone is sufficient to warrant finding an individual to be a supervisor. The Board makes the determination of supervisory status on the basis of the actual job duties of each employee in question. (*Salinas Valley Nurseries* (1989) 15 ALRB No. 4.)
SOUTH LAKES DAIRY FARMS, 36 ALRB No. 5

312.04 The Board makes the determination whether individuals are supervisors as defined in Labor Code section 1140.4 (j) on the basis of the actual job duties of each employee in question.
KAWAHARA NURSERIES, INC., 37 ALRB No. 4

312.04 The Board overruled the challenge to the ballot of a lead worker in nursery's maintenance department who translated for the department supervisor and directed other crew members based on overall assignments given by supervisor because he did not use independent judgment as required by the statutory definition of "supervisor."
KAWAHARA NURSERIES, INC., 37 ALRB No. 4

312.04 The Board overruled the challenge to the ballot of a lead worker at a nursery who directed other workers in her group how to pull plants from greenhouses to fill orders. Although the record supported the conclusion that she responsibly directed work, her duties involved overseeing routine, recurrent, predictable tasks that did not involve the use of independent judgment as required by the statutory definition of "supervisor."
KAWAHARA NURSERIES, INC., 37 ALRB No. 4

312.04 The Board overruled the challenge to the ballot of a "supervisor's assistant" at a nursery who passed on daily assignments and driving routes to company truck drivers from the supervisor of the department, and who had limited authority to direct truck drivers to perform discrete tasks, because he did not use independent judgment as required by the statutory definition of "supervisor."
KAWAHARA NURSERIES, INC., 37 ALRB No. 4

312.05 Confidential Employees, Relatives, Guards

312.05 Title 8, California Code of Regulations, section 20352(b)(5) renders ineligible to vote the children of an employing company's sole shareholders.

BUNDEN NURSERY, INC., 14 ALRB No. 18

312.05 The Board found that a Regional Director had erred in upholding challenges to the ballots cast by the daughter-in-law and grandchildren of an employing company's sole shareholders. Neither the daughter-in-law nor the grandchildren of the sole shareholders are within the plainly defined ambit of Title 8, California Code of Regulations, section 20352(b)(5).
BUNDEN NURSERY, INC., 14 ALRB No. 18

312.05 Since the Agricultural Labor Relations Act (ALRA), in sharp contrast to the relevant provisions of the National Labor Relations Act, contains no family-based exclusion from its definition of "agricultural employee", and aside from a narrow geographic-based exception found in section 1156.2 requires every bargaining unit to include "all the agricultural employees of the employer," employer family members who fall within the ALRA's definition of "agricultural employee" are presumptively entitled to vote in unit elections.
BUNDEN NURSERY, INC., 14 ALRB No. 18

312.05 The spouse of an individual who serves as an employing company's vice-president, secretary-treasurer, and general manager is not ineligible to vote under the provisions of Title 8, California Code of Regulations, section 20352(b)(5) where the corporate officer, though the son of the company's sole shareholders, is not himself a shareholder in the employing company.
BUNDEN NURSERY, INC., 14 ALRB No. 18

312.05 Since the Agricultural Labor Relations Act (ALRA) itself contains no family-based exclusions from voting eligibility, and affords the Board only limited discretion in determining appropriate bargaining units, the Board is unwilling to expand the family-based exclusions from voting eligibility beyond those already set forth in Title 8, California Code of Regulations, section 20352(b)(5).
BUNDEN NURSERY, INC., 14 ALRB No. 18

312.05 Although Title 8, California Code of Regulations, section 20352(b)(5) removes voting eligibility from the closest relatives of the employer, viz., a parent, child, or spouse, there is no other basis for invoking community of interest considerations in establishing voting eligibility under the Agricultural Labor Relations Act.
BUNDEN NURSERY, INC., 14 ALRB No. 18

312.05 Board upheld Regional Director's recommendation to overrule ballot challenges of voters who were relatives of a supervisor where there was no evidence showing that the challenged voters possessed "a special status closely related to management."
KERN VALLEY FARMS, 3 ALRB No. 4

312.05 Unless convinced otherwise in the future, the Board will follow the NLRB guidelines on confidential employees: The only employees excluded from the unit are those acting in a confidential capacity to persons involved in the formation, determination, and effectuation of the employer's labor relations policies.
PROCTOROFF POULTRY FARMS, 2 ALRB No. 56

312.05 Employees whose functions are closely aligned with management, such as supervisors, guards, managerial and confidential employees are implicitly excluded from the definition of agricultural employees. Office workers who participate directly in management decisions or assist and act in a confidential capacity to persons responsible for an employer's labor-management policy can be managerial or confidential employees.
HEMET WHOLESALE, 2 ALRB No. 24

312.05 Where seven employees whose names did not appear on the eligibility list actually worked during the period but received their wages through another family member the Board overruled the challenges to their ballots and ordered the ballots counted.
M. V. PISTA & CO., 2 ALRB No. 8

312.05 Confidential employees are only those who assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations. RD's conclusions that employees at issue do not participate with any management person in the resolution of employee grievances or complaints and do not perform work that involves labor relations matters are consistent with this test.
COCOPAH NURSERIES, INC., 27 ALRB No. 3

312.05 Regular access to confidential files is insufficient to establish confidential status. However, an employee who has regular access to documents regarding management's positions in collective bargaining and labor relations matters before they are revealed to the union or affected employees may be considered confidential. (*E & L Transport Company* (1998) 327 NLRB 408; *Associated Day Care Services* (1984) 269 NLRB 178.)
COCOPAH NURSERIES, INC., 27 ALRB No. 3

312.05 Children of the employer, even if long-term employees, are ineligible to vote pursuant to the exclusion contained in subdivision (b)(5) of Regulation 20352.
PETE VANDERHAM DAIRY, INC., 28 ALRB No. 1

312.05 Nephews who were foster children living with employer at time of election were the functional equivalent of children and, therefore, excluded from eligibility under Regulation 20352.
ARTESIA DAIRY, 33 ALRB No. 3

312.05 The Board sustained the challenge to the ballot of the

son of a trustee of a family trust which is the majority stockholder in the Dairy and found the son was ineligible to vote under Board regulation section 20352(b)(5). The Board reasoned that under the circumstances of this case, the trustee/father exerted the same control over the company as he would if he were a substantial shareholder acting in his individual capacity, therefore the section 20352(b)(5) exclusion was applicable.
LASSEN DAIRY, INC. dba MERITAGE DAIRY, 34 ALRB No. 1

312.05 5th DCA overrules *Artesia Dairy* 33 ALRB No. 3 in part by holding that voter eligibility exclusion of "child" in Regulation 20352(b)(5) does not include nephews who were foster children and fully integrated into the family during the time in question. Without explanation, court finds that "child" is a plainly-defined category.
ARTESIA DAIRY v. ALRB (2008) 168 Cal.App.4th 598

312.06 Non-Agricultural Employees (Packing Shed, Cooling Facility, Mechanic, Etc.)

312.06 Doctrine of preemption precludes ALRB from determining that workers are "agricultural employees" within the meaning of Labor Code section 1140.4(b) where the NLRB has made a prior determination that the same workers are commercial and hence within the national board's jurisdiction.
THE CAREAU GROUP, DBA EGG CITY, 14 ALRB No. 2

312.06 Processing plant employees are commercial rather than agricultural where 28% of the eggs handled are purchased from other growers.
THE CAREAU GROUP, DBA EGG CITY, 14 ALRB No. 2

312.06 Wife of supervisor who cooked lunch in her home for husband, Employer and two other employees during eligibility period was not "agricultural employee . . . engaged in agriculture" under Labor Code section 1140.4(a) and (b) and therefore was not eligible to vote.
RON CHINN FARMS 12 ALRB No. 10

312.06 Employees of a packing operation which does not pack a significant percentage of produce for independent growers are engaged in agriculture and are eligible to vote in ALRB elections; in determining whether a significant percentage of the produce is packed for independent growers, the total circumstances of employment are relevant.
SEQUOIA ORANGE CO., 11 ALRB No. 21

312.06 Secretary was included in the unit where the bulk of her duties was incidental to the employer's farming operation and she was not involved in labor relations, except in a purely clerical capacity.
POINT SAL GROWERS AND PACKERS, 9 ALRB No. 57

312.06 Three secretaries not included in unit of agricultural

employees where their duties involved only the employer's commercial packing shed and other nonagricultural operations.
POINT SAL GROWERS AND PACKERS, 9 ALRB No. 57

312.06 Shop employees who spent a regular and substantial portion of their time on activities related to agriculture were included in the bargaining unit with all the agricultural employees of the employer.
SAM ANDREWS' SONS, 9 ALRB No. 24

312.06 Where employer's packing shed functions in manner incident to and in conjunction with employer's horticultural operations, all packing shed workers found to be agricultural employees under section 1140.4(b) and therefore eligible to vote.
TRANSPLANT NURSERY, INC., 5 ALRB No. 49

312.06 Work done in packing shed is clearly incident to and in conjunction with employer's nursery operation where employer provides no packing services for other growers, nor acts as broker for other growers. Employers only contact with plants produced by other growers involves purchases made to meet its own contract obligations.
TRANSPLANT NURSERY, INC., 5 ALRB No. 49

312.06 An agricultural employer's packing shed may be commercial enterprise beyond Board's jurisdiction if it packs agricultural commodities of other growers in addition to its own.
TRANSPLANT NURSERY, INC., 5 ALRB No. 49

312.06 In determining whether shed workers are agricultural employees, Board looks to precedents of NLRB courts, and U.S. Dept. of Labor.
TRANSPLANT NURSERY, INC., 5 ALRB No. 49

312.06 Where agricultural grower must purchase plants from another grower on ad hoc basis, solely to meet preexisting contract obligations because there is insufficient supply of plants from its own fields, no commercial packing service is provided and inherent agricultural nature of operation remains.
TRANSPLANT NURSERY, INC., 5 ALRB No. 49

312.06 The Board found the employer's landscaping division of a nursery to be a commercial operation since at least 35% of the horticultural goods used by the landscaping division were grown by nonemployer sources, and thus held that the landscaping employees outside of Board jurisdiction.
STRIBLING'S NURSERIES, INC., 4 ALRB No. 50

312.06 Dissent: Based on the totality of evidence and Labor Code section 1140.4(b), the landscaping division was not separately organized as an independent productive activity at the time of the election, but was an integral

element of the nursery's operations. Thus, the landscaping division employees are agricultural employees and therefore eligible voters.
STRIBLING'S NURSERIES, INC., 4 ALRB No. 50

312.06 Challenged ballots of mechanics and maintenance workers will be overruled where union presented no evidence that these employees were involved in a commercial operation.
ANDERSON FARMS CO., 3 ALRB No. 48

312.06 Challenged ballots of 25 truck drivers who have produce for a single grower will be overruled where union presented no evidence that they may be commercial drivers.
ANDERSON FARMS CO., 3 ALRB No. 48

312.06 Challenged ballots of clerical workers who perform routine clerical work will be overruled where union presented no evidence that they work for operations other than employer's agricultural concerns.
ANDERSON FARMS CO., 3 ALRB No. 48

312.06 Challenged ballots of tractor drivers will be overruled where union presented no evidence as to the managerial or confidential status of these employees.
ANDERSON FARMS CO., 3 ALRB No. 48

312.06 Where the issue of whether the truck drivers were agricultural or industrial employees was pending before the NLRB the Board deferred determination of their status until resolution by the NLRB or the filing of a future motion for unit clarification.
HAIDEN FARMS OF CALIFORNIA, INC., 2 ALRB No. 30

312.06 Where there was no evidence that an asparagus packing shed was a "commercial" shed the Board ruled that the shed employees had properly been included within the bargaining unit.
HAIDEN FARMS OF CALIFORNIA, INC., 2 ALRB No. 30

312.06 Mechanics in employer's off-farm repair shop held to be agricultural employees of employer.
CAL COASTAL FARMS, 2 ALRB No. 26

312.06 Election set aside where packing shed Employees excluded from unit of field workers where number of former could have affected election results.
R.C. WALTER & SONS, 2 ALRB No. 14

312.06 Employees who work solely in the farmer's road-side stand not agricultural employees since at least 60 percent of the commodities sold are not grown by employer and thus retail sales are not an incident of his farming operations.
MR. ARTICHOKE, INC., 2 ALRB No. 5

312.06 Truck drivers who hauled hay and feed for dairy cows were

agricultural employees within the meaning of ALRA section 1140.4(b) where the drivers' employer was a farmer, and the hauling of feed was incidental to the employer's actual farming operations.
ARIE DE JONG dba MILKY WAY DAIRY, 29 ALRB No. 4

312.06 Truck driver who hauled dairy machinery and equipment was an agricultural employee within the meaning of ALRA section 1140.4(b) where the driver's employer was a farmer, and the equipment was for use in the employer's actual farming operations.
ARIE DE JONG dba MILKY WAY DAIRY, 29 ALRB No. 4

312.06 Worker who performed specialty work calibrating engines of vehicles used on a dairy was performing work incidental to employer dairy's farming operation and thus was an agricultural employee within the meaning of ALRA section 1140.4(b).
ARIE DE JONG dba MILKY WAY DAIRY, 29 ALRB No. 4

312.06 A worker whose duties included cleaning restrooms, lunchrooms and offices used by dairy employees was an agricultural employee within the meaning of ALRA section 1140.4(b) because she spent a regular and substantial amount of time performing work incidental to employer dairy's farming operation.
ARIE DE JONG dba MILKY WAY DAIRY, 29 ALRB No. 4

312.06 A worker who performed simple computer assisted drafting work was engaged in secondary agriculture as her work was incident to or in conjunction with the employer's farming operations.
ARIE DE JONG dba MILKY WAY DAIRY, 29 ALRB No. 4

312.06 Voter found to be independent contractor ineligible to vote where she operated a cleaning business, had a business license, had other clients, paid her own taxes, and submitted invoices and was paid in cash.
GH & G ZYSLING DAIRY, 32 ALRB No. 2

312.06 Electrician who was a licensed electrical contractor and who had specialized skills and worked without supervision found to be independent contractor even though he accepted less formal arrangements more akin to employment when business was slow.
GH & G ZYSLING DAIRY, 32 ALRB No. 2

312.06 Independent contractor status established even though handyman doing non-agricultural work during eligibility period had no contractors license. Government-issued license not required to establish independent contractor status where other independent contractor indicia are present.
GH & G ZYSLING DAIRY, 32 ALRB No. 2

312.06 Handyman was engaged in construction work under Board test stated in *Dutch Brothers* 3 ALRB No. 80. The

handyman did only work involving building of fence. His projects did not involve Employer's agricultural workers and he and his helper were not integrated into the Employer's agricultural work force.
GH & G ZYSLING DAIRY, 32 ALRB No. 2

312.06 Voter who normally worked as a salesman for one of the employer's suppliers was an agricultural employee, not an independent contractor, when periodically hired to pull stumps and clear weeds.
GH & G ZYSLING DAIRY, 32 ALRB No. 2

312.06 Voter who vaccinated cows, at the direction of the employer and with employer provided syringes and at several dairies found to be a part-time employee of the dairies, not an independent contractor.
GH & G ZYSLING DAIRY, 32 ALRB No. 2

312.06 Voter who normally worked as a cattle broker and semen salesman, but periodically worked for dairy sorting and loading cattle for an hourly wage during the eligibility period, unrelated to his normal business, was an agricultural employee eligible to vote.
GH & G ZYSLING DAIRY, 32 ALRB No. 2

312.06 Unlicensed mechanic who had at an earlier time performed work on the employer's premises for her husband's independent mechanic business was an employee eligible to vote where her husband's business had ceased prior to the eligibility period and she worked for an hourly wage during the eligibility period for the employer, primarily using the employer's tools, and shortly thereafter was hired as a full-time employee.
GH & G ZYSLING DAIRY, 32 ALRB No. 2

312.06 Employee who solely performed decorative landscaping work on dairy property without any operational connection to the dairy was not engaged in secondary agriculture because the work was not incidental to or in conjunction with the farming operation.
ARTESIA DAIRY, 33 ALRB No. 3

312.06 Challenge to ballot of woman who cleaned at dairy on a weekly basis, as well as at the owner's house, set for hearing, as evidence gathered in investigation insufficient to establish if she is an independent contractor. While she provides the same service to 18 other clients and no taxes are withheld, her work is not specialized or particularly skilled, nor does she provide her own equipment or supplies. Helpful information would include the level of supervision she receives, the amount of discretion she has in determining when and how she performs the work, whether she sets her wage rate, etc.
HENRY A. GARCIA DAIRY, 33 ALRB No. 4

312.06 Employees of a nursery who work as "merchandisers" at various retail stores which are not owned by the

nursery, and who organize, display, water, maintain and care for their employer's plants before they are sold, may be engaged in secondary agriculture because their work can properly be viewed in connection with an incident to the nursery's general enterprise rather than in connection with a separate commercial enterprise.
KAWAHARA NURSERIES, INC., 36 ALRB No. 3

312.06 Employees of a nursery who work as "merchandisers" at various retail stores which are not owned by the nursery, and who regularly merchandise plants from sources other than their employer will fall outside of the Board's jurisdiction, and the challenges to the eligibility of these employees to vote in a representation election will be sustained.
KAWAHARA NURSERIES, INC., 36 ALRB No. 3

312.06 Employees of a nursery who work as "merchandisers" at various retail stores which are not owned by the nursery, and who organize, display, water, maintain and care for plants grown only by their employer may be engaged in secondary agriculture. However, if such employees are found to engage in both agricultural and non-agricultural work, it will need to be determined whether these individuals engage in agricultural work a substantial amount of the time to determine whether they fall within the ALRB's jurisdiction.
KAWAHARA NURSERIES, INC., 36 ALRB No. 3

312.06 Three employees of a nursery who work as "merchandisers" at various retail stores not owned by the nursery, organize, display, water, maintain and care for their employer's plants before they are sold, and do not regularly handle plants not owned by their employer, are engaged in secondary agriculture because their work can properly be viewed in connection with an incident to the nursery's general enterprise rather than in connection with a separate commercial enterprise.
KAWAHARA NURSERIES, INC., 37 ALRB No. 4

312.07 Strikers And Replacement Employees

312.07 In determining voter eligibility under section 1157, an "economic striker" includes any employee "whose work has ceased as a consequence of a current labor dispute, . . . (29 U.S.C. § 152(3)). This status may be rebutted by a showing that the employee had abandoned interest in the job.
SAN JOAQUIN TOMATO GROWERS, INC./LCL FARMS, INC.
16 ALRB No. 10

312.07 A person is eligible to vote as an economic striker regardless of whether his or her name appears on the pre-strike payroll if he or she can demonstrate to the Regional Director that he or she: (1) worked for compensation during that period, and (2) ceased work in connection with a current labor dispute resulting in a

strike against the current employer.
SAN JOAQUIN TOMATO GROWERS, INC./LCL FARMS, INC. 16 ALRB No. 10

312.07 A person is eligible to vote as an economic striker regardless of whether his or her name appears on the pre-strike payroll if he or she can demonstrate to the Regional Director that he or she: (1) worked for compensation during that period, and (2) ceased work in connection with a current labor dispute resulting in a strike against the current employer.
ACE TOMATO CO., INC., 16 ALRB No. 9

312.07 An economic striker may lose eligibility to vote upon a showing by the opposing party that the individual has resumed work for the struck employer, as well as by a showing that the employee has abandoned interest in the job.
SAN JOAQUIN TOMATO GROWERS, INC.,/LCL FARMS, INC.
16 ALRB No. 10

312.07 An economic striker may lose eligibility to vote upon a showing by the opposing party that the individual has resumed work for the struck employer, as well as by a showing that the employee has abandoned interest in the job.
ACE TOMATO CO., INC., 16 ALRB No. 9

312.07 An economic striker who returns to work for the struck employer after the eligibility period, but prior to the election, may lose economic striker status and eligibility in the absence of special circumstances.
SAN JOAQUIN TOMATO GROWERS, INC./LCL FARMS, INC.
16 ALRB No. 10

312.07 In determining voter eligibility under section 1157, an "economic striker" includes any employee "whose work has ceased as a consequence of a current labor dispute, . . (29 USC □152(3)). This status may be rebutted by a showing that the employee had abandoned interest in the job.
SAN JOAQUIN TOMATO GROWERS, INC./LCL FARMS, INC.
16 ALRB No. 10

312.07 An economic striker who returns to work after the election remains eligible since post-vote conduct is of no relevance to voter eligibility.
SAN JOAQUIN TOMATO GROWERS, INC./LCL FARMS, INC. 16 ALRB No. 10

312.07 Employees from prior years who join a strike against their prior employer before reporting to work are not eligible to vote in a representation election as economic strikers. ACE TOMATO COMPANY, INC., 16 ALRB No. 9

312.07 Issues involving strike related violence or threats of violence are appropriately raised though challenged

ballot proceeding only when directly related to the individual challenges; in all other instances they should be raised as election objections.
ACE TOMATO COMPANY, INC., 16 ALRB No. 9

312.07 Issues involving strike related violence or threats of violence are appropriately raised though challenged ballot proceeding only when directly related to the individual challenges; in all other instances they should be raised as election objections.
TRIPLE E PRODUCE CORPORATION, 16 ALRB No. 5

312.07 An employee who withholds labor as a consequence of, or in connection with, any current labor dispute resulting in a strike is eligible to vote as an "economic striker" where there is an uncontroverted showing that the employee worked in the payroll period preceding the strike, declared herself or himself to be on strike at the time of the election, has not obtained other regular and substantially equivalent employment as of the election, and has not ceased to be an employee by virtue of his or her own unprotected conduct in furtherance of the strike.
ACE TOMATO COMPANY, INC., 16 ALRB No. 9

312.07 An employee who withholds labor as a consequence of, or in connection with any current labor dispute resulting in a strike is eligible to vote as an "economic striker" where there is an uncontroverted showing that the employee worked in the payroll period preceding the strike, declared herself or himself to be on strike at the time of the election, has not obtained other regular and substantially equivalent employment as of the election, and has not ceased to be an employee by virtue of his or her own unprotected conduct in furtherance of the strike.
TRIPLE E PRODUCE CORPORATION, 16 ALRB No. 5

312.07 Pre-Act economic strikers on temporary layoff had a stake in the election and should not be denied a voice in the election merely because they were not working during one of the named payroll periods.
D. M. STEELE, dba VALLEY VINEYARDS, 5 ALRB No. 11

312.07 Alleged economic strikers who were not available for Regional Director's investigation may be presumed eligible voters if in fact they joined the strike.
D. M. STEELE, dba VALLEY VINEYARDS, 5 ALRB No. 11

312.07 Mere acceptance of other employment does not establish a striker's abandonment of intent to work for the struck employer.
D. M. STEELE, dba VALLEY VINEYARDS, 5 ALRB No. 11

312.07 Where several alleged economic strikers could not show that they were on the payroll during the pay period preceding July 29, 1973, the Board held that they were

not eligible to vote in the election.
MID-STATE HORTICULTURE COMPANY, 4 ALRB No. 101

312.07 Where several employees applied for work with, or placed their names on a future employment list with the employer prior to are presentation election, they lost their status as economic strikers and were not eligible to vote in the election.
MID-STATE HORTICULTURE COMPANY, 4 ALRB No. 101

312.07 Where two economic strikers took jobs with other employers and later struck those employers also, and stated that they would return to work for one of the subsequent employers if the strikers ended simultaneously, the Board nevertheless ruled that the employees were eligible to vote because their later jobs did not show abandonment of the strike, and neither did their response to a hypothetical regarding their post-strike intentions.
MID-STATE HORTICULTURE COMPANY, 4 ALRB No. 101

312.07 Where several alleged economic strikers could not show that they were on the payroll during the pay period preceding July 29, 1973,the Board held that they were not eligible to vote in the election.
MID-STATE HORTICULTURE COMPANY, 4 ALRB No. 101

312.07 Where the evidence showed that an alleged economic striker continued working after the strike began the alleged striker was ineligible to vote in the election as a striker.
MID-STATE HORTICULTURE COMPANY, 4 ALRB No. 101

312.07 Where an employee leaves the picket line to accept employment with the struck employer prior to a representation election, unless the employee is employed during the eligibility period she/he is ineligible to vote in the election.
MID-STATE HORTICULTURE COMPANY, 4 ALRB No. 101

312.07 Since the original election occurred within 18 months of the effective date of the ALRA all economic strikers eligible to vote in the original election were held eligible to vote in the re-run.
PANDOL AND SONS, 3 ALRB No. 72

312.07 One factor in determining whether someone is an economic striker is whether he or she has engaged in activities from the date of the strike which constitute abandonment of his/her economic striker status.
D'ARRIGO BROS., 3 ALRB No. 37

312.07 Following NLRB precedent, the ALRB holds that merely placing one's name on a rehire list does not necessarily constitute abandonment of one's economic striker status.
D'ARRIGO BROS., 3 ALRB No. 37

312.07 Section 1157 of the ALRA is a special provision of limited duration, narrowly focused, and designed to confer voting eligibility upon that group of workers engaged in economic strikes predating enactment of the ALRA.
D'ARRIGO BROS., 3 ALRB No. 37

312.07 In order to give full effect to provisions of 1157, the Board will require clear and compelling evidence of the abandonment of a particular strike before it will deprive beneficiaries of the provision of the right to vote.
D'ARRIGO BROS., 3 ALRB No. 37

312.07 Board inferred Employees who left work 1 and 2 days before strike left because of strike despite Regional Director's failure to state same in his report recommending Employees' votes count as economic strikers.
MARLIN BROTHERS, 3 ALRB No. 17

312.07 Status of economic strikers must be established at time strike begins and retained until election in order to vote therein.
MARLIN BROTHERS, 3 ALRB No. 17

312.07 Board rejected Employer exception based on no opportunity to cross-examine because no hearing ordered, but then went on to examine Regional Director's findings that individuals were economic strikers and entitled to vote.
MARLIN BROTHERS, 3 ALRB No. 17

312.07 Permanent employment elsewhere does not overcome presumption of continuing interest in struck job. Employer must produce objective evidence to defeat presumption.
MARLIN BROTHERS, 3 ALRB No. 17

312.07 Employee was economic striker and entitled to vote where he quit because of strike. Board presumed continuing interest in strike job even though Employee found other work and went to college full time, reasoning that he had worked for Employer while a student, and no evidence he would not continue to do so on same basis absent strike.
MARLIN BROTHERS, 3 ALRB No. 17

312.07 Economic striker status found where Employees worked during the pay period before strike and claimed they left because of strike despite factual dispute re last day worked.
MARLIN BROTHERS, 3 ALRB No. 17

312.07 Where the unavailability of challenged voters precludes a proper investigation of their claim of voter eligibility based on their status as economic strikers, then the challenges to their ballots must be sustained.
COSSA & SONS (1977) 3 ALRB No. 12

312.07 Claim that an economic striker had procured employment

elsewhere, at higher wages, does not by itself overcome the striker's presumption of continuing eligibility to vote under applicable NLRA precedent.
COSSA & SONS (1977) 3 ALRB No. 12

312.07 Employer has burden of disputing eligibility of voters who appear on the statutory pre-strike payroll and non-appearance of voters in post-election investigation is insufficient to overcome presumption of eligibility to vote.
COSSA & SONS (1977) 3 ALRB No. 12

312.07 The Board sustained challenges to employees who had been laid off or fired, who had quit, or who were on strike but had failed to prove their status, or who had begun working after the conclusion of the eligibility period.
TEX-CAL LAND MANAGEMENT, INC., 3 ALRB No. 11

312.07 A person whose name appears on the payroll immediately preceding the strike and who went on strike is presumptively eligible to vote. The burden is on the voter to establish these facts.
GEORGE LUCAS & SONS,3 ALRB No. 5

312.07 If a voter has abandoned interest in a strike, he or she is not eligible to vote. It is the burden of the party asserting the challenge to prove abandonment.
GEORGE LUCAS & SONS,3 ALRB No. 5

312.07 In a holding limited to this case, the Board ordered that the ballots of five clerical workers be counted -- assuming none are confidential employees -- if the "bulk" of their office work is incidental to the employer's agricultural operations.
PROCTOROFF POULTRY FARMS, 2 ALRB No. 56

312.08 Laid-Off Employees

312.08 Employees from prior years who join a strike against their prior employer before reporting to work are not eligible to vote in a representation election as economic strikers.
ACE TOMATO COMPANY, INC., 16 ALRB No. 9

312.08 Even though laid-off employees had received notice of recall, and therefore had an expectation in fact of reemployment with date certain, Board adheres to statutory language which requires employment during the relevant pre-petition payroll period as a condition of eligibility.
HIJI BROTHERS, INC., 13 ALRB No. 16

312.08 Statements made by an employer to individuals not currently working that they were on rehire list serve merely to inform them that the possibility of jobs during the harvest season exists and do not conclusively establish that the land -- at employees have a reasonable

expectation of re-employment. Accordingly, the Board views them as seasonal employees who have not yet been hired and who therefore are not eligible to vote.
WINE WORLD INC., dba BERINGER VINEYARDS, 5 ALRB No. 41

312.08 The Board sustained challenges to employees who had been laid off or fired, who had quit, or who were on strike but had failed to prove their status, or who had begun working after the conclusion of the eligibility period.
TEX-CAL LAND MANAGEMENT, INC., 3 ALRB No. 11

312.08 Two employees, although "on call," were absent during applicable pre-petition payroll period, performed no work during that time because there was no work for them to do, are indistinguishable from seasonal employees who have not yet been hired for the harvest and therefore are not eligible to vote.
ROD McLELLAN CO., 3 ALRB No. 6

312.08 The federal Worker Adjustment and Retraining Notification Act ("WARN" Act, 29 U.S.C. §§ 2101 et seq.) was not intended to supplant rights employees otherwise enjoy under state law. Therefore, to construe the federal WARN Act as requiring the provision of 60 days' notice of an impending layoff while simultaneously disenfranchising employees under the ALRA who remain employed during that notice period is a strained construction of both acts.
NURSERYMEN'S EXCHANGE, INC., 36 ALRB No. 6

312.08 Requirements for peak and voter eligibility were met when employees who received 60-day notice of layoff pursuant to the federal Worker Adjustment and Retraining Notification Act ("WARN" Act, 29 U.S.C. §§ 2101 et seq.) but remained on employer's payroll on paid administrative leave were considered eligible to vote in representation election.
NURSERYMEN'S EXCHANGE, INC., 36 ALRB No. 6

312.08 The Board has consistently rejected use of the NLRB's "reasonable expectation of employment" standard in determining the existence of an employer-employee relationship. Rather, the inquiry has been focused on whether there was an employment relationship during the pre-petition payroll period, as employment during that period is the only statutory requirement for voter eligibility
NURSERYMEN'S EXCHANGE, INC., 36 ALRB No. 6

312.09 Discharged Or Quit Employees, Or Possibility Of Discharge

312.09 While the NLRB conditions voter eligibility on employment during both the eligibility period and the date of the election, the ALRA requires only that a worker be employed at any time during the eligibility period. A workers who is discharged during the eligibility period is eligible to vote.

THE CAREAU GROUP, dba EGG CITY, 14 ALRB No. 2

312.09 Voting eligibility of two unlawfully discharged employees was resolved in prior Board Decision, since evidence in that case clearly indicated that both employees would have been employed during voting eligibility period, but for their unlawful discharge. Thus, the challenges to their ballots are overruled.
AGRI-SUN NURSERY, 13 ALRB No. 19

312.09 The Board sustained challenges to employees who had been laid off or fired, who had quit, or who were on strike but had failed to prove their status, or who had begun working after the conclusion of the eligibility period.
TEX-CAL LAND MANAGEMENT, INC., 3 ALRB No. 11

312.10 Probationary Or New Employees

312.10 The Board sustained challenges to employees who had been laid off or fired, who had quit, or who were on strike but had failed to prove their status, or who had begun working after the conclusion of the eligibility period.
TEX-CAL LAND MANAGEMENT, INC., 3 ALRB No. 11

312.11 Temporary Absence; Leave of Absence

312.11 Workers whose leaves of absence had expired prior to the commencement of the eligibility period and who had not sought authorization to extend their leaves do not hold a current job or position and are therefore ineligible to vote.
THE CAREAU GROUP, dba EGG CITY, 14 ALRB No. 2

312.11 Employees found to be absent on an approved sick leave during the eligibility period are eligible to vote in a representation election.
WINE WORLD INC., dba BERINGER VINEYARDS, 5 ALRB No. 41

312.11 Employees who are on unpaid sick leave, including unpaid leave due to the illness of a dependent child, or unpaid holiday during the eligibility period may, under appropriate circumstances, be eligible to vote.
KARAHADIAN & SONS, INC., 5 ALRB No. 19

312.11 Challenged ballot to be counted if it appears that employee who did not work during eligibility period would have worked but for illness or vacation. Factors to be considered include history of employment, continued payments into insurance funds, contributions to pension or other benefit programs, and any other relevant evidence which bears upon the question of whether or not there was a current job or position actually held by him or her during the relevant payroll period.
VALDO PRODUCE CO., 3 ALRB No. 8

312.11 Employees who would have performed work for the employer but for absence due to sickness or vacation are eligible

to vote providing Board can make finding there was a current job or position actually held by them during the relevant payroll period. In making that finding, Board will examine such factors as the employees' history of employment, continued payments into insurance funds, contributions to pension or other benefit programs, and any other relevant evidence which bears on question presented above.
ROD McLELLAN CO., 3 ALRB No. 6

312.11 In further interpreting Labor Code section 1157 (pre-petition eligibility list), Board rejects "sweeping" language of Yoder Brothers, Inc. (1976) 2 ALRB No. 4, and finds it inequitable to grant eligibility to employees who perhaps worked half a day for an employer and yet deny eligibility to long-standing employees who happened to be absent during the single relevant payroll period. Board holds therefore that employees who were on unpaid sick leave or unpaid holiday may, under appropriate circumstances, vote in the election.
ROD McLELLAN CO., 3 ALRB No. 6

312.11 An individual is eligible to vote if he or she would have worked during the eligibility period but for an absence due to illness and there is a reasonable expectation of returning to work. (*Rod McLellan Co.* (1977) 3 ALRB No. 6; *Valdora Produce Co.* (1977) 3 ALRB No. 8.) In deciding eligibility, the Board must consider such factors as the employee's history of employment, continued payments into insurance funds, contributions to pension or other benefit programs, and any other relevant evidence which bears upon the question of whether or not there was a current job or position actually held by the employee during the eligibility period. Therefore, further investigation is necessary before ruling on the challenged ballot of an employee who was "disabled" during the eligibility period.
COCOPAH NURSERIES, INC., 27 ALRB No. 3

312.11 If worker hurt on the job has been replaced legally, so that under workers compensation laws he no longer has a right to return to his former job, he would have no reasonable expectation to return to work and would not be eligible to vote. If not legally replaced, still necessary to determine whether there was any expectation that employee would eventually heal sufficiently to perform former job of milker, or whether dairy could accommodate any work restrictions.
ARTESIA DAIRY, 32 ALRB No. 3

312.11 If worker hurt on the job had not been replaced legally by the time of the election, he would have worked but for the injury and thus was eligible to vote. It is not necessary that the worker in addition have a reasonable expectation to return to work, as mistakenly suggested in Cocopah Nurseries, Inc. 27 ALRB No. 3, which is overruled.

ARTESIA DAIRY, 33 ALRB No. 3

312.11 The Board need not inquire further into the circumstances of the employer-employee relationship, nor has it, in cases where employees were on the payroll and on some form of paid leave during the applicable payroll period.
NURSERYMEN'S EXCHANGE, INC., 36 ALRB No. 6

312.11 Requirements for peak and voter eligibility were met when employees who received 60-day notice of layoff pursuant to the federal Worker Adjustment and Retraining Notification Act ("WARN" Act, 29 U.S.C. §§ 2101 et seq.) but remained on employer's payroll on paid administrative leave were considered eligible to vote in representation election.
NURSERYMEN'S EXCHANGE, INC., 36 ALRB No. 6

312.11 The Board has consistently rejected use of the NLRB's "reasonable expectation of employment" standard in determining the existence of an employer-employee relationship. Rather, the inquiry has been focused on whether there was an employment relationship during the pre-petition payroll period, as employment during that period is the only statutory requirement for voter eligibility.
NURSERYMEN'S EXCHANGE, INC., 36 ALRB No. 6

312.12 Employees Hired For The Purpose Of Voting; Labor Code Section 1154.6 (see sections 446 and 316.12)

312.12 Respondent did not violate section 1154.6 by hiring two crews prior to election. The crews were needed and qualified, hired on a permanent basis, and did perform the work for which they were hired.
ROYAL PACKING CO. 5 ALRB No. 31

312.12 Here the evidence failed to support union claims that certain employees were either supervisors or had been hired primarily to vote in the election the Board overruled the challenges to their votes and ordered their ballots counted.
M.V. PISTA & CO., 2 ALRB No. 8

313.00 CIRCUMSTANCES DETERMINING PROPRIETY OF ELECTION

313.01 In General

313.02 7-Day Requirement, Labor Code Section 1156.3(a)

313.02 Where turnout was approximately 80 percent, an election will not be set aside for failure to conduct it within the seven-day period absent a showing that a number of voters sufficient to affect the results were disenfranchised by the timing.
RON NUNN FARMS, 4 ALRB No. 31

313.02 Elections held beyond 7-day period at agreement of parties; issue not raised as objection.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

313.02 Election held 9 rather than 7 days after Petition filed not invalid absent showing of prejudice.
TMY FARMS 2 ALRB No. 58

313.02 Because of 7-day election rule, Board expects parties to an election to participate in efforts to notify potential voters of election. Board implies that Employee's failure to supply adequate employee list or to assist in notification efforts were factors in rejecting claim of disenfranchisement on grounds of insufficient notice.
LU-ETTE FARMS 2 ALRB No. 49

313.02 Where election was held on eighth day and there was very low voter turnout (harvest concluded three days prior to election) election set aside. No compelling reason given as to why election not scheduled earlier.
ACE TOMATO CO., 2 ALRB No. 20

313.02 Turn-out of one-third of eligible voters would not be per se grounds for setting aside election held within statutory seven-day period.
ACE TOMATO CO., 2 ALRB No. 20

313.02 The fact that the election was held on the eighth day after the filing of the petition is not of itself reason to set the election aside, in the absence of a showing of prejudice. The statutory purpose of ensuring a large voter turnout was not frustrated but enhanced by an election where 80 percent of the eligible employees voted and 115 laid off employees had been recalled the previous day.
J.J. CROSETTI CO., INC., 2 ALRB No. 1

313.02 Validity of election upheld although held 8 days after filing of petition due to Board Agent erroneously excluding Sunday in computing time. No prejudice from delay.
WILLIAM DAL PORTO & SONS, INC., 1 ALRB No. 19

313.02 1156.3(a) requirement that Board conduct elections within seven days is not jurisdictional. It is directory only.
RADOVICH v. ALRB (1977) 72 Cal.App.3d 36

313.03 Representative Character Of Workforce; Peak; Voter Turnout

313.03 Decision of the Fourth District Court of Appeal in Adamek & Dessert, Inc. v. ALRB (1986) 178 Cal.App.3d 979 [224 Cal.Rptr. 366] invalidates regulation of Agricultural Labor Relations Board appearing at Title 8, California Code of Regulations, section 20310(a)(6)(B). Employer wishing to show peak requirement has not been met must first show that actual number of employees working in

eligibility period is less than 50% of actual number of employees employed in peak employment period, and if that comparison does not indicate that peak requirement is met, employer must also show that actual number of employees working in eligibility period is less than 50% of average number of employees working in peak employment period. (Adamek & Dessert, Inc., supra, following Mario Saikhon, Inc. (1976) 2 ALRB No. 2).
TRIPLE E PRODUCE CORPORATION, 16 ALRB No. 14

313.03 Dissent: Board agents made reasonable efforts to provide employees, all of whom were laid off, with notice of election where election was scheduled to coincide with time employees were scheduled to pick up payroll checks at employer's offices.
HARRY TUTUNJIAN & SONS, 12 ALRB No. 22

313.03 Absent concrete showing that significant numbers of eligible voters denied opportunity to vote, low voter turnout is not basis for setting aside election. (TMY Farms (1976) 2 ALRB No. 58.)Employer suggestion that election should be set aside because majority of eligible employees did not vote rejected.
H. H. MAULHARDT PACKING COMPANY, 6 ALRB No. 42

313.03 Board set aside election where voter turnout was very low, 66 of 222 eligible. The only employees who voted were those who worked on the day of the election. No employees worked between the date the petition for certification was filed and the day of the election, and there was no evidence that the Regional Director's efforts to notify eligible employees of the coming election were successful.
VERDE PRODUCE COMPANY, INC. 6 ALRB No. 24

313.03 Whereas a 2.5% margin of error in the peak estimation in Bonita Packing Co., Inc. (1978) 4 ALRB No. 96 was allowed by the Board, a 07% error was deemed too great and the election was set aside.
WINE WORLD, INC., dba BERINGER VINEYARDS, 5 ALRB No. 41

313.03 Where an unusually high post-election peak-employment figure results from unforeseeable weather conditions, the number of employees actually hired in the peak period may not accurately reflect the size of normal, or reasonable predictable, bargaining unit at peak.
CHARLES MALOVICH, 5 ALRB No. 33

313.03 Where a petition for certification was filed near the time of the Employer's actual peak employment period, but the election was conducted among less than 50 percent of the employees working during the eligibility period as a result of the Regional Director's erroneous interpretation of the eligibility period, the Board set aside the election and dismissed the petition.
JACK BROTHERS & MCBURNEY, INC., 4 ALRB No. 97

313.03 Where turnout was approximately 80 percent, an election will not be set aside for failure to conduct it within the seven-day period absent a showing that a number of voters sufficient to affect the results were disenfranchised by the timing.
RON NUNN FARMS, 4 ALRB No. 31

313.03 Notice was adequate where union handed out unofficial notices before the end of harvest and the employer's supervisor phoned timekeepers on the tomato machines to ask them to notify those who worked with them.
RON NUNN FARMS, 4 ALRB No. 31

313.03 Absent evidence that voters denied opportunity to vote, majority vote for union by minority of eligible voters does not indicate vote not representative.
LU-ETTE FARMS 2 ALRB No. 49

313.03 Turn-out of one-third of eligible voters would not be per se grounds for setting aside election held within statutory seven-day period.
ACE TOMATO CO., 2 ALRB No. 20

313.03 Where election was held on eighth day and there was very low voter turnout (harvest concluded three days prior to election) election set aside. No compelling reason given as to why election not scheduled earlier.
ACE TOMATO CO., 2 ALRB No. 20

313.03 Turn-out of one-third of eligible voters would not be per se grounds for setting aside election held within statutory seven-day period.
ACE TOMATO CO., 2 ALRB No. 20

313.03 In calculating peak, the proper method of measuring level of employment is to take an average of the number of employee days worked on all days of a given payroll period.
MARIO SAIKHON, INC., 2 ALRB No. 2

313.03 Board impermissibly altered terms of 1156.3(a)(1) when it employed an averaging formula to determine whether employer was at 50% of peak employment for calendar year.
ADAMEK & DESSERT, INC. v. ALRB (1986) 178 Cal.App.3d 970

313.03 In defining its approaches to calculating peak employment, Board should not develop procedures to deal with purely hypothetical problems.
ADAMEK & DESSERT, INC. v. ALRB (1986) 178 Cal.App.3d 970

313.03 Board's peak determination affirmed where it appeared, in spite of Board's improper use of an averaging formula, that employer was at least 50% of peak employment.
ADAMEK & DESSERT, INC. v. ALRB (1986) 178 Cal.App.3d 970

313.03 Key to deciding whether election is timely is whether electorate is representative of bargaining unit which may

ultimately be certified; thus an election will be upheld if Regional Director's determination of peak was reasonable in light of evidence available at the time, even if subsequent events should prove the determination incorrect.
RULINE NURSERY CO. v. ALRB (1985) 169 Cal.App.3d 247

313.03 Contrary to Respondent's contention, while section 1156.4 only prohibits the Board from applying averaging to the number of employees on the pre-petition payroll, Board may continue to measure prospective peak by the averaging method.
GALLO VINEYARDS, INC., 23 ALRB No. 7

313.03 Board reaffirms the position it asserted in Gallo Vineyards (1995) 21 ALRB No. 3, wherein it rejected the employer's contention that section 1156.4 mandates the Board to develop uniform statewide crop and acreage statistics to assist in making peak determinations; also reaffirms practice of evaluating prospective peak on the basis of whether Regional Director's decision to go forward with election was reasonable in light of information available at the time. Moreover, it is the responsibility of employers who contend representation petition not timely filed on the basis of future peak to provide information to support such claim.
GALLO VINEYARDS, INC., 23 ALRB No. 7

313.04 Strike Shutdown, Transfer Or Discontinuance Of Business, Or Successor Company; 48-Hour Elections, Labor Code Section 1156.3(a)

313.04 Where Board found uncontroverted evidence that strike circumstances had not ceased, and that strike activity was in fact continuing at the time the Regional Director made his decision to proceed with the expedited election Board found that he did not abuse his discretion in refusing to postpone the election since the Act's mandate is clear that elections under strike circumstances are to be held in an expedited fashion wherever possible.
PEREZ PACKING COMPANY, INC., 15 ALRB No. 19

313.04 Title 8, California code of Regulations, section 20377(c) is clearly designed to address objections to the Regional Director's initial determination that the election be expedited and does not foreclose Board review of an election objection that contests the Regional Director's decision to proceed with the expedited election when a change in circumstances occurs after that initial decision has been made.
PEREZ PACKING COMPANY, INC., 15 ALRB No. 19

313.04 Board must be reasonably certain that strike circumstances have indeed ended before it can say that an expedited election is no longer appropriate.
PEREZ PACKING COMPANY, INC., 15 ALRB No. 19

313.04 Unconditional offer to return to work made by the Union on behalf of striking employees was not sufficient to demonstrate that strike circumstances had ended in view of fact that there was still some picketing taking place several hours after offer was made.
PEREZ PACKING COMPANY, INC., 15 ALRB No. 19

313.04 Employer's assertion of prejudice suffered as result of its abbreviated opportunity to campaign during expedited election is unavailing as Legislature specifically rejected this argument in enacting expedited election process.
PEREZ PACKING COMPANY, INC., 15 ALRB No. 19

313.04 Strike elections place a significant burden on the Board in light of the strict time strictures established by the statute; therefore, the violent or coercive conduct of employees during a strike, which had abated by the time of the election, was insufficient to have affected the outcome of the election.
J. OBERTI, INC., et al., 10 ALRB No. 50

313.04 Board agent properly determined that a majority of the employer's agricultural employees were on strike based on the information available to him at the time the determination was made.
T. ITO & SONS FARMS, 9 ALRB No. 56

313.04 Petition for certification deemed properly filed where petition was not physically filed in regional office but was hand-delivered to Board agent in charge of investigating petition and employer did not allege lack of notice of the filing of the petition; in addition, the petition involved an election under strike circumstances.
T. ITO & SONS FARMS, 9 ALRB No. 56

313.04 In the absence of supporting documentation, an employer's conclusory declaration that the majority of his agricultural work force is not on strike will not be sufficient evidence for a determination that an expedited strike election should not be held.
T. ITO & SONS FARMS, 9 ALRB No. 56

313.04 There is no presumption of impropriety when a strike time election is held in less than 48 hours after the filing of the petition; the Regional Director should conduct the election as soon as reasonably possible, and need not have proof of violence or coercion to hold the election the first day rather than the second.
MURANAKA FARMS, 9 ALRB No. 20

313.04 Elections held pursuant to regulation 20377, which directs that an election be held within 48 hours if a majority of unit employees are on strike, should be held as soon as possible provided that adequate notice is provided to the parties and the employees, no party is prejudiced, and eligible voters are not disenfranchised.

MURANAKA FARMS, 9 ALRB No. 20

313.04 Where union's petition for certification indicates that there is no ongoing strike, union must be deemed to have abandoned the strike.
D'ARRIGO BROS., 3 ALRB No. 37

313.04 Board rejects contention of General Counsel that ALRA embodies a "trade-off" in which employees give up the right to obtain recognition of a union by striking in return for the right to obtain expedited elections and therefore "recognitional" strikers entitled to reinstatement whether or not permanently replaced. Board observed that 48-hour strike election rule not mandatory, only directs Board to give precedence to such cases and to attempt to hold elections within 48 hours.
KYUTOKU NURSERY 3 ALRB No. 30

313.04 A strike election should be held as soon as possible, provided adequate notice is provided to the parties and the employees, no party is prejudiced, and eligible employees are not denied an opportunity to vote.
GEORGE AMARAL RANCHES, INC., 38 ALRB No. 5

313.04 An election tally showing that the number of employees alleged to have been on strike at the time a representation petition was filed is not a majority of total eligible voters warrants a hearing on the question whether the number of employees on strike at the time the election petition was filed was less than a majority of total eligible voters.
GEORGE AMARAL RANCHES, INC., 38 ALRB No. 5

313.04 Inherent in the inquiry whether a majority of employees were on strike at the time a representation petition was filed, in the event that a majority were not on strike, is the secondary question whether the Regional Director's conclusion that a majority were on strike was reasonable based on the information available to him at the time of the election.
GEORGE AMARAL RANCHES, INC., 38 ALRB No. 5

313.05 Pre-election Conferences

314.00 METHOD OF CONDUCTING ELECTION

314.01 Conduct Of Board Agents In General; Use Of Discretion

314.01 Deviations from procedures in the Election Manual, without more, are not grounds for setting aside an election. Thus, even if union observer was wearing "campaign material" which Board agents did not require

her to remove, this would not provide a basis for setting aside the election.
LONOAK FARMS, 17 ALRB No. 19

314.01 Board agent's treatment of challenged ballot process as confidential, although not required by Elections Manual, did not constitute misconduct and did not prejudice the election.
LONOAK FARMS, 17 ALRB No. 19

314.01 Board neutrality not compromised where Board agent proffered to Employer a correct statement of law regarding Union's entitlement to access, there was no misuse of the statement by any party, and no evidence that the dispute between the Board agent and the Employer was disseminated to employees.
TRIPLE E PRODUCE CORPORATION, 17 ALRB No. 15

314.01 Board agent's gratuitous statements in which he offered opinion that Union wanted election to occur within 48 hours because it did not want to give Employer opportunity to campaign was inappropriate conduct contrary to section 2-9200 of Board's Case Handling Manual; agents are there advised that strike is volatile situation, and when they deal with expedited election, they must perform their duties in such way that no one can misinterpret their actions.
PEREZ PACKING COMPANY, INC., 15 ALRB No. 19

314.01 Board agents who did not give another ballot to a voter who wrote his name on his own ballot did not engage in misconduct. COMITE 83, SINDICATO DE TRABAJADORES CAMPESINOS LIBRES, 14 ALRB No. 13

314.01 An accurate statement in response to what was reasonably perceived as a general legal issue does not impair the appearance of neutrality in the election process.
TANI FARMS 13 ALRB No. 25

314.01 As Board agent reasonably interpreted employees' question and was not placed on notice that question may have involved a specific local campaign issue, under an objective standard, Board agent's general, but accurate, response, did not mislead the employees.
TANI FARMS 13 ALRB No. 25

314.01 An employee was not denied an opportunity to vote where he never approached the eligibility table, stood across from the line of prospective voters, and left area when Board agent asked that any foremen leave.
RANCHO PACKING, 10 ALRB No. 38

314.01 Board declined to set election aside based on voter confusion generated by employer's mistaken reliance on alleged unwritten Board practice of printing ballots with union choice on left side.
VISALIA CITRUS PACKERS, 10 ALRB No. 32

314.01 Employer was not denied its opportunity to campaign where an expedited strike election was held 38 hours after the filing of the petition.
T. ITO & SONS FARMS, 9 ALRB No. 56

314.01 Board agent not abuse his discretion under 8 Cal. Admin. Code section 20350 in accepting Union observers' visual identification of voters and not requiring them to vote challenged ballots.
ROBERT J. LINDELEAF, 8 ALRB No. 22

314.01 No abuse of discretion by Board agent who directed Union organizer to leave quarantine area although organizer entered seeking replacement for Union observer.
ROBERT J. LINDELEAF, 8 ALRB No. 22

314.01 Election objections will be resolved on basis of conduct of Board agent in charge at election rather than statements of another agent at pre-election conference that no more than three challenges will be accepted.
ROBERT J. LINDELEAF, 8 ALRB No. 22

314.01 Board agent's refusal to head observer's request to investigate presence of Union organizer's car on a public road at edge of quarantine area did not constitute misconduct since to do so would have left polling area unguarded.
SAKATA RANCHES, 5 ALRB No. 56

314.01 The Board set aside the election where the Board agent improperly invoked the third presumption, causing the election to be conducted without an eligibility list, enabling ineligible voters to cast ballots, and disenfranchising over 50% of the electorate.
E.C. CORDA RANCHERS 4 ALRB No. 35

314.01 NLRB unusually gives Board Agent in charge of election discretion of letting Employee vote late.
ABATTI FARMS, INC. AND ABATTI PRODUCE, INC.,
3 ALRB No. 83

314.01 Board Agent's refusal to allow Employee to vote while polls were still in place and ballot box unsealed and the same agent's allowing another Employee to vote at another site after the ballot box was sealed not sufficient to overturn election because the 2 votes could not have affected the outcome where Union won by 100 votes.
ABATTI FARMS, INC. AND ABATTI PRODUCE, INC.,
3 ALRB No. 83

314.01 Board agent supervising election is allowed reasonable discretion in setting the time of the election.
SECURITY FARMS, 3 ALRB No. 81

314.01 Where the Board's agents permitted voters to vote without challenge consistent with the parties' pre-election

agreements, and may have improperly rejected one challenge the Board held that the error, if any, was insufficient to affect the outcome of the election.
TOMOOKA BROTHERS, 2 ALRB No. 52

314.01 Where the Board's agents permitted voters to vote without challenge consistent with the parties' pre-election agreements, and may have improperly rejected one challenge the Board held that the error, if any, was insufficient to affect the outcome of the election.
TOMOOKA BROTHERS, 2 ALRB No. 52

314.01 An election will not be overturned because an observer spoke to voters in Spanish absent a showing that there was electioneering or that the conduct may have influenced the election.
GONZALES PACKING CO., 2 ALRB No. 48

314.01 Where there was no evidence that the election was affected by the Board agent (1) not having an official tally of ballots form; (2) telling an employer observer it would do no good to file challenges; (3) failing to inspect the polling site prior to the election; and (4) failing to keep a written record of the election; the Board certified the results of the election.
HAIDEN FARMS OF CALIFORNIA, INC., 2 ALRB No. 30

314.01 Board agent should inform all parties of the time and place of the ballot count in enough time to allow them to have representatives witness the tallying.
CARL JOSEPH MAGGIO INC., 2 ALRB No. 9

314.01 Overturning of election due to Board agent's failure to notify all parties of the election arrangements in a timely fashion, should not depend on a showing that such misconduct could have affected the outcome of the election. In some circumstances, it may be appropriate to set aside the election as a means of deterring particularly objectionable conduct, or of safeguarding public confidence in the integrity of the election process.
CARL JOSEPH MAGGIO INC., 2 ALRB No. 9

314.01 Board set aside election where there was affirmative evidence that voters were disenfranchised by Board agents opening polls one hour later than time designated in Direction and Notice of Election and failing to maintain separate identity of each challenged ballot.
HATANAKE & OTA CO. 1 ALRB No. 7

314.01 As Board noted in Coachella Growers, Inc. (1976) 2 ALRB No. 17, bias or appearance of bias, to justify setting aside election, must be shown to have affected conduct of election and to have impaired validity of balloting as a measure of employee choice.
GEORGE ARAKELIAN FARMS, INC. v. ALRB (1985) 40 Cal.3d 654

314.01 Evidence that suggests disenfranchisement of perhaps 75 percent of petitioner's employees compels reconsideration of matters litigated in prior representation proceeding. PERRY FARMS INC. v. ALRB (1978) 86 Cal.App.3d 448

314.01 Board rejects Employer's contention that Board agents should have heeded its observer's objection to the construction of a second ballot box without having first consulted with the Employer since the Board agents' decision in that regard is well within their broad discretion to conduct elections. Moreover, disputes about the fundamental exercise of Board agent discretion to manage the election require something more than just one party's preference that a different procedure be implemented. "The test is not whether optimum practices were followed, but whether on all the facts the manner in which the election was held raises a reasonable doubt as to its validity."
OCEANVIEW PRODUCE CO., 20 ALRB No. 16

314.01 Whereas any party to an election, as well as Board agents, may, for good cause shown, challenge any prospective voter on grounds expressly set forth in the regulations, Board agents have sole discretionary authority to determine adequacy of voter identification. OCEANVIEW PRODUCE CO., 20 ALRB No. 16

314.01 It is the Board's responsibility, not that of the parties, or the parties' observers, to establish the proper procedures for the conduct of elections. Board agents have considerable latitude in assuring that elections are conducted at a time and in a manner which facilitates maximum participation by eligible employees. OCEANVIEW PRODUCE CO., 20 ALRB No. 16

314.01 Election objection that Board failed to provide adequate notice of an election to non-striking employees failed to state a prima facie case. Section 20365(c)(2)(b) of the Board's regulations require that declarations set forth with particularity the details of each occurrence and the manner in which it is alleged to have affected or could have affected the outcome of the election. Employees' declarations did not show that they did not vote or were prevented from voting, and were insufficient on their face.
GEORGE AMARAL RANCHES, INC., 38 ALRB No. 5

314.01 Election objection that Board created a threatening and intimidating environment by allowing separate voting processes for striking and non-striking employees resulting in striking employees beating up on non-striking employees failed to state a prima facie case. Section 20365 (c)(2)(B) of the Board's regulations require that declarations set forth with particularity the details of each occurrence and the manner in which it is alleged to have affected or could have affected

the outcome of the election. The employee observer declarations failed to state who caused the observers to feel threatened and intimidated, or how.
GEORGE AMARAL RANCHES, INC., 38 ALRB No. 5

314.02 Communication With Parties

314.02 In the course of investigating facts relating to an election petition and making arrangements for an election, Board agents must have some independent communications with the parties. An allegation that a Board agent "met unilaterally" with representatives of the parties or their supporters does not, in itself, allege improper conduct.
R.T. ENGLUND COMPANY, 2 ALRB No. 23

314.02 Overturning of election due to Board agent's failure to notify all parties of the election arrangements in a timely fashion, should not depend on a showing that such misconduct could have affected the outcome of the election. In some circumstances, it may be appropriate to set aside the election as a means of deterring particularly objectionable conduct, or of safeguarding public confidence in the integrity of the election process.
CARL JOSEPH MAGGIO INC., 2 ALRB No. 9

314.03 Secrecy Of Balloting; Handling Ballots And Ballot Box

314.03 Board agent's actions in holding curtains of voting booths closed because of strong winds did not violate privacy of voters inside the booths, and thus did not interfere with secrecy of the ballot or voter free choice.
LONOAK FARMS, 17 ALRB No. 19

314.03 The chief means by which the Agricultural Labor Relations Act meets its stated goals of ensuring peace in the agricultural fields by guaranteeing justice for all agricultural workers and stability in labor relations is by the provision of secret ballot elections in which the free choice of those workers for or against representation by a labor organization can be expressed.
MANN PACKING CO., INC., 16 ALRB No. 15

314.03 Board found that location and security of ballots adequately accounted for during relevant time periods.
TENNECO WEST, INC., 5 ALRB No. 27

314.03 Board rejects view that one or two isolated and short intervals in which Board agent many have left ballots unattended in his partitioned office while eating lunch would create substantial or reasonable possibility of tampering.
TENNECO WEST, INC., 5 ALRB No. 27

314.03 Board agent's failure to comply with field manual by

using sealed challenged-ballot envelopes in investigating challenges does not by itself warrant setting aside election, citing California Coastal Farms, (1976) 2 ALRB No. 26
TENNECO WEST, INC., 5 ALRB No. 27

314.03 Petitioners did not have burden of establishing chain of custody in post-election objections case premised on security of unresolved challenged ballots.
TENNECO WEST, INC., 5 ALRB No. 27

314.03 Board found neither actual tampering with challenged ballot envelopes not substantial possibility that such tampering took place, noting, inter alia, that Board agents retained custody of sealed envelopes which were never left unattended in presence of interested parties.
TENNECO WEST, INC., 5 ALRB No. 27

314.03 The mere fact that a union observer did not follow Board agent instructions and picked up a ballot which had fallen from the ballot box onto the table during the vote tally does not impugn the integrity of the election justifying setting aside the election.
D'ARRIGO BROS., 3 ALRB No. 37

314.03 Where challenged ballot was not put in a special envelope before being placed in the ballot box and where one check stub may have been used as identification for two separate unchallenged votes, the election will not be set aside since these votes were not outcome determinative.
R.T. ENGLUND COMPANY, 2 ALRB No. 23

314.03 Board set aside election where there was affirmative evidence that voters were disenfranchised by Board agents opening polls one hour later than time designated in Direction and Notice of Election and failing to maintain separate identity of each challenged ballot.
HATANAKE & OTA CO., 1 ALRB No. 7

314.03 Board rejects Employer's contention that Board agents should have heeded its observer's objection to the construction of a second ballot box without having first consulted with the Employer since the Board agents' decision in that regard is well within their broad discretion to conduct elections. Moreover, disputes about the fundamental exercise of Board agent discretion to manage the election require something more than just one party's preference that a different procedure be implemented. "The test is not whether optimum practices were followed, but whether on all the facts the manner in which the election was held raises a reasonable doubt as to its validity."
OCEANVIEW PRODUCE CO., 20 ALRB No. 16

314.03 Board rejects mere allegation that election should be invalidated because ballot box left unattended in Board agent's car near a voting site where union supporters

were gathered. Employer did not allege that, for example, the box was left in the cabin of an unlocked car, in plain view, or in an unlocked trunk, where it could be accessed, or even suggest that there was actual tampering.
OCEANVIEW PRODUCE CO., 20 ALRB No.16

314.04 Time Scheduled For Election; Departure From Scheduled Voting Time; Late Or Early Opening Of Polls

314.04 Employer failed to show that voters were disenfranchise by Board agents' delayed opening of the polls and failure to leave Board agent behind at each voting site, where Notice of Election clearly informed employees that voting at last site would continue until 5:00 p.m.
LONOAK FARMS, 17 ALRB No. 19

314.04 Poor visibility at election site is not a basis for setting aside election where evidence showed that although conditions were dark and foggy, they did not prevent the expression of voter free choice.
SILVA HARVESTING, INC., 11 ALRB No. 12

314.04 Board declined to set aside election where polls were opened 20 minutes late, but held open additional 20 minutes, and no evidence of disenfranchisement was shown. IHE, pp. 6-8.
H. H. MAULHARDT PACKING COMPANY, 6 ALRB No. 42

314.04 Absent any evidence that any voter was disenfranchised thereby, the Board will not overturn an election merely because the polls opened 25-30 minutes late.
D'ARRIGO BROS., 3 ALRB No. 37

314.04 Although the employer agreed to stagger bus arrivals to avoid massing of voters at the polls, the fact that a jam of busses occurred with ensuing long waits for voters does not necessitate overturning the election since there was no showing the jam-up was intentional or caused any disenfranchisement.
BUD ANTLE, INC., 3 ALRB No. 7

314.04 Although polls closed one-half hour prior to time originally noticed, no question of disenfranchisement where Board Agents remained in polling area and testified that no potential voters attempted to vote prior to time of scheduled closing.
UNITED CELERY GROWERS, 2 ALRB No. 27

314.04 Although the date and time of the election were not announced until about one hour before the election was to begin, and Employer did not have sufficient time to arrange for observers at one polling site, the Employer's objections are overruled because an outcome-determinative number of voters were not affected.
CARL JOSEPH MAGGIO INC., 2 ALRB No. 9

314.04 Board agent did not abuse "reasonable discretion" in refusing union's request for earlier election starting time where there was no showing that any voters were disenfranchised.
MELCO VINEYARDS, 1 ALRB No. 14

314.04 Board set aside election where there was affirmative evidence that voters were disenfranchised by Board agents opening polls one hour later than time designated in Direction and Notice of Election and failing to maintain separate identity of each challenged ballot.
HATANAKE & OTA CO., 1 ALRB No. 7

314.04 Employer could not reasonably believe 1) that ruling in favor of union's suggestion for time and place of election affected outcome of election; or 2) that delaying preelection conference for 90 minutes and allowing union representative to translate preelection conference for a few minutes to a few employees showed Board agent bias that would affect employee free choice.
GEORGE ARAKELIAN FARMS, INC. v. ALRB (1985) 40 Cal.3d 654

314.04 Although employer delayed workers' entry into the polling area by telling them that they had to "punch in" prior to voting instead of proceeding directly to the polling area as had been previously agreed, the Board affirmed the dismissal of the union's election objection. There was no evidence that any workers were unable to vote, nor were there facts supporting the conclusion that the delay was coercive enough to have affected free choice in the election.
L. E. COOKE COMPANY, 35 ALRB No. 1

314.05 Place Of Holding Election; Multiple Voting Sites

314.05 Poor visibility at election site is not a basis for setting aside election where evidence showed that although conditions were dark and foggy, they did not prevent the expression of voter free choice.
SILVA HARVESTING, INC., 11 ALRB No. 12

314.05 Inadequate notice of polling site did not involve sufficient number of potential voters to change the election results so election not set aside on that basis.
FRUDDEN ENTERPRISES, INC., 7 ALRB No. 22

314.05 Holding election in fields absent specific evidence that doing so was intimidating to workers was not objectionable. Site of election is within reasonable discretion of agent.
BUD ANTLE, INC., 3 ALRB No. 7

314.05 Addition of another polling site at the request of one party coupled with failure to notify other parties of the additional site until an hour before the election created appearance of partiality which warrants setting aside the election.

CARL JOSEPH MAGGIO INC., 2 ALRB No. 9

314.05 Although the date and time of the election were not announced until about one hour before the election was to begin, and Employer did not have sufficient time to arrange for observers at one polling site, the Employer's objections are overruled because an outcome-determinative number of voters were not affected.
CARL JOSEPH MAGGIO INC., 2 ALRB No. 9

314.06 Checking Names Or Challenging Voters

314.06 Failure of Board agents to explain the reason the employees were voting as challenged, does not require overturning the election.
COMITE 83, SINDICATO DE TRABAJADORES CAMPESINOS LIBRES, 14 ALRB No. 13

314.06 Board agents improperly failed to list the names of voters on the challenged ballot envelopes.
RANCHO PACKING, 10 ALRB No. 38

314.06 In compiling list of challenged voters, Board agents improperly included several names of voters from another, previously held, election, whose declarations had mistakenly been mixed with those used in later election.
RANCHO PACKING, 10 ALRB No. 38

314.06 Failure of Board agent to note individually names of voters refused challenged ballots not warrant setting aside election where number of voters involved insufficient to affect outcome of election. No showing that any voter was ineligible to vote.
ROBERT J. LINDELEAF, 8 ALRB No. 22

314.06 Where the Board's agents permitted voters to vote without challenge consistent with the parties' pre-election agreements, and may have improperly rejected one challenge the Board held that the error, if any, was insufficient to affect the outcome of the election.
TOMOOKA BROTHERS, 2 ALRB No. 52

314.06 Where the Board's agents permitted voters to vote without challenge consistent with the parties' pre-election agreements, and may have improperly rejected one challenge the Board held that the error, if any, was insufficient to affect the outcome of the election.
TOMOOKA BROTHERS, 2 ALRB No. 52

314.06 Board agents may resolve challenged ballots prior to the Tally of Ballots (8 Cal. Admin. Code 20350(d) but lack authority to unilaterally resolve challenged ballots after an election has been conducted.
UNITED CELERY GROWERS, INC., 2 ALRB No. 46

314.06 Where challenged ballot was not put in a special envelope before being placed in the ballot box and where one check

stub may have been used as identification for two separate unchallenged votes, the election will not be set aside since these votes were not outcome determinative.
R.T. ENGLUND COMPANY, 2 ALRB No. 23

314.06 Addition of another polling site at the request of one party coupled with failure to notify other parties of the additional site until an hour before the election created appearance of partiality which warrants setting aside the election.
CARL JOSEPH MAGGIO INC., 2 ALRB No. 9

314.06 Election objection dismissed as de mimimus where Union organizer stopped 3 cars containing Employees who had voted and checked off their names on a voting list and Union won election 44 to 3. No atmosphere of fear or coercion.
WILLIAM DAL PORTO & SONS, INC., 1 ALRB No. 19

314.06 No evidence voters allowed to vote without proper identification where Union observer knew almost all the Employees who used UFW cards (most of the voters) and where Employer observers did not state any unchallenged Employee was allowed to vote.
WILLIAM DAL PORTO & SONS, INC., 1 ALRB No. 19

314.06 Board properly rejected Lindeleaf's argument that Board agent improperly failed to note each challenge, because number of challenges was insufficient to have altered outcome of election.
LINDELEAF v. ALRB (1986) 41 Cal.3d 861

314.06 Election objection properly dismissed where declarations failed to establish that Board agents interfered with free choice by asking voters confusing and inconsistent questions about their job duties.
ROYAL PACKING COMPANY, 20 ALRB No. 14

314.06 Requiring disputed voters to vote by challenged ballot does not result in disenfranchisement, as challenged voters indeed are allowed to vote and their ballots simply are segregated pending resolution of their eligibility.
HENRY A. GARCIA DAIRY, 33 ALRB No. 4

314.06 Disputed voters may be left on the eligibility list, as this ensures that their votes will be challenged so that their eligibility can be resolved before their vote is counted. As explained by the Board in *ARTESIA DAIRY* (2006) 32 ALRB No. 3, there is nothing inherently wrong with such a procedure as long as no evidentiary burden is allocated as a result.
HENRY A. GARCIA DAIRY, 33 ALRB No. 4

314.07 Voter Identification

314.07 Election objection dismissed where Board agent failed to

follow established procedure of requesting identification from every voter, but the election observers acknowledged knowing the voters and there was no allegation or evidence that ineligible employees were permitted to vote.
RANCHO PACKING, 10 ALRB No. 38

314.07 8 Cal. Admin. Code section 20350 gives Board agent discretion to rely on recognition of voter by an observer.
ROBERT J. LINDELEAF, 8 ALRB No. 22

314.07 Where an employer employs a great may workers, the mere fact that observers fail to recognize one voter is insufficient to cast doubt upon that voter's otherwise valid identification.
KARAHADIAN & SONS, INC., 5 ALRB No. 19

314.07 Challenged ballot overruled where voter's name appeared on the eligibility list, identification was presented subsequent to the election, and signatures matched on affidavit and declaration.
TENNECO WEST, INC., 3 ALRB No. 92

314.07 Board agent has discretion to refuse to use handwriting exemplars of the eligible voters as the sole means of identification.
R.T. ENGLUND COMPANY, 2 ALRB No. 23

314.07 Election objection dismissed as de mimimus where Union organizer stopped 3 cars containing Employees who had voted and checked off their names on a voting list and Union won election 44 to 3. No atmosphere of fear or coercion.
WILLIAM DAL PORTO & SONS, INC., 1 ALRB No. 19

314.07 No evidence voters allowed to vote without proper identification where Union observer knew almost all the Employees who used UFW cards (most of the voters) and where Employer observers did not state any unchallenged Employee was allowed to vote.
WILLIAM DAL PORTO & SONS, INC., 1 ALRB No. 19

314.07 Board properly rejected Lindeleaf's assertion that election should be set aside because ALRB agent failed to seek proper voter identification at polls and refused to note challenges individually. In each instance, challenged voter was permitted to cast a ballot after being recognized and identified by a UFW observer. ALRB's regulation unequivocally provides that identification may be in the form of "any . . . identification which the Board agent, in his or her discretion, deems adequate." Board has expressly held that recognition of employee "may at the discretion of a board agent, constitute adequate identification."
LINDELEAF v. ALRB (1986) 41 Cal.3d 861

314.07 Whereas any party to an election, as well as Board agents, may, for good cause shown, challenge any prospective voter on grounds expressly set forth in the regulations, Board agents have sole discretionary authority to determine adequacy of voter identification.
OCEANVIEW PRODUCE CO., 20 ALRB No. 16

314.07 Where Notice & Direction of Election advised prospective voters that identification is a precondition to receiving a ballot, and expressly set forth examples of such identification, Board has no duty to extend to voters challenged for failure to produce identification a post-election opportunity to do so.
OCEANVIEW PRODUCE CO., 20 ALRB No. 16

314.07 Though RD was unable to obtain additional evidence of identity from employee who failed to bring identification on the day of the election, where names and signatures match on W-4 form and declaration signed on day of election, and party who challenged voter assents to reliance on matching signatures, it is appropriate to open and count the ballot.
COCOPAH NURSERIES, INC., 27 ALRB No. 3

314.08 Mail Balloting

314.09 Notice Of Election Or Of Preelection Hearings; Distribution; Defacement Of Notices; Voter Turnout

314.09 Even though large number of voters on layoff on date of runoff election, where maximum feasible notice efforts undertaken, including radio announcements on Spanish language channels and house to house visits by Board agents, election will not be set aside even though not every voter got notice.
GERAWAN RANCHES, 18 ALRB No. 5

314.09 Board must set aside election where, through no fault of the employer or union, outcome determinative number of employees received no notice of the election and were thus disenfranchised.
SEQUOIA ORANGE CO., et al., 13 ALRB No. 18

314.09 Dissent: Individual notice to employees of an election is not required; both NLRB and ALRB only require that Board agents make reasonable efforts to notify employees of an election.
HARRY TUTUNJIAN & SONS, 12 ALRB No. 22

314.09 Dissent: In reviewing allegations that employees did not receive sufficient notice of an election, the Board must balance the strong need to assure that all eligible employees have been given an opportunity to vote against the competing considerations favoring prompt completion of election proceedings.
HARRY TUTUNJIAN & SONS, 12 ALRB No. 22

314.09 Dissent: Board agents made reasonable efforts to provide employees, all of whom were laid off, with notice of election where election was scheduled to coincide with time employees were scheduled to pick up payroll checks at employer's offices.
HARRY TUTUNJIAN & SONS, 12 ALRB No. 22

314.09 Where the Regional Director failed to give notice of the election to packing shed workers (who nonetheless received notice from the employer and cast challenged ballots), to the employees of a harvester later determined to be a labor contractor (and whose employees were therefore eligible to vote in the election) and to certain other employees of entities also determined to be labor contractors (because the labor contractors failed to provide their names to the Regional Director), the Board ordered subsequent briefing to address the effect of the obligation of the parties to shoulder some of the obligation to notify eligible employees of an upcoming election.
SEQUOIA ORANGE CO., 11 ALRB No. 21

314.09 The Regional Director is required to give as much notice as is reasonably possible under the circumstances of each case; notice to employees of the date and time of election coupled with notice of evening voting sites is sufficient even if employees failed to hear the call to vote at the actual working site.
J. OBERTI, INC., et al., 10 ALRB No. 50

314.09 Absent concrete showing that significant numbers of eligible voters denied opportunity to vote, low voter turnout is not basis for setting aside election. (TMY Farms (1976) 2 ALRB No. 58.) Employer suggestion that election should be set aside because majority of eligible employees did not vote rejected.
H. H. MAULHARDT PACKING COMPANY, 6 ALRB No. 42

314.09 Board set aside election where voter turnout was very low, 66 of 222 eligible. The only employees who voted were those who worked on the day of the election. No employees worked between the date the petition for certification was filed and the day of the election, and there was no evidence that the Regional Director's efforts to notify eligible employees of the coming election were successful.
VERDE PRODUCE COMPANY, INC. 6 ALRB No. 24

314.09 Notice was adequate where union handed out unofficial notices before the end of harvest and the employer's supervisor phoned timekeepers on the tomato machines to ask them to notify those who worked with them.
RON NUNN FARMS, 4 ALRB No. 31

314.09 Neither the Board's failure to provide sample ballots in advance of the election nor the fact that the final details of the time and place of the election were not

fixed until slightly more than two days before the election establish that any worker was effectively deprived of the opportunity to vote and that therefore election should be set aside.
D'ARRIGO BROS., 3 ALRB No. 37

314.09 Although Board Agent's first attempt to notify employees of pending election occurred at work site on morning of election, no question of disenfranchisement since only 7 of the 53 employees working that day failed to vote and 40 of an additional 56 eligible employees who did not vote had ceased working for Employee by time petition for certification filed. (See dissenting opinion which argued integrity of election process violated where, as here, Board failed to strive for maximum voter participation.)
LU-ETTE FARMS, 2 ALRB No. 49

314.09 The Board held that although the pre-election conference was not held until approximately 12 hours before the election, the notices were not ready for distribution until eight hours before the election, and the employer failed to distribute the notices that the notice provided was sufficient in that 326 of 385 eligible employees voted in the election.
HAIDEN FARMS OF CALIFORNIA, INC., 2 ALRB No. 30

314.09 Board agents have discretion to attempt to give as adequate notice as possible. Board dismissed objection where the total number of votes for those workers who did not vote and those workers who voted challenged ballots was still insufficient to affect the outcome of the election.
R.T. ENGLUND COMPANY, 2 ALRB No. 23

314.09 The Direction and Notice of Election describing eligible voters as agricultural employees of the employer who were employed "during the payroll period ending August 27, 1975" was not misleading to eligible truck drivers who were on a different payroll schedule, since only four out of these thirteen employees did not vote and this number was too small to affect the election's outcome.
J.J. CROSETTI CO., INC., 2 ALRB No. 1

314.09 Where 93 of 100 voters voted in the election, the Board found that the employer's receipt of the written notice and direction of election only a few minutes before the pools opened had no prejudicial affect on the election.
YAMADA BROTHERS, 1 ALRB No. 13

314.09 Employer objection that being informed of the election at the preelection conference the afternoon before the following morning election was too short of a time to properly contact the employees, held invalid since 103 out of 108 employees voted and the employer had a chance to campaign among its employees. The seven-day time constraint was sufficient justification for the short

notice of election. (p. 4-5.)
YAMANO BROTHERS FARMS, 1 ALRB No. 9

314.09 Evidence that suggests disenfranchisement of perhaps 75% of petitioner's employees compels reconsideration of matters litigated in prior representation proceeding.
PERRY FARMS INC. v. ALRB (1978) 86 Cal.App.3d 448

314.09 No genuine issue of disenfranchisement raised by lack of notice of election to individuals who the employer failed to prove were in the bargaining unit and/or were working during the eligibility period.
GH & G ZYSLING DAIRY, 20 ALRB No. 3

314.09 Board will set aside election based on objection filed by an employer whose own agents provided a defective eligibility list, resulting in the failure of an outcome determinative number of voters to receive notice of the election, where the provision of the defective list was inadvertent, and not the result of bad faith, and where the employees were disenfranchised through no fault of their own.
COASTAL BERRY COMPANY, LLC, 25 ALRB No. 1

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.
D'ARRIGO BROS. CO. OF CALIFORNIA, 39 ALRB No. 4

314.10 Observers

314.10 Board agent did not abuse discretion by denying individual company-observer status or voting privileges where employer already had adequate number of observers, agent merely informed individual that supervisors were

not allowed in polling area, and one vote would not have affected outcome of election. IHE, pp.9-11.
H. H. MAULHARDT PACKING COMPANY, 6 ALRB No. 42

314.10 The mere fact that a union observer did not follow Board agent instructions and picked up a ballot which had fallen from the ballot box onto the table during the vote tally does not impugn the integrity of the election justifying setting aside the election.
D'ARRIGO BROS., 3 ALRB No. 37

314.10 The numerical imbalance of UFW and employer observers, by itself, does not constitute grounds for setting aside the election.
O. P. MURPHY & SONS, 3 ALRB No. 26

314.10 Election objection that Employer observer instructed Employees to mark their ballot for one Union rather than another dismissed for lack of evidence.
E. & L. FARMS, 2 ALRB No. 36

314.10 Although the date and time of the election were not announced until about one hour before the election was to begin, and Employer did not have sufficient time to arrange for observers at one polling site, the Employer's objections are overruled because an outcome-determinative number of voters were not affected.
CARL JOSEPH MAGGIO INC., 2 ALRB No. 9

314.10 Employer not entitled to have non-Employee election observers.
WILLIAM DAL PORTO & SONS, INC., 1 ALRB No. 19

314.10 The Board agent properly prevented the employer's use of a supervisor as an observer during the election.
YAMADA BROTHERS, 1 ALRB No. 13

314.10 Claim of cumulative effect is untenable where each of employer's other election objections was properly dismissed.
LINDELEAF v. ALRB (1986) 41 Cal.3d 861

314.10 Board properly dismissed Lindeleaf's objection that the Board agents improperly rejected Employer's proposed election observer, where person was not an employee of Lindeleaf at time of election, so his participation as an observer depended on written agreement by all parties to the election.
LINDELEAF v. ALRB (1986) 41 Cal.3d 861

314.11 Tally Of Ballots; Segregation Or Impounding

314.11 Evidence does not support allegation that Board agent opened and counted challenged ballots prior to tally of ballots over protest of employer observer in violation of regulations and procedures. IHED pp. 30-31.
TENNECO WEST, INC., 5 ALRB No. 27

314.11 Petitioners did not have burden of establishing chain of custody in post-election objections case premised on security of unresolved challenged ballots.
TENNECO WEST, INC., 5 ALRB No. 27

314.11 Board agent's failure to comply with field manual by using sealed challenged-ballot envelopes in investigating challenges does not by itself warrant setting aside election, citing California Coastal Farms, (1976) 2 ALRB No. 26.
TENNECO WEST, INC., 5 ALRB No. 27

314.11 The sole fact that the employer's representatives were only given a few hours' notice of the opening and counting of the previously impounded ballots does not cast a shadow on the accuracy or integrity of the election which would warrant overturning the election results.
D'ARRIGO BROS., 3 ALRB No. 37

314.11 Absence of employer representative from tallying of ballots is not, absent impropriety in ballot counting, ground for setting aside election, even when representative did not receive adequate notice.
HIJI BROTHERS, INC., 3 ALRB No. 1

314.11 Failure to give notice of counting of ballots may require setting election aside when there is any semblance of impropriety in ballot count, or any substantial possibility of occurrence of impropriety.
HIJI BROTHERS, INC., 3 ALRB No. 1

314.11 Where there was no evidence that the election was affected by the Board agent (1) not having an official tally of ballots form; (2) telling an employer observer it would do no good to file challenges; (3) failing to inspect the polling site prior to the election; and (4) failing to keep a written record of the election; the Board certified the results of the election.
HAIDEN FARMS OF CALIFORNIA, INC., 2 ALRB No. 30

314.11 Where there is no indication of impropriety in the ballot count or any substantial possibility of impropriety, failure to give adequate notice of the tally of ballots does not require setting aside the election.
R.T. ENGLUND COMPANY, 2 ALRB No. 23

314.11 Board agent should inform all parties of the time and place of the ballot count in enough time to allow them to have representatives witness the tallying.
CARL JOSEPH MAGGIO INC., 2 ALRB No. 9

314.11 Unless the party challenging the election alleges and demonstrates impropriety in the ballot county, mere failure to serve a copy of the tally is not conduct which would warrant the setting aside of an election.

CARL JOSEPH MAGGIO INC., 2 ALRB No. 9

314.11 Although the employer representative received short notice of the ballot count, employer did not make a determined effort to have its observers present for the tally. Several observers for other parties present during the count testified that the ballot box remained sealed until the count. Since the integrity of the ballot box and the propriety of the ballot count were substantiated, there were insufficient grounds to set aside the election.
J.J. CROSETTI CO., INC., 2 ALRB No. 1

314.11 Board set aside election where there was affirmative evidence that voters were disenfranchised by Board agents opening polls one hour later than time designated in Direction and Notice of Election and failing to maintain separate identity of each challenged ballot.
HATANAKE & OTA CO. 1 ALRB No. 7

314.12 Pooling Of Ballots

314.13 Order Directing Election; Board Designation Of Unit

314.13 Where 93 of 100 voters voted in the election, the Board found that the employer's receipt of the written notice and direction of election only a few minutes before the pools opened had no prejudicial affect on the election.
YAMADA BROTHERS 1 ALRB No. 13

314.14 Withdrawal From Ballot

314.15 Establishing Quarantine Area

314.15 The presence of representatives of some of the parties in the polling area after the polls were scheduled to open--but before the actual voting began--does not constitute interference with the election.
D'ARRIGO BROS., 3 ALRB No. 37

314.15 Where Board agent did not set physical boundaries for restricted polling area, election will not be overturned based upon mere presence of union organizer (who did not engage in electioneering or otherwise interfere with orderly process of voting) some 50 feet from actual location of voting.
SAM BARBIC, 1 ALRB No. 25

314.16 Board Agent Bias Or Appearance Of Bias

314.16 Although Board agents should not have made their own decision to overrule Employer's objections to Union access, there is no evidence that employees could have perceived any partisan alignment between the Board agents and any of the parties, nor that the Board's neutrality was impaired. Thus, Board agents' authorization of access did not tend to affect employee free choice in the

election.
ACE TOMATO CO., INC., 18 ALRB No.9

314.16 Board agent's explanation to employees of the function of a labor organization and the purpose of an election did not constitute bias tending to interfere with voter free choice.
LONOAK FARMS, 17 ALRB No. 19

314.16 Board sets aside election where Board agent made appropriate but lengthy remarks to an employee meeting reasonably perceived as a partisan union assembly. The agent's remarks were misrepresented for partisan effect in a union flyer one day prior to the election. The agent allowed himself by his conduct to be used in a manner that seriously affected the neutrality of the Board's procedures.
SAM ANDREWS' SONS, 15 ALRB No. 5

314.16 The Board views with utmost seriousness allegations that intentional or inadvertent conduct of its agents acquired such an appearance of bias that such conduct tended to affect the exercise of free choice by agricultural employees.
SAM ANDREWS' SONS, 15 ALRB No. 5

314.16 To warrant setting aside election on basis of Board agent misconduct, agent's action must demonstrate a partisan alignment or a compromising of Board neutrality.
SAM ANDREWS' SONS, 15 ALRB No. 5

314.16 Absent some showing that Board agents aligned themselves with one of the parties, or allowed themselves to be used in a manner seriously affecting the neutrality of the Board's processes, the Board must dismiss the employer's objection alleging Board agent bias.
TANI FARMS 13 ALRB No. 25

314.16 An accurate statement in response to what was reasonably perceived as a general legal issue does not impair the appearance of neutrality in the election process.
TANI FARMS 13 ALRB No. 25

314.16 As Board agent reasonably interpreted employees' question and was not placed on notice that question may have involved a specific local campaign issue, under an objective standard, Board agent's general, but accurate, response, did not mislead the employees.
TANI FARMS 13 ALRB No. 25

314.16 Board agent in charge of election did not exhibit bias when, during a lull in voting, he answered election observers' questions about the functions of the Board, explained the election process, and said he was pleased to be responsible for providing a procedure for people to participate in the democratic process.
AGRI-SUN NURSERY, 13 ALRB No. 19

314.16 Board agents should not only be free of bias but should refrain from any conduct that would give rise to an impression of bias. Board agent misconduct requires the setting aside of an election if the conduct is sufficiently substantial in nature to create an atmosphere which renders improbable a free choice by the voters.
AGRI-SUN NURSERY, 13 ALRB No. 19

314.16 Board agent's voting instructions, during which he used a sample ballot to demonstrate how to vote for the union and how to vote no-union, was not biased and could not reasonably have created an impression of bias.
ACE TOMATO COMPANY, INC., 12 ALRB No. 20

314.16 Employer's evidence failed to establish that Board agents assisted the union in its organizing effort by being present at a field at the same time as union representatives.
RANCHO PACKING, 10 ALRB No. 38

314.16 Board agent's alleged comment to gathering of eligible voters that "Union gave better benefits" would, had it been made, have been grounds to set aside election if heard by a sufficient number of eligible voters.
EXETER PACKERS, INC., 9 ALRB No. 76

314.16 Board agent's response to potential voter's question regarding possible bargained-for wage increase if union certified could not reasonably be considered evidence of agent bias or misconduct.
DON MOORHEAD HARVESTING CO., INC., 9 ALRB No. 58

314.16 Board agent's comments that he would set election early in morning so employer could not campaign did not exhibit bias where statement was made in context of negotiating election procedures with parties, issue of improper employee campaigning was being discussed and parties subsequent agreed to a time for the election.
MATSUI NURSERY, INC., 9 ALRB No. 42

314.16 Board upholds cred resolutions of ALJ based on demeanor and finds that Board agent did not tell workers that Company would make promises which it would not keep and that Company would threaten to call immigration if workers did not cooperate with it.
NASH-DE CAMP COMPANY, 7 ALRB No. 26

314.16 Allegation of general pattern of bias against employer and in favor of union on part of Bard agents not supported by substantial evidence.
TENNECO WEST, INC., 5 ALRB No. 27

314.16 Board affirms IHE credibility demeanor-based resolutions (which were supported by record as a whole) that Board agents did not express support for union or use state car

in attempt to encourage workers to support union.
PAUL W. BERTUCCIO and BERTUCCIO FARMS, 4 ALRB No. 91

314.16 Isolated and inconsequential nature of alleged board agent misconduct (statement that "I am from the union") would not create atmosphere which rendered improbable free choice by voters.
PAUL W. BERTUCCIO and BERTUCCIO FARMS, 4 ALRB No. 91

314.16 Isolated comment by Board agent at pre-election conference to effect he would designate an off-site polling area due to Employer's threats was not sufficiently substantial in nature to create atmosphere which rendered improbable a free choice by the voters.
MIKE YUROSEK & SONS, INC. 4 ALRB No. 54

314.16 Board held that allegedly incorrect information previously provided by a Board attorney did not preclude the employer from giving a planned 15-minute speech to assembled employees on the day of the election. The employer conferred subsequently with its counsel at a time sufficient to proceed as planned. Counsel admitted that he was aware at the time he advised the employer that this Board has not found the NLRB's Peerless Plywood rule applicable to elections under the ALRA (prohibition against speeches to a massed assembly of employees on company time with 24 hours of the start of a representation election, Peerless Plywood Company, (1953) 107 NLRB 427 [33 LRRM 1151].
DUNLAP NURSERY, 4 ALRB No. 9

314.16 Board Agent's refusal to allow Employee to vote while polls were still in place and ballot box unsealed and the same agent's allowing another Employee to vote at another site after the ballot box was sealed not sufficient to overturn election because the 2 votes could not have affected the outcome where U won by 100 votes.
ABATTI FARMS, INC. AND ABATTI PRODUCE, INC., 3 ALRB No. 83

314.16 Overturning of election due to Board agent's failure to notify all parties of the election arrangements in a timely fashion, should not depend on a showing that such misconduct could have affected the outcome of the election. In some circumstances, it may be appropriate to set aside the election as a means of deterring particularly objectionable conduct, or of safeguarding public confidence in the integrity of the election process.
CARL JOSEPH MAGGIO INC., 2 ALRB No. 9

314.16 Employer could not reasonably believe 1) that ruling in favor of union's suggestion for time and place of election affected outcome of election; or 2) that delaying preelection conference for 90 minutes and allowing union representative to translate preelection conference for a few minutes to a few employees showed

Board agent bias that would affect employee free choice.
GEORGE ARAKELIAN FARMS, INC. v. ALRB (1985) 40 Cal.3d 654

314.16 As Board noted in Coachella Growers, Inc. (1976) 2 ALRB No. 17, bias or appearance of bias, to justify setting aside election, must be shown to have affected conduct of election and to have impaired validity of balloting as a measure of employee choice.
GEORGE ARAKELIAN FARMS, INC. v. ALRB (1985) 40 Cal.3d 654

314.16 Where Employer challenged voters as not being agricultural employees, Board agent's statement, in response to voter who asked why questions were being asked about his job duties, that it was because Employer "says if you're not a cutter, you are not a campesino," did not reflect Board agent bias, particularly where it was not shown how many voters may have heard the comment.
ROYAL PACKING COMPANY, 20 ALRB No. 14

314.17 Board Agent Control Of Conduct In Voting Area

314.17 Evidence did not support allegation that Board agents failed to prohibit campaigning in election area. Rather, evidence showed that Board agents sought to curtail the campaign activities by ordering employees to remove union bumper stickers from display. Thus, evidence did not show that Board agent failed to conduct the election properly.
ARCO SEED COMPANY, 14 ALRB No. 6

314.17 Board agent's refusal to head observer's request to investigate presence of Union organizer's car on a public road at edge of quarantine area did not constitute misconduct since to do so would have left polling area unguarded.
SAKATA RANCHES, 5 ALRB No. 56

314.17 Although the election conditions were not ideal -- (1) large numbers of people were waiting to vote; (2) 10-15 people at a time were waiting to case challenged ballots; (3) some pro-union sloganeering occurred in the waiting line; (4) a "crap" game was conducted in the waiting line; and (5) to deal with these occurrences the Board agents left the blank ballots briefly unattended -- absent any showing that the election results were affected by this conduct, the Board will not set aside the election.
D'ARRIGO BROS., 3 ALRB No. 37

314.17 Although the employer agreed to stagger bus arrivals to avoid massing of voters at the polls, the fact that a jam of busses occurred with ensuing long waits for voters does not necessitate overturning the election since there was no showing the jam-up was intentional or caused any disenfranchisement.
BUD ANTLE, INC., 3 ALRB No. 7

314.17 Where Board agent did not set physical boundaries for restricted polling area, election will not be overturned based upon mere presence of union organizer (who did not engage in electioneering or otherwise interfere with orderly process of voting) some 50 feet from actual location of voting.
SAM BARBIC, 1 ALRB No. 25

314.17 Board properly certified election despite drunk's entry into polling area, because there was no evidence that his conduct interfered with election.
ADAMEK & DESSERT, INC. v. ALRB (1986) 178 Cal.App.3d 970

314.17 Board properly certified results of election even though group of individuals had been drinking near polling site, since they left site when asked to and there was no evidence that their drinking disrupted election or interfered with any employee's exercise of his or her right to vote.
ADAMEK & DESSERT, INC. v. ALRB (1986) 178 Cal.App.3d 970

314.17 Board properly dismissed Lindeleaf's objection that the Board agents improperly rejected Employer's proposed election observer, where person was not an employee of Lindeleaf at time of election, so his participation as an observer depended on written agreement by all parties to the election.
LINDELEAF v. ALRB (1986) 41 Cal.3d 861

314.17 Board properly rejected assertion of alleged failure by ALRB agent to respond promptly to misconduct by a UFW organizer in the 'quarantined' areas as the election was about to begin. The incident was trivial at best.
LINDELEAF v. ALRB (1986) 41 Cal.3d 861

314.17 Election objection dismissed where declarations failed to show any disruption of voting or that election was improperly supervised.
J.R. NORTON CO. v. ALRB (1979) 26 Cal.3d 1

314.17 Objections alleging that Board agents allowed union agents to engage in improper electioneering at or near the polls dismissed where allegations of electioneering were themselves insufficient to warrant setting matter for hearing.
ANDERSON VINEYARDS, INC., 24 ALRB No. 5

314.17 Objection that Board agents committed misconduct by allowing pro-union supervisors to speak to employees lined up to vote dismissed where supervisors' presence was brief and not coercive and Board agents, once they discovered the men were supervisors, told them they could not vote.
THE HESS COLLECTION WINERY, 25 ALRB No. 2

314.17 Election objection that Board failed to provide adequate notice of an election to non-striking employees failed

to state a *prima facie* case. Section 20365(c)(2)(b) of the Board's regulations require that declarations set forth with particularity the details of each occurrence and the manner in which it is alleged to have affected or could have affected the outcome of the election. Employees' declarations did not show that they did not vote or were prevented from voting, and were insufficient on their face.
GEORGE AMARAL RANCHES, INC., 38 ALRB No. 5

314.18 Representative Character Of Vote; Opportunity To Vote; Illiterate Or Foreign-Language Groups

314.18 The Regional Director is required to give as much notice as is reasonably possible under the circumstances of each case; notice to employees of the date and time of election coupled with notice of evening voting sites is sufficient even if employees failed to hear the call to vote at the actual working site.
J. OBERTI, INC., et al., 10 ALRB No. 50

314.18 An employee was not denied an opportunity to vote where he never approached the eligibility table, stood across from the line of prospective voters, and left area when Board agent asked that any foremen leave.
RANCHO PACKING, 10 ALRB No. 38

314.18 Board agent did not abuse discretion by denying individual company-observer status or voting privileges where employer already had adequate number of observers, agent merely informed individual that supervisors were not allowed in polling area, and one vote would not have affected outcome of election. IHE, pp.9-11.
H. H. MAULHARDT PACKING COMPANY, 6 ALRB No. 42

314.18 Evidence presented at hearing that two persons not allowed to vote insufficient to set aside election where issue not related to objection set by executive secretary for hearing, and votes of two persons could not have affected outcome of election. IHED, pp.11-12.
H. H. MAULHARDT PACKING COMPANY, 6 ALRB No. 42

314.18 Board declined to set aside election where polls were opened 20 minutes late, but held open additional 20 minutes, and no evidence of disenfranchisement was shown. IHE, pp. 6-8.
H. H. MAULHARDT PACKING COMPANY, 6 ALRB No. 42

314.18 Absent concrete showing that significant numbers of eligible voters denied opportunity to vote, low voter turnout is not basis for setting aside election. (TMY Farms (1976) 2 ALRB No. 58.) Employer suggestion that election should be set aside because majority of eligible employees did not vote rejected.
H. H. MAULHARDT PACKING COMPANY, 6 ALRB No. 42

314.18 Neither the Board's failure to provide sample ballots in

advance of the election nor the fact that the final details of the time and place of the election were not fixed until slightly more than two days before the election establish that any worker was effectively deprived of the opportunity to vote and that therefore election should be set aside.
D'ARRIGO BROS., 3 ALRB No. 37

314.18 Absent evidence that voters denied opportunity to vote, majority vote for union by minority of eligible voters does not indicate vote not representative.
LU-ETTE FARMS 2 ALRB No. 49

314.18 Although Board Agent's first attempt to notify employees of pending election occurred at work site on morning of election, no question of disenfranchisement since only 7 of the 53 employees working that day failed to vote and 40 of an additional 56 eligible employees who did not vote had ceased working for Employee by time petition for certification filed. (See dissenting opinion which argued integrity of election process violated where, as here, Board failed to strive for maximum voter participation.)
LU-ETTE FARMS 2 ALRB No. 49

314.18 The Board held that although the pre-election conference was not held until approximately 12 hours before the election, the notices were not ready for distribution until eight hours before the election, and the employer failed to distribute the notices that the notice provided was sufficient in that 326 of 385 eligible employees voted in the election.
HAIDEN FARMS OF CALIFORNIA, INC., 2 ALRB No. 30

314.18 Board will set aside election based on objection filed by an employer whose own agents provided a defective eligibility list, resulting in the failure of an outcome determinative number of voters to receive notice of the election, where the provision of the defective list was inadvertent, and not the result of bad faith, and where the employees were disenfranchised through no fault of their own.
COASTAL BERRY COMPANY, LLC, 25 ALRB No. 1

314.19 Ballots Improperly Marked; Blank Ballots

314.19 Failure of Board agents to explain the reason the employees were voting as challenged, does not require overturning the election.
COMITE 83, SINDICATO DE TRABAJADORES CAMPESINOS LIBRES, 14 ALRB No. 13

314.19 Poor visibility at election site is not a basis for setting aside election where evidence showed that although conditions were dark and foggy, they did not prevent the expression of voter free choice.
SILVA HARVESTING, INC., 11 ALRB No. 12

314.19 Board agent properly voided a ballot where both boxes were marked, since the intent of the voter could not be determined; Board agent improperly voided a ballot where the voter's intent was clear, and, although the voter had written on the ballot, the markings were not such as to disclose the voter's identity.
RANCH PACKING, 10 ALRB No. 38

314.19 Board set election aside where word "NO" on the no-union symbol on ballot transposed to reach "ON", and voter testimony and mismarked ballot indicated that at least one voter confused thereby.
VISALIA CITRUS PACKERS, 10 ALRB No. 32

314.20 Misprinted Ballots

314.20 Board set aside election where word "NO" within no-union symbol on ballot transposed to read "ON" and voter testimony and mismarked ballot indicated that at least one voter confused thereby.
VISALIA CITRUS PACKERS, 10 ALRB No. 32

314.20 Board declined to set election aside based on voter confusion generated by employer's mistaken reliance on alleged unwritten Board practice of printing ballots with union choice on left side.
VISALIA CITRUS PACKERS, 10 ALRB No. 32

315.00 ELECTIONS: ALRB REFUSAL TO CERTIFY

315.01 In General; Labor Code Section 1156.3(c)

315.01 Board refused to set aside decertification election where, under the circumstances, it found the employer's statements did not constitute a promise of increased medical benefits since, during the campaign, the owner verbally disclaimed he could promise anything to the employees; his statements were in response to employees' questions; its campaign involved other topics, and there was no evidence of other objectionable conduct that would tend to interfere with employee free choice and affect the results of the election.
ARROW LETTUCE COMPANY 14 ALRB No. 7

315.01 Board refused to set aside decertification election where it found, under the circumstances, the mere appearance of police personnel, absent coercion or interference, prior to and during the election was not such that it would tend to adversely affect the employees' freedom of choice.
ARROW LETTUCE COMPANY 14 ALRB No. 7

315.01 Board refused to set aside decertification election, using same standard in judging impact of employer campaigning as in representation cases.

JACK OR MARION RADOVICH, 9 ALRB No. 45

315.01 Board set aside election where voter turnout was very low, 66 of 222 eligible. The only employees who voted were those who worked on the day of the election. No employees worked between the date the petition for certification was filed and the day of the election, and there was no evidence that the Regional Director's efforts to notify eligible employees of the coming election were successful.
VERDE PRODUCE COMPANY, INC. 6 ALRB No. 24

315.01 In analyzing election conduct, the ALRB will consider the objections separately and as a whole to determine whether the conduct impeded voter free choice to the degree that the election results must be set aside.
D'ARRIGO BROS., 3 ALRB No. 37

315.01 Regional Director can invoke presumption that the petition is timely filed (peak) or that the petition is adequately supported when he believes employee list is incomplete, inflated or inaccurate. Presumptions should be invoked only where failure to provide information frustrates a determination of fact related to the presumption.
YODER BROTHERS, 2 ALRB No. 4

315.01 By language of 1156.3, Legislature has in substance established presumption in favor of certification, with burden of proof resting with objecting party to show why election should not be certified.
RULINE NURSERY CO. v. ALRB (1985) 169 Cal.App.3d 247

315.01 Among the factors which tend to impede employee free choice is a lack of information concerning choices available.
SAN DIEGO NURSERY CO. v. ALRB (1979) 100 Cal.App.3d 128

315.01 The Board concluded that the proper unit in an election under the ALRA consisted only of those specified employees of a mutual water company who engaged in primary agriculture a substantial amount of the time. Because the votes of those employees not properly in the unit could not be segregated without affecting the result of the election, the Board dismissed the petition for certification and set aside the election.
SUTTER MUTUAL WATER CO., 31 ALRB NO. 4.

315.02 Standard For Setting Aside Election; Outcome-Determinative Test

315.02 Because none of the employer's objections was proved to be well taken individually, Board necessarily concludes that the objections taken collectively fail to establish the invalidity of the election.
LONOAK FARMS, 17 ALRB No. 19

315.02 Where invalid challenges appear to have been processed without undue attention being drawn to the challenged voters and their participation in the anti-union campaign and where challenges were witnessed by an insufficient number of voters to have affected the outcome of the election, the Board finds that this misuse of the challenged ballot procedures does not warrant setting aside the election.
BORREGO PACKING COMPANY, 15 ALRB No. 8

315.02 Since prohibited promises of benefits need not be explicit, the Board must determine whether a promise may reasonably be inferred from the employer's statements.
ARROW LETTUCE COMPANY, 14 ALRB No. 7

315.02 When evaluating allegations of a preelection threat of reprisal or promise of benefits, the Board must examine the statements within the totality of the circumstances.
ARROW LETTUCE COMPANY, 14 ALRB No. 7

315.02 Misconduct alleged to have tended to affect the results of the election must be tested by an objective standard of whether such a misstatement could be reasonably viewed as tending to interfere with employee free choice.
TANI FARMS, 13 ALRB No. 25

315.02 Board must set aside election where, through no fault of the employer or union, outcome determinative number of employees received no notice of the election and were thus disenfranchised.
SEQUOIA ORANGE CO., et al., 13 ALRB No. 18

315.02 Although the NLRB employs the "laboratory conditions" standard in reviewing the conduct of an election and the ALRB utilizes the "outcome determinative" test, both employ the same standard for evaluating the impact of violence or threats thereof on the election process: whether the misconduct creates an atmosphere of fear or coercion rendering employee free choice of representatives impossible.
T. ITO & SONS FARMS, 11 ALRB No. 36

315.02 Where Regional Director held election in statutorily inappropriate unit, consisting of only employer's citrus workers, election upheld where IHE able to redefine unit in accordance with "all agricultural employees of the employer" requirement and with no adverse effect on other relevant statutory provisions or employees' rights.
BAKER BROTHERS, 11 ALRB No. 23

315.02 The party objecting to the certification of an election bears the burden of proving by specific evidence that misconduct occurred which tended to affect employee free choice to the extent that it affected the election results.
BRIGHT'S NURSERY, 10 ALRB No. 18
Accord: J. OBERTI, INC., et al., 10 ALRB No. 50

315.02 Board refused to set aside decertification election, using same standard in judging impact of employer campaigning as in representation cases.
JACK OR MARION RADOVICH, 9 ALRB No. 45

315.02 Given Union's wide margin of victory (116-9), number of eligible voters shown to have been aware of prior violent conduct insufficient to have impact on results of election. IHED pp. 24-25.
JOSEPH GUBSER CO., 7 ALRB No. 33

315.02 Hearsay statements of several Employees that they were frightened insufficient to find crew members were afraid and not basis to set aside election.
FRUDDEN ENTERPRISES, INC., 7 ALRB No. 22

315.02 Objective not subjective standard for determining if atmosphere of fear existed to warrant setting aside election. Statements of small number of Employees that they were frightened insufficient basis where there were a large number of potential voters and the violent incidents were not objectively of such a character as to engender significant fear of Union.
FRUDDEN ENTERPRISES, INC., 7 ALRB No. 22

315.02 Board concluded that since Regional Director's Supplemental Report on Challenged Ballots was incomplete in several material respects, it was unable to resolve remaining determinative challenges. Board acknowledged that handling of case had been inadequate and concluded that inexcusable delays prevented attainment of truly representative election results. Accordingly, Board set aside election and dismissed representation petition. Board and General Counsel ordered to institute comprehensive re-examination of respective policies, practices, and procedures.
FRANZIA BROTHERS WINERY, 7 ALRB No. 14

315.02 Although employer was negligent in providing deficient employee list, intervenor failed to demonstrate that the deficiencies in the list affected the outcome of the election. (Id., IHED, p. 12.)
COLACE BROTHERS, INC., 6 ALRB No. 56

315.02 Evidence presented at hearing that two persons not allowed to vote insufficient to set aside election where issue not related to objection set by executive secretary for hearing, and votes of two persons could not have affected outcome of election. IHED, pp.11-12.
H. H. MAULHARDT PACKING COMPANY, 6 ALRB No. 42

315.02 Board rejects NLRB's "laboratory conditions" standard in evaluating election objections because of the conditions peculiar to agriculture and holds that it will set aside an election only where the circumstances of the first election were such that employees could not express a

free and uncoerced choice of a collective bargaining representative.
D'ARRIGO BROTHERS OF CALIFORNIA, 6 ALRB No. 27

315.02 Employer's pre-election Employee list inadequate so election set aside.
SALINAS LETTUCE FARMERS COOPERATIVE, 5 ALRB No. 21

315.02 Union organizer's accusing employer's representative of calling Immigration and Naturalization Service (INS), after INS agents appeared on employer's property, arrested a worker, and later released him, not grounds for setting aside election as the record failed to establish that any employee or observer overheard the remarks.
TEPUSQUET VINEYARDS, 4 ALRB No. 102

315.02 Conduct by an eligible voter (not an agent of any party) who accompanied crews of other voters to polls, urged the crews to vote for the union, waited in the polling area while the crews voted, then left and returned with other crews, did not warrant setting aside the election as record failed to establish that the actions had a prejudicial effect on the voters.
TEPUSQUET VINEYARDS, 4 ALRB No. 102

315.02 Board Agent's refusal to allow Employee to vote while polls were still in place and ballot box unsealed and the same agent's allowing another Employee to vote at another site after the ballot box was sealed not sufficient to overturn election because the 2 votes could not have affected the outcome where Union won by 100 votes.
ABATTI FARMS, INC. AND ABATTI PRODUCE, INC.,
3 ALRB No. 83

315.02 Election manual only guide and failure to follow evaluated by whether failure affected outcome of election or tended to interfere with Employee free choice.
ABATTI FARMS, INC. AND ABATTI PRODUCE, INC.,
3 ALRB No. 83

315.02 Unlike the NLRB context, an ALRB decision to set aside an agricultural election will generally mean that the rerun cannot be conducted until the following season when the next peak of employment occurs, and the electorate will most likely be substantially changed. Therefore, the ALRB will not set aside an election and order a rerun unless the circumstances of the first election were such that employees could not express a free and uncoerced choice of a collective bargaining representative.
D'ARRIGO BROS., 3 ALRB No. 37

315.02 Even if the presence of supervisors in the polling area influenced the free choice of the 40 voters present, no discernible impact was had on the results of an election won by a margin of more than 600 votes.
BUD ANTLE, INC., 3 ALRB No. 7

315.02 Employer did not meet burden of proof that eligible voters prevented from voting. Election not set aside.
TMY FARMS, 2 ALRB No. 58

315.02 When opposing union is not disadvantaged by another union's taking excess access, and there is no evidence demonstrating that six incidents of excess access affected employee free choice or the outcome of the election, the election will not be set aside
DESSERT SEED COMPANY, INC., 2 ALRB No. 53

315.02 Although the date and time of the election were not announced until about one hour before the election was to begin, and Employer did not have sufficient time to arrange for observers at one polling site, the Employer's objections are overruled because an outcome-determinative number of voters were not affected.
CARL JOSEPH MAGGIO INC., 2 ALRB No. 9

315.02 Overturning of election due to Board agent's failure to notify all parties of the election arrangements in a timely fashion, should not depend on a showing that such misconduct could have affected the outcome of the election. In some circumstances, it may be appropriate to set aside the election as a means of deterring particularly objectionable conduct, or of safe-guarding public confidence in the integrity of the election process.
CARL JOSEPH MAGGIO INC., 2 ALRB No. 9

315.02 Board agent did not abuse "reasonable discretion" in refusing union's request for earlier election starting time where there was no showing that any voters were disenfranchised.
MELCO VINEYARDS, 1 ALRB No. 14

315.02 Board properly rejected Lindeleaf's argument that Board agent improperly failed to note each challenge, because number of challenges was insufficient to have altered outcome of election.
LINDELEAF v. ALRB (1986) 41 Cal.3d 861

315.02 In representation cases, ALRB has consistently followed policy of upholding elections unless to do so would clearly violate employee rights or result in unreasonable interpretation or application of Act.
RULINE NURSERY CO. v. ALRB (1985) 169 Cal.App.3d 247

315.02 Neither NLRB nor Board adheres to "laboratory conditions" standard in determining whether to certify election results. Both boards have focused on "atmosphere" of election proceedings and have, in practice, applied an outcome-determinative test.
TRIPLE E PRODUCE CORP. v. ALRB (1983) 35 Cal.3d 42

315.02 Section 1156.3(c), which requires that the Board certify

an election unless there are sufficient grounds to refuse to do so, has been interpreted to create a presumption in favor of certification of an election, with the burden of proof on the objecting party to demonstrate that an election should be set aside. In cases involving Excelsior lists, the complaining union must show that the inadequacies in the list actually impaired its ability to communicate with employees.
LEMINOR, INC., et al., 22 ALRB No. 3

315.02 The burden of a party objecting to an election is not met merely by providing that misconduct did in fact occur, but rather by specific evidence demonstrating that such conduct interfered with the employees' exercise of their free choice to such an extent that the conduct changed the results of the election.
OCEANVIEW PRODUCE CO., 20 ALRB No. 16

315.02 Probing subjective individual reactions of employees involves an "endless and unreliable inquiry" and is "irrelevant to the question whether there was, in fact, objectionable conduct."
OCEANVIEW PRODUCE CO., 20 ALRB No. 16

315.02 The touchstone in ALRB precedent regarding overturning elections is an "outcome-determinative" test to determine whether unlawful acts occurred and whether these acts interfered with employees' free choice to such an extent that they affected the results of the election.
GALLO VINEYARDS, INC., 34 ALRB No. 6

315.02 While lack of due diligence may be relevant in determining whether an address list is deficient, under an outcome determinative standard it is of no import whether the deficient list was the result of gross negligence or bad faith. Therefore, it does not provide any basis for setting aside an election where the deficiencies in the list and the consequent effect on the union's ability to communicate with employees are not themselves sufficient to warrant setting it aside.
GALLO VINEYARDS, INC., 35 ALRB No. 6

315.02 In light of outcome determinative standard applied to defective address list cases, the Board will not refuse to entertain evidence of the actual effect of the faulty list and showing such effect is the burden of the objecting party. Therefore, regardless of whether the number of inadequate addresses "dwarfs" or merely exceeds the shift in the number of votes needed to change the outcome, some inquiry into the effect of the list's deficiencies on the utility of the list is necessary before concluding that there are sufficient grounds to set aside an election. A high number of facially inadequate addresses relative to the number of votes necessary to change the outcome will normally weigh significantly in favor of inferring an outcome determinative effect on the election, but is not in and

of itself conclusive.
GALLO VINEYARDS, INC., 35 ALRB No. 6

315.02 In cases involving defective eligibility lists, the Board has applied an outcome-determinative standard under which an election will be set aside only if the eligibility list was so deficient that its utility was impaired and it tended to interfere with the employees' free choice to an extent that the outcome of the election could have been affected. (See *Silva Harvesting, Inc.* (1985) 11 ALRB No. 12 at pp. 5-6.
GALLO VINEYARDS, INC., 35 ALRB No. 6

315.02 Although employer delayed workers' entry into the polling area by telling them that they had to "punch in" prior to voting instead of proceeding directly to the polling area as had been previously agreed, the Board affirmed the dismissal of the union's election objection. There was no evidence that any workers were unable to vote, nor were there facts supporting the conclusion that the delay was coercive enough to have affected free choice in the election.
L. E. COOKE COMPANY, 35 ALRB No. 1

315.02 Although employer delayed ALRB agents' entry into the property on the day of the election by five minutes in the presence of 20 employees, the Board affirmed the dismissal of the union's objection where the union failed to demonstrate coercive or intimidating circumstances that restrained workers in their right to freely cast ballots.
L. E. COOKE COMPANY, 35 ALRB No. 1

315.02 Election objected based on inadequate notice of an election will generally be dismissed unless the objecting party can show that an outcome determinative number of voters will be disenfranchised.
GEORGE AMARAL RANCHES, INC., 38 ALRB No. 5

315.02 Election objection that Board failed to provide adequate notice of an election to non-striking employees failed to state a *prima facie* case. Section 20365(c)(2)(b) of the Board's regulations require that declarations set forth with particularity the details of each occurrence and the manner in which it is alleged to have affected or could have affected the outcome of the election. Employees' declarations did not show that they did not vote or were prevented from voting, and were insufficient on their face.
GEORGE AMARAL RANCHES, INC., 38 ALRB No. 5

315.03 What Constitutes A Majority

315.03 Union wins election by getting a majority of votes cast; does not need a majority of all Employees in unit.
TMY FARMS, 2 ALRB No. 58

315.03 Absent evidence that voters denied opportunity to vote, majority vote for union by minority of eligible voters does not indicate vote not representative.
LU-ETTE FARMS 2 ALRB No. 49

316.00 EMPLOYER INTERFERENCE WITH ELECTIONS

316.01 In General

316.01 Board finds employer's supervisor did not interfere with employee free choice in allowing members of the unit to come to the door of her vehicle to obtain caps bearing the logo "No Union"; the supervisor did not force the "No Union" caps on any of the employees who sought out the caps for themselves.
MANN PACKING CO., INC., 16 ALRB No. 15

316.01 Incumbent Union's failure to show company's discriminatory pattern of permitting work time access to rival Union while denying same to incumbent was a de minimus showing of "excess access" and did not violate the Act.
COMITE 83, SINDICATO DE TRABAJADORES CAMPESINOS LIBRES, 14 ALRB No. 13

316.01 Although Company foreman and rival union officer company employee heckled incumbent union agent while he conversed with employees, incumbent did not show the conduct prevented employees from receiving information which interfered with exercising their free choice in the election. COMITE 83, SINDICATO DE TRABAJADORES CAMPESINOS LIBRES, 14 ALRB No. 13

316.01 Whether a statement is coercive does not turn on an employees' subjective reactions but instead depends upon whether the statement reasonably tends to coerce employees.
T. ITO & SONS FARMS, 11 ALRB No. 36

316.01 Employer who is aware of preelection misconduct of foreman and who fails to correct it, cannot later rely on that conduct as grounds for setting aside the election.
MATSUI NURSERY, INC., 9 ALRB No. 42

316.01 An employer may not rely on its own failure to provide eligibility list as grounds for setting aside an election. [Reg. 20365(c)(5)]
MURANAKA FARMS, 9 ALRB No. 20

316.01 ALO properly considered entire course of campaign in finding unlawful assistance to decertification efforts.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC., 7 ALRB No. 36

316.01 Where deliberate or repeated misrepresentations occur prior to election, fact they are corrected during a mass

meeting would not necessarily eradicate their effects where evidence establishes that misrepresentations interfered with the employees free choice to the extent that they affected the results of the election.
SAKATA RANCHES, 5 ALRB No. 56

316.01 Board expresses reluctance to follow 1962 rule of Hollywood Ceramics Co., as reinstated in General Knit of California, Inc. (1978) 239 NLRB No. 101 [99 LRRM 1687], governing pre-election misrepresentations as rule is based on NLRB's "laboratory conditions" model for election conduct which requires representation elections to take place "under conditions as nearly ideal as possible." NLRB elections can be easily rerun where statements or conduct at a preceding the election fall short of laboratory conditions whereas in the agricultural setting rerun elections, in most cases, must be postponed until a subsequent period of peak employment. Board reaffirms policy of setting aside elections only where the employees could not express free and uncoerced choice.
SAKATA RANCHES, 5 ALRB No. 56

316.01 Physical confrontations between union and employee representatives are intolerable under Act.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

316.01 Because of 7-day election rule, Board expects parties to an election to participate in efforts to notify potential voters of election. Board implies that Employee's failure to supply adequate employee list or to assist in notification efforts were factors in rejecting claim of disenfranchisement on grounds of insufficient notice.
LU-ETTE FARMS, 2 ALRB No. 49

316.01 Existence and enforcement of union security clause based upon provisions of contract existing at time of election is not cause to set aside election where no evidence presented to show that it affected election and where clause itself was legal under California law.
ECKEL PRODUCE COMPANY, 2 ALRB No. 25

316.01 Anti-union animus is not a necessary element in finding that a statement interferes with employee free choice. The ALRB consistently has applied an objective standard, in which the inquiry is whether the conduct would tend to interfere with employee free choice. (See, e.g., *Karahadian Ranches, Inc. v. ALRB* (1985) 38 Cal.3d 1; *J.R. Norton v. ALRB* (1987) 192 Cal.App.3d 874, 891; *S. F. Growers* (1978) 4 ALRB No. 58.)
GIUMARRA VINEYARDS CORP., 32 ALRB No. 5

316.01 Receipt by a union of an employer’s flyer four days prior to an election was sufficient to put the union on notice that it needed to respond, even if it was unaware that the flyer had actually been distributed until two days before the election. NLRB authority has held that two

days is sufficient for such a response.
GALLO VINEYARDS, INC., 34 ALRB No. 6

316.01 Although employer delayed workers' entry into the polling area by telling them that they had to "punch in" prior to voting instead of proceeding directly to the polling area as had been previously agreed, the Board affirmed the dismissal of the union's election objection. There was no evidence that any workers were unable to vote, nor were there facts supporting the conclusion that the delay was coercive enough to have affected free choice in the election.
L. E. COOKE COMPANY, 35 ALRB No. 1

316.01 Although employer delayed ALRB agents' entry into the property on the day of the election by five minutes in the presence of 20 employees, the Board affirmed the dismissal of the union's objection where the union failed to demonstrate coercive or intimidating circumstances that restrained workers in their right to freely cast ballots.
L. E. COOKE COMPANY, 35 ALRB No. 1

316.02 Union Access To Employees

316.02 Board adopts IHE's conclusion that during campaign period prior to decertification election, incumbent union is entitled to access to employer's agricultural employees under provisions of the Board's access regulations, Title 8, California Code of Regulations, section 20900 et seq. (Cf. Patterson Farms (1982) 8 ALRB No. 57, n.3 [access regulation governs access in rival union campaign].) The union's need to campaign for a continued majority does not implicate post-certification access under O. P. Murphy (1978) 4 ALRB No. 106 or strike access under Bruce Church (1981) 7 ALRB No. 20.
THE CAREAU GROUP dba EGG CITY, 15 ALRB No. 21

316.02 Employer's unexplained submission of "grossly inadequate" seniority list instead of current pre-petition payroll list constituted grounds to set aside election both in itself and in combination with IUAW/Teamster agents' abuse of incumbent IUAW post-certification access to campaign for Teamsters.
CARL DOBLER AND SONS, 11 ALRB No. 37

316.02 Board dismissed objections that supervisors engaged in surveillance and threats of job loss and that employer assisted petitioning union and denied access to intervening union.
CARL DOBLER AND SONS, 11 ALRB No. 37

316.02 Board applies an outcome determinative test in determining whether to set aside election on the basis of a defective eligibility list. Board set aside election where employer's eligibility list contained accurate street addresses for only 53 of the 198 named employees,

the election results were close, and the defective list caused actual prejudice to the incumbent union so that the list tended to affect the results of the election.
SILVA HARVESTING, INC., 11 ALRB No. 12

316.02 Denial of access to union organizers was not discriminatory where union organizers were provided with more access than decertification petitioners.
JACK OR MARION RADOVICH, 9 ALRB No. 45

316.02 Employer violated the act by granting preferential access to one union for organizing purposes when it allowed that union's organizers to substitute for its lettuce-wrap machine operators while soliciting support.
ROYAL PACKING CO. 5 ALRB No. 31

316.02 Where the employer had three organizers attempting to take access arrested over three weeks prior to the election and it was not shown how many employees witnessed the arrest the Board dismissed the objection alleging such conduct because of its remoteness in time and because there was no showing that the arrest created a coercive or intimidating atmosphere.
MID-STATE HORTICULTURE COMPANY, 4 ALRB No. 101

316.02 Where the UFW failed to show that it was discriminatorily denied access to the employees during the election campaign the Board held that a single non-violent denial of access did not require the election to be set aside.
MID-STATE HORTICULTURE COMPANY, 4 ALRB No. 101

316.02 Respondent, charged with failing to provide pre-petition lists, defended on grounds regulation was unlawful and provision violated employee's right to privacy. ALO found said defense "frivolous" and therefore warranted award of attorney's fees and litigation costs to general counsel and charging party. Board rejected attorney's fees but granted expanded access.
AMERICAN FOODS, INC., 4 ALRB No. 29

316.02 Election must be set aside in light of employer's pervasive ULP's, including unlawful promise of benefits, numerous discriminatory discharges, threats of loss of employment, and interference with communication between employees and organizers in company fields and labor camps.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

316.02 Owner/operator of labor camp cannot exercise worker's right not to speak with organizer.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

316.02 Denials of entry to labor camps constituted unlawful interference with free exercise of rights guaranteed to employees by Act.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

316.02 Head supervisor's conduct "blocking" union organizer's efforts to leave premises which climaxed to avert of organizer in presence of workers violated section 1153(a).
ANDERSON FARMS COMPANY, 3 ALRB No. 67

316.02 Section 1152 guarantees right of employees to convene with organizers at home, wherever that home is.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

316.02 Heavy burden will be with owner/operator of labor camp to show that any rule restricting union access does not also restrict rights of tenant to be visited.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

316.02 Brandishing firearms to prevent union organizers from taking access is coercive and, as such, violates the rights guaranteed to employees by section 1152.
WESTERN TOMATO, et al., 3 ALRB No. 51

316.02 Violations of the access rule constitute unfair labor practices under the ALRA.
JACK PANDOL & SONS, INC., 3 ALRB No. 29

316.02 The access rule allows the distribution of literature as well as oral communication.
JACK PANDOL & SONS, INC., 3 ALRB No. 29

316.02 Where the evidence showed (1) no disparities in either the amount or quality of contact with the employees by two competing unions; and (2) that the employer's refusal to permit access by organizers on several occasions was consistent with the access rule, the Board found no conduct which could have affected the outcome of the election.
TOMOOKA BROTHERS, 2 ALRB No. 52

316.02 In evaluating an employer's compliance with the requirement to provide an accurate Excelsior list, the ALRB has been somewhat more flexible than the NLRB, in recognition of the special problems agricultural employers face in obtaining accurate, up to date street addresses. The ALRB applies an outcome determinative test and will not presume that a failure to provide a substantially complete list would have a prejudicial effect upon the election.
LEMINOR, INC., et al., 22 ALRB No. 3

316.03 No-Solicitation Rule; Meetings And Interviews; Calling In Employees

316.03 Although Act cannot require Employer to refuse to respond to Employee inquiry, Employer went well beyond merely naming or suggesting Lawyer who Petitioners might consult; Employer brought Petitioners and counsel together. Counsel was father-in-law to Employer's labor relation representative, and circulated decertification

petition at Christmas party given by Employer.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC.,
7 ALRB No. 36

316.03 Employer's unlawful assistance to Employees in decertification effort proven by circumstantial evidence that (1) leading proponents of decertification Petitioner provided leaves of absence and other benefits to facilitate their conduct, and (2) Employer's agents assembled Employees for purpose of obtaining signatures in various decertification Petitioners.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC.,
7 ALRB No. 36

316.03 No threat of reprisal in Respondent's pre-election statement to employees indicating a preference for the Teamsters Union coupled with statement that a UFW victory would require destruction of, or an inability to use, produce boxes previously imprinted with Teamster labels.
JASMINE VINEYARDS, INC. 3 ALRB No. 74

316.03 Unlawful threat of reprisal in Respondent's pre-election solicitation of employee support for Teamsters coupled with prediction that a UFW victory would cause him to pull up the grapevines since comment indicated that Respondent would cease operations before negotiating with the UFW.
JASMINE VINEYARDS, INC. 3 ALRB No. 74

316.04 Visits To Employees' Homes; Transporting Employees To Polls

316.04 Denials of entry to labor camps constituted unlawful interference with free exercise of rights guaranteed to employees by Act.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

316.04 Heavy burden will be with owner/operator of labor camp to show that any rule restricting union access does not also restrict rights of tenant to be visited.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

316.04 Owner/operator of labor camp cannot exercise worker's right not to speak with organizer.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

316.04 Section 1152 guarantees right of employees to convene with organizers at home, wherever that home is.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

316.04 Election must be set aside in light of employer's pervasive ULP's, including unlawful promise of benefits, numerous discriminatory discharges, threats of loss of employment, and interference with communication between employees and organizers in company fields and labor camps.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

316.05 Distribution Of Literature; Photographs And Motion Pictures; Letters And Notices To Employees; Sample Ballots

316.05 Under the circumstances, the Employer's leaflet listing certain limitations in the Union's medical plan while not comparing specific union or nonunion plans is not objectionable under Jack or Marion Radovich (1983) 9 ALRB No. 45, and since the leaflets did not state the employer could or would cure the limitations, there was no promise of benefits.
ARROW LETTUCE COMPANY, 14 ALRB No. 7

316.05 Employer's distribution of "Vive la Uva" buttons, and employer's distribution of leaflets accusing union of falsehoods, blaming union for negotiation failures and comparing company benefit levels under union contract with levels at non-union ranches in the area, are not grounds to set aside election.
JACK OR MARION RADOVICH, 9 ALRB No. 45

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.
D'ARRIGO BROS. CO. OF CALIFORNIA, 39 ALRB No. 4

316.05 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

316.06 Misrepresentations

316.06 Mechanic who works on machinery at both King City and Salinas packing sheds and does not work on field machinery or perform functions as an incident to or in conjunction with Employer's farming operations is not agricultural employee.
MELCO VINEYARDS, 1 ALRB No. 14

316.06 Although union's constitution authorizes initiation fees, no misrepresentation in pre-election flyer which stated that union had no initiation fees because evidence established that union had never in fact required such payments.
SAMUEL S. VENER CO., 1 ALRB No. 10

316.06 Board rejects Employer's contention Union injected "racial animosity" into campaign when it utilized a campaign consultant's accusation of Union organizers of Mexican descent of "acting like a bunch of ignorant animals" in presence of a crew by later highlighting the incident in flyers and rallies, quoting the consultant as having said "all Mexicans are a bunch of ignorant animals." Board discussed cases in which NLRB distinguished appeals to racial prejudice from appeals to the racial pride of a particular ethnic minority.
OCEANVIEW PRODUCE CO., 20 ALRB No. 16

316.06 Board defers deciding whether it must follow the NLRB's rule against entertaining election objections based on misrepresentations unless a party has forged documents or altered NLRB documents during the election campaign. (Midland National Life Insurance Co. (1982) 263 NLRB 127; Acme Bus Corp. (1995 316 NLRB 274 (elections will be set aside only "if a party misrepresented the facts or the law by forging documents, thereby deceiving the voters, and rendering them unable to recognize the propaganda for what it is.") Board need not decide whether contested statements by employer constituted misrepresentation and thus interference because UFW had notice and opportunity to diffuse or explain away the alleged misrepresentation prior to the decertification election.
OCEANVIEW PRODUCE CO., 24 ALRB No. 6

316.06 Election objection dismissed where, even if it were found that the employer's campaign literature concerning union dues was misleading, particularly in light of the unique vulnerability of the agricultural workforce, the union had ample time to refute or explain away the misrepresentations. In so holding, the Board continued to apply the broader standard articulated in *Hollywood Ceramics* (1962) 140 NLRB 221, finding it unnecessary to decide if the narrower standard of *Midland National Life Insurance Co.* (1982) 263 NLRB 127 is applicable precedent that must be followed pursuant to section 1148 of the Agricultural Labor Relations Board.
GUIMARRA VINEYARDS CORP., 31 ALRB No. 6

316.07 24-Hour Rule; Applicability; Union's Opportunity To Reply

316.07 Board held that allegedly incorrect information previously provided by a Board attorney did not preclude the employer from giving a planned 15-minute speech to assembled employees on the day of the election. The employer conferred subsequently with its counsel at a time sufficient to proceed as planned. Counsel admitted

that he was aware at the time he advised the employer that this Board has not found the NLRB's Peerless Plywood rule applicable to elections under the ALRA (prohibition against speeches to a massed assembly of employees on company time with 24 hours of the start of a representation election, Peerless Plywood Company, (1953) 107 NLRB 427 [33 LRRM 1151].
DUNLAP NURSERY, 4 ALRB No. 9

316.07 Receipt by a union of an employer's flyer four days prior to an election was sufficient to put the union on notice that it needed to respond, even if it was unaware that the flyer had actually been distributed until two days before the election. NLRB authority has held that two days is sufficient for such a response.
GALLO VINEYARDS, INC., 34 ALRB No. 6

316.08 Aid To Union; Favoritism Between Unions; Execution Or Enforcement Of Contracts; Labor Code Section 1155.4

316.08 Board follows NLRB rule that an election will be set aside for supervisor's pro-union conduct only if employees may reasonably infer that the employer itself favors the union, or the supervisor's statements or conduct leads employees to fear future retaliation if they do not support the union. Foreman's favorable statements about the union herein did not satisfy either prong of the NLRB test.
LONOAK FARMS, 17 ALRB No. 19

316.08 Although Company foreman and rival union member -- Company employee heckled incumbent union agent while he conversed with employees, incumbent did not show the conduct prevented employees from receiving information which interfered with exercising their free choice in the election.
COMITE 83, SINDICATO DE TRABAJADORES CAMPESINOS LIBRES, 14 ALRB No. 13

316.08 Company foreman who had a right to be in an area during the time the organizers attempted to speak to workers did not violate act by refusing to leave when requested.
COMITE 83, SINDICATO DE TRABAJADORES CAMPESINOS LIBRES, 14 ALRB No. 13

316.08 Incumbent Union's failure to show company's discriminatory pattern of permitting work time access to rival Union while denying same to incumbent was a de minimus showing of "excess access" and did not violate the Act.
COMITE 83, SINDICATO DE TRABAJADORES CAMPESINOS LIBRES, 14 ALRB No. 13

316.08 Under the circumstances and the fact that neither the Employer nor the supervisor (as opposed to the foreman) knew of rival union members' use of a company vehicle for campaign purposes, there was no evidence of agency or

employer support.
COMITE 83, SINDICATO DE TRABAJADORES CAMPESINOS LIBRES, 14 ALRB No. 13

316.08 Absent proof of employer support or rival union violence, incumbent union's showing that rival union members entered fields before the lunch period or stayed afterwards was merely excess access and insufficient grounds for overturning the election.
COMITE 83, SINDICATO DE TRABAJADORES CAMPESINOS LIBRES, 14 ALRB No. 13

316.08 Board affirmed IHE's finding that incumbent Union failed to establish rival Union campaigned on work time which could have been designated the lunch period since incumbent initially did not show the workers had an established lunch period; thus, there was no violation of the Act.
COMITE 83, SINDICATO DE TRABAJADORES CAMPESINOS LIBRES, 14 ALRB No. 13

316.08 Board dismissed objections that supervisors engaged in surveillance and threats of job loss and that employer assisted petitioning union and denied access to intervening union.
CARL DOBLER AND SONS, 11 ALRB No. 37

316.08 Employer violated the act by granting preferential access to one union for organizing purposes when it allowed that union's organizers to substitute for its lettuce-wrap machine operators while soliciting support.
ROYAL PACKING CO. 5 ALRB No. 31

316.08 Union's objection that another union was given preferential access dismissed as the evidence indicated a hotly, though freely, contested election with no significant campaign advantage to either union. (ALOD at p. 27.)
AGMAN, INC. 4 ALRB No. 7

316.08 The employer's rendering unlawful support and assistance to one union, viz., foremen passing out campaign buttons and grant of field access to one union only, constitutes grounds for setting aside an election.
SECURITY FARMS, 3 ALRB No. 81

316.08 Although the record establishes that Teamster organizers had freer access to employees than did UFW organizers, it is not necessary to set aside the election on this basis since it is clear that the Teamsters administered their contract much of the time they were in the fields. Further, the UFW had a sufficient opportunity to campaign. The Teamsters did not have such a significant campaign advantage that employees were unable to cast an informed vote.
BUD ANTLE, INC., 3 ALRB No. 7

316.08 Where the evidence showed (1) no disparities in either the amount or quality of contact with the employees by two competing unions; and (2) that the employer's refusal to permit access by organizers on several occasions was consistent with the access rule, the Board found no conduct which could have affected the outcome of the election.
TOMOOKA BROTHERS, 2 ALRB No. 52

316.09 Discharge, Layoffs, Transfers, Etc.; Claim Of Employer's Unfair Labor Practices

316.09 The Board found respondent violated the Act by hiring a replacement crew for purposes of affecting the outcome of the election, where: record indicated anti-union animus; respondent discharged an openly pro-UFW crew and altered its payroll periods shortly before the election in a manner which disenfranchised the discharged crew; and the ostensible economic justification for the discharge and replacement of the pro-UFW crew was not supported by the record evidence.
S & F GROWERS, 4 ALRB No. 58

316.09 The firing of an employee two months before an election is found not to be conduct tending to affect the results of an election. The firing of two employees reinstated after missing only part of one day of employment is also not conduct warranting setting aside an election.
BUD ANTLE, INC., 3 ALRB No. 7

316.09 Election must be set aside in light of employer's pervasive ULP's, including unlawful promise of benefits, numerous discriminatory discharges, threats of loss of employment, and interference with communication between employees and organizers in company fields and labor camps.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

316.09 Fair election could not be held in context of numerous and egregious ULPs (including discharged employees for protected activity during union's campaign and demotion of union observer on day of election.
SAM ANDREWS' SONS, 3 ALRB No. 45

316.09 Election objections supported by same evidence proving ULPs constitute sufficient misconduct to set aside election.
SAM ANDREWS' SONS, 3 ALRB No. 45

316.09 Firing worker for union activity before election is display of employer's economic power that cannot help but chill desire of vote to support union.
VALLEY FARMS, 2 ALRB No. 42

316.09 Discharge of known UFW supporter shortly before election in small workforce is ground to overturn election. Election set aside on other grounds.

VALLEY FARMS, 2 ALRB No. 42

316.09 Where employer's unlawful refusal to respond to union inquiries and to continue bargaining derailed promising negotiations and included the three and half months preceding the decertification election, such conduct would tend to interfere with employee free choice and warrants dismissal of decertification petition.
P.H. RANCH, INC., et al., 21 ALRB No. 13

316.09 Executive Secretary properly dismissed union's election objections where alleged bad faith bargaining conduct of employer just prior to decertification election was not of a nature that it would inherently have immediate impact on free choice and union failed to show that employees were made aware of conduct and that it was used in some way to undermine support for the union.
COKE FARMS, INC., 20 ALRB No. 15

316.10 Speeches And Statements; Disparagement Of Union; Timing of Statements; Union's Opportunity To Reply

316.10 Since prohibited promises of benefits need not be explicit, the Board must determine whether a promise may reasonably be inferred from the employer's statements.
ARROW LETTUCE COMPANY 14 ALRB No. 7

316.10 When evaluating allegations of a preelection threat of reprisal or promise of benefits, the Board must examine the statements within the totality of the circumstances.
ARROW LETTUCE COMPANY 14 ALRB No. 7

316.10 Comparison of benefit levels under union contract and at non-union ranches in area, distributed by employer in leaflet circulated shortly before election, did not constitute promise of benefits affecting election.
JACK OR MARION RADOVICH, 9 ALRB No. 45

316.10 Employer speech blaming union for negotiation failure before decertification election neither instigated nor assisted by employer did not constitute disparagement of union which would effect election.
JACK OR MARION RADOVICH, 9 ALRB No. 45

316.10 Not improper for ALO to utilize evidence of Employer's anti-union acts and statements in his consideration of case.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC., 7 ALRB No. 36

316.10 Proof of Employer instigation of Decertification Pet requires evidence that Employer implanted idea in mind of Employees.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC., 7 ALRB No. 36

316.10 Where a supervisor simply told each voter to "Vote

Teamster" as they left the fields to vote that simple statement did not constitute a "captive audience" speech nor was it otherwise.
MID-STATE HORTICULTURE COMPANY, 4 ALRB No. 101

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

316.11 Wage Increase Or Employee Benefits Granted Or Withheld

316.11 Employer's ordinary practices with respect to leave policy and permitting Employees to charge personal items differ sufficiently to compel conclusion that Employee received special favorable treatment because of involvement in decertification campaign.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC., 7 ALRB No. 36

316.11 Employer's unlawful assistance to Employees in decertification effort proven by circumstantial evidence that (1) leading proponents of Decertification Petition provided leaves of absences and other benefits to facilitate their conduct result of the credit of the company, and (2) Employer's agents assembled Employees for purpose of obtaining signatures in various decertification Petitions.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC., 7 ALRB No. 36

316.11 Election set aside where the employer promised and granted improved medical benefits during the organizational campaign.
ROYAL PACKING CO. 5 ALRB No. 31

316.11 Grant of wage increase violative of employees section 1152 rights on basis of timing (increase granted same day that UFW organizers first visited crew), amount of increase (disproportionate in comparison with past increases), and setting in which increase announced (accompanied by threat of loss of employment if employees supported Union).
BROCK RESEARCH, INC., 4 ALRB No. 32

316.11 Fact that benefits not actually available to large percentage of work force informed of plan and employer's established anti-union animus support inference that company's conduct had purpose and effect of influencing employee choice at election.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

316.11 Board sua sponte included issue of payments to former employees to come to vote in election in objection hearing since the facts raised the possibility of an extraordinary circumstance potentially affecting the integrity of the election process.
GH & G ZYSLING DAIRY, 32 ALRB No. 2

316.12 Hiring Persons To Vote, Labor Code Section 1154.6 (see also sections 312.12 and 446)

316.12 Election objections dismissed where union proved suspicious hiring practices prior to decertification petition but failed to prove employer knew the new employees' attitudes toward the union or hired them to vote no-union.
TNH FARMS, INC., 10 ALRB No. 37

316.12 Hiring a labor contractor crew known to be hostile to the incumbent union in the hopes that decertification or rival union proceedings will be instigated is insufficient to prove that the employees were hired for the purpose of voting in an election.
ARAKELIAN FARMS, 9 ALRB No. 25

316.12 Respondent did not violate section 1154.6 by hiring two crews prior to election. The crews were needed and qualified, hired on a permanent basis, and did perform the work for which they were hired.
ROYAL PACKING CO. 5 ALRB No. 31

316.12 The Board found respondent violated the Act by hiring a replacement crew for purposes of affecting the outcome of the election, where: record indicated anti-union animus; respondent discharged an openly pro-UFW crew and altered its payroll periods shortly before the election in a manner which disenfranchised the discharged crew; and the ostensible economic justification for the discharge and replacement of the pro-UFW crew was not supported by the record evidence.
S & F GROWERS, 4 ALRB No. 58

316.12 Here the evidence failed to support union claims that certain employees were either supervisors or had been hired primarily to vote in the election the Board overruled the challenges to their votes and ordered their ballots counted.
M. V. PISTA & CO., 2 ALRB No. 8

316.13 Threats And Promises; Questioning; Surveillance

316.13 Employer leaflet setting forth certain limitations of union medical plan did not contain a promise, express or implied, of increased benefits since the leaflet did not state employer could or would cure the limitations, and thus, did not interfere with the employees' free choice or affect the results of the election.

ARROW LETTUCE COMPANY, 14 ALRB No. 7

316.13 When evaluating allegations of a preelection threat of reprisal or promise of benefits, the Board must examine the statements within the totality of the circumstances.
ARROW LETTUCE COMPANY, 14 ALRB No. 7

316.13 Since prohibited promises of benefits need not be explicit, the Board must determine whether a promise may reasonably be inferred from the employer's statements.
ARROW LETTUCE COMPANY, 14 ALRB No. 7

316.13 Under the circumstances, the Employer's leaflet listing certain limitations in the Union's medical plan, while not comparing specific union or nonunion plans, is not objectionable under Jack or Marion Radovich (1983) 9 ALRB No. 45, and since the leaflets did not state the employer could or would cure the limitations, there was no promise of benefits.
ARROW LETTUCE COMPANY, 14 ALRB No. 7

316.13 Since supervisor discussed medical benefits with employees prior to election through Spanish-speaking interpreter, Board must evaluate message employees heard rather than that intended by supervisor; message actually heard conveyed promise of benefits which interfered with free choice and affected results of election.
LIMONEIRA COMPANY, 13 ALRB No. 13

316.13 When evaluating allegations of promise of benefits made to employees prior to election, Board required to accord close scrutiny to intended implications in message as well as express words used.
LIMONEIRA COMPANY, 13 ALRB No. 13

316.13 Owner's statement to two employees that he knew that a lot of workers had signed cards, was not evidence of surveillance, there being no evidence that he had personal knowledge that the workers he was speaking to had signed such cards.
INLAND AND WESTERN RANCHES, 11 ALRB No. 39

316.13 Owner's remarks to two workers regarding possible loss of future employment in context of references to union's hiring hall practices considered not a threat of employer action but permissible campaign propaganda.
INLAND AND WESTERN RANCHES, 11 ALRB No. 39

316.13 Leaflet distributed to employees during campaign involving rival unions in which purported actions of one union towards undocumented workers were highlighted deemed permissible campaign propaganda and contained no threat of employer action.
INLAND AND WESTERN RANCHES, 11 ALRB No. 39

316.13 Board dismissed objections that supervisors engaged in surveillance and threats of job loss and that employer

assisted petitioning union and denied access to intervening union.
CARL DOBLER AND SONS, 11 ALRB No. 37

316.13 Election set aside where supervisor read aloud, to his crew, the names of union supporters in the crew.
ROYAL PACKING CO., 5 ALRB No. 31

316.13 Employer's use of "employee information" cards to gather preelection petition list petition list information, where employer stated that employees had option of refusing to supply the information, constitutes interrogation in violation of 1153(a) in that the workers were in effect being asked to disclose their attitudes for or against the union by giving or refusing to give their addresses.
LAFLIN AND LAFLIN, et al. 4 ALRB No. 28

316.13 Threats of discharge for union support by employer's supervisors, if made did not form part of a systematic campaign on the part of the employer to threaten discharge, expressly or impliedly, for the purpose of influencing the employees in their choice of a union representative. Accordingly, such conduct did not affect the outcome of an election.
AGMAN, INC., 4 ALRB No. 7

316.13 Employer's repeated statements about planting alfalfa, rather than tomatoes, thereby eliminating the need for a sizeable workforce, coupled with his statements that he would contract out the alfalfa-cutting work were patent threats to the workers that they would have no work if the union prevailed.
ARNAUDO BROS. INC., 3 ALRB No. 78

316.13 Employer's questioning of employees about union and union sympathies together with threats to plant alfalfa and thereby eliminate job if the union came in, held to be unlawful interrogation in violation of section 1153(a) of the Act.
ARNAUDO BROS. INC., 3 ALRB No. 78

316.13 Employer's comments to workers about their union activities as well as the activities of others would reasonably be expected to create in the mind of the worker the conclusion that his participation in union activities was known to the Employer and that the Employer's knowledge of such affairs was obtained from surveillance, since the union activities of the two workers in question was not so overt as to be matters of public knowledge.
ARNAUDO BROS. INC., 3 ALRB No. 78

316.13 Election must be set aside in light of employer's pervasive ULP's, including unlawful promise of benefits, numerous discriminatory discharges, threats of loss of employment, and interference with communication between

employees and organizers in company fields and labor camps.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

316.13 The Board finds no evidence showing the presence of security guards affected the employees' free choice when there was little contact between voters and guards and the guards were hired by the employer with Board agent approval for election duty only.
BUD ANTLE, INC., 3 ALRB No. 7

316.13 Where there was no showing that the presence of an employer supervisor in the fields, at about the time that the access period was ending, was other than work related, the Board found no unlawful interference with access rights.
TOMOOKA BROTHERS, 2 ALRB No. 52

316.13 The presence of supervisor in the area of the field where union organizers were speaking with employees is not coercive surveillance where the evidence shows that supervisor is normally present to supervise the work and evidence is unclear as to supervisor's proximity to the actual conversations.
KONDA BROTHERS, 2 ALRB No. 34

316.13 Statements made during election campaign can reasonably be expected to have been discussed, repeated, or disseminated among employees; impact of such statements will carry beyond person to whom they are directed.
TRIPLE E PRODUCE CORP. v. ALRB (1983) 35 Cal.3d 42

316.13 NLRB and courts have found incidents where preelection photographing of employees demonstrating support for or against unionization may be coercive and intimidating because of employee fear that it could serve as basis for later reprisals. However, research revealed no such cases where random picture taking of employees arriving to vote, standing alone, was deemed interference with free choice.
OCEANVIEW PRODUCE CO., 20 ALRB No. 16

316.14 Management Representatives At Or Near Polls

316.14 Mere presence of a supervisor in the polling area is not sufficient in itself to require invalidation of an election. Presence of foreman herein, who drove employees to polls and waited in his car while they voted, was uncoercive and does not require setting aside the election.
LONOAK FARMS, 17 ALRB No. 19

316.14 Supervisor's presence in the polling area did not warrant setting aside the election, where his only remarks related to the challenge of a voter's ballot and he said nothing about either competing union or relating to whether the challenged vote was for petitioner or

intervenor, or indicating a preference for either union or for whom the employees should vote.
AGMAN, INC. 4 ALRB No. 7

316.14 Where representatives of the parties who are excluded from the voting area not problems which should be brought to a Board agent's attention, it is perfectly appropriate to do so by means of a written message to the Board agent conveyed by an eligible voter.
D'ARRIGO BROS., 3 ALRB No. 37

316.14 Even if the presence of supervisors in the polling area influenced the free choice of the 40 voters present, no discernible impact was had on the results of an election won by a margin of more than 600 votes.
BUD ANTLE, INC., 3 ALRB No. 7

316.14 The Board finds no evidence showing the presence of security guards affected the employees' free choice when there was little contact between voters and guards and the guards were hired by the employer with Board agent approval for election duty only.
BUD ANTLE, INC., 3 ALRB No. 7

316.14 Election objection that Employer observer instructed Employees to mark their ballot for one Union rather than another dismissed for lack of evidence.
E. & L. FARMS, 2 ALRB No. 36

316.14 The Board will not find that the employer interfered with an election so as to justify overturning the results where the employer's family—although not talking to any voters—remained approximately 10 minutes within 100 to 150 feet of an undelineated polling site and then, on the Board's agent's request, moved an appropriate distance away from the remainder of the election.
KONDA BROTHERS, 2 ALRB No. 34

316.15 Racial, National Origin, Sex, Etc. Discrimination; Appeals To Prejudice

316.15 Board rejects Employer's contention Union injected "racial animosity" into campaign when it utilized a campaign consultant's accusation of Union organizers of Mexican descent of "acting like a bunch of ignorant animals" in presence of a crew by later highlighting the incident in flyers and rallies, quoting the consultant as having said "all Mexicans are a bunch of ignorant animals." Board discussed cases in which NLRB distinguished appeals to racial prejudice from appeals to the racial pride of a particular ethnic minority.
OCEANVIEW PRODUCE CO., 20 ALRB No. 16

316.16 Violence Or Threats Of Violence

316.16 Where evidence demonstrated no serious threats, threats, no threats tied to voting, no violence except for one

isolated incident of tomato-throwing, some pushing of cars but no attempts to overturn them, no vandalism tied to Union agents or supporters, and no misconduct alleged to have occurred on the day of the election, Board holds that the conduct of third parties did not create an atmosphere of fear and reprisal making employee free choice in the election impossible.
ACE TOMATO CO., INC., 18 ALRB No. 9

316.16 Board finds incidents of actual violence sufficient to justify dismissing technical refusal to bargain complaint and vacating prior certification order where (1) pro-union employees surrounded labor consultants in their car after having bombarded the car with hardened dirt clods and unripe tomatoes and rocked the car as if intending to overturn it; (2) pro-union employees and union organizers coerced non-participating workers into ceasing work by pelting them with hardened dirt clods and unripe tomatoes; and (3) pro-union employees surrounded labor consultant's car at polling site on day of election and bombarded car with hardened dirt clods and unripe tomatoes while beating on car with fists and rocking car as if to overturn it.
ACE TOMATO COMPANY, INC./GEORGE B. LAGORIO FARMS, 15 ALRB No. 7

316.16 Actual violence, as opposed to threats of violence, readily establishes atmosphere of fear and coercion or reprisal sufficient to render employee free choice impossible.
ACE TOMATO COMPANY, INC./GEORGE B. LAGORIO FARMS, 15 ALRB No. 7

316.16 Board has duty to establish norms that strongly discourage labor relations violence. It will not tolerate violence in connection with representation elections.
ACE TOMATO COMPANY, INC./GEORGE B. LAGORIO FARMS, 15 ALRB No. 7

316.16 Altercation between incumbent union agent and rival union officer/Company employee at field 30 days pre-filing of petition did not interfere with employee free choice since it was isolated in time and circumstance and was not connected to election.
COMITE 83, SINDICATO DE TRABAJADORES CAMPESINOS LIBRES, 14 ALRB No. 13

316.16 Although the NLRB employs the "laboratory conditions" standard in reviewing the conduct of an election and the ALRB utilizes the "outcome determinative" test, both employ the same standard for evaluating the impact of violence or threats thereof on the election process: whether the misconduct creates an atmosphere of fear or coercion rendering employee free choice of representatives impossible.
T. ITO & SONS FARMS, 11 ALRB No. 36

316.16 Where supervisor brandished a rifle during a field-rushing incident, employer was partially responsible for violent strike atmosphere which, combined with other objectionable conduct, was grounds to set election aside.
BETTERAVIA FARMS, 9 ALRB No. 46

316.16 Employer violated section 1153(a) of the Act when it failed to cooperate in the conducting of a decertification election, orchestrated outrage among sympathetic employees over the conduct of that election, and acted in complicity with the disruption of the election.
M. CARATAN, INC., 9 ALRB No. 33

316.16 Physical assaults by high company officials on union organizers seeking lawful access to the employer's fields in full view of the work force is a violation of section 1153(a) and warrants setting aside the election.
SECURITY FARMS, 3 ALRB No. 81

316.16 Head supervisor's conduct "blocking" union organizer's efforts to leave premises which climaxed to avert of organizer in presence of workers violated section 1153(a).
ANDERSON FARMS COMPANY, 3 ALRB No. 67

316.16 Where allegation in election objection is that supervisor assaulted union organizer in front of employees and later was arrested in their presence, it is necessary for the matter to go to hearing to determine the exact nature of the assault and the surrounding circumstances, including the relative level of dissemination of knowledge of the assault and arrest, before it would be possible to fully evaluate the ameliorative effect of the subsequent arrest.
NASH DE CAMP CO., 25 ALRB No. 7

316.17 Conduct Of Observers

316.17 The recognition of challenges other than those specifically set forth in the regulations facilitates the potential misuse of the Board's challenged ballot procedure and can result in coercive circumstances that ultimately interfere with the election process.
BORREGO PACKING COMPANY, 15 ALRB No. 8

316.18 Allowing Employee To Circulate Petition Or Campaign During Work Hours

316.18 Board dismissed objections that supervisors engaged in surveillance and threats of job loss and that employer assisted petitioning union and denied access to intervening union.
CARL DOBLER AND SONS, 11 ALRB No. 37

316.18 Employer did not interfere with election by simply

allowing employees to circulate decertification petition and to discuss decertification on company time.
TNH FARMS, INC., 10 ALRB No. 37

316.18 It is not objectionable for an employer to simply allow employees to circulate a decertification petition on company time.
NASH DE CAMP CO., 25 ALRB No. 7

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 Employer Initiation And Support Of Decertification

316.19 Board affirms ALJ's findings, based on credibility resolutions, that employer did not initiate or support decertification campaign.
MAYFAIR PACKING COMPANY 13 ALRB No. 20

316.19 Objection alleging employer assistance in decertification effort by virtue of employees soliciting signatures on work time dismissed where supporting declarations fail to reflect facts indicating that these employees were either

supervisors or would have been perceived as acting on behalf of the Employer.
NASH DE CAMP CO., 25 ALRB No. 7

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.
D'ARRIGO BROS. CO. OF CALIFORNIA, 39 ALRB No. 4

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

317.00 PARTICIPATING UNION'S OR EMPLOYEE INTERFERENCE WITH ELECTION

317.01 In General; Standards Applied To Party And Non-Party Conduct

317.01 Third party standard applied where misconduct is by union supporters or pickets, but no other indication of agency relationship. Burden of proving agency is on party

asserting agency relationship.
SAN JOAQUIN TOMATO GROWERS, INC./LCL FARMS, INC.19 ALRB No. 4

317.01 Union supporters' vague threats, unaccompanied by any acts of force, do not constitute misconduct sufficient to warrant setting aside election, especially where (1) the threats were directed at refusals to join the strike and were not related to the election itself or how employees should vote, and (2) most of the proffered evidence consisted of uncorroborated hearsay which, pursuant to Regulation 20370, subdivision (d), is insufficient to support a finding.
SAN JOAQUIN TOMATO GROWERS, INC./LCL FARMS, INC., 19 ALRB No. 4

317.01 Board adhered to well-established doctrine that this conduct of third parties not identified as agents of employer or union will be grounds for setting aside election only if misconduct of third parties was such that free employee choice in election was rendered impossible.
TRIPLE E PRODUCE CORP., 19 ALRB No. 2

317.01 Board affirmed the IHE's finding that there were aggravated acts of vandalism to employee vehicles but, since conduct not attributable to Union, utilization of third-party standard results in finding that in light of largely peaceful nature of strike and large Union ballot margin, the isolated acts of misconduct were not such that they would serve to taint the atmosphere in which the election was held.
TRIPLE E PRODUCE CORPORATION, 17 ALRB No. 15

317.01 An election will be set aside based upon third party conduct only where such conduct was so aggravated that it made it impossible for employees to express their free choice. The Board will set aside an election based upon party misconduct where the objecting party proves that the misconduct occurred and that it would tend to interfere with employee free choice to such an extent that it affected the outcome of the election.
FURUKAWA FARMS, INC., 17 ALRB No. 4

317.01 Altercation between incumbent union agent and rival union officer/employee at field 30 days pre-filing of petition did not interfere with employee free choice since it was isolated in time and circumstance and was not connected to election.
COMITE 83, SINDICATO DE TRABAJADORES CAMPESINOS LIBRES, 14 ALRB No. 13

317.01 Both the ALRB and the NLRB accord less weight to misconduct of party supporters than to misconduct attributable to party agents or representatives.
AGRI-SUN NURSERY, 13 ALRB No. 19

317.01 The test of whether a threatening statement is coercive does not depend upon its actual effect upon listeners, but rather upon whether it would reasonably tend to have an intimidating effect.
AGRI-SUN NURSERY, 13 ALRB No. 19

317.01 The test to be applied in determining whether nonparty conduct is coercive is an objective, not a subjective, test.
AGRI-SUN NURSERY, 13 ALRB No. 19

317.01 Employee who solicited authorization card signatures and told at least one employee that he would lose his job if he did not sign a card, was not acting as agent of the union. (Distinguishing Davlan Engineering, Inc. (1987) 283 NLRB No. 124.)
AGRI-SUN NURSERY, 13 ALRB No. 19

317.01 The party seeking to overturn an election bears a heavy burden of proof, requiring specific evidence that misconduct occurred and interfered with employee free choice to such an extent that it tended to affect the results of the election.
AGRI-SUN NURSERY, 13 ALRB No. 19

317.01 In evaluating the effect of coercive conduct on the election process, Board employs the same standard as the NLRB. In assessing the effect of such misconduct, both this Board and the NLRB accord less weight to conduct not attributable to the union or the employer.
ACE TOMATO COMPANY, INC., 12 ALRB No. 20

317.01 A party seeking to overturn an election on the basis of coercive conduct bears a heavy burden. The test for setting aside an election because of nonparty conduct is whether the conduct was so aggravated that it created an atmosphere of fear or reprisal making employee free choice impossible.
ACE TOMATO COMPANY, INC., 12 ALRB No. 20

317.01 Threats of bodily harm made to an alleged supervisor by third parties and not disseminated among the bargaining unit employees do not rise to the level of misconduct required to set aside a representation election.
SANDYLAND NURSERY CO., INC., 12 ALRB No. 1

317.01 Board will not infer that threats of bodily harm were widely disseminated among bargaining unit members where the testimony presented establishes that those employees who were told about the threats did not repeat them to other employees. (Compare Triple E Produce Corp. v. ALRB, et al. (1985) 35 Cal.3d 42.)
SANDYLAND NURSERY CO., INC., 12 ALRB No. 1

317.01 The Board finds an atmosphere of fear and coercion where striking employees threatened large groups of employees with physical beatings and calling the INS, threats were

accompanied by acts of violence, and the INS threats were repeated by union supporters to workers waiting in line to vote during the election.
T. ITO & SONS FARMS, 11 ALRB No. 36

317.01 Whether a statement is coercive does not turn on an employees' subjective reactions but instead depends upon whether the statement reasonably tends to coerce employees.
T. ITO & SONS FARMS, 11 ALRB No. 36

317.01 In determining the seriousness of a threat by a non-party, the ALRB utilizes the standards enunciated by the NLRB in Westwood Horizons Hotel (1984) 270 NLRB No. 116: the nature of the threat itself; whether the threat encompassed the entire bargaining unit; whether reports of the threat were widely disseminated within the unit; whether the person making the threat was capable of carrying it out and whether it is likely that employees acted in fear of his capability of carrying out the threat; and whether the threat was rejuvenated at or near the time of the election.
T. ITO & SONS FARMS, 11 ALRB No. 36

317.01 In assessing the impact of misconduct, less weight is given to conduct of union supporters than is given to conduct of the parties or their agents; the test is whether nonparty misconduct is so aggravated that it creates a general atmosphere of fear or coercion, rendering employee free choice impossible. Once a threat has been established, whether it constitutes aggravated misconduct depends upon the character and circumstances of the threat, and not merely on the number of employees threatened.
T. ITO & SONS FARMS, 11 ALRB No. 36

317.01 Strike-related misconduct by union supporters found not sufficient to overturn election.
T. ITO & SONS FARMS, 9 ALRB No. 56

317.01 Actions of non-parties are accorded less weight than actions of Board agents or parties in determining their effect on the election.
MATSUI NURSERY, INC., 9 ALRB No. 42

317.01 Threats by persons not associated with Union not sufficient grounds to set aside election absent showing (1) that threats were Union policy; (2) pervasive atmosphere of fear existed; and
(3) few Employees directly threatened and voter turnout was high.
ROBERT J. LINDELEAF, 8 ALRB No. 22

317.01 Threats by other than Union reps not sufficient grounds for setting election aside where (1) no showing Union policy to threaten Employees; (2) no pervasive atmosphere of fear; (3) few Employees directly threatened; (4) high

voter turnout.
ROBERT J. LINDELEAF, 8 ALRB No. 22

317.01 Where deliberate or repeated misrepresentations occur prior to election, fact they are corrected during a mass meeting would not necessarily eradicate their effects where evidence establishes that misrepresentations interfered with the employees free choice to the extent that they affected the results of the election.
SAKATA RANCHES, 5 ALRB No. 56

317.01 Board expresses reluctance to follow 1962 rule of Hollywood Ceramics Co., as reinstated in General Knit of California, Inc. (1978) 239 NLRB No. 101 [99 LRRM 1687], governing pre-election misrepresentations as rule is based on NLRB's "laboratory conditions" model for election conduct which requires representation elections to take place "under conditions as nearly ideal as possible." NLRB elections can be easily rerun where statements or conduct at a preceding the election fall short of laboratory conditions whereas in the agricultural setting rerun elections, in most cases, must be postponed until a subsequent period of peak employment. Board reaffirms policy of setting aside elections only where the employees could not express free and uncoerced choice.
SAKATA RANCHES, 5 ALRB No. 56

317.01 The Board will accord the conduct of a non-party less weight in determining whether that conduct created an atmosphere which readers improbable a free choice by the voters.
TEPUSQUET VINEYARDS, 4 ALRB No. 102

317.01 Where a teamster organizer threw a UFW pamphlet into a campfire and made derogatory statements about the UFW the Board declined to set aside the election because the statements were recognizable by the employees as mere campaign propaganda and not likely to have affected the outcome of the election.
TOMOOKA BROTHERS, 2 ALRB No. 52

317.01 Where several cars, a bus, and a building all bearing UFW insignia were within the polling area during the election but caused no disruption of the polling or interference of any kind, the Board declined to set aside the election.
HAIDEN FARMS OF CALIFORNIA, INC., 2 ALRB No. 30

317.01 The Board held that the election should nevertheless be upheld where the occupants of a car drove past 50-75 employees waiting to vote and twice yelled "Viva Chavey" because it is not likely that the yelling affected the results of the election.
HAIDEN FARMS OF CALIFORNIA, INC., 2 ALRB No. 30

317.01 Where (1) some employees gathered within the quarantined

area and talked loudly while drinking beer; (2) two employees drank beer while waiting in line to vote; and (3) alcohol could be smelled on the breath of some voters, the Board declined to set aside the election because there was no evidence that the employee's conduct was coercive.
HAIDEN FARMS OF CALIFORNIA, INC., 2 ALRB No. 30

317.01 Existence and enforcement of union security clause based upon provisions of contract existing at time of election is not cause to set aside election where no evidence presented to show that it affected election and where clause itself was legal under California law.
ECKEL PRODUCE COMPANY, 2 ALRB No. 25

317.01 In general, the question to be determined in reviewing whether union's conduct affected the results of an election is "did the activity interfere with the workers' ability to make a free choice concerning a collective bargaining representative?"
EGGER & OHIO COMPANY, INC., 1 ALRB No. 17

317.01 Objection properly dismissed where declarations failed to establish that union representative asked any employee how she was going to cast her ballot, since the single declarant could not identify the questioner.
J.R. NORTON CO. v. ALRB (1979) 26 Cal.3d 1

317.01 Conduct of employees prior to union's involvement is not attributable to union under "mass action" theory of liability (Vulcan Materials Co. v. United Steel Workers (5th Cir. 1970) 430 F.2d 446 [74 LRRM 2818]) where no agency relationship was established.
ACE TOMATO CO., INC., 20 ALRB No. 7

317.01 Election objection alleging that union organizers breached pre-election agreement to have employees vote one crew at a time and instead told all employees to come in and vote dismissed for failure to indicate how such conduct could have affected free choice in the election.
ANDERSON VINEYARDS, INC., 24 ALRB No. 5

317.01 Election objection that Board created a threatening and intimidating environment by allowing separate voting processes for striking and non-striking employees resulting in striking employees beating up on non-striking employees failed to state a *prima facie* case. Section 20365 (c)(2)(B) of the Board's regulations require that declarations set forth with particularity the details of each occurrence and the manner in which it is alleged to have affected or could have affected the outcome of the election. The employee observer declarations failed to state who caused the observers to feel threatened and intimidated, or how.

GEORGE AMARAL RANCHES, INC., 38 ALRB No. 5

317.02 Visits To Employees' Homes; Transporting Employees To Polls

317.02 Employees were interrogated in violation of 1153(a) where employer approached workers and asked them for either their home address if they desired to be visited by UFW representatives or a written refusal based on their desire not to be so visited.
TENNECO WEST, INC., 3 ALRB No. 92

317.02 An election will not be overturned because an observer spoke to voters in Spanish absent a showing that there was electioneering or that the conduct may have influenced the election.
GONZALES PACKING CO., 2 ALRB No. 48

317.02 Board properly certified results of election where UFW's pre-election home visits were led by a convicted arsonist, since home visits were not threatening and there was no evidence that any employee was aware of arson conviction.
ADAMEK & DESSERT, INC. v. ALRB (1986) 178 Cal.App.3d 970

317.03 Distribution Of Literature; Letters And Notices To Employees; Sample Ballots

317.03 Election objection dismissed where alleged facsimile ballot distributed prior to election contained no reference to the ALRB and bore little resemblance to an official ballot.
BRIGHT'S NURSERY, 10 ALRB No. 18

317.03 No misrepresentation where leaflet read: "Sign a UFW authorization card to win the right to vote for the only real Union on the ballot." Leaflet appeared while Union collecting cards to make request showing of support and thus information not false.
TMY FARMS, 2 ALRB No. 58

317.03 Electioneering of organizers, prior to, but not on day of election, consisting of handing out leaflets and buttons and conversing in fields with small groups of employees is not improper conduct.
CAL COASTAL FARMS, 2 ALRB No. 26

317.03 Lindeleaf's declarations asserting that UFW organizers exhorted voters and distributed pro-UFW flyers immediately before and during balloting, failed to present a prima facie showing of misconduct.
LINDELEAF v. ALRB (1986) 41 Cal.3d 861

317.03 Election objection alleging distribution of sample ballot marked in favor of rival union did not warrant hearing where ballot varied so dramatically from an actual ballot that employees would not have been misled into thinking

that it was an official ballot or an endorsement by the ALRB.
MONTEREY MUSHROOMS, INC., 21 ALRB No. 2

317.04 Misrepresentations

317.04 Evidence as to misrepresentations was inconclusive, as it was impossible to determine whether information broadcast was misunderstood or, if inaccurate, whether it was due to false information received from the union or its agents or due to broadcaster error. No evidence was presented of efforts to spread false information through the media or to increase publicity surrounding the dispute.
FURUKAWA FARMS, INC., 17 ALRB No. 4

317.04 Teamster officials' statements to workers that their current representative, IUAW, was going to cease to exist not a misrepresentation in circumstances where Teamsters were authorized to conduct the affairs of the IUAW and IUAW president "acquiesced" to Teamster campaign for employee support.
INLAND AND WESTERN RANCHES, 11 ALRB No. 39

317.04 Although the Board set election aside on other grounds, it rejected IHE's finding election should be set aside on basis of IUAW agents' misrepresentations to employees that IUAW President wanted them to vote for the Teamsters.
CARL DOBLER AND SONS, 11 ALRB No. 37

317.04 Pre-election misrepresentations by Union did not have a "substantial impact" on election since statements were isolated incidents and were in conflict with other statements on same subject which were not misleading.
SAKATA RANCHES, 5 ALRB No. 56

317.04 Record evidence failed to establish that union made any representations regarding promises of help with immigration matters. No showing made that employer lacked adequate opportunity to reply to representations made by union organizer and record did not establish that immigration representations were integral part of UFW's campaign or were more than isolated comments.
PAUL W. BERTUCCIO and BERTUCCIO FARMS, 4 ALRB No. 91

317.04 Board reserved judgment on whether Hollywood Ceramics (1962)140 NLRB 221 or Shopping Kart Food Mart, Inc. (1977)228 NLRB No. 190, should be applied to misrepresentations made agricultural context.
PAUL W. BERTUCCIO and BERTUCCIO FARMS, 4 ALRB No. 91

317.04 No misrepresentation where leaflet read: "Sign a UFW authorization card to win the right to vote for the only real Union on the ballot." Leaflet appeared while Union collecting cards to make showing of support and thus information not false.

TMY FARMS 2 ALRB No. 58

317.04 Union promise that if it won election it would negotiate a contract with the employer is nothing more than a campaign promise; it does not constitute a misrepresentation.
DESSERT SEED COMPANY, INC., 2 ALRB No. 53

317.04 Where a teamster organizer threw a UFW pamphlet into a campfire and made derogatory statements about the UFW the Board declined to set aside the election because the statements were recognizable by the employees as mere campaign propaganda and not likely to have affected the outcome of the election.
TOMOOKA BROTHERS, 2 ALRB No. 52

317.04 Where a teamster organizer threw a UFW pamphlet into a campfire and made derogatory statements about the UFW the Board declined to set aside the election because the statements were recognizable by the employees as mere campaign propaganda and not likely to have affected the outcome of the election.
TOMOOKA BROTHERS, 2 ALRB No. 52

317.04 UFW handbill stating that union does not charge initiation fees does not constitute misrepresentation warranting setting aside the election since evidence showed that UFW did not collect initiation fees as a matter of course and Employer failed to demonstrate that such fees were ever collected.
HASHIMOTO BROTHERS NURSERY, 2 ALRB No. 31

317.04 Distribution of union leaflet that no initiation fee will be collected contrary to provision in union constitution held no misrepresentation where evidence shows fee always waived and no evidence that it is collected.
HEMET WHOLESALE, 2 ALRB No. 24

317.04 A misrepresentation by the union that the employer would lower wages if the union lost cannot be the basis for overturning an election where (1) the employer actually replied in opposition to the union's remark and (2) the employees had no reasons to suspect that the union was privy to the employer's plans.
JACK OR MARION RADOVICH, 2 ALRB No. 12

317.04 The ALRB agrees with the reservations expressed by the NLRB in Modine Mfg. Co. (1973) 203 NLRB 527 about overturning elections on the basis of the Board's evaluation of campaign statements made in the context of a heated election campaign.
JACK OR MARION RADOVICH, 2 ALRB No. 2

317.04 The ALRB's authority to overturn elections on the basis of misrepresentations must be exercised in line with the provisions of the First Amendment to the United States Constitution and of Article I, section 2 of the

California Constitution.
JACK OR MARION RADOVICH, 2 ALRB No. 12

317.04 The union's statement that--if it won--the hiring hall would not be sued as a method of providing workers to the employer was only a campaign promise, and not a misrepresentation. Unlike the employer, who has the acknowledged power to grant or withhold benefits, a union can only promise that it will attempt to achieve benefits and changed conditions in the future. Its campaign promises are necessarily prospective and cannot be characterized as misrepresentations.
JACK OR MARION RADOVICH, 2 ALRB No. 12

317.04 The "laboratory conditions" standard set forth by the NLRB in judging the effect of misrepresentations made in the course of an election campaign is of limited applicability to elections conducted among agricultural workers.
JACK OR MARION RADOVICH, 2 ALRB No. 12

317.04 No improper electioneering where Union organizer stopped two cars of Union organizers and spoke briefly to them when such conduct occurred 100 to 200 yards from polling area and no evidence as to what was said. Milchem Inc. (1968) 170 NLRB 46 distg.
WILLIAM DAL PORTO & SONS, INC., 1 ALRB No. 19

317.04 The UFW was not guilty of a misrepresentation requiring that the results of an election be set aside simply because it promised to waive initiation fees if employees voted for the union. Although the union constitution required initiation fees, the evidence showed that the union did not, in fact, collect them.
EGGER & OHIO COMPANY, INC., 1 ALRB No. 17

317.04 Union's leaflet which warned that Employer, consistent with already announced layoffs, might replace additional employees with labor contractor, was merely campaign propaganda which is not a sufficient basis to set aside election.
ROYAL PACKING COMPANY, 20 ALRB No. 14

317.05 24-Hour Rule; Applicability; Employer's Or Rival Union's Opportunity To Reply

317.05 The fact that a UFW organizer passed out campaign literature at the employer's labor camp one hour before the commencement of the election does not constitute a "captive audience" speech and is not prohibited by the Act.
D'ARRIGO BROS., 3 ALRB No. 37

317.05 The presence of union organizers at noon on the day of the election was not objectionable inasmuch as the Board has not adopted the NLRB's "captive audience" rule. (See Peerless Plywood Company (1953) 107 NLRB 427.)

YAMADA BROTHERS 1 ALRB No. 13

317.06 Statements; Threats; Inducements; Waiver Of Initiation Fee Or Dues

317.06 Where evidence demonstrated no serious threats, threats, no threats tied to voting, no violence except for one isolated incident of tomato-throwing, some pushing of cars but no attempts to overturn them, no vandalism tied to Union agents or supporters, and no misconduct alleged to have occurred on the day of the election, Board holds that the conduct of third parties did not create an atmosphere of fear or reprisal making employee free choice in the election impossible.
ACE TOMATO CO., INC., 18 ALRB No. 9

317.06 Testimony was too ambiguous, inconsistent, and contradictory to establish that workers were threatened with job loss if they failed to sign authorization cards.
FURUKAWA FARMS, INC., 17 ALRB No. 4

317.06 Board adopts IHE's conclusion that union representative's distorted account of physical encounter with decertification petitioner to workers assembled on picket line cannot serve as basis for overturning results of decertification election. Even though workers on picket line could not know whether union representative's account was true or false, to allow such conduct to serve as basis for overturning election would be to invite mischief by enabling losing party in election to create objectionable atmosphere of violence and intimidation by spreading false stories attributing the misconduct complained of to the prevailing party.
THE CAREAU GROUP dba EGG CITY, 15 ALRB No. 21

317.06 Evidence supports IHE's conclusion that employee who attended and spoke at union campaign meetings, but who had no official role in conducting the meetings and was not a member of the organizing committee, was not an agent of the union. Thus, his preelection campaign statements are not attributable to union.
AGRI-SUN NURSERY, 13 ALRB No. 19

317.06 Union supporters' preelection threats of job loss for failure to vote for union, failure to sign authorization card, or failure to join the union if it won the election, did not create an atmosphere of fear and reprisal rendering free choice impossible.
AGRI-SUN NURSERY, 13 ALRB No. 19

317.06 Employee who solicited authorization card signatures and told at least one employee that he would lose his job if he did not sign a card, was not acting as agent of the union. (Distinguishing Davlan Engineering, Inc. (1987) 283 NLRB No. 124.)
AGRI-SUN NURSERY, 13 ALRB No. 19

317.06 Threats of bodily harm made to an alleged supervisor by third parties and not disseminated among the bargaining unit employees do not rise to the level of misconduct required to set aside a representation election.
SANDYLAND NURSERY CO., INC., 12 ALRB No. 1

317.06 The Board finds an atmosphere of fear and coercion where striking employees threatened large groups of employees with physical beatings and calling the INS, threats were accompanied by acts of violence, and the INS threats were repeated by union supporters to workers waiting in line to vote during the election.
T. ITO & SONS FARMS, 11 ALRB No. 36

317.06 Throwing of dirt clods or rocks, verbal shouting, touching of ladders, personal confrontation between employees without significant coercion, all of which affected at most a relatively small number of employees, was not misconduct of a nature to have affected the outcome of the election.
J. OBERTI, INC., et al., 10 ALRB No. 50

317.06 In light of the IHE's findings that no threats of violence were made before or during the election, no union organizer was responsible for any threats and the fact that the margin of victory was significant, the employer failed to establish an overall atmosphere of fear and reprisal rendering a free election impossible.
J. OBERTI, INC., et al., 10 ALRB No. 50

317.06 Pro-union activity of "working foremen" not grounds to set aside election where foremen had no direct authority to hire, fire, or discipline and employer informed potential voters that it did not favor union representation for its employees.
BRIGHT'S NURSERY, 10 ALRB No. 18

317.06 Absent evidence that statements of Union organizer in quarantine area prior to election intimidated voters or that organizer did anything more than seek replacement for a no show Union observer, no basis for setting aside election.
ROBERT J. LINDELEAF, 8 ALRB No. 22

317.06 Threats by persons not associated with Union not sufficient grounds to set aside election absent showing (1) that threats were Union policy; (2) pervasive atmosphere of fear existed; and (3) few Employees directly threatened and voter turnout was high.
ROBERT J. LINDELEAF, 8 ALRB No. 22

317.06 Statement by union supporter to potential voters that they were ineligible because of their part-time status could not have affected outcome of election as all employees who heard statement voted anyway. IHED, pp. 8-9.
H. H. MAULHARDT PACKING COMPANY, 6 ALRB No. 42

317.06 Union organizer's accusing employer's representative of calling Immigration and Naturalization Service (INS), after INS agents appeared on employer's property, arrested a worker, and later released him, not grounds for setting aside election as the record failed to establish that any employee or observer overheard the remarks.
TEPUSQUET VINEYARDS, 4 ALRB No. 102

317.06 Union's promises of immigration help not found to be marked threats of deportation where benefits pledged were not tied to preelection support, were remote and of uncertain value, were no more than a pledge to unionize. No record evidence that employees feared retribution by union organizers of recent INS investigational detention of undocumented workers on employer's premises.
PAUL W. BERTUCCIO and BERTUCCIO FARMS, 4 ALRB No. 91

317.06 Record evidence failed to establish that union made any representations regarding promises of help with immigration matters. No showing made that employer lacked adequate opportunity to reply to representations made by union organizer and record did not establish that immigration representations were integral part of UFW's campaign or were more than isolated comments.
PAUL W. BERTUCCIO and BERTUCCIO FARMS, 4 ALRB No. 91

317.06 Threats by UFW supporters--both to call the Immigration and Naturalization if the UFW lost the election and that those who refused to sign authorization cards would be fired if the UFW won the election--did not create such an atmosphere of fear and coercion that workers were unable to express their free choice.
SECURITY FARMS, 3 ALRB No. 81

317.06 Words of condition, such as "possibly" or "perhaps", which preface otherwise threatening statements, have no mitigating effect and an implied threat will still be found; however, the threats in this case were insufficient to warrant setting aside the election.
SECURITY FARMS, 3 ALRB No. 81

317.06 Exaggerations, name-calling, and obvious propaganda easily recognizable as such do not constitute "threats" which would require the setting aside of an election.
BUD ANTLE, INC., 3 ALRB No. 7

317.06 Where a teamster organizer threw a UFW pamphlet into a campfire and made derogatory statements about the UFW the Board declined to set aside the election because the statements were recognizable by the employees as mere campaign propaganda and not likely to have affected the outcome of the election.
TOMOOKA BROTHERS, 2 ALRB No. 52

317.06 Where a teamster organizer threw a UFW pamphlet into a

campfire and made derogatory statements about the UFW the Board declined to set aside the election because the statements were recognizable by the employees as mere campaign propaganda and not likely to have affected the outcome of the election.
TOMOOKA BROTHERS, 2 ALRB No. 52

317.06 The Board held that the election should nevertheless be upheld where the occupants of a car drove past 50-75 employees waiting to vote and twice yelled "Viva Chavey" because it is not likely that the yelling affected the results of the election.
HAIDEN FARMS OF CALIFORNIA, INC., 2 ALRB No. 30

317.06 Where it was shown only that the Union observer engaged in brief conversations with voters in the nature of greetings the Board declined to set aside the election because there was no evidence that voter free choice had been affected.
HAIDEN FARMS OF CALIFORNIA, INC., 2 ALRB No. 30

317.06 A union's offer to waive initiation fees if an employee agrees to sign an authorization card and the union later wins the election does not interfere with workers' rights to refrain from union activity. No interference will be found if the fee waiver is available both before and after the election since, in that case, non-supporters would not be induced to sign up beforehand.
JACK OR MARION RADOVICH, 2 ALRB No. 12

317.06 A statement by union agents that non-supporters of the union would lose their jobs if the union won the election cannot be characterized as a threat where the conversation was known to only 2 workers and the election was not conducted in an atmosphere of fear.
JACK OR MARION RADOVICH, 2 ALRB No. 12

317.06 A union organizer's statement that the employer would pay a lower wage if the employees voted for "no union" was not a threat because a union cannot actually lower wages if it loses an election.
JACK OR MARION RADOVICH, 2 ALRB No. 12

317.06 Economic inducements by the union that are available to all employees, regardless of whether or not the employees committed themselves to supporting the union before the election, do not constitute impermissible interference with the rights of employees to refrain from union activities.
JACK OR MARION RADOVICH, 2 ALRB No. 12

317.06 Election objection dismissed as de mimimus where Union organizer stopped 3 cars containing Employees who had voted and checked off their names on a voting list and Union won election 44 to 3. No atmosphere of fear or coercion.
WILLIAM DAL PORTO & SONS, INC., 1 ALRB No. 19

317.06 The UFW was not guilty of a is presentation requiring that the results of an election be set aside simply because it promised to waive initiation fees if employees voted for the union. Although the union constitution required initiation fees, the evidence showed that the union did not, in fact, collect them.
EGGER & OHIO COMPANY, INC., 1 ALRB No. 17

317.06 Peaceful, non-disruptive organizational activity, even if accomplished through an arguable trespass, generally cannot be said to interfere with employee free choice in an election, particularly when the organizational activity did not exceed the boundaries of the access rule.
SAMUEL S. VENER COMPANY, 1 ALRB No. 10

317.06 Lindeleaf's declarations alleging threats by UFW organizers against employees after election fail to provide a prima facie evidentiary basis for a charge of pre-election misconduct. Lindeleaf makes no showing of how this subsequent misconduct affected the outcome of the election previously held.
LINDELEAF v. ALRB (1986) 41 Cal.3d 861

317.06 Election must be set aside if employees were coerced into voting for the union.
LINDELEAF v. ALRB (1986) 41 Cal.3d 861

317.06 Supreme Court reversed Board certification of election results where union organizers told at least 10 prospective voters that they would lose their jobs if they didn't vote for union. Court rejected characterizations of organizers' statements as mere campaign propaganda.
TRIPLE E PRODUCE CORP. v. ALRB (1983) 35 Cal.3d 42

317.06 Testimony of some workers that others were afraid of losing their jobs as result of union organizers' threats insufficient, standing alone, to invalidate election. However, evidence was admissible and supported application of NLRB rule that statements made to handful of employees may reasonably be anticipated to reach larger part of workforce.
TRIPLE E PRODUCE CORP. v. ALRB (1983) 35 Cal.3d 42

317.06 Existence of "good standing" provision in ALRA and use by UFW of hiring hall provide basis for reasonable employees to believe that union could exercise some control over job allocation. These factors made more credible union organizers' threats of job loss if workers voted against union.
TRIPLE E PRODUCE CORP. v. ALRB (1983) 35 Cal.3d 42

317.06 Statements made during election campaign can reasonably be expected to have been discussed, repeated, or disseminated among employees; impact of such statements

will carry beyond person to whom they are directed.
TRIPLE E PRODUCE CORP. v. ALRB (1983) 35 Cal.3d 42

317.06 Objection properly dismissed where declarations failed to establish that union representative asked any employee how she was going to cast her ballot, since the single declarant could not identify the questioner.
J.R. NORTON CO. v. ALRB (1979) 26 Cal.3d 1

317.06 In case involving threat of job loss for failure to vote for union, it is not necessary to presume that employees believed that union would know how they voted if record provides no basis for such an inference.
OCEANVIEW PRODUCE CO., 21 ALRB No. 1

317.06 Vague and inconsistent testimony insufficient to establish threats of job loss for failing to sign authorization cards or to vote for the union.
OCEANVIEW PRODUCE CO., 21 ALRB No. 1

317.06 Where those who were allegedly subjected to threats of job loss for not supporting the union related the statements to co-workers, and the co-workers told them the comments were not true, such countervailing statements lessen, if not eliminate, any coercive effects of the alleged threats.
OCEANVIEW PRODUCE CO., 21 ALRB No. 1

317.06 Allegation of threats dismissed for failure to meet requirements of Regulation 20365 where supporting declarations failed to provide content of the threats, the identity of those hearing the threats, or the identity of those making the threats.
ANDERSON VINEYARDS, INC., 24 ALRB No. 5

317.06 Election objection that Board created a threatening and intimidating environment by allowing separate voting processes for striking and non-striking employees resulting in striking employees beating up on non-striking employees failed to state a *prima facie* case. Section 20365 (c)(2)(B) of the Board's regulations require that declarations set forth with particularity the details of each occurrence and the manner in which it is alleged to have affected or could have affected the outcome of the election. The employee observer declarations failed to state who caused the observers to feel threatened and intimidated, or how.
GEORGE AMARAL RANCHES, INC., 38 ALRB No. 5

317.07 Union Appeals Through Insignia, Sound Trucks, Etc.

317.07 The 18-month time limit in Labor Code section 1157 on the voter eligibility of economic strikers was tolled by the hiatus which occurred during the first year of Board operations due to lack of funds.
KARAHADIAN & SONS, INC., 5 ALRB No. 19

317.07 UFW bumper stickers on car 150 feet and visible from polling place not grounds to set aside election.
TMY FARMS, 2 ALRB No. 58

317.07 Where several cars, a bus, and a building all bearing UFW insignia were within the polling area during the election but caused no disruption of the polling or interference of any kind, the Board declined to set aside the election.
HAIDEN FARMS OF CALIFORNIA, INC., 2 ALRB No. 30

317.07 No improper electioneering where Union organizer displayed Union flag 200 to 300 yards from polling area and no evidence flag could be seen.
WILLIAM DAL PORTO & SONS, INC., 1 ALRB No. 19

317.08 Union Agents At Or Near Polls

317.08 Where representatives of the parties who are excluded from the voting area not problems which should be brought to a Board agent's attention, it is perfectly appropriate to do so by means of a written message to the Board agent conveyed by an eligible voter.
D'ARRIGO BROS., 3 ALRB No. 37

317.08 The presence of union representatives near the polls--but outside the quarantine area--for the purpose of identifying economic strikers who had come to vote, is not conduct which warrants setting aside the election, especially where the union was responsible for locating, informing, and perhaps transporting economic strikers.
D'ARRIGO BROS., 3 ALRB No. 37

317.08 UFW bumper stickers on car 150 feet and visible from polling place not grounds to set aside election.
TMY FARMS, 2 ALRB No. 58

317.08 Mere presence of two UFW organizers parked 25 yards from the polling area for 15-20 minutes without any allegation that they were electioneering, talking to workers, or displaying union insignias is insufficient to set aside the election.
R.T. ENGLUND COMPANY, 2 ALRB No. 23

317.08 Where Board agent did not set physical boundaries for restricted polling area, election will not be overturned based upon mere presence of union organizer (who did not engage in electioneering or otherwise interfere with orderly process of voting) some 50 feet from actual location of voting.
SAM BARBIC, 1 ALRB No. 25

317.08 Election objection dismissed as de mimimus where Union organizer stopped 3 cars containing Employees who had voted and checked off their names on a voting list and Union won election 44 to 3. No atmosphere of fear or coercion.

WILLIAM DAL PORTO & SONS, INC., 1 ALRB No. 19

317.08 No improper electioneering where Union organizer stopped two cars of Union organizers and spoke briefly to them when such conduct occurred 100 to 200 yards from polling area and no evidence as to what was said.
Milchem Inc. (1968) 170 NLRB 46 distg.
WILLIAM DAL PORTO & SONS, INC., 1 ALRB No. 19

317.08 No improper electioneering where Union organizer displayed Union flag 200 to 300 yards from polling area and no evidence flag could be seen.
WILLIAM DAL PORTO & SONS, INC., 1 ALRB No. 19

317.08 Campaigning two to three miles from the polls during the election is not objectionable.
YAMADA BROTHERS, 1 ALRB No. 13

317.08 The presence of union organizers at noon on the day of the election was not objectionable inasmuch as the Board has not adopted the NLRB's "captive audience" rule. (See Peerless Plywood Company (1953) 107 NLRB 427.)
YAMADA BROTHERS, 1 ALRB No. 13

317.08 Union organizers talking to workers about 150 yards from the polling area before voting began, and who left immediately when told to do so by Board agent did not engage in objectionable electioneering.
YAMANO BROTHERS FARMS, 1 ALRB No. 9

317.08 Board properly certified results of election even though group of individuals had been drinking near polling site, since they left site when asked to and there was no evidence that their drinking disrupted election or interfered with any employee's exercise of his or her right to vote.
ADAMEK & DESSERT, INC. v. ALRB (1986) 178 Cal.App.3d 970

317.08 Board properly certified election despite drunk's entry into polling area, because there was no evidence that his conduct interfered with election.
ADAMEK & DESSERT, INC. v. ALRB (1986) 178 Cal.App.3d 970

317.08 Lindeleaf's declarations asserting that UFW organizers exhorted voters and distributed pro-UFW flyers immediately before and during balloting, failed to present a prima facie showing of misconduct.
LINDELEAF v. ALRB (1986) 41 Cal.3d 861

317.08 ALRB has firmly held that last-minute electioneering in the polling place does not warrant setting aside an election unless it continues during actual voting or is intimidating and coercive to employees.
LINDELEAF v. ALRB (1986) 41 Cal.3d 861

317.08 NLRB and courts have found incidents where preelection photographing of employees demonstrating support for or

against unionization may be coercive and intimidating because of employee fear that it could serve as basis for later reprisals. However, research revealed no such cases where random picture taking of employees arriving to vote, standing alone, was deemed interference with free choice.
OCEANVIEW PRODUCE CO. 20 ALRB No. 16 (1994)

317.08 Without specific content of "pro-union slogans" shouted at voters near polling area prior to actual balloting it cannot be concluded that the conduct was coercive or threatening. Moreover, campaigning in or near the polling area prior to the actual balloting is not a sufficient ground for setting aside an election.
ANDERSON VINEYARDS, INC., 24 ALRB No. 5

317.08 The Board will not set aside an election due to electioneering at or near the polling place on a "per se" basis, but will instead examine whether the conduct was so coercive or disruptive as to interfere with free choice in the election to the extent that it might have affected the outcome of the election. The mere shouting of pro-union slogans does not constitute such coercive or disruptive conduct.
ANDERSON VINEYARDS, INC., 24 ALRB No. 5

317.08 Objection that supervisors engaged in pro-union coercive conduct in polling area dismissed where conduct was not shown to be coercive and could not have been outcome determinative because supervisors spoke to only several of the 20-30 employees waiting in line to vote, and union's margin of victory was 61.
THE HESS COLLECTION WINERY, 25 ALRB No. 2

317.09 Racial, National Origin, Sex, Etc. Discrimination; Appeals To Prejudice

317.10 Expulsion Of Members Or Other Union Discipline

317.10 Existence and enforcement of union security clause based upon provisions of contract existing at time of election is not cause to set aside election where no evidence presented to show that it affected election and where clause itself was legal under California law.
ECKEL PRODUCE COMPANY 2 ALRB No. 25

317.10 Existence of "good standing" provision in ALRA and use by UFW of hiring hall provide basis for reasonable employees to believe that union could exercise some control over job allocation. These factors made more credible union organizers' threats of job loss if workers voted against union.
TRIPLE E PRODUCE CORP. v. ALRB (1983) 35 Cal.3d 42

317.11 Violence Or Threats Of Violence

317.11 Union supporters' vague threats, unaccompanied by any

acts of force, do not constitute misconduct sufficient to warrant setting aside election, especially where (1) the threats were directed at refusals to join the strike and were not related to the election itself or how employees should vote, and (2) most of the proffered evidence consisted of uncorroborated hearsay which, pursuant to Regulation 20370, subdivision (d), is insufficient to support a finding.
SAN JOAQUIN TOMATO GROWERS, INC./LCL FARMS, INC., 19 ALRB No. 43

317.11 Board affirmed the IHE's finding that there were aggravated acts of vandalism to employee vehicles but, since conduct not attributable to Union, utilization of third-party standard results in finding that in light of largely peaceful nature of strike and large Union ballot margin, the isolated acts of misconduct were not such that they would serve to taint the atmosphere in which the election was held.
TRIPLE E PRODUCE CORPORATION, 17 ALRB No. 15

317.11 Board distinguished allegedly violent pre-election atmosphere from that which obtained in T. Ito & Sons (1985) 11 ALRB No. 36 and Ace Tomato Co., Inc. (1989) 15 ALRB No. 7 on grounds that here no evidence of misconduct by Union or otherwise, on the day of the election or the day preceding the election.
TRIPLE E PRODUCE CORPORATION, 17 ALRB No. 15

317.11 No evidence presented that would make threats to "take out" those who tried to work during one day work stoppage attributable to union. Threats were made by autonomous group of workers, were remote in time from election, and there was no evidence of conduct that would rejuvenate threats or link them to union organizing campaign.
FURUKAWA FARMS, INC., 17 ALRB No. 4

317.11 Issues involving strike related violence or threats of violence are appropriately raised through challenged ballot proceeding only when directly related to the individual challenge. In all other instances they should be raised as election objections.
SAN JOAQUIN TOMATO GROWERS, INC./LCL FARMS, INC., 16 ALRB No. 10

317.11 Issues involving strike related violence or threats of violence are appropriately raised through challenged ballot proceeding only when directly related to the individual challenge. In all other instances they should be raised as election objections.
ACE TOMATO COMPANY, INC., 16 ALRB No. 9

317.11 Issues involving strike related violence or threats of violence are appropriately raised through challenged ballot proceeding only when directly related to the individual challenge.
In all other instances they should be raised as election

objections.
TRIPLE E PRODUCE CORPORATION, 16 ALRB No. 5

317.11 Where issues involving strike related violence or threats of violence are directly related to individual challenges and are raised through the challenged ballot proceedings, the Board may defer resolution of challenges which will not conclusively determine the outcome of the election where there are additional ballots subject to investigation which may determine the outcome.
SAN JOAQUIN TOMATO GROWERS, INC./LCL FARMS, INC., 16 ALRB No. 10

317.11 Board finds incidents of actual violence sufficient to justify dismissing technical refusal to bargain complaint and vacating prior certification order where (1) pro-union employees surrounded labor consultants in their car after having bombarded the car with hardened dirt clods and unripe tomatoes and rocked the car as if intending to overturn it; (2) pro-union employees and union organizers coerced non-participating workers into ceasing work by pelting them with hardened dirt clods and unripe tomatoes; and (3) pro-union employees surrounded labor consultant's car at polling site on day of election and bombarded car with hardened dirt clods and unripe tomatoes while beating on car with fists and rocking car as if to overturn it.
ACE TOMATO COMPANY, INC./GEORGE B. LAGORIO FARMS, 15 ALRB No. 7

317.11 Board has duty to establish norms that strongly discourage labor relations violence. It will not tolerate violence in connection with representation elections.
ACE TOMATO COMPANY, INC./GEORGE B. LAGORIO FARMS, 15 ALRB No. 7

317.11 Actual violence, as opposed to threats of violence, readily establishes atmosphere of fear and coercion or reprisal sufficient to render employee free choice impossible.
ACE TOMATO COMPANY, INC./GEORGE B. LAGORIO FARMS, 15 ALRB No. 7

317.11 Altercation between incumbent union agent and rival union officer/employee at field 30 days pre-filing of petition did not interfere with employee free choice since it was isolated in time and circumstance and was not connected to election.
COMITE 83, SINDICATO DE TRABAJADORES CAMPESINOS LIBRES, 14 ALRB No. 13

317.11 Gathering of workers, on evening prior to election, involved drinking and vehement argument. However, no workers were physically touched, threatened or intimidated and actions of union organizer in dispersing the workers and sending them home showed workers that

union disapproved of their behavior. Therefore, the workers' conduct did not tend to interfere with election results.
AGRI-SUN NURSERY, 13 ALRB No. 19

317.11 Nonparty conduct, involving throwing of dirt clods and tomatoes at labor consultant's automobile and rocking the automobile back and forth, held not sufficiently coercive to require setting aside election.
ACE TOMATO CO., INC., 12 ALRB No. 20

317.11 Dissent: Misconduct by union supporters before and during the election consisting of the throwing of dirt clods and tomatoes at labor consultants and employees, as well as the rocking of vehicles with labor consultants in them, interfered with employees' free choice and was grounds to set aside the election.
ACE TOMATO COMPANY, INC., 12 ALRB No. 20

317.11 In determining the seriousness of a threat by a non-party, the ALRB utilizes the standards enunciated by the NLRB in Westwood Horizons Hotel (1984) 270 NLRB No. 116: the nature of the threat itself; whether the threat encompassed the entire bargaining unit; whether reports of the threat were widely disseminated within the unit; whether the person making the threat was capable of carrying it out and whether it is likely that employees acted in fear of his capability of carrying out the threat; and whether the threat was rejuvenated at or near the time of the election.
T. ITO & SONS FARMS, 11 ALRB No. 36

317.11 The Board finds an atmosphere of fear and coercion where striking employees threatened large groups of employees with physical beatings and calling the INS, threats were accompanied by acts of violence, and the INS threats were repeated by union supporters to workers waiting in line to vote during the election.
T. ITO & SONS FARMS, 11 ALRB No. 36

317.11 Although the NLRB employs the "laboratory conditions" standard in reviewing the conduct of an election and the ALRB utilizes the "outcome determinative" test, both employ the same standard for evaluating the impact of violence or threats thereof on the election process: whether the misconduct creates an atmosphere of fear or coercion rendering employee free choice of representatives impossible.
T. ITO & SONS FARMS, 11 ALRB No. 36

317.11 Throwing of dirt clods or rocks, verbal shouting, touching of ladders, personal confrontation between employees without significant coercion, all of which affected at most a relatively small number of employees, was not misconduct of a nature to have affected the outcome of the election.
J. OBERTI, INC., et al., 10 ALRB No. 50

317.11 Strike elections place a significant burden on the Board in light of the strict time strictures established by the statute; therefore, the violent or coercive conduct of employees during a strike, which had abated by the time of the election, was insufficient to have affected the outcome of the election.
J. OBERTI, INC., et al., 10 ALRB No. 50

317.11 In light of the IHE's findings that no threats of violence were made before or during the election, no union organizer was responsible for any threats and the fact that the margin of victory was significant, the employer failed to establish an overall atmosphere of fear and reprisal rendering a free election impossible.
J. OBERTI, INC., et al., 10 ALRB No. 50

317.11 Violence occurring during one-day strike two weeks before election could not have tended to interfere with employee free choice and affect the results of the election absent credible evidence of some connection between the union and the strike or strike supporters or perpetrators of violence.
EXETER PACKERS, INC., 9 ALRB No. 76

317.11 Strike-related misconduct by union supporters found not sufficient to overturn election.
T. ITO & SONS FARMS, 9 ALRB No. 56

317.11 All violence, actual or threatened, is coercive to a greater or lesser degree depending upon circumstances and character of author.
JOSEPH GUBSER CO., 7 ALRB No. 33, IHED pp. 24-25

317.11 Given Union's wide margin of victory (116-9), number of eligible voters shown to have been aware of prior violent conduct insufficient to have impact on results of election.
JOSEPH GUBSER CO., 7 ALRB No. 33, IHED pp. 24-25

317.11 Union supporters rushed into field, committing acts of violence and disrupting operations. However, since incident was isolated, remote in time from election, (11 days prior) it was insufficient to create atmosphere or fear and coercion affecting free choice.
JOSEPH GUBSER CO., 7 ALRB No. 33

317.11 Setting aside election unwarranted where almost one Employee's vote might have been affected by threats of violence.
GROW ART, 7 ALRB No. 32

317.11 Fact that Employees carrying UFW flags or shouting pro-UFW slogans insufficient to establish they were authorized by UFW to organizer on its behalf. Nonetheless, their conduct attributed to UFW organizer where he not only failed to disassociate himself or UFW

from their conduct but accompanied them, gave encouragement and direction. (ALJD pp. XXI-XXII.)
FRUDDEN ENTERPRISES, INC., 7 ALRB No. 22

317.11 Although UFW violated ALRB access rule and its agents were violent and disruptive, the conduct did not create an atmosphere of fear and coercion that would interfere with Employee free choice warranting setting aside an election. Specified UFW organizers barred from taking access for specified periods, but Union certified as bargaining rep.
FRUDDEN ENTERPRISES, INC., 7 ALRB No. 22

317.11 Objective not subjective standard for determining if atmosphere of fear existed so as to warrant setting aside election. Statements of small number of Employees that they were frightened insufficient basis where there were a large number of potential voters and the violent incidents were not objectively of such a character as to engender significant fear of Union.
FRUDDEN ENTERPRISES, INC., 7 ALRB No. 22

317.11 Hearsay statements of several Employees that they were frightened insufficient to find crew members were afraid and not basis to set aside election.
FRUDDEN ENTERPRISES, INC., 7 ALRB No. 22

317.11 Setting aside election unwarranted where at most one Employee's vote might have been affected by threats of violence.
GROW ART, 7 ALRB No. 19, Adopted by Board in GROW ART, 7 ALRB No. 32

317.11 As remedy for Respondent Union's physical assaults and other acts of violence directed against representatives of rival Union during pre-election organizing period, Respondent directed to mail Notice to Employees to each employee of ranch where conduct occurred and to read Notice to them on their lunch hour, post notices at Union's business offices and meeting halls and publish same in all Union publications.
WESTERN CONFERENCE OF TEAMSTERS, Local 946, 3 ALRB No. 52

317.11 Where a teamster organizer threw a UFW pamphlet into a campfire and made derogatory statements about the UFW the Board declined to set aside the election because the statements were recognizable by the employees as mere campaign propaganda and not likely to have affected the outcome of the election.
TOMOOKA BROTHERS, 2 ALRB No. 52

317.11 Where a teamster organizer threw a UFW pamphlet into a campfire and made derogatory statements about the UFW the Board declined to set aside the election because the statements were recognizable by the employees as mere campaign propaganda and not likely to have affected the outcome of the election.

TOMOOKA BROTHERS, 2 ALRB No. 52

317.11 Board properly certified results of election where UFW's pre-election home visits were led by a convicted arsonist, since home visits were not threatening and there was no evidence that any employee was aware of arson conviction.
ADAMEK & DESSERT, INC. v. ALRB (1986) 178 Cal.App.3d 970

317.11 Employer's attempt to rely on unproven incidents of alleged misconduct, based on discredited testimony, does not provide legitimate basis for relitigating Board's decision certifying election.
ACE TOMATO CO., INC., 20 ALRB No. 7

317.11 Board will not presume dissemination of "threats" where election showed a large margin of victory, unit was large, no party agent or official made any threats, and examples cited as "threats" all involved conduct which IHE and Board found not to have occurred.
ACE TOMATO CO., INC., 20 ALRB No. 7

317.11 A claim of intimidation requires more than an expression of fear that an employee's vote will be ascertainable from the public tally of the ballots where the number of eligible voters is very small. There must be facts provided in the election objections petition, supported by declarations, to indicate any actions by Union supporters or agents that would constitute intimidation or coercion.
PETE VANDERHAM DAIRY, INC., 28 ALRB No. 1

317.12 Conduct Of Observers

317.12 Deviations from procedures in the election Manual, without more, are not grounds for setting aside an election. Thus, even if union observer was wearing "campaign material" which Board agents did not require her to remove, this would not provide a basis for setting aside the election.
LONOAK FARMS, 17 ALRB No. 19

317.12 The wearing of campaign insignia by election observers does not constitute grounds for setting aside an election, since it is generally well known that election observers represent the special interests of the parties.
LONOAK FARMS, 17 ALRB No. 19

317.12 Union observer's questioning of several voters about their surnames did not destroy the atmosphere of impartiality, since Board agent clearly demonstrated that she remained in charge of the election process.
LONOAK FARMS, 17 ALRB No. 19

317.12 When confronted with a union observer's alleged improper polling place conversation the Board will inquire into the substance of the observer's statements to determine

if it can be reasonably said that those statements would tend to affect the results of the election.
WILLIAM BUAK FRUIT COMPANY, INC., 13 ALRB No. 13

317.12 The fact that a few union observers wore union buttons, while not desirable, is not misconduct which warrants setting aside the election.
D'ARRIGO BROS., 3 ALRB No. 37

317.12 Although it was established that union observers talked to voters, since the only evidence of the conversation was that the discussion concerned identification of voters -- which is in the assigned scope of the observers' duties -- the Board will not find the observer conduct objectionable.
D'ARRIGO BROS., 3 ALRB No. 37

317.12 Mere fact that unauthorized UFW observers were allowed to remain at the ranch entrance during the election does not, by itself, constitute grounds for setting aside the election.
O.P. MURPHY & SONS, 3 ALRB No. 26

317.12 Where it was shown only that the Union observer engaged in brief conversations with voters in the nature of greetings the Board declined to set aside the election because there was no evidence that voter free choice had been affected.
HAIDEN FARMS OF CALIFORNIA, INC., 2 ALRB No. 30

317.13 Excess Access By Union Agents

317.13 Incumbent Union's failure to show company's discriminatory pattern of permitting work time access to rival Union while denying same to incumbent was a de minimus showing of "excess access" and did not violate the Act.
COMITE 83, SINDICATO DE TRABAJADORES CAMPESINOS LIBRES, 14 ALRB No. 13

317.13 Despite several instances of access abuse by Teamster officials also functioning as "IUAW consultants," Board affirms IHE's finding that "technical" violations did not disrupt employees' work and were far less serious than access abuses in cases cited by IHE where elections were not set aside. Although finding that agents of Teamsters/IUAW had employed IUAW post-certification work time access to campaign for Teamsters, Board distinguished Carl Dobler and Sons (1985) 11 ALRB No. 37 where similar access abuse exacerbated prejudice to UFW in its efforts to communicate with the voters.
INLAND AND WESTERN RANCHES, 11 ALRB No. 39

317.13 Employer's unexplained submission of "grossly inadequate" seniority list instead of current pre-petition payroll list constituted grounds to set aside election both in itself and in combination with IUAW/Teamster agents'

abuse of incumbent IUAW post-certification access to campaign for Teamsters.
CARL DOBLER AND SONS, 11 ALRB No. 37

317.13 Technical violations of Board's access regulation were de minimis in nature and did not deprive voters of their free choice in election.
ROBERT J. LINDELEAF, 8 ALRB No. 22

317.13 Motion to deny access should be granted where there is: (1) significant disruption of Employer's operations; (2) intentional or harassment of Employer or Employees; or (3) intentional or reckless disregard of access rule.
FRUDDEN ENTERPRISES, INC., 7 ALRB No. 22

317.13 UFW failed to comply with Board access rule by: failure to properly serve Notice Of Intent To Take Access; UFW organizers not wearing badges; taking access at times and in numbers of organizers not allowed (including organizing while Employees were working); engaging in disruptive conduct, but violation did not warrant setting aside election.
FRUDDEN ENTERPRISES, INC., 7 ALRB No. 22

317.13 Although UFW violated ALRB access rule and its agents were violent and disruptive, the conduct did not create an atmosphere of fear and coercion that would interfere with Employee free choice warranting setting aside an election. Specified UFW organizers barred from taking access for specified periods, but Union certified as bargaining representative.
FRUDDEN ENTERPRISES, INC., 7 ALRB No. 22

317.13 Organizers who refused to leave when told violated access rule, but such conduct would not necessarily create fear or have other coercive impact which would affect voting.
FRUDDEN ENTERPRISES, INC., 7 ALRB No. 22

317.13 No violation of access rule where number of organizers exceeded allowable number for talking to one crew but was less than permitted for total number of crews talked to during lunch break.
FRUDDEN ENTERPRISES, INC., 7 ALRB No. 22

317.13 In the case of "excess access" by a labor organization, the Board refuses to set aside elections where there is "minimal and insubstantial encroachment" upon the employer's premises beyond the slope of the access rule, where no opposing union is disadvantaged and the "excess access" is not of such a character to have an intimidating or coercive impact on employers or in any way affect the outcome of the election, or when employers participate in a free and fair election and it cannot be fairly concluded that the misconduct affects the results of the election. (IHE Dec. at p. 7.)
GEORGE ARAKELIAN FARMS, INC., 4 ALRB No. 6

317.13 Although there were numerous occasions of prework "excess access" by the UFW, Board found the conduct not to be of such character as to affect employees' free choice of a collective bargaining representative, as there was no indication of any work disruption, coercion, or intimidation caused by union organizers during the prework visits and there was no opposing union disadvantaged by such "excess access." (IHE Dec. at p. 8.)
GEORGE ARAKELIAN FARMS, INC., 4 ALRB No. 6

317.13 In order to set aside an election on the basis of "excess access," it must first be established that the violations took place and that the misconduct affected the results of the election. (IHE Dec. at p. 7.)
GEORGE ARAKELIAN FARMS, INC., 4 ALRB No. 6

317.13 Although the record establishes that Teamster organizers had freer access to employees than did UFW organizers, it is not necessary to set aside the election on this basis since it is clear that the Teamsters administered their contract much of the time they were in the fields. Further, the UFW had a sufficient opportunity to campaign. The Teamsters did not have such a significant campaign advantage that employees were unable to cast an informed vote.
BUD ANTLE, INC., 3 ALRB No. 7

317.13 Pre-August 29, 1975 access: In reviewing entry by organizers on to employer's property, Board declined to set aside election, since there was no evidence of coercive or disruptive conduct.
HIJI BROTHERS, INC., 3 ALRB No. 1

317.13 Post-August 29, 1975 access: Two violations of access rule were found: 1) permissible number of organizers was exceeded; 2) organizers came onto property during working hours. Nonetheless, Board declined to set aside election, since conduct was not found to have affected election's outcome.
HIJI BROTHERS, INC., 3 ALRB No. 1

317.13 Lindeleaf's argument that Court should establish a per se rule of setting aside election on grounds of access violations by Union is rejected. ALRB has expressly declined to adopt per se rule, and Court will not dispute its administrative judgment that charges of access violations should be reviewed in each instance on their own facts.
LINDELEAF v. ALRB (1986) 41 Cal.3d 861

317.13 Election objection properly dismissed where declarations failed to show that access by union organizers was of such intimidating character as would affect the outcome of the election.
J.R. NORTON CO. v. ALRB (1979) 26 Cal.3d 1

317.13 Employer made no showing that any threats, disruption or other misconduct occurred during taking of excess access by Union, nor that amount of access taken was so excessive that it would tend to intimidate or coerce employees. Thus, Board affirms Executive Secretary's dismissal of election objection.
WARMERDAM PACKING COMPANY, 20 ALRB No. 12

317.13 Alleged access improprieties insufficient to set aside election where not even clear if access was on Employer's property or during work time and, more importantly, no showing of threats or coercion.
ROYAL PACKING COMPANY, 20 ALRB No. 14

317.14 Campaigning Or Conversations At Polling Site

317.14 The wearing of campaign insignia by election observers does not constitute grounds for setting aside an election, since it is generally well known that election observers represent the special interests of the parties.
LONOAK FARMS, 17 ALRB No. 19

317.14 Evidence did not support allegation that union or its agents were responsible for posting union bumper stickers in election area, or engaged in electioneering at the voting site. Therefore, Board dismissed objection alleging that union had interfered with free choice by violating a no-campaigning pre-election agreement.
ARCO SEED COMPANY, 14 ALRB No. 6

317.14 Pro-union chanting by large number of workers during polling period did not create atmosphere of fear or coercion tending to affect voter free choice.
ACE TOMATO COMPANY, INC., 12 ALRB No. 20

317.14 Election objection dismissed where no evidence was introduced to prove that pro-union supervisor's conversations with voters in polling area had any effect on employee free choice.
BRIGHT'S NURSERY, 10 ALRB No. 18

317.14 Statement by union supporter to potential voters that they were ineligible because of their part-time status could not have affected outcome of election as all employees who heard statement voted anyway. IHED, pp. 8-9.
H. H. MAULHARDT PACKING COMPANY, 6 ALRB No. 42

317.14 Absent evidence of threats or coercion, distribution of campaign buttons by union sympathizers inside polling area did not affect employee free choice and is not grounds for setting aside the election.
D'ARRIGO BROS., 3 ALRB No. 37

317.14 The mere presence of bumper stickers in the polling area is not grounds for setting aside an election.
D'ARRIGO BROS., 3 ALRB No. 37

317.14 The fact that some of the voters wore campaign material at the polling site is not sufficient grounds for setting aside the election.
O.P. MURPHY & SONS, 3 ALRB No. 26

317.14 Mere presence of campaign material in or about the polling area is not grounds for setting aside an election absent a prejudicial effect on the election.
O.P. MURPHY & SONS, 3 ALRB No. 26

317.14 Campaigning in the polling area prior to the opening of the polls is not grounds for setting aside an election.
O.P. MURPHY & SONS, 3 ALRB No. 26

317.14 Where (1) some employees gathered within the quarantined area and talked loudly while drinking beer; (2) two employees drank beer while waiting in line to vote; and (3) alcohol could be smelled on the breath of some voters, the Board declined to set aside the election because there was no evidence that the employee's conduct was coercive.
HAIDEN FARMS OF CALIFORNIA, INC., 2 ALRB No. 30

317.14 Since campaigning in polling area prior to opening of polls generally is not conduct sufficient to warrant setting aside of election, similar result where campaigning occurred after the official time for opening of polls but before late opening actually occurred.
UNITED CELERY GROWERS, 2 ALRB No. 27

317.14 Mere presence of voter who remained in voting area for some time after voting, although improper is not enough to warrant setting aside an election, where voter did nothing to interfere with election or even speak with any other voter.
SAM BARBIC, 1 ALRB No. 25

317.14 Campaigning two to three miles from the polls during the election is not objectionable.
YAMADA BROTHERS, 1 ALRB No. 13

317.14 Pro-union bumper strips on employees' cars visible from polling area did not warrant setting aside election because voters not so easily swayed that their free choice would be overridden by glimpsing a few slogans.
SAMUEL S. VENER CO., 1 ALRB No. 10

317.14 ALRB has firmly held that last-minute electioneering in the polling place does not warrant setting aside an election unless it continues during actual voting or is intimidating and coercive to employees.
LINDELEAF v. ALRB (1986) 41 Cal.3d 861

317.14 Lindeleaf's declarations asserting that UFW organizers exhorted voters and distributed pro-UFW flyers immediately before and during balloting, failed to

present a prima facie showing of misconduct.
LINDELEAF v. ALRB (1986) 41 Cal.3d 861

317.14 Board properly dismissed election objection where union electioneering did not occur near polling place or while voters were standing in line, nor did declarations indicate that content of conversations or circumstances suggest interference with employee free choice, particularly where election results were not close.
J.R. NORTON CO. v. ALRB (1979) 26 Cal.3d 1

317.14 Without specific content of "pro-union slogans" shouted at voters near polling area prior to actual balloting it cannot be concluded that the conduct was coercive or threatening. Moreover, campaigning in or near the polling area prior to the actual balloting is not a sufficient ground for setting aside an election.
ANDERSON VINEYARDS, INC., 24 ALRB No. 5

317.14 The Board will not set aside an election due to electioneering at or near the polling place on a "per se" basis, but will instead examine whether the conduct was so coercive or disruptive as to interfere with free choice in the election to the extent that it might have affected the outcome of the election. The mere shouting of pro-union slogans does not constitute such coercive or disruptive conduct.
ANDERSON VINEYARDS, INC., 24 ALRB No. 5

317.15 Pro-Union Supervisors, Activity Of

317.15 Election objection dismissed where no evidence was introduced to prove that pro-union supervisor's conversations with voters in polling area had any effect on employee free choice.
BRIGHT'S NURSERY, 10 ALRB No. 18

317.15 Pro-union activity of "working foremen" not grounds to set aside election where foremen had no direct authority to hire, fire, or discipline and employer informed potential voters that it did not favor union representation for its employees.
BRIGHT'S NURSERY, 10 ALRB No. 18

317.16 Use Of Employee List To Check-Off Voters

317.16 Board properly dismissed objection where declarations failed to show that union's efforts to keep "checkoff" list of voters occurred in such an atmosphere of coercion or intimidation that list would be perceived as coercive surveillance.
J.R. NORTON CO. v. ALRB (1979) 26 Cal.3d 1

317.16 Board properly declined to find keeping of voter list *per se* objectionable, since agricultural employees are often scattered and union has legitimate interest in giving employees last-minute notice of election.

J.R. NORTON CO. v. ALRB (1979) 26 Cal.3d 1

318.00 THIRD-PARTY INTERFERENCE; UNIDENTIFIED PERSONS; RUMORS

318.01 In General

318.01 Board adhered to well-established doctrine that this conduct of third parties not identified as agents of employer or union will be grounds for setting aside election only if misconduct of third parties was such that free employee choice in election was rendered impossible.
TRIPLE E PRODUCE CORP., 19 ALRB No. 2

318.01 Since Employer failed to establish that Union gave express or apparent authority to any worker or striker to engage in misconduct, Board applies third-party standard to alleged strike misconduct.
ACE TOMATO, CO., Inc., 18 ALRB No. 9

318.01 Board affirmed the IHE's finding that there were aggravated acts of vandalism to employee vehicles but, since conduct not attributable to Union, utilization of third-party standard results in finding that in light of largely peaceful nature of strike and large Union ballot margin, the isolated acts of misconduct were not such that they would serve to taint the atmosphere in which the election was held.
TRIPLE E PRODUCE CORPORATION, 17 ALRB No. 15

318.01 Board distinguished allegedly violent pre-election atmosphere from that which obtained in T. Ito & Sons (1985) 11 ALRB No. 36 and Ace Tomato Co., Inc. (1989) 15 ALRB No. 7 on grounds that here no evidence of misconduct by Union or otherwise, on the day of the election or the day preceding the election.
TRIPLE E PRODUCE CORPORATION, 17 ALRB No. 15

318.01 Election results upheld where record evidence insufficient to prove that third party engaged in any significant misconduct in pursuing lawsuit against the employer or in its contacts with the media.
FURUKAWA FARMS, INC., 17 ALRB No. 4

318.01 Although Company foreman and rival union member -- Company employee heckled incumbent union agent while he conversed with employees, incumbent did not show the conduct prevented employees from receiving information which interfered with exercising their free choice in the election.
COMITE 83, SINDICATO DE TRABAJADORES CAMPESINOS LIBRES, 14 ALRB No. 13

318.01 Altercation between incumbent union agent and rival union officer/Company employee at field 30 days pre-filing of

petition did not interfere with employee free choice since it was isolated in time and circumstance and was not connected to election.
COMITE 83, SINDICATO DE TRABAJADORES CAMPESINOS LIBRES, 14 ALRB No. 13

318.01 Under ALRB and NLRB precedent, the mere display of campaign symbols within polling area is not a basis for setting aside election in absence of evidence that the material caused a disruption of polling or otherwise interfered with the election. No evidence herein showed that the union emblems displayed at the election site caused any disruption or otherwise interfered with the orderly process of voting.
ARCO SEED COMPANY, 14 ALRB No. 6

318.01 Board will not infer that threats of bodily harm were widely disseminated among bargaining unit members where the testimony presented establishes that those employees who were told about the threats did not repeat them to other employees. (Compare Triple E Produce Corp. v. ALRB, et al. (1985) 35 Cal.3d 42.)
SANDYLAND NURSERY CO., INC., 12 ALRB No. 1

318.01 Threats of bodily harm made to an alleged supervisor by third parties and not disseminated among the bargaining unit employees do not rise to the level of misconduct required to set aside a representation election.
SANDYLAND NURSERY CO., INC., 12 ALRB No. 1

318.01 In assessing the impact of misconduct, less weight is given to conduct of union supporters than is given to conduct of the parties or their agents; the test is whether nonparty misconduct is so aggravated that it creates a general atmosphere of fear or coercion, rendering employee free choice impossible. Once a threat has been established, whether it constitutes aggravated misconduct depends upon the character and circumstances of the threat, and not merely on the number of employees threatened.
T. ITO & SONS FARMS, 11 ALRB No. 36

318.01 Whether a statement is coercive does not turn on an employees' subjective reactions but instead depends upon whether the statement reasonably tends to coerce employees.
T. ITO & SONS FARMS, 11 ALRB No. 36

318.01 In determining the seriousness of a threat by a non-party, the ALRB utilizes the standards enunciated by the NLRB in Westwood Horizons Hotel (1984) 270 NLRB No. 116: the nature of the threat itself; whether the threat encompassed the entire bargaining unit; whether reports of the threat were widely disseminated within the unit; whether the person making the threat was capable of carrying it out and whether it is likely that employees acted in fear of his capability of carrying out the

threat; and whether the threat was rejuvenated at or near the time of the election.
T. ITO & SONS FARMS, 11 ALRB No. 36

318.01 The Board finds an atmosphere of fear and coercion where striking employees threatened large groups of employees with physical beatings and calling the INS, threats were accompanied by acts of violence, and the INS threats were repeated by union supporters to workers waiting in line to vote during the election.
T. ITO & SONS FARMS, 11 ALRB No. 36

318.01 Violence occurring during one-day strike two weeks before election could not have tended to interfere with employee free choice and affect the results of the election absent credible evidence of some connection between the union and the strike or strike supporters or perpetrators of violence.
EXETER PACKERS, INC., 9 ALRB No. 76

318.01 Strike-related misconduct by union supporters found not sufficient to overturn election.
T. ITO & SONS FARMS, 9 ALRB No. 56

318.01 Actions of union supporters are not automatically attributable to the union absent a showing of some union involvement in or union instigation of the actions of the supporters.
MATSUI NURSERY, INC., 9 ALRB No. 42

318.01 Fact that people who entered field carried flags bearing Union symbol is by itself insufficient to establish agency relationship. However, where violence is committed prior to election, violence will be viewed according to whether it tended to interfere with free choice. Agency status will not be controlling factor.
JOSEPH GUBSER CO., 7 ALRB No. 33

318.01 INS' appearance on employer's property after the polls opened, and INS agents' arrest of a worker, did not create an atmosphere which rendered improbable a free choice by voters since prompt action by the Board agent and a party representative resulted in the INS agents releasing the arrested worker in view of other workers, the INS's leaving the employer's property, and the worker's returning to his job.
TEPUSQUET VINEYARDS, 4 ALRB No. 102

318.01 Conduct by an eligible voter (not an agent of any party) who accompanied crews of other voters to polls, urged the crews to vote for the union, waited in the polling area while the crews voted, then left and returned with other crews, did not warrant setting aside the election as record failed to establish that the actions had a prejudicial effect on the voters.
TEPUSQUET VINEYARDS, 4 ALRB No. 102

318.01 Reckless driving of a car by an employee close to the actual polling area, although disruptive, was not shown to have affected the results of the election.
RON NUNN FARMS, 4 ALRB No. 31

318.01 During an election, one individual shouting slogans from the road running along the edge of the field not attributable to a party to the election is not conduct sufficient to warrant setting aside the election absent a showing that the voters' free choice was impaired.
O.P. MURPHY & SONS, 3 ALRB No. 26

318.01 Mere presence of voter who remained in voting area for some time after voting, although improper is not enough to warrant setting aside an election, where voter did nothing to interfere with election or even speak with any other voter.
SAM BARBIC, 1 ALRB No. 25

318.01 Board properly certified results of election even though group of individuals had been drinking near polling site, since they left site when asked to and there was no evidence that their drinking disrupted election or interfered with any employee's exercise of his or her right to vote.
ADAMEK & DESSERT, INC. v. ALRB (1986) 178 Cal.App.3d 970

318.01 Proffered testimony of threats by unidentified persons was inadmissible hearsay. The Board regulations clearly provide that although hearsay evidence may be used at investigative hearings to supplement or explain other evidence, it may not in itself support a finding unless it would be admissible in a civil action.
LINDELEAF v. ALRB (1986) 41 Cal.3d 861

319.00 UNIT FOR BARGAINING; IN GENERAL; RANCH-WIDE, STATE-WIDE; AND MULTI-EMPLOYER UNITS

319.01 In General; Labor Code Section 1156.2

319.01 An off-the-farm packing or cooling facility may be deemed a noncontiguous geographical area within the meaning of section 1156.2 and therefore employees employed therein may constitute a unit appropriate for bargaining.
ANDREWS DISTRIBUTION COMPANY, INC., 14 ALRB No. 19

319.01 Under Board's interpretation of section 1156.2, Board must include in bargaining unit all the agricultural employees of the employer at the one or more sites it finds within the scope of the appropriate unit. (IHED, p. 12.)
FOSTER POULTRY FARMS (CHICKEN LIVEHAUL CREW), 13 ALRB No. 5

319.01 Dissent: Statement of Intent sought to protect the ability of Fresh Fruit and Vegetable Workers Union to

organize agricultural employees engaged in packing, cooling and processing operations; it provided the Board with discretion to certify groups of such employees as separate "noncontiguous geographical" units when those operations are not conducted "on-a-farm."
HARRY TUTUNJIAN & SONS, 12 ALRB No. 22

319.01 Dissent: Reference to "on-a-farm in Statement Of Intent should be construed liberally, allowing packing sheds to be separate bargaining units unless the shed operation is inseparably part of the farming operation, i.e. "on-a-farm" requires that the shed must be located on the farms which produces the very commodities packed into the shed.
HARRY TUTUNJIAN & SONS, 12 ALRB No. 22

319.01 Dissent: Even when shed is off-a-farm, the Board should utilize the community of interest test enunciated in Bruce Church, Inc. (1976) 2 ALRB No. 38 to determine whether the shed and field employees should nonetheless be included in one bargaining unit.
HARRY TUTUNJIAN & SONS, 12 ALRB No. 22

319.01 The FFVW secured a Statement Of Intent from the Legislature in response to its concern about protecting its interest in organizing "processing, packing and cooling operations which were not conducted on a farm." Thus, the Board relied upon "on-a-farm/off-a-farm" analysis with respect to determining whether a packing shed is contiguous to the field operations.
HARRY TUTUNJIAN & SONS, 12 ALRB No. 22

319.01 Reference in the Statement of Intent to "...packing operations...not conducted on a farm" indicates that the concern was only with the site of the shed in relation to the rest of the employer's farming operations, not with the types of crops grown adjacent to the shed or whether the crops are packed into the shed.
HARRY TUTUNJIAN & SONS, 12 ALRB No. 22

319.01 Where Regional Director held election in statutorily inappropriate unit, consisting of only employer's citrus workers, election upheld where IHE able to redefine unit in accordance with "all agricultural employees of the employer" requirement and with no adverse effect on other relevant statutory provisions of employees' rights.
BAKER BROTHERS, 11 ALRB No. 23

319.01 Once parameters of employing entity defined, the only statutorily appropriate unit consists of all of the entity's agricultural employees irrespective of the nature of their agricultural work.
BAKER BROTHERS, 11 ALRB No. 23

319.01 Section 1156.2 of the Act reflects a legislative preference for broad comprehensive bargaining units.
CREAM OF THE CROP, 10 ALRB No. 43

319.01 To determine the appropriate unit(s) when a single employer has multiple operations in noncontiguous geographical areas, the Board considered the following factors: (1) The physical or geographical "location of the locations" in relation to each other; (2) the extent to which administration is centralized, particularly with regard to labor relations; (3) the extent to which employees at different locations share common supervision; (4) the extent of interchange among employees from location to location; the nature of the work performed at the various locations and the similarity or dissimilarity of the skill involved; (6) similarity or dissimilarity in wages, working hours, and other terms and conditions of employment; and (7) the pattern of bargaining history among employees; the Board also considered the fact that the union had petitioned for and organized on the basis of a smaller unit and a legislative presumption favoring broad comprehensive bargaining units.
CREAM OF THE CROP, 10 ALRB No. 43

319.01 Group of employees known as drivers, loaders, and stitcher-gluers fall within the definition of agricultural employees and are therefore part of the certified bargaining unit.
KOYAMA FARMS, 10 ALRB No. 4

319.01 To determine the appropriate unit(s) when a single employer's operations are in noncontiguous geographical areas, the Board recognizes a legislative preference for broad, comprehensive units. Further, all relevant factors must be considered, including the method of figuring wages, the number of working hours, the benefits received, the methods of supervision, the quality and degree of skill necessary, actual job functions, the degree of bargaining, the desires of the employees, and the nature of the business.
PROHOROFF POULTRY FARMS, 9 ALRB No. 68

319.01 In establishing the appropriate bargaining unit, the Board has no discretion to sever operations of a single employer unless those operations are in noncontiguous geographical areas.
PROHOROFF POULTRY FARMS, 9 ALRB No. 68

319.01 Prior contract recognizing separate unit of off-the-farms not controlling in unit clarification proceeding where employees are clearly agricultural under section 1140.4(b) of the Act.
TOMOOKA FARMS, INC., 9 ALRB No. 48

319.01 Prior contract recognizing separate unit of off-the-farms not controlling in unit clarification proceeding where employees are clearly agricultural under section 1140.4(b) of the Act.
SECURITY FARMS, 9 ALRB No. 47

319.01 Labor Code sections 1140.4(c) and 1156.2 require that employees hired through labor contractor and those hired directly be placed in same bargaining unit even if paid on different basis, supervised by different foremen and working different hours harvesting different variety of tomato, unless they work in noncontiguous geographical areas.
TMY FARMS, 2 ALRB No. 58 ACCORD: CARDINAL DISTRIBUTING CO., 3 ALRB No. 23

319.01 Where there was no evidence that an asparagus packing shed was a "commercial" shed the Board ruled that the shed employees had properly been included within the bargaining unit.
HAIDEN FARMS OF CALIFORNIA, INC., 2 ALRB No. 30

319.01 Where the issue of whether the truck drivers were agricultural or industrial employees was pending before the NLRB the Board deferred determination of their status until resolution by the NLRB or the filing of a future motion for unit clarification.
HAIDEN FARMS OF CALIFORNIA, INC., 2 ALRB No. 30

319.01 Even if Employer stipulated to unit excluding packing shed Employees, Board not bound by same and had no discretion to exclude same on facts presented.
R.C. WALTER & SONS, 2 ALRB No. 14

319.01 Legislature created bargaining units consisting of all agricultural employees of employer to enhance mobility from low paid to higher paid jobs and to protect growers from bargaining with many different unions.
VISTA VERDE FARMS v. ALRB (1981) 29 Cal.3d 307

319.01 Section 1156.2 precludes Board from modifying original certification in order to sever out only a certain classification of employees on grounds union abandoned interest in representing only that aspect of the overall operation.
DOLE FRESH FRUIT CO., 22 ALRB No. 4

319.01 Objection that bargaining unit should have been limited to unit agreed upon by parties dismissed where statute requires a statewide unit (Lab. Code § 1156.2) and objecting party failed to present evidence of why a different unit would be more appropriate.
THE HESS COLLECTION WINERY, 25 ALRB No. 2

319.01 Parties do not have the authority to exclude agricultural employees from certified bargaining units without the concurrence of the Board.
NASH DE CAMP COMPANY, 26 ALRB No. 4

319.01 Unit clarification petitions seeking to expand the scope of bargaining units to include agricultural operations acquired by an employer that did not exist when the union was originally certified must be analyzed in the same

manner as initial unit determinations.
SUN WORLD INTERNATIONAL, LLC, 38 ALRB No. 3

319.01 The unit description "all agricultural employees of an employer in the State of California" simply reflects at the time of the original certification, the unit included all of an employer's operations in the State. This description has no independent legal significance regarding the appropriateness of the inclusion—via a unit clarification petition—of any operations acquired by the employer after the union was originally certified.
SUN WORLD INTERNATIONAL, LLC, 38 ALRB No. 3

319.01 The Board noted that it had previously clarified in *Coastal Berry. LLC* (2000) 26 ALRB No. 2, that there was no statutory presumption or preference in favor of a statewide bargaining unit when the employer's operations are in two or more noncontiguous areas.
SUN WORLD INTERNATIONAL, LLC, 38 ALRB No. 3

319.01 Certifications that have long been inactive generally cannot be the basis of noncontiguous accretions sought in a unit clarification proceeding; however, there may be circumstances where discontinued operations are revived in noncontiguous areas and it may be appropriate to accrete them to the original certification.
SUN WORLD INTERNATIONAL, LLC, 38 ALRB No. 3

319.01 Because the Board found that accretions sought by the union in a unit clarification proceeding were inappropriate because there was no community of interest between an employer's current unionized operations and its non-unionized operations in a non-contiguous geographical area, the Board declined to rule on whether the National Labor Relations Board's "accretion doctrine," was applicable under the ALRA.
SUN WORLD INTERNATIONAL, LLC, 38 ALRB No. 3

319.02 Authority of Courts And ALRB, In General

319.02 In establishing the appropriate bargaining unit, the Board has no discretion to sever operations of a single employer unless those operations are in noncontiguous geographical areas.
PROHOROFF POULTRY FARMS, 9 ALRB No. 68

319.02 Prior contract recognizing separate unit of off-the-farms not controlling in unit clarification proceeding where employees are clearly agricultural under section 1140.4(b) of the Act.
SECURITY FARMS, 9 ALRB No. 47
TOMOOKA FARMS, INC., 9 ALRB No. 48

319.02 The Board lacks jurisdiction to exclude agricultural workers based on bargaining history or community of interest, in view of the mandate in section 1145.2 of the Labor Code.

J.J. CROSETTI CO., INC., 2 ALRB No. 1

319.02 ALRA generally requires that all agricultural employees of an employer be in one bargaining unit. Board may not allow separation of skilled from unskilled workers, regardless of pre-Act history of bargaining with skilled workers.
JOE A. FREITAS & SONS v. FOOD PACKERS (1985) 164 Cal.App.3d 1210

319.03 Presumptions As To Bargaining Unit, Multi-Employer Unit Not Favored

319.03 Election conducted in limited unit of employer's employees is set aside, where SDAPA factors showing employer's poultry facilities were within single geographical area, together with legislative presumption favoring broad agricultural units, indicate that bargaining unit sought was inappropriate and that appropriate unit appears to be a statewide unit of all the employer's agricultural employees.
FOSTER POULTRY FARMS (CHICKEN LIVEHAUL CREW), 13 ALRB No. 5

319.03 Under Board's interpretation of section 1156.2, Board must include in bargaining unit all the agricultural employees of the employer at the one or more sites it finds within the scope of the appropriate unit. (IHED, p. 12.)
FOSTER POULTRY FARMS (CHICKEN LIVEHAUL CREW), 13 ALRB No. 5

319.03 Reference in the Statement of Intent to ". . . packing operations . . . not conducted on a farm" indicates that the concern was only with the site of the shed in relation to the rest of the employer's farming operations, not with the types of crops grown adjacent to the shed or whether the crops are packed into that shed.
HARRY TUTUNJIAN & SONS, 12 ALRB No. 22

319.03 Dissent: Individual notice to employees of an election is not required; both NLRB and ALRB only require that Board agents make reasonable efforts to notify employees of an election.
HARRY TUTUNJIAN & SONS, 12 ALRB No. 22

319.03 Dissent: Whereas the Board normally utilizes the Single Definable Agricultural Production Area standard in determining whether two parcels of land are located in noncontiguous geographical areas, legislative intent exists for the Board to use an "on-or-off-a-farm" analysis with respect to employees employed in packing, cooling and processing operations.
HARRY TUTUNJIAN & SONS, 12 ALRB No. 22

319.03 Dissent: Reference to "on-a-farm" in Statement of Intent should be construed liberally, allowing packing sheds to

be separate bargaining units unless the shed operation is inseparably part of the farming operation, i.e. "on-a-farm" requires that the shed must be located on the farm which produces the very commodities packed into the shed.
HARRY TUTUNJIAN & SONS, 12 ALRB No. 22

319.03 Dissent: Statement of Intent sought to protect the ability of Fresh Fruit and Vegetable Workers Union to organize agricultural employees engaged in packing, cooling and processing operations; it provided the Board with discretion to certify groups of such employees as separate "noncontiguous geographical" units when those operations are not conducted "on-a-farm."
HARRY TUTUNJIAN & SONS, 12 ALRB No. 22

319.03 Once parameters of employing entity defined, the only statutorily appropriate unit consists of all of the entity's agricultural employees irrespective of the nature of their agricultural work.
BAKER BROTHERS, 11 ALRB No. 23

319.03 Section 1156.2 of the Act reflects a legislative preference for broad comprehensive bargaining units.
CREAM OF THE CROP, 10 ALRB No. 43

319.03 Significant separation of the employer's operations does not defeat the preference for broad comprehensive bargaining units when there exists substantial similarity in skills and working conditions, common supervision, employee interchange and control of labor relations between the two geographically separate operations.
CREAM OF THE CROP, 10 ALRB No. 43

319.03 Where two poultry farming operations of a single employer show the following factors: centralized business structure, uniformity in benefits, overlap of job functions, and prior elections in a single bargaining unit, the fact that there is no interchange of employees coupled with local autonomy and geographical separation will not defeat the legislative preference for broad comprehensive bargaining units.
PROHOROFF POULTRY FARMS, 9 ALRB No. 68

319.03 Even if Employer stipulated to unit excluding packing shed Employees, Board not bound by same and had no discretion to exclude same on facts presented.
R.C. WALTER & SONS, 2 ALRB No. 36

319.03 Packing shed Employees were agricultural Employees where they worked only with Employer's grapes on Employer's property and their work was geared to work of the field Employees. One unit appropriate based on legislative intent, and Board had no discretion to exclude shed Employees since they worked on land adjacent to other farmland of Employer.
R.C. WALTER & SONS, 2 ALRB No. 14

319.03 There is a presumption in favor of single employer unit, and unless employers are closely related in ownership and control, a multi-employer unit will only be recognized where there has been a history of collective bargaining on a multi-employer basis.
J.J. CROSETTI CO., INC., 2 ALRB No. 1

319.03 There is no statutory language indicating a legislative preference or presumption for a statewide unit in separate sites which are not geographically contiguous. The only statutory presumption in favor of statewide bargaining units is the irrebutable presumption in favor of statewide units where an ER's operations are in contiguous geographical areas. (Lab. Code §1156.2.) To extent that *Prohoroff Poultry Farms* (1983) 9 ALRB No. 68, *Cream of the Crop* (1984) 10 ALRB No. 43, or any other Board decisions are inconsistent, they are overruled.
COASTAL BERRY COMPANY, LLC, 26 ALRB No. 2

319.03 The Board noted that it had previously clarified in *Coastal Berry. LLC* (2000) 26 ALRB No. 2, that there was no statutory presumption or preference in favor of a statewide bargaining unit when the employer's operations are in two or more noncontiguous areas.
SUN WORLD INTERNATIONAL, LLC, 38 ALRB No. 3

319.04 Non-Contiguous Geographical Areas; Single Definable Agricultural Production Area

319.04 Where employees at employer's two non-contiguous nursery sites performed identical work with common supervision and similar wages and benefits, a single unit was appropriate.
SILVER TERRACE NURSERIES, INC., 19 ALRB No. 12

319.04 Since there is insufficient evidence that a statewide bargaining unit would be more appropriate than the single-county unit petitioned for, Board certifies unit of employees located in San Joaquin County.
ACE TOMATO, CO., INC., 18 ALRB No. 9

319.04 An off-the-farm packing or cooling facility may be deemed a noncontiguous geographical area within the meaning of section 1156.2 and therefore employees employed therein may constitute a unit Appropriate for bargaining.
ANDREWS DISTRIBUTION COMPANY, INC., 14 ALRB No. 19

319.04 Although employer's poultry operations were not literally contiguous, Board found that single definable agricultural production area factors of commonality of climate, water, soil and labor conditions were important to employer's operations and indicated that employer's poultry facilities were within a single geographical area for purposes of the statute.
FOSTER POULTRY FARMS (CHICKEN LIVEHAUL CREW), 13 ALRB No. 5

319.04 Dissent: Even when shed is off-a-farm, the Board should utilize the community of interest test enunciated in Bruce Church, Inc. (1976) 2 ALRB No. 38 to determine whether the shed and field employees should nonetheless be included in one bargaining unit.
HARRY TUTUNJIAN & SONS, 12 ALRB No. 22

319.04 Election conducted in limited unit of employer's employees is set aside, where SDAPA factors showing employer's poultry facilities were within single geographical area, together with legislative presumption favoring broad agricultural units, indicate that bargaining unit sought was inappropriate and that appropriate unit appears to be a statewide unit of all the employer's agricultural employees.
FOSTER POULTRY FARMS (CHICKEN LIVEHAUL CREW), 13 ALRB No. 5

319.04 Board determined the Employer's packing shed to be located on a parcel of land where the Employer's almonds are grown. Although the Employer's almonds are not packed in this shed, the packing operation is clearly on, as well as adjacent to, land owned and farmed by the Employer.
HARRY TUTUNJIAN & SONS, 12 ALRB No. 22

319.04 The FFVW secured a Statement of Intent from the Legislature in response to its concern about protecting its interest in organizing "processing, packing and cooling operations which are not conducted on a farm." Thus, the Board relied upon "on-a-farm/off-a-farm" analysis with respect to determining whether a packing shed is contiguous to the field operations.
HARRY TUTUNJIAN & SONS, 12 ALRB No. 22

319.04 Dissent: Whereas the Board normally utilizes the Single Definable Agricultural Production Area standard in determining whether two parcels of land are located in noncontiguous geographical areas, legislative intent exists for the Board to use an "on-or-off-a-farm" analysis with respect to employees employed in packing, cooling and processing operations.
HARRY TUTUNJIAN & SONS, 12 ALRB No. 22

319.04 Dissent: Statement of Intent sought to protect the ability of Fresh Fruit and Vegetable Workers Union to organize agricultural employees engaged in packing, cooling and processing operations; it provided the Board with discretion to certify groups of such employees as separate "noncontiguous geographical" units when those operations are not conducted "on-a-farm."
HARRY TUTUNJIAN & SONS, 12 ALRB No. 22

319.04 Significant separation of the employer's operations does not defeat the preference for broad comprehensive bargaining units when there exists substantial similarity

in skills and working conditions, common supervision, employee interchange and control of labor relations between the two geographically separate operations.
EXETER PACKERS, INC., 9 ALRB No. 76

319.04 Tomato ranches near King City in Salinas Valley (Monterey County) and Huron in western San Joaquin Valley are in noncontiguous geographical areas and separate agricultural production areas. Since evidence on record insufficient to establish a community of interest between the employees at both locations, Board certified union as the exclusive representative of Monterey County employees, subject, nevertheless, to a petition by the parties to clarify the unit and supplement the record.
EXETER PACKERS, INC., 9 ALRB No. 76

319.04 To determine the appropriate unit(s) when a single employer's operations are in noncontiguous geographical areas, the Board recognizes a legislative preference for broad, comprehensive units. Further, all relevant factors must be considered, including the method of figuring wages, the number of working hours, the benefits received, the methods of supervision, the quality and degree of skill necessary, actual job functions, the degree of contact and interchange between sites, the history of bargaining, the desires of the employees, and the nature of the business.
PROHOROFF POULTRY FARMS, 9 ALRB No. 68

319.04 Where two poultry farming operations of a single employer show the following factors: centralized business structure, uniformity in benefits, overlap of job functions, and prior elections in a single bargaining unit, the fact that there is no interchange of employees coupled with local autonomy and geographical separation will not defeat the legislative preference for broad comprehensive bargaining units.
PROHOROFF POULTRY FARMS, 9 ALRB No. 68

319.04 Board presumes that operations in close geographical proximity are in a "single definable agricultural production area" and therefore "contiguous" within the meaning of section 1156.2 of the ALRA. (See John Elmore (1979) 3 ALRB No. 16 and Egger & Ghio Company, Inc. (1975) 1 ALRB No. 17.)
PIONEER NURSERY/RIVER WEST, INC., 9 ALRB No. 38

319.04 Contrary to established Board precedents, Board certified unit of all agricultural employees in Imperial Valley to exclusion of employees in Lamont (San Joaquin Valley) without first making finding that operations were in noncontiguous geographical areas.
MIKE YUROSEK & SONS, INC., 4 ALRB No. 54

319.04 The fact that one company is an independent operation within a larger company does not prevent the Board from finding that the employees of the independent operation

are the agricultural employees of the larger company.
TENNECO WEST, INC., 3 ALRB No. 92

319.04 Board found that the employer's citrus, grape and date operations are all located in the Coachella Valley, a single definable agricultural production area.
TENNECO WEST, INC., 3 ALRB No. 92

319.04 In determining the appropriate unit for non-contiguous geographic areas the following factors are relevant: (1) The location of the units in relation to each other; (2) the extent to which administration is centralized particularly with regard to labor relations; (3) the extent of interchange among employees; (4) the extent to which employees in different locations share common supervision; (5) the similarity of the nature of work performed in the different location; (6) similarity in wages, hours and other terms and conditions of employment and; (7) the pattern of bargaining history. A non-contiguous unit was appropriate where: (1) Company did business in 4 valleys; (2) ninety percent of business devoted to lettuce; (3) highly centralized management in Salinas; (4) same work and skills involved in each location; (5) approximately seventy-five percent of the work was done by 1700 permanent employees, of which approximately 250 were stationary; (6) seventy percent of remaining permanent employees worked in two or more locations; (7) sixty-one percent of supervisors move from area to area; (8) seventy to eighty percent of the equipment is moved from area to area; (9) there was a 05-year history of state-wide bargaining; (10) wages, benefits and conditions are identical in all areas.
BUD ANTLE, INC., 3 ALRB No. 7

319.04 Teamsters filed petition seeking a single unit comprised of employees at Employer's Oxnard (Ventura Co.) operations while UFW filed cross-petition covering Oxnard as well as Employer's Lompoc (Santa Barbara Co.) operations. Board dismissed Teamster objections alleging UFW and Board Agent misconduct in Oxnard election and certified UFW as representative of both units. Board did not reach question of geographical noncontiguity but merely noted that sine no party objected to the treatment of the two locations as separate units, "our disposition of the objections to the Oxnard election does not affect the Lompoc election."
UNITED CELERY GROWERS, 2 ALRB No. 27

319.04 Employees of two non-contiguous ranches--owned and operated by one employer--are part of a single bargaining unit if they are in a single, definable agricultural production area. In this case, the two ranches were only 10 miles apart and produced nearly identical crops. In addition, even if the ranches were in different geographical areas, the employees possessed a substantial community of interest: the hours, rates of pay, and working conditions are nearly the same; there is some

interchange of employees between the two ranches; and although immediate supervision is separate, overall management of the two ranches rests with one person who is responsible for all personnel hiring and assignment.
EGGER & GHIO COMPANY, INC., 1 ALRB No. 17

319.04 When ER operates in two or more noncontiguous areas, Board has discretion to determine whether statewide unit or multiple units are more appropriate. Board will apply the NLRB's community of interest factors in making its determination. These factors include: 1)The physical or geographical location(s) in relation to each other; 2)The extent to which administration is centralized, particularly with regard to labor relations; 3)The extent to which employees at different locations share common supervision; 4)The extent of interchange among employees from location to location; 5)The nature of the work performed at the various locations and the similarity or dissimilarity of the skills involved; 6)The similarity or dissimilarity in wages, hours, and other terms and conditions of employment; and 7)The pattern of bargaining history among employees.
COASTAL BERRY COMPANY, LLC, 26 ALRB No. 2

319.04 Based on lack of interchange of employees between ER's geographically noncontiguous operations, ER's determination to keep labor pools for the two operations separate, the degree of autonomy possessed by ER's regional managers and general lack of common supervision of employees in the two regions, the fact that wages of the separate groups of employees are different, and the fact that quality standards and initiation of employee discipline are lodged in local foremen, Board holds that ER's two separate geographical areas of operations lack the requisite community of interest to constitute a statewide unit.
COASTAL BERRY COMPANY, LLC, 26 ALRB No. 2

319.04 The subjective desires of employees do not constitute one of the specific factors to be considered in determining an appropriate bargaining unit, and IHE properly excluded evidence on the issue.
COASTAL BERRY COMPANY, LLC, 26 ALRB No. 2

319.04 Certifications that have long been inactive generally cannot be the basis of noncontiguous accretions sought in a unit clarification proceeding; however, there may be circumstances where discontinued operations are revived in noncontiguous areas and it may be appropriate to accrete them to the original certification.
SUN WORLD INTERNATIONAL, LLC, 38 ALRB No. 3

319.05 Joint Employers; Integrated Enterprises

319.05 Single employing enterprise and thus single employer status in agricultural labor context found where same individual owns and/or leases farmland, owns growing

company with which it contracts to grow only its own produce, and is sole owner-operator of a packing/cooling facility which processes only its own crops. Facts establish common ownership, financial control, management, interrelations of operations and common labor relations policies exercised by same individual over all entities.
ANDREWS DISTRIBUTION COMPANY, INC., 14 ALRB No. 19

319.05 The joint-employer concept differs from whether two or more companies are a single employer as it is premised on the recognition that the business entities are in fact separate but for other than labor relations purposes.
ANDREWS DISTRIBUTION COMPANY, INC., 14 ALRB No. 19

319.05 In determining whether two or more entities are sufficiently integrated so that they may fairly be treated as a single employer, Board adopted four factors set out in Parklane Hosiery Co. (1973) 203 NLRB 597, amended 207 NLRB 991 as follows: (1) Functional interrelation of operations; (2) common management; (3) centralized control of labor relations; and (4) common ownership or financial control. Board distinguished joint-employer status which presumes that two or more entities are independent and separate but which share or co-determine the essential terms and conditions of employment of the employees in question, citing NLRB v. Browning-Ferris Industries (3d Cir. 1982) 691 F.2d 1117.
ANDREWS DISTRIBUTION COMPANY, INC., 14 ALRB No. 19

319.05 Four nominally separate entities deemed a single employer in agricultural context where all entities commonly guided and controlled by a single personality, with a single labor relations policy, where all entities have common management not found in arm's length relationships existing among non-integrated companies.
ANDREWS DISTRIBUTION COMPANY, INC., 14 ALRB No. 19

319.05 In the context of a challenged ballot report, Board found two entities to be an integrated enterprise and hence to constitute a single employer: one entity handled the growing while the other handled the harvesting, packing and selling of the melons; one entity owned the other; and the president and vice president of one played a major role in the management and decision-making of both companies.
PAPPAS AND COMPANY, 10 ALRB No. 27

319.05 Nursery and Land Management Company owned and managed by the same individuals are single employer despite dissimilarity of operations and skills and lack of functional integration and minimal employee interchange. Pervasive involvement of common owners and managers, as well as single office and clerical and accounting staff, financial interdependence, use of same labor contractor, and other evidence of interrelation distinguish this case

from Signal Produce Company and Brock Research, Inc. (1978) 4 ALRB No. 3. Election set aside due to disenfranchisement of River West employees.
PIONEER NURSERY/RIVER WEST, INC., 9 ALRB No. 38

319.05 Joint Employer status found based on common ownership, common control, and common control of labor relations policy.
ABATTI FARMS, INC. AND ABATTI PRODUCE, INC., 3 ALRB No. 83

319.05 Board found no employment relationship where company other than Employer named in Petition operated as independent contractor using its own leased trucks and equipment whereon workers packed lettuce and transported it to coolers and performed same services for Employer and other growers. Individuals found not to be Employees of Employer and not eligible to vote. Board declined to decide whether they were agricultural Employees.
SAHARA PACKING COMPANY, 3 ALRB No. 39

319.05 Employment relationship found where one of 3 corporate partners of the general partnership hired labor contractor who harvested crops owned by and grown on land of the partnership. Workers of the labor contractor entitled to vote. Not determinative that the contractor's workers had different hours, were paid on different basis, harvested a different type of tomato than direct Employees or that the contractor Employees were supervised by a F of the contractor.
TMY FARMS, 2 ALRB No. 58

319.05 Joint employer finding upheld where two companies had same principal owner, integrated operations, common management, interchange of employees.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

319.05 The Board set for hearing the challenges of two individuals who are the employees of a neighboring farm. The Board ordered the hearing examiner to take evidence on whether the farm, the Dairy and a related business that provides payroll services and equipment to the Dairy and farm constitute a single employer for collective bargaining purposes under the test set forth in Andrews Distribution Company (1988) 14 ALRB No. 19
LASSEN DAIRY, INC. dba MERITAGE DAIRY, 34 ALRB No. 1.

319.06 Prior Election Or Board Determination, Effect Of NLRB Certification

319.06 Certification relates back to the election which it certifies.
SUMNER PECK RANCH, INC., 10 ALRB No. 24

319.06 Where two poultry farming operations of a single employer show the following factors: centralized business structure, uniformity in benefits, overlap of job

functions, and prior elections in a single bargaining unit, the fact that there is no interchange of employees coupled with local autonomy and geographical separation will not defeat the legislative preference for broad comprehensive bargaining units.
PROHOROFF POULTRY FARMS, 9 ALRB No. 68

319.06 A bargaining unit includes all agricultural employees of the employer, including stitchers, folders and gluers. However, in light of pending NLRB action, the ALRB deferred to the NLRB proceedings before processing the petition further.
CAL COASTAL FARMS, 2 ALRB No. 26

319.07 Accretions To Unit; Consolidation Of Units

319.07 The issue of whether new groups of employees should be considered accreted into a certified unit may be raised whenever it becomes a matter of dispute, whether in a UC, ULP, or election proceeding.
NASH DE CAMP COMPANY, 26 ALRB No. 4

319.07 Because the Board found that accretions sought by the union in a unit clarification proceeding were inappropriate because there was no community of interest between an employer's current unionized operations and its non-unionized operations in a non-contiguous geographical area, the Board declined to rule on whether the National Labor Relations Board's "accretion doctrine," was applicable under the ALRA.
SUN WORLD INTERNATIONAL, LLC, 38 ALRB No. 3

319.07 Unit clarification petitions seeking to expand the scope of bargaining units to include agricultural operations acquired by an employer that did not exist when the union was originally certified must be analyzed in the same manner as initial unit determinations.
SUN WORLD INTERNATIONAL, LLC, 38 ALRB No. 3

319.07 The unit description "all agricultural employees of an employer in the State of California" simply reflects at the time of the original certification, the unit included all of an employer's operations in the State. This description has no independent legal significance regarding the appropriateness of the inclusion—via a unit clarification petition—of any operations acquired by the employer after the union was originally certified.
SUN WORLD INTERNATIONAL, LLC, 38 ALRB No. 3

319.07 Certifications that have long been inactive generally cannot be the basis of noncontiguous accretions sought in a unit clarification proceeding; however, there may be circumstances where discontinued operations are revived in noncontiguous areas and it may be appropriate to accrete them to the original certification.
SUN WORLD INTERNATIONAL, LLC, 38 ALRB No. 3

319.08 Employees Not Included In Unit

319.08 The Board found that a Regional Director had erred in upholding challenges to the ballots cast by the daughter-in-law and grandchildren of an employing company's sole shareholders. Neither the daughter-in-law nor the grandchildren of the sole shareholders are within the plainly defined ambit of Title 8, California Code of Regulations, section 20352(b)(5).
BUNDEN NURSERY, INC., 14 ALRB No. 18

319.08 Since the Agricultural Labor Relations Act (ALRA) itself contains no family-based exclusions from voting eligibility, and affords the Board only limited discretion in determining appropriate bargaining units, the Board is unwilling to expand the family-based exclusions from voting eligibility beyond those already set forth in Title 8, California Code of Regulations, section 20352(b)(5).
BUNDEN NURSERY, INC., 14 ALRB No. 18

319.08 Title 8, California Code of Regulations, section 20352(b)(5) renders ineligible to vote the children of an employing company's sole shareholders.
BUNDEN NURSERY, INC., 14 ALRB No. 18

319.08 Although Title 8, California Code of Regulations, section 20352(b)(5) removes voting eligibility from the closest relatives of the employer, viz., a parent, child, or spouse, there is no other basis for invoking community of interest considerations in establishing voting eligibility under the Agricultural Labor Relations Act.
BUNDEN NURSERY, INC., 14 ALRB No. 18

319.08 Since the Agricultural Labor Relations Act (ALRA), in sharp contrast to the relevant provisions of the National Labor Relations Act, contains no family-based exclusion from its definition of "agricultural employee", and aside from a narrow geographic-based exception found in section 1156.2 requires every bargaining unit to include "all the agricultural employees of the employer," employer family members who fall within the ALRA's definition of "agricultural employee" are presumptively entitled to vote in unit elections.
BUNDEN NURSERY, INC., 14 ALRB No. 18

319.08 The spouse of an individual who serves as an employing company's vice-president, secretary-treasurer, and general manager is not ineligible to vote under the provisions of Title 8, California Code of Regulations, section 20352(b)(5) where the corporate officer, though the son of the company's sole shareholders, is not himself a shareholder in the employing company.
BUNDEN NURSERY, INC., 14 ALRB No. 18

319.08 Employer's driver-loaders and secretaries found to be

agricultural employees within the meaning of the Act and thus included in the certified bargaining unit.
TANI FARMS, 10 ALRB No. 5

319.08 Secretaries found not to be confidential employees under the definition of such employees approved by U.S. Supreme Court in NLRB v. Hendricks (1981) 454 U.S. 170 [108 LRRM 3505].
TANI FARMS, 10 ALRB No. 5

319.08 Office clerical found to be confidential employee and excluded from bargaining unit where employee actively participates in the resolution of employee complaints and grievances along with management personnel who exercise discretion in labor relations matters.
KOYAMA FARMS, 10 ALRB No. 4

319.08 Office clerical found not to be confidential employee, and thus included in the certified bargaining unit; where employee can overhear all conversations that take place in the office where she works, but no showing was made that she had access to confidential information concerning anticipated changes which may result from collective bargaining negotiations.
KOYAMA FARMS, 10 ALRB No. 4

319.08 Group of employees known as drivers, loaders, and stitcher-gluers fall within the definition of agricultural employees and are therefore part of the certified bargaining unit.
KOYAMA FARMS, 10 ALRB No. 4

319.08 Three secretaries not included in unit of agricultural employees where their duties involved only the employer's commercial packing shed and other nonagricultural operations.
POINT SAL GROWERS AND PACKERS, 9 ALRB No. 57

319.08 Secretary was included in the unit where the bulk of her duties was incidental to the employer's farming operation and she was not involved in labor relations, except in a purely clerical capacity.
POINT SAL GROWERS AND PACKERS, 9 ALRB No. 57

319.08 Off-the-farms were agricultural employees, and included in Off-a-farm unit, where their activities included packing and transporting only the employer's produce to the employer's cooler.
TOMOOKA FARMS, INC., 9 ALRB No. 48

319.08 Off-the-farms were agricultural employees, and included in ALRB-certified unit, where their activities included packing and transporting only the employer's produce to the employer's cooler.
SECURITY FARMS, 9 ALRB No. 47

319.08 Election set aside where packing shed Employees excluded

from unit of field workers where number of former could have affected election results.
R.C. WALTER & SONS, 2 ALRB No. 14

319.08 Employees who work solely in the farmer's road-side stand not agricultural employees since at least 60 percent of the commodities sold are not grown by employer and thus retail sales are not an incident of his farming operations.
MR. ARTICHOKE, INC., 2 ALRB No. 5

319.08 The Board concluded that the proper unit in an election under the ALRA consisted only of those specified employees of a mutual water company who engaged in primary agriculture a substantial amount of the time. Because the votes of those employees not properly in the unit could not be segregated without affecting the result of the election, the Board dismissed the petition for certification and set aside the election.
SUTTER MUTUAL WATER CO., 31 ALRB No. 4.

319.09 Unit Issues Not Resolved During Election Proceedings

319.09 Board finds that its narrow reading pertaining to the Statement of Intent is consistent with the Legislature's overall intent contained in section 1156.2, to the effect that all of an employer's agricultural workers employed in a single geographical area be included in one unit without regard to the types of work involved or the kinds of crops grown.
HARRY TUTUNJIAN & SONS, 12 ALRB No. 22

319.09 Election objections directed to the status of harvest employees employed by a labor contractor based upon geographical proximity of the fields harvested by the contractor are more appropriately addressed to the scope of the bargaining unit, and absent evidence of non-contiguity, such objections will be dismissed.
SEQUOIA ORANGE CO., 11 ALRB No. 21

319.09 Issue of whether certain employees are included in bargaining unit resolved in unit clarification proceeding.
TANI FARMS, 10 ALRB No. 5

319.09 Issue of whether certain employees are included in bargaining unit resolved in unit clarification proceeding.
KOYAMA FARMS, 10 ALRB No. 4

319.09 Unit clarification petition was not untimely five years after certification, since question of unit status was never resolved at the time of the election, and the parties may not, by agreement, supersede the Board's authority to resolve issues of employee status under the ALRA.
POINT SAL GROWERS AND PACKERS, 9 ALRB No. 57

319.09 Prior contract recognizing separate unit of driver-stitcher-loaders not controlling in unit clarification proceeding where employees are clearly agricultural under section 1140.4(b) of the Act.
TOMOOKA FARMS, INC., 9 ALRB No. 48

319.09 Prior contract recognizing separate unit of off-the-farms not controlling in unit clarification proceeding where employees are clearly agricultural under section 1140.4(b) of the Act.
SECURITY FARMS, 9 ALRB No. 47

319.10 Changes In Employing Entity Affecting The Composition Of The Unit

319.10 Dissent: Individual notice to employees of an election is not required; both NLRB and ALRB only require that Board agents make reasonable efforts to notify employees of an election.
HARRY TUTUNJIAN & SONS, 12 ALRB No. 22

319.10 Unit will be split when successor employer purchases fraction of property covered by certified unit.
SUMNER PECK RANCH, INC., 10 ALRB No. 24

319.10 Changes in employing entity affecting the composition of the unit can be dealt with by unit clarification proceedings.
SUMNER PECK RANCH, INC., 10 ALRB No. 24

319.10 Where the evidence failed to establish whether the employer's onion shed employees had been permanently terminated prior or subsequent to the date on which the employer's duty to bargain arose, the Board held that it could not find that the employer had unlawfully refused to bargain concerning such employees.
P&P Farms, 5 ALRB No. 59

320.00 CERTIFICATION OF REPRESENTATIVES

320.01 In General

320.01 Board declines to reconsider its prior decision dismissing objections, but recognizing that unfair labor practice hearing arising from employer's refusal to bargain to obtain judicial review of Board certification may be appropriate occasion for reexamining legal standards applicable to certification of elections.
TRIPLE E PRODUCE CORP., 19 ALRB No. 2

320.02 Necessity For Election Before Certification

320.02 1153(f) prohibits voluntary recognition of union without secret ballot election.
JOE A. FREITAS & SONS v. FOOD PACKERS (1985) 164

Cal.App.3d 1210

320.02 Legislative history regarding exclusivity of secret ballot election refers to unions' options of obtaining recognition, not to Board's remedial power.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

320.02 ALRA provides only one means for union seeking recognition to obtain it: the secret ballot election. It does not follow, however, that Board is prohibited from issuing remedial bargaining order where ULP's have made free and fair election impossible.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

320.02 Although ALRA section 1156 requires that a labor organization must win secret ballot election before ALRB will certify it as exclusive bargaining agent, Legislature did not intend to abrogate obligations of a successor employer with regard to a union that was selected by predecessor's employees.
SAN CLEMENTE RANCH, LTD. v. ALRB (1981) 29 Cal.3d 874

320.03 Board's Duty To Certify Union After Election

320.03 Since employer's petition sets forth no unresolved questions of unit composition or changed circumstances, it was inappropriate for employer to seek amendment of the certification under section 20385 of Board's Regulations. Employer was simply seeking to reargue an employer identity issue that had already been resolved, and which it could have raised, but failed to raise, in its election objections.
LEMINOR, INC., 19 ALRB No. 8

320.03 Board declines to reconsider its prior decision dismissing objections, but recognizing that unfair labor practice hearing arising from employer's refusal to bargain to obtain judicial review of Board certification may be appropriate occasion for reexamining legal standards applicable to certification of elections.
TRIPLE E PRODUCE CORP., 19 ALRB No. 2

320.03 The Board is required to certify the results of a free and fair election pursuant to the provisions of Labor Code section 1156.3(c) unless it is persuaded that sufficient reasons exist for it not to do so.
MANN PACKING CO., INC., 16 ALRB No. 15

320.03 Labor Code section 1156.3(c) requires the Board to certify results of election unless it finds the election was not properly conducted or that misconduct affecting the results of the election occurred.
ARCO SEED COMPANY, 14 ALRB No. 6

320.03 Board will certify union where employer withdraws objections to election won by union.
SUMNER PECK RANCH, INC., 10 ALRB No. 24

320.03 The Board is obligated to certify elections unless there are sufficient grounds to refuse to do so.
CARL JOSEPH MAGGIO, INC., 2 ALRB No. 9

320.03 When employer failed to seek review of E.S.'s dismissal of election objections, Board certified election as matter of course.
HIGHLAND RANCH v. ALRB (1981) 29 Cal.3d 848

320.04 Successor Company Or Successor To Certified Union; Change Of Union's Affiliation; Local And International Unions

320.04 Should concrete dissatisfaction among members develop concerning the merger of one local of a labor organization into another local, the unit members have an effective statutory remedy in the decertification procedures available under the ALRA to express their will. In the absence of effective employee repudiation of the merger through the decertification procedure, invalidating the merger and thereby creating a representational vacuum is inimical to the purposes of the ALRA.
LOCAL 389 (ADAM FARMS), 16 ALRB No. 2

320.04 Where no evidence indicates that unit employees were denied the opportunity to join the merged local voluntarily and thereby acquire the ability to vote in the merger election, and the unit employees indicated their approval of the merger by signing a petition requesting representation by the surviving local, adequate due process was maintained.
LOCAL 389 (ADAM FARMS), 16 ALRB No. 2

320.04 Employer's interest in union's structural or other organizational change is adequately protected by option to pursue judicial review by means of refusal to bargain where Board's duty to protect free expression of employee choice in representation elections and to maintain bargaining relationship stability precludes disturbing union's organizational change.
LOCAL 389 (ADAM FARMS), 16 ALRB No. 2

320.04 Satisfactory representational continuity is furnished by the merger of one local of an international organization with a lengthy history of representing farm workers into another local of the same labor organization where the merger is accomplished within the requirements of the international labor organization's constitution, the business representative of the merged local continues in that capacity in the surviving local and maintains an office on the same site as that formerly utilized by the merged local, and the surviving local assumes the assets and liabilities of the merged local. Such a change is not so dramatic as to call representational continuity into question.
LOCAL 389 (ADAM FARMS), 16 ALRB No. 2

320.04 Adequate due process was furnished in merger of one Teamsters local with another where after notification of the merger meeting, 250 out of a total membership of 450 in the merged local attended the merger meeting and a majority voted in favor of the merger proposal. No question of representation is raised by the facts that the merger decision was taken by voice vote and the members of the unit at the Employer's operations did not participate in the vote. The Regional Director found that the vote presented no evidence of pressure, coercion, or restraint, and the members of the unit at the employer's operations presented a petition to the surviving local indicating their desire to be represented by that local. No indication of improper denial of voting opportunity, unfair disenfranchisement, manipulative foreclosure from participation, or deliberate exclusion was presented by the inability of the members of the unit at the employer's operations to vote by virtue solely of the absence of a collective bargaining agreement between the employer and the merged local.
LOCAL 389 (ADAM FARMS), 16 ALRB No. 2

320.04 Dissent: Even if Board were to find that evidence of majority support is neither necessary nor required so long as the continuity of representation analysis indicates that the new local is merely a continuation of the old, the majority fails dramatically to provide sufficient justification for a finding of continuity because its per se rule of continuity for mergers of sister locals of the same international is contrary to prevailing precedent. The analysis and consequent holding in Factory Services, Inc. (1971) 193 NLRB 722 [78 LRRM 1344], in which the national board denied the union's petition to amend the certification on the basis of a factual scenario almost identical to the one presently before this Board.
LOCAL 389 (ADAM FARMS), 16 ALRB No. 2

320.04 Dissent: NLRB v. Financial Institution Employees of America, Local 1182 (1986) 472 U.S. 192 [106 S.Ct. 1007, 121 LRRM 2741] does not provide authority here for finding of continuity of representation or to ignore the employees' choice of a newly-selected bargaining representative under the guise of industrial stability, since the holding therein addresses only one narrow issue and that was to overturn the national board's Amoco IV rule.
LOCAL 389 (ADAM FARMS), 16 ALRB No. 2

320.04 Dissent: The present state of the record does not permit the Board to amend the certification as petitioned, but rather, obligates it to dismiss the petition without prejudice to file another request upon showing of objective facts that the amendment reflects the desires and wishes of the employees, since the record is not only

devoid of any objective evidence of the employees' wishes, but there is reasonable cause to believe that the employees could have been informed of the prospective merger prior to the ALRB-conducted election.
LOCAL 389 (ADAM FARMS), 16 ALRB No. 2

320.04 Successor bound by certification issued after purchase where election held before purchase and successor knew of election and pending ALRB proceedings but chose not to intervene.
SUMNER PECK RANCH, INC., 10 ALRB No. 24

320.04 It is well settled that the concept of successorship liability is inherent in the fundamental purpose of labor legislation.
SAN CLEMENTE RANCH, LTD. v. ALRB (1981) 29 Cal.3d 874

320.04 If the drafters of ALRA had intended to eliminate concept of successorship that is firmly recognized under NLRA, they would have included provision in ALRA specifically so providing. Since they did not, it will be assumed that successorship doctrine applies under ALRA.
SAN CLEMENTE RANCH, LTD. v. ALRB (1981) 29 Cal.3d 874

320.04 Because of great seasonal fluctuations in workforce of typical agricultural employer, it would cause unnecessary delay to determine whether successor employees are substantially same as predecessor employees only at the period of peak employment. Therefore, NLRB requirement that new employer's bargaining obligations cannot be determined until "full complement" of employees is hired is not strictly applicable to ALRA.
SAN CLEMENTE RANCH, LTD. v. ALRB (1981) 29 Cal.3d 874

320.04 Objectives of state labor policy under ALRA require that rights of employers to buy and sell agricultural businesses be balanced by some protection to employees from a sudden change in employment relationship.
SAN CLEMENTE RANCH, LTD. v. ALRB (1981) 29 Cal.3d 874

320.04 Since there are a great variety of factual circumstances in which successorship issues may arise, and because different legal consequences may be at issue in different situations, each successorship case must be decided on a case-by-case basis and not pursuant to a single, mechanical formula.
SAN CLEMENTE RANCH, LTD. v. ALRB (1981) 29 Cal.3d 874

320.04 Because of unique circumstances of California's agricultural setting, ALRB was justified in finding that considerations in addition to workforce continuity should play important role in defining successorship under ALRA. Federal successorship decisions are not necessarily controlling in this context.
SAN CLEMENTE RANCH, LTD. v. ALRB (1981) 29 Cal.3d 874

320.04 In view of fact that new employer took over on-going

ranch and continued regular operations of business for substantial period of time (4 months) with a workforce made up largely of predecessor's employees, ALRB was justified in imposing bargaining obligation on successor.
SAN CLEMENTE RANCH, LTD. v. ALRB (1981) 29 Cal.3d 874

320.04 Since bargaining obligation of an employer who purchased and continued to operate the whole of a predecessor's operations applies to all employees in the certified unit, employer cannot refuse to bargain concerning employees in a specific crop operation on grounds original unit no longer exists due to changes in overall acreage, kinds of crops produced, or employee turnover.
DOLE FRESH FRUIT CO., 22 ALRB No. 4

320.05 Scope, Duration, And Effect Of Certification

320.05 Certification relates back to the election which it certifies.
SUMNER PECK RANCH, INC., 10 ALRB No. 24

320.05 Successor bound by certification issued after purchase where election held before purchase and successor knew of election and pending ALRB proceedings but chose not to intervene.
SUMNER PECK RANCH, INC., 10 ALRB No. 24

320.05 Employer's duty to bargain continues during its court challenge of Board's decision to certify union as bargaining representative.
GEORGE ARAKELIAN FARMS v. ALRB (1986) 186 Cal.App.3d 94

320.05 Even where there is no change in ownership, agricultural employers frequently experience significant turnover in workforce during single year. Legislature has nonetheless imposed one-year certification bar.
SAN CLEMENTE RANCH, LTD. v. ALRB (1981) 29 Cal.3d 874

320.05 Once ALRB certifies union as exclusive bargaining representative, union is guaranteed this representation status for one year. This is known as certification bar, requiring employer to bargain in good faith for entire year.
SAN CLEMENTE RANCH, LTD. v. ALRB (1981) 29 Cal.3d 874

320.05 Stalled negotiations, or even a hiatus in negotiations, cannot alone be the basis for refusing to bargain on the grounds the union is unable or unwilling to represent unit employees since an absence of negotiations need not necessarily translate into a disclaimer of interest.
DOLE FRESH FRUIT CO., 22 ALRB No. 4

320.06 Clarification Or Amendment of Unit Certification

320.06 Organizational changes desired by a labor organization, reflected in petition to amend certification, should be allowed to proceed without outside interference so long

as the changes are accomplished with adequate due process safeguards, and so long as the resultant structure maintains representational continuity with the predecessor organization. (NLRB v. Financial Institution Employees of America, AFL-CIO, Local 1182 (1986) 475 U.S. 192 [106 S.Ct. 1007, 121 LRRM 2741].)
LOCAL 389 (ADAM FARMS), 16 ALRB No. 2

320.06 Employer's alleged fundamental changes in its operations should properly have been brought to Board's attention by way of petition for unit clarification rather than during hearing on election objections.
ARCO SEED COMPANY, 14 ALRB No. 6

320.06 Labor Code section 1156.3(c) required Board to certify results of election unless it finds the election was not properly conducted or that misconduct affecting the results of the election occurred.
ARCO SEED COMPANY, 14 ALRB No. 6

320.06 Changes in employing entity affecting the composition of the unit can be dealt with by unit clarification proceedings.
SUMNER PECK RANCH, INC., 10 ALRB No. 24

320.06 The Board's certification of the union only at employer's Monterey County location was still subject to the parties' petition to clarify the unit and to submission of additional evidence on the community of interest between employees in western San Joaquin Valley location and those in Salinas Valley location.
EXETER PACKERS, INC., 9 ALRB No. 76

320.06 Unit clarification petition was not untimely five years after certification, since question of unit status was never resolved at the time of the election, and the parties may not, by agreement, supersede the Board's authority to resolve issues of employee status under the Act.
POINT SAL GROWERS AND PACKERS, 9 ALRB No. 57

320.06 Prior contract recognizing separate unit of driver-stitcher-loaders not controlling in unit clarification proceeding where employees are clearly agricultural under section 1140.4(b) of the Act.
TOMOOKA FARMS, INC., 9 ALRB No. 48

320.06 Prior contract recognizing separate unit of off-the-farms not controlling in unit clarification proceeding where employees are clearly agricultural under section 1140.4(b) of the Act.
SECURITY FARMS, 9 ALRB No. 47

320.07 Revocation Of Certification

320.07 The Board revoked earlier certification, adopting the exception established in Subzero Freezer, Inc. (1984) 271

NLRB No. 7 to the general rule proscribing relitigation of representation issues during the technical refusal-to-bargain proceeding, where the Board finds that the election was conducted in an atmosphere of fear and coercion.
T. ITO & SONS FARMS, 11 ALRB No. 36

320.07 Section 1156.2 precludes Board from modifying original certification in order to sever out only a certain classification of employees on grounds union abandoned interest in representing only that aspect of overall operation.
DOLE FRESH FRUIT CO., 22 ALRB No. 4

320.08 Extension Of Certification

320.08 Board properly extended UFW's certification for one year although union had not filed petition to extend its certification pursuant to 1155.2(b).
ADAMEK & DESSERT, INC. v. ALRB (1986) 178 Cal.App.3d 970

320.08 Board properly followed NLRA precedent in extending union's certification after finding that employer had unlawfully refused to bargain.
ADAMEK & DESSERT, INC. v. ALRB (1986) 178 Cal.App.3d 970

321.00 PROCEDURE

321.00 PROCEDURE IN REPRESENTATION CASES

321.01 In General

321.01 Board declines to reconsider its prior decision dismissing objections, but recognizing that unfair labor practice hearing arising from employer's refusal to bargain to obtain judicial review of Board certification may be appropriate occasion for reexamining legal standards applicable to certification of elections.
TRIPLE E PRODUCE CORP., 19 ALRB No. 2

321.01 Board finds that failure of its regulations to provide for an interim appeals procedure in representation proceedings, as opposed to that available in unfair labor practice cases, is not inadvertent, nor would it be appropriate in light of expedited elections procedure required under the ALRA. Board therefore denied interim appeal of IHE's dismissal of election objection in Administrative Order 89-29 without prejudice to refiling as exception to IHE's Decision.
THE CAREAU GROUP dba EGG CITY, 15 ALRB No. 21

321.01 Union's Motion for Directed Verdict granted following Employer's presentation of his case where Employer failed to establish a prima facie case that the conduct complained of tended to interfere with employee free choice and affect the outcome of the election.

SANDYLAND NURSERY CO., INC., 12 ALRB No. 1

321.01 Board affirmed IHE dismissal of election objections where employer waived its right to hearing by refusing to present evidence in support of the objections which had been set for hearing.
D. PAPAGNI FRUIT CO., 10 ALRB No. 31

321.01 As part of "El Centro" experiment to expedite elections cases, Board Member Grodin conducted preliminary hearing on objections, made arrangements for supplemental investigation of certain specified facts, and served report of preliminary hearing and supplemental investigation on all parties. On basis of parties' responses to foregoing, Board found absence of any factual disputes requiring an evidentiary hearing and certified results of election.
LU-ETTE FARMS, 2 ALRB No. 49

321.01 Although an issue in an appeal of an election petition dismissed is moot, it will be resolved when it is one of general import and guidelines are needed for other cases.
MARIO SAIKHON, INC., 2 ALRB No. 2

321.01 Employer failed to exhaust administrative remedies, having filed request for Board review of Executive Secretary's partial dismissal of election objections four days late and having failed to seek Board reconsideration of denial of request for review or to provide explanation for untimeliness.
GEORGE ARAKELIAN FARMS, INC. v. ALRB (1985) 40 Cal.3d 654

321.01 Entire election process is an "investigation" within meaning of 1151(a).
SAN DIEGO NURSERY CO. v. ALRB (1979) 100 Cal.App.3d 128

321.01 If ALRB is to carry out its statutory duty to protect and supervise election process, its control cannot be limited to events after petition is filed. Rather, Board has appropriately established pre-filing procedures, such as NA's, NO's, and pre-petition lists, in order meaningfully to oversee elections in context of agribusiness and legislatively imposed time parameters.
SAN DIEGO NURSERY CO. v. ALRB (1979) 100 Cal.App.3d 128

321.01 The ALRB, unlike the NLRB, does not assign a burden of proof in representation proceedings. Rather, the party supporting a challenge, including one alleging that a voter is a supervisor, has only a burden of production.
ARTESIA DAIRY, 33 ALRB No. 3

321.02 Scope Of Inquiry; Proof Of Unfair Labor Practices In Representation Case

321.02 Union's Motion for Directed Verdict granted following Employer's presentation of his case where Employer failed to establish a prima facie case that the conduct

complained of tended to interfere with employee free choice and affect the outcome of the election.
SANDYLAND NURSERY CO., INC., 12 ALRB No. 1

321.02 Board bifurcated employer's election objections and never reached second phase to decide whether employing entity included the 46 grower-customers of commercial packing company.
VISALIA CITRUS PACKERS, 10 ALRB No. 32

321.02 IHE properly denied employer's motion to expand the scope of the hearing to include consideration of objections which the Board had dismissed; IHE also properly dismissed employer's alternative motion to defer hearing on those objections which had been set until final resolution of the dismissed objections by a court.
D. PAPAGNI FRUIT CO., 10 ALRB No. 31

321.02 IHE properly allowed evidence of incorrect addresses on employee list, despite reference in objection to only lack of addresses, since evidence relevant to overall issue of utility of list.
BETTERAVIA FARMS, 9 ALRB No. 46

321.02 Consolidation of unfair labor practice charges and election objections for hearing for the purpose of administrative convenience and efficiency does not deprive an agricultural employer of due process.
M. CARATAN, INC., 9 ALRB No. 33 Accord: SEQUOIA ORANGE CO., 11 ALRB No. 21

321.02 The materials in the Board's election manual are not binding procedural rules, but are intended only to provide operational guidance in the handling of elections.
OCEANVIEW PRODUCE CO., 20 ALRB No. 16

321.02 Probing subjective individual reactions of employees involves an "endless and unreliable inquiry" and is "irrelevant to the question whether there was, in fact, objectionable conduct."
OCEANVIEW PRODUCE CO., 20 ALRB No. 16

321.02 *Mann Packing Co.*, Inc. (1989) 15 ALRB No. 11 reflects a reconciliation of the authority of the General Counsel and the Board that is consistent with both the ALRA and its implementing regulations. The General Counsel's final authority over the investigation of unfair labor practice charges and the issuance of complaints acts as a narrow limitation on the Board's exclusive authority over representation matters. *Mann Packing Co.*, Inc. is settled law that is neither manifestly incorrect, nor has it proven unworkable in practice.
RICHARD'S GROVE & SARALEE'S VINEYARD, INC., 33 ALRB No. 7

321.02 Under Mann Packing Co., Inc. (1989) 15 ALRB No. 11, in both challenged ballot and election objection cases, the

Board will defer to the General Counsel's resolution of the investigation of an unfair labor practice charge where the merits of the issues necessarily decided by the investigation also are determinative of the merits of related issues in the representation case. It is more than the mere existence of identical issues that triggers this rule, as it is well established that conduct sufficient to warrant the setting aside of an election does not necessarily constitute an unfair labor practice, and not all unfair labor practices necessarily constitute conduct sufficient to set aside an election. (See, e.g., *ADIA Personnel Services* (1997) 322 NLRB 994, fn. 2.) Thus, it is only where the issues in the two proceedings are coextensive in terms of their legal merit that the Board is bound by the General Counsel's determination.
RICHARD'S GROVE & SARALEE'S VINEYARD, INC., 33 ALRB No. 7

321.02 Where no related unfair labor practice charges have been filed, the Board retains its full authority to adjudicate all issues involving election objections and challenged ballots. In *Bayou Vista Dairy* (2006) 32 ALRB No. 6, the Board further explained that where a complaint was withdrawn and the underlying unfair labor practice charge dismissed pursuant to a settlement agreement without any admission of liability, it was the legal equivalent of no charge having been filed and the issue could be litigated in election objection proceedings. By extension, the withdrawal of a charge also would not preclude the Board from litigating a parallel issue in an election proceeding.
RICHARD'S GROVE & SARALEE'S VINEYARD, INC., 33 ALRB No. 7

321.02 The Board upheld the Executive Secretary's dismissal of objections which raised the same facts and allegations contained in unfair labor practice charges previously dismissed by the General Counsel because the conduct alleged in the objections was of the nature that it could not be objectionable election conduct if it did not also constitute an unfair labor practice (ULP). Under *Mann Packing Co, Inc.* (1989) 15 ALRB No. 11, the Board must defer to the General Counsel's resolution of a ULP charge where the charge and the related objection are co-extensive in terms of their legal merit.
GALLO VINEYARDS, INC., 34 ALRB No. 6

321.02 The *Mann Packing* rule is not automatically triggered simply because the facts in a representation proceeding are the same as those in a dismissed ULP proceeding. The Board has clearly stated that the Board is not bound by the General Counsel's dismissal of a ULP charge where the Board can find conduct alleged in a related objection objectionable on an independent legal basis,
GALLO VINEYARDS, INC., 34 ALRB No. 6

321.03 Practice Before Board; Disciplinary Proceedings Against Attorneys; Non-Attorney Representatives

322.00 PETITIONS

322.01 In General

322.01 Employer's response to petition for certification filed under oath and required by Regulation section 20310 may well be form of pleading and therefore constitute judicial admission. (Witkin, Calif. Evidence, p. 472; IHED p. 2, n. 1.)
SIGNAL PRODUCE COMPANY, BROCK RESEARCH, INC., 4 ALRB No. 3

322.01 Dissenting opinion: Certification petition for smaller unit shortly after petition for certification for that same employer had been filed was improperly dismissed; it should have been treated as motion to intervene.
CARDINAL DISTRIBUTING CO., 3 ALRB No. 23

322.01 Petition naming a second corporate entity as an "aka" of corporate entity named first in petition as employer not defective as to the second entity, even accepting that first named corporate entity has no employees at site where eligible voters employed.
VENTURA COASTAL CORPORATION, 28 ALRB No. 6

321.01 Where General Counsel has issued complaint but then settled the complaint's unfair labor practice allegations, under *Mann Packing* (1989) 15 ALRB No. 11 the Board can consider the same conduct in objections proceedings.
BAYOU VISTA DAIRY, 32 ALRB No. 6

321.02 Where General Counsel has issued complaint but then settled the complaint's unfair labor practice allegations, under Mann Packing (1989) 15 ALRB No. 11 the Board can consider the same conduct in objections proceedings.
BAYOU VISTA DAIRY, 32 ALRB No. 6

322.02 Amendments

322.02 Although an issue in an appeal of an election petition dismissed is moot, it will be resolved when it is one of general import and guidelines are needed for other cases.
MARIO SAIKHON, INC., 2 ALRB No. 2

322.03 Withdrawal Of Petition; Successive Or Reinstated Petitions; Limitation On Refiling

322.04 Parties

322.04 Employer's objection to the election is dismissed where it is based on the ground that the ballot failed to include the union signatory of the existing collective bargaining agreement where the union fails to attempt to intervene.

R.T. ENGLUND COMPANY, 2 ALRB No. 23

322.04 Employer may not request review of regional director's dismissal of decertification petition. Under Board regulations section 20393(a), only party whose petition was dismissed has standing to file an appeal of the dismissal. Application of this provision to decertification petitions is consistent with Legislature's purpose of making employees sole moving parties in decertification petitions.
LEWIS FARMS, 21 ALRB No. 7

322.05 Intervention

322.05 Where no party filed direction to election based on Regional Director's dismissal of cross-petition (rather than treating it as motion to intervene), Board did not consider issue in decision on challenged ballots in election objections.
CARDINAL DISTRIBUTING CO.,
3 ALRB No. 23

322.05 Dissenting opinion: Certification petition for smaller unit shortly after petition for certification for that same employer had been filed was improperly dismissed; it should have been treated as motion to intervene.
CARDINAL DISTRIBUTING CO., 3 ALRB No. 23

322.05 Employer's objection to the election is dismissed where it is based on the ground that the ballot failed to include the union signatory of the existing collective bargaining agreement where the union fails to attempt to intervene.
R.T. ENGLUND COMPANY, 2 ALRB No. 23

323.00 HEARINGS

323.01 In General

323.01 Employer was not denied due process when IHE refused to allow it to extend its case-in-chief beyond stipulated date, nor when IHE refused to permit Employer to call Union agent as its own witness. Since Employer had ample opportunity to call and examine witnesses, it failed to show actual prejudice resulting from IHE's rulings. (Kux Manufacturing Co. v. NLRB (6th Cir. 1989) 890 F.2d 804 [132 LRRM 2935].)
ACE TOMATO CO., INC., 18 ALRB No.9

323.01 Board finds that failure of its regulations to provide for an interim appeals procedure in representation proceedings, as opposed to that available in unfair labor practice cases, is not inadvertent, nor would it be appropriate in light of expedited elections procedure required under the ALRA. Board therefore denied interim appeal of IHE's dismissal of election objection in

Administrative Order 89-29 without prejudice to refiling as exception to IHE's Decision.
THE CAREAU GROUP dba EGG CITY, 15 ALRB No. 21

323.01 IHE properly ruled that IUAW could present evidence in support of objections filed by UFW. See Board Regulation section 20370(b).
INLAND AND WESTERN RANCHES, 11 ALRB No. 39

323.01 The Board held that the cumulative affect of the allegedly improper conduct was not great enough to cause the election to be set aside.
HAIDEN FARMS OF CALIFORNIA, INC., 2 ALRB No. 30

323.01 Hearing on election objections not proper forum to review emergency Board Regulations.
WILLIAM DAL PORTO & SONS, INC., 1 ALRB No. 19

323.01 Board declines to render credibility resolution for to do so would require judging credibility of Board agent, "a task which should be avoided where possible."
MIKE YUROSEK & SONS, INC., 4 ALRB No. 54

323.01 Although 1156.3(c) provides that Board "upon due notice, shall conduct a hearing to determine whether [a disputed] election shall be certified", it does not follow that Board itself must make initial findings of fact and conclusions of law.
LINDELEAF v. ALRB (1986) 41 Cal.3d 861

323.01 Fact that hearings "may be conducted by an officer or employee of a regional office of the Board" does not require that they must be so conducted in any individual case. Consequently, Board's regulation prohibiting such officers from making recommendations, while purposefully narrower than the statute, is clearly permissible.
LINDELEAF v. ALRB (1986) 41 Cal.3d 861

323.01 The Code specifically empowers Board to appoint hearing officers, whose function would be rendered nugatory by a requirement that they may not make preliminary determinations. Such a rule would strain the Board's resources in manner not contemplated by the Legislature.
LINDELEAF v. ALRB (1986) 41 Cal.3d 861

323.01 Branding evidence as hearsay in representation hearings does not affect its admissibility but only its weight if there is controversial evidence.
TRIPLE E PRODUCE CORP. v. ALRB (1983) 35 Cal.3d 42

323.01 Testimony of some workers that others were afraid of losing their jobs as result of union organizers' threats insufficient, standing alone, to invalidate election. However, evidence was admissible and supported application of NLRB rule that statements made to handful of employees may reasonably be anticipated to reach larger part of workforce.

TRIPLE E PRODUCE CORP. v. ALRB (1983) 35 Cal.3d 42

323.01 That challenged ballot declarations written in English (though read to declarants in Spanish) and taken prior to voting, while reasonable concerns, did not warrant discrediting of declarations, especially where at hearing declarants made dubious wholesale denials of the contents of their declarations, rather than more credibly disagreeing over details or nuances.
ARTESIA DAIRY, 33 ALRB No. 3

323.01 The Regional Director may appear and present evidence on the propriety of his earlier peak employment determination in an election objections hearing, as he has the right to participate in representation hearings "to the extent necessary to ensure that the evidentiary record is fully developed and that the basis for the Board's action is fully substantiated." (Cal. Code Regs., tit. 8, § 20370(c); *GH & G Zysling Dairy* (2006) 32 ALRB No. 2 at p. 2, n.2.)
NURSERYMEN'S EXCHANGE, INC., 37 ALRB No. 1

323.02 Investigative Hearing Examiners; Bias; Disqualification; Power To Control Hearing

323.02 Employer's challenge to IHE's decision on grounds statute prohibits hearing officers from making findings and recommendations rejected. Section 1156.3(c) does not prohibit the Board from adopting other procedures for conducting representation hearings; that section has meaning only if Board assigns representation matters to regional offices, but in fact Board's regulations provide that such matters be heard only by hearing officers assigned by Executive Secretary.
BAKER BROTHERS, 11 ALRB No. 23

323.02 Section 1156.3 prohibits making of recommendations by employee or official of regional office who serves as IHE. IHE who is not officer or employee of any regional office may properly make recommendations as authorized by Reg. 20370(f).
TENNECO WEST, INC., 5 ALRB No. 27

323.02 Act provides, "Such hearings may be conducted by an officer or employee of a regional office of the Board. He shall make no recommendation with respect thereto." . . . [T]he pronoun 'He' must refer to entire immediately preceding sentence, and terms 'an officer or employee' must be read together, both being qualified by phrase, 'of a regional office of the Board.'"
LINDELEAF v. ALRB (1986) 41 Cal.3d 861

323.02 Because local elections are conducted under supervision of regional director and overseen by regional agents whose duties voters, and tallying ballots, Legislature designed 1156.3(c) to avoid any appearance of impropriety that might arise if hearings on election objections were

conducted by employees of same regional offices.
LINDELEAF v. ALRB (1986) 41 Cal.3d 861

323.02 Fact that hearings "may be conducted by an officer or employee of a regional office of the Board" does not require that they must be so conducted in any individual case. Consequently, Board's regulation prohibiting such officers from making recommendations, while purposefully narrower than the statute, is clearly permissible.
LINDELEAF v. ALRB (1986) 41 Cal.3d 861

323.02 Employer failed to demonstrate that ALJ should be disqualified for bias. Statistical arguments concerning the number of rulings an ALJ has made against a litigant (or class of litigants) do not tend to establish bias. (Fieldcrest Cannon, Inc. v. NLRB (4th Cir. 1996) 97 F.3d 665 [153 LRRM 2385].) Moreover, employer did not show that ALJ's rulings in the instant case were based on bias rather than impartial evaluation of the evidence.
TRIPLE E PRODUCE CORP., 23 ALRB No. 8

323.02 IHE properly refused to allow employer to introduce evidence on last scheduled day of hearing where employer had moved to quash a subpoena seeking the same information and had submitted a response to the decertification petition, under penalty of perjury, which contained statements which were misleading, if not intentionally false, and were inconsistent with the evidence proffered at hearing.
NASH DE CAMP COMPANY, 26 ALRB No. 4

323.03 Motions

323.03 In a technical refusal to bargain case, Board denied employer's motion to reopen election objections proceedings, as Board concluded it had properly dismissed employer's election threats objection on basis of same standard of review as California Supreme Court later applied in Triple E Produce Corp. v. ALRB (1983) 35 Cal.2d 42.
MURANAKA FARMS, 12 ALRB No. 9

323.03 IHE properly denied employer's motion to expand the scope of the hearing to include consideration of objections which the Board had dismissed; IHE also properly dismissed employer's alternative motion to defer hearing on those objections which had been set until final resolution of the dismissed objections by a court.
D. PAPAGNI FRUIT CO., 10 ALRB No. 31

323.03 IHE properly dismissed employer's motion to dismiss objections where employer suffered no prejudice from union's failure to submit a detailed statement of facts until one hour before the hearing.
BETTERAVIA FARMS, 9 ALRB No. 46

323.03 Motion to deny access should be granted where there is:

(1) significant disruption of Employer's operations; (2) intentional or harassment of Employer or Employees; or (3) intentional or reckless disregard of access rule.
FRUDDEN ENTERPRISES, INC., 7 ALRB No. 22

323.04 Notice Of Hearing Or Order; Process

323.04 Board bifurcated employer's election objections and never reached second phase to decide whether employing entity included the 46 grower-customers of commercial packing company.
VISALIA CITRUS PACKERS, 10 ALRB No. 32

323.04 One who appears in administrative proceeding without notice to which he is entitled by law cannot be heard to complain of alleged insufficiency of notice.
SAM BARBIC, 1 ALRB No. 25

323.04 Where named intervenor appeared at election objection hearing, rejected offer of postponement, and agreed to proceed with participate in hearing. Board declined to reopen hearing or overturn election because of failure of proper notice.
SAM BARBIC, 1 ALRB No.25

323.04 Board issued Notice of Hearing on Employer Objection Petition in accordance with section 1156.3(c).
HEROTA BROTHERS, 1 ALRB No. 3

323.05 Continuance

323.05 Employee's opening day of hearing motion for continuance because of inability to locate three key witnesses properly denied by IHE since Employee had three weeks since hearing noticed to advise Employees of potential problem and seek continuance in advance of hearing.
J.A. WOOD CO., 4 ALRB No. 10

323.05 Witness who was still in the employ of the employer, although working at the Imperial Valley operations of the employer at the time of the Salinas hearing was not "unavailable" for purposes of obtaining a continuance.
R.T. ENGLUND COMPANY, 2 ALRB No. 23

323.05 The Board rejected Employer’s counsel’s argument that, because Employer had declared bankruptcy, counsel could no longer represent Employer without prior application to and approval from the bankruptcy court. The Board granted Employer a continuance in the interest of not depriving Employer of its choice of counsel and to permit Employer’s counsel to determine whether it could be compensated for his continued representation and to allow Employer and Employer’s counsel to determine whether to continue the representation.
NURSERYMEN’S EXCHANGE, INC., 37 ALRB No. 1

323.06 Place Of Hearing

323.07 Rehearing Or Reopening Record; Newly Discovered Evidence

323.07 Request to reopen record denied where, despite erroneous ruling by IHE with regard to privileged nature of attorney-client meeting, objecting party not prejudiced because IHE allowed testimony of communications relevant to objections at issue.
FURUKAWA FARMS, INC., 17 ALRB No. 4

323.07 In the absence of newly-discovered or previously unavailable evidence, it is generally impermissible to relitigate representation issues in an unfair labor practice proceeding. (ALJD p. 5.)
JULIUS GOLDMAN'S EGG CITY 5 ALRB No. 8

323.07 Where named intervenor appeared at election objection hearing, rejected offer of postponement, and agreed to proceed with participate in hearing. Board declined to reopen hearing or overturn election because of failure of proper notice.
SAM BARBIC, 1 ALRB No. 25

323.07 One who appears in administrative proceeding without notice to which he is entitled by law cannot be heard to complain of alleged insufficiency of notice.
SAM BARBIC, 1 ALRB No. 25

323.08 Burden Of Proof

323.08 Party filing objections to an election has the burden of proof.
FURUKAWA FARMS, INC., 17 ALRB No. 4

323.08 In effect, Labor Code section 1156.3(c) creates a presumption in favor of certification, whether of a representation or decertification election, which a party objecting to an election bears a heavy burden to overcome.
MANN PACKING CO., INC., 16 ALRB No. 15

323.08 In election objections proceeding where employer alleges that employee eligible to vote was not on the employer's payroll and therefore not countable for the peak determination, employer bears the burden of overcoming regional director's finding that petition was timely filed as to peak requirement, and of demonstrating why employee eligible to vote should not be counted for purposes of computing peak.
KUBOTA NURSERIES, INC., 15 ALRB No. 12

323.08 Employer that alleged that employee eligible to vote was not countable for purposes of the peak determination did not meet burden of establishing that employee would not have worked but for his disability leave because employer

did not show (1) that employee voluntarily severed his employment, or (2) that employee was discharged, or (3) that no job was being held open for employee.
KUBOTA NURSERIES, INC., 15 ALRB No. 12

323.08 Board finds employee was "currently employed" as that term is used in Labor Code section 1156.3(a)(1) because he continued to enjoy employee status in face of employer's failure to bear burden of demonstrating that employee would not have worked but for his work-related disability.
KUBOTA NURSERIES, INC., 15 ALRB No. 12

323.08 Union's Motion for Directed Verdict granted following Employer's presentation of his case where Employer failed to establish a prima facie case that the conduct complained of tended to interfere with employee free choice and affect the outcome of the election.
SANDYLAND NURSERY CO., INC., 12 ALRB No. 1

323.08 IHE properly ruled that IUAW could present evidence in support of objections filed by UFW. See Board Regulation section 20370(b).
INLAND AND WESTERN RANCHES, 11 ALRB No. 39

323.08 IHE properly ruled that by refusing to present evidence on election objections, employer waived its right to hearing and failed to sustain its burden of proof in seeking to set aside the election.
D. PAPAGNI FRUIT CO., 10 ALRB No. 31

323.08 The party objecting to the certification of an election bears the burden of proving by specific evidence that misconduct occurred which tended to affect employee free choice to the extent that it affected the election results.
BRIGHT'S NURSERY, 10 ALRB No. 18

323.08 Hearsay statements in ALRB investigative hearing insufficient to support a finding of fact unless they would be admissible in a civil action. Hearsay statements that workers threatened by Union would not be admissible in civil action and are insufficient to support finding that threats were made.
ROBERT J. LINDELEAF, 8 ALRB No. 22

323.08 Objections based upon threats of physical violence and loss of jobs made by Union organizers and supporters dismissed where only evidence of such threats was hearsay and admitted for limited purpose of showing state of mind of Employees before election.
ROBERT J. LINDELEAF, 8 ALRB No. 22

323.08 Hearsay statements by workers that they might not have jobs if Union won election does not demonstrate Employees' state of mind was the result of actual Union threats.

ROBERT J. LINDELEAF, 8 ALRB No. 22

323.08 Threats of job loss made by fellow Employees not Union agents or organizers insufficient grounds to overturn an election.
ROBERT J. LINDELEAF, 8 ALRB No. 22

323.08 Although employer was negligent in providing deficient employee list, intervenor failed to demonstrate that the deficiencies in the list affected the outcome of the election. (Id., IHED, p. 12.)
COLACE BROTHERS, INC., 6 ALRB No. 56

323.08 Intervenor's objection to election alleging employer violence and interference with intervenor's access to workers dismissed due to intervenor's failure of proof. (IHE decision.)
POINT SAL GROWERS AND PACKERS, 4 ALRB No. 105

323.08 Where a party failed to present any evidence on its election objections at the objections hearing the Board did not decide that party's objections.
MID-STATE HORTICULTURE COMPANY, 4 ALRB No. 101

323.08 Board accepted Regional Director's findings that two Employees with different names were same person in absence of proof that they were not despite Employer objection that Regional Director showed no facts to support findings.
MARLIN BROTHERS, 3 ALRB No. 17

323.08 Employer did not meet burden of proof that eligible voters prevented from voting. Election not set aside.
TMY FARMS, 2 ALRB No. 58

323.08 The Board held that the cumulative affect of the allegedly improper conduct was not great enough to cause the election to be set aside.
HAIDEN FARMS OF CALIFORNIA, INC., 2 ALRB No. 30

323.08 Election objections supported by same evidence proving ULPs constitute sufficient misconduct to set aside election.
SAM ANDREWS' SONS, 1 ALRB No. 45

323.08 Proper threshold standard for review by Board of election objections is plainly expressed in regulations: "[a petition for hearing must be] accompanied by a declaration or declarations which, if uncontroverted or unexplained, would constitute sufficient grounds for the Board to refuse to certify election."
LINDELEAF v. ALRB (1986) 41 Cal.3d 861

323.08 Party filing election objections has burden of proving that misconduct warranted setting aside election.
OCEANVIEW PRODUCE CO., 21 ALRB No. 1

323.08 The burden of a party objecting to an election is not met merely by providing that misconduct did in fact occur, but rather by specific evidence demonstrating that such conduct interfered with the employees' exercise of their free choice to such an extent that the conduct changed the results of the election.
OCEANVIEW PRODUCE CO., 20 ALRB No. 16

323.08 The party filing election objections bears the burden of proving by a preponderance of evidence that its objections are meritorious and warrant setting aside the election.
GH & G ZYSLING DAIRY, 20 ALRB No. 3

323.08 In an investigative hearing to resolve challenged ballots, the burden on the party seeking to upset the status quo established by the eligibility list by challenging a voter is a burden of production rather than one of persuasion.
ARIE DE JONG dba MILKY WAY DAIRY, 29 ALRB No. 4

323.08 The ALRB, unlike the NLRB, does not assign a burden of proof in representation proceedings. Rather, the party supporting a challenge, including one alleging that a voter is a supervisor, has only a burden of production.
ARTESIA DAIRY, 33 ALRB No. 3

323.08 The Board held that the IHE was correct in assigning the burden of producing evidence supporting challenges to the party asserting the challenges to voters' eligibility. The Board has stated that with respect to the evidentiary burdens upon the parties in representation proceedings, the party supporting the challenge to a voter carries a burden of production, but not of persuasion. (*Artesia Dairy* (2007) 33 ALRB No. 3; *Milky Way Dairy* (2003) 29 ALRB No. 4; *Artesia Dairy* (2006) 32 ALRB No. 3)
KAWAHARA NURSERIES, INC., 37 ALRB No. 4

323.08 Election objection that Board failed to provide adequate notice of an election to non-striking employees failed to state a *prima facie* case. Section 20365(c)(2)(b) of the Board's regulations require that declarations set forth with particularity the details of each occurrence and the manner in which it is alleged to have affected or could have affected the outcome of the election. Employees' declarations did not show that they did not vote or were prevented from voting, and were insufficient on their face.
GEORGE AMARAL RANCHES, INC., 38 ALRB No. 5

323.08 Election objected based on inadequate notice of an election will generally be dismissed unless the objecting party can show that an outcome determinative number of voters will be disenfranchised.
GEORGE AMARAL RANCHES, INC., 38 ALRB No. 5

323.08 Election objection that Board created a threatening and intimidating environment by allowing separate voting processes for striking and non-striking employees resulting in striking employees beating up on non-striking employees failed to state a *prima facie* case. Section 20365 (c)(2)(B) of the Board's regulations require that declarations set forth with particularity the details of each occurrence and the manner in which it is alleged to have affected or could have affected the outcome of the election. The employee observer declarations failed to state who caused the observers to feel threatened and intimidated, or how.
GEORGE AMARAL RANCHES, INC., 38 ALRB No. 5

323.09 Interpreters; Translation Of Testimony

323.09 Board found without merit General Counsel's exception to ALJ decision based on failure to provide Mixtec or Zapotec translator to witness whose Spanish was marginal. General Counsel proceeded with the available Spanish translator at the hearing and did not adequately create a record regarding the translation issue. Furthermore, the Board reviewed the entire record de novo and found it to be sufficient to reach its decision.
CIENIGA FARMS, INC., 27 ALRB No. 5

323.10 Estoppel Of Board; Conduct In Reliance On Advice Of Board Agents

323.10 Board held that allegedly incorrect information previously provided by a Board attorney did not preclude the employer from giving a planned 15-minute speech to assembled employees on the day of the election. The employer conferred subsequently with its counsel at a time sufficient to proceed as planned. Counsel admitted that he was aware at the time he advised the employer that this Board has not found the NLRB's Peerless Plywood rule applicable to elections under the ALRA (prohibition against speeches to a massed assembly of employees on company time with 24 hours of the start of a representation election, Peerless Plywood Company, (1953) 107 NLRB 427 [33 LRRM 1151].
DUNLAP NURSERY, 4 ALRB No. 9

323.11 Settlements And Stipulations

323.11 Board will not look behind stipulation withdrawing objections to election in challenge to certification issued as result of withdrawal of objections.
SUMNER PECK RANCH, INC., 10 ALRB No. 24

323.11 Parties' stipulation containing no evidence relating to access violation dismissed for failure of proof.
SIGNAL PRODUCE COMPANY, BROCK RESEARCH, INC., 1 ALRB No. 3

323.12 IHE Decisions

323.12 Board finds conflict between witnesses' contemporaneous declarations and subsequent testimony at hearing highly relevant for purposes of credibility assessment.
MANN PACKING CO., INC., 16 ALRB No. 15

323.12 Board rejects diminution of credibility in employer's worker witnesses based solely on the employees' participation in decertification efforts against the union; in the absence of some actual proof of special affection for, or particular benefits from, their employer, employees who do not desire union representation are not to be discredited merely because of their attitude toward the union.
MANN PACKING CO., INC., 16 ALRB No. 15

323.12 Board rejects Investigative Hearing Examiner's unsupported finding of bias in employer witness who had left the employ of the company; an employee no longer employed by his or her former employer, in the absence of evidence to the contrary, is a disinterested witness.
MANN PACKING CO., INC., 16 ALRB No. 15

323.12 Board disapproves the IHE/ALJ's credibility resolutions based on examiner/judge's subjective impressions of witnesses' thought processes or subjective analysis of witnesses' psychological make-up. IHE/ALJ must determine witnesses' truthfulness on stand without unwarranted forays into subjective realm of psychology or resort to other personal forms of speculation.
SAM ANDREWS' SONS, 15 ALRB No. 5

323.12 Employer's challenge to IHE's decision on grounds statue prohibits hearing from making findings and recommendations rejected. Section 1156.3(c) does not prohibit the Board from adopting other procedures for conducting representation hearings; that section has meaning only if Board assigns representation matters to regional offices, but in fact Board's regulations provide that such matters be heard only by hearing officers assigned by Executive Secretary.
BAKER BROTHERS, 11 ALRB No. 23

323.12 Where an IHE's credibility resolutions are based on testimonial demeanor, they will be upheld unless a clear preponderance of the evidence indicates they are in error; no such error occurred where witnesses were contradicted by more credible witnesses and testimony was fraught with inconsistencies and vague, non-responsive answers.
BRIGHT'S NURSERY, 10 ALRB No. 18

323.12 IHE's credibility resolutions upheld where findings based on testimonial demeanor and logical consistency of the testimony.
DON MOORHEAD HARVESTING CO., INC., 9 ALRB No. 58

323.12 Board upholds cred resolutions of ALJ based on demeanor and finds that Board agent did not tell workers that Company would make promises which it would not keep and that Company would threaten to call immigration if workers did not cooperate with it.
NASH-DE CAMP COMPANY, 7 ALRB No. 26

323.12 Board affirms IHE credibility demeanor-based resolutions (which were supported by record as a whole) that Board agents did not express support for union or use state car in attempt to encourage workers to support union.
PAUL W. BERTUCCIO and BERTUCCIO FARMS, 1 ALRB No. 91

323.12 Section 1156.3 prohibits making of recommendations by employee or official of regional office who serves as IHE. IHE who is not officer or employee of any regional office may properly make recommendations as authorized by Reg. 20370(f).
TENNECO WEST, INC., 1 ALRB No. 27

323.12 Although 1156.3(c) provides that Board "upon due notice, shall conduct a hearing to determine whether [a disputed] election shall be certified", it does not follow that Board itself must make initial findings of fact and conclusions of law.
LINDELEAF v. ALRB (1986) 41 Cal.3d 861

323.12 Act provides, "Such hearings may be conducted by an officer or employee of a regional office of the Board. He shall make no recommendation with respect thereto. "
. . . [T]he pronoun 'He' must refer to entire immediately preceding sentence, and terms 'an officer or employee' must be read together, both being qualified by phrase, 'of a regional office of the Board.'"
LINDELEAF v. ALRB (1986) 41 Cal.3d 861

323.12 The Code specifically empowers Board to appoint hearing officers, whose function would be rendered nugatory by a requirement that they may not make preliminary determinations. Such a rule would strain the Board's resources in manner not contemplated by the Legislature.
LINDELEAF v. ALRB (1986) 41 Cal.3d 861

323.13 Dismissal of Objections After Hearing

323.13 Union's Motion for Directed Verdict granted following Employer's presentation of his case where Employer failed to establish a prima facie case that the conduct complained of tended to interfere with employee free choice and affect the outcome of the election.
SANDYLAND NURSERY CO., INC., 12 ALRB No. 1

323.13 Board affirmed IHE dismissal of election objections where employer waived its right to hearing by refusing to present evidence in support of the objections which had been set for hearing.
D. PAPAGNI FRUIT CO., 10 ALRB No. 31

323.13 Intervenor's objection to election alleging employer violence and interference with intervenor's access to workers dismissed due to intervenor's failure of proof. (IHE decision.)
POINT SAL GROWERS AND PACKERS, 4 ALRB No. 105

323.14 Exceptions To IHE Decision

323.14 Where IHE properly recommended setting aside election based on Employer's objections, and no other party filed exceptions to IHE decision, Board will not take up other issues raised by Employer's exceptions. Contentions that same issues may arise in future does not warrant Board addressing them on advisory basis, since facts existing at Employer's operations in future may be so different as to make advisory or declaratory decision at this time inappropriate in future, particularly in view of Board's limited resources.
ORANGE COUNTY NURSERY, INC., 19 ALRB No. 3

323.14 The ALRB provision for de novo review of IHE's contested recommendations ensures that Board does not delegate its ultimate authority in election matters. Pursuant to its regulations any party may file exceptions to initial IHE findings and recommendations, triggering independent review by Board of entire proceedings.
LINDELEAF v. ALRB (1986) 41 Cal.3d 861

323.15 Intervention; Intervention Of Regional Director

323.15 Organization accused of third party misconduct not allowed to intervene as an interested party.
FURUKAWA FARMS, INC., 17 ALRB No. 4

323.15 Board considers inappropriate regional counsel's request for sanctions against employer as result of employer's litigation posture in objections proceeding. The request for sanctions is clear indication that regional counsel exceeded the legitimate bounds of protecting Regional Director's interest, on behalf of Board, in developing full and complete record, and substantiating integrity of Board's election processes.
KUBOTA NURSERIES, INC., 15 ALRB No. 12

323.15 Board allows Regional Director limited intervention in representation matters to ensure that evidentiary record is fully developed and that basis for Board's action is fully substantiated. Limited intervention for above purposes does not authorize regional counsel to engage in partisan advocacy. Prior Board precedent disapproved and overruled to extent "full party" status allowed therein.
KUBOTA NURSERIES, INC., 15 ALRB No. 12

323.16 Procedures Distinguished From ULP Hearing

323.16 Board finds that failure of its regulations to provide

for an interim appeals procedure in representation proceedings, as opposed to that available in unfair labor practice cases, is not inadvertent, nor would it be appropriate in light of expedited elections procedure required under the ALRA. Board therefore denied interim appeal of IHE's dismissal of election objection in Administrative Order 89-29 without prejudice to refiling as exception to IHE's Decision.
THE CAREAU GROUP dba EGG CITY, 15 ALRB No. 21

323.16 Where there is an ostensible "No Union" victory and no parallel unfair labor practice charges are filed, the ALRA confers on the Board only the authority to uphold or set aside the election. The statute does not provide for any other sanctions for engaging in misconduct affecting the results of an election. As a result, the setting aside of the election in those circumstances merely returns the situation to the status quo before the election petition was filed, but with the residual effect on free choice from the misconduct, allowing wrongdoers to profit from their misconduct.
GIUMARRA VINEYARDS CORP., 32 ALRB No. 5

323.17 Consolidated RC And ULP Hearings

323.17 By stipulation of parties, objections to election consolidated for hearing with charges of unfair labor practices.
SAM ANDREWS' SONS, 3 ALRB No. 45

323.17 Stipulations entered into during the election portion of a consolidated hearing carry over into the unfair labor practice phase and presumptively establish the facts to which the stipulations apply. Such stipulations constitute authorized and adoptive admissions, and, absent a showing that fundamental concepts of fairness and due process require that the stipulations be set aside, or that the stipulations are based on a material excusable mistake of fact, a party will not be relieved of the consequences of the stipulations.
SEQUOIA ORANGE CO., 11 ALRB No. 21

323.17 Consolidation of unfair labor practice charges and election objections for hearing for the purpose of administrative convenience and efficiency does not deprive an agricultural employer of due process.
M. CARATAN, INC., 9 ALRB No. 33 Accord: SEQUOIA ORANGE CO., 11 ALRB No. 21

323.18 Subpoenas And Discovery

323.18 Subpoenas duces tecum of agency officials quashed where evidence sought (unwritten agency practice of printing ballots with union choice on left) was irrelevant to question of interference with employee free choice.
VISALIA CITRUS PACKERS, 10 ALRB No. 32

323.18 Employer's response to petition for certification filed under oath and required by Regulation section 20310 may well be form of pleading and therefore constitute judicial admission. (Witkin, Calif. Evidence, p. 472; IHED p. 2, n. 1.)
SIGNAL PRODUCE COMPANY, BROCK RESEARCH, INC., 1 ALRB No. 3

324.00 ELECTION OBJECTIONS PROCEDURE

324.01 In General

324.01 It may be appropriate for the Board to raise sua sponte issues of misconduct or other occurrences which might have affected the results or integrity of an election where failure to do so would create a result manifestly contrary to the policies underlying the ALRA. No such circumstances appear in present case, particularly where party who potentially would have been the victim of the unaddressed conduct not only prevailed in the election, but also chose not to pursue objections it had previously filed.
CONAGRA TURKEY COMPANY, 19 ALRB No. 11

324.01 Repeated disregard for Board's objections procedures not excused by insufficiency of clerical assistance or unfulfilled expectation that employees would induce union to disclaim interest before end of objections period.
SILVER TERRACE NURSERIES, INC., 19 ALRB No. 5

324.01 Since the individuals who were challenged were agricultural employees who met the voter eligibility requirements of Labor Code section 1157, and since the asserted basis for the challenge, i.e., "agent/ consultant" for the employer, is not among the specific categories to which challenges must be limited under Title 8, Cal. Code of Regulations, section 20355(a)(1) - (8), the proffered challenges should have been rejected as either improper on their face or more properly the subject of a post-election objection.
BORREGO PACKING COMPANY, 15 ALRB No. 8

324.01 Board bifurcated employer's election objections and never reached second phase to decide whether employing entity included the 46 grower-customers of commercial packing company.
VISALIA CITRUS PACKERS, 10 ALRB No. 32

324.01 Board affirmed IHE dismissal of election objections where employer waived its right to hearing by refusing to present evidence in support of the objections which had been set for hearing.
D. PAPAGNI FRUIT CO., 10 ALRB No. 31

324.01 Board will certify union where employer withdraws objections to election won by union.

SUMNER PECK RANCH, INC., 10 ALRB No. 24

324.01 Board will not look behind stipulation withdrawing objections to election in challenge to certification issued as result of withdrawal of objections.
SUMNER PECK RANCH, INC., 10 ALRB No. 24

324.01 Employer who is aware of preelection misconduct of foreman and who fails to correct it, cannot later rely on that conduct as grounds for setting aside the election.
MATSUI NURSERY, INC., 9 ALRB No. 42

324.01 An employer may not rely on its own failure to provide eligibility list as grounds for setting aside an election. [Reg. 20365(c)(5)]
MURANAKA FARMS, 9 ALRB No. 20

324.01 8 Cal. Admin. Code section 20280(a) does not require citations to pages in the transcript. This section requires a description of specific testimony of particular witnesses or reference to particular exhibits.
TENNECO WEST, INC., 3 ALRB No. 92

324.01 An employer objection alleging improper use of union organizers as observers, which was not raised to the Board agent prior to the election, was waived and therefore dismissed.
D'ARRIGO BROS., 3 ALRB No. 37

324.01 Objections to the constitutionality of the Act and attacks on the regulations of the Board are not proper subjects for review under the Election Objections Procedure.
GONZALES PACKING CO., 2 ALRB No. 48

324.01 Objections pertaining to the sufficiency of employee support for the petition for certification are not reviewable.
GONZALES PACKING CO., 2 ALRB No. 48

324.01 In the absence of evidence showing that deviations from ideal procedures affected the outcome of the election or interfered with employee free choice, objections alleging such deviations should be dismissed at the prehearing stage.
HAIDEN FARMS OF CALIFORNIA, INC., 2 ALRB No. 30

324.01 The issue of whether or not one is an agricultural employee may not be raised through a post-election proceeding, but must be raised through challenge.
CAL COASTAL FARMS, 2 ALRB No. 26

324.01 Section 20315(c) [now section 20300(j)(5)] of the Board's regulations, which provides that matters relating to the showing of interest shall not be reviewable by the Board in any election proceeding, is not in conflict with Labor Code section 1156.3(a). Labor Code section 1156.3(a)

provides that petitions for certification be accompanied by signed authorization cards from a majority of the employees. The ALRB follows NLRB precedent in this regard, and holds that the election itself is the best indicator of the interest and allegiance of the employees; accordingly, the Board will not overturn an election based on a finding that the showing of interest was inadequate.
JACK OR MARION RADOVICH, 2 ALRB No. 12

324.01 Section 20315(c) [now section 20300(j)(5)] of the Board's regulations, which provides that matters relating to the showing of interest shall not be reviewable by the Board in any election proceeding, is not in conflict with Labor Code section 1156.3(c). Labor Code section 1156.3(c) provides that, after an election, any person may file with the Board a petition alleging that the assertions made in the certification petition -- filed pursuant to Labor Code section 1156.3(a) -- were incorrect. However, the authorization cards used to demonstrate a showing of interest pursuant to section 20315(c) [now section 20300(j)(5)] are not "assertions" made in the certification petition. The assertions referred to in Labor Code section 1156.3(c) are listed in Labor Code section 1156.3(a)(1), (2), (3), and (4), and do not include the requirement of the submission of authorization cards. Hence, the statue, by its terms, does not require the Board to review the validity of a union's showing of interest.
JACK OR MARION RADOVICH, 2 ALRB No. 12

324.01 Hearing on election objections not proper forum to review emergency Board Regulations.
WILLIAM DAL PORTO & SONS, INC., 1 ALRB No. 19

324.01 Board issued Notice of Hearing on Employer Objection Petition in accordance with section 1156.3(c).
HEROTA BROTHERS, 1 ALRB No. 3

324.01 Steps favoring quick resolution of election proceedings further policy of Act.
RULINE NURSERY CO. v. ALRB (1985) 169 Cal.App.3d 247

324.01 By language of 1156.3, Legislature has in substance established presumption in favor of certification, with burden of proof resting with objecting party to show why election should not be certified.
RULINE NURSERY CO. v. ALRB (1985) 169 Cal.App.3d 247

324.01 Where no election objections are set for hearing, the Board can certify election as a matter of course.
GEORGE ARAKELIAN FARMS, INC. v. ALRB (1985) 40 Cal.3d 654

324.01 In establishing procedure through which objections to initial election results may be voiced (Sec. 1156.3(c)), ALRA implicitly recognizes that at least in some instances initial counting of ballots may, for variety of

reasons, not represent valid expression of desires of affected workers.
HIGHLAND RANCH v. ALRB (1981) 29 Cal.3d 848

324.01 ALRB is authorized to direct a regional director in the first instance to assess whether prima facie case has been made entitling objecting party to hearing.
J.R. NORTON CO. v. ALRB (1979) 26 Cal.3d 1

324.01 Board will set aside election based on objection filed by an employer whose own agents provided a defective eligibility list, resulting in the failure of an outcome determinative number of voters to receive notice of the election, where the provision of the defective list was inadvertent, and not the result of bad faith, and where the employees were disenfranchised through no fault of their own.
COASTAL BERRY COMPANY, LLC, 25 ALRB No. 1

324.01 Payment of amount approximating or exceeding a day's wages to certain former employees to come to employer's premises to vote in election may constitute coercion potentially compromising the integrity of the election even if it does not constitute a ground for challenging the ballots of three voters shown to have received such payments. Board sua sponte included issue of payments to former employees to come to vote in election in objection hearing since the facts raised the possibility of an extraordinary circumstance potentially affecting the integrity of the election process.
GH & G ZYSLING DAIRY, 32 ALRB No. 2

324.01 A case becomes moot when a ruling can have no practical effect or cannot provide the parties with effective relief. However, issues otherwise moot may be decided where they present important legal issues of continuing public interest. Conversely, moot issues generally will not be decided where the issues are essentially factual and therefore require resolution on a case-by-case basis. Election objections dismissed as moot where there was no effective relief to be granted, nor any practical effect on the parties, from deciding the merits of the objections where there was an ostensible "No Union" victory and the one-year election bar had expired. Issues raised either were factual so that there would be little guidance from their resolution or they implicated only well-settled legal issues.
GIUMARRA VINEYARDS CORP., 32 ALRB No. 5

324.01 Where there is an ostensible "No Union" victory and no parallel unfair labor practice charges are filed, the ALRA confers on the Board only the authority to uphold or set aside the election. The statute does not provide for any other sanctions for engaging in misconduct affecting the results of an election. As a result, the setting aside of the election in those circumstances merely returns the situation to the status quo before the

election petition was filed, but with the residual effect on free choice from the misconduct, allowing wrongdoers to profit from their misconduct.
GIUMARRA VINEYARDS CORP., 32 ALRB No. 5

324.01 Where General Counsel has issued complaint but then settled the complaint's unfair labor practice allegations, under *Mann Packing* (1989) 15 ALRB No. 11 the Board can consider the same conduct in objections proceedings.
BAYOU VISTA DAIRY, 32 ALRB No. 6

324.01 The *Mann Packing* rule is not automatically triggered simply because the facts in both [election objection and unfair labor practice] proceedings are the same, and the Board may adjudicate an objection even where a related ULP charge has been dismissed if it can do so on an independent legal basis. Parties always have the option of filing unfair labor practice charges or objections or both, depending on the type of remedy sought.
GALLO VINEYARDS, INC., 34 ALRB No. 6

324.02 Screening For Prima Facie Case; Right To Hearing; Dismissal Without Hearing; Appeal

324.02 Although Employer stated that he supervised another company's employees while they worked on his premises, he failed to allege that the two companies shared in determining the hours, wages or other working conditions of the employees or shared the right to hire and fire them. Thus, Executive Secretary properly dismissed Employer's election objection contending that the two companies were joint employers.
G H & G ZYSLING DAIRY, 19 ALRB No. 17

324.02 Since Employer failed to make prima facie showing that its election objections were well taken individually, Board refuses to consider possible cumulative effect of the alleged incidents. (NLRB v. Monark Boat Co. (8th Cir. 1986) 800 F.2d 191 [123 LRRM 2502].)
G H & G ZYSLING DAIRY, 19 ALRB No. 17

324.02 Executive Secretary properly dismissed election objection supported only by declaration based entirely on hearsay. Board regulations require that declarations state facts within the personal knowledge of the declarant.
G H & G ZYSLING DAIRY, 19 ALRB No. 17

324.02 The Board reviews objections to decertification elections with the same rigor with which it scrutinizes objections to representation elections.
MANN PACKING CO., INC., 16 ALRB No. 15

324.02 Pursuant to Title 8, California Code of Regulations, section 20393(a), the Agricultural Labor Relations Board will exercise its discretion to utilize the provisions of Labor Code section 1142(b) in disposing of an employer's

or labor organization's request for review of the Executive Secretary's dismissal of election objections when the election objections dismissed raise issues of general interest. When the dismissed objections do not raise such issues of general interest, the Board will employ its usual practice of disposing of such requests by Board Order.
TRIPLE E PRODUCE CORPORATION, 16 ALRB No. 14

324.02 Board and Executive Secretary empowered to simultaneously dismiss without setting for hearing, objections which are factually unsupported on legally insufficient grounds to set election aside.
D. PAPAGNI FRUIT CO., 11 ALRB No. 38

324.02 IHE properly denied employer's motion to expand the scope of the hearing to include consideration of objections which the Board had dismissed; IHE also properly dismissed employer's alternative motion to defer hearing on those objections which had been set until final resolution of the dismissed objections by a court.
D. PAPAGNI FRUIT CO., 10 ALRB No. 31

324.02 Election objections set for hearing only where objection states prima facie case for setting aside election.
TRIPLE E PRODUCE CORP., 5 ALRB No. 65

324.02 Absent allegations of facts which if true would constitute grounds for refusing to certify an election, there is no obligation to conduct a hearing on objections to an election.
GEORGE ARAKELIAN, 4 ALRB No. 53

324.02 Board dismissed election objections without recourse to executive secretary screening when objectives directly related to board discussion of challenged ballots.
CARDINAL DISTRIBUTING CO., 3 ALRB No. 23

324.02 Board dismissed objections petition in its entirety where not accompanied by supporting declarations. For sake of expediency Board dismissed objections in decision on challenged ballots rather than delegate responsibility to Executive Secretary.
CARDINAL DISTRIBUTING CO., 3 ALRB No. 23

324.02 Board rejected Employer exception based on no opportunity to cross-examine because no hearing ordered, but then went on to examine RD's findings that individuals were economic strikers and entitled to vote.
MARLIN BROTHERS, 3 ALRB No. 17

324.02 No evidentiary hearing on election objections required unless objections raise substantial factual dispute. No further investigation ordered where Union excepted to Regional Director examining only payroll records of Employees listed on Union's Petition contending that there was second company which was joint Employer w/the

first.
MARLIN BROTHERS, 3 ALRB No. 17

324.02 Board sustained Regional Director rejection of proposed amendment to election objections filed almost one month after election. Board and Regional Director found reason that Employer did not know of grounds for the objection until 6 days before filed same did not amount to "unusual circumstances" as required by 1156.3(c).
TMY FARMS, 2 ALRB No. 58

324.02 Employer's argument that section 1156.3(c) of the Act mandates a hearing on all objections is rejected by the Board. Where the moving party does not present prima facie evidence which would warrant overturning the election, the objections may be dismissed without a hearing.
GONZALES PACKING CO., 2 ALRB No. 48

324.02 The employer's objection based on its claim NLRB has preempted the authority of the ALRB to conduct elections and determine labor representatives is dismissed since it is in the nature of a general attack on the legality of the ALRA and as such is not a proper subject for review under Labor Code section 1156.3(c).
ASSOCIATED PRODUCE DISTRIBUTORS, 2 ALRB No. 47

324.02 In the absence of evidence showing that deviations from ideal procedures affected the outcome of the election or interfered with employee free choice, objections alleging such deviations should be dismissed at the prehearing stage.
HAIDEN FARMS OF CALIFORNIA, INC., 2 ALRB No. 30

324.02 Where there was no evidence that the election was affected by the Board agent (1) not having an official tally of ballots form; (2) telling an employer observer it would do no good to file challenges; (3) failing to inspect the polling site prior to the election; and (4) failing to keep a written record of the election; the Board certified the results of the election.
HAIDEN FARMS OF CALIFORNIA, INC., 2 ALRB No. 30

324.02 Since the Employer failed to provide supporting declarations demonstrating that the ALRB's failure to provide written notices of election until 1:00 p.m. on the day prior to the election actually disenfranchised voters, the objection was properly dismissed.
JACK OR MARION RADOVICH, 2 ALRB No. 12

324.02 The Board is not required to hold a hearing on all allegations contained in an election objections petition filed pursuant to Labor Code section 1156.3(c).
EGGER & OHIO COMPANY, INC., 1 ALRB No. 17

324.02 Proper threshold standard for review by Board of election objections is plainly expressed in regulations: "[a

petition for hearing must be] accompanied by a declaration or declarations which, if uncontroverted or unexplained, would constitute sufficient grounds for the Board to refuse to certify election."
LINDELEAF v. ALRB (1986) 41 Cal.3d 861

324.02 NLRB regulation provides that objections to election misconduct shall be submitted to a regional director who, like the ALRB Executive Secretary, reviews and acts on them in the first instance. The regional director will issue a notice of hearing only when he determines that "substantial and material factual issues" are raised. The party objecting must, as under the ALRA, supply "prima facie evidence," presenting "substantial and material factual issues" which would warrant setting aside the election.
LINDELEAF v. ALRB (1986) 41 Cal.3d 861

324.02 Employer failed to exhaust administrative remedies, having filed request for Board review of Executive Secretary's partial dismissal of election objections four days late and having failed to seek Board reconsideration of denial of request for review or to provide explanation for untimeliness.
GEORGE ARAKELIAN FARMS, INC. v. ALRB (1985) 40 Cal.3d 654

324.02 Executive Secretary may dismiss election objections without hearing when objections fail to make prima facie case of conduct affecting outcome of election.
GEORGE ARAKELIAN FARMS, INC. v. ALRB (1985) 40 Cal.3d 654

324.02 When employer failed to seek review of Executive Secretary's dismissal of election objections, Board certified election as matter of course.
HIGHLAND RANCH v. ALRB (1981) 29 Cal.3d 848

324.02 Executive Secretary properly dismissed objections without hearing where supporting declarations, if true, did not set forth facts which would constitute grounds to deny certification to union.
HIGHLAND RANCH v. ALRB (1981) 29 Cal.3d 848

324.02 Employer's failure to contest Executive Secretary's dismissal of certain election objections is tantamount to concession that dismissal was valid.
J.R. NORTON CO. v. ALRB (1979) 26 Cal.3d 1

324.02 ALRB within its authority in issuing regulations setting out a threshold standard of proof and reliability that must be met before election objections will be set for investigative hearing. Investigation without prima facie showing would be fruitless exercise.
J.R. NORTON CO. v. ALRB (1979) 26 Cal.3d 1

324.02 Availability of judicial review through technical refusal to bargain is a sufficient check on arbitrary administrative action to permit summary dismissal of

objections.
J. R. NORTON CO. v. ALRB (1979) 26 Cal.3d 1

324.02 Board's screening procedure serves statutory purpose of giving newly formed unions legitimacy as quickly as possible.
J. R. NORTON CO. v. ALRB (1979) 26 Cal.3d 1

324.02 Board properly dismissed one objection where another objection, raising identical issue, was set for hearing.
J. R. NORTON CO. v. ALRB (1979) 26 Cal.3d 1

324.02 Board's election objection screening procedure modeled after NLRB procedure which has been upheld many times.
J. R. NORTON CO. v. ALRB (1979) 26 Cal.3d 1

324.02 1156.3(c), which provides that Board "shall" conduct hearing on election objections, does not require Board to conduct hearing on all objections to elections.
RADOVICH v. ALRB (1977) 72 Cal.App.3d 36

324.02 Although law favors holding of hearings by administrative bodies, 1156.3(c) does not require holding of hearings on election objections which are not supported by declarations establishing prima facie case. Such delay would frustrate purpose of Act.
RADOVICH v. ALRB (1977) 72 Cal.App.3d 36

324.02 Executive Secretary properly dismissed objection alleging intimidation of voters, because none of the described conduct could objectively be considered intimidating or coercive. Subjective feelings of fear, not reasonably based in fact, are irrelevant.
CALIFORNIA REDI-DATE, INC., 20 ALRB No. 11

324.02 Regulation 20365 requires that declarations and other supporting materials be submitted along with objections; therefore, new submissions accompanying request for review of Executive Secretary's dismissal of election objections will not be considered.
COKE FARMS, INC., 20 ALRB No. 15

324.02 Executive Secretary properly dismissed union's election objections where alleged bad faith bargaining conduct of employer just prior to decertification election was not of a nature that it would inherently have immediate impact on free choice and union failed to show that employees were made aware of conduct and that it was used in some way to undermine support for the union.
COKE FARMS, INC., 20 ALRB No. 15

324.02 Board affirms dismissal of objection alleging that union agents paid money for employee support and votes, because not supported by a declaration signed under penalty of perjury.
CALIFORNIA REDI-DATE, INC., 20 ALRB No. 11

324.02 Objections relating to campaigning in the polling area and photographing of voters were properly dismissed, because it was not clear the conduct took place in quarantine area, the activity was brief and noncoercive, and it ended quickly after Board agent's request. Further, there was no evidence that photographing of voters interfered with free choice.
CALIFORNIA REDI-DATE, INC., 20 ALRB No. 11

324.02 Board's regulations squarely place on the objecting party the burden of establishing a prima facie case based on the supporting materials filed with the objections petition. The Board's regulations allow no amendments to the petition and the Executive Secretary has no duty to conduct any further investigation or to sua sponte search Board files for any cases involving the same parties that might contain relevant information. Therefore, Board would not consider newly furnished materials attached to request for review offered to show that Executive Secretary should have applied the stricter party standard, rather than the third party standard, in evaluating the alleged pre-election misconduct.
MONTEREY MUSHROOMS, INC., 21 ALRB No. 2

324.02 IHE properly disallowed litigation of allegations objecting party may have intended to be a part of objection set for hearing, where Executive Secretary and Board had in previous orders discussed and dismissed those allegations in the context of discussing other numbered objections.
OCEANVIEW PRODUCE CO., 21 ALRB No. 1

324.02 Party not entitled to a hearing on its peak objection where it failed to present prima facie case that RD's peak determination was not a "reasonable one in light of the information available at the time of the investigation."
Scheid Vineyards and Management Co. v. ALRB, (1994) 22 Cal. App. 4th 139 [27 Cal.Rptr.2d 36], affirming 19 ALRB No. 1

324.02 Board will not disturb Executive Secretary's dismissal of election objections where request for review did not comply with requirements of Regulation 20393(a) because it failed to specify grounds for overruling the Executive Secretary or provide evidence or legal argument in support of the request, and where Executive Secretary's analysis on its face shows no deficiencies.
VCNM FARMS, 21 ALRB No. 9

324.02 In considering whether to set election objections, employers properly excluded hearsay statements because they alleged facts not within the declarant' personal knowledge, and thus failed to comply with Board regulation 20365.
GILROY FOODS, INC., 23 ALRB No. 10

324.02 Executive Secretary properly dismissed election objection claiming voters were confused by UFW representative's statement that voters should "vote-in" the UFW rather than the "Salinas union." Since only the petitioning union, and not the UFW, could have appeared on the ballot, reasonable voters would not have been confused about what were the actual choices on the ballot.
GILROY FOODS, INC., 23 ALRB No. 10

324.02 Executive Secretary properly dismissed election objection claiming that Board agents gave inadequate notice of election, since Regional Director is required to give only as much notice of an election as is reasonably possible under the circumstances of each case (J. Oberti, Inc. (1984) 10 ALRB No. 50), and employer failed to show that an outcome determinative number of voters was disenfranchised (R.T. Englund Company (1976) 2 ALRB No. 23).
GILROY FOODS, INC., 23 ALRB No.10

324.02 Objection that cumulative effect of conduct of Board agents, Union agents and Union supporters interfered with fair election dismissed where none of the incidents individually stated a prima facie case.
THE HESS COLLECTION WINERY, 25 ALRB No. 2

324.02 Objection that union is not a labor organization under the ALRA because it already represents nonagricultural employees is dismissed on grounds there is no statutory requirement that a union represent agricultural employees exclusively. (Labor Code §1140.4(f).)
THE HESS COLLECTION WINERY, 25 ALRB No. 2

324.02 Objection that supervisors engaged in pro-union coercive conduct in polling area dismissed where conduct was not shown to be coercive and could not have been outcome determinative because supervisors spoke to only several of the 20-30 employees waiting in line to vote, and union's margin of victory was 61.
THE HESS COLLECTION WINERY, 25 ALRB No. 2

324.02 Objection that Board agents committed misconduct by allowing pro-union supervisors to speak to employees lined up to vote dismissed where supervisors' presence was brief and not coercive and Board agents, once they discovered the men were supervisors, told them they could not vote.
THE HESS COLLECTION WINERY, 25 ALRB No. 2

324.02 Objection that bargaining unit should have been limited to unit agreed upon by parties dismissed where statute requires a statewide unit (Lab. Code § 1156.2) and objecting party failed to present evidence of why a different unit would be more appropriate.
THE HESS COLLECTION WINERY, 25 ALRB No. 2

324.02 Union made prima facie showing that ER made unlawful

promise of benefits when it assured employees that all benefit levels would remain in place if Union were vote out, since ER was impliedly promising to withdraw its current bargaining proposal to impose a premium cap on what it would pay toward employee health benefits, in exchange for a non-union vote by the employees. Thus, Union made prima facie showing that ER was not just assuring employees that it would maintain the status quo. (El Cid, Inc. (1976) 222 NLRB 1315.)
SAN CLEMENTE RANCH, LTD., 25 ALRB No.5

324.02 Board affirmed ES's dismissal of Union's objection that ER violated rule established by NLRB in Peerless Plywood Company (1953) 107 NLRB 427 by conducting "captive audience" speeches on company time to assemblies of employees within 24 hours before scheduled time for election. Board found there was insufficient declaratory basis for setting the objection, and that it therefore need not reach the issue of whether the Peerless Plywood rule was applicable under the ALRA.
SAN CLEMENTE RANCH, LTD., 25 ALRB No.5

324.02 ES dismissal of objection and set for hearing question of whether a forewoman predicted that the employer would go out of business if UFW won the election, and whether the statement was made by a management official or by someone the employees would view as being in a position to speak for management.
COASTAL BERRY COMPANY, LLC, 26 ALRB No. 1

324.02 Board overruled ES dismissal of objection and set for hearing question of whether a foreman told employees that a particular field would not be planted the following year, and whether the foreman was a supervisor or agent of the employer or was viewed by employees as someone in a position to speak for management, and therefore whether his statement constituted a threat of job loss in the event of a particular union's victory.
COASTAL BERRY COMPANY, LLC, 26 ALRB No. 1

324.02 Board overruled ES dismissal of objection and set for hearing question of whether forewoman told employees they should vote for particular union in order to save company from going under, and whether the forewoman was a supervisor or agent of the employer or would be viewed by employees as someone in a position to speak for management, and therefore whether her statement could reasonably be perceived by employees as a threat.
COASTAL BERRY COMPANY, LLC, 26 ALRB No. 1

324.02 Board overruled ES dismissal of objection and set for hearing question of whether supporter of one union made a threat of violence against supporter of rival union and, if so, whether such threat created an atmosphere of fear or coercion tending to interfere with employee free choice.
COASTAL BERRY COMPANY, LLC, 26 ALRB No. 1

324.02 Board affirmed dismissal of election objections that consisted of bare allegations unaccompanied by supporting declarations. The Board's regulations unequivocally require that adequate declarations be timely filed with the objections petition. The regulations further prohibit any exceptions to this rule, and there is no precedent for these requirements being excused by the Board.
DESERT SPRING GROWERS, ARZ, INC. dba SUN CITY GROWERS, 28 ALRB No. 9

324.02 Where General Counsel has issued complaint but then settled the complaint's unfair labor practice allegations, under Mann Packing (1989) 15 ALRB No. 11 the Board can consider the same conduct in objections proceedings.
BAYOU VISTA DAIRY, 32 ALRB No. 6

324.02 Anti-union animus is not a necessary element in finding that a statement interferes with employee free choice. The ALRB consistently has applied an objective standard, in which the inquiry is whether the conduct would tend to interfere with employee free choice. (See, e.g., *Karahadian Ranches, Inc. v. ALRB* (1985) 38 Cal.3d 1; *J.R. Norton v. ALRB* (1987) 192 Cal.App.3d 874, 891; *S F. Growers* (1978) 4 ALRB No. 58.)
GIUMARRA VINEYARDS CORP., 32 ALRB No. 5

324.02 Under *Mann Packing Co., Inc.* (1989) 15 ALRB No. 11, in both challenged ballot and election objection cases, the Board will defer to the General Counsel's resolution of the investigation of an unfair labor practice charge where the merits of the issues necessarily decided by the investigation also are determinative of the merits of related issues in the representation case. It is more than the mere existence of identical issues that triggers this rule, as it is well established that conduct sufficient to warrant the setting aside of an election does not necessarily constitute an unfair labor practice, and not all unfair labor practices necessarily constitute conduct sufficient to set aside an election. (See, e.g., *ADIA Personnel Services* (1997) 322 NLRB 994, fn. 2.) Thus, it is only where the issues in the two proceedings are coextensive in terms of their legal merit that the Board is bound by the General Counsel's determination.
RICHARD'S GROVE & SARALEE'S VINEYARD, INC., 33 ALRB No. 7

324.02 Where no related unfair labor practice charges have been filed, the Board retains its full authority to adjudicate all issues involving election objections and challenged ballots. In Bayou Vista Dairy (2006) 32 ALRB No. 6, the Board further explained that where a complaint was withdrawn and the underlying unfair labor practice charge dismissed pursuant to a settlement agreement without any admission of liability, it was the legal equivalent of no charge having been filed and the issue could be litigated

in election objection proceedings. By extension, the withdrawal of a charge also would not preclude the Board from litigating a parallel issue in an election proceeding.
RICHARD'S GROVE & SARALEE'S VINEYARD, INC., 33 ALRB No. 7

324.02 *Mann Packing Co.*, Inc. (1989) 15 ALRB No. 11 reflects a reconciliation of the authority of the General Counsel and the Board that is consistent with both the ALRA and its implementing regulations. The General Counsel's final authority over the investigation of unfair labor practice charges and the issuance of complaints acts as a narrow limitation on the Board's exclusive authority over representation matters. *Mann Packing Co.*, Inc. is settled law that is neither manifestly incorrect, nor has it proven unworkable in practice.
RICHARD'S GROVE & SARALEE'S VINEYARD, INC., 33 ALRB No. 7

324.02 The Executive Secretary properly dismissed objections where declarations failed to show a sufficient number of employees were affected by Employer's failure to fully comply with a Board order in a previous ULP case so as to have affected the outcome of the election.
GALLO VINEYARDS, INC., 34 ALRB No. 6

324.02 The Board upheld the Executive Secretary's dismissal of objections which raised the same facts and allegations contained in unfair labor practice charges previously dismissed by the General Counsel because the conduct alleged in the objections was of the nature that it could not be objectionable election conduct if it did not also constitute an unfair labor practice (ULP). Under *Mann Packing Co, Inc.* (1989) 15 ALRB No. 11, the Board must defer to the General Counsel's resolution of a unfair labor practice charge where the charge and the related objection are co-extensive in terms of their legal merit.
GALLO VINEYARDS, INC., 34 ALRB No. 6

324.02 The *Mann Packing* rule is not automatically triggered simply because the facts in a representation proceeding are the same as those in a dismissed unfair labor practice (ULP) proceeding. The Board has clearly stated that the Board is not bound by the General Counsel's dismissal of a ULP charge where the Board can find conduct alleged in a related objection objectionable on an independent legal basis,
GALLO VINEYARDS, INC., 34 ALRB No. 6

324.02 Election objection that Board failed to provide adequate notice of an election to non-striking employees failed to state a *prima facie* case. Section 20365(c)(2)(b) of the Board's regulations require that declarations set forth with particularity the details of each occurrence and the manner in which it is alleged to have affected or could have affected the outcome of the election. Employees' declarations did not show that they did not vote or were prevented from voting, and were insufficient on their

face.
GEORGE AMARAL RANCHES, INC., 38 ALRB No. 5

324.02 Election objected based on inadequate notice of an election will generally be dismissed unless the objecting party can show that an outcome determinative number of voters will be disenfranchised.
GEORGE AMARAL RANCHES, INC., 38 ALRB No. 5

324.02 Election objection that Board created a threatening and intimidating environment by allowing separate voting processes for striking and non-striking employees resulting in striking employees beating up on non-striking employees failed to state a *prima facie* case. Section 20365 (c)(2)(B) of the Board's regulations require that declarations set forth with particularity the details of each occurrence and the manner in which it is alleged to have affected or could have affected the outcome of the election. The employee observer declarations failed to state who caused the observers to feel threatened and intimidated, or how.
GEORGE AMARAL RANCHES, INC., 38 ALRB No. 5

324.03 Who May File Objections

324.03 Employer who is aware of preelection misconduct of foreman and who fails to correct it, cannot later rely on that conduct as grounds for setting aside the election.
MATSUI NURSERY, INC., 9 ALRB No. 42

324.03 An employer may not rely on its own failure to provide eligibility list as grounds for setting aside an election. [Reg. 203b5(c)(5)]
MURANAKA FARMS, 9 ALRB No. 20

324.03 Under sections 1156.3 and 1140.4(d) a union not on the ballot has standing to file and raise post-election objections to allegations made in a Petition for Certification if such objections contend that the allegations made in the Petition for Certification were incorrect or that a representation petition was filed and an election held when a peak season did not exist.
HERBERT BUCK RANCHES, INC., 1 ALRB No. 6

324.03 Under section 1156.3(c) a union not on the ballot does not have standing to raise post-election objections to the conduct of the election or conduct affecting the results of the election. The union has no direct and immediate interest to give it the requisite standing to seek section 1156.3(c) relief.
HERBERT BUCK RANCHES, INC., 1 ALRB No. 6

324.03 Majority follows NLRB which permits election objections to be filed only by parties to the election; i.e., the petitioner, the employer involved in the election, and any intervening or cross-petitioning labor organization(s). Accordingly, an individual employee,

although a member of the unit, is not a "party" and therefore is not a "person" with an interest in the outcome of the proceeding within the meaning of section 1140.4(d).
COASTAL BERRY FARMS, LLC., 24 ALRB No. 4

324.03 Majority criticizes Herbert Buck Ranches, Inc. (1975) 1 ALRB No. 6 which held that a union not on the ballot could nevertheless file certain types of election objections, such as one challenging the finding of peak. Board suggests that its own regulatory and case law developments since Buck issued have impliedly if not expressly overruled both the holding and the reasoning of Buck.
COASTAL BERRY FARMS, LLC., 24 ALRB No. 4

324.03 Following Herbert Buck Ranches, Inc. (1975) 1 ALRB No. 6, dissent holds that all of the requirements for a bona fide question concerning representation as set forth in section 1156.3(a) (1) through (4) are statutory prerequisites and therefore "any person" has standing to file election objections challenging the sufficiency of those requirements for the holding of the election.
COASTAL BERRY FARMS, LLC., 24 ALRB No. 4

324.04 Time For Filing Or Serving Objections

324.04 Board adheres to postmark rule to establish timeliness of filing of objections sent by registered or certified mail. Objections must be filed by physical receipt by Executive Secretary, by fax if all requirements of Board regulation 20168 are met, or mailing by registered or certified mail with postmark dated by end of objections filing period.
SILVER TERRACE NURSERIES, INC., 19 ALRB No. 5

324.04 IHE properly dismissed employer's motion to dismiss objections where employer suffered no prejudice from union's failure to submit a detailed statement of facts until one hour before the hearing.
BETTERAVIA FARMS, 9 ALRB No. 46

324.04 Board sustained RD rejection of proposed amendment to election objections filed almost one month after election. Board and Regional Director found reason that Employer did not know of grounds for the objection until 6 days before filed same did not amount to "unusual circumstances" as required by 1156.3(c).
TMY FARMS, 2 ALRB No. 58

324.04 Normally, whether a particular employee is an agricultural employee is not a proper subject of a section 1156.3(c) proceeding (post-election objections hearing). However, when the regional director excludes specific categories as not agricultural employees in Notice of Election, and the number of such employees could affect the outcome, section 1156.3(c), review is

proper since the Notice could deter voting and thereby affect the outcome.
HEMET WHOLESALE, 2 ALRB No. 24

324.04 Even where the final outcome of balloting is not immediately known, all parties are bound by the section 1156.3(c) requirement that election objections be filed within five days of the election.
OCEANVIEW PRODUCE CO., 20 ALRB No. 16

324.04 Because Employer failed to comply with regulatory requirements for filing by FAX, it would be appropriate to dismiss its request for review of dismissal of election objections as untimely filed. However, Board affirms dismissal of the objections on substantive grounds, as well.
CALIFORNIA REDI-DATE, INC., 20 ALRB No. 11

324.04 IHE properly excluded proffered evidence of UFW's election misconduct where rival union failed to raise issues by timely-filed election objections.
COASTAL BERRY COMPANY, LLC, 26 ALRB No. 2

324.04 Whereas no extension of time may be provided for the filing of election objections, making the timely filing of them jurisdictional, the timely service of those objections on the parties is not similarly jurisdictional under the Board's regulations.
GEORGE AMARAL RANCHES, INC., 38 ALRB No. 5

324.04 Union alleged no prejudice resulting from receiving an after-hours fax transmission of election objections on the day the objections were required to be filed with the Executive Secretary. Section 20365 of the Board's regulations does not require responsive pleadings in response to election objections.
GEORGE AMARAL RANCHES, INC., 38 ALRB No. 5

324.05 Time For Filing Or Serving Exceptions To IHE Report

324.05 Board rejected General Counsel's motion to strike Respondent's exceptions as untimely in the absence of a showing by General Counsel that he suffered material prejudice as a result of the late filing, citing Genesse Merchants Bank & Trust Co. (1973) 206 NLRB 274 [84 LRRM 1237].
ABATTI FARMS INC., 5 ALRB No. 34

325.00 CHALLENGED BALLOT PROCEDURE

325.01 In General

325.01 RD properly held challenged ballots in abeyance pending outcome of election objections case that already had been set for hearing and would involve litigation of same issues raised with regard to challenged ballots.

WALTER H. JENSEN CATTLE CO., INC., 19 ALRB No. 7

325.01 The Board may defer addressing the "agricultural employer" issue in a challenged ballot proceeding where the resolution of challenges may result in the issue being rendered moot. (Exeter Packers, Inc., 8 ALRB No. 95.)
SAN JOAQUIN TOMATO GROWERS, INC./LCL FARMS, INC., 16 ALRB No. 10

325.01 Issues involving strike related violence or threats of violence are appropriately raised through challenged ballot proceeding only when directly related to the individual challenges.
In all other instances they should be raised as election objections.
SAN JOAQUIN TOMATO GROWERS, INC./LCL FARMS, INC., 16 ALRB No. 10

325.01 Where issues involving strike violence or threats of violence are directly related to individual challenges and are raised through the challenged ballot proceedings, the Board may defer resolution of challenges which will not conclusively determine the outcome of the election where there are additional ballots subject to investigation which may determine the outcome.
SAN JOAQUIN TOMATO GROWERS, INC.,/LCL FARMS, INC. 16 ALRB No. 10

325.01 The Board recognized that its regulations are silent as to the proper disposition of a challenged ballot when withdrawn after a tally of ballots, as opposed to a withdrawal made prior to the tally of ballots (see regulation section 20355(d), under which the Board agent supervising the election has the discretion to accept withdrawals made by the challenging party), but finds that the limited set of facts in the matter before it fails to support a finding that the Regional Director abused his discretion under the Act or the Board's regulations, or that the union's challenges were made in bad faith or without substantial justification.
CAPCO MANAGEMENT GROUP INCORPORATED, 15 ALRB No. 13

325.01 When the eligibility of a challenged voter is no longer contested, the Board's challenged ballot procedures no longer apply, and as neither party contests the eligibility of any of the challenged voters, it was proper for the Regional Director to recommend that the ballots be opened and counted, because to do otherwise would result in the disenfranchisement of voters who are presumptively eligible and entitled to vote.
CAPCO MANAGEMENT GROUP INCORPORATED, 15 ALRB No. 13

325.01 Were Board to determine eligibility of challenged voters in representation proceeding who were laid off as a result of allegedly unlawful subcontracting out of unit work, Board would contravene General Counsel's section

1149 authority since General Counsel had exercised such authority to dismiss a related unfair labor practice charge. However, where no unfair labor practice charges are filed, there can be no threat to the statute's separation of powers doctrine and thus Board may consider question in context of a representation proceeding if necessary to fully carry out its own Chapter 5 responsibilities.
MANN PACKING CO., INC., 15 ALRB No. 11

325.01 The recognition of challenges other than those specifically set forth in the regulations facilitates the potential misuse of the Board's challenged ballot procedure and can result in coercive circumstances that ultimately interfere with the election process.
BORREGO PACKING COMPANY, 15 ALRB No. 8

325.01 Where invalid challenges appear to have been processed without undue attention being drawn to the challenged voters and their participation in the anti-union campaign and where challenges were witnessed by an insufficient number of voters to have affected the outcome of the election, the Board finds that this misuse of the challenged ballot procedures does not warrant setting aside the election.
BORREGO PACKING COMPANY, 15 ALRB No. 8

325.01 Since the individuals who were challenged were agricultural employees who met the voter eligibility requirements of Labor Code section 1157, and since the asserted basis for the challenge, i.e., "agent/ consultant" for the employer, is not among the specific categories to which challenges must be limited under Title 8 Cal. Code of Regulations section 20355(a)(1) - (8), the proffered challenges should have been rejected as either improper on their face or more properly the subject of a post-election objection.
BORREGO PACKING COMPANY, 15 ALRB No. 8

325.01 While Title 8, California Code of Regulations, section 20352(b)(5) accords finality to challenged ballot determinations of a Regional Director to which no exceptions have been filed, the Board, in its investigative capacity pertaining to certification matters, will overturn such otherwise final determinations or conclusions of a Regional Director's report as it finds to be arbitrary, capricious, or not consonant with Board policy or the statutory design of the Agricultural Labor Relations Act.
BUNDEN NURSERY, INC., 14 ALRB No. 18

325.01 Regional Director's investigation of challenged ballots may properly disclose different reason or ineligibility than that in the original challenge.
RANCHO PACKING, 10 ALRB No. 38

325.01 Board agents improperly failed to list the names of

voters on the challenged ballot envelopes.
RANCHO PACKING, 10 ALRB No. 38

325.01 In compiling list of challenged voters, Board agents improperly included several names of voters from another, previously held, election, whose declarations had mistakenly been mixed with those used in later election.
RANCHO PACKING, 10 ALRB No. 38

325.01 A challenged ballot which, should it be a vote for the incumbent union, would only create a tie vote in a decertification election, is not an outcome-determinative ballot subject to an investigation and report by a Regional Director. (8 Cal. Admin. Code section 2063(a).)
RECLAIMED ISLAND LAND COMPANY (RILCO), 9 ALRB No. 71

325.01 Regional Director improperly dismissed union's challenges without written report and without notice to union prior to election; however, error did not affect the outcome of the election since challenges were without merit.
BETTERAVIA FARMS, 9 ALRB No. 46

325.01 Regional Director's report on challenged ballots incomplete where Board unable to determine whether 5 Employees whose challenged ballots were previously counted are same Employees whose names appear on ALRB list.
FRANZIA BROTHERS WINERY, 7 ALRB No. 14

325.01 The Board reserved ruling on the challenges to the votes of certain economic strikers where no evidence was presented on their cases during the investigation.
MID-STATE HORTICULTURE COMPANY, 4 ALRB No. 101

325.01 Where a party excepting to the Regional Director's challenged ballot report fails to present evidence raising a material factual dispute the Board is entitled to rely upon the Regional Director's report.
MID-STATE HORTICULTURE COMPANY, 4 ALRB No. 101

325.01 Where it was not shown by the opposing party that certain economic strikers had abandoned the strike the Board overruled the challenge to their votes.
MID-STATE HORTICULTURE COMPANY, 4 ALRB No. 101

325.01 Where the UFW failed to submit evidence supporting its exception to the Regional Director's recommendation regarding a challenged ballot the Board overruled the challenge.
PHELAN AND TAYLOR PRODUCE COMPANY, 4 ALRB No. 57

325.01 Challenge on any ground satisfied regulation 20355(b) requirement that challenges must be asserted before vote or be considered waived.
JACK T. BAILLIE COMPANY, INC., 4 ALRB No. 47

325.01 The function of the challenged ballot system is to

provide a post-election framework in which contested factual questions regarding voter eligibility can be determined.
D'ARRIGO BROS., 3 ALRB No. 37

325.01 Challenged ballots cast without a notation of the voters' names are void.
GEORGE LUCAS & SONS, 3 ALRB No. 5

325.01 Challenge to votes of Employees of labor contractor dismissed but then issue treated as request for unit clarification.
TMY FARMS, 2 ALRB No. 58

325.01 The Board is entitled to rely on the Regional Director's challenged ballot report where the parties fail to raise a material factual dispute which would warrant further investigation or hearing.
DESSERT SEED COMPANY, INC., 2 ALRB No. 53

325.01 Board agents may resolve challenged ballots prior to the Tally of Ballots (8 Cal. Admin. Code section 20350(d) but lack authority to unilaterally resolve challenged ballots after an election has been conducted.
UNITED CELERY GROWERS, INC., 2 ALRB No. 46

325.01 The issue of whether or not one is an agricultural employee may not be raised through a post-election proceeding, but must be raised through challenge.
CAL COASTAL FARMS, 2 ALRB No. 26

325.01 Although Board should generally determine election outcome before deciding on appropriate remedy, time-consuming challenged ballot proceedings are not necessary before issuing bargaining order where ULP's are so pervasive as to require setting aside election, and employer is not prejudiced by Board's failure to determine outcome.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

325.01 That challenged ballot declarations written in English (though read to declarants in Spanish) and taken prior to voting, while reasonable concerns, did not warrant discrediting of declarations, especially where at hearing declarants made dubious wholesale denials of the contents of their declarations, rather than more credibly disagreeing over details or nuances.
ARTESIA DAIRY, 33 ALRB No. 3

325.01 Challenged ballot declarations taken by a Board agent with no interest in the outcome of the election are inherently more credible than those later taken by an interested party.
ARTESIA DAIRY, 33 ALRB No. 3

325.01 The ALRB Election Manual is not legal authority for determining voter eligibility under the ALRA and should

not be cited as such. Rather, the Manual is simply a guide designed to be consistent with existing statutory, regulatory, and case law authorities.
NURSERYMEN'S EXCHANGE, INC., 36 ALRB No. 5

325.01 The purpose of a challenged ballot investigation held pursuant to Board regulation section 20363, subdivision (a), is not to resolve material factual issues in dispute, rather it is to determine whether challenges to voters' eligibility can be resolved based on undisputed facts. Where this is not possible, an evidentiary hearing is the proper forum in which to resolve material issues of fact and credibility
SOUTH LAKES DAIRY FARMS, 36 ALRB No. 5

325.02 Time For Asserting Challenges

325.02 Challenge on any ground satisfied regulation 20355(b) requirement that challenges must be asserted before vote or be considered waived.
JACK T. BAILLIE COMPANY, INC., 4 ALRB No. 47

325.02 In order to preserve the issue of voter eligibility of one who is contended not to be an agricultural employee, the party contesting eligibility must make a timely challenge.
HEMET WHOLESALE, 2 ALRB No. 24

325.02 The issue of whether one is an agricultural employee may not be raised in a post-election proceeding, but must be raised through challenge.
HEMET WHOLESALE, 2 ALRB No. 24

325.03 Who May File Exceptions To Regional Director's Report

325.04 Scope Of Investigation; Need For And Sufficiency Of Exceptions; Burden Of Proof

325.04 In excepting to Regional Director's Supplemental Report on Challenged Ballots, employer failed to submit declarations and/or other documentary evidence as required by Title 8, California Code of Regulations, section 20363(b), but merely reiterated in broad conclusionary terms matters which it had previously asserted in pending objections to election. Accordingly, employer failed to raise a specific and material factual dispute ripe for Board consideration or which could cause Board to remand for further investigation or hearing.
SAN JOAQUIN TOMATO GROWERS, INC.,/LCL FARMS, INC., 17 ALRB No. 3

325.04 An economic striker may lose eligibility to vote upon a showing by the opposing party that the individual has resumed work for the struck employer, as well as by a showing that the employee has abandoned interest in the job.
SAN JOAQUIN TOMATO GROWERS, INC./LCL FARMS, INC.,

16 ALRB No. 10 ACE TOMATO CO., INC., 16 ALRB No. 9

325.04 A party opposing a claim of eligibility by a person whose name does not appear on the pertinent payroll can rebut the claim by showing that the person did not work for the employer, or that the employer prohibited more than one person working under one payroll name.
SAN JOAQUIN TOMATO GROWERS, INC./LCL FARMS, INC., 16 ALRB No. 10

325.04 A party opposing a claim of eligibility by a person whose name does not appear on the pertinent payroll can rebut the claim by showing that the person did not work for the employer, or that the employer prohibited more than one person working under one payroll name.
ACE TOMATO CO., INC., 16 ALRB No. 9

325.04 Issues involving peak employment are not subject to review in challenged ballot proceedings.
ACE TOMATO COMPANY, INC., 16 ALRB No. 9

325.04 Issues involving peak employment are not subject to review in challenged ballot proceedings.
TRIPLE E PRODUCE CORPORATION, 16 ALRB No. 5

325.04 Where the parties fail to raise in their exceptions a material issue of fact or law which would warrant further investigation or hearing, or where the employer's conclusory statements in its brief filed in support of its exceptions are not supported by declarations or documentary evidence, the Board will adopt the Regional Director's recommendations in the Challenged Ballot Report.
ACE TOMATO CO., INC., 16 ALRB No. 9

325.04 Where the parties fail to raise in their exceptions a material issue of fact or law which would warrant further investigation or hearing, or where the employer's conclusory statements in its brief filed in support of its exceptions are not supported by declarations or documentary evidence, the Board will adopt the Regional Director's recommendations in the Challenged Ballot Report.
TRIPLE E PRODUCE CORPORATION, 16 ALRB No. 5

325.04 Declaration submitted in support of employer's exception to Challenged Ballot Report is insufficient where it lacks a direct connection to the individual challenged, even though it may be relevant support for an election objection.
ACE TOMATO CO., INC., 16 ALRB No. 9

325.04 Declaration submitted in support of employer's exception to Challenged Ballot Report is insufficient where it lacks a direct connection to the individual challenged, even though it may be relevant support for an election

objection.
TRIPLE E PRODUCE CORPORATION, 16 ALRB No. 5

325.04 When the eligibility of a challenged voter is no longer contested, the Board's challenged ballot procedures no longer apply, and as neither party contests the eligibility of any of the challenged voters, it was proper for the Regional Director to recommend that the ballots be opened and counted, because to do otherwise would result in the disenfranchisement of voters who are presumptively eligible and entitled to vote.
CAPCO MANAGEMENT GROUP INCORPORATED, 15 ALRB No. 13

325.04 Where the parties fail to raise in their exceptions a material factual dispute which would warrant further investigation or hearing, or where the employer's conclusory statements in its brief filed in support of its exceptions are not supported by declarations or documentary evidence, the Board shall be entitled to rely on the Regional Director's challenged ballot report.
CAPCO MANAGEMENT GROUP INCORPORATED, 15 ALRB No. 13

325.04 The Board overruled an employer's challenge to ballots cast by alleged commercial workers where employer's exceptions were not supported by declarations or documentary evidence. Under such circumstances, the employer's conclusory statements in its brief are insufficient to rebut the Regional Director's recommendation.
BUNDEN NURSERY, INC., 14 ALRB No. 18

325.04 Where the Employer withdrew its exceptions to the Regional Director's Challenged Ballot Report, the Board adopted pro forma the Regional Director's findings and recommendations on the subject challenges and certified the results of the election.
HILLVIEW DAIRY FARM, 14 ALRB No. 3

325.04 Since supervisor discussed medical benefits with employees prior to election through Spanish-speaking interpreter, Board must evaluate message employees heard rather than that intended by supervisor; message actually heard conveyed promise of benefits which interfered with free choice and affected results of election.
LIMONEIRA COMPANY, 13 ALRB No. 13

325.04 When evaluating allegations of promise of benefits made to employees prior to election, Board required to accord close scrutiny to intended implications in message as well as express words used.
LIMONEIRA COMPANY, 13 ALRB No. 13

325.04 The Board will adopt the Regional Director's recommendations in a Challenged Ballot Report where the employer's exceptions failed to raise a material issue of fact or law and are not supported by any documentary evidence.

SEQUOIA ORANGE CO., 13 ALRB No. 9

325.04 Declaration submitted supporting employer's exceptions to Challenged Ballot Report is insufficient where it fails to contain specific assertions raising material issues of fact or law.
SEQUOIA ORANGE CO., 13 ALRB No. 9

325.04 Board will adopt recommendations in Order to Show Cause where the employer fails to present any legal argument or factual evidence in support of its objections.
SEQUOIA ORANGE CO., 13 ALRB No. 9

325.04 Regional Director's investigation of challenged ballots may properly disclose different reason or ineligibility than that in the original challenge.
RANCHO PACKING, 10 ALRB No. 38

325.04 Declarations provided by a party objecting to a report on challenged ballots will establish the need for further proceedings, including investigative hearings, if such declarations raise material questions of fact or law.
FARMER JOHN EGG ENTERPRISES, INC., 10 ALRB No. 15

325.04 Objections to a Regional Director's Report on Challenged Ballots that are not supported by documentary evidence but only by conclusory statements are insufficient to overrule recommendations by the Regional Director.
MAYFAIR PACKING COMPANY, 9 ALRB No. 66
Accord: FARMER JOHN EGG ENTERPRISES, INC., 10 ALRB No. 15

325.04 Regional Director's report on challenged ballots incomplete where Board unable to determine whether 5 Employees whose challenged ballots were previously counted are same Employees whose names appear on ALRB list.
FRANZIA BROTHERS WINERY, 7 ALRB No. 14

325.04 Board declines to remand to resolve challenged ballots where 5 yrs. 9 months have passed since election, it would be extremely difficult or impossible to locate Employee witnesses, and remand would cause further delay.
FRANZIA BROTHERS WINERY, 7 ALRB No. 14

325.04 Board concluded that since Regional Director's Supplemental Report on Challenged Ballots was incomplete in several material respects, it was unable to resolve remaining determinative challenges. Board acknowledged that handling of case had been inadequate and concluded that inexcusable delays prevented attainment of truly representative election results. Accordingly, Board set aside election and dismissed representation petition. Board and General Counsel ordered to institute comprehensive re-examination respective policies, practices, and procedures.
FRANZIA BROTHERS WINERY, 7 ALRB No. 14

325.04 Where no exceptions taken to Regional Director's recommendations concerning supervisory status of three votes, Regional Director's challenge ballot recommendations approved by Board.
TRANSPLANT NURSERY, INC., 5 ALRB No. 49

325.04 In the absence of specific exceptions supported by evidence, the Board will rely on the Regional Director's challenged ballot report.
KARAHADIAN & SONS, INC., 5 ALRB No. 19

325.04 Where the Regional Director has based his recommendation to sustain or overrule a challenge solely on examination of the employer's payroll records, the Board may rely on such recommendation in the absence of evidence that the records were unreliable, either in general or as to specific voters.
KARAHADIAN & SONS, INC., 5 ALRB No. 19

325.04 Where discharge of voter is found to be an unfair labor practice, the Regional Director need not establish that the voter would have been working in the eligibility period but for the discharge; rather, the burden is on the challenging party to submit evidence to the contrary.
KARAHADIAN & SONS, INC., 5 ALRB No. 19

325.04 The Board adopted the Regional Director's recommendation to sustain a challenge where the voter could not be located during the challenge investigation and there was no other evidence tending to establish his eligibility to vote.
KARAHADIAN & SONS, INC., 5 ALRB No. 19

325.04 Employer disputes finding that certain workers appear on the payroll for the period encompassing the commencement of the strike, but submitted no declarations or other evidence in support of its position and has therefore failed to raise a factual dispute.
D. M. STEELE, dba VALLEY VINEYARDS, 5 ALRB No. 11

325.04 The Board reserved ruling on the challenges to the votes of certain economic strikers where no evidence was presented on their cases during the investigation.
MID-STATE HORTICULTURE COMPANY, 4 ALRB No. 101

325.04 Regional Director did not abuse discretion by invoking presumption in Board Regulation 20310(d)(2) that unchallenged Employees are eligible to vote where Employer had inadequate payroll records and did not submit complete data in timely manner to verify Employee status and voter eligibility.
HARRY SINGH & SONS, 4 ALRB No. 63

325.04 One challenge is made on particular basis, subsequent investigation may establish extremely different reason for sustaining challenge, if voter is found ineligible

for any reason, challenge must be sustained.
JACK T. BAILLIE COMPANY, INC., 4 ALRB No. 47

325.04 Where the Regional Director conducted an inadequate investigation on challenged ballots the Board was not able to properly resolve the challenges.
E.C. CORDA RANCHERS, 4 ALRB No. 35

325.04 Board overruled challenged ballots where there was confusion regarding the name, and not the eligibility of the voter.
TENNECO WEST, INC., 3 ALRB No. 92

325.04 Board will accept Regional Director's recommendations resolving challenged ballots where no exceptions are filed or exceptions are unsupported by any evidence.
TENNECO WEST, INC., 3 ALRB No. 92

325.04 The mere fact that Regional Director's report failed to specify job classification, type of work performed or whether the employee was seasonal or permanent is not sufficient grounds for exception.
TENNECO WEST, INC., 3 ALRB No. 92

325.04 Ballot with an illegible signature will be declared void since there is no way to determine the identity of the voter.
ANDERSON FARMS CO., 3 ALRB No. 48

325.04 Exceptions unsupported by any evidence will result in the Board adopting the Regional Director's recommendations resolving the challenged ballots.
ANDERSON FARMS CO., 3 ALRB No. 48

325.04 Where no exceptions are filed, the Board will adopt the Regional Director's recommendations resolving the challenged ballots.
ANDERSON FARMS CO., 3 ALRB No. 48

325.04 Challenged ballots of mechanics and maintenance workers will be overruled where union presented no evidence that these employees were involved in a commercial operation.
ANDERSON FARMS CO., 3 ALRB No. 48

325.04 Challenged ballots of clerical workers who perform routine clerical work will be overruled where union presented no evidence that they work for operations other than employer's agricultural concerns.
ANDERSON FARMS CO., 3 ALRB No. 48

325.04 Challenged ballots of 25 truck drivers who have produce for a single grower will be overruled where union presented no evidence that they may be commercial drivers.
ANDERSON FARMS CO., 3 ALRB No. 48

325.04 Challenged ballots of tractor drivers will be overruled

where union presented no evidence as to the managerial or confidential status of these employees.
ANDERSON FARMS CO., 3 ALRB No. 48

325.04 Absent a showing that facts other than those found by the Regional Director actually exist, the Board is entitled to rely on the Regional Director's challenged ballot report.
D'ARRIGO BROS., 3 ALRB No. 37

325.04 Absent specific assertion which are substantiated by evidence, a regional director's report on challenged ballots will not be overturned by the Board.
D'ARRIGO BROS., 3 ALRB No. 37

325.04 Board accepted Regional Director's findings that two Employees with different names were same person in absence of proof that they were not despite Employer objection that Regional Director showed no facts to support findings.
MARLIN BROTHERS, 3 ALRB No. 17

325.04 No evidentiary hearing on election objections required unless objections raise substantial factual dispute. No further investigation ordered where Union excepted to Regional Director examining only payroll records of Employer listed on Union's Petition contending that there was second company which was joint Employer with the first.
MARLIN BROTHERS, 3 ALRB No. 17

325.04 Employer has burden of disputing eligibility of voters who appear on the statutory pre-strike payroll and non-appearance of voters in post-election investigation is insufficient to overcome presumption of eligibility to vote.
COSSA & SONS, 3 ALRB No. 12

325.04 Where the unavailability of challenged voters precludes a proper investigation of their claim of voter eligibility based on their status as economic strikers, then the challenges to their ballots must be sustained.
COSSA & SONS, 3 ALRB No. 12

325.04 Where the record discloses a clear material factual dispute with the Regional Director's challenged ballot report and the report is unclear as to the scope of the investigation conducted by the Regional Director, further investigation is warranted.
COSSA & SONS, 3 ALRB No. 12

325.04 Where parties' exceptions to Regional Director's Report on Challenged Ballots reveals conflicting evidence and/or material factual disputes, Board will not order further investigation by Regional Director but will set hearing under 8 California Administrative Code section 20363(a).
ROD McLELLAN CO., 3 ALRB No. 6

325.04 Mere nonappearance at the investigation of a challenge is insufficient to disqualify a voter.
GEORGE LUCAS & SONS, 3 ALRB No. 5

325.04 If a voter has abandoned interest in a strike, he or she is not eligible to vote. It is the burden of the party asserting the challenge to prove abandonment.
GEORGE LUCAS & SONS, 3 ALRB No. 5

325.04 It is the burden of the party asserting the challenge to show by affirmative evidence that the striker has abandoned interest in the struck job.
GEORGE LUCAS & SONS, 3 ALRB No. 5

325.04 Where a material factual dispute exists as to the supervisorial status of a voter and the challenged ballot is outcome determinative, the question of the voter's status as a supervisor shall be set for a hearing.
KERN VALLEY FARMS, 3 ALRB No. 4

325.04 The Board is entitled to rely on the Regional Director's challenged ballot report where the parties fail to raise a material factual dispute which would warrant further investigation or hearing.
DESSERT SEED COMPANY, INC., 2 ALRB No. 53

325.04 Board agent's failure to comply with field manual by using sealed challenged-ballot envelopes in investigating challenges does not by itself warrant setting aside election.
CAL COASTAL FARMS, 2 ALRB No. 26

325.04 Where neither voters nor parties respond to Regional Director's requests for evidence to remove concerns as to identity of voters challenged for failure to present any identification, the Board sustained the Regional Director's recommendation that the challenges be sustained. Letter from Regional Director to voters requested them to contact Regional Office or Board agent in charge of investigation, and none did so.
OCEANVIEW PRODUCE COMPANY, 20 ALRB No. 10

325.04 The party filing exceptions to a challenged ballot report has the burden to provide sufficient evidence to create a material dispute and conclusory statements or assertions are not sufficient to do so. Mere statement that challenged voters worked during eligibility period is insufficient to meet that burden.
SIMON HAKKER, 20 ALRB No. 6

325.04 Where a party fails to raise in its exceptions a material factual dispute which would warrant further investigation or hearing, or where conclusory statements in the brief filed in support of the exceptions are not supported by declarations or documentary evidence, the Board shall be entitled to rely on the challenged ballot report.

COASTAL BERRY CO., LLC, 25 ALRB No. 3

325.04 Exceptions to RD challenged ballot report must be rejected where the party filing the exceptions fails to provide material facts that contradict the RD's findings. (*Sequoia Orange Co.* (1987) 13 ALRB No. 9; *Miranda Mushroom Farm, Inc.* (1980) 6 ALRB No. 22.) The Board is entitled to rely on the report of a Regional Director where the parties fail to raise a material factual dispute that would warrant further investigation or hearing. (Sam Andrews' Sons (1976) 2 ALRB No.28.)
COCOPAH NURSERIES, INC., 27 ALRB No. 3

325.04 Regulation 20363, subdivision (b) (Tit. 8, Cal. Code Regs., sec. 20363,subdiv. (b)), requires that a party filing exceptions to a challenged ballot report include declarations or other documentary evidence in support of the exceptions. Where such evidence raises material issues of fact as to the findings relied on by the Regional Director in the challenged ballot report, the Board will set the matter for an evidentiary hearing to resolve the disputed facts. (See, e.g., *Oceanview Produce Company* (1994) 20 ALRB No. 10.)
ALBERT GOYENETCHE DAIRY, 28 ALRB No. 2

325.04 There is no requirement that the evidence submitted in support of the exceptions must be restricted to that which the filing party previously provided to the Regional Director during the investigation, and the Board has accepted such "new" evidence in support of exceptions. (*Kern Valley Farms* (1977) 3 ALRB No. 4.)
ALBERT GOYENETCHE DAIRY, 28 ALRB No. 2

325.04 In evaluating declarations offered in support of exceptions to a challenged ballot report, the Board is not concerned with the plausibility of the factual scenario presented in the declarations. Rather, under the established standard for setting a hearing in these matters, it is simply a question of whether the declarations place in dispute facts material to the Regional Director's determination of the challenge.
ALBERT GOYENETCHE DAIRY, 28 ALRB No. 2

325.04 Though Board is of the view that serious consideration should be given to prohibiting the submission of evidence, without legal excuse, not submitted to the RD during the investigation, because of existing precedent allowing this practice, it would offend principles of fundamental fairness to change this rule at this stage of proceedings. Such change in policy would more appropriately be accomplished through an amendment to the Board's regulations. Therefore, where evidence offered in support of exceptions contradicts RD's conclusions so as to create a material factual dispute, the challenges must be set for hearing.
ARTESIA DAIRY, 32 ALRB No. 3

325.04 While it is appropriate for an RD, in the exercise of discretion, to require employees not on the regular payroll to cast challenged ballots so that their relationship to the employer may be thoroughly examined in a subsequent investigation, it is improper to assign a burden of proof, or even production, based on that decision. In such circumstances, the RD should simply weigh the evidence gathered in the investigation to determine if there is a material factual dispute warranting an evidentiary hearing. It shall continue to be appropriate to assign to a party challenging a voter the burden of producing some evidence to support the challenge. (*Rod McLellan* (1978) 4 ALRB No. 22.)
ARTESIA DAIRY, 32 ALRB No. 3

325.04 Agricultural employees found to have worked during the eligibility period are eligible to vote even if their names do not appear on the employer's regular payroll list. (*Valdora Produce Co.* (1977) 3 ALRB No.8.) While irregular or unusual payment practices fairly may be viewed as casting some doubt on the accuracy of declarations containing assertions that the challenged voters did work during the eligibility period, they do not render the declarations unbelievable.
ARTESIA DAIRY, 32 ALRB No. 3

325.04 The ALRB, unlike the NLRB, does not assign a burden of proof in representation proceedings. Rather, the party supporting a challenge, including one alleging that a voter is a supervisor, has only a burden of production.
ARTESIA DAIRY, 33 ALRB No. 3

325.04 The purpose of a challenged ballot investigation held pursuant to Board regulation section 20363, subdivision (a), is not to resolve material factual issues in dispute, rather it is to determine whether challenges to voters' eligibility can be resolved based on undisputed facts. Where this is not possible, an evidentiary hearing is the proper forum in which to resolve material issues of fact and credibility
SOUTH LAKES DAIRY FARMS, 36 ALRB No. 5

325.04 Board Regulation section 20360 states that when considering exceptions to a regional director's challenged ballot report the Board will not consider, absent extraordinary circumstances, evidence that was not submitted timely to the regional director during the challenged ballot investigation.
SOUTH LAKES DAIRY FARMS, 36 ALRB No. 5

325.04 The Board held that the IHE was correct in assigning the burden of producing evidence supporting challenges to the party asserting the challenges to voters' eligibility. The Board has stated that with respect to the evidentiary burdens upon the parties in representation proceedings, the party supporting the challenge to a voter carries a burden of production, but

not of persuasion. (*Artesia Dairy* (2007) 33 ALRB No. 3; *Milky Way Dairy* (2003) 29 ALRB No. 4; *Artesia Dairy* (2006) 32 ALRB No. 3)
KAWAHARA NURSERIES, INC., 37 ALRB No. 4

325.04 The Board overruled the challenges to employees of a nursery who held the job title "merchandiser" where the union that challenged the employees' eligibility failed to meet its burden of producing evidence in support of the challenges.
KAWAHARA NURSERIES, INC., 37 ALRB No. 4

325.05 Hearing, Need For; Conduct Of Hearing Or Investigation

325.05 Board finds merit in Employer's contention that its declarations place in issue findings relied on by Regional Director to determine supervisorial status of employees who cast challenged ballots, but defers setting of investigative hearing to resolve evidentiary conflicts pending opening and counting of ballot that may render hearing unnecessary.
FREITAS BROTHERS, 17 ALRB No. 18

325.05 Where the Employer withdrew its exceptions to the Regional Director's Challenged Ballot Report, the Board adopted pro forma the Regional Director's findings and recommendations on the subject challenges and certified the results of the election.
HILLVIEW DAIRY FARM, 14 ALRB No. 3

325.05 Since supervisor discussed medical benefits with employees prior to election through Spanish-speaking interpreter, Board must evaluate message employees heard rather than that intended by supervisor; message actually heard conveyed promise of benefits which interfered with free choice and affected results of election.
LIMONEIRA COMPANY, 13 ALRB No. 13

325.05 When evaluating allegations of promise of benefits made to employees prior to election, Board required to accord close scrutiny to intended implications in message as well as express words used.
LIMONEIRA COMPANY, 13 ALRB No. 13

325.05 Declarations provided by a party objecting to a report on challenged ballots will establish the need for further proceedings, including investigative hearings, if such declarations raise material questions of fact or law.
FARMER JOHN EGG ENTERPRISES, INC., 10 ALRB No. 15

325.05 Challenges sustained where Regional Director's report was incomplete, intervenor union failed to submit evidence demonstrating the voters' eligibility, and time elapsed since election made usefulness of any further investigation unlikely.
D. M. STEELE, dba VALLEY VINEYARDS, 5 ALRB No. 11

325.05 Use of presumption in Board Reg. 20310(d) (2) proper unless Employer shows Regional Director invocation thereof is abuse of discretion and resulted in prejudice.
HARRY SINGH & SONS, 4 ALRB No. 63

325.05 Where employer did not except to finding that vote was supervisor and offered no evidence to contrary, there is no need for evidentiary hearing, and challenge to ballot is sustained.
JACK T. BAILLIE COMPANY, INC., 4 ALRB No. 47

325.05 Regional Director ordered to clarify discrepancies in report and reopen investigation to find sufficient facts to determine challenges in event that ballots became determinative.
CARDINAL DISTRIBUTING CO., 3 ALRB No. 23

325.05 Board approved Regional Director report overruling challenged ballots where no substantial factual dispute. Remaining challenges to be set for hearing to resolve factual issues if outcome determinative.
MC COY'S POULTRY SERVICES, INC., 3 ALRB No. 6

325.05 Mere nonappearance at the investigation of a challenge is insufficient to disqualify a voter.
GEORGE LUCAS & SONS, 3 ALRB No. 5

325.05 A denial of the findings of the Regional Director does not raise an issue of fact without evidence containing specific assertions and does not warrant a further investigation or hearing.
GEORGE LUCAS & SONS, 3 ALRB No. 5

325.05 Where a material factual dispute exists as to the supervisorial status of a voter and the challenged ballot is outcome determinative, the question of the voter's status as a supervisor shall be set for a hearing.
KERN VALLEY FARMS, 3 ALRB No. 4

325.05 Challenges to votes of employees of Labor contractor dismissed because not outcome determinative.
TMY FARMS, 2 ALRB No. 58

325.05 Where declarations submitted with exceptions raised issues as to Regional Director's factual findings supporting his recommendation to sustain the challenges to ballots cast by surqueros, the Board ordered the surqueros' supervisory status to be determined by investigative hearing officer if their challenged ballots are determinative following the revised tally from the counting of overruled challenges.
OCEANVIEW PRODUCE COMPANY, 20 ALRB No. 10

325.05 Regulation 20363, subdivision (b) (Tit. 8, Cal. Code Regs., sec. 20363,subdiv. (b)), requires that a party filing exceptions to a challenged ballot report include declarations or other documentary evidence in support of

the exceptions. Where such evidence raises material issues of fact as to the findings relied on by the Regional Director in the challenged ballot report, the Board will set the matter for an evidentiary hearing to resolve the disputed facts. (See, e.g., *Oceanview Produce Company* (1994) 20 ALRB No. 10.)
ALBERT GOYENETCHE DAIRY, 28 ALRB No. 2

325.05 In evaluating declarations offered in support of exceptions to a challenged ballot report, the Board is not concerned with the plausibility of the factual scenario presented in the declarations. Rather, under the established standard for setting a hearing in these matters, it is simply a question of whether the declarations place in dispute facts material to the Regional Director's determination of the challenge.
ALBERT GOYENETCHE DAIRY, 28 ALRB No. 2

325.05 Where declarations and exhibits fail to present facts that would support assertion of custom harvester status, no material issue of fact requiring hearing has been raised.
VENTURA COASTAL CORPORATION, 28 ALRB No. 6

325.05 The purpose of a challenged ballot investigation held pursuant to Board regulation section 20363, subdivision (a), is not to resolve material factual issues in dispute, rather it is to determine whether challenges to voters' eligibility can be resolved based on undisputed facts. Where this is not possible, an evidentiary hearing is the proper forum in which to resolve material issues of fact and credibility
SOUTH LAKES DAIRY FARMS, 36 ALRB No. 5

325.06 Time For Filing Or Serving Exceptions To Report

325.06 Exceptions to a Regional Director's decision not to consider a challenged ballot to be outcome determinative must be filed within five days of the date that the union was notified of that decision. Where the official Tally of Ballots, served on the union, clearly stated that the challenged ballot was not outcome-determinative, the union was on notice that no report would be forthcoming and "Exceptions" to that decision filed 24 days after the election and issuance of the official Tally were untimely.
RECLAIMED ISLAND LAND COMPANY (RILCO), 9 ALRB No. 71

325.06 8 Cal. Admin. Code 20365(f) requires party to file its exceptions to Regional Director's Report on Challenged Ballots within five days after receipt of the report. Consequently, union exceptions filed 13 days after receipt were untimely, and conclusions and recommendations set forth in Regional Director's report were final.
SUNNYSIDE NURSERIES, INC., 2 ALRB No. 3

326.00 UNIT CLARIFICATION PROCEDURE

326.01 In General

326.01 If any party, following the filing of a unit clarification petition, files exceptions to a regional director's investigatory report that raise material issues of fact, the Board may, in its discretion, direct further investigation or set the matter or matters for a full evidentiary hearing before an investigative hearing examiner, in which case the IHE's subsequent decision is transferred directly to the Board.
SILVA HARVESTING, INC., 15 ALRB No. 2

326.01 Labor Code section 1151 confers on regional directors broad authority to investigate matters arising within the unit clarification process, and such investigatory power permits regional directors to prepare the type of report contemplated by the Board's regulations governing unit clarification petitions.
SILVA HARVESTING, INC., 15 ALRB No. 2

326.01 Adherence to the Board's procedures for the processing of unit clarification petitions is necessary to ensure that unit clarification proceedings remain purely investigative in nature and do not result in inappropriate imposition of burdens of proof.
SILVA HARVESTING, INC., 15 ALRB No. 2

326.01 Legal representative of regional director in unit clarification proceeding who appeared to be soliciting testimony for the purpose of advancing a particular litigation theory conducted himself as if he were an advocate in an adversarial proceeding and thereby exceeded limited participation necessary to defend Board actions and proper role as Regional Director's representative in purely investigative proceeding.
SILVA HARVESTING, INC., 15 ALRB No. 2

326.01 The focus of the inquiry in proceedings under Title 8, California Code of Regulations, section 20385, is whether changed circumstances warranting unit clarification have occurred.
SILVA HARVESTING, INC., 15 ALRB No. 2

326.01 In light of the specific delegation of authority that is permitted under Labor Code section 1142(b) and the explicit directive to regional directors contained in Title 8, California Code of Regulations section 20385(c), it is clear that conclusions and recommendations concerning unit clarification matters are to be made in a report to the Board by regional directors themselves.
SILVA HARVESTING, INC., 15 ALRB No. 2

326.01 The authority that is vested in the Board's regional

directors with respect to unit clarification petitions derives from Labor Code section 1142(b).
SILVA HARVESTING, INC., 15 ALRB No. 2

326.01 Employer's alleged fundamental changes in its operations should properly have been brought to Board's attention by way of petition for unit clarification rather than during hearing on election objections.
ARCO SEED COMPANY, 14 ALRB No. 6

326.01 The Board's certification of the union only at employer's Monterey County location was still subject to the parties' petition to clarify the unit and to submission of additional evidence on the community of interest between employees in western San Joaquin Valley location and those in Salinas Valley location.
EXETER PACKERS, INC., 9 ALRB No. 76

326.01 Unit clarification petition was not untimely five years after certification, since question of unit status was never resolved at the time of the election, and the parties may not, by agreement, supersede the Board's authority to resolve issues of employee status under the Act.
POINT SAL GROWERS AND PACKERS, 9 ALRB No. 57

326.01 Shop employees who spent a regular and substantial portion of their time on activities related to agriculture were included in the bargaining unit with all the agricultural employees of the employer.
SAM ANDREWS' SONS, 9 ALRB No. 24

326.01 Challenge to votes of employees of Labor contractor dismissed but then issue treated as request for unit clarification.
TMY FARMS, 2 ALRB No. 58

326.01 Where an election is certified and a union is designated as representative of all agricultural employees in specific geographic area, question over whether particular employees are included may be raised through petition for a unit clarification (motion for clarification of the unit).
HEMET WHOLESALE, 2 ALRB No. 24

326.01 Board declined to entertain joint petitions for unit clarification filed by two nominally separate entities who alleged that because they were in fact a single employer at time Unit Clarification petitions filed, as well as at time of election, the certified representative at the most recently certified unit should be invalidated and those employees be consolidated within a statewide unit previously certified and represented by a different union. Such a result would effectively require the Board to decertify one union and chose a different union to represent those same employees, all outside the Act's election process and without benefit of employee free

choice.
OCEANVIEW PRODUCE, et al., 22 ALRB No. 15

326.01 Employer's attempt to have Board nullify a certification (effectively a decertification) on grounds employees were part of a single employing statewide entity already represented by a different union raised a question concerning representation and therefore could not be resolved by means of the unit clarification process.
OCEANVIEW PRODUCE, et al, 22 ALRB No. 15

326.01 Employer who failed to assert objection to unit at any stage of representation proceeding and never engaged in technical refusal but instead recognized and bargained with certified representative held to have waived right to contest unit appropriateness two years later by means of unit clarification petition.
OCEANVIEW PRODUCE, et al., 22 ALRB No. 15

326.01 Unit clarification petitions seeking to expand the scope of bargaining units to include agricultural operations acquired by an employer that did not exist when the union was originally certified must be analyzed in the same manner as initial unit determinations.
SUN WORLD INTERNATIONAL, LLC, 38 ALRB No. 3

326.01 The unit description "all agricultural employees of an employer in the State of California" simply reflects at the time of the original certification, the unit included all of an employer's operations in the State. This description has no independent legal significance regarding the appropriateness of the inclusion—via a unit clarification petition—of any operations acquired by the employer after the union was originally certified.
SUN WORLD INTERNATIONAL, LLC, 38 ALRB No. 3

326.01 The Board noted that it had previously clarified in *Coastal Berry. LLC* (2000) 26 ALRB No. 2, that there was no statutory presumption or preference in favor of a statewide bargaining unit when the employer's operations are in two or more noncontiguous areas.
SUN WORLD INTERNATIONAL, LLC, 38 ALRB No. 3

326.01 Certifications that have long been inactive generally cannot be the basis of noncontiguous accretions sought in a unit clarification proceeding; however, there may be circumstances where discontinued operations are revived in noncontiguous areas and it may be appropriate to accrete them to the original certification.
SUN WORLD INTERNATIONAL, LLC, 38 ALRB No. 3

326.01 Because the Board found that accretions sought by the union in a unit clarification proceeding were inappropriate because there was no community of interest between an employer's current unionized operations and its non-unionized operations in a non-contiguous

geographical area, the Board declined to rule on whether the National Labor Relations Board's "accretion doctrine," was applicable under the ALRA.
SUN WORLD INTERNATIONAL, LLC, 38 ALRB No. 3

327.00 EXTENSION OF CERTIFICATION PROCEDURE

327.01 In General

327.01 Following the end of the certification year, a request for extension of certification by the union is not required before a previously certified union can require bargaining with the employer.
O.E. MAYOU & SONS, 11 ALRB No. 25

327.01 Where Board did not make specific, statutorily-required finding that employer had failed to bargain in good faith, it was precluded from extending union's certification an additional year under 1155.2(b).
YAMADA BROS. v. ALRB (1979) 99 Cal.App.3d 112

327.01 Petition for extension of certification filed under 1155.2(b) is denied because it was filed outside statutory window period when such petitions may be filed, and because it fails to comply with regulatory requirement that petition must be filed under oath. (Cal. Code Regs., tit. 8, '20382.)
P-H RANCH, INC., 20 ALRB No. 18

327.01 Board cannot extend certification under 1155.2(b) without making a finding that employer has not bargained in good faith. (Yamada Bros. v. ALRB (1979) 99 Cal.App.3d 112.) Since union's petition consists merely of unsworn hearsay allegations, Board has no facts from which to make such a finding, and thus must dismiss the petition.
P-H RANCH, INC., 20 ALRB No. 18

400.00 UNFAIR LABOR PRACTICE ISSUES INTERFERENCE, RESTRAINT, COERCION

400.00 EMPLOYER INTERFERENCE WITH, RESTRAINT, OR COERCION OF EMPLOYEES

400.01 In General; Labor Code Section 1153(a); Standards; Objective Rather Than Subjective Standard

400.01 Disciplinary action based on conduct which is in fact protected by the ALRA constitutes an independent violation of section 1153, subdivision (a). In such a case, General Counsel must first prove that the employees were engaged in protected activities. Then the burden shifts to the employer to show that it had a good faith belief that misconduct occurred and, if such a showing is made, the General Counsel may still prevail by showing that no misconduct took place.
CONAGRA TURKEY COMPANY, 18 ALRB No. 14

400.01 Subjective perception of employees not a necessary element of an independent violation of Labor Code section 1153(a). Objective test is applied to determine if the employer's conduct would reasonably tend to interfere with protected rights.
S & J RANCH, INC., 18 ALRB No. 2

400.01 Employer's assertion that employees were commercial rather than agricultural no defense to denial of access charge once Regional Director (RD) finds employer is subject to ALRB jurisdiction; since union deferred taking access until Regional Director ruled, Board not required to reach question as to whether a violation would stand had union been denied access prior to ruling.
ANDREWS DISTRIBUTION CO., 15 ALRB No. 6

400.01 Employer did not violate section 1153(a) by inadvertently deducting union dues after expiration of the collective bargaining agreement and refunding them to the employees rather than to the union.
TMY FARMS, INC., 9 ALRB No. 29

400.01 Employees demonstrate their union support by their unrevoked dues checkoff authorization cards, and employer's failure to forward dues money deducted pursuant to unrevoked valid dues checkoff authorization cards, whether intentional, negligent or inadvertent, tended to interfere with the relationship between its employees and their collective bargaining representative.
TMY FARMS, INC., 9 ALRB No. 29

400.01 No constructive discharge where Employer rescinded workers unauthorized firing earlier in day and told them to return to work. Evidence fails to establish that work

conditions (wet fields) so onerous that Respondent forced or induced workers to quit.
SUPERIOR FARMING COMPANY, 8 ALRB No. 40

400.01 Violation of 1153(a) found where General Counsel proved that three workers reprimanded because they sought to convince others that fields were too wet for work rather than because they were late for work.
SUPERIOR FARMING COMPANY, 8 ALRB No. 40

400.01 To establish prima facie case of 1153(a) constructive discharge, General Counsel must show causal connection between Employee's PCA or Union activity and assignment of onerous working conditions causing Employee to quit.
SUPERIOR FARMING COMPANY, 8 ALRB No. 40

400.01 A supervisor engaged in an unlawful surveillance or unlawfully created an impression of surveillance where he (1) asked an employee if his companion was from the UFW; (2) stood at the door of the kitchen and seemed to have listened to a conversation between the employee and a UFW agent; and (3) asked the UFW agent as he left whether he was from the Union. (ALJD)
KARAHADIAN RANCHES, INC., 5 ALRB No. 37

400.01 Promotion of foreman to supervisor lawful since there was no showing that it interfered with section 1152 rights.
ROYAL PACKING CO., 5 ALRB No. 31

400.01 A violation of section 1153(a) occurs if it is shown that the employer engaged in conduct which, it may be reasonably said, tends to interfere with the free exercise of employee rights as guaranteed under section 1152. There is no necessity to prove that the employer acted out of animosity or anti-union animus, or that the interference, coercion, or restraint of employees in any way achieved the effect of truly hindering employees' section 1152 rights.
S & F GROWERS, 4 ALRB No. 58

400.01 There may be an instance where a discharge was so inherently destructive of guaranteed employee rights that though this discharge may have been justified by business considerations and flowed from no employee anti-union animus, there may nonetheless be a violation of the Act.
S & F GROWERS, 4 ALRB No. 58

400.01 Unlawful employer interference with employee rights not made lawful by nature of medium through which violator chooses to act.
PERRY FARMS, INC., 4 ALRB No. 25

400.01 Discharge held not violation of 1153(a) or (c) when Employee made only personal gripes, not engaged in concerted activity and no Union activity.
TREFETHEN VINEYARDS, 4 ALRB No. 19

400.01 Board agreed with ALJ finding that discharge not violation of 1153(e). However, evidence insufficient to establish that discharge effected in such a way as to interfere with section 1152 rights of employees.
TRIMBLE AND SONS, 3 ALRB No. 89

400.01 Respondent's good or bad faith in committing violations largely irrelevant. Board's primary concern is to evaluate extent of misconduct itself.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

400.01 Issue before Board is not whether employee actually felt threatened (by interrogation) but whether employer engaged in conduct which may reasonably be said to tend to interfere with free exercise of employee rights under Act.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

400.01 Once the General Counsel proves unlawful motive, the employer has the burden of proving that it was influenced by lawful motive.
MAGGIO-TOSTADO, INC., 3 ALRB No. 33

400.01 Once the General Counsel proves unlawful motive, the employer has the burden of proving that it was influenced by lawful motive.
MAGGIO-TOSTADO, INC., 3 ALRB No. 33

400.01 Where the record established employer knowledge of concerted activities, but not of the employees' union support and sympathies, the Board found that the employees were laid off in violation of section 1153, subdivision (a).
MAGGIO-TOSTADO, INC., 3 ALRB No. 33

400.01 Only those interrogations which tend to interfere with or restrain the exercise of section 1152 rights violate the ALRA.
MAGGIO-TOSTADO, INC., 3 ALRB No. 33

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MAGGIO-TOSTADO, INC., 3 ALRB No. 33

400.01 Where the preponderance of the evidence employer knowledge of the Union activities and sympathies, and inconsistent or shifting reasons for the layoff of the employees, the Board held that the employer had unlawfully laid off the employees in violation of section 1153, subdivisions (a) and (c).
MAGGIO-TOSTADO, INC., 3 ALRB No. 33

400.01 In determining whether there has been a threat to discharge an employee for engaging in protected union acts in violation of Labor Code section 1153, subdivision (a), neither the employer's motive nor the success of the

coercion is an element.
J.R. NORTON CO. v. ALRB (1987) 192 Cal.App.3d 874

400.01 No evidence is required to show actual interference, restraint or coercion in evaluating whether the conduct tended to interfere with the free exercise of the employee's right. However, the complete lack of evidence that any employee was actually intimidated or coerced, coupled with affirmative evidence that union activities continued to the maximum, should persuasively indicate that a threat accomplished nothing.
J.R. NORTON CO. v. ALRB (1987) 192 Cal.App.3d 874

400.01 No actual interference with employee rights is required to prove violation of 1153(a), only that conduct complained of reasonably tended to interfere with free exercise of rights under ALRA.
LAFLIN & LAFLIN v. ALRB (1985) 166 Cal.App.3d 368

400.01 Conduct which has objective tendency to interfere with, restrain, or coerce employee in exercise of 1152 rights is unlawful. It is not necessary to prove either actual coercion or intent to coerce.
KARAHADIAN RANCHES,INC. v. ALRB (1985) 38 Cal.3d 1

400.01 Motive is not essential element of charge founded upon general anti-interference proscription of 1153(a).
SUPERIOR FARMING CO. v. ALRB (1984) 151 Cal.App.3d 100

400.01 Test for violation of 1153(a) is whether employer engages in conduct which it may reasonably be said tends to interfere with freedom of exercise of employee rights under Act.
SUPERIOR FARMING CO. v. ALRB (1984) 151 Cal.App.3d 100

400.01 Test for violation of 1153(a) is objective in two respects: first, General Counsel need only show that conduct would tend to coerce reasonable employee, and not that employees were actually coerced. Second, it is sufficient to show that action has probable effect of restraint or coercion; it is not necessary to show that effect was intended.
CARIAN v. ALRB (1984) 36 Cal.3d 654

400.01 1153(a) does not purport to list all conduct which interferes with employee rights; rather, it is for Board to determine whether particular conduct violates general proscription of 1153(a).
CARIAN v. ALRB (1984) 36 Cal.3d 654

400.01 1153(a), like NLRA section 8(a)(1), proscribes wide range of employee conduct--including threats of reprisal, surveillance, interrogation, the barring of solicitation on company property--which does not fall into any other category of ULP, but can be said to interfere with, restrain, or coerce employees in exercise of their rights under 1152.

CARIAN v. ALRB (1984) 36 Cal.3d 654

400.01 In absence of union or other protected activities, it is not purpose of ALRA to vest in administrative board any control over employer's business policies.
NASH-DECAMP CO. v. ALRB (1983) 146 Cal.App.3d 92

400.01 Violation of 1153(a), unlike 1153(c), does not require proof of anti-union animus, unlawful motive, or discouragement of union activities. Section 1153(a) protects spontaneous concerted protests without union support if such protests are for employees' mutual aid and protection.
NASH-DECAMP CO. v. ALRB (1983) 146 Cal.App.3d 92

400.01 An independent violation of 1153(a) does not require proof of illegal employer motive. Test is whether employer's conduct reasonably tends to interfere with free exercise of employee rights under Act.
M. B. ZANINOVICH, INC. v. ALRB (1981) 114 Cal.App.3d 665

400.01 To establish violation under NLRA 8(a)(1), it is not necessary to show that employees were actually coerced or that employer intended to produce that effect. It is enough to show that employer's conduct would tend to coerce a reasonable employee.
M. B. ZANINOVICH, INC. v. ALRB (1981) 114 Cal.App.3d 665

400.01 Section 1155 establishes employer rights to free speech. Mere prediction of effect of unionization is not necessarily a ULP; statements must be viewed "in their entirety" considering "their total effect on the receiver."
ABATTI FARMS, INC. v. ALRB (1980) 107 Cal.App.3d 317

400.01 Evidence that an employee continued to wear union button after employer interrogations is not controlling. Test is reasonable tendency to interfere with employee rights, not actual coercion or interference. (Concurrence by Staniforth, J.)
ABATTI FARMS, INC. v. ALRB (1980) 107 Cal.App.3d 317

400.01 The test on appellate review is whether substantial evidence supports Board's findings that employer interrogation or expression contained threat of reprisal and reasonably tended to restrain or interfere with employees in exercise of their protected rights. (Concurrence by Staniforth, J.)
ABATTI FARMS, INC. v. ALRB (1980) 107 Cal.App.3d 317

400.01 Section 1153(a) of the Act was violated by employer who singled out a group of workers immediately after they engaged in protected concerted activity, who asked them to leave and return at some unspecified time when she would know the piece rate, and who then fired them when they entered the field and attempted to work by the hour with the rest of the crew.

CIENIGA FARMS, INC., 27 ALRB No. 5

401.01 Pursuant to O.P. Murphy Produce Co., Inc. (Dec. 12, 1978) 4 ALRB No. 106, the certified bargaining representative is entitled to take post-certification access to property not owned or leased by the agricultural employer if its bargaining-unit employees are performing agricultural services on the property. The definition of "employer's premises" shall not be narrowly defined to mean only property owned or leased by the agricultural employer. In order to effectuate the policies of the Act, "employer's premises" shall also include property in which the employer has no legal ownership or leasehold interest, if its agricultural employees are performing agricultural services on the property.
ROBERT H. HICKAM, 8 ALRB No. 102

400.01 Objectionable misconduct in the context of elections cannot be tested by the subjective individual reactions of employees. The test is whether the conduct, when measured by an objective standard, was such that it reasonably would tend to interfere with employee free choice.
GEORGE AMARAL RANCHES, INC., 38 ALRB No. 5

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

400.02 Repudiation Or Disavowal Of Unlawful Conduct

400.02 A farm operator engaging a person to supply agricultural workers is responsible for the unfair labor practices of that person absent a showing that, by public repudiation or by significant isolation of the unlawful practices from the operator's labor policy, such conduct by the supplier was unattributable to the operator.
SAHARA PACKING COMPANY, 11 ALRB No. 24

400.02 Coercive effects of threat not dispelled where supervisor did not repudiate other supervisor's conduct and coercive practices continued unabated after incident.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

400.02 Board properly rejected employer's attempted repudiation where notice to employee was ambiguous as to event and

people involved, contained a denial of responsibility, and failed to give future assurances.
J.R. NORTON CO. v. ALRB (1984) 162 Cal.App.3d 692

400.02 Voluntary employer repudiation of unlawful conduct is to be encouraged. To be effective, however, such repudiation must be timely, unambiguous, specific as to the coercive conduct, free from other illegal conduct, adequately published to the employees, and must contain assurances that conduct will not happen again.
J.R. NORTON CO. v. ALRB (1984) 162 Cal.App.3d 692

400.03 Inherently Destructive Conduct

400.03 Wholesale replacement of union with non-union employees has manifest and substantial adverse impact on organizational rights. Given such inherently destructive conduct, Board may require employer to justify his acts and may find ULP without reference to intent.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

400.03 Even if employer motive were a factor in 1153(a) violation, Board is free to disagree with ALJ by drawing inference of improper motive based on its finding that employer's conduct was inherently destructive of employee rights.
M. B. ZANINOVICH, INC. v. ALRB (1981) 114 Cal.App.3d 665

400.03 If employer's discriminatory conduct is "inherently destructive of employee rights", no proof of anti-union motivation is needed and Board can find ULP even if employer introduces evidence that its conduct was motivated by business considerations.
M. B. ZANINOVICH, INC. v. ALRB (1981) 114 Cal.App.3d 665

400.03 Assignment of "negative seniority" had effect of penalizing employees for participation in Board processes and was inherently destructive of important employee rights under Act.
M. B. ZANINOVICH, INC. v. ALRB (1981) 114 Cal.App.3d 665

401.00 COMPANY RULES AND ORDERS AFFECTING ORGANIZING; UNION ACCESS AND PRIVILEGES; SOLICITATION

401.01 In General

401.01 Questioning of an employee as to his or her sympathies or activities with a union by an employer's general manager tends to restrain or interfere with rights guaranteed the employee. However, where the views are volunteered by the employee, no interrogation can be said to have occurred.
DUKE WILSON COMPANY, 12 ALRB No. 19

401.01 Employer violated ALRA section 1153(a) by denying access to union organizers, where employer's interest in crop

protection was insufficient to outweigh need for organizers' access to workers.
UKEGAWA BROTHERS, INC., 9 ALRB No. 26

401.01 No violation found where employer interfered with workers' access to union food co-op since section 1152 of ALRA does not protect right of worker to be served food by union food service.
UKEGAWA BROTHERS, INC., 9 ALRB No. 26

401.01 Foreman did not violate Act when he instructed employees not to talk about politics, religion, or sports during working hours, and employer did not violate Act by building a fence around its parking lot.
STEAK-MATE, INC., 9 ALRB No. 11

401.01 Where a group of three employees was transferred from packing to picking grapes during a slowdown, the transfer did not violate the provisions of a collective bargaining contract or any company policy, and, there was no evidence that the transfer was intended to inhibit employee organization, the Board refused to find that the transfer of a Union supporter within the group of three was unlawful.
KARAHADIAN RANCHES, INC., 5 ALRB No. 37

401.01 The employer violated Labor Code section 1153(a) when it caused the sheriff to arrest two of the organizers who had gained access to the employer's property in compliance with the Board's access regulation.
PINKHAM PROPERTIES, 3 ALRB No. 15

401.01 Section 20900.5(c) of the Board's regulations (the "access" regulation; now section 20900(e)(4)(A)) permits access to the employer's property to two organizers for every work crew of up to 30 workers and an additional organizer for each additional 15 workers, or any part thereof. Therefore, given a single work crew of 46 workers, the union did not violate the "access rule" when 4 organizers entered the property and spoke with the crew members during their lunch break.
PINKHAM PROPERTIES, 3 ALRB No. 15

401.01 Unlawful interference where employer's son rammed UFW vehicles with his truck and tractor, and physically assaulted union representatives. Physical confrontations violate Act absent imminent need to secure persons from physical harm or property from material harm.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209 [Appendix]

401.01 Strike access is one form of post-certification access. In addition to providing union communication with nonstrikers about the strike, such access may be permitted to communicate about contract negotiations, to gather information about working conditions, and to form an employee committee.

ALRB v. CALIFORNIA COASTAL FARMS, INC. (1982) 31 Cal.3d 469

401.01 Questions or comments by company agents must be viewed in context of labor relations setting in which they are made. Board's determination as to what is coercive is normally one peculiarly within the discretion of the agency.
ABATTI FARMS, INC. v. ALRB (1980) 107 Cal.App.3d 317

401.01 No need to prove that employees wanted to talk to organizers at time employer had organizers arrested, since the test is objective--i.e., whether the conduct may reasonably be said to interfere with protected rights.
PANDOL & SONS v. ALRB (1979) 98 Cal.App.3d 580

401.01 Employer violates Act by ejecting all union organizers, though some may have exceeded numerical limit provided in Board's access regulation.
TEX-CAL LAND MANAGEMENT, INC. v. ALRB (1979) 24 Cal.3d 335

401.02 Employer-Owned Housing, Labor Camps; Company Towns

401.02 Pursuant to court remand, Board revised its labor camp access order, acknowledging the employer's right to establish reasonable time, place and manner restrictions on labor camp access.
SAM ANDREWS' SONS, 15 ALRB No. 1

401.02 On remand from Court of Appeals, Board modified its order allowing unrestricted organizer access to employer's labor camp, by limiting time and number of organizers. Board also followed Velez v. Armenta (D. Conn. 1974) 370 F.Supp. 1250 in allowing employer to question, under certain circumstances and for general nondiscriminatory security purposes only, non-residents seeking access to camp.
SAM ANDREWS' SONS, 11 ALRB No. 29

401.02 Employer owned and/or operated housing constitutes a condition of employment: (1) where employees receive the housing at a rental cost below the prevailing rate for comparable housing; (2) where other housing in the area of employment is in short supply and consequently there is a worker demand for company housing; or (3) where company housing is a necessary part of the enterprise and is provided to employees at such a low rate as to represent a substantial part of their enumeration.
HARRY CARIAN SALES, 9 ALRB No. 13

401.02 Employer violated section 1153(a) by threatening employee who brought union representative onto employer's property to talk with another employee who lived in a house on the employer's property; situation was analogous to right of labor-camp residents to receive union agents as visitors,

citing Sam Andrews' Sons (1982) 8 ALRB No. 87.
WILLIAM DAL PORTO & SONS, INC., 9 ALRB No. 4

401.02 The right to labor camp access flows directly from section 1152 of the ALRA, and does not depend on the "access" regulation; which only concerns work site access.
HIGH & MIGHTY FARMS, 6 ALRB No. 34

401.02 Under the ALRA, workers have the right to be contacted at their homes, including residential quarters at labor camps, by union organizers. This right of access is crucial to the proper function of the Act.
HIGH & MIGHTY FARMS, 6 ALRB No. 34

401.02 An agricultural employee's right to be contacted at home in a labor camp exists even where the organizers have not been specifically invited.
HIGH & MIGHTY FARMS, 6 ALRB No. 34

401.02 While an employee has the right to decline to speak to a union organizer, the employees' supervisor, employer, labor contractor, or landlord has no right to prevent such communication.
HIGH & MIGHTY FARMS, 6 ALRB No. 34

401.02 The employer violates the Act when its labor contractor--who leases the employer's labor camp--threatens physical violence against union organizers who attempt to speak with employees who reside at the camp.
FRUDDEN PRODUCE, INC., 4 ALRB No. 17

401.02 Employer violated section 1153(a) by posting guards at the entrance to its labor camp in an attempt to limit union's access to the camp to a one-hour period six days of the week.
SECURITY FARMS, 3 ALRB No. 81

401.02 Heavy burden will be with owner/ operator of labor camp to show that any rule restricting union access does not also restrict rights of tenant to be visited.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

401.02 Owner/operator of labor camp cannot exercise worker's right not to speak with organizer.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

401.02 Section 1152 guarantees right of employees to convene with organizers at home, wherever that home is.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

401.02 Denials of entry to labor camps constituted unlawful interference with free exercise of rights guaranteed to employees by Act.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

401.02 Interference with right of workers to be visited by union

organizers at their homes, regardless of where their homes are located or who their landlords are was a violation of section 1153(a).
SAM ANDREWS' SONS, 3 ALRB No. 45
ACCORD: SILVER CREEK PACKING CO., 3 ALRB No. 13

401.02 In proceedings before the ALRB to resolve a labor dispute regarding the right of access of a farm workers' union to workers housed in the grower's labor camps, the Board's order mandating unlimited and unrestricted access to the labor camp was overboard, since access rights are subject to reasonable time, place and manner regulation.
SAM ANDREWS' SONS v. ALRB (1988) 47 Cal.3d 157

401.02 The existence of alternative means of communication is relevant in determining the reasonableness of regulations governing labor camp access, since such access is subject to reasonable time, place and manner regulation.
SAM ANDREWS' SONS v. ALRB (1988) 47 Cal.3d 157

401.02 A grower is not precluded from making reasonable regulations governing union access to a communal bunkhouse so as not to impinge on the right of others in the group living situation not to suffer visits by unrestricted numbers of union representatives at any and all hours of the day and night.
SAM ANDREWS' SONS v. ALRB (1988) 47 Cal.3d 157

401.02 It is the grower, and not the Board, which has the right to make reasonable regulations as to camp access in the first instance.
SAM ANDREWS' SONS v. ALRB (1988) 47 Cal.3d 157

401.02 The workplace access rule, which requires inadequate alternative means of communication before a union may have workplace access to employees, is not fully applicable to agricultural labor camp access, since the right of agricultural employees and union representatives to exchange information at labor camps is guaranteed under Lab. Code sec. 1152.
SAM ANDREWS' SONS v. ALRB (1988) 47 Cal.3d 157

401.02 Farm workers' statutory right of union access, sometimes characterized as a right to be visited in the home, refers to the right to communicate with union representatives where the employees live.
SAM ANDREWS' SONS v. ALRB (1988) 47 Cal.3d 157

401.02 Employees have right, under 1152, to be visited in their homes by union organizers, even when they live in employer-owned labor camps.
KARAHADIAN RANCHES,INC. v. ALRB (1985) 38 Cal.3d 1

401.02 NLRB precedents allow non-employee access to employer's premises where usual channels of communication are ineffective; however, right to access must be limited and qualified to avoid unnecessary interference with

employer's property rights.
SAM ANDREWS' SONS v. ALRB (1984) 162 Cal.App.3d 923

401.02 Owner of labor camp cannot exercise privacy rights of resident farm workers who do not wish to be visited by union organizers.
SAM ANDREWS' SONS v. ALRB (1984) 162 Cal.App.3d 923

401.02 ALRB must apply NLRB precedent when determining whether denial of union organizer access to company-owned labor camp was violation of ALRA.
SAM ANDREWS' SONS v. ALRB (1984) 162 Cal.App.3d 923

401.02 Post-certification access to company-owned labor camp was unlawfully denied to union organizers where union proved it had no reasonable, practical, and effective alternative means of communicating with the workers. Company placed tarps over fences, forced organizers to ask guards to bring employees out to parking lot one by one, prohibited other meetings in the barracks, and generally blocked union access to employees over long period.
SAM ANDREWS' SONS v. ALRB (1984) 162 Cal.App.3d 923

401.02 Employer's use of law enforcement officers to prevent organizers from communicating with workers in labor camp does not make lawful an otherwise unlawful interference.
VISTA VERDE FARMS v. ALRB (1981) 29 Cal.3d 307

401.02 Employer's physical confrontation with union organizers and barring communication with workers in their labor camp homes constitutes interference, restraint, and coercion under 1153(a).
VISTA VERDE FARMS v. ALRB (1981) 29 Cal.3d 307

401.02 Labor camp residents have 1152 right to receive union representatives as visitors in their homes.
VISTA VERDE FARMS v. ALRB (1981) 29 Cal.3d 307

401.03 Nature Of Business; Nursery And Floral, Poultry And Egg Farms, Dairies, Etc.

401.04 Discrimination In Favor Of Other Solicitation; "Equal Opportunity"

401.04 NLRB precedent shows that an employer violates 1153(a) by allowing one union greater access to its employees than another union.
JASMINE VINEYARDS, INC. v. ALRB (1980) 113 Cal.App.3d 968

401.04 Board's finding that employer granted preferential access to Teamsters not affected by access provision in Teamster contract since provision didn't apply to solicitation of signatures.
ROYAL PACKING CO. v. ALRB. (1980) 101 Cal.App.3d 826

401.05 Possession Or Distribution Of Union Literature; Ban On

Distribution Or Solicitation

401.05 The employer unlawfully discharged an employee who had distributed a union button to another employee where although work time had commenced, the distribution caused no disruption of work because the employees were not actually working at the time of the distribution.
KARAHADIAN RANCHES, INC.,5 ALRB No. 37

401.05 The distribution of literature by union organizers taking access to an employer's property is an appropriate form of organizing under the ALRA.
PINKHAM PROPERTIES, 3 ALRB No. 15

401.05 No-solicitation rule, even if valid on its face, is unlawful if it is applied to restrict solicitation during "customary non-working interval" for which employees are being paid.
KARAHADIAN RANCHES,INC. v. ALRB (1985) 38 Cal.3d 1

401.05 Distribution of union literature by union organizers is within the activities permitted under the Board's access regulation.
TEX-CAL LAND MANAGEMENT, INC. v. ALRB (1979) 24 Cal.3d 335

401.06 Time Of Adopting Or Enforcing Rule

401.06 Change from suckering in rows to suckering in spaces, resulting in isolation of workers and preventing discussion of union and organizing, implemented during organizing drive and shortly after work stoppage, violated section 1153(a).
ARMSTRONG NURSERIES, INC., 9 ALRB No. 53

401.07 Pre-Certification Access (see section 302)

401.07 Where union failed to file Notice of Intent to Take Access, and therefore had no present right to access, employer committed no violation by changing break time so that work had resumed by the time union reappeared at work site.
SUMA FRUIT INT'L (USA), INC., 19 ALRB No. 14

401.07 Delay of access until most workers have left constitutes unlawful interference with access; interference with access not proven where evidence too vague, confused or contradictory to demonstrate that any delay or detention of access takers resulted in actual interference with access.
S & J RANCH, INC., 18 ALRB No. 2

401.07 Employer violated section 1153(a) by prohibiting access to parking lot until after employees quit for the day and by misleading union as to when employees' work day would end.
ANDREWS DISTRIBUTION CO., 15 ALRB No. 6

401.07 Employer violated ALRA section 1153(a) by denying access to union during period of time before Regional Director determined employer was subject to Act's jurisdiction.
ANDREWS DISTRIBUTION CO., 15 ALRB No. 6

401.07 On remand from Court of Appeals, Board modified its order allowing unrestricted organizer access to employer's labor camp, by limiting time and number of organizers. Board also followed Velez v. Armenta (D. Conn. 1974) 370 F.Supp. 1250 in allowing employer to question, under certain circumstances and for general nondiscriminatory security purposes only, non-residents seeking access to camp.
SAM ANDREWS' SONS, 11 ALRB No. 29

401.07 Employer violated ALRA section 1153(a) by denying access to union organizers, where employer's interest in crop protection was insufficient to outweigh need for organizers' access to workers.
UKEGAWA BROTHERS, INC., 9 ALRB No. 26

401.07 No violation found where employer interfered with workers' access to union food co-op since section 1152 of ALRA does not protect right of worker to be served food by union food service.
UKEGAWA BROTHERS, INC., 9 ALRB No. 26

401.07 Violation found where foreman, when union organizers were attempting to meet with workers at lunchtime, refused to leave when asked and instead placed himself at the center of the workers; conduct amounted to surveillance or impression thereof and interference with access under Board's regulations.
UKEGAWA BROTHERS, INC., 9 ALRB No. 26

401.07 Respondent's denial of access to shop by union organizers violated section 1153(a); Respondent's causing arrest and removal of organizers was an excessive and unreasonable reaction to their presence and constituted additional violation of section 1153(a).
ABATTI FARMS, INC., 5 ALRB No. 34

401.07 In determining whether Employer violated Union's right to access, Employer's contention that Union had alternative channels for communication with employees irrelevant under ALRA since 8 Cal. Admin. Code section 20900(e)(3)(A) clearly contemplates such access.
ABATTI FARMS INC., 5 ALRB No. 34

401.07 Employer's denial of access policy and actual denials of access interfered with employees' organizational rights guaranteed under Labor Code section 1152 in violation of Labor Code section 1153(c). Employer's defense that it was required to deny organizers access to steady employees who congregated each morning at shop on grounds access would disrupt only opportunity employees had to

assemble in one place, since they worked at widely scattered locations, rejected on basis of Board's finding that the gatherings were not work time.
ABATTI FARMS INC., 5 ALRB No. 34

401.07 Employer's supervisor's call to sheriff to remove union organizer from barracks room shared by two workers after one of the workers was unable to get the organizer to leave the room did not constitute a denial of access since supervisor's purpose was not to deprive employees of access to union information and organizer was present for social visit, rather than for organizing.
M. CARATAN, INC., 5 ALRB No. 16

401.07 Where the employer has several work crews which end their work days at different times over a period of several hours, it is not improper for the union to enter the area where each crew reports upon finishing work to contact each crew, even though the total period of such end-of-day access spans several hours.
GOURMET HARVESTING & PACKING, 4 ALRB No. 14

401.07 In the case of "excess access" by a labor organization, the Board refuses to set aside elections where there is "minimal and insubstantial encroachment" upon the employer's premises beyond the slope of the access rule, where no opposing union is disadvantaged and the "excess access" is not of such a character to have an intimidating or coercive impact on employers or in any way affect the outcome of the election, or when employers participate in a free and fair election and it cannot be fairly concluded that the misconduct affects the results of the election. (IHE Dec. at p. 7.)
GEORGE ARAKELIAN FARMS, INC., 4 ALRB No. 6

401.07 In order to set aside an election on the basis of "excess access," it must first be established that the violations took place and that the misconduct affected the results of the election. (IHE Dec. at p. 7.)
GEORGE ARAKELIAN FARMS, INC., 4 ALRB No. 6

401.07 Although there were numerous occasions of prework "excess access" by the UFW, Board found the conduct not to be of such a character as to affect employees' free choice of a collective bargaining representative, as there was no indication of any work disruption, coercion, or intimidation caused by union organizers during the prework visits and there was no opposing union disadvantaged by such "excess access." (IHE Dec. at p. 8.)
GEORGE ARAKELIAN FARMS, INC., 4 ALRB No. 6

401.07 Physical assaults by high company officials on union organizers seeking lawful access to the employer's fields in full view of the work force is a violation of section 1153(a) and warrants setting aside the election.
SECURITY FARMS, 3 ALRB No. 81

401.07 Heavy burden will be with owner/operator of labor camp to show that any rule restricting union access does not also restrict rights of tenant to be visited.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

401.07 Section 1152 guarantees right of employees to convene with organizers at home, wherever that home is.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

401.07 Owner/operator of labor camp cannot exercise worker's right not to speak with organizer.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

401.07 Denials of entry to labor camps constituted unlawful interference with free exercise of rights guaranteed to employees by Act.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

401.07 The employer violated Labor Code section 1153(a) when it caused the sheriff to arrest two of the organizers who had gained access to the employer's property in compliance with the Board's access regulation.
PINKHAM PROPERTIES, 3 ALRB No. 15

401.07 Section 20900.5(c) of the Board's regulations (the "access" regulation; now section 20900(e)(4)(A)) permits access to the employer's property to two organizers for every work crew of up to 30 workers and an additional organizer for each additional 15 workers, or any part thereof. Therefore, given a single work crew of 46 workers, the union did not violate the "access rule" when 4 organizers entered the property and spoke with the crew members during their lunch break.
PINKHAM PROPERTIES, 3 ALRB No. 15

401.07 Since the standard for reviewing allegations of election misconduct is whether the activity reasonably interfered with employees' ability to make a free choice concerning a collective bargaining representative, peaceful and nondisruptive organizational activity, even if accomplished through an arguable trespass, generally insufficient basis for setting aside election.
SAMUEL S. VENER CO., 1 ALRB No. 10

401.07 Unlawful denial of access to shop in early morning before employer began instructing workers as to day's work. Board finding that such access does not disrupt other kinds of work is "not inherently incredible."
ABATTI FARMS, INC. v. ALRB (1980) 107 Cal.App.3d 317

401.07 No need to prove that employees wanted to talk to organizers at time employer had organizers arrested, since the test is objective--i.e., whether the conduct may reasonably be said to interfere with protected rights.
PANDOL & SONS v. ALRB (1979) 98 Cal.App.3d 580

401.07 Organizers may distribute pamphlets while taking access, subject to usual limitation on disruption of farming operations.
PANDOL & SONS v. ALRB (1979) 98 Cal.App.3d 580

401.07 Employer violates Act by ejecting all union organizers, though some may have exceeded numerical limit provided in Board's access regulation.
TEX-CAL LAND MANAGEMENT, INC. v. ALRB (1979) 24 Cal.3d 335

401.07 Notwithstanding union representative's technical trespass upon employer's property, violent attacks upon him in presence of workers constitutes ULP.
PERRY FARMS INC. v. AGRICULTURAL LABOR RELATIONS BOARD (1978) 86 Cal.App.3d 448

401.07 ALRB access regulation, allowing unqualified right to pre-election access by union, is valid because of peculiar characteristics of agriculture workforce.
ALRB v. SUPERIOR COURT (PANDOL) (1976) 16 Cal.3d 392

401.08 Post-Certification Access

401.08 Absent compelling reasons, the Board will not, on remand from the Court, reopen access interference allegations in light of the existence of a presently harmonious bargaining relationship which has reached a negotiated agreement on access by union representatives to the work force.
SAM ANDREWS' SONS, 13 ALRB No. 7

401.08 Violation found where record did not clearly indicate the number of organizers taking work site access, since the burden of proof was on the employer to show that access was excessive.
SAM ANDREWS' SONS, 11 ALRB No. 5

401.08 Denial of access during period when employer is testing its obligation to bargain in court constitutes a presumptive interference with the rights of agricultural employees to maintain their ability to bargain collectively through representatives of their own choosing and therefore violates section 1153(a) of the Act.
F & P GROWERS ASSOCIATION, 10 ALRB No. 28
Accord: VENTURA COUNTY FRUIT GROWERS, INC., 10 ALRB No. 45

401.08 In citrus harvest setting, employer is under an affirmative obligation to make the union's access rights meaningful by providing a certain amount of information that will aid the union in locating crews that it wishes to contact.
F & P GROWERS ASSOCIATION, 10 ALRB No. 28
Accord: VENTURA COUNTY FRUIT GROWERS, INC., 10 ALRB

No. 45

401.08 Since the employer was able to show that the Union had adequate, alternative means of contacting its employees following the Union's certification, the employer did not violate the Act when it denied the Union past-certification access.
SUNNYSIDE NURSERIES, INC., 6 ALRB No. 52

401.08 In considering need for post-certification access, employer bears burden of overcoming presumption that there are no other adequate alternative means of communicating with employees.
F&P GROWERS ASSN. v. ALRB (1985) 172 Cal.App.3d 1127

401.08 Employer's failure to grant post-certification access constitutes a refusal to bargain in good faith and violates both 1153(e) and 1153(a).
F&P GROWERS ASSN. v. ALRB (1985) 172 Cal.App.3d 1127

401.08 Employer's failure to allow post-certification access by union independently violates 1153(a), especially where union has no other reasonable means of contacting employees.
F&P GROWERS ASSN. v. ALRB (1985) 172 Cal.App.3d 1127

401.08 Employer's failure to provide information necessary to taking post-certification access violates 1153(e) and 1153(a).
F&P GROWERS ASSN. v. ALRB (1985) 172 Cal.App.3d 1127

401.08 Post-certification access to company-owned labor camp was unlawfully denied to union organizers where union proved it had no reasonable, practical, and effective alternative means of communicating with the workers. Company placed tarps over fences, forced organizers to ask guards to bring employees out to parking lot one by one, prohibited other meetings in the barracks, and generally blocked union access to employees over long period.
SAM ANDREWS' SONS v. ALRB (1984) 162 Cal.App.3d 923

401.08 NLRB precedents allow non-employee access to employer's premises where usual channels of communication are ineffective; however, right to access must be limited and qualified to avoid unnecessary interference with employer's property rights.
SAM ANDREWS' SONS v. ALRB (1984) 162 Cal.App.3d 923

401.08 Board required employer to allow post-certification access to the employer's premises to communicate with employees about collective bargaining because of the rebuttable presumption that no effective alternative means of communication exist.
ALRB v. CALIFORNIA COASTAL FARMS, INC. (1982) 31 Cal.3d 469

401.08 Strike access is one form of post-certification access. In addition to providing union communication with nonstrikers about the strike, such access may be permitted to communicate about contract negotiations, to gather information about working conditions, and to form an employee committee.
ALRB v. CALIFORNIA COASTAL FARMS, INC. (1982) 31 Cal.3d 469

401.08 Pursuant to O.P. Murphy Produce Co., Inc. (Dec. 12, 1978) 4 ALRB No. 106, the certified bargaining representative is entitled to take post-certification access to property not owned or leased by the agricultural employer if its bargaining-unit employees are performing agricultural services on the property. The definition of "employer's premises" shall not be narrowly defined to mean only property owned or leased by the agricultural employer. In order to effectuate the policies of the Act, "employer's premises" shall also include property in which the employer has no legal ownership or leasehold interest, if its agricultural employees are performing agricultural services on the property.
ROBERT H. HICKAM, 8 ALRB No. 102

401.08 After a rival union files a Notice of Intent to Take Access or a petition for election, the incumbent-certified union may also take organizational access.
PATTERSON FARMS, INC., 8 ALRB No. 57

401.08 Union does not require access to represent replacement employees in order to fulfill its duty of fair representation.
BRUCE CHURCH, INC., 7 ALRB No. 20

401.08 Board rejected the employer's defense of bad-faith bargaining by the union, based in part upon access taken by the union. Such access is generally approved. Even though the union did not follow all of the Board's suggested procedures, the access taken was limited to a short period of time during negotiations.
O. P. MURPHY PRODUCE CO., INC., dba O. P. MURPHY & SONS, 5 ALRB No. 63

401.08 A certified bargaining representative is entitled to take post-certification access at reasonable times and places for any purpose relevant to collective bargaining with the employer as the exclusive representative of the employees in the unit.
O. P. MURPHY PRODUCE CO., INC., dba O. P. MURPHY & SONS, 4 ALRB No. 106

401.08 Board finds lack of available alternative channels of communication between union and unit employees is basis for right of post-certification access.
O. P. MURPHY PRODUCE CO., INC., dba O. P. MURPHY & SONS, 4 ALRB No. 106

401.08 Board establishes guidelines to be followed in Utilizing post-certification access.
O. P. MURPHY PRODUCE CO., INC., dba O. P. MURPHY & SONS, 4 ALRB No. 106

401.08 Board will evaluate the extent of the need for post certification access on a case-by-case approach.
O. P. MURPHY PRODUCE CO., INC., dba O. P. MURPHY & SONS, 4 ALRB No. 106

401.09 Access During Strike

401.09 Employer's temporary denial of strike access in response to numerous acts of serious picket line misconduct was not unlawful; Board overruled Bruce Church (1981) 7 ALRB No. 20, to the extent it required a showing that acts of violence were directly attributable to the taking of access before such access could be denied.
WEST FOODS, INC., 11 ALRB No. 17

401.09 Union representatives entry onto employer's land for purposes of communicating with non-striking workers about labor dispute does not constitute illegal trespass.
BANALES v. MUNICIPAL COURT (1982) 132 Cal.App.3d 67

401.09 Employer has no absolute constitutional property right to prohibit access to discuss issues during an economic strike. Employer attempt to base its constitutional claim on "privacy" does not give the claim any more merit than the property right claim.
ALRB v. CALIFORNIA COASTAL FARMS, INC. (1982) 31 Cal.3d 469

401.09 Strike access is one form of post-certification access. In addition to providing union communication with nonstrikers about the strike, such access may be permitted to communicate about contract negotiations, to gather information about working conditions, and to form an employee committee.
ALRB v. CALIFORNIA COASTAL FARMS, INC. (1982) 31 Cal.3d 469

401.09 Union representatives entitled to strike access to respondent's fields in accordance with the access granted in Bruce Church, Inc., 7 ALRB No. 20.
BERTUCCIO FARMS, 8 ALRB No. 70

401.09 Union representatives not entitled to strike access to respondent's packing sheds because general counsel presented no evidence that union lacked effective alternative means of communicating with non-striking shed employees.
BERTUCCIO FARMS, 8 ALRB No. 70

401.09 Strike access, according to an expert witness, tends to reduce strike violence. Where acts of violence or intimidation occur during a strike, the Board will

respond with appropriate injunction requests and post-adjudication review of unfair labor practice allegations. Strike access is not inherently coercive, rather it is necessary to free- and informed-employee choice and must be allowed under controlled circumstances.
GROWERS EXCHANGE, INC., 8 ALRB No. 7

401.09 It is unlawful to deny union access to employer's property for the purpose of communicating their strike message to non-striking employees.
BRUCE CHURCH, INC., 7 ALRB No. 20

401.09 Strike access facilitates the non-striking employees' ability to make an informed choice about whether to join the strike, as well as the striking employees' interest in conveying their strike message. Both interests are protected by section 1152.
BRUCE CHURCH, INC., 7 ALRB No. 20

401.09 Strike access will be permitted when picketing is ineffective and no adequate alternative means of communication exists.
BRUCE CHURCH, INC., 7 ALRB No. 20

401.09 Strike access will be limited both as to the number of access takers as well as to the frequency with which it is taken. One organizer will be permitted for every 15 employees. Access may be taken at lunchtime only.
BRUCE CHURCH, INC., 7 ALRB No. 20

401.10 Board Agent Access (see section 302)

401.10 Employer did not violate section 1153(a) by denying access to his premises to Board agents, since agents had no authority to enter property on work time to distribute information regarding decertification petitions.
JACK OR MARION RADOVICH, 9 ALRB No. 16

401.10 Employer violated section 1153(a) by refusing to allow Board agents access to its property in order to notify employees about the filing of an election petition and their right to vote for or against a union in a Board-conducted election.
STEAK-MATE, INC., 9 ALRB No. 11

401.11 Union Activity On Nonworking Time Or In Nonworking Areas

401.11 Employer interfered with employees' section 1152 rights when it ejected from its work area a former or off-duty employee who sought to discuss union activities with two employees during their lunchtime. Although a company rule prohibited unauthorized entry on company property for purposes other than work, the rule was customarily relaxed during lunchtime when employees were not actually working.
MAYFAIR PACKING COMPANY, 13 ALRB No. 20

401.11 On remand from Court of Appeals to place restrictions on labor camp access order, Board analogizes to solicitation on non-work-time cases for presumption that restrictions on labor camp organizer access are invalid.
SAM ANDREWS' SONS, 11 ALRB No. 29

401.11 Foreman did not violate Act when he instructed employees not to talk about politics, religion, or sports during working hours, and employer did not violate Act by building a fence around its parking lot.
STEAK-MATE, INC., 9 ALRB No. 11

401.11 Employer violated section 1153(a) by threatening employee who brought union representative onto employer's property to talk with another employee who lived in a house on the employer's property; situation was analogous to right of labor-camp residents to receive union agents as visitors, citing Sam Andrews' Sons (1982) 8 ALRB No. 87
WILLIAM DAL PORTO & SONS, INC., 9 ALRB No. 4

401.11 The employer unlawfully discharged an employee who had distributed a union button to another employee where although work time had commenced, the distribution caused no disruption of work because the employees were not actually working at the time of the distribution.
KARAHADIAN RANCHES, INC., 5 ALRB No. 37

401.11 Employer's denial of access policy and actual denials of access interfered with employees' organizational rights guaranteed under Labor Code section 1152 in violation of Labor Code section 1153(c). Employer's defense that it was required to deny organizers access to steady employees who congregated each morning at shop on grounds access would disrupt only opportunity employees had to assemble in one place, since they worked at widely scattered locations, rejected on basis of Board's finding that the gatherings were not work time.
ABATTI FARMS INC., 5 ALRB No. 34

401.11 Respondent's denial of access to shop by union organizers violated section 1153(a); Respondent's causing arrest and removal of organizers was an excessive and unreasonable reaction to their presence and constituted additional violation of section 1153(a).
ABATTI FARMS, INC., 5 ALRB No. 34

401.11 In determining whether Employer violated Union's right to access, Employer's contention that Union had alternative channels for communication with employees irrelevant under ALRA since 8 Cal. Admin. Code section 20900(e)(3)(A) clearly contemplates such access.
ABATTI FARMS INC., 5 ALRB No. 34

401.11 No-solicitation rule, even if valid on its face, is unlawful if it is applied to restrict solicitation during "customary non-working interval" for which employees are being paid.

KARAHADIAN RANCHES,INC. v. ALRB (1985) 38 Cal.3d 1

401.11 Labor camp residents have 1152 right to receive union representatives as visitors in their homes.
VISTA VERDE FARMS v. ALRB (1981) 29 Cal.3d 307

401.12 Bulletin Board Use By Union; Posting Of Union Notices

401.13 Display Of Union Insignia

401.14 Restrictions On Employee Organizing

401.14 Where union failed to file Notice of Intent to Take Access, and therefore had no present right to access, employer committed no violation by changing break time so that work had resumed by the time union reappeared at work site.
SUMA FRUIT INT'L (USA), INC., 19 ALRB No. 14

401.14 Change from suckering in rows to suckering in spaces, resulting in isolation of workers and preventing discussion of union and organizing, implemented during organizing drive and shortly after work stoppage, violated section 1153(a).
ARMSTRONG NURSERIES, INC., 9 ALRB No. 53

401.14 Foreman did not violate Act when he instructed employees not to talk about politics, religion, or sports during working hours, and employer did not violate Act by building a fence around its parking lot.
STEAK-MATE, INC., 9 ALRB No. 11

402.00 QUESTIONING EMPLOYEES; INTERROGATION

402.01 In General

402.01 In accord with Sunnyvale Medical Clinic, Inc. (1985) 277 NLRB 1217, Board will examine all the surrounding circumstances to determine if interrogation would tend to be coercive, even where employees are not open and active union supporters.
OASIS RANCH MANAGEMENT, INC., 18 ALRB No. 11

402.11 A discharge based on an employer's mistaken belief that an employee engaged in misconduct is not unlawful if it is not in retaliation for protected, concerted activity.
E. W. MERRITT FARMS, 14 ALRB No. 5 (ALJD)

402.01 A supervisor unlawfully interrogated an employee when after asking the employee where he had been, the supervisor called him a liar and said the employee had been seen at the UFW's offices. (ALJD)
KARAHADIAN RANCHES, INC., 5 ALRB No. 37

402.01 Supervisor unlawfully interrogated the employee when he asked the employee about his union sympathies during the

above incident. (ALJD)
KARAHADIAN RANCHES, INC., 5 ALRB No. 37

402.01 The employer unlawfully interrogated an employee when after meeting him in the field, the employer asked the employee, "How's Chavey, didn't he shoot your friend?"
KARAHADIAN RANCHES, INC., 5 ALRB No. 37

402.01 Interrogation of employees is not a per se violation of the Act, but it does constitute a violation when it tends to coerce, restrain, or interfere with employees' section 1152 rights, citing Blue Flash Express, Inc. (1954) 109 NLRB 591 [34 LRRM 1384]; Akitomo Nursery (1977) 3 ALRB No. 73. Applying that standard, Board found such a violation in a supervisor's questioning of employee shortly after she signed union authorization card since supervisor gave employee no reason for his question and failed to assure her no reprisal would be taken based on her answer. Board held that, under such circumstances, employees' subjective reaction to the alleged interrogation is irrelevant and Board makes an objective finding based on all the circumstances.
ABATTI FARMS, INC., 5 ALRB No. 34

402.01 Only those interrogations which tend to interfere with or restrain the exercise of section 1152 rights violate the ALRA.
MAGGIO-TOSTADO, INC., 3 ALRB No. 33

402.01 Only those interrogations which tend to interfere with or restrain the exercise of section 1152 rights violate the ALRA.
MAGGIO-TOSTADO, INC., 3 ALRB No. 33

402.01 Finding of unlawful interrogation does not turn on employer's intent, but on whether employees could reasonably perceive conduct as requiring them to indicate whether they wished to communicate with union organizers.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209 [Appendix]

402.01 Board determination that questioning was coercive, based on totality of circumstances, was consistent with new NLRB rule announced in Rossmore House (1984) 269 NLRB 198.
KARAHADIAN RANCHES, INC. v. ALRB (1985) 38 Cal.3d 1

402.01 Supervisor unlawfully interrogated employee about identity of union organizer, where supervisor obviously already knew that labor camp visitor was an organizer.
KARAHADIAN RANCHES, INC. v. ALRB (1985) 38 Cal.3d 1

402.01 ALRB may find interrogation unlawful; indeed, argument for doing so is stronger under ALRA than under NLRA, since under ALRA employer may not voluntarily recognize union and therefore has no need to ascertain union's majority status.

CARIAN v. ALRB (1984) 36 Cal.3d 654

402.01 Where interrogation is isolated, it is for Board to determine whether, in light of surrounding circumstances, a violation occurred.
PROHOROFF POULTRY FARMS v. ALRB (1980) 107 Cal.App.3d 622

402.01 Evidence that an employee continued to wear union button after employer interrogations is not controlling. Test is reasonable tendency to interfere with employee rights, not actual coercion or interference. (Concurrence by Staniforth, J.)
ABATTI FARMS, INC. v. ALRB (1980) 107 Cal.App.3d 317

402.01 Criteria for determining whether employer interrogation was coercive under all the circumstances include: whether employer (a) communicated to employees a legitimate purpose for questioning, (b) gave assurances that no reprisal would take place, and (c) did questioning in atmosphere free of employer hostility to union organizing. Also relevant are (d) timing, (e) nature of information sought, (f) truthfulness of employee's answer, and (g) relationship of personnel involved. Application of these criteria in agricultural further requires consideration of non-English speaking, migrant nature of agricultural workers. (Concurrence by Staniforth, J.)
ABATTI FARMS, INC. v. ALRB (1980) 107 Cal.App.3d 317

402.01 The test on appellate review is whether substantial evidence supports Board's findings that employer interrogation or expression contained threat of reprisal and reasonably tended to restrain or interfere with employees in exercise of their protected rights. (Concurrence by Staniforth, J.)
ABATTI FARMS, INC. v. ALRB (1980) 107 Cal.App.3d 317

402.02 Questioning Applicants; Employment Applications; Conditions Of Employment

402.02 Adoption of documentation procedures for identifying returning ULP strikers reasonable in light of extended passage of time since inception of strike and limitations on contemporaneous court injunction ordering employer to reinstate only those strikers who had previously submitted written offers to return; delays in reinstatement resulting from such procedures to be remedied in compliance phase of earlier case.
LU-ETTE FARMS, INC., 10 ALRB No. 20

402.02 A supervisor unlawfully interrogated two employees when hiring them when he asked about their union membership then told them not to join the UFW. (ALJD)
KARAHADIAN RANCHES, INC., 5 ALRB No. 37

402.03 Union Activities Or Membership

402.03 Labor consultants' asking worker why they wanted a union unlawful where interrogation took place less than a day after election petition was filed, consultants did not identify whom they represented, questioning was done in formal manner during work time, and worker was not an open and active union supporter. Interrogation unlawful where not known until the next day that consultants represented the company, as chilling effect need not be immediate. Along with other circumstances, asking workers what problems they had and offering to help resolve them unlawful where consultants misrepresented that they were from the state. Merely asking what problems the workers had with the company, absent other circumstances, not unlawful. Supervisor did not commit violation by asking employee "man to man, not like foreman to employee," if he signed petition for the union, where questioning was done in a casual and friendly manner, where foreman immediately told employee he would not be inclined in upcoming layoff, and employee not aware of previous unlawful conduct by supervisor or labor consultants.
OASIS RANCH MANAGEMENT, INC., 18 ALRB No. 11

402.03 Questioning of an employee as to his or her sympathies or activities with a union by an employer's general manager tends to restrain or interfere with rights guaranteed the employee. However, where the views are volunteered by the employee, no interrogation can be said to have occurred.
DUKE WILSON COMPANY, 12 ALRB No. 19

402.03 Employer may question non-residents seeking access to labor camp, under certain specific circumstances and for general nondiscriminatory security purposes.
SAM ANDREWS' SONS, 11 ALRB No. 29

402.03 The employer unlawfully interrogated an employee when after meeting him in the field, the employer asked the employee, "How's Chavey, didn't he shoot your friend?"
KARAHADIAN RANCHES, INC., 5 ALRB No. 37

402.03 The same supervisor unlawfully interrogated the employee when he asked the employee about his union sympathies during the above incident. (ALJD)
KARAHADIAN RANCHES, INC., 5 ALRB No. 37

402.03 Interrogation of employees is not a per se violation of the Act, but it does constitute a violation when it tends to coerce, restrain, or interfere with employees' section 1152 rights, citing Blue Flash Express, Inc. (1954) 109 NLRB 591 [34 LRRM 1384]; Akitomo Nursery (1977) 3 ALRB No. 73. Applying that standard, Board found such a violation in a supervisor's questioning of employee shortly after she signed union authorization card since supervisor gave employee no reason for his question and failed to assure her no reprisal would be taken based on her answer. Board held that, under such circumstances, employees' subjective reaction to the alleged

interrogation is irrelevant and Board makes an objective finding based on all the circumstances.
ABATTI FARMS, INC., 5 ALRB No. 34

402.03 Employer's questioning of employees about their union sympathies, when employer's anti-union position was well-known, when it expressed no assurance against reprisals and when there was no necessity for employer to ascertain the union's majority status, tended to restrain or interfere with employees' rights under the Act and was a violation of section 1153(a).
AKITOMO NURSERY, 3 ALRB No. 73

402.03 A supervisor unlawfully interrogated an employee when he asked about her union sympathies after telling her that he was going to fire all of the UFW sympathizes in his crew.
MAGGIO-TOSTADO, INC., 3 ALRB No. 33

402.03 A supervisor unlawfully interrogated an employee when he asked about her union sympathies after telling her that he was going to fire all of the UFW sympathizes in his crew.
MAGGIO-TOSTADO, INC., 3 ALRB No. 33

402.03 Employer violated section 1153(a) where foreman asked employee if he had a union button and if he had an organizing list.
ABATTI FARMS, INC. v. ALRB (1980) 107 Cal.App.3d 317

402.03 Owner of company did not unlawfully interrogate employees where he asked a group of employees why they were supporting the union and whether he wasn't a good boss, where owner did not seem to expect an answer but instead was expressing concern and frustration, and any possible coercive effect was mitigated by owner's son immediately signaling his father to stop.
TSUKIJI FARMS, 24 ALRB No. 3

402.04 Lie Detector Tests

402.05 Union Views; Voting; Questionnaires; Polling Of Employees

402.05 Employer interrogated and coerced employees in violation of section 1153(a) by its agent's circulation of petition opposing disclosure of employees' names and addresses to union; employer also interrogated its employees by its supervisor's question at a worker education meeting, "Who of you want Marcial and his union to visit you in your homes?"
V. B. ZANINOVICH& SONS, 9 ALRB No. 54

402.05 Employer's conducting of employee poll of union sentiment shortly after the end of the certification year held to be unlawful interrogation in violation of section 1153(a) of the Act, absent objective evidence on which employer could base a reasonable doubt as to the union's continued

majority status.
BEE & BEE PRODUCE, INC., 6 ALRB No. 48

402.05 Notwithstanding fact that supervisor and employee are personal friends, former's questions regarding employee's union activities and his instructions to cease organizing were held to be violations of section 1153(a).
OCEANVIEW FARMS, INC., 5 ALRB No. 71

402.05 Questioning an Employee about his or her vote immediately preceding a representation election, particularly where the employer's anti-union animuses known, violates section 1153(a) even though question asked in amicable manner.
ABATTI FARMS, INC., 5 ALRB No. 34

402.05 Employer's use of "employee information" cards to gather preelection petition list petition list information, where employer stated that employees had option of refusing to supply the information, constitutes interrogation in violation of section 1153(a) in that the workers were in effect being asked to disclose their attitudes for or against the union by giving or refusing to give their addresses.
LAFLIN AND LAFLIN, et al., 4 ALRB No. 28

402.05 Employees were interrogated in violation of section 1153(a) where employer approached workers and asked them for either their home address if they desired to be visited by UFW representatives or a written refusal based on their desire not to be so visited.
TENNECO WEST, INC., 3 ALRB No. 92

402.05 Employer's questioning of employees about union and union sympathies together with threats to plant alfalfa and thereby eliminate job if the union came in, held to be unlawful interrogation in violation of section 1153(a) of the Act.
ARNAUDO BROS. INC., 3 ALRB No. 78

402.05 Where employer's general manager initiated a conversation with an employee's organizer, in which manager asked the employee if he was involved in organizational activities, employer violated section 1153(a). Questioning an employee as to his/her views, sympathies, or activities with the union tends to restrain or interfere with the collective rights guaranteed by the Act.
ROD McLELLAN CO., 3 ALRB No. 71

402.05 Petition seeking employee corroboration that company did not threaten workers and requesting workers to confirm that they voted "anyway they wanted" constituted unlawful interrogation.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

402.05 Employer violated 1153(a) by asking employees to fill out information cards which, inter alia, attempted to

discover employee attitudes regarding union or ALRB.
CARIAN v. ALRB (1984) 36 Cal.3d 654

402.05 Interrogation of employees as to union sympathies conducted in context of other ULP's is coercive and violates Act.
PROHOROFF POULTRY FARMS v. ALRB (1980) 107 Cal.App.3d 622

402.05 Violation where supervisor asked employee on several occasions how she was going to vote in election.
ABATTI FARMS, INC. v. ALRB (1980) 107 Cal.App.3d 317

402.06 Attendance Or Transactions At Union Meetings

402.06 Employer violated section 1153(a) by foreman's questioning employees about a meeting, statement that he was going to find out who the "agitators "were and get rid of them, and advising employees not to talk to workers from the state.
D'ARRIGO BROTHERS COMPANY OF CALIFORNIA, 9 ALRB No. 3

402.06 A supervisor unlawfully interrogated an employee when after asking the employee where he had been, the supervisor called him a liar and said the employee had been seen at the UFW's offices. (ALJD)
KARAHADIAN RANCHES, INC., 5 ALRB No. 37

402.07 Assistance Sought In Board Or Court Proceedings; Check On Union's Representation Claim Or Pretrial Statements

402.07 Request to supervisor to inform himself as to what employees saying about company and union, given unclear character of supervisor's testimony, insufficient to establish that supervisor directed to engage in coercive interrogation.
GERAWAN RANCHES, 18 ALRB No. 5

402.07 Dissent: Request to supervisor to inform himself about what employees were saying about company and union, given widespread discrimination and coercion present in this case, amounts to direction to engage in unlawful interrogation.
GERAWAN RANCHES, 18 ALRB No. 5

402.07 Petition seeking employee corroboration that company did not threaten workers and requesting workers to confirm that they voted "anyway they wanted" constituted unlawful interrogation.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

402.08 Strike Or Other Protected Concerted Activity; Anticipated Strike

402.08 The Board rejected employer's defense of bad faith bargaining by the union. Access taken during negotiations is generally approved and union's access here was limited to a short period during negotiations. Conduct of

employees in submitting a petition to the employer held not attributable to the union.
O.P. MURPHY & SONS, 5 ALRB No. 63

403.00 SURVEILLANCE

403.01 In General; What Constitutes Unlawful Surveillance

403.01 Request to supervisor to inform himself as to what employees saying about company and union, given unclear character of testimony, insufficient to establish that supervisor directed to engage in unlawful surveillance.
GERAWAN RANCHES, 18 ALRB No. 5

403.01 Dissent: Request to supervisor to inform himself about what employees were saying about company and union, given widespread discrimination and coercion present in this case, amounts to direction to engage in unlawful surveillance.
GERAWAN RANCHES, 18 ALRB No. 5

403.01 Labor contractor engaged in unlawful surveillance when he followed access takers, exhorted workers that only he could give them work, and gave "hard" looks to employees who talked to access takers; employer unlawfully created impression of surveillance when supervisors and guards, even though out of earshot, regularly observed access; employer's proffered justification for the observation, fear of violence, not supported by the record.
S & J RANCH, INC., 18 ALRB No. 2

403.01 No violation where foreman and subforeman ate lunch in an area where union organizers were attempting to meet with employees; illegal surveillance must be based upon more than a showing that a supervisor was in an area where he had a right to be during the time organizers are attempting to speak to workers in the area.
UKEGAWA BROTHERS, INC., 9 ALRB No. 26

403.01 Violation found where foreman, when union organizers were attempting to meet with workers at lunchtime, refused to leave when asked and instead placed himself at the center of the workers; conduct amounted to surveillance or impression thereof and interference with access under Board's regulations.
UKEGAWA BROTHERS, INC., 9 ALRB No. 26

403.01 Employer conducted unlawful surveillance where foremen spied on union water deliveries and where foreman was present near the union food co-op area without plausible explanation, in a non-work area on non-work time.
UKEGAWA BROTHERS, INC., 9 ALRB No. 26

403.01 Use of motion picture camera to record employee participation in protected concerted activity found to be violative of ALRA.

ALPINE PRODUCE, 9 ALRB No. 12

403.01 Impression of surveillance created by sup statements that aware of where and when Union meetings held and who attended.
NASH-DE CAMP COMPANY, 8 ALRB No. 5

403.01 A supervisor engaged in an unlawful surveillance or unlawfully created an impression of surveillance where he (1) asked an employee if his companion was from the UFW; (2) stood at the door of the kitchen and seemed to have listened to a conversation between the employee and a UFW agent; and (3) asked the UFW agent as he left whether he was from the Union. (ALJD)
KARAHADIAN RANCHES, INC., 5 ALRB No. 37

403.01 By placing a security guard at gate and permitting him to interrupt conversations between employees and organizers in the vicinity of the gate, Respondent engaged in surveillance of employees or created the impression of surveillance, thereby interfering with the employees exercise of section 1152 rights in violation of section 1153(a).
ABATTI FARMS, INC., 5 ALRB No. 34

403.01 Supervisor held to have engaged in surveillance of employees at a union meeting, convened for the purpose of selecting delegates for a forthcoming union convention, by sitting among the employees and refusing to leave when requested to do so. Although supervisor did not participate in or otherwise obstruct the progress of the meeting, his mere presence had a chilling effect to such extent that the meeting was terminated.
M. CARATAN, INC., 5 ALRB No. 16

403.01 The Board concluded that a supervisor's presence at an unscheduled union meeting in a labor camp's TV room, where the supervisor had as much right to be as the workers, did not constitute unlawful surveillance or interference.
M. CARATAN, INC., 5 ALRB No. 16

403.01 Statement by labor contractor's chief assistant that "she pitied workers who voted for union as immigration police was going to deport them," as well as conduct in arranging for surveillance of crew violates section 1153(c). Conduct attributable to employer. IHED pp. 22-23.
PAUL W. BERTUCCIO and BERTUCCIO FARMS, 5 ALRB No. 5

403.01 No violation or surveillance where company merely stationed guard at gate, absent evidence of unnecessary intimidation or interference with employee communication.
ABATTI FARMS, INC. v. ALRB (1980) 107 Cal.App.3d 317

403.02 Taking Photographs Or Motion Pictures (see section 406.06)

403.02 While the taking of video or still pictures of picketers trespassing on private property is lawful, the taking of such pictures of peaceful picketers on public property constitutes unlawful surveillance.
MICHAEL HAT FARMING CO., 19 ALRB No. 13

403.02 Photographing of returned strikers at work without their consent and against their wishes, while not constituting surveillance because employees not engaged in protected activity, violated Act as part of overall scheme of harassment and intimidation against returning strikers.
LU-ETTE FARMS, INC., 10 ALRB No. 20

403.02 Use of motion picture camera to record employee participation in protected concerted activity found to be violative of ALRA.
ALPINE PRODUCE, 9 ALRB No. 12

403.02 Surveillance by supervision of (photography and tape recording union organizer - worker conversations during lunch time) violated section 1153(a).
ANDERSON FARMS COMPANY, 3 ALRB No. 67

403.03 Eavesdropping

403.03 A supervisor engaged in an unlawful surveillance or unlawfully created an impression of surveillance where he (1) asked an employee if his companion was from the UFW; (2) stood at the door of the kitchen and seemed to have listened to a conversation between the employee and a UFW agent; and (3) asked the UFW agent as he left whether he was from the Union. (ALJD)
KARAHADIAN RANCHES, INC., 5 ALRB No. 37

403.03 Makewhole relief appropriate where union prevails in election by sizeable margin, employer's evidentiary objections to Board's ruling were neither substantial nor of a nature that have affected outcome of election, and workers have endured a prolonged delay.
LINDELEAF v. ALRB (1986) 41 Cal.3d 861

403.03 The Board properly awarded makewhole relief because "neither the objections which were dismissed by the Executive Secretary nor those which were the subject of a hearing raised novel questions of statutory interpretation or difficult legal issues. "This is not close case "raising important issues concerning whether the election was conducted in a manner that truly protected employees right of free choice."
LINDELEAF v. ALRB (1986) 41 Cal.3d 861

403.03 Supervisors' repeated presence near conversations between union organizers and workers was unlawful surveillance, notwithstanding fact that it occurred in "common areas."
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209
[Appendix]

403.03 Unlawful surveillance where employer's son followed organizers around as they attempt to speak with workers during lunch break.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209 [Appendix]

403.03 Supervisor engaged in surveillance by surreptitiously eavesdropping on conversation between union lawyer and employee.
KARAHADIAN RANCHES,INC. v. ALRB (1985) 38 Cal.3d 1

403.04 Statements To Employees As To Surveillance; Creating Impression Of Surveillance

403.04 Statement by supervisor to employee that company knew he was the union leader does not constitute unlawful interrogation, but does unlawfully create the impression of surveillance.
OASIS RANCH MANAGEMENT, INC., 18 ALRB No. 11

403.04 Labor contractor engaged in unlawful surveillance when he followed access takers, exhorted workers that only he could give them work, and gave "hard" looks to employees who talked to access takers; employer unlawfully created impression of surveillance when supervisors and guards, even though out of earshot, regularly observed access; employer's proffered justification for the observation, fear of violence, not supported by the record.
S & J RANCH, INC., 18 ALRB No. 2

403.04 A supervisor engaged in an unlawful surveillance or unlawfully created an impression of surveillance where he (1) asked an employee if his companion was from the UFW; (2) stood at the door of the kitchen and seemed to have listened to a conversation between the employee and a UFW agent; and (3) asked the UFW agent as he left whether he was from the Union. (ALJD)
KARAHADIAN RANCHES, INC., 5 ALRB No. 37

403.04 By placing a security guard at gate and permitting him to interrupt conversations between employees and organizers in the vicinity of the gate, Respondent engaged in surveillance of employees or created the impression of surveillance, thereby interfering with the employees exercise of section 1152 rights in violation of section 1153(a).
ABATTI FARMS, INC., 5 ALRB No. 34

403.04 Supervisor violated the Act, giving impression of surveillance, by reading aloud the names of union supporters.
ROYAL PACKING CO., 5 ALRB No. 31

403.04 Employer's characterization of employee as paid union agent during angry exchange of comments at public meeting did not create impression of surveillance.

M. CARATAN, INC., 4 ALRB No. 83

403.04 Employer's comments to workers about their union activities as well as the activities of others would reasonably be expected to create in the mind of the worker the conclusion that his participation in union activities was known to the Employer and that the Employer's knowledge of such affairs was obtained from surveillance, since the union activities of the two workers in question was not so overt as to be matters of public knowledge.
ARNAUDO BROS. INC., 3 ALRB No. 78

403.04 Supervisor's reading aloud to crew names of UFW supporters listed in organizer's notebook created impression of surveillance and thereby interfered with employees' section 1152 rights.
ROYAL PACKING CO. v. ALRB. (1980) 101 Cal.App.3d 826

403.05 Information Sought Through Or Obtained By Ordinary Employees Informers

403.06 Management Representatives At Or Near Union Meetings

403.06 No violation where foreman and subforeman ate lunch in an area where union organizers were attempting to meet with employees; illegal surveillance must be based upon more than a showing that a supervisor was in an area where he had a right to be during the time organizers are attempting to speak to workers in the area.
UKEGAWA BROTHERS, INC., 9 ALRB No. 26

403.06 Violation found where foreman, when union organizers were attempting to meet with workers at lunchtime, refused to leave when asked and instead placed himself at the center of the workers; conduct amounted to surveillance or impression thereof and interference with access under Board's regulations.
UKEGAWA BROTHERS, INC., 9 ALRB No. 26

403.06 Where a supervisor attended Union meetings after being invited by two unit employees and there was no objection made to his presence, the employer was held not to have engaged in unlawful surveillance.
SUNNYSIDE NURSERIES, INC., 6 ALRB No. 52

403.06 Supervisor's solicitation of an employee to spy on his fellow employees and to obtain information which could be used against the union held to be a violation of section 1153(a).
M. CARATAN, INC., 5 ALRB No. 16

403.06 The Board concluded that a supervisor's presence at, and participation in, an informal discussion among employees and a union agent at a customary gathering place in the yard of a labor camp, where the supervisor and employees lived, did not constitute unlawful surveillance.

M. CARATAN, INC., 5 ALRB No. 16

403.06 No unlawful surveillance where two supervisors, one an owner, went to Union meeting on Company property to determine who had invited a Union organizer and left when that question was answered. Other Union meetings held and no complaints of surveillance.
TREFETHEN VINEYARDS, 4 ALRB No. 19

403.06 Company supervisors did not engage in surveillance of employees' union activities taking place in a public park, where supervisors were conducting legitimate business across the street from the park, were not closely monitoring the employees' activities, and evidence did not establish that they remained near the union gathering for any significant amount of time after their legitimate business was done.
TRIPLE E PRODUCE CORP., 23 ALRB No. 8

404.00 STATEMENTS, MEETINGS, NOTICES, AND LEAFLETS

404.01 In General

404.01 Absent evidence of threats or promises in supervisor's post-certification statements to employees to effect "union not worth a damn," "union doesn't mean much to me," futile to wear union buttons, "take them off [since] union won't do you any good" and frequent references to employees as "Chavistas," "asshole Chavistas" and sons of bitches no more than expression of opinion protected by section 1155 and thus statements cannot constitute unfair labor practices.
GOURMET HARVESTING & PACKING, INC., AND GOURMET FARMS, 14 ALRB No. 9

404.01 Remarks by employers to employees which contain neither threats of force or reprisal, nor promises of benefits, are protected by the free speech provisions of section 1155 and thus cannot be used to prove independent violations of section 1153(a) or serve to provide motivation for other alleged violations of the Act.
GOURMET HARVESTING & PACKING, INC., AND GOURMET FARMS, 14 ALRB No. 9

404.01 Disparaging remarks about union adherents or expressions of hostility toward employees due to their protected activity, even though made in an "offhand humorous manner" may be deemed violative of the act, particularly when uttered during the course of a union organizational campaign.
GOURMET HARVESTING & PACKING, INC., AND GOURMET FARMS, 14 ALRB No. 9

404.01 Section 1155 implements the First Amendment and specifically establishes an employer's freedom of speech absent threats of reprisal or force, or promises of

benefit.
GOURMET HARVESTING & PACKING, INC., AND GOURMET FARMS, 14 ALRB No. 9

404.01 Isolated comments, not accompanied by threats or promises of benefits, and uttered outside the context of an organizational campaign, are less likely to interfere with protected rights.
GOURMET HARVESTING & PACKING, INC., AND GOURMET FARMS, 14 ALRB No. 9

404.01 Letter from company negotiator to union negotiator declaring that contractual obligation to hire family members of current workers was being discontinued was not a violation of section 1153(a) since there was no evidence that the statement was addressed to or in any other way reached the employees.
TEX-CAL LAND MANAGEMENT, INC., ET AL., 12 ALRB No. 26

404.01 Employer's statement found in one case or context to be non-coercive has not thereby received Board approval applicable to later cases. Under NLRB v. Gissel Packing (1969) 395 U.S. 575, [71 LRRM 2481], statements must be evaluated in light of all circumstances and evidence adduced at hearing, i.e., on a case-by-case basis rather than in accordance with any per se rule.
KARAHADIAN RANCH, INC., 4 ALRB No. 69

404.01 Whether statements are coercive is normally a question peculiarly within Board's discretion, due to Board's special sensitivity to effects of speech in labor context.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209 [Appendix]

404.01 Otherwise isolated reference by employer to shooting of employee by union president was coercive when viewed in context of other violations and anti-union animus.
KARAHADIAN RANCHES,INC. v. ALRB (1985) 38 Cal.3d 1

404.01 Limitations on employer's free speech rights are greater in the context of nascent union organizational drive.
PROHOROFF POULTRY FARMS v. ALRB (1980) 107 Cal.App.3d 622

404.01 Employer's free speech rights must be balanced against employee's economic dependence on employer to determine whether speech is prohibited under Act.
PROHOROFF POULTRY FARMS v. ALRB (1980) 107 Cal.App.3d 622

404.01 Employer statements are constitutionally protected unless they contain "threat of reprisal or force, or promise of benefit."
PROHOROFF POULTRY FARMS v. ALRB (1980) 107 Cal.App.3d 622

404.02 Timing Of Conduct

404.03 Meetings And Speeches On Company Time And Property

404.03 Employer's comparison of contract benefits to pre-union benefits, like comparison to existing non-union ranch benefits, does not constitute implied promise of benefits in violation of section 1153(a) where comparison made in response to union's claims and employer expressly disclaimed intent to make promise; Board reversed in part, Jack or Marion Radovich, 9 ALRB No. 16.
JACK OR MARION RADOVICH, 10 ALRB No. 1

404.03 Employer's campaign speech four days before decertification election did not violate Act.
JACK OR MARION RADOVICH, 9 ALRB No. 45

404.03 Violation found in extra-textual remarks of employer's agent after presentation of prepared speech, to the effect that the union would send workers to immigration authorities.
UKEGAWA BROTHERS, INC., 9 ALRB No. 26

404.03 Employer speech to employees that contained references to "the ALRB, the government" and "outsiders" not unlawful because it contained no threat, promise of benefit or coercive statement.
UKEGAWA BROTHERS, INC., 9 ALRB No. 26

404.03 Employer's anti-union campaign (which included weekly meetings between employees and supervisors, distribution of pro-company buttons, and posting of union caricatures) was protected free speech and contained no unlawful threats or promises that would tend to prove anti-union animus.
MONROVIA NURSERY COMPANY, 9 ALRB No. 15

404.04 Appeals For Individual Bargaining Or Individual Grievance Presentation

404.04 Employer's advertisements and leaflets criticizing union and its bargaining position were fair expression of employer's views, protected by 1155, and not attempt to negotiate directly with workers.
CARL JOSEPH MAGGIO, INC. v. ALRB (1984) 154 Cal.App.3d 40

404.05 Appeals To Loyalty; Anti-union Campaign And Insignia

404.05 Employer's distribution of "Vive la Uva" buttons during decertification campaign did not violate Act.
JACK OR MARION RADOVICH, 9 ALRB No. 45

404.05 Employer's anti-union campaign (which included weekly meetings between employees and supervisors, distribution of pro-company buttons, and posting of union caricatures) was protected free speech and contained no unlawful threats or promises that would tend to prove anti-union animus.
MONROVIA NURSERY COMPANY, 9 ALRB No. 15

404.05 Supervisor's posting of unfair labor practice charges, coupled with foreman's statement that employees who signed unfair labor practice charge were trying to wreck his job, constituted unlawful interference in violation of section 1153(a).
O.P. MURPHY & SONS, 5 ALRB No. 63

404.06 Blaming Union For Lack of Work, Discharges, Layoffs, Etc.

404.06 Employer did not violate Act during decertification campaign by blaming union for failure of negotiations and low wages and benefits.
JACK OR MARION RADOVICH, 9 ALRB No. 45

404.06 Employer violated section 1153(a) by sending its employees a newspaper article which suggested that it would close its mushroom operation if the union won an upcoming election; by telling its employees that a strike was inevitable if the union won the election; and by telling its employees that it would not agree to a contract but would replace any employee who went on strike.
STEAK-MATE, INC., 9 ALRB No. 11

404.06 Employer threats of union violence if union wins election violate Act.
PROHOROFF POULTRY FARMS v. ALRB (1980) 107 Cal.App.3d 622

404.07 Citing Conditions At Other Employers

404.07 Employer's comparison of contract benefits to pre-union benefits, like comparison to existing non-union ranch benefits, does not constitute implied promise of benefits in violation of section 1153(a) where comparison made in response to union's claims and employer expressly disclaimed intent to make promise; Board reversed in part, Jack or Marion Radovich, 9 ALRB No. 16.
JACK OR MARION RADOVICH, 10 ALRB No. 1

404.07 Employer's comparison of its benefits with those at nonunion ranches in the area did not constitute unlawful promise of benefits; Members Carrillo and McCarthy would overrule the finding of unlawful promise in Jack or Marion Radovich (1983) 9 ALRB No. 16, but Member Song distinguishes between comparison with past nonunion benefit levels and comparisons with present nonunion levels.
JACK OR MARION RADOVICH, 9 ALRB No. 45

404.08 Company Policy Explained

404.09 Disadvantages Of Or Need For Union

404.09 Section 1155 acknowledges right of employers to express antiunion views with impunity from labor laws unless such views are accompanied by threats of reprisal or promises of benefit.

GOURMET HARVESTING & PACKING, INC., AND GOURMET FARMS, 14 ALRB No. 9

404.09 Employer's comparison of contract benefits to pre-union benefits, like comparison to existing non-union ranch benefits, does not constitute implied promise of benefits in violation of section 1153(a) where comparison made in response to union's claims and employer expressly disclaimed intent to make promise; Board reversed in part, Jack or Marion Radovich, 9 ALRB No. 16.
JACK OR MARION RADOVICH, 10 ALRB No. 1

404.09 Statements contained in leaflet distributed to employees with their paychecks inter alia, "you will always do better with us without a union, which can't and won't do anything for you except jeopardize your jobs," were found to be non-coercive under the circumstances.
KARAHADIAN RANCH, INC., 4 ALRB No. 9

404.09 Supervisor threatened employee in violation of 1153(c) by angrily yelling "be careful" during discussion of union sentiments and upcoming vote.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

404.09 Supervisor's statement to employee not to vote for Chavez because it was "going to be bad" for her, spoke in threatening manner and given supervisor's anti-union animus tended to intimidate workers and was therefore violative of 1153(a).
ANDERSON FARMS COMPANY, 3 ALRB No. 67

404.09 Employer threats of union violence if union wins election violate Act.
PROHOROFF POULTRY FARMS v. ALRB (1980) 107 Cal.App.3d 622

404.10 Derogatory Statements; Name-Calling

404.10 Where a foreman's disparaging remarks about union adherents or expressions of hostility toward workers seeking rehire result from their protected activity, a violation of the Act may be established.
STAMOULES PRODUCE CO., 16 ALRB No. 13

404.10 Absent evidence of threats or promises in supervisor's post-certification statements to employees to effect "union not worth a damn," "union doesn't mean much to me," futile to wear union buttons, "take them off [since] union won't do you any good" and frequent references to employees as "Chavistas," "asshole Chavistas" and sons of bitches no more than expression of opinion protected by section 1155 and thus statements cannot constitute unfair labor practices.
GOURMET HARVESTING & PACKING, INC., AND GOURMET FARMS, 14 ALRB No. 9

404.10 Member McCarthy would hold that employer unlawfully harassed the Varela crew by engaging in name-calling,

insults and other derogatory comments directed at employees because of their union activities.
GOURMET HARVESTING & PACKING, INC., AND GOURMET FARMS, 14 ALRB No. 9

404.10 Disparaging remarks about union adherents or expressions of hostility toward employees due to their protected activity, even though made in an "offhand humorous manner" may be deemed violative of the act, particularly when uttered during the course of a union organizational campaign.
GOURMET HARVESTING & PACKING, INC., AND GOURMET FARMS, 14 ALRB No. 9

404.10 Derogatory statements to and about returned strikers violated Act as part of overall scheme of harassment and intimidation.
LU-ETTE FARMS, INC., 10 ALRB No. 20

404.10 Employer's printing and distribution of insulting and degrading leaflets is ULP, not "speech" protected by 1155. HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209 [Appendix]

404.10 Otherwise isolated reference by employer to shooting of employee by union president was coercive when viewed in context of other violations and anti-union animus.
KARAHADIAN RANCHES, INC. v. ALRB (1985) 38 Cal.3d 1

404.11 Distribution Of Literature And Posting of Notices; Motion Pictures; Anti-Union Petitions

404.11 Employer distribution of leaflets four days before decertification election did not violate Act despite comparison of its benefits with those at nonunion ranches and blaming union for failure in negotiations.
JACK OR MARION RADOVICH, 9 ALRB No. 45

404.11 Employer violated section 1153(a):by sending its employees a newspaper article which suggested that it would close its mushroom operation if the union won an upcoming election; by telling its employees that a strike was inevitable if the union won the election; and by telling its employees that it would not agree to a contract but would replace any employee who went on strike.
STEAK-MATE, INC., 9 ALRB No. 11

404.11 Where General Counsel failed to prove that statements in leaflet distributed by employer to its employees, which were not coercive in themselves, were significantly stronger in Spanish than in English, were made in atmosphere of fear, or took on more threatening meaning in agricultural context, Board found no violation of section 1153(a) under NLRB v. Gissel Packing (1969)395 U.S. 575, [71 LRRM 2481].
KARAHADIAN RANCH, INC., 4 ALRB No. 69

404.11 Where General Counsel failed to prove that statements in leaflet distributed by employer to its employees, which were not coercive in themselves, were significantly stronger in Spanish than in English, were made in atmosphere of fear, or took on more threatening meaning in agricultural context, Board found no violation of section 1153(a) under NLRB v. Gissel Packing (1969)395 U.S. 575, [71 LRRM 2481].
TRIMBLE AND SONS, 3 ALRB No. 89

404.12 Explanation Of ALRA Or Other Government Regulations

404.12 An employer is free to respond to employees' inquiries concerning their rights, including the right to decertify a union, or to name or suggest an attorney whom employees may consult concerning their rights.
PETER D. SOLOMON and JOSEPH R. SOLOMON dba CATTLE VALLEY FARMS/TRANSCO LAND AND CATTLE CO., 9 ALRB No. 65

404.12 Employer's supervisor at worker education assembly conducted by ALRB agents threatened one employee and unlawfully interrogated other employees.
V. B. ZANINOVICH & SONS, 9 ALRB No. 54

404.13 Grievance Or Negotiation Session, Statements During

404.13 Letter from company negotiator to union negotiator declaring that contractual obligation to hire family members of current workers was being discontinued was not a violation of section 1153(a) since there was no evidence that the statement was addressed to or in any other way reached the employees.
TEX-CAL LAND MANAGEMENT, INC., et al., 12 ALRB No. 26

404.14 Isolated Statements; Joking Or Casual Remarks

404.14 Disparaging remarks about union adherents or expressions of hostility toward employees due to their protected activity, even though made in an "offhand humorous manner" may be deemed violative of the act, particularly when uttered during the course of a union organizational campaign.
GOURMET HARVESTING & PACKING, INC., AND GOURMET FARMS, 14 ALRB No. 9

404.14 Isolated comments, not accompanied by threats or promises of benefits, and uttered outside the context of an organizational campaign, are less likely to interfere with protected rights.
GOURMET HARVESTING & PACKING, INC., AND GOURMET FARMS, 14 ALRB No. 9

404.14 Otherwise isolated reference by employer to shooting of employee by union president was coercive when viewed in context of other violations and anti-union animus.
KARAHADIAN RANCHES,INC. v. ALRB (1985) 38 Cal.3d 1

404.14 Supervisor's statement that unionization would cause loss of jobs and loss of free housing was not an unlawful threat, where statement was isolated comment, occurred ten weeks before election, appeared to be "offhand", and election was otherwise free of employer interference.
MERRILL FARMS v. ALRB (1980) 113 Cal.App.3d 176

404.15 Misrepresentations, False Accusations, Or Rumors

404.16 Newspaper Articles And Advertisements

404.16 Employer violated section 1153(a): by sending its employees a newspaper article which suggested that it would close its mushroom operation if the union won an upcoming election; by telling its employees that a strike was inevitable if the union won the election; and by telling its employees that it would not agree to a contract but would replace any employee who went on strike.
STEAK-MATE, INC., 9 ALRB No. 11

404.16 Employer's advertisements and leaflets criticizing union and its bargaining position were fair expression of employer's views, protected by 1155, and not attempt to negotiate directly with workers.
CARL JOSEPH MAGGIO, INC. v. ALRB (1984) 154 Cal.App.3d 40

404.17 Inciting Prejudice Based On Race, National Origin, Religion, Or Sex

404.18 Reply To Questions Or Claims

404.18 An employer is free to respond to employees' inquiries concerning their rights, including the right to decertify a union, or to name or suggest an attorney whom employees may consult concerning their rights.
PETER D. SOLOMON and JOSEPH R. SOLOMON dba CATTLE VALLEY FARMS/TRANSCO LAND AND CATTLE CO., 9 ALRB No. 65

404.19 Singling Out Employees; Individual Interviews, Visits To Employees' Homes

404.19 Exhorting employees not to assist returned strikers violated Act as part of overall scheme of harassment and intimidation.
LU-ETTE FARMS, INC., 10 ALRB No. 20

404.19 Statements indicating that returning strikers would be subject to more onerous working conditions and would be singled out for criticism and disrespect was inherently threatening in violation of section 1153(a); illegal import of statements exacerbated by the hypercritical and disparaging treatment returning strikers actually received from their foremen.
LU-ETTE FARMS, INC., 10 ALRB No. 20

404.20 Statements To Supervisors, Job Applicants, Or Outsiders

404.21 References To Employees' Immigration Status

404.21 Remark by foreman to employee during an investigation of an automobile accident as to whether employee had "papers" is too vague to constitute a reference to his immigration status or a threat.
PETER D. SOLOMON and JOSEPH R. SOLOMON dba CATTLE VALLEY FARMS/TRANSCO LAND AND CATTLE CO., 9 ALRB No. 65

404.21 Violation found in extra-textual remarks of employer's agent after presentation of prepared speech, to the effect that the union would send workers to immigration authorities.
UKEGAWA BROTHERS, INC., 9 ALRB No. 26

404.21 Statement by labor contractor's chief assistant that "she pitied workers who voted for union as immigration police was going to deport them," as well as conduct in arranging for surveillance of crew violates section 1153(a). Conduct attributable to employer. IHED pp. 22-23.
PAUL W. BERTUCCIO and BERTUCCIO FARMS, 5 ALRB No. 5

404.21 Employer's threat of deportation constituted unlawful interference.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal. 3d 209 [Appendix]

405.00 THREAT OR PROMISE, WHAT CONSTITUTES

405.01 In General; Timing Of Conduct

405.01 Employer speech to employees that contained references to "the ALRB, the government" and "outsiders" not unlawful because it contained no threat, promise of benefit or coercive statement.
UKEGAWA BROTHERS, INC., 9 ALRB No. 26

405.01 Violation found in extra-textual remarks of employer's agent after presentation of prepared speech, to the effect that the union would send workers to immigration authorities.
UKEGAWA BROTHERS, INC., 9 ALRB No. 26

405.01 Statement by forelady to employee who was member of union's negotiation committee not to go to a negotiation session was not a threat because it was isolated, an expression of a personal view, made in the absence of other section 1153(a) misconduct by the forelady, was accompanied by permission to go to the negotiation session and was tempered by her comment that it was up to the employee whether to go to the negotiation session.
J. R. NORTON COMPANY, 9 ALRB No. 9

405.01 Employer violated section 1153(a) by its foreman's threat to workers that he would file a lawsuit or involve employees in litigation because they attended a meeting at which workers discussed the union and selected a representative.
D'ARRIGO BROTHERS COMPANY OF CALIFORNIA, 9 ALRB No. 3

405.01 Statement by supervisor to Employee organizer following Union election that she could leave to organize another ranch not a threat in context of general lack of hostility toward Union and following foreman's statement congratulating Union supporters on victory.
NASH-DE CAMP COMPANY, 8 ALRB No. 5

405.01 Board found no unlawful threat to interference where an employee first asked a supervisor to provide travel pay for workers and the discussion thereafter degenerated into an argument, with an exchange of insults and threats of physical violence. Board found that supervisor's subsequent threat to call the sheriff to arrest employee was based on employee's hostile threats rather than because of his previous concerted activity in seeking travel for the workers.
M. CARATAN, INC., 5 ALRB No. 16

405.01 Unlawful threat of reprisal in Respondent's pre-election solicitation of employee support for Teamsters coupled with prediction that a UFW victory would cause him to pull up the grapevines since comment indicated that Respondent would cease operations before negotiating with the UFW.
JASMINE VINEYARDS, INC., 3 ALRB No. 74

405.01 No threat of reprisal in Respondent's pre-election statement to employees indicating a preference for the Teamsters Union coupled with statement that a UFW victory would require destruction of, or an inability to use, produce boxes previously imprinted with Teamster labels.
JASMINE VINEYARDS, INC., 3 ALRB No. 74

405.01 Where there was a direct conflict in the testimony over employer's making threats, with no additional evidence to shed light on truth of allegation, General Counsel failed to meet burden of proof.
S. KURAMURA, INC., 3 ALRB No. 49

405.01 Employer's threat of deportation constituted unlawful interference.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209 [Appendix]

405.01 Threats of job loss as reprisal for union activity constitute restraint and coercion in exercise of 1152 rights. However, statements must be viewed in their entirety, and total effect on listener considered.
MERRILL FARMS v. ALRB (1980) 113 Cal.App.3d 176

405.01 Granting of widespread and unprecedented benefits one month before election (previous wage increase was six years ago) is unlawful.
PROHOROFF POULTRY FARMS v. ALRB (1980) 107 Cal.App.3d 622

405.01 Employer's free speech rights must be balanced against employee's economic dependence on employer to determine whether speech is prohibited under Act.
PROHOROFF POULTRY FARMS v. ALRB (1980) 107 Cal.App.3d 622

405.01 Employer statements are constitutionally protected unless they contain a "threat of reprisal or force, or promise of benefit."
PROHOROFF POULTRY FARMS v. ALRB (1980) 107 Cal.App.3d 622

405.01 Employer's First Amendment right to free speech does not outweigh employees' rights under 1153(a) to be free of threats of reprisal for engaging in protected activities. Balance is to be struck in each case by expert agency, based on context of statements. (Concurrence by Staniforth, J.)
ABATTI FARMS, INC. v. ALRB (1980) 107 Cal.App.3d 317

405.01 Section 1155 establishes employer rights to free speech. Mere prediction of effect of unionization is not necessarily a ULP; statements must be viewed "in their entirety" considering "their total effect on the receiver."
ABATTI FARMS, INC. v. ALRB (1980) 107 Cal.App.3d 317

405.01 Although much of company's conduct was protected by First Amendment, substantial evidence supported Board's findings of threats of reprisal and promise of benefits in violation of section 1153(a).
SUNNYSIDE NURSERIES, INC. v. ALRB (1979) 93 Cal.App.3d 922

405.02 Discharge, Layoff, Or Demotion Threatened

405.02 Employer violated section 1153(a) by threatening to replace employees with non-union workers if they did not sever their union ties.
WEST COAST DAIRY, 11 ALRB No. 30

405.02 Employer's supervisor at worker education assembly conducted by ALRB agents threatened one employee and unlawfully interrogated other employees.
V.B. ZANINOVICH & SONS, 9 ALRB No. 54

405.02 Employer violated section 1153(a): by sending its employees a newspaper article which suggested that it would close its mushroom operation if the union won an upcoming election; by telling its employees that a strike was inevitable if the union won the election; and by telling its employees that it would not agree to a contract but would replace any employee who went on strike.

STEAK-MATE, INC., 9 ALRB No. 11

405.02 Employer violated section 1153(a) by its foreman's threat to workers that he would file a lawsuit or involve employees in litigation because they attended a meeting at which workers discussed the union and selected a representative.
D'ARRIGO BROTHERS COMPANY OF CALIFORNIA, 9 ALRB No. 3

405.02 Employer violated section 1153(a) by delivering to one of its employees letter which specifically threatened employee with discharge, and implied that he would forfeit his reinstatement rights as striker, if he did not abandon lawful strike and report to his next work assignment.
SIGNAL PRODUCE COMPANY, 6 ALRB No. 47

405.02 Supervisor's threats to fire group of employees "when union activity was over" found to be violative of 1153(c).
OCEANVIEW FARMS, INC., 5 ALRB No. 71

405.02 A supervisor unlawfully threatened an employee when the supervisor told the employee that he would be fired if he was observed soliciting signatures for authorization cards again.
KARAHADIAN RANCHES, INC., 5 ALRB No. 37

405.02 The Board found a violation of section 1153(a) where a supervisor threatened employees with loss of employment for engaging in union activity or other protected concerted activity, or for utilizing the facilities of the ALRB to protect or secure their rights.
M. CARATAN, INC., 5 ALRB No. 16

405.02 Labor contractor's initial order of discharge (although not followed through) made in presence of number of workers tended to restrain workers in exercise of rights guaranteed by act and constituted violation of section 1153(a).
ANDERSON FARMS COMPANY, 3 ALRB No. 67

405.02 A supervisor's statement that he was going to fire the UFW sympathizers in his crew constituted an unlawful threat.
MAGGIO-TOSTADO, INC., 3 ALRB No. 33

405.02 A supervisor's statement that he was going to fire the UFW sympathizers in his crew constituted an unlawful threat.
MAGGIO-TOSTADO, INC., 3 ALRB No. 33

405.02 The test for determining whether there has been a violation of Labor Code section 1153, subdivision (a), is whether the employer engaged in conduct that may reasonably be said to tend to interfere with the freedom of the exercise of the employee's rights under the Act.

J.R. NORTON CO. v. ALRB (1987) 192 Cal.App.3d 874

405.02 In determining whether there has been a threat to discharge an employee for engaging in protected union acts in violation of Labor Code section 1153, subdivision (a), neither the employer's motive nor the success of the coercion is an element.
J.R. NORTON CO. v. ALRB (1987) 192 Cal.App.3d 874

405.02 Supervisor's threat of refusal to rehire in future is ULP. Minor inconsistencies in testimony of principal witnesses are not sufficient to cast doubt on their testimony.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209 [Appendix]

405.02 Supervisors threat that all would be fired was unlawful where, in context of other ULP's, it would reasonably tend to interfere with workers' rights.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209 [Appendix]

405.02 Violation where supervisor asked employee on several occasions how she was going to vote in election.
ABATTI FARMS, INC. v. ALRB (1980) 107 Cal.App.3d 317

405.02 Board reasonably inferred that remarks about job loss were coercive when they occurred in context of general anti-union animus, other coercive acts, and election campaign. (Concurrence by Staniforth, J.)
ABATTI FARMS, INC. v. ALRB (1980) 107 Cal.App.3d 317

405.02 Although irrigator/truck driver who often directed day-to-day work and had general authority to put people to work who had worked the prior season was not a statutory supervisor, employees would reasonably have perceived him as acting as the employer's agent in making threats that employer was going to plant very little acreage and would hire only non-union supporters the following year. Under standards of *Vista Verde Farms v. Agricultural Labor Relations Bd.* (1981) 29 Cal.3d 307, an employer may be held responsible for unlawful conduct by a nonsupervisor even if the employer did not direct, authorize or ratify the conduct if the nonsupervisor has apparent authority to speak for the employer.
TSUKIJI FARMS, 24 ALRB No. 3

405.02 Employer made unlawful implied threat of discharge in the event the employees again sought the assistance of a union when he told them "well, if the union is so strong, [next time] let them give you a job."
VINCENT B. ZANINOVICH & SONS, INC., 25 ALRB No. 4

405.02 Employer violated section 1153(a) by making threats to discharge union supporters and by directing supervisors to discharge union supporters where, even if directives not carried out, they were heard by employees.

VINCENT B. ZANINOVICH & SONS, 34 ALRB No. 3

405.03 Blacklisting Or Refusal Of Recommendation Threatened

405.04 Shutdown, Curtailment Of Operations, Plant Removal, Work Transfer, Subcontracting Or Sale Threatened

405.04 Employer violated section 1153(a) by sending its employees a newspaper article which suggested that it would close its mushroom operation if the union won an upcoming election; by telling its employees that a strike was inevitable if the union won the election; and by telling its employees that it would not agree to a contract but would replace any employee who went on strike.
STEAK-MATE, INC., 9 ALRB No. 11

405.04 Employer threat to change to less labor-intensive crop because of union activity violated section 1153(a). IHED pp. 33-39.
PAUL W. BERTUCCIO and BERTUCCIO FARMS, 5 ALRB No. 5

405.04 Employer's wife's remark that she did not care if union won election because she and husband were tired of working and thinking of closing business and were going to fix up workers' houses and rent them to white people found violative of 1153(a). IHED p. 29.
PAUL W. BERTUCCIO and BERTUCCIO FARMS, 5 ALRB No. 5

405.04 Employer's repeated statements about planting alfalfa, rather than tomatoes, thereby eliminating the need for a sizeable workforce, coupled with his statements that he would contract out the alfalfa-cutting work were patent threats to the workers that they would have no work if the union prevailed.
ARNAUDO BROS. INC., 3 ALRB No. 78

405.04 Unlawful threat of reprisal in Respondent's pre-election solicitation of employee support for Teamsters coupled with prediction that a UFW victory would cause him to pull up the grapevines since comment indicated that Respondent would cease operations before negotiating with the UFW.
JASMINE VINEYARDS, INC., 3 ALRB No. 74

405.04 Unlawful threat of reprisal in Respondent's pre-election solicitation of employee support for Teamsters coupled with prediction that a UFW victory would cause him to pull up the grapevines since comment indicated that Respondent would cease operations before negotiating with the UFW.
JASMINE VINEYARDS, INC., 3 ALRB No. 74

405.04 Statements by an employer to employees implying that jobs might be lost or work opportunities lessened if the union won the election, without any facts showing that economic necessity would require such a cutback, interfere with

employees' exercise of their rights under the Act and are a violation of section 1153(a).
AKITOMO NURSERY, 3 ALRB No. 73

405.04 Supervisor's statement that unionization would cause loss of jobs and loss of free housing was not an unlawful threat, where statement was isolated comment, occurred ten weeks before election, appeared to be "offhand", and election was otherwise free of employer interference.
MERRILL FARMS v. ALRB (1980) 113 Cal.App.3d 176

405.04 1155 establishes employer rights to free speech. Mere prediction of effect of unionization is not necessarily a ULP; statements must be viewed "in their entirety" considering "their total effect on the receiver."
ABATTI FARMS, INC. v. ALRB (1980) 107 Cal.App.3d 317

405.04 Violation where sister of company principal suggested that company would shut down or reduce number of jobs if union won election.
ABATTI FARMS, INC. v. ALRB (1980) 107 Cal.App.3d 317

405.04 No unlawful threat of shutdown of operations and loss of work if union won election where supervisor credibly denied making such statements.
WARMERDAM PACKING CO., 24 ALRB No. 2

405.04 Labor consultant who told employees that several companies in the area had gone out of business because the union had come in, and that the same thing could happen to them, made an unlawful threat, because a reasonable person would draw the conclusion that supporting the union could lead to the employer closing. An employer may make predictions as to the effects it believes unionization will have on the company, but the predictions must be carefully based on objective facts demonstrating probably consequences beyond the employer's control. (*NLRB v. Gissel Packing Co.* (1969) 395 U.S. 575.)
TSUKIJI FARMS, 24 ALRB No. 3

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TSUKIJI FARMS, 24 ALRB No. 3

405.04 Although irrigator/truck driver who often directed day-to-day work and had general authority to put people to

work who had worked the prior season was not a statutory supervisor, employees would reasonably have perceived him as acting as the employer's agent in making threats that employer was going to plant very little acreage and would hire only non-union supporters the following year. Under standards of *Vista Verde Farms v. Agricultural Labor Relations Bd.* (1981) 29 Cal.3d 307, an employer may be held responsible for unlawful conduct by a nonsupervisor even if the employer did not direct, authorize or ratify the conduct if the nonsupervisor has apparent authority to speak for the employer.
TSUKIJI FARMS, 24 ALRB No. 3

405.04 Where the employer states or implies that it will shut down operations or declare bankruptcy if the union wins election, section 1153(a) violated unless employer provides facts showing economic necessity for shut down or bankruptcy.
VINCENT B. ZANINOVICH & SONS, 34 ALRB No. 3

405.04 Section 1153(a) violated where employer threatens to change to a less labor intensive crop if union wins election and, thus, reduce the amount of work available.
VINCENT B. ZANINOVICH & SONS, 34 ALRB No. 3

405.05 Reduction Or Loss Of Wages, Hours, Overtime, Benefits, Or Privileges, Etc., Threatened Or Actual

405.05 Threat by supervisor that there would be adverse changes in working conditions if union won election unlawful.
OASIS RANCH MANAGEMENT, INC., 18 ALRB No. 11

405.05 Employer violated 1153(c) and (a) by threatening to discontinue employees' bus service because of the union activities.
CLARK PRODUCE, INC., 11 ALRB No. 19

405.05 Statements indicating that returning strikers would be subject to more onerous working conditions and would be singled out for criticism and disrespect was inherently threatening in violation of section 1153(a); illegal import of statements exacerbated by the hypercritical and disparaging treatment returning strikers actually received from their foremen.
LU-ETTE FARMS, INC., 10 ALRB No. 20

405.05 Constructive discharge occurs when an employer renders an Employee's working conditions so intolerable that the employee is forced to quit. When an Employer imposes such intolerable conditions because of the Employees' Union activity or Union membership, it is a violation of Labor Code section 11153(c) and (a),citing J.P. Stevens & Co. v. NLRB (4th Cir. 1972) 461 F.2d 490 [80 LRRM 2609].Here, verbal abuse of supervisor who threatened employee with "mayhem" in a conversation in which he also told employee he did not want UFW people working in the crew did not rise to the level of a constructive

discharge situation but did constitute interference with the exercise of employees' section 1152 rights in violation of section 1153(a).
SIERRA CITRUS ASSOCIATION, 5 ALRB No. 12

405.05 Employer threat and attempt to evict employees from their residence because of union activity violated section 1153(c) and (a). IHED pp. 29-32.
PAUL W. BERTUCCIO and BERTUCCIO FARMS, 5 ALRB No. 5

405.05 Statements by an employer to employees implying that jobs might be lost or work opportunities lessened if the union won the election, without any facts showing that economic necessity would require such a cutback, interfere with employees' exercise of their rights under the Act and are a violation of section 1153(a).
AKITOMO NURSERY, 3 ALRB No. 73

405.05 Statements by labor contractor to employees threatening loss of employment (by bringing in "electric machines") in event of union victory are violative of 1153(a).
ANDERSON FARMS COMPANY, 3 ALRB No. 67

405.05 Board could properly find that employer's distribution of "employee information cards", without explanation and in midst of hotly contested UFW organizing campaign, was form of prohibited interrogation.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209 [Appendix]

405.05 Employer violated 1153(a) by threatening employees with loss of benefits if they supported the union. The standard is not whether the employees felt threatened, but whether Employer's conduct may reasonably be said to tend to interfere with the free exercise of employees' rights under the ALRA.
P.H. RANCH, INC., 22 ALRB No. 1

405.05 Statement that, if union came in, children of workers would no longer be able to work was unlawfully coercive because it could apply to children legally employed and there was no business justification for the statement.
VINCENT B. ZANINOVICH & SONS, 34 ALRB No. 3

405.06 Withholding Of Wage Increase, Promotion, Benefits, Privileges, Etc., Threatened Or Actual

405.06 Employer threat to change to less labor-intensive crop because of union activity violated section 1153(a). IHED pp. 33-39.
PAUL W. BERTUCCIO and BERTUCCIO FARMS, 5 ALRB No. 5

405.06 Although much of company's conduct was protected by First Amendment, substantial evidence supported Board's findings of threats of reprisal and promise of benefits in violation of 1153(a).
SUNNYSIDE NURSERIES, INC. v. ALRB (1979) 93 Cal.App.3d

405.07 Promise Or Granting Of Wage Increase, Promotion, Benefits, Privileges, Etc.

405.07 Promise of wage increase not unlawful where it was promptly rescinded and it was explained to employees that it was unlawful to make such promises during an election campaign. Ranch manager's statement that he would talk to his boss about employees' request for a wage increase does not constitute unlawful promise of benefits. Promise to do what was already company policy not an unlawful promise of benefits.
OASIS RANCH MANAGEMENT, INC., 18 ALRB No. 11

405.07 Employer violated 1153(a) by promising to provide employees with a less expensive medical plan than the one provided by the union.
WEST COAST DAIRY, 11 ALRB No. 30

405.07 Employer grant of benefit and wage increase shortly after commencement of union organizing drive not violative of section 1153(a) where employer establishes notice for increases and timing of increases unrelated to union organizing.
McANALLY ENTERPRISES, INC., 11 ALRB No. 2

405.07 Employer's comparison of contract benefits to pre-union benefits, like comparison to existing non-union ranch benefits, does not constitute implied promise of benefits in violation of section 1153(a) where comparison made in response to union's claims and employer expressly disclaimed intent to make promise; Board reversed in part, Jack or Marion Radovich, 9 ALRB No. 16.
JACK OR MARION RADOVICH, 10 ALRB No. 1

405.07 Employer's comparison of benefits under union contract with existing nonunion ranch benefits is not a promise of benefits, absent more explicit inducement; Members Carrillo and McCarthy would overrule finding in Jack or Marion Radovich (1983) 9 ALRB No. 16 that comparison with past benefits is unlawful. Member Song distinguishes present from past benefit comparisons.
JACK OR MARION RADOVICH, 9 ALRB No. 45

405.07 Assistance by an employer to employees criminally charged for conduct surrounding a decertification election does not violate section 1153(a) of the Act.
M. CARATAN, INC., 9 ALRB No. 33

405.07 Employer's refusal to honor supervisor's promise of an end-of-season bonus to workers not violative of the Act absent showing promise, or disavowal thereof, was related to employees union activities.
D'ARRIGO BROTHERS COMPANY, INC., 9 ALRB No. 30

405.07 Employer violated section 1153(a) by promising to

introduce an improved medical plan if the union was decertified.
JACK OR MARION RADOVICH, 9 ALRB No. 16

405.07 Interference with employee organizational rights found where employer announced an unscheduled wage increase after it learned that a union organizational campaign was underway at its operations.
ALPINE PRODUCE, 9 ALRB No. 12

405.07 The employer did not violate section 1153(a) by promising its employees a medical plan and a wage increase where the increased benefits were not tied to union organization and the employer had a practice of increasing benefits at the time of year when they were increased.
KARAHADIAN RANCHES, INC., 5 ALRB No. 37

405.07 Promotion of foreman to supervisor lawful since there was no showing that it interfered with section 1152 rights.
ROYAL PACKING CO., 5 ALRB No. 31

405.07 Board found 1153(a) violation where employer granted new medical plan during the course of organizing efforts. Held that although plan was announced after withdrawal of a representation petition, organizing efforts were still in progress and the timing had a natural tendency to influence the anticipated election, despite employer's claim that the new plan was the result of negotiations with incumbent union.
ROYAL PACKING CO., 5 ALRB No. 31

405.07 Grant of wage increase violative of employees section 1152 rights on basis of timing (increase granted same day that UFW organizers first visited crew), amount of increase (disproportionate in comparison with past increases), and setting in which increase announced (accompanied by threat of loss of employment if employees supported Union).
BROCK RESEARCH, INC., 4 ALRB No. 32

405.07 Granting a pay increase to all employees during an election campaign is not discrimination in violation of section 1153(c), despite a showing of anti-union motivation. However, granting a pay increase during an election campaign is an unfair labor practice in violation of section 1153(a).
AKITOMO NURSERY, 3 ALRB No. 73

405.07 Fact that benefits not actually available to large percentage of work force informed of plan and employer's established anti-union animus support inference that company's conduct had purpose and effect of influencing employee choice at election.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

405.07 Grant of benefits announced at peak of preelection

campaign in employer propaganda speech made two days before election violated section 1153(a).
ANDERSON FARMS COMPANY, 3 ALRB No. 67

405.07 Announcement of insurance benefits - even if unconditional and permanent - constituted unlawful promise of benefits, where made at a time closely preceding election and with intention of influencing employees to vote against union.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

405.07 Pay raise during midst of election campaign was unlawful interference, even though no formal election petition pending. Test is whether promised or conferred benefits are intended to and do interfere with workers' organizational fights.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209 [Appendix]

405.07 Election eve promises of higher wages, made in context of employer's anti-union speech, violated 1153(a).
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209 [Appendix]

405.07 Granting of widespread and unprecedented benefits one month before election (previous wage increase was six years ago) is unlawful.
PROHOROFF POULTRY FARMS v. ALRB (1980) 107 Cal.App.3d 622

405.07 Substantial evidence supports Board's finding that institution of improved medical benefits plan, after expiration of Teamster contract, when no election petition pending but during period of intense organizational activity and "no union" campaign by employer, tended to interfere with employees' organizational rights, despite the fact that enforcement of Act in such a situation may have "unfortunate and ironic effect of depriving employees of an excellent medical plan."
ROYAL PACKING CO. v. ALRB (1980) 101 Cal.App.3d 826

405.07 If employer intended, as it claimed, to institute the improved medical plan during the previous year, it could easily have done so without any possibility of interference with an election, since Board's doors would have been closed to election petitions during the last year of the Teamster contract.
ROYAL PACKING CO. v. ALRB (1980) 101 Cal.App.3d 826

405.07 Regardless of whether an election is formally pending, benefit increases may violate NLRA where they are intended to and do interfere with workers' organizational rights.
ROYAL PACKING CO. v. ALRB (1980) 101 Cal.App.3d 826

405.07 Employer violated 1153(a) by promising employees more money if they agreed to support the Employer in upcoming

election.
P.H. RANCH, INC., 22 ALRB No. 1

405.08 Comparison To Non-Union Ranch Benefits

406.00 INTERFERENCE WITH PROTECTED STRIKES, PICKETING, AND BOYCOTTS

406.01 In General

406.01 Employees engaged in PCA when they walked off job because Employer could not meet with crew regarding how much crew would be paid to redo work. Employer did not violate Act by his inability to meet.
GIUMARRA VINEYARDS, INC., 7 ALRB No. 7

406.02 Attempts To Avert Or Provoke Strikes

406.03 Attempts To Break Strikes; Solicitation Of Or Threats To Strikers Or Pickets; Inducements

406.03 The Board held that the ALJ erred in dismissing a paragraph of the complaint alleging recruitment of replacement employees without informing them of the existence of a labor dispute merely because there was no precedent to establish that the conduct alleged therein constituted a violation of section 1153(a), and that the ALJ should have allowed the General Counsel to develop a full factual record on the novel issue so that appropriate findings and conclusions could be made.
SUN HARVEST, INC., 6 ALRB No. 4

406.04 Injunction Against Striking Or Picketing; Suit For Injunction Or Damages As Interference

406.05 Wage Payments Or Other Benefits During Strike Or Picketing

406.06 Photographing Strikers Or Pickets (see also section 403.02)

406.07 Arrest Of Strikers Or Pickets

406.08 Unlawful Or Unauthorized Strikes Or Violation Of Contract

406.09 Conduct After Strike

407.00 MISCELLANEOUS INTERFERENCE (see section 316)

407.01 Violence Or Employer's Threat Thereof; Incitement To Violence; Barring Employees From Plant

407.01 Due to conflicting accounts and apparent confusion at the scene, evidence insufficient to establish that security guard assaulted access taker.
S & J RANCH, INC., 18 ALRB No. 2

407.01 Employer violated the Act where supervisor threatened union representative with a knife.
SAM ANDREWS' SONS, 11 ALRB No. 5

407.01 Assistance by an employer to employees criminally charged for conduct surrounding a decertification election does not violate section 1153(a) of the Act.
SAM ANDREWS' SONS, 11 ALRB No. 5

407.01 An employer violates section 1153(a) of the Act when it fails to cooperate in the conducting of a decertification election, orchestrates outrage among sympathetic employees over the conduct of that election, and acts in complicity with the disruption of the election.
M. CARATAN, INC., 9 ALRB No. 33

407.01 Physical confrontations between union and employer representatives are intolerable under the Act. Absent compelling evidence of an imminent need to act to secure persons against danger of physical harm or to prevent material harm to tangible property interests, resort to violence is a violation of the Act.
HIGH & MIGHTY FARMS, 6 ALRB No. 34

407.01 Employer violated Act by provoking fight with union organizer, interfering with union's communication with workers, and damaging or destroying union property which conduct occurred in the presence of employer's agricultural employees. No showing required that organizers were lawfully on property.
PERRY FARMS, INC., 4 ALRB No. 25

407.01 Employer's entire course of conduct (including: (1) shouting at organizers; (2) pushing and shoving them; (3) throwing their authorization cards on ground; (4) precipitating altercation; (5) fighting with organizers; and (6) displaying axe handle in threatening manner) was violative of Act. Board rejected distinction between employer's liability for provoking fight and liability for fight itself.
PERRY FARMS, INC., 4 ALRB No. 25

407.01 The employer violates the Act when its labor contractor--who leases the employer's labor camp--threatens physical violence against union organizers who attempt to speak with employees who reside at the camp.
FRUDDEN PRODUCE, INC., 4 ALRB No. 17

407.01 Supervisor's giving orders in an angry manner, countermanding orders, shouting at employees, and wearing a pistol from time to time held not to be harassment.
ARNAUDO BROS. INC., 3 ALRB No. 78

407.01 Physical confrontations between union and employee representatives are intolerable under Act.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

407.01 Resort to physical violence is normally violative of Act.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

407.01 Brandishing firearms to prevent union organizers from taking access is coercive and, as such, violates the rights guaranteed to employees by section 1152.
WESTERN TOMATO, et al., 3 ALRB No. 51

407.01 Violations of the access rule constitute unfair labor practices under the ALRA.
JACK PANDOL & SONS, INC., 3 ALRB No. 29

407.01 Employer's physical confrontation with union organizers and barring communication with workers in their labor camp homes constitutes interference, restraint, and coercion under section 1153(a).
VISTA VERDE FARMS v. ALRB (1981) 29 Cal.3d 307

407.01 Notwithstanding union representative's technical trespass upon employer's property, violent attacks upon him in presence of workers constitutes ULP.
PERRY FARMS INC. v. ALRB (1978) 86 Cal.App.3d 448

407.02 Outside Aid To Combat Organization

407.02 Employer violated section 1153(a) by its foreman's threat to workers that he would file a lawsuit or involve employees in litigation because they attended a meeting at which workers discussed the union and selected a representative.
D'ARRIGO BROTHERS COMPANY OF CALIFORNIA, 9 ALRB No. 3

407.02 Respondent, charged with failing to provide prepetition lists, defended on grounds regulation was unlawful and provision violated employee's right to privacy. ALO found said defense "frivolous" and therefore warranted award of attorney's fees and litigation costs to general counsel and charging party. Board rejected attorney's fees but granted expanded access.
AMERICAN FOODS, INC., 4 ALRB No. 29

407.02 Presence of sheriff's deputies on property when workers engaging in protected organizational activity has intimidating and chilly effect upon full exercise of rights.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

407.03 Obstruction Of Board Or Other Proceedings; Soliciting Withdrawal Of Charges Or Grievances; Interference With Subpoenas

407.03 Assistance by an employer to employees criminally charged for conduct surrounding a decertification election does not violate section 1153(a) of the Act.
M. CARATAN, INC., 9 ALRB No. 33

407.03 An employer violates section 1153(a) of the Act when it fails to cooperate in the conducting of a decertification election, orchestrates outrage among sympathetic employees over the conduct of that election, and acts in complicity with the disruption of the election.
M. CARATAN, INC., 9 ALRB No. 33

407.03 Employer violated section 1153(a) by foreman's questioning employees about a meeting, statement that he was going to find out who the "agitators" were and get rid of them, and advising employees not to talk to workers from the state.
D'ARRIGO BROTHERS COMPANY OF CALIFORNIA, 9 ALRB No. 3

407.03 Employer's interference with Board agents by shouting at them as they attempted to serve him with subpoena and by ordering them off his property with shotgun and later with revolver was not, in this case, an unfair labor practice.
PERRY FARMS, INC., 4 ALRB No. 25

407.04 Soliciting Employees To File Charges Against Union

407.05 Elections, Interference With

407.05 Unlawful for supervisor to order employees to stop organizing.
OASIS RANCH MANAGEMENT, INC., 18 ALRB No. 11

407.05 Assistance by an employer to employees criminally charged for conduct surrounding a decertification election does not violate section 1153(a) of the Act.
M. CARATAN, INC., 9 ALRB No. 33

407.05 An employer violates section 1153(a) of the Act when it fails to cooperate in the conducting of a decertification election, orchestrates outrage among sympathetic employees over the conduct of that election, and acts in complicity with the disruption of the election.
M. CARATAN, INC., 9 ALRB No. 33

407.05 Labor contractor who boarded bus transporting group of workers to polls, explained general layout of ballot and reminded workers to "think about what they were going to do" and to "pay attention" violated 1153(c).
ANDERSON FARMS COMPANY, 3 ALRB No. 67

407.05 Brandishing firearms to prevent union organizers from taking access is coercive and, as such, violates the rights guaranteed to employees by section 1152.
WESTERN TOMATO, et al., 3 ALRB No. 51

407.05 Violations of the access rule constitute unfair labor practices under the ALRA.
JACK PANDOL & SONS, INC., 3 ALRB No. 29

407.06 Failure To Provide Employee List

407.06 Employer's agent's circulation of petition opposing disclosure to union of employee names and addresses violated section 1153(a).
V. B. ZANINOVICH & SONS, 9 ALRB No. 54

407.06 By submitting employee list which omitted substantial number of names and street addresses (only 389 names provided of 700-800 "peak" employees, with no addresses given for 69 and P.O. Box addresses for another 41), respondent violated section 1153(a).
PAUL W. BERTUCCIO and BERTUCCIO FARMS, 5 ALRB No. 5

407.06 Board rejected Respondent's defense for not providing prepetition lists on grounds regulation was unlawful and provisions of lists would violate employee's right to privacy.
AMERICAN FOODS, INC., 4 ALRB No. 29

407.06 Employer violated 1153(a) by failing to submit, in accordance with 8 Cal. Admin. Code 20910(c), a complete list of employees, their current street addresses and job classifications to the Board following service of a Notice of Intention to Organize.
LAFLIN AND LAFLIN, et al., 4 ALRB No. 28

407.06 Respondent's failure to provide an accurate list of the names and addresses of its employees, including the labor contractor's employees, is a violation of 1153(a).
TENNECO WEST, INC., 3 ALRB No. 92

407.06 Employer does not commit 1153(a) violation by failing to provide complete prepetition list where employer made good faith effort to comply, but failed for reasons beyond its control.
CARIAN v. ALRB (1984) 36 Cal.3d 654

407.06 Employer violated 1153(a) by failing to provide union with adequate employee list, since proffered list consisted of post office boxes and non-local addresses that were not usable. Inadequate list generally interferes with 1152 rights.
CARIAN v. ALRB (1984) 36 Cal.3d 654

407.06 Board regulation requiring employer to furnish union with list of employees' names and addresses--before election is scheduled--is reasonable exercise of rule-making power. Board reasonably considered peculiar problems of communicating with farm workers due to short seasons, 7-day election, and migratory patterns.
CARIAN v. ALRB (1984) 36 Cal.3d 654

407.07 Union Affairs, Interference With; Competing Activities

407.07 Employer did not violate section 1153(a) by inadvertently deducting union dues after expiration of the collective bargaining agreement and refunding them to the employees

rather than to the union.
TMY FARMS, INC., 9 ALRB No. 29

407.07 Dissent: Employees demonstrate their union support by their unrevoked dues checkoff authorization cards, and employer's failure to forward dues money deducted pursuant to unrevoked valid dues checkoff authorization cards, whether intentional, negligent or inadvertent, tended to interfere with the relationship between its employees and their collective bargaining representative.
TMY FARMS, INC., 9 ALRB No. 29

407.08 Racial, National Origin Or Sex Discrimination

408.00 EMPLOYER INTERFERENCE WITH DECERTIFICATION OR RIVAL UNION PETITION

408.01 In General (see also sections 309.02 and 316)

408.01 Employer unlawfully instigated and supported decertification efforts where labor consultants urged the signing of the petition and where crew leader and personnel employee, who were reasonably viewed as acting on behalf of management, circulated the petition.
S & J RANCH, INC., 18 ALRB No. 2

408.01 Employer unlawfully instigated and assisted its employees in filing a decertification election petition by calling its discontented workers together and referring them to free legal representation, prearranged by the employer to assist the employees in their decertification of the union.
PETER D. SOLOMON and JOSEPH R. SOLOMON dba CATTLE VALLEY FARMS/TRANSCO LAND AND CATTLE CO., 9 ALRB No. 65

408.01 General Counsel's theory of "long distance psychological manipulation" rejected; decertification found to be genuine grassroots campaign.
JACK OR MARION RADOVICH, 9 ALRB No. 45

408.01 No violation where lead person merely interpreted a decertification petition for employees and did not advocate signing the petition.
JACK OR MARION RADOVICH, 9 ALRB No. 16

408.01 Not improper for ALO to utilize evidence of Employer's anti-union acts and statements in his consideration of case.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC., 7 ALRB No. 36

408.01 Employer's unlawful assistance to Employees in decertification effort proven by circumstantial evidence that (1) leading proponents of Decertification Petition provided leaves of absences and other benefits to facilitate there conduct result of the credit of the

company, and (2) Employer's agents assembled Employees for purpose of obtaining signatures in various decertification Petitions.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC., 7 ALRB No. 36

408.01 ALO properly considered entire course of campaign in finding unlawful assistance to decertification efforts.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC., 7 ALRB No. 36

408.01 Proof of Employer instigation of Decertification Pet requires evidence that Employer implanted idea in mind of Employees.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC., 7 ALRB No. 36

408.01 Employer's supervisors' coercion of substantial numbers of employees to sign decertification petition in presence of entire crews warrants invalidation of decertification petition. Dissemination may be presumed and impossible to determine how far it spread.
GALLO VINEYARDS, INC., 30 ALRB No. 2

408.02 Withdrawal of Union Membership Or Authorization Suggested Or Aided

409.00 SPECIAL DEFENSES

409.01 Competitive Or Business Disadvantage

409.01 Employer failed to prove defense of business necessity where it failed to show any changed circumstances explaining its decision to reduce the compensation to its employees without first negotiating with union.
GEORGE ARAKELIAN FARMS v. ALRB (1986) 186 Cal.App.3d 94

409.01 Employer may raise a legitimate and substantial business justification, such as plant safety, efficiency, or discipline, as defense to allegation that conduct interferes with, restrains, or coerces employees in exercise of their 1152 rights.
CARIAN v. ALRB (1984) 36 Cal.3d 654

409.02 Conduct Ineffective Or Isolated

409.02 Supervisor's statement that unionization would cause loss of jobs and loss of free housing was not an unlawful threat, where statement was isolated comment, occurred ten weeks before election, appeared to be "offhand", and election was otherwise free of employer interference.
MERRILL FARMS v. ALRB (1980) 113 Cal.App.3d 176

409.02 Where interrogation is isolated, it is for Board to determine whether, in light of surrounding circumstances, a violation occurred.

PROHOROFF POULTRY FARMS v. ALRB (1980) 107 Cal.App.3d 622

409.03 Discontinuance of Illegal Activity; Retraction; Repudiation

409.03 Timely repudiation and withdrawal of promise wage increase during pendency of election petition negates liability. Prompt reinstatement with backpay of workers discriminatorily laid off does not obviate liability in absence of repudiation of unlawful conduct.
OASIS RANCH MANAGEMENT, INC., 18 ALRB No. 11

409.03 To effectively repudiate unlawful conduct, the minimum criteria stated in Passavant Memorial Area Hospital (1978) 237 NLRB 138 must be met--the repudiation must be timely, unambiguous, and specific in nature to the coercive conduct, the respondent must be free from other proscribed illegal conduct, and the repudiation must be adequately published and should give assurances to employees that in the future the respondent will not interfere with the exercise of their section 1152 rights.
J. R. NORTON COMPANY, 10 ALRB No. 7

409.03 The burden is on a respondent to show that it effectively disavowed or otherwise repudiated the unlawful conduct.
J. R. NORTON COMPANY, 10 ALRB No. 7

409.03 Coercive effects of threat not dispelled where supervisor did not repudiate other supervisor's conduct and coercive practices continued unabated after incident.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

409.03 Repeated, egregious misconduct of supervisors went unrestrained by management in violation of Act. Company totally consented to supervisor's actions and in fact directly initiated some of ULPs.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

409.03 Board properly rejected employer's attempted repudiation where notice to employee was ambiguous as to the event and the people involved, contained a denial of responsibility and failed to give future assurances.
J.R. NORTON CO. v. ALRB (1984) 162 Cal.App.3d 692

409.03 Voluntary employer repudiation of unlawful conduct is to be encouraged. To be effective, however, such repudiation must be timely, unambiguous, specific as to the coercive conduct, free from other illegal conduct, adequately published to the employees, and must contain assurances that conduct will not happen again.
J.R. NORTON CO. v. ALRB (1984) 162 Cal.App.3d 692

409.03 Employer may escape liability for isolated labor contractor misconduct if employer publicly repudiates acts and reprimands labor contractor or demonstrates over period of time that it will not discriminate.
VISTA VERDE FARMS v. ALRB (1981) 29 Cal.3d 307

409.04 Misconduct Of Union

409.04 As remedy for Respondent Union's physical assaults and other acts of violence directed against representatives of rival Union during pre-election organizing period, Respondent directed to mail Notice to Employees to each employee of ranch where conduct occurred and to read Notice to them on their lunch hour, post notices at Union's business offices and meeting halls and publish same in all Union publications.
WESTERN CONFERENCE OF TEAMSTERS, Local 46, 3 ALRB No. 52

409.04 Potential misuse of employee list by union or potential invasions of privacy are not reasons to deny union the prepetition list.
CARIAN v. ALRB (1984) 36 Cal.3d 654

409.05 Consent Or Waiver By Union

409.06 Evidence; Totality Of Employer's Conduct

409.07 Public Disavowal Of Acts Of Agent

409.07 The burden is on a respondent to show that it effectively disavowed or otherwise repudiated the unlawful conduct.
J. R. NORTON COMPANY, 10 ALRB No. 7

409.07 A respondent may relieve itself of liability for the unlawful conduct of its supervisor and/or agent by retracting, disavowing or otherwise repudiating isolated and relatively minor unfair labor practices.
J. R. NORTON COMPANY, 10 ALRB No. 7

409.07 To effectively repudiate unlawful conduct, the minimum criteria stated in Passavant Memorial Area Hospital (1978) 237 NLRB 138 must be met--the repudiation must be timely, unambiguous, and specific in nature to the coercive conduct, the respondent must be free from other proscribed illegal conduct, and the repudiation must be adequately published and should give assurances to employees that in the future the respondent will not interfere with the exercise of their section 1152 rights.
J. R. NORTON COMPANY, 10 ALRB No. 7

409.07 Board held that threats to employees by employer's agent were not adequately repudiated by employer's private reprimand of the agent; the disavowal must be made to the employee(s) who were threatened or had knowledge of the threats.
NICK J. CANATA, 9 ALRB No. 8

409.07 Repeated, egregious misconduct of supervisors went unrestrained by management in violation of Act. Company totally consented to supervisor's actions and in fact directly initiated some of ULPs.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

409.07 Coercive effects of threat not dispelled where supervisor did not repudiate other supervisor's conduct and coercive practices continued unabated after incident.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

409.07 Voluntary employer repudiation of unlawful conduct is to be encouraged. To be effective, however, such repudiation must be timely, unambiguous, specific as to the coercive conduct, free from other illegal conduct, adequately published to the employees, and must contain assurances that conduct will not happen again.
J.R. NORTON CO. v. ALRB (1984) 162 Cal.App.3d 692

409.07 Board properly rejected employer's attempted repudiation where notice to employee was ambiguous as to the event and the people involved, contained a denial of responsibility and failed to give future assurances.
J.R. NORTON CO. v. ALRB (1984) 162 Cal.App.3d 692

409.07 Employer may escape liability for isolated labor contractor misconduct if employer publicly repudiates acts and reprimands labor contractor or demonstrates over period of time that it will not discriminate.
VISTA VERDE FARMS v. ALRB (1981) 29 Cal.3d 307

409.07 Employer is responsible for statements of supervisor, whether or not employer authorized them, unless statements are repudiated.
MERRILL FARMS v. ALRB (1980) 113 Cal.App.3d 176

409.08 Deferral To Arbitration (see also section 106.03)

410.00 DOMINATION OR ASSISTANCE

410.00 DOMINATION OF OR ASSISTANCE TO LABOR ORGANIZATIONS, EMPLOYEE COMMITTEES, ETC.

410.01 In General, Labor Code Section 1153(b)

410.01 It is not a violation of section 1153(b) for an employer merely to express a preference for a particular labor organization, particularly if that organization is not engaged in a campaign among the employer's workers.
AKITOMO NURSERY, 3 ALRB No. 73

410.01 To find a violation of section 1153(b), there must be a finding that the degree or nature of the employer's involvement with the labor organization has impinged upon the free exercise of the employee's rights under section 1152 of the Act to organize themselves and deal at arm's length with the employer. The nature of the inquiry may differ depending on whether there are one or two labor unions involved.
BONITA PACKING COMPANY, 3 ALRB No. 27

410.02 Domination And Assistance Distinguished

411.00 CIRCUMSTANCES AFFECTING CHARGE

411.01 In General

411.02 Coercion Or Illegal Conduct By Rival Union

411.03 Desire Of Employees

411.04 Effective Or Limited Functioning of Union

411.05 Neutrality Statements; Purge Of Unfair Practices; Withdrawal Of Support

411.06 Management Aid Or Instigation In Forming Unions, Committees, Etc.; Statements In General; Free Speech

411.07 Attorney Furnished Or Suggested

411.08 Management Participation In Union Meetings

411.09 Management Retaliatory Decisions

411.09 Employer's discontinuance of operations in the midst of pruning operations in the face of picketing activity was unlawful as it tended to aid the rival union, and to intimidate the incumbent union's supporters; the layoff of nonstriking employees was in retaliation for their union support and therefore unlawful. Advice from a labor consultant that the cessation was necessary was no defense to the retaliation.
ARAKELIAN FARMS, 9 ALRB No. 25

411.10 Questioning; Surveillance

411.10 Where company allowed Teamsters to enter fields whenever they wanted, but denied UFW access to buses, subjected UFW organizers to surveillance during lawful access periods, and made pro-Teamsters, anti-UFW statements, practice resulted in support of Teamster organizing effort in violation of section 1153(b) of the Act. (ALJD, pp. 9-10, 22.)
SAM ANDREWS' SONS, 3 ALRB No. 45

411.11 Threats And Inducements

411.12 Unequal Treatment of Employees And Applicants; Hiring, Discharge, Layoffs, Reinstatement, Etc.

411.13 Constitution, Bylaws, Or Structure Of Union; Purpose Of Organization

412.00 ORGANIZATION, MEETINGS, ETC., ON COMPANY TIME AND PROPERTY

412.01 In General

412.02 Favoritism; Contract Ban On Solicitation; Unequal Treatment Of Unions; Preferential Access

412.02 Where company allowed Teamsters to enter fields whenever they wanted, but denied UFW access to buses, subjected UFW organizers to surveillance during lawful access periods, and made pro-Teamsters, anti-UFW statements, practice resulted in support of Teamster organizing effort in violation of section 1153(b) of the Act. (ALJD, pp. 9-10, 22.)
SAM ANDREWS' SONS, 3 ALRB No. 45

412.02 To find a violation of section 1153(b), there must be a finding that the degree or nature of the employer's involvement with the labor organization has impinged upon the free exercise of the employee's rights under section 1152 of the Act to organize themselves and deal at arm's length with the employer. The nature of the inquiry may differ depending on whether there are one or two labor unions involved.
BONITA PACKING COMPANY 3 ALRB No. 27

412.02 Board could reasonably infer that employer's solicitation on behalf of Teamsters was neither isolated nor de minimis, where supervisor admitted one incident and could not remember whether there were others.
JASMINE VINEYARDS, INC. v. ALRB (1980) 113 Cal.App.3d 968

412.03 Bulletin Board Use And Notice Of Meetings

412.04 Solicitation And Dues Collection

412.05 Special Facilities And Services

413.00 FINANCIAL AID, GIFTS, ETC

413.01 In General

413.02 Loans; Dues Payments, Etc.

413.03 Payment To Employees For Time Spent In Union Activities

413.04 Concessions, Vending Machines, Etc.

413.05 Union Expenses Paid

413.06 Wage Increases Or Employee Benefits

413.07 Re-Formed And Successor Organizations

414.00 EMPLOYER DISCRIMINATION IN REGARD TO EMPLOYMENT

414.00 DISCRIMINATION

414.01 In General; Labor Code Section 1153(c); Elements Of Prima Facie Case

414.01 Additional requirement in refusal to rehire cases that application be made when work is available is satisfied where employer had policy of contacting former employees when work available and by stipulation that work available at time of application or shortly thereafter.
GIANNINI PACKING CORP., 19 ALRB No. 16

414.01 Prima facie case not established in absence of evidence that Respondent motivated to discharge broccoli harvesting machine driver because driver's concerted activities.
ANTHONY HARVESTING, INC., 18 ALRB No. 7

414.01 In absence of evidence that Respondent's higher level supervision became aware of failure of replacement driver's failure to comply with direction to remain in driver's seat at all times machine operating, insufficient evidence to establish discharge for failure to remain in seat pretextual.
ANTHONY HARVESTING, INC., 18 ALRB No. 7

414.01 In discrimination in employment cases under Labor Code section 1153(c) and (a), the initial burden of establishing a prima facia case is on the General Counsel. The General Counsel must show by a preponderance of the evidence that 1) the alleged discriminatee(s) engaged in protected activity in support of the union; 2) the employer had knowledge of such conduct, and 3) there was a causal relationship between the employees' protected activity and the employer's action.
CALIFORNIA VALLEY LAND CO., INC., AND WOOLF FARMING CO. OF CALIFORNIA, INC., 17 ALRB No. 8

414.01 In cases involving employer motivation, the Board has adopted the two-part test of causation established in Wright Line, A Division of Wright Line, Inc. (1980) 251 NLRB 1083 (105 LRRM 1169). The General Counsel must first make a prima facie showing sufficient to support the inference that protected conduct was a "motivating factor" in the employer's decision. The burden of proof then shifts to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct.
CALIFORNIA VALLEY LAND CO., INC., AND WOOLF FARMING CO. OF CALIFORNIA, INC., 17 ALRB No. 8

414.01 In establishing discrimination in hiring, the General Counsel must show that the alleged discriminatees were not considered on an equal basis with other like employees seeking the same position, and that the dissimilar treatment affected the conditions of their employment.
CALIFORNIA VALLEY LAND CO., INC., AND WOOLF FARMING CO.

OF CALIFORNIA, INC., 17 ALRB No. 8

414.01 General Counsel failed to establish causal connection between alleged discriminatee's concerted activity (complaining about late lunches and supporting son's effort to file workers' compensation claim) and employer's failure to rehire him and his family. T.T. MIYASAKA, INC., 16 ALRB No. 16

414.01 Where the General Counsel has established that persons have engaged in activities protected by the Act and that these activities were known by the employer, a discriminatory refusal to rehire may be established by a change without notice in the method of hiring harvest workers if it precludes workers from making timely application and disparately impacts union supporters. STAMOULES PRODUCE CO., 16 ALRB No. 13

414.01 General Counsel is not required to show that employee's union activity had an effect on other workers in order to establish that it constituted protected concerted activity under section 1152. BRUCE CHURCH, INC., 16 ALRB No. 3

414.01 Board rejects employer's contention that anti-union animus is an essential element of General Counsel's case in proving a discriminatory discharge; while animus may help to establish the causal relationship between protected activity and the discharge, it is not a necessary element of the prima facie case itself. BRUCE CHURCH, INC., 16 ALRB No. 3

414.01 Evidence of a prior history of anti-union animus based on conduct actually found to have violated the Act, rather than inferred from the mere existence of prior unfair labor practice charges that were not brought to complaint by the General Counsel, is but one factor to be considered in determining whether there is a violation of section 1153(c). Such evidence is not a substitute for the causal connection between the employee's union activity and the employer's corresponding adverse action. MARIO SAIKHON, INC., 16 ALRB No. 1

414.01 Worker who swore at supervisor during a protected work stoppage would have been discharged for his abusive language even if he had been engaged in activity merely on his own behalf rather than concerted activity. Thus, employer did not violate the Act by discharging him. (Wright Line, Inc. (1980) 251 NLRB 1083 [105 LRRM 1169].) DAVID FREEDMAN & CO., 15 ALRB No. 9

414.01 The NLRB's Wright Line analysis in all cases turning on employer motivation, as set forth in NLRB v. Transportation Management Corporation (1983) 462 U.S. 393 [113 LRRM 2857], applies to discharge as well as to refusal to rehire cases but would not be applicable in a case where motivation is not an issue. Thus, Wright Line

would have no meaning where, for instance, the question was whether an employee would have received seniority and been recalled pursuant to those rights under a collective bargaining agreement. (See, e.g., Engineered Control System (1985) 274 NLRB 1308, 1314 [119 LRRM 1038].)
SAM ANDREWS' SONS, 13 ALRB No. 15

414.01 Where both legitimate and unlawful motives are offered to explain an employer's actions toward its employees, the analysis must follow the test of causation set forth in Wright Line, Inc. (1980) 251 NLRB 1083 [105 LRRM 1169], enforced as modified (1st Cir. 1981) 662 F.2d 899 [108 LRRM 2513].As approved in NLRB v. Transportation Management Corporation (1983) 462 U.S. 393 [113 LRRM 2857], Wright Line applies to all cases alleging violations of Labor Code sections 1153(c) and (a) turning on employer motivation.
SAM ANDREWS' SONS, 13 ALRB No. 15

414.01 Although employer was aware of employees' visit to a union office as well as crew's conduct in putting on union buttons at work, no causal connection was established between either incident and the employees' termination. Therefore, ALJ's dismissal of 1153(c) allegation is affirmed.
AGRI-SUN NURSERY, 13 ALRB No. 10

414.01 Board will not consider whether employer has "proper cause" for the discharge of an employee; it will consider only whether the discharge violates the ALRA.
D'ARRIGO BROTHERS, 13 ALRB No. 1

414.01 In order to establish a violation of sections 1153(a) and (c) stemming from an employee discharge, the General Counsel has the burden of establishing by a preponderance of the evidence, that the employee participated in union or other protected activity, that the employer had knowledge of such participation, and that there was a causal connection between the activity and the employee's discharge. (ALJD, p. 19.)
D'ARRIGO BROTHERS, 13 ALRB No. 1

414.01 The Board concluded that Respondent did not unlawfully refuse to reinstate three employees to night shift irrigation work because of their union activities where General Counsel failed to establish a causal connection between the union activities and Respondent's actions.
SAM ANDREWS' SONS, INC., 12 ALRB No. 24

414.01 Once the General Counsel has established a prima facie case that Respondent was acting on the basis of an unlawful motive, the burden of proof shifts to the employer and a violation of the Act will be found unless the employer proves by a preponderance of the evidence that it would have taken the adverse action even in the absence of the employee's protected activity. (See Royal Packing Co. (1982) 8 ALRB No. 74.)

RANCH NO. 1, 12 ALRB No. 21

414.01 General Counsel's prima facie case met in view of other unfair labor practices, timing of discharge in relation to union activity and supervisor's antiunion statement.
CLAASSEN MUSHROOM, INC., 12 ALRB No. 13

414.01 In certain circumstances, a familial relationship with a person who has engaged in activity protected by the Act may be found to be the motivation behind discriminatory treatment of the relative. Where, however, the only evidence in support of a charge of discriminatory layoff is the familial relationship to the activist, at most a suspicion of unlawful motive may be raised, but the familial relationship alone is insufficient to meet General Counsel's burden of proof.
LIGHTNING FARMS, 12 ALRB No. 7

414.01 An unlawful discharge is established by evidence of the dischargee's role as employee spokesperson, subsequent retaliation by imposition of harsh working conditions immediately following assertion of the role of spokesperson and termination shortly thereafter. The Employer's defense of lack of production and a random method of selection for discharge was discounted by the animus of the employer, the timing of the discharge and the change in layoff selection process.
LIGHTNING FARMS, 12 ALRB No. 7

414.01 Employer violated 1153(c) by discriminatorily discharging employee because of his union support and affiliation.
WEST COAST DAIRY, 11 ALRB No. 30

414.01 Where an employee's tenure is expressly conditioned on the continued employment of the supervisor, and the supervisor has been terminated as a means of discharging the employees because of their concerted activity, the discharge of the supervisor also violates the Act.
SEQUOIA ORANGE CO., 11 ALRB No. 21

414.01 General Counsel established essential elements of the prima facie case of a discriminatory discharge, in part based upon employer's statements of antiunion animus directed toward discriminatee.
THE GARIN COMPANY, 11 ALRB No. 18

414.01 Prima facie case not established by evidence of employer's animus against two union supporters who previously filed unfair labor charges against employer and fact that employer failed to notify them of work when he saw them 5 days before the start-up date; evidence insufficient to establish causal connection since it was not shown that employer would have known of start-up date 5 days in advance or would have notified workers in advance.
YAMANO FARMS, INC., 11 ALRB No. 16

414.01 Violation of 1153(c) and (d) established by evidence of (1) employer's and his labor contractor's animus against two union supporters who previously filed unfair labor practice charges against employer and (2) the labor contractor's successful attempts to keep same union supporters from learning of start-up date of weed and thin operations.
YAMANO FARMS, INC., 11 ALRB No. 16

414.01 Knowledge of foreman's refusal to commit ULP is imputed to higher management officials where there is no evidence that such information was not passed on.
GEORGE LUCAS & SONS, 11 ALRB No. 11 (See 13 ALRB No. 4)

414.01 Two employees discharged because of their union activity where evidence showed that other employees who engaged in similar conduct were not disciplined; alleged reason for discharge was pretextual.
GEORGE LUCAS & SONS, 11 ALRB No. 11 (See 13 ALRB No. 4)

414.01 General Counsel failed to rebut employer's contention that the decision to not give its yearly bonus to workers was because of higher expenses and lower profits for that year.
MATSUI NURSERY, INC., 11 ALRB No. 10

414.01 Employees were denied requested transfers because of their protected union activities and because they filed charges with Board.
MATSUI NURSERY, INC., 11 ALRB No. 10

414.01 Knowledge of an employee's protected activity was imputed to the employer where the employer did not meet its burden of establishing that the supervisor who learned of the employee's protected concerted activity did not pass on that information to the personnel who decided to lay him off.
ARCO SEED COMPANY, 11 ALRB No. 1

414.01 To prove a violation of section 1153(c), the General Counsel must establish that a person engaged in activities protected by the Act, that this activity was known to the employer and that the employee was denied rehire or terminated because of the protected activity; once the General Counsel thus establishes a prima facie case of unlawful discrimination, the burden of proof shifts to the employer to establish that the employee would have been denied rehire or terminated notwithstanding any protected activities.
BEN AND JERRY NAKASAWA d/b/a NAKASAWA FARMS AND B.J. HAY HARVESTING, 10 ALRB No. 48

414.01 Discharges of union activists within two weeks of representation election, although prima facie discriminatory, were found to be based on one activist's insubordination and the other's brandishing of gun to other employee during election.

VISALIA CITRUS PACKERS, 10 ALRB No. 44

414.01 Discrimination against an employee which violates the Act may be established by an unfavorable change in the employer's treatment of that employee, as well as by disparate treatment of that employee in comparison with other employees.
GEORGE A. LUCAS & SONS, 10 ALRB No. 33

414.01 General Counsel failed to establish a prima facie case that employer discriminatorily laid off two employees of their protected concerted activities.
SIGNAL PRODUCE COMPANY, 10 ALRB No. 23

414.01 Discrimination against returning strikers, known to be union supporters, shown by disparate treatment by strikers as compared with nonstrikers.
LU-ETTE FARMS, INC., 10 ALRB No. 20

414.01 Employee's union activity was not too remote in time from the act of discrimination to preclude the finding of a violation.
PAUL BERTUCCIO, 10 ALRB No. 10

414.01 Where a change (without notice) in the method of notifying workers of harvest starting date foreseeable precluded workers from making timely applications and disparately impacted on union supporters, disparate impact was unavoidable consequence which employer must have intended; statistical evidence of disparate impact sufficient to establish that failure to apply for work or late application was due to employer's failure to notify employees of the starting date of the harvest as was its past practice.
ADMIRAL PACKING COMPANY (DISSENT), 10 ALRB No. 9

414.01 Generally in discrimination cases, General Counsel must prove that the employee engaged in union activities and/or testified before the Board, that the employer had knowledge thereof and that there was a causal connection between the union activity and/or ALRB testimony and the subsequent discriminatory treatment of the employee.
BRUCE CHURCH, INC., 9 ALRB No. 75

414.01 In mixed motive cases, when the General Counsel establishes that a contributing factor in an employer's decision to terminate an employee is the employee's union activity, the employer can only avoid a finding that it violated the Act by demonstrating by a preponderance of the evidence that it would have discharged the employee even absent his/her union involvement.
MIKE YUROSEK & SON, INC., 9 ALRB No. 69

414.01 A discriminatory act may violate section 1153(c), even absent a disproportionate or discriminatory effect, provided the act, as a natural and foreseeable consequence, tends to encourage or discourage union

activity. (Majestic Molded Products (2nd Cir. 1964) 330 F.2d 603, enfg. 143 NLRB 71.)
McCARTHY FARMING CO., INC., et al., 9 ALRB No. 34

414.01 No causal connection establishing 1153(c) violation absent evidence Employer aware alleged discriminatee complained to Union or ALRB.
NASH-DE CAMP COMPANY, 8 ALRB No. 5

414.01 Union activity not a motive for discharge where: (1) Employee's Union activity not noteworthy; (2) no overt reprisals against more prominent Union supporters; (3) no action taken until a month after election although Union activity preceded election; (4) more plausible reason for discharge established.
NASH-DE CAMP COMPANY, 8 ALRB No. 5

414.01 Decision to lay off crew made before Employer aware of Union activity, rebuts General Counsel's prima facie case of section 1153(a) and (c) violations.
NASH-DE CAMP COMPANY, 8 ALRB No. 5

414.01 Layoff one week before election and soon after Employer learned of Employees' support for Union, coupled with hostility of Employer toward Union, established prima facie case.
NASH-DE CAMP COMPANY, 8 ALRB No. 5

414.01 Discriminatory motive may be inferred where: (1) anti-union animus by supervisor; (2) interrogation of crew regarding their Union support; (3) supervisor's statements that aware of time, place and attendance of Union meetings; and (4) Employer offered crew leader money and solicited assistance in discouraging Employees from supporting Union.
NASH-DE CAMP COMPANY, 8 ALRB No. 5

414.01 To establish prima facie case of discrimination discharge or ref or failure to rehire, the General Counsel must show by a preponderance of evidence that Employee was engaged in PCA, the Respondent had knowledge of such activity, and that there was some connection or causal relationship between the protective activity and the discharge or failure to rehire. Where the alleged discrimination consists of a ref to rehire, the General Counsel must ordinarily show that the discriminatee applied for work at a time when work was available and that the Employer's policy was to rehire former Employees. If the General Counsel establishes a prima facie case that protective activity was a motivating factor in the Employer's decision, the burden then shifts to the Employer to prove that it would have reached the same decision in the absence of the protective activity.
VERDE PRODUCE COMPANY, 7 ALRB No. 27

414.01 General Counsel failed to establish prima facie case of illegal retaliation against Employees who had arranged a

UFW radio broadcast critical of alleged supervisor.
TENNECO WEST, INC., 7 ALRB No. 12

414.01 Employer violated section 1153(c) and (a) for issuing disciplinary notice to Employee who was overheard talking with other Employees about a strike and who had led the crew in wage dispute a few days earlier. Defense that the Employee was performing work improperly pretextual since Employee's husband who was working with her was not reprimanded.
GIUMARRA VINEYARDS, INC., 7 ALRB No. 7

414.01 The employer violated sections 1153(c) and (a) by discharging an employee who asked for a transfer, giving as a reference an individual with the same name as a union organizer with whom the company had a hostile relationship. The fact that the employer was mistaken in his belief that the employee has a close association with a union organizer is no defense.
HIGH & MIGHTY FARMS, 6 ALRB No. 34

414.01 To establish an unlawful refusal to rehire, it is not required in all cases to show either that work was available at the time of application or that the employer had a policy of recalling former employees.
Golden Valley Farming, 6 ALRB No. 8

414.01 Although the timing of employee's discharge was suspect, viz., four days after his participation in concerted activity, the uncontradicted record evidence amply demonstrated that supervisors were experiencing problems with employee's work performance; moreover, the Employer's witnesses testified that they had decided upon discharge prior to employee's participation in protected concerted activity. General Counsel therefore failed to demonstrate by a preponderance of the evidence that the employee would not have been terminated but for his participation in the protected, concerted activities.
SAM ANDREWS' SONS, 5 ALRB No. 38

414.01 Where a group of three employees was transferred from packing to picking grapes during a slowdown, the transfer did not violate the provisions of a collective bargaining contract or any company policy, and, there was no evidence that the transfer was intended to inhibit employee organization, the Board refused to find that the transfer of a Union supporter within the group of three was unlawful.
KARAHADIAN RANCHES, INC., 5 ALRB No. 37

414.01 Board dismissed charge of alleged discriminatory layoff or refusal to rehire because Employer Union activity minimal and no showing Employer knew of such activity.
MARIO SAIKHON, INC., 4 ALRB No. 107

414.01 Board will not reach question of whether Employer's conduct was inherently destructive of employees' section

1152 rights and thus in violation of the Act when record evidence supported finding that Employer motivated by anti-union animus is discharging crew.
S & F GROWERS, 4 ALRB No. 58

414.01 Discharge not violation of section 1153(a) or (c) when Employee not engaged in concerted activity but made only personal gripes, and no Union activity.
TREFETHEN VINEYARDS, 4 ALRB No. 19

414.01 General Counsel and petitioner failed to prove by a preponderance of the evidence that employer discriminatorily refused reinstatement to employee due to his exercise of his rights under the Act, his union activities, or his testimony in prior Board proceeding, and complaint is dismissed in its entirety.
D'ARRIGO BROS. OF CALIFORNIA, Reedley Dist. No. 3, 3 ALRB No. 34

414.01 Once the General Counsel proves unlawful motive, the employer has the burden of proving that it was influenced by lawful motive.
MAGGIO-TOSTADO, INC. 3 ALRB No. 33

414.01 Where the preponderance of the evidence employer knowledge of the Union activities and sympathies, and inconsistent or shifting reasons for the layoff of the employees, the Board held that the employer had unlawfully laid off the employees in violation of section 1153, subdivisions (a) and (c).
MAGGIO-TOSTADO, INC., 3 ALRB No. 33

414.01 Once the General Counsel proves unlawful motive, the employer has the burden of proving that it was influenced by lawful motive.
MAGGIO-TOSTADO, INC., 3 ALRB No. 33

414.01 To establish a prima facie case of discriminatory refusal to rehire, general counsel must show by a preponderance of the evidence that the employee engaged in protected activity, that the employer had knowledge of such activity and that there was some causal relationship between the protected activity and the failure to rehire.
J.R. NORTON CO. v. ALRB (1987) 192 Cal.App.3d 874

414.01 [Appendix]
In 1153(c) cases, General Counsel must establish discriminatory conduct which could have adversely affected employee rights, in light of such factors as animus, timing, and employer knowledge of union activities. Once General Counsel establishes prima facie case, employer has burden of demonstrating that conduct was motivated by legitimate objectives.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209
[Appendix]

414.01 Substantial evidence does not mean "any" evidence, and is

not established by mere suspicions of unlawful motive. Such findings regarding motive are not lightly to be inferred.
CARL JOSEPH MAGGIO, INC. v. ALRB (1984) 154 Cal.App.3d 40

414.01 If discharge or discipline is causally related to protected labor activities of employees, Act is violated irrespective of any inquiry into employer's subjective state of mind.
SUPERIOR FARMING CO. v. ALRB (1984) 151 Cal.App.3d 100

414.01 Even in so-called "dual motive" case, that is, where employer arguably possessed both lawful and unlawful reasons for disciplining employee, test is whether employee's protected activity was "but for" cause of discharge or other discipline, regardless of employer's state of mind.
SUPERIOR FARMING CO. v. ALRB (1984) 151 Cal.App.3d 100

414.01 In absence of union or other protected activities, it is not purpose of ALRA to vest in administrative board any control over employer's business policies.
NASH-DECAMP CO. v. ALRB (1983) 146 Cal.App.3d 92

414.01 Wholesale replacement of union with non-union employees has manifest and substantial adverse impact on organizational rights. Given such inherently destructive conduct, Board may require employer to justify his acts and may find ULP without reference to intent.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

414.01 Where Board concludes that employer's purported business justification is pretextual, Wright Line analysis has no meaning, since union animus is the only true cause.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

414.01 When it is shown that employee is guilty of misconduct warranting discharge, discharge should not be deemed ULP unless Board determines that employee would have been retained but for his union or protected activity.
MARTORI BROTHERS DISTRIBUTORS v. ALRB (1981) 29 Cal.3d 721

414.01 Once it is shown that employee's union activities were a motivating factor in discharge, burden shifts to employer to show that discharge would have occurred in any event.
MARTORI BROTHERS DISTRIBUTORS v. ALRB (1981) 29 Cal.3d 721

414.01 Employee's involvement in union activities does not immunize him or her from discharge for misconduct or from routine employment decisions.
MARTORI BROTHERS DISTRIBUTORS v. ALRB (1981) 29 Cal.3d 721

414.01 In absence of other circumstances, employer can discharge its employees at will, and an employee's protected

activity does not insulate him or her from discharge for misconduct or from ordinary employment decisions.
GEORGE ARAKELIAN FARMS v. ALRB (1980) 111 Cal.App.3d 258

414.01 Only rarely will there be probative direct evidence of employer's motivation. It is well-established rule that in such cases Board is free to draw inference from all the circumstances, and need not accept self-serving declarations of intent, even if they are uncontradicted.
ROYAL PACKING CO. v. ALRB (1980) 101 Cal.App.3d 826

414.01 Substantial evidence was lacking from which the Board could infer a causal connection between discriminatee's discharge and his union activities-- that he would not have been discharged "but for" his union activities or that his union activities were a "moving" or "substantial" cause of his discharge.
ROYAL PACKING CO. v. ALRB (1980) 101 Cal.App.3d 826

414.01 1153(c) prohibits discrimination in regard to tenure and other conditions of employment. For violation to be found there must be both discrimination and resulting discouragement of union membership. The finding of a violation turns on employer's motive.
SUNNYSIDE NURSERIES, INC. v. ALRB (1979) 93 Cal.App.3d 922

414.01 Employee who engages in union activities will not tie employer's hand and prevent him from exercise of his business judgment to discharge employee for cause.
SUNNYSIDE NURSERIES, INC. v. ALRB (1979) 93 Cal.App.3d 922

414.01 Prima facie case rebutted where employer demonstrated that employee would have been discharged in any event due to violation of company policy on unexcused absences.
D'ARRIGO BROTHERS COMPANY OF CALIFORNIA, 21 ALRB No. 5

414.01 Since change in classification occurred six months before protected activity, change could not have been designed to prevent employee from voting.
WARMERDAM PACKING CO., 24 ALRB No. 2

414.01 Knowledge of union activity not imputed where credited testimony indicates that the information was not passed on to higher officials in company who made the decision to take the adverse actions complained of. Foremen's knowledge that alleged discriminatees were leaders of organizing effort not imputed where respondent's denials of knowledge credited, evidence showed that foremen were sympathetic to the organizing effort, and organizing otherwise was "secret."
WARMERDAM PACKING CO., 24 ALRB No. 2

414.01 No prima facie case of layoff in retaliation for union activities where layoff not close in time to union

activities, no evidence of collateral unfair labor practices, no credited expressions of animus, and individual layoff part of larger, seasonal layoff.
WARMERDAM PACKING CO., 24 ALRB No. 2

414.01 No prima facie case of refusal to rehire where refusal to rehire remote in time from union activity, no context of other unlawful conduct, and testimony concerning statement of anti-union animus not credited.
WARMERDAM PACKING CO., 24 ALRB No. 2

414.01 Employer knowledge of protected activity is an essential element of a prima facie case. Knowledge of protected activity held by supervisors is imputed to the employer, unless it is shown that the decision-maker(s) of the adverse action were unaware of the activity at the time the decision was made. Circumstances reflecting that it was unlikely that such knowledge was passed, along with credible denials of knowledge by decision makers, is sufficient to avoid imputation of knowledge.
VINCENT B. ZANINOVICH & SONS, INC., 25 ALRB No. 4

414.01 A dual motive analysis under *Wright Line* (1980) 251 NLRB 1083 is not necessary in circumstances where the conduct for which the employer claims to have discharged the employee remains protected.
THE ELMORE COMPANY, 28 ALRB No. 3

414.01 Where an employer provokes an employee to the point where the employee commits an indiscretion or insubordinate act, and the employer's provocation consists of unlawful conduct or is motivated by the employee's protected activity, the employer cannot rely on the employee's indiscretion to meet its burden of showing that it would have discharged the employee even in the absence of protected activity.
PICTSWEET MUSHROOM FARMS, 28 ALRB No. 4

414.01 The discharge of an employee who reactively grabbed and lowered his supervisor's hand from his face after the supervisor threw mushrooms at him, yelled at him and pointed his finger at his face violated section 1153 (a) and (c) as the employee's brief physical contact with the supervisor was in line with the supervisor's provocative conduct, and as such, the employer could not rely on the employee's indiscretion in disciplining him.
PICTSWEET MUSHROOM FARMS, 28 ALRB No. 4

414.01 Presumption that supervisor's knowledge of protected activity would become known to his superiors who made decision to discharge is rebutted where credited evidence shows that knowledge of the protected activity was not communicated to the decision maker.
RIVERA VINEYARDS, et al., 29 ALRB No. 5

414.01 Individual request for re-employment not a necessary element of prima facie case where employer maintained

policy whereby employees were informed of recall by their forepersons.
RIVERA VINEYARDS, et al., 29 ALRB No. 5

414.01 General Counsel established prima facie case of discriminatory discharge where employee concertedly complained to employer about broken ventilation fans in milk barn where employees were working and circumstantial evidence such as failure to warn, severity of averse action and inconsistent reasons given for the discharge supported an inference of unlawful motivation
AUKEMAN FARMS, 34 ALRB No. 2

414.01 Finding that company managers suspected that charging party was involved in anonymous letter protesting supervisor's conduct sufficient to establish employer knowledge of protected activity.
WOOLF FARMING CO. OF CA, INC., 35 ALRB No. 2

414.01 Despite evidence from which to infer a causal relationship between employee's protected activity and his discharge, allegation must fail where employer knowledge element of prima facie case is not proven by a preponderance of the evidence.
TULE RIVER DAIRY and P&M VANDERPOEL DAIRY, 35 ALRB No. 4

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

414.02 Encouragement Or Discouragement Of Union Membership In General

414.02 Layoff earlier or more frequent than normal resulting from employer assigning work to other workers for purpose of affecting outcome of election, discriminatory.
GERAWAN RANCHES, 18 ALRB No. 5

414.02 Layoff resulting from employer's election strategy of having work performed by other employees to affect outcome of election, discriminatory.
GERAWAN RANCHES, 18 ALRB No. 5

414.02 Where Respondent puts forth shifting reasons and where Respondent's witnesses testify inconsistently and contradict one another as well as themselves, it is reasonable to infer pretext.
STAMOULES PRODUCE CO., 16 ALRB No. 13

414.02 Respondent's assertion of both false and shifting reasons for refusal to rehire supports an inference of unlawful motive.
STAMOULES PRODUCE CO., 16 ALRB No. 13

414.02 Absent direct evidence of a discriminatory motive, NLRB

and ALRB look to certain factors to establish the true motive for an employer's adverse action in response to protected activity, including (1) proximity of action to the protected activity (timing); (2) assertion of false or inconsistent or belated reasons for the action; (3) whether employer has in the past tolerated similar conduct; (4) employer's failure to warn employees of the conduct later asserted as the basis for the adverse action; (5) employer's failure to investigate incidents relied upon for adverse action; and, (6) severity of adverse action.
NAMBA FARMS, INC., 16 ALRB No. 4

414.02 Respondent's assertion of both false and shifting reasons for adverse action supports an inference of unlawful motive.
NAMBA FARMS, INC., 16 ALRB No. 4

414.02 Absence of any warning whatsoever regarding crews' work performance supports inference that employer's claim they were discharged because work substandard for two years is pretext for unlawful action.
NAMBA FARMS, INC., 16 ALRB No. 4

414.02 Where Respondent puts forth but then withdraws reason for adverse action and where witnesses testify inconsistently and contradict one another as well as themselves, reasonable to infer Respondent "casting about for a reason which would withstand scrutiny because it could not divulge the true motive."
NAMBA FARMS, INC., 16 ALRB No. 4

414.02 A discriminatory act may violate section 1153(c), even absent a disproportionate or discriminatory effect, provided the act, as a natural and foreseeable consequence, tends to encourage or discourage union activity. (Majestic Molded Products (2nd Cir. 1964) 330 F.2d 603, enfg. 143 NLRB 71.)
McCARTHY FARMING CO., INC., et al., 9 ALRB No. 34

414.02 Granting a pay increase to all employees during an election campaign is not discrimination in violation of section 1153(c), despite a showing of anti-union motivation. However, granting a pay increase during an election campaign is an unfair labor practice in violation of section 1153(a).
AKITOMO NURSERY, 3 ALRB No. 73

414.02 If employer's discriminatory conduct is "inherently destructive of employee rights", no proof of anti-union motivation is needed and Board can find ULP even if employer introduces evidence that its conduct was motivated by business considerations.
M. B. ZANINOVICH, INC. v. ALRB (1981) 114 Cal.App.3d 665

414.02 1153(c) prohibits discrimination in regard to tenure and other conditions of employment. For violation to be

found there must be both discrimination and resulting discouragement of union membership. The finding of a violation turns on employer's motive.
SUNNYSIDE NURSERIES, INC. v. ALRB (1979) 93 Cal.App.3d 922

414.03 Burden Of Proof; Weight Of Evidence

414.03 Respondent met burden of showing that would have discharged broccoli machine driver that would have shifted to Respondent had prima facie case been established.
ANTHONY HARVESTING, INC., 18 ALRB No. 7

414.03 In cases involving employer motivation, the Board has adopted the two-part test of causation established in Wright Line, A Division of Wright Line, Inc. (1980) 251 NLRB 1083 (105 LRRM 1169). The General Counsel must first make a prima facie showing sufficient to support the inference that protected conduct was a "motivating factor" in the employer's decision. The burden of proof then shifts to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct.
CALIFORNIA VALLEY LAND CO., INC., AND WOOLF FARMING CO. OF CALIFORNIA, INC., 17 ALRB No. 8

414.03 Worker who swore at supervisor during a protected work stoppage would have been discharged for his abusive language even if he had been engaged in activity merely on his own behalf rather than concerted activity. Thus, employer did not violate the Act by discharging him. (Wright Line, Inc. (1980) 251 NLRB 1083 [105 LRRM 1169].)
DAVID FREEMAN & CO., 15 ALRB No. 9

414.03 Where the ALJ found that the employer utilized a statement from its own supervisor that its primary union organizer had quit and where the employee denied having voluntarily quit, the employer cannot rely on a disputed communication by one of its own supervisors to create what would appear to be a nondiscriminatory motive to defeat the prima facie case establishing a violation of the Act.
LA CUESTA VERDE GINNING CO., 13 ALRB No. 23

414.03 Since evidence of actual motive rarely will be available, Board permitted to infer motive from the surrounding circumstances.
SAM ANDREWS' SONS, 13 ALRB No. 15

414.03 In all dual motive cases, Board must follow a two-step test to determine whether a causal relationship exists between the alleged discriminatory action and the employees' protected activities. General Counsel first must make a prima facie showing sufficient to support an inference that the protected conduct was a motivating factor in the employer's decision to take action

allegedly proscribed by the Act. Once this is established, the burden shifts to the employer to demonstrate by a preponderance of the evidence that its conduct would have been the same even in the absence of the employees' protected activities.
SAM ANDREWS' SONS, 13 ALRB No. 15

414.03 Since employer's asserted business justifications for terminating two employees did not appear to be entirely pretextual, ALJ erred in failing to apply "but for" test applicable in dual motive cases. (Wright Line, Inc. (1980) 251 NLRB 1083; Nishi Greenhouse (1981) 7 ALRB No. 18.) However, after examining the evidence concerning the employees' work histories, Board concluded that the evidence demonstrated that the employees would not have been discharged but for their protected concerted activity, and therefore employer violated section 1153(a) by discharging them.
AGRI-SUN NURSERY, 13 ALRB No. 10

414.03 Once the General Counsel establishes a prima facie case, the burden of proof then shifts to the employer to demonstrate that the discharge would have taken place even in the absence of any protected concerted activity. (ALJD, p.9.)
D'ARRIGO BROTHERS, 13 ALRB No. 1

414.03 In order to establish a discriminatory failure or refusal to hire or rehire, General Counsel must first establish that the prospective employee made a proper application for work at a time when work was available but was rejected for reasons proscribed by the Act.
GRAND VIEW HEIGHTS CITRUS ASSOCIATION, 12 ALRB No. 28

414.03 When a prospective employee makes an application for work that is rejected in a discriminatory manner which would lead the applicant reasonably to believe that further efforts to seek work would be futile, the employee is entitled to an immediate offer of work with backpay to accrue from the date of the first opening for which the applicant was qualified to fill.
GRAND VIEW HEIGHTS CITRUS ASSOCIATION, 12 ALRB No. 28

414.03 Once the General Counsel has established a prima facie case that Respondent was acting on the basis of an unlawful motive, the burden of proof shifts to the employer and a violation of the Act will be found unless the employer proves by a preponderance of the evidence that it would have taken the adverse action even in the absence of the employee's protected activity. (See Royal Packing Co. (1982) 8 ALRB No. 74.)
RANCH NO. 1, 12 ALRB No. 21

414.03 While a finding of past discrimination may be of some relevance in assessing a present action, it does not become a conclusive presumption of current unlawful motivation. (Sioux Quality Packers Etc. v. NLRB (1978)

581 F.2d 153, 157 [98 LRRM 3128].)
THE GARIN COMPANY, 12 ALRB No. 14

414.03 Respondent failed to meet its burden of proving it would have discharged employee even in absence of union activities when part of its stated reason is admitted to be false.
CLAASSEN MUSHROOM, INC., 12 ALRB No. 13

414.03 Challenges to fight relied upon by ALJ found not to justify discharge when challenge took place after discharge was effectuated.
CLAASSEN MUSHROOM, INC., 12 ALRB No. 13

414.03 Where employer's asserted reason for a discharge is proven to be false, Board can infer that there is another, unlawful, motive which employer desires to conceal, where surrounding facts, such as antiunion animus, tend to reinforce that inference.
THE GARIN COMPANY, 11 ALRB No. 18

414.03 Prima facie case not established by evidence of employer's animus against two union supporters who previously filed unfair labor charges against employer and fact that employer failed to notify them of work when he saw them 5 days before the start-up date; evidence insufficient to establish causal connection since it was not shown that employer would have known of start-up date 5 days in advance or would have notified workers in advance.
YAMANO FARMS, INC., 11 ALRB No. 16

414.03 Employer's knowledge of protected activity, past history of anti-union animus, and unusual hiring of intermittent workers indicated that discrimination was a motivating factor. However, employer met its burden of proving that due to lack of seniority and the genuine need for intermittent workers, the employee would have been denied rehire even absent his protected activity.
SAM ANDREWS' SONS, 11 ALRB No. 5

414.03 To prove a violation of section 1153(c), the General Counsel must establish that a person engaged in activities protected by the Act, that this activity was known to the employer and that the employee was denied rehire or terminated because of the protected activity; once the General Counsel thus establishes a prima facie case of unlawful discrimination, the burden of proof shifts to the employer to establish that the employee would have been denied rehire or terminated notwithstanding any protected activities.
BEN AND JERRY NAKASAWA d/b/a NAKASAWA FARMS AND B.J. HAY HARVESTING, 10 ALRB No. 48

414.03 General Counsel failed to meet burden of proving that work was available when applied for; directive from employer to its foreman not to hire employee was not

inconsistent with assertion that work was unavailable when reemployment was sought.
SIGNAL PRODUCE COMPANY, 10 ALRB No. 23

414.03 Where a change (without notice) in the method of notifying workers of harvest starting date foreseeable precluded workers from making timely applications and disparately impacted on union supporters, disparate impact was unavoidable consequence which employer must have intended; statistical evidence of disparate impact sufficient to establish that failure to apply for work or late application was due to employer's failure to notify employees of the starting date of the harvest as was its past practice.
ADMIRAL PACKING COMPANY (DISSENT), 10 ALRB No. 9

414.03 Generally in discrimination cases, General Counsel must prove that the employee engaged in union activities and/or testified before the Board, that the employer had knowledge thereof that there was a causal connection between the union activity and/or ALRB testimony and the subsequent discriminatory treatment of the employee.
BRUCE CHURCH, INC., 9 ALRB No. 75

414.03 When discrimination is charged in the treatment afforded returning unfair labor practice strikers, the prima facie case elements of union activity and employer knowledge are met, but more preference shown toward other strikers is insufficient evidence to carry the General Counsel's burden.
BRUCE CHURCH, INC., 9 ALRB No. 74

414.03 To establish a prima facie case of discrimination against an individual employee, the General Counsel must show by a preponderance of the evidence that the employee was engaged in protected activity, that the employer had knowledge of such activity, and that there is some connection or causal relationship between the protected activity and the adverse action taken against the employee; once a prima facie case has been established, the burden of producing evidence to show it would have reached the same decision absent the employee's protected activity shifts to the employer; should the employer carry this burden, the General Counsel must then prove by a preponderance of the evidence that the reasons advanced by the employer were not true reasons, but were a pretext for a discrimination; thus the ultimate burden of proof remains with the General Counsel.
BRUCE CHURCH, INC., 9 ALRB No. 74

414.03 In mixed motive cases, when the General Counsel establishes that a contributing factor in an employer's decision to terminate an employee is the employee's union activity, the employer can only avoid a finding that it violated the Act by demonstrating by a preponderance of the evidence that it would have discharged the employee even absent his/her union involvement.

MIKE YUROSEK & SON, INC., 9 ALRB No. 69

414.03 When an employee is terminated for three acts of misconduct, one of which is proven to be protected activity under the Act, the employer has not proven by a preponderance of the evidence that the employee would have been terminated solely on the basis of the remaining two acts of misconduct.
MIKE YUROSEK & SON, INC., 9 ALRB No. 69

414.03 An employee named as a discriminatee, who failed to testify at the hearing, was placed by a disinterested witness out of the country at the time he allegedly requested reemployment; the ALJ's unexplained credibility resolution was insufficient to establish that the employee made a timely application for employment.
ARAKELIAN FARMS, 9 ALRB No. 25

414.03 Board rejected date ULP charge filed as basis for determining date discriminatee applied for work where testimony on issue conflicting.
NASH-DE CAMP COMPANY, 8 ALRB No. 5

414.03 Prima facie case of 1153(a) refusal to rehire not established where conflict in testimony could not be resolved on basis of demeanor or otherwise.
NASH-DE CAMP COMPANY, 8 ALRB No. 5

414.03 Discriminatory motive may be inferred where: (1) anti-union animus by sup; (2) interrogation of crew regarding their Union support; (3) supervisor's statements that aware of time, place and attendance of Union meetings; and (4) Employer offered crew leader money and assistance in discouraging Employees from supporting Union.
NASH-DE CAMP COMPANY, 8 ALRB No. 5

414.03 Decision to lay off crew made before E aware of Union activity, rebuts General Counsel's prima facie case of sections 1153(a) and (c) of violations.
NASH-DE CAMP COMPANY, 8 ALRB No. 5

414.03 No violation 1153(a) where General Counsel fails to establish that discriminatee applied for rehire when work available or show causal connection between PCA and refusal to rehire.
NASH-DE CAMP COMPANY, 8 ALRB No. 5

414.03 Discharge did not violate Act where, although Employer's reasons for discharge were suspicious, the Union activity was minimal, Employer knowledge of same was scarce and discharge was the result of tensions between management and workers regarding more stringent management procedures rather than Union activity.
DEL MAR MUSHROOMS, INC., 7 ALRB No. 41

414.03 Employer's labor relations representative admission that company abrogated Employee's seniority in response to

Union grievance filed on Employee's behalf essentially constitutes admission of violation of Act.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC., 7 ALRB No. 36, ALOD pp. 60-61

414.03 No causal connection between PCA and discharge where some 6 months elapsed and Employee destroyed Employer's crops, was fired immediately after such destruction, and Employee had fewer problems at work after PCA until the discharge.
TENNECO WEST, INC., 7 ALRB No. 12

414.03 General Counsel failed to establish prima facie case of illegal retaliation against Employees who had arranged a UFW radio broadcast critical of alleged supervisor.
TENNECO WEST, INC., 7 ALRB No. 12

414.03 No prima facie case of discriminatory discharge because no causal connection between PCA and firing. Employer not required to show legitimate basis for firing.
TENNECO WEST, INC., 7 ALRB No. 12

414.03 Mere suspicion that Employee discharged for Union activity or PCA because of Employer hostility to Union insufficient to prove discrimination.
TENNECO WEST, INC., 7 ALRB No. 12

414.03 Evidence did not establish a retaliatory layoff for PCA. Employees voluntarily chose not to work until they could discuss wage for redoing work with Employer who was reasonably unavailable to meet immediately.
GIUMARRA VINEYARDS, INC., 7 ALRB No. 7

414.03 General Counsel failed to establish discriminatory layoff where the record evidence is at least as consistent with employer's contention that employee was laid off because of his low seasonal seniority, for valid business reasons, and as to employer's failure to rehire employee, the record fails to show that employee made a proper application for work at a time when work was available.
MARIO SAIKHON, INC., 5 ALRB No.30

414.03 Board found it unreasonable of employer to depend on employee to inform co-worker of availability of alternative workers. However, as there was no evidence that layoffs were motivated by anti-union animus, no violation found.
PAUL W. BERTUCCIO and BERTUCCIO FARMS, 5 ALRB No. 5

414.03 Employer's anti-union animus and knowledge of employees' union activity insufficient to overcome employer's affirmative defense of insufficient work and poor performance by crew.
PAUL W. BERTUCCIO and BERTUCCIO FARMS, 5 ALRB No. 5

414.03 In seeking to establish a discharge violation of section 1153(c), the burden is upon the general counsel to

establish a prima facie case. Once that burden is met, the respondent must produce a valid explanation for the discharge since the real reason for the termination is within its exclusive knowledge.
ARNAUDO BROS. INC., 3 ALRB No. 78

414.03 Board may draw inferences from the facts of the case in an effort to establish the true motive; however, circumstances which merely raise a suspicion do not establish a violation.
ROD McLELLAN CO., 3 ALRB No. 71

414.03 Although there exists evidence to support a justifiable ground for discharge, ULP may nevertheless be found where the union activity is the moving cause behind the discharge or where worker would not have been fired "but for" union activities. Union animus need not be dominant motive.
S. KURAMURA, INC., 3 ALRB No. 49

414.03 Where the preponderance of the evidence employer knowledge of the Union activities and sympathies, and inconsistent or shifting reasons for the layoff of the employees, the Board held that the employer had unlawfully laid off the employees in violation of section 1153, subdivisions (a) and (c).
MAGGIO-TOSTADO, INC., 3 ALRB No. 33

414.03 Once the General Counsel proves unlawful motive, the employer has the burden of proving that it was influenced by lawful motive.
MAGGIO-TOSTADO, INC., 3 ALRB No. 33

414.03 Once the General Counsel proves unlawful motive, the employer has the burden of proving that it was influenced by lawful motive.
MAGGIO-TOSTADO, INC., 3 ALRB No. 33

414.03 Where the evidence indicates an employer was motivated by both an antiunion bias and legitimate business interests in its challenged action, the so-called "dual motive" situation arises. If the employer establishes reasons for its action, it will not be charged with any discriminatory misconduct unless the action would not have been taken but for the improper motivation.
VESSEY & COMPANY, INC. v. ALRB (1989) 210 Cal.App.3d 629

414.03 Once a prima facie case of discrimination is established, the employer may avoid liability by proving, by a preponderance of the evidence, that its actions were consistent with past business practices and that it would have taken the same action even in the absence of the union activities.
VESSEY & COMPANY, INC. v. ALRB (1989) 210 Cal.App.3d 629

414.03 The General Counsel bears the initial burden of proving that his engaging in protected activities was a

motivating factor in his discharge. The burden shifts to the employer to show that discharge would have occurred in any event. If the employer fails to carry his burden, the Board may find that the discharge was improper.
PAUL W. BERTUCCIO v. ALRB (1988) 202 Cal.App.3d 1369

414.03 Under the dual motive rules applicable to a situation in which an employer subject to the labor statutes was motivated by both an antiunion bias and legitimate business interests in discharging an employee, with regard to an employee guilty of misconduct warranting discharge, the discharge should not be deemed an unfair labor practice unless the Board determines the employee would have been retained but for his union membership or his performance of other protected activities.
PAUL W. BERTUCCIO v. ALRB (1988) 202 Cal.App.3d 1369

414.03 In 1153(c) cases, General Counsel must establish discriminatory conduct which could have adversely affected employee rights, in light of such factors as animus, timing, and employer knowledge of union activities. Once General Counsel establishes prima facie case, employer has burden of demonstrating that conduct was motivated by legitimate objectives.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209 [Appendix]

414.03 When it appears that employee was dismissed because of combined valid business reasons as well as invalid reasons, such as union or other protected activities, the question becomes whether discharge would have occurred "but for" protected activities.
NASH-DECAMP CO. v. ALRB (1983) 146 Cal.App.3d 92

414.03 While new owner of business has broad power to restructure its operations and hire its own workers, he violates ALRA if he discriminates against union applicants on basis of anti-union animus.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

414.03 General Counsel has burden of proving prima facie case by preponderance of evidence, after which burden shifts to employer to clearly explain non-discriminatory reasons for its actions.
MONTEBELLO ROSE CO. v. ALRB (1981) 119 Cal.App.3d 1

414.03 Once it is shown that employee's union activities were a motivating factor in discharge, burden shifts to employer to show that discharge would have occurred in any event.
MARTORI BROTHERS DISTRIBUTORS v. ALRB (1981) 29 Cal.3d 721

414.03 Mere suspicion is not sufficient to sustain finding that discriminatory conduct was motivated by employer animus. Evidence must support rational inference of causal nexus between anti-union animus and discrimination.
GEORGE ARAKELIAN FARMS v. ALRB (1980) 111 Cal.App.3d 258

414.03 Board need not treat self-serving declarations of employer as conclusive, even is uncontradicted. Board must determine motive from all circumstances of case. (Dissent by Tamura, J.)
GEORGE ARAKELIAN FARMS v. ALRB (1980) 111 Cal.App.3d 258

414.03 Circumstantial evidence is sufficient to establish unlawful discharge or refusal to rehire.
ABATTI FARMS, INC. v. ALRB (1980) 107 Cal.App.3d 317

414.03 Once Board has shown significant improper motivation, burden is on employer to prove that it had good reason, sufficient in itself, to initiate discharge. (Concurrence by Staniforth, J.)
ABATTI FARMS, INC. v. ALRB (1980) 107 Cal.App.3d 317

414.03 In discrimination case, once General Counsel proves significant improper motivation, burden of proof shifts to employer to prove it had a legitimate reason, sufficient in itself, for discharge.
ABATTI FARMS, INC. v. ALRB (1980) 107 Cal.App.3d 317

414.03 Proof of general employer anti-union animus aids General Counsel's burden of proof but is not in itself sufficient to prove charge.
KAWANO, INC. v. ALRB (1980) 106 Cal.App.3d 937

414.03 Charging party has burden of proving prima facie case of significant unlawful motive for discharge or refusal to rehire; if it does so, then burden shifts to employer to show legitimate business reason, sufficient in itself to produce discharge.
KAWANO, INC. v. ALRB (1980) 106 Cal.App.3d 937

414.03 Charging Party has burden to prove motive for discharge was punishment for engaging in protected union activity.
ROYAL PACKING CO. v. ALRB (1980) 101 Cal.App.3d 826

414.03 Union and Board did not meet their burden of showing that workers' employment was improperly terminated.
SUNNYSIDE NURSERIES, INC. v. ALRB (1979) 93 Cal.App.3d 922

414.03 Employer violated 1153(c) and (a) by discharging employee who was accused of failing to milk a cow. Abundant evidence showed that he would not have been discharged in the absence of his union activity.
P.H. RANCH, INC. (1996) 22 ALRB No. 1

414.03 In an alternative analysis, the Board found that even if an employee's swearing at his supervisor had caused him to lose the Act's protection, the employer failed to meet its burden of proving that it would have discharged the employee even in the absence of his protected concerted activity.
THE ELMORE COMPANY, 28 ALRB No. 3

414.03 In an alternative analysis, the Board held that even if the provocation doctrine did not preclude the employer from presenting its defense under *Wright Line*, the Board would have concluded that the employer had not met its burden of showing it would have discharged the employee even in the absence of his union and other protected concerted activities.
PICTSWEET MUSHROOM FARMS, 28 ALRB No. 4

414.03 Where an employer provokes an employee to the point where the employee commits an indiscretion or insubordinate act, and the employer's provocation consists of unlawful conduct or is motivated by the employee's protected activity, the employer cannot rely on the employee's indiscretion to meet its burden of showing that it would have discharged the employee even in the absence of protected activity.
PICTSWEET MUSHROOM FARMS, 28 ALRB No. 4

414.03 Employer failed to meet its burden of proof to show it would not have rehired worker even in the absence of her protected concerted activity when its primary defense, that the worker had failed to apply for work when it was available, was found to be factually incorrect.
McCAFFREY GOLDER ROSES, 28 ALRB No. 8

414.03 General Counsel failed to establish a prima facie case that worker's protected concerted activity was a motivating factor in the decision to discharge her. Worker's discharge was remote in time from the protected concerted activity, and there was no evidence presented that the employer had targeted the worker for her role in earlier group protests.
McCAFFREY GOLDER ROSES, 28 ALRB No. 8

414.03 Employer carried its burden of showing it would have failed to rehire employee even in the absence of his protected concerted activity when it established that the employee's unsatisfactory work performance was the reason he was not rehired.
McCAFFREY GOLDER ROSES, 28 ALRB No. 8

414.03 Employer met its burden of showing it would have discharged employee even in the absence of employee’s protected concerted activity where it was shown that the reason for the discharge was the employee’s unprotected act of concealing baskets of mushrooms on the picking room floor.
MUSHROOM FARMS, 35 ALRB No. 8

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 Discrimination Based On Protected Concerted Activity; Labor Code Section 1153(a)

414.04 Employer violated section 1153, subdivisions (a), (c), and (d) where it issued warning notices to three employees based on conduct which was in fact protected activity, failed to investigate complaints against the three or give them an opportunity to refute the complaints, and based the notices on a work rule which was less appropriate and more severe than the work rule relied on previously in similar circumstances.
CONAGRA TURKEY CO., 18 ALRB No. 14

414.04 Employer violated 1153(a) by discharging employee for encouraging crew not to work in protest over termination of co-employee.
PELTZER GROVES, 17 ALRB No. 20

414.04 Respondent's assertion of both false and shifting reasons for refusal to rehire supports an inference of unlawful motive.
STAMOULES PRODUCE CO., 16 ALRB No. 13

414.04 Where Respondent puts forth shifting reasons and where Respondent's witnesses testify inconsistently and contradict one another as well as themselves, it is reasonable to infer pretext.
STAMOULES PRODUCE., 16 ALRB No. 13

414.04 Absent direct evidence of a discriminatory motive, NLRB and ALRB look to certain factors to establish the true motive for an employer's adverse action in response to protected activity, including (1) proximity of action to the protected activity (timing); (2) assertion of false or inconsistent or belated reasons for the action; (3) whether employer has in the past tolerated similar conduct; (4) employer's failure to warn employees of the conduct later asserted as the basis for the adverse action; (5) employer's failure to investigate incidents relied upon for adverse action; and (6) severity of adverse action.
NAMBA FARMS, INC., 16 ALRB No. 4

414.04 Absence of any warning whatsoever regarding crews' work performance supports inference that employer's claim they were discharged because work substandard for two years creates inference that quality of work pretext for adverse action.
NAMBA FARMS, INC., 16 ALRB No. 4

414.04 Although discriminatee's specific act of urging employees to refrain from providing legally required information may not have been protected activity, evidence indicates that the specific act was not a significant part of the totality of the protected conduct which caused the employer to discharge the discriminatee.
VALLEY-WIDE, dba MONA, INC., 15 ALRB No. 16

414.04 In order to establish a violation of section 1153(a) and (c) stemming from an employee discharge, the General Counsel has the burden of establishing by a preponderance of the evidence, that the employee participated in union or other protected activity, that the employer had knowledge of such participation, and that there was a causal connection between the activity and the employee's discharge. (ALJD, p. 19.)
D'ARRIGO BROTHERS, 13 ALRB No. 1

414.04 Employee was discharged because he failed to repair or report a leak in the irrigation pipe, resulting in equipment becoming stuck in the field, and not because he had engaged in protected concerted activity; the employee had engaged in the same activity over several years, and the employer had never retaliated against him and had, in fact, hired him back several times after he quit.
L. A. ROBERTSON FARMS, INC., 12 ALRB No. 11

414.04 An employer was responsible for the action of its supplier of labor in discharging three persons notwithstanding the fact that the concerted activity, protesting the working conditions of the co-op supplying the labor, was not directed primarily at the employer.
SAHARA PACKING COMPANY, 11 ALRB No. 24

414.04 Employees' two work stoppages to protest employer's institution of new rule requiring lettuce harvesters to work during the rain were protected concerted activity, and the one-day suspension of employees who had engaged in the protest was unlawful.
BERTUCCIO FARMS, 10 ALRB No. 52

414.04 Following the NLRB's decision in Meyers Industries, Inc. (1984) 268 NLRB No. 73 [115 LRRM 1025], in order for an employee's activity to be concerted, it must be engaged in with, or on authority of, other employees, and not solely by and on behalf of the employee; an 1153(a) violation will then be found if the employer knew of the concerted nature of the employee's activity, the concerted activity was protected by the Act, and the

adverse employment action at issue was motivated by the employee's concerted activity.
GOURMET FARMS, INC., 10 ALRB No. 41

414.04 Employer violated section 1153(a) by discharging three employees because they engaged in a protected concerted activity, i.e., discussing living conditions at employer's labor camp with their legal representatives.
HARRY CARIAN SALES, 9 ALRB No. 13

414.04 Refusal to rehire not violate 1153(a) where General Counsel fails to prove PCA was cause for failure to rehire.
NASH-DE CAMP COMPANY, 8 ALRB No. 5

414.04 No violation of section 1153(c) or (a) where work unavailable for persons not previously employed in Respondent's harvest and all alleged discriminatees were new Employees.
NASH-DE CAMP COMPANY, 8 ALRB No. 5

414.04 Having found unlawful discharge based on Employee PCA, unnecessary to decide if separate incident also PCA.
NASH-DE CAMP COMPANY, 8 ALRB No. 5

414.04 Board found dispute regarding Employee's and his wife's pay shortage was PCA and was motivating factor in sup having Employee fired. Violation of section 1153(a) found.
NASH-DE CAMP COMPANY, 8 ALRB No. 5

414.04 No causal connection establishing a 1153(c) violation absent evidence Employer aware alleged discriminatee complained to Union or ALRB.
NASH-DE CAMP COMPANY, 8 ALRB No. 5

414.04 Discriminatory motive many be inferred where: (1) anti-union animus by supervisor; (2) interrogation of crew regarding their Union support; (3) supervisor's statements that aware of time, place and attendance of Union meetings; and (4) Employer offered crew leader money and solicited assistance in discouraging Employees from supporting Union.
NASH-DE CAMP COMPANY, 8 ALRB No. 5

414.04 To establish prima facie case of discrimination discharge or ref or failure to rehire, the General Counsel must show by a preponderance of evidence that Employee was engaged in PCA, the Respondent had knowledge of such activity, and that there was some connection or causal relationship between the protective activity and the discharge or failure to rehire. Where the alleged discrimination consists of a ref to rehire, the General Counsel must ordinarily show that the discriminatee applied for work at a time when work was available and that the Employer's policy was to rehire former Employees. If the General Counsel establish a prima

facie case that protective activity was a motivating factor in the Employer's decision, the burden then shifts to the Employer to prove that it would have reached the same decision in the absence of the protective activity.
VERDE PRODUCE COMPANY, 7 ALRB No. 27

414.04 General Counsel failed to establish prima facie case of illegal retaliation against Employees who had arranged a UFW radio broadcast critical of alleged supervisor.
TENNECO WEST, INC., 7 ALRB No. 12

414.04 Employer violated 1153(c) and (a) for issuing disciplinary notice to Employee who was overheard talking with other Employees about a strike and who had led the crew in wage dispute a few days earlier. Defense that the Employee was performing work improperly pretextual since Employee's husband who was working with her was not reprimanded.
GIUMARRA VINEYARDS, INC., 7 ALRB No. 7

414.04 No violation where disciplinary notices were issued to Employees who had engaged in PCA recently where there was a recent history of poor work by their crew, and General Counsel did not show that Employees who got the notices were more involved in PCA than those who did not.
GIUMARRA VINEYARDS, INC., 7 ALRB No. 7

414.04 General Counsel failed to sustain its burden of proving causal connection between Employee's concerted activity and discharge where 2 + months elapsed between protected activity and termination and where shouting incident between employee and Supervisor immediately preceded firing.
YAMAMOTO FARMS, 7 ALRB No. 5

414.04 Board affirmed ALO's conclusion that Employee was discharged for insubordination and disturbing other Employees, and that his earlier concerted activity as spokesman for Employees during negotiations was not related to discharge.
YAMAMOTO FARMS, 7 ALRB No. 5

414.04 Employer violated section 1153(a) by discharging Employee because of his participation in concerted protest against discharge of another worker and because he threatened to get additional Employees to join protest.
YAMAMOTO FARMS, 7 ALRB No. 5

414.04 Employer violated section 1153(a) by refusing to rehire employees who engaged in a brief work stoppage over wage rates and then unconditionally offered to return to work.
TENNECO WEST, 6 ALRB No. 53

414.04 A discriminatee's role in protected concerted activity must not be an active or vocal one to support a conclusion that his discharge violated Section 1153(a) of the Act.

SAM ANDREWS' SONS, 5 ALRB No. 38

414.04 The employer unlawfully discharged an employee who had distributed a union button to another employee where although work time had commenced, the distribution caused no disruption of work because the employees were not actually working at the time of the distribution.
KARAHADIAN RANCHES, INC., 5 ALRB No. 37

414.04 Granting a pay increase to all employees during an election campaign is not discrimination in violation of section 1153(c), despite a showing of anti-union motivation. However, granting a pay increase during an election campaign is an unfair labor practice in violation of section 1153(a).
AKITOMO NURSERY, 3 ALRB No. 73

414.04 Where the record established employer knowledge of concerted activities, but not of the employees' union support and sympathies, the Board found that the employees were laid off in violation of section 1153, subdivision (a).
MAGGIO-TOSTADO, INC., 3 ALRB No. 33

414.04 Motive is not essential element of charge founded upon general anti-interference proscription of 1153(a).
SUPERIOR FARMING CO. v. ALRB (1984) 151 Cal.App.3d 100

414.04 Test for violation of 1153(a) is whether employer engages in conduct which it may reasonably be said tends to interfere with freedom of exercise of employee rights under Act.
SUPERIOR FARMING CO. v. ALRB (1984) 151 Cal.App.3d 100

414.04 Where discharge flowed in direct causal chain from crews' wage protest, even though a link in causal chain was foreman's mistaken assertion to crew that they had been discharged, Board was correct in finding that discharge violated 1153(a); crew would not have been discharged "but for" their protected activity. ULP can be found even if foreman's mistake was unreasonable.
SUPERIOR FARMING CO. v. ALRB (1984) 151 Cal.App.3d 100

414.04 If discharge or discipline is causally related to protected labor activities of employees, Act is violated irrespective of any inquiry into employer's subjective state of mind.
SUPERIOR FARMING CO. v. ALRB (1984) 151 Cal.App.3d 100

414.04 Concerted activity is protected if 1) there is work-related grievance; 2) specific remedy or relief is sought; 3) some group interest is furthered; and 4) the activity is not unlawful, violent, in breach of contract, or indefensibly disloyal.
NASH-DECAMP CO. v. ALRB (1983) 146 Cal.App.3d 92

414.04 Violation of 1153(a), unlike 1153(c), does not require

proof of anti-union animus, unlawful motive, or discouragement of union activities. Section 1153(a) protects spontaneous concerted protests without union support if such protests are for employees' mutual aid and protection.
NASH-DECAMP CO. v. ALRB (1983) 146 Cal.App.3d 92

414.04 In absence of union or other protected activities, it is not purpose of ALRA to vest in administrative board any control over employer's business policies.
NASH-DECAMP CO. v. ALRB (1983) 146 Cal.App.3d 92

414.04 Involvement is protected activity does not insulate employee from ordinary discipline or other business decisions of employer. Employee may be fired for any reason or no reason, so long as reason is not protected activity.
NASH-DECAMP CO. v. ALRB (1983) 146 Cal.App.3d 92

414.04 Notwithstanding employees concerted' wage protest and employer decision to lay them off just hours later, no violation where employer established valid business reasons for mass reduction in overall crew size due to unseasonal weather conditions.
DUTRA FARMS, 24 ALRB No. 1

414.04 Employees who refused to work pending clarification from the owner of their rate of pay and who then met in a group with the owner to discuss the rate of pay were engaged in protected concerted activity.
CIENIGA FARMS, INC., 27 ALRB No. 5

414.04 Section 1153(a) of the Act was violated by employer who singled out a group of workers immediately after they engaged in protected concerted activity, who asked them to leave and return at some unspecified time when she would know the piece rate, and who then fired them when they entered the field and attempted to work by the hour with the rest of the crew.
CIENIGA FARMS, INC., 27 ALRB No. 5

414.04 Board found that General Counsel proved by a preponderance of the evidence that the employer knew that the employees had engaged in protected concerted activity and discharged them for that reason. General Counsel’s prima facie case was supported by both direct and circumstantial evidence.
CIENIGA FARMS, INC., 27 ALRB No. 5

414.04 Employer violated 1153(a) of the Act by refusing to rehire worker who led group complaints about abusive treatment by a forewoman and about wages.
McCAFFREY GOLDER ROSES, 28 ALRB No. 8

414.04 Although an employee's protected concerted activity occurred several months before the employer failed to rehire her, a prima facie case of discriminatory failure

to rehire was established because the record showed continuing animus when the employer's labor contractor specifically told the supervisor in charge of the seasonal recall not to rehire the worker because she had been a troublemaker.
McCAFFREY GOLDER ROSES, 28 ALRB No. 8

414.04 General Counsel failed to establish a prima facie case that worker's protected concerted activity was a motivating factor in the decision to discharge her. Worker's discharge was remote in time from the protected concerted activity, and there was no evidence presented that the employer had targeted the worker for her role in earlier group protests.
McCAFFREY GOLDER ROSES, 28 ALRB No. 8

414.04 The discharge of an employee who reactively grabbed and lowered his supervisor's hand from his face after the supervisor threw mushrooms at him, yelled at him and pointed his finger at his face violated section 1153 (a) and (c) as the employee's brief physical contact with the supervisor was in line with the supervisor's provocative conduct, and as such, the employer could not rely on the employee's indiscretion in disciplining him.
PICTSWEET MUSHROOM FARMS, 28 ALRB No. 4

414.04 Employer violated section 1153(a) by discharging an employee who protested the manner in which a supervisor treated a co-worker while giving the co-worker a work assignment when the concerted activity motivated the supervisor's later provocation of the employee into making brief physical contact with the supervisor.
PICTSWEET MUSHROOM FARMS, 28 ALRB No. 4

414.04 Discharge of an employee who used an obscene term towards his supervisor in the course of an otherwise protected discussion violated section 1153(a) of the Act. The employee's conduct did not seriously undermine the employer's ability to maintain control in the work place, was unaccompanied by threats or violence, was provoked in part by employer conduct that was arguably an unfair labor practice, and in light of all surrounding circumstances did not rise to the level of egregious behavior that would cause him to lose the Act's protection.
THE ELMORE COMPANY, 28 ALRB No. 3

414.04 General Counsel established prima facie case of discriminatory discharge where employee concertedly complained to employer about broken ventilation fans in milk barn where employees were working and circumstantial evidence such as failure to warn, severity of averse action and inconsistent reasons given for the discharge supported an inference of unlawful motivation
AUKEMAN FARMS, 34 ALRB No. 2

414.04 Respondent failed to meet its burden of proving it would

have discharged employee even in the absence of his protected concerted activity where employer's proffered reason for the discharge was found to be a pretext.
AUKEMAN FARMS, 34 ALRB No. 2

414.04 Employee's act of hiding baskets of mushrooms on the floor with the intent that no one see them did not communicate in a reasonably clear way to management that the employee was taking an action to enforce a provision of a collective bargaining agreement. Therefore, this aspect of employee's conduct was not protected concerted activity.
MUSHROOM FARMS, 35 ALRB No. 8

415.00 PERSONS ENTITLED TO PROTECTION

415.01 In General

415.01 Employer acted unlawfully in discharging employee on basis of his pre-employment protected activities at another company, whether or not discriminatee was an employee of the prior company at the time he engaged in the activities.
VALLEY-WIDE, DBA MONA, INC., 15 ALRB No. 16

415.02 Relatives Of Union Members

415.02 Evidence insufficient to warrant inference that failure to rehire father was motivated by son's filing of unfair labor practice charge.
D & H FARMS, 18 ALRB No. 12

415.02 Evidence insufficient to sustain claim that employer failed to give hiring preference to relatives of bargaining unit employees, as provided for in expired labor agreement.
TEX-CAL LAND MANAGEMENT, INC., et al., 12 ALRB No. 26

415.02 In certain circumstances, a familial relationship with a person who has engaged in activity protected by the Act may be found to be the motivation behind discriminatory treatment of the relative. Where, however, the only evidence in support of a charge of discriminatory layoff is the familial relationship to the activist, at most a suspicion of unlawful motive may be raised, but the familial relationship alone is insufficient to meet General Counsel's burden of proof.
LIGHTNING FARMS, 12 ALRB No. 7

415.02 Union activity by family members sufficient to support finding that Respondent discriminated against other family members.
ROGERS FOODS, INC., 8 ALRB No. 19

415.03 Mistake As To Employee's Status

415.04 Persons Outside Bargaining Unit

415.04 Employer's discriminatory layoff of Union supporters, and of several other co-workers, as disguise for layoff of pro-Union employees, was unlawful. Employees seniority found to be pretext for layoffs.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC., 7 ALRB No. 36

415.05 Temporary, Extra, Part-Time, Or Probationary Employees

415.06 Supervisors And Other Management Personnel, Treatment of; Coercive Effect On Others

415.06 As a general rule, supervisors are not accorded the protections of the ALRA; however, a supervisor may be afforded the protection of the Act when he or she is discharged for having refused to engage in activities proscribed by the Act, or when the discharge of the supervisor is the means by which the employer discriminates against its employees.
SEQUOIA ORANGE CO., 11 ALRB No. 21

415.06 Where an employee's tenure is expressly conditioned on the continued employment of the supervisor, and the supervisor has been terminated as a means of discharging the employees because of their concerted activity, the discharge of the supervisor also violates the Act.
SEQUOIA ORANGE CO., 11 ALRB No. 21

415.06 Spouse who was fired when her foreman husband refused to commit an unfair labor practice is ordered reinstated with backpay.
GEORGE LUCAS & SONS, 11 ALRB No. 11 (See 13 ALRB No. 4)

415.06 Supervisors are not generally entitled to protections of the Act; an exception exists where supervisor is fired for refusing to commit an unfair labor practice.
GEORGE LUCAS & SONS, 11 ALRB No. 11 (See 13 ALRB No. 4)

415.06 Demotion and subsequent discharge of a supervisor for his refusal to commit unfair labor practices is itself an unfair labor practice.
M. CARATAN, INC., 9 ALRB No. 33

415.06 Punchers in mushroom operation were statutory supervisors and Board therefore dismissed allegations that employer unlawfully discriminated against them.
STEAK-MATE, INC., 9 ALRB No. 11

415.06 Supervisors within the meaning of the Act are not protected from discharge by section 1153(c); however, the discharge of a supervisor may be unlawful if it has an intimidating effect on nonsupervisory employees in the exercise of their rights.
M. CARATAN, INC., 4 ALRB No. 83

415.06 Discharge of supervisor did not have intimidating effect on employees' rights in violation of section 1153(a) when supervisor's few pro-union activities were not well known to employees and when discharge was not part of a plan to interfere with union activities of employees.
M. CARATAN, INC., 4 ALRB No. 83

415.06 Discharge of supervisor violated the Act when the discharge had a chilling effect on the rank-and-file employees and led to the discharge of the entire crew.
S & F GROWERS, 4 ALRB No. 58

415.06 Employee was not supervisor, despite being paid salary, where he had authority to see that certain work was performed but had no authority to hire or fire or otherwise supervise.
BABBITT ENGINEERING & MACHINERY v. ALRB (1984) 152 Cal.App.3d 310

415.06 Discharge of a supervisor did not violate the Act where there was no evidence presented that showed his discharge had an adverse effect on any other employee or that any other employee's work was dependent on his continued employment.
McCAFFREY GOLDER ROSES, 28 ALRB No. 8

415.06 Employer carried its burden of showing it would have failed to rehire employee even in the absence of his protected concerted activity when it established that the employee's unsatisfactory work performance was the reason he was not rehired.
McCAFFREY GOLDER ROSES, 28 ALRB No. 8

415.06 Allegation that supervisor was discharged for refusing order to fire employees who had protested ill treatment by a higher level supervisor dismissed where the only testimony reflecting that such an order was given was not credited.
RIVERA VINEYARDS, et al., 29 ALRB No. 5

416.00 REFUSAL TO HIRE, OR DISCOURAGING HIRE OF UNION MEMBERS OR SYMPATHIZERS

416.01 In General

416.01 Number of new hires after layoff misleading as indicator of need to rehire crew since it does not account for turnover, nor reflect fact that daily totals of number of people working were significantly less than at time of layoff. This, coupled with lack of evidence of discriminatory layoff, precludes finding discriminatory refusal to rehire.
SUMA FRUIT INT'L (USA), INC., 19 ALRB No. 14

416.01 Failure to rehire employee as irrigator unlawful where employee had been promised such work when his car was

fixed, supervisor refused to rehire him and told him to go see if his union friend had any work for him, and at least some irrigation work was available that went to less senior employees.
OASIS RANCH MANAGEMENT, INC., 18 ALRB No. 11

416.01 Where General Counsel has established a prima facie case of discriminatory diversion of bargaining unit work and Respondent contends elimination of work for Union members resulted from its customers' independent and voluntary decision to assume responsibility for their own harvesting requirements, Board may draw adverse inference from Respondent's failure to call any witnesses or put on any evidence in support of defense.
RICHARD A. GLASS COMPANY, INC., 14 ALRB No. 11

416.01 An employer violates section 1153(c) by discriminatorily refusing to offer a permanent job to a temporary-hire employee who applies for the vacancy during his temporary job and again after the lawful termination of his temporary job; General Counsel not required to show availability of work.
MATSUI NURSERY, INC., 11 ALRB No. 10

416.01 Allegations of refusal to rehire not supported by a prima facie case.
SIGNAL PRODUCE COMPANY, 10 ALRB No. 23

416.01 Employer's defense that it denied available field work to five discriminatees because they had no experience in such work was discredited, in part by its employing new workers with no prior experience to do the field work.
PAUL BERTUCCIO, 10 ALRB No. 10

416.01 Employee unlawfully refused rehire to union supporters where leave policy was applied inconsistently immediately after takeover of business by new owner who took adamant bargaining stance.
DESSERT SEED COMPANY, INC., 9 ALRB No. 72

416.01 Union activity followed by failure to rehire was insufficient, on its own, to prove discrimination, particularly where employee did not apply for work in the usual manner.
RIGI AGRICULTURAL SERVICES, INC., 9 ALRB No. 31

416.01 No violation found where employer refused to rehire a former employee. General Counsel failed to establish prima facie case; employer knowledge of employee's union activities not established.
UKEGAWA BROTHERS, INC., 9 ALRB No. 26

416.01 Sections 1153(c) and (d) violated by Respondent's departure from rehire procedures by failing to notify known Union supporters that work commencing. Defense of change in rehire procedure not supported by evidence.
ROGERS FOODS, INC., 8 ALRB No. 19

416.01 Failure to notify Employees that work beginning and failure to rehire med Union supporter not rehired because he lost his seniority by not applying for work within 3 days of start of season and because no work available when he reapplied. But Respondent's records showed others hired despite not reporting within 3 day period and that others were hired at same time Union supporter was turned down. Respondent's anti-union animus was a contributing factor to the finding of violation.
VERDE PRODUCE COMPANY, 7 ALRB No. 27

416.01 Company had system where closer from previous season would have seniority as cutter and packer the next season if he knew how to do job. Discrimination shown where Union supporter with seniority seeking work as a cutter and packer, a job he had previously done, was denied work during a time when new hires were added to crew.
VERDE PRODUCE COMPANY, 7 ALRB No. 27

416.01 To establish an unlawful refusal to rehire, it is not required in all cases to show either that work was available at the time of application or that the employer had a policy of recalling former employees.
Golden Valley Farming, 6 ALRB No. 8

416.01 Violation of section 1153(c) and (a) found where foreman who refused to rehire a married couple, at the time others were being hired, told them his reason was that the boss did not want or like union people. Knowledge of belief of union activity shown by supervisor's statements. (Subsequent history indicates that this case was vacated (10/27/80).)
LOUIS CARIC & SONS, 6 ALRB No. 2

416.01 General Counsel must prove, inter alia, that alleged discriminatee applied for work at a time when work was available to establish discriminatory refusal to rehire.
PROHOROFF POULTRY FARMS, 5 ALRB No. 9

416.01 Employer did not violate Act by failing to rehire employee, since all job seekers were required to fill out applications for rehire, and employee failed to do so. Moreover, there was insufficient evidence of employer knowledge of employee's union activities.
TEPUSQUET VINEYARDS, 4 ALRB No. 102

416.01 Board finds unlawful discharge where leading union activist is laid off ten days after conclusion of ULP case in which he played prominent role in assisting UFW; the layoff is premised on a seasonal seniority system never before implemented; all other employees laid off with the union activist were reemployed the reduction in force until one week after layoff; the employer took inconsistent positions justifying layoff and rehiring.
MARIO SAIKHON, INC., 4 ALRB No. 72

416.01 General Counsel and petitioner failed to prove by a preponderance of the evidence that employer discriminatorily refused reinstatement to employee due to his exercise of his rights under the Act, his union activities, or his testimony in prior Board proceeding, and complaint is dismissed in its entirety.
D'ARRIGO BROS. OF CALIFORNIA, Reedley Dist. No. 3, 3 ALRB No. 34

416.01 The elements of proof of an unfair refusal to rehire charge are that the agricultural employee applied for an available position for which he or she was qualified and was unequivocally rejected, primarily because of union support. Proof of general company antiunion animus aids general counsel's burden of proof but is not in itself sufficient to prove the charge.
VESSEY & COMPANY, INC. v. ALRB (1989) 210 Cal.App.3d 629

416.01 If a violation of Labor Code, section 1153, subdivision (c), is alleged, general counsel is additionally charged with showing by a preponderance of the evidence that the employer's conduct had an object of discouraging membership in a labor organization.
J.R. NORTON CO. v. ALRB (1987) 192 Cal.App.3d 874

416.01 In proving his prima facie case of discriminatory failure to rehire, general counsel must customarily show that work was available at the time the employee applied and that the employer's policy was to rehire former employees.
J.R. NORTON CO. v. ALRB (1987) 192 Cal.App.3d 874

416.01 The Board's finding of an unfair labor practice for refusal to rehire was justified despite the employee's failure to apply when work was available where the employer's foreman had told him he would be refused rehire because of his union activities.
J.R. NORTON CO. v. ALRB (1987) 192 Cal.App.3d 874

416.01 When new employer acquires unionized business, he has clear incentive to rid business of union by refusing to hire former employees. Hence, Board was entitled to reject self-serving but unconvincing justifications given by new employer for failure to hire predecessor employees.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

416.01 Employer commits no ULP by rejecting offers to work which are absolutely conditioned on terms he need not accept.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

416.01 Elements of proof of unlawful refusal to rehire are that employee applied for available position for which he or she was qualified and was unequivocally rejected, primarily because of his or her union activities.
KAWANO, INC. v. ALRB (1980) 106 Cal.App.3d 937

416.01 Where Employer treats applicants for rehire in discriminatory manner (e.g., by discouraging them from applying or by not considering their applications equally with those of other employees), a discriminatory refusal to rehire may be shown without necessity of showing work was available at the very time of application.
IMPERIAL ASPARAGUS FARMS, INC., 20 ALRB No. 2

416.01 Employer's claim that employees sought rehire at times when no work was available rejected where Board found that employer had altered established hiring policies in order to avoid rehiring employees who had engaged in protected work stoppage in prior season; employees sought rehire at appropriate times and would have been given work had the declared policy remained in effect.
TANIMURA & ANTLE, INC., 21 ALRB No. 12

416.01 Employer discriminatorily refused to hire group of union supporters where it changed its hiring procedures without notice, which precluded workers from making timely application and disparately impacted union supporters.
TSUKIJI FARMS, 24 ALRB No. 3

416.01 Although General Counsel generally must establish that alleged discriminatees applied for work at a time when work was available, when an employer has made clear its discriminatory policy not to rehire a particular group of persons, each member of the defined group need not undertake the futile gesture of offering in person to return to work. (*Duke Wilson Company* (1986) 12 ALRB No. 19.)
TSUKIJI FARMS, 24 ALRB No. 3

416.01 Employer violated section 1153(c) and (a) by refusing to hire predecessor's employees. Employer was entitled to hire its own previous employees first, but violated the law when it hired new employees and still refused to hire the predecessor's employees for discriminatory reasons.
GREWAL ENTERPRISES, INC., 24 ALRB No. 7

416.01 Employer violated 1153(a) of the Act by refusing to rehire worker who led group complaints about abusive treatment by a forewoman and about wages.
McCAFFREY GOLDER ROSES, 28 ALRB No. 8

416.01 Employer failed to meet its burden of proof to show it would not have rehired worker even in the absence of her protected concerted activity when its primary defense, that the worker had failed to apply for work when it was available, was found to be factually incorrect.
McCAFFREY GOLDER ROSES, 28 ALRB No. 8

416.01 Although an employee's protected concerted activity occurred several months before the employer failed to rehire her, a prima facie case of discriminatory failure to rehire was established because the record showed continuing animus when the employer's labor contractor

specifically told the supervisor in charge of the seasonal recall not to rehire the worker because she had been a troublemaker.
McCAFFREY GOLDER ROSES, 28 ALRB No. 8

416.01 Employer carried its burden of showing it would have failed to rehire employee even in the absence of his protected concerted activity when it established that the employee's unsatisfactory work performance was the reason he was not rehired.
McCAFFREY GOLDER ROSES, 28 ALRB No. 8

416.01 Record evidence insufficient to establish any of the recognized exceptions to the general rule in failure to rehire cases that the employee must apply for rehire at a time when work is available. It was not proven that the employer failed to follow an established rehire practice or otherwise made an effort to conceal the job openings so that the charging party would not learn of them.
TEMPLE CREEK DAIRY, INC., 36 ALRB No. 4

416.02 Blacklisting Or Refusal To Recommend

416.02 An employer can make clear its discriminatory policy not to rehire a particular group of persons by unequivocal statements of discriminatory intent by a new foreman, inconsistent conduct by the foreman with prior company policy of rehiring experienced workers and corroborating discriminatory conduct by other supervisors. Subsequent rehire of some group members does not defeat the finding of group discrimination as complete exclusion of the group from the workforce is not required.
DUKE WILSON COMPANY, 12 ALRB No. 19

416.02 Violation of section 1153(c) and (d) established by evidence of (1) employer's and his labor contractor's animus against two union supporters who previously filed unfair labor practice charges against employer and (2) the labor contractor's successful attempts to keep same union supporters from learning of start-up date of weed and thin operations.
YAMANO FARMS, INC., 11 ALRB No. 16

416.03 Former Employees; Seasonal Workers

416.03 Where the General Counsel has established that persons have engaged in activities protected by the Act and that these activities were known by the employer, a discriminatory refusal to rehire may be established by a change without notice in the method of hiring harvest workers if it precludes workers from making timely application and disparately impacts union supporters.
STAMOULES PRODUCE CO., 16 ALRB No. 13

416.03 Respondent's assertion of both false and shifting reasons for refusal to rehire supports an inference of unlawful

motive.
STAMOULES PRODUCE CO., 16 ALRB No. 13

416.03 In order to establish an unlawful failure or refusal to recall laid off employees for discriminatory reasons, General Counsel must first establish that the employer had a practice or policy of affirmatively recalling former employees.
GRAND VIEW HEIGHTS CITRUS ASSOCIATION, 12 ALRB No. 28

416.03 A co-op supplying labor to an employer discharged three persons belonging to the co-op in retaliation for their protected activity by orchestrating a dissolution and reemergence of the co-op without disclosing the reemergence to the three, and the employer engaging the Co-op was liable for the discharges.
SAHARA PACKING COMPANY, 11 ALRB No. 24

416.03 Violation of 1153(c) and (d) established by evidence of (1) Employer's animus against two union supporters who had recently filed unfair labor practice charges, (2) their past history of employment on first harvest machine, (3) their arrival before others, and (4) employer's evasive conduct and pretextual explanations for refusing to rehire them in tomato harvest.
YAMANO FARMS, INC., 11 ALRB No. 16

416.03 Delay of one week in rehiring union supporter who had returned from vacation in Mexico was not discriminatory.
PAUL BERTUCCIO, 10 ALRB No. 10

416.03 Where a change (without notice) in the method of notifying workers of harvest starting date foreseeable precluded workers from making timely applications and disparately impacted on union supporters, disparate impact was unavoidable consequence which employer must have intended; statistical evidence of disparate impact sufficient to establish that failure to apply for work or late application was due to employer's failure to notify employees of the starting date of the harvest as was its past practice.
ADMIRAL PACKING COMPANY (DISSENT), 10 ALRB No. 9

416.03 Employer's refusal to rehire employees for the pruning season did not involve group discrimination absent proof of changed circumstances which would render it difficult or impossible for group member to reapply or other factors which would justify a group-based analysis; however, refusal to rehire was unlawful as it reduced the incumbent union's support in the bargaining unit. Therefore, former employees who made a timely application for reemployment and were denied reemployment to accomplish the employer's unlawful design were ordered reinstated.
ARAKELIAN FARMS, 9 ALRB No. 25

416.03 An employee named as a discriminatee, who failed to

testify at the hearing, was placed by a disinterested witness out of the country at the time he allegedly requested reemployment; the ALJ's unexplained credibility resolution was insufficient to establish that the employee made a timely application for employment.
ARAKELIAN FARMS, 9 ALRB No. 25

416.03 Where it was shown that the employer knew of the employee's union activities and sentiment, had an anti-union animus, and gave shifting reasons for its failure to rehire him, the Board found that the employee had been unlawfully discharged.
Golden Valley Farming, 6 ALRB No. 8

416.03 To establish an unlawful refusal to rehire, it is not required in all cases to show either that work was available at the time of application or that the employer had a policy of recalling former employees.
Golden Valley Farming, 6 ALRB No. 8

416.03 Anti-union bias found where Employer tried to identify Employees sympathetic to Union, Employees who were Union activists, not rehired, Employer vigorously opposed Union's efforts to organize and transferred Union supporters.
KITAYAMA BROS. NURSERY, 4 ALRB No. 85

416.03 Violation of section 1153(a) and (c) where Union activist not rehired but 15 new employees were hired.
KITAYAMA BROS. NURSERY, 4 ALRB No. 85

416.03 Where Employer treats applicants for rehire in discriminatory manner (e.g., by discouraging them from applying or by not considering their applications equally with those of other employees), a discriminatory refusal to rehire may be shown without necessity of showing work was available at the very time of application.
IMPERIAL ASPARAGUS FARMS, INC., 20 ALRB No. 2

416.03 Evidence established that Employer refused to rehire employee because of her union activities where employee's activities were open and obvious, Employer's supervisor falsely denied knowledge of the activities, and Employer made unsubstantiated allegations that employee (who had nine years' experience with Employer) was slow and unproductive.
SCHEID VINEYARDS AND MANAGEMENT COMPANY, INC., 21 ALRB No. 10

416.03 No prima facie case of refusal to rehire where refusal to rehire remote in time from union activity, no context of other unlawful conduct, and testimony concerning statement of anti-union animus not credited.
WARMERDAM PACKING CO., 24 ALRB No. 2

416.03 Employer discriminatorily refused to hire group of union

supporters where it changed its hiring procedures without notice, which precluded workers from making timely application and disparately impacted union supporters.
TSUKIJI FARMS, 24 ALRB No. 3

416.03 Although General Counsel generally must establish that alleged discriminatees applied for work at a time when work was available, when an employer has made clear its discriminatory policy not to rehire a particular group of persons, each member of the defined group need not undertake the futile gesture of offering in person to return to work. (*Duke Wilson Company* (1986) 12 ALRB No. 19.)
TSUKIJI FARMS, 24 ALRB No. 3

416.03 Employer violated 1153(a) of the Act by refusing to rehire worker who led group complaints about abusive treatment by a forewoman and about wages.
McCAFFREY GOLDER ROSES, 28 ALRB No. 8

416.03 Employer failed to meet its burden of proof to show it would not have rehired worker even in the absence of her protected concerted activity when its primary defense, that the worker had failed to apply for work when it was available, was found to be factually incorrect.
McCAFFREY GOLDER ROSES, 28 ALRB No. 8

416.03 Although an employee's protected concerted activity occurred several months before the employer failed to rehire her, a prima facie case of discriminatory failure to rehire was established because the record showed continuing animus when the employer's labor contractor specifically told the supervisor in charge of the seasonal recall not to rehire the worker because she had been a troublemaker.
McCAFFREY GOLDER ROSES, 28 ALRB No. 8

416.03 Employer carried its burden of showing it would have failed to rehire employee even in the absence of his protected concerted activity when it established that the employee's unsatisfactory work performance was the reason he was not rehired.
McCAFFREY GOLDER ROSES, 28 ALRB No. 8

416.03 Record evidence insufficient to establish any of the recognized exceptions to the general rule in failure to rehire cases that the employee must apply for rehire at a time when work is available. It was not proven that the employer failed to follow an established rehire practice or otherwise made an effort to conceal the job openings so that the charging party would not learn of them.
TEMPLE CREEK DAIRY, INC., 36 ALRB No. 4

416.04 Strikers, Refusal To Reinstate

416.04 Employer's failure to reinstate returning economic

strikers was justified by a legitimate change in irrigation schedule which eliminated positions which otherwise could have been filled by returning strikers.
SAM ANDREWS' SONS, 13 ALRB No. 15

416.04 Respondent's refusal to rehire a former striker was unlawful where its reliance on its undocumented worker policy was a pretext and the actual reason for the refusal to rehire was the worker's concerted and union activities.
SAM ANDREWS' SONS, 12 ALRB No. 24

416.04 Respondent's refusal to rehire a former striker because of his union activities and his association with a strong union adherent was found to violate sections 1153(c) and (a).
SAM ANDREWS' SONS, INC., 12 ALRB No. 24

416.04 A concerted work stoppage due to a desire to increase wages is protected activity, and employees are entitled to reinstatement following an unconditional offer to return to work. The employer's failure to demonstrate that the striking employees had been replaced as of the time of their offer to return to work renders its failure to reinstate the employees unlawful.
SEQUOIA ORANGE CO., 11 ALRB No. 21

416.04 Absent a demonstration of a legitimate and substantial business justification, an employer's denying economic strikers their reinstatement rights is inherently destructive of the important employee right to strike.
VESSEY & COMPANY, INC., 11 ALRB No. 3

416.04 Where, during an economic strike by regular employees, an employer engages a labor contractor to harvest an upcoming crop and begins independent recruitment efforts to obtain replacement workers, the fact that no replacement employee has accepted an offer of employment prior to the receipt of an unconditional offer to return to work by striking employees is critical in determining whether the employer may refuse to accept such offers to return to work. The employer's inchoate plans to replace the striking employees are not legitimate and substantial business justifications, and, absent such justification, such as the actual hiring of specific replacement workers, returning economic strikers retain their rights of reinstatement.
VESSEY & COMPANY, INC., 11 ALRB No. 3

416.04 A recognized legitimate and substantial business justification for refusing to reinstate returning economic strikers is the employer's good faith belief that the strikers engaged in serious strike misconduct.
BERTUCCIO FARMS, 10 ALRB No. 52

416.04 The fact that an employer in good faith believed that a returning striker engaged in misconduct sufficient to bar

his/her reinstatement is no defense to a ULP finding if the misconduct in fact did not occur; however, once an employer has shown such a good faith belief, the burden of showing that the misconduct did not occur shifts to the General Counsel.
BERTUCCIO FARMS, 10 ALRB No. 52

416.04 Economic strikers who unconditionally apply for reinstatement have a right to immediate reinstatement unless the employer can show that its refusal to reinstate was due to a legitimate and substantial business justification.
BERTUCCIO FARMS, 10 ALRB No. 52

416.04 Where employer's payroll records showed it continued to hire pruners after previously discharged protesters applied, Board inferred that work was available when protesters applied.
SUMNER PECK RANCH, INC., 10 ALRB No. 24

416.04 Adoption of documentation procedures for identifying returning ULP strikers reasonable in light of extended passage of time since inception of strike and limitations on contemporaneous court injunction ordering employer to reinstate only those strikers who had previously submitted written offers to return; delays in reinstatement resulting from such procedures to be remedied in compliance phase of earlier case.
LU-ETTE FARMS, INC., 10 ALRB No. 20

416.04 A strike, economic at its outset, was converted to an unfair labor practice strike when the employer's unlawful bargaining strategy came to fruition, and, after conversion, the employer's unlawful conduct served to prolong the strike by preventing the development of conditions under which strikers would have returned to work. Employees who, subsequent to the date of conversion, made unconditional offers to return to work were therefore entitled to reinstatement to their former or equivalent positions even if replacements had been hired.
BRUCE CHURCH, INC., 9 ALRB No. 74

416.04 In class discrimination cases, the General Counsel has the burden of proving: (1) that the alleged discriminatory conduct was directed against an entire group, and (2) that the individual was a member of that group. Absent proof of a plan or a scheme, a group discrimination analysis is unwarranted. An intent to do no more than absolutely necessary to comply with minimal legal standards of recall for economic strikers is insufficient to imply an underlying discriminative motive in the design of a seniority recall plan or system.
BRUCE CHURCH, INC., 9 ALRB No. 74

416.04 When discrimination is charged in the treatment afforded returning unfair labor practice strikers, the prima facie

case elements of union activity and employer knowledge are met, but more preference shown toward other strikers is insufficient evidence to carry the General Counsel's burden.
BRUCE CHURCH, INC., 9 ALRB No. 74

416.04 Not unlawful for Employee to refuse to reinstate striking employees who offer to return to work prior to the hiring of replacements since offer tendered by union conditioned upon Employee bargaining with Employer over the wage dispute which triggered the strike.
KYUTO NURSERY, 3 ALRB No. 30

416.04 Refusal to reinstate strikers unlawful where employer failed to prove strikers were permanently replaced and where separation agreement signed by some strikers found unenforceable because not a clear and unmistakable waiver, against public policy, and lacked consideration; There are no time limits on the reinstatement rights of economic strikers, therefore the employer's failure to follow the recall list after one year unlawful.
SUNRISE MUSHROOMS, INC., 22 ALRB No. 2

416.05 Group Discrimination

416.05 When the Employer has made clear its discriminatory policy not to rehire a particular group of persons, each member of the clearly defined group need not undertake the futile gesture of offering in person to return to work.
DUKE WILSON COMPANY, 12 ALRB No. 19

416.05 An employer can make clear its discriminatory policy not to rehire a particular group of persons by unequivocal statements of discriminatory intent by a new foreman, inconsistent conduct by the foreman with prior company policy of rehiring experienced workers and corroborating discriminatory conduct by other supervisors. Subsequent rehire of some group members does not defeat the finding of group discrimination as complete exclusion of the group from the workforce is not required.
DUKE WILSON COMPANY, 12 ALRB No. 19

416.05 In class discrimination cases, the General Counsel has the burden of proving: (1) that the alleged discriminatory conduct was directed against an entire group, and (2) that the individual was a member of that group. Absent proof of a plan or a scheme, a group discrimination analysis is unwarranted. An intent to do no more than absolutely necessary to comply with minimal legal standards of recall for economic strikers is insufficient to imply an underlying discriminative motive in the design of a seniority recall plan or system.
BRUCE CHURCH, INC., 9 ALRB No. 74

416.05 Employer's refusal to rehire employees for the pruning season did not involve group discrimination absent proof

of changed circumstances which would render it difficult or impossible for group Member to reapply or other factors which would justify a group-based analysis; however, refusal to rehire was unlawful as it reduced the incumbent union's support in the bargaining unit. Therefore, former employees who made a timely application for reemployment and were denied reemployment to accomplish the employer's unlawful design were ordered reinstated.
ARAKELIAN FARMS, 9 ALRB No. 25

416.05 Fact that employer doesn't discriminate against all union supporters doesn't prove that employer did not discriminate against some union supporters.
RULINE NURSERY CO. v. ALRB (1985) 169 Cal.App.3d 247

416.05 Board may leave determination of specific identity of discriminatees and their respective reinstatement rights to compliance proceedings after court enforcement.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

416.05 Board has considerable power to weigh reasons asserted for a mass refusal-to-hire; the less probable the reasons, the more likely the reasons did not exist.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

416.05 Board erred in including in group of employees entitled to backpay five workers who were not working on the day of the unlawful discharge.
GEORGE ARAKELIAN FARMS v. ALRB (1980) 111 Cal.App.3d 258

416.05 Employer's change in hiring policy from legal alien workers to "illegal" workers was unlawful where legals were considered by employer to be union supporters, employer displayed anti-union animus, and former legal employees made numerous unsuccessful efforts to obtain reemployment when suitable jobs were available.
KAWANO, INC. v. ALRB (1980) 106 Cal.App.3d 937

416.05 If employer unequivocally and publicly promulgates his unconditional refusal to rehire a certain category of employees, proof of such promulgation excuses need to prove that individuals in category made applications for rehire which would, under the circumstances, have been futile.
KAWANO, INC. v. ALRB (1980) 106 Cal.App.3d 937

416.05 Although General Counsel generally must establish that alleged discriminatees applied for work at a time when work was available, when an employer has made clear its discriminatory policy not to rehire a particular group of persons, each member of the defined group need not undertake the futile gesture of offering in person to return to work. (*Duke Wilson Company* (1986) 12 ALRB No. 19.)
TSUKIJI FARMS, 24 ALRB No. 3

416.05 Employer discriminatorily refused to hire group of union supporters where it changed its hiring procedures without notice, which precluded workers from making timely application and disparately impacted union supporters. TSUKIJI FARMS, 24 ALRB No. 3

417.00 DISCHARGE AND LAYOFFS

417.01 Discharge In General

417.01 Discharge of crew members who walked off the job to seek assistance of union unlawful. Walkout was protected activity, as there was insufficient evidence of oral no-strike agreement and walkout was not in derogation of role of union. Record does not show that crew members attempted to negotiate with employer representatives to the exclusion of the union and walkout was for express purpose of involving union in the dispute. Demands of those who staged walkout not inconsistent with position of the union because the union had not yet agreed to the employer's latest proposal and the union had not waived the right to further bargaining at time of the walkout. BRIGHTON FARMING CO., INC., 18 ALRB No. 4

417.01 Employer violated 1153(a) by discharging employee for encouraging crew not to work in protest over termination of co-employee.
PELTZER GROVES, 17 ALRB No. 20

417.01 Employer violated Sections 1153(c) and (a) when it discharged a single employee from all company operations, and later modified the discharge to a loss of seniority in the melon operations, for his union and concerted activities and not for his unexcused absence due to incarceration, the latter reason being considered pretextual by the Board.
MARIO SAIKHON, INC., 16 ALRB No. 1

417.01 Employer acted severely in discharging union activist who advised co-employee to "go slow" in her work, but although employer's action gave rise to a suspicion of unlawful motive, such a suspicion does not constitute proof of a violation of the Act. (ALJD, p. 33.)
MAYFAIR PACKING COMPANY, 13 ALRB No. 20

417.01 Although employer's explanation for rule forbidding employees to leave shop area without permission made no sense, employer committed no violation of law in firing employee for breaking the rule, where General Counsel failed to establish any connection between promulgation of the rule and any particular form of protected activity that it was designed to prevent or punish. (ALJD, p. 62.)
MAYFAIR PACKING COMPANY, 13 ALRB No. 20

417.01 Dissent would find violation for discharge of union activist who defied what dissent finds to be

discriminatorily motivated order not to leave work place.
MAYFAIR PACKING COMPANY, 13 ALRB No. 20

417.01 Dissent would find violation for discharge of union activist without warning and contrary to employee handbook despite his admission to having suggested to fellow worker that she "take it easy."
MAYFAIR PACKING COMPANY, 13 ALRB No. 20

417.01 Board will not consider whether employer has "proper cause" for the discharge of an employee; it will consider only whether the discharge violates the ALRA.
D'ARRIGO BROTHERS, 13 ALRB No. 1

417.01 Employer violated section 1153(a) by discharging workers who engaged in work stoppages in support of daily bin rate negotiations.
PHILLIP D. BERTELSEN, 12 ALRB No. 27

417.01 A co-op supplying labor to an employer discharged three persons belonging to the co-op in retaliation for their protected activity by orchestrating a dissolution and reemergence of the co-op without disclosing the reemergence to the three, and the employer engaging the Co-op was liable for the discharges.
SAHARA PACKING COMPANY, 11 ALRB No. 24

417.01 Employer's business justification for discharge of two employees--that they were among five employees with lowest seniority--is pretextual, since discharge closely followed the two employees' participation in union activities, and other employees with less seniority were rehired in the following few days.
CLARK PRODUCE, INC., 11 ALRB No. 19

417.01 Where employer's asserted reason for a discharge is proven to be false, Board can infer that there is another, unlawful, motive which employer desires to conceal, where surrounding facts, such as antiunion animus, tend to reinforce that inference.
THE GARIN COMPANY, 11 ALRB No. 18

417.01 Spouse who was fired when her foreman husband refused to commit an unfair labor practice is ordered reinstated with backpay.
GEORGE LUCAS & SONS, 11 ALRB No. 11 (See 13 ALRB No. 4)

417.01 Two employees discharged because of their union activity where evidence showed that other employees who engaged in similar conduct were not disciplined; alleged reason for discharge was pretextual.
GEORGE LUCAS & SONS, 11 ALRB No. 11 (See 13 ALRB No. 4)

417.01 Employer discharged protesters where credited testimony indicated that, when protesters offered to go to work, employer told them it was too late, though they had not yet been replaced.

MARDI GRAS MUSHROOM FARMS, 10 ALRB No. 8

417.01 Employer violated sections 1153(c) and (a) when, after union won a Board- conducted election, it changed its standards for imposing suspensions and issuing warnings for mixed mushroom and long stems, even though the suspensions and warnings did not affect union supporters more than other employees; Board found that some individual warnings, suspensions and discharges were based on protected concerted activity, while others were based on legitimate business reasons.
STEAK-MATE, INC., 9 ALRB No. 11

417.01 Where the employer failed to even interview our independent witness of an altercation between an employee and a supervisor who had given conflicting accounts of the incident, and the employer was well aware of the employee's union activities, the Board found the employee's discharge unlawful.
SUNNYSIDE NURSERIES, INC., 6 ALRB No. 52

417.01 Where it was not shown that the employer's discharge of a longtime employee resulted from an anti-union motive the Board found no violation of either section 1153, subdivision (a) or (c).
J. G. BOSWELL CO., 4 ALRB No. 13

417.01 Labor contractor's initial order of discharge (although not followed through) made in presence of number of workers tended to restrain workers in exercise of rights guaranteed by act and constituted violation of section 1153(a)
ANDERSON FARMS COMPANY, 3 ALRB No. 67

417.01 Fact that crew foreman--although not a supervisor--frequently relayed management directives to crew is substantial evidence upon which to conclude that, when foreman told crew they had been discharged, crew members reasonably believed they had, in fact, been discharged.
SUPERIOR FARMING CO. v. ALRB (1984) 151 Cal.App.3d 100

417.01 Where discharge flowed in direct causal chain from crews' wage protest, even though a link in causal chain was foreman's mistaken assertion to crew that they had been discharged, Board was correct in finding that discharge violated 1153(a); crew would not have been discharged "but for" their protected activity. ULP can be found even if foreman's mistake was unreasonable.
SUPERIOR FARMING CO. v. ALRB (1984) 151 Cal.App.3d 100

417.01 Test of whether employee has been discharged depends upon reasonable inference that employee could draw from language used by employer.
SUPERIOR FARMING CO. v. ALRB (1984) 151 Cal.App.3d 100

417.01 Substantial evidence was lacking from which the Board could infer a causal connection between discriminatee's

discharge and his union activities-- that he would not have been discharged "but for'' his union activities or that his union activities were a "moving" or "substantial" cause of his discharge.
ROYAL PACKING CO. v. ALRB (1980) 101 Cal.App.3d 826

417.01 Employees were engaged in protected concerted activity when they refused to sign (and urged other employees not to sign) employer's attendance form which appeared to document their participation in a safety training meeting, although no such meeting had taken place. Employees' actions were reasonable under the circumstances, and employer's discharge of them for their refusal to sign and urging other employees not to sign violated section 1153(a).
OCEANVIEW PRODUCE COMPANY, 21 ALRB No. 8

417.01 General Counsel established that Employer laid off and discharged crew because of its protected concerted activity where, after crew's wage protest and strike, Employer refused to reinstate crew to its status as preferred corn harvesting crew, but instead employed other crews with less experience.
GOLDEN ACRE FARMS, INC., 22 ALRB No. 14

417.01 Employee was not discriminatorily discharged when foreman told him he could not continue working while intoxicated. Reasonable employee would not have believed he was discharged but only that he could not continue working in his intoxicated condition.
TRIPLE E PRODUCE CORP., 23 ALRB No. 8

417.01 Section 1153(a) of the Act was violated by employer who singled out a group of workers immediately after they engaged in protected concerted activity, who asked them to leave and return at some unspecified time when she would know the piece rate, and who then fired them when they entered the field and attempted to work by the hour with the rest of the crew.
CIENIGA FARMS, INC., 27 ALRB No. 5

417.01 General Counsel failed to establish a prima facie case that worker's protected concerted activity was a motivating factor in the decision to discharge her. Worker's discharge was remote in time from the protected concerted activity, and there was no evidence presented that the employer had targeted the worker for her role in earlier group protests.
McCAFFREY GOLDER ROSES, 28 ALRB No. 8

417.02 What Constitutes A Discharge; Layoff Distinguished

417.02 Employee found to have been discharged when foreman stated he was out of job and owner indicated that Employee was not to return to work unless he received phone call. No phone call received by Employee.
YAMAMOTO FARMS, 7 ALRB No. 5

417.02 Constructive discharge, in violation of sections 1153(c) and (a), not found where employer laid off employees who declined its piece-rate offer. Employees were laid off for valid business and economic reasons.
TANAKA BROTHERS 4 ALRB No. 95

417.02 In determining whether or not a striker has been discharged, the test to be used is whether the words or conduct of the employer reasonably led the strikers to believe they were discharged and the employer has the burden of resolving any ambiguity created by its conduct. Where employer tells strikers to go home, employees indicate that they believe they have been discharged by asking for immediate payment of unpaid wages, employer indicates on termination form that employees were insubordinate for refusing to work, and employer is unwilling to rehire any of the workers, employees reasonably believed that they had been discharged, and did not voluntarily quit their employment.
DOLE FARMING, INC., 22 ALRB No. 8

417.02 Employees' refusal to work for a portion of one day protected where they discussed their mutual concerns about the difficulty of working in unseasonably hot weather. Board cites NLRB cases where, under similar circumstances in which employees perceived discomfort or danger in working under unique or adverse working conditions, work stoppage was deemed a spontaneous and limited one-time event and thus was not an unprotected "partial strike."
TANIMURA & ANTLE, INC., 21 ALRB No. 12

417.02 A discharge is established by the words and actions of the employer. Discriminatory discharge established where, as here, credited testimony attributed to employer statements, in response to concerted demands for changes in wages and hours, which reasonably led employees to believe that they had been discharged ("go home," "no more work for you," "the increase is at home"). (Citing American Protection Industries, et al. (1991) 17 ALRB No. 21, ALJ Sec., p. 18; Ridgeway Trucking Co. (1979) 243 NLRB 1048 [101 LRRM 1561], enf'd (5th Cir., 1980) 622 F.2d 1222.) Having made statements that the employees reasonably could have taken as indicating a discharge, it was incumbent upon the Employer, if he did not intend to fire the employees, to clarify the situation.
BOYD BRANSON FLOWERS, INC., 21 ALRB No. 4

417.02 Employees may rely on representation of foreperson/supervisor that they would not be recalled for work, even if supervisor was not acting on a reasonable interpretation of what she was told by higher level supervisor, and even if some employees knew that they could seek employment individually, rather than exclusively through their foreperson.
RIVERA VINEYARDS, et al., 29 ALRB No. 5

417.02 Even if supervisor did not intend to discharge employee, his conduct reasonably caused employee to believe he was discharged; therefore the employer had the obligation to clarify the employment status, which it failed to do.
LASSEN DAIRY, INC., 35 ALRB No. 7

417.03 Constructive Discharge

417.03 Purposeful intermingling of pro-union and anti-union employees, a rare occurrence, threats directed against the pro-union employees and the refusal of the supervisor to intervene (who in fact abets the brewing violence) constructively discharges employees who are driven from their work assignments.
M. CARATAN, INC., 9 ALRB No. 33

417.03 No constructive discharge where Employer rescinded workers unauthorized firing earlier in day and told them to return to work. Evidence fails to establish that work conditions (wet fields) so onerous that Respondent forced or induced workers to quit.
SUPERIOR FARMING COMPANY, 8 ALRB No. 40

417.03 To establish prima facie case of 1153(a) constructive discharge, General Counsel must show causal connection between Employee's PCA or Union activity and assignment of onerous working conditions causing Employee to quit.
SUPERIOR FARMING COMPANY, 8 ALRB No. 40

417.03 Violation of 1153(a) found where General Counsel proved that three workers reprimanded because they sought to convince others that fields were too wet for work rather than because they were late for work.
SUPERIOR FARMING COMPANY, 8 ALRB No. 40

417.03 Constructive discharge occurs when an employer renders an Employee's working conditions so intolerable that the employee is forced to quit. When an Employer imposes such intolerable conditions because of the Employees' Union activity or Union membership, it is a violation of Labor Code section 11153(c) and (a), citing J.P. Stevens & Co. v. NLRB (4th Cir. 1972) 461 F.2d 490 [80 LRRM 2609]. Here, verbal abuse of supervisor who threatened employee with "mayhem" in a conversation in which he also told employee he did not want UFW people working in the crew did not rise to the level of a constructive discharge situation but did constitute interference with the exercise of employees' section 1152 rights in violation of section 1153(a).
SIERRA CITRUS ASSOCIATION, 5 ALRB No. 12

417.03 Constructive discharge, in violation of section 1153(c) and (a), not found where employer laid off employees who declined its piece-rate offer. Employees were laid off for valid business and economic reasons.
TANAKA BROTHERS, 4 ALRB No. 95

417.03 Employer constructively discharged two packers by assigning them, in the middle of the harvest, to pull weeds in order to prepare a field which the Employer knew he would not be using; it was reasonable and foreseeable that the two would quit rather than perform work which injured their hands.
M. CARATAN, INC., 4 ALRB No. 83

417.03 Employer did not constructively discharge a work crew which quit on second morning of a new assignment which had resulted in only slightly less bonus pay than that earned by other crews.
M. CARATAN, INC., 4 ALRB No. 83

417.03 The Board finds a constructive discharge, rather than a voluntary quit, where the employer and labor contractor changed working conditions and harassed, surveilled, threatened and assaulted the employee.
FRUDDEN PRODUCE, INC., 4 ALRB No. 17

417.03 No constructive discharge where change in irrigator's duties was comparatively slight and not uncommon.
GEORGE ARAKELIAN FARMS v. ALRB (1980) 111 Cal.App.3d 258

417.03 No discharge where record shows that employee voluntarily relinquished his job due to perceived obligation to support strike.
TAYLOR FARMS, 20 ALRB No. 8

417.03 In light of strict standard for constructive discharge, verbal harassment, unwanted physical contact, and threats to make union supporters quit had not reached the legal threshold of constructive discharge at the time employee left work.
VINCENT B. ZANINOVICH & SONS, 34 ALRB No. 3

417.04 Layoffs In General; Permanent Or Temporary Layoffs; Disciplinary Layoff

417.04 Though employer witnesses may have provided exaggerated testimony of poor work performance to justify layoff, where no reason to disbelieve consistent testimony that decision was in any event made before the protected activity that allegedly motivated it and some evidence of difference in quality as compared to other crews, discriminatory layoff allegation must be dismissed.
SUMA FRUIT INT'L (USA), INC., 19 ALRB No. 14

417.04 Layoff unlawful where supervisor's comments, such as "those who repented of joining the union would get their jobs back," reflect that layoff was in retaliation for filing of election petition. Prompt reinstatement with backpay of workers discriminatorily laid off does not obviate liability in absence if repudiation of unlawful conduct. Since record is unclear as to whether employer followed its established procedures in recalling employee

from layoff, General Counsel failed to meet its burden of proof. Background of many findings of unlawful conduct, some of which Board did not affirm, coupled with not implausible business justification of ranch manager, insufficient to raise inference that layoff connected to protected activity.
OASIS RANCH MANAGEMENT, INC., 18 ALRB NO. 11

417.04 Layoff earlier or more frequent than normal, resulting from employer assigning work to other workers for purpose of affecting outcome of election, discriminatory.
GERAWAN RANCHES., 18 ALRB No. 5

417.04 Layoff found discriminatory where supervisors threatened loss of work if union won election, anti-union employees were segregated into one crew, and only pro-union employees were laid off immediately after union won election.
PIONEER NURSERY, 10 ALRB No. 30

417.04 General Counsel failed to establish a prima facie case that employer discriminatorily laid off two employees because of their protected concerted activities.
SIGNAL PRODUCE COMPANY, 10 ALRB No. 23

417.04 Layoff found discriminatory where supervisors threatened loss of work if union won election, anti-union employees were segregated into one crew, then only pro-union employees were laid off immediately after union won election.
PIONEER NURSERY, 9 ALRB No. 44

417.04 Employer's discontinuance of operations in the midst of pruning operations in the face of picketing activity was unlawful as it tended to aid the rival union and to intimidate the incumbent union's supporters; the layoff of nonstriking employees was in retaliation for their union support and therefore unlawful. Advice from a labor consultant that the cessation was necessary was no defense to the retaliation.
ARAKELIAN FARMS, 9 ALRB No. 25

417.04 Discontinuance of operations following completion of the pruning season is no violation of the Act but is rather an exercise of the employer's control over its business.
ARAKELIAN FARMS, 9 ALRB No. 25

417.04 General Counsel failed to establish a prima facie case that employer discriminatorily laid off 13 employees because of their protected concerted activities.
MONROVIA NURSERY COMPANY, 9 ALRB No. 15

417.04 Employer reduction in size of grape-pruning crew by giving seniority preference to Employees who had worked during spring thinning held nondiscriminatory.
GIUMARRA VINEYARDS, INC., 7 ALRB No. 17

417.04 Where the employer hired six employees to work during the poinsettia season, laid-off the employees upon the conclusion of that season, but later recalled the employees and offered them permanent jobs, the Board found that the original lay off was not unlawful.
SUNNYSIDE NURSERIES, INC., 6 ALRB No. 52

417.04 Where the employer put on uncontradicted evidence that it terminated a crew for lack of work the Board refused to find that the termination was unlawful.
CORONA COLLEGE HEIGHTS ORANGE AND LEMON ASSOCIATION, 5 ALRB No. 15

417.04 General Counsel failed to meet its burden of proof by failing to prove by a preponderance of the evidence that employer's transfer and subsequent layoff of certain employees was the result of anti-union motivation.
EDWIN FRAZEE, INC., 4 ALRB No. 94

417.04 Board finds unlawful discharge where leading union activist is laid off ten days after conclusion of ULP case in which he played prominent role in assisting UFW; the layoff is premised on a seasonal seniority system never before implemented; all other employees laid off with the union activist were reemployed the following week; the business records did not show an actual reduction in force until one week after layoff; the employer took inconsistent positions justifying layoff and rehiring.
MARIO SAIKHON, INC., 4 ALRB No. 72

417.04 Layoff of crew not discriminatory where crew not visibly more supportive of Union than were comparable crews, no showing Employer knew crew members had signed Union authorization cards, and Employer proffered substantial business justification for layoff.
BROCK RESEARCH, INC., 4 ALRB No. 32

417.04 Selection of employees for layoff because of their union activities is discrimination in violation of section 1153(c), even if the layoffs are economically justified.
AKITOMO NURSERY, 3 ALRB No. 73

417.04 Layoff of family violated 1153(c) and (a) where union (taking authorization cards and speaking with union representative in presence of employer ranch superintendent) preceded layoff notice by 20 minutes, and employer's explanation riddled with inconsistencies and contradictions.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

417.04 Employer discriminated when it laid off crew but transferred six employees with less seniority than discriminatee to other crew and continued to hire workers for other crews.
SAM ANDREWS' SONS, 3 ALRB No. 45

417.04 Though employer witnesses may have provided exaggerated testimony of poor work performance to justify layoff, where no reason to disbelieve consistent testimony that decision was in any event made before the protected activity that allegedly motivated it and some evidence of difference in quality as compared to other crews, discriminatory layoff allegation must be dismissed.
SUMA FRUIT INT'L (USA), INC., 19 ALRB No. 14

417.04 No prima facie case of layoff in retaliation for union activities where layoff not close in time to union activities, no evidence of collateral unfair labor practices, no credited expressions of animus, and individual layoff part of larger, seasonal layoff.
WARMERDAM PACKING CO., 24 ALRB No. 2

417.04 Evidence indicates that employer's layoff was not discriminatory where employer decided to disk under acreage infested with mites and fungus, and employer was concerned that without a layoff, shorter hours would cause employees to seek work elsewhere, thus providing no assurance that employer would have enough employees remaining until the end of the harvest.
TSUKIJI FARMS, 24 ALRB No. 3

417.04 Allegation of layoff and refusal to rehire due to union organizing activity dismissed where General Counsel failed to prove element of employer knowledge. Circumstances reflecting that it was unlikely that supervisors' knowledge of protected activity was passed to decision makers, along with credible denials of knowledge by decision makers, is sufficient to avoid imputation of knowledge to employer.
VINCENT B. ZANINOVICH & SONS, INC., 25 ALRB No. 4

417.05 Successive Layoffs Or Discharges; Discharge Following Reinstatement

418.00 OTHER DISCIPLINARY ACTIONS

418.01 Suspension

418.01 Employer violated 1153(c) by suspending seven employees because of their union activities; employer failed to prove that the employees' poor quality work would have resulted in suspension under its regular disciplinary practices.
TEX-CAL LAND MANAGEMENT, INC., 11 ALRB No. 31

418.01 The employer violated section 1153(a) by suspending broccoli crew employees because they protested their assignment to "second cut" a field which had been first cut by another concern.
BRUCE CHURCH, INC., 11 ALRB No. 9

418.01 Employees' two work stoppages to protest employer's

institution of new rule requiring lettuce harvesters to work during the rain were protected concerted activity, and the one-day suspension of employees who had engaged in the protest was unlawful.
BERTUCCIO FARMS, 10 ALRB No. 52

418.01 Employer violated section 1153(c) and (a) when, after union won a Board-conducted election, it changed its standards for imposing suspensions and issuing warnings for mixed mushroom and long stems, even though the suspensions and warnings did not affect union supporters more than other employees; Board found that some individual warnings, suspensions and discharges were based on protected concerted activity, while others were based on legitimate business reasons.
STEAK-MATE, INC., 9 ALRB No. 11

418.01 Unlawful discriminatory treatment (2 days suspension & losing 7 years of seniority) of Union employee who missed 1 day to attend Union collective bargaining session found where Employer admitted having no concern over others similarly absent for reasons having nothing to do with Union.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC.,7 ALRB No. 36

418.02 Warning Letters

418.02 Employer violated section 1153, subdivisions (a), (c), and (d) where it issued warning notices to three employees based on conduct which was in fact protected activity, failed to investigate complaints against the three or give them an opportunity to refute the complaints, and based the notices on a work rule which was less appropriate and more severe than the work rule relied on previously in similar circumstances.
CONAGRA TURKEY CO., 18 ALRB No. 14

418.02 Employer's warning notice to employee was not discriminatory where it was given for employee's violation of company rule prohibiting the placing of any personal materials on company property, and employee had placed a union bumper sticker on company box lid.
GEORGE LUCAS & SONS, 11 ALRB No. 11 (See 13 ALRB No. 4)

418.02 Employer violated section 1153(c) and (a) when, after union won a Board- conducted election, it changed its standards for imposing suspensions and issuing warnings for mixed mushroom and long stems, even though the suspensions and warnings did not affect union supporters more than other employees; Board found that some individual warnings, suspensions and discharges were based on protected concerted activity, while others were based on legitimate business reasons.
STEAK-MATE, INC., 9 ALRB No. 11

418.02 Employer violated 1153(c) and (a) for issuing

disciplinary notice to Employee who was overheard talking with other Employees about a strike and who had led the crew in wage dispute a few days earlier. Defense that the Employee was performing work improperly pretextual since Employee's husband who was working with her was not reprimanded.
GIUMARRA VINEYARDS, INC., 7 ALRB No. 7

418.02 No violation where disciplinary notices were issued to Employees who had engaged in PCA recently where there was a recent history of poor work by their crew, and General Counsel did not show that Employees who got the notices were more involved in PCA than those who did not.
GIUMARRA VINEYARDS, INC., 7 ALRB No. 7

418.02 Employer's placement of unlawful warning letter in employee's personnel file constituted discipline for participation in union activity is violative of 1153(c) and (a).
SIGNAL PRODUCE COMPANY, 6 ALRB No. 47

418.03 Oral Reprimands

418.03 Statements indicating that returning strikers would be subject to more onerous working conditions and would be singled out for criticism and disrespect was inherently threatening in violation of section 1153(a); illegal import of statements exacerbated by the hypercritical and disparaging treatment returning strikers actually received from their foremen.
LU-ETTE FARMS, INC., 10 ALRB No. 20

418.03 Absent a showing that the supervisor treated union activists different than other employees, harassment and pressure given to an employee known to have been active with the union is not a violation of the Act. However, when employees were permitted to talk during their work as long as it did not interfere with their job performance, and a supervisor ordered an employee to stop talking about union affairs or she would receive a disciplinary notice, the supervisor violated the Act; absent a work rule prohibiting conversation of all kinds, employees have the same right to discuss union activities as other subjects during their work hours.
BRUCE CHURCH, INC., 9 ALRB No.75

418.03 Reprimands based on legitimate business reasons, Complaint of "dirty picking" and not completing work, not discrimination despite timing of initial reprimands only a month after election in which Employee was vocal Union supporter.
TREFETHEN VINEYARDS, 4 ALRB No. 19

419.00 CHANGE IN OR DISCONTINUANCE OF OPERATIONS FOR DISCRIMINATORY REASONS

419.01 In General

419.01 Where General Counsel has established a prima facie case of discriminatory diversion of bargaining unit work and Respondent contends elimination of work for Union members resulted from its customers' independent and voluntary decision to assume responsibility for their own harvesting requirements, Board may draw adverse inference from Respondent's failure to call an witnesses or put on any evidence in support of defense.
RICHARD A. GLASS COMPANY, INC., 14 ALRB No. 11

419.01 When examining an employer's motives in any given situation, Board need be watchful it does not tend to substitute its own judgment for that which the employer may choose to follow in the normal and regular course of business since employer's conduct must be judged by the "standard which [it] has set for itself" as evidenced by past practice and other relevant factors.
SAM ANDREWS' SONS 13 ALRB No. 15

419.01 General Counsel failed to rebut employer's contention that the decision to not give its yearly bonus to workers was because of higher expenses and lower profits for that year. MATSUI NURSERY, INC., 11 ALRB No. 10

419.01 Assigning a crew spokesperson a position that is more arduous and dangerous, where the position previously was alternated among the crew members, was a violation of the Act. MIKE YUROSEK & SON, INC., 9 ALRB No. 69

419.01 Employer's decision to employ a labor contractor's nonunion employees, rather than hire employees through the union, was motivated by anti-union animus, in violation of section 1153(c) and (a).
MOUNT ARBOR NURSERIES, INC., and MID-WESTERN NURSERIES, INC., 9 ALRB No. 49

419.01 Employer's discontinuance of operations in the midst of pruning operations in the face of picketing activity was unlawful as it tended to aid the rival union, and to intimidate the incumbent union's supporters; advice from a labor consultant that the cessation was necessary was no defense.
ARAKELIAN FARMS, 9 ALRB No. 25

419.02 Subcontracting

419.02 Unnecessary to reach question of whether diversion of unit work was "inherently destructive" and a violation of section 1153(c) where an 1153(e) violation was found, and the remedy for both violations was identical.
TEX-CAL LAND MANAGEMENT, INC., ET AL. 12 ALRB No. 26

419.02 Employer violated 1153(c) by contracting bargaining unit work in order to reduce work for its regular bargaining unit employees because of their involvement in protected

concerted activity.
TEX-CAL LAND MANAGEMENT, INC., 11 ALRB No. 31

419.03 Sale Or Merger; Successor Companies; Hiring Of Predecessor's Employees

419.03 Employer's inconsistent and superficial excuses for failure to hire or consider hiring predecessor's employees warranted inference that employer's motives were discriminatory. RIVCOM CORPORATION and RIVERBEND FARMS, INC., 5 ALRB No. 55

419.03 Board found violation of section 1153(c) and (a) where successor-employer failed to consider or hire any of predecessor's employees in order to avoid dealing with the union certified to represent them.
RIVCOM CORPORATION and RIVERBEND FARMS, INC., 5 ALRB No. 55

419.03 While new owner of business has broad power to restructure its operations and hire its own workers, he violates ALRA if he discriminates against union applicants on basis of anti-union animus.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

419.03 New employer cannot avoid successorship status by discriminating against former employees. Where such conduct has occurred, continuity of the work force is presumed. RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

419.04 Discontinuance Of Business, Change In Size Of Operations; Crop Change; Mechanization

419.04 Board rejects employer's contention that, as a result of diminished INS tensions during backpay period and thus for non-discriminatory reasons, it could and did take advantage of the "economic efficiency" of hiring an undocumented workforce which allegedly performed better work for less pay than would a workforce comprised of documented workers, such as the discriminatees. Employer failed to establish that discriminatees were not competent or qualified to perform work which was available during backpay period as respondent continued to farm agricultural commodities in the same fields under the same conditions and with replacement employees who utilized the same skills as had the discriminatees.
UKEGAWA BROTHERS, et al., 16 ALRB No. 18

419.04 No violation of section 1153(e) and (a) where employer offers to bargain over both partial closure decision and its effects, and bargaining history between parties on these issues is too short to prove the existence of either good or bad faith at the table.
VESSEY & COMPANY, INC., et al. 13 ALRB No. 17

419.04 In determining whether employer's partial closure was motivated by a desire to chill unionism in any of the

remaining operations, and where there is no evidence that anti-union remarks were made to employees at any remaining operations, that there was contemporaneous union activity at the operations, or that there was interchange between the employees, Board finds insufficient basis for concluding that employer violated section 1153(c) in closing part of its operations.
VESSEY & COMPANY, INC., et al., 13 ALRB No. 17

419.04 No violation of Act where employer's decision to cease its lettuce operations is based on valid business justifications, and same decision would have taken place even in the absence of the alleged protected activity.
VESSEY & COMPANY, INC., et al., 13 ALRB No. 17

419.04 No violation of sections 1153(e) and (a) where employer offers to bargain over both the partial closure decision and its effects on the bargaining unit, and union fails to seek bargaining over the effects of the partial closure.
VESSEY & COMPANY, INC., et al., 13 ALRB No. 17

419.04 Employer's failure to reinstate returning economic strikers was justified by a legitimate change in irrigation schedule which eliminated positions which otherwise could have been filled by returning strikers.
SAM ANDREWS' SONS, 13 ALRB No. 15

419.04 Employer discriminatorily discontinued a crop to retaliate against striking workers where discontinuance occurred immediately after strikes, was preceded by threats of such discontinuance, and was not credibly explained.
SAM ANDREWS' SONS, 11 ALRB No. 5

419.04 Employer's discontinuance of operations in the midst of pruning operations in the face of picketing activity was unlawful as it tended to aid the intimidate the incumbent union's supporters; advice from a labor consultant that the cessation was necessary was no defense.
ARAKELIAN FARMS, 9 ALRB No. 25

419.04 Employer's discontinuance of crop in order to prevent harvest-time strike, several months in the future, among pro-Union Employees violated section 1153(c). Preemptive layoff cannot be justified by mere possibility of strike.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC., 7 ALRB No. 36

419.05 Transfer, Promotion, Or Demotion; Work Assignments And Work Opportunities

419.05 By assigning employee to more onerous work--picking trees with very little fruit--because of his protected concerted activity, employer violated section 1153(c) and (a). BAIRD-NEECE PACKING CORPORATION, 14 ALRB No. 16

419.05 Although employer discriminatorily assigned employee to onerous work, employer tried to make the work less onerous by offering the employee a number of options. Evidence did not support a finding that employer was trying to get employee to quit, or that it would not have discharged him but for his protected activity. (Wright Line, Inc. (1980) 251 NLRB 1083 [105 LRRM 1169].)
BAIRD-NEECE PACKING CORPORATION, 14 ALRB No. 16

419.05 Dissent: The fact that several calendar days elapsed between work stoppage and transfer does not operate to negate strong evidence that Respondent was retaliating against crew members who engaged in protected activity.
PHILLIP D. BERTELSEN 12 ALRB No. 27

419.05 Employer violated section 1153(c) by delaying the start of the pruning season and hiring excessive additional crews for the purpose of reducing work for its regular bargaining unit employees because of their involvement in protected concerted activity.
TEX-CAL LAND MANAGEMENT, INC., 11 ALRB No. 31

419.05 Assignment of more difficult work in uncultivated portions of field to a small union crew was discriminatory.
PAUL BERTUCCIO, 10 ALRB No. 10

419.05 Segregation of a small crew of prounion workers from a larger, regular crew was based upon employees' union support.
PAUL BERTUCCIO, 10 ALRB No. 10

419.05 Employer successfully showed that its assignment of miscellaneous shed work to workers other than alleged discriminatees was based on legitimate, nondiscriminatory reasons.
PAUL BERTUCCIO, 10 ALRB No. 10

419.05 Employer's defense that it denied available field work to five discriminatees because they had no experience in such work was discredited, in part by its employing new workers with no prior experience to do the field work.
PAUL BERTUCCIO, 10 ALRB No. 10

419.05 Where a change (without notice) in the method of notifying workers of harvest starting date foreseeably precluded workers from making timely applications and disparately impacted on union supporters, disparate impact was unavoidable consequence which employer must have intended; statistical evidence of disparate impact sufficient to establish that failure to apply for work or late application was due to employer's failure to notify employees of the starting date of the harvest as was its past practice.
ADMIRAL PACKING COMPANY (DISSENT), 10 ALRB No. 9

419.05 Assigning a crew spokesperson a position that is more

arduous and dangerous, where the position previously was alternated among the crew members, was a violation of the Act.
MIKE YUROSEK & SON, INC., 9 ALRB No. 69

419.05 Employer's implementation of rule change from suckering in rows to suckering in spaces, isolating workers during union organizing drive and shortly after protected work stoppage, violated 1153(a) where employer's president had instructed supervisor to do everything in his power to prevent union from coming in, employer had a long history of suckering in rows, its agents gave shifting and contradictory explanations for the change, little evidence was presented that employee fraternizing had interfered with suckering, and foreman admitted that the spaces order was retained into the following season to avoid the inference that discharges for its violation were discriminatory.
ARMSTRONG NURSERIES, INC., 9 ALRB No. 53

419.05 Change in seniority system during pendency of judicial challenge to Board's certification order constitutes unilateral change in violation of Labor Code section 1153(e) and (a); employer's past practice defense sufficient only to rebut allegation that same change was discriminatorily motivated in violation of Labor Code section 1153(c) and (a).
D'ARRIGO BROTHERS COMPANY, INC., 9 ALRB No. 30

419.05 Where a group of three employees was transferred from packing to picking grapes during a slowdown, the transfer did not violate the provisions of a collective bargaining contract or any company policy, and, there was no evidence that the transfer was intended to inhibit employee organization, the Board refused to find that the transfer of a Union supporter within the group of three was unlawful.
KARAHADIAN RANCHES, INC., 5 ALRB No. 37

419.05 The adoption of a new seniority policy for legitimate business reasons is not per se an unfair labor practice that discriminates against union workers. However, here the employer's application of its new seniority, hiring, and recall policies was discriminatory.
VESSEY & COMPANY, INC. v. ALRB (1989) 210 Cal.App.3d 629

419.05 Assignment to more onerous work not unlawful where no showing of anti-union animus by employer or of any notable union activity of employee.
GEORGE ARAKELIAN FARMS v. ALRB (1980) 111 Cal.App.3d 258

419.05 Evidence established that known union activist, who was twice singled out by management personnel for one-on-one displays of anti-union animus, was denied tractor driving work because of his protected concerted activities.
Scheid Vineyards and Management Company, Inc.,21 ALRB No. 10

419.05 Assignment to more arduous work in hospital barn constitutes a negative change in terms and conditions of employment which is unlawful if done in response to protected activity.
LASSEN DAIRY, INC., 35 ALRB No. 7

419.06 Promotion Withheld Or Transfer Denied

419.06 In light of employer's knowledge of employee's affinity for the union and employer threats of reprisal for such affinity, employer's unexplained failure to follow its practice of transferring the employee from irrigation work to the more highly paid position of the harvesting machine, violated section 1153(c) and (a) of Act.
ARNAUDO BROS. INC., 3 ALRB No. 78

419.07 Seniority

419.07 Change in seniority system during pendency of judicial challenge to Board's certification order constitutes unilateral change in violation of Labor Code section 1153(e) and (a); employer's past practice defense sufficient only to rebut allegation that same change was discriminatorily motivated in violation of Labor Code section 1153(c) and (a).
D'ARRIGO BROTHERS COMPANY, 9 ALRB No. 30

419.07 No violation where employer made legitimate corrections in its seniority list and changes in position on list did not tend to encourage or discourage union membership.
SAM ANDREW'S SONS, 9 ALRB No. 21

419.07 Unlawful layoff found where Employees were active Union representatives and supporters, crew was important to possible success of (unlawful) decertification drive, selection of layoffs made little sense unless one concluded Employer attempted to specifically eliminate discriminatees, and a few days before layoffs, general foreman was overheard telling foreman to discharge crew's Union representative.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC., 7 ALRB No. 36

419.07 Employer's labor relations representative admission that company abrogated Employee's seniority in response to Union grievance filed on Employee's behalf essentially constitutes admission of violation of Act.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC., 7 ALRB No. 36

419.07 Company had system where closer from previous season would have seniority as cutter and packer the next season if he knew how to do job. Discrimination shown where Union supporter with seniority seeking work as a cutter and packer, a job he had previously done, was denied work during a time when new hires were added to crew.

VERDE PRODUCE COMPANY, 7 ALRB No. 27

419.07 The adoption of a new seniority policy for legitimate business reasons is not per se an unfair labor practice that discriminates against union workers. However, here the employer's application of its new seniority, hiring, and recall policies was discriminatory.
VESSEY & COMPANY, INC. v. ALRB (1989) 210 Cal.App.3d 629

419.07 Assignment of "negative seniority" had effect of penalizing employees for participation in Board processes and was inherently destructive of important employee rights under Act.
M. B. ZANINOVICH, INC. v. ALRB (1981) 114 Cal.App.3d 665

419.08 Merit Rating

419.09 Wages, Tips, Bonuses, And Profit Sharing; Incentives; Severance Pay

419.09 Granting a pay increase to all employees during an election campaign is not discrimination in violation of section 1153(c), despite a showing of anti-union motivation. However, granting a pay increase during an election campaign is an unfair labor practice in violation of section 1153(a).
AKITOMO NURSERY, 3 ALRB No. 73

419.10 Hours And Overtime, Work Schedules

419.10 The unilateral and unexplained elimination of past lunch period for a pro-UFW crew in the pay period immediately preceding the election and manifesting itself in the first paycheck received after the election constituted a violation of section 1153(c).
ARNAUDO BROTHERS, INC. 3 ALRB No. 78

419.10 Absent contractual restrictions, the employer has a fundamental right to assign duties and arrange work schedules in accordance with its best judgment. The Board will not disturb such employer decisions absent proof that the assignment was intended to inhibit the exercise of section 1152 rights or that the adverse effect of the change on employee rights outweighed the employer's business justifications.
ROD McLELLAN CO., 3 ALRB No. 71

419.10 No discriminatory change in hours or overtime where variation in hours not unusual and in months directly after protected activity double overtime hours increased.
WARMERDAM PACKING CO., 24 ALRB No. 2

419.11 Working Conditions And Employee Privileges

419.11 Credited testimony that foreman was told to make employee work alone in onerous and unsafe conditions, along with timing of adverse action, sufficient to prove that action

taken in retaliation against earlier concerted safety complaint. Finding that transportation for discriminatory reasons reversed where employer's defense at hearing not so different from that expressed in answer or at prehearing conference as to reflect shifting rationales or after the fact justifications and foreman's earlier threat to make adverse changes was remote in time and conditioned on the union winning the election.
OASIS RANCH MANAGEMENT, INC., 18 ALRB No. 11

419.11 Discrimination against returning strikers, known to be union supporters, shown by disparate treatment received by strikers as compared with nonstrikers.
LU-ETTE FARMS, INC., 10 ALRB No. 20

419.11 Exhorting employees not to assist returned strikers violated Act as part of overall scheme of harassment and intimidation. LU-ETTE FARMS, INC., 10 ALRB No. 20

419.11 Assignment of more difficult work in uncultivated portions of field to a small union crew was discriminatory.
PAUL BERTUCCIO, 10 ALRB No. 10

419.11 Segregation of a small crew of prounion workers from a larger, regular crew was based upon employees' union support.
PAUL BERTUCCIO, 10 ALRB No. 10

419.11 Absent a showing that the supervisor treated union activists different than other employees, harassment and pressure given to an employee known to have been active with the union is not a violation of the Act. However, when employees were permitted to talk during their work as long as it did not interfere with their job performance, and a supervisor ordered an employee to stop talking about union affairs or she would receive a disciplinary notice, the supervisor violated the Act; absent a work rule prohibiting conversation of all kinds, employees have the same right to discuss union activities as other subjects during their work hours.
BRUCE CHURCH, INC., 9 ALRB No. 75

419.11 Assigning a crew spokesperson a position that is more arduous and dangerous, where the position previously was alternated among the crew members, was a violation of the Act.
MIKE YUROSEK & SON, INC., 9 ALRB No. 69

419.11 Employer's implementation of rule change from suckering in rows to suckering in spaces, isolating workers during union organizing drive and shortly after protected work stoppage, violated 1153(a) where employer's president had instructed supervisor to do everything in his power to prevent union from coming in, employer had a long history of suckering in rows, its agents gave shifting and contradictory explanations for the change, little

evidence was presented that employee fraternizing had interfered with suckering, and foreman admitted that the spaces order was retained into the following season to avoid the inference that discharges for its violation were discriminatory.
ARMSTRONG NURSERIES, INC., 9 ALRB No. 53

419.11 No finding of discrimination where changes in working conditions not limited to Employees filing ULP complaint.
ROGERS FOODS, INC., 8 ALRB No. 19

419.11 Board found violation of section 1153(c) and (a) where successor- employer attempted to evict predecessor's employees from company housing to avoid dealing with the union which represented them.
RIVCOM CORPORATION and RIVERBEND FARMS, INC., 5 ALRB No. 55

419.11 Board upholds ALJ finding that discriminatory treatment of crew -- orders to use grape knife rather than usual longhandled hoe, to weed four rows of lettuce at a time rather than customary two and to shorten work day -- constituted ULP.
SAM ANDREWS' SONS, 3 ALRB No. 45

419.11 No finding of discriminatory warnings to speak only English to supervisor or not to speak to other employees where supervisor credibly denied making such statements.
WARMERDAM PACKING CO., 24 ALRB No. 2

419.12 Employee Benefits: Insurance, Pensions, Vacations, Holidays, Leave, Etc.

419.12 Withdrawal of benefits from an employee because of union activity is discrimination in order to discourage union activity in violation of section 1153(c) even if no other employees ever had such benefits.
AKITOMO NURSERY, 3 ALRB No. 73

419.13 Eviction From Company Housing

419.13 Where successor-employer attempted to evict predecessor's employees from company housing following its discriminatory failure and refusal to hire them, or to consider hiring them, Board found that the same discriminatory reasons motivated the attempted evictions.
RIVCOM CORPORATION and RIVERBEND FARMS, INC.,5 ALRB No. 55

419.13 Board found violation of section 1153(c) and (a) where successor-employer attempted to evict predecessor's employees from company housing to avoid dealing with the union which represented them.
RIVCOM CORPORATION and RIVERBEND FARMS, INC.,5 ALRB No. 55

419.13 Employer threat and attempt to evict employees from their

residence because of union activity violated section 1153(c) and(a). IHED pp. 29-32.
PAUL W. BERTUCCIO and BERTUCCIO FARMS, 5 ALRB No. 5

419.13 Eviction from company housing after unlawful discharge or refusal to hire also constitutes discrimination.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

419.13 Filing of unlawful detainer actions against strikers not shown to be retaliatory where evidence shows that action taken because right to housing was condition of employment which ceased upon going out on strike.
TAYLOR FARMS, 20 ALRB No. 8

420.00 REASONS FOR DISCIPLINE, DISCHARGE, OR REFUSAL TO REINSTATE

420.01 In General

420.01 Layoff earlier or more frequent than normal, resulting from employer assigning work to other workers for purpose of affecting outcome of election, discriminatory. Layoff resulted from employees exercising statutory organizational right to petition for representation election.
GERAWAN RANCHES., 18 ALRB No. 5

420.01 A discharge based on an employer's mistaken belief that an employee engaged in misconduct is not unlawful if it is not in retaliation for protected, concerted activity.
E. W. MERRITT FARMS, 14 ALRB No. 5 (ALJD)

420.01 Employer's defense that a discharge or failure to rehire was supported by a belief of vandalism by the alleged discriminatee must include a showing that the belief was relied upon for the action taken.
RANCH NO. 1, 12 ALRB No. 21

420.01 Board rejected as both pretextual and discriminatory employer's defense that it had refused to rehire union supporters on first tomato machine because of policy of giving priority to ranch residents.
YAMANO FARMS, INC., 11 ALRB No. 16

420.01 Employer's knowledge of protected activity, past history of anti-union animus, and unusual hiring of intermittent workers indicated that discrimination was a motivating factor. However, employer met its burden of proving that due to lack of seniority and the genuine need for intermittent workers, the employee would have been denied rehire even absent his protected activity.
SAM ANDREWS' SONS, 11 ALRB No. 5

420.01 A recognized legitimate and substantial business justification for refusing to reinstate returning economic strikers is the employer's good faith belief

that the strikers engaged in serious strike misconduct.
BERTUCCIO FARMS, 10 ALRB No. 52

420.01 Employee was not discharged for his concerted activity but for being drunk on the job; supervisor's firing employee on mistaken assumption that foreman intended to fire him did not violate the Act since discharge was not causally related to the employee's concerted activity.
GOURMET FARMS, INC., 10 ALRB No. 41

420.01 Where the employer failed to even interview our independent witness of an altercation between an employee and a supervisor who had given conflicting accounts of the incident, and the employer was well aware of the employee's union activities, the Board found the employee's discharge unlawful.
SUNNYSIDE NURSERIES, INC., 6 ALRB No. 52

420.01 Delay in rehire was not a violation where employer acted pursuant to legitimate interest in requiring physical examination and was not responsible for misunderstanding resulting from defect in medical questionnaire.
C. MONDAVI & SONS, dba CHARLES KRUG WINERY, 5 ALRB No. 53

420.01 Board finds unlawful discharge where leading union activist is laid off ten days after conclusion of ULP case in which he played prominent role in assisting UFW; the layoff is premised on a seasonal seniority system never before implemented; all other employees laid off with the union activist were reemployed the following week; the business records did not show an actual reduction in force until one week after layoff; the employer took inconsistent positions justifying layoff and rehiring.
MARIO SAIKHON, INC., 4 ALRB No. 72

420.01 In light of fact that employee was insubordinate when he countermanded foreman's legitimate order to return to work and challenged the foreman to discharge him, employee's ten-day suspension was for cause, was unrelated to employee's union activity, and therefore did not violate Act.
S & F GROWERS, 4 ALRB No. 58

420.01 The Board concluded that discharge of know union activist was not unlawful where evidence indicated that it was motivated by the employee's insubordination and goading of a supervisor.
S & F GROWERS, 4 ALRB No. 58

420.01 Although there exists evidence to support a justifiable ground for discharge, ULP may nevertheless be found where the union activity is the moving cause behind the discharge or where worker would not have been fired "but for" union activities. Union animus need not be dominant motive.
S. KURAMURA, INC., 3 ALRB No. 49

420.01 The mere fact that an employee is or was participating in union activities does not insulate him from discharge for misconduct or give immunity from routine employment decisions.
J.R. NORTON CO. v. ALRB (1987) 192 Cal.App.3d 874

420.01 Discharge unlawful when, but for employer's antiunion animus, worker would have retained job.
RULINE NURSERY CO. v. ALRB (1985) 169 Cal.App.3d 247

420.01 Labor legislation does not purport to interfere with employer's ordinary disciplinary decisions unless discipline is imposed for engaging in activities protected by Act.
SUPERIOR FARMING CO. v. ALRB (1984) 151 Cal.App.3d 100

420.01 When it appears that employee was dismissed because of combined valid business reasons as well as invalid reasons, such as union or other protected activities, the question becomes whether discharge would have occurred "but for" protected activities.
NASH-DECAMP CO. v. ALRB (1983) 146 Cal.App.3d 92

420.01 Involvement is protected activity does not insulate employee from ordinary discipline or other business decisions of employer. Employee may be fired for any reason or no reason, so long as reason is not protected activity.
NASH-DECAMP CO. v. ALRB (1983) 146 Cal.App.3d 92

420.01 Board has considerable power to weigh reasons asserted for a mass refusal-to-hire; the less probable the reasons, the more likely the reasons did not exist.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

420.01 Deficient applications are no legal justification for refusal to hire if proper, timely offers would also have been rejected. Employer had already decided not to hire predecessor's employees before they even applied.
RIVCOM CORP. v. ALRB (1983) 34 Cal3d. 743

420.01 Where Board concludes that employer's purported business justification is pretextual, Wright Line analysis has no meaning, since union animus is the only true cause.
RIVCOM CORP. v. ALRB (1983) 34 Cal3d. 743

420.01 Employer commits no ULP by rejecting offers to work which are absolutely conditioned on terms he need not accept.
RIVCOM CORP. v. ALRB (1983) 34 Cal3d. 743

420.01 If employer's discriminatory conduct is "inherently destructive of employee rights", no proof of anti-union motivation is needed and Board can find ULP even if employer introduces evidence that its conduct was motivated by business considerations.
M. B. ZANINOVICH, INC. v. ALRB (1981) 114 Cal.App.3d 665

420.01 Finding that employer's reason for discharging employee was a "pretext" is merely another way of stating that there was no sufficient business justification.
MARTORI BROTHERS DISTRIBUTORS v. ALRB (1981) 29 Cal.3d 721

420.01 Employee's involvement in union activities does not immunize him or her from discharge for misconduct or from routine employment decisions.
MARTORI BROTHERS DISTRIBUTORS v. ALRB (1981) 29 Cal.3d 721

420.01 When it is shown that employee is guilty of misconduct warranting discharge, discharge should not be deemed ULP unless Board determines that employee would have been retained but for his union or protected activity.
MARTORI BROTHERS DISTRIBUTORS v. ALRB (1981) 29 Cal.3d 721

420.01 In absence of other circumstances, employer can discharge its employees at will, and an employee's protected activity does not insulate him or her from discharge for misconduct or from ordinary employment decisions.
GEORGE ARAKELIAN FARMS v. ALRB (1980) 111 Cal.App.3d 258

420.01 Only rarely will there be probative direct evidence of employer's motivation. It is well-established rule that in such cases Board is free to draw inference from all the circumstances, and need not accept self-serving declarations of intent, even if they are uncontradicted.
ROYAL PACKING CO. v. ALRB (1980) 101 Cal.App.3d 826

420.01 Employee who engages in union activities will not tie employer's hands and prevent him from exercise of his business judgment to discharge employee for cause.
TEX-CAL LAND MANAGEMENT, INC. v. ALRB (1979) 93 Cal.App.3d 922

420.01 Apparently justifiable ground for layoff may in fact be pretext for unlawful discrimination.
TEX-CAL LAND MANAGEMENT, INC. v. ALRB (1979) 24 Cal.3d 335

420.01 Employer's claim that employees' refusal to work one afternoon assertedly because of an adverse working condition (extreme heat) constituted a voluntary quit or alternatively an act of insubordination, rejected where employees' conduct found to be protected.
TANIMURA AND ANTLE, INC., 21 ALRB NO. 12

420.01 The discharge of an employee who reactively grabbed and lowered his supervisor's hand from his face after the supervisor threw mushrooms at him, yelled at him and pointed his finger at his face violated section 1153 (a) and (c) as the employee's brief physical contact with the supervisor was in line with the supervisor's provocative

conduct, and as such, the employer could not rely on the employee's indiscretion in disciplining him.
PICTSWEET MUSHROOM FARMS, 28 ALRB No. 4

420.01 Respondent failed to meet its burden of proving it would have discharged employee even in the absence of his protected concerted activity where employer's proffered reason for the discharge was found to be a pretext.
AUKEMAN FARMS, 34 ALRB No. 2

420.02 Demand By Union Or Fellow Employees; Intraunion And Rival Union Disputes

420.03 Absence Or Tardiness; Leave Of Absence; Overstaying Leave; Leaving Work Place

420.03 Employee's refusal, two months prior to his discharge, to sign Employer's petition to oust Union, together with Employer's antiunion statements and threats to lay off workers through automation, are not enough to prove discriminatory discharge of employee who arrived four hours late for work because of drunk driving arrest, and who had previously incurred serious injury from on-the-job accident stemming from carelessness.
SUNNY CAL EGG & POULTRY, INC., 14 ALRB No. 14

420.03 Dissent would find violation for discharge of union activist who defied what dissent finds to be discriminatorily motivated order not to leave work place.
MAYFAIR PACKING COMPANY, 13 ALRB No. 20

420.03 Dissent would find violation for discharge of union activist without warning and contrary to employee handbook despite his admission to having suggested to fellow worker that she "take it easy."
MAYFAIR PACKING COMPANY, 13 ALRB No. 20

420.03 Employer violated section 1153(c) when it discharged a worker, active in union organizing, who legitimately and properly took emergency leave and returned from the leave in a timely fashion.
MATSUI NURSERY, INC., 11 ALRB No. 10

420.03 Delay of one week in rehiring union supporter who had returned from vacation in Mexico was not discriminatory.
PAUL BERTUCCIO, 10 ALRB No. 10

420.03 Employer unlawfully refused rehire to union supporters where leave policy was applied inconsistently immediately after takeover of business by new owner who took adamant bargaining stance.
DESSERT SEED COMPANY, INC., 9 ALRB No. 72

420.03 Employer did not violate section 1153(c) by discharging employees who returned late from leaves of absence where policy was applied as written in company handbook and had not been applied differently to nonunion employees.

SAM ANDREW'S SONS, 9 ALRB No. 21

420.03 Violation of 1153(a) found where General Counsel proved that three workers reprimanded because they sought to convince others that fields were too wet for work rather than because they were late for work.
SUPERIOR FARMING COMPANY, 8 ALRB No. 40

420.03 Unlawful discriminatory treatment (2 days suspension & losing 7 years of seniority) of Union employee who missed 1 day to attend Union collective bargaining session found were Employer admitted having no concern over others similarly absent for reasons having nothing towards Union.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC., 7 ALRB No. 36

420.03 Where it was not shown that the employer's discharge of a longtime employee resulted from an anti-union motive the Board found no violation of either section 1153, subdivision (a) or (c).
J. G. BOSWELL CO., 4 ALRB No. 13

420.03 Respondent's stated reason for discharging employee—that he had overextended his vacation in violation of company rules—was found to be a pretext where employer had condoned employees' practice of trading shifts to extend vacations in the past, a written warning purportedly warning employee to be back to work in 14 days was found to be a fabrication, and where employer's explanation of how he determined employee had overextended his vacation changed over the course of the ULP proceeding.
AUKEMAN FARMS, 34 ALRB No. 2

420.03 Prima facie case of discrimination rebutted where employer showed legitimate grounds for discharge, as employee had received several warnings, including for repeatedly leaving work early, and where there was no showing of disparate treatment.
LASSEN DAIRY, INC., 35 ALRB No. 7

420.04 Accident Record, Driving Rules, Law Violations, Criminal Record

420.04 Employer failed its burden of proving its asserted business justification for discharging a supposedly reckless tractor driver on the same day that he engaged in protected concerted activity.
PHILLIP D. BERTELSEN, 12 ALRB No. 27

420.04 Employer's knowledge of felony charges pending against returning economic strikers showed a good faith belief that they had engaged in serious strike misconduct, and that belief constituted a legitimate substantial business justification for not rehiring those employees.
BERTUCCIO FARMS, 10 ALRB No. 52

420.05 Violation Of Immigration Law; Deportation

420.05 Respondent's reliance on its undocumented worker policy for its refusal to rehire a former striker was found to be pretextual where the policy was inconsistently enforced in the past and Respondent had known about the worker's undocumented status for years.
SAM ANDREWS' SONS, INC., 12 ALRB No. 24

420.05 In concluding that Respondent's reliance on its undocumented worker policy for a refusal to rehire a former striker was pretextual, the Board did not pass on the legality of that policy but, rather, found that the worker was denied rehired for discriminatory reasons in violation of section 1153(c) and (a).
SAM ANDREWS' SONS, INC., 12 ALRB No. 24

420.05 The Board deferred ruling on Respondent's arguments concerning the propriety of backpay and reinstatement remedies for a discriminatee who may be an undocumented worker. Respondent can present its arguments in the compliance proceeding. (But see dissent.)
SAM ANDREWS' SONS, INC., 12 ALRB No. 24

420.06 Altercations With Others; Fighting; Violence

420.06 Discharge of returning economic striker found to be lawful where, even though employee was not initial aggressor, he escalated the level of the conflict from fists to deadly weapons.
JOE MAGGIO, INC., 11 ALRB No. 15

420.06 Discharges of union activists within two weeks of representation election, although prima facie discriminatory, were found to be based on one activist's insubordination and the other's brandishing of gun to other employee during election.
VISALIA CITRUS PACKERS, 10 ALRB No. 44

420.06 Employee's conflicts with supervisors and fomenting of strife among other employees was inextricably intertwined with his protected concerted activities.
GRAMIS BROTHERS FARMS, INC., and GRO-HARVESTING, INC., 9 ALRB No. 60

420.06 Where the employer failed to even interview our independent witness of an altercation between an employee and a supervisor who had given conflicting accounts of the incident, and the employer was well aware of the employee's union activities, the Board found the employee's discharge unlawful.
SUNNYSIDE NURSERIES, INC. 6 ALRB No. 52

420.06 Discharge of strikers upheld where employer showed good faith belief that individuals threw rocks at vehicles and General Counsel failed to establish that the misconduct did not take place; Discharge of striker not upheld where

General Counsel successfully established by a preponderance of evidence that striker did not throw rock as alleged; Discharge of strikers not upheld where employer failed to show good faith belief by offering as evidence only letter containing vague accusation of misconduct on unspecified date, without any corroboration or identification of a witness.
SUNRISE MUSHROOMS, INC., 22 ALRB No. 2

420.06 While peaceful work stoppage was protected, those who later rushed the fields and interfered with other employees' right to refrain from joining the work stoppage lost the protection of the ALRA.
COASTAL BERRY CO. v. ALRB (2001) 94 Cal.App.4th 1, 114 Cal.Rptr.2d 228

420.06 Where it was found that protesters rushed the fields and engaged in unprotected conduct by interfering with the rights of nonstriking workers, it was unnecessary to proceed to determine whether their individual actions constituted "serious strike misconduct."
COASTAL BERRY CO. v. ALRB (2001) 94 Cal.App.4th 1, 114 Cal.Rptr.2d 228

420.06 Strike misconduct need not consist of physical acts, but may consist of an expression of hostility that may tend to coerce or intimidate nonstriking employees; the misconduct need not be directed at nonstriking employees, as threatening customers and company officials and striking their vehicles has been deemed misconduct even where no actual damage resulted, as has acts of vandalism or sabotage directed against the employer; actions that promote or encourage misconduct by other strikers may also justify discharge.
COASTAL BERRY CO. v. ALRB (2001) 94 Cal.App.4th 1, 114 Cal.Rptr.2d 228

420.06 The present standard for strike misconduct is that adopted by the NLRB in *Clear Pine Mouldings, Inc.* (1984) 268 NLRB 1044, i.e., that strike misconduct is "serious" (thereby justifying dismissal or denial of reinstatement) if it reasonably tends to coerce or intimidate nonstriking workers.
COASTAL BERRY CO. v. ALRB (2001) 94 Cal.App.4th 1, 114 Cal.Rptr.2d 228

420.06 Once the G.C. has established that a striker was denied reinstatement for conduct related to a strike, the burden shifts to the employer to establish that it had an honest belief that the striker engaged in strike misconduct. (The employer's determination not to reinstate a striker must be based on evidence that the striker personally engaged in strike misconduct.) If the employer meets its burden, the G.C. then has the burden of establishing that the striker did not in fact engage in the alleged misconduct or that it was not sufficiently serious to remove the protection of the Act.

COASTAL BERRY CO. v. ALRB (2001) 94 Cal.App.4th 1, 114 Cal.Rptr.2d 228

420.06 The discharge of an employee who reactively grabbed and lowered his supervisor's hand from his face after the supervisor threw mushrooms at him, yelled at him and pointed his finger at his face violated section 1153 (a) and (c) as the employee's brief physical contact with the supervisor was in line with the supervisor's provocative conduct, and as such, the employer could not rely on the employee's indiscretion in disciplining him.
PICTSWEET MUSHROOM FARMS, 28 ALRB No. 4

420.06 The throwing of objects at the vehicle occupied by a company official constitutes serious strike misconduct. It is not necessary that the objects caused any damage, as the conduct itself is highly coercive.
COASTAL BERRY COMPANY, LLC, 28 ALRB No. 7

420.06 Leader and instigator of a group of strikers who threw boxes at vehicle occupied by company official, blocked the vehicle’s exit, and rocked the vehicle from side to side was engaged in serious strike misconduct for which he was lawfully discharged.
COASTAL BERRY COMPANY, LLC, 28 ALRB No. 7

420.06 Striker who approached employee in order to take his box so he could not continue working, but who stopped and backed away when told to do so by others, was found to have engaged in no more than an aborted attempt to interfere with work that did not constitute serious strike misconduct.
COASTAL BERRY COMPANY, LLC, 28 ALRB No. 7

420.06 Actions that promote or encourage misconduct by other strikers may justify discharge.
COASTAL BERRY COMPANY, LLC, 28 ALRB No. 7

420.06 Where, in light of the surrounding circumstances, a statement reasonably would be construed as threatening violence or other unlawful strike activity, the statement may constitute serious strike misconduct warranting discharge. Threats by the leader of a group of strikers that they would destroy or “break” the company, occurring before and just after litany of violent and other unprotected conduct by the group, and carrying implied threat of continuance of similar activity, warranted discharge.
COASTAL BERRY COMPANY, LLC, 28 ALRB No. 7

420.06 No prima facie case where facts demonstrated that employee discharged primarily for pushing supervisor, along with other misconduct, and where no factors other than timing were indicative of unlawful motive. Even if failure to do a more complete investigation warranted finding prima facie case, employer successfully showed that it would have discharged employee even in the

absence of his protected activity.
HERBTHYME FARMS, INC., 36 ALRB No. 2

420.07 Damage To Or Loss Of Machines, Materials, Crops, Etc.

420.07 Respondent's failure to inquire about incident similar to escape of cows relied on to discharge discriminatee showed real motive for discharge was union solicitation, not cow escape.
M. CURTI & SONS, 19 ALRB No. 18

420.07 Employer's assertion that it did not rehire the alleged discriminatees because it believed one of them to have engaged in vandalism was found unpersuasive where the defense was not offered until the hearing, no factual basis for the belief was established, and the ALJ, in demeanor-based credibility resolutions, found employer's witness to be untruthful in other aspects of his testimony.
RANCH NO. 1, 12 ALRB No. 21

420.07 Employer's defense that a discharge or failure to rehire was supported by a belief of vandalism by the alleged discriminatee must include a showing that the belief was relied upon for the action taken.
RANCH NO. 1, 12 ALRB No. 21

420.07 Discharge of returning economic striker found lawful where that employee allowed a severe washout to develop, took insufficient action to mitigate the damage and failed to report the problem to his supervisors.
JOE MAGGIO, INC., 11 ALRB No. 15

420.07 Although the discharge of a known union activist for "bad attitude" gave rise to an inference of unlawful motive, the employer proved that the employee was actually fired for causing serious property damage and that his attitude towards an absence without leave was simply the last straw.
SAM ANDREW'S SONS, 9 ALRB No. 21

420.07 No violation where employees were discharged for allowing severe property damage to occur.
J. R. NORTON COMPANY, 9 ALRB No. 18

420.07 No causal connection between PCA and discharge where some 6 months elapsed and Employee destroyed Employer's crops, was fired immediately after such destruction, and Employee had fewer problems at work after PCA until the discharge.
TENNECO WEST, INC., 7 ALRB No. 12

420.07 Ample reason for discharge of employee for misconduct (improper use of company truck) existed even though discharge took place after employee asked for raise and invoked spectra of union if raise not forth coming.
TRIMBLE AND SONS, 3 ALRB No. 89

420.07 No unlawful discharge proven where evidence showed that employee did damage machinery and falsify timesheets, which were stated reasons for discharge, and where no other evidence of pretext.
WARMERDAM PACKING CO., 24 ALRB No. 2

421.07 Employer knowledge of protected activity is an essential element of a prima facie case. Knowledge of protected activity held by supervisors is imputed to the employer, unless it is shown that the decision-maker(s) of the adverse action were unaware of the activity at the time the decision was made. Circumstances reflecting that it was unlikely that such knowledge was passed, along with credible denials of knowledge by decision makers, is sufficient to avoid imputation of knowledge.
VINCENT B. ZANINOVICH & SONS, INC., 25 ALRB No. 4

420.07 Striker who destroyed crates of packed berries engaged in serious strike misconduct warranting discharge.
COASTAL BERRY COMPANY, LLC, 28 ALRB No. 7

420.08 Dishonesty, False Statements, Theft, Or Disloyalty To Employer

420.08 Discriminatee's alleged description of supervisors as "importamadristas" and "thieves," while discussing work procedures with other employees, was not so egregious or excessively disloyal as to put his conduct outside the realm of protected activity.
VALLEY-WIDE, DBA MONA, INC., 15 ALRB No. 16

420.08 Events regarding Employer's contention he took flowers without prior approval, and General Counsel failed to demonstrate that in discharging this employee, the employer applied the discipline in a discriminatory fashion.
MATSUI NURSERY, INC., 11 ALRB No. 10

420.08 Discharge of union activist found discriminatory where discharge occurred immediately upon employer's discovery of employee's union activity; employer made anti-union statements; work was clearly available; and discharge was based on fabricated charge of theft.
BABBITT ENGINEERING & MACHINERY v. ALRB (1984) 152 Cal.App.3d 310

420.08 No unlawful discharge proven where evidence showed that employee did damage machinery and falsify timesheets, which were stated reasons for discharge, and where no other evidence of pretext.
WARMERDAM PACKING CO., 24 ALRB No. 2

420.08 General Counsel failed to establish a prima facie case that worker's protected concerted activity was a motivating factor in the decision to discharge her. Worker's discharge was remote in time from the protected

concerted activity, and there was no evidence presented that the employer had targeted the worker for her role in earlier group protests.
McCAFFREY GOLDER ROSES, 28 ALRB No. 8

420.08 Discharge of a supervisor did not violate the Act where there was no evidence presented that showed his discharge had an adverse effect on any other employee or that any other employee's work was dependent on his continued employment.
McCAFFREY GOLDER ROSES, 28 ALRB No. 8

420.08 Discharge lawful where, even under employee's version of events, he would have given supervisor the impression that he had stolen herbicide from the employer.
WOOLF FARMING CO. OF CA, INC., 35 ALRB No. 2

420.09 Dissatisfaction With, Or Criticism Of, Management

420.09 General Counsel failed to establish causal connection between alleged discriminatee's concerted activity (complaining about late lunches and supporting son's effort to file workers compensation claim) and employer's failure to rehire him and his family.
T.T. MIYASAKA, INC., 16 ALRB No. 16

420.09 The law allows employees leeway in presenting grievances relating to their working conditions. Such activity loses its mantle of protection only in cases in which the misconduct/insubordination is so violent or of such serious nature as to render the employee unfit for further service. (ALJD, p. 25.)
D'ARRIGO BROTHERS 13 ALRB No. 1

420.09 While mere "griping" about employment conditions is generally not considered protected activity, "when the griping coalesces with the expression inclined to produce group or representative action," the statute protects the activity. (ALJD, p. 23.)
D'ARRIGO BROTHERS, 13 ALRB No. 1

420.09 Employee's conflicts with supervisors and fomenting of strife among other employees was inextricably intertwined with his protected concerted activities.
GRAMIS BROTHERS FARMS, INC., and GRO-HARVESTING, INC., 9 ALRB No. 60

420.09 General Counsel failed to show that employer discharged employee because she engaged in protected concerted activity by complaining about the portable toilets.
CARDINAL DISTRIBUTING CO., INC., et al., 9 ALRB No. 43

420.09 Use of profane language to his supervisors, disobedience of work orders, attempt to undermine his supervisors' authority, and displays of anger, offensiveness, and insubordination justified discharge of Teamster activist.
ROYAL PACKING CO. v. ALRB. (1980) 101 Cal.App.3d 826

420.09 Employer violated section 1153(a) by discharging an employee who protested the manner in which a supervisor treated a co-worker while giving the co-worker a work assignment when the concerted activity motivated the supervisor's later provocation of the employee into making brief physical contact with the supervisor.
PICTSWEET MUSHROOM FARMS, 28 ALRB No. 4

420.10 Garnishment Of Wages

420.11 Horseplay

420.11 Discharge of two employees who refused to sign Employer's petition to oust the Union was not entirely pretextual, since Employer had some genuine concern that the employees had been "horsing around" and "dragging on the clock" in order to work overtime. However, a number of factors show that Employer would not have discharged the employees in the absence of their protected activity: the Employer's hostile antiunion statements during the discharge incident; fact that a co-employee who had signed the Employer's petition was not fired; the discharges occurred only four days after Union was certified; in view of the employees' extended years of service, the alleged misconduct was not serious enough to warrant discharge.
SUNNY CAL EGG & POULTRY, INC., 14 ALRB No. 14

420.12 Insubordination

420.12 Employee's use of profanity toward supervisor, which took place on the work site and in front of other employees, constituted insubordinate conduct tending to undermine employer's ability to maintain order and respect in the fields. Although uttered during the course of a protected work stoppage, his language amounted to egregious conduct exceeding the bounds of protected activity under the ALRA.
DAVID FREEDMAN & CO., 15 ALRB No. 9

420.12 Although employer's explanation for rule forbidding employees to leave shop area without permission made no sense, employer committed no violation of law in firing employee for breaking the rule, where General Counsel failed to establish any connection between promulgation of the rule and any particular form of protected activity that it was designed to prevent or punish. (ALJD, p. 62.)
MAYFAIR PACKING COMPANY, 13 ALRB No. 20

420.12 Dissent would find violation for discharge of union activist without warning and contrary to employee handbook despite his admission to having suggested to fellow worker that she "take it easy."
MAYFAIR PACKING COMPANY, 13 ALRB No. 20

420.12 Dissent would find violation for discharge of union activist who defied what dissent finds to be discriminatorily motivated order not to leave work place.
MAYFAIR PACKING COMPANY, 13 ALRB No. 20

420.12 The law allows employees leeway in presenting grievances relating to their working conditions. Such activity loses its mantle of protection only in cases in which the misconduct/insubordination is so violent or of such serious nature as to render the employee unfit for further service. (ALJD, p. 25.)
D'ARRIGO BROTHERS, 13 ALRB No. 1

420.12 Union activist's insubordination, although offensive, would not in itself and in the absence of union activism have caused his discharge because labor contractor had not discharged employees for similar insubordination in the past.
VISALIA CITRUS PACKERS, 10 ALRB No. 44

420.12 Employee's conflicts with supervisors and fomenting of strife among other employees was inextricably intertwined with his protected concerted activities.
GRAMIS BROTHERS FARMS, INC., and GRO-HARVESTING, INC., 9 ALRB No. 60

420.12 When employees fired ostensibly for refusing to comply with rule change instituted in retaliation for past-and in prevention of future-protected concerted activities, discharges would not have occurred absent such activities and employer thereby violated section 1153(a) and (c).
ARMSTRONG NURSERIES, INC., 9 ALRB No. 53

420.12 No violation where employee was actually discharged for refusing to obey a direct order by his supervisor.
SAM ANDREW'S SONS, 9 ALRB No. 21

420.12 Employer violated section 1153(c) and (a) by discharging an employee because of his support for and activities on behalf of the union, and not because he refused an order.
D'ARRIGO BROTHERS COMPANY OF CALIFORNIA, 9 ALRB No. 3

420.12 Employee refused a directive to work certain rows, and on another occasion refused to continue working and left the field. Employee was then fired. Held: No causal relation found where previous PCA occurred 1 months before and the result of this activity that the Employees' demands had been, in fact, met.
HANSEN FARMS, 7 ALRB No. 2

420.12 The Board concluded that the employer violated section 1153(a) by discharging four employees for protected concerted activity--a sudden change in working conditions--rejecting the employer's contention that the employees were insubordinate for refusing a work assignment. The employees were attempting to present a grievance as to unsafe working conditions in a manner

which the employer had previously encouraged.
JACK BROTHERS & MCBURNEY, INC., 6 ALRB No. 12

420.12 In light of fact that employee was insubordinate when he countermanded foreman's legitimate order to return to work and challenged the foreman to discharge him, employee's ten-day suspension was for cause, was unrelated to employee's union activity, and therefore did not violate Act.
S & F GROWERS, 4 ALRB No. 58

420.12 Use of profane language to his supervisors, disobedience of work orders, attempt to undermine his supervisors' authority, and displays of anger, offensiveness, and insubordination justified discharge of Teamster activist.
ROYAL PACKING CO. v. ALRB (1980) 101 Cal.App.3d 826

420.12 Employees were engaged in protected concerted activity when they refused to sign (and urged other employees not to sign) employer's attendance form which appeared to document their participation in a safety training meeting, although no such meeting had taken place. Employees' actions were reasonable under the circumstances, and employer's discharge of them for their refusal to sign and urging other employees not to sign violated section 1153(a).
OCEANVIEW PRODUCE COMPANY, 21 ALRB No. 8

420.12 Employer's claim that employees sought rehire at times when no work was available rejected where Board found that employer had altered established hiring policies in order to avoid rehiring employees who had engaged in protected work stoppage in prior season; employees sought rehire at appropriate times and would have been given work had the declared policy remained in effect.
TANIMURA & ANTLE, INC., 21 ALRB No. 12

420.12 Where an employer provokes an employee to the point where the employee commits an indiscretion or insubordinate act, and the employer's provocation consists of unlawful conduct or is motivated by the employee's protected activity, the employer cannot rely on the employee's indiscretion to meet its burden of showing that it would have discharged the employee even in the absence of protected activity.
PICTSWEET MUSHROOM FARMS, 28 ALRB No. 4

420.12 Discharge of an employee who used an obscene term towards his supervisor in the course of an otherwise protected discussion violated section 1153(a) of the Act. The employee's conduct did not seriously undermine the employer's ability to maintain control in the work place, was unaccompanied by threats or violence, was provoked in part by employer conduct that was arguably an unfair labor practice, and in light of all surrounding circumstances did not rise to the level of egregious behavior that would cause him to lose the Act's

protection.
THE ELMORE COMPANY, 28 ALRB No. 3

420.12 No prima facie case established where facts demonstrated that employee discharged for repeatedly refusing lawful assignment, lack of progressive discipline was consistent with employee manual, and where no other factors other than timing were indicative of unlawful motive.
HERBTHYME FARMS, INC., 36 ALRB No. 2

420.13 Intoxication; Use Or Possession Of Liquor Or Drugs

420.13 An employer failed to meet its burden of establishing that the foreman had been terminated for intoxication where credited, corroborated evidence showed the foreman to have a sober demeanor, and the employer's version was discredited based upon the demeanor of the witnesses, the failure to supply purported documentary substantiation and other lack of corroborating evidence.
SEQUOIA ORANGE CO., 11 ALRB No. 21

420.13 ALJ incorrectly relied upon expert testimony based upon alcohol blood test results as conclusive proof that discriminatee did not drink beer within the time period in dispute; nonetheless, ALJ properly gave the test results some weight as they tended to discredit employer's assertion that discriminatee was openly and defiantly drinking beer in the presence of employer's supervisors.
THE GARIN COMPANY, 11 ALRB No. 18

420.13 Employer's stated reason for employee's discharge (that employee was drinking beer at work) was pretextual based upon evidence of disparate treatment accorded employee for his alleged violation of employer's drinking policy.
THE GARIN COMPANY, 11 ALRB No. 18

420.13 Where employer's asserted reason for a discharge is proven to be false, Board can infer that there is another, unlawful, motive which employer desires to conceal, where surrounding facts, such as antiunion animus, tend to reinforce that inference.
THE GARIN COMPANY, 11 ALRB No. 18

420.13 Employee was not discharged for his concerted activity but for being drunk on the job; supervisor's firing employee on mistaken assumption that foreman intended to fire employee did not violate the Act since discharge was not causally related to the employee's concerted activity.
GOURMET FARMS, INC., 10 ALRB No. 41

420.13 Employer's reliance on employees' drinking or poor work habits rejected as pretextual where habits had been tolerated prior to union activity.
ABATTI FARMS, INC. v. ALRB (1980) 107 Cal.App.3d 317

420.14 Loafing, Sleeping, Or Talking

420.15 Low Production Or Impeding Production; Negligence, Inefficiency Or Incompetence

420.15 General Counsel failed to establish a prima facie case of discriminatory discharge where employee was the only one of four workers who failed to finish job assignment, and his discharge was not closely linked in time to his protected activity.
SUNNY CAL EGG & POULTRY, INC., 14 ALRB No. 14

420.15 Dissent would find violation for discharge of union activist without warning and contrary to employee handbook despite his admission to having suggested to fellow worker that she "take it easy."
MAYFAIR PACKING COMPANY 13 ALRB No. 20

420.15 Employer acted severely in discharging union activist who advised co-employee to "go slow" in her work, but although employer's action gave rise to a suspicion of unlawful motive, such a suspicion does not constitute proof of a violation of the Act. (ALJD, p. 33.)
MAYFAIR PACKING COMPANY, 13 ALRB No. 20

420.15 Employer failed its burden of proving its asserted business justification of poor productivity as justifying random discharge of one half of a harvesting crew the day following the entire crew's participation in concerted protected activity.
PHILLIP D. BERTELSEN, 12 ALRB No. 27

420.15 Employer successfully rebutted General Counsel's strong prima facia showing of discrimination by demonstrating that a crew's transfer five days after the crew engaged in protected concerted activity was motivated by the crew's chronic poor productivity.
PHILLIP D. BERTELSEN 12 ALRB No. 27

420.15 An unlawful discharge is established by evidence of the dischargees' role as employee spokesperson, subsequent retaliation by imposition of harsh working conditions immediately following assertion of the role of spokes-person and termination shortly thereafter. The Employer's defense of lack of production and a random method of selection for discharge was discounted by the animus of the employer, the timing of the discharge and the change in layoff selection process.
LIGHTNING FARMS, 12 ALRB No. 7

420.15 Employer's testimony to the poor work habits of discriminatee was too vague and general to credit.
MATSUI NURSERY, INC., 11 ALRB No. 10

420.15 Termination of an entire crew found to be a violation of sections 1153(c) and (a) of the Act where work-deficiency

justifications offered by employer appeared unpersuasive, one discharged crew member was not present at the time of the discharge, and most of the crew had recently been engaged in known strike activity.
ALPINE PRODUCE, 9 ALRB No. 12

420.15 Employer violated 1153(c) and (a) for issuing disciplinary notice to Employee who was overheard talking with other Employees about a strike and who had led the crew in wage dispute a few days earlier. Defense that the Employee was performing work improperly pretextual since Employee's husband who was working with her was not reprimanded. GIUMARRA VINEYARDS, INC., 7 ALRB No. 7

420.15 No violation where disciplinary notices were issued to Employees who had engaged in PCA recently where there was a recent history of poor work by their crew, and General Counsel did not show that Employees who got the notices were more involved in PCA than those who did not.
GIUMARRA VINEYARDS, INC., 7 ALRB No. 7

420.15 Although the timing of employee's discharge was suspect, viz., four days after his participation in concerted activity, the uncontradicted record evidence amply demonstrated that supervisors were experiencing problems with employee's work performance; moreover, the Employer's witnesses testified that they had decided upon discharge prior to employee's participation in protected concerted activity. General Counsel therefore failed to demonstrate by a preponderance of the evidence that the employee would not have been terminated but for his participation in the protected, concerted activities.
SAM ANDREWS' SONS, 5 ALRB No. 38

420.15 The employer unlawfully discharged an employee who had distributed a union button to another employee where although work time had commenced, the distribution caused no disruption of work because the employees were not actually working at the time of the distribution.
KARAHADIAN RANCHES, INC., 5 ALRB No. 37

420.15 Employer's anti-union animus and knowledge of employees' union activity insufficient to overcome employer's affirmative defense of insufficient work and poor performance by crew.
PAUL W. BERTUCCIO and BERTUCCIO FARMS, 5 ALRB No. 5

420.15 The discharge of a union sympathizer during an organizational campaign violated the Act where the employer who argued poor work as the reason for the discharge, was shown to have subjected the dischargee to quality control inspections which were not consistent with prior company practice.
S & F GROWERS, 4 ALRB No. 58

420.15 Section 1153(c) and (a) are violated by respondent's layoff of an openly pro-union crew shortly before an

election and the hiring of an apparently less pro-union crew. Shortly before the election, respondent altered its payroll periods in a manner which disenfranchised the more pro-union crew, and issued misleading statements in a leaflet which evidenced animus towards the UFW. Respondent's ostensible economic justification (light lettuce packs, variance in lettuce-pack weights, and quality of lettuce packs) for the discharge held not supported by the record evidence.
S & F GROWERS, 4 ALRB No. 58

420.15 Reprimands based on legitimate Bus reasons, Complaint of "dirtypicking" and not completing work, not discrimination timing of initial reprimands only a month after election in which Employee was vocal Union supporter.
TREFETHEN VINEYARDS, 4 ALRB No. 19

420.15 Employer's reliance on employees' drinking or poor work habits rejected as pretextual where habits had been tolerated prior to union activity.
ABATTI FARMS, INC. v. ALRB (1980) 107 Cal.App.3d 317

420.15 Evidence established that Employer refused to rehire employee because of her union activities where employee's activities were open and obvious, Employer's supervisor falsely denied knowledge of the activities, and Employer made unsubstantiated allegations that employee (who had nine years' experience with Employer) was slow and unproductive.
Scheid Vineyards and Management Company, Inc.,

420.15 Employer carried its burden of showing it would have failed to rehire employee even in the absence of his protected concerted activity when it established that the employee's unsatisfactory work performance was the reason he was not rehired.
McCAFFREY GOLDER ROSES, 28 ALRB No. 8

420.15 Evidence of poor work performance and evidence that decision to discharge made prior to protected activity, as well as by strong possibility that false reasons given for failure to recall due to reluctance to discharge long time employee, sufficient to show that crew would have been discharged even in the absence of protected activity.
RIVERA VINEYARDS, et al., 29 ALRB No. 5

420.16 Offensive Personal Characteristics; Quarrelsomeness; "Troublemaker"; Bad Attitude

420.16 The law allows employees leeway in presenting grievances relating to their working conditions. Such activity loses its mantle of protection only in cases in which the misconduct/insubordination is so violent or of such serious nature as to render the employee unfit for further service. (ALJD, p. 25.)

D'ARRIGO BROTHERS, 13 ALRB No. 1

420.16 Union activist's insubordination, although offensive, would not in itself and in the absence of union activism have caused his discharge because labor contractor had not discharged employees for similar insubordination in the past. VISALIA CITRUS PACKERS, 10 ALRB No. 44

420.16 Employee's conflicts with supervisors and fomenting of strife among other employees was inextricably intertwined with his protected concerted activities. GRAMIS BROTHERS FARMS, INC., and GRO-HARVESTING, INC., 9 ALRB No. 60

420.16 Although the discharge of a known union activist for "bad attitude" gave rise to an inference of unlawful motive, the employer proved that the employee was actually fired for causing serious property damage and that his attitude towards an absence without leave was simply the last straw. SAM ANDREW'S SONS, 9 ALRB No. 21

420.16 Use of profane language to his supervisors, disobedience of work orders, attempt to undermine his supervisors' authority, and displays of anger, offensiveness, and insubordination justified discharge of Teamster activist. ROYAL PACKING CO. v. ALRB (1980) 101 Cal.App.3d 826

420.17 Outside Work; Competing Business; "Moonlighting"

420.18 Physical Or Mental Disability; Age Of Employees; Contagious Diseases

420.18 Delay in rehire was not a violation where employer acted pursuant to legitimate interest in requiring physical exam and was not responsible for misunderstanding resulting from defect in medical questionnaire. C. MONDAVI & SONS, dba CHARLES KRUG WINERY 5 ALRB No. 53

420.19 Profanity, Name Calling, Obscene Language Or Conduct

420.19 Employee's use of profane or obscene language during course of concerted activity does not necessarily take the activity outside the realm of statutory protection, since employee's right to engage in such activity must be balanced against employer's right to maintain order and respect. (NLRB v. Illinois Tool Works (7th Cir. 1946) 153 F.2d 811 [17 LRRM 841].) BRUCE CHURCH, INC., 16 ALRB No. 3

420.19 Board will apply a four-factor analysis to determine whether employee who is engaged in concerted activity has, by opprobrious conduct, lost the protection of the Act. The analysis is based on (1) the place of the discussion, (2) the subject matter of the discussion, (3) the nature of the employee's outburst, and (4) whether the outburst was in any way provoked by the employer's unfair labor practice. (Atlantic Steel Company (1979) 245

NLRB 814 [102 LRRM 1247].)
BRUCE CHURCH, INC., 16 ALRB No. 3

420.19 Although employee who was engaged in union activity may have used disrespectful language to foreman, his activity remained protected since he did not engage in any violent or threatening conduct, and his intemperate language was provoked by the foreman's threat of physical violence.
BRUCE CHURCH, INC., 16 ALRB No. 3

420.19 Although employee may have used intemperate language in responding to foreman's admonition not to talk to crew about the union, employee's conduct was not sufficiently flagrant to take it outside the realm of activity protected by the Act, where employee's interruption of crew, if any, was too brief to impede production, employee did not engage in any violence or threats, and evidence indicates that employee's language was not as profane as employer later claimed.
BRUCE CHURCH, INC., 16 ALRB No. 3

420.19 Discriminatee's alleged use of derogatory terms to describe employer while discussing work procedures with fellow employees does not constitute insubordination, since the alleged epithets were not directed at the employer but were merely overhead by him. Thus, the alleged name-calling did not provide a legitimate reason for the employee's discharge.
VALLEY-WIDE, DBA MONA, INC., 15 ALRB No. 16

420.19 Worker who told his supervisor "go to hell" and "f--k you" on three separate occasions, on company property, in the presence of other employees and within a thirty minute time span crossed the line between protected and unprotected activity. The abusive conduct was unprovoked and demonstrated a lack of respect for the employer which was not germane to his concerted activity. The employer was justified in discharging the employee in order to maintain order and respect for the company.
DAVID FREEDMAN & CO., 15 ALRB No. 9

420.19 Discharge of an employee who used an obscene term towards his supervisor in the course of an otherwise protected discussion violated section 1153(a) of the Act. The employee's conduct did not seriously undermine the employer's ability to maintain control in the work place, was unaccompanied by threats or violence, was provoked in part by employer conduct that was arguably an unfair labor practice, and in light of all surrounding circumstances did not rise to the level of egregious behavior that would cause him to lose the Act's protection.
THE ELMORE COMPANY, 28 ALRB No. 3

420.19 The Board reiterated that the proper test for determining whether an employee's use of vulgar language during an otherwise protected discussion with a supervisor caused

the employee to lose the protection of the Act is the four-part balancing test set forth in *Atlantic Steel Co.* (1979) 245 NLRB 814.
THE ELMORE COMPANY, 28 ALRB No. 3

420.20 Company Rules Generally; Successive Violations Of Rules

420.20 Finding of discrimination evidenced by employer's basing of warning notices on a work rule which was less appropriate and more severe than the work rule relied on previously in similar circumstances.
CONAGRA TURKEY CO., 18 ALRB No. 14

420.20 Although employer's explanation for rule forbidding employees to leave shop area without permission made no sense, employer committed no violation of law in firing employee for breaking the rule, where General Counsel failed to establish any connection between promulgation of the rule and any particular form of protected activity that it was designed to prevent or punish. (ALJD, p. 62.)
MAYFAIR PACKING COMPANY, 13 ALRB No. 20

420.20 Dissent would find violation for discharge of union activist without warning and contrary to employee handbook despite his admission to having suggested to fellow worker that she "take it easy."
MAYFAIR PACKING COMPANY, 13 ALRB No. 20

420.20 Where employees withhold their labor to exert pressure on the employer for a change in the wage structure, they are engaged in protected concerted activity. Termination for the refusal to work violates the Act.
LIGHTNING FARMS, 12 ALRB No. 7

420.20 Employer's stated reason for employee's discharge (that employee was drinking beer at work) was pretextual based upon evidence of disparate treatment accorded employee for his alleged violation of employer's drinking policy.
THE GARIN COMPANY, 11 ALRB No. 18

420.20 Employer's warning notice to employee was not discriminatory where it was given for employee's violation of company rule prohibiting the placing of any personal materials on company property, and employee had placed a union bumper sticker on company box lid.
GEORGE LUCAS & SONS, 11 ALRB No. 11 (See 13 ALRB No. 4)

420.20 Absent a showing that the supervisor treated union activists different than other employees, harassment and pressure given to an employee known to have been active with the union is not a violation of the Act. However, when employees were permitted to talk during their work as long as it did not interfere with their job performance, and a supervisor ordered an employee to stop talking about union affairs or she would receive a disciplinary notice, the supervisor violated the Act; absent a work rule prohibiting conversation of all kinds,

employees have the same right to discuss union activities as other subjects during their work hours.
BRUCE CHURCH, INC., 9 ALRB No. 75

420.20 When an employee is terminated for three acts of misconduct, one of which is proven to be protected activity under the Act, Respondent has not proven by a preponderance of the evidence that the employee would have been terminated solely on the basis of the remaining two acts of misconduct.
MIKE YUROSEK & SON, INC., 9 ALRB No. 69

420.20 When employees fired ostensibly for refusing to comply with rule change instituted in retaliation for past- and in prevention of future-protected concerted activities, discharges would not have occurred absent such activities and employer thereby violated section 1153(a) and(c).
ARMSTRONG NURSERIES, INC., 9 ALRB No. 53

420.20 Termination of entire crew found to be a violation of sections 1153(c) and (a) of the Act where one of three requisite warnings had, by employer's own admission, been based upon the crew's participation in protected concerted strike activity.
ALPINE PRODUCE, 9 ALRB No. 12

420.20 Employer violated section 1153(c) and (a) when, after union won a Board-conducted election, it changed its standards for imposing suspensions and issuing warnings for mixed mushroom and long stems, even though the suspensions and warnings did not affect union supporters more than other employees; Board found that some individual warnings, suspensions and discharges were based on protected concerted activity, while others were based on legitimate business reasons.
STEAK-MATE, INC., 9 ALRB No. 11

420.20 The employer unlawfully discharged an employee who had distributed a union button to another employee where although work time had commenced, the distribution caused no disruption of work because the employees were not actually working at the time of the distribution.
KARAHADIAN RANCHES, INC., 5 ALRB No. 37

420.20 Employer did not violate Act by failing to rehire employee, since all job seekers were required to fill out applications for rehire, and employee failed to do so. Moreover, there was insufficient evidence of employer knowledge of employee's union activities.
TEPUSQUET VINEYARDS, 4 ALRB No. 102

420.20 Employer did not violate Act by failing to rehire 420.20 employee, since all job seekers were required to fill out applications for rehire, and employee failed to do so. Moreover, there was insufficient evidence of employer knowledge of employee's union activities.
TEPUSQUET VINEYARDS, 4 ALRB No. 102

420.20 Where it was not shown that the employer's discharge of a longtime employee resulted from an anti-union motive the Board found no violation of either section 1153, subdivision (a) or (c).
J. G. BOSWELL CO., 4 ALRB No. 13

420.20 Prima facie case rebutted where employer demonstrated that employee would have been discharged in any event due to violation of company policy on unexcused absences.
D'ARRIGO BROTHERS COMPANY OF CALIFORNIA, 21 ALRB No. 5

420.20 Respondent's stated reason for discharging employee—that he had overextended his vacation in violation of company rules—was found to be a pretext where employer had condoned employees' practice of trading shifts to extend vacations in the past, a written warning purportedly warning employee to be back to work in 14 days was found to be a fabrication, and where employer's explanation of how he determined employee had overextended his vacation changed over the course of the ULP proceeding.
AUKEMAN FARMS, 34 ALRB No. 2

420.20 In light of prior violation of safety rules and history of insubordination, employee would have been discharged even in absence of his protected activity.
WOOLF FARMING CO. OF CA, INC., 35 ALRB No. 2

420.21 Reduction Or Redistribution Of Work; Elimination Of Jobs; Availability Of Work After Discharge Or Layoff; Automation

420.21 Board rejects employer's contention that, as a result of diminished INS tensions during backpay period and thus for non-discriminatory reasons, it could and did take advantage of the "economic efficiency" of hiring an undocumented workforce which allegedly performed better work for less pay than would a workforce comprised of documented workers, such as the discriminatees. Employer failed to establish that discriminatees were not competent or qualified to perform work which was available during backpay period as respondent continued to farm agricultural commodities in the same fields under the same conditions and with replacement employees who utilized the same skills as had the discriminatees.
UKEGAWA BROTHERS, et al., 16 ALRB No. 18

420.21 Dissent would find violation for discharge of union activist without warning and contrary to employee handbook despite his admission to having suggested to fellow worker that she "take it easy."
MAYFAIR PACKING COMPANY 13 ALRB No. 20

420.21 Dissent would find violation for discharge of union activist who defied what dissent finds to be discriminatorily motivated order not to leave work place.
MAYFAIR PACKING COMPANY, 13 ALRB No. 20

420.21 An unlawful discharge is established by evidence of the dischargees' role as employee spokesperson, subsequent retaliation by imposition of harsh working conditions immediately following assertion of the role of spokes-person and termination shortly thereafter. The Employer's defense of lack of production and a random method of selection for discharge was discounted by the animus of the employer, the timing of the discharge and the change in layoff selection process.
LIGHTNING FARMS, 12 ALRB No. 7

420.21 Violation of 1153(c) and (d) established by evidence of (1) Employer's animus against two union supporters who had recently filed unfair labor practice charges, (2) their past history of employment on first harvest machine, (3) their arrival before others, and (4) employer's evasive conduct and pretextual explanations for refusing to rehire them in tomato harvest.
YAMANO FARMS, INC., 11 ALRB No. 16

420.21 Board rejected employer's defense that layoff of student son of known activists was due to nondiscriminatory policy of denying weekend and vacation work to minor children of regular employees unless there was enough work to keep steady employees busy, and based its rejection on timing of layoffs the day after a representation election, and inconsistencies and contradictions in employer's witnesses' explanation of sudden enforcement of policy.
VISALIA CITRUS PACKERS, 10 ALRB No. 44

420.21 Employer's defense of lack of available work rejected where work was available only to anti-union employees after union won election.
PIONEER NURSERY, 10 ALRB No.30

420.21 Where employer's payroll records showed it continued to hire pruners after previously discharged protesters applied, Board inferred that work was available when protesters applied.
SUMNER PECK RANCH,INC., 10 ALRB No. 24

420.21 Employer, in denying discriminatees available field work, failed to follow its policy of giving its workers preference over those supplied by a labor contractor.
PAUL BERTUCCIO, 10 ALRB No. 10

420.21 Employer's defense that it denied available field work to five discriminatees because they has no experience in such work was discredited, in part by its employing new workers with no prior experience to know the field work.
PAUL BERTUCCIO, 10 ALRB No. 10

420.21 Employer successfully showed that its assignment of miscellaneous shed work to workers other than alleged discriminatees was based on legitimate, nondiscriminatory

reasons.
PAUL BERTUCCIO, 10 ALRB No. 10

420.21 Union activity followed by failure to rehire was insufficient, on its own, to prove discrimination, particularly where employee did not apply for work in the usual manner.
RIGI AGRICULTURAL SERVICES, INC., 9 ALRB No. 31

420.21 Automation No violation where employer made legitimate corrections in its seniority list and changes in position on list did not tend to encourage or discourage union membership.
SAM ANDREW'S SONS, 9 ALRB No. 21

420.21 General Counsel failed to establish causal connection between layoff of Employees and prior protected work stoppage. Respondent plausibly explained layoff occasioned by normal transfer of machinery.
ROGERS FOODS, INC., 8 ALRB No. 19

420.21 Employer's economic rationale for group layoff rejected where no evidence of previous significant layoffs during same period, at least 2 Employees without seniority were employed, and apparent goal of providing more work time for rest of crew not accomplished.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC.,7 ALRB No. 36

420.21 Where the employer hired six employees to work during the poinsettia season, laid-off the employees upon the conclusion of that season, but later recalled the employees and offered them permanent jobs, the Board found that the original lay off was not unlawful.
SUNNYSIDE NURSERIES, INC. 6 ALRB No. 52

420.21 Where a group of three employees was transferred from packing to picking grapes during a slowdown, the transfer did not violate the provisions of a collective bargaining contract or any company policy, and, there was no evidence that the transfer was intended to inhibit employee organization, the Board refused to find that the transfer of a Union supporter within the group of three was unlawful.
KARAHADIAN RANCHES, INC., 5 ALRB No. 37

420.21 Where there was no evidence that any work was available at the time a foreman and his crew applied for rehire the Board refused to find that the crew was discriminatorily refused re-employment.
CORONA COLLEGE HEIGHTS ORANGE AND LEMON ASSOCIATION, 5 ALRB No. 15

420.21 Where the employer put on uncontradicted evidence that it terminated a crew for lack of work the Board refused to find that the termination was unlawful.
CORONA COLLEGE HEIGHTS ORANGE AND LEMON ASSOCIATION, 5

ALRB No. 15

420.21 Employer did not violate Act by assigning employee work as chili picker because no other work available for him. PAUL W. BERTUCCIO and BERTUCCIO FARMS, 5 ALRB No. 5

420.21 Employer's anti-union animus and knowledge of employees' union activity insufficient to overcome employer's affirmative defense of insufficient work and poor performance by crew. PAUL W. BERTUCCIO and BERTUCCIO FARMS, 5 ALRB No. 5

420.21 Board properly found unlawful layoff of 38 union supporters; employer's claim of reduced work belied by past practice and by payroll records. HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209 [Appendix]

420.21 Notwithstanding employees concerted' wage protest and employer decision to lay them off just hours later, no violation where employer established valid business reasons for mass reduction in overall crew size due to unseasonal weather conditions. DUTRA FARMS, 24 ALRB No. 1

420.22 Refusal To Work Overtime Or Accept Job Assignment

420.22 Although employer discriminatorily assigned employee to onerous work, employer tried to make the work less onerous by offering the employee a number of options. Evidence did not support a finding that employer was trying to get employee to quit, or that it would not have discharged him but for his protected activity. (Wright Line, Inc. (1980) 251 NLRB 1083 [105 LRRM 1169].) BAIRD NEECE PACKING CORPORATION, 14 ALRB No. 16

420.22 Dissent would find violation for discharge of union activist without warning and contrary to employee handbook despite his admission to having suggested to fellow worker that she "take it easy." MAYFAIR PACKING COMPANY, 13 ALRB No. 20

420.22 Dissent would find violation for discharge of union activist who defied what dissent finds to be discriminatorily motivated order not to leave work place. MAYFAIR PACKING COMPANY, 13 ALRB No. 20

420.22 Employer violated section 1153(c) and (a) by discharging an employee because of his support for and activities on behalf of the union, and not because of his alleged refusal to perform a work order. D'ARRIGO BROTHERS, 13 ALRB No. 1

420.22 An Employee, unhappy that he had no specific lunch period, announced that if he did not receive same lunch period as sorters, he would submit time card reflecting no time off for lunch. Held: the Employee was not

setting his own terms of employ as his conduct did not indicate a plan to alter work duties or assignments.
B.&B. FARMS, 7 ALRB No. 38

420.22 Employee refused a directive to work certain rows, and on another occasion refused to continue working and left the field. Employee was then fired. Held: No causal relation found where previous PCA occurred 10 months before and the result of this activity was that the Employees' demands had been, in fact, met.
HANSEN FARMS, 7 ALRB No. 2

420.22 Board found that employer violated 1153(a) by discharging 11 employees because of their protected concerted refusal to work overtime on one day. Board rejected employer's contention that the employees voluntarily quit, finding that employer gave employees choice of stopping its protected activity or being paid off.
PAPPAS & COMPANY, 5 ALRB No. 52

420.22 Employer commits no ULP by rejecting offers to work which are absolutely conditioned on terms he need not accept.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

420.23 Solicitation Or Other Union Activity On Company Time Or Property

420.23 Absent a showing that the supervisor treated union activists different than other employees, harassment and pressure given to an employee known to have been active with the union is not a violation of the Act. However, when employees were permitted to talk during their work as long as it did not interfere with their job performance, and a supervisor ordered an employee to stop talking about union affairs or she would receive a disciplinary notice, the supervisor violated the Act; absent a work rule prohibiting conversation of all kinds, employees have the same right to discuss union activities as other subjects during their work hours.
BRUCE CHURCH, INC., 9 ALRB No. 75

420.23 The employer unlawfully discharged an employee who had distributed a union button to another employee where although work time had commenced, the distribution caused no disruption of work because the employees were not actually working at the time of the distribution.
KARAHADIAN RANCHES, INC., 5 ALRB No. 37

420.23 Employee unlawfully discharged for violation of no-solicitation rule, where conduct did not interfere with work and other employees had violated rule without discharge.
KARAHADIAN RANCHES,INC. v. ALRB (1985) 38 Cal.3d 1

420.24 Threat By Employees

420.24 Discharges of union activists within two weeks of

representation election, although prima facie discriminatory, were found to be based on one activist's insubordination and the other's brandishing of gun to other employee during election.
VISALIA CITRUS PACKERS, 10 ALRB No. 44

420.24 The proper standard for evaluating serious strike misconduct is that enunciated in *Clear Pine Mouldings, Inc*. (1984) 268 NLRB 1044. Under the *Clear Pine Mouldings, Inc*. standard, a striker may be found to have engaged in serious strike misconduct, thus causing the striker to lose the protection of the Act if his or her conduct in the course of the strike "may reasonably tend to coerce or intimidate employees in the exercise of rights protected under the Act." Abusive threats need not be accompanied by violence or physical acts or gestures.
COASTAL BERRY COMPANY, LLC, 28 ALRB No. 7

420.24 While serious strike misconduct may consist solely of verbal threats unaccompanied by any physical element, yelling insults at non-striking employees and imploring them to stop working does not constitute such misconduct.
COASTAL BERRY COMPANY, LLC, 28 ALRB No. 7

420.24 Where, in light of the surrounding circumstances, a statement reasonably would be construed as threatening violence or other unlawful strike activity, the statement may constitute serious strike misconduct warranting discharge. Threats by the leader of a group of strikers that they would destroy or "break" the company, occurring before and just after litany of violent and other unprotected conduct by the group, and carrying implied threat of continuance of similar activity, warranted discharge.
COASTAL BERRY COMPANY, LLC, 28 ALRB No. 7

420.25 Wearing Union Buttons Or Other Display Of Insignia

420.25 Employer's warning notice to employee was not discriminatory where it was given for employee's violation of company rule prohibiting the placing of any personal materials on company property, and employee had placed a union bumper sticker on company box lid.
GEORGE LUCAS & SONS, 11 ALRB No. 11 (See ALRB 13 No. 4)

420.25 Employee's Union activity and Employee's knowledge thereof established by Employee's talking to Supervisor's regarding Union, asking pro-Union questions, being seen by Supervisor's with Union people, wearing Union buttons, etc. KITAYAMA BROS. NURSERY, 4 ALRB No. 85

420.25 Instructing employees to remove union buttons, absent business justification, constitutes violation of section 1153(a).
VINCENT B. ZANINOVICH & SONS, 34 ALRB No. 3

420.26 Failure To Maintain Sanitary Conditions; Especially In Mushrooms Or Dairies

420.27 Failure To Request Reinstatement Or To Respond To Offer Of Reinstatement

420.27 General Counsel failed to establish discriminatory layoff where the record evidence is at least as consistent with employer's contention that employee was laid off because of his low seasonal seniority, for valid business reasons, and as to employer's failure to rehire employee, the record fails to show that employee made a proper application for work at a time when work was available. MARIO SAIKHON, INC., 5 ALRB No. 30

420.27 No waiver of right to reinstatement where employees applied for hire within two days of company take-over and where applications would have been futile whenever they were made. RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

420.27 Deficient applications are no legal justification for refusal to hire if proper, timely offers would also have been rejected. Employer had already decided not to hire predecessor's employees before they even applied. RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

420.27 Employer's asserted good-faith belief that Board had communicated offers of reinstatement to employees and that employees had not responded thereto did not justify employer's later assignment of negative seniority to employees when they requested reinstatement. M. B. ZANINOVICH, INC. v. ALRB (1981) 114 Cal.App.3d 665

420.27 Employer failed to meet its burden of proof to show it would not have rehired worker even in the absence of her protected concerted activity when its primary defense, that the worker had failed to apply for work when it was available, was found to be factually incorrect. McCAFFREY GOLDER ROSES, 28 ALRB No. 8

421.00 BACKGROUND CIRCUMSTANCES INDICATING OR REBUTTING DISCRIMINATION IN DISCIPLINE, DISCHARGE, LAYOFF, OR REFUSAL TO REINSTATE

421.01 Antiunion Background Or Prior Unfair Labor Practices Employer, Proof Of

421.01 Threats to withdraw benefits if employees selected union in conversations where Respondent told employees' it was aware of activities engaged in by discriminatee showed Respondent's hostility toward possibility of unionization discriminatee was trying to bring about. M. Curti & Sons, 19 ALRB No. 18

421.01 Threats of discharge, cessation of business, closure of labor camps, and interference with unemployment benefits

by lower level supervisors, derogatory characterization of union supporters by higher level supervisors, and general manager's expression of strong hostility towards unionization, indicative that layoffs, discharges unlawfully motivated.
GERAWAN RANCHES, 18 ALRB No. 5

421.01 Foreman's negative statement regarding employment opportunities for those previously engaged in union organizing effort, the timing of the refusal to rehire crews involved in union activity in relation to the hiring of other crews, and the employer's assertion of shifting, inconsistent reasons for the unavailability of work, all indicate that the employer's motivation for refusing to rehire the workers was their protected union activity. STAMOULES PRODUCE CO., 16 ALRB No. 13

421.01 While a finding of past discrimination may be of some relevance in assessing a present action, it does not become a conclusive presumption of current unlawful motivation. (Sioux Quality Packers Etc. v. NLRB (1978) 581 F.2d 153, 157 [98 LRRM 3128].)
THE GARIN COMPANY 12 ALRB No. 14

421.01 General Counsel established essential elements of the prima facie case of a discriminatory discharge, in part based upon employer's statements of antiunion animus directed toward discriminatee.
THE GARIN COMPANY, 11 ALRB No. 18

421.01 Violation of 1153(c) and (d) established by evidence of (1) employer's and his labor contractor's animus against two union supporters who previously filed unfair labor practice charges against employer and (2) the labor contractor's successful attempts to keep same union supporters from learning of start-up date of weed and thin operators.
YAMANO FARMS, INC., 11 ALRB No. 16

421.01 Employer's knowledge of protected activity, past history of anti-union animus, and unusual hiring of intermittent workers indicated that discrimination was a motivating factor. However, employer met its burden of proving that due to lack of seniority and the genuine need for intermittent workers, the employee would have been denied rehire even absent his protected activity.
SAM ANDREWS' SONS, 11 ALRB No. 5

421.01 Employer's implementation of rule change from suckering in rows to suckering in spaces, isolating workers during union organizing drive and shortly after protected work stoppage, violated 1153(a) where employer's president had instructed supervisor to do everything in his power to prevent union from coming in, employer had a long history of suckering in rows, its agents gave shifting and contradictory explanations for the change, little evidence was presented that employee fraternizing had

interfered with suckering, and foreman admitted that the spaces order was retained into the following season to avoid the inference that discharges for its violation were discriminatory.
ARMSTRONG NURSERIES, INC., 9 ALRB No. 53

421.01 In determining if discharge was discriminated; several factors are significant: (1) timing of discharge is near alleged discriminatory act; (2) other 1153 violations in same time period; (3) anti-union animus on part of Employer; (4) discharge is without prior warnings and (5) shifting reasons for discharge.
DEL MAR MUSHROOMS, INC., 7 ALRB No. 41

421.01 ALO improperly used failure to rehire as evidence of bias and then found discriminatory failure to rehire in light of anti-union bias. Violation of sections 1153(c) and (a) upheld because other evidence of anti-union bias.
KITAYAMA BROS. NURSERY, 4 ALRB No. 85

421.01 Anti-union bias found where Employer tried to identify Employees sympathetic to Union, Employees who were Union activists not rehired, Employer vigorously opposed Union's efforts to organize and transferred Union supporters. KITAYAMA BROS. NURSERY, 4 ALRB No. 85

421.01 Employer violated 1153(c) and (a) when six employees discharged immediately after supervisor observed them talking with union organizer, supervisor obviously angered by spectacle of employees engaged in organizational activity, and intense anti-union animus manifested on numerous other occasions.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

421.01 Timing of employer's denial of wage increases is evidence of antiunion animus.
RULINE NURSERY CO. v. ALRB (1985) 169 Cal.App.3d 247

421.01 Deficient applications are no legal justification for refusal to hire if proper, timely offers would also have been rejected. Employer had already decided not to hire predecessor's employees before they even applied.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

421.01 Proof of general employer anti-union animus aids General Counsel's burden of proof but is not in itself sufficient to prove charge.
KAWANO, INC. v. ALRB (1980) 106 Cal.App.3d 937

421.01 Employee handbook that discouraged employees from seeking redress through the union and actively encouraged direct dealing with employer, employer's refusal to recognize union-designated employee representatives, employer's predisposition to blame union supporters in disputed cases of misconduct, and employer's cursory treatment of anti-union employees who made serious threats to union supporters all indicate that the employer's motivation

for discharging an employee was his union activity.
PICTSWEET MUSHROOM FARMS, 28 ALRB No. 4

421.02 Comparative Treatment Of Union And Non-Union Employees

421.02 Respondent's failure to inquire about incident similar to escape of cows relied on to discharge discriminatee showed real motive for discharge was union solicitation, not cow escape. M. CURTI & SONS, 19 ALRB No. 18

421.02 Employer's business justification for discharge of two employees--that they were among five employees with lowest seniority--is pretextual, since discharge closely followed the two employees' participation in union activities, and other employees with less seniority were rehired in the following few days.
CLARK PRODUCE, INC., 11 ALRB No. 19

421.02 Employer's stated reason for employee's discharge (that employee was drinking beer at work) was pretextual based upon evidence of disparate treatment accorded employee for his alleged violation of employer's drinking policy.
THE GARIN COMPANY, 11 ALRB No. 18

421.02 Two employees discharged because of their union activity where evidence showed that other employees who engaged in similar conduct were not disciplined; alleged reason for discharge was pretextual.
GEORGE LUCAS & SONS, 11 ALRB No. 11 (See 13 ALRB No. 4)

421.02 Employee was found not credible in his version of events regarding Employer's contention he took flowers without prior approval, and General Counsel failed to demonstrate that in discharging this employee, the employer applied the discipline in a discriminatory fashion.
MATSUI NURSERY, INC., 11 ALRB No. 10

421.02 General Counsel failed to show employer applied disciplinary action disproportionately to what had been meted out in past to other employees.
MATSUI NURSERY, INC., 11 ALRB No. 10

421.02 Discrimination against an employee which violates the Act may be established by an unfavorable change in the employer's treatment of that employee as well as by disparate treatment of that employee in comparison with other employees.
GEORGE A. LUCAS & SONS, 10 ALRB No. 33

421.02 Layoff found discriminatory where supervisors threatened loss of work if union won election, anti-union employees were segregated into one crew, and only pro-union employees were laid off immediately after union won election.
PIONEER NURSERY, 10 ALRB No. 30

421.02 Discrimination against returning strikers, known to be

union supporters, shown by disparate treatment received by strikers as compared with nonstrikers.
LU-ETTE FARMS, INC., 10 ALRB No. 20

421.02 Employee unlawfully refused rehire to union supporters where leave policy was applied inconsistently immediately after takeover of business by new owner who took adamant bargaining stance.
DESSERT SEED COMPANY, INC., 9 ALRB No. 72

421.02 Layoff found discriminatory where supervisors threatened loss of work if union won election, anti-union employees were segregated into one crew, then only pro-union employees were laid off immediately after union won election.
PIONEER NURSERY, 9 ALRB No. 44

421.02 Employer did not violate section 1153 (c) by discharging employees who returned late from leaves of absence where policy was applied as written in company handbook and had not been applied differently to nonunion employees.
SAM ANDREWS' SONS, 9 ALRB No. 21

421.02 Respondent claimed Union supporter not rehired because he lost his seniority by not applying for work within 3 days of start of season and because no work available when he reapplied. But Respondent's records showed others hired despite not reporting within 3 day period and that others were hired at same time Union supporter was turned down. Respondent's anti-union animus was a contributing factor to the finding of violation.
VERDE PRODUCE COMPANY, 7 ALRB No. 27

421.02 No violation where disciplinary notices were issued to Employees who had engaged in PCA recently where there was a recent history of poor work by their crew, and General Counsel did not show that Employees who got the notices were more involved in PCA than those who did not.
GIUMARRA VINEYARDS, INC., 7 ALRB No. 7

421.02 Employer violated 1153(c) and (a) for issuing disciplinary notice to Employee who was overheard talking with other Employees about a strike and who had led the crew in wage dispute a few days earlier. Defense that the Employee was performing work improperly pretextual since Employee's husband who was working with her was not reprimanded. GIUMARRA VINEYARDS, INC., 7 ALRB No. 7

421.02 Fact that employer doesn't discriminate against all union supporters doesn't prove that employer did not discriminate against some union supporters.
RULINE NURSERY CO. v. ALRB (1985) 169 Cal.App.3d 247

421.02 Employee unlawfully discharged for violation of no solicitation rule, where conduct did not interfere with work and other employees had violated rule without discharge.

KARAHADIAN RANCHES,INC. v. ALRB (1985) 38 Cal.3d 1

421.02 Rehire of some former employees does not prove employer's lawful motive where most active union supporters were denied rehire.
BABBITT ENGINEERING & MACHINERY v. ALRB (1984) 152 Cal.App.3d 310

421.02 Board properly rejected employer's business justifications for failing to hire predecessor's employees where no credited basis existed to support purported preference for group of workers employer knew from other operations.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

421.02 No violation where only evidence supporting inference of causal connection was fact that 5 out of 6 employees laid off were known union supporters, since employer showed that employees were laid off due to lack of work.
GEORGE ARAKELIAN FARMS v. ALRB (1980) 111 Cal.App.3d 258

421.02 Employer's reliance on employees' drinking or poor work habits rejected as pretextual where habits had been tolerated prior to union activity.
ABATTI FARMS, INC. v. ALRB (1980) 107 Cal.App.3d 317

421.02 In context of contest election campaign and other violations, disproportionate layoff and refusal to rehire union supporters supports inference of unlawful discrimination.
ABATTI FARMS, INC. v. ALRB (1980) 107 Cal.App.3d 317

421.02 Employer's change in hiring policy from legal alien workers to "illegal " workers was unlawful where legals were considered by employer to be union supporters, employer displayed anti-union animus, and former legal employees made numerous unsuccessful efforts to obtain reemployment when suitable jobs were available.
KAWANO, INC. v. ALRB (1980) 106 Cal.App.3d 937

421.02 Disproportionate impact of hiring policy on union supporters is evidence of discrimination.
KAWANO, INC. v. ALRB (1980) 106 Cal.App.3d 937

421.03 Departure From Past Practice

421.03 Inference of causal relationship between protected activity and refusal to rehire established by failure to adhere to established reemployment practices and by giving false and shifting reasons for refusal.
GIANNINI PACKING CORP., 19 ALRB No. 16

421.03 Finding of discrimination evidenced by employer's basing of warning notices on a work rule which was less appropriate and more severe that the work rule relied on previously in similar circumstances.
CONAGRA TURKEY CO., 18 ALRB No. 14

421.03 Layoffs that were more abrupt and included more employees than at same season in prior years constituting departure from past practice, indicate layoffs discriminatorily motivated.
GERAWAN RANCHES, 18 ALRB No. 5

421.03 Use of farm labor contractor crews to greater extent than in prior years, not resulting in directly employed crews losing work to any greater extent than in prior years, not discriminatory. General Counsel failed to take position that use of labor contractor to greater extent than in prior years was evidence of discrimination.
GERAWAN RANCHES, 18 ALRB No. 5

421.03 Board rejects employer's contention that, as a result of diminished INS tensions during backpay period and thus for non-discriminatory reasons, it could and did take advantage of the "economic efficiency" of hiring an undocumented workforce which allegedly performed better work for less pay than would a workforce comprised of documented workers, such as the discriminatees. Employer failed to establish that discriminatees were not competent or qualified to perform work which was available during backpay period as respondent continued to farm agricultural commodities in the same fields under the same conditions and with replacement employees who utilized the same skills as had the discriminatees.
UKEGAWA BROTHERS, et al., 16 ALRB No. 18

421.03 Employer's failure to reinstate returning economic strikers was justified by a legitimate change in irrigation schedule which eliminated positions which otherwise could have been filled by returning strikers.
SAM ANDREWS' SONS, 13 ALRB No. 15

421.03 Discipline such as termination which does not appear to be commensurate with the offense committed can provide evidence that the discharge would not have occurred "but for" a worker's participation in protected, concerted activities. (ALJD, p. 30.)
D'ARRIGO BROTHERS, 13 ALRB No. 1

421.03 Employer violated 1153(c) by suspending seven employees because of their union activities; employer failed to prove that the employees' poor quality work would have resulted in suspension under its regular disciplinary practices.
TEX-CAL LAND MANAGEMENT, INC., 11 ALRB No. 31

421.03 Employer's knowledge of protected activity, past history of anti-union animus, and unusual hiring of intermittent workers indicated that discrimination was a motivating factor. However, employer met its burden of proving that due to lack of seniority and the genuine need for intermittent workers, the employee would have been denied rehire even absent his protected activity.

SAM ANDREWS' SONS, 11 ALRB No. 5

421.03 Board rejected employer's defense that layoff of student son of known activists was due to nondiscriminatory policy of denying weekend and vacation work to minor children of regular employees unless there was enough work to keep steady employees busy, and based its rejection on timing of layoffs the day after a representation election, and inconsistencies and contradictions in employer's witnesses' explanation of sudden enforcement of policy.
VISALIA CITRUS PACKERS, 10 ALRB No. 44

421.03 Union activist's subordination, although offensive, would not in itself and in the absence of union activism have caused his discharge because labor contractor had not discharged employees for similar insubordination in the past.
VISALIA CITRUS PACKERS, 10 ALRB No. 44

421.03 Discrimination against an employee which violates the Act may be established by an unfavorable change in the employer's treatment of that employee, as well as by disparate treatment of that employee in comparison with other employees.
GEORGE A. LUCAS & SONS, 10 ALRB No. 33

421.03 Employer had no established or observed seniority system which gave alleged discriminatees a "bumping privilege."
SIGNAL PRODUCE COMPANY, 10 ALRB No. 23

421.03 Employer, in denying discriminatees available field work, failed to follow its policy of giving its workers preference over those supplied by a labor contractor.
PAUL BERTUCCIO, 10 ALRB No. 10

421.03 Employer unlawfully refused rehire to union supporters where leave policy was applied inconsistently immediately after takeover of business by new owner who took adamant bargaining stance.
DESSERT SEED COMPANY, INC., 9 ALRB No. 72

421.03 Employer's implementation of rule change from suckering in rows to suckering in spaces, isolating workers during union organizing drive and shortly after protected work stoppage, violated 1153(a) where, among other indicia of discriminatory intent, employer had a long history of suckering in rows; discharge of employees for failure to follow rule violated Act.
ARMSTRONG NURSERIES, INC., 9 ALRB No. 53

421.03 Board properly found unlawful layoff of 38 union supporters; employer's claim of reduced work belied by past practice and by payroll records.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209 [Appendix]

421.03 Employer's reliance on employees' drinking or poor work habits rejected as pretextual where habits had been tolerated prior to union activity.
ABATTI FARMS, INC. v. ALRB (1980) 107 Cal.App.3d 317

421.04 Timing Of Action

421.04 Timing of discharge, day after Respondent threatened employees with loss of benefits if they selected union to represent them, strong evidence of that discriminatee's union activities, referred to in same conversations, caused discharge.
M. CURTI & SONS, 19 ALRB No. 18

421.04 Though employer witnesses may have provided exaggerated testimony of poor work performance to justify layoff, where no reason to disbelieve consistent testimony that decision was in any event made before the protected activity that allegedly motivated it and some evidence of difference in quality as compared to other crews, discriminatory layoff allegation must be dismissed.
SUMA FRUIT INT'L (USA), INC., 19 ALRB No. 14

421.04 Where employees were laid off within 3 weeks of their concerted activity and employer failed to prove unavailability of work, General Counsel proved the layoffs unlawful.
HARLAN RANCH COMPANY, 18 ALRB No. 8

421.04 Timing of massive layoffs immediately after election indicates that layoffs motivated by employees having sought union representation and obtained election.
GERAWAN RANCHES, 18 ALRB No. 5

421.04 Foreman's negative statement regarding employment opportunities for those previously engaged in union organizing effort, the timing of the refusal to rehire crews involved in union activity in relation to the hiring of other crews, and the employer's assertion of shifting, inconsistent reasons for the unavailability of work, all indicate that the employer's motivation for refusing to rehire the workers was their protected union activity. STAMOULES PRODUCE CO., 16 ALRB No. 13

421.04 Foreman's open hostility to previous union activities, the timing of the employee's discharge, and the employer's advancement of shifting, inconsistent reasons for its adverse action, all indicate that the employer's motivation for discharging the employee was his protected union activity.
BRUCE CHURCH, INC., 16 ALRB No. 3

421.04 General Counsel failed to establish a prima facie case of discriminatory discharge where employee was the only one of four workers who failed to finish job assignment, and his discharge was not closely linked in time to his protected activity.

SUNNY CAL EGG & POULTRY, INC., 14 ALRB No. 14

421.04 Discharge of two employees who refused to sign Employer's petition to oust the Union was not entirely pretextual, since Employer had some genuine concern that the employees had been "horsing around" and "dragging on the clock" in order to work overtime. However, a number of factors show that Employer would not have discharged the employees in the absence of their protected activity: the Employer's hostile antiunion statements during the discharge incident; fact that a co-employee who had signed the Employer's petition was not fired; the discharges occurred only four days after Union was certified; in view of the employees' extended years of service, the alleged misconduct was not serious enough to warrant discharge.
SUNNY CAL EGG & POULTRY, INC., 14 ALRB No. 14

421.04 Dissent: The fact that several calendar days elapsed between work stoppage and transfer does not operate to negate strong evidence that Respondent was retaliating against crew members who engaged in protected activity.
PHILLIP D. BERTELSEN 12 ALRB No. 27

421.04 An unlawful discharge is established by evidence of the dischargees' role as employee spokesperson, subsequent retaliation by imposition of harsh working conditions immediately following assertion of the role of spokes-person and termination shortly thereafter. The Employer's defense of lack of production and a random method of selection for discharge was discounted by the animus of the employer, the timing of the discharge and the change in layoff selection process.
LIGHTNING FARMS 12 ALRB No. 7

421.04 The timing of a discharge just three (3) weeks after the worker filed a charge with the ALRB can be a critical factor and strong circumstantial evidence that the employer violated section 1153(d).
KIRSCHENMAN ENTERPRISES, INC., 12 ALRB No. 2

421.04 Employer's business justification for discharge of two employees--that they were among five employees with lowest seniority--is pretextual, since discharge closely followed the two employees' participation in union activities, and other employees with less seniority were rehired in the following few days.
CLARK PRODUCE, INC., 11 ALRB No. 19

421.04 Discharges of union activists within two weeks of representation election, although prima facie discriminatory, were found to be based on one activist's insubordination and the other's brandishing of gun to other employee during election.
VISALIA CITRUS PACKERS, 10 ALRB No. 44

421.04 Board rejected employer's defense that layoff of student

son of known activists was due to nondiscriminatory policy of denying weekend and vacation work to minor children of regular employees unless there was enough work to keep steady employees busy, and based its rejection on timing of layoffs the day after a representation election, and inconsistencies and contradictions in employer's witnesses' explanation of sudden enforcement of policy.
VISALIA CITRUS PACKERS, 10 ALRB No. 44

421.04 Suspicions raised by post-election layoffs of student son of union activist were not undermined by fact that father and uncle, the "real union activists", were retained.
VISALIA CITRUS PACKERS, 10 ALRB No. 44

421.04 Layoff found discriminatory where supervisors threatened loss of work if union won election, anti-union employees were segregated into one crew, and only pro-union employees were laid off immediately after union won election.
PIONEER NURSERY, 10 ALRB No. 30

421.04 Employee's union activity was not too remote in time from the act of discrimination to preclude the finding of a violation.
PAUL BERTUCCIO, 10 ALRB No. 10

421.04 Employer unlawfully refused rehire to union supporters where leave policy was applied inconsistently immediately after takeover of business by new owner who took adamant bargaining stance.
DESSERT SEED COMPANY, INC., 9 ALRB No. 72

421.04 Employer's implementation of rule change from suckering in rows to suckering in spaces, isolating workers during union organizing drive and shortly after protected work stoppage, violated 1153(a); discharge of employees for failure to follow rule violated Act.
ARMSTRONG NURSERIES, INC., 9 ALRB No. 53

421.04 Layoff found discriminatory where supervisors threatened loss of work if union won election, anti-union employees were segregated into one crew, then only pro-union employees were laid off immediately after union won election.
PIONEER NURSERY, 9 ALRB No. 44

421.04 Discharge of active union supporter unlawful where discharge occurred shortly after employee's union activity and employer response was disproportionate to alleged employee misconduct.
RIGI AGRICULTURAL SERVICES, INC., 9 ALRB No. 31

421.04 Termination of an entire crew found to be a violation of sections 1153(c) and (a) of the Act where work-deficiency justifications offered by employer appeared unpersuasive, one discharged crew member was not present at the time of

the discharge, and most of the crew had recently been engaged in known strike activity.
ALPINE PRODUCE, 9 ALRB No. 12

421.04 In determining if discharge was discriminated; several factors are significant: (1) timing of discharge is near alleged discriminatory act; (2) other 1153 violations in same time period; (3) anti-union animus on part of Employer; (4) discharge is without prior warnings and (5) shifting reasons for discharge.
DEL MAR MUSHROOMS, INC., 7 ALRB No. 41

421.04 No causal connection between PCA and discharge where some 6 months elapsed and Employee destroyed Employer's crops, was fired immediately after such destruction, and Employee had fewer problems at work after PCA until the discharge. TENNECO WEST, INC., 7 ALRB No. 12

421.04 No violation where disciplinary notices were issued to Employees who had engaged in PCA recently where there was a recent history of poor work by their crew, and General Counsel did not show that Employees who got the notices were more involved in PCA than those who did not.
GIUMARRA VINEYARDS, INC., 7 ALRB No. 7

421.04 Employer violated 1153(c) and (a) for issuing disciplinary notice to Employee who was overheard talking with other Employees about a strike and who had led the crew in wage dispute a few days earlier. Defense that the Employee was performing work improperly pretextual since Employee's husband who was working with her was not reprimanded. GIUMARRA VINEYARDS, INC., 7 ALRB No. 7

421.04 General Counsel failed to sustain its burden of proving causal connection between Employee's concerted activity and discharge where 2 + months elapsed between protected activity and termination and where shouting incident between Employee and Supervisor immediately preceded firing.
YAMAMOTO FARMS, 7 ALRB No. 5, ALOD pp. 14-15

421.04 Employer's inconsistent and superficial excuses for failure to hire or consider hiring predecessor's employees warranted inference that employer's motives were discriminatory. RIVCOM CORPORATION and RIVERBEND FARMS, INC., 5 ALRB No. 55

421.04 Although the timing of employee's discharge was suspect, viz., four days after his participation in concerted activity, the uncontradicted record evidence amply demonstrated that supervisors were experiencing problems with employee's work performance; moreover, the Employer's witnesses testified that they had decided upon discharge prior to employee's participation in protected concerted activity. General Counsel therefore failed to demonstrate by a preponderance of the evidence that the employee would not have been terminated but for his

participation in the protected, concerted activities.
SAM ANDREWS' SONS, 5 ALRB No. 38

421.04 Reprimands based on legitimate Bus reasons, Complaint of "dirtypicking" and not completing work, not Discriminated despite timing of initial reprimands only a month after election in which Employee was vocal Union supporter.
TREFETHEN VINEYARDS, 4 ALRB No. 19

421.04 Employer violated 1153(c) and (a) when six employees discharged immediately after supervisor observed them talking with union organizer, supervisor obviously angered by spectacle of employees engaged in organizational activity, and intense anti-union animus manifested on numerous other occasions.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

421.04 Layoff of family violated 1153(c) and (a) where union (taking authorization cards and speaking with union representative in presence of employer ranch superintendent) preceded layoff notice by 20 minutes, and employer's explanation riddled within consistencies and contradictions.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

421.04 Timing of employer's denial of wage increases is evidence of antiunion animus.
RULINE NURSERY CO. v. ALRB (1985) 169 Cal.App.3d 247

421.04 Timing of employer's denial of wage increases is evidence of antiunion animus.
RULINE NURSERY CO. v. ALRB (1985) 169 Cal.App.3d 247

421.04 Discharge of union activist found discriminatory where discharge occurred immediately upon employer's discovery of employee's union activity; employer made anti-union statements; work was clearly available; and discharge was based on fabricated charge of theft.
BABBITT ENGINEERING & MACHINERY v. ALRB (1984) 152 Cal.App.3d 310

421.04 The timing of the adverse action relative to the protected activity is an important circumstantial consideration. Timing alone, however, will not establish a violation.
RIVERA VINEYARDS, et al., 29 ALRB No. 5

421.04 Prima facie case established even though discharge occurred seven months after protected activity where, in the interim, supervisor exhibited unwarranted hostility and unlawfully assigned employee to more arduous work and employer exhibited undue haste in discharging employee.
LASSEN DAIRY, INC., 35 ALRB No. 7

421.04 Passage of seven months between protected activity and discharge weighs against inference of unlawful motive.
WOOLF FARMING CO. OF CA, INC., 35 ALRB No. 2

421.04 No prima facie case where facts demonstrated that employee discharged primarily for pushing supervisor, along with other misconduct, and where no factors other than timing were indicative of unlawful motive. Even if failure to do a more complete investigation warranted finding prima facie case, employer successfully showed that it would have discharged employee even in the absence of his protected activity.
HERBTHYME FARMS, INC., 36 ALRB No. 2

421.04 No prima facie case established where facts demonstrated that employee discharged for repeatedly refusing lawful assignment, lack of progressive discipline was consistent with employee manual, and where no other factors other than timing were indicative of unlawful motive.
HERBTHYME FARMS, INC., 36 ALRB No. 2

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.s* (1995) 316 NLRB 1248, 1253).
SOUTH LAKES DAIRY FARM, 39 ALRB No. 1

421.05 Extent Of Union Activity Of Discriminatee

421.05 Discharge of crew members who walked off the job to seek assistance of union unlawful. Walkout was protected activity, as there was insufficient evidence of oral no-strike agreement and walkout was not in derogation of role of union. Record does not show that crew members attempted to negotiate with employer representatives to the exclusion of the union and walkout was for express purpose of involving union in the dispute. Demands of those who staged walkout not inconsistent with position of the union because the union had not yet agreed to the employer's latest proposal and the union had not waived the right to further bargaining at time of the walkout.
BRIGHTON FARMING CO., INC., 18 ALRB No. 4

421.05 In certain circumstances, a familial relationship with a person who has engaged in activity protected by the Act may be found to be the motivation behind discriminatory treatment of the relative. Where, however, the only evidence in support of a charge of discriminatory layoff is the familial relationship to the activist, at most a suspicion of unlawful motive may be raised, but the familial relationship alone is insufficient to meet General Counsel's burden of proof.
LIGHTNING FARMS, 12 ALRB No. 7

421.05 Act protects all manner of union activity, and an

employee does not have to be very active in order to enjoy the Act's protections.
GEORGE LUCAS & SONS, 11 ALRB No. 11 (See 13 ALRB No. 4)

421.05 Suspicions raised by post-election layoffs of student son of union activist were not undermined by fact that father and uncle, the "real union activists," were retained.
VISALIA CITRUS PACKERS, 10 ALRB No. 4

421.05 Discharge did not violate Act where, although Employer's reasons for discharge were suspicious, the Union activity was minimal, Employer knowledge of same was scarce and discharge was the result of tensions between management and workers regarding more stringent management procedures rather than Union activity.
DEL MAR MUSHROOMS, INC., 7 ALRB No. 41

421.05 Unlawful layoff found where Employees were active Union representatives and supporters, crew was important to possible success of (unlawful) decertification drive, selection of layoffs made little sense unless one concluded Employer attempted to specifically eliminate discriminatees, and a few days before layoffs, general foreman was overheard telling foremen to discharge crew' Union representative.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC., 7 ALRB No. 36

421.05 Where the employer failed to even interview our independent witness of an altercation between an employee and a supervisor who had given conflicting accounts of the incident, and the employer was well aware of the employee's union activities, the Board found the employee's discharge unlawful.
SUNNYSIDE NURSERIES, INC., 6 ALRB No. 52

421.05 Board dismissed charge of alleged discriminatory layoff or refusal to rehire because Employer Union activity minimal and not showing Employer knew of such activity.
MARIO SAIKHON, INC., 4 ALRB No. 107

421.05 Section 1153(c) and (a) are violated by respondent's layoff of an openly pro-union crew shortly before an election and the hiring of an apparently less pro-union crew. Shortly before the election, respondent altered its payroll periods in a manner which disenfranchised the more pro-union crew, and issued misleading statements in a leaflet which evidenced animus towards the UFW. Respondent's ostensible economic justification (light lettuce packs, variance in lettuce-pack weights, and quality of lettuce packs) for the discharge held not supported by the record evidence.
S & F GROWERS, 4 ALRB No. 58

421.05 Discharge not violation of section 1153(a) or (c) when Employee not engaged in concerted activity but made only personal gripes, and no Union activity.

TREFETHEN VINEYARDS, 4 ALRB No. 19

421.05 Employee's involvement in union activities does not immunize him or her from discharge for misconduct or from routine employment decisions.
MARTORI BROTHERS DISTRIBUTORS v. ALRB (1981) 29 Cal.3d 721

421.05 A few isolated anti-union comments by supervisors did not prove discriminatory motive where employer overall displayed no animus, employee had little union activity, and company had legitimate reasons for treating the employee differently than other irrigators at other times.
GEORGE ARAKELIAN FARMS v. ALRB (1980) 111 Cal.App.3d 258

421.05 Employee who engages in union activities will not tie employer's hands and prevent him from exercise of his business judgment to discharge employee for cause.
SUNNYSIDE NURSERIES, INC. v. ALRB (1979) 93 Cal.App.3d 922

421.05 While not determinative, it is appropriate to consider that the Employer took no disciplinary action against another employee who was at least equally suspected of engaging in protected activity.
WOOLF FARMING CO. OF CA, INC., 35 ALRB No. 2

421.06 Grievances Or Bargaining Demands, Presentation Of; Suits Against Employers

421.06 General Counsel failed to show that employer discharged employee because she engaged in protected concerted activity by complaining about portable toilets.
CARDINAL DISTRIBUTING CO., INC., et al., 9 ALRB No. 43

421.07 Knowledge of Employee's Union Activities, Proof Of; Surveillance Or Questioning

421.07 Respondent's statement describing exactly activities that only discriminatee had engaged in showed Respondent either knew the identity of that employee or would have surmised the employee's identity based on what supervisor said, and the small size of its work force and the close contact between supervisor and employees. Knowledge was established even without application of small plant doctrine.
M. CURTI & SONS, 19 ALRB No. 18

421.07 Since the duty to supply information relevant to the union's obligations to administer the bargaining agreement is a statutory one, it is immaterial whether a contract is silent as to information the employer must submit; the duty to supply information exists independent of any agreement between the parties.
RICHARD A. GLASS CO., INC., 14 ALRB No. 11

421.07 A supervisor's knowledge of union activity may be imputed to the employer (absent a direct denial) even though the supervisor was a rank and file employee at the time the information was acquired.
(ALJ Decision.)
E. W. MERRITT FARMS, 14 ALRB No. 5

421.07 Knowledge of foreman's refusal to commit ULP is imputed to higher management officials where there is no evidence that such information was not passed on.
GEORGE LUCAS & SONS, 11 ALRB No. 11 (See 13 ALRB No. 4)

421.07 Termination of crew found to be a violation of sections 1153(c) and (a) of the Act where one of three requisite warnings had, by employer's own admission, been based upon the crew's participation in protected concerted strike activity.
ALPINE PRODUCE, 9 ALRB No. 12

421.07 No violation of 1153(d) where Employee filed charge and was refused rehire, absent evidence labor contractor who did not rehire him was aware charge filed.
NASH-DE CAMP COMPANY, 8 ALRB No. 5

421.07 Small plant doctrine (whereby Employer knowledge of Union activity is inferred because of small number of Employees in small area where PCA occurs) inapplicable where Union activity minimal and only evidence of discussion between Employer and Employees was after alleged discriminatee discharge.
DEL MAR MUSHROOMS, INC., 7 ALRB No. 41

421.07 Discharge did not violate Act where, although Employer's reasons for discharge were suspicious, the Union activity was minimal, Employer knowledge of same was scarce and discharge was the result of tensions between management and workers regarding more stringent management procedures rather than Union activity.
DEL MAR MUSHROOMS, INC., 7 ALRB No. 41

421.07 Employer knowledge of Union activity may be shown by circumstantial evidence.
DEL MAR MUSHROOMS, INC., 7 ALRB No. 41

421.07 Where the employer failed to even interview our independent witness of an altercation between an employee and a supervisor who had given conflicting accounts of the incident, and the employer was well aware of the employee's union activities, the Board found the employee's discharge unlawful.
SUNNYSIDE NURSERIES, INC., 6 ALRB No. 52

421.07 Where it was shown that the employer knew of the employee's union activities and sentiment, had an anti-union animus, and gave shifting reasons for its failure to rehire him, the Board found that the employee had been unlawfully discharged.

Golden Valley Farming, 6 ALRB No. 8

421.07 Violation of section 1153(c) and (a) found where foreman who refused to rehire a married couple, at the time others were being hired, told them his reason was that the boss did not want or like union people. Knowledge of belief of union activity shown by supervisor's statements. (Subsequent history indicates that this case was vacated (10/27/80).)
LOUIS CARIC & SONS, 6 ALRB No. 2

421.07 Small plant doctrine not basis for inferring Employer knowledge of Employee's Union activity where Employee worked alone, supervision was sporadic and limited, and Union activity was minimal.
MARIO SAIKHON, INC., 4 ALRB No. 107

421.07 Board dismissed charge of alleged discriminatory layoff or refusal to rehire because Employer Union activity minimal and not showing Employer knew of such activity.
MARIO SAIKHON, INC., 4 ALRB No. 107

421.07 Employee's Union activity and Employer's knowledge thereof established by Employee's talking to Supervisor regarding Union, asking pro-Union questions, being seen by Supervisor's with Union people, wearing Union buttons, etc.
KITAYAMA BROS. NURSERY, 4 ALRB No. 85

421.07 Employer knowledge of Union activities of Employee established where Supervisor heard Employee yell "Viva Chavez," regularly reported activities on the premises to Employee's Supervisor and 2 or 3 weeks after the "Viva Chavez" incident Employee's Supervisor asked Employee if he was satisfied with job and fired Employee three days later.
KITAYAMA BROS. NURSERY, 4 ALRB No. 85

421.07 Where the record established employer knowledge of concerted activities, but not of the employees' union support and sympathies, the Board found that the employees were laid off in violation of section 1153, subdivision (a).
MAGGIO-TOSTADO, INC., 3 ALRB No. 33

421.07 Where the preponderance of the evidence employer knowledge of the Union activities and sympathies, and inconsistent or shifting reasons for the layoff of the employees, the Board held that the employer had unlawfully laid off the employees in violation of section 1153, subdivisions (a) and (c).
MAGGIO-TOSTADO, INC., 3 ALRB No. 33

421.07 Knowledge of union activity not imputed where credited testimony indicates that the information was not passed on to higher officials in company who made the decision to take the adverse actions complained of. Foremen's

knowledge that alleged discriminatees were leaders of organizing effort not imputed where respondent's denials of knowledge credited, evidence showed that foremen were sympathetic to the organizing effort, and organizing otherwise was "secret."
WARMERDAM PACKING CO., 24 ALRB No. 2

421.07 Presumption that supervisor's knowledge of protected activity would become known to his superiors who made decision to discharge is rebutted where credited evidence shows that knowledge of the protected activity was not communicated to the decision maker.
RIVERA VINEYARDS, et al., 29 ALRB No. 5

421.07 "Small plant doctrine" is not a presumption, but merely reflects the principle that the small size of an operation is a circumstance that may be considered in inferring employer knowledge. The doctrine may be applied where the facility is small and open, the work force is small, the employees made no great effort to conceal their union conversations, and management personnel are located in the immediate vicinity of the protected activity. (Health Care Logistics (6th Cir. 1986) 784 F.2d 232.) The mere fact that an employer's plant is of a small size does not permit a finding that the employer had knowledge of the union activities of specific employees, absent supporting evidence that the union activities were carried on in such a manner, or at times that in the normal course of events, the employer must have known about them. (See e.g., NLRB v. Mid States Sportswear (5th Cir. 1969) 412 F. 2d 537, at 540, quoting NLRB v. Joseph Antell, Inc. (1st Cir. 1966) 358 F.2d 880.)
TULE RIVER DAIRY and P&M VANDERPOEL DAIRY, 35 ALRB No. 4

421.07 Despite small size of workplace, employer knowledge of protected activity not proven where witnesses testified that no manager or supervisor was present when employee engaged in union activity, or that they otherwise learned of it or suspected it, where there was no evidence of employer knowledge that an incipient union organizing campaign had begun or that such an effort was suspected or rumored, where employee's testimony that he made no effort to conceal his actions was contradicted by a witness who otherwise testified in his favor, and where it was not clear how much of work area could be viewed on single video monitor (without audio) or how often manager or supervisor viewed monitor.
TULE RIVER DAIRY and P&M VANDERPOEL DAIRY, 35 ALRB No. 4

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

421.08 Majority Status Affected By Termination

421.08 Board found violation of section 1153(c) and (a) where successor-employer failed to consider or hire any of predecessor's.
RIVCOM CORPORATION and RIVERBEND FARMS, INC., 5 ALRB No. 55

421.09 Meritorious Or Satisfactory Service; Prior Promotion Or Wage Increase

421.09 Although employer may have had mixed motive in discharging employee, evidence that he received two wage increases shortly before discharge and was discharges on same day two other employees were unlawfully laid off, proves that employer would not have discharged him in the absence of his concerted activity.
HARLAN RANCH COMPANY, 18 ALRB No. 8

421.09 Discharge of two employees who refused to sign Employer's petition to oust the Union was not entirely pretextual, since Employer had some genuine concern that the employees had been "horsing around" and "dragging on the clock" in order to work overtime. However, a number of factors show that Employer would not have discharged the employees in the absence of their protected activity: the Employer's hostile antiunion statements during the discharge incident; fact that a co-employee who had signed the Employer's petition was not fired; the discharges occurred only four days after Union was certified; in view of the employees' extended years of service, the alleged misconduct was not serious enough to

warrant discharge.
SUNNY CAL EGG & POULTRY, INC., 14 ALRB No. 14

421.10 No Reason, False, Or Inconsistent Reasons Given For Dismissal

421.10 Inference of causal relationship between protected activity and refusal to rehire established by failure to adhere to established reemployment practices and by giving false and shifting reasons for refusal.
GIANNINI PACKING CORP., 19 ALRB No. 16

421.10 Finding that tractor driver stopped working due to recurring back trouble, rather than due to dislike for night work as claimed by employer, does not warrant inference that employer's claim was a pretext to hide animus based on protected activity of tractor driver's son where employer would in any event be disturbed by risk created that work would not be completed before rains came.
D & H FARMS, 18 ALRB No.12

421.10 Finding that transportation discontinued for discriminatory reasons reversed where employer's defense at hearing not so different from that expressed in answer or at prehearing conference as to reflect shifting rationales or after the fact justifications and foreman's earlier threat to make adverse changes was remote in time and conditioned on the union winning the election.
OASIS RANCH MANAGEMENT, INC., 18 ALRB No. 11

421.10 Although employer gave shifting reasons for failure to rehire, Board did not infer an improper motive where employee's concerted activity was weak, management did not respond to activity with hostility, and evidence indicated that employee's work performance was unacceptable.
T.T. MIYASAKA, INC., 16 ALRB No. 16

421.10 Foreman's negative statement regarding employment opportunities for those previously engaged in union organizing effort, the timing of the refusal to rehire crews involved in union activity in relation to the hiring of other crews, and the employer's assertion of shifting, inconsistent reasons for the unavailability of work, all indicate that the employer's motivation for refusing to rehire the workers was their protected union activity.
STAMOULES PRODUCE CO., 16 ALRB No. 13

421.10 Foreman's open hostility to previous union activities, the timing of the employee's discharge, and the employer's advancement of shifting, inconsistent reasons for its adverse action, all indicate that the employer's motivation for discharging the employee was his protected union activity.
BRUCE CHURCH, INC., 16 ALRB No. 3

421.10 Employer's stated reason for discharging employee—that he was verbally abusive to other employees—was pretextual, and Board upholds ALJ's conclusion that the employee was discriminatorily discharged.
BAIRD-NEECE PACKING CORPORATION, 14 ALRB No. 16

421.10 The belated introduction of a new justification can be a factor suggesting the existence of a concealed and improper motive.
RANCH NO. 1, 12 ALRB No. 21

421.10 An employer failed to meet its burden of establishing that the foreman had been terminated for intoxication where credited, corroborated evidence showed the foreman to have a sober demeanor, and the employer's version was discredited based upon the demeanor of the witnesses, the failure to supply purported documentary substantiation and other lack of corroborating evidence.
SEQUOIA ORANGE CO., 11 ALRB No. 21

421.10 Where employer's asserted reason for a discharge is proven to be false, Board can infer that there is another, unlawful, motive which employer desires to conceal, where surrounding facts, such as antiunion animus, tend to reinforce that inference.
THE GARIN COMPANY, 11 ALRB No. 18

421.10 Board rejected employer's defense that layoff of student son of known activists was due to nondiscriminatory policy of denying weekend and vacation work to minor children of regular employees unless there was enough work to keep steady employees busy, and based its rejection on timing of layoffs the day after a representation election, and inconsistencies and contradictions in employer's witnesses' explanation of sudden enforcement of policy.
VISALIA CITRUS PACKERS, 10 ALRB No. 44

421.10 Employer's defense that it denied available field work to five discriminatees because they had no experience in such work was discredited, in part by its employing new workers with no prior experience to do the field work.
PAUL BERTUCCIO, 10 ALRB No. 10

421.10 Employer discharged protesters where credited testimony indicated that, when protesters offered to go to work, employer told them it was too late, though they had not yet been replaced.
MARDI GRAS MUSHROOM FARMS, 10 ALRB No. 8

421.10 Employer's implementation of rule change from suckering in rows to suckering in spaces, isolating workers during organizing drive and shortly after protected work stoppage, violated 1153(a) where employer's president had instructed supervisor to do everything in his power to prevent union from coming in, employer had a long history

of suckering in rows, its agents gave shifting and contradictory explanations for the change, little evidence was presented that employee fraternizing had interfered with suckering, and foreman admitted that the spaces order was retained into the following season to avoid the inference that discharges for its violation were discriminatory.
ARMSTRONG NURSERIES, INC., 9 ALRB No.53

421.10 Termination of an entire crew found to be a violation of sections 1153(c) and (a) of the Act where work-deficiency justifications offered by employer appeared unpersuasive, one discharged crew member was not present at the time of the discharge, and most of the crew had recently been engaged in known strike activity.
ALPINE PRODUCE, 9 ALRB No. 12

421.10 In determining if discharge was discriminated; several factors are significant: (1) timing of discharge is near alleged discriminatory act; (2) other 1153 violations in same time period; (3) anti-union animus on part of Employer; (4) discharge is without prior warnings and (5) shifting reasons for discharge.
DEL MAR MUSHROOMS, INC., 7 ALRB No. 41

421.10 Numerous and conflicting reasons given for Employee's discharge could give rise to inference that Employee fired because Employer considered him threat to status quo of worker-management relations.
YAMAMOTO FARMS, 7 ALRB No. 5

421.10 Where it was shown that the employer knew of the employee's union activities and sentiment, had an anti-union animus, and gave shifting reasons for its failure to rehire him, the Board found that the employee had been unlawfully discharged.
Golden Valley Farming, 6 ALRB No. 8

421.10 Employer's inconsistent and superficial excuses for failure to hire or consider hiring predecessor's employees warranted inference that employer's motives were discriminatory.
RIVCOM CORPORATION and RIVERBEND FARMS, INC., 5 ALRB No. 55

421.10 Discriminatory Discharge upheld where Employer told Employee he was fired for lack of work and at hearing gave added rationale that Employee did not adequately understand and speak English but evidence showed Employee's command of English was better than another Employee who was kept on.
KITAYAMA BROS. NURSERY, 4 ALRB No. 85

421.10 Inconsistent explanations for discharge of Union activist evidences discrimination.
KITAYAMA BROS. NURSERY, 4 ALRB No. 85

421.10 Layoff of family violated 1153(c) and (a) where union (taking authorization cards and speaking with union representative in presence of employer ranch superintendent) preceded layoff notice by 20 minutes, and employer's explanation riddled within consistencies and contradictions.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

421.10 Foreman explained that family selected for layoff because grower wished to avoid dividing larger families contracted by payroll records demonstrating a contrast of sales and the hiring of new personnel subsequent to the layoff.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

421.10 Where the preponderance of the evidence employer knowledge of the Union activities and sympathies, and inconsistent or shifting reasons for the layoff of the employees, the Board held that the employer had unlawfully laid off the employees in violation of section 1153, subdivisions (a) and (c).
MAGGIO-TOSTADO, INC., 3 ALRB No. 33

421.10 Employer's proffering of false motive for discharge gives rise to inference that real motive is being concealed because it is illegal one.
BABBITT ENGINEERING & MACHINERY v. ALRB (1984) 152 Cal.App.3d 310

421.10 Employer's reasons for discharge discredited where employee was never warned that poor work would result in discharge and employer shifted its reasons for discharge during hearing.
BABBITT ENGINEERING & MACHINERY v. ALRB (1984) 152 Cal.App.3d 310

421.10 Inconsistent reasons put forward by employer for refusing to hire union supporters strengthens inference of unlawful motive.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

421.10 Where Board concludes that employer's purported business justification is pretextual, Wright Line analysis has no meaning, since union animus is the only true cause.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

421.10 Finding that employer's reason for discharging employee was a "pretext" is merely another way of stating that there was no sufficient business justification.
BROTHERS DISTRIBUTORS v. ALRB (1981) 29 Cal.3d 721

421.10 Apparently justifiable ground for layoff may in fact be pretext for unlawful discrimination.
TEX-CAL LAND MANAGEMENT, INC. v. ALRB (1979) 24 Cal.3d 335

421.10 Supervisor's admission that she would not rehire

employees "because of what they had done," owner's admission that one employee was not rehired because of his association with two others who engaged in protected concerted activity, as well as Employer's shifting reasons offered to explain refusals to rehire, all support conclusion that the employees would not have been denied rehire in the absence of their protected concerted activity.
IMPERIAL ASPARAGUS FARMS, INC., 20 ALRB No. 2

421.10 Inference of unlawful motive raised by supervisor initially giving false reasons for failure to recall and by timing of adverse action vis-à-vis protected activity rebutted by evidence of poor work performance and evidence that decision to discharge made prior to protected activity, as well as by reasonable possibility that false reasons given for failure to recall due to reluctance to discharge long time employee.
RIVERA VINEYARDS, et al., 29 ALRB No. 5

421.10 Respondent's stated reason for discharging employee—that he had overextended his vacation in violation of company rules—was found to be a pretext where employer had condoned employees' practice of trading shifts to extend vacations in the past, a written warning purportedly warning employee to be back to work in 14 days was found to be a fabrication, and where employer's explanation of how he determined employee had overextended his vacation changed over the course of the ULP proceeding.
AUKEMAN FARMS, 34 ALRB No. 2

421.10 Unlawful discharge found where employer's assertion that employee failed to return from medical leave contradicted by credited testimony and payroll records indicating he was discharged on the day he brought note from doctor excusing him from work.
LASSEN DAIRY, INC., 35 ALRB No. 7

421.11 Notice, Warning, Or Investigation; Consultation With Supervisors

421.11 Summary, adversarial nature of discharge where Respondent had never discharged employees for same offenses, indicative of unlawful motivation.
M. Curti & Sons, 19 ALRB No. 18

421.11 Finding of discrimination evidenced by failure of employer to investigate complaints against employees or allow the employees to give their side of the story before imposing discipline.
CONAGRA TURKEY CO., 18 ALRB No. 14

421.11 When an employee is terminated for three acts of misconduct, one of which is proven to be protected activity under the Act, employer has not proven by a preponderance of the evidence that the employee would have been terminated solely on the basis of the remaining

two acts of misconduct.
MIKE YUROSEK & SON, INC., 9 ALRB No. 69

421.11 Since employer had no system of giving written reprimands or written warnings to employees, employer's lack of documentation of employees' un-satisfactory work does not tend to prove discriminatory motive for layoff.
MONROVIA NURSERY COMPANY, 9 ALRB No. 15

421.11 In determining if discharge was discriminated; several factors are significant: (1) timing of discharge is near alleged discriminatory act; (2) other 1153 violations in same time period; (3) anti-union animus on part of Employer; (4) discharge is without prior warnings and (5) shifting reasons for discharge.
DEL MAR MUSHROOMS, INC., 7 ALRB No. 41

421.11 Where the employer failed to even interview our independent witness of an altercation between an employee and a supervisor who had given conflicting accounts of the incident, and the employer was well aware of the employee's union activities, the Board found the employee's discharge unlawful.
SUNNYSIDE NURSERIES, INC. 6 ALRB No. 52

421.11 Employer's reasons for discharge discredited where employee was never warned that poor work would result in discharge and employer shifted its reasons for discharge during hearing.
BABBITT ENGINEERING & MACHINERY v. ALRB (1984) 152 Cal.App.3d 310

421.11 Employer’s reaction to protected activity weighs against inference of unlawful motive where, after receiving letter protesting supervisor’s treatment of employees, the employer had a consultant speak to employees in a noncoercive manner to ascertain if the protest had merit.
WOOLF FARMING CO. OF CA, INC., 35 ALRB No. 2

421.11 Failure to interview employee prior to suspension and tentative decision to discharge and supervisor’s delay in reporting incident leading to discharge do not raise inference of unlawful motive where both were sufficiently explained as benign.
WOOLF FARMING CO. OF CA, INC., 35 ALRB No. 2

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, enfd. (6th Cir. 1982) 705 F.2d 799).
PREMIERE RASPBERRIES, LLC dba DUTRA FARMS, 39 ALRB No. 6

421.12 Condonation Of Misconduct

421.12 No condonation where employer rehired employee on day after employee's discharge for threatening owner, since employer was attempting to mitigate potential backpay liability and was genuinely surprised to learn that employee was rehired in subsequent season.
MARTORI BROTHERS DISTRIBUTORS v. ALRB (1981) 29 Cal.3d 721

421.12 Condonation is properly invoked only when there is clear and convincing evidence that employer has forgiven employee, intending to wipe slate clean.
MARTORI BROTHERS DISTRIBUTORS v. ALRB (1981) 29 Cal.3d 721

421.13 Penalty For Refusal To Combat Union

421.13 Knowledge of foreman's refusal to commit ULP is imputed to higher management officials where there is no evidence that such information was not passed on.
GEORGE LUCAS & SONS, 11 ALRB No. 11 (See 13 ALRB No. 4)

421.13 Supervisors are not generally entitled to protections of the Act; an exception exists where supervisor is fired for refusing to commit an unfair labor practice.
GEORGE LUCAS & SONS, 11 ALRB No. 11 (See 13 ALRB No.4)

421.14 Reinstatement Offered Or Refused; Conditions Imposed

421.14 Adoption of documentation procedures for identifying returning ULP strikers reasonable in light of extended passage of time since inception of strike and limitations on contemporaneous court injunction ordering employer to reinstate only those strikers who had previously submitted written offers to return; delays in reinstatement resulting from such procedures to be remedied in compliance phase of earlier case.
LU-ETTE FARMS, INC., 10 ALRB No. 20

421.14 Employee was fired because he failed to respond to a recall notice in a timely manner.
D'ARRIGO BROTHERS COMPANY OF CALIFORNIA, 9 ALRB No. 3

421.14 Offer to return to work upon recall not conditional since Employees' could not return until Respondent accepted offer by recalling them.
COLACE BROTHERS, INC., 8 ALRB No. 1

421.15 Availability Of Work

421.15 Additional requirement in refusal to rehire cases that application be made when work is available is satisfied where employer had policy of contacting former employees when work available and by stipulation that work available at time of application or shortly thereafter.
GIANNINI PACKING CORP., 19 ALRB No. 16

421.15 Number of new hires after layoff misleading as indicator of need to rehire crew since it does not account for turnover, nor reflect fact that daily totals of number of people working were significantly less than at time of layoff. This, coupled with lack of evidence of discriminatory layoff, precludes finding discriminatory refusal to rehire.
SUMA FRUIT INT'L (USA), INC., 19 ALRB No. 14

421.15 Fact that record reflects that some work was available when discriminatee sought rehire is sufficient, along with other factors, to support violation. Exact amount of work denied may be left to be determined in compliance phase.
OASIS RANCH MANAGEMENT, INC., 18 ALRB No. 11

421.15 An employer violates section 1153(c) by discriminatorily refusing to offer a permanent job to a temporary-hire employee who applies for the vacancy during his temporary job and again after the lawful termination of his temporary job; General Counsel not required to show availability of work.
MATSUI NURSERY, INC., 11 ALRB No. 10

421.15 Additional evidence of availability of work not necessary where labor contractor had, at time of refusing rehire, expressed anger that returning discriminatee was to participate in representation case hearing.
VISALIA CITRUS PACKERS, 10 ALRB No. 44

421.15 Employer's defense of lack of available work rejected where work was available only to anti-union employees after union won election.
PIONEER NURSERY, 10 ALRB No. 30

421.15 Where employer's payroll records showed it continued to hire pruners after previously discharged protesters applied, Board inferred that work was available when protesters applied.
SUMNER PECK RANCH, INC., 10 ALRB No. 24

421.15 General Counsel failed to meet burden of proving that work was available when applied for; directive from employer to its foreman not to hire employee was not inconsistent with assertion that work was unavailable when reemployment was sought.
SIGNAL PRODUCE COMPANY, 10 ALRB No. 23

421.15 Delay of one week in rehiring union supporter who had returned from vacation in Mexico was not discriminatory.
PAUL BERTUCCIO, 10 ALRB No. 10

421.15 Employer's defense that it denied available field work to five discriminatees because they had no experience in such work was discredited, in part by its employing new workers with no prior experience to do the field work.

PAUL BERTUCCIO, 10 ALRB No. 10

421.15 Employer successfully showed that its assignment of miscellaneous shed work to workers other than alleged discriminatees was based on legitimate, nondiscriminatory reasons.
PAUL BERTUCCIO, 10 ALRB No. 10

421.15 Employer's defense of lack of available work rejected where work was available only to anti-union employees after union won election.
PIONEER NURSERY, 9 ALRB No. 44

421.15 An employee named as a discriminatee, who failed to testify at the hearing, was placed by a disinterested witness out of the country at the time he allegedly requested reemployment; the ALJ's unexplained credibility resolution was insufficient to establish that the employee made a timely application for employment.
ARAKELIAN FARMS, 9 ALRB No. 25

421.15 Respondent claimed Union supporter not rehired because he lost his seniority by not applying for work within 3 days of start of season and because no work available when he reapplied. But Respondent's records showed others hired despite not reporting within 3 day period and that others were hired at same time Union supporter was turned down. Respondent's anti-union animus was a contributing factor to the finding of violation.
VERDE PRODUCE COMPANY, 7 ALRB No. 27

421.15 Board rejects ALO's finding that work available when Employee confronted Employer immediately following layoff and Employer did not need to augment crew until at least 3 days later.
GIUMARRA VINEYARDS, INC., 7 ALRB No. 17

421.15 Where the employer hired six employees to work during the poinsettia season, laid-off the employees upon the conclusion of that season, but later recalled the employees and offered them permanent jobs, the Board found that the original lay off was not unlawful.
SUNNYSIDE NURSERIES, INC., 6 ALRB No. 52

421.15 Availability of work need not be shown where employer's statements make pursuit of reemployment appear futile.
C. MONDAVI & SONS, dba CHARLES KRUG WINERY 5 ALRB No. 53

421.15 Where a group of three employees was transferred from packing to picking grapes during a slowdown, the transfer did not violate the provisions of a collective bargaining contract or any company policy, and, there was no evidence that the transfer was intended to inhibit employee organization, the Board refused to find that the transfer of a Union supporter within the group of three was unlawful.
KARAHADIAN RANCHES, INC., 5 ALRB No. 37

421.15 Discharge of union activist found discriminatory where discharge occurred immediately upon employer's discovery of employee's union activity; employer made anti-union statements; work was clearly available; and discharge was based on fabricated charge of theft.
BABBITT ENGINEERING & MACHINERY v. ALRB (1984) 152 Cal.App.3d 310

421.15 No violation where only evidence supporting inference of causal connection was fact that 5 out of 6 employees laid off were known union supporters, since employer showed that employees were laid off due to lack of work.
GEORGE ARAKELIAN FARMS v. ALRB (1980) 111 Cal.App.3d 258

421.15 Employer's change in hiring policy from legal alien workers to "illegal " workers was unlawful where legals were considered by employer to be union supporters, employer displayed anti-union animus, and former legal employees made numerous unsuccessful efforts to obtain reemployment when suitable jobs were available.
KAWANO, INC. v. ALRB (1980) 106 Cal.App.3d 937

421.16 Replacement Of Employees; Labor Shortage Or Busy Season; Key Employees

421.16 Employer's knowledge of protected activity, past history of anti-union animus, and unusual hiring of intermittent workers indicated that discrimination was a motivating factor. However, employer met its burden of proving that due to lack of seniority and the genuine need for intermittent workers, the employee would have been denied rehire even absent his protected activity.
SAM ANDREWS' SONS, 11 ALRB No. 5

421.16 Employer discriminated when it laid off crew but transferred six employees with less seniority than discriminatee to other crew and continued to hire workers for other crews. SAM ANDREWS' SONS, 3 ALRB No. 45

421.16 Board properly rejected employer's business justifications for failing to hire predecessor's employees where no credited basis existed to support purported preference for group of workers employer knew from other operations.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

421.16 Employer met burden to prove substantial and legitimate business justification for failure to immediately reinstate economic strikers who unconditionally offered to return to work by showing mutual understanding that replacement workers were permanent and that, after offer to return, openings were thereafter filled with returning strikers. Not necessary to show that offer of permanent employment was necessary in order for employer to obtain sufficient number of replacements.
TAYLOR FARMS, 20 ALRB No. 8

421.16 Temporary work that was contracted out in accordance with past practice was not work that had to be offered to economic strikers on preferential hiring list. TAYLOR FARMS, 20 ALRB No. 8

421.17 Seniority

421.17 The General Counsel failed to establish that three foremen were denied rehire as a method of discriminating against their crews, where there was no evidence that the foremen applied for work at a time when work was available, and the employer's statement of possible recall was insufficient to establish this element of the prima facie case. SEQUOIA ORANGE CO., 11 ALRB No. 21

421.17 Employer's business justification for discharge of two employees--that they were among five employees with lowest seniority--is pretextual, since discharge closely followed the two employees' participation in union activities, and other employees with less seniority were rehired in the following few days. CLARK PRODUCE, INC., 11 ALRB No. 19

421.17 Employer's knowledge of protected activity, past history of anti-union animus, and unusual hiring of intermittent workers indicated that discrimination was a motivating factor. However, employer met its burden of proving that due to lack of seniority and the genuine need for intermittent workers, the employee would have been denied rehire even absent his protected activity. SAM ANDREWS' SONS, 11 ALRB No. 5

421.17 Employer had no established or observed seniority system which gave alleged discriminatees a "bumping privilege." SIGNAL PRODUCE COMPANY, 10 ALRB No. 23

21.17 Employer, in denying discriminatees available field work, failed to follow its policy of giving its workers preference over those supplied by a labor contractor. PAUL BERTUCCIO, 10 ALRB No. 10

421.17 Employer's discriminatory layoff of Union supporters, and of several other co-workers, as disguise for layoff of pro-Union employees, was unlawful. Employees' seniority found to be pretext for layoffs. ABATTI FARMS, INC., and ABATTI PRODUCE, INC., 7 ALRB No. 36

421.17 Company had system where closer from previous season would have seniority as cutter and packer the next season if he knew how to do job. Discrimination shown where Union supporter with seniority seeking work as a cutter and packer, a job he had previously done, was denied work during a time when new hires were added to crew. VERDE PRODUCE COMPANY, 7 ALRB No. 27

421.17 General Counsel failed to establish discriminatory layoff where the record evidence is at least as consistent with employer's contention that employee was laid off because of his low seasonal seniority, for valid business reasons, and as to employer's failure to rehire employee, the record fails to show that employee made a proper application for work at a time when work was available.
MARIO SAIKHON, INC., 5 ALRB No.30

421.18 Statements Or Conduct Of Employer; Time Of Conduct, Threats

421.18 Employee's refusal, two months prior to his discharge, to sign Employer's petition to oust Union, together with Employer's antiunion statements and threats to lay off workers through automation, are not enough to prove discriminatory discharge of employee who arrived four hours late for work because of drunk driving arrest, and who had previously incurred serious injury from on-the-job accident stemming from carelessness.
SUNNY CAL EGG & POULTRY, INC., 14 ALRB No. 14

421.18 Discharge of two employees who refused to sign Employer's petition to oust the Union was not entirely pretextual, since Employer had some genuine concern that the employees had been "horsing around" and "dragging on the clock" in order to work overtime. However, a number of factors show that Employer would not have discharged the employees in the absence of their protected activity: the Employer's hostile antiunion statements during the discharge incident; fact that a co-employee who had signed the Employer's petition was not fired; the discharges occurred only four days after Union was certified; in view of the employees' extended years of service, the alleged misconduct was not serious enough to warrant discharge.
SUNNY CAL EGG & POULTRY, INC., 14 ALRB No. 14

421.18 Additional evidence of availability of work not necessary where labor contractor had, at time of refusing rehire, expressed anger that returning discriminatee was to participate in representation case hearing.
VISALIA CITRUS PACKERS, 10 ALRB No. 44

421.18 Layoff found discriminatory where supervisors threatened loss of work if union won election, anti-union employees were segregated into one crew, and only pro-union employees were laid off immediately after union won election.
PIONEER NURSERY, 10 ALRB No. 30

421.18 Employer discharged protesters where credited testimony indicated that, when protesters offered to go to work, employer told them it was too late, though they had not yet been replaced.
MARDI GRAS MUSHROOM FARMS, 10 ALRB No. 8

421.18 Respondent's implementation of rule change from suckering in rows to suckering in spaces, isolating workers during union organizing drive and shortly after protected work stoppage, violated 1153(a) where, among other indicia of discriminatory intent, employer's president had instructed supervisor to do everything in his power to prevent union from coming in, and employer's foreman admitted that the spaces order was retained into the following season to avoid the inference that discharges for its violation were discriminatory.
ARMSTRONG NURSERIES, INC., 9 ALRB No. 53

421.18 Layoff found discriminatory where supervisors threatened loss of work if union won election, anti-union employees were segregated into one crew, then only pro-union employees were laid off immediately after union won election.
PIONEER NURSERY, 9 ALRB No. 44

421.18 Demotion of union supporter shortly after employee's union activity unlawful where employer acted with disproportionate and misplaced anger over alleged employee misconduct.
RIGI AGRICULTURAL SERVICES INC., 9 ALRB No. 31

421.18 Termination of entire crew found to be a violation of sections 1153(c) and (a) of the Act where one of three requisite warnings had, by employer's own admission, been based upon the crew's participation in protected concerted strike activity.
ALPINE PRODUCE, 9 ALRB No. 12

421.18 Unlawful layoff found where Employees were active Union representatives and supporters, crew was important to possible success of (unlawful) decertification drive, selection of layoffs made little sense unless one concluded Employer attempted to specifically eliminate discriminatees, and a few days before layoffs, general foreman was overheard telling foremen to discharge crew' Union representative.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC., 7 ALRB No. 36

421.18 Employer's anger at employee's pro-union activities found to be substantial evidence in layoff decision and hence violative of 1153(c) and (a). IHED pp. 27-29.
PAUL W. BERTUCCIO and BERTUCCIO FARMS, 5 ALRB No. 5

421.18 Section 1153(c) and (a) are violated by respondent's layoff of an openly pro-union crew shortly before an election and the hiring of an apparently less pro-union crew. Shortly before the election, respondent altered its payroll periods in a manner which disenfranchised the more pro-union crew, and issued misleading statements in a leaflet which evidenced animus towards the UFW. Respondent's ostensible economic justification (light lettuce packs, variance in lettuce-pack weights, and

quality of lettuce packs) for the discharge held not supported by the record evidence.
S & F GROWERS, 4 ALRB No. 58

421.18 Employer's consultation with attorney about conduct that is later determined to be ULP cannot be used as evidence of bad faith--at least where employer is dealing with legal problems arising from recently enacted legislation and regulations.
LAFLIN & LAFLIN v. ALRB (1985) 166 Cal.App.3d 368

421.18 Discharge of union activist found discriminatory where discharge occurred immediately upon employer's discovery of employee's union activity; employer made anti-union statements; work was clearly available; and discharge was based on fabricated charge of theft.
BABBITT ENGINEERING & MACHINERY v. ALRB (1984) 152 Cal.App.3d 310

421.18 Employer is responsible for anti-union statements or acts of supervisors whether or not they are specifically authorized, and such anti-union remarks are evidence of unlawful motive.
BABBITT ENGINEERING & MACHINERY v. ALRB (1984) 152 Cal.App.3d 310

421.18 A few isolated anti-union comments by supervisors did not prove discriminatory motive where employer overall displayed no animus, employee had little union activity, and company had legitimate reason for treating the employee differently than other irrigators at other times.
GEORGE ARAKELIAN FARMS v. ALRB (1980) 111 Cal.App.3d 258

421.18 Timing of discharge, following immediately upon what employer perceived to be activities encouraging assault on supervisor, does not support inference that union activities were substantial motivating force behind discharge.
ROYAL PACKING CO. v. ALRB (1980) 101 Cal.App.3d 826

421.19 Support Of Union; Favoritism Between Unions

421.19 Rehiring of employee because of his union renunciation is evidence of union animus. (ALJD p. 20.)
PROHOROFF POULTRY FARMS, 5 ALRB No. 9

421.19 Substantial evidence was lacking for Board to infer that union activities motivated discharge of Teamster activist, especially where employer supported Teamsters and activist had history of insubordination.
ROYAL PACKING CO. v. ALRB (1980) 101 Cal.App.3d 826

421.20 Wage Increase Or Benefits, Or Promise Thereof, To Combat Organization

421.20 Employer's wage increase and union's distribution of

leaflets in August did not show company knowledge of organizing activity and anti-union animus; rather, it was as reasonable to infer that the wage increase was the result of a normal business decision and that the distribution of the leaflets was a reasonable communication to employees occasioned by the enactment of the ALRA.
EDWIN FRAZEE, INC., 4 ALRB No. 94

421.21 Work Sharing Or Transfer Offered Or Refused

421.22 Record Antedating Employment

421.22 Employer acted unlawfully in discharging employee on basis of his pre-employment protected activities at another company, whether or not discriminatee was an employee of the prior company at the time he engaged in the activities.
VALLEY-WIDE, DBA MONA, INC., 15 ALRB No. 16

421.23 Employee Quit Voluntarily

421.23 Where the ALJ found that the employer utilized a statement from its own supervisor that its primary union organizer had quit and where the employee denied having voluntarily quit, the employer cannot rely on a disputed communication by one of its own supervisors to create what would appear to be a nondiscriminatory motive to defeat the prima facie case establishing a violation of the Act.
LA CUESTA VERDE GINNING CO., 13 ALRB No. 23

421.23 Where Respondent administer Employee's discharge in Complaint and never sought to amend its answer to deny discharge, it cannot later argue that Employee voluntarily quit.
B.& B. FARMS, 7 ALRB No. 38

421.23 Where Respondent administer Employee's discharge in Complaint and never sought to amend its answer to deny discharge, it cannot later argue that Employee voluntarily quit.
B. & B. FARMS, 7 ALRB No. 38

421.23 In determining whether or not a striker has been discharged, the test to be used is whether the words or conduct of the employer reasonably led the strikers to believe they were discharged and the employer has the burden of resolving any ambiguity created by its conduct. Where employer tells strikers to go home, employees indicate that they believe they have been discharged by asking for immediate payment of unpaid wages, employer indicates on termination form that employees were insubordinate for refusing to work, and employer is unwilling to rehire any of the workers, employees reasonably believed that they had been discharged, and did not voluntarily quit their employment.

DOLE FARMING, INC., 22 ALRB No. 8

421.23 Employees who are told that they must resign in order to receive needed benefits have not clearly or unmistakably expressed a desire to relinquish statutory reinstatement rights.
SUNRISE MUSHROOMS, INC., 22 ALRB No. 2

421.23 Defense that employees voluntarily quit rejected and discriminatory discharge established where credited testimony indicated that employer made statements in response to concerted demands for changes in wages and hours which employees reasonably believed to indicate that they had been discharged.
BOYD BRANSON FLOWERS, INC., 21 ALRB No. 4

421.23 Unlawful discharge found where employer's assertion that employee failed to return from medical leave contradicted by credited testimony and payroll records indicating he was discharged on the day he brought note from doctor excusing him from work.
LASSEN DAIRY, INC., 35 ALRB No. 7

422.00 EMPLOYER DISCRIMINATION FOR FILING CHARGES OR GIVING TESTIMONY

422.01 In General, Labor Code Section 1153(d)

422.01 Employer's justification for excluding from company barbecue employees who had testified at a prior Board hearing found to be pretextual, thus leaving intact the inference of wrongful motive established by the General Counsel. (Frank Black Mechanical Services, Inc. (1984) 271 NLRB 1302, fn. 2, [117 LRRM 1183].)
THE GARIN COMPANY, 12 ALRB No. 14

422.01 Respondent employer was not compelled to prove that it was without animus toward an employee but rather that the discipline would have taken place regardless of participation in Board processes.
THE GARIN COMPANY, 12 ALRB No. 14

422.01 To establish a violation of section 1153(d) the General Counsel must prove that the discriminatees filed charges or gave testimony (or otherwise involved themselves in the processes of the Board), and that the respondent knew of the above activity and discriminated against the employees because of their protected activities.
BEN AND JERRY NAKASAWA d/b/a NAKASAWA FARMS AND B. J. HAY HARVESTING, 10 ALRB No. 48

422.01 No violation of 1153(d) where Employees failed to remain at or return to work site (and apply for rehire) following layoff as did those workers who ultimately were reinstated.
GIUMARRA VINEYARDS, INC., 7 ALRB No. 17

422.01 Assignment of "negative seniority" had effect of penalizing employees for participation in Board processes and was inherently destructive of important employee rights under Act.
M. B. ZANINOVICH, INC. v. ALRB (1981) 114 Cal.App.3d 665

422.01 Employees' prior involvement with Board's settlement procedures must be deemed protected employee activity within Act.
M. B. ZANINOVICH, INC. v. ALRB (1981) 114 Cal.App.3d 665

422.02 Filing Charges Or Petitions

422.02 Employer violated section 1153, subdivisions (a), (c) and (d) where it issued warning notices to three employees based on conduct which was in fact protected activity, failed to investigate complaints against the three or give them an opportunity to refute the complaints, and based the notices on a work rule relied on previously in similar circumstances.
CONAGRA TURKEY CO., 18 ALRB No. 14

422.02 Evidence insufficient to establish prima facie case that employer failed to rehire father due to his son's filing of unfair labor practice charge where father was rehired once after filing of charge, where finding that tractor driver stopped working due to recurring back trouble, rather than due to dislike for night work as claimed by employer, does not warrant inference that employer's claim was pretextual because employer would in any event be disturbed by risk created that work would not be completed before rains came, and where comments by supervisor that father not rehired because he was included in son's settlement not indicative of unlawful motive because no evidence of source of supervisor's erroneous impression and no evidence that supervisor had any authority or input with regard to father's rehiring.
D & H FARMS, 18 ALRB No. 12

422.02 Employer violated section 1153(d) by discharging a worker in retaliation for his filing a ULP charge just three weeks earlier.
KIRSCHENMAN ENTERPRISES, INC., 12 ALRB No. 2

422.02 Violation of section 1153(c) and (d) established by evidence of (1) Employer's animus against two union supporters who had recently filed unfair labor practice charges, (2) their past history of employment on first harvest machine, (3) their arrival before others, and (4) employer's evasive conduct and pretextual explanations for refusing to rehire them in tomato harvest.
YAMANO FARMS, INC., 11 ALRB No. 16

422.02 Violation of 1153(c) and (d) established by evidence of (1) employer's and his labor contractor's animus against two union supporters who previously filed unfair labor

practice charges against employer and (2) the labor contractor's successful attempts to keep same union supporters from learning of start-up date of weed and thin operations.
YAMANO FARMS, INC., 11 ALRB No. 16

422.02 Employees were denied requested transfers because of their protected union activities and because they filed charges with Board.
MATSUI NURSERY, INC., 11 ALRB No. 10

422.02 Charge of refusing to provide transportation to employees who had filed unfair labor practice charges with ALRB charging unlawful reduction in work hours was fully litigated and sufficiently related to ULP charges to justify finding of 1153(d) violation despite absence of allegation in complaint.
GRAMIS BROTHERS FARMS, INC., and GRO-HARVESTING, INC., 9 ALRB No. 60

422.02 Under statutory interpretation approved in Bacchus Farms, 4 ALRB No. 26, contacting ALRB regarding an employ complaint is PCA even though charge not filed.
NASH-DE CAMP COMPANY, 8 ALRB No. 5

422.02 No violation of section 1153(d) where Employee filed charge and was refused rehire, absent evidence Lab K' or who did not rehire him was aware charge filed.
NASH-DE CAMP COMPANY, 8 ALRB No. 5

422.02 Employer violated section 1153(d) and (a) by refusal to rehire. Employer stated "too many charges" had been filed.
C. MONDAVI & SONS, dba CHARLES KRUG WINERY 5 ALRB No. 53

422.03 Attendance Or Giving Testimony At Board Hearing

422.03 Prima facie case established that employee's testimony in Board proceeding motivated employer to issue warning tickets for taking asparagus without permission, but Respondent successfully rebutted prima facie case with evidence of a nondiscriminatory business judgment that warnings were warranted.
THE GARIN COMPANY, 12 ALRB No. 14

422.03 Exclusion of employees, who had testified at a prior Board hearing, from a company barbecue violated section 1153(d). THE GARIN COMPANY, 12 ALRB No. 14

422.03 Board affirms ALJ's findings that employer's justification for discipline, i.e., employee performing major mechanical work on personal vehicle during work hours, was pretextual and that the discipline constituted unlawful discrimination against employee because of his participation in Board processes.
THE GARIN COMPANY, 12 ALRB No. 14

422.03 Due to failure to allege violation of section 1153(d) in complaint, Board declined to go beyond finding that discriminatory refusal to rehire son of union activists (due to his expected participation in favor of union position in representation case hearing) violated section 1153(c) and (a).
VISALIA CITRUS PACKERS, 10 ALRB No. 44

422.03 Reduction in hours of work following testimony adverse to employer in backpay compliance proceeding raises inference of discrimination sufficient to establish prima facie case and shifts to employer burden of showing change would have occurred even in absence of participation in Board processes.
ABATTI FARMS, INC., 10 ALRB No. 40

423.00 CONCERTED ACTIVITIES; PROTECTED ACTIVITIES

423.01 In General

423.01 The Act protects the right of employees to engage in protected and concerted activity, regardless of the merits of their complaints or the success of their activities.
GIANNINI PACKING CORP., 19 ALRB No. 16

423.01 ALJ incorrectly applied standard of review applicable to use of intemperate language by employee acting in a representative capacity while engaged in negotiations or presentation of a grievance. ALJ should have applied standard of review for employees engaged in concerted activity on employer's premises but not during course of negotiations or presentation of a grievance.
BRUCE CHURCH, INC., 16 ALRB No. 3

423.01 Request to employer by two brothers that deductions be made from their paychecks for purposes of income taxes constitutes concerted activity. (ALJ Decision.)
E. W. MERRITT FARMS, 14 ALRB No. 5

423.01 Request that employer pay employee in two separate checks, one made out to employee and one made out to employee's son, for purposes of income tax evasion is unprotected activity because objective is unlawful. (ALJ Decision.)
E. W. MERRITT FARMS, 14 ALRB No. 5

423.01 Within the panoply of rights granted employees in section 1152 is the right of employees to present grievances on matters affecting their terms and conditions of employment. (ALJD, p. 23.)
D'ARRIGO BROTHERS, 13 ALRB No. 1

423.01 Employee's conduct during grievance meeting--refusing to leave employer's sales office upon employer's demand, and continuing to engage in heated discussion with employer--

did not lose its protected status, since employer himself was largely responsible for making the meeting acrimonious and causing partial disruption of office business; employee's refusal to leave premises was spontaneous and brief; and a small amount of disruption of business must be tolerated where grievance meetings were not precluded from employer's sales office during business hours.
V. B. ZANINOVICH & SONS, 12 ALRB No. 5

423.01 Employee spokesperson was engaged in protected concerted activity when he entered employer's sales office with other employees to seek rehire of a former fellow worker and to protest alleged racial discrimination in employer's hiring practices. Employer's discharge of spokesperson for insubordination found to be in violation of section 1153(a).
V. B. ZANINOVICH & SONS, 12 ALRB No. 5

423.01 A co-op supplying labor to an employer discharged three persons belonging to the co-op in retaliation for their protected activity by orchestrating a dissolution and re-emergence of the co-op without disclosing the re-emergence to the three, and the employer engaging the co-op was liable for the discharges.
SAHARA PACKING COMPANY, 11 ALRB No. 24

423.01 Following the NLRB's decision in Meyers Industries, Inc. (1984) 268 NLRB No. 73 [115 LRRM 1025], in order for an employee's activity to be concerted, it must be engaged in with, or on authority of, other employees, and not solely by and on behalf of the employee; an 1153(a) violation will then be found if the employer knew of the concerted nature of the employee's activity, the concerted activity was protected by the Act, and the adverse employment action at issue was motivated by the employee's concerted activity.
GOURMET HARVESTING, INC., 10 ALRB No. 41

423.01 Employee who spoke up in meeting with foreman and fellow workers against a new work rule and in favor of other changes in wages and working conditions was engaged in concerted activity; employee spoke to fellow workers prior to meeting about seeking changes, other workers joined his comments at the meeting, and the foreman understood his remarks to be representative of the group's feelings.
GOURMET FARMS, INC., 10 ALRB No. 41

423.01 Concerted protected activity found where group of employees complained about epithets directed at them by a foreman.
SIGNAL PRODUCE COMPANY, 10 ALRB No. 23

423.01 Five employees who refused to start work in protest of the out-of-seniority layoff of a fellow employee were engaged in protected activity.

MARDI GRAS MUSHROOM FARMS, 10 ALRB No. 8

423.01 Employer's ejection of legal representatives from its labor camp because they were discussing living conditions at the labor camp with employees violated section 1153(a).
HARRY CARIAN SALES, 9 ALRB No. 13

423.01 Employer owned and/or operated housing constitutes a condition of employment: (1) where employees receive the housing at a rental cost below the prevailing rate for comparable housing; (2) where other housing in the area of employment is in short supply and consequently there is a worker demand for company housing; or (3) where company housing is a necessary part of the enterprise and is provided to employees at such a low rate as to represent a substantial part of their enumeration.
HARRY CARIAN SALES, 9 ALRB No. 13

423.01 Workers were engaged in PCA when attempting to convince co-workers that fields too wet for work.
SUPERIOR FARMING COMPANY, 8 ALRB No. 40

423.01 Employee's individual complaint that he be paid for his lunch hour or receive the same lunch hour as other Employees was not concert activity. Board rejects idea that nature of Employee's protest was likely to affect working conditions of Respondent's other Employees and have a "collective rippling effect" on the work force as in Hansen Chevrolet (1978) 237 NLRB 584, 99 LRRM 1066. Board, citing National Wax Company(1980) 251 NLRB No. 147, 105 LRRM 1371, holds that Hansen should be confined to sit where the relation between Employer and Employees, which is the subject of the individual Employee's action, is closely akin to a collective bargaining agreement.
B. & B. FARMS, 7 ALRB No. 38

423.01 Employee's individual complaint that he be paid for his lunch hour or receive the same lunch hour as other Employees was not concert activity. Board rejects idea that nature of Employee's protest was likely to affect working conditions of Respondent's other Employees and be said to have a "collective rippling effect" on the work force as in Hansen Chevrolet (1978) 237 NLRB 584, 99 LRRM 1066. Board, citing National Wax Company (1980) 251 NLRB No. 147, 105 LRRM 1371, holds that Hansen should be confined to sit where the relation between Employer and Employees, which is the subject of the individual Employee's action, is closely akin to a collective bargaining agreement.
B. & B. FARMS 7 ALRB No. 38

423.01 Concerted activity can concern anything directly involving employment, wages, hours, and working conditions. The trier of fact need only reasonably infer that the employees involved considered that they had a grievance and decided among themselves to take it up with

management.
JACK BROTHERS & MCBURNEY, INC., 6 ALRB No. 12

423.01 The existence of many reasons for concerted walkout does not strip employees' activity of its protected status.
PAPPAS & COMPANY, 5 ALRB No. 52

423.01 A discriminatee's role in protected concerted activity must not be an active or vocal one to support a conclusion that his discharge violated Section 1153(a) of the Act.
SAM ANDREWS' SONS, 5 ALRB No. 38

423.01 The protections accorded under the Act for concerted activity are not dependent on the merit or lack of merit of a particular grievance, even if the activity is in disobeyance of a management order. Nor does the protection diminish even if the controversy is minor.
M. CARATAN, INC., 4 ALRB No. 83

423.01 The discharge of an employee who intervened on behalf of his brother, who was engaged in a dispute with his supervisor, was found to violate the ALRA. Because the subject matter of the dispute (the proper level of lemons required to constitute a full bin) had been an issue between labor and management on prior occasions, the dischargee's actions were held to be contemplative of group action and therefore protected concerted activity.
S & F GROWERS, 4 ALRB No. 58

423.01 Employees' concerted activity is protected from employer retaliation if it meets four conditions: (1) there must be a work related complaint or grievance; (2) a specific remedy or result must be sought through such activity; (3) the concerted activity must further some group interest; and (4) the activity should not be unlawful or otherwise improper or unprotected.
PAUL W. BERTUCCIO v. ALRB (1988) 202 Cal.App.3d 1369

423.01 Concerted activity is protected if 1) there is work - related grievance; 2) specific remedy or relief is sought; 3) some group interest is furthered; and 4) the activity is not unlawful, violent, in breach of contract, or indefensibly disloyal.
NASH-DECAMP CO. v. ALRB (1983) 146 Cal.App.3d 92

423.01 In determining whether protest by individual employee is protected, emphasis must be given to objective of person or persons engaged in activity. Although number of participants may be significant, it is not conclusive. If issue can be solved individually without affecting rights or duties of others or is merely personal "griping," it would fall on non-concerted side.
NASH-DECAMP CO. v. ALRB (1983) 146 Cal.App.3d 92

423.01 Violation of 1153(a), unlike 1153(c), does not require proof of anti-union animus, unlawful motive, or

discouragement of union activities. Section 1153(a) protects spontaneous concerted protests without union support if such protests are for employees' mutual aid and protection.
NASH-DECAMP CO. v. ALRB (1983) 146 Cal.App.3d 92

423.01 Employees' prior involvement with Board's settlement procedures must be deemed protected employee activity within Act.
M. B. ZANINOVICH, INC. v. ALRB (1981) 114 Cal.App.3d 665

423.01 Employer's claim that employees' refusal to work one afternoon, assertedly because of an adverse working condition (extreme heat), constituted a voluntary quit or, alternatively, an act of insubordination, rejected where employees' conduct found to be protected.
TANIMURA & ANTLE, INC., 21 ALRB No. 12

423.01 Employees' refusal to work for a portion of one day protected where they discussed their mutual concerns about the difficulty of working in unseasonably hot weather. Board cites NLRB cases where, under similar circumstances in which employees perceived discomfort or danger in working under unique or adverse working conditions, work stoppage was deemed a spontaneous and limited one-time event and thus was not an unprotected "partial strike."
TANIMURA & ANTLE, INC., 21 ALRB No. 12

423.01 The protected status of concerted demands concerning wages or working conditions does not depend on the reasonableness of the demands. (Giannini Packing Corp. (1993) 19 ALRB No. 16, ALJ dec., p. 15.) However, activity that would otherwise be protected may nonetheless lose its protected status only if it is unlawful, violent, in breach of contract, or indefensibly disloyal. (See, generally, Hardin, The Developing Labor Law, 3rd Ed., p. 137; Nash-DeCamp Co. v. ALRB (1983) 146 Cal.App.3d 92, 105.)
BOYD BRANSON FLOWERS, INC., 21 ALRB No. 4

423.01 Employer's claim that employees' refusal to work one afternoon, assertedly because of an adverse working condition (extreme heat), constituted a voluntary quit or, alternatively, an act of insubordination, rejected where employees' conduct found to be protected.
TANIMURA & ANTLE, INC., 21 ALRB No. 12

423.01 Employees who refused to work pending clarification from the owner of their rate of pay and who then met in a group with the owner to discuss the rate of pay were engaged in protected concerted activity.
CIENIGA FARMS, INC., 27 ALRB No. 5

423.01 Where it was found that protesters rushed the fields and engaged in unprotected conduct by interfering with the rights of nonstriking workers, it was unnecessary to

proceed to determine whether their individual actions constituted "serious strike misconduct."
COASTAL BERRY CO. v. ALRB (2001) 94 Cal.App.4th 1, 114 Cal.Rptr.2d 228

423.01 The present standard for strike misconduct is that adopted by the NLRB in *Clear Pine Mouldings, Inc.* (1984) 268 NLRB 1044, i.e., that strike misconduct is "serious" (thereby justifying dismissal or denial of reinstatement) if it reasonably tends to coerce or intimidate nonstriking workers.
COASTAL BERRY CO. v. ALRB (2001) 94 Cal.App.4th 1, 114 Cal.Rptr.2d 228

423.01 Concerted activity is protected if it meets four conditions: (1) there must be a work-related complaint or grievance; (2) a specific remedy or result must be sought through such activity; (3) the concerted activity must further some group interest; and (4) the activity should not be unlawful or otherwise improper (e.g., violent, in breach of contract or indefensibly disloyal). (Citing *Nash-De Camp Co. v. ALRB* (1983) 146 Cal.App.3d 92, 104; accord, *Bertuccio v. ALRB* (1988) 202 Cal.App.3d 1369, 1404.)
COASTAL BERRY CO. v. ALRB (2001) 94 Cal.App.4th 1, 114 Cal.Rptr.2d 228

423.01 That protesters made unreasonable demands, such as the removal of UFW supporters from the fields, did not remove entire protest from the protection of the ALRA.
COASTAL BERRY CO. v. ALRB (2001) 94 Cal.App.4th 1, 114 Cal.Rptr.2d 228

423.01 As long as an employer does not discharge an employee for engaging in protected activities, he may fire him for any reason, just or not, reasonable or not, or for no cause or reason at all.
COASTAL BERRY CO. v. ALRB (2001) 94 Cal.App.4th 1, 114 Cal.Rptr.2d 228

423.01 A conversation between an individual employee and a supervisor that was held on the day following a group protest of schedule changes and work policies was a logical outgrowth of group action, and was therefore a continuation of the previous day's protected concerted activity.
THE ELMORE COMPANY, 28 ALRB No. 3

423.01 Employee who protested the manner in which a supervisor treated a co-worker while giving the co-worker a work assignment was engaged in protected concerted activity.
PICTSWEET MUSHROOM FARMS, 28 ALRB No. 4

423.01 Where, in light of the surrounding circumstances, a statement reasonably would be construed as threatening violence or other unlawful strike activity, the statement may constitute serious strike misconduct warranting

discharge. Threats by the leader of a group of strikers that they would destroy or "break" the company, occurring before and just after litany of violent and other unprotected conduct by the group, and carrying implied threat of continuance of similar activity, warranted discharge.
COASTAL BERRY COMPANY, LLC, 28 ALRB No. 7

423.01 Actions that promote or encourage misconduct by other strikers may justify discharge.
COASTAL BERRY COMPANY, LLC, 28 ALRB No. 7

423.01 Striker who destroyed crates of packed berries engaged in serious strike misconduct warranting discharge.
COASTAL BERRY COMPANY, LLC, 28 ALRB No. 7

423.01 Striker who approached employee in order to take his box so he could not continue working, but who stopped and backed away when told to do so by others, was found to have engaged in no more than an aborted attempt to interfere with work that did not constitute serious strike misconduct.
COASTAL BERRY COMPANY, LLC, 28 ALRB No. 7

423.01 The throwing of objects at the vehicle occupied by a company official constitutes serious strike misconduct. It is not necessary that the objects caused any damage, as the conduct itself is highly coercive.
COASTAL BERRY COMPANY, LLC, 28 ALRB No. 7

423.01 Leader and instigator of a group of strikers who threw boxes at vehicle occupied by company official, blocked the vehicle's exit, and rocked the vehicle from side to side was engaged in serious strike misconduct for which he was lawfully discharged.
COASTAL BERRY COMPANY, LLC, 28 ALRB No. 7

423.01 An employer's determination not to reinstate a striker must be based on evidence that the striker personally engaged in strike misconduct. It is insufficient to conclude that much of the conduct of the group of which the striker was a part was unprotected.
COASTAL BERRY COMPANY, LLC, 28 ALRB No. 7

423.01 While serious strike misconduct may consist solely of verbal threats unaccompanied by any physical element, yelling insults at non-striking employees and imploring them to stop working does not constitute such misconduct.
COASTAL BERRY COMPANY, LLC, 28 ALRB No. 7

423.01 Following the well-settled rule that the reasonableness of the employees' demands is irrelevant to whether their conduct is protected concerted activity, the Board found that an employee who complained about broken ventilation fans in a milk barn was engaged in protected concerted activity even though the complaint was based on the employees' subjective perception that working conditions

were uncomfortable.
AUKEMAN FARMS, 34 ALRB No. 2

423.01 Employee's act of hiding baskets of mushrooms on the floor with the intent that no one see them did not communicate in a reasonably clear way to management that the employee was taking an action to enforce a provision of a collective bargaining agreement. Therefore, this aspect of employee's conduct was not protected concerted activity.
MUSHROOM FARMS, 35 ALRB No. 8

423.01 Where there was an existing collective bargaining agreement providing that mushroom pickers were to receive overtime pay after nine hours of work, verbal complaints by a worker to a foreman that he was not giving proper credit for baskets of mushrooms picked in overtime were protected and concerted because an action taken by a single employee to enforce the provisions of an existing collective bargaining agreement is considered to be an extension of the concerted activity that produced the agreement in the first place. Further, the assertion of such a right affects the rights of all employees covered by the agreement. (*NLRB* v. *City Disposal Systems, Inc.* (1984) 465 U.S. 822; *Interboro Contractors, Inc.* (1966) 157 NLRB 1295.)
MUSHROOM FARMS, 35 ALRB No. 8

423.02 Abstention From Concerted Activity

423.03 Activities In Advance Of Or Apart From Organization

423.03 Employer acted unlawfully in discharging employee on basis of his pre-employment protected activities at another company, whether or not discriminatee was an employee of the prior company at the time he engaged in the activities.
VALLEY-WIDE, DBA MONA, INC., 15 ALRB No. 16

423.03 Knowledge of an employee's protected activity was imputed to the employer where the employer did not meet its burden of establishing that the supervisor who learned of the employee's protected concerted activity did not pass on that information to the personnel who decided to lay him off.
ARCO SEED COMPANY, 11 ALRB No. 1

423.03 New employer cannot avoid successorship status by discriminating against former employees. Where such conduct has occurred, continuity of work force is presumed.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

423.03 In successorship analysis, fluctuating nature of agricultural employment requires ALRB to use a more flexible approach to workforce continuity than that used by NLRB.

RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

423.03 Acting as union's election observer is protected activity.
HERBTHYME FARMS, INC., 36 ALRB No. 2

423.04 Individual Activities; "Constructive" Concerted Activities

423.04 Employee's complaints about adequate toilet facilities and improper use of pesticides not protected since not established that they were concerted in nature.
GIANNINI PACKING CORP., 19 ALRB No. 16

423.04 Workers' support each other in presenting grievances in meeting with management constituted protected concerted activity even though the grievances varied to some extent from employee to employee.
HARLAN RANCH COMPANY, 18 ALRB No. 8

423.04 Father's support of son's worker's compensation claim was concerted activity, despite fact that the objective was to further a matter which would directly benefit only the son.
T. T. MIYASAKA, INC., 16 ALRB No. 16

423.04 Although discriminatee's specific act of urging employees to refrain from providing legally required information may not have been protected activity, evidence indicates that the specific act was not a significant part of the totality of the protected conduct which caused the employer to discharge the discriminatee.
VALLEY-WIDE, DBA MONA, INC., 15 ALRB No. 16

423.04 Employee engaged in protected concerted activity by meeting with fellow workers to discuss their wages and then taking steps to secure unlawfully withheld overtime payments, where the evidence established that the workers authorized and supported the employee's efforts.
ARCO SEED COMPANY, 11 ALRB No. 1

423.04 Following the NLRB's decision in Meyers Industries, Inc. (1984) 268 NLRB No. 73 [115 LRRM 1025], in order for an employee's activity to be concerted, it must be engaged in with, or on authority of, other employees, and not solely by and on behalf of the employee; an 1153(a) violation will then be found if the employer knew of the concerted nature of the employee's activity, the concerted activity was protected by the Act, and the adverse employment action at issue was motivated by the employee's concerted activity.
GOURMET FARMS, INC., 10 ALRB No. 41

423.04 General Counsel failed to show that employer discharged employee because she engaged in protected concerted activity by complaining about the portable toilets.
CARDINAL DISTRIBUTING CO., INC., et al., 9 ALRB No. 43

423.04 General Counsel failed to show that employer discharged employee under mistaken belief that she had filed a complaint with the Labor Commissioner about the condition of the toilets.
CARDINAL DISTRIBUTING CO., INC., et al., 9 ALRB No. 43

423.04 Employee's individual complaint that he be paid for his lunch hour or receive the same lunch hour as other Employees was not concert activity. Board rejects idea that nature of Employee's protest was likely to affect working conditions of Respondent's other Employees and have a "collective rippling effect" on the work force as in Hansen Chevrolet (1978)237 NLRB 584, 99 LRRM 1066. Board, citing National Wax Company (1980)251 NLRB No. 147, 105 LRRM 1371, holds that Hansen should be confined to sit where the relation between employer and its Employees, which is the subject of the individual Employee's action, is closely akin to a collective bargaining agreement.
B. & B. FARMS, 7 ALRB No. 38

423.04 Employee's individual complaint that he be paid for his lunch hour or receive the same lunch hour as other Employees was not concert activity. Board rejects idea that nature of Employee's protest was likely to affect working conditions of Respondent's other Employees and have a "collective rippling effect" on the work force as in Hansen Chevrolet (1978) 237 NLRB 584, 99 LRRM 1066. Board, citing National Wax Company (1980) 251 NLRB No. 147, 105 LRRM 1371, holds that Hansen should be confined to sit where the relation between employer and employee, which is the subject of the individual employee's action, is closely akin to a collective bargaining agreement.
B.& B. FARMS, 7 ALRB No. 38

423.04 An Employee, unhappy that he had no specific lunch period, announced that if he did not receive same lunch period as sorters, he would submit time card reflecting no time off for lunch. Held: the Employee was not setting his own terms of employ as his conduct did not indicate a plan to alter work duties or assignments.
B. & B. FARMS, 7 ALRB No. 38

423.04 Employee engaged in PCA where she solicited money from other Employees to have criticisms of their supervisor's treatment of Employees broadcast on UFW radio show where no showing statements were illegal (e.g., slanderous) even through Employee admitted many based on rumor.
TENNECO WEST, INC., 7 ALRB No. 12

423.04 Mere suspicion that Employee discharged for Union activity or PCA because of Employer hostility to Union insufficient to prove discrimination.
TENNECO WEST, INC., 7 ALRB No. 12

423.04 Discharge not Violation of section 1153(a) or (c) when

Employee not engaged in concerted activity but made only personal gripes, and no Union activity.
TREFETHEN VINEYARDS, 4 ALRB No. 19

423.04 Complaint by employee and wife about possible bookkeeping error, which largely involved hurt feelings, was personal and individual in nature and not "concerted" protected activity.
NASH-DECAMP CO. v. ALRB (1983) 146 Cal.App.3d 92

423.04 In determining whether protest by individual employee is protected, emphasis must be given to objective of person or persons engaged in activity. Although number of participants may be significant, it is not conclusive. If issue can be solved individually without affecting rights or duties of others or is merely personal "griping," it would fall on non-concerted side.
NASH-DECAMP CO. v. ALRB (1983) 146 Cal.App.3d 92

423.04 A conversation between an individual employee and a supervisor that was held on the day following a group protest of schedule changes and work policies was a logical outgrowth of group action, and was therefore a continuation of the previous day's protected concerted activity.
THE ELMORE COMPANY, 28 ALRB No. 3

423.04 Where there was an existing collective bargaining agreement providing that mushroom pickers were to receive overtime pay after nine hours of work, verbal complaints by a worker to a foreman that he was not giving proper credit for baskets of mushrooms picked in overtime were protected and concerted because an action taken by a single employee to enforce the provisions of an existing collective bargaining agreement is considered to be an extension of the concerted activity that produced the agreement in the first place. Further, the assertion of such a right affects the rights of all employees covered by the agreement. (*NLRB v. City Disposal Systems, Inc.* (1984) 465 U.S. 822; *Interboro Contractors, Inc.* (1966) 157 NLRB 1295.)
MUSHROOM FARMS, 35 ALRB No. 8

423.05 Grievances In General; By-Passing Contract Procedure; Union Officers And Agents, Protection In Performance Of Union Duties

423.05 While mere "griping" about employment conditions is generally not considered protected activity, "when the griping coalesces with the expression inclined to produce group or representative action," the statute protects the activity. (ALJD, p. 23.)
D'ARRIGO BROTHERS, 13 ALRB No. 1

423.05 Within the panoply of rights granted employees in section 1152 is the right of employees to present grievances on matters affecting their terms and conditions of

employment. (ALJD, p. 23.)
D'ARRIGO BROTHERS, 13 ALRB No. 1

423.05 The law allows employees leeway in presenting grievances relating to their working conditions. Such activity loses its mantle of protection only in cases in which the misconduct/insubordination is so violent or of such serious nature as to render the employee unfit for further service. (ALJD, p. 25.)
D'ARRIGO BROTHERS, 13 ALRB No. 1

423.05 Employee's conduct during grievance meeting--refusing to leave employer's sales office upon employer's demand, and continuing to engage in heated discussion with employer--did not lose its protected status, since employer himself was largely responsible for making the meeting acrimonious and causing partial disruption of office business; employee's refusal to leave premises was spontaneous and brief; and a small amount of disruption of business must be tolerated where grievance meetings were not precluded from employer's sales office during business hours.
V. B. ZANINOVICH & SONS, 12 ALRB No. 5

423.05 Acting as union's election observer is protected activity.
HERBTHYME FARMS, INC., 36 ALRB No. 2

423.06 Meetings, Conferences, And Hearings

423.06 Employee engaged in PCA by serving as crew spokesman in meeting with company owner where workers' grievances about wages and working conditions discussed.
YAMAMOTO FARMS, 7 ALRB No. 5

423.06 Appearing at ALRB hearing is protected activity.
HERBTHYME FARMS, INC., 36 ALRB No. 2

423.07 Wage Demands; Demands For Change In Working Conditions

423.07 Crew's request for overtime to be computed beginning at an earlier time than state regulation requires neither renders the conduct unprotected nor implies that overtime demand a pretext for strike for unprotected objective.
ANTHONY HARVESTING, INC., 18 ALRB No. 7

423.07 Employees who engage in work stoppage in support of increase in daily bin rate are engaging in protected concerted activity.
PHILLIP D. BERTELSEN, 12 ALRB No. 27

423.07 A concerted work stoppage due to a desire to increase wages is protected activity, and employees are entitled to reinstatement following an unconditional offer to return to work. The employer's failure to demonstrate that the striking employees had been replaced as of the time of their offer to return to work renders its failure

to reinstate the employees unlawful.
SEQUOIA ORANGE CO., 11 ALRB No. 21

423.07 The employer violated section 1153(a) by suspending broccoli crew employees because they protested their assignment to "second cut" a field which had been first cut by another concern.
BRUCE CHURCH, INC., 11 ALRB No. 9

423.07 Employee engaged in protected concerted activity by meeting with fellow workers to discuss their wages and then taking steps to secure unlawfully withheld overtime payments, where the evidence established that the workers authorized and supported the employee's efforts.
ARCO SEED COMPANY, 11 ALRB No. 1

423.07 Employees' two work stoppages to protest employer's institution of new rule requiring lettuce harvesters to work during the rain were protected concerted activity, and the one-day suspension of employees who had engaged in the protest was unlawful.
BERTUCCIO FARMS, 10 ALRB No. 52

423.07 Employee who spoke up in meeting with foreman and fellow workers against a new work rule and in favor of other changes in wages and working conditions was engaged in concerted activity; employee spoke to fellow workers prior to meeting about seeking changes, other workers joined his comments at the meeting, and the foreman understood his remarks to be representative of the group's feelings.
GOURMET FARMS, INC., 10 ALRB No. 41

423.07 Five employees who refused to start work in protest of the out-of- seniority layoff of a fellow employee were engaged in protected activity.
MARDI GRAS MUSHROOM FARMS, 10 ALRB No. 8

423.07 Delaying the start of work to determine the wage rate to be paid is protected concerted activity and not intermittent or quickie-strikes or otherwise unprotected activity.
MIKE YUROSEK & SON, INC., 9 ALRB No. 69

423.07 Employee engaged in PCA when acting as spokesman for Employees in pay dispute with labor contractor who hired them.
NASH-DE CAMP COMPANY, 8 ALRB No. 5

423.07 Employee engaged in PCA where she solicited money from other Employees to have criticisms of their supervisor's treatment of Employees broadcast on UFW radio show where no showing statements were illegal (e.g., slanderous) even through Employee admitted many based on rumor.
TENNECO WEST, INC., 7 ALRB No. 12

423.07 Employee engaged in PCA by serving as crew spokesman in

meeting w/co. owner where workers' grievances about wages and working conditions discussed.
YAMAMOTO FARMS, 7 ALRB No. 5

423.07 A work stoppage to protest the wage rates is concerted activity protected under Labor Code section 1152(a).
TENNECO WEST (1980) 6 ALRB No. 53

423.07 The Board concluded that the employer violated section 1153(a) by discharging four employees for protected concerted activity--a sudden change in working conditions-- rejecting the employer's contention that the employees were insubordinate for refusing a work assignment. The employees were attempting to present a grievance as to unsafe working conditions in a manner which the employer had previously encouraged.
JACK BROTHERS & MCBURNEY, INC., 6 ALRB No. 12

423.07 Protest by cantaloupe crew regarding wage rate was protected activity, and credited evidence indicated the crew was fired and did not quit.
GEORGE ARAKELIAN FARMS v. ALRB (1980) 111 Cal.App.3d 258

423.07 Employees were engaged in protected concerted activity when they complained to supervisor about not receiving their paychecks, complained to supervisor and later to Labor Commissioner about not receiving overtime pay, and declined supervisor's request that they work on salary basis rather than for hourly wages.
IMPERIAL ASPARAGUS FARMS, INC., 20 ALRB No. 2

423.07 Demands concerning wages and hours made on behalf of self and 11 other employees who refused to begin working in support of demands constitutes protected concerted activity. The protected status of concerted demands concerning wages or working conditions does not depend on the reasonableness of the demands. (Giannini Packing Corp. (1993) 19 ALRB No. 16, ALJ Dec., p. 15.)
BOYD BRANSON FLOWERS, INC., 21 ALRB No. 4

423.07 Notwithstanding employees concerted' wage protest and employer decision to lay them off just hours later, no violation where employer established valid business reasons for mass reduction in overall crew size due to unseasonal weather conditions.
DUTRA FARMS, 24 ALRB No. 1

423.07 That protesters made unreasonable demands, such as the removal of UFW supporters from the fields, did not remove entire protest from the protection of the ALRA.
COASTAL BERRY CO. v. ALRB (2001) 94 Cal.App.4th 1, 114 Cal.Rptr.2d 228

423.07 Employer violated 1153(a) of the Act by refusing to rehire worker who led group complaints about abusive treatment by a forewoman and about wages.
McCAFFREY GOLDER ROSES, 28 ALRB No. 8

423.07 Concerted protest of supervisor's abusive treatment of crew is protected.
RIVERA VINEYARDS, et al., 29 ALRB No. 5

423.07 Following the well-settled rule that the reasonableness of the employees' demands is irrelevant to whether their conduct is protected concerted activity, the Board found that an employee who complained about broken ventilation fans in a milk barn was engaged in protected concerted activity even though the complaint was based on the employees' subjective perception that working conditions were uncomfortable.
AUKEMAN FARMS, 34 ALRB No. 2

423.07 Participation in wage protest with other employees constitutes protected concerted activity.
LASSEN DAIRY, INC., 35 ALRB No. 7

423.07 Anonymous letter to management instigated by at least two employees protesting conduct of supervisor constitutes protected concerted activity, as does later individual complaint directly related to the protest letter.
WOOLF FARMING CO. OF CA, INC., 35 ALRB No. 2

423.08 Minority Demands; Dissident Group; Intra-union Disputes

423.08 Employees engaged in concerted activity by meeting to discuss wage demands and then present those demands to the employer.
ROBERTS FARMS, INC., 13 ALRB No. 11

423.09 False Or Abusive Statements Or Threats

423.09 Employees were engaged in protected concerted activity when they and several other employees on layoff went to speak to company supervisors and demanded to know why company had hired a labor contractor crew instead of recalling the regular crew. Although the employees were angry and upset during their protest, their conduct was not tainted with violence, threats, intimidation or other misconduct that would remove it from the realm of protected conduct.
AGRI-SUN NURSERY, 13 ALRB No. 10

423.09 Concerted protected activity found where group of employees complained about epithets directed at them by a foreman.
SIGNAL PRODUCE COMPANY, 10 ALRB No. 23

423.09 Employee engaged in PCA where she solicited money from other Employees to have criticisms of their supervisor's treatment of Employees broadcast on UFW radio show where no showing statements were illegal (e.g., slanderous) even through Employee admitted many based on rumor.
TENNECO WEST, INC., 7 ALRB No. 12

423.09 Discharge of an employee who used an obscene term towards his supervisor in the course of an otherwise protected discussion violated section 1153(a) of the Act. The employee's conduct did not seriously undermine the employer's ability to maintain control in the work place, was unaccompanied by threats or violence, was provoked in part by employer conduct that was arguably an unfair labor practice, and in light of all surrounding circumstances did not rise to the level of egregious behavior that would cause him to lose the Act's protection.
THE ELMORE COMPANY, 28 ALRB No. 3

423.09 While serious strike misconduct may consist solely of verbal threats unaccompanied by any physical element, yelling insults at non-striking employees and imploring them to stop working does not constitute such misconduct.
COASTAL BERRY COMPANY, LLC, 28 ALRB No. 7

423.09 Where, in light of the surrounding circumstances, a statement reasonably would be construed as threatening violence or other unlawful strike activity, the statement may constitute serious strike misconduct warranting discharge. Threats by the leader of a group of strikers that they would destroy or "break" the company, occurring before and just after litany of violent and other unprotected conduct by the group, and carrying implied threat of continuance of similar activity, warranted discharge.
COASTAL BERRY COMPANY, LLC, 28 ALRB No. 7

423.09 The proper standard for evaluating serious strike misconduct is that enunciated in *Clear Pine Mouldings, Inc*. (1984) 268 NLRB 1044. Under the *Clear Pine Mouldings, Inc*. standard, a striker may be found to have engaged in serious strike misconduct, thus causing the striker to lose the protection of the Act if his or her conduct in the course of the strike "may reasonably tend to coerce or intimidate employees in the exercise of rights protected under the Act." Abusive threats need not be accompanied by violence or physical acts or gestures.
COASTAL BERRY COMPANY, LLC, 28 ALRB No. 7

423.10 Racial, National Origin, Sex Discrimination, Or Sexual Harassment, Protest Against

423.10 Employee spokesperson was engaged in protected concerted activity when he entered employer's sales office with other employees to seek rehire of a former fellow worker and to protest alleged racial discrimination in employer's hiring practices. Employer's discharge of spokesperson for insubordination found to be in violation of section 1153(a).
V. B. ZANINOVICH & SONS, 12 ALRB No. 5

423.11 Quit Or Discharge; Constructive Discharge; Retraction Of Resignation, Protest Against

423.11 Where employer issues employees' paychecks to date other than normal payday without making it clear to employees that they have not been discharged, it creates a reasonable basis for the employees to believe that they have been discharged. Having created such an ambiguous situation, the employer must so act as to make it clear to the employees that they have not been discharged, or bear the consequences of the ambiguity it created.
AMERICAN PROTECTION INDUSTRIES, et al., 17 ALRB No. 21

423.11 When an employee voluntarily leaves employment without notice and an employer's acts indicate a continuing concern for the employee's safety, the employee must be said to have quit in circumstances which do not amount to constructive discharge.
SWINE PRODUCERS UNLIMITED, INC., 13 ALRB No. 12

423.11 Employer violated 1153(a) by discharging Employee because of his participation in concerted protest against discharge of another worker and because he threatened to get additional Employees to join protest.
YAMAMOTO FARMS, 7 ALRB No. 5

423.11 Employee's protest over, or criticism of discharge of co-worker constitutes PCA for mutual aid or protection under 1152. This is so even if original discharge did not constitute ULP, so long as protesting Employee had good faith belief discharge effectuated for improper reasons.
YAMAMOTO FARMS, 7 ALRB No. 5

423.11 Protest by cantaloupe crew regarding wage rate was protected activity, and credited evidence indicated the crew was fired and did not quit.
GEORGE ARAKELIAN FARMS v. ALRB (1980) 111 Cal.App.3d 258

423.11 Board credited the General Counsel’s witnesses who testified, contrary to the employer’s testimony that they voluntarily quit, that they were fired when they entered the field and attempted to work along with the rest of the crew. The Board was especially impressed with the recollection and consistency of detail among these witnesses.
CIENIGA FARMS, INC., 27 ALRB No. 5

423.12 Mistake As To Employee's Activities

423.12 The fact that an employer in good faith believed that a returning striker engaged in misconduct sufficient to bar his/her reinstatement is no defense to a ULP finding if the misconduct in fact did not occur; however, once an employer has shown such a good faith belief, the burden of showing that the misconduct did not occur shifts to the General Counsel.
BERTUCCIO FARMS, 10 ALRB No. 52

423.12 General Counsel failed to show that employer discharged employee under mistaken belief that she had filed a complaint with the Labor Commissioner about the condition of the toilets.
CARDINAL DISTRIBUTING CO., INC., et al., 9 ALRB No. 43

423.12 Employer's claim that employees' refusal to work one afternoon, assertedly because of an adverse working condition (extreme heat), constituted a voluntary quit or, alternatively, an act of insubordination, rejected where employees' conduct found to be protected.
TANIMURA & ANTLE, INC., 21 ALRB No. 12

424.00 STRIKES AND SLOWDOWNS; WORK STOPPAGES

424.01 In General

424.01 Discharge of crew members who walked off the job to seek assistance of union unlawful. Walkout was protected activity, as there was insufficient evidence of oral no-strike agreement and walkout was not in derogation of role of union. Record does not show that crew members attempted to negotiate with employer representatives to the exclusion of the union and walkout was for express purpose of involving union in the dispute. Demands of those who staged walkout not inconsistent with position of the union because the union had not yet agreed to the employer's latest proposal and the union had not waived the right to further bargaining at time of the walkout.
BRIGHTON FARMING CO., INC., 18 ALRB No. 4

424.01 Employees who did not begin work as scheduled, but waited 10 to 15 minutes while their designated spokesman sought to persuade the employer to pay a higher piece rate, were engaged in a strike, since they were withholding their services in support of the request.
AMERICAN PROTECTION INDUSTRIES, et al., 17 ALRB No. 21

424.01 The fact that employees have different personal motives, which may vary from employee to employee, for participating in a work stoppage does not deprive an otherwise concerted work stoppage of concertedness.
SPRINGFIELD MUSHROOMS, INC., 14 ALRB No. 10

424.01 Leaving work after 8 hours in protest of onerous conditions does not constitute unprotected intermittent work stoppage where protesters attempted unsuccessfully to raise their complaint with management before walking out, despite testimony by one protester that he intended to continue to walk out early on following days.
SUMNER PECK RANCH, INC., 10 ALRB No. 24

424.01 The presence or absence of pickets is not the essential feature of strikes; rather it is the withholding of labor from the employer which is decisive.

COSSA & SONS (1977) 3 ALRB No. 12

424.01 Sufficient evidence supported ALJ's conclusion that General Counsel failed to meet burden of proof that employees engaged in a strike rather than a resignation when they left premises. Before they left, most vocal employee said he would quit and take another job. Rather than seeking reinstatement, two of the employees first applied for unemployment insurance benefits, indicating on their application forms that reason for cessation of active employment was that they had quit (rather than indicating strike as the reason) and failing to disagree with the Employer's statement that they had quit.
NICHOLS FARMS, 20 ALRB No. 17

424.01 Employees' refusal to work for a portion of one day protected where they discussed their mutual concerns about the difficulty of working in unseasonably hot weather. Board cites NLRB cases where, under similar circumstances in which employees perceived discomfort or danger in working under unique or adverse working conditions, work stoppage was deemed a spontaneous and limited one-time event and thus was not an unprotected "partial strike."
TANIMURA & ANTLE, INC., 21 ALRB No. 12

424.02 Union Responsibility In General; Strike Authorization

424.03 Object Of Strike

424.03 As a matter of law, commission of an unfair labor practice, standing alone, will not convert otherwise economic strike. General Counsel must show causal connection between ULP and prolongation of strike.
SAM ANDREWS' SONS, 12 ALRB No. 30

424.03 Dissent: Member Henning would find strike converted to unfair labor practice strike by personnel director's statement that reinstated strikers would be required to abandon their established seniority. In his view, such statement was inherently destructive of employee rights resulting in conversion of the strike irrespective of employee sentiment.
SAM ANDREWS' SONS, 12 ALRB No. 30

424.03 Economic strike is converted to ULP strike on date of the ULP, e.g., refusal to bargain, since it is presumed the ULP is one reason the strike continues. Union filing refusal to bargain charge day after Employers declared false impasse is sufficient evidence. UFW motivated at least in part by Employer's ULP.
ADMIRAL PACKING CO., et al, 7 ALRB No. 43

424.03 Employees were engaged in an unfair labor practice strike, rather than an economic strike, because the strike was initiated at least in part by the employer's refusal to bargain in good faith.

O.P. MURPHY & SONS, 5 ALRB No. 63

424.03 That protesters made unreasonable demands, such as the removal of UFW supporters from the fields, did not remove entire protest from the protection of the ALRA.
COASTAL BERRY CO. v. ALRB (2001) 94 Cal.App.4th 1, 114 Cal.Rptr.2d 228

424.04 Means Of Conducting Strike: Illegal Means; Sitdown Strikes; Slowdowns; "Union Meetings;" Obstructive Tactics; Intermittent Work Stoppages; Partial Strikes

424.04 A slowdown occurs when employees concertedly work at a slower rate than normally accomplished by that workforce, giving the employer less than the normal amount of work it had been receiving for the wages paid.
SKALLI CORPORATION dba ST. SUPERY, 17 ALRB No. 14

424.04 Concerted failure to comply with an unlawful speed up imposed through unilaterally increased production standards does not constitute a slowdown, provided employees maintain or exceed their normal rate of production.
SKALLI CORPORATION dba ST. SUPERY, 17 ALRB No. 14

424.04 A work stoppage is protected, even if it is limited to overtime hours, provided it is neither partial, intermittent, nor recurrent. The presumption that a single work stoppage is protected is rebutted only when the evidence demonstrates that the stoppage is part of a pattern or plan or intermittent action.
SPRINGFIELD MUSHROOMS, INC., 14 ALRB No. 10

424.04 Because an employer bears the burden of showing that a one-time work stoppage marks the beginning of a series of intermittent job actions over a particular issue, an employer is free to question returning strikers about their future intentions.
SPRINGFIELD MUSHROOMS, INC., 14 ALRB No. 10

424.04 Where employees engage in a one-time protected work stoppage to protest overtime work, it is immaterial whether employees were correct in their belief that overtime work had always been voluntary, since the reasonableness of workers' decision to engage in a work stoppage has no bearing on whether the stoppage is protected.
SPRINGFIELD MUSHROOMS, INC., 14 ALRB No. 10

424.04 Dissent would find violation for discharge of union activist who defied what dissent finds to be discriminatorily motivated order not to leave work place.
MAYFAIR PACKING COMPANY, 13 ALRB No. 20

424.04 Employees' two work stoppages to protest employer's institution of new rule requiring lettuce harvesters to work during the rain were protected concerted activity,

and the one-day suspension of employees who had engaged in the protest was unlawful.
BERTUCCIO FARMS, 10 ALRB No. 52

424.04 Leaving work after 8 hours in protest of onerous conditions does not constitute unprotected intermittent work stoppage where protesters attempted unsuccessfully to raise their complaint with management before walking out, despite testimony by one protester that he intended to continue to walk out early on following days.
SUMNER PECK RANCH, INC., 10 ALRB No. 24

424.04 Delaying the start of work to determine the wage rate to be paid is protected concerted activity and not intermittent or quickie-strikes or otherwise unprotected activity.
MIKE YUROSEK & SON, INC., 9 ALRB No. 69

424.04 Employees who engaged in concerted refusal to comply with rule change from suckering in rows to suckering in spaces and continued to sucker in rows were discharged in violation of 1153(a) and (c) where rule change was made in retaliation for past-and in prevention of future-protected concerted activities of employees.
ARMSTRONG NURSERIES, INC., 9 ALRB No. 53

424.04 Intermittent or recurrent partial work stoppages are not protected activity.
SAM ANDREWS' SONS, 9 ALRB No. 24

424.04 Employees engaged in PCA when they walked off job because Employer could not meet with crew regarding how much crew would be paid to redo work. Employer did not violate Act by his inability to meet.
GIUMARRA VINEYARDS, INC., 7 ALRB No. 7

424.04 The presence or absence of pickets is not the essential feature of strikes; rather it is the withholding of labor from the employer which is decisive.
COSSA & SONS (1977) 3 ALRB No. 12

424.04 Single work stoppage that consisted of complete withholding of labor to protest wages, hours, and working conditions is protected and does not constitute a partial, intermittent, or recurrent strike.
DOLE FARMING, INC., 22 ALRB No. 8

424.04 While peaceful work stoppage was protected, those who later rushed the fields and interfered with other employees' right to refrain from joining the work stoppage lost the protection of the ALRA.
COASTAL BERRY CO. v. ALRB (2001) 94 Cal.App.4th 1, 114 Cal.Rptr.2d 228

424.04 Where it was found that protesters rushed the fields and engaged in unprotected conduct by interfering with the rights of nonstriking workers, it was unnecessary to

proceed to determine whether their individual actions constituted "serious strike misconduct."
COASTAL BERRY CO. v. ALRB (2001) 94 Cal.App.4th 1, 114 Cal.Rptr.2d 228

424.04 The present standard for strike misconduct is that adopted by the NLRB in *Clear Pine Mouldings, Inc.* (1984) 268 NLRB 1044, i.e., that strike misconduct is "serious" (thereby justifying dismissal or denial of reinstatement) if it reasonably tends to coerce or intimidate nonstriking workers.
COASTAL BERRY CO. v. ALRB (2001) 94 Cal.App.4th 1, 114 Cal.Rptr.2d 228

424.04 Once the G.C. has established that a striker was denied reinstatement for conduct related to a strike, the burden shifts to the employer to establish that it had an honest belief that the striker engaged in strike misconduct. (The employer's determination not to reinstate a striker must be based on evidence that the striker personally engaged in strike misconduct.) If the employer meets its burden, the G.C. then has the burden of establishing that the striker did not in fact engage in the alleged misconduct or that it was not sufficiently serious to remove the protection of the Act.
COASTAL BERRY CO. v. ALRB (2001) 94 Cal.App.4th 1, 114 Cal.Rptr.2d 228

424.04 Strike misconduct need not consist of physical acts, but may consist of an expression of hostility that may tend to coerce or intimidate nonstriking employees; the misconduct need not be directed at nonstriking employees, as threatening customers and company officials and striking their vehicles has been deemed misconduct even where no actual damage resulted, as has acts of vandalism or sabotage directed against the employer; actions that promote or encourage misconduct by other strikers may also justify discharge.
COASTAL BERRY CO. v. ALRB (2001) 94 Cal.App.4th 1, 114

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424.04 The proper standard for evaluating serious strike misconduct is that enunciated in *Clear Pine Mouldings, Inc*. (1984) 268 NLRB 1044. Under the *Clear Pine Mouldings, Inc*. standard, a striker may be found to have engaged in serious strike misconduct, thus causing the striker to lose the protection of the Act if his or her conduct in the course of the strike "may reasonably tend to coerce or intimidate employees in the exercise of rights protected under the Act."
COASTAL BERRY COMPANY, LLC, 28 ALRB No. 7

424.05 Secondary Or Sympathy Strikes

424.06 Termination Of Strike; Moot Controversy

424.07 Recall After Strike; Seniority And Job Rights Of Strikers, Nonstrikers, And Strike Replacements

424.07 Where Board's "Seabreeze" doctrine not applicable, as Members McCarthy and Gonot found they were not in this case, "legitimate and substantial business justification" for failing or refusing to reinstate an economic striker immediately upon offer to return to work on grounds striker permanently replaced requires affirmative showing by employer that both employer and replacement worker had mutual understanding employment status would be permanent.
SAM ANDREWS' SONS, INC., 12 ALRB No. 30

424.07 Under NLRB precedent, where Employer fails to reinstate returning strikers on grounds former positions occupied by replacements, employer violates section 1153(c) and (a) absent showing that prior to offer to return, replacements understood they were hired as permanent employees.
SAM ANDREWS' SONS, INC. 12 ALRB No. 30

424.07 As a matter of law, commission of an unfair labor practice, standing alone, will not convert otherwise economic strike. General Counsel must show causal connection between ULP and prolongation of strike.
SAM ANDREWS' SONS 12 ALRB No. 30

424.07 Dissent: Member Henning would find strike converted to unfair labor practice strike by personnel director's statement that reinstated strikers would be required to abandon their established seniority. In his view, such

statement was inherently destructive of employee rights resulting in conversion of the strike irrespective of employee sentiment.
SAM ANDREWS' SONS, INC., 12 ALRB No. 30

424.07 Dissent: Member Carrillo would apply presumptions announced in Seabreeze Berry Farms to reinstatement of economic strikers into seasonal positions filled by replacements where periodic layoffs constituted "significant break" in employment relationship.
SAM ANDREWS' SONS, INC., 12 ALRB No. 30

424.07 A concerted work stoppage due to a desire to increase wages is protected activity, and employees are entitled to reinstatement following an unconditional offer to return to work. The employer's failure to demonstrate that the striking employees had been replaced as of the time of their offer to return to work renders its failure to reinstate the employees unlawful.
SEQUOIA ORANGE CO., 11 ALRB No. 21

424.07 Economic strikers who unconditionally apply for reinstatement have a right to immediate reinstatement unless the employer can show that its refusal to reinstate was due to a legitimate and substantial business justification. BERTUCCIO FARMS, 10 ALRB No. 52

424.07 A recognized legitimate and substantial business justification for refusing to reinstate returning economic strikers is the employer's good faith belief that the strikers engaged in serious strike misconduct.
BERTUCCIO FARMS, 10 ALRB No. 52

424.07 Unfair labor practice strikers who make unconditional request for reinstatement must be reinstated to former positions, and replacement workers must be ousted.
VESSEY & COMPANY, INC., 7 ALRB No. 44

424.07 Unfair labor practice strikers who make unconditional request for reinstatement must be reinstated to their former positions, and replacement workers must be ousted.
VESSEY & COMPANY, INC., 7 ALRB No. 44

424.07 The burden of proving the replacements for economic strikers were hired as permanent employees is on the employer, and the employer must show a mutual understanding between itself and the replacements that the replacements are permanent.
VESSEY & COMPANY, INC. v. ALRB (1989) 210 Cal.App.3d 629

424.07 If an employer has permanently filled the positions held by economic strikers before receiving the strikers' unconditional offers to return to work, the strikers are only entitled to reinstatement as jobs become available. If, however, the strikers have not been permanently replaced at the time the offers are received, they are entitled to immediate reinstatement.

VESSEY & COMPANY, INC. v. ALRB (1989) 210 Cal.App.3d 629

424.07 For purposes of determining under the NLRA whether a striking worker is entitled to reinstatement, a replacement worker will be deemed permanent if the employer can show that the men or women who replaced the economic strikers are regarded by themselves and the employer as having received their jobs on a permanent basis.
VESSEY & COMPANY, INC. v. ALRB (1989) 210 Cal.App.3d 629

424.07 Refusal to rehire strikers after a strike or receipt of their unconditional offers to return to work constitutes an unfair labor practice despite the absence of bad faith or antiunion animus, as such refusal discourages employees from exercising their rights to organize and to strike as guaranteed by the ARLA.
VESSEY & COMPANY, INC. v. ALRB (1989) 210 Cal.App.3d 629

424.07 A striker's presumptive entitlement to his job depends on the nature of the strike and whether an employer who refuses to reinstate strikers can show legitimate and substantial business justifications for such refusal.
VESSEY & COMPANY, INC. v. ALRB (1989) 210 Cal.App.3d 629

424.07 Under the NLRA strikers retain their status as employees unless they have obtained other regular and substantially equivalent employment, and at the conclusion of the strike or upon offering to return to work, they have presumptive entitlement to their jobs with all attendant rights.
VESSEY & COMPANY, INC. v. ALRB (1989) 210 Cal.App.3d 629

424.07 A unilateral, undisclosed belief by the general manager was inadequate to satisfy the requisite burden of proving a mutual belief that the replacement workers were permanent employees.
VESSEY & COMPANY, INC. v. ALRB (1989) 210 Cal.App.3d 629

424.07 Substantial evidence supported a finding of the Board that an agricultural employer had not permanently replaced strikers before it received the strikers' offers to return to work where nothing in the record indicated that the employer's general manager had communicated to the replacement workers his subjective belief that they were permanent.
VESSEY & COMPANY, INC. v. ALRB (1989) 210 Cal.App.3d 629

424.07 The key factor for showing a mutual understanding between the employer and replacement employees that the replacement employees are permanent is whether the employer communicated its intentions to the replacement workers.
VESSEY & COMPANY, INC. v. ALRB (1989) 210 Cal.App.3d 629

424.07 Generally, the hiring of permanent replacement workers to fill openings created by economic strikers, as compared

to unfair labor practice strikers who are entitled to immediate reinstatement at the expense of replacement workers, is considered a legitimate business justification for refusing to hire back those strikers.
VESSEY & COMPANY, INC. v. ALRB (1989) 210 Cal.App.3d 629

424.07 Permanent replacement of economic strikers not established where employer failed to show mutual understanding of permanent status of replacement workers; Permanent replacement is an affirmative defense to reinstatement, and it is employer's burden to raise and establish such defense. It is not General Counsel's burden to identify all possible issues in the case by anticipating and denying any affirmative defenses that the employer might raise.
SUNRISE MUSHROOMS, INC., 22 ALRB No. 2

424.08 Strike Settlement Agreements

424.08 Where strikers were told they had to sign in order to get unemployment insurance benefits and vacation pay, separation agreement providing for strikers to resign and then have resignation converted to layoff to facilitate unemployment benefits, and for mutual release of claims, unenforceable because not a clear and unmistakable waiver, against public policy, and lacked consideration.

SUNRISE MUSHROOMS, INC., 22 ALRB No. 2

425.00 NO-STRIKE CLAUSE; "WILDCAT STRIKES," SPONTANEOUS WALKOUTS

425.01 In General

425.01 Vague assurance from union negotiator that "you won't have any problems with me," in response to employer representative's exhortation that he would negotiate with the union but not with the employees in the fields, insufficient to establish oral no-strike agreement. Similarly, earlier agreement to reinstate crew who had staged a walkout, with admonition that "this was the last time this was going to happen," does not reflect mutual agreement that reinstatement was quid pro quo for no-strike agreement.
BRIGHTON FARMING CO., INC., 18 ALRB No. 4

425.01 Employer did not unlawfully discharge employees who left work to attend a negotiation session where the work stoppage was prohibited by a no-strike provision in the contract and employer clearly stated that anyone who did not return to work would be discharged.
TMY FARMS, INC., 9 ALRB No. 10

425.02 What Constitutes A Strike Under No-Strike Clause

425.02 Employer did not unlawfully discharge employees who left

work to attend a negotiation session where the work stoppage was prohibited by a no-strike provision in the contract and employer clearly stated that anyone who did not return to work would be discharged.
TMY FARMS, INC., 9 ALRB No. 10

425.03 Union And Union Officers' Responsibility; Unauthorized Strikes

425.04 Grievance Or Arbitration Provisions Of Contract As No-Strike Clause

426.00 PICKETING

426.01 In General

426.01 Mere maintenance of picket line while tendering offer to return did not render offer insincere or invalid.
VESSEY & COMPANY, INC., 7 ALRB No. 44

426.01 Mere maintenance of picket line while tendering offer to return did not render offer insincere or invalid.
VESSEY & COMPANY, INC., 7 ALRB No. 44

426.02 What Constitutes Picketing; Strike Distinguished; Threat To Picket

426.02 Parking lot handbilling occurring simultaneously and in the same general area as unlawful sidewalk picketing constitutes an extension and integral part of the picketing.
UNITED FARM WORKERS OF AMERICA, 19 ALRB No. 15

426.02 Parking lot conduct, which involved the wearing of placards, speaking to store customers, distribution of leaflets, and patrolling by handbillers who walked up and down the parking lot aisles and vigorously approached store customers with their leaflets, constituted picketing.
UNITED FARM WORKERS OF AMERICA, 19 ALRB No. 15

426.03 Right To Picket In General; Who May Picket; Intra-union Disputes; Who May Be Picketed

426.03 In determining the scope of the section 1154(d)(4) prohibition of jurisdictional picketing, the Board looks to the NLRA for guidance but takes into account the greater protections afforded employee informational picketing and secondary activity under the ALRA.
UNITED VINTNERS, INC., 10 ALRB No. 34

426.04 Union Responsibility; Local And International Unions

426.04 Where union members were authorized and directed by union to engage in demonstrations or picketing activity, later acts and conduct during confrontation at laundromat were

not such a deviation from conduct to warrant finding that agency relationship had terminated. Respondent union found liable for acts and conduct of union member at two (trailer park, laundromat)locations.
UFW/CALIFORNIA COASTAL FARMS, 6 ALRB No. 64

426.05 Honoring Picket Lines

426.06 Interference With Picketing (see also section 406)

427.00 METHODS OF PICKETING

427.01 In General

427.02 Statements On Picket Signs; Misrepresentations

427.03 Following Or Obstructing Vehicles

427.04 Mass Picketing, Obstructing Access, Or Interference With Business

427.05 Violence, Threats, Molesting Workers Or Customers; Name Calling

427.05 Evidence presented by Respondent of sporadic picket line violence was not of such magnitude to render strikers' offer to return to work conditional or insincere. Specific instances of strike misconduct or violence was more appropriately addressed at compliance stage.
VESSEY & COMPANY, INC., 7 ALRB No. 44

427.05 Threats of unspecified reprisals constitute unlawful restraint and coercion in violation of section 1154(a)(1) of Act. Local Union No. 153 IBEW (1975) 221 NLRB 345 [90 LRRM 1688].
UFW/CALIFORNIA COASTAL FARMS, 6 ALRB No. 64

427.05 Union violated section 1154(a)(1) by picketing residences of agricultural employees in large numbers, shouting loudly and angrily, threatening employees, and using coarse and contemptuous epithets. Conduct tended to coerce and restrain targeted workers.
UFW/CALIFORNIA COASTAL FARMS, 6 ALRB No. 64

427.05 Union violated section 1154(a)(1) by threatening agricultural employee ("stop working for sake of your family;" "things would go bad for sure") at public laundromat.
UFW/CALIFORNIA COASTAL FARMS, 6 ALRB No. 64

427.06 Forfeiture Of Right Of Peaceful Picketing

427.07 Location Of Picketing; Trespassing; Residential Picketing

427.07 Where union members were authorized and directed by union to engage in demonstrations or picketing activity, later

acts and conduct during confrontation at laundromat were not such a deviation from conduct to warrant finding that agency relationship had terminated. Respondent union found liable for acts and conduct of union member at two (trailer park, laundromat) locations.
UFW/CALIFORNIA COASTAL FARMS, 6 ALRB No. 64

427.07 Where union violated section 1154(a)(1) by picketing residences of agricultural employees, remedy concluded submission of written apology to residents of picketed houses.
UFW/CALIFORNIA COASTAL FARMS, 6 ALRB No. 64

427.07 Board rejected ALO suggestion to impose limitations as to number of picketers who may picket residence and times when such picketing may be permitted. Board to review such matters on case-by-case basis.
UFW/CALIFORNIA COASTAL FARMS, 6 ALRB No. 64

427.07 Union violated section 1154(a)(1) by threatening agricultural employee ("stop working for sake of your family;" "things would go bad for sure") at public laundromat.
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UFW/CALIFORNIA COASTAL FARMS, 6 ALRB No. 64

428.00 OBJECT OF PICKETING; NONREPRESENTATIVE UNIONS

428.01 In General

428.02 Organization Or Recognition As Object (see section 301.03)

428.02 Union did not violate recognitional picketing statute (Lab. Code § 1154(h)) because, although union's ultimate goal may have been recognition by California grape growers, General Counsel did not demonstrate that recognition was union's immediate goal. Rather, union's immediate goal was to end supermarket's promotion and sale of table grapes tainted with pesticides.
UNITED FARM WORKERS OF AMERICA, 19 ALRB No. 15

428.02 Respondent union violated section 1154(d)(3) and (h) of the Act by picketing the employer for recognition when the Board had properly certified another union as the collective bargaining representative of said employees. (ALJD pp. 5-6.)
JULIUS GOLDMAN'S EGG CITY, 5 ALRB No. 8

428.03 Certification Or Other Proceeding Pending

428.04 Contest of Incumbent Union's Certification Or Contract; Jurisdictional Disputes

428.04 Although classic jurisdictional dispute not likely to occur under ALRA, potential 1154(d)(4) claim may arise in certain situations, such as where employer employs both agricultural and non-agricultural employees or where employer contracts with other employers, becomes part of joint enterprise or is replaced by alter ego or successor with larger pre-existing work force.
UNITED VINTNERS, INC., 10 ALRB No. 34

428.04 Where union picketed with object of preserving vineyard work previously performed by its members under long-standing vineyard management arrangement with employer of its members and decision to contract with non-union management company initiated by charging party which has since "attempted to withdraw the 1154(d)(4) charge, Board found dispute at issue not subject to resolution under sections 1154(d)(4) and 1160.5 and quashed notice of hearing.
UNITED VINTNERS, INC., 10 ALRB No. 34

428.04 Respondent union violated section 1154(d)(3) and (h) of the Act by picketing the employer for recognition when the Board had properly certified another union as the collective bargaining representative of said employees. (ALJD pp. 5-6.) JULIUS GOLDMAN'S EGG CITY, 5 ALRB No. 8

428.05 Protest Against Working Conditions, Discharge, Replacement Of Strikers, Breach Of Contract Or Unfair Practices

428.05 Workers were engaged in PCA when attempting to convince co-workers that fields too wet for work.
SUPERIOR FARMING COMPANY, 8 ALRB No. 40

428.06 Racial Equality As Object

429.00 SECONDARY ACTIVITY; HOT CARGO CONTRACTS; JURISDICTIONAL DISPUTES; RECOGNITIONAL PICKETING

429.01 Secondary Picketing And Boycotts

429.01 Certified labor organization does not lose ability to engage in do not patronize picketing publicity under second publicity proviso of ALRA at end of initial certification year. Labor organization is certified until decertified.(Nish Noroian Farms (1982) 8 ALRB No. 25.)
UFW (THE CAREAU GROUP dba EGG CITY), 15 ALRB No. 10

429.01 Board orders labor organization to compensate persons injured in their business or property by union's violations of the secondary boycott provisions of the ALRA. Such persons may participate, by intervention if

necessary, in compliance proceedings following the Board's liability determination, but no compensation shall be awarded for conduct not found violative of the Act in the liability proceeding. Regional Directors shall conduct secondary boycott compliance proceedings in conformity with the procedures and practices set forth in Title 8, California Code of Regulations, section 20290, et seq., so far as possible.
UFW (THE CAREAU GROUP dba EGG CITY), 15 ALRB No. 10

429.01 Similarity of secondary boycott provisions of ALRA to those of NLRA mandates construction of ALRA's provisions in conformity with precedents construing similar provisions of NLRA. (Kaplan's Fruit & Produce Co. v. Superior Court (1979) 26 Cal.3d 60 [160 Cal.Rptr. 745].)
UFW (THE CAREAU GROUP dba EGG CITY), 15 ALRB No. 10

429.01 ALRB rejects employer's contention that second and third publicity provisos of ALRA permit only indirect requests by labor organization to public to withdraw patronage from targeted secondary entity. The federal cases impose no such restriction. (Honolulu Typographical Union Local No. 37 v. NLRB (D.C. Cir. 1968) 401 F.2d 952 [698 LRRM 3004].)
UFW (THE CAREAU GROUP dba EGG CITY), 15 ALRB No. 10

429.01 Third publicity proviso of ALRA permits labor organization, not currently certified but that has not lost an election within the preceding 12 months, and with respect to the unit of agricultural employees the labor organization wishes to represent no other labor organization is currently certified representative, to engage in all publicity permissible under the first proviso and, in addition, to request the consuming public to withdraw its patronage from the targeted secondary entity provided that all restrictions applicable to a certified labor organization are met and provided further that the publicity used to request the public to withdraw its patronage not be picketing.
UFW (THE CAREAU GROUP dba EGG CITY), 15 ALRB No. 10

429.01 ALRB rejects ALJ's totality of circumstances approach to adequacy of labor organization's informational disclosure. Where union relies on multiple communications media such as picket signs, chanting, and union flags, at least one such medium must furnish all necessary informational elements required to satisfy truthfully advising provision of publicity provisos. Other media used must refrain from false or misleading information.
UFW (THE CAREAU GROUP dba EGG CITY), 15 ALRB No. 10

429.01 Labor organization agent's warning to secondary employer that union would follow secondary's delivery trucks to discover secondary's customers and would engage in informational picketing of customers to inform them of primary dispute and secondary's and secondary's customers' role in dispute not illegal threat under ALRA.

Agent's warning merely informs secondary of union's intent to engage in legal conduct.
UFW (THE CAREAU GROUP dba EGG CITY), 15 ALRB No. 10

429.01 Labor organization engages in do not patronize picketing publicity at its peril after it loses a decertification election and files objections to the election. If the election is set aside by the Board, no violation of the secondary boycott provisions of the ALRA will be found if the picketing publicity is otherwise legal. If union's objections are dismissed and election is not set aside, Board may find violation for engaging in do not patronize publicity by uncertified labor organization from date of tally of ballots.
UFW (THE CAREAU GROUP dba EGG CITY), 15 ALRB No. 10

429.01 Second publicity proviso of ALRA permits currently certified labor organization to engage in all publicity permitted under the first proviso, and also allows it to request public to withdraw its patronage from entity that is the target of its secondary conduct provided that there are no proscribed secondary effects as under the first proviso, and provided also that the labor organization's publicity truthfully advises the consuming public of the nature of its primary dispute and the targeted secondary entity's relationship to that dispute.
UFW (THE CAREAU GROUP dba EGG CITY), 15 ALRB No. 10

429.01 As picketing is qualitatively different from pure speech such as leafletting and is clearly entitled to less constitutional protection than pure speech, Board's interpretation of fourth publicity proviso of ALRA does not violate labor organization's free speech rights under federal or California constitutions by requiring that labor organization's picketing publicity truthfully advise the public of nature of its primary dispute and relationship of secondary entities to that dispute.
UFW (THE CAREAU GROUP dba EGG CITY), 15 ALRB No. 10

429.01 Labor organization agent's threat to secondary employer to picket secondary's customers even if secondary ceased to supply customers with primary's struck product illegal under ALRA. If primary's struck product not present at secondary's customers, there is no producer/ distributor relationship between primary and secondary or secondary's customers as required by publicity provisos, and picketing is not protected by publicity provisos. Threat to engage in illegal conduct is illegal threat.
(San Francisco Labor Council (Ito Packing Co.) (1971) 191 NLRB 261 [77 LRRM 1593].)
UFW (THE CAREAU GROUP dba EGG CITY), 15 ALRB No. 10

429.01 First publicity proviso of ALRA declares all publicity, including picketing, concerning labor organizations' disputes with primary employers legal provided that such publicity (1) truthfully advises public of existence and nature of primary labor dispute and relation of targeted

secondary employer to that dispute; (2) results in no proscribed secondary effects such as work stoppages or interruptions in pick-ups and deliveries among employees of an employer other than the one(s) with whom the union has its actual labor dispute; and (3) does not request that the consuming public withdraw its patronage from the entity that is the target of the union's secondary conduct.
UFW (THE CAREAU GROUP dba EGG CITY), 15 ALRB No. 10

429.01 Board orders labor organization found to have violated secondary boycott provisions of ALRA to mail notice of Board's decision to secondary entities with respect to whom the labor organization's secondary conduct was found violative of ALRA. Mailing serves function of informing most directly affected entities of Board's resolution of issues never previously addressed.
UFW (THE CAREAU GROUP dba EGG CITY), 15 ALRB No. 10

429.01 Fourth publicity proviso of ALRA bans unconstitutional restrictions on labor organizations' publicity, including picketing, in order to re-emphasize Legislature's commitment to widest possible latitude for labor organizations to publicize primary disputes consistent with the protections granted secondary employers and entities.
UFW (THE CAREAU GROUP dba EGG CITY), 15 ALRB No. 10

429.01 ALRB rejects ALJ's conclusion that labor organization agent's statement that labor organization would picket secondary's customers as long as they did business with secondary really meant the secondary's customers would be picketed as long as they received the primary's product from the secondary. Board will not require secondaries to show they were unaware agent's threats really were aimed at primary rather than at themselves as statements plainly indicated. Ambiguous threats will be construed against the labor organization.
UFW (THE CAREAU GROUP dba EGG CITY), 15 ALRB No. 10

429.01 ALRB rejects employer's contention that all informational elements necessary to truthfully advise public of nature of labor organization's primary dispute and targeted secondary entity's relation to that dispute, as required by ALRA's publicity provisos, must be on each and every picket sign used by a picketing labor organization.
UFW (THE CAREAU GROUP dba EGG CITY), 15 ALRB No. 10

429.01 Labor organization agent's direct request to secondary employer not to do business with primary not prohibited under ALRA. Such request is mere solicitation to exercise managerial discretion, and does not constitute prohibited threats, coercion, or restraint. (NLRB v. Servette, Inc. (1964) 377 U.S. 46 [84 S.Ct. 1098].)
UFW (THE CAREAU GROUP dba EGG CITY), 15 ALRB No. 10

429.01 Union's publicity is adequate to meet truthfully advising

requirement of ALRA's publicity provisos if (1) there is no substantial departure from fact and (2) there is no inferable intent to deceive. (International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Milk Drivers and Dairy Employees Local 537 (Lohman Sales) (1961) 132 NLRB 901 [49 LRRM 1429].)
UFW (THE CAREAU GROUP dba EGG CITY), 15 ALRB No. 10

429.01 To meet truthfully advising requirement of ALRA's publicity provisos labor organization's publicity must (1) disclose existence and nature of primary dispute and (2) indicate secondary employer's relationship with that dispute. (Hospital & Service Employees Union, Local 399, Service Employees International Union, AFL-CIO v. NLRB (Delta Airlines) (9th Cir. 1984) 743 F.2d 1417 [117 LRRM 2717].)
UFW (THE CAREAU GROUP dba EGG CITY), 15 ALRB No. 10

429.01 Labor organization agent's warning that picketing of secondary would continue as long as secondary received primary's product illegal under ALRA where picketing then occurring illegal for failure to comply with requirements of publicity provisos. When labor organization warns that it will continue picketing that is ongoing, it assumes risk that picketing that is occurring may be illegal.
UFW (THE CAREAU GROUP dba EGG CITY), 15 ALRB No. 10

429.01 ALRA's ban on "hard" or employee boycott, in which labor organization attempts to force other employers to curtail or cease business contacts with the employer(s) with whom it has its actual labor dispute by persuading employees of those other employers to withhold their services until compliance with the labor organization's wishes is obtained, indicates legislative intent not to permit agricultural labor organizations unlimited power to coerce secondary employers.
UFW (THE CAREAU GROUP dba EGG CITY), 15 ALRB No. 10

429.01 Legislature balanced agricultural labor organizations' interest in appealing to the public, including consumers, to support them against the primary employer(s) with whom they have their actual dispute with secondary employers' interest in avoiding entrapment in labor dispute(s) not of their own making by creating ordered sequence of permissible publicity techniques that enable labor organizations to communicate their information to the consuming public while limiting the application of those techniques so as to prevent undue economic coercion of secondary employers.
UFW (THE CAREAU GROUP dba EGG CITY), 15 ALRB No. 10

429.02 Secondary Boycotts And Secondary Recognition Strikers; Labor Code Section 1154(d)(2)

429.02 Union supporters engaged in unlawful, do-not patronize secondary picketing when they stood or walked back and

forth along sidewalks in front of stores, carried banners or flags and large signs urging people to boycott table grapes and not to shop in the stores, and sometimes chanted slogans or approached cars as they entered the parking lot and asked occupants not to shop at the stores.
UNITED FARM WORKERS OF AMERICA, 19 ALRB No. 15

429.02 Since union was certified at only about 12 of the 830 table grape growers in California, its do-not-patronize picketing of secondary employer is not protected by second proviso of Labor Code section 1154(d), which permits do-not-patronize picketing if union is currently certified as representative of the primary employer's employees.
UNITED FARM WORKERS OF AMERICA, 19 ALRB No. 15

429.02 Union's secondary do-not-patronize picketing is not protected by free speech provisions of California or U.S. Constitution.
UNITED FARM WORKERS OF AMERICA, 19 ALRB No. 15

429.02 Labor Code sec. 1155, which provides that the expression of views, arguments or opinions shall not constitute evidence of an unfair labor practice, protects normal persuasive activities engaged in by employers and unions, but does not apply to coercive speech or picketing in furtherance of unfair labor practices.
UNITED FARM WORKERS OF AMERICA, 19 ALRB No. 15

429.03 Inducement For Secondary Object; "Individuals" Induced; Labor Code Section 1154(d)(1)

429.04 Strikes Or Picketing In Furtherance Of Boycott

429.04 Prohibition in ALRA against secondary picketing to induce customers to stop doing business with struck employer does not prohibit primary picketing which induces customers to refuse to pick up orders.
KAPLAN'S FRUIT & PRODUCE CO. v. SUPERIOR CT. (1979) 26 Cal.3d 60

429.05 Hot Cargo Contracts And Subcontractor Clauses, Ban On; Labor Code Section 1154.5

429.06 Jurisdictional Disputes; Labor Code Sections 1154(d)(4); 1160.5

429.07 "Any Employer" Under Section 1154(d)(4)

429.07 Where employees withhold their labor to exert pressure on the employer for a change in the wage structure, they are engaged in protected concerted activity. Termination for the refusal to work violates the Act.
LIGHTNING FARMS, 12 ALRB No. 7

429.07 In section 1160.5 proceeding Board did not reach

questions of charging party's motivation for change in vineyard management contract or its obligation to bargain over that change or whether union engaged in unlawful secondary activity or recognitional picketing.
UNITED VINTNERS, INC., 10 ALRB No. 34

429.07 Because section 1154(d)(4) protects "any employer," it is not necessary for Board to determine whether party charging union with unlawful jurisdictional picketing is "agricultural" employer or employer of vineyard workers whose work is in dispute.
UNITED VINTNERS, INC., 10 ALRB No. 34

429.07 Where union picketed with object of preserving vineyard work previously performed by its members under long-standing vineyard management arrangement with employer of its members and decision to contract with non-union management company initiated by charging party which has since attempted to withdraw the 1154(d)(4) charge, Board found dispute at issue not subject to resolution under sections 1154(d)(4) and 1160.5 and quashed notice of hearing.
UNITED VINTNERS, INC., 10 ALRB No. 34

429.07 In determining the scope of the section 1154(d)(4) prohibition of jurisdictional picketing, the Board looks to the NLRA for guidance but takes into account the greater protections afforded employee informational picketing and secondary activity under the ALRA.
UNITED VINTNERS, INC., 10 ALRB No. 34

429.07 Although classic jurisdictional dispute not likely to occur under ALRA, potential 1154(d)(4) claim may arise in certain situations, such as where employer employs both agricultural and non-agricultural employees or where employer contracts with other employers, becomes part of joint enterprise or is replaced by alter ego or successor with larger pre-existing work force.
UNITED VINTNERS, INC., 10 ALRB No. 34

430.00 STRIKERS, PICKETING, AND BOYCOTTS: DISCHARGE; REFUSAL OF REINSTATEMENT, ETC.

430.01 In General

430.01 Employer's unilateral change in terms and conditions of employment is per se refusal to bargain.
GEORGE ARAKELIAN FARMS v. ALRB (1986) 186 Cal.App.3d 94

430.02 What Constitutes A "Discharge" Of Strikers; Tactical Discharge; Quitting

430.02 Board held that the employer violated sections 1153(c) and (a) by discharging unfair labor practice strikers. Although the strikers had earlier participated in unprotected activities, the employer indicated its

willingness to have the strikers return by requiring them to sign a "no-strike" agreement under penalty of discharge.
O.P. MURPHY& SONS, 5 ALRB No. 63

430.02 In determining whether or not a striker has been discharged, the test to be used is whether the words or conduct of the employer reasonably led the strikers to believe they were discharged and the employer has the burden of resolving any ambiguity created by its conduct. Where employer tells strikers to go home, employees indicate that they believe they have been discharged by asking for immediate payment of unpaid wages, employer indicates on termination form that employees were insubordinate for refusing to work, and employer is unwilling to rehire any of the workers, employees reasonably believed that they had been discharged, and did not voluntarily quit their employment.
DOLE FARMING, INC., 22 ALRB No. 8

430.02 Strikers not discharged where evidence shows they did not believe they had been discharged and ranch manager asked them to return to work immediately after purported discharge by foreman.
S&S RANCH, INC., 22 ALRB No. 7

430.03 Offer of Benefits, "Superseniority," Etc. To Refuse To Strike Or Abandon Strike

430.04 Application For Reinstatement, Sufficient; Individual Or Union Application

430.04 When strikers present selves for work, they have made a sufficient unconditional offer to return to work, even though no express offer is articulated to employer.
ANTHONY HARVESTING, INC., 18 ALRB No. 7

430.04 Respondent, having unlawfully concluded that strike constituted a quit, would have declined to consider an express unconditional offer to return to work, if such express offer had been made.
ANTHONY HARVESTING, INC., 18 ALRB No. 7

430.04 Economic strikers who unconditionally apply for reinstatement have a right to immediate reinstatement unless the employer can show that its refusal to reinstate was due to a legitimate and substantial business justification.
BERTUCCIO FARMS, 10 ALRB No. 52

430.04 Filing ULP charge alleging unlawful failure to rehire does not constitute unconditional offer to return to work. Absent other evidence of unconditional offer, no violation of Act by failure to rehire.
COLACE BROTHERS, INC., 8 ALRB No. 40

430.04 Unfair labor practice strikers who make unconditional

request for reinstatement must be reinstated to former positions and replacement workers must be ousted.
VESSEY & COMPANY, INC., 7 ALRB No. 44

430.04 Strikers' offer to return to work and declaration that they were available for work "upon recall" was an unconditional offer to return even though parties' expired labor agreement had contained a seniority provision. Mere maintenance of picket line while tendering offer to return did not render offer insincere or invalid. Evidence presented by Respondent of sporadic picket line violence was not of such magnitude to render strikers' offer to return to work conditional or insincere. Specific instances of strike misconduct or violence was more appropriately addressed at the compliance stage. Unfair labor practice strikers who make unconditional request for reinstatement must be reinstated to former positions, and replacement workers must be ousted. (Ibid.)
VESSEY & COMPANY, INC., 7 ALRB No. 44

430.04 Evidence presented by Respondent of sporadic picket line violence was not of such magnitude to render strikers' offer to return to work conditional or insincere. Specific instances of strike misconduct or violence was more appropriately addressed at compliance stage.
VESSEY & COMPANY, INC., 7 ALRB No. 44

430.04 Mere maintenance of picket line while tendering offer to return did not render offer insincere or invalid.
VESSEY & COMPANY, INC., 7 ALRB No. 44

430.04 Strikers' offer to return to work and declaration that they were available for work "upon recall" was an unconditional offer to return even though parties' expired labor agreement had contained a seniority provision.
VESSEY & COMPANY, INC., 7 ALRB No. 44

430.04 Discharged strikers need not make an unconditional offer to return to work because such an offer would be futile; Futility doctrine applies only where, as in discharges, the employment relationship is severed by actions of the employer, and does not apply where employees signed separation agreements which purported to constitute resignations, since in such circumstances the employees would not reasonably believe that an offer to return would be futile.
SUNRISE MUSHROOMS, INC., 22 ALRB No. 2

430.04 Offer to return to work was on behalf of entire group of strikers congregated outside employer's office where three representatives said to the employer, "give us our jobs back to all of us."
S&S RANCH, INC., 22 ALRB No. 7

430.05 Replacement Of Strikers, Effect Of; Economic Or Unfair

Practice Strikes

430.05 Permanent replacement of economic strikers is a defense to failure to reinstate, but employer has burden of showing that both it and the replacements explicitly understood that the replacements hired with permanent status.
ANTHONY HARVESTING, INC., 18 ALRB No. 7

430.05 Upon receipt of economic strikers' unconditional offers to return to work and employer's subsequent refusal to reinstate those returning workers, employer violates Act unless employer establishes legitimate and substantial business justifications.
VESSEY & COMPANY, INC., 13 ALRB No. 17

430.05 Employer violates sections 1153(c) and (a) by failing to treat returning strikers' offers to return to work in nondiscriminatory fashion where employer alters its established seniority practices and imposes new hiring and recall policies designed to limit reemployment opportunities of returning strikers.
VESSEY & COMPANY, INC., et al., 13 ALRB No. 17

430.05 In establishing legitimate and substantial business justifications for not offering reinstatement to returning economic strikers, employer has burden of proving a mutual understanding between itself and the replacements that they were permanent.
VESSEY & COMPANY, INC., 13 ALRB No. 17

430.05 Under NLRB precedent, where Employer fails to reinstate returning strikers on grounds former positions occupied by replacements, employer violates section 1153(c) and (a) absent showing that prior to offer to return, replacements understood they were hired as permanent employees.
SAM ANDREWS' SONS, INC. 12 ALRB No. 30

430.05 Dissent: Member Henning would find strike converted to unfair labor practice strike by personnel director's statement that reinstated strikers would be required to abandon their established seniority. In his view, such statement was inherently destructive of employee rights resulting in conversion of the strike irrespective of employee sentiment.
SAM ANDREWS' SONS, INC., 12 ALRB No. 30

430.05 As a matter of law, commission of an unfair labor practice, standing alone, will not convert otherwise economic strike. General Counsel must show causal connection between ULP and prolongation of strike.
SAM ANDREWS' SONS, 12 ALRB No. 30

430.05 Dissent: Member Carrillo would apply presumptions announced in Seabreeze Berry Farms to reinstatement of economic strikers into seasonal positions filled by

replacements where periodic layoffs constituted "significant break" in employment relationship.
SAM ANDREWS' SONS, INC., 12 ALRB No. 30

430.05 Where Board's "Seabreeze" doctrine not applicable, as Members McCarthy and Gonot found they were not in this case, "legitimate and substantial business justification" for failing or refusing to reinstate an economic striker immediately upon offer to return to work on grounds striker permanently replaced requires affirmative showing by employer that both employer and replacement worker had mutual understanding employment status would be permanent.
SAM ANDREWS' SONS, INC., 12 ALRB No. 30

430.05 In section 1160.5 proceeding Board did not reach questions of charging party's motivation for change in vineyard management contract or its obligation to bargain over that change or whether union engaged in unlawful secondary activity or recognitional picketing.
SAM ANDREWS' SONS, INC., 12 ALRB No. 30

430.05 Where, during an economic strike by regular employees, an employer engages a labor contractor to harvest an upcoming crop and begins independent recruitment efforts to obtain replacement workers, the fact that no replacement employee has accepted an offer of employment prior to the receipt of an unconditional offer to return to work by striking employees is critical in determining whether the employer may refuse to accept such offers to return to work. The employer's inchoate plans to replace the striking employees are not legitimate and substantial business justifications, and, absent such justification, such as the actual hiring of specific replacement workers, returning economic strikers retain their rights of reinstatement.
VESSEY & COMPANY, INC., 11 ALRB No. 3

430.05 Absent a demonstration of a legitimate and substantial business justification, an employer's denying economic strikers their reinstatement rights is inherently destructive of the important employee right to strike.
VESSEY & COMPANY, INC., 11 ALRB No. 3

430.05 In section 1160.5 proceeding Board did not reach questions of charging party's motivation for change in vineyard management contract or its obligation to bargain over that change or whether union engaged in unlawful secondary activity or recognitional picketing.
BRUCE CHURCH, INC., 9 ALRB No. 74

430.05 In class discrimination cases, the General Counsel has the burden of proving: (1) that the alleged discriminatory conduct was directed against an entire group, and (2) that the individual was a member of that group. Absent proof of a plan or a scheme, a group resolution under sections 1154(d)(4) and 1160.5 and

quashed notice of hearing.
BRUCE CHURCH, INC., 9 ALRB No. 74

430.05 A strike, economic at its outset, was converted to an unfair labor practice strike when the employer's unlawful bargaining strategy came to fruition, and, after conversion, the employer's unlawful conduct served to prolong the strike by preventing the development of conditions under which strikers would have returned to work. Employees who, subsequent to the date of conversion, made unconditional offers to return to work were therefore entitled to reinstatement to their former or equivalent positions even if replacements had been hired.
BRUCE CHURCH, INC., 9 ALRB No. 74

430.05 Whether striking Employees unconditionally offering to return to work had been permanently replaced prior to conversion of economic strike to ULP strike appropriately deferred to compliance proceedings.
COLACE BROTHERS, INC., 8 ALRB No. 1

430.05 Where strike converted from economic to ULP strike prior to date of unconditional offer, Respondent's failure to reinstate strikers as of date of unconditional offer violates 1153(c) and (a).
COLACE BROTHERS, INC., 8 ALRB No. 1

430.05 Economic strike was later converted to ULP strike. Respondent is allowed to demonstrate at compliance stage that certain of striking Employees were perm replaced prior to conversion of strike. Such perm replaced workers were entitled to reinstatement as of date of unconditional offer to return unless Respondent could also show that is was necessary to offer perm work to the replacements beyond the first harvest season as set forth in Seabreeze Berry Farms, 7 ALRB No. 40.
VESSEY & COMPANY, INC., 7 ALRB No. 44

430.05 Economic strike was later converted to ULP strike. Respondent is allowed to demonstrate at compliance stage that certain of striking Employees were perm replaced prior to conversion of strike. Such perm replaced workers were entitled to reinstatement as of date of unconditional offer to return unless Respondent could also show that is was necessary to offer perm work to the replacements beyond the first harvest season as set forth in Seabreeze Berry Farms, 7 ALRB No. 40.
VESSEY & COMPANY, INC., 7 ALRB No. 44

430.05 In compliance hearing to determine if strikers were permanently replaced, Board's decision in Seabreeze Berry Farms (1981) (7 ALRB No. 40) controls and if only some strikers were permanently replaced, least senior Employees deemed those first replaced.
ADMIRAL PACKING CO., et al, 7 ALRB No. 43

430.05 Employer did not violate Act by procuring replacement employees by word-of-mouth rather than through its usual method of written recall notices and by changing location of pickup point for replacement employees during a strike, since obligation to bargain during an economic strike does not extend to an employer's decision to hire temporary replacement workers or to the method by which the employer chooses to obtain them.
COLACE BROTHERS, INC., 6 ALRB No. 56

430.05 Employer did not violate sections 1153(a) and (c) of the Act by failing or refusing to recall its melon harvest workers because the melon harvest workers were on strike and had made no offer to return to work at the time Employer obtained replacement workers.
JACK BROTHERS & McBURNEY, INC., 6 ALRB No. 12

430.05 The Board held that the ALJ erred in dismissing a paragraph of the complaint alleging recruitment of replacement employees without informing them of the existence of a labor dispute merely because there was no precedent to establish that the conduct alleged therein constituted a violation of section 1153(a), and that the ALJ should have allowed the general counsel to develop a full factual record on the novel issue so that appropriate findings and conclusions could be made.
SUN HARVEST, INC., 6 ALRB No. 4

430.05 Temporary work that was contracted out in accordance with past practice was not work that had to be offered to economic strikers on preferential hiring list.
TAYLOR FARMS, 20 ALRB No. 8

430.05 Employer met burden to prove substantial and legitimate business justification for failure to immediately reinstate economic strikers who unconditionally offered to return to work by showing mutual understanding that replacement workers were permanent and that, after offer to return, openings were thereafter filled with returning strikers. Not necessary to show that offer of permanent employment was necessary in order for employer to obtain sufficient number of replacements.
TAYLOR FARMS, 20 ALRB No. 8

430.05 Permanent replacement of economic strikers not established where employer failed to show mutual understanding of permanent status of replacement workers; Permanent replacement is an affirmative defense to reinstatement, and it is employer's burden to raise and establish such defense. It is not General Counsel's burden to identify all possible issues in the case by anticipating and denying any affirmative defenses that the employer might raise.
SUNRISE MUSHROOMS, INC., 22 ALRB No. 2

430.06 Conditions Imposed By Strikers; Delay In Seeking Reinstatement

430.06 Offer to return to work upon recall not conditional since Employees' could not return until Respondent accepted offer by recalling them.
COLACE BROTHERS, INC., 8 ALRB No. 1

438.06 No violation for unilaterally changing hiring method and pickup point utilized to obtain replacement employees during a strike, since obligation to bargain during an economic strike does not extend to an employer's decision to hire temporary replacement workers or to the method by which the employer chooses to obtain them.
COLACE BROTHERS, INC., 6 ALRB No. 56

430.06 Not unlawful for Employee to refuse to reinstate striking employees who offer to return to work prior to the hiring of replacements since offer tendered by union conditioned upon Employee bargaining with Employer over the wage dispute which triggered the strike.
KYUTO NURSERY, 3 ALRB No. 30

430.07 Termination Of Strike; Settlement Agreements; Voluntary Return To Work; Promise To Rehire Strikers

430.07 Where strikers were told they had to sign in order to get unemployment insurance benefits and vacation pay, separation agreement providing for strikers to resign and then have resignation converted to layoff to facilitate unemployment benefits, and for mutual release of claims, unenforceable because not a clear and unmistakable waiver, against public policy, and lacked consideration.

SUNRISE MUSHROOMS, INC., 22 ALRB No. 2

430.08 Reinstatement Offer; Substantially Equivalent Employment; Conditions To Or Delay In Reinstatement; Order Of Recall

430.08 Adoption of documentation procedures for identifying returning ULP strikers reasonable in light of extended passage of time since inception of strike and limitations on contemporaneous court injunction ordering employer to reinstate only those strikers who had previously submitted written offers to return; delays in reinstatement resulting from such procedures to be remedied in compliance phase of earlier case.
LU-ETTE FARMS, INC., 10 ALRB No. 20

430.08 Employer did not fail or refuse to reinstate returning economic strikers where personnel manager told strikers' representatives that she did not hire them and that they would have to go see their foreman (who was found to have the authority to hire).
S&S RANCH, INC., 22 ALRB No. 7

430.09 Strikers' Refusal Of Reinstatement Offer Or Failure To Report; Acceptance Of Other Employment As Quit

430.10 Reinstatement Of Employees On Layoff Or Leave During Strike

430.11 Discrimination As Between Returning Strikers

430.11 Employer's knowledge of felony charges pending against returning economic strikers showed a good faith belief that they had engaged in serious strike misconduct, and that belief constituted a legitimate substantial business justification for not rehiring those employees.
BERTUCCIO FARMS, 10 ALRB No. 52

430.11 The fact that an employer in good faith believed that a returning striker engaged in misconduct sufficient to bar his/her rein-statement is no defense to a ULP finding if the misconduct in fact did not occur; however, once an employer has shown such a good faith belief, the burden of showing that the misconduct did not occur shifts to the General Counsel.
BERTUCCIO FARMS, 10 ALRB No. 52

430.11 A recognized legitimate and substantial business justification for refusing to reinstate returning economic strikers is the employer's good faith belief that the strikers engaged in serious strike misconduct.
BERTUCCIO FARMS, 10 ALRB No. 52

430.12 Comparative Treatment Of Strikers And Nonstrikers During Or After Strike; Seniority, Wage Payments, Vacations, Etc.

430.12 Derogatory statements to and about returned strikers violated Act as part of overall scheme of harassment and intimidation. LU-ETTE FARMS, INC., 10 ALRB No. 20

430.12 Discrimination against returning strikers, known to be union supporters, shown by disparate treatment received by strikers as compared with nonstrikers.
LU-ETTE FARMS, INC., 10 ALRB No. 20

430.12 Exhorting employees not to assist returned strikers violated Act as part of overall scheme of harassment and intimidation. LU-ETTE FARMS, INC., 10 ALRB No. 20

430.12 Statements indicating that returning strikers would be subject to more onerous working conditions and would be singled out for criticism and disrespect was inherently threatening in violation of section 1153(a); illegal import of statements exacerbated by the hypercritical and disparaging treatment returning strikers actually received from their foremen.
LU-ETTE FARMS, INC., 10 ALRB No. 20

430.12 Photographing of returned strikers at work without their consent and against their wishes, while not constituting surveillance because employees not engaged in protected activity, violated Act as part of overall scheme of

harassment and intimidation against returning strikers.
LU-ETTE FARMS, INC., 10 ALRB No. 20

430.12 When discrimination is charged in the treatment afforded returning unfair labor practice strikers, the prima facie case elements of union activity and employer knowledge are met, but more preference shown toward other strikers is insufficient evidence to carry the General Counsel's burden. BRUCE CHURCH, INC., 9 ALRB No. 74

431.00 TEMPORARY SHUTDOWNS AND LOCKOUTS

431.01 In General

431.01 Employer did not have a reasonable fear that a strike was imminent, and its phasedown constituted economic action designed to apply pressure for contractual concessions on the union during the time period specified in section 1155.3(a).
WEST FOODS, INC., 11 ALRB No. 17

431.02 Reason Or Motive For Shutdown; Timing Of Shutdown; Continued Operations

431.02 Employer's motives for instituting a lockout were not "defensive" in nature as employer did not harbor a reasonable fear of an imminent strike.
WEST FOODS, INC., 11 ALRB No. 17

431.02 Employer's discontinuance of operations in the midst of pruning operations in the face of picketing activity was unlawful as it tended to aid the rival union, and to intimidate the incumbent union's supporters; the layoff of non-striking employees was in retaliation for their union support and therefore unlawful. Advice from a labor consultant that the cessation was necessary was no defense to the retaliation.
ARAKELIAN FARMS, 9 ALRB No. 25

431.03 Strike Called Or Anticipated; Employer Associations; Strike Insurance Plans; "Whipsawing" Strikes

431.03 Employer's motives for instituting a lockout were not "defensive" in nature as employer did not harbor a reasonable fear of an imminent strike.
WEST FOODS, INC., 11 ALRB No. 17

431.04 Layoffs In Non-Struck Plants, Departments, Or Units

431.04 Employer's discontinuance of crop in order to prevent harvest-time strike, several months in the future, among pro-Union Employees violated section 1153(c). Preemptive layoff cannot be justified by mere possibility of strike.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC.,7 ALRB No. 36

431.05 Eviction From Property; Protection Of Employees From Violence

431.06 Eviction From Company Houses, Labor Camp

432.00 REFUSAL TO BARGAIN IN GOOD FAITH

432.00 REFUSAL OF EMPLOYER TO BARGAIN COLLECTIVELY IN GOOD FAITH

432.01 In General, Labor Code Section 1153(e)

432.01 Where Board in decision on objections found them 462.01 insufficient to deny certification, but that the misconduct bordered on level of misconduct that had caused Board to set aside elections in past, sufficient to make refusal to bargain seeking Board and judicial review of the misconduct on that present one showing good faith belief in that election might be overturned. Board noted that Employer's remaining contentions were exaggerated or unsupported by evidence, but that they did not negate the one contention presented in this case showing good faith contention.
TRIPLE E PRODUCE CORP., 19 ALRB No. 2

432.01 Where an employer consistently and unreasonably refuses to provide information requested by the union's bargaining representative, submits predictably unacceptable proposals, refused to discuss mandatory subjects of bargaining, fields negotiators whose authority was not sufficiently broad to permit negotiations to proceed without undue delay, and unilaterally modified tentative agreements without good cause, the employer is unlawfully refusing to bargain collectively in good faith.
ROBERT MEYER dba MEYER TOMATOES, 17 ALRB No. 17

432.01 When the record as a whole reflects dilatory tactics or an effort to stall bargaining efforts which continues over a period of many months and long after any need for "clarification" has vanished, it is appropriate to order the employer to makewhole its agricultural employees for the losses suffered as a result of the employer's unlawful refusal to bargain.
ROBERT MEYER dba MEYER TOMATOES, 17 ALRB No. 17

432.01 Respondent violated section 1153(e) by failing to effects bargain over numerous reductions in crop acreage and production.
PLEASANT VALLEY VEGETABLE, 12 ALRB No. 31

432.01 Employer violated section 1153(e) by failing, as required by expired labor agreement, to inform union of its intention to prune the prune trees in time (30 days in advance of the start-up of the season) for union to negotiate rate.

TEX-CAL LAND MANAGEMENT, INC., ET AL., 12 ALRB No. 26

432.01 Failure to timely notify incumbent union of impending closure warrants, in addition to usual order to effects bargain, limited backpay remedy equivalent to a minimum of two weeks' pay for all employees employed from time of decision to actual closure in order to restore a semblance of bargaining strength that would have obtained had Respondent fulfilled its bargaining obligation at a time when the employee unit was still intact.
ROBERT J. LINDELEAF, 12 ALRB No. 18

432.01 Meyers Industries does not require the Board to factor out individual motives to see if all employees were activated by the same one in order to determine if walkout is concerted activity.
ARMSTRONG NURSERIES, INC., 12 ALRB No. 15

432.01 One day walkout presumptively protected in absence of proof that it was part of a pattern of disruptive activities.
ARMSTRONG NURSERIES, INC., 12 ALRB No. 15

432.01 Action of five employees in walking off the job together to protest longer workday and employer's failure to notify them of change is concerted even if some of the employees had individual reasons for joining in the walkout.
ARMSTRONG NURSERIES, INC., 12 ALRB No. 15

432.01 Employer violated section 1153(e) by locking out its employees and by refusing to bargain in good faith with the employees' certified bargaining representative.
WEST FOODS, INC., 11 ALRB No. 17

432.01 Employer's assertion that its proposals, including union security, to exclude employees of its labor contractor from the terms of a contract was a form of a technical refusal to bargain, held to be without merit; proposals to exclude such employees are per se violations and, in any event, at no time did employer have a reasonable good faith belief that its labor contractor employees were not its agricultural employees.
PAUL W. BERTUCCIO, 10 ALRB No. 16

432.01 Employer's conditioning of bargaining over employees in the bargaining unit on concessions from the union is a per se violation of the duty to bargain.
PAUL W. BERTUCCIO, 10 ALRB No. 16

432.01 The filing of a petition for unit clarification does not suspend the duty to bargain over employees in question.
PAUL W. BERTUCCIO, 10 ALRB No. 16

432.01 Employer's conduct in refusing to provide requested information, failing to submit economic proposals over a 19-month period, submitting only two non-economic

proposals, and implementing unilateral changes constituted an unlawful refusal to bargain collectively in good faith.
ROBERT H. HICKAM, 10 ALRB No. 2

432.01 An employer who merely gives the appearance of bargaining, but has no intention of reaching an agreement, acts in bad faith and violates section 1153(e).
GROW-ART, 9 ALRB No. 67

432.01 Employer violated the ALRA by unlawfully repudiating its contract with union and laying off employees in violation of contract seniority provision.
PETER D. SOLOMON and JOSEPH R. SOLOMON dba CATTLE VALLEY FARMS/TRANSCO LAND AND CATTLE CO., 9 ALRB No. 65

432.01 Given employer's substantial, consistent and unreasonable refusal to provide the bargaining representative with information requested from which the inference clearly arises that employer's illegality was conscious and in bad faith, it is appropriate to order that employer make whole its agricultural employees for the losses they suffered as a result of employer's unlawful refusal to bargain.
CARDINAL DISTRIBUTING COMPANY, INC., et al.,9 ALRB No. 36

432.01 The obligation to bargain in good faith means that while the parties need not agree, they must meet with the intent to reach agreement if at all possible. Reaching tentative agreements on articles in the proposed contract pending agreement on all the articles is a well-established method of fulfilling one's bargaining obligations. However, unilateral withdrawal of tentative agreements without good cause is indicative of bad faith bargaining, notwithstanding the tentative nature of the agreements. Formal rules of contract formation are not binding.
ARAKELIAN FARMS, 9 ALRB No. 25

432.01 Under NLRA & ALRA, Employer is required to bargain collectively with collective bargaining agent over wages, hours, and other terms and conditions of employment.
N. A. PRICOLA PRODUCE, 7 ALRB No. 49

432.01 Good faith bargaining requires negotiating with intent to reach agreement.
ADMIRAL PACKING CO., et al, 7 ALRB No. 43

432.01 Violation of section 1153(e) also violation of section 1153(a).
ADMIRAL PACKING CO., et al, 7 ALRB No. 43

432.01 Employee engaged in PCA by serving as crew spokesman in meeting with co. owner where workers' grievances about wages and working conditions discussed.
YAMAMOTO FARMS, 7 ALRB No. 5

432.01 Section 1152(a) cannot be basis of violation as it merely defines collective bargaining.
MASAJI ETO, et al., 6 ALRB No. 20

432.01 Mere "griping" about a condition of employment is not protected, but when the "griping" coalesces with expression inclined to produce group or representative action, the statute protects the activity.
JACK BROTHERS & MCBURNEY, INC., 6 ALRB No. 12

432.01 Where the employer continued to farm after its duty to bargain arose, but refused to bargain with the UFW before it terminated its agricultural operations or thereafter, the Board found that the employer had refused to bargain in violation of section 1153(e).
P&P Farms, 5 ALRB No. 59

432.01 Good faith bargaining is such bargaining as leads either to a contract or impasse.
WILLIAM DAL PORTO & SONS, INC. v. ALRB (1987) 191 Cal.App.3d 1195

432.01 A party is guilty of surface bargaining when it merely goes through the motions of negotiating a collective bargaining agreement without any real intent to enter into a binding agreement.
George Arakelian Farms, Inc. v. ALRB (1989) 49 Cal.3d 1279

432.01 Employer's failure to grant post-certification access constitutes a refusal to bargain in good faith and violates both 1153(e) and 1153(a).
F&P GROWERS ASSN. v. ALRB (1985) 172 Cal.App.3d 1127

432.01 Employer's failure to provide information necessary to taking post-certification access violates 1153(e) and 1153(a).
F&P GROWERS ASSN. v. ALRB (1985) 172 Cal.App.3d 1127

432.01 Because Board has issued bargaining order expressly to remedy employer's ULP's, bargaining duty can be enforced under 1160.8 whether or not failure to comply would, itself, be independent ULP under 1153(e).
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

432.01 Board finding of bad faith bargaining overturned where employers did not make take-it-or-leave-it offer, bargained to impasse over crucial issue of economics, genuinely believed that their economic proposal was controlled by then-existing presidential wage and price guidelines, and only communicated their views about status of negotiations in advertisements directed to employees.
CARL JOSEPH MAGGIO, INC. v. ALRB (1984) 154 Cal.App.3d 40

432.01 Section 1153(f) does not preclude employer from

bargaining with certified union after "certification year."
MONTEBELLO ROSE CO. v. ALRB (1981) 119 Cal.App.3d 1

432.01 Board refusal to extend certification under 1155.2(b) is not res judicata as to later-instituted ULP charges, since General Counsel was not a party to initial proceedings and such an interpretation would make unlikely any further use of extension of certification procedure.
MONTEBELLO ROSE CO. v. ALRB (1981) 119 Cal.App.3d 1

432.01 Collective bargaining requires time and interaction for maturation of relationship between employer and union.
MONTEBELLO ROSE CO. v. ALRB (1981) 119 Cal.App.3d 1

432.01 Neither statute nor regulations provide any avenue for courts to review ALRB orders extending certification. Employer cannot obtain indirect review thereof by refusing to bargain.
YAMADA BROS. v. ALRB (1979) 99 Cal.App.3d 112

432.02 Refusal To Bargain For Purpose Of Obtaining Judicial Review; Technical Refusal To Bargain (see also section 463.03)

432.02 Dissent, particularly one that disregarded established distinction between impact of conduct of agents of parties and third parties on election, does not make refusal to bargain in that case a close question under J. R. Norton (1980) 26 Cal.3d 1, nor does ALJ decision denying certification for reasons rejected by Board.
TRIPLE E PRODUCE CORP., 19 ALRB No. 2

432.02 Where employer failed to produce declaratory support which was legally or factually sufficient to establish a prima facie showing that its peak objection should be heard, employer has not shown reasonable litigation posture in arguing that Board's dismissal of its objection was erroneous.
SCHEID VINEYARDS AND MANAGEMENT CO., 19 ALRB No. 1

432.02 Employer would not have waived its right to seek judicial review of Board's dismissal of its obligations prior to certification by giving union that had received majority of votes in election notice and opportunity to bargain as to specific changes in mandatory subject of bargaining it wished to effectuate before certification.
GERAWAN RANCHES, et al. 18 ALRB No. 16

432.02 Respondent violated bargaining obligation by closing housing it had previously provided without notice to or bargaining with union that received majority of ballots in Board election.
GERAWAN RANCHES, et al. 18 ALRB No. 16

432.02 Board will not allow relitigation of facts proved in

representation proceeding in subsequent unfair labor practice case where employer fails to present new or previously unavailable evidence, or to demonstrate extraordinary circumstances justifying such relitigation. Exceptions to relitigation ban in cases showing widespread threats and property damage, or actual as opposed to merely threatened violence, not applicable where basis for relitigation request is presence or absence of impermissible promise of benefit.
LIMONEIRA COMPANY, 15 ALRB No. 20

432.02 Concurrence/Dissent: Relitigation is warranted in unfair labor practice proceedings of matters previously determined in underlying representation proceeding when there are faulty findings of facts and conclusions of law in the prior Decision. (Cf. Sutti Farm (1981)) 7 ALRB No. 42 and Triple E Produce Corp. (1980) 6 ALRB No. 46, revd. on other grounds, Triple E Produce Corp. v. ALRB (1983) 35 Cal.3d 42 where election-related issues were reconsidered because of errors due to oversight by Board.)
LIMONEIRA COMPANY, 15 ALRB No. 20

432.02 Board finds incidents of actual violence sufficient to justify dismissing technical refusal to bargain complaint and vacating prior certification order where (1) pro-union employees surrounded labor consultants in their car after having bombarded the car with hardened dirt clods and unripe tomatoes and rocked the car as if intending to overturn it; (2) pro-union employees and union organizers coerced non-participating workers into ceasing work by pelting them with hardened dirt clods and unripe tomatoes; and (3) pro-union employees surrounded labor consultant's car at polling site on day of election and bombarded car with hardened dirt clods and unripe tomatoes while beating on car with fists and rocking car as if to overturn it.
ACE TOMATO COMPANY, INC./GEORGE B. LAGORIO FARMS, 15 ALRB No. 7

432.02 Where actual violence creates atmosphere of fear and coercion or reprisal sufficient to render employee free choice impossible, Board will follow T. Ito & Sons Farms, 11 ALRB No. 36 and reconsider facts previously litigated in representation proceeding.
ACE TOMATO COMPANY, INC./GEORGE B. LAGORIO FARMS, 15 ALRB No. 7

432.02 On remand from Court of Appeal, Board found that two month delay between request and refusal to bargain, absent other evidence of bad faith, was insufficient to support a finding of bad faith. Board concluded that it was improper to rely upon other factors which were either not relied upon by the ALJ due to credibility resolutions or not fully litigated in the underlying election objection proceedings.
SAN JUSTO RANCH/WYRICK FARMS 14 ALRB No. 1

432.02 Concurrence/Dissent: Member McCarthy would hold the employer's unexplained 70-day delay in responding to union's bargaining request to be evidence of lack of reasonableness and good faith. He would impose makewhole from 30 days after the bargaining request until the employer notified union of its technical refusal to bargain.
SAN JUSTO RANCH/WYRICK FARMS 14 ALRB No. 1

432.02 The Board declined to award makewhole relief following an employer's technical refusal to bargain after it concluded that the employer's arguments concerning the appropriateness of the Board's unit designation, the identity of the statutory employer and the conduct of the election were reasonable.
S & J RANCH, INC., 12 ALRB No. 32

432.02 Absent facts such as those found compelling in T. Ito & Sons Farms (1985) 11 ALRB No. 36, Board does not relitigate representation case issues presented in subsequent ULP proceedings where there is no newly discovered or previously unavailable evidence, or a claim of extraordinary circumstances.
S & J RANCH, INC., 12 ALRB No. 32

432.02 Board concludes that Respondent's technical refusal to bargain was reasonable and asserted in good faith. As such, a makewhole remedy was not required. Members Henning and Carrillo dissented.
PLEASANT VALLEY VEGETABLE, 12 ALRB No. 31

432.02 The Board revoked earlier certification, adopting the exception established in Subzero Freezer, Inc. (1984) 271 NLRB No. 7 to the general rule proscribing relitigation of representation issues during the technical refusal-to-bargain proceeding, where the Board finds that the election was conducted in an atmosphere of fear and coercion.
T. ITO & SONS FARMS, 11 ALRB No. 36

432.02 Employer violated section 1153(e) when it refused to bargain in order to obtain ALRB ruling on its argument that the duty to bargain lapsed at the end of the certification year.
0. E. MAYOU & SONS, 11 ALRB No. 25

432.02 Employer's attempts to limit his presence at a negotiating session it requested, to a posture of less than full bargaining, were ineffective to preserve a technical refusal to bargain posture asserted previously.
0. E. MAYOU & SONS, 11 ALRB No. 25

432.02 Board inferred bad faith from employer's wholly discredited testimony in defense of his refusal to recognize and bargain with the union.
JOHN ELMORE FARMS, et al., 11 ALRB No. 22

432.02 The Board refused to award makewhole relief following an employer's technical refusal to bargain after it concluded that the employer's argument concerning the peak calculation in the underlying representation proceeding was reasonable.
ADAMEK AND DESSERT, INC., 11 ALRB No. 8

432.02 Makewhole remedy appropriate where employer could not have entertained a reasonable good faith belief that employees were disenfranchised absent showing of lack of notice or evidence that voters were prevented from voting by misconduct of Board or any party.
LEO GAGOSIAN FARMS, INC., 10 ALRB No.39

432.02 Employer's unilateral closure of operation without notice to union - prior to certification of union - did not violate section 1153(e) where employer held a reasonable belief at the time of the refusal to bargain that it was the employer of a group of employees and reasonably believed that the election petition was therefore untimely.
W. G. PACK, JR., 10 ALRB No. 22

432.02 Makewhole remedy appropriate where employer's technical-refusal-to-bargain based on successorship was not raised in reasonable good faith; employer's legal theory was highly impractical, mechanical, and totally without support in state or federal precedent, and employer tried to create its own claim through illegal discrimination.
SAN CLEMENTE RANCH, LTD., 10 ALRB No. 21

432.02 Employer's assertion that its proposals, including union security, to exclude employees of its labor contractor from the terms of a contract was a form of a technical refusal to bargain, held to be without merit; proposals to exclude such employees are per se violations and, in any event, at no time did employer have a reasonable good faith belief that its labor contractor employees were not its agricultural employees.
PAUL W. BERTUCCIO, 10 ALRB No. 16

432.02 Employees will be made whole where employer persists in challenging the certification order merely as a means of delaying the negotiations process; allegations of Board agent misconduct, even if true, did not describe conduct which would tend to affect results of election.
GEORGE A. LUCAS & SONS, 10 ALRB No. 14

432.02 An employer that wishes to test the validity of the Board's certification must refuse to bargain with the certified bargaining representative in a timely manner; such a rule is necessary in order to insure the integrity of the Board's process and the judicial process.
GROW-ART, 9 ALRB No. 67

432.02 An employer who embarks upon negotiations with a

certified union implicitly abandons any objections it may have raised regarding the validity of the certification.
GROW-ART, 9 ALRB No. 67

432.02 An employer who merely gives the appearance of bargaining, but has no intention of reaching an agreement, acts in bad faith and violates section 1153(e).
GROW-ART, 9 ALRB No. 67

432.02 Where the Board specifically included packing shed workers in the bargaining unit, the certified bargaining representative had a duty to represent those workers, and the employer's attempt to have the bargaining representative voluntarily exclude the packing shed workers from the unit was contrary to the purposes of the Act.
GROW-ART, 9 ALRB No. 67

432.02 Employer violated Labor Code section 1153(e) when it refused to bargain in order to seek judicial review of the validity of the underlying certification of a bargaining representative.
SAN JUSTO RANCH/WYRICK FARMS, 9 ALRB No. 55

432.02 The Board must determine in technical refusal to bargain cases whether makewhole relief is appropriate on a case-by-case basis.
C. MONDAVI & SONS, d/b/a CHARLES KRUG WINERY 6 ALRB No. 30

432.02 Board follows NLRB precedents which hold that the duty to bargain is not tolled pending the outcome of a judicial appeal of an unfair labor practice case, even though the validity of the certification may turn on the resolution of the ULP charge, citing East Coast Equipment Corporation (1977) 229 NLRB No. 130 [95 LRRM 116].
ABATTI FARMS INC., 5 ALRB No. 34

432.02 Board will not relitigate representation issues in related unfair labor practice decisions.
GEORGE ARAKELIAN, 4 ALRB No. 53

432.02 The ALRB adopts NLRB's broad proscription against relitigation of representation issues in a related unfair labor practice proceeding (viz., technical refusal to bargain cases). Absent newly discovered or previously unavailable evidence, or extraordinary circumstances justifying relitigation, the Board will not re-examine its earlier determinations of election objections.
C. MONDAVI & SONS dba CHARLES KRUG WINERY, 4 ALRB No. 52

432.02 The ALRB adopts NLRB's broad proscription against relitigation of representation issues in a related unfair labor practice proceeding (viz., technical refusal to bargain cases). Absent newly discovered or previously unavailable evidence, or extraordinary circumstances

justifying relitigation, the Board will not re-examine its earlier determinations of election objections.
J.R. NORTON COMPANY, 4 ALRB No. 39

432.02 Makewhole remedy applies whether employer's refusal to bargain was designed solely to procure review in courts of underlying election issues, or whether it was of flagrant or willful variety. In either case, employees have lost their statutorily created rights to be represented by their Board certified representative during negotiations of wages, hours, and other terms and conditions of employment.
PERRY FARMS, INC., 4 ALRB No. 25

432.02 Unless litigation of the employer's position furthers the policy and purposes of the Act, the employer, not the affected employees, should ultimately face the consequences of its choice to litigate the representation issues rather than bargain with the employees in good faith.
George Arakelian Farms, Inc. v. ALRB (1989) 49 Cal.3d 1279

432.02 In cases involving a technical refusal to bargain, any relevant evidence tending to show that no contract would have been consummated between the parties is more appropriately introduced in the compliance proceedings of the Board's bifurcated determination process, rather than the liability proceedings, because the question of what the parties might have agreed to concerns the amount of damages rather than the fact of damages.
George Arakelian Farms, Inc. v. ALRB (1989) 49 Cal.3d 1279

432.02 Employer's duty to bargain continues during its court challenge of Board's decision to certify union as bargaining representative.
GEORGE ARAKELIAN FARMS v. ALRB (1986) 186 Cal.App.3d 94

432.02 Makewhole relief is not automatically available whenever the Board finds that an employer has failed to present a prima facie case in support of its objections; any other view would inhibit challenges in close cases raising important questions of fact or law concerning fairness of an election.
LINDELEAF v. ALRB (1986) 41 Cal.3 d 861

432.02 Makewhole relief appropriate where union prevails in election by sizeable margin, employer's evidentiary objections to Board's ruling were neither substantial nor of a nature to have affected outcome of election, and workers have endured a prolonged delay.
LINDELEAF v. ALRB (1986) 41 Cal.3d 861

432.02 Makewhole relief is appropriate when an employer unreasonably refuses to accept the results of free and fair election, in effect using litigation as pretense to

thwart collective bargaining process.
LINDELEAF v. ALRB (1986) 41 Cal.3d 861

432.02 Makewhole relief is appropriate even where there is a lone dissenting hearing officer, Board member, or appellate judge who finds merit in an employer's claim of election misconduct. A holding otherwise would potentially eliminate any disincentive for employers to pursue dilatory appeals by too easily immunizing them against makewhole demands.
LINDELEAF v. ALRB (1986) 41 Cal.3d 861

432.02 Employer's denial of recognition to newly elected union is a devastating psychological blow.
RULINE NURSERY CO. v. ALRB (1985) 169 Cal.App.3d 247

432.02 The term "technical refusal to bargain" refers to employer's seeking judicial review by refusing to bargain with union.
F&P GROWERS ASSN. v. ALRB (1985) 168 Cal.App.3d 667

432.02 Board's two-part test for makewhole in technical refusal cases (see J.R. Norton (1980) 6 ALRB No. 26) accords with Supreme Court's guidelines in Norton v. ALRB (1979) 26 Cal.3d 1.
GEORGE ARAKELIAN FARMS, INC. v. ALRB (1985) 40 Cal.3d 654

432.02 In applying makewhole in technical refusals-to-bargain, Board must look at facts and equities and determine whether litigation is pretense to avoid bargaining or employer believed in reasonable good faith that election conduct deprived employees of free choice.
GEORGE ARAKELIAN FARMS, INC. v. ALRB (1985) 40 Cal.3d 654

432.02 Employer's refusal to bargain on ground of no successorship was based on employer's discriminatory refusal to hire former pro-union employees. Such discrimination is act of "bad faith" under Norton standards.
BABBITT ENGINEERING & MACHINERY v. ALRB (1984) 152 Cal.App.3d 310

432.02 Need for stability in union representation is increased in a successorship situation, where employees need special protection from changes in policy, organization, and terms and conditions of employment.
SAN CLEMENTE RANCH, LTD. v. ALRB (1981) 29 Cal.3d 874

432.02 In determining whether makewhole is appropriate in technical refusal to bargain cases, Board must look at the totality of employer's conduct to determine whether litigation of its election objections was simply to delay bargaining or whether it litigated in a reasonable good faith belief that employees were denied free choice.
J.R. NORTON CO. v. ALRB (1979) 26 Cal.3d 1

432.02 Employer cannot obtain immediate review of Board's

decision certifying union; it can only obtain review of such election matters after being found guilty of refusing to bargain--a "technical refusal."
J.R. NORTON CO. v. ALRB (1979) 26 Cal.3d 1

432.02 Availability of judicial review through technical refusal to bargain is a sufficient check on arbitrary administrative action to permit summary dismissal of objections.
J.R. NORTON CO. v. ALRB (1979) 26 Cal.3d 1

432.02 Only way employer may obtain judicial review of election and certification is to refuse to bargain, be found guilty of ULP, and obtain review of election and certification in course of review of ULP decision.
PERRY FARMS INC. v. ALRB (1978) 86 Cal.App.3d 448

432.02 In absence of newly discovered or previously unavailable evidence or extraordinary circumstances, respondent in refusal-to-bargain proceeding may not litigate matters which were or could have been raised in prior representation proceedings.
PERRY FARMS INC. v. ALRB (1978) 86 Cal.App.3d 448

432.02 Orders in certification proceedings are not directly reviewable in courts, but only become reviewable by resistance to a ULP charge, at which time various issues involved in the certification may be reviewed.
NISHIKAWA FARMS, INC. v. MAHONY (1977) 66 Cal.App.3d 781

432.02 Board's finding that harvesting entity was a labor contractor rather than a custom harvester does not fall within the narrow exception to the prohibition against relitigation of representation issues in unfair labor practice proceedings. Such relitigation has been allowed only where it is determined that the certification was manifestly in error because the election was held in an atmosphere of fear and coercion.
SAN JOAQUIN TOMATO GROWERS, INC., 20 ALRB No. 13

432.02 Employer's arguments that IHE's credibility 463.03 determinations should be overruled, that non-party conduct should be attributed to union, that testimony of witnesses' subjective feelings and reactions should have been admitted, and that uncredited incidents of alleged threats and violence should have caused Board to set aside election, do not indicate a reasonable, good-faith litigation posture. Therefore, makewhole remedy is appropriate.
ACE TOMATO CO., INC., 20 ALRB No. 7

432.02 Where employer did not follow the normal route of review of the Board's decision in a representation matter, but instead sought *Leedom v. Kyne* direct review in the superior court, Board took into account the likelihood that employer would not prevail on that basis when deciding to invoke the makewhole remedy.

GALLO VINEYARDS, INC., 23 ALRB No. 7

432.02 Where employer's attempt to invoke narrow *Leedom v. Kyne* standard as grounds for direct review of Board's certification decision raised issues it could have properly asserted before Board and court of appeal on the merits under the broader standard of review, Board could conclude that trial court action was filed for the sole purpose of delaying the bargaining obligation.
GALLO VINEYARDS, INC., 23 ALRB No. 7

432.02 Where review of election certification was available by the normal process of a technical refusal to bargain first before the Board and then in the court of appeal, Respondent failed to demonstrate the need for an extraordinary remedy in equity by its effort to seek direct review in the superior court.
GALLO VINEYARDS, INC., 23 ALRB No. 7

432.02 Where Respondent is on notice that its arguments had previously been considered and rejected by various courts of appeal, filing of *Leedom v. Kyne* action in superior court did not reflect good faith litigation.
GALLO VINEYARDS, INC., 23 ALRB No. 7

432.02 Employer's willingness to discuss changes in working conditions with the union during the course of its technical refusal to bargain, which was the employer's legal duty, and the employer's decision, after 10 months, not to pursue judicial review, were not probative of the employer's good faith at the time it technically refused to bargain with the union.
THE HESS COLLECTION WINERY, 27 ALRB No. 2

432.02 Election objections that would require that the Board disregard mandatory provisions of the ALRA with regard to bargaining unit designations, that lack the required declaratory support, that are based on misstatements of applicable legal standards, and that completely lack legal support to the point of being frivolous, do not constitute a reasonable good faith basis for seeking judicial review of a certification. Therefore, the bargaining makewhole remedy is appropriate.
THE HESS COLLECTION WINERY, 27 ALRB No. 2

432.02 Ten month delay occasioned by employer's aborted technical refusal to bargain is not without consequence. Any delay in bargaining due to a technical refusal to bargain that is not undertaken in reasonable good faith undermines the Act and interferes with employee free choice at a critical period and postpones the union's ability to negotiate a contract on behalf of the employees in the bargaining unit.
THE HESS COLLECTION WINERY, 27 ALRB No. 2

432.02 Mere claims that the underlying representation decision was wrongly decided does not constitute "extraordinary

circumstances" warranting reconsideration of the decision.
ARTESIA DAIRY, 33 ALRB No. 6

432.02 Documents that were available far before the date of hearing, the content of which had to have been known at that time in order for the related claim to have merit, do not constitute "newly discovered" or "previously unavailable" evidence warranting reconsideration.
ARTESIA DAIRY, 33 ALRB No. 6

432.03 Persons Required To Bargain; Purchaser Or Transferee; "Successors"; Affiliated Companies

432.03 Lack of joint employer relationship between former landowner and former land management company holding the bargaining obligation does not preclude purchaser of land who also operates the ranch from succeeding to bargaining obligation. More consistent with established successorship principles and the policies underlying those principles to focus on who succeeds to the function of the predecessor employer, rather than on the passing of ownership interests.
MICHAEL HAT FARMING CO., 19 ALRB No. 13

432.03 Deemphasis of workforce majority criterion in San Clemente did not dispense with need for some substantial workforce continuity. Lack of any workforce continuity precludes finding successorship.
MICHAEL HAT FARMING CO., 19 ALRB No. 13

432.03 Workforce continuity may not be presumed where employer provides credible, nondiscriminatory business reasons for not hiring any employees of the predecessor.
MICHAEL HAT FARMING CO., 19 ALRB No. 13

432.03 Changes in duties, and complete change in supervisory staff are types of changes which are properly relied on to show lack of continuity of operations; however, other changes which simply made the operation more efficient and reduced labor needs should be given little weight because they did not change the essential nature of the enterprise nor significantly affect employees and their working conditions.
MICHAEL HAT FARMING CO., 19 ALRB No. 13

432.03 Where post-sale change in a workforce is due to gradual employee turnover rather than any "alteration in managerial direction" and where the continuity of operations and supervision was maintained by the new employer, the new employer succeeds to the former employer's bargaining obligation despite the fact that the new employer purchased only a fraction of the land covered by the original unit and only a minority of the seller's employees worked for the purchasers; the part of the unit purchased was the most labor-intensive part of the original unit and was broken off from the rest of the

unit at an "obvious cleavage line."
SUMNER PECK RANCH, INC., 10 ALRB No. 24

432.03 Successor bound by certification issued after purchase where election held before purchase and successor knew of election and pending ALRB proceedings but chose not to intervene. SUMNER PECK RANCH, INC., 10 ALRB No. 24

432.03 Transcribed arguments of counsel for predecessor employer and union in prior representation proceeding which resulted in stipulation to withdraw objections, resulting in certification of union, properly excluded as irrelevant to successor employer's duty to bargain with union.
SUMNER PECK RANCH, INC., 10 ALRB No. 24

432.03 Board found violation of section 1153(e) and (a) where successor- employer refused to meet and bargain with bargaining representative of predecessor's employees despite lack of continuity in work force as that condition resulted from successor's refusal to consider or hire predecessor's employees.
RIVCOM CORPORATION and RIVERBEND FARMS, INC., 5 ALRB No. 55

432.03 Employer was not in bad faith in rejecting union's successorship clause, since employer had reason to believe that such language would make it difficult to sell company, and since it was unclear, at time of negotiations, whether ALRB would apply NLRB rule that successors are not bound by predecessors' contracts.
WILLIAM DAL PORTO & SONS, INC. v. ALRB (1984) 163 Cal.App.3d 541

432.03 Federal precedent on successorship is generally applicable under the ALRA, except to the extent the federal cases focus on "workforce continuity." Since high turnover is prevalent in agriculture, the federal focus on workforce continuity is not applicable.
BABBITT ENGINEERING & MACHINERY v. ALRB (1984) 152 Cal.App.3d 310

432.03 Whether purchaser of business becomes successor to existing bargaining obligation is determined on case-by-case basis. Factors to be considered are workforce continuity, continuity of business operations, similarity of supervisory personnel, similarity of product or service, similarity in methods of production, sales, or inventorying, and use of same plant. BABBITT ENGINEERING & MACHINERY v. ALRB (1984) 152 Cal.App.3d 310

432.03 In agriculture, workforce continuity as factor in successorship must be viewed in light of seasonal and migratory nature of agricultural workforce -- characteristics which often result in high turnover.
BABBITT ENGINEERING & MACHINERY v. ALRB (1984) 152 Cal.App.3d 310

432.03 Finding of successorship upheld where employer disrupted workforce continuity by its own discriminatory hiring practices, and the business, real property, equipment, product, and unit size were all the same after purchase.
BABBITT ENGINEERING & MACHINERY v. ALRB (1984) 152 Cal.App.3d 310

432.03 Successorship analysis seeks to determine whether, after transfer of business control, the previously certified unit is still appropriate and in existence. Criteria include continuity of supervision, similarity of machinery or equipment, retention of employee functions, and, most importantly, continuity of work force.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

432.03 Although ALRA section 1156 requires that a labor organization must win secret ballot election before ALRB will certify it as exclusive bargaining agent, Legislature did not intend to abrogate obligations of a successor employer with regard to a union that was selected by predecessor's employees.
SAN CLEMENTE RANCH, LTD. v. ALRB (1981) 29 Cal.3d 874

432.03 Since there are a great variety of factual circumstances in which successorship issues may arise, and because different legal consequences may be at issue in different situations, each successorship case must be decided on a case-by-case basis and not pursuant to a single, mechanical formula.
SAN CLEMENTE RANCH, LTD. v. ALRB (1981) 29 Cal.3d 874

432.03 Because of great seasonal fluctuations in workforce of typical agricultural employer, it would cause unnecessary delay to determine whether successor employees are substantially same as predecessor employees only at the period of peak employment. Therefore, NLRB requirement that new employer's bargaining obligations cannot be determined until "full complement" of employees is hired is not strictly applicable to ALRA.
SAN CLEMENTE RANCH, LTD. v. ALRB (1981) 29 Cal.3d 874

432.03 In view of fact that new employer took over on-going ranch and continued regular operations of business for substantial period of time (4 months) with a workforce made up largely of predecessor's employees, ALRB was justified in imposing bargaining obligation on successor.
SAN CLEMENTE RANCH, LTD. v. ALRB (1981) 29 Cal.3d 874

432.03 In successorship context, employer's attempt to equate "full complement" and "peak employment" is totally unsound.
SAN CLEMENTE RANCH, LTD. v. ALRB (1981) 29 Cal.3d 874

432.03 Since bargaining obligation of an employer who purchased and continued to operate the whole of a predecessor's operations applies to all employees in the certified

unit, employer cannot refuse to bargain concerning employees in a specific crop operation on grounds original unit no longer exists due to changes in overall acreage, kinds of crops produced, or employee turnover.
DOLE FRESH FRUIT CO., 22 ALRB No. 4

432.04 Burden Of Proof; Evidence

432.04 In compliance proceeding, General Counsel has the burden of proving the appropriate duration of the makewhole remedy.
MARIO SAIKHON, INC., 13 ALRB No. 8

432.04 Where facts stipulated to Board without hearing, the General Counsel failed to establish that the employer refused to provide information or otherwise refused to bargain where there existed a factual conflict in the record, which was impossible to resolve without credibility determinations.
O. E. MAYOU & SONS, 11 ALRB No. 25

432.04 Employer's admission that he did not intend to bargain over reinstatement of medical plan found to be conclusive on an issue of Employer's lack of good faith in raising issue of coverage lapse.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC., 7 ALRB No. 36

432.04 No finding Union reneged on agreements or improperly changed proposals because proposals not in evidence and changes testified to were minimal.
KAPLAN'S FRUIT AND PRODUCE COMPANY, 6 ALRB No. 36

432.04 No finding of bad faith based on parties' inability to compromise on hiring hall, even though reasonable compromises of parties' positions were proposed, because no evidence why proposals not accepted.
KAPLAN'S FRUIT AND PRODUCE COMPANY, 6 ALRB No. 36

432.04 Conduct away from bargaining table reflects on good faith at table. Nonetheless, inadequate evidence of surface bargaining; dismissal of pro-Union crew leader just before negotiations and two unilateral wage increases not sufficient to find overall bad faith.
KAPLAN'S FRUIT AND PRODUCE COMPANY, 6 ALRB No. 36

432.04 If the Board finds that the grower has failed to prove no contract would have been entered into absent his refusal to bargain, the Board should then impute an agreement and measure losses of pay and benefits with reference to the imputed contract.
PAUL W. BERTUCCIO v. ALRB (1988) 202 Cal.App.3d 1369

432.04 If the grower fails to carry its burden to prove no contract would have been agreed to absent the grower's refusal to bargain, the Board may find an agreement providing for higher pay would have been concluded but

for the grower's refusal to bargain.
PAUL W. BERTUCCIO v. ALRB (1988) 202 Cal.App.3d 1369

432.04 The Board's General Counsel has the initial burden of producing evidence to show the grower unlawfully refused to bargain. Once the General Counsel produces such evidence, the burden of persuasion shifts to the grower to prove no agreement calling for higher pay would have been concluded in the absence of the illegality.
PAUL W. BERTUCCIO v. ALRB (1988) 202 Cal.App.3d 1369

432.04 The placing of the burden on the employer to rebut the presumption that the parties would have entered into an agreement had the employer bargained in good faith, does not unconstitutionally violate due process, since empirical data supports a rational connection between good faith bargaining and the consummation of an agreement.
WILLIAM DAL PORTO & SONS, INC. v. ALRB (1987) 191 Cal.App.3d 1195

432.04 The placing of the burden on the employer to rebut the presumption that the parties would have entered into an agreement had the employer bargained in good faith, does not unconstitutionally violate due process, since empirical data supports a rational connection between good faith bargaining and the consummation of an agreement.
WILLIAM DAL PORTO & SONS, INC. v. ALRB (1987) 191 Cal.App.3d 1195

432.04 If the employer fails to carry the burden of proving that no contract would have been concluded in good faith, the Board should impute to the parties an agreement, and measure losses of pay and benefits with reference to it.
WILLIAM DAL PORTO & SONS, INC. v. ALRB (1987) 191 Cal.App.3d 1195

432.04 In proceedings before the ALRB seeking a makewhole remedy under Labor Code section 1160.3 for an employer's refusal to bargain in good faith, there is a rebuttable presumption, placing the burden of proof on the employer, that the parties would have consummated a collective bargaining agreement had the employer bargained exclusively in good faith.
WILLIAM DAL PORTO & SONS, INC. v. ALRB (1987) 191 Cal.App.3d 1195

432.04 In considering need for post- certification access, employer bears burden of overcoming presumption that there are no other adequate alternative means of communicating with employees. F&P GROWERS ASSN. v. ALRB (1985) 172 Cal.App.3d 1127

432.04 State of mind--the key issue in bad-faith bargaining case--is not question of law but of fact, and is most often established by circumstantial evidence. Such

determinations must be made on basis of totality of circumstances.
WILLIAM DAL PORTO & SONS, INC. v. ALRB (1984) 163 Cal.App.3d 541

432.04 Board's regulations, (20382(g)) preclude admission in ULP proceedings of Board order extending certification.
YAMADA BROS. v. ALRB (1979) 99 Cal.App.3d 112

432.05 Violation Of Contract As Unfair Labor Practice

432.05 Employer violated the ALRA by unlawfully repudiating its contract with union and laying off employees in violation of contract seniority provision.
PETER D. SOLOMON and JOSEPH R. SOLOMON dba CATTLE VALLEY FARMS/TRANSCO LAND AND CATTLE CO., 9 ALRB No. 65

432.06 Refusal To Bargain Between Union Election Victory And Certification

432.06 Where the General Counsel failed to show that the closure of these nursery for one-half day prior to New Year's Day represented a change in employment practices, the Board refused to find that the employer had violated its duty to bargain when it closed the nursery for one-half day without negotiating with the Union.
SUNNYSIDE NURSERIES, INC., 6 ALRB No. 52

432.06 The employer violated its duty to bargain where it changed its hiring practices following a Union election victory without negotiating with the Union even though the Board had not yet certified the Union's election victory.
SUNNYSIDE NURSERIES, INC., 6 ALRB No. 52

432.06 Employer's denial of recognition to newly elected union is a devastating psychological blow.
RULINE NURSERY CO. v. AGRICULTURAL LABOR RELATIONS BOARD (1985) 169 Cal.App.3d 247

432.06 Employer must bargain over effects of decision to close its operations, even while election objections are still pending. HIGHLAND RANCH v. ALRB (1981) 29 Cal.3d 848

432.06 While employer need not bargain to contract while election objections are pending and before union is certified, employer's refusal to bargain over changes in working conditions during that period is unlawful if union is ultimately certified. This policy is intended to prevent employer from undermining or boxing in union before contract bargaining even begins.
HIGHLAND RANCH v. ALRB (1981) 29 Cal.3d 848

433.00 SUBJECTS FOR BARGAINING; UNION DEMANDS

433.01 Mandatory Subjects Of Bargaining

433.01 Where an employer consistently and unreasonably refuses to provide information requested by the union's bargaining representative, submits predictably unacceptable proposals, refused to discuss mandatory subjects of bargaining, fields negotiators whose authority was not sufficiently broad to permit negotiations to proceed without undue delay, and unilaterally modified tentative agreements without good cause, the employer is unlawfully refusing to bargain collectively in good faith.
ROBERT MEYER dba MEYER TOMATOES, 17 ALRB No. 17

433.01 Imposition of production standards enforced by disciplinary warnings constitutes change in a mandatory subject of bargaining requiring notice and opportunity to bargain be accorded certified representative.
SKALLI CORPORATION dba ST. SUPERY, 17 ALRB No. 14

433.01 Dues checkoff excepted from general rule that employer may not make unilateral changes in terms and conditions of employment embodied in a collective bargaining agreement following expiration of the agreement. Violation found where employer suddenly and unilaterally ceased dues deductions provided for in an on-going contract.
CERTIFIED EGG FARMS AND OLSON FARMS, INC., 16 ALRB No. 7

433.01 Respondent violated section 1153(c) by discriminatorily transferring harvest work from its own crew to a labor contractor. The transfer involved a mandatory subject of bargaining.
PLEASANT VALLEY VEGETABLE, 12 ALRB No. 31

433.01 Employer's unilateral change from requirement of oral to written notice for union to take access was not a violation of 1153(e) as it was not a change affecting a mandatory subject of bargaining.
TEX-CAL LAND MANAGEMENT, INC., et al. 12 ALRB No. 26

433.01 Union's insistence on compliance with notification of hiring provision in expired contract was directed at a mandatory subject of bargaining.
TEX-CAL LAND MANAGEMENT, INC., 11 ALRB No. 31

433.01 Employer's importation of mushrooms from another facility did not have such a significant detrimental impact on the bargaining unit as to require negotiation.
WEST FOODS, INC., 11 ALRB No. 17

433.01 Employer's institution of a new rule requiring employees to cut lettuce in the rain was a mandatory subject of bargaining. BERTUCCIO FARMS, 10 ALRB No. 52

433.01 Employer's proposal that labor contractor employees who admittedly are covered by the certification be excluded from the terms of a proposed collective bargaining

agreement is evidence of employer's bad faith.
PAUL W. BERTUCCIO, 10 ALRB No. 16

433.01 The filing of a petition for unit clarification does not suspend the duty to bargain over employees in question.
PAUL W. BERTUCCIO, 10 ALRB No. 16

433.01 An employer has no duty to bargain with the certified bargaining representative about its decision to sell a crop; such a decision lies at the core of entrepreneurial control and therefore is not subject to the collective bargaining process.
PAUL W. BERTUCCIO, 9 ALRB No. 61

433.01 A decision by management regarding what crop to grow or discontinue is not subject to the collective bargaining process; such a decision lies at the core of entrepreneurial control.
CARDINAL DISTRIBUTING COMPANY, INC., et al., 9 ALRB No. 36

433.01 A decision to subcontract the production of a crop is subject to mandatory bargaining.
CARDINAL DISTRIBUTING CO., INC., et al., 9 ALRB No. 43

433.01 Employer violated section 1153(e) and (a) by unilaterally changing its recall procedure by instituting a written recall method instead of its previous written and oral notification system; method of recall was mandatory subject of bargaining and, although some unilateral changes are too insignificant to constitute violations of the Act, this change in the employer's recall procedure was significant enough to constitute an unlawful unilateral change.
D'ARRIGO BROTHERS COMPANY OF CALIFORNIA, 9 ALRB No. 3

433.01 Under NLRA & ALRA, Employer is required to bargain collectively with collective bargaining agent over wages, hours, and other terms and conditions of employment.
N. A. PRICOLA PRODUCE, 7 ALRB No. 49

433.01 Relevant information regarding pension, medical, educational and welfare plans must be provided upon request since such plans are mandatory subjects of bargaining. UFW's Citizens' Participation Day Fund is a special circumstance. Although contributions to it are a mandatory subject since it provides a paid holiday, management and expenditure of the Fund concern UFW and its members and is permissive bargaining subject only.
ADMIRAL PACKING CO., et al, 7 ALRB No. 43

433.01 In the context of agricultural employment, where pesticides are so often used and may affect the health and safety of employees working near and with them. Pesticides and chemicals constitute a mandatory subject of bargaining. As such, information about pesticides is relevant and necessary for a certified labor organization

to bargain.
AS-H-NE FARMS, 6 ALRB No. 9

433.01 By unilaterally altering the crew assignments, respondent refused to bargain with the certified collective bargaining representative concerning a mandatory subject of bargaining. This conduct constitutes a per se violation of section 1153(e) and (a) of the Act and is evidence of respondent's overall failure to bargain in good faith. Montebello Rose Co., Inc./Mount Arbor Nurseries, Inc., 6 ALRB No. 64; NLRB v. Katz, 369 U.S. 736, 50 LRRM 2177 (1962); and Central Cartage, Inc. 236 NLRB No. 163, 98 LRRM 1554 (1978).
SAM ANDREWS' SONS, 5 ALRB No. 38

433.01 The ALJ concluded respondent violated section 1153(e) and (a) of the Act by failing to provide relevant bargaining information requested by the union, failing to meet promptly and regularly, unilaterally granting wage increase and laying off employees, failing to adequately respond to union proposals, failing to bargain in good faith with respect to mandatory subjects of bargaining, excluding items previously agreed upon from a counterproposal, and submitting proposals which failed to respond to issues introduced by the union. The Board affirmed general conclusion as to violation of section 1153(e) and (a).
HEMET WHOLESALE COMPANY, 4 ALRB No. 75

433.01 Even if an agricultural employer had no duty to provide its employees free lodging, kitchen utensils, and a line of credit for groceries before a union was certified as the employees' exclusive bargaining representative, the employer could not lawfully change these benefits without bargaining with the union since they had acquired the status of a condition of employment.
J.R. NORTON CO. v. ALRB (1987) 192 Cal.App.3d 874

433.01 Successorship is mandatory subject of bargaining.
WILLIAM DAL PORTO & SONS, INC. v. ALRB (1984) 163 Cal.App.3d 541

433.01 Transfer of work away from bargaining unit employees is a mandatory subject of bargaining, even where the work is transferred to another state.
NISH NOROIAN FARMS v. ALRB (1984) 35 Cal.3d 726

433.02 Permissive Subjects Of Bargaining

433.03 Illegal Subjects Of Bargaining

433.03 Employer's assertion that its proposals, including union security, to exclude employees of its labor contractor from the terms of a contract was a form of a technical refusal to bargain, held to be without merit; proposals to exclude such employees are per se violations and, in any event, at no time did employer have a reasonable good

faith belief that its labor contractor employees were not its agricultural employees.
PAUL W. BERTUCCIO, 10 ALRB No. 16

433.04 Decision Bargaining

433.04 Change in number of canes to be left on grape vines during pruning is a matter that lies within the "core of entrepreneurial control" and is therefore not subject to decision bargaining. A matter need not involve the "scope and direction" of the enterprise to be subject only to effect bargaining.
BRIGHTON FARMING CO., INC., 18 ALRB No. 4

433.04 Employer has no obligation to bargain over an economically motivated decision to partially close its business, since the decision is not of the type that is amenable to resolution through the bargaining process.
VESSEY & COMPANY, INC., et al., 13 ALRB No. 17

433.04 Employer's conversion of vineyards from table grape to raisin production was a crop change decision which does not require decision bargaining; however, employer violated 1153(e) by failing to give the union notice of the conversion and an opportunity to bargain over its effects, since it could have been expected to have a significant impact on the continued availability of employment.
TEX-CAL LAND MANAGEMENT, INC., 11 ALRB No. 31

433.04 Employer's elimination of its own swamping trucks did not constitute violation of 1153(e) since the change was the type of management decision which is not appropriate for decision bargaining; bargaining over effects not required because it was not demonstrated that the use of subcontracted trucks had any impact on continued availability of employment.
TEX-CAL LAND MANAGEMENT, INC., 11 ALRB No. 31

433.04 Employer's decision to discontinue growing lettuce was a managerial decision to go partially out of business and was not subject to mandatory bargaining.
HOLTVILLE FARMS, INC., 10 ALRB No. 49

433.04 Employer has no obligation to bargain over an economically motivated decision to partially close its business.
VALDORA PRODUCE COMPANY and VALDORA PRODUCE COMPANY, INC., 10 ALRB No. 3

433.04 An employer has no duty to bargain with the certified bargaining representative about its decision to sell a crop; such a decision lies at the core of entrepreneurial control and therefore is not subject to the collective bargaining process.
PAUL W. BERTUCCIO, 9 ALRB No. 61

433.04 Employer's decision to grow almonds rather than go out of business did not affect wages, hours or other terms and conditions of employment, and there-fore was not a subject of mandatory bargaining.
MOUNT ARBOR NURSERIES, INC., and MID-WESTERN NURSERIES, INC., 9 ALRB No. 49

433.04 A decision to subcontract the production of a crop is subject to mandatory bargaining.
CARDINAL DISTRIBUTING CO., INC., et al., 9 ALRB No. 43

433.04 A decision by management regarding what crop to grow or discontinue is not subject to the collective bargaining process; such a decision lies at the core of entrepreneurial control.
CARDINAL DISTRIBUTING COMPANY, INC., et al., 9 ALRB No. 36

433.04 Board reversed on finding of a subcontracting decision, requiring bargaining, where record showed no contractual relationship between employer discontinuing crop and lessee of grower's land, no control of crop by former employer, crop was discontinued because it was uneconomical to grow in small parcels, discontinuance was a complete elimination of employer's investment in the crop, and union could not meaningfully bargain over employer's economic concerns. CARDINAL DISTRIBUTING CO. v. ALRB (1984) 159 Cal.App.3d 758

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433.04 Bargaining over management decisions which reduce jobs is required only where benefit for collective bargaining outweighs burden on the business.
CARDINAL DISTRIBUTING CO. v. ALRB (1984) 159 Cal.App.3d 758

433.04 Decisions regarding what crop to grow or discontinue involve changes in scope and direction of business and are not mandatory subjects of bargaining. Subcontracting is mandatory subject because it focuses upon aspects of employment relationship that are amenable to bargaining.
CARDINAL DISTRIBUTING CO. v. ALRB (1984) 159 Cal.App.3d 758

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433.04 Whether a decision is "subcontracting" involves 1) nature of employer's business before and after change, 2) reasons for change, 3) capital expense of change, 4) union's ability to make meaningful proposals concerning contemplated change. CARDINAL DISTRIBUTING CO. v. ALRB (1984) 159 Cal.App.3d 758

433.04 Employer has no duty to bargain over basic decision whether to go out of business; however, it must still bargain over effects of closure on its employees. HIGHLAND RANCH v. ALRB (1981) 29 Cal.3d 848

433.05 Effects Bargaining

433.05 Change in number of canes to be left on grape vines during pruning is a matter that lies within the "core of entrepreneurial control" and is therefore not subject to decision bargaining. A matter need not involve the "scope and direction" of the enterprise to be subject only to effect bargaining. BRIGHTON FARMING CO., INC., 18 ALRB No. 4

433.05 Upon notice to union of its impending closure and request of the union, employer is obligated to bargain over the effects of its decision. VESSEY & COMPANY, INC., et al., 13 ALRB No. 17

433.05 Employer's failure to inform the union of when grape pruning was to begin and to bargain over the effects of this decision was a violation of section 1153(e). Decision had an impact on unit employees as the delay meant that more workers had to be hired, and employment was for shorter periods of time. TEX-CAL LAND MANAGEMENT, INC., et al. 12 ALRB No. 26

433.05 Employer's conversion of vineyards from table grape to raisin production was a crop change decision which does not require decision bargaining; however, employer violated 1153(e) by failing to give the union notice of the conversion and an opportunity to bargain over its effects, since it could have been expected to have a significant impact on the continued availability of employment. TEX-CAL LAND MANAGEMENT, INC., 11 ALRB No. 31

433.05 Employer's elimination of its own swamping trucks did not

constitute violation of 1153(e) since the change was the type of management decision which is not appropriate for decision bargaining; bargaining over effects not required because it was not demonstrated that the use of subcontracted trucks had any impact on continued availability of employment.
TEX-CAL LAND MANAGEMENT, INC., 11 ALRB No. 31

433.05 Board granted default judgment and awarded limited backpay for employer's failure to bargain over effects of a partial closure.
KAPLAN'S FRUIT & PRODUCE CO., 11 ALRB No. 7

433.05 Employers violated their duty to bargain in good faith over the effects of their partial closure decision by delaying negotiations and failing timely to provide the union with information it requested.
HOLTVILLE FARMS, INC., 10 ALRB No. 49

433.05 No violation found for failure to engage in effects bargaining over partial closure where union failed to follow through on its request for effects bargaining.
VALDORA PRODUCE COMPANY and VALDORA PRODUCE COMPANY, INC., 10 ALRB No. 3

433.05 When an employer fails to timely notify the union of its decision to cease operations so as to provide the union a meaningful opportunity to bargain the effects of that closure, it violates its duty to bargain in good faith.
PIK'D RITE, INC., and CAL-LINA, INC., 9 ALRB No. 39

433.05 The proper remedy for a failure to provide a meaningful opportunity to bargain over the effects of a decision to cease operations is a limited backpay award coupled with an order to bargain; the limited backpay award is remedial, and its purpose is to restore the situation, as nearly as possible, to that which would have been obtained but for the violation. PIK'D RITE, INC., and CAL-LINA, INC., 9 ALRB No. 39

433.05 Employer obligated to bargain with union over the California effects of a unilateral change in work-allocation policy that was implemented in Arizona.
NISH NOROIAN FARMS v. ALRB (1984) 35 Cal.3d 726

433.05 Employer has no duty to bargain over basic decision whether to go out of business; however, it must still bargain over effects of closure on its employees.
HIGHLAND RANCH v. ALRB (1981) 29 Cal.3d 848

433.05 Employer must bargain over effects of decision to close its operations, even while election objections are still pending. HIGHLAND RANCH v. ALRB (1981) 29 Cal.3d 848

434.00 MEETINGS AND AUTHORITY TO NEGOTIATE

434.01 In General

434.01 Where an employer consistently and unreasonably refuses to provide information requested by the union's bargaining representative, submits predictably unacceptable proposals, refused to discuss mandatory subjects of bargaining, fields negotiators whose authority was not sufficiently broad to permit negotiations to proceed without undue delay, and unilaterally modified tentative agreements without good cause, the employer is unlawfully refusing to bargain collectively in good faith.
ROBERT MEYER dba MEYER TOMATOES 17 ALRB No. 17

434.01 Employer's willingness to meet and discuss all proposals does not prove good faith intent; it may show no more than desire to go through motions-- surface bargaining. (Dissent by Weiner, J.)
CARL JOSEPH MAGGIO, INC. v. ALRB (1984) 154 Cal.App.3d 40

434.01 Collective bargaining requires time and interaction for maturation of relationship between employer and union.
MONTEBELLO ROSE CO. v. ALRB (1981) 119 Cal.App.3d 1

434.02 Representative For Bargaining; Authority To Reach Agreement

434.02 Employer's changing negotiators is not evidence of bad faith, where the change caused no particular delay in negotiations; the new negotiator was not so unversed in skill and knowledge as to indicate bad faith; and new negotiator was not so constrained in his lack of authority to agree on behalf of respondent as to preclude good faith bargaining. (ALJD, pp. 78-80.)
MAYFAIR PACKING COMPANY, 13 ALRB No. 20

434.02 Dissent would find bad faith bargaining based upon negotiator's unavailability and failure to return calls as well as delays in providing information.
MAYFAIR PACKING COMPANY, 13 ALRB No. 20

434.02 Employer's attorney/negotiator's subtle pattern of avoiding agreement was furthered by his lack of negotiating authority, his failure to relay information to and from his absentee principals accurately and in a timely manner, and the discrepancies between his positions at the bargaining table and in the board room.
McFARLAND ROSE PRODUCTION, 11 ALRB No. 34

434.02 Employer's negotiator had authority and knowledge to bargain on behalf of employer; company representative was present to assist in negotiations.
PAUL W. BERTUCCIO, 10 ALRB No. 16

434.02 Although authority of Union negotiators was restricted (i.e., contract had to be ratified by membership, negotiators could not extend current contract and could

not drop demand for Union run hiring facility without members' approval), this authority was not so limited as to constitute a failure to bargain.
ADMIRAL PACKING CO., et al, 7 ALRB No. 43

434.02 Negotiators must have sufficient authority to conduct meaningful negotiations or violation of duty to bargain.
ADMIRAL PACKING CO., et al, 7 ALRB No. 43

434.02 Negotiators not unprepared or without authority to negotiate where both sides had to confer with principals on basic policy issues despite delays caused thereby.
KAPLAN'S FRUIT AND PRODUCE COMPANY, 6 ALRB No. 36

434.02 In arguing that RD failed to conduct an adequate investigation of peak and that employer's objection should not have been dismissed without a hearing, employer failed to raise novel legal issues or important issues concerning whether election was conducted in a manner that truly protected employees' right of free choice. Therefore, makewhole remedy is warranted for employer's refusal to bargain. (J.R. Norton Co. v. ALRB (1979) 26 Cal.3d 1.)

434.03 Refusal Of Employer To Meet, Or Delay In Arranging Meetings

434.03 Delays in bargaining schedule do not show bad faith on employer's part, where at least part of the delay was attributable to the union, and union was less than vigorous in responding to employer's final offer which was on the table. (ALJD, pp. 81-82.)
MAYFAIR PACKING COMPANY, 13 ALRB No. 20

434.03 Dissent would find bad faith bargaining based upon negotiator's unavailability and failure to return calls as well as delays in providing information.
MAYFAIR PACKING COMPANY, 13 ALRB No. 20

434.03 Failure to provide a prepared negotiator who is regularly available to meet indicates a desire to delay bargaining.
SAM ANDREWS' SONS, 11 ALRB No. 5

434.03 Employer engaged in bad faith bargaining by delays, and failure to set up meetings as promised or respond to union requests to meet.
SUMNER PECK RANCH, INC., 10 ALRB No. 24

434.03 Employer engaged in surface bargaining by engaging in dilatory tactics.
PAUL W. BERTUCCIO, 10 ALRB No. 16

434.03 Delaying negotiations by canceling and being unprepared for meetings indicia of bad faith; however, record did not show why negotiations were slow nor allow analysis of parties' positions so finding of bad faith bargaining reversed. Union shared responsibility for delays, and

there were indicia of E good faith, e.g., prompt scheduling of initial bargaining, complete counterproposals at second session, many meetings, and agreement on substantial number of contract provisions.
KAPLAN'S FRUIT AND PRODUCE COMPANY, 6 ALRB No. 36

434.03 Seven weeks found to be unreasonable long period for employer to commence negotiations following union's bargaining requests.
MASAJI ETO, et al., 6 ALRB No. 20

434.03 Employer's outright refusals to meet pending developments extrinsic to negotiations themselves (i.e., inter-union jurisdictional dispute) constituted per se violation of 1153(e)and (a).
MASAJI ETO, et al., 6 ALRB No. 20

434.03 Letters in which union requested preliminary meetings with each respondent constituted adequate requests or demands for bargaining.
MASAJI ETO, et al., 6 ALRB No. 20

434.03 Employer bargained in bad faith by failing to provide negotiator who was available and/or willing to meet at reasonable intervals.
MASAJI ETO, et al., 6 ALRB No. 20

434.03 Where the employer continued to farm after its duty to bargain arose, but refused to bargain with the UFW before it terminated its agricultural operations or thereafter, the Board found that he employer had refused to bargain in violation of section 1153(e).
P&P Farms, 5 ALRB No. 59

434.03 The ALJ concluded respondent violated section 1153(e) and (a) of the Act by failing to provide relevant bargaining information requested by the union, failing to meet promptly and regularly, unilaterally granting wage increase and laying off employees, failing to adequately respond to union proposals, failing to bargain in good faith with respect to mandatory subjects of bargaining, excluding items previously agreed upon from a counterproposal, and submitting proposals which failed to respond to issues introduced by the union. The Board affirmed general conclusion as to violation of section 1153(e) and (a).
HEMET WHOLESALE COMPANY, 4 ALRB No. 75

434.03 The duty to bargain in good faith imposes on the parties the obligation to meet and confer at reasonable times, and the use of delaying and evasive tactics is evidence of bad faith. ROBERT H. HICKAM, 4 ALRB No. 73

434.03 Unavailability of a respondent's negotiators is an indication of bad faith.
ROBERT H. HICKAM, 4 ALRB No. 73

434.03 The duty to bargain in good faith imposes on the parties the obligation to meet and confer at reasonable times, and the use of delaying and evasive tactics is evidence of bad faith. ROBERT H. HICKAM, 4 ALRB No. 73

434.03 Employer unlawfully refused to bargain by failing to respond to repeated inquiries from union after mediation sessions, where it was unreasonable for employer to insist on contact only through mediator, as parties had agreed to resume direct contact and union made it known through phone contacts and filings with the Board that it sought further negotiations, and parties were not at impasse.
P.H. RANCH, INC., et al., 21 ALRB No. 13

434.03 Except where there is an unrepudiated agreement that all contact must be through the mediator, whether such agreement is express or reasonably may be inferred from the conduct of the parties, a party may not use the existence of a mediator as an excuse to ignore efforts by the other party to resume direct contacts or negotiations.
P.H. RANCH, INC., et al., 21 ALRB No. 13

434.04 Observers At Meetings; Transcript Of Record

434.05 Time And Place Of Meetings; Postponing Or Cutting Meetings Short

434.05 No bad faith in employer's cancellation of one negotiating session where the record did not reveal a pattern of refusals to meet or the cancellations of other meetings on the part of the employer.
TEX-CAL LAND MANAGEMENT, INC., et al. 12 ALRB No. 26

434.05 Delaying negotiations by canceling and being unprepared for meetings indicia of bad faith; however, record did not show why negotiations were slow nor allow analysis of parties' positions so finding of bad faith bargaining reversed. Union shared responsibility for delays, and there were indicia of Employer good faith, e.g., prompt scheduling of initial bargaining, complete counterproposals at second session, many meetings, and agreement on substantial number of contract provisions.
KAPLAN'S FRUIT AND PRODUCE COMPANY, 6 ALRB No. 36

434.06 "Off The Record" Communications

434.07 Multi-Union Coalition; Coordinated Bargaining; Other Unions Included In Bargaining Committee

434.08 Withdrawal Of Employer From Meetings Or Negotiations

435.00 NEGOTIATIONS; OTHER INDICIA OF GOOD FAITH BARGAINING OF EMPLOYER

435.01 In General; "Surface Bargaining;" Totality Of Employer's Conduct

435.01 Employer's changing negotiators is not evidence of bad faith, where the change caused no particular delay in negotiations; the new negotiator was not so unversed in skill and knowledge as to indicate bad faith; and new negotiator was not so constrained in his lack of authority to agree on behalf of respondent as to preclude good faith bargaining. (ALJD, pp. 78-80.)
MAYFAIR PACKING COMPANY, 13 ALRB No. 20

435.01 Board must examine employer's behavior in light of Union's conduct during negotiations including its violation of agreed-upon ground rule of a news blackout by making public the details of negotiations, instigation of a strike against employer's operations before employer completed its first set of proposals, and inflexible position based on the Sun Harvest contract, which helped set a tone of hard bargaining for subsequent negotiations.
VESSEY & COMPANY, INC., 13 ALRB No. 17

435.01 Board finds that employer engaged in lawful hard bargaining where employer, despite union's inflexible bargaining strategy, modified their proposal, resulting in agreement on 33 articles.
VESSEY & COMPANY, INC., 13 ALRB No. 17

435.01 Board must examine the totality of the circumstances to determine whether employer engaged in surface or hard bargaining. Board cannot rely on a scrutiny of only isolated and limited periods of bargaining.
VESSEY & COMPANY, INC., 13 ALRB No. 17

435.01 Board must examine totality of the circumstances, including parties' conduct both at and away from the bargaining table when such conduct relates to the bargaining negotiations, to determine whether party has the requisite good faith agreement to reach agreement on a contract.
VESSEY & COMPANY, INC., 13 ALRB No. 17

435.01 Board has dual responsibility of assuring that parties bargain in good faith while, at the same time, giving full recognition to the statute's express acknowledgment that good faith bargaining "does not compel either party to agree to a proposal or require the making of a concession."
VESSEY & COMPANY, INC., et al., 13 ALRB No. 17

435.01 Circumstances indicate that employer was acting in disregard of the union's role as the exclusive bargaining representative of employer's agricultural employees and was engaging in conduct which could not help but frustrate the collective bargaining process.
MARIO SAIKHON, INC., 13 ALRB No. 8

435.01 The Board is in danger of assuming an improper role when it relies too heavily on such factors as the importance of issues to a party and the degree of movement exhibited by either side.
MARIO SAIKHON, INC., 13 ALRB No. 8

435.01 Board cannot conclude that Employer was engaged in other than a course of surface bargaining during period which was not only preceded by bad faith bargaining but also followed by a lengthy period of bad faith bargaining; makewhole liability not tolled
MARIO SAIKHON, INC., 13 ALRB No. 8

435.01 Given Employer's recurring and sometimes blatant acts in derogation of its basic bargaining obligations, Board concludes that Employer lacked the requisite good faith intent to reach an agreement with the Union and was engaged in an overall course of surface or bad faith bargaining.
MARIO SAIKHON, INC., 13 ALRB No. 8

435.01 Failure of collective bargaining process was made inevitable by a clear pattern of bad faith conduct on the part of the Employer which included long delays in responding to Union proposals, a failure to submit counterproposals as promised, a failure to provide requested relevant information in a timely matter, and a string of unlawful unilateral wage changes; under these circumstances, Board deemed application of makewhole remedy to be appropriate.
MARIO SAIKHON, INC., 13 ALRB No. 8

435.01 Board holds that Employer failed to fulfill its statutory obligation to bargain in good faith by creating inexcusable delays and by engaging in conduct indicating a conscious disregard for the Union's role as the exclusive bargaining representative of Respondent's employees.
MARIO SAIKHON, INC., 13 ALRB No. 8

435.01 Board has dual responsibility of assuring that parties bargain in good faith while, at the same time, giving full recognition to statutory proviso that the good faith bargaining obligation "does not compel either party to agree to a proposal or require the making of a concession."
MARIO SAIKHON, INC., 13 ALRB No. 8

435.01 Employer was guilty of refusal to bargain in good faith when viewed from the totality of its conduct, which included its refusal to bargain over acreage it was actually farming, its subcontracting out of bargaining unit work to labor contractors and custom harvesters, its refusal to bargain over a tree pruning rate and over the effects of its change in the start-up date of grape pruning, and its refusal to provide information to the

union.
TEX-CAL LAND MANAGEMENT, INC., et al. 12 ALRB No. 26

435.01 Employer's attorney/negotiator continued his "active though often subtle frustration of the bargaining process" by agreeing to particular provisions or agreeing not to recommend against them, in fact recommending against them, and delaying announcement of their rejection by company principals in Chicago.
McFARLAND ROSE PRODUCTION, 11 ALRB No. 34

435.01 In determining the duration of the makewhole period, post-liability hearing conduct that bears a close resemblance to pre-hearing conduct will inevitably be colored by the Board's previous findings, making it that much more difficult for the employer to show it was no longer operating in bad faith.
McFARLAND ROSE PRODUCTION, 11 ALRB No. 34

435.01 Where Board's underlying finding of surface bargaining was grounded on employer's attorney/negotiator's "subtle but active" style of frustrating the negotiations as well as direct evidence of employer's agent's intent to delay, fact that pre-hearing unilateral wage increases and direct dealing did not continue after unfair labor practices hearing does not indicate good faith.
McFARLAND ROSE PRODUCTION, 11 ALRB No. 34

435.01 Employer's attorney/negotiator's admission at compliance hearing that he did not know and his position would not be affected by information as to how MLK funds expended, as well as employer's refusal to accept condition negotiated, constitutes indication that its section 1155.4 defense to MLK not taken in good faith.
McFARLAND ROSE PRODUCTION, 11 ALRB No. 34

435.01 Fact that contract ultimately signed with union, rather than signifying good faith, was attributable to the combination of employer's imminent closing and the delays generated by its attorney/negotiator's bad faith bargaining conduct.
McFARLAND ROSE PRODUCTION, 11 ALRB No. 34

435.01 Board declined to judge employer by nature and quantity of concessions or refusals to concede during post-hearing bargaining, instead analyzing employer's post-hearing conduct in the total context of its bargaining history with the UFW.
McFARLAND ROSE PRODUCTION, 11 ALRB No. 34

435.01 Although the Board must review the totality of the parties' conduct, and take some cognizance of the reasonableness of the positions taken by the parties, it cannot compel agreement or concessions, or sit in judgment of the substantive terms of a contract.
TEX-CAL LAND MANAGEMENT, INC., 11 ALRB No. 31

435.01 Totality of circumstances shows that employer's refusal to sign agreed-upon collective bargaining contract was in bad faith, where employer knowingly misled union about its intention to be bound by the contract, and subsequent to the refusal showed no willingness to explain or discuss its problems with the contract language.
TEX-CAL LAND MANAGEMENT, INC., 11 ALRB No. 28

435.01 Employer violated section 1153(e) by locking out its employees and by refusing to bargain in good faith with the employees' certified bargaining representative.
WEST FOODS, INC., 11 ALRB No. 17

435.01 Manner in which unilateral wage change was implemented and employer's bargaining over issue of union security, when taken together, result in a totality of circumstances indicating that employer was in fact seeking to frustrate negotiations and avoid signing a contract.
WILLIAM DAL PORTO & SONS, INC., 11 ALRB No. 13

435.01 Bad faith bargaining found where employer declared premature impasse, raised wages unilaterally, delayed in providing information, provided an unprepared and/or unavailable negotiator, failed to use care in reviewing its own proposals, failed to respond to substantial countermovement, and took untenable position on specific legal issue.
SAM ANDREWS' SONS, 11 ALRB No. 5

435.01 Employer engaged in bad faith bargaining by delays, failure to set up meetings as promised or respond to union requests to meet, and failure to offer counterproposals; by disregarding union's role as employees' exclusive representative by resisting union proposals in order to preserve a "family-like" relationship between employer and employees; and by declarations of impasse, as well as refusal to provide union with relevant information and instituting unilateral wage increases without notice to the union.
SUMNER PECK RANCH, INC., 10 ALRB No. 24

435.01 Defense of statute of limitations will limit makewhole remedy but evidence of bad faith bargaining prior to six-month period is relevant background for finding of violation. SUMNER PECK RANCH, INC., 10 ALRB No. 24

435.01 Bad faith inferred from employer's failure to assert, until hearing, defense that it was not bound by certification and was not successor of previous employer.
SUMNER PECK RANCH, INC., 10 ALRB No. 24

435.01 Employer engaged in surface bargaining by making predictably unacceptable proposals and engaging in dilatory tactics.
PAUL W. BERTUCCIO, 10 ALRB No. 16

435.01 Union did not remain permanently bound to a proposal based upon major concessions where employer rejected the proposal and conditions underlying union's proposals changed.
PAUL W. BERTUCCIO, 10 ALRB No. 16

435.01 Employer's proposal that labor contractor employees who admittedly are covered by the certification be excluded from the terms of a proposed collective bargaining agreement is evidence of employer's bad faith.
PAUL W. BERTUCCIO, 10 ALRB No. 16

435.01 Employer's conduct in refusing to provide requested information, failing to submit economic proposals over a 19-month period, submitting only two non-economic proposals, and implementing unilateral changes constituted an unlawful refusal to bargain collectively in good faith.
ROBERT H. HICKAM, 10 ALRB No. 2

435.01 Bad faith bargaining found where employer's position on union institutional needs absolute and across the board, without any willingness to compromise or accommodate; union motives distrusted and impugned and union abuse assumed, all without sufficient basis; alternatives and possibilities are neither presented nor explored; objections to a critical proposal are insincere and other proposals are sophistical; proposals are made knowing and expecting their unacceptability; and, finally, away from the bargaining table key management personnel expound theories indicating that the union's relationship to management is to be subordinated to that of management to worker. However, the employer cannot be ordered to accede to any union position or proposal; rather the employer must make some good faith effort in some direction to compose its differences and reach agreement with the union. BRUCE CHURCH, INC., 9 ALRB No. 74

435.01 Bargaining is a careful, sophisticated process; rarely is there an admission of a "bad faith" intention. Violations can only be inferred from circumstantial evidence. The previous relations of the parties, antecedent events explaining behavior at the bargaining table, and the course of negotiations constitute the raw facts for reaching such a determination. The content and context of proposals and counterproposals can be circumstantial evidence from which motive or state of mind may be inferred. This evidence is useful, not as an indication of whether a specific proposal is reasonable or unreasonable, but because it may serve to disclose underlying motive, pattern or design. As such it is to be considered in combination with all of the other bargaining behavior, and not as a separate, isolated fragment.
BRUCE CHURCH, INC., 9 ALRB No. 74

435.01 Employer's unrelenting opposition to union-supported

funds, pension plan, medical plan, hiring hall and other "institutional" items is an indication of bad faith bargaining when that opposition is based on claims that were not genuinely held by the employer; employer's opposition was based on a pervasive belief that the union could not be trusted to honestly carry out its duties as exclusive representative, and this mistrust was not based firmly on facts, but was, instead, a smoke screen to conceal a resolve to avoid any concession in this area.
BRUCE CHURCH, INC., 9 ALRB No. 74

435.01 An employer who merely gives the appearance of bargaining, but has no intention of reaching an agreement, acts in bad faith and violates section 1153(e).
GROW-ART, 9 ALRB No. 67

435.01 Where the Board specifically included packing shed workers in the bargaining unit, the certified bargaining representative has a duty to represent those workers, and the employer's attempt to have the bargaining representative voluntarily exclude the packing shed workers from the unit was contrary to the purposes of the Act.
GROW-ART, 9 ALRB No. 67

435.01 No bad faith bargaining found where, although employer exhibited some indicia of bad faith, the totality of circumstances showed that the employer desired to reach agreement, and that there were indications that the union was not at all times doing everything in its power to reach agreement.
D'ARRIGO BROTHERS OF CALIFORNIA, 9 ALRB No. 51

435.01 Employer bargained in bad faith by insisting that all agreements be tentative, by withdrawing numerous agreed-upon articles, by declaring impasse prematurely, and by its disingenuous claim that the union had lost its majority. ROBERTS FARMS, INC., 9 ALRB No. 27

435.01 Board unwilling to infer bad faith from wage offers where employer, who was in a relatively strong bargaining position, did display some flexibility on economic issues.
WILLIAM DAL PORTO & SONS, INC., 9 ALRB No. 4

435.01 Intent of parties in unfair bargaining case must nearly always be determined from circumstantial evidence.
ADMIRAL PACKING CO., et al, 7 ALRB No. 43

435.01 In unfair bargaining case, must look to totality of circumstances both at and away from table.
ADMIRAL PACKING CO., et al, 7 ALRB No. 43

435.01 Use of package approach to bargaining where parties did not discuss proposals on all major contract items indicated bad faith in view of particular bargaining

history (e.g., short relationship, complexity of issues). ADMIRAL PACKING CO., et al, 7 ALRB No. 43

435.01 Hindsight appropriate for finding good or bad faith in bargaining ULP. [See Montebello Rose, 5 ALRB No. 64, p. 14-15] ADMIRAL PACKING CO., et al, 7 ALRB No. 43

435.01 In assessing good or bad faith in negotiations, Board considers totality of the circumstances. ADMIRAL PACKING CO., et al, 7 ALRB No. 43

435.01 Presence or absence of intent to bargain in good faith must be discerned from totality of circumstances, including review of parties' conduct both at bargaining table and away from it. MASAJI ETO, et al., 6 ALRB No. 20

435.01 Board must evaluate evidence as whole to determine whether respondent engaged in mere surface bargaining without sincere desire to reach agreement, or bargained in good faith but were unable to arrive at agreement acceptable to all parties. NLRB v. Reed & Prince Mfg. Co. (1st Cir. 1953) 205 F.2d 131 cert. den.346 U.S. 887. MASAJI ETO, et al., 6 ALRB No. 20

435.01 Where it appeared from totality of employer's conduct that it had bargained in bad faith for fifteen months, employer's willingness to meet and agree on some contract items in weeks just prior to hearing did not show significant change in its past unlawful conduct. MASAJI ETO, et al., 6 ALRB No. 20

435.01 Act requires more than meeting and going through motions of negotiating. A. H. Belo Corporation (1968) 170 NLRB 1558. MASAJI ETO, et al., 6 ALRB No. 20

435.01 Board rejects ALO treatment of separate periods of bargaining as discrete units in evaluating employer's intent. Employer's intent must be discerned from totality of conduct during entire course of negotiations. All aspects of parties' bargaining and related conduct are to be considered comprehensively, not as separate fragments assessed in isolation from one another. MASAJI ETO, et al., 6 ALRB No. 20

435.01 Whether a party bargained in good faith is determined by examining the totality for its conduct. The Board must decide whether the party acted with a "bonafide intent to reach an agreement if agreement [was] possible." Atlas Mills, 3 ALRB No. 10, 1 LRRM 60 (1937); West Coast Casket Company, 192 NLRB 624, 78 LRRM 1026 (1971); enf'd in part 469 F.2d 871, 81 LRRM 1857 (9th Cir. 1972). AS-H-NE FARMS, 6 ALRB No. 9

435.01 "Conduct reflecting a rejection of the principle of collective bargaining . . . , in the Board's view, manifests the absence of a genuine desire to compose

differences and to reach agreement in the manner the Act commands." See Akron Novelty Mfg. Co., 224 NLRB 998.
AS-H-NE FARMS, 6 ALRB No. 9

435.01 The employer violated sections 1153(e) and (a) by is course of bargaining conduct including postponing meetings, changing negotiators, delaying discussion on substantive issues, failing to present adequate contract proposals, requiring individuals to sign a "no-strike" agreement and by various independent per se violations.
O.P. MURPHY & SONS, 5 ALRB No. 63

435.01 Surface bargaining involves pretense or appearance of good faith when genuine desire to reach agreement is lacking. Hard bargaining involves holding firm on positions sincerely held, though impasse results.
WILLIAM DAL PORTO & SONS, INC. v. ALRB (1984) 163 Cal.App.3d 541

435.01 State of mind--the key issue in bad-faith bargaining case--is not question of law but of fact, and is most often established by circumstantial evidence. Such determinations must be made on basis of totality of circumstances.
WILLIAM DAL PORTO & SONS, INC. v. ALRB (1984) 163 Cal.App.3d 541

435.01 Determination of intent in bargaining case must be founded upon party's overall conduct and totality of the circumstances, as distinguished from individual pieces forming part of mosaic.
CARL JOSEPH MAGGIO, INC. v. ALRB (1984) 154 Cal.App.3d 40

435.01 Totality of circumstances test requires consideration of union's conduct during negotiations, such as: refusing to meet with mediator; calling a strike before making a complete proposal; failing to make other than minor concessions; using publicity to put employer in bad light; and engaging in serious strike misconduct and violence.
CARL JOSEPH MAGGIO, INC. v. ALRB (1984) 154 Cal.App.3d 40

435.01 Board finding of bad faith bargaining overturned where employer did not make take-it-or-leave-it offer, bargained to impasse over crucial issue of economics, genuinely believed that their economic proposal was controlled by then-existing presidential wage and price guidelines, and only communicated their views about status of negotiations in advertisements directed to employees.
CARL JOSEPH MAGGIO, INC. v. ALRB (1984) 154 Cal.App.3d 40

435.01 Collective bargaining requires time and interaction for maturation of relationship between employer and union.
MONTEBELLO ROSE CO. v. ALRB (1981) 119 Cal.App.3d 1

435.02 Arbitration Or Mediation, Submission To

435.02 Union's failure to agree to Employer proposal that federal mediator be brought in not evidence of bad faith especially where proposal was tied to Employer's position that it was bound by federal guidelines which it asserted but did not believe.
ADMIRAL PACKING CO., et al, 7 ALRB No. 43

435.02 Arbitration is a laudable and expeditious means by which to resolve disputes over interpretation which were unforeseeable at time agreement was reached.
TEX-CAL LAND MANAGEMENT, INC. v. ALRB (1982) 135 Cal.App.3d 906

435.03 Concessions; Right To Reject Proposals; Adamant Position; Predictably Unacceptable Offer

435.03 So long as employer did not outright refuse to bargain with union upon the filing of a decertification petition, there is nothing unlawful in its hoping that the election might facilitate agreement on its terms, when, in fact, the union took it into account in making its own concessions.
MAYFAIR PACKING COMPANY 13 ALRB No. 20

435.03 Board finds that employer engaged in lawful hard bargaining where employer, despite union's inflexible bargaining strategy, modified their proposal, resulting in agreement on 33 articles.
VESSEY & COMPANY, INC., et al., 13 ALRB No. 17

435.03 Employer's adamant refusal to agree to MLK Fund and second year pension indicated bad faith when viewed in context of attorney/negotiator's conduct.
McFARLAND ROSE PRODUCTION, 11 ALRB No. 34

435.03 Either party is entitled to use its economic strength to achieve the most favorable terms possible.
TEX-CAL LAND MANAGEMENT, INC., 11 ALRB No. 31

435.03 The fact that a proposal may be deemed predictably unacceptable, in the sense that the other side would clearly prefer a different term, is alone insufficient to establish that the required posture of good faith is lacking.
TEX-CAL LAND MANAGEMENT, INC., 11 ALRB No. 31

435.03 Board rejects ALJ's finding of bad faith bargaining in that it relies too heavily on assessment of the adequacy of employer's wage and health plan offers and on conduct away from the table which had no apparent effect on conduct at the table.
TEX-CAL LAND MANAGEMENT, INC., 11 ALRB No. 31

435.03 Bad faith bargaining found where employer declared premature impasse, raised wages unilaterally, delayed in providing information, provided an unprepared and/or

unavailable negotiator, failed to use care in reviewing its own proposals, failed to respond to substantial countermovement, and took untenable position on specific legal issue.
SAM ANDREWS' SONS, 11 ALRB No. 5

435.03 Employer engaged in surface bargaining by making predictably unacceptable proposals.
PAUL W. BERTUCCIO, 10 ALRB No. 16

435.03 Employer's unrelenting opposition to union-supported funds, pension plan, medical plan, hiring hall and other "institutional" items is an indication of bad faith bargaining when that opposition is based on claims that were not genuinely held by the employer; employer's opposition was based on a pervasive belief that the union could not be trusted to honestly carry out its duties as exclusive representative, and this mistrust was not based firmly on facts, but was, instead, a smoke screen to conceal a resolve to avoid any concession in this area.
BRUCE CHURCH, INC., 9 ALRB No. 74

435.03 Bad faith bargaining found where employer's position on union institutional needs absolute and across the board, without any willingness to compromise or accommodate; union motives distrusted and impugned and union abuse assumed, all without sufficient basis; alternatives and possibilities are neither presented nor explored; objections to a critical proposal are insincere and other proposals are sophistical; proposals are made knowing and expecting their unacceptability; and, finally, away from the bargaining table key management personnel expound theories indicating that the union's relationship to management is to be subordinated to that of management to worker. However, the employer cannot be ordered to accede to any union position or proposal; rather the employer must make some good faith effort in some direction to compose its differences and reach agreement with the union. BRUCE CHURCH, INC., 9 ALRB No. 74

435.03 Employer did not bargain in bad faith by holding firm on its proposal that agreement last for five years; employer made reasonable argument for duration, offered wage concessions to compensate for extra duration, and reached agreement on most other issues.
TMY FARMS, INC., 9 ALRB No. 10

435.03 Board unwilling to infer bad faith from wage offers where employer, who was in a relatively strong bargaining position, did display some flexibility on economic issues.
WILLIAM DAL PORTO & SONS, INC., 9 ALRB No. 4

435.03 Respondent's unreasonable and adamant positions with respect to issues of successorship and union security together with its granting of a unilateral wage increase, constituted failure and refusal to bargain in good faith.

WILLIAM DAL PORTO & SONS, INC., 9 ALRB No. 4

435.03 Although Employer's economic counterproposals cut back on many Union prerogatives in prior contract, fact should not be taken as evidence of bad faith. Board does not judge substantive terms of parties' bargaining proposals.
ADMIRAL PACKING CO., et al, 7 ALRB No. 43

435.03 No finding of bad faith based on parties' inability to compromise on hiring hall, even though reasonable compromises of parties' positions were proposed, because no evidence why proposals not accepted.
KAPLAN'S FRUIT AND PRODUCE COMPANY, 6 ALRB No. 36

435.03 Outright rejection of a union proposal without any attempt to explain or to minimize differences, is inconsistent with a bona fide desire to reach an agreement. See Akron Novelty Mfg. Co., 224 NLRB 998, 93 LRRM 1106 (1976).
AS-H-NE FARMS, 6 ALRB No. 9

435.03 Employer's firm or unwavering stand on issue is not, in itself, contrary to good faith bargaining.
CARL JOSEPH MAGGIO, INC. v. ALRB (1984) 154 Cal.App.3d 40

435.03 Employer may insist on inclusion or exclusion of contract term forever, so long as insistence is genuine and sincerely held and not mere window dressing.
CARL JOSEPH MAGGIO, INC. v. ALRB (1984) 154 Cal.App.3d 40

435.03 Board finding that employer took an untenable legal position was supported by substantial evidence where several grower representatives testified they knew federal wage guidelines were voluntary and guidelines on their face were obviously voluntary. (Dissent by Weiner, J.)
CARL JOSEPH MAGGIO, INC. v. ALRB (1984) 154 Cal.App.3d 40

435.03 Board finding that employer made take-it-or-leave-it offer supported by substantial evidence where employers' characterized last proposal as "serious", presented it signed to union, summarily rejected union's counter offer, declared impasse, and immediately launched a widespread publicity campaign to gain employee and public support. (Dissent by Weiner, J.)
CARL JOSEPH MAGGIO, INC. v. ALRB (1984) 154 Cal.App.3d 40

435.03 Board is statutorily precluded, under 1155.2(a), from forcing agreement on any contract term, regardless of rationale invoked to support such action.
TEX-CAL LAND MANAGEMENT, INC. v. ALRB (1982) 135 Cal.App.3d 906

435.04 Counterproposals; Sufficiency Of Company Offer; Failure To Explain Proposal

435.04 Board finds that employer engaged in lawful hard

bargaining where employer, despite union's inflexible bargaining strategy, modified their proposal, resulting in agreement on 33 articles.
VESSEY & COMPANY, INC., et al., 13 ALRB No. 17

435.04 Employer did not fail or refuse to explain its proposals or to respond to union proposals.
SAM ANDREWS' SONS, 11 ALRB No. 5

435.04 Employer engaged in bad faith bargaining by failure to offer counter-proposals.
SUMNER PECK RANCH, INC., 10 ALRB No. 24

435.04 Employer's conduct in refusing to provide requested information, failing to submit economic proposals over a 19-month period, submitting only two non-economic proposals, and implementing unilateral changes constituted an unlawful refusal to bargain collectively in good faith.
ROBERT H. HICKAM, 10 ALRB No. 2

435.04 Employer's unrelenting opposition to union-supported funds, pension plan, medical plan, hiring hall and other "institutional" items is an indication of bad faith bargaining when that opposition is based on claims that were not genuinely held by the employer; employer's opposition was based on a pervasive belief that the union could not be trusted to honestly carry out its duties as exclusive representative, and this mistrust was not based firmly on facts, but was, instead, a smoke screen to conceal a resolve to avoid any concession in this area.
BRUCE CHURCH, INC., 9 ALRB No. 74

435.04 Bad faith bargaining found where employer's position on union institutional needs absolute and across the board, without any willingness to compromise or accommodate; union motives distrusted and impugned and union abuse assumed, all without sufficient basis; alternatives and possibilities are neither presented nor explored; objections to a critical proposal are insincere and other proposals are sophistical; proposals are made knowing and expecting their unacceptability; and, finally, away from the bargaining table key management personnel expound theories indicating that the union's relationship to management is to be subordinated to that of management to worker. However, the employer cannot be ordered to accede to any union position or proposal; rather the employer must make some good faith effort in some direction to compose its differences and reach agreement with the union. BRUCE CHURCH, INC., 9 ALRB No. 74

435.04 Board unwilling to infer bad faith from wage offers where employer, who was in a relatively strong bargaining position, did display some flexibility on economic issues.
WILLIAM DAL PORTO & SONS, INC., 9 ALRB No. 4

435.04 Employers engaged in bad faith negotiation when they predicated their economic proposals on federal limitations on wage increases when they did not believe their proposals were so limited. Good faith requires that parties' claims be honestly maintained.
ADMIRAL PACKING CO., et al, 7 ALRB No. 43

435.04 Employer bargained in bad faith where its package proposals, at late stages of negotiation showed that employer was not making reasonable efforts to improve differences with union, in light of parties' stated priorities, and where its response to union proposals was unreasoned.
MASAJI ETO, et al., 6 ALRB No. 20

435.04 Delay in submitting counter proposals constitutes evidence of bad faith bargaining. See Lawrence Textile Shrinking Co., Inc., 235 NLRB No. 163, 98 LRRM 1129 (1978).
AS-H-NE FARMS, 6 ALRB No. 9

435.04 The ALJ concluded respondent violated section 1153(e) and (a) of the Act by failing to provide relevant bargaining information requested by the union, failing to meet promptly and regularly, unilaterally granting wage increase and laying off employees, failing to adequately respond to union proposals, failing to bargain in good faith with respect to mandatory subjects of bargaining, excluding items previously agreed upon from a counterproposal, and submitting proposals which failed to respond to issues introduced by the union. The Board affirmed general conclusion as to violation of section 1153(e) and (a).
HEMET WHOLESALE COMPANY, 4 ALRB No. 75

435.04 Company refused to bargain in good faith over dues check-off proposal where negotiator simply refused on basis of bookkeeping costs but never even attempted to determine what actual costs would be. Moreover, company's cost-related objection was belied by adamance in face of union efforts to reduce total cost of contract.
WILLIAM DAL PORTO & SONS, INC. v. ALRB (1984) 163 Cal.App.3d 541

435.04 Employer was not in bad faith in rejecting union's successorship clause, since employer had reason to believe that such language would make it difficult to sell company, and since it was unclear, at time of negotiations, whether ALRB would apply NLRB rule that successors are not bound by predecessors' contracts.
WILLIAM DAL PORTO & SONS, INC. v. ALRB (1984) 163 Cal.App.3d 541

435.05 Dilatory Or Evasive Tactics

435.05 Employer's changing negotiators is not evidence of bad faith, where the change caused no particular delay in

negotiations; the new negotiator was not so unversed in skill and knowledge as to indicate bad faith; and new negotiator was not so constrained in his lack of authority to agree on behalf of respondent as to preclude good faith bargaining.(ALJD, pp. 78-80.)
MAYFAIR PACKING COMPANY, 13 ALRB No. 20

435.05 Board holds that Employer failed to fulfill its statutory obligation to bargain in good faith by creating inexcusable delays and by engaging in conduct indicating a conscious disregard for the Union's role as the exclusive bargaining representative of Respondent's employees.
MARIO SAIKHON, INC., 13 ALRB No. 8

435.05 After hiatus in bargaining which is not the result of bad faith, parties are deemed to share responsibility for resumption of bargaining.
MARIO SAIKHON, INC., 13 ALRB No. 8

435.05 Lengthy period of delay in bargaining attributed to employer's failure to provide its promised response.
MARIO SAIKHON, INC., 13 ALRB No. 8

435.05 After the unfair labor practice hearing, employer's attorney/negotiator continued his pre-hearing delaying practices by shifting positions and injecting new obstacles to agreement in the guise of "clarifying" previous agreements, delaying responses to union proposals and inquiries and leading the union to believe he had agreed to proposals later rejected by his principals.
McFARLAND ROSE PRODUCTION, 11 ALRB No. 34

435.05 Employer engaged in deliberate stalling tactics intended either to avoid reaching a contract before it closed or to lead the union on until imminent closure eliminated union bargaining power.
McFARLAND ROSE PRODUCTION, 11 ALRB No. 34

435.05 Employer engaged in bad faith bargaining by delays, failure to set up meetings as promised or respond to union requests to meet.
SUMNER PECK RANCH, INC., 10 ALRB No. 24

435.05 Employer engaged in surface bargaining by engaging in dilatory tactics.
PAUL W. BERTUCCIO, 10 ALRB No. 16

435.05 Employer's conduct in refusing to provide requested information, failing to submit economic proposals over a 19-month period, submitting only two non-economic proposals, and implementing unilateral changes constituted an unlawful refusal to bargain collectively in good faith.
ROBERT H. HICKAM, 10 ALRB No. 2

435.05 Delaying negotiations by canceling and being unprepared for meetings indicia of bad faith; however, record did not show why negotiations were slow nor allow analysis of parties' positions so finding of bad faith bargaining reversed. Union shared responsibility for delays, and there were indicia of Employer good faith, e.g., prompt scheduling of initial bargaining, complete counterproposals at second session, many meetings, and agreement on substantial number of contract provisions.
KAPLAN'S FRUIT AND PRODUCE COMPANY, 6 ALRB No. 36

435.05 Failure of Union to make firm wage proposal for 19 months did not sustain finding of bad faith but did contribute to delay. No showing Union was trying to avoid reaching contract.
KAPLAN'S FRUIT AND PRODUCE COMPANY, 6 ALRB No. 36

435.05 Seven weeks found to be unreasonably long period for employer to commence negotiations following union's bargaining requests.
MASAJI ETO, et al., 6 ALRB No. 20

435.05 Delay in submitting counter proposals constitutes evidence of bad faith bargaining. See Lawrence Textile Shrinking Co., Inc., 235 NLRB No. 163, 98 LRRM 1129 (1978).
AS-H-NE FARMS, 6 ALRB No. 9

435.05 The employer violated sections 1153(e) and (a) by is course of bargaining conduct including postponing meetings, changing negotiators, delaying discussion on substantive issues, failing to present adequate contract proposals, requiring individuals to sign a "no-strike" agreement and by various independent per se violations.
O.P. MURPHY & SONS, 5 ALRB No. 63

435.05 The ALJ concluded respondent violated section 1153(e) and (a) of the Act by failing to provide relevant bargaining information requested by the union, failing to meet promptly and regularly, unilaterally granting wage increase and laying off employees, failing to adequately respond to union proposals, failing to bargain in good faith with respect to mandatory subjects of bargaining, excluding items previously agreed upon from a counterproposal, and submitting proposals which failed to respond to issues introduced by the union. The Board affirmed general conclusion as to violation of section 1153(e) and (a).
HEMET WHOLESALE COMPANY, 4 ALRB No. 75

435.06 Discussion Of Proposals; Duration Of Or Time Limit On Negotiations; Ground Rules

435.06 Use of package approach to bargaining where parties did not discuss proposals on all major contract items indicated bad faith in view of particular bargaining history (e.g., short relationship, complexity of issues).

ADMIRAL PACKING CO., et al, 7 ALRB No. 43

435.06 No violation of Act for Employer to demand complete proposal with both economic and non-economic provisions before making counters to Union's non-economic proposals.
ADMIRAL PACKING CO., et al, 7 ALRB No. 43

435.06 Employer bargained in bad faith where its package proposals, at late stages of negotiation showed that employer was not making reasonable efforts to improve differences with union, in light of parties' stated priorities, and where its response to union proposals was unreasoned.
MASAJI ETO, et al., 6 ALRB No. 20

435.06 Outright rejection of a union proposal without any attempt to explain or to minimize differences, is inconsistent with a bona fide desire to reach an agreement. See Akron Novelty Mfg. Co., 224 NLRB 998, 93 LRRM 1106 (1976).
AS-H-NE FARMS, 6 ALRB No. 9

435.07 Inconsistent Positions Taken; Withdrawal Of Offers Or Concessions

435.07 Union not held to have engaged in regressive bargaining; a return to an old proposal, standing alone, does not constitute bad faith bargaining.
MARIO SAIKHON, INC.,13 ALRB No. 8

435.07 Union did not remain permanently bound to a proposal based upon major concessions where employer rejected the proposal and conditions underlying union's proposals changed.
PAUL W. BERTUCCIO, 10 ALRB No. 16

435.07 Employer bargained in bad faith by insisting that all agreements be tentative, by withdrawing numerous agreed-upon articles, by declaring impasse prematurely, and by its disingenuous claim that the union had lost its majority. ROBERTS FARMS, INC., 9 ALRB No. 27

435.07 Unilateral withdrawal of tentative agreements without good cause is indicative of bad faith bargaining, notwithstanding the tentative nature of the agreements.
ARAKELIAN FARMS, 9 ALRB No. 25

435.07 The ALJ concluded respondent violated section 1153(e) and (a) of the Act by failing to provide relevant bargaining information requested by the union, failing to meet promptly and regularly, unilaterally granting wage increase and laying off employees, failing to adequately respond to union proposals, failing to bargain in good faith with respect to mandatory subjects of bargaining, excluding items previously agreed upon from a counterproposal, and submitting proposals which failed to respond to issues introduced by the union. The Board

affirmed general conclusion as to violation of section 1153(e) and (a).
HEMET WHOLESALE COMPANY, 4 ALRB No. 75

435.07 Company refused to bargain in good faith over dues check-off proposal where negotiator simply refused on basis of bookkeeping costs but never even attempted to determine with actual costs would be. Moreover, company's cost-related objection was belied by adamance in face of union efforts to reduce total cost of contract. WILLIAM DAL PORTO & SONS, INC. v. ALRB (1984) 163 Cal.App.3d 541

435.08 Conduct Away From The Table; Prior Unfair Labor Practices

435.08 Board must examine totality of the circumstances, including parties' conduct both at and away from the bargaining table when such conduct relates to the bargaining negotiations, to determine whether party has the requisite good faith agreement to reach agreement on a contract.
VESSEY & COMPANY, INC., et al., 13 ALRB No. 17

435.08 Board holds that Employer failed to fulfill its statutory obligation to bargain in good faith by creating inexcusable delays and by engaging in conduct indicating a conscious disregard for the Union's role as the exclusive bargaining representative of Respondent's employees.
MARIO SAIKHON, INC., 13 ALRB No. 8

435.08 Unlawful unilateral changes in wage rates constitute evidence of bad faith.
MARIO SAIKHON, INC., 13 ALRB No. 8

435.08 Employer showed bad faith by failing, as required by expired labor agreement, to inform union of its intention to prune the prune trees in time (30 days in advance of the start-up of the season) for union to negotiate rate.
TEX-CAL LAND MANAGEMENT, INC., ET AL. 12 ALRB No. 26

435.08 But the mere setting of a piece rate without consultation with the union was not a unilateral change since the expired labor agreement contemplated either a piece rate or an hourly wage.
TEX-CAL LAND MANAGEMENT, INC., 12 ALRB No. 26

435.08 Where Board's underlying finding of surface bargaining was grounded on employer's attorney/negotiator's "subtle but active" style of frustrating the negotiations as well as direct evidence of employer's agent's intent to delay, fact that pre-hearing unilateral wage increases and direct dealing did not continue after unfair labor practices hearing does not indicate good faith.
McFARLAND ROSE PRODUCTION, 11 ALRB No. 34

435.08 Board rejects ALJ's finding of bad faith bargaining in that it relies too heavily on assessment of the adequacy

of employer's wage and health plan offers and on conduct away from the table which had no apparent effect on conduct at the table.
TEX-CAL LAND MANAGEMENT, INC., 11 ALRB No. 31

435.08 Employer's conduct away from the table, while complicating the union's bargaining task, outweighed by conduct at the table which reflected employer's intent to reach agreement.
TEX-CAL LAND MANAGEMENT, INC., 11 ALRB No. 31

435.08 Board relied in part on employer's previous unlawful unilateral changes as evidence of employer's overall bad faith.
TEX-CAL LAND MANAGEMENT, INC., 11 ALRB No. 28

435.08 Employer engaged in bad faith bargaining by instituting unilateral wage increases without notice to the union.
SUMNER PECK RANCH, INC., 10 ALRB No. 24

435.08 Employer's conduct in refusing to provide requested information, failing to submit economic proposals over a 19-month period, submitting only two non-economic proposals, and implementing unilateral changes constituted an unlawful refusal to bargain collectively in good faith.
ROBERT H. HICKAM, 10 ALRB No. 2

435.08 Letters by the employer to its employees describing ongoing negotiations, while not as free from regulation as communications to the public, are not an indication of bad faith bargaining unless they contain information or proposals not discussed in negotiations or suggest repudiation of the union and direct dealing with management.
BRUCE CHURCH, INC., 9 ALRB No. 74

435.08 Respondent's unreasonable and adamant positions with respect to issues of successorship and union security together with its granting of a unilateral wage increase, constituted failure and refusal to bargain in good faith.
WILLIAM DAL PORTO & SONS, INC., 9 ALRB No. 4

435.08 Conduct away from bargaining table reflects on good faith at table. Nonetheless, inadequate evidence of surface bargaining; dismissal of pro-Union crew leader just before negotiations and two unilateral wage increases not sufficient to find overall bad faith.
KAPLAN'S FRUIT AND PRODUCE COMPANY, 6 ALRB No. 36

435.08 Certain employer acts and conduct (unilateral wage changes and refusal to provide information) found to constitute per se refusals to bargain regardless of employer's overall intent to reach agreement. Such conduct held to be also evidence of bad faith.
MASAJI ETO, et al., 6 ALRB No. 20

435.08 Presence or absence of intent to bargain in good faith must be discerned from totality of circumstances, including review of parties' conduct both at bargaining table and away from it.
MASAJI ETO, et al., 6 ALRB No. 20

435.08 In determining whether a party has bargained in good faith, the Board may consider its prior unfair labor practices. Hecks, Inc., 172 NLRB 2231, 69 LRRM 1177 (1968), affirmed 433 F.2d 541, 74 LRRM 2109 (D.C. Cir. 1970), and Crystal Springs Shirt Co., 229 NLRB 4, 95 LRRM 1038 (1977).)
AS-H-NE FARMS, 6 ALRB No. 9

435.09 Circumvention Of Union; "Direct Dealing" With Employees; "Boulwarism"

435.09 Where Board's underlying finding of surface bargaining was grounded on employer's attorney/negotiator's "subtle but active" style of frustrating the negotiations as well as direct evidence of employer's agent's intent to delay, fact that pre-hearing unilateral wage increases and direct dealing did not continue after unfair labor practices hearing does not indicate good faith.
McFARLAND ROSE PRODUCTION, 11 ALRB No. 34

435.09 Letters by the employer to its employees describing ongoing negotiations, while not as free from regulation as communications to the public, are not an indication of bad faith bargaining unless they contain information or proposals not discussed in negotiations or suggest repudiation of the union and direct dealing with management.
BRUCE CHURCH, INC., 9 ALRB No. 74

435.09 Negotiations focusing not on wages nor managerial prerogatives but rather the "institutional demands" of the union are not conducted in good faith when the employer leaves the area of the strength of the bond between the worker and the union as it impacts on economics and management flexibility and usurps the duty of the union to act as the exclusive representative of the workers.
BRUCE CHURCH, INC., 9 ALRB No. 74

435.09 Employer's public relations campaign wherein it bypassed Union and communicated (through publicity) directly with Employees, disparaged Union and Employer engaged in other tactics constituting "Boulwarism" was per se violation of section 1153(e).
ADMIRAL PACKING CO., et al, 7 ALRB No. 43

435.09 Employer not prohibited from communicating with its Employees during negotiations, but Employer cannot bypass Union, derogate it in eyes of Employees and act as though Union does not exist.
ADMIRAL PACKING CO., et al, 7 ALRB No. 43

435.09 Where an employer bypasses the certified bargaining representative by negotiating directly with the employees, it is irrelevant who originated the idea for discussion or requested the meetings. Popular Volkswagen 205 NLRB 441, 84 LRRM 1002 (1973); Medo Photo Supply Corp., 321 U.S. 678.
AS-H-NE FARMS, 6 ALRB No. 9

435.09 The Act makes it the duty of the employer to bargain collectively with the chosen representative of his employees. As the obligation is exclusive, it demands "the negative duty to treat with no other. "Medo Photo Supply Corp. v. NLRB, 321 U.S. 678, 14 LRRM 581 (1944).
AS-H-NE FARMS, 6 ALRB No. 9

435.09 Where an employer negotiated directly with the employees, it "was not relieved of its obligations because the employees asked that they be disregarded. The statute was enacted in the public interest for the protection of the employees' right to collective bargaining and it may not be ignored by the employer, even though the employees consent. "Medo Photo Supply, 321 U.S. 678.
AS-H-NE FARMS, 6 ALRB No. 9

435.09 Employer did not bargain in bad faith or engage in "Boulwarism" by launching major publicity campaign, since employers' campaign was limited to publicizing sincerely held bargaining position, employee showed willingness to negotiate on all subjects, and did not present take-it-or-leave-it position.
CARL JOSEPH MAGGIO, INC. v. ALRB (1984) 154 Cal.App.3d 40

435.09 Employer's advertisements and leaflets criticizing union and its bargaining position were fair expression of employer's views, protected by 1155, and not attempt to negotiate directly with workers.
CARL JOSEPH MAGGIO, INC. v. ALRB (1984) 154 Cal.App.3d 40

435.09 Employer engaged in "Boulwarism" by making take-it-or-leave-it offer on economics, based on false premise of mandatory federal wage guidelines, then boxing itself into that bargaining position by a wide spread publicity campaign. (Dissent by Weiner, J.)
CARL JOSEPH MAGGIO, INC. v. ALRB (1984) 154 Cal.App.3d 40

435.10 Usurping The Role Of Union As Representative

435.10 Employer engaged in bad faith bargaining by disregarding union's role as employees' exclusive representative by resisting union proposals in order to preserve a "family-like" relationship between employer and employees. SUMNER PECK RANCH, INC., 10 ALRB No. 24

435.10 Employer's unrelenting opposition to union-supported funds, pension plan, medical plan, hiring hall and other "institutional" items is an indication of bad faith

bargaining when that opposition is based on claims that were not genuinely held by the employer; employer's opposition was based on a pervasive belief that the union could not be trusted to honestly carry out its duties as exclusive representative, and this mistrust was not based firmly on facts, but was, instead, a smoke screen to conceal a resolve to avoid any concession in this area.
BRUCE CHURCH, INC., 9 ALRB No. 74

435.10 Management's unrelenting opposition to each of the union's institutional needs, if taken separately and considered in isolation, does not imply an improper motivation; but taken together, these separate instances constitute evidence which, along with other circumstances, support an inference that the employer was bargaining toward a contract which would relegate the union to a secondary role inconsistent with its right to act as the exclusive bargaining representative of workers.
BRUCE CHURCH, INC., 9 ALRB No. 74

435.10 By attempting to assume the role of protector of its employees, the employer failed to recognize the union as the exclusive representative of the employees as required by law.
AS-H-NE FARMS, 6 ALRB No. 9

435.10 Employer's proposal of ballot clause such as the one described in Borg-Warner, 365 U.S. 342, 42 LRRM 2036 (1958) was not in itself unlawful, but provides indication of bad faith bargaining.
AS-H-NE FARMS, 6 ALRB No. 9

435.10 It is a basic principle of collective bargaining under the ALRA that the certified collective bargaining representative is the exclusive representative of the employees and that the employer may not assume that role. Montebello Rose Co. and Mount Arbor Nurseries, Inc., 5 ALRB No. 64 (1979); NLRB v. General Electric Co., 418 F.2d 736, 72 LRRM 2530 (2d Cir. 1969), cert. denied 397 U.S. 965 (1970).
AS-H-NE FARMS, 6 ALRB No. 9

435.10 Employer's advertisements and leaflets criticizing union and its bargaining position were fair expression of employer's views, protected by 1155, and not attempt to negotiate directly with workers.
CARL JOSEPH MAGGIO, INC. v. ALRB (1984) 154 Cal.App.3d 40

435.11 Failure To Treat Bargaining Obligation As Seriously As Other Business Obligations; Negligent Mistakes

435.11 Dissent would find bad faith bargaining based upon negotiator's unavailability and failure to return calls as well as delays in providing information.
MAYFAIR PACKING COMPANY, 13 ALRB No. 20

435.11 Negligence in preparing proposals indicates lack of seriousness about reaching agreement where employer erroneously made concessions, then withdrew them.
SAM ANDREWS' SONS, 11 ALRB No. 5

435.11 Act requires more than meeting and going through motions of negotiating. A. H. Belo Corporation (1968) 170 NLRB 1558. MASAJI ETO, et al., 6 ALRB No. 20

435.11 Inadequate preparation for bargaining indicates a lack of good faith.
AS-H-NE FARMS, 6 ALRB No. 9

435.12 Conditions Placed On Negotiations

435.12 Employer's attempts to limit his presence at a negotiating session it requested, to a posture of less than full bargaining, were ineffective to preserve a technical refusal to bargain posture asserted previously.
O. E. MAYOU & SONS, 11 ALRB No. 25

435.12 Employer's conditioning of bargaining over employees in the bargaining unit on concessions from the union is a per se violation of the duty to bargain.
PAUL W. BERTUCCIO, 10 ALRB No. 16

435.12 Employer bargained in bad faith by insisting that all agreements be tentative, by withdrawing numerous agreed-upon articles, by declaring impasse prematurely, and by its disingenuous claim that the union had lost its majority.
ROBERTS FARMS, INC., 9 ALRB No. 27

435.12 Conditioning bargaining on withdrawal of ULP charges is ULP, but no violation of Act where Employer continued negotiations in spite of ultimatum.
KAPLAN'S FRUIT AND PRODUCE COMPANY, 6 ALRB No. 36

435.12 Board finding that employer took an untenable legal position was supported by substantial evidence where several grower representatives testified they knew federal wage guidelines were voluntary and guidelines on their face were obviously voluntary. (Dissent by Weiner, J.)CARL JOSEPH MAGGIO, INC. v. ALRB (1984) 154 Cal.App.3d 40

435.13 Refusal To Provide Or Delay In Providing Information (see also section 436.02)

435.13 ALJ takes no account of respondent's delay in providing information since it is clear that such delay as is evident had no effect on the parties' positions. (ALJD, p. 83, n. 89.)
MAYFAIR PACKING COMPANY, 13 ALRB No. 20

435.13 Dissent would find bad faith bargaining based upon negotiator's unavailability and failure to return calls

as well as delays in providing information.
MAYFAIR PACKING COMPANY, 13 ALRB No. 20

435.13 Board holds that Employer failed to fulfill its statutory obligation to bargain in good faith by creating inexcusable delays and by engaging in conduct indicating a conscious disregard for the Union's role as the exclusive bargaining representative of Respondent's employees.
MARIO SAIKHON, INC., 13 ALRB No. 8

435.13 No unwarranted delay or prejudice to union in employer's handling of request for crew leader information.
TEX-CAL LAND MANAGEMENT, INC., 11 ALRB No. 31

435.13 Although employer ultimately provided requested information, delay indicated a lack of good faith in
SAM ANDREWS' SONS, 11 ALRB No. 5

435.13 Employer engaged in bad faith bargaining by refusal to provide union with relevant information.
SUMNER PECK RANCH, INC., 10 ALRB No. 24

435.13 Employer fulfilled its duty to provide relevant information even though it did not provide the information in the form requested.
PAUL W. BERTUCCIO, 10 ALRB No. 16

435.13 Employer's conduct in refusing to provide requested information, failing to submit economic proposals over a 19-month period, submitting only two non-economic proposals, and implementing unilateral changes constituted an unlawful refusal to bargain collectively in good faith.
ROBERT H. HICKAM, 10 ALRB No. 2

435.13 Employer's substantial, consistent and unreasonable refusal to provide the bargaining representative with information requested leads to clear inference that employer's illegality was conscious and in bad faith.
CARDINAL DISTRIBUTING COMPANY, INC., et al.,9 ALRB No. 36

435.13 An employer's belated compilation of union-requested bargaining information evidences bad faith bargaining.
AS-H-NE FARMS, 6 ALRB No. 9

435.13 The employer violated sections 1153(e) and (a) by instituting unilateral wage increases, by unilaterally implementing a new policy for paying employees, and by refusing to provide the union with production and yield information, which was relevant and necessary to wage negotiations.
O.P. MURPHY & SONS, 5 ALRB No. 63

435.13 Respondent's failure to provide the relevant information sought is a further indication of respondent's bad faith and constitutes a further refusal to bargain.

ROBERT H. HICKAM, 4 ALRB No. 73

435.14 Failure To Provide Post-Certification Access To Union (see also section 401.08)

435.14 Employer's insistence, contrary to past practice, that the union had to file a formal notice before access would be granted was an indication of bad faith.
TEX-CAL LAND MANAGEMENT, INC., ET AL. 12 ALRB No. 26

435.14 Since the employer was able to show that the Union had adequate, alternative means of contacting its employees following the Union's certification, the employer did not violate the Act when it denied the Union past-certification access.
SUNNYSIDE NURSERIES, INC., 6 ALRB No. 52

436.00 INFORMATION TO UNION; DATA FOR BARGAINING OR CONTRACT ADMINISTRATION

436.01 In General; Relevance Of Information To Collective Bargaining

436.01 Where an employer consistently and unreasonably refuses to provide information requested by the union's bargaining representative, submits predictably unacceptable proposals, refused to discuss mandatory subjects of bargaining, fields negotiators whose authority was not sufficiently broad to permit negotiations to proceed without undue delay, and unilaterally modified tentative agreements without good cause, the employer is unlawfully refusing to bargain collectively in good faith.
ROBERT MEYER dba MEYER TOMATOES 17 ALRB No. 17

436.01 Board finds violation of duty to bargain where employer unreasonably and without justification delayed for over a year in providing information relevant to bargaining in employee lists readily at its disposal.
ROBERT MEYER dba MEYER TOMATOES, 17 ALRB No. 5

436.01 Section 1153(a) imposes upon an employer the duty to furnish a union, upon request, information relevant and necessary to enable the union to intelligently carry out its duties as the employees' exclusive bargaining representative and that duty does not terminate upon the consummation of a collective bargaining agreement but continues unabated during the term of the agreement in order to permit the union to police and administer the contract.
RICHARD A. GLASS COMPANY, INC. 14 ALRB No. 11

436.01 An employer has a duty to provide information which would allow a union to determine at the outset whether there has been a breach of the bargaining agreement and to supply information which would enable the union to make

an informed decision about whether to process a grievance and, in particular, to provide information which would assist the union in preparing for arbitration.
RICHARD A. GLASS COMPANY, INC., 14 ALRB No. 11

436.01 Information as to the amount of rent owed by striking employees not shown to be relevant to bargaining process.
PAUL W. BERTUCCIO dba BERTUCCIO FARMS, 10 ALRB No. 16

436.01 Board rejected employer's argument that the information requested by the bargaining representative was irrelevant and that the requests were overly broad, since employer did not raise these concerns during bargaining and did not seek clarification from the bargaining representative.
CARDINAL DISTRIBUTING COMPANY, INC., et al., 9 ALRB No. 36

436.01 Certain employer acts and conduct (unilateral wage changes and refusal to provide information) found to constitute per se refusals to bargain regardless of employer's overall intent to reach agreement. Such conduct held to be also evidence of bad faith.
MASAJI ETO, et al., 6 ALRB No. 20

436.01 Information about an employer's other agricultural interests was relevant because it related to a contract proposal, recognition, which respondent had rejected and because the information concerned the scope of the bargaining unit and as such was fundamental to the union's full knowledge of which employees it represented. Ohio Power Company, 216 NLRB 987, 88 LRRM 1646 (1975) enf'd 531 F.2d 1281, 92 LRRM 3049 (6th Cir. 1976.)
AS-H-NE FARMS, 6 ALRB No. 9

436.01 The General Counsel must show only that the information was necessary and relevant for collective bargaining, not that delay in providing information slowed negotiations. Citing East Dayton Tool and Die Company, 239 NLRB No. 20, 99 LRRM 1449 (1978).
AS-H-NE FARMS, 6 ALRB No. 9

436.01 The NLRB has deemed the following information necessary and relevant to bargaining; supervisors doing bargaining work, Universal Building Services, Inc., 234 NLRB No. 82, 97 LRRM 1376 (1978); race, sex, and age of employees, Westinghouse Electric Corporation, 239 No. 19, 99 LRRM 1482 (1978); social security numbers, Andy Johnson Co., Inc., 230 NLRB No. 308, 96 LRRM 1366 (1977).
AS-H-NE FARMS, 6 ALRB No. 9

436.01 Information is not made irrelevant simply because a union is able to negotiate a contract without the requested data. NLRB v. Fitzgerald Mills Corporation, 313 F.2d 260, 52 LRRM 2174, (2d Cir., 1963), enforcing, 133 NLRB 877, 48 LRRM 1745 (1961) cert. denied, 375 U.S. 834, 54 LRRM 2312 (1963).)

AS-H-NE FARMS, 6 ALRB No. 9

436.01 Employer's failure to provide information necessary to taking post-certification access violates 1153(e) and 1153(a).
F&P GROWERS ASSN. v. ALRB (1985) 172 Cal.App.3d 1127

436.01 Union's requests for information on wages, production, benefits and pesticides were within broad and liberal standard of relevancy applied on review.
CARDINAL DISTRIBUTING CO. v. ALRB (1984) 159 Cal.App.3d 758

436.01 General Counsel need only show that information sought was necessary and relevant for bargaining, not that delay in providing information impeded negotiations.
CARDINAL DISTRIBUTING CO. v. ALRB (1984) 159 Cal.App.3d 758

436.01 Information re: wage rates, hours worked by employees, and profit sharing plan is presumptively relevant and belief that union could formulate proposals without information is not a sufficient defense to failure to provide such information.
P.H. RANCH, INC., et al., 21 ALRB No. 13

436.01 Employer violated section 1153(e) by refusing to provide union with information relevant to 436.07 bargaining, including seniority lists, addresses, dates of hire and social security numbers of workers, maps of company property, number of acres and products farmed, average hours of workers, names and titles of company representatives, and percentage of compensation paid to labor contractors.
TRIPLE E PRODUCE CORP., 23 ALRB No. 8

436.02 Delay or Refusal to Provide Information As Unfair Labor Practice

436.02 Unlawful for employer to deny union access to information potentially relevant to the processing of grievances under the contract on grounds union's decision to take grievance to arbitration obviates duty to provide such information.
RICHARD A. GLASS COMPANY, INC., 14 ALRB No. 11

436.02 Where respondent never claimed that the union's request for information was not relevant, specific, overboard or too burdensome to produce, but acknowledged the validity of the information sought by repeated but unfulfilled promises to produce, Board may find conduct violative of duty to bargain.
RICHARD A. GLASS COMPANY, INC., 14 ALRB No. 11

436.02 Employer's failure to respond to union's request for certain bargaining information and its excessive delay in responding to another such request constitute violations

of section 1153(e) and (a).
MARIO SAIKHON, INC.,13 ALRB No. 8

436.02 Section 1153(e) violation found where employer refused to give union financial information which presumably would have supported its position that it did not know when grape pruning would begin because it had not yet received the necessary funding. It was also a violation not to inform the union when grape pruning was to begin.
TEX-CAL LAND MANAGEMENT, INC., ET AL. 12 ALRB No. 26

436.02 Section 1153(e) violation found where employer failed to disclose financial information concerning various other entities with which it had some interest as union entertained an objective factual basis for believing that these other organizations and the employer were all financially intertwined.
TEX-CAL LAND MANAGEMENT, INC., ET AL. 12 ALRB No. 26

436.02 Section 1153(e) violation found where employer failed to provide production information about pruning of prune trees so as to enable union, pursuant to expired labor agreement, to bargain over new rate.
TEX-CAL LAND MANAGEMENT, INC., ET AL. 12 ALRB No. 26

436.02 Section 1153(e) violation found where employer refused to disclose information relating to its officers, directors, shareholders, agents for service and principal place of business and the names and addresses of landowners who had leased land to it and then allegedly canceled the leases, the dates of the decisions to cancel, and the effective date of those cancellations.
TEX-CAL LAND MANAGEMENT, INC., ET AL. 12 ALRB No. 26

436.02 No section 1153(e) violation found where employer refused to turn over personal tax information of individuals who had interest in corporation and other intertwined entities.
TEX-CAL LAND MANAGEMENT, INC., ET AL. 12 ALRB No. 26

436.02 Although withholding of raisin subcontracting information was a per se violation of employer's duty to bargain, it was, in the context of bargaining table conduct, an isolated occurrence that did not appear to have had a sufficient impact on the union's ability to formulate its proposals or analyze the employer's.
TEX-CAL LAND MANAGEMENT, INC., 11 ALRB No. 31

436.02 Hours of piece rate workers were available to employer, and its failure to provide that and other relevant information to union violated 1153(e) and (a).
SUMNER PECK RANCH, INC., 10 ALRB No. 24

436.02 Employer did not violate section 1153(e) by failing to furnish the union with information in the specific form requested by the union, when employer did furnish the information relevant to a determination of which

employees had dues deducted from their paychecks after expiration of the contract and the amounts that had been so deducted and refunded to the employees.
TMY FARMS, INC., 9 ALRB No. 29

436.02 No violation of Act where Employer failed to provide all information but Union reversed its position that it would accept information in whatever form Employer had it and demanded anew that it be provided in a form which was unavailable.
ADMIRAL PACKING CO., et al, 7 ALRB No. 43

436.02 Makewhole inappropriate where no finding of surface bargaining, unilateral wage increases brought wages up to prevailing rate and Union consciously refused to discuss wages before increase and did not protest the increases.
KAPLAN'S FRUIT AND PRODUCE COMPANY, 6 ALRB No. 36

436.02 The employer violated sections 1153(e) and (a) by instituting unilateral wage increases, by unilaterally implementing a new policy for paying employees, and by refusing to provide the union with production and yield information, which was relevant and necessary to wage negotiations.
O.P. MURPHY & SONS, 5 ALRB No. 63

436.02 The ALJ concluded respondent violated section 1153(e) and (a) of the Act by failing to provide relevant bargaining information requested by the union, failing to meet promptly and regularly, unilaterally granting wage increase and laying off employees, failing to adequately respond to union proposals, failing to bargain in good faith with respect to mandatory subjects of bargaining, excluding items previously agreed upon from a counterproposal, and submitting proposals which failed to respond to issues introduced by the union. The Board affirmed general conclusion as to violation of section 1153(e) and (a).
HEMET WHOLESALE COMPANY, 4 ALRB No. 75

436.02 Duty to bargain in good faith includes duty to make reasonable and diligent effort to comply with union's request for relevant information, and breach of the duty to provide information constitutes refusal to bargain.
CARDINAL DISTRIBUTING CO. v. ALRB (1984) 159 Cal.App.3d 758

436.02 General Counsel need only show that information sought was necessary and relevant for bargaining, not that delay in providing information impeded negotiations.
CARDINAL DISTRIBUTING CO. v. ALRB (1984) 159 Cal.App.3d 758

436.02 Information re: wage rates, hours worked by employees, and profit sharing plan is presumptively relevant and belief that union could formulate proposals without information is not a sufficient defense to failure to

provide such information.
P.H. RANCH, INC., et al., 21 ALRB No. 13

436.02 Employer violated section 1153(e) by refusing to provide union with information relevant to 436.07 bargaining, including seniority lists, addresses, dates of hire and social security numbers of workers, maps of company property, number of acres and products farmed, average hours of workers, names and titles of company representatives, and percentage of compensation paid to labor contractors.
TRIPLE E PRODUCE CORP., 23 ALRB No. 8

436.02 The employer violated sections 1153(a) and (e) by its five month delay in providing the union with basic employee identification, wage hour and fringe benefit information relevant to the issue of effects bargaining.
GREWAL ENTERPRISES, INC., (2000) 26 ALRB No. 5

436.03 Request For Information

436.03 Even though initial request for information was made outside six-months limitations period of section 1160.2, Board may examine such prior conduct in order to explain or clarify conduct which occurred within six months of the filing of the relevant unfair labor practice charge.
RICHARD A. GLASS COMPANY, INC., 14 ALRB No. 11

436.03 A labor organization is not required to seek alternative means of obtaining information requested from the employer; employer's failure to provide requested information violates section 1153(e) and (a) of the Act.
CARDINAL DISTRIBUTING COMPANY, INC., et al., 9 ALRB No. 36

436.03 Employer's substantial, consistent and unreasonable refusal to provide the bargaining representative with information requested leads to clear inference that employer's illegality was conscious and in bad faith.
CARDINAL DISTRIBUTING COMPANY, INC., et al.,9 ALRB No. 36

436.03 Employer did not violate section 1153(e) by failing to furnish the union with information in the specific form requested by the union, when employer did furnish the information relevant to a determination of which employees had dues deducted from their paychecks after expiration of the contract and the amounts that had been so deducted and refunded to the employees.
TMY FARMS, INC., 9 ALRB No. 29

436.03 The union is not required to "probe" for information. The Union requested the information, and that request was sufficient to preserve its right to the data. Aero-Motive Manufacturing Co., 195 NLRB 790, 79 LRRM 1496 (1972) enf'd, 475 F.2d 2, 82 LRRM 3052 (9th Cir. 1973).
AS-H-NE FARMS, 6 ALRB No. 9

436.04 Wage and Salary Data in General; Individual Wage Rates

436.04 Information re: wage rates, hours worked by employees, and profit sharing plan is presumptively relevant and belief that union could formulate proposals without information is not a sufficient defense to failure to provide such information.
P.H. RANCH, INC., et al., 21 ALRB No. 13

436.05 Form, Currency, and Sufficiency of Information Furnished; Difficulty or Expense of Supplying or Obtaining Data

436.05 Hours of piece rate workers were available to employer, and its failure to provide that and other relevant information to union violated 1153(e) and (a).
SUMNER PECK RANCH, INC., 10 ALRB No. 24

436.05 Employer fulfilled its duty to provide relevant information even though it did not provide the information in the form requested.
PAUL W. BERTUCCIO, 10 ALRB No. 16

436.05 Employer did not violate section 1153(e) by failing to furnish the union with information in the specific form requested by the union, when employer did furnish the information relevant to a determination of which employees had dues deducted from their paychecks after expiration of the contract and the amounts that had been so deducted and refunded to the employees.
TMY FARMS, INC., 9 ALRB No. 29

436.05 Employer made inadequate effort to provide information, where its summaries of requested information were deficient and union was never allowed to verify summaries with original data, though copies were available.
CARDINAL DISTRIBUTING CO. v. ALRB (1984) 159 Cal.App.3d 758

436.05 Employer failed to make diligent efforts to obtain employee and wage data for labor contract employees where employer had statutory duty to keep records, made minimal effort to contact labor contractor during off-season, and union had no other access to information.
CARDINAL DISTRIBUTING CO. v. ALRB (1984) 159 Cal.App.3d 758

436.06 Confidential Information; Consent of Employees; Data as to Employees Outside Bargaining Unit

436.06 Bare assertion of a "trade secret" or other grounds for confidentiality of information sought not adequate since Board must be permitted to balance the union's need for information against the legitimate and substantial confidentiality interests of the employer.
RICHARD A. GLASS COMPANY, INC., 14 ALRB No. 11

436.06 Where a respondent defends its failure to produce

relevant information on the grounds of a "trade secret" privilege, respondent has burden of proving the existence of a "trade secret" as well as the burden of demonstrating how disclosure would injure its business, citing Agricultural Labor Relations Board v. Richard A. Glass, Inc. (1985) 175 Cal.App.3d 703.
RICHARD A. GLASS COMPANY, INC., 14 ALRB No. 11

436.06 Where evidence in support of defense falls within ambit of confidentiality or some other validly recognized privilege, Board may not draw adverse inference from a respondent's failure to come forward with such evidence.
RICHARD A. GLASS COMPANY, INC., 14 ALRB No. 11

436.06 Board acknowledges validity of the "trade secret" privilege when asserted in accordance with the guidelines established in ALRB v. Richard A. Glass, Inc. (1985) 175 Cal.App.3d 703.
RICHARD A. GLASS COMPANY, INC., 14 ALRB No. 11

436.06 In light of conditions which preceded resumption of bargaining, Board does not rely on Employer's failure to provide names and addresses of strike replacements in response to Union's information request as a factor indicating that Employer was engaged in a course of bad faith bargaining.
MARIO SAIKHON, INC., 13 ALRB No. 8

436.07 Subjects (Except Wages) on Which Information is Sought; Names and Addresses; Time Studies, Etc.

436.07 Unlawful for employer to deny union access to information potentially relevant to the processing of grievances under the contract on grounds union's decision to take grievance to arbitration obviates duty to provide such information.
RICHARD A. GLASS COMPANY, INC., 14 ALRB No. 11

436.07 Section 1153(e) violation found where employer refused to give union financial information which presumably would have supported its position that it did not know when grape pruning would begin because it had not yet received the necessary funding. It was also a violation not to inform the union when grape pruning was to begin.
TEX-CAL LAND MANAGEMENT, INC., et al., 12 ALRB No. 26

436.07 No section 1153(e) violation found where employer refused to turn over personal tax information of individuals who had interest in corporation and other intertwined entities.
TEX-CAL LAND MANAGEMENT, INC., et al., 12 ALRB No. 26

436.07 Section 1153(e) violation found where employer failed to disclose financial information concerning various other entities with which it had some interest as union entertained an objective factual basis for believing that these other organizations and the employer were all

financially intertwined.
TEX-CAL LAND MANAGEMENT, INC., et al., 12 ALRB No. 26

436.07 Section 1153(e) violation found where employer failed to provide production information about pruning of prune trees so as to enable union, pursuant to expired labor agreement, to bargain over new rate.
TEX-CAL LAND MANAGEMENT INC., et al., 12 ALRB No. 26

436.07 Section 1153(e) violation found where employer refused to disclose information relating to its officers, directors, shareholders, agents for service and principal place of business and the names and addresses of landowners who had leased land to it and then allegedly canceled the leases, the dates of the decisions to cancel, and the effective date of those cancellations.
TEX-CAL LAND MANAGEMENT, INC., et al., 12 ALRB No. 26

436.07 Hours of piece rate workers were available to employer, and its failure to provide that and other relevant information to union violated 1153(e) and (a).
SUMNER PECK RANCH, INC., 10 ALRB No. 24

436.07 Information as to the amount of rent owed by striking employees not shown to be relevant to bargaining process.
PAUL W. BERTUCCIO, 10 ALRB No. 16

436.07 Employer did not violate section 1153(e) by failing to furnish the union with information in the specific form requested by the union, when employer did furnish the information relevant to a determination of which employees had dues deducted from their paychecks after expiration of the contract and the amounts that had been so deducted and refunded to the employees.
TMY FARMS, INC., 9 ALRB No. 29

436.07 The NLRB has deemed the following information necessary and relevant to bargaining; supervisors doing bargaining work, Universal Building Services, Inc., 234 NLRB No. 82, 97 LRRM 1376 (1978); race, sex, and age of employees, Westinghouse Electric Corporation, 239 No. 19, 99 LRRM 1482 (1978); social security numbers, Andy Johnson Co., Inc., 230 NLRB No. 308, 96 LRRM 1366 (1977).
AS-H-NE FARMS, 6 ALRB No. 9

436.07 Employers have no legitimate interest in protecting their employees' right of privacy unless the disclosure of their addresses would present a clear and present danger to the employees. Shell Oil Co. v. NLRB, 457 F.2d 614, 79 LRRM 2997 (9th Cir. 1972).
AS-H-NE FARMS, 6 ALRB No. 9

436.07 Information about an employer's other agricultural interests was relevant because it related to a contract proposal, recognition, which respondent had rejected and because the information concerned the scope of the bargaining unit and as such was fundamental to the

union's full knowledge of which employees it represented. Ohio Power Company, 216 NLRB 987, 88 LRRM 1646 (1975) enf'd 531 F.2d 1281, 92 LRRM 3049 (6th Cir. 1976.)
AS-H-NE FARMS, 6 ALRB No. 9

436.07 In the context of agricultural employment, where pesticides are so often used and may affect the health and safety of employees working near and with them. Pesticides and chemicals constitute a mandatory subject of bargaining. As such, information about pesticides is relevant and necessary for a certified labor organization to bargain.
AS-H-NE FARMS, 6 ALRB No. 9

436.07 Employers are obligated to provide the addresses of the employees in a bargaining unit upon the request of their collective bargaining representative.
AS-H-NE FARMS, 6 ALRB No. 9

436.07 Union's request for information on wages, production, benefits land pesticides were within broad and liberal standard of relevancy applied on review.
CARDINAL DISTRIBUTING CO. v. ALRB (1984) 159 Cal.App.3d 758

436.07 Employer violated section 1153(e) by refusing to provide union with information relevant to 436.07 bargaining, including seniority lists, addresses, dates of hire and social security numbers of workers, maps of company property, number of acres and products farmed, average hours of workers, names and titles of company representatives, and percentage of compensation paid to labor contractors.
TRIPLE E PRODUCE CORP., 23 ALRB No. 8

436.08 Waiver of Union's Right to Information

436.08 Merely because a union submits wage proposals and accepts proposed contract terms does not establish a clear and unmistakable waiver of its right to previously requested information. Sun Oil Company of Pennsylvania, 232 NLRB 7, 96 LRRM 1484 (1977).
AS-H-NE FARMS, 6 ALRB No. 9

436.08 The union is not required to "probe" for information. The Union requested the information, and that request was sufficient to preserve its right to the data. Aero-Motive Manufacturing Co., 195 NLRB 790, 79 LRRM 1496 (1972) enf'd, 475 F.2d 2, 82 LRRM 3052 (9th Cir. 1973).
AS-H-NE FARMS, 6 ALRB No. 9

436.09 Financial Information; Data Showing Inability to Pay

436.09 Employer's failure to furnish information on employees for over one year after union's request, failure to produce complete updated employee list, failure to provide information regarding benefits plan (health and

welfare plans, pension, profit-sharing life insurance) and delay of 2□-4 months in providing information regarding holiday and vacation benefits, were per se violations of sections 1153(e) and (a).
MASAJI ETO, et al., 6 ALRB No. 20

436.10 Misrepresentations or Concealment by Employer

436.10 Hours of piece rate workers were available to employer, and its failure to provide that and other relevant information to union violated 1153(e) and (a).
SUMNER PECK RANCH, INC., 10 ALRB No. 24

436.10 Duty to bargain in good faith is violated where employer intentionally deceives union by secretly implementing wage increase, then pretends that subject is still open to negotiation prior to implementation.
WILLIAM DAL PORTO & SONS, INC. v. ALRB (1984) 163 Cal.App.3d 541

437.00 EFFECTIVENESS OF CONTRACT

437.01 Effective Date of Contract; Failure to Sign; Expiration of

437.01 Failure of the parties to fully agree on every article in the proposed collective bargaining agreement, establishes a defense to an alleged failure to sign a fully executed contract; Board ordered bargaining to resume at the point it was abandoned.
ARAKELIAN FARMS, 9 ALRB No. 25

437.01 Where it is conceded that an offer on a collective bargaining agreement has not been withdrawn, the correct test for determining whether the offer has lapsed is the reasonable belief of the parties. If one of the parties believes that the offer has lapsed, then it is necessary to consider whether the belief is reasonable, that is, whether circumstances would lead a party to reasonably believe that the offer has expired. Length of time between offer and acceptance is only one of the circumstances to be considered.
PAUL W. BERTUCCIO v. ALRB (1988) 202 Cal.App.3d 1369

437.01 An offer for a collective bargaining agreement remains open and may be accepted within a reasonable time unless it is expressly withdrawn prior to acceptance, is expressly made contingent upon some condition subsequent, or is subject to intervening circumstances which make it unfair to hold the offeror to the bargain.
PAUL W. BERTUCCIO v. ALRB (1988) 202 Cal.App.3d 1369

437.01 A mere change in bargaining strength does not create such unfairness as to negate acceptance of an offer on a collective bargaining agreement.
PAUL W. BERTUCCIO v. ALRB (1988) 202 Cal.App.3d 1369

437.01 An offer for a collective bargaining agreement, once made, will remain on the table unless explicitly withdrawn by the offeror or unless circumstances arise which would lead the parties to reasonably believe that the offer had been withdrawn.
PAUL W. BERTUCCIO v. ALRB (1988) 202 Cal.App.3d 1369

437.01 The common law rule that a rejection or counterproposal necessarily terminates an offer has little relevance in the collective bargaining setting as such contract principles run counter to federal labor law policy which encourages the formation of collective bargaining agreements. Thus, a contract offer is not automatically terminated by the other party's rejection or counterproposal, but may be accepted within a reasonable time unless it is expressly withdrawn prior to acceptance.
PAUL W. BERTUCCIO v. ALRB (1988) 202 Cal.App.3d 1369

437.01 A grower's delayed acceptance of a union proposal on a collective bargaining agreement, several months after it was submitted by the union and the day before an administrative hearing, was fully effective and thus an agreement should have been entered into at that time.
PAUL W. BERTUCCIO v. ALRB (1988) 202 Cal.App.3d 1369

437.01 Neither side believed the union's contract offer had lapsed due to a four month delay, and thus the delayed acceptance by the employer of the union's offer was not unreasonable. PAUL W. BERTUCCIO v. ALRB (1988) 202 Cal.App.3d 1369

437.02 Contracts: Interim or Incomplete Contracts; Duty to Sign After Agreement on Terms; Anticipatory Refusal or Threat of Refusal; Execution, Form, and Scope of Contract

437.02 Refusal to sign a fully negotiated collective bargaining agreement due to the pendency of a decertification election which is subsequently invalidated, violates section 1153(e).
M. CARATAN, INC., 9 ALRB No. 33

437.02 Violation of section 1153(e) and (a) found where Respondent refused to sign final typed copy of a collective bargaining contract it had previously agreed to and initialed. A refusal to sign valid labor contract embodying terms on which parties reached agreement is per se violation of duty to bargain in good faith.
TEX-CAL LAND MANAGEMENT, INC., 7 ALRB No. 11

437.02 If there is no "meeting of the minds" on contract terms, as result of ambiguity for which no party is to blame, there is no contract.
LAND MANAGEMENT, INC. v. ALRB (1982) 135 Cal.App.3d 906

437.02 Before signing contract, party may seek assurances from

other side that term means what parties negotiated it to mean; propriety of such conduct turns upon good or bad faith of party seeking assurances.
TEX-CAL LAND MANAGEMENT, INC. v. ALRB (1982) 135 Cal.App.3d 906

437.02 Duty to bargain in good faith includes duty to sign, upon request, written contract embodying agreement. Failure to sign is per se ULP.
TEX-CAL LAND MANAGEMENT, INC. v. ALRB (1982) 135 Cal.App.3d 906

437.02 Collective bargaining agreement need not be reduced to writing to be enforceable.
TEX-CAL LAND MANAGEMENT, INC. v. ALRB (1982) 135 Cal.App.3d 906

437.02 Where refusal to sign contract was based on ambiguity in subcontracting article, such refusal did not constitute per se violation of duty to bargain. If refusal were made in bad faith, then Board could have found violation.
TEX-CAL LAND MANAGEMENT, INC. v. ALRB (1982) 135 Cal.App.3d 906

437.02 Question whether full agreement has been reached on contract terms is question of fact.
TEX-CAL LAND MANAGEMENT, INC. v. ALRB (1982) 135 Cal.App.3d 906

437.03 Contracts: Ratification by Employees; Employer's Contest of Validity

437.04 Contracts: Continuing Duty To Bargain; Modification or Termination in General; Automatic Renewal; Reopening

437.04 Employer's unilateral changes in the rest periods and seniority provisions of the contract constituted an unlawful unilateral change even where the employer had never implemented terms of contract; Board concluded employer would benefit from its own misconduct absent a finding of a violation.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC., 9 ALRB No. 70

437.04 Employer violated its duty to bargain by repudiating its one-year contract with the union, and refusing to bargain upon expiration of the contract.
PETER D. SOLOMON AND JOSEPH R. SOLOMON dba CATTLE VALLEY FARMS/TRANSCO LAND AND CATTLE CO., 9 ALRB No. 65

437.05 Notice to Terminate or Modify Contract

437.05 Employer violated its duty to bargain by repudiating its one-year contract with the union, and refusing to bargain upon expiration of the contract. PETER D. SOLOMON AND JOSEPH R. SOLOMON dba CATTLE VALLEY FARMS/TRANSCO LAND AND CATTLE CO., 9 ALRB No. 65

437.06 Expiration of Contract, Effect; Period Between Contracts

437.06 As a general rule, the terms and conditions of employment, including those dealing with hiring, survive the agreement's expiration.
TEX-CAL LAND MANAGEMENT, INC., ET AL., 12 ALRB No. 26

437.06 After the collective bargaining agreement had expired, employers unlawfully instituted a new hiring procedure by engaging a labor contractor instead of hiring employees through the union, thus changing the status quo ante.
MOUNT ARBOR NURSERIES, INC., and MID-WESTERN NURSERIES, INC., 9 ALRB No. 49

438.00 UNILATERAL ACTION; UNDERCUTTING UNION'S AUTHORITY

438.01 Unilateral Action in General; Per Se Rule

438.01 Where conduct alleged in an unfair labor practice charge is found to constitute a violation of section 1153(c), the same conduct will not support an allegation of unilateral changes within the meaning of section 1153(e), unless supported by a timely filed, independent unfair labor practice charge expressly alleging a violation of section 1153(e); section (c) conduct is not sufficiently related to section (e) conduct.
GOURMET HARVESTING AND PACKING, INC., AND GOURMET FARMS, 14 ALRB No. 9

438.01 Where the employer decides to make a change in operations, which may be amenable to collective bargaining, but such a change cannot be shown to have a significant impact on the continued availability of employment, an employ is not obligated to bargain over the effects of that decision.
ROBERTS FARMS, INC., 13 ALRB No. 14

438.01 Employer violated section 1153(e) and (a) by unilaterally implementing increases in the wage rates of various worker groups.
MARIO SAIKHON, INC., 13 ALRB No. 8

438.01 Respondent violated section 1153(e) and (a) by committing numerous unilateral change violations.
PLEASANT VALLEY VEGETABLE, 12 ALRB No. 31

438.01 Proposal of a new wage rate which exceeded last pre-impasse offer served to break impasse and, in addition, indicated a willingness to resume negotiations based on the proposed change; employer therefore could not implement the change absent a new impasse, the consent of the union, or the union's waiver of its right to bargain over the proposed change, or a valid past practice or business necessity defense.
MAGGIO, VESSEY & COLACE, 11 ALRB No. 35

438.01 Employer violated section 1153(e) and (a) by terminating employees' pension plan, increasing wages, and increasing working hours without giving the union prior notice and opportunity to bargain about the changes.
HOLTVILLE FARMS, INC., 10 ALRB No. 49

438.01 The parties stipulated that the employer granted a unilateral wage increase without giving the union prior notice or an opportunity to bargain; implementation occurred at a time when there did not exist a bona fide bargaining impasse (see Bruce Church, Inc. (1983) 9 ALRB No. 74) and the unilateral increase therefore unlawful.
BRUCE CHURCH, INC., 9 ALRB No. 75

438.01 Employer's unilateral changes in the rest periods and seniority provisions of the contract constituted an unlawful unilateral change even where the employer had never implemented terms of contract; Board concluded employer would benefit from its own misconduct absent a finding of a violation.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC., 9 ALRB No. 70

438.01 Employer violated the ALRA by unlawfully repudiating its contract with union and laying off employees in violation of contract seniority provision.
PETER D. SOLOMON and JOSEPH R. SOLOMON dba CATTLE VALLEY FARMS/TRANSCO LAND AND CATTLE CO., 9 ALRB No.65

438.01 No duty to notify and bargain with union over minor changes in employee's assignment since allegedly new duties were only an extension of job for which initially hired. Since employee was hired as a shop mechanic, immaterial that he was occasionally required to service equipment in the field as well as in the shop.
D'ARRIGO BROTHERS COMPANY, INC., 9 ALRB No. 30

438.01 Employer violated section 1153(e) and (a) unilaterally changing its recall procedure by instituting a written recall method instead of its previous written and oral notification system; method of recall was mandatory subject of bargaining and, although some unilateral changes are too insignificant to constitute violations of the Act, this change in the employer's recall procedure was significant enough to constitute an unlawful unilateral change.
D'ARRIGO BROTHERS COMPANY OF CALIFORNIA, 9 ALRB No. 3

438.01 Change in seniority system during pendency of judicial challenge to Board's certification order constitutes unilateral change in violation of Labor Code section 1153(e) and (a); employer's past practice defense sufficient only to rebut allegation that same change was discriminatorily motivated in violation of Labor Code sections 1153(c) and (a).
D'ARRIGO BROTHERS COMPANY, INC., 9 ALRB No. 30

438.01 Employer violated section 1153(e) by using labor contractor crews for a portion of its weeding and thinning work, since the use of labor contractor employees constituted a unilateral change in the employer's hiring practice and the employer instituted the change without giving the union prior notice or an opportunity to bargain about the change.
D'ARRIGO BROTHERS COMPANY OF CALIFORNIA, 9 ALRB No. 3

438.01 Employer's unilateral change in wages without first contacting Union and granting it opportunity to negotiate, is per se violation of duty to bargain regardless of Employer's subjective good or bad faith.
N. A. PRICOLA PRODUCE, 7 ALRB No. 49

438.01 Unilateral changes in wages or other working conditions is per se violation of duty to bargain in good faith irrespective of motive or intent.
ADMIRAL PACKING CO., et al, 7 ALRB No. 43

438.01 Once union certified as collective bargaining representative of employer's employees, employer had duty to notify and bargain with union before instituting any changes in wages, hours and working conditions of its employees.
SIGNAL PRODUCE COMPANY, 6 ALRB No. 47

438.01 Employer's unilateral implementation of wage increases without notice to Union per se violation of section 1153(e) and (a). Increase not within "dynamic status quo" exception despite 4 year history of Employer granting wage increases at same time of year after Employee requests and based on Employer's survey of prevailing wages in area because too much discretion in amount and timing of raises.
KAPLAN'S FRUIT AND PRODUCE COMPANY, 6 ALRB No. 36

438.01 Certain employer acts and conduct (unilateral wage changes and refusal to provide information) found to constitute per se refusals to bargain regardless of employer's overall intent to reach agreement. Such conduct held to be also evidence of bad faith.
MASAJI ETO, et al., 6 ALRB No. 20

438.01 Employer's unilateral wage raise constituted per se violation of section 1153(e) and (c) where made following contrived declaration of impasse.
MASAJI ETO, et al., 6 ALRB No. 20

438.01 By unilaterally altering the crew assignments, respondent refused to bargain with the certified collective bargaining representative concerning a mandatory subject of bargaining. This conduct constitutes a per se violation of section 1153(e) and (a) of the Act and is evidence of respondent's overall failure to bargain in good faith. Montebello Rose Co., Inc./Mount Arbor

Nurseries, Inc.,
6 ALRB No. 64; NLRB v. Katz, 369 U.S. 736, 50 LRRM 2177 (1962); and Central Cartage, Inc. 236 NLRB No. 163, 98 LRRM 1554 (1978).
SAM ANDREWS' SONS, 5 ALRB No. 38

438.01 Employer's unilateral change in terms and conditions of employment is per se refusal to bargain.
GEORGE ARAKELIAN FARMS v. ALRB (1986) 186 Cal.App.3d 94

438.01 Employer's unilateral changes in terms and conditions of employment when it is under duty to bargain in good faith are "per se" refusals to bargain and, thus, violate sections 1153(a) and (e) of the ALRA.
RULINE NURSERY CO. v. ALRB. (1985) 169 Cal.App.3d 247

438.01 Unilateral changes in mandatory subjects of bargaining violate duty to bargain in good faith.
WILLIAM DAL PORTO & SONS, INC. v. ALRB (1984) 163 Cal.App.3d 541

438.01 Neither an employer's motivation nor the effect of a unilateral change (i.e., harm) is relevant because unilateral changes in mandatory terms and conditions of employment are per se violations of the duty to bargain.
WARMERDAM PACKING, 22 ALRB No. 13

438.01 Even unilateral changes which are beneficial to employees are per se violations because such changes undermine the union's position in the eyes of its members and cause them to wonder if they really need a union.
WARMERDAM PACKING, 22 ALRB No. 13

438.01 Irrelevant whether unilateral changes are de minimis as only test is whether there was a change, not the nature or scope or effect of the change. Moreover, the effect of a change, even one that inures to employees' benefit, will not negate bargaining obligation.
WARMERDAM PACKING, 22 ALRB No. 13

438.01 U.S. Supreme Court's Katz per se unilateral change rule has been applied to numerous post-Katz factual situations and therefore need not be limited to merit wage increase cases.
WARMERDAM PACKING, 22 ALRB No. 13

438.02 Prior Notice Or Consultation; Pro-Forma Bargaining

438.02 No violation of section 1153(e) where employer made unilateral changes when not at bona fide impasse but no evidence whether or not Employer failed to consult Union.
ADMIRAL PACKING CO., et al, 7 ALRB No. 43

438.02 Testimony of one employee that he was aware of termination of term or condition of employment constitutes neither actual nor constructive notice of the change to certified union.

GEORGE ARAKELIAN FARMS v. ALRB (1986) 186 Cal.App.3d 94

438.02 Union did not get sufficient prior notice of intent to increase wages where employer implemented increase one week after notice and never told union time was of the essence. No evidence of union waiver on those facts.
WILLIAM DAL PORTO & SONS, INC. v. ALRB (1984) 163 Cal.App.3d 541

438.02 Where employer announces change in working conditions as a decision which effectively has already been made and implemented, no genuine bargaining can take place.
WARMERDAM PACKING, 22 ALRB No. 13

438.03 Contract Administration in General; Breach by Employer; Union-Security Contracts; Rescission

438.03 Respondent violated section 1153(e) and (a) by breaking an agreement negotiated with the UFW to permit an employee to continue working in the celery harvest as a packer.
PLEASANT VALLEY VEGETABLE 12 ALRB No. 31

438.03 Employer violated section 1153(a) by refusing to timely pay union dues and benefits under an extant collective bargaining agreement.
TEX-CAL LAND MANAGEMENT, INC., 11 ALRB No. 31

438.04 Comparative Treatment of Represented and Unrepresented Groups of Unions Representing Different Units

438.04 Employer's providing striker replacements with room and board at cost and free transportation constituted unlawful unilateral changes from previously existing working conditions; absent a showing of emergency, or other exigent circumstances, employer was obligated to first notify and bargain with the union.
WEST FOODS, INC., 11 ALRB No. 17

438.05 Discharge, Layoff, Reinstatement, Seniority, Transfers, Promotions, Work Assignments, Job Classifications; Work by Supervisors

438.05 Unilateral change in practice of allowing crews to follow the harvest to next location is unlawful where, regardless of allegations of dilatory and evasive conduct by union, no notice of change was given prior to implementation.
BRUCE CHURCH, INC., 17 ALRB No. 1

438.05 Employer violated 1153(e) when it transferred employees, thereby affecting their seniority, without notice to or bargaining with the union.
TEX-CAL LAND MANAGEMENT, INC., 11 ALRB No. 31

438.05 Failure to recall a fifth lettuce harvesting crew did not constitute an unlawful unilateral change, since employer

did not exceed the limits of flexibility inherent in its established practice regarding crew size and utilization by expanding the size of the other four crews rather than adding a fifth crew.
SAM ANDREWS' SONS, 11 ALRB No. 14

438.05 Employer did not commit a bargaining violation by assigning occasional tractor driving work to a foreman's son, since General Counsel made no showing that working conditions of regular tractor drivers were changed, nor that such occasional employment would have constituted a deviation from the employer's past practice of employing supervisors' children for part-time and summer work.
SAM ANDREWS' SONS, 11 ALRB No. 14

438.05 Employer violated section 1153(e) and (a) by requiring lettuce harvesters to cut lettuce during the rain, because employer did not first offer to bargain with the union about the change from its prior practice.
BERTUCCIO FARMS, 10 ALRB No. 52

438.05 Change in seniority system during pendency of judicial challenge to Board's certification order constitutes unilateral change in violation of Labor Code section 1153(e) and (a); employer's past practice defense sufficient only to rebut allegation that same change was discriminatorily motivated in violation of Labor Code section 1153(c) and (a).
D'ARRIGO BROTHERS COMPANY, INC., 9 ALRB No. 30

438.05 No duty to notify and bargain with union over minor changes in employee's assignment since allegedly new duties were only an extension of job for which initially hired. Since employee was hired as a shop mechanic, immaterial that he was occasionally required to service equipment in the field as well as in the shop.
D'ARRIGO BROTHERS COMPANY, INC., 9 ALRB No. 30

438.05 Board concluded that employer violated section 1153(e) and (a) in unilaterally changing its recall procedure by instituting a written recall method instead of its previous written and oral notification system; method of recall was mandatory subject of bargaining and, although some unilateral changes are too insignificant to constitute violations of the Act, change in the employer's recall procedure was significant enough to constitute an unlawful unilateral change.
D'ARRIGO BROTHERS COMPANY OF CALIFORNIA, 9 ALRB No. 3

438.05 The employer violated its duty to bargain where it changed its hiring practices following a Union election victory without negotiating with the Union even though the Board had not yet certified the Union's election victory.
SUNNYSIDE NURSERIES, INC., 6 ALRB No. 52

438.05 By unilaterally altering the crew assignments, respondent

refused to bargain with the certified collective bargaining representative concerning a mandatory subject of bargaining. This conduct constitutes a per se violation of section 1153(e) and (a) of the Act and is evidence of respondent's overall failure to bargain in good faith. Montebello Rose Co., Inc./Mount Arbor Nurseries, Inc., 6 ALRB No. 64; NLRB v. Katz, 369 U.S. 736, 50 LRRM 2177 (1962); and Central Cartage, Inc. 236 NLRB No. 163, 98 LRRM 1554 (1978).
SAM ANDREWS' SONS, 5 ALRB No. 38

438.05 The ALJ concluded respondent violated section 1153(e) and (a) of the Act by failing to provide relevant bargaining information requested by the union, failing to meet promptly and regularly, unilaterally granting wage increase and laying off employees, failing to adequately respond to union proposals, failing to bargain in good faith with respect to mandatory subjects of bargaining, excluding items previously agreed upon from a counterproposal, and submitting proposals which failed to respond to issues introduced by the union. The Board affirmed general conclusion as to violation of section 1153(e) and (a).
HEMET WHOLESALE COMPANY, 4 ALRB No. 75

438.05 Employer made inadequate effort to provide information, where its summaries of requested information were deficient and union was never allowed to verify summaries with original data, though copies were available.
CARDINAL DISTRIBUTING CO. v. ALRB (1984) 159 Cal.App.3d 758

438.05 Employer did not violate its duty to bargain by failing to give notice to union before reducing single employee's work hours and eliminating his tractor driving duties.
SCHEID VINEYARDS AND MANAGEMENT CO., INC,21 ALRB No. 10

438.05 End-of-season layoffs of employees constituted an unlawful unilateral change, since the layoffs involved considerable discretion and thus required notification to the union and provision of the opportunity to bargain over implementation of the employer's layoff policy.
Scheid Vineyards and Management Company, Inc.,
21 ALRB No. 10

438.05 Employer violated its duty to bargain by unilaterally instituting a new policy requiring minimum of 400 hours' pruning experience over prior two years.
Scheid Vineyards and Management Company, Inc.,
21 ALRB No. 10

438.05 Hiring of new, local employees instead of recalling regular employees by classification seniority constituted an unlawful unilateral change in hiring practices.
Scheid Vineyards and Management Company, Inc.,
21 ALRB No. 10

438.06 Hiring Practices; Use of Labor Contractors

438.06 Unilateral change in use of labor contractor crews unlawful where, regardless of allegation of dilatory and evasive conduct by union, employer's actions were inconsistent with its contract proposals.
BRUCE CHURCH, INC., 17 ALRB No. 1

438.06 The use of labor contractor employees, to perform tasks customarily performed by employees directly hired by the employer, may constitute a unilateral change, and a prima facie violation of section 1153(e) and (a) is established if an employer implements the change without giving the union prior notice and an opportunity to bargain over the decision. ROBERTS FARMS, INC., 13 ALRB No. 14

438.06 Sufficient ground did not exist to award other than the traditional remedy for failure to bargain over decision to use a labor contractor.
ROBERTS FARMS, INC., 13 ALRB No. 14

438.06 Respondent violated section 1153(e) and (a) by failing to notify and offer to bargain with the UFW over its decision to merge its crews with labor contractor crews.
PLEASANT VALLEY VEGETABLE, 12 ALRB No. 31

438.06 Respondent violated section 1153(c) by discriminatorily transferring harvest work from its own crew to a labor contractor. The transfer involved a mandatory subject of bargaining.
PLEASANT VALLEY VEGETABLE, 12 ALRB No. 31

438.06 Employer violated section 1153(e) by failing to hire bargaining unit crews over those of labor contractors and custom harvesters, as required by terms of expired labor agreement.
TEX-CAL LAND MANAGEMENT, INC., ET AL. 12 ALRB No. 26

438.06 Employer violated section 1153(e) by delaying the start of the pruning season and hiring excessive additional crews without notice to and bargaining with the union.
TEX-CAL LAND MANAGEMENT, INC., 11 ALRB No. 31

438.06 No independent section 1153(e) violation for manner in which unilateral hiring was conducted; employer could not reasonably foresee consequences of its failure to comply with notification provision, and Board therefore could not conclude that the negotiation process was thereby frustrated to the point that no agreement was possible.
TEX-CAL LAND MANAGEMENT, INC., 11 ALRB No. 31

438.06 Employer violated 1153(e) by failing to conduct hiring in accordance with notification procedures that became terms and conditions of employment despite expiration of contract.
TEX-CAL LAND MANAGEMENT, INC., 11 ALRB No. 31

438.06 Employer's changes in the employment application form did not constitute an unlawful unilateral change.
TEX-CAL LAND MANAGEMENT, INC., 11 ALRB No. 31

438.06 No change in hiring practices where company began a new operation and had no seniority list from which to recall workers.
SAM ANDREWS' SONS, 11 ALRB No. 5

438.06 Hiring of a labor contractor to perform pre-existing unit work found to be an unlawful unilateral change in hiring practices.
VALDORA PRODUCE COMPANY and VALDORA PRODUCE COMPANY, INC., 10 ALRB No. 3

438.06 Employer's conduct in unilaterally eliminating its hourly paid grapevine pruning crew and hiring a labor contractor to replace it constituted an unlawful unilateral change in its hiring practices.
ROBERT H. HICKAM, 10 ALRB No. 2

438.06 Exigent circumstances excused employer's unilateral change in hiring practices, and employer's notice to the union two days after the decision, along with providing the opportunity to bargain at that time, met the requirement of bargaining to the extent circumstances permitted.
CHARLES MALOVICH, 9 ALRB No. 64

438.06 Employer violated section 1153(e) by using labor contractor crews for a portion of its weeding and thinning work, since the use of labor contractor employees constituted a unilateral change in the employer's hiring practice and the employer instituted the change without giving the union prior notice or an opportunity to bargain about the change.
D'ARRIGO BROTHERS COMPANY OF CALIFORNIA, 9 ALRB No. 3

438.06 The employer violated its duty to bargain where it changed its hiring practices following a Union election victory without negotiating with the Union even though the Board had not yet certified the Union's election victory.
SUNNYSIDE NURSERIES, INC. 6 ALRB No. 52

438.06 Hiring of labor contractor for grape harvest was an unlawful unilateral change in hiring practices, since Employer had used labor contractor during harvesting only once in previous 20 years.
Scheid Vineyards and Management Company, Inc., 21 ALRB No. 10

438.07 Job Vacancies; Training Programs; Probationary Period

438.07 A failure to pay vacations and holidays is a continuing violation of the Act for which the employer is liable commencing with the beginning of the limitations period--

six months prior to the filing of the charge.
RULINE NURSERY CO. v. ALRB. (1985) 169 Cal.App.3d 247

438.08 Incentive and Piece Rates

438.08 Employer's unilateral wage increase, its change in method compensation from an hourly basis to a piece-rate basis, and the unilateral implementation of a vacation plan constituted unlawful unilateral changes.
ROBERT H. HICKAM, 10 ALRB No. 2

438.08 Changes in rate of pay could not be lawfully implemented without first giving the union notice and an opportunity to bargain, but changes in method of pay not found to be a violation because circumstances not sufficiently clear as to those changes.
D'ARRIGO BROTHERS OF CALIFORNIA, 9 ALRB No. 51

438.08 Employer's unilateral implementation of wage increases without notice to Union per se violation of section 1153(e) and (a). Increase not within "dynamic status quo" exception despite 4 year history of Employer granting wage increases at same time of year after Employee requests and based on Employer's survey of prevailing wages in area because too much discretion in amount and timing of raises.
KAPLAN'S FRUIT AND PRODUCE COMPANY, 6 ALRB No. 36

438.09 Circumvention of Union by Individual Bargaining and Contracts; Individual Discussion of Discipline or Grievances; Change to Contractor Status; Communications to Employees; Polling; Communications on Negotiations with Union

438.09 The employer did not engage in direct bargaining with broccoli crew members where employees complained about assignment to "second cut" a field and employer merely explained field assignments, assuring employees that past practice of giving its own crews the best fields would continue.
BRUCE CHURCH, INC., 11 ALRB No. 9

438.09 Employer did not deal directly with its employees regarding change in bus pick-up point where employee who presented demand was authorized to negotiate with employer.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC.,9 ALRB No. 70

438.09 Employer communication of last offer in letter to employees did not constitute direct dealing because it was made in response to employee requests for information.
JACK OR MARION RADOVICH, 9 ALRB No. 45

438.10 Insurance, Pensions, and Retirement, Profit Sharing, Stock Purchase Plans

438.10 Employer violated section 1153(e) and (a) by terminating employees' pension plan, increasing wages and increasing working hours without giving the union prior notice and opportunity to bargain about the changes.
HOLTVILLE FARMS, INC., 10 ALRB No. 49

438.10 Changes in rate of pay could not be lawfully implemented without first giving the Union notice and an opportunity to bargain, but changes in method of pay not found to be a violation because circumstances not sufficiently clear as to those changes.
D'ARRIGO BROTHERS OF CALIFORNIA, 9 ALRB No. 51

438.11 Company Rules; Access to Workplace

438.12 Mechanization or Other Changes in Operations; Crop Changes

438.12 Unilateral change by way of the introduction of pelletized machines lawful where union had been dilatory and evasive in its bargaining conduct and action was consistent with employer's contract proposal.
BRUCE CHURCH, INC., 17 ALRB No. 1

438.12 Dissent: Dissent finds introduction of pelletizing machine unlawful, absent any specific notice of change. That changes made may have been comprehended in or consistent with employer proposals generally allowing introduction of new machinery without advance notice irrelevant, because bargaining had not reached impasse.
BRUCE CHURCH, INC., 17 ALRB No. 1

438.12 Where the employer decides to make a change in operations, which may be amenable to collective bargaining, but such a change cannot be shown to have a significant impact on the continued availability of employment, an employer is not obligated to bargain over the effects of that decision.
ROBERTS FARMS, INC. 13 ALRB No. 14

438.12 Employer's conversion of vineyards from table grape to raisin production was a crop change decision which does not require decision bargaining; however, employer violated 1153(e) by failing to give the union notice of the conversion and an opportunity to bargain over its effects, since it could have been expected to have a significant impact on the continued availability of employment.
TEX-CAL LAND MANAGEMENT, INC, 11 ALRB No. 31

438.12 Decisions regarding what crop to grow or discontinue involve changes in scope and direction of business and are not mandatory subjects of bargaining. Subcontracting is mandatory subject because it focuses upon aspects of employment relationship that are amenable to bargaining.
CARDINAL DISTRIBUTING CO. v. ALRB (1984) 159 Cal.App.3d

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438.12 Decisions regarding what crop to grow or discontinue involve changes in scope and direction of business and are not mandatory subjects of bargaining. Subcontracting is mandatory subject because it focuses upon aspects of employment relationship that are amenable to bargaining. CARDINAL DISTRIBUTING CO. v. ALRB (1984) 159 Cal.App.3d 758

438.12 Board reversed on finding of a subcontracting decision, requiring bargaining, where record showed no contractual relationship between employer discontinuing crop and lessee of grower's land, no control of crop by former employer, the crop was discontinued because it was uneconomical to grow in small parcels, discontinuance was complete elimination of employer's investment in the crop, and union could not meaningfully bargain over the employer's economic concerns. CARDINAL DISTRIBUTING CO. v. ALRB (1984) 159 Cal.App.3d 758

438.13 Temporary Shutdowns and Lockouts

438.13 An employer can demonstrate an economic necessity for locking out its employees when it reasonably believes that if a strike were to occur it would suffer severe economic loss and it reasonably believes a strike will occur.
WEST FOODS, INC., 11 ALRB No. 17

438.13 Employer's phasedown or crop protection plan constituted a lockout within the meaning of section 1155.3(a).
WEST FOODS, INC., 11 ALRB No. 17

438.13 Employer did not have a reasonable fear that a strike was imminent, and its phasedown constituted economic action designed to apply pressure for contractual concessions on the union during the time period specified in section 1155.3(a).
WEST FOODS, INC., 11 ALRB No. 17

438.13 Lockout violated section 1153(e) because it was an integral part of employer's bad faith bargaining strategy and was inherently prejudicial to employee interests.
WEST FOODS, INC., 11 ALRB No. 17

438.13 Employer violated section 1153(e) by locking out its employees and by refusing to bargain in good faith with the employees' certified bargaining representative.
WEST FOODS, INC., 11 ALRB No. 17

438.13 Lockout which took place within the 60-day period preceding expiration of the parties' contract was unlawful, since section 1155.3(a) proscribes lockouts during that 60-day period.
WEST FOODS, INC., 11 ALRB No. 17

438.13 Where the General Counsel failed to show that the closure of these nursery for one-half day prior to New Year's Day represented a change in employment practices, the Board refused to find that the employer had violated its duty to bargain when it closed the nursery for one-half day without negotiating with the Union.
SUNNYSIDE NURSERIES, INC. 6 ALRB No. 52

438.14 Sale or Discontinuance of Business or Department; Merger or Reorganization

438.14 Where evidence did not demonstrate that all terms and conditions of employment remained the same for employees in certified bargaining unit where the operations that employed them were sold, and many possible issues remained for discussion, bargaining order is appropriate, even where specific adverse effects on employees not established. Detailed assessments of effects best left to bargaining process.
CARDINAL DISTRIBUTING CO., INC., 19 ALRB No. 10

438.14 Where employees retained jobs, at wages equal to or better than former wages, and their seniority was recognized, the Board did not impose a minimum two weeks' backpay award for failure to notify union and bargain about effects of sale.
CARDINAL DISTRIBUTING CO., INC., 19 ALRB No. 10

438.14 Bargaining order and possible backpay liability not appropriate where evidence showed no Adverse effects arising from sale of company operations. (DISSENT)
CARDINAL DISTRIBUTING CO., INC., 19 ALRB No. 10

438.14 A decision to close or sell a business will normally require management to bargain over the effects of that decision on the wages and working conditions of the employees.
ROBERTS FARMS, INC. 13 ALRB No. 14

438.14 Employer's importation of mushrooms from another facility did not have such a significant detrimental impact on the bargaining unit as to require negotiation.
WEST FOODS, INC., 11 ALRB No. 17

438.14 Employers violated their duty to bargain in good faith over the effects of their partial closure decision by delaying negotiations and failing timely to provide the union with information it requested.
HOLTVILLE FARMS, INC., 10 ALRB No. 49

438.14 Employer's decision to discontinue growing lettuce a managerial decision to go partially out of business and was not subject to mandatory bargaining.
HOLTVILLE FARMS, INC., 10 ALRB No. 49

438.14 Because employer held a reasonable doubt as to the validity of the election, the "at your peril" doctrine

did not apply and no 1153(e) violation occurred when employer made unilateral changes; employer's peak objection was based on a reasonable belief that it was the employer of harvest workers, since employer hired and paid workers and was the sole owner of the harvested crop.
W. G. PACK, JR., 10 ALRB No. 22

438.14 Employer's unilateral closure of operation without notice to union - prior to certification of union - did not violate section 1153(e) where employer held a reasonable belief at the time of the refusal to bargain that it was the employer of a group of employees and reasonably believed that the election petition was therefore untimely.
W. G. PACK, JR., 10 ALRB No. 22

438.14 When an employer fails to timely notify the union of its decision to cease operations so as to provide the union a meaningful opportunity to bargain the effects of that closure, it violates its duty to bargain in good faith.
PIK'D RITE, INC., and CAL-LINA, INC., 9 ALRB No. 39

438.14 Where the employer refused to bargain over its employees' wages, etc., prior to the termination of its business, the employer must make its employees whole for any loss of pay from the date its duty to bargain matured until the time it ceased operations.
P & P Farms, 5 ALRB No. 59

438.14 Where the employer continued to farm after its duty to bargain arose, but refused to bargain with the UFW before it terminated its agricultural operations or thereafter, the Board found that the employer had refused to bargain in violation of section 1153(e).
P & P Farms, 5 ALRB No. 59

438.14 Where the employer failed to bargain over the "effects" of its decision to cease business, the Board ordered the employer to pay its employees their regular wages from the time immediately prior to termination up to the point when (1) it bargains to agreement or impasse with the UFW; (2) the UFW fails to request bargaining within 5 days after the date of the Board's decision; and (3) the UFW fails to bargain in good faith.
P & P Farms, 5 ALRB No. 59

438.15 Subcontracting; Transfer of Work to Other Locations; Removal to Other Locations; New Operations; Discontinuance of Prior Operations

438.15 The use of labor contractor employees, to perform tasks customarily performed by employees directly hired by the employer, may constitute a unilateral change, and a prima facie violation of section 1153(e) and (a) is established if an employer implements the change without giving the union prior notice and an opportunity to bargain over the

decision.
ROBERTS FARMS, INC., 13 ALRB No. 14

438.15 Employer's elimination of its own swamping trucks did not constitute violation of 1153(e) since the change was the type of management decision which is not appropriate for decision bargaining; bargaining over effects not required because it was not demonstrated that the use of subcontracted trucks had any impact on continued availability of employment.
TEX-CAL LAND MANAGEMENT, INC., 11 ALRB No. 31

438.15 Employer's importation of mushrooms from another facility to be packed by its own employees cannot be characterized as subcontracting since that term usually refers to the taking away of work that would normally have been performed by unit employees.
WEST FOODS, INC., 11 ALRB No. 17

438.15 Employer's conduct in unilaterally eliminating its hourly paid grapevine pruning crew and hiring a labor contractor to replace it constituted an unlawful unilateral change in its hiring practices.
ROBERT H. HICKAM, 10 ALRB No. 2

438.15 An employer has no duty to bargain with the certified bargaining representative about its decision to sell a crop; such a decision lies at the core of entrepreneurial control and therefore is not subject to the collective bargaining process.
PAUL W. BERTUCCIO, 9 ALRB No. 61

438.15 When an employer fails to timely notify the union of its decision to cease operations so as to provide the union a meaningful opportunity to bargain the effects of that closure, it violates its duty to bargain in good faith.
PIK'D RITE, INC., and CAL-LINA, INC., 9 ALRB No. 39

438.15 A decision by management regarding what crop to grow or discontinue is not subject to the collective bargaining process; such a decision lies at the core of entrepreneurial control.
CARDINAL DISTRIBUTING COMPANY, INC., et al., 9 ALRB No. 36

438.15 Employer violated section 1153(e) by using labor crews for a portion of its weeding and thinning work, since the use of labor contractor employees constituted a unilateral change in the employer's hiring practice and the employer instituted the change without giving the union prior notice or an opportunity to bargain about the change.
D'ARRIGO BROTHERS COMPANY OF CALIFORNIA, 9 ALRB No. 3

438.15 Where the employer continued to farm after its duty to bargain arose, but refused to bargain with the UFW before it terminated its agricultural operations or thereafter,

the Board found that the employer had refused to bargain in violation of section 1153(e).
P & P Farms, 5 ALRB No. 59

438.15 Where the employer failed to bargain over the "effects" of its decision to cease business, the Board ordered the employer to pay its employees their regular wages from the time immediately prior to termination up to the point when (1) it bargains to agreement or impasse with the UFW; (2) the UFW fails to request bargaining within 5 days after the date of the Board's decision; and (3) the UFW fails to bargain in good faith.
P & P Farms, 5 ALRB No. 59

438.15 Where the employer refused to bargain over its employees' wages, etc., prior to the termination of its business, the employer must make its employees whole for any loss of pay from the date its duty to bargain matured until the time it ceased operations.
P & P Farms, 5 ALRB No. 59

438.15 Where the evidence failed to establish whether the employer's onion shed employees had been permanently terminated prior to the date on which the employer's duty to bargain arose, the Board held that it could not find that the employer had unlawfully refused to bargain concerning such employees.
P & P Farms, 5 ALRB No. 59

438.15 Decisions regarding what crop to grow or discontinue involve changes in scope and direction of business and are not mandatory subjects of bargaining. Subcontracting is mandatory subject because it focuses upon aspects of employment relationship that are amenable to bargaining.
CARDINAL DISTRIBUTING CO. v. ALRB (1984) 159 Cal.App.3d 758

438.15 Whether a decision is "subcontracting" involves 1) nature of employer's business before and after change, 2) reasons for change, 3) capital expense of change, 4) union's ability to make meaningful proposals concerning contemplated change.
CARDINAL DISTRIBUTING CO. v. ALRB (1984) 159 Cal.App.3d 758

438.15 Board reversed on finding of a subcontracting decision, requiring bargaining, where record showed no contractual relationship between employer discontinuing crop and lessee of grower's land, no control of crop by former employer, the crop was discontinued because it was uneconomical to grow in small parcels, discontinuance was complete elimination of employer's investment in the crop, and union could not meaningfully bargain over the employer's economic concerns.
CARDINAL DISTRIBUTING CO. v. ALRB (1984) 159 Cal.App.3d 758

438.15 No interference with Arizona policy or possibility of conflicting responsibilities where ALRB limited its findings to California effects on an employment relationship that existed only in California.
NISH NOROIAN FARMS v. ALRB (1984) 35 Cal.3d 726.

438.15 Employer obligated to bargain with union over the California effects of a unilateral change in work-allocation policy that was implemented in Arizona.
NISH NOROIAN FARMS v. ALRB (1984) 35 Cal.3d 726.

438.15 Transfer of work away from bargaining unit employees is a mandatory subject of bargaining, even where the work is transferred to another state.
NISH NOROIAN FARMS v. ALRB (1984) 35 Cal.3d 726.

438.16 Wage Increase or Benefits Granted; Change in Method of Payment

438.16 Unilateral wage increase unlawful where no meaningful opportunity to bargain provided to union prior to implementation, and where evidence insufficient to show impasse, waiver, dilatory conduct or business necessity.
S & J RANCH, INC., 18 ALRB No. 2

438.16 An employer may lawfully implement unilateral wage and benefit increases if the parties are at impasse and the changes implemented are consistent with the employer's proposals made during negotiations.
BRUCE CHURCH, INC., 14 ALRB No. 20

438.16 To the extent that Kaplan's Fruit & Produce Company (1980) 6 ALRB No. 36 may be read to propose that the amount of a unilateral increase in wages (e.g., bringing employees' wages up to the prevailing rate) is determinative as to remedy, it is overruled. The Kaplan's Board declined to award makewhole for two unilateral wage increases on the theory that employees were benefitted rather than harmed, thereby overlooking the teaching of NLRB v. Katz (1962) 369 U.S. 735 [50 LRRM 2177] which holds that unilateral changes constitute per se violations of the duty to bargain because such conduct bypasses and undermines the employees' chosen bargaining representative.
MARIO SAIKHON, INC., 12 ALRB No. 4

438.16 Proposal of a new wage rate which exceeded last pre-impasse offer served to break impasse and, in addition, indicated a willingness to resume negotiations based on the proposed change; employer therefore could not implement the change absent a new impasse, the consent of the union, or the union's waiver of its right to bargain over the proposed change, or a valid practice or business necessity defense.
MAGGIO, VESSEY & COLACE, 11 ALRB No. 35

438.16 Employer's providing striker replacements with room and

board at cost and free transportation constituted unlawful unilateral changes from previously existing working conditions; absent a showing of emergency, or other exigent circumstances, employer was obligated to first notify and bargain with the union.
WEST FOODS, INC., 11 ALRB No. 17

438.16 Employer violated section 1153(e) and (a) by terminating employees' pension plan, increasing wages, and increasing working hours without giving the union prior notice and opportunity to bargain about the changes.
HOLTVILLE FARMS, INC., 10 ALRB No. 49

438.16 Discretionary unilateral wage increase could not be justified by workers' expectations or any prior established policy of employer.
SUMNER PECK RANCH, INC., 10 ALRB No. 24

438.16 Employer's unilateral wage increase, its change in method of compensation from an hourly basis to a piece-rate basis, and the unilateral implementation of a vacation plan constituted unlawful unilateral changes.
ROBERT H. HICKAM, 10 ALRB No. 2

438.16 The parties stipulated that the employer granted a unilateral wage increase without giving the union prior notice or an opportunity to bargain; implementation occurred at a time when there did not exist a bona fide bargaining impasse (see Bruce Church, Inc. (1983) 9 ALRB No. 74) and the unilateral increase was therefore unlawful.
BRUCE CHURCH, INC., 9 ALRB No. 75

438.16 Changes in rate of pay could not be lawfully implemented without first giving the union notice and an opportunity to bargain, but changes in method of pay not found to be a violation because circumstances not sufficiently clear as to those changes.
D'ARRIGO BROTHERS OF CALIFORNIA, 9 ALRB No. 51

438.16 Employer's unreasonable and adamant positions with respect to issues of successorship and union security together with its granting of a unilateral wage increase, constituted failure and refusal to bargain in good faith.
WILLIAM DAL PORTO & SONS, INC., 9 ALRB No. 4

438.16 Employer refused to bargain in good faith in violence of section 1153(e) and (a) by granting unilateral wage increase where Employer had discretion over amount and timing of increase and whether to grant any increase at all. Such wage increase not "automatic" increase to which Employer has already committed itself and over which there is no duty to bargain.
N. A. PRICOLA PRODUCE, 7 ALRB No. 49

438.16 Employer's unilateral change in wages without first contacting Union and granting it opportunity to

negotiation, is per se violation of duty to bargain regardless of Employer's subjective good or bad faith.
N. A. PRICOLA PRODUCE, 7 ALRB No. 49

438.16 Employer violated 1153(e) by raising irrigation shift rate without notifying union or giving union opportunity to bargain about increase.
SIGNAL PRODUCE COMPANY, 6 ALRB No. 47

438.16 Employer's unilateral implementation of wage increases without notice to Union per se violation of 1153(e) and (a). Increase not within "dynamic status quo" exception despite 4 year history of Employer granting wage increases at same time of year after Employee requests and based on Employer's survey of prevailing wages in area because too much discretion in amount and timing of raises.
KAPLAN'S FRUIT AND PRODUCE COMPANY, 6 ALRB No. 36

438.16 Wage increase based on employee's transfer from field work to tractor driver does not constitute unlawful unilateral change.
MASAJI ETO, et al., 6 ALRB No. 20

438.16 Employer's unilateral wage raise constituted per se violation of 1153(e) and (c) where made following contrived declaration of impasse.
MASAJI ETO, et al., 6 ALRB No. 20

438.16 The employer violated section 1153(e) and (a) by instituting unilateral wage increases, by unilaterally implementing a new policy for paying employees, and by refusing to provide the union with production and yield information, which was relevant and necessary to wage negotiations.
O.P. MURPHY & SONS, 5 ALRB No. 63

438.16 The ALJ concluded respondent violated section 1153(e) and (a) of the Act by failing to provide relevant bargaining information requested by the union, failing to meet promptly and regularly, unilaterally granting wage increase and laying off employees, failing to adequately respond to union proposals, failing to bargain in good faith with respect to mandatory subjects of bargaining, excluding items previously agreed upon from a counterproposal, and submitting proposals which failed to respond to issues introduced by the union. The Board affirmed general conclusion as to violation of section 1153(e) and (a).
HEMET WHOLESALE COMPANY, 4 ALRB No. 75

438.16 Unilateral wage increase granted following survey of other wage rates and at time arbitrarily chosen by the employer violates duty to bargain.
GEORGE ARAKELIAN FARMS v. ALRB (1986) 186 Cal.App.3d 94

438.16 Unilateral wage increase violates duty to bargain where

increase was discretionary rather than automatic.
GEORGE ARAKELIAN FARMS v. ALRB (1986) 186 Cal.App.3d 94

438.16 Duty to bargain in good faith is violated where employer intentionally deceives union by secretly implementing wage increase, then pretends that subject is still open to negotiation prior to implementation.
WILLIAM DAL PORTO & SONS, INC. v. ALRB (1984) 163 Cal.App.3d 541

438.16 Unilateral wage increase, without prior notice to union, is a per se refusal to bargain because it subverts the union's role as employees' representative.
CARDINAL DISTRIBUTING CO. v. ALRB (1984) 159 Cal.App.3d 758

438.17 Wage Reduction, Withholding Wage Increase, Or Discontinuance Of Benefits

438.17 Unilateral reduction in wages and benefits lawful where union engaged in dilatory and evasive bargaining conduct and employer provided notice of intent to seek reductions. Given union's pattern of ignoring employer's mailings and parties' practice of presenting proposals only at the table, presentation of a specific proposal prior to implementation was not required in this instance.
BRUCE CHURCH, INC., 17 ALRB No. 1

438.17 Dissent: Relying on NLRB and federal court precedents, dissent would find letter to Union merely stating its perception of decline in agricultural wages generally coupled with request to discuss, failed to meet federal standards for specific notice of proposed changes prior to implementation.
BRUCE CHURCH, INC., 17 ALRB No. 1

438.17 Employer's failure to continue making contributions to the employees' medical plan as required by the parties' expired collective bargaining agreement was violative of section 1153(e).
LU-ETTE FARMS, INC., 11 ALRB No. 20

438.17 Employer violated section 1153(e) by unilaterally discontinuing various practices established by the parties' expired collective bargaining agreement.
LU-ETTE FARMS, INC., 11 ALRB No. 20

438.17 No violation in employer's closing labor camp for which it lost its lease as the union did not discuss the problem with the employer nor specifically request bargaining regarding the effects of the loss of the camp.
BRUCE CHURCH, INC., 11 ALRB No. 9

438.17 No violation when the employer unilaterally ceased providing bus transportation due to mass demonstrations which prevented employees from boarding buses, since

change was justified by employer's concern for the safety of employees and their property.
BRUCE CHURCH, INC., 11 ALRB No. 9

438.17 Employer's discontinuance of term or condition of employment does not constitute continuing violation of the Act for purposes of statute of limitations.
GEORGE ARAKELIAN FARMS v. ALRB (1986) 186 Cal.App.3d 94

438.18 Work Schedules, Change In; Loss Of Overtime

438.18 Employer violated section 1153(e) and (a) by requiring lettuce harvesters to cut lettuce during the rain, because employer did not first offer to bargain with the union about the change from its prior practice.
BERTUCCIO FARMS, 10 ALRB No. 52

438.18 Employer violated section 1153(e) and (a) by terminating employees' pension plan, increasing wages, and increasing working hours without giving the union prior notice and opportunity to bargain about the changes.
HOLTVILLE FARMS, INC., 10 ALRB No. 49

438.18 Employer did not violate its duty to bargain by failing to give notice to union before reducing single employee's work hours and eliminating his tractor driving duties. Such relatively minor changes have no generalized effect on the bargaining unit.
Scheid Vineyards and Management Company, Inc.,
21 ALRB No. 10

438.18 Employer did not violate its duty to bargain by failing to give notice to union before reducing single employee's work hours and eliminating his tractor driving duties. Such relatively minor changes have no generalized effect on the bargaining unit.
Scheid Vineyards and Management Company, Inc.,
21 ALRB No. 10

438.19 Workload and Production Standards; Change in; Speedup

438.19 Changing hourly production standard, a mandatory subject of bargaining, without notice to certified representative an unlawful unilateral change in a condition of employment.
SKALLI CORPORATION dba ST. SUPERY, 17 ALRB No. 14

438.19 Employer has limited right to unilaterally change wages and working conditions after bona fide impasse but not when the impasse is false.
ADMIRAL PACKING CO., et al, 7 ALRB No. 43

439.00 DEFENSES TO CHARGE OF REFUSAL TO BARGAIN

439.01 In General

439.01 Premise underlying ALJ's conclusion that employer continued to bargain in bad faith held no longer viable.
VESSEY & COMPANY, INC., et al., 13 ALRB No. 17

439.01 In defense of refusal to bargain charge, employer cannot rely on results of employee poll as evidence of its good faith doubt that union no longer enjoys support of majority of employees. Union certification and obligation to bargain continue to be effective in absence of decertification or rival union election.
JOE G. FANUCCHI & SONS, 12 ALRB No. 8

439.01 Bad faith inferred from employer's failure to assert, until hearing, defense that it was not bound by certification and was not successor of previous employer.
SUMNER PECK RANCH, INC., 10 ALRB No. 24

439.01 Employer cannot rely in its good faith doubt of the union's majority status, where the employer itself created the doubt.
PETER D. SOLOMON and JOSEPH R. SOLOMON dba CATTLE VALLEY FARMS/TRANSCO LAND AND CATTLE CO., 9 ALRB No. 65

439.01 Board erred in rejecting uncontradicted and unimpeached testimony of employer's negotiator indicating sincere belief that employer could suffer sanctions for violating president's wage guidelines.
CARL JOSEPH MAGGIO, INC. v. ALRB (1984) 154 Cal.App.3d 40

439.01 In absence of newly discovered or previously unavailable evidence or extraordinary circumstances, respondent in refusal-to-bargain proceeding may not litigate matters which were or could have been raised in prior representation proceedings.
PERRY FARMS INC. v. ALRB (1978) 86 Cal.App.3d 448.

439.01 Board rejected the employer's defense of bad-faith bargaining by the union, based in part upon access taken by the union. Such access is generally approved. Even though the union did not follow all of the Board's suggested procedures, the access taken was limited to a short period of time during negotiations.
O. P. MURPHY PRODUCE CO., INC., dba O. P. MURPHY & SONS, 4 ALRB No. 106

439.02 Bad Faith, Delay, Unreasonable or Unlawful Demands, Violence Or Misconduct By Charging Union

439.02 Unilateral changes in working conditions are permissible if adopted by employer as countermeasure intended as a response to a slowdown.
SKALLI CORPORATION dba ST. SUPERY, 17 ALRB No. 14

439.02 Where the employer has earnestly sought negotiations,
SKALLI but union's dilatory and evasive conduct has prevented further negotiations, the employer may unilaterally implement changes in terms and conditions of

employment, consistent with prior proposals. Union's avoidance of negotiations for over six months allowed employer to make changes in wages and benefits and to introduce new machinery, because sufficient notice had been given. Changes in transfer policy and in the use of labor contractor crews unlawful because they were inconsistent with prior proposals.
BRUCE CHURCH, INC., 17 ALRB No. 1

439.02 Dissent: Dissent would follow NLRB and federal court precedents which hold that in the absence of a bona fide impasse employer may not implement changes in employees' terms and conditions of employment unless union is accorded prior specific notice of proposed changes and opportunity to bargain.
BRUCE CHURCH, INC., 17 ALRB No. 1

Premise underlying ALJ's conclusion that employer continued to bargain in bad faith held no longer viable.
VESSEY & CO., INC., 13 ALRB No. 17

439.02 Union not faulted for failure to formulate and submit a seniority supplement because employer unlawfully withheld information about changes in its operations.
MARIO SAIKHON, INC., 13 ALRB No. 8

439.02 In light of conditions which preceded resumption of bargaining, Board does not rely on Employer's failure to provide names and addresses of strike replacements in response to Union's information request as a factor indicating that Employer was engaged in a course of bad faith bargaining.
MARIO SAIKHON, INC., 13 ALRB No. 8

439.02 Although union believed employer had a duty to sign agreed-upon contract as written, it nevertheless extended the opportunity to present a counterproposal, and thus did not fail to leave any room for bargaining.
TEX-CAL LAND MANAGEMENT, INC., 11 ALRB No. 28

439.02 No bad faith by employer where union did not appear to desire agreement until master industry agreement reached.
SAM ANDREWS' SONS, 11 ALRB No. 5

439.02 Notwithstanding failure of union to request bargaining until more than two years following certification, affirmative notification to employer of its desire and intent to commence bargaining sufficient to overcome defense to refusal to bargain based on theory union had abandoned unit.
VENTURA COUNTY FRUIT GROWERS, INC., 10 ALRB No. 45

439.02 Union did not engage in bad faith bargaining.
SUMNER PECK RANCH, INC., 10 ALRB No. 24

439.02 Union's suspension of bargaining sessions in response to years of employer's bad faith bargaining is not evidence

of bad faith bargaining by the union.
PAUL W. BERTUCCIO, 10 ALRB No. 16

439.02 Union did not remain permanently bound to a proposal based upon major concessions where employer rejected the proposal and conditions underlying union's proposals changed.
PAUL W. BERTUCCIO, 10 ALRB No. 16

439.02 Union bad faith bargaining can constitute a complete defense to a charge of employer bad faith when the union's conduct removes the possibility of negotiations and precludes the existence of a situation in which the employer's own good faith can be tested. However, the union conduct is not a defense when it comes in reaction to the employer's refusal to make some effort to accommodate its differences with the union. Nevertheless, such conduct is not to be condoned and is considered in framing the equitable remedy of "makewhole."
BRUCE CHURCH, INC., 9 ALRB No. 74

439.02 Union avoided impasse by obfuscation and delay by coming late to negotiations, avoiding issues, talking other issues into the ground, dillydallying, jumping from issue to issue with little rhyme or reason, refusing to prioritized, and submitting an occasional counterproposal but delaying a full response.
BRUCE CHURCH, INC., 9 ALRB No. 74

439.02 Conduct by the union, which included delays in seeking and providing information, failure to exercise post-certification access, failure to vest negotiator with sufficient authority, lack of preparedness, and failure to follow through on bargaining requests, is to be considered in assessing the totality of circumstances and in determining whether the employer could be deemed in violation if its bargaining obligation.
D'ARRIGO BROTHERS OF CALIFORNIA, 9 ALRB No. 51

439.02 Although Employer may be justified in refusing to meet for negotiations because of serious strike related violence for which Union is clearly responsible, not so in instant case because Employers may have contributed to the causes for violence and Employers never actually refused to meet because of the violence.
ADMIRAL PACKING CO., et al, 7 ALRB No. 43

439.02 Bad faith bargaining by Union may be defense to refusal to bargain charge against Employer.
ADMIRAL PACKING CO., et al, 7 ALRB No. 43

439.02 An economically preposterous proposal does not necessarily show bad faith if its underlying rationale is reasonable, e.g., based on concrete problems.
ADMIRAL PACKING CO., et al, 7 ALRB No. 43

439.02 Strike violence and picket line misconduct do not show

lack of desire by Union to reach collective bargaining agreement and do not excuse Employer's bad faith bargaining.
ADMIRAL PACKING CO., et al, 7 ALRB No. 43

439.02 Union's lack of preparation and dilatory bargaining made it impossible for Board to assess Employer's good faith, or lack thereof, in bargaining.
ADMIRAL PACKING CO., et al, 7 ALRB No. 43

439.02 Delaying negotiations by canceling and being unprepared for meetings indicia of bad faith; however, record did not show why negotiations were slow nor allow analysis of parties' positions so finding of bad faith bargaining reversed. Union shared responsibility for delays, and there were indicia of Employer good faith, e.g., prompt scheduling of initial bargaining, complete counterproposals at second session, many meetings, and agreement on substantial number of contract provisions.
KAPLAN'S FRUIT AND PRODUCE COMPANY, 6 ALRB No. 36

439.02 The Board rejected employer's defense of bad faith bargaining by the union. Access taken during negotiations is generally approved and union's access here was limited to a short period during negotiations. Conduct of employees in submitting a petition to the employer held not attributable to the union.
O.P. MURPHY & SONS, 5 ALRB No. 63

439.02 Before finding a failure of an employer to bargain in good faith, the totality of the employer's conduct must be examined. This includes a consideration of the union's conduct.
PAUL W. BERTUCCIO v. ALRB (1988) 202 Cal.App.3d 1369

439.02 Board properly found the grower's offer of proof as to union violence would not have constituted a complete defense to the unfair labor practice charges. There was no evidence or offer of proof that the conduct of individual strikers had any impact whatsoever on the grower's participation in the bargaining process.
PAUL W. BERTUCCIO v. ALRB (1988) 202 Cal.App.3d 1369

439.02 Totality of circumstances test requires consideration of union's conduct during negotiations, such as: refusing to meet with mediator; calling a strike before making a complete proposal; failing to make other than minor concessions; using publicity to put employer in bad light; and engaging in serious strike misconduct and violence.
CARL JOSEPH MAGGIO, INC. v. ALRB (1984) 154 Cal.App.3d 40

439.02 Strike misconduct does not serve as excuse for employer's surface bargaining. Employer must either stop bargaining until misconduct stops; or bargain in good faith. (Dissent by Weiner, Jr.)
CARL JOSEPH MAGGIO, INC. v. ALRB (1984) 154 Cal.App.3d 40

439.02 Board properly considered union's bargaining conduct and determined that employer's adherence to untenable legal position prevented union's good faith from being tested and that union's use of publicity did not have any effect on negotiations or violate explicit agreement. (Dissent by Weiner, J.)
CARL JOSEPH MAGGIO, INC. v. ALRB (1984) 154 Cal.App.3d 40

439.03 Conflict Of Interest On Part Of Union

439.04 Business Necessity; Competitive Or Financial Position Of Employer

439.04 Bare assertion of a "trade secret" or other grounds for confidentially of information sought not adequate since Board must be permitted to balance the union's need for information against the legitimate and substantial confidentiality interests of the employer.
RICHARD A. GLASS COMPANY, INC., 14 ALRB No. 11

439.04 An employer can demonstrate an economic necessity for locking out its employees when it reasonably believes that if a strike were to occur would suffer severe economic loss and it reasonably believes a strike will occur.
WEST FOODS, INC., 11 ALRB No. 17

439.04 No violation when the employer unilaterally ceased providing bus transportation due to mass demonstrations which prevented employees from boarding buses, since change was justified by employer's concern for the safety of employees and their property.
BRUCE CHURCH, INC., 11 ALRB No. 9

439.04 Discretionary unilateral wage increase could not be justified by workers' expectations or any prior established policy of employer.
SUMNER PECK RANCH, INC., 10 ALRB No. 24

439.04 Employer cannot repudiate its contract with union on the basis of business necessity occasioned by its employees' strike in support of employees' decertification petition, where employer unlawfully instigated and assisted the employees' decertification effort.
PETER D. SOLOMON and JOSEPH R. SOLOMON dba CATTLE VALLEY FARMS/TRANSCO LAND AND CATTLE CO., 9 ALRB No. 65

439.04 Exigent circumstances excused employer's unilateral change in hiring practices, and employer's notice to the union two days after the decision, along with providing the opportunity to bargain at that time, met the requirement of bargaining to the extent circumstances permitted.
CHARLES MALOVICH, 9 ALRB No. 64

439.04 Employer failed to prove defense of business necessity

where it failed to show any changed circumstances explaining its decision to reduce the compensation to its employees without first negotiating with union.
GEORGE ARAKELIAN FARMS v. ALRB (1986) 186 Cal.App.3d 94

439.04 Business necessity may justify unilateral change; however, the necessity must involve more than economics alone, and, in any event, prior notice and bargaining are still required to the extent the situation permits.
CARDINAL DISTRIBUTING CO. v. ALRB (1984) 159 Cal.App.3d 758

439.04 Limited "exigent circumstance" exception to duty to notify and bargain before implementing changes in working conditions must be very narrowly construed and employer has heavy burden to show "extraordinary events which are `an unforeseen occurrence, having a major economic effect [requiring]...immediate action'" and, further, that situation required prompt action, changes were compelled, dictated by external events, beyond employer's control or not reasonably foreseeable.
WARMERDAM PACKING, 22 ALRB No. 13

439.04 "Business necessity" not the same as compelling considerations which may excuse bargaining.
WARMERDAM PACKING, 22 ALRB No. 13

439.05 Employees Not Included In Bargaining Unit

439.05 Employer's proposal that labor contractor employees who admittedly are covered by the certification be excluded from the terms of a proposed collective bargaining agreement is evidence of employer's bad faith.
PAUL W. BERTUCCIO, 10 ALRB No. 16

439.05 Employer's assertion that its proposals, including union security, to exclude employees of its labor contractor from the terms of a contract was a form of a technical refusal to bargain, held to be without merit; proposals to exclude such employees are per se violations and, in any event, at no time did employer have a reasonable good faith belief that its labor contractor employees were not it agricultural employees.
PAUL W. BERTUCCIO, 10 ALRB No. 16

439.05 The filing of a petition for unit clarification does not suspend the duty to bargain over employees in question.
PAUL W. BERTUCCIO, 10 ALRB No. 16

439.05 The fact that, in order to try to reach agreement, that certain employees covered by the certification be excluded from the terms of a collective bargaining agreement does not legitimize employer's per se violation of its duty to bargain in good faith.
PAUL W. BERTUCCIO, 10 ALRB No. 16

439.05 Shop employees who perform a regular and substantial

portion of their time on activities related to agriculture are in the bargaining unit with all the agricultural employees of the employer.
SAM ANDREWS' SONS, 9 ALRB No. 24

439.05 Where the evidence failed to establish whether the employer's onion shed employees had been permanently terminated prior to the date on which the employer's duty to bargain arose, the Board held that it could not find that the employer had unlawfully refused to bargain concerning such employees.
P & P Farms, 5 ALRB No. 59

439.06 Jurisdiction Of Board; Contract Interpretation; Alternative Remedy Under Grievance And Arbitration Provisions

439.06 Board rejects respondent's contention that whereas it once was both a grower and shipper of fresh vegetable commodities, it is now solely a shipper upon finding that the so-called independent growers are not distinct business entities engaged in independent agricultural production, but are components of a unitary grower/shipper organization controlled by respondent.
BUD ANTLE, INC., 18 ALRB No. 6

439.06 No real change in employing entity where Board finds respondent merely modified the manner in which it had in the past controlled growing operations, relinquishing direct management for a form of controlled or centralized management.
BUD ANTLE, INC., 18 ALRB No. 6

439.06 Although respondent entered into complex agreements with ostensibly independent growers, it continued to maintain critical policy and operational control at the highest or executive level over all entities which it had solicited and bound together contractually and financially; facts support Board's finding of single integrated enterprise.
BUD ANTLE, INC., 18 ALRB No. 6

439.06 Superficial changes in method of operation insufficient to alter respondent's prior status as a farmer-employer of the agricultural employees who work in its various cooling facilities since respondent continued to be essentially the same grower/shipper it was at the time of initial certification.
BUD ANTLE, INC., 18 ALRB No. 6

439.06 Compliance is the appropriate place to determine when, if ever, Employer ceased to be an agricultural employer.
SUNNY CAL EGG & POULTRY, INC., 14 ALRB No. 14

439.06 Since Employer was admittedly an agricultural employer at the time it refused to bargain, Board has justification to remedy the ULP even though Employer may later have become a commercial, nonagricultural employer.

SUNNY CAL EGG & POULTRY, INC., 14 ALRB No. 14

439.06 Board concludes that NLRB has not strictly adhered to its holding in Austin DeCoster d/b/a DeCoster Egg Farms (1976) 223 NLRB 884 [92 LRRM 1120] that any amount of processing of other producer's agricultural products necessarily makes the processing employees commercial rather than agricultural. Subsequent NLRB decisions indicate that the national board has continued to apply the rule established in Olaa Sugar Company, Ltd. (1957) 118 NLRB 1442 [40 LRRM 1400] and The Garin Company (1964) 148 NLRB 1499 [47 LRRM 1175] that employees engaged in the processing of crops will be found to be nonagricultural employees only if a regular and substantial portion of their work consists of processing the crops of a grower or growers other than the grower-employer.
SUNNY CAL EGG & POULTRY, INC., 14 ALRB No. 14

439.06 No interference with Arizona policy or possibility of conflicting responsibilities where ALRB limited its findings to California effects on an employment relationship that existed only in California.
NISH NOROIAN FARMS v. ALRB (1984) 35 Cal.3d 726.

439.06 Employer obligated to bargain with union over the California effects of a unilateral change in work-allocation policy that was implemented in Arizona.
NISH NOROIAN FARMS v. ALRB (1984) 35 Cal.3d 726.

439.07 Past Practice; Maintenance Of Status Quo

439.07 Failure to recall a fifth lettuce harvesting crew did not constitute an unlawful unilateral change, since employer did not exceed the limits of flexibility inherent in its established practice regarding crew size and utilization by expanding the size of the other four crews rather than adding a fifth crew.
SAM ANDREWS' SONS, 11 ALRB No. 14

439.07 Employer did not commit a bargaining violation by assigning occasional tractor driving work to a foreman's son, since General Counsel made no showing that working conditions of regular tractor drivers were changed, nor that such occasional employment would have constituted a deviation from the employer's past practice of employing supervisors' children for part-time and summer work.
SAM ANDREWS' SONS, 11 ALRB No. 14

439.07 Discretionary unilateral wage increase could not be justified by workers' expectations or any prior established policy of employer.
SUMNER PECK RANCH, INC., 10 ALRB No. 24

439.07 Where the General Counsel failed to show that the closure of these nursery for one-half day prior to New Year's Day represented a change in employment practices, the Board

refused to find that the employer had violated its duty to bargain when it closed the nursery for one-half day without negotiating with the Union.
SUNNYSIDE NURSERIES, INC., 6 ALRB No. 52

439.07 Employer's unilateral implementation of wage increases without notice to Union per se violation of section 1153(e) and (a). Increase not within "dynamic status quo" exception despite 4 year history of Employer granting wage increases at same time of year after Employee requests and based on Employer's survey of prevailing wages in area because too much discretion in amount and timing of raises.
KAPLAN'S FRUIT AND PRODUCE COMPANY, 6 ALRB No. 36

439.07 Although an exception against the ban on unilateral wage increases exists for traditional raises whereby the employer is simply maintaining the status quo, the grower's policy of wage increases left to his own discretion if wages were to be raised and by how much. Thus, the grower failed to prove that such adjustments of wages were purely automatic and pursuant to definite guidelines.
PAUL W. BERTUCCIO v. ALRB (1988) 202 Cal.App.3d 1369

439.07 To validate what would otherwise, in the circumstances, be a forbidden unilateral wage increase the employer must show that the wage change was essentially automatic and involved no exercise of discretion by the employer.
PAUL W. BERTUCCIO v. ALRB (1988) 202 Cal.App.3d 1369

439.07 Unilateral wage increase granted following survey of other wage rates and at time arbitrarily chosen by the employer violates duty to bargain.
GEORGE ARAKELIAN FARMS v. ALRB (1986) 186 Cal.App.3d 94

439.07 Unilateral wage increase violates duty to bargain where increase was discretionary rather than automatic.
GEORGE ARAKELIAN FARMS v. ALRB (1986) 186 Cal.App.3d 94

439.07 Employer may give employees unilateral wage increase to maintain "dynamic status quo," if increases are automatic as to amount and timing. Any area of discretion requires bargaining prior to implementation.
CARDINAL DISTRIBUTING CO. v. ALRB (1984) 159 Cal.App.3d 758

439.07 Unprecedented, irregular, and therefore unpredictable nature of changes in working conditions suggest they were the "product of an ad hoc decision-making process rather than a continuation of an established company policy" and therefore cannot serve to justify changes in hiring policy absent prior notification and bargaining with union.
WARMERDAM PACKING, 22 ALRB No. 13

439.07 Combination of short history and indefinite nature of the

alleged past practice fatal to employer's claim of past practice to defend post-certification changes in hiring policies.
WARMERDAM PACKING, 22 ALRB No. 13

439.08 Deferral To Pending Proceedings Before Courts, Board, Or Arbiters (see also section 106.03)

439.08 Unlawful for employer to dent union access to information potentially relevant to the processing of grievances under the contract on grounds union's decision to take grievance to arbitration obviates duty to provide such information.
RICHARD A. GLASS COMPANY, INC., 14 ALRB No. 11

439.08 Because of extreme degree of distrust between parties, deferral to arbitration not appropriate in cases where the employer's actions were designed to undermine the status of the union.
TEX-CAL LAND MANAGEMENT, INC., 11 ALRB No. 31

439.09 Management-Rights Clause, Effect Of

439.09 Employer who defends failure to bargain on grounds of waiver bears heavy burden of showing first that it formally and fully apprised union of its intent to take action affecting employment terms and union, having been given meaningful opportunity to bargain, declined.
WARMERDAM PACKING, 22 ALRB No. 13

439.09 A union's past practice of permitting unilateral changes does not constitute waiver of right to bargain over such changes in future.
WARMERDAM PACKING, 22 ALRB No. 13

439.09 Test of waiver is not extent to which union sought bargaining as waiver may not be inferred even from silence.
WARMERDAM PACKING, 22 ALRB No. 13

439.10 Waiver By Union; Contract Waivers; Bargaining History; Estoppel; Disclaimer

439.10 Union request to bargain employer's proposal for wage increase along with other outstanding issues, rather than giving yes or no answer as demanded by employer, did not constitute waiver or dilatory conduct.
S & J RANCH, INC., 18 ALRB No. 2

439.10 A finding of waiver must be clear and unequivocal such that the union's subsequent failure to demand bargaining constitutes a "conscious relinquishment" of the right to bargain.
ROBERTS FARMS, INC., 13 ALRB No. 14

439.10 Notice to the union of proposed changes affecting the bargaining unit must be given sufficiently in advance of

actual implementation of a decision to allow reasonable scope for bargaining.
ROBERTS FARMS, INC., 13 ALRB No. 14

439.10 The burden of proving waiver of bargaining rights is on the party alleging it.
ROBERTS FARMS, INC., 13 ALRB No. 14

439.10 No violation in employer's closing labor camp for which it lost its lease as the union did not discuss the problem with the employer nor specifically request bargaining regarding the effects of the loss of the camp.
BRUCE CHURCH, INC., 11 ALRB No. 9

439.10 Employer did not refuse to bargain over effects of crop decision where, after information was finally provided, union declined to make a proposal.
SAM ANDREWS' SONS., 11 ALRB No. 5

439.10 No violation found for failure to engage in effects bargaining over partial closure where union failed to follow through on its request for effects bargaining.
VALDORA PRODUCE COMPANY and VALDORA PRODUCE COMPANY, INC., 10 ALRB No. 3

439.10 Employer did not violate the Act by implanting a change in the rate of pay, since the union, despite repeated requests, had refused to meet and negotiate with the employer; the local negotiating committee asked for the change and the employer acquiesced in the suggested modifications; and the union had previously authorized the local negotiating committee members to engage in such bargaining with the employer.
NEUMAN SEED GROWERS, INC., 9 ALRB No. 52

439.10 A waiver by the exclusive bargaining representative of its right to bargain over wage increases cannot generally be inferred from silence or acquiescence to prior increases; waiver must be clear and unequivocal.
CARDINAL DISTRIBUTING COMPANY, INC.M et al.,9 ALRB No. 36

439.10 Union did not waive right to bargain wages because substantial delay in making wage proposal and not protesting unilateral increases after Employer notified Union of same. Silence not waiver absent clear and unequivocal evidence of intentional wavier.
KAPLAN'S FRUIT AND PRODUCE COMPANY, 6 ALRB No. 36

439.10 Board rejected employer's defense that union waived right to bargain over unilateral wage increase by failing to object to increase at negotiation session following increase. Evidence of waiver must be clear and unequivocal and will not be lightly inferred.
MASAJI ETO, et al., 6 ALRB No. 20

439.10 Union did not get sufficient prior notice of intent to increase wages where employer implemented increase one

week after notice and never told union time was of the essence. No evidence of union waiver on those facts.
WILLIAM DAL PORTO & SONS, INC. v. ALRB (1984) 163 Cal.App.3d 541

439.10 Waiver by union of right to bargain over wage increase must be clear and unequivocal; it may not be implied from mere silence or past acquiescence. Insufficient showing of clear union acquiescence in wage increase where there was no general waiver by union and two prior instances of acquiescence occurred prior to exchange of economic proposals.
CARDINAL DISTRIBUTING CO. v. ALRB (1984) 159 Cal.App.3d 758

439.11 Impasse

439.11 Parties not shown to be at impasse at time of unilateral wage increase where there was still room for movement, the employer at that time did not claim the parties were at impasse, and where impasse claim is belied by employer's attempt to get union's approval of increase.
S & J RANCH, INC., 18 ALRB No. 2

439.11 A concession by the union on a major point of dispute between the parties that was among the causes of impasse revives the employer's duty to bargain prior to making unilateral changes in wages and benefit plans.
BRUCE CHURCH, INC., 14 ALRB No. 20

439.11 Unilateral wage increases following bona fide impasse consistent with pre-impasse proposal not violation of section 1153(e).
LU-ETTE FARMS, INC., 12 ALRB No. 3

439.11 Bad faith bargaining found where employer declared premature impasse, raised wages unilaterally, delayed in providing information, provided an unprepared and/or unavailable negotiator, failed to use care in reviewing its own proposals, failed to respond to substantial countermovement, and took untenable position on specific legal issue.
SAM ANDREWS' SONS, 11 ALRB No. 5

439.11 Employer bargained in bad faith by insisting that all agreements be tentative, by withdrawing numerous agreed-upon articles, by declaring impasse prematurely, and by its disingenuous claim that the union had lost its majority. ROBERTS FARMS, INC., 9 ALRB No. 27

439.11 No bona fide impasse where many significant issues had not been discussed, few meetings had occurred on the disputed issues, and the union did not evidence uncompromising attitude on key issue.
SAM ANDREWS' SONS, 9 ALRB No. 24

439.11 No impasse although deadlock on some bargaining proposals

if there is room for movement on major contract items.
ADMIRAL PACKING CO., et al, 7 ALRB No. 43

439.11 No violation of section 1153(e) where Employer made unilateral changes when not at bona fide impasse but no evidence whether or not Employer failed to consult Union.
ADMIRAL PACKING CO., et al, 7 ALRB No. 43

439.11 Impasse is not genuine where it follows failure to bargain in good faith.
ADMIRAL PACKING CO., et al, 7 ALRB No. 43

439.11 Employer has limited right to unilaterally change wages and working conditions after bona fide impasse but not when the impasse is false.
ADMIRAL PACKING CO., et al, 7 ALRB No. 43

439.11 Parties' deadlock on economic issues was result of Employers maintaining limitations on their wage proposals which they did not honestly believe existed; thus deadlock was not a bona fide impasse.
ADMIRAL PACKING CO., et al, 7 ALRB No. 43

439.11 Impasse occurs when parties are unable to reach agreement despite their best good faith efforts to do so. Factors such as bargaining history, good faith of parties during negotiations, and importance of issue(s) in disagreement, are all relevant to determination of whether valid impasse exists.
MASAJI ETO, et al., 6 ALRB No. 20

439.11 As general rule, contract negotiations are not at impasse if parties shall have room for movement on major contract items, even if parties are deadlocked in some areas.
MASAJI ETO, et al., 6 ALRB No. 20

439.11 Whether an impasse exists depends on whether, in view of all the circumstances of the bargaining further discussions would be futile.
WILLIAM DAL PORTO & SONS, INC. v. ALRB (1987) 191 Cal.App.3d 1195

439.11 A genuine impasse is synonymous with a deadlock; the parties have discussed a subject in good faith, and despite their best efforts to achieve agreement, neither party is willing to move from its respective position.
WILLIAM DAL PORTO & SONS, INC. v. ALRB (1987) 191 Cal.App.3d 1195

439.11 Employer declared bona fide impasse where parties were far apart on economic issues and neither side made more than minor movement, and where economic issue loomed so large that movement in other areas could not be expected to break stalemate.
CARL JOSEPH MAGGIO, INC. v. ALRB (1984) 154 Cal.App.3d 40

439.11 No impasse shown where union had made concessions in

mediation and sought further meetings and where parties had not yet exhaustively bargained over core economic issues.
P.H. RANCH, INC., et al., 21 ALRB No. 13

439.12 Strikes Or Other Protected Concerted Activity By Union

439.12 An employer can demonstrate an economic necessity for locking out its employees when it reasonably believes that if a strike were to occur wit would suffer severe economic loss and it reasonably believes a strike will occur.
WEST FOODS, INC., 11 ALRB NO. 17

439.12 Employer did not have a reasonable fear that a strike was imminent, and its phasedown constituted economic action designed to apply pressure to contractual concessions on the union during the time period specified in section 1155.3(a).
WEST FOODS, INC., 11 ALRB NO. 17

439.12 No violation for unilaterally changing hiring method and pickup point utilized to obtain replacement employees during a strike, since obligation to bargain during an economic strike does not extend to an employer's decision to hire temporary replacement workers or to the method by which the employer chooses to obtain them.
COLACE BROTHERS, INC., 6 ALRB No. 56

439.12 Totality of circumstances test requires consideration of union's conduct during negotiations, such as: refusing to meet with mediator; calling a strike before making a complete proposal; failing to make other than minor concessions; using publicity to put employer in bad light; and engaging in serious strike misconduct and violence.
CARL JOSEPH MAGGIO, INC. v. ALRB (1984) 154 Cal.App.3d 40

439.13 Abandonment Of Unit

439.13 Union's dilatory and evasive bargaining conduct did not constitute abandonment of unit where it was not shown that union was defunct, disclaimed interest in the unit, or was unable or unwilling to represent unit.
BRUCE CHURCH, INC., 17 ALRB No. 1

439.13 Despite sporadic and intermittent representation of the bargaining unit over a period of six years, employer did not show that the union abandoned the bargaining unit, where there was no showing that the union was either unable or unwilling to represent the unit.
O.E. MAYOU & SONS, 11 ALRB No. 25

439.13 Notwithstanding failure of union to request bargaining until more than two years following certification, affirmative notification to employer of its desire and intent to commence bargaining sufficient to overcome

defense to refusal to bargain based on theory union had abandoned unit.
VENTURA COUNTY FRUIT GROWERS, INC., 10 ALRB No. 45

439.13 Section 1156.2 precludes Board from modifying original certification in order to sever out only a certain classification of employees on grounds union abandoned interest in representing only that aspect of the overall operation.
DOLE FRESH FRUIT CO. 22 ALRB No. 4

439.13 Board rejects employer's claim that duty to bargain concerning grape employees had been extinguished on grounds union had abandoned them where evidence established that union's repeated claims to bargain had been rebuffed, where union took worksite access to solicit union membership, and union held rallies among area grape workers to urge them to press for a general wage increase.
DOLE FRESH FRUIT CO., 22 ALRB No. 4

439.13 In assessing allegation that employer need not bargain with certified representative on grounds union abandoned employees, issue is not extent of union/management contact, which may have been lacking, but union/employees contact which continued to take place.
DOLE FRESH FRUIT CO., 22 ALRB No. 4

439.13 Stalled negotiations, or even a hiatus in negotiations, cannot alone be the basis for refusing to bargain on the grounds the union is unable or unwilling to represent unit employees since an absence of negotiations need not necessarily translate into a disclaimer of interest.
DOLE FRESH FRUIT CO., 22 ALRB No. 4

439.13 Period of dormancy in collective bargaining activity does not cause union to lose status as certified representative under the ALRA's statutory scheme, under which union representative status can come only from certification following Board-conducted election and can only be terminated by same means, unless union disclaims interest in representing the unit or becomes defunct.
PICTSWEET MUSHROOM FARMS, 29 ALRB No. 3

439.14 Section 1153(f) - Prohibition Against Bargaining With Union Not Certified

439.14 Relevant information regarding pension, medical, educational and welfare plans must be provided upon request since such plans are mandatory subjects of bargaining. UFW's Citizens' Participation Day Fund is a special circumstance. Although contributions to it are a mandatory subject since it provides a paid holiday, management and expenditure of the Funds concern UFW and its members and is permissive bargaining subject only.
ADMIRAL PACKING CO., et al, 7 ALRB No. 43

439.14 Union's failure to provide information about its RFK medical plan violated 1154(c), as did its providing only incomplete information regarding its Martin Luther King Fund. Employer has no duty to bargain over proposals related to the funds when Union not provide the information.
ADMIRAL PACKING CO., et al, 7 ALRB No. 43

439.14 Under ALRA, once union has been certified, employer's duty to bargain continues until union has been decertified.
ADAMEK & DESSERT, INC. v. ALRB (1986) 178 Cal.App.3d 970

439.14 1153(f) does not preclude employer from bargaining with certified union after "certification year."
MONTEBELLO ROSE CO. v. ALRB (1981) 119 Cal.App.3d 1

439.14 One-year certification lapses for election bar purposes, but general duty to bargain does not lapse when year expires. This interpretation gives stability to bargaining relationships, prevents unions from striking to force concessions, is consistent with NLRB presumption of continuing majority status, prevents large gaps in representation, and reduces burden of repeated elections on all parties.
MONTEBELLO ROSE CO. v. ALRB (1981) 119 Cal.App.3d 1

439.14 Due to 1153(f), employer's refusal to bargain while election objections are pending may not be unlawful, if employer entertained reasonable, good faith doubt as to whether union's initial election victory will be sustained and certified.
HIGHLAND RANCH v. ALRB (1981) 29 Cal.3d 848

439.14 1153(f) was intended to prevent "sweetheart" contracts with unions that had not been elected; it was not intended to be read literally to eliminate any duty to bargain prior to certification.
HIGHLAND RANCH v. ALRB (1981) 29 Cal.3d 848

440.00 MAJORITY STATUS OF UNION; RECOGNITION

440.01 In General, Bargaining With Uncertified Union, Labor Code Section 1153(f)

440.01 Section 1153(f) does not justify a successor's refusal to bargain with a union certified after purchase as a result of stipulation by former employer to withdraw objections to election.
SUMNER PECK RANCH, INC., 10 ALRB No. 24

440.01 Employers need not bargain with, nor reach a contract with, a labor organization not certified as the exclusive representative of their employees to violate section 1153(f); mere recognition of the labor organization is

sufficient. However, cessation of operations to give a noncertified union an appearance of strength, petitioning a superior court for an election, and hiring a labor contractor crew for the purpose of reducing the incumbent (and certified) union's support in the bargaining unit is not a violation of this section.
ARAKELIAN FARMS, 9 ALRB No. 25

440.01 Under ALRA, once union has been certified, employer's duty to bargain continues until union has been decertified.
ADAMEK & DESSERT, INC. v. ALRB (1986) 178 Cal.App.3d 970

440.01 Two legislative purposes underlie adoption of 1153(f): (1) to prevent "sweetheart contracts;" and (2) to keep employers out of process of choosing unions.
F&P GROWERS ASSN. v. ALRB (1985) 168 Cal.App.3d 667

440.01 1153(f) prohibits voluntary recognition of union without secret ballot election.
JOE A. FREITAS & SONS v. FOOD PACKERS (1985) 164 Cal.App.3d 1210

440.01 There is nothing inconsistent between Legislature's desire to prevent coercion by employers, by prohibiting voluntary recognition, and Board's power to issue bargaining orders where coercion by employers has been so pervasive as to preclude free election.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

440.01 Because of employers' pre-Act voluntary recognition of Teamsters throughout California, bitter struggle ensued between UFW and Teamsters that was "disorderly, occasionally bloody, and never the showplace of self-determination. "It has been suggested that this struggle was the "unstable and potentially volatile condition" referred to in Act's Preamble.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

440.01 Evil which Legislature sought to avoid with secret ballot election requirement was not remedial bargaining orders, but "sweetheart" contracts between employers and unrepresentative unions, as illustrated by Englund v. Chavez. HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

440.01 Comments of drafters are perfectly consistent with Board's conclusion that Act's secret ballot provisions were intended to preclude voluntary recognition, not bargaining orders. Drafters contrasted worker-initiated secret elections with various means of voluntary recognition used by unions and employers, such as recognitional strikes or employer-triggered elections.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

440.01 Section 1153(f) does not preclude employer from bargaining with certified union after "certification year."

MONTEBELLO ROSE CO. v. ALRB (1981) 119 Cal.App.3d 1

440.01 One-year certification lapses for election bar purposes, but general duty to bargain does not lapse when year expires. This interpretation gives stability to bargaining relationships, prevents unions from striking to force concessions, is consistent with NLRB presumption of continuing majority status, prevents large gaps in representation, and reduces burden of repeated elections on all parties.
MONTEBELLO ROSE CO. v. ALRB (1981) 119 Cal.App.3d 1

440.01 While employer need not bargain to contract while election objections are pending and before union is certified, employer's refusal to bargain over changes in working conditions during that period is unlawful if union is ultimately certified. This policy is intended to prevent employer from undermining or boxing in union before contract bargaining even begins.
HIGHLAND RANCH v. ALRB (1981) 29 Cal.3d 848

440.01 Due to 1153(f), employer's refusal to bargain while election objections are pending may not be unlawful, if employer entertained reasonable, good faith doubt as to whether union's initial election victory will be sustained and certified.
HIGHLAND RANCH v. ALRB (1981) 29 Cal.3d 848

440.01 Section 1153(f) was intended to prevent "sweetheart" contracts with unions that had not been elected; it was not intended to be read literally to eliminate any duty to bargain prior to certification.
HIGHLAND RANCH v. ALRB (1981) 29 Cal.3d 848

440.01 Board follows NLRB presumption that new employees support the union in the same ratio as when majority support was first manifested and certified representative is obliged to bargain not only for employees who voted for it but for all employees in the bargaining unit.
DOLE FRESH FRUIT CO., 22 ALRB No. 4

440.02 Employer's Right To Contest Majority; Loss Of Majority In General; Effect Of Unfair Labor Practices

440.02 Employer's claim to have withdrawn recognition ineffective since recognition can only be granted or withdrawn pursuant to certification under ALRA.
CARDINAL DISTRIBUTING CO., INC., 19 ALRB No. 10

440.02 Because of the statutory differences between the NLRA and the ALRA, as well as the unique characteristics of the agricultural industry, the Board has determined that a reasonable, good faith belief in the loss of majority support is not a valid defense in a refusal to bargain case under the ALRA.
ARCO SEED COMPANY, 14 ALRB No. 6

440.02 In defense of refusal to bargain charge, employer cannot rely on results of employee poll as evidence of its good faith doubt that union no longer enjoys support of majority of employees. Union certification and obligation to bargain continue to be effective in absence of decertification or rival union election.
JOE G. FANUCCHI & SONS 12 ALRB No. 8

440.02 Employer not entitled to contest majority support of union under ALRA; even prior to Cattle Valley Decision (8 ALRB No. 24) announcing right of employees to decertify despite lack of contract, employer had insubstantial basis for alleged belief in loss of support and waived right to contest union's majority support by failure to assert defense.
SUMNER PECK RANCH, INC., 10 ALRB No. 24

440.02 Employer cannot rely in its good faith doubt of the union's majority status, where the Employer itself created the doubt. PETER D. SOLOMON and JOSEPH R. SOLOMON dba CATTLE VALLEY FARMS/TRANSCO LAND AND CATTLE CO., 9 ALRB No. 65

440.02 Absent a successful decertification or rival union election, loss of majority support or good faith belief thereof is not a defense under the ALRA to a refusal to bargain with a certified union.
F & P GROWERS ASSOCIATION, 9 ALRB No. 22
Accord: O,E, MAYOU & SONS, 11 ALRB No. 25

440.02 Under ALRA, once union has been certified, employer's duty to bargain continues until union has been decertified.
ADAMEK & DESSERT, INC. v. ALRB (1986) 178 Cal.App.3d 970

440.02 In determining whether Employer had good faith doubt concerning union's majority status when it refused to bargain, NLRB considers totality of employer's conduct contemporaneous with refusal.
RULINE NURSERY CO. v. AGRICULTURAL LABOR RELATIONS BOARD (1985) 169 Cal.App.3d 247

440.02 Two legislative purposes underlie adoption of 1153(f): (1) to prevent "sweetheart contracts;" and (2) to keep employers out of process of choosing unions.
F&P GROWERS ASSN. v. ALRB (1985) 168 Cal.App.3d 667

440.02 NLRB's "loss of majority" defense to charge of employer bad faith bargaining is not permitted under ALRA. Because Legislature removed employer from any role whatsoever in determining whether employees should select a union, it would be inconsistent with Act to permit employer to refuse to bargain with certified union because of "good faith belief" that union no longer enjoyed majority support.
F&P GROWERS ASSN. v. ALRB (1985) 168 Cal.App.3d 667

440.02 Even in absence of ULP's and Gissel bargaining orders, it is often true that majority of current employees were not present when cards were solicited and election held. ALRA and labor law generally are premised on legal fiction that union elected in past is freely chosen representative of current employees.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

440.02 ALRB may find interrogation unlawful; indeed, argument for doing so is stronger under ALRA than under NLRA, since under ALRA employer may not voluntarily recognize union and therefore has no need to ascertain union's majority status. CARIAN v. ALRB (1984) 36 Cal.3d 654

440.02 New employer cannot avoid successorship status by discriminating against former employees. Where such conduct has occurred, continuity of work force is presumed.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

440.02 One-year certification lapses for election bar purposes, but general duty to bargain does not lapse when year expires. This interpretation gives stability to bargaining relationships, prevents unions from striking to force concessions, is consistent with NLRB presumption of continuing majority status, prevents large gaps in representation, and reduces burden of repeated elections on all parties.
MONTEBELLO ROSE CO. v. ALRB (1981) 119 Cal.App.3d 1

440.02 A union's failure to timely file an unfair labor practice charge against an attempted withdrawal of recognition cannot make the withdrawal effective where the statutory scheme does not permit such actions by employers.
DOLE FRESH FRUIT CO., 22 ALRB No. 4

440.03 Change In Personnel; Company Expansion, Contraction, Or Removal

440.03 Even where there is no change in ownership, agricultural employers frequently experience significant turnover in workforce during single year. Legislature has none-the-less imposed one-year certification bar.
SAN CLEMENTE RANCH, LTD. V. ALRB (1981) 29 Cal.3d 874

440.04 Rival Union Claims; Effect Of Existing Contract; Change In Employees' Union Affiliation

440.04 Pre-Act contractual relationship between employer and uncertified union becomes void upon certification of another union by ALRB, and existing contract is thereafter unenforceable.
JOE A. FREITAS & SONS v. FOOD PACKERS (1985) 164 Cal.App.3d 1210

440.05 Abandonment Of Unit

440.05 Union did not abandon bargaining unit where employer purported to withdraw recognition. Union continued to attempt to contact employees, and had some contact with respondent during period of claimed abandonment.
CARDINAL DISTRIBUTING CO., INC., 19 ALRB No. 10

440.05 Despite sporadic and intermittent representation of the bargaining unit over a period of six years, employer did not show that the union abandoned the bargaining unit, where there was no showing that the union was either unable or unwilling to represent the unit.
O. E. MAYOU & SONS, 11 ALRB No. 25

440.05 Board rejects employer's claim that duty to bargain concerning grape employees had been extinguished on grounds union had abandoned them where evidence established that union's repeated claims to bargain had been rebuffed, where union took worksite access to solicit union membership, and union held rallies among area grape workers to urge them to press for a general wage increase.
DOLE FRESH FRUIT CO., 22 ALRB No. 4

440.05 Section 1156.2 precludes Board from modifying original certification in order to sever out only a certain classification of employees on grounds union abandoned interest in representing only that aspect of the overall operation.
DOLE FRESH FRUIT CO. 22 ALRB No. 4

440.05 In assessing allegation that employer need not bargain with certified representative on grounds union abandoned employees, issue is not extent of union/management contact, which may have been lacking, but of union/employee contact which continued to take place.
DOLE FRESH FRUIT CO., 22 ALRB No. 4

440.05 Stalled negotiations, or even a hiatus in negotiations, cannot alone be the basis for refusing to bargain on the grounds the union is unable or unwilling to represent unit employees since an absence of negotiations need not necessarily translate into a disclaimer of interest.
DOLE FRESH FRUIT CO., 22 ALRB No. 4

441.00 ELECTION; CERTIFICATION; DECERTIFICATION; EFFECT ON DUTY TO BARGAIN

441.01 Representation Or Decertification Proceedings, Pendency

441.01 In defense of refusal to bargain charge, employer cannot rely on results of employee poll as evidence of its good faith doubt that union no longer enjoys support of majority of employees. Union certification and obligation to bargain continue to be effective in absence of decertification or rival union election.
JOE G. FANUCCHI & SONS 12 ALRB No. 8

441.01 Employer's unilateral closure of operation without notice to union - prior to certification of union - did not violate section 1153(e) where employer held a reasonable belief at the time of the refusal to bargain that it was the employer of a group of employees and reasonably believed that the election petition was therefore untimely.
W. G. PACK JR., 10 ALRB No. 22

441.01 Because employer held a reasonable doubt as to the validity of the election, the "at your peril" doctrine did not apply and no 1153(e) violation occurred when employer made unilateral changes; employer's peak objection was based on a reasonable belief that it was the employer of harvest workers, since employer hired and paid workers and was the sole owner of the harvested crop.
W. G. PACK JR., 10 ALRB No. 22

441.01 Employer cannot rely in its good faith doubt of the union's majority status, where the employer itself created the doubt.
PETER D. SOLOMON and JOSEPH R. SOLOMON dba CATTLE VALLEY FARMS/TRANSCO LAND AND CATTLE CO., 9 ALRB No. 65

441.01 Absent, a successful decertification or rival union election, loss of majority support or good faith belief thereof is not a defense under the ALRA to a refusal to bargain with a certified union.
A & P GROWERS ASSOCIATION, 9 ALRB No. 22

441.01 It is unlawful for Employer to refuse to bargain with incumbent Union based upon results of decertification election where Employer unlawfully supported and assisted Employees in their decertification campaign.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC.,7 ALRB No. 36

441.01 Employer's duty to bargain continues during its court challenge of Board's decision to certify union as bargaining representative.
GEORGE ARAKELIAN FARMS v. ALRB (1986) 186 Cal.App.3d 94

441.01 Section 1152 contains complementary rights to associate and disassociate with concerted activities. The disassociational right, however, may be limited by a union security agreement.
PASILLAS v. ALRB (1984) 156 Cal.App.3d 312

441.01 After certification year expires, assuming no contract bar exists, employees are free under section 1156.3 to decertify union whether or not collective bargaining agreement was ever reached.
MONTEBELLO ROSE CO. v. ALRB (1981) 119 Cal.App.3d 1

444.01 Before employees can be obligated to pay dues under a

union security clause or requested to file a dues checkoff authorization, the union must give them a notice of their rights to object to use of dues for purposes other than direct representation of the bargaining unit. (*Breaux v. ALRB* (1990) 217 Cal.App.3d 730.)
UFW (VIRGEN/MENDOZA), 33 ALRB No. 2

444.01 Board found that standards stated in *Breaux* rather than the duty of fair representation standard applied by the NLRB in *California Saw & Knife* (1995) 320 NLRB 224 govern a union's duty under the ALRA to inform employees of their rights to object to use of dues required under a union security clause for purposes not directly related to representation of bargaining unit.
UFW (VIRGEN/MENDOZA), 33 ALRB No. 2

444.01 Inclusion of *Breaux* notice under unrelated cover letter that did not refer to the *Breaux* notice was insufficient to satisfy the obligation to give employees notice of their Breaux rights. Face of written materials containing *Breaux* notice must refer to the presence of the notice prominently and in all appropriate languages.
UFW (VIRGEN/MENDOZA), 33 ALRB No. 2

444.01 Hand delivery of *Breaux* as conducted in this case constitutes sufficient manner of giving notice. Mailing is not required.
UFW (VIRGEN/MENDOZA), 33 ALRB No. 2

441.02 Majority Status In Period Between Election And Certification Or Decertification; "At Your Peril Doctrine"

441.02 Pendency of objections did not excuse employer from giving notice of changes in mandatory bargaining subjects, and employer proceeded to make such changes without notice and bargaining during precertification period at its peril.
GERAWAN RANCHES, ET AL. 18 ALRB No. 16

441.02 Employer's unilateral closure of operation without notice to union - prior to certification of union - did not violate section 1153(e) where employer held a reasonable belief at the time of the refusal to bargain that it was the employer of a group of employees and reasonably believed that the election petition was therefore untimely.
W. G. PACK, JR., 10 ALRB No. 22

441.02 Because employer held a reasonable doubt as to the validity of the election, the "at your peril" doctrine did not apply and no 1153(e) violation occurred then employer made unilateral changes; employer's peak objection was based on a reasonable belief that it was the employer of harvest workers, since employer hired and paid workers and was the sole owner of the harvested crop.

W. G. PACK, JR., 10 ALRB No. 22

441.02 An employer makes changes in employees' working conditions at its peril between the time of the election and the certification if it appears that a union might be certified.
THOMAS S. CASTLE FARMS, INC., 9 ALRB No. 14

441.02 During pendency of election objections, employer obligated to give union notice about changes it wanted to make in its employee's wages, and opportunity to bargain about changes.
SIGNAL PRODUCE COMPANY, 6 ALRB No. 47

441.02 Although employer is not under obligation to bargain towards comprehensive collective bargaining agreement during pendency of election objections, it acts at its peril by unilaterally changing terms or conditions of employment.
Highland Ranch and San Clemente Ranch, Ltd. (1979) 5 ALRB No. 59.
SIGNAL PRODUCE COMPANY, 6 ALRB No. 47

441.02 During pendency of election objections, respondent is obligated to give union notice about changes it wants to make in employees' wages, hours, or conditions of employment, and opportunity to bargain about changes.
Highland Ranch and San Clement Ranch, Ltd. (1979) 5 ALRB No. 54.
MASAJI ETO, et al., 6 ALRB No. 20

441.02 Only employees or labor organizations are permitted to petition Board for new election to get rid of incumbent union.
F&P GROWERS ASSN. v. ALRB (1985) 168 Cal.App.3d 667

441.02 Due to 1153(f), employer's refusal to bargain while election objections are pending may not be unlawful, if employer entertained reasonable, good faith doubt as to whether union's initial election victory will be sustained and certified.
HIGHLAND RANCH v. ALRB (1981) 29 Cal.3d 848

441.02 Employer clearly could not have maintained good faith, reasonable belief that election was invalid, where employer failed to request Board review of dismissal of its objections and resulting certification became a mere ministerial act.
HIGHLAND RANCH v. ALRB (1981) 29 Cal.3d 848

441.02 While employer need not bargain to contract while election objections are pending and before union is certified, employer's refusal to bargain over changes in working conditions during that period is unlawful if union is ultimately certified. This policy is intended to prevent employer from undermining or boxing in union before contract bargaining even begins.

HIGHLAND RANCH v. ALRB (1981) 29 Cal.3d 848

441.02 Employer must bargain over effects of decision to close its operations, even while election objections are still pending. HIGHLAND RANCH v. ALRB (1981) 29 Cal.3d 848

441.03 Majority Status After Certification; Duration Of Certification Presumptions

441.03 Certification of union as collective bargaining representative continues until union is decertified.
CARDINAL DISTRIBUTING CO., INC., 19 ALRB No. 10

441.03 Following the end of the certification year, a request for extension of certification by the union is not required before a previously certified union can require bargaining with the employer.
O. E. MAYOU & SONS, 11 ALRB No. 25

441.03 Employer violated section 1153(e) when it refused to bargain in order to obtain ALRB ruling on its argument that the duty to bargain lapsed at the end of the certification year.
O. E. MAYOU & SONS, 11 ALRB No. 25

441.03 Extension of certification not appropriate for denial of post-certification access.
F & P GROWERS ASSOCIATION, 10 ALRB No. 28

441.03 Loss of majority support does not terminate the duty to bargain, absent a Board-certified decertification or rival union election.
ROBERTS FARMS, INC., 9 ALRB No. 27

441.03 Absent a successful decertification or rival union election, loss of majority support or good faith belief thereof is not a defense under the ALRA to a refusal to bargain with a certified union.
F & P GROWERS ASSOCIATION, 9 ALRB No. 22
Accord: O. E. MAYOU & SONS, 11 ALRB No. 25

441.03 In determining whether Employer had good faith doubt concerning union's majority status when it refused to bargain, NLRB considers totality of employer's conduct contemporaneous with refusal.
RULINE NURSERY CO. v. ALRB (1985) 169 Cal.App.3d 247

441.03 Even in absence of ULP's and Gissel bargaining orders, it is often true that majority of current employees were not present when cards were solicited and election held. ALRA and labor law generally are premised on legal fiction that union elected in past is freely chosen representative of current employees.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

441.03 One-year certification lapses for election bar purposes, but general duty to bargain does not lapse when year

expires. This interpretation gives stability to bargaining relationships, prevents unions from striking to force concessions, is consistent with NLRB presumption of continuing majority status, prevents large gaps in representation, and reduces burden of repeated elections on all parties.
MONTEBELLO ROSE CO. v. ALRB (1981) 119 Cal.App.3d 1

441.03 Since not final order within meaning of Labor Code section 1160.8, order in a certification proceeding not directly reviewable in courts.
MONTEBELLO ROSE COMPANY, 8 ALRB No. 3

441.04 Successor Unions

442.00 UNION UNFAIR LABOR PRACTICES: RESTRAINT OR COERCION

442.00 As remedy for Respondent Union's physical assaults and other acts of violence directed against representatives of rival Union during pre-election organizing period, Respondent directed to mail Notice to Employees to each employee of ranch where conduct occurred and to read Notice to them on their lunch hour, post notices at Union's business offices and meeting halls and publish same in all Union publications.
WESTERN CONFERENCE OF TEAMSTERS, Local 46 3 ALRB No. 52

442.01 Restraint Or Coercion, In General; Labor Code Section 1154(a)(1)

442.02 Employee's Right To Refrain From Concerted Activities

442.02 Union violated 1154(a)(1) by picketing homes of non-striking Employees, shouting obscenities and yelling epithets directed at the Employees. Union interfered with Employee's right to refrain from Union activity.
UNITED FARM WORKERS OF AMERICA, AFL-CIO., 6 ALRB No. 58

442.02 1152 contains complementary rights to associate and disassociate with concerted activities. The disassociational right, however, may be limited by a union security agreement.
PASILLAS v. ALRB (1984) 156 Cal.App.3d 312

442.02 General Counsel failed to establish that UFW agents taking post-certification access unlawfully restrained or coerced employees by addressing the employees through a bullhorn, videotaping employees as they worked, entering fields at times not authorized by private party access agreement and in numbers exceeding the number permitted by the agreement, yelling at supervisors in the presence of employees, or entering fields with persons who were not Union representatives and in some cases giving them badges to wear which falsely identified them as Union representatives. Although Union's conduct was disrespectful of employees and the employer, it was not

sufficiently egregious to constitute an unfair labor practice.
UNITED FARM WORKERS OF AMERICA, AFL-CIO (Triple E Produce Corp.), 23 ALRB No. 4

442.03 Union Rules And Discipline In General; Union Dues And Fees; Fines; Assessments, Etc.

442.03 Board declines to dismiss charges against union where (1) charging parties had lost good standing with UFW for failure to pay CPD dues, thereby becoming subject to discharge under union security clause of collective bargaining agreement; (2) one charging party had been discharged pursuant to union request and union security clause of collective bargaining agreement; and (3) rebate procedures set forth in settlement not available at time charges were filed.
UFW/GILES BREAUX, et al., 11 ALRB No. 32

442.03 Board will review internal union disciplinary proceedings, raised by the invoking of a union security clause, on a case-by-case basis, and will insure that a union member charged with a violation of union rules is served with written specific charges, given a reasonable time to prepare his or her defense, and afforded a full and fair hearing.
UFW and SUN HARVEST, INC./GEORGE MOSES, et al., 9 ALRB No. 40

442.03 Absent some demonstrated and substantial infringement on associational rights protected by the Act, the ALRA must protect the union's power to prevent erosion of its strike-effectiveness by disciplining its membership. The power to fine or expel strikebreakers is essential if union is to be effective bargaining agent.
PASILLAS v. ALRB (1984) 156 Cal.App.3d 312

442.03 A union's constitution and bylaws constitute a binding contract between union and members as to discipline of a member.
PASILLAS v. ALRB (1984) 156 Cal.App.3d 312

442.04 Union Discipline Or Threats

442.04 Board declines to dismiss charges against union where (1) charging parties had lost good standing with UFW for failure to pay CPD dues, thereby becoming subject to discharge under union security clause of collective bargaining agreement; (2) one charging party had been discharged pursuant to union request and union security clause of collective bargaining agreement; and (3) rebate procedures set forth in settlement not available at time charges were filed.
UFW/GILES BREAUX, et al., 11 ALRB No. 32

442.04 Board will review internal union disciplinary proceedings, raised by the invoking of a union security

clause, on a case-by-case basis, and will insure that a union member charged with a violation of union rules is served with written specific charges, given a reasonable time to prepare his or her defense, and afforded a full and fair hearing.
UFW and SUN HARVEST, INC./GEORGE MOSES, et al., 9 ALRB No. 40

442.05 Obstructing Of Board Or Other Proceedings

442.06 Fair Representation; Grievances And Arbitration; Racial; National Origin, Sex, Etc. Discrimination

442.06 A breach of a union's duty of fair representation is not proven solely because a union does not pursue a meritorious grievance. There must also be a showing that the union simply ignored the grievance or acted in a manner that was arbitrary, invidious, in bad faith, or so far outside the wide range of reasonableness as to be wholly irrational
UNITED FARM WORKERS OF AMERICA, 37 ALRB No. 3

442.06 Although there is case law to the effect that it is a breach of the duty of fair representation to bargain away employees' vested rights without their consent, a "vested right" is commonly defined as "a right that so completely and definitely belongs to a person that it cannot be impaired or taken away without that person's consent." *Newspaper Guild of St. Louis, Local 36047 v. St. Louis Post Dispatch, LLC* (8th Cir. 2011) 641 F.3d 263, 266. Wages claimed under an ambiguous contract provision are not a vested right.
UNITED FARM WORKERS OF AMERICA, 37 ALRB No. 3

442.07 Employee Benefits: Pensions, Welfare Funds, Etc.

442.08 Job Referrals; Blacklisting; Working Cards Or Permits

442.09 Statements, Questioning, Surveillance; Threats Of Jobs Loss, Violence, Etc.; Inducements In General; Misrepresentations

442.09 Insufficient credible evidence to prove that union or its agents engaged in threats or rock and olive throwing during work stoppage and march through olive fields.
S & J RANCH, INC., 18 ALRB No. 2

442.09 Union violated 1154(a)(1) by picketing homes of non-striking Employees, shouting obscenities and yelling epithets directed at the Employees. Union interfered with Employee's right to refrain from Union activity.
UNITED FARM WORKERS OF AMERICA, AFL-CIO., 6 ALRB No. 58

442.09 Union organizer did not intimidate Employee when he visited him 5 months before election despite fact Employee was afraid of the Union the organizer represented.

SALINAS LETTUCE FARMERS COOPERATIVE, 5 ALRB No. 21

442.09 ULP if Union organizer physically attacks or threatens bodily harm or violence which reasonably tends to coerce or restrain Employees from exercising rights.
SALINAS LETTUCE FARMERS COOPERATIVE, 5 ALRB No. 21

442.09 No violation of 1154(a)(1) where Union organizer used abusive language toward rival Union organizer and challenged him to fight one day before election in presence of several Employees.
SALINAS LETTUCE FARMERS COOPERATIVE, 5 ALRB No. 21

442.09 Violence or threats of violence directed against employees by union are ULP's, including such acts directed against supervisors in the presence of unit employees.
BERTUCCIO v. SUPERIOR COURT (1981) 118 Cal.App.3d 363

442.10 Choice Of Agricultural Employer Representative; Labor Code Section 1154(a)(2), In General

443.00 UNLAWFUL STRIKES, PICKETING, ETC.

443.01 In General

443.01 Prohibition in ALRA against secondary picketing to induce customers to stop doing business with struck employer does not prohibit primary picketing which induces customers to refuse to pick up orders.
KAPLAN'S FRUIT & PRODUCE CO. v. SUPERIOR CT. (1979) 26 Cal.3d 60

443.02 Right To Strike Or Picket; Effect Of Labor Code Sections 1152, 1155, And 1166

443.02 Union violated 1154(a)(1) by picketing homes of non-striking Employees, shouting obscenities and yelling epithets directed at the Employees. Union interfered with Employees right to refrain from Union activity.
UNITED FARM WORKERS OF AMERICA, AFL-CIO., 6 ALRB No. 58

443.02 Picketing has coercive aspect which is especially pronounced when engaged in at one's residence.
UNITED FARM WORKERS OF AMERICA, AFL-CIO., 6 ALRB No. 58

443.02 Prohibition in ALRA against secondary picketing to induce customers to stop doing business with struck employer does not prohibit primary picketing which induces customers to refuse to pick up orders.
KAPLAN'S FRUIT & PRODUCE CO. v. SUPERIOR CT. (1979) 26 Cal.3d 60

443.03 Forcing Recognition Of Non-Certified Union

443.04 Termination Of Strike Or Picketing

443.05 Informational Picketing Or Other Informational Activity

443.06 Jurisdictional Strikes And Picketing

443.06 In determining the scope of the section 1154(d) (4) prohibition of jurisdictional picketing, the Board looks to the NLRA for guidance but takes into account the greater protections afforded employee informational picketing and secondary activity under the ALRA.
UNITED VINTNERS, INC., 10 ALRB No. 34

443.06 Although classic jurisdictional dispute not likely to occur under ALRA, potential 1154(d) (4) claim may arise in certain situations, such as where employer employs both agricultural and non-agricultural employees or where employer contracts with other employers, becomes part of joint enterprise or is replaced by alter ego or successor with larger pre-existing work force.
UNITED VINTNERS, INC., 10 ALRB No. 34

443.06 Where union picketed with object of preserving vineyard work previously performed by its members under long-standing vineyard management arrangement with employer of its members and decision to contract with non-union management company initiated by charging party which has since attempted to withdraw the 1154(d) (4) charge, Board found dispute at issue not subject to resolution under sections 1154(d) (4) and 1160.5 and quashed notice of hearing.
UNITED VINTNERS, INC., 10 ALRB No. 34

444.00 UNION SECURITY; UNION AND EMPLOYER-UNION DISCRIMINATION

444.01 Union Security; Union And/Or Employer Discrimination; Labor Code Sections 1153(c) And 1154(b), In General

444.01 Board will review internal union disciplinary proceedings, raised by the invoking of a union security clause, on a case-by-case basis, and will insure that a union member charged with a violation of union rules is served with written specific charges, given a reasonable time to prepare his or her defense, and afforded a full and fair hearing.
UFW and SUN HARVEST, INC./GEORGE MOSES, et al., 9 ALRB No. 40

444.01 If union rules of membership are reasonable and provide fair warning to agricultural employees, then the application of a union security clause in a collective bargaining agreement that forbids employment of suspended members, regardless of the execution date of that contract, provided those members were voluntary members of the union at the time they chose to violate the union's rules of membership, does not violate the Act.

UFW and SUN HARVEST, INC./GEORGE MOSES, et al.,
9 ALRB No. 40

444.01 Contrary to NLRA, union security provision of 1153(c) requires more than mere payment of dues; good standing by employee, as determined by union, is necessary to retain employment. (But see Pasillas (1984) 156 Cal.App.3d 312.)
BELTRAN v. STATE OF CALIFORNIA (1985) 617 F.Supp. 948

444.01 California Legislature plainly anticipated that discharge for strike breaking would result from language of 1153(c): Moreover, the legislative history shows that retroactive enforcement was assumed without dispute, indicating legislative agreement that such an assumption was correct and intended.
PASILLAS v. ALRB (1984) 156 Cal.App.3d 312

444.01 1153(c) does not contain the limiting language of NLRA section 8(a)(3), which limits the meaning of "membership" in a union to the payment of dues and fees.
PASILLAS v. ALRB (1984) 156 Cal.App.3d 312

444.01 ALRB may only review reasonableness of union membership requirement where an employee has been suspended or expelled. Lesser penalties are nonreviewable union matters.
PASILLAS v. ALRB (1984) 156 Cal.App.3d 312

444.01 Enforcement of union security clause does not constitute "state action" invoking constitutional standards because (1) such clauses are voluntary, (2) pre-ALRA California law did not require or prohibit union shop clauses, (3) the ALRA incorporated existing California policy of neutrality toward union shop clauses, and (4) union actions under union security clauses do not constitute arbitrary discrimination.
PASILLAS v. ALRB (1984) 156 Cal.App.3d 312

444.02 Discrimination Against Employees For Filing Charges Or Grievances, Giving Testimony, Or Bringing Suit

444.03 Discrimination With Respect To Grievance Handling; Fair Representation

444.04 Hiring Practices In General; Work Fees And Permits, Area Preference

444.05 Membership And Good Standing In General; Duty Of Union; Extension Of Time For Paying Dues

444.05 Board declines to dismiss charges against union where (1) charging parties had lost good standing with UFW for failure to pay CPD dues, thereby becoming subject to discharge under union security clause of collective bargaining agreement; (2) one charging party had been discharged pursuant to union request and union security

clause of collective bargaining agreement; and (3) rebate procedures set forth in settlement not available at time charges were filed.
UFW/GILES BREAUX, et al., 11 ALRB No. 32

444.05 Where union members subject to "good standing" union security clause of collective bargaining agreement seek to challenge union expenditure of dues and union maintains a facially adequate rebate procedure with escrow account, Board will only intervene if objecting members have paid their dues, subjected themselves to union's internal rebate procedure and are dissatisfied with the union's rebate award.
UFW/GILES BREAUX, et al., 11 ALRB No. 32

444.05 Board will review internal union disciplinary proceedings, raised by the invoking of a union security clause, on a case-by-case basis, and will insure that a union member charged with a violation of union rules is served with written specific charges, given a reasonable time to prepare his or her defense, and afforded a full and fair hearing. UFW and SUN HARVEST, INC./GEORGE MOSES, et al., 9 ALRB No. 40

444.05 Union violated section 1154(b) by suspending the membership of an employee without affording the employee/member a fair hearing, and then requesting the employee/member's discharge for lack of good standing under a union security clause.
UFW/ODIS SCARBROUGH, 9 ALRB No. 17

444.05 1153(c) does not contain the limiting language of NLRA section 8(a)(3), which limits the meaning of "membership" in a union to the payment of dues and fees.
PASILLAS v. ALRB (1984) 156 Cal.App.3d 312

444.05 *Breaux* v. ALRB (1990) 217 Cal.App.3d 730 interpreted the member in good standing provisions of section 1153(c), which are expressly made subject to free speech and due process rights for members, as a statutory adoption of principles laid out in seminal Supreme Court cases regarding employees' right to object to paying for a union's non-representational activities.
UFW (VIRGEN/MENDOZA), 33 ALRB No. 2

444.06 Tender Of Acceptance Of Dues And Fees; Initiation Fees; Checkoff Authorizations

444.06 Where union members subject to "good standing" union security clause of collective bargaining agreement seek to challenge union expenditure of dues and union maintains a facially adequate rebate procedure with escrow account, Board will only intervene if objecting members have paid their dues, subjected themselves to union's internal rebate procedure and are dissatisfied with the union's rebate award.
UFW/GILES BREAUX, et al., 11 ALRB No. 32

444.07 Eligibility For, Denial Of, And Classes Of Membership; Members Of Sister Locals; Racial, National Origin, Sex, Etc. Discrimination

444.08 Dual Unionism; Intraunion Disputes As Affecting Hire Or Discharge; Decertification Petitions

444.09 Reinstatement Fees; Increase Or Reduction In Dues Or Fees

444.10 Resignation Or Withdrawal From Union; Effect Of Layoff; Leave, Quitting Job, Or Transfer From Bargaining Unit

444.11 Retroactive Membership Requirements; Period Between Contracts

444.11 If union rules of membership are reasonable and provide fair warning to agricultural employees, then the application of a union security clause in a collective bargaining agreement that forbids employment of suspended members, regardless of the execution date of that contract, provided those members were voluntary members of the union at the time they chose to violate the union's rules of membership, does not violate the Act.
UFW and SUN HARVEST, INC./GEORGE MOSES, et al.,9 ALRB No. 40

444.11 Wording of union security provisions in collective bargaining agreements clearly indicated the parties' intention to give retroactive effect to those provisions.
PASILLAS v. ALRB (1984) 156 Cal.App.3d 312

444.11 Nothing in specific language of ALRA requires or forbids retroactive application of a union security clause; rather, the matter of retroactivity was left to agreement of parties in collective bargaining.
PASILLAS v. ALRB (1984) 156 Cal.App.3d 312

444.11 Retroactive enforcement of union security provision is necessary due to agricultural workers' tendency to change employers frequently and the obvious intent that discipline for strikebreaking not be curable by the former union member.
PASILLAS v. ALRB (1984) 156 Cal.App.3d 312

444.11 Retroactive application of union security provision did not offend policies of ALRA, where discharged employees' interest in strike breaking was purely financial and did not represent desire to associate with rival union or to disassociate with certified union.
PASILLAS v. ALRB (1984) 156 Cal.App.3d 312

444.11 NLRB precedent regarding retroactive enforcement of union security clauses is not applicable to ALRA, since federal precedent is based on construction of statutory language which does not appear in the ALRA.
PASILLAS v. ALRB (1984) 156 Cal.App.3d 312

444.12 Union Rules And Discipline; Expulsion Or Suspension

444.12 Board declines to dismiss charges against union where (1) charging parties had lost good standing with UFW for failure to pay CPD dues, thereby becoming subject to discharge under union security clause of collective bargaining agreement; (2) one charging party had been discharged pursuant to union request and union security clause of collective bargaining agreement; and (3) rebate procedures set forth in settlement not available at time charges were filed.
UFW/GILES BREAUX, et al., 11 ALRB No. 32

444.12 Board approved settlement in which (1) the good standing of union members who objected to payment of CPD dues on the ground that they were used for political expenditures was reinstated and passed dues forgiven; (2) union agreed to seek reinstatement for union member who had been discharged from employment as a consequence of loss of union good standing for non-payment of dues; (3) union agreed to utilize internal rebate procedure established to return non-compellable dues to objecting members; and (4) union agreed not to terminate good standing in the future for non-payment of dues without giving objecting member opportunity to use rebate procedure. Board noted that dues of objecting members held in escrow under settlement procedure and conditioned its approval of settlement on one year limit on rebate, payment of interest on rebate dues, and deletion of timeliness limitations on objections.
UFW/GILES BREAUX, et al., 11 ALRB No. 32

444.12 A union members reasonable request for a copy of the union's constitution, translated into English, so as to adequately prepare his defense, places the burden on the union to provide the material is a defense to the imposition of the discipline. UFW and SUN HARVEST, INC./GEORGE MOSES, et al., 9 ALRB No. 40

444.12 A union member will not be required to exhaust internal union appeals from imposition of union discipline if the union officials were so hostile to the members that the member could not hope to obtain a fair hearing; or the union appeal could not provide a complete remedy; or exhaustion of internal appeals would unreasonably delay the opportunity for a hearing on the merits of the claims.
UFW and SUN HARVEST, INC./GEORGE MOSES, et al., 9 ALRB No. 40

444.12 An appeal to the final internal union review body is not necessary when the member has been discharged, pursuant to a union security clause, for the union then lacks the legal means to require an employer to reinstate the member.
UFW and SUN HARVEST, INC./GEORGE MOSES, et al.,

9 ALRB No. 40

444.12 Union violated section 1154(b) by suspending the membership of an employee without affording the employee/member a fair hearing, and then requesting the employee/member's discharge for lack of good standing under a union security clause.
UFW/ODIS SCARBROUGH, 9 ALRB No. 17

444.12 Internal union charges filed within the union's constitutional time period following the last alleged violation of the union rules are timely filed.
UFW/ODIS SCARBROUGH, 9 ALRB No. 17

444.12 As the union trial judges prejudged the guilt of two charged union members and determined the appropriate penalty at a pretrial meeting, the members were deprived of due process at the subsequent trial before those judges.
UFW/ODIS SCARBROUGH, 9 ALRB No. 17

444.12 ALRB may only review reasonableness of union membership requirement where an employee has been suspended or expelled. Lesser penalties are nonreviewable union matters.
PASILLAS v. ALRB (1984) 156 Cal.App.3d 312

444.12 California Legislature plainly anticipated that discharge for strike breaking would result from language of 1153(c):Moreover, the legislative history shows that retroactive enforcement was assumed without dispute, indicating legislative agreement that such an assumption was correct and intended.
PASILLAS v. ALRB (1984) 156 Cal.App.3d 312

444.13 Reasonable Union Rules And Membership Requirements

444.13 Board review of reasonableness of membership requirement of mandatory payment of CPD dues not available until dues paid and facially adequate union rebate procedure exhausted.
UFW/GILES BREAUX, et al., 11 ALRB No. 32

444.13 Board will review internal union disciplinary proceedings, raised by the invoking of a union security clause, on a case-by-case basis, and will insure that a union member charged with a violation of union rules is served with written specific charges, given a reasonable time to prepare his or her defense, and afforded a full and fair hearing.
UFW and SUN HARVEST, INC./GEORGE MOSES, et al.,
9 ALRB No. 40

444.13 If union rules of membership are reasonable and provide fair warning to agricultural employees, then the application of a union security clause in a collective bargaining agreement that forbids employment of suspended

members, regardless of the execution date of that contract, provided those members were voluntary members of the union at the time they chose to violate the union's rules of membership, does not violate the Act.
UFW and SUN HARVEST, INC./GEORGE MOSES, et al.,
9 ALRB No. 40

444.13 A union member may not be compelled to help defray the union's organizing expenses, since organizational activity is not of sufficiently direct benefit to the worker who is already a member of the represented bargaining unit.
GILES BREAUX v. ALRB (1990) 217 Cal.App.3d 730

444.13 A union member may be compelled to pay only those dues which are used to pay expenditures that are necessarily or reasonably incurred for the purpose of performing the duties of an exclusive representative of the employee.
GILES BREAUX v. ALRB (1990) 217 Cal.App.3d 730

444.13 A requirement that union members who objected to use of their union contributions for political purposes file a written objection by registered or certified mail was not unreasonable.
GILES BREAUX v. ALRB (1990) 217 Cal.App.3d 730

444.13 In determining whether union membership requirement is reasonable, the Board must consider (1) whether requirement is reasonably related to legitimate union goals and functions, and (2) whether penalty is reasonable in particular case, given the interests of union and employee. Penalty is unreasonable if less severe sanction will effectively serve union's interest.
PASILLAS v. ALRB (1984) 156 Cal.App.3d 312

444.13 ALRB may only review reasonableness of union membership requirement where an employee has been suspended or expelled. Lesser penalties are nonreviewable union matters.
PASILLAS v. ALRB (1984) 156 Cal.App.3d 312

444.13 Absent some demonstrated and substantial infringement on associational rights protected by the Act, the ALRA must protect the union's power to prevent erosion of its strike-effectiveness by disciplining its membership. The power to fine or expel strikebreakers is essential if union is to be effective bargaining agent.
PASILLAS v. ALRB (1984) 156 Cal.App.3d 312

444.13 *Breaux v. ALRB* (1990) 217 Cal.App.3d 730 interpreted the member in good standing provisions of section 1153(c), which are expressly made subject to free speech and due process rights for members, as a statutory adoption of principles laid out in seminal Supreme Court cases regarding employees' right to object to paying for a union's non-representational activities.
UFW (VIRGEN/MENDOZA), 33 ALRB No. 2

444.14 Procedural Fairness

444.14 Board will review internal union disciplinary proceedings, raised by the invoking of a union security clause, on a case-by-case basis, and will insure that a union member charged with a violation of union rules is served with written specific charges, given a reasonable time to prepare his or her defense, and afforded a full and fair hearing.
UFW and SUN HARVEST, INC./GEORGE MOSES, et al., 9 ALRB No. 40

444.14 Internal union charges filed within the union's constitutional time period following the last alleged violation of the union rules are timely filed.
UFW and SUN HARVEST, INC./GEORGE MOSES, et al., 9 ALRB No. 40

444.14 A union members reasonable request for a copy of the union's constitution, translated into English, so as to adequately prepare his defense, places the burden on the union to provide the material is a defense to the imposition of the discipline.
UFW and SUN HARVEST, INC./GEORGE MOSES, et al., 9 ALRB No. 40

444.14 As the union trial judges prejudged the guilt of two charged union members and determined the appropriate penalty at a pretrial meeting, the members were deprived of due process at the subsequent trial before those judges.
UFW and SUN HARVEST, INC./GEORGE MOSES, et al., 9 ALRB No. 40

444.14 Union violated section 1154(b) by suspending the membership of an employee without affording the employee/member a fair hearing, and then requesting the employee/member's discharge for lack of good standing under a union security clause.
UFW/ODIS SCARBROUGH, 9 ALRB No. 17

444.14 The provision for a union member to appeal a union's dues assessment to the union's "public review board," did not meet the requirement for a hearing before an impartial decision maker since the board owed its existence and the designation of its membership to the union.
GILES BREAUX v. ALRB (1990) 217 Cal.App.3d 730

444.14 Board properly held that employee did not receive fair internal union disciplinary hearing where employee did not understand procedure or his right to present evidence in his behalf.
PASILLAS v. ALRB (1984) 156 Cal.App.3d 312

444.15 Exhaustion Of Intra-Union Remedies

444.15 Board review of reasonableness of membership requirement of mandatory payment of CPD dues not available until dues paid and facially adequate union rebate procedure exhausted. UFW/GILES BREAUX, et al., 11 ALRB No. 32

444.15 A union member will not be required to exhaust internal union appeals from imposition of union discipline if the union officials were so hostile to the members that the member could not hope to obtain a fair hearing; or the union appeal could not provide a complete remedy; or exhaustion of internal appeals would unreasonably delay the opportunity for a hearing on the merits of the claims.
UFW and SUN HARVEST, INC./GEORGE MOSES, et al.,9 ALRB No. 40

444.15 An appeal to the final internal union review body is not necessary when the member has been discharged, pursuant to a union security clause, for the union then lacks the legal means to require an employer to reinstate the member.
UFW and SUN HARVEST, INC./GEORGE MOSES, et al., 9 ALRB No. 40

444.15 Disciplined employee failed to exhaust internal union remedies where he did not appear at his own trial and made no showing of bias, prejudgment, or futility.
PASILLAS v. ALRB (1984) 156 Cal.App.3d 312

444.15 Union member must in the usual case avail himself of all appropriate intra-union remedies before seeking administrative or judicial relief.
PASILLAS v. ALRB (1984) 156 Cal.App.3d 312

444.15 Disciplined employee was excused from exhausting internal union appeal procedures where union review committee discretionarily refused to exercise jurisdiction over appeal in face of an egregious violation of internal rule by union. PASILLAS v. ALRB (1984) 156 Cal.App.3d 312

444.15 Board properly held that disciplined union member was excused from exhaustion of intra-union remedies, since union appeal board could not guarantee member reinstatement to former position.
PASILLAS v. ALRB (1984) 156 Cal.App.3d 312

444.16 Reasonable Discipline

444.16 California Legislature plainly anticipated that discharge for strike breaking would result from language of 1153(c): Moreover, the legislative history shows that retroactive enforcement was assumed without dispute, indicating legislative agreement that such an assumption was correct and intended.
PASILLAS v. ALRB (1984) 156 Cal.App.3d 312

444.16 Board may return an unreasonably disciplined worker to

union disciplinary process for lesser sanction.
PASILLAS v. ALRB (1984) 156 Cal.App.3d 312

444.16 In determining whether union membership requirement is reasonable, the Board must consider (1) whether requirement is reasonably related to legitimate union goals and functions, and (2) whether penalty is reasonable in particular case, given the interests of union and employee. Penalty is unreasonable if less severe sanction will effectively serve union's interest.
PASILLAS v. ALRB (1984) 156 Cal.App.3d 312

444.16 Factors to be considered in determining whether union discipline of member is reasonable are: (1) union's need for conformity, (2) importance of goal which conformance serves, (3) threat to union solidarity, (4) frequency and seriousness of violation, (5) probable curative effects of lesser sanctions than suspension or expulsion, (6) worker's ability to find work in other places, (7) his or her financial hardships, (8) his or her awareness of the rule and willingness to abide by it in the future, (9) his or her tenure or interest in continued employment.
PASILLAS v. ALRB (1984) 156 Cal.App.3d 312

444.17 Preferred Treatment As Between Union Members Or Union And Non-Union Employees; Job Rotation; Out-Of-Work Lists

444.18 Union Fines And Assessments; "Periodic Dues"

444.18 Every assessment of dues and any other form of contribution by a union member must be accompanied by a clear statement from the union indicating the allocations to be made if the member does not object.
GILES BREAUX v. ALRB (1990) 217 Cal.App.3d 730

444.18 A provision establishing a one-year deadline for rebates of those dues and contribution amounts determined allocable to political activities meets the requirement of a reasonably prompt opportunity to challenge the disputed amount before an impartial decision maker.
GILES BREAUX v. ALRB (1990) 217 Cal.App.3d 730

444.18 When a union member disputes the validity of a dues assessment, any funds indisputably refundable to the member should be refunded promptly and the balance of the members contributions must be escrowed until the refundable portion is determined.
GILES BREAUX v. ALRB (1990) 217 Cal.App.3d 730

444.19 Reinstatement Of Strikers; Authorized And Unauthorized Strikes; Discrimination Against Replacements

445.00 UNION BARGAINING CONDUCT

445.01 Union Refusal To Bargain In General; Totality Of Union Conduct; Labor Code Section 1154(c)

445.01 Union's frequent, prolonged delays in bargaining indicate that it did not treat its bargaining obligation as seriously as it would other union business and, by its dilatory conduct, it engaged in surface bargaining in violation of Labor Code section 1154(c).
UNITED FARM WORKERS OF AMERICA, AFL-CIO (MAGGIO, INC.) 12 ALRB No. 16

445.01 Union's delays and failure to respond to employer's bargaining proposals, and it failure timely to present proposals and counterproposals of its own, show that it failed to bargain with due diligence in violation of Labor Code section 1154(c).
UNITED FARM WORKERS OF AMERICA, AFL-CIO (MAGGIO, INC.) 12 ALRB No. 16

445.01 Union violated Labor Code section 1154(c) by failing to furnish information about the Union's benefit plans in a timely manner.
UNITED FARM WORKERS OF AMERICA, AFL-CIO (MAGGIO, INC.) 12 ALRB No. 16

445.01 Union's suspension of bargaining sessions in response to years of employer's bad faith bargaining is not evidence of bad faith bargaining by the union.
PAUL W. BERTUCCIO, 10 ALRB No. 16

445.01 Union avoided impasse by obfuscation and delay by coming late to negotiations, avoiding issues, talking other issues in the ground, dilly-dallying, jumping from issue to issue with little rhyme or reason, refusing to prioritized, and submitting an occasional counterproposal but delaying a full response.
BRUCE CHURCH, INC., 9 ALRB No. 74

445.01 No finding Union reneged on agreements or improperly changed proposals because proposals not in evidence and changes testified to were minimal.
KAPLAN'S FRUIT AND PRODUCE COMPANY, 6 ALRB No. 36

445.01 Before finding a failure of an employer to bargain in good faith, the totality of the employer's conduct must be examined. This includes a consideration of the union's conduct.
PAUL W. BERTUCCIO v. ALRB (1988) 202 Cal.App.3d 1369

445.02 Subjects For Union Bargaining Conditions; Unlawful Demands; Counterproposals

445.02 Union not held to have engaged in regressive bargaining; a return to an old proposal, standing alone, does not constitute bad faith bargaining.
MARIO SAIKHON, INC., 13 ALRB No. 8

445.02 Union did not engaged in bad faith bargaining over the subject of maintenance of medical benefits as there was

no evidence that it insisted to the point of impasse that the employer make the requested additional payments or that the employer's conduct would have been any different if the union had not negotiated over the matter as it did.
TEX-CAL LAND MANAGEMENT, INC., ET AL. 12 ALRB No. 26

445.02 Union avoided impasse by obfuscation and delay by coming late to negotiations, avoiding issues, talking other issues in the ground, dilly-dallying, jumping from issue to issue with little rhyme or reason, refusing to prioritized, and submitting an occasional counterproposal but delaying a full response.
BRUCE CHURCH, INC., 9 ALRB No. 74

445.03 Authority Of Union Negotiators; Local And International Unions; Objections To Or Selection Of Employer Negotiators

445.04 Union-Security Demands As Refusal To Bargain

445.05 Majority Status And Unit For Bargaining; Multi-Employer And Multi-Union Bargaining; Work Assignments; Racial, National Origin, Sex, Etc. Discrimination

445.06 Successor Employers; Successor Unions; Union's Duty To Bargain

445.07 Duty of Union To Sign Contract After Agreement On Terms; Ratification

445.07 No finding Union reneged on agreements or improperly changed proposals because proposals not in evidence and changes testified to were minimal.
KAPLAN'S FRUIT AND PRODUCE COMPANY, 6 ALRB No. 36

445.08 Transcript Or Record Of Negotiations; Union's Bargaining Duty

445.09 Strikes, Slowdowns, And Harassing Tactics As Refusal To Bargain; Strike Notice And Cooling-Off Period

445.09 Economic strike during negotiation not inconsistent with duty to bargaining good faith.
ADMIRAL PACKING CO., et al, 7 ALRB No. 43

445.09 Strike violence and picket line misconduct do not show lack of desire by Union to reach collective bargaining agreement and do not excuse Employer's bad faith bargaining.
ADMIRAL PACKING CO., et al, 7 ALRB No. 43

445.09 Union's picketing of Employer's produce stand not indicative of bad faith.
KAPLAN'S FRUIT AND PRODUCE COMPANY, 6 ALRB No. 36

445.09 Union publications urging support of its strike and

attacking Employers not evidence of bad faith. No similar concern of bypassing representative as exists when Employer directly contacts Employees.
ADMIRAL PACKING CO., et al, 7 ALRB No. 43

445.10 Union's failure to provide information about its RFK medical plan violated 1154(c), as did its providing only incomplete information regarding its Martin Luther King Fund. Employer has no duty to bargain over proposals related to the funds when Union not provide the information.
ADMIRAL PACKING CO., et al, 7 ALRB No. 43

446.00 MISCELLANEOUS UNFAIR LABOR PRACTICES

446.00 HIRING PERSON TO VOTE IN REPRESENTATION ELECTION; LABOR CODE SECTION 1154.6

446.01 In General (see also sections 312.12 and 316.12)

446.01 Hiring a labor contractor crew known to be hostile to the incumbent union in the hopes that decertification or rival union proceedings will be instigated is insufficient to prove that the employees were hired for the purpose of voting in an election.
ARAKELIAN FARMS, 9 ALRB No. 25

446.01 Respondent did not violate section 1154.6 by hiring two crews prior to election. The crews were needed and qualified, hired on a permanent basis, and did perform the work for which they were hired.
ROYAL PACKING CO. 5 ALRB No. 31

447.00 PAYMENT, REQUEST, OR ACCEPTANCE OF BRIBES TO EMPLOYEE REPRESENTATIVES

447.01 In General; Labor Code Sections 1155.4 And 1155.5

447.01 Employer's attorney/negotiator's admission at compliance hearing that he did not know and his position would not be affected by information as to how MLK funds expended, as well as employer's refusal to accept condition negotiated, constitutes indication that its section 1155.4 defense to MLK not taken in good faith.
McFARLAND ROSE PRODUCTION, 11 ALRB No. 34

447.02 Persons Making Payments; "Employers"

447.03 Types Of "Payments": Loans, Insurance Premiums, "Money"

447.04 Payments Under Judgment, Arbitration Awards, Or Settlement, Exemption

447.05 Persons Receiving Payments: Employee Representatives, Industry Promotion Funds, Etc.; Compensation For Services

447.06 Criminal Prosecutions: Willfulness

447.07 Criminal Prosecutions: Indictment, Evidence, Procedure, Limitations, Appeals; Single Or Multiple Offenses, Etc.

447.08 Injunctions; Contempt; Declaratory Judgment; Jurisdiction And Procedure In Civil Actions

448.00 EXCESSIVE MEMBER FEES, EXTORTION, FEATHERBEDDING

448.01 Excessive Or Discriminatory Initiation Fees; Labor Code Section 1154(e)

448.02 Exactions; "Featherbedding"; Labor Code Section 1154(f)

449.00 PROCEDURE IN UNFAIR LABOR PRACTICE AND COMPLIANCE CASES

449.01 In General

449.01 In compliance proceeding, respondent has the burden of showing interim earnings to mitigate backpay liability. Respondent cannot shift that burden to the General Counsel by making no effort to investigate or show backpay, and contending that General Counsel failed to exhaust every avenue to find interims. No evidence showed that there was any reasonable possibility that the claimants had used other social security numbers during backpay period that they had used in the past.
CERTIFIED EGG, 19 ALRB No. 9

449.01 Board declines to grant General Counsel's motion to strike Employer's exceptions under section 20282 of Board's Regulations. Although Employer failed to cite by page number the portions of ALJ decision to which it took exception, Employer's exceptions brief clearly states the bases for its disagreement with ALJ's rulings.
AZTECA FARMS, INC., 18 ALRB No. 15

449.01 Board entertained union's request for review of General Counsel's determination to close case under the authority of Labor Code section 1142(b) and, as required therein, issued a published decision.
SAM ANDREWS' SONS, 16 ALRB No. 6

449.01 The Board deferred ruling on Respondent's arguments concerning the propriety of backpay and reinstatement remedies for a discriminatee who may be an undocumented worker. Respondent can present its arguments in the compliance proceeding. But see dissent.
SAM ANDREWS' SONS, INC., 12 ALRB No. 24

449.01 General Counsel's use of declarations provided to the General Counsel by an Employer pursuant to the external complaint procedure in an unfair labor practice procedure

undermines and jeopardizes the effectiveness of the external complaint procedure. Litigants may be inhibited from complaining about allegedly improper Board employee conduct for fear that any documents they submit might be used against them at a subsequent hearing. However, the impact of the General Counsel's actions on the effectiveness of the external complaint policy does not establish any failure to provide the Employer full due process in the unfair labor practice hearing. The Board found that General Counsel's use of any prejudice to the Employer, since the declarations were not necessary to the decision and the Board did not rely on them in reaching its conclusion.
LIGHTNING FARMS 12 ALRB No. 7

449.01 An employer cannot complain of the quality of representation when it chooses to represent itself, expressly waiving the right to appear by counsel at the hearing and voluntarily electing to be represented by its managing partner, who was given considerable leeway in presenting the employer's case and in cross-examining witnesses. The employer failed to establish rulings and of certain witnesses, deprived the employer of the opportunity to fully present and argue evidence. As such, no question is presented concerning a lack of due process.
LIGHTNING FARMS 12 ALRB No. 7

449.01 General Counsel acts as Board's agent rather than as independent prosecutor in compliance proceedings, but due process requires the General Counsel bear burden of proof with respect to continuing bad faith bargaining.
McFARLAND ROSE PRODUCTION, 11 ALRB No.34

449.01 Board adopted NLRB's policy of not allowing respondents to question discriminatees concerning their interim earnings or search for employment outside the confines of an administrative hearing.
MARIO SAIKHON, INC., 10 ALRB No. 36

449.01 Strikers permanently replaced prior to conversion of strike from economic to ULP strike entitled to immediate reinstatement upon making unconditional offer to return absent R's showing of necessity to offer replacements employment beyond the first harvesting season in which hired.
COLACE BROTHERS, INC., 8 ALRB No. 1

449.01 It is the policy of the Board to allow same extension of the filing period for all parties to an unfair labor practice proceeding when the time for filing is extended for any party.
PROHOROFF POULTRY FARMS, 5 ALRB No. 9

449.01 Doctrine prohibiting relitigation of representation issues in subsequent related unfair labor practice proceedings is applicable to proceedings under ALRA. In

absence of newly-discovered or previously-unavailable evidence or extraordinary circumstances, respondent in a refusal-to-bargain proceeding may not litigate matters which were or could have been raised in prior representation proceeding.
PERRY FARMS, INC., 4 ALRB No. 25

449.01 To apply doctrine prohibiting relitigation of representation issues in related unfair labor practice proceedings, law requires only that respondent had opportunity to file and thereafter to litigate, proper objections to conduct of election and/or to conduct affecting its results.
PERRY FARMS, INC., 4 ALRB No. 25

449.01 Respondent's attempt to discover, by oral deposition, information relating to backpay issues was premature prior to a determination that the discharged workers were entitled to backpay.
ARNAUDO BROS. INC, 3 ALRB No. 78

449.01 Clarification of applicability of makewhole order to particular employees is matter for Board compliance proceedings and may not be obtained during court review of Board liability order.
GEORGE ARAKELIAN FARMS v. ALRB (1986) 186 Cal.App.3d 94

449.01 Notwithstanding General Counsel's objection, Board properly admitted evidence necessary to consider remedy for ULP's charged by General Counsel in his complaint.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

449.01 Reg. 20290 requires that factors limiting employer's liability for backpay be determined in backpay proceeding which follows determination of whether ULP has occurred.
SUPERIOR FARMING CO. v. ALRB (1984) 151 Cal.App.3d 100

449.01 Board's ULP proceedings are inherently protracted. Such delays sometimes render ALRB's ultimate remedy meaningless, thereby frustrating remedial purposes of Act. Section 1160.4 was enacted to partially avoid these problems.
ALRB v. RULINE NURSERY CO. (1981) 115 Cal.App.3d 1005.

449.01 ALRA contains ample safeguards of fair procedure at administrative level.
TEX-CAL LAND MANAGEMENT, INC. v. ALRB (1979) 24 Cal.3d 335

449.01 Where ALJ adopts own backpay methodology after rejecting those proffered by General Counsel and respondent, and where respondent did not have an adequate opportunity to offer evidence to rebut reasonableness of ALJ's methodology, remand is appropriate to allow respondent such opportunity.
OASIS RANCH MANAGEMENT, INC., 20 ALRB No. 19

449.02 Practice Before The Board In General, Discipline Of Attorneys, Non-Attorney Representatives

449.02 Motion to strike whole of opposing party's brief denied, but motion granted as to certain portion of briefs which are no more than an attack on the Board's ability to judge the issues fairly.
BUD ANTLE, INC., 18 ALRB No. 6

449.02 Board will dismiss brief in whole or in part where it fails to further a party's legal position but is no more than a rancorous assault on the integrity and processes of the General Counsel, the ALJ, and/or the Board.
BUD ANTLE, INC., 18 ALRB No. 6

449.02 In a proceeding under section 20800 of the Board's regulations, the Board concluded that a former employee was prohibited from participating in a proceeding which had been pending before the Board during his employment. No evidence demonstrated that the former employee had participated in the matter while it was pending before the Board.
UFW/SUN HARVEST (Rodríguez), 13 ALRB No. 24

449.02 In a proceeding under section 20800 of the Board's regulations, and California Government Code 87400 et seq., the Board concluded that a former employee was prohibited from participating in a compliance proceeding where he was involved in investigating the charge which led to the liability proceeding.
MARIO SAIKHON, INC., 10 ALRB No. 46

449.03 Allocation Of Burden Of Proof In ULP And Compliance Proceedings

449.03 As a general matter, General Counsel has the burden, as part of the prima facie case, to establish jurisdictional facts. However, where the Board's jurisdiction has been determined in a previous adjudication, the burden shifts to respondent to provide evidence that intervening changes in facts or law have stripped the Board of jurisdiction.
OLSON FARMS/CERTIFIED EGG FARMS, INC., 19 ALRB No. 20

449.03 ALJ properly refused to reconsider earlier granting of motion to dismiss at end of General Counsel's case-in-chief despite later evidence that was arguably inconsistent with the ruling, because General Counsel had burden of proving the allegation in its case-in-chief.
S & J RANCH, INC., 18 ALRB No. 2

449.03 Party asserting an affirmative defense has the burden of proof as to that defense.
BRUCE CHURCH, INC., 17 ALRB No. 1

449.03 Once successorship is determined, burden is on successor to show it lacked knowledge of predecessor's unfair labor

practices. Mere denial of knowledge not controlling if Board can reasonably infer notice from record as a whole.
UKEGAWA BROTHERS, et al., 16 ALRB No. 18

449.03 Party seeking to overcome a Board reinstatement order bears heavy burden of proving that the discriminatees could not have been retained in their former or substantially equivalent positions.
UKEGAWA BROTHERS, et al., 16 ALRB No. 18

449.03 In case where it was not clear whether a pre-strike discriminatee would have accepted an offer of reinstatement had one been extended during the course of an economic strike, Board followed NLRB's Winn Dixie rule (206 NLRB 777) which holds that any uncertainty as to the amount of loss suffered by a discriminatee was caused by the wrongdoer who violated the law in the first instance and therefore should be resolved against the wrongdoer.
SAM ANDREWS' SONS, 16 ALRB No. 6

449.03 Employer has burden of demonstrating a good-faith effort to communicate a valid offer of reinstatement to the employee.
SAM ANDREWS' SONS, 16 ALRB No. 6

449.03 Since employer's asserted business justifications for terminating two employees did not appear to be entirely pretextual, ALJ erred in failing to apply "but for" test applicable in dual motive cases. (Wright Line, Inc. (1980) 251 NLRB 1083; Nishi Greenhouse (1981) 7 ALRB No. 18.) However, after examining the evidence concerning the employees' work histories, Board concluded that the evidence demonstrated that the employees would not have been discharged but for their protected concerted activity, and therefore employer violated 1153(a) by discharging them.
AGRI-SUN NURSERY, 13 ALRB No. 10

449.03 In compliance proceeding, general Counsel has the burden of proving the appropriate duration of the makewhole remedy.
MARIO SAIKHON, INC.,13 ALRB No. 8

449.03 Post-hearing brief mailed one day late accepted where no prejudice shown to other parties.
ADMIRAL PACKING CO., et al, 7 ALRB No. 43

449.03 General Counsel failed to meet its burden of proof by failing to prove by a preponderance of the evidence that employer's transfer and subsequent layoff of certain employees was the result of anti-union motivation.
EDWIN FRAZEE, INC. 4 ALRB No. 94

449.03 In backpay proceeding, General Counsel has burden of proving gross backpay. Once General Counsel has done so, employer has burden of proving any facts in mitigation of its gross backpay liability.

FRUDDEN ENTERPRISES, INC. v. ALRB (1984) 153 Cal.App.3d 262

449.03 Uncertainties in the calculation of backpay will be resolved against the wrongdoing party, whose unlawful conduct created the uncertainties.
OASIS RANCH MANAGEMENT, INC., 20 ALRB No. 19

449.03 Where Board order requires respondent to reinstate discriminatee by assigning him irrigation work in same manner as prior to discrimination, it is not General Counsel's burden to prove that each irrigation assignment was denied for discriminatory reasons; rather, it was respondent's burden to show legitimate reasons why available assignments were not given to discriminatee.
OASIS RANCH MANAGEMENT, INC., 20 ALRB No. 19

450.00 CHARGE

450.01 In General; Supporting Declarations

450.01 Where conduct alleged in an unfair labor practice charge is found to constitute a violation of section 1153(c), the same conduct will not support an allegation of unilateral changes within the meaning of section 1153(e) unless supported by a timely files, independent, ULP charge expressly alleging a violation, of section 1153(e); section (c) conduct is not sufficiently related to section (e) conduct.
GOURMET HARVESTING AND PACKING INC., AND GOURMET FARMS, 14 ALRB No. 9

450.01 Marketing commission (Table Grape) is not empowered by its enabling statute, the Ketchum Act, to file unfair labor practice charges, therefore, it has no standing under ALRA to file such charges.
UFW v. ALRB (Table Grape Commission), 41 Cal. App. 4th 303 [48 Cal.Rptr.2d 696](setting aside UFW (Table Grape Commission) (1993) 19 ALRB No. 15)

450.02 Board Initiation Or Solicitation

450.03 Withdrawal Of Charge By Charging Party

450.03 Regional Director denied charging party's request to withdraw section 1154(d) (4) charge and issued notice of hearing under section 1160.5; Board denied charging party's request for enforcement of subpoenas of agency officials on grounds that determination that section 1154(d) (4) charge has merit not required for section 1160.5 hearing to proceed, but ultimately quashed notice of hearing on grounds that dispute not subject to resolution under sections 1160.5 and 1154(d) (4).
UNITED VINTERS, INC., 10 ALRB No. 34

450.04 Dismissal of Charge; Appeal From

450.04 Board adopts the national board's decision in Ducane Heating Corp. (1985) 273 NLRB 1389 concerning the appropriate standard to apply in reviewing a regional director's reinstatement of a previously dismissed charge. However, considering the progress of the instant case through the Board's hearing and decision process, the Board did not apply Ducane standard to this case.
PLEASANT VALLEY VEGETABLE 12 ALRB No. 31

450.04 Dismissal of charges proper after hearing on refusal to bargain charges but prior to issuance of decision where parties entered into collective bargaining contract and all parties agreed to dismissal.
ADMIRAL PACKING CO., et al, 7 ALRB No. 43

450.05 Investigations; Section 1151 Agent Access

450.05 Once ALRB's jurisdiction is invoked through filing of charge, General Counsel is free to make full inquiry under its broad investigatory power, and complaint is not limited to allegations in charge.
RULINE NURSERY CO. v. ALRB (1985) 169 Cal.App.3d 247

451.00 LIMITATION PERIOD FOR FILING CHARGE: LABOR CODE SECTION 1160.2

451.01 In General

451.01 Where respondent failed to assert statute of limitations defense and failed to object to full litigation of facts pertaining to alleged failure to provide information outside six-month period of section 1160.2, Board may examine such evidence and, where warranted, find violations of the Act. RICHARD A. GLASS COMPANY, INC., 14 ALRB No. 11

451.01 Board adopts the national board's decision in Ducane Heating Corp. (1985) 273 NLRB 1389 concerning the appropriate standard to apply in reviewing a regional director's reinstatement of a previously dismissed charge. However, considering the process of the instant case through the Board's hearing and decision process, the Board did not apply Ducane standard to the instant case. Chairperson James-Massengale and Member Gonot dissented: they would apply Ducane standard to this case.
PLEASANT VALLEY VEGETABLE, 12 ALRB No. 31

451.01 Defense of statute of limitations will limit makewhole remedy but evidence of bad faith bargaining prior to six-month period is relevant background for finding of violation.
SUMNER PECK RANCH, INC., 10 ALRB No. 24

451.01 Bard limits award of makewhole because certain losses of pay, due to unlawful change in hiring practices, did not

occur within six months of the filing of the charge.
VALDORA PRODUCE COMPANY and VALDORA PRODUCE COMPANY, INC., 10 ALRB No. 3

451.01 Complaint issued more than six months after charge filed not time barred by section 1160.2 which applies only to filing of charge.
ROGERS FOODS, INC., 8 ALRB No. 19

451.01 Allegations in charge or complaint may be supplemented by specific allegations which relate back to date charge filed. Sufficient if charge informed charged party of general nature of alleged viols.
ROGERS FOODS, INC., 8 ALRB No. 19

451.01 Six-month limitations period for filing charges provides affirmative defense which must be annotated by party charged.
MASAJI ETO, et al., 6 ALRB No. 20

451.01 The six-month limitation of Section 1160.2 of the Act is not jurisdictional, but must be the subject of an affirmative defense; respondent's failure to raise the statutory limitation constituted a waiver of the defense.
AS-H-NE FARMS, 6 ALRB No. 9

451.01 Six-month statutory limitation provided in section 1160.2 of the Act is not jurisdictional. It must be raised as affirmative defense. Failure to raise limitation at hearing constitutes waiver of that defense.
PERRY FARMS, INC., 4 ALRB No. 25

451.01 Claim that statute of limitations has run under 1160.2 is an affirmative defense, and employer has burden of establishing that union had actual or constructive notice of charged unlawful conduct.
RULINE NURSERY CO. v. ALRB (1985) 169 Cal.App.3d 247

451.01 Section 1160.2 bars filing of charges based on acts which occurred over six months from time charging party knew or should have known of the act upon which the charge is based.
RULINE NURSERY CO. v. ALRB (1985) 169 Cal.App.3d 247

451.01 Limitation period in 1160.2 does not begin to run until claimant obtains actual or constructive notice of violation. Union did not become aware of employer's bad faith bargaining until false impasse was declared.
MONTEBELLO ROSE CO. v. ALRB (1981) 119 Cal.App.3d 1

451. 01 Allegation that employee's layoff violated the Act was time-barred. Surrounding circumstances were sufficient to put employee on notice that an adverse action had taken place; therefore, the time period for filing the charge commenced on the day of the layoff.
McCAFFREY GOLDER ROSES, 28 ALRB No. 8

451.01 The Board found that an allegation concerning employer's refusal to rehire the employee was timely filed when the employer failed to adequately establish that the employee had clear unequivocal knowledge that he was not going to be rehired more than six months before the charge was filed.
McCAFFREY GOLDER ROSES, 28 ALRB No. 8

451.01 Charge not untimely where, even though decision to discharge made more than six months before filing of charge, employee was given false impression that lack of recall was due to lack of work or other nonperformance factors and not told of discharge until less than six months prior to filing.
RIVERA VINEYARDS, et al., 29 ALRB No. 5

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.

451.02 Amended Charge Or Complaint; Withdrawal Of Charge; Reopening

451.02 Charge not untimely filed, where initial charge cited incorrect date for ULP, but amended charge (filed more than 6 months after ULP) corrected the date.
HARLAN RANCH COMPANY, 18 ALRB No. 8

451.02 Since employee's claim of discriminatory discharge is closely related to the facts and circumstances of her husband's discharge, her claim is not barred by the statute of limitations although the original charge was filed only by the husband.
BAIRD-NEECE PACKING CORPORATION, 14 ALRB No. 16

451.03 Computation of Six-Month Period

451.03 A ULP charge alleging a refusal to bargain is timely filed so long as the Respondent has unlawfully refused to bargain, upon request, within the six-month period preceding the filing of the charge, even if the initial refusal to bargain was made outside the six-months limitations period, citing The Pulitzer Publishing Co.

(1979) 242 NLRB 35 [101 LRRM 1101]; Ocean System, Inc. (1977) 227 NLRB 1593 [94 1496].
GOURMET HARVESTING AND PACKING, INC. AND GOURMET FARMS, 14 ALRB No. 9

451.03 Where the union requested information and bargaining sessions within the six-month period preceding the filing of a charge, the charge is not untimely filed despite the fact that the union was certified over two years earlier and received notice following the end of the first year that the employer had doubts regarding its continuing obligation to bargain due to the union's inactivity.
O. E. MAYOU & SONS, 11 ALRB No. 25

451.03 The six-month limitation prescribed by Labor Code section 1160.2 commences when a party has reasonable notice of the other party's bad faith intentions.
AS-H-NE FARMS, 6 ALRB No. 9

451.03 Six-month statute of limitations does not begin to run until charging party has either actual or constructive notice of allegedly unlawful act.
GEORGE ARAKELIAN FARMS v. ALRB (1986) 186 Cal.App.3d 94

451.03 Testimony of one employee that he was aware of termination of term or condition of employment constitutes neither actual nor constructive notice of the change to certified union.
GEORGE ARAKELIAN FARMS v. ALRB (1986) 186 Cal.App.3d 94

451.03 In refusal-to-bargain cases dealing with unlawful unilateral changes, running of statute of limitations in 1160.2 is tolled when charging party has no actual or constructive notice of unlawful conduct.
RULINE NURSERY CO. v. ALRB (1985) 169 Cal.App.3d 247

451.03 Limitation period in 1160.2 does not begin to run until claimant obtains actual or constructive notice of violation. Union did not become aware of employer's bad faith bargaining until false impasse was declared.
MONTEBELLO ROSE CO. v. ALRB (1981) 119 Cal.App.3d 1

451. 03 Allegation that employee's layoff violated the Act was time-barred. Surrounding circumstances were sufficient to put employee on notice that an adverse action had taken place; therefore, the time period for filing the charge commenced on the day of the layoff.
McCAFFREY GOLDER ROSES, 28 ALRB No. 8

451.03 The Board found that an allegation concerning employer's refusal to rehire the employee was timely filed when the employer failed to adequately establish that the employee had clear unequivocal knowledge that he was not going to be rehired more than six months before the charge was filed.
McCAFFREY GOLDER ROSES, 28 ALRB No. 8

451.04 Continuing Or Separate Violations

451.04 Even though initial request for information was made outside six-months limitations period of section 1160.2, Board may examine such prior conduct to explain or clarify conduct which occurred within six months of the filing of the relevant unfair labor practice charge.
RICHARD A. GLASS COMPANY, INC., 14 ALRB No. 11

451.04 Defense of statute of limitations will limit makewhole remedy but evidence of bad faith bargaining prior to six-month period is relevant background for finding of violation.
SUMNER PECK RANCH, INC., 10 ALRB No. 24

451.04 Surface bargaining is a continuing violation. Therefore, late filing of the charge is not a defense to the violation, but merely limits the time period during which the Board may find a violation. Boise Implement Company, 106 NLRB 657, 32 LRRM 1530 (1953), enf'd 215 F.2d 652, 34 LRRM 2788 (9th Cir. 1954)
AS-H-NE FARMS, 6 ALRB No. 9

451.04 Employer's discontinuance of term or condition of employment does not constitute continuing violation of the Act for purposes of statute of limitations.
GEORGE ARAKELIAN FARMS v. ALRB (1986) 186 Cal.App.3d 94

451.04 Failure to pay vacations and holidays is continuing violation of Act for which employer is liable commencing with beginning of limitations period--six months prior to the filing of the charge.
RULINE NURSERY CO. v. ALRB (1985) 169 Cal.App.3d 247

451.04 Failure To Raise Six Month Limitation

451.04 Where respondent failed to assert statute of limitations defense and failed to object to full litigation of facts pertaining to alleged failure to provide information outside six-month period of section 1160.2, Board may examine such evidence and, where warranted, find violations of the Act.
RICHARD A. GLASS COMPANY, INC. 14 ALRB No. 11

451.05 Parties; Service Of Charge

451.05 Where the Board dismissed an allegation on its merits, it found it unnecessary to rule on employer's exception regarding the validity of the service of the charge on which the allegation was based.
ARAKELIAN FARMS, 9 ALRB No. 25

451.05 Labor contractors are not indispensable parties in ALRB proceedings; reinstatement remedies may be ordered against growers, despite potential interference with contracts to provide labor and absence of labor contractors during hearings.

RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

451.06 Successor Companies And Unions

452.00 COMPLAINT OR SPECIFICATION

452.01 In General

452.01 Board adopted NLRB's policy of not allowing respondents to question discriminatees concerning their interim earnings or search for employment outside the confines of an administrative hearing.
MARIO SAIKHON, INC., 10 ALRB No. 36

452.01 Issuance of notice of hearing on derivative liability appropriate even though General Counsel may have known of existence and role of partnership and general partner earlier in unfair labor practice proceeding. General Counsel does not have to proceed against all entities that may ultimately be liable to remedy unfair labor practices at time of earliest knowledge of their relationship with original respondent.
Claassen Mushrooms, Inc., 20 ALRB No. 9

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.

452.02 Issuance Of Complaint Or Specification

452.02 The General Counsel may issue complaints based on conduct discovered during an investigation of related charges.
BEN AND JERRY NAKASAWA d/b/a NAKASAWA FARMS AND B.J.HAY HARVESTING, 10 ALRB No. 48

452.02 If the General Counsel does not include discoverable charges in the complaint, they may be forever waived.
BEN AND JERRY NAKASAWA d/b/a NAKASAWA FARMS AND B.J.HAY HARVESTING, 10 ALRB No. 48
Accord: DUKE WILSON COMPANY 12 ALRB No. 19

452.02 Final authority over whether ULP complaint should issue is with General Counsel, not Board.
BELRIDGE FARMS v. ALRB (1978) 21 Cal.3d 551

452.03 Refusal To Issue Complaint; Appeal From

452.03 Regional Director's failure or refusal to issue a complaint is not a final decision on the merits, citing NLRB v. Baltimore Transit Co. (4th Cir. 1944) 140 F.2nd 51 [13 LRRM 739].

VENTURA COUNTY FRUIT GROWERS, INC., 10 ALRB No. 45

452.03 General Counsel's refusal to issue complaint is not a final order of Board under 1160.8 and therefore is not reviewable.
BELRIDGE FARMS v. ALRB (1978) 21 Cal.3d 551

452.03 Mandamus is available to review General Counsel's erroneous interpretation of statute; however, whether a particular act constitutes unlawful restraint or coercion is question of fact, not matter of statutory construction, and General Counsel's exercise of discretion is not subject to extraordinary writ.
BELRIDGE FARMS v. ALRB (1978) 21 Cal.3d 551

452.03 General Counsel's refusal to issue complaint is immune from judicial review except where there is a colorable claim of violation of constitutional right, an act in excess of specific grant of authority, or an erroneous construction of applicable statute.
BELRIDGE FARMS v. ALRB (1978) 21 Cal.3d 551

452.04 Definiteness; Giumarra Bill Of Particulars

452.04 Specification prepared on programmable calculator need not show each step of computations where methodology was explained in sufficient detail to allow verification of net figures.
ROBERT H. HICKAM, 10 ALRB No. 24

452.04 Allegations in charge or complaint may be supplemented by specific allegations which relate back to date charge filed. Charge need only inform charged party of general nature of alleged violations.
ROGERS FOODS, INC., 8 ALRB No. 19

452.04 The ALJ properly denied Respondent's request to take oral depositions since the complaint was sufficiently clear to put Respondent on notice as to what witnesses and evidence would be necessary to present its defense.
ARNAUDO BROS. INC., 3 ALRB No. 78

452.04 A complaint is sufficient if it specifically and clearly identifies the events or incidents alleged as unfair labor practices.
NISH NOROIAN FARMS v. ALRB (1984) 35 Cal.3d 726

452.05 Scope Of Inquiry

452..0 The General Counsel may issue complaints based on conduct discovered during an investigation of related charges.
BEN AND JERRY NAKASAWA d/b/a NAKASAWA FARMS AND B.J.HAY HARVESTING, 10 ALRB No. 48

452.05 Board declined to adopt ALJ's findings that makewhole period terminated at nominal end of employer's technical refusal to bargain, leaving determination of when

employer commenced good faith bargaining to second phase of compliance proceeding.
J.R. NORTON COMPANY, INC., 10 ALRB No. 42

452.05 Where the question of employer's good faith was raised by employer's defense of bona fide impasse, ALJ properly analyzed employer's overall course of conduct in collective bargaining, despite General Counsel's desire to limit pleadings to allegations of per se refusal-to-bargain.
ROBERTS FARMS, INC., 9 ALRB No. 27

452.05 A party may be estopped from claiming that his/her uncharged conduct constituted ULP where he/she has acquiesced in the trial of such conduct as ULP.
GEORGE ARAKELIAN FARMS v. ALRB (1986) 186 Cal.App.3d 94

452.05 Where conduct is litigated solely to prove defense to ULP allegation, it may not be held to itself constitute ULP.
GEORGE ARAKELIAN FARMS v. ALRB (1986) 186 Cal.App.3d 94

452.05 Once ALRB's jurisdiction is invoked through filing of charge, General Counsel is free to make full inquiry under its broad investigatory power, and complaint is not limited to allegations in charge.
RULINE NURSERY CO. v. ALRB (1985) 169 Cal.App.3d 247

452.05 Any evidence concerning any potentially appropriate remedy is material and relevant, regardless of whether General Counsel has requested remedy in his complaint.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

452.05 Board's plenary jurisdiction to vindicate public rights is invoked by filing of charge, and after investigation, Board is not limited in its inquiry to specific matters alleged in the charge, but may inquire into related matters.
NISH NOROIAN FARMS v. ALRB (1984) 35 Cal.3d 726

452.06 Variance Of Complaint From Charge; Evidence, Findings, Or Order Varying From Complaint; Events Subsequent To Charge Or Complaint

452.06 Board has broad discretion in fashioning appropriate remedy and may grant particular relief even though not requested in complaint by General Counsel.
D. PAPAGNI FRUIT CO., 11 ALRB No. 38
Accord: BEN AND JERRY NAKASAWA (1984) 10 ALRB No. 48
DUKE WILSON COMPANY 12 ALRB No. 19

452.06 If the General Counsel does not include discoverable charges in the complaint, they may be forever waived.
BEN AND JERRY NAKASAWA d/b/a NAKASAWA FARMS AND B.J.HAY HARVESTING, 10 ALRB No. 48

452.06 Due to failure to allege violation of section 1153(d) in complaint, Board declined to go beyond finding that

discriminatory refusal to rehire son of union activists (due to his expected participation in favor of union position in representation case hearing) violated section 1153(c) and (a).
VISALIA CITRUS PACKERS, 10 ALRB No. 44

452.06 Although unilateral wage change not alleged in complaint as violation of 1153(e), it was fully litigated at hearing and clearly related to allegation of bad faith bargaining which was included in complaint.
SIGNAL PRODUCE COMPANY, 6 ALRB No. 47

452.06 Where neither charge nor complaint allege wage increase as violation of 1153(e), increase not treated as per se violation, and ALO did not conclude it was a violation, issue has not been fully litigated as independent violation and regarded thus as background evidence of employer's attitude toward bargaining.
MASAJI ETO, et al., 6 ALRB No. 20

452.06 Where conduct is neither charged as ULP nor alleged as such in complaint, Board may not find that conduct constituted ULP unless it is fully and fairly litigated.
GEORGE ARAKELIAN FARMS v. ALRB (1986) 186 Cal.App.3d 94

452.06 A party may be estopped from claiming that his/her uncharged conduct constituted ULP where he/she has acquiesced in the trial of such conduct as ULP.
GEORGE ARAKELIAN FARMS v. ALRB (1986) 186 Cal.App.3d 94

452.06 Where conduct not charged as ULP, Board may determine that such conduct constituted ULP if it is related to, and intertwined with, other conduct which has been alleged in complaint, provided that matter is fully litigated.
GEORGE ARAKELIAN FARMS v. ALRB (1986) 186 Cal.App.3d 94

452.06 Where conduct is litigated solely to prove defense to ULP allegation, it may not be held to itself constitute ULP.
GEORGE ARAKELIAN FARMS v. ALRB (1986) 186 Cal.App.3d 94

452.06 Where amendments to complaint concern conduct which falls within the same pattern of, but presents different varieties than, original allegations, and where employer is given adequate opportunities to defend, such amendments are proper.
RULINE NURSERY CO. v. ALRB (1985) 169 Cal.App.3d 247

452.06 Once ALRB's jurisdiction is invoked through filing of a charge, General Counsel is free to make full inquiry under its broad investigatory power, and complaint is not limited to allegations in charge.
RULINE NURSERY CO. v. ALRB (1985) 169 Cal.App.3d 247

452.06 Any evidence concerning any potentially appropriate remedy is material and relevant, regardless of whether General Counsel has requested remedy in his complaint.

HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

452.06 Board properly made finding of bad faith refusal to bargain over layoff and rehire policies where timely charge alleged layoff and failure to rehire was discriminatory, finding only affected one additional employee, and finding did not disrupt a prior agreement or relationship.
NISH NOROIAN FARMS v. ALRB (1984) 35 Cal.3d 726

452.06 Board's plenary jurisdiction to vindicate public rights is invoked by filing of charge, and after investigation, Board is not limited in its inquiry to specific matters alleged in the charge, but may inquire into related matters. NISH NOROIAN FARMS v. ALRB (1984) 35 Cal.3d 726

452.06 Board may draw any reasonable inference from evidence fully and fairly litigated, regardless of specific litigation theories of the parties.
NISH NOROIAN FARMS v. ALRB (1984) 35 Cal.3d 726

452.07 Amendments

452.07 Amendment of specification to include additional employees, exclude others, and correct inaccuracies was appropriate where errors were discovered during Board-ordered recomputation of makewhole award.
ROBERT H. HICKAM, 10 ALRB No. 25

452.07 Board granted General Counsel's motion to amend complaint after partial summary judgment award but before remanded hearing; complaint amended to delete part of prayer relating to remedy to be considered at remand hearing, thereby obviating need for remand hearing.
F & P GROWERS ASSOCIATION, 9 ALRB No. 28

452.07 Charge or complaint may be supplemented by allegations which relate back to date charge filed. Charge need only inform charged party of general nature of alleged violations.
ROGERS FOODS, INC., 8 ALRB No. 19

452.07 General Counsel may amend a complaint at close of case in chief where events fully litigated, Respondent had notice of amendment prior to presenting its case, and no prejudice shown because of timing of amendment. Exception thereto untimely.
ROGERS FOODS, INC., 8 ALRB No. 19

452.07 Amendment of complaint permitted despite General Counsel's failure to comply with 8 Cal. Admin. Code section 20222 (10 day limit) where amendment set forth in transcript and no prejudice shown by Respondent.
ROGERS FOODS, INC., 8 ALRB No. 19

452.07 Amendment of complaint during hearing to add one Employee and to delete another was proper where both were part of

the same crew receiving the alleged discriminatory disciplinary notice, and the complaint referred to named and "other employees".
GIUMARRA VINEYARDS, INC., 7 ALRB No. 7

452.07 Amendment to complaint must relate in nature to events for which charges were filed and original complaint issued, but amendment need not necessarily relate in time to charged acts.
RULINE NURSERY CO. v. ALRB (1985) 169 Cal.App.3d 247

452.07 Actions before ALRB are not subject to technical pleading requirements. Issue is whether party was denied due process or otherwise prejudiced by amendments to complaint.
RULINE NURSERY CO. v. ALRB (1985) 169 Cal.App.3d 247

452.07 Objecting party must show how it was actually prejudiced by amendment to complaint.
RULINE NURSERY CO. v. ALRB (1985) 169 Cal.App.3d 247

452.07 ULP complaint can be amended during hearing.
RULINE NURSERY CO. v. ALRB (1985) 169 Cal.App.3d 247

452.07 Where amendments to complaint concern conduct which falls within the same pattern of, but presents different varieties than, original allegations, and where employer is given adequate opportunities to defend, such amendments are proper.
RULINE NURSERY CO. v. ALRB (1985) 169 Cal.App.3d 247

452.07 Board may liberally grant amendments to conform to proof, absent prejudice, including extension of remedial order to joint employer.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

452.07 Alleged joint employer not unfairly surprised when General Counsel requested amendment of complaint, since president of and counsel for both companies were present during entire hearing and no request for continuance or reopening was made by joint employer.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

452.07 General Counsel properly amended complaint during hearing where new allegations were fully litigated and no prejudice to employer was apparent in record.
KAWANO, INC. v. ALRB (1980) 106 Cal.App.3d 937

452.08 Answer Or Other Defenses

452.08 Where Respondent admitted Employee's discharge in Complaint and never sought to amend its answer to deny discharge, it cannot later argue that Employee voluntarily quit.
B. & B. FARMS, 7 ALRB No. 38

452.08 Six-month limitations period for filing charges provides

affirmative defense which must be asserted by party charged. MASAJI ETO, et al., 6 ALRB No. 20

452.08 Affirmative defenses that employer denied fair and impartial procedures dismissed for lack of evidence. Affirmative defense that charging party engaged in misconduct improper and stricken from answer. Anderson Lithograph Co. (1959) 124 NLRB 920, IHED p. 7. PAUL W. BERTUCCIO and BERTUCCIO FARMS, 5 ALRB No. 5

452.08 When 13 persons failed to file an answer to the General Counsel's complaint the Board issued an Order to Show Cause. The Board shall deem true all allegations and issue an order accordingly (unless an adequate response is received within 10 days). WESTERN TOMATO, et al., 3 ALRB No. 51

452.08 Claim that statute of limitations has run under 1160.2 is an affirmative defense, and employer has burden of establishing that union had actual or constructive notice of charging unlawful conduct. RULINE NURSERY CO. v. ALRB (1985) 169 Cal.App.3d 247

452.09 Service Of Charge, Complaint, Or Specification; Labor Code Section 1151.4

452.09 Under NLRB precedent, ALRB acquired jurisdiction over all three entities comprising a single integrated enterprise--which Board found to be a single employer--notwithstanding its failure to specifically serve upon each a copy of ULP charge and concurrent failure to list each as a respondent in complaint. PERRY FARMS INC. v. ALRB (1978) 86 Cal.App.3d 448

452.09 Uncharged and unnamed party may be held responsible for ULP's where that unnamed entity comprises part of single employer which was properly served and named. PERRY FARMS INC. v. ALRB (1978) 86 Cal.App.3d 448

452.09 Service was effected when Respondent refused to accept or failed to claim certified mail. Where service by mail is permitted by statute, service is established by postal service entries on returned certified mail showing notices of attempts to deliver, and that document being served was either refused or returned unclaimed. VALLEY FARMING COMPANY 20 ALRB No. 4

452.10 Parties To Charge, Complaint, Or Specification

452.10 Labor contractor may have right to intervene if remedial order could affect contractual relationships. RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

452.10 Uncharged and unnamed party may be held responsible for ULP's where that unnamed entity comprises part of single employer which was properly served and named. PERRY FARMS INC. v. ALRB (1978) 86 Cal.App.3d 448

452.10 Under NLRB precedent, ALRB acquired jurisdiction over all three entities comprising a single integrated enterprise—which Board found to be a single employer--notwithstanding its failure to specifically serve upon each a copy of ULP charge and concurrent failure to list each as a respondent in complaint.
PERRY FARMS INC. v. ALRB (1978) 86 Cal.App.3d 448

452.10 Marketing commission (Table Grape) is not empowered by its enabling statute, the Ketchum Act, to file unfair labor practice charges, therefore, it has no standing under ALRA to file such charges.
UFW v. ALRB (Table Grape Commission), 41 Cal. App. 4th 303 [48 Cal.Rptr.2d 696] (setting aside UFW (Table Grape Commission) (1993) 19 ALRB No. 15)

452.10 Entities which may be derivatively liable may be named in a derivative liability proceeding initiated after the unfair labor practice and original compliance hearing.
Claassen Mushrooms, Inc. 20 ALRB No. 9

452.11 Intervention

452.11 Labor contractor may have right to intervene if remedial order could affect contractual relationships.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

452.12 Consolidation, Severance, Or Bifurcation Of Proceedings

452.12 Where there was a threshold question of jurisdiction, Board bifurcated liability phase of unfair labor practice proceeding, set hearing on question of jurisdiction alone, issued interlocutory decision finding jurisdiction, and then remanded to ALJ to complete hearing on merit of underlying charges.
BUD ANTLE, INC., 18 ALRB No. 6

452.12 Compliance proceedings bifurcated to enable parties to litigate appropriateness of regional Director's makewhole formula first and, after Board review of the ALJ's findings regarding the formula, to consider a detailed specification computed in accordance with the Board's decision on the formula.
J.R. NORTON COMPANY, INC., 10 ALRB No. 42

452.12 IHE bifurcated section 1160.5 hearing to isolate question of whether reasonable cause existed to believe that conduct at issue violated section 1154(d) (4).
UNITED VINTERS, INC., 10 ALRB No. 34

452.12 Although ALJ not authorized to sever charges sue sponte and against the wishes of General Counsel and all other parties, board decided to sever for administrative efficiency and to avoid further delay where allegations could be remedied in compliance phase of earlier case.
LU-ETTE FARMS, INC., 10 ALRB No. 20

452.12 Consolidation of unfair labor practice charges and election objections for hearing for the purpose of administrative convenience and efficiency does not deprive an agricultural employer of due process.
M. CARATAN, INC., 9 ALRB No. 33
Accord: SEQUOIA ORANGE CO., 11 ALRB No. 21

452.12 Consolidation of cases related both in fact and law was in the interests of administrative economy and justice: Initial complaint alleged bad faith bargaining by Employer group. Second complaint alleged bad faith by Union in same negotiations.
ADMIRAL PACKING CO., et al, 7 ALRB No. 43

452.13 Default Or Failure To Appear

452.13 ALJ properly granted General Counsel's motion for default where Employer failed to file timely answer to complaint or backpay specification. Employer's defense that its owner is not fluent in English is invalid since owner acknowledged taking complaint to Employer's agent for service of process, who is fluent in English. Further, the action was not filed against an individual but against a corporation, which may not assert a linguistic disability.
AZTECA FARMS, INC., 18 ALRB No. 15

452.13 Board rejects Employer's argument that default judgment should not be granted because no prejudice resulted from its failure to file timely answer. Board finds some prejudice did result from Employer's failure. Further, lack of prejudice will be considered only when there is some excuse for the delay. (Benjamin v. Dalmo Mfg. Co. (1948) 31 Cal.2d 523.)
AZTECA FARMS, INC., 18 ALRB No. 15

452.13 Default judgment granted where Respondent failed to file an answer to the complaint, did not appear at the prehearing conference and did not respond to General Counsel's motion to deem allegations in complaint true and for default judgment.
KAPLAN'S FRUIT & PRODUCE CO., 11 ALRB No. 7

452.13 Board granted default judgment but did not award contractual makewhole prayed for in the complaint where the allegations of the complaint did not support a finding of bad faith bargaining.
KAPLAN'S FRUIT & PRODUCE CO., 11 ALRB No. 7

452.13 Failure to show good cause sufficient to defer Motion for Summary Judgment includes such defenses as failure of respondent's attorney to file answer because he had not been paid; answer to complaint not filed because respondent financially unable to retain counsel; respondent's attorney delinquent in reviewing matter; respondent absent from the office in order to attend to

other pressing business matters.
LU-ETTE FARMS, INC., 11 ALRB No. 4

452.13 Motion for Summary Judgment granted where respondent failed to file answers to initial and second consolidated complaint, did not seek extension of time in which to file answer, complaint put respondent on notice as to requirement of answer as well as consequences for failure to comply and respondent not a stranger to Board proceedings.
LU-ETTE FARMS, INC., 11 ALRB No. 4

452.13 The general counsel may move for summary judgment against five persons who filed answers to a complaint but did not appear at the hearing.
WESTERN TOMATO, et al., 3 ALRB No. 51

452.13 Where one respondent defaults, Board has discretion whether or not to issue a final order in the nature of a default judgment. Respondent who defaults in a compliance proceeding may be entitled to the benefit of any adjudication involving other respondents that results in the reduction of the amount of backpay alleged in the specification. However, any reduction or elimination of liability that rests on a theory peculiar to the non-defaulting respondent(s) will not relieve the defaulting respondent of any of the terms of the specification as issued.
BRIGHTON FARMING CO., INC. AND FELIZ VINEYARD, INC., 20 ALRB No. 20

452.13 Failure to file an answer to complaint or specification permits Board to enter summary judgment finding violation and amount of backpay due.
VALLEY FARMING COMPANY 20 ALRB No. 4

452.13 The standard for relief from default in California is codified in Code of Civil Procedure section 473. The pertinent portion of that provision is found in subdivision (b): "The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect."
ALLSTAR SEED COMPANY, 29 ALRB No. 2

452.13 It is the policy of the law to favor, wherever possible, a hearing on the merits, rather than allow a judgment by default to stand and it appears that a substantial defense could be made. But it is also true that the courts have made it clear that there are standards that must be met in order to grant such relief. Where the basis for relief from default is a mistake of law, the determining factors are the reasonableness of the misconception and the justifiability of lack of determination of the correct law, and that excusable neglect is that neglect which might have been the act of

a reasonably prudent person under the same circumstances.

ALLSTAR SEED COMPANY, 29 ALRB No. 2

452.13 No relief from default where Respondent failed to answer complaint based on a reasonable mistake of law as to the preclusive effect of the withdrawal of a parallel charge before the NLRB because ALRB complaint served nearly three weeks after notice of NLRB withdrawal and it was not reasonable for Respondent to make no inquiry as to the significance of the complaint.
ALLSTAR SEED COMPANY, 29 ALRB No. 2

el4 5 When 13 persons failed to file an answer to the General Counsel's complaint the Board issued an Order to Show Cause. The Board shall deem true all allegations and issue an order accordingly (unless an adequate response is received within 10 days).
WESTERN TOMATO, et al., 3 ALRB No. 51

452.14 Withdrawal Of Complaint Before Hearing; Appeal From

452.14 Dismissal of charges proper after hearing on refusal to bargain charges but prior to issuance of decision where parties entered into collective bargaining contract and all parties agreed to dismissal.
ADMIRAL PACKING CO., et al, 7 ALRB No. 43

452.15 Request For Deferral To Arbitration (see also section 106.03)

453.00 HEARINGS

453.01 In General

453.01 Where employer seeks to resubmit in Dal Porto proceeding evidence purporting to demonstrate that it would not have entered into a contract calling for higher wages due to its weak financial condition that was previously proffered and rejected in the liability stage without explanation, rehabilitation, or expansion of supporting documentation, Board has no basis to retreat from prior rejection of such proof, and employer has suffered no prejudice entitling it to a Dal Porto hearing.
ROBERT H. HICKAM, 17 ALRB 7

453.01 A post-hearing brief is timely filed if it is mailed on the date it is due.(8 Cal. Admin. Code 20480(b).)
FRUDDEN PRODUCE, INC., 4 ALRB No. 17

453.01 The ALRB has the authority to establish evidentiary standards in unfair labor practice proceedings and may appropriately bar at the threshold proffered evidence that fails to meet these standards.
George Arakelian Farms, Inc. v. ALRB (1989) 49 Cal.3d 1279

453.01 Reg. 20290 requires that factors limiting employer's liability for backpay be determined in backpay proceeding which follows determination of whether ULP has occurred.
SUPERIOR FARMING CO. v. ALRB (1984) 151 Cal.App.3d 100

453.01 Board's regulations, (20382(g)) preclude admission in ULP proceedings of Board order extending certification.
YAMADA BROS. v. ALRB (1979) 99 Cal.App.3d 112

453.01 Proceedings before ALRB are neither civil actions nor proceedings known to the common law, and absent a statute providing for jury trial in such proceedings, no such right exists.
PERRY FARMS INC. v. ALRB (1978) 86 Cal.App.3d 448

453.02 Notice And Opportunity For Hearing; Summary Judgment

453.02 When no factual conflicts must be resolved prior to ruling on the legal rights of the parties, the Board utilizes a summary disposition procedure similar to civil summary judgment.
MARIO SAIKHON, INC., 15 ALRB No. 3

453.02 Proof that a union perceived itself as having failed to obtain intended wage levels does not constitute proof of wage level flexibility sufficient to raise a triable issue that the employer's bad faith bargaining conduct, rather than the union's unvarying wage proposals, caused the parties' failure to reach contractual agreement.
MARIO SAIKHON, INC., 15 ALRB No. 3

453.02 The task of the Board on a motion for summary disposition of pending matters is issue identification, not issue resolution.
MARIO SAIKHON, INC., 15 ALRB No. 3

453.02 Board will grant a motion for summary disposition of pending matters when the moving party's proof establishes its entitlement to judgment in its favor, and the opposing party's proof fails to raise a triable issue as to any matter then pending.
MARIO SAIKHON, INC., 15 ALRB No. 3

453.02 The failure of a party opposing a motion for summary disposition to challenge the admissibility of evidence brought forward by the moving party in support of its motion constitutes a waiver of further challenge to the admissibility of such proof.
MARIO SAIKHON, INC., 15 ALRB No. 3

453.02 Board will not grant a summary disposition by default; it will determine the legal sufficiency of the moving party's evidentiary presentation prior to examining the counter-presentation of the opposing party.
MARIO SAIKHON, INC., 15 ALRB No. 3

453.02 When faced with a motion for summary disposition of a matter pending before it, the Board will liberally construe the evidentiary support presented by the party opposing the granting of the motion.
MARIO SAIKHON, INC., 15 ALRB No. 3

453.02 Board is not bound by the details of civil summary judgment practice when faced with a motion for summary disposition of matters pending before it; the Board will look for guidance, however, to the requirements of Code of Civil Procedure section 437(c) in the application of its own procedure.
MARIO SAIKHON, INC., 15 ALRB No. 3

453.02 For purposes of determining the propriety of summary disposition of a pending matter, the Board will take as true the factual assertions of the opposing party that have adequate evidentiary support.
MARIO SAIKHON, INC., 15 ALRB No. 3

453.02 Board will independently scrutinize the record for the presence of genuine issues of material fact that would render a summary disposition improper.
MARIO SAIKHON, INC., 15 ALRB No. 3

453.02 The presence of the rebuttable presumption affecting the burden of proof created by the court in William Dal Porto & Sons v. ALRB (1987) 191 Cal.App.3d 1195 does not affect the ability of the Board to grant summary disposition of the question whether the parties negotiating for a collective bargaining agreement would have reached agreement in the absence of a party's bad faith bargaining conduct.
MARIO SAIKHON, INC., 15 ALRB No. 3

453.02 Board granted partial summary judgment by awarding summary judgment against employer on liability issue but remanding for portion of makewhole period; supplemental Decision made partial summary judgment final.
F & P GROWERS ASSOCIATION, 9 ALRB No. 22

453.02 It is prejudicial and a violation of a respondent's due process rights for the Board to find a violation when the specific allegation was dismissed by the ALJ after General Counsel's case in chief, since the respondent must be allowed an opportunity to contest or rebut facts used by the Board in its findings. In such circumstances, if the Board disagrees with the ALJ's dismissal, a remand is generally warranted; in this case, it was deemed unnecessary.
NICK J. CANATA, 9 ALRB No. 8

453.02 Board reversed ALO's partial granting of motion for summary judgment and ordered hearing reopened.
ALBERT C. HANSEN, 4 ALRB No. 41

453.02 Board reversed ALO's grant of motion for summary

judgment. Respondent entitled to trial de novo to determine if conduct litigated in elections objections case constituted violations of 1153(a) and (b). Consistent with Evidence Code, evidence from representation trial may be part of record in later ULP hearing.
ALBERT C. HANSEN, 4 ALRB No. 41

453.02 A party may be estopped from claiming that his/her uncharged conduct constituted ULP where he/she has acquiesced in the trial of such conduct as ULP.
GEORGE ARAKELIAN FARMS v. ALRB (1986) 186 Cal.App.3d 94

453.02 Where conduct is litigated solely to prove defense to ULP allegation, it may not be held to itself constitute ULP.
GEORGE ARAKELIAN FARMS v. ALRB (1986) 186 Cal.App.3d 94

453.02 Where conduct is neither charged as ULP nor alleged as such in complaint, Board may not find that conduct constituted ULP unless it is fully and fairly litigated.
GEORGE ARAKELIAN FARMS v. ALRB (1986) 186 Cal.App.3d 94

453.02 Alleged joint employer not unfairly surprised when General Counsel requested amendment of complaint, since president of and counsel for both companies were present during entire hearing and no request for continuance or reopening was made by joint employer.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

453.02 No prejudice where General Counsel's first indicated in subpoena after prehearing conference that it intended to call as witnesses various managerial and supervisorial personnel which the employer had already included on its list of witnesses, and where subpoena served on employer several weeks before hearing.
DOLE FARMING, INC., 22 ALRB No. 8

453.02 Prehearing Conference Order does not have the legal effect of a stipulation and some variance between testimony and summary of facts in order, as long as it does not constitute surprise as to the material issues in dispute, is both expected and permissible.
DOLE FARMING, INC., 22 ALRB No. 8

453.03 Conduct Of Hearing; Fair Hearing; Bias; Disqualification Of ALJ; Right To Appear; Power Of ALJ To Control Hearing

453.03 While it is better practice to exclude all nonparty witnesses, no abuse of discretion or prejudice was shown from presence of nonintervening charging parties.
OASIS RANCH MANAGEMENT, INC., 18 ALRB No. 11

453.03 Where transcript of hearing and ALJD reveal ALJ gave all parties ample opportunity to present their cases and ALJ based his decision on the entire record, no appearance of bias on part of ALJ.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC., 14 ALRB No.

453.03 An employer cannot complain of the quality of representation when it chooses to represent itself, expressly waiving the right to appear by counsel at the hearing and voluntarily electing to be represented by its managing partner, who was given considerable leeway in presenting the employer's case and in cross-examining witnesses. The employer failed to establish that the conduct of the hearing in the evidentiary rulings and choice in the presentation of evidence by the selection of certain witnesses, deprived the employer of the opportunity to fully present and argue evidence. As such, no question is presented concerning a lack of due process.
LIGHTNING FARMS 12 ALRB No. 7

453.03 General Counsel's use of declarations provided to the General Counsel by an Employer pursuant to the external complaint procedure in an unfair labor practice procedure undermines and jeopardizes the effectiveness of the external complaint procedure. Litigants may be inhibited from complaining about allegedly improper Board employee conduct for fear that any documents they submit might be used against them at a subsequent hearing. However, the impact of the General Counsel's actions on the effectiveness of the external complaint policy does not establish any failure to provide the Employer full due process in the unfair labor practice hearing. The Board found that General Counsel's use of the declarations in the ULP case did not result in any prejudice to the Employer, since the declarations were not necessary to the decision and the Board did not rely on them in reaching its conclusion.
LIGHTNING FARMS 12 ALRB No. 7

453.03 Dissatisfaction from having lost prior cases before the same ALJ without a showing of bias or prejudice in the instant matter is insufficient justification for disqualification of the ALJ.
MARIO SAIKHON, INC., 16 ALRB No. 1

453.03 Violation not alleged in complaint may nevertheless be found when activity was related to and intertwined with allegations in complaint and was fully litigated.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209 [Appendix]

453.03 Incidents not fully litigated where employer had no way of knowing whether conduct was merely being used as factor for setting aside election, or as independent ULP's Board's finding of ULP's; was therefore contrary to principles of due process.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209 [Appendix]

453.03 Regulations regarding disqualification of ALJ's did not

deny due process where aggrieved party could seek discretionary interim Board review of ALJ's refusal to disqualify himself, and had appeal of right after issuance of ALJ decision. CALIFORNIA COASTAL FARMS v. DOCTOROFF (1981) 117 Cal.App.3d 15

453.03 Party seeking disqualification for bias must show actual bias and show that ALJ acted on that bias in some prejudicial manner. Appearances, or perceptions of party litigant, are not sufficient.
ANDREWS v. ALRB (1981) 28 Cal.3d 781

453.03 Under ALRB regulation 20230.4 (now 20263) an ALJ is required to disqualify himself only when, in the opinion of the ALJ, disqualification is sufficient on its face.
ANDREWS v. ALRB (1981) 28 Cal.3d 781

453.03 On review, issue is whether there is substantial evidence for Board decision. Lack of substantial evidence does not prove bias of the fact finder.
ANDREWS v. ALRB (1981) 28 Cal.3d 781

453.03 ALRB regulation 20230.4 (now 20263) does not give a right to automatically disqualify an ALJ.
ANDREWS v. ALRB (1981) 28 Cal.3d 781

453.03 Fact that ALJ uniformly credited evidence of one party and discredited evidence of another is not relevant to determination of whether ALJ is biased.
ANDREWS v. ALRB (1981) 28 Cal.3d 781

453.03 Bias cannot be proved by mere reference to ALJ's former clients, his/her personal beliefs, or his/her ethnic background.
ANDREWS v. ALRB (1981) 28 Cal.3d 781

453.03 Temporary status of ad hoc ALJ is not a relevant factor in deciding whether ALJ should be disqualified.
ANDREWS v. ALRB (1981) 28 Cal.3d 781

453.03 ALJ's denial of continuance at end of hearing where party did not show why witness could not be located earlier with exercise of due diligence and ALJ's cutting off of lines of questioning where testimony was cumulative or not leading to relevant information is consistent with ALJ's authority to control hearing and is not evidence of bias. ALJ's communication of reservations as to validity of separation agreement ending strike not evidence of bias.
SUNRISE MUSHROOMS, INC., 22 ALRB No. 2

453.03 ALJ not disqualified; no disqualifying interest or appearance of bias shown. ALJ conduct of hearing and decision showed no bias against respondent.
GALLO VINEYARDS, INC., 30 ALRB No. 2

453.04 Continuance

453.04 ALJ's denial of continuance at end of hearing to call additional witness, where party did not show why witness could not be located earlier with exercise of due diligence, not improper or indicative of bias.
SUNRISE MUSHROOMS, INC., 22 ALRB No. 2

453.05 Place Of Hearing

453.06 Rehearing Or Reopening Record; Newly Discovered Evidence

453.06 Backpay claimant's motion granted to reopen hearing to correct, as mistaken, her admission that she had been employed during part of her backpay period.
UFW/SUN HARVEST (Moses) 13 ALRB No. 26

453.06 ALJ properly declined to reopen the record after the close of the hearing where the evidence proffered by General Counsel would not controvert clear, credited testimony in the record.
VERDE PRODUCE CO., INC. 10 ALRB No. 35

453.06 Absent extraordinary circumstances or newly discovered or previously unavailable Evidence, refusals to set or dismissal of election objections in prior proceeding will not be reconsidered in technical refusal to bargain case.
TRIPLE E PRODUCE CORP., 5 ALRB No. 65

453.06 In the absence of newly-discovered or previously unavailable evidence, it is generally impermissible to relitigate representation issues in an unfair labor practice proceeding. (ALJD p. 5.)
JULIUS GOLDMAN'S EGG CITY, 5 ALRB No. 8

453.06 Board reversed ALO's partial granting of motion for summary judgment and ordered hearing reopened.
ALBERT C. HANSEN, 4 ALRB No. 41

453.06 Party seeking reopening of record has burden of demonstrating that it has evidence which was previously unavailable or newly discovered. Moving party must have shown reasonable diligence in prior hearing.
ALBERT C. HANSEN, 4 ALRB No. 41

453.06 Doctrine prohibiting relitigation of representation issues in subsequent related unfair labor practice proceedings is applicable to proceedings under ALRA. In absence of newly-discovered or previously-unavailable evidence or extraordinary circumstances, respondent in a refusal-to-bargain proceeding may not litigate matters which were or could have been raised in prior representation proceeding.
PERRY FARMS, INC., 4 ALRB No. 25

453.06 To apply doctrine prohibiting relitigation of representation issues in related unfair labor practice proceedings, law requires only that respondent had

opportunity to file and thereafter to litigate, proper objections to conduct of election and/or to conduct affecting its results.
PERRY FARMS, INC., 4 ALRB No. 25

453.06 Employer's claim of unfair surprise and request for rehearing rejected where it failed to point to any evidence it would have introduced had it had more notice.
NISH NOROIAN FARMS v. ALRB (1984) 35 Cal.3d 726

453.06 In absence of newly discovered or previously unavailable evidence or extraordinary circumstances, respondent in refusal-to-bargain proceeding may not litigate matters which were or could have been raised in prior representation proceedings.
PERRY FARMS INC. v. ALRB (1978) 86 Cal.App.3d 448

453.07 Witness Fees

453.07 Backpay claimant is entitled to receive mileage and witness fees from union which subpoenaed him to appear but neglected to inform him that hearing was continued.
UFW/SUN HARVEST (Moses) 13 ALRB No. 26

453.08 Interpreters; Translation of Testimony

453.08 Where General Counsel failed to prove that statements in leaflet distributed by employer to its employees, which were not coercive in themselves, were significantly stronger in Spanish than in English, were made in atmosphere of fear, or took on more threatening meaning in agricultural context, Board found no violation of section 1153(a) under NLRB v. Gissel Packing (1969) 395 U.S. 575, [71 LRRM 2481]
KARAHADIAN RANCH, INC., 4 ALRB No. 69

453.09 Duty Of Other State Agencies To Furnish Records; Labor Code Section 1151.5

453.10 Sanctions

453.11 Appeals

453.11 Regulations regarding disqualification of ALJ's did not deny due process where aggrieved party could seek discretionary interim Board review of ALJ's refusal to disqualify himself, and had appeal of right after issuance of ALJ decision.
CALIFORNIA COASTAL FARMS v. DOCTOROFF (1981) 117 Cal.App.3d 15

453.11 Judicial review unavailable where employer failed to appeal interim ruling of ALJ to Board, pursuant to ALRB regulation section 20240(f).
CALIFORNIA COASTAL FARMS v. DOCTOROFF (1981) 117 Cal.App.3d 15

453.11 Respondent's application to the Board for special permission to appeal an oral ruling of the ALJ pursuant to Board regulation section 20242 was untimely when it was filed more than five days after the ALJ's initial ruling.
D'ARRIGO BROS. CO. OF CALIFORNIA, 30 ALRB NO. 1.

453.11 Under Board regulation section 20242, the five day period for seeking permission from the Board to file an interim appeal of an ALJ's ruling runs from the date of the initial ruling of the ALJ, not from the date the ALJ denies the applicant's motion for reconsideration of that ruling.
D'ARRIGO BROS. CO. OF CALIFORNIA, 30 ALRB NO. 1.

453.11 The Board will only hear interim appeals of interlocutory rulings pursuant to Regulation 20242(b) that cannot be addressed effectively through exceptions filed pursuant to Regulations 20282 or 20370(j)
PREMIERE RASPBERRIES, LLC dba DUTRA FARMS, 38 ALRB No. 11

453.11 The Board will reject an application for special permission for interim appeals if it fails to state the necessity for interim review as required by Regulation 20242(b).
PREMIERE RASPBERRIES, LLC dba DUTRA FARMS, 38 ALRB No. 11

453.11 Section 20242 (b) of the Board's regulations clearly prohibits the filing of further pleadings in support of a special appeal unless requested by the Board through the Executive Secretary.
PREMIERE RASPBERRIES, LLC dba DUTRA FARMS, 38 ALRB No. 11

454.00 SETTLEMENT AND STIPULATIONS; APPEAL FROM

454.01 In General

454.01 Stipulations must be given a reasonable construction with a view to giving effect to the intent of the parties. Unless it is clear from the record that both parties assented, there is no stipulation.
UFW/JUAN MARTINEZ, 13 ALRB No. 6

454.01 Board approved settlement in which (1) the good standing of union members who objected to payment of CPD dues on the ground that they were used for political expenditures was reinstated and passed dues forgiven; (2) union agreed to seek reinstatement for union members who had been discharged from employment as a consequence of loss of union good standing for non-payment of dues; (3) union agreed to utilize internal rebate procedure established to return non-compellable dues to objecting members; and (4) union agreed not to terminate good standing in the future for non-payment of dues without giving objecting member opportunity to use rebate procedure. Board noted

that dues of objecting members held in escrow under settlement procedure and conditioned it's approval of settlement on one year limit on rebate, payment of interest on rebate dues, and deletion of timeliness limitations on objections.
UFW/GILES BREAUX, et al., 11 ALRB No. 32

454.01 Where facts stipulated to Board without hearing, the General Counsel failed to establish that the employer refused to provide information or otherwise refused to bargain where there existed a factual conflict in the record, which was impossible to resolve without credibility determinations.
O.E. MAYOU & SONS, 11 ALRB No. 25

454.01 In a stipulated record where the General Counsel had charged a continuing course of bad faith bargaining and the Board found a prima facie case beginning with facts contained in later submitted and contested stipulations, the Board remanded for further proceedings.
O.E. MAYOU & SONS, 11 ALRB No. 25

454.01 Stipulations entered into during the election portion of a consolidated hearing carry over into the unfair labor practice phase and presumptively establish the facts to which the stipulations apply. Such stipulations constitute authorized and adoptive admissions, and, absent a showing that fundamental concepts of fairness and due process require that the stipulations are based on a material excusable mistake of fact, a party will not be relieved of the consequences of the stipulations.
SEQUOIA ORANGE CO., 11 ALRB No. 21

454.01 Board excluded stipulation entered into by General Counsel and respondent during the hearing on the underlying unfair labor practice charge, because the stipulation was made for a limited purpose, and there was substantial proof that respondent did not make an unconditional offer of reinstatement on the date recited in the stipulation.
KITAYAMA BROTHERS, 10 ALRB No. 4

454.01 Board entertained union's Request for Review of General Counsel's determination to close case under the authority of Labor Code section 1142(b) and, as required therein, issued a published decision.
SAM ANDREWS' SONS, 16 ALRB No. 6

454.01 Where the parties had resolved their differences, and as the charging party had withdrawn its exceptions to the ALJ's decision, the Board held it would not effectuate the purposes of the Act tore-open the hearing to take evidence on this novel issue of strike replacements recruited without knowledge of the strike.
SUN HARVEST, INC., 6 ALRB No. 4

454.01 Upon affirming ALJ's conclusion that respondent violated

section 1153(e) and (a) of the Act, the Board, acting on a join motion of respondent and the charging party stating that all parties had entered into a private settlement agreement, dispensed with issuing a remedial order, finding that the private settlement agreement was in accordance with the policies of the Act, in view of the unique circumstances presented in the case, and noting that respondent had terminated its agricultural operations.
HEMET WHOLESALE COMPANY, 4 ALRB No. 75

454.01 A request by agricultural employees for review of a decision and order of the ALRB settling an unfair labor practice charge against the union over the objections of the employees was ripe for adjudication.
GILES BREAUX v. ALRB (1990) 217 Cal.App.3d 730

454.01 By agreeing to a settlement, the union and the Board foreclosed adjudication of the original dispute and thus rendered irrelevant defenses that might have been asserted in proceedings on that dispute.
GILES BREAUX v. ALRB (1990) 217 Cal.App.3d 730

454.01 A request by agricultural employees for review of a decision and order of the ALRB approving a written agreement in settlement of unfair labor practice charges against the union over the objection of the employees was not moot.
GILES BREAUX v. ALRB (1990) 217 Cal.App.3d 730

454.01 Waiver language in first settlement was superseded by later agreement which reserved the Board's right to investigate and resolve issues emanating from initial layoff and failure to rehire.
NISH NOROIAN FARMS v. ALRB (1984) 35 Cal.3d 726

454.01 A written instrument must be construed as a whole, including multiple writings that are part of same contract. The factual context in which agreement is reached is relevant to interpretation of the agreement, unless the words are susceptible to only one interpretation.
NISH NOROIAN FARMS v. ALRB (1984) 35 Cal.3d 726

454.01 Settlement agreement which excluded a particular discrimination charge did not preclude litigation of an amended charge alleging refusal-to-bargain, since the bargaining allegation was related to the incident which the parties intended to litigate.
NISH NOROIAN FARMS v. ALRB (1984) 35 Cal.3d 726

454.01 Board affirms ALJ's dismissal of bargaining allegations after parties reach a private party settlement, under which employer agreed to recognize Union as exclusive representative of the workers on acreage previously farmed by employer's predecessor.
GREWAL ENTERPRISES, INC., 24 ALRB No. 7

454.01 Board granted continuance in election objections proceeding to allow Employer that had declared bankruptcy and its counsel to determine whether counsel could be compensated for its representation and whether Employer and its counsel would continue the representation. The Board offered for consideration by all parties the option of proceeding with a stipulated record.
NURSERYMEN'S EXCHANGE, INC., 37 ALRB No. 1

455.00 ADMINISTRATIVE LAW JUDGES' DECISIONS

455.01 In General

455.01 Where ALJD relies on record, and transcript reveals ALJ gave ample opportunity to all parties to present their cases, ALJD not constitutionally defective.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC., 14 ALRB No. 8

455.01 Where the question of employer's good faith was raised by employer's defense of bona fide impasse, ALJ properly analyzed employer's overall course of conduct in collective bargaining, despite General Counsel's desire to limit pleadings to allegations of per se refusal to bargain.
ROBERTS FARMS, INC., 9 ALRB No. 27

455.01 The Board held that the ALJ erred in dismissing a paragraph of the complaint alleging recruitment of replacement employees without informing them of the existence of a labor dispute merely because there was no precedent to establish that the conduct alleged therein constituted a violation of section 1153(a), and that the ALJ should have allowed the general counsel to develop a full factual record on the novel issue so that appropriate findings and conclusions could be made.
SUN HARVEST, INC., 6 ALRB No. 4

455.01 ALJ's refusal to admit evidence, if error, was harmless because it is unlikely Board would have reached different result even if evidence had been admitted.
M. B. ZANINOVICH, INC. v. ALRB (1981) 114 Cal.App.3d 665

455.02 Exceptions; Response; Cross-Exceptions

455.02 Exceptions will not be stricken where, though exceedingly brief, they are minimally sufficient to allow the Board to fully address them on their merits. (Lack of citations to the record due to lack of evidence in record and therefore lack of support goes more to merits of exceptions than to technical sufficiency.) Lack of proof of service not fatal where General Counsel was in fact served and no prejudice shown.
OLSON FARMS/CERTIFIED EGG FARMS, INC., 19 ALRB No. 20

455.02 Failure to state grounds for an exception, as required by Regulation 20282(a)(1), is a sufficient basis for its dismissal.
OASIS RANCH MANAGEMENT, INC., 18 ALRB No. 11

455.02 Failure to state grounds for an exception, as required by Regulation 20282(a)(1), is a sufficient basis for dismissing exceptions.
S & J RANCH, INC., 18 ALRB No. 2

455.02 Board declines to strike appendix to General Counsel's exceptions brief causing it to exceed 127-page limitation. Submission of the overlong brief was harmless since Board has not relied upon the appendix, a compilation of data already in the record.
MARIO SAIKHON, INC., 17 ALRB No. 6

455.02 Party excepting to factual findings required to cite to transcript in support of exception; description of record evidence not sufficient. (Board overrules UFW/Maggio 12 ALRB No. 16, fn. 1, to extent that decision inconsistent.)
ABATTI FARMS, INC. and ABATTI PRODUCE, INC., 14 ALRB No. 8

455.02 In compensation for receiving an incomplete Administrative Law Judge Decision, a party was provided a complete decision and given extra time to file exceptions to the decision.
LIGHTNING FARMS, 12 ALRB No. 7

455.02 Three-day extension of time for mailing provided Board section 20480(a) may be invoked when filing response to exceptions which were served on Executive Secretary by mail.
ABATTI FARMS, INC., 10 ALRB No. 40

455.02 Employer's exceptions that it was denied due process failed to conform to Board's regulation section 20282(a)(1) requiring references to the record.
PETER D. SOLOMON and JOSEPH R. SOLOMON dba CATTLE VALLEY FARMS/TRANSCO LAND AND CATTLE CO., 9 ALRB No. 65

455.02 General Counsel substantially complied with 8 Cal. Admin. Code 20480(b) by sending exceptions by regular rather than registered mail. No showing respondent prejudiced thereby. Motion to strike exceptions denied.
NASH-DE CAMP COMPANY, 8 ALRB No. 5

455.02 Late filing of exceptions allowed absent Respondent's showing of prejudices.
COLACE BROTHERS, INC., 8 ALRB No. 1

455.02 Board rejected General Counsel's motion to strike Respondent's exceptions as untimely in the absence of a showing by General Counsel that he suffered material

prejudice as a result of the late filing, citing Genesse Merchants Bank & Trust Co. (1973) 206 NLRB 274 [84 LRRM 1237].
ABATTI FARMS INC. 5 ALRB No. 34

455.02 Employer waived right to object to use of daily method of backpay computation by failing to challenge ALJ's decision on that ground.
NISH NOROIAN FARMS v. ALRB (1984) 35 Cal.3d 726

455.02 Employer waived evidentiary objection to ALJ's decision by failing to raise issue in exceptions filed with Board.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

455.02 Board has declined to dismiss exceptions where compliance with Regulation 20282, subdivision (a)(1), is sufficient to allow the Board to identify the exceptions and the grounds therefor and to address them on their merits.
WARMERDAM PACKING CO., 24 ALRB No. 2

455.02 Board found without merit General Counsel's exception to ALJ decision based on failure to provide Mixtec or Zapotec translator to witness whose Spanish was marginal. General Counsel proceeded with the available Spanish translator at the hearing and did not adequately create a record regarding the translation issue. Furthermore, the Board reviewed the entire record de novo and found it to be sufficient to reach its decision.
CIENIGA FARMS, INC., 27 ALRB No. 5

455.02 Failure to comply with Regulation 20282 is grounds for dismissing exceptions. (See, e.g., *S & J Ranch, Inc.* (1992) 18 ALRB No. 2.) However, the Board has declined to dismiss exceptions where compliance with the regulation is sufficient to allow the Board to identify the exceptions and the grounds therefore and address them on their merits. (*Warmerdam Packing Company* (1998) 24 ALRB No. 2; *Olson Farms/Certified Egg Farms, Inc.* (1993) 19 ALRB No. 20; *Oasis Ranch Management, Inc.* (1992) 18 ALRB No. 11.) Exceptions accepted only to the extent that the grounds therefor could be identified.
LASSEN DAIRY, INC., 35 ALRB No. 7

455.03 Weight To Be Given Administrative Law Judges' Findings In General; Credibility Resolutions; Failure of ALJ To Meet Minimum Standards

455.03 Although ALJ's credibility resolutions were based in part on demeanor, Board finds that ALJ improperly discredited employer's witnesses for insufficient reasons. Board also finds that testimony of employee witnesses credited by the ALJ was inconsistent and not believable. Board thus overrules the ALJ's credibility resolutions, concluding that the clear preponderance of all the relevant evidence demonstrates that they are incorrect. (Standard Dry Wall Products (1950) 91 NLRB 544 [26 LRRM 1531].)

DAVID FREEDMAN & CO., 15 ALRB No. 9

455.03 Board disapproves the IHE/ALJ's credibility resolutions based on examiner/judge's subjective impressions of witnesses' thought processes or subjective analysis of witnesses' psychological make-up. IHE/ALJ must determine witnesses' truthfulness on stand without unwarranted forays into subjective realm of psychology or resort to other personal forms of speculation.
SAM ANDREWS' SONS, 15 ALRB No. 5

455.03 Where record reveals ALJ gave all parties ample opportunity to present their case and based his decision on entire record, respondent's argument that it be disregarded as biased is rejected.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC., 14 ALRB No. 8

Where ALJD relies on record, and transcript reveals ALJ gave ample opportunity to all parties to present their cases, ALJD not constitutionally defective.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC., 14 ALRB No. 8

455.03 Board found "somewhat strained" the ALJ's explanation that the testimony of the employer's general manager concerning the alleged discriminatee's job performance of the witness's attempt at hearing to justify his intemperate decision to discharge the employee.
L.A. ROBERTSON FARMS, INC., 12 ALRB No. 11

455.03 Board rejects employer's contention that an employee witness was not reliable and that its own witness was reliable where the ALJ discredited the employer's witness based on inconsistencies in his testimony and contradictions with the testimony of other employer witnesses.
ARCO SEED COMPANY, 11 ALRB No. 1

455.03 ALJ properly discredited employer where testimony was aggressive, argumentative, scornful of the proceedings, and inconsistent, particularly in contrast to other testimony by employer which was straight-forward and unargumentative.
VERDE PRODUCE CO., INC., 10 ALRB No. 35

455.03 Board declined to defer to ALJ's findings where not founded on demeanor-based credibility resolutions and made its own findings regarding employer's motive for implementing a rule change, based on the logical consistency and probability of the testimony taken as a whole.
ARMSTRONG NURSERIES, INC., 9 ALRB No. 53

455.03 Board affirmed ALJ's credibility resolutions in favor of discriminatees where resolutions were based on logical detailed corroboration, and testimonial demeanor.

RIGI AGRICULTURAL SERVICES, INC., 9 ALRB No. 31

455.03 An employee named as a discriminatee, who failed to testify at the hearing, was placed by a disinterested witness out of the country at the time he allegedly requested reemployment; the ALJ's unexplained credibility resolution was insufficient to establish that the employee made a timely application for employment.
ARAKELIAN FARMS, 9 ALRB No. 25

455.03 ALO conclusion was based on the testimony of one witness, with no corroboration or refutation and complaint was not amended to allege the conduct as a violation. Board determined that issue was not fully litigated and made no determination as to whether Act was violated.
C. MONDAVI & SONS, dba CHARLES KRUG WINERY, 5 ALRB No. 53

455.03 While the Board reached the same ultimate conclusions as the ALO, the Board found that the ALO's Decision failed to meet the minimum standards, as set forth in S. Kuramura, Inc. (1977) 3 ALRB No. 49, and as a result, the Board was not bound by the implicit credibility resolutions and, instead, examined the undisputed facts and reasonably drawn inferences and tested them against the ALO's ultimate conclusions.
EDWIN FRAZEE, INC., 4 ALRB No. 94

455.03 Board declines to render credibility resolution for to do so would require judging credibility of Board agent, "a task which should be avoided where possible."
MIKE YUROSEK & SONS, INC., 4 ALRB No. 54

455.03 Where ALO's decision fails to rule on some allegations in complaint, evidentiary basis for certain determinations absent, pretrial evidence is not considered and inapplicable legal standards were applied to certain issues. Board found it necessary to set out facts and rules of law in great detail.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

455.03 An ALO's report which merely refers to the allegations in the pleadings is clearly insufficient. The report should contain a discussion of the relevant evidence, noting whether contradicted or not. Section 20279 is intended to require the ALO to state the reasons for their findings of fact, as well as for their conclusions of law.
S. KURAMURA, INC., 3 ALRB No. 49

455.03 Where ALO stated only that "the testimony of the general counsel's (sic) witnesses were not credible", the Board must examine the undisputed facts and the reasonable inferences which can be drawn therefrom and test them against the ALO's ultimate conclusions.
S. KURAMURA, INC., 3 ALRB No. 49

455.03 The findings of the ALO should be considered together

with the consistency and inherent probability of the testimony. The Board is not required to uphold automatically the ALO's decision on issues of fact, even though that decision is not "clearly erroneous."
S. KURAMURA, INC., 3 ALRB No. 49

455.03 Board erred in rejecting uncontradicted and unimpeached testimony of employer's negotiator indicating sincere belief that employer could suffer sanctions for violating president's wage guidelines.
CARL JOSEPH MAGGIO, INC. v. ALRB (1984) 154 Cal.App.3d 40

455.03 ALJ's credibility resolutions adopted by Board must be accepted by courts unless they are patently incredible or inherently improbable.
BABBITT ENGINEERING & MACHINERY v. ALRB (1984) 152 Cal.App.3d 310

455.03 When new employer acquires unionized business, he has clear incentive to rid business of union by refusing to hire former employees. Hence, Board was entitled to reject self-serving but unconvincing justifications given by new employer for failure to hire predecessor employees.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

455.03 Board must accept as true intended meaning of uncontradicted and unimpeached evidence. Interest of witness does not warrant rejection of his or her testimony in all circumstances, particularly where contrary evidence is available and opposing party fails to produce it.
MARTORI BROTHERS DISTRIBUTORS v. ALRB (1981) 29 Cal.3d 721

455.03 Board, not ALJ, is ultimate fact finder under the ALRA.
ANDREWS v. ALRB (1981) 28 Cal.3d 781

455.03 Board, not ALJ, is fact finder to which statutorily mandated deference must be paid. The rule does not change when Board and ALJ disagree, even where testimonial demeanor was factor in the ALJ's findings.
GEORGE ARAKELIAN FARMS v. ALRB (1980) 111 Cal.App.3d 258

455.03 ALJ findings, if supported by credible evidence, should be accorded great weight and be rejected only on basis of contrary evidence of "considerable substantiality." (Citing Lamb v. WCAB (1974) 11 Cal.3d 274.)
GEORGE ARAKELIAN FARMS v. ALRB (1980) 111 Cal.App.3d 258

455.03 Underlying policy of ALRA is to protect collective bargaining rights of farm workers; hence, no special weight need be given an ALJ decision that dismisses an unfair labor practice charge. (Dissent by Tamura, J.)
GEORGE ARAKELIAN FARMS v. ALRB (1980) 111 Cal.App.3d 258

455.03 Board, not ALJ, is fact finder to which statutory deference must be paid. Therefore, standard of review is not altered when Board and ALJ disagree or draw different inferences from evidence. WCAB cases relied on by majority are based on specific statute not relevant here. (Dissent by Tamura, J.)
GEORGE ARAKELIAN FARMS v. ALRB (1980) 111 Cal.App.3d 258

455.03 Demeanor is an unreliable indication of truthfulness and is only a factor in overall evaluation of testimony in light of its rationality or internal consistency and manner in which it hangs together with other evidence. (Concurrence by Staniforth, J.)
ABATTI FARMS, INC. v. ALRB (1980) 107 Cal.App.3d 317

455.03 Credibility determination based not on demeanor but on plausibility of employees' testimony overruled by Board where review of record as a whole convinces Board that employer's version of disputed conversation is more plausible.
S&S RANCH, INC., 22 ALRB No. 7

455.03 The Board will not disturb credibility determinations, particularly where they are based largely on demeanor and are supported by a careful evaluation of the consistency of the relevant testimony and its plausibility in light of known facts.
SUNRISE MUSHROOMS, INC., 22 ALRB No. 2

455.03 Where ALJ's credibility determinations are not based on demeanor, but on such things as reasonable inferences, the consistency of witness testimony, plausibility of the testimony in light of other evidence and of common experience, or the presence or absence of corroboration, the Board may overrule such determinations where they conflict with well supported inferences from the record considered as a whole.
S&S RANCH, INC., 22 ALRB No. 7

455.03 Board disagreed with ALJ who did not credit the General Counsel’s witnesses’ testimony that they were fired. The ALJ’s credibility determinations were not demeanor based, but rather based upon what he perceived to be the implausibility and inconsistency of the witnesses’ testimony. Board reviewed the record de novo and found this testimony to be both plausible and consistent.
CIENIGA FARMS, INC., 27 ALRB No. 5

455.03 Board credited the General Counsel’s witnesses who testified, contrary to the employer’s testimony that they voluntarily quit, that they were fired when they entered the field and attempted to work along with the rest of the crew. The Board was especially impressed with the recollection and consistency of detail among these witnesses.
CIENIGA FARMS, INC., 27 ALRB No. 5

455.03 The Board will not disturb credibility resolutions based on demeanor unless the clear preponderance of the evidence demonstrates that they are in error. (*P.H. Ranch* (1996) 22 ALRB No. 1; *Standard Drywall Products* (1950) 91 NLRB 544.) 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. (*P.H. Ranch*, supra.)
RIVERA VINEYARDS, et al., 29 ALRB No. 5

455.03 Claim that ALJ's credibility determinations were merely conclusory and not based on any examination of corroborating or contradictory evidence rejected where decision reflects that ALJ evaluated the testimony in light of the evidentiary record as a whole, discussed the consistency and plausibility of the testimony in light of uncontested or admitted facts, and made individualized observations concerning each witness's demeanor.
VINCENT B. ZANINOVICH & SONS, 34 ALRB No. 3

455.03 In the rare circumstance where there is no reasonable basis for determining the relative credibility of testimony that is in direct opposition, the burden of proof would not be carried. But where ALJ did find a reasonable and sufficient basis for resolving conflicts in the testimony via well-supported credibility determinations, the burden of proof was carried.
VINCENT B. ZANINOVICH & SONS, 34 ALRB No. 3

455.03 Even assuming witnesses were not disinterested and could be expected to testify only in a manner supportive of their employer's case, they cannot be discredited simply on that basis. Rather, only if their demeanor had reflected a lack of veracity and/or their testimony was inconsistent or implausible, or it did not fit with other evidence in the record, would it have been proper to discredit their testimony.
WOOLF FARMING CO. OF CA, INC., 35 ALRB No. 2

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, enfd (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 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

456.00 DISCOVERY

456.01 In General

456.01 Employer's argument that it was not afforded discovery with respect to the complaint is irrelevant, since Employer failed to file timely answer and case thus did not go to hearing.
AZTECA FARMS, INC., 18 ALRB No. 15

456.01 Respondent's attempt to discover, by oral deposition, information relating to backpay issues was premature prior to a determination that the discharged workers were

entitled to backpay.
ARNAUDO BROS. INC., 3 ALRB No. 78

456.01 The ALJ properly denied Respondent's request to take oral depositions since the complaint was sufficiently clear to put Respondent on notice as to what witnesses and evidence would be necessary to present its defense.
ARNAUDO BROS. INC., 3 ALRB No. 78

456.01 Board declines to impose sanctions on employer for tardy compliance with discovery rules, since no prejudice to General Counsel was shown.
SUNRISE MUSHROOMS, INC., 22 ALRB No. 2

456.01 Executive Secretary did not abuse his discretion under Regulation '20246 in denying request to take deposition where party failed to make required showing that witness would be unavailable for hearing.
SUNRISE MUSHROOMS, INC., 22 ALRB No. 2

456.01 Motion seeking issue preclusion or reopening of record due to General Counsel's failure to produce exculpatory declarations from related election cases denied for lack of prejudice where claims that declarations were exculpatory either were without merit or Board's decision rendered them moot.
COASTAL BERRY COMPANY, LLC, 28 ALRB No. 7

456.01 Section 20262 (m) of the Board's regulations gives an ALJ authority to grant a protective order with respect to a document that is subject to discovery "as may be appropriate and necessary." As the regulations do not define "appropriate and necessary," the Board will look to California and federal case law holding that protective orders may issue upon a showing of "good cause" in determining when a protective order is appropriate and necessary under the Board's regulations.
D'ARRIGO BROS. CO. OF CALIFORNIA, 30 ALRB NO. 1.

456.01 In order to demonstrate that good cause for the issuance of a protective order, a party must show that the documents in question are truly confidential, and that disclosure of the documents would cause a clearly defined and serious injury. Broad allegations of harm are not sufficient; the party must provide specific demonstrations of fact supported by affidavits and concrete examples.
D'ARRIGO BROS. CO. OF CALIFORNIA, 30 ALRB NO. 1.

456.01 It is well established under California and federal case law that the party seeking a protective order bears the burden, for each particular document it seeks to protect, of showing the specific harm or prejudice will result if no protective order is granted.
D'ARRIGO BROS. CO. OF CALIFORNIA, 30 ALRB NO. 1.

456.01 Respondent seeking a protective order for negotiation

notes did not provide adequate support for its argument that the notes were confidential when it merely stated that its bargaining representatives did not contemplate that the notes would ever be disclosed to a third party.

D'ARRIGO BROS. CO. OF CALIFORNIA, 30 ALRB NO. 1.

456.02 Subpoenas Duces Tecum And Ad Testificandum; Investigatory Subpoenas; Refusal To Obey; Contempt; Labor Code Section 1151

456.02 Regional Director denied charging party's request to withdraw section 1154(d)(4) charge and issued notice of hearing under section 1160.5; Board denied charging party's request for enforcement of subpoenas of agency officials on grounds that determination that section 1154(d)(4) charge has merit not required for section 1160.5 hearing to proceed, but ultimately quashed notice of hearing on grounds that dispute not subject to resolution under sections 1160.5 and 1154(d)(4).
UNITED VINTERS, INC., 10 ALRB No. 34

456.02 In backpay compliance proceeding, discriminatee served with subpoena duces tecum by the respondent must appear and testify, or petition in writing to revoke the subpoena within five days after date of service, except where subpoena has been served less than five days before hearing, in which case the petition to revoke is due on the first day of the hearing.
GEORGE LUCAS & SONS, 10 ALRB No. 6

456.02 Where backpay discriminatee did not comply with nor move to revoke subpoena served by the respondent, erred in reviewing requested documents in camera and/or then failing to turn them over to the respondent on grounds matters related thereto not probative or too consumptive of time; Board remanded to ALJ to reopen record to enforce subpoena, take additional evidence if necessary, and issue supplemental decision.
GEORGE LUCAS & SONS, 10 ALRB No. 6

456.02 Respondent not entitled to notice of subpoenas issued to third parties as there was no showing of surprise or prejudice.
VALDORA PRODUCE COMPANY and VALDORA PRODUCE COMPANY, INC., 10 ALRB No. 3

456.02 Most appropriate remedy for intentional refusal to comply with subpoena duces tecum is court-ordered contempt pursuant to Regulation section 20250(i); however, in certain circumstances, concealment of subpoenaed evidence, especially after denying its possession and thereby avoiding General Counsel's enforcement request, may result in the Board drawing adverse inferences or striking or precluding testimony of other evidence relating to the issue. Given the unartful construction of the original subpoena and the untimely request for

sanctions, the Board declined to order sanctions for noncompliance.
V. B. ZANINOVICH & SONS, 9 ALRB No. 54

456.02 Board follows Brown v. Superior Court (1977) 71 Cal.App.3d 141 which held that since W-2 forms must be attached to both state and federal income tax returns, they constitute an integral part of such returns and thereby fall within the judicially created privilege against disclosure of tax returns. Board overrules its prior decisions to extent that they may be inconsistent with Brown. (George Lucas, 10 ALRB No. 6.)
UKEGAWA BROTHERS, et al., 16 ALRB No. 18

456.02 Discovery requests regarding regional office handling and disposition of charges and election petitions denied as irrelevant to ULP alleging Respondent's discrimination despite asserted contention of denial of due process and equal protection.
ROGERS FOODS, INC., 8 ALRB No. 19

456.02 Superior Court refusal to enforce subpoenas seeking employee lists did not estop Board from later determining in administrative proceedings that employer failed to provide adequate lists.
CARIAN v. ALRB (1984) 36 Cal.3d 654

456.02 Entire election process is an "investigation" within meaning of 1151(a).
SAN DIEGO NURSERY CO. v. ALRB (1979) 100 Cal.App.3d 128

456.02 California Legislature intended to give ALRB broader investigatory powers than NLRB.
SAN DIEGO NURSERY CO. v. ALRB (1979) 100 Cal.App.3d 128

456.02 Scope of judicial inquiry limited in subpoena enforcement proceedings under 1151 to whether administrative subpoena was regularly issued and records sought are relevant to administrative inquiry and identified with sufficient particularity, unless subpoena is overbroad or unreasonably burdensome or oppressive.
ALRB v. LAFLIN & LAFLIN (1979) 89 Cal.App.3d 651

456.03 Giumarra

456.03 Claim that the rule of Giumarra Vineyards Corp. (1977) 3 ALRB No. 21 prevents a respondent from having an opportunity to prepare an adequate defense and allows the General Counsel to withhold exculpatory evidence was considered and rejected in Giumarra, as well as in numerous cases involving the NLRB, which has the same restrictions on discovery. Therefore, Board declines to revisit this well-settled issue.
DOLE FARMING, INC., 22 ALRB No. 8

457.00 BOARD DECISIONS

457.01 Proceedings And Arguments Before Board

457.01 Motion to strike whole of opposing party's brief denied, but motion granted as to certain portion of briefs which are no more than an attack on the Board's ability to judge the issues fairly.
BUD ANTLE, INC., 18 ALRB No. 6

457.01 Board will dismiss brief in whole or in part where it fails to further a party's legal position but is no more than a rancorous assault on the integrity and processes of the General Counsel, the ALJ, and/or the Board.
BUD ANTLE, INC., 18 ALRB No. 6

457.01 Board declines to reconsider its prior decision dismissing objections, but recognizing that unfair labor practice hearing arising from employer's refusal to bargain to obtain judicial review of Board certification may be appropriate occasion for reexamining legal standards applicable to certification of elections.
TRIPLE E PRODUCE CORP., 19 ALRB No. 2

457.01 Amicus curiae brief filed by leave of Board.
PERRY FARMS, INC., 4 ALRB No. 25

457.01 Respondent's failure to present to the ALJ its constitutional challenge to the Board's authority to exercise its jurisdiction precludes the Board from considering the issue.
BUD ANTLE, INC., 3 ALRB No. 56

457.01 Request for oral argument denied where briefs and exceptions to ALJ decision sufficient.
SAM ANDREWS' SONS, 3 ALRB No. 45

457.01 Board found it unnecessary to comment on each of many exceptions filed by parties. Many concerned ALO's supposed failure to find facts which would be cumulative or which related to alleged ULPs never formally charged.
SAM ANDREWS' SONS, 3 ALRB No. 45

457.01 Board finding of violation of Labor Code section 1153 subdivisions (a) and (c) was made without adequate notice and opportunity to defend and had to be set aside where the original charge had been that a layoff of agricultural workers, rather than the failure to rehire them constituted a violation, and the charge was never amended.
J.R. NORTON CO. v. ALRB (1987) 192 Cal.App.3d 874

457.01 Notwithstanding General Counsel's objection, Board properly admitted evidence necessary to consider remedy for ULP's charged by General Counsel in his complaint.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

457.01 ALRB is not a court, and its decisions are not judgments, since judicial power of state is vested by constitution in the various courts.
SANDRINI BROTHERS v. ALRB (1984) 156 Cal.App.3d 878

457.01 Where statute mandates specific finding before Board can take action, failure to make such a finding renders administrative action fatally defective.
YAMADA BROS. v. ALRB (1979) 99 Cal.App.3d 112

457.02 Finality; Modification Or Vacation Of Decision Or Order

457.02 Where employer seeks to resubmit in Dal Porto proceeding evidence purporting to demonstrate that it would not have entered into a contract calling for higher wages due to its weak financial condition that was previously proffered and rejected in the liability stage without explanation, rehabilitation, or expansion of supporting documentation, Board has no basis to retreat from prior rejection of such proof, and employer has suffered no prejudice entitling it to a Dal Porto hearing.
ROBERT H. HICKAM, 17 ALRB No. 7

457.02 Where an unfair labor practice case has progressed to a final compliance order, it is no longer pending before the Board. Such cases are not entitled to the hearing provided in William Dal Porto & Sons, Inc. v. ALRB (1987) 191 Cal.App.3d 1195 to show that no contract would have been entered into even in the absence of an employer's bad faith bargaining.
ROBERT H. HICKAM, 17 ALRB No. 7

457.02 On granting General Counsel's motion to correct a clerical mistake, the Board issued a supplemental decision substituting the correct name of the respondent into the decision and order.
UKEGAWA BROTHERS, 14 ALRB No. 15

457.02 In granting the General Counsel's motion to correct clerical error, the Board found its omission of eight discriminatees from the remedial orders in Vessey & Co., Inc. (1985) 11 ALRB No. 3 and (1983) 7 ALRB No. 44, was due to clerical error; and issued a Supplemental Decision and Corrected Order substituting the corrected order, including the eight names.
VESSEY & COMPANY, INC., 14 ALRB No. 4

457.02 Board may modify interest rate on backpay award since interest is only incidental to the amount of the award. Since Board has jurisdiction in compliance proceedings to determine whether any backpay is owing, it is not a violation of the principle of res judicata to modify interest rate.
ABATTI FARMS, INC., & ABATTI PRODUCE, INC., 14 ALRB No. 8

457.02 Board amended its Decision and Order by finding that

respondent hired permanent replacements before the economic strikers' unconditional offers to return to work, and limiting the Order to require full and immediate reinstatement to those returning economic strikers who were deprived of reinstatement solely due to respondent's altered, discriminatory seniority system.
VESSEY & COMPANY, INC., 13 ALRB No. 22

457.02 Court of Appeal overturned Board decision at 11 ALRB No. 6 in its entirety. In that case the Board specified the method of calculating backpay owed to strikers who had been discriminatorily replaced, and it modified the interest rate in the Order to the Lu-Ette rate. The court opined that the Board was not permitted to make these changes following a previous remand. The Board issued an Order vacating its decision at 11 ALRB No. 6 in its entirety.
FRUDDEN PRODUCE, INC., et al., 13 ALRB No. 3

457.02 Pursuant to Broad count remand, Board modified seven percent interest rate of original Order to provide for imposition of adjustable Lu-Ette rate from date of issuance of Lu-Ette Decision. (Lu-Ette Farms, Inc. (Aug. 18,1982) 8 ALRB No. 55.)
GEORGE ARAKELIAN FARMS 12 ALRB No. 29
Dissent: Remand Order not broad enough to permit modification of interest rates per Lu-Ette Farms, Inc. (1982) 8 ALRB No. 55.
GEORGE ARAKELIAN FARMS, 12 ALRB No. 29

457.02 Unilateral settlement final with respect to only 1 of 11 charging parties, who did not seek 1160.8 review of settlement, and Board retains jurisdiction to determine acquiescing party's backpay entitlement under settlement despite pending court review and remand to Board of order approving settlement.
UFW/CERVANDO PEREZ, 11 ALRB No. 33

457.02 In approving unilateral settlement of charges against union for terminating good standing and demanding discharge of members who refused to pay dues alleged to be spent for political activities, Board invited charging parties to seek review by Board in supplemental proceeding if payment of dues and utilization of internal union rebate procedure did not resolve their objections.
UFW/GILES BREAUX, et al., 11 ALRB No. 32

457.02 Where the Regional Director failed to give notice of the election to packing shed workers (who nonetheless received notice from the employer and cast challenged ballots), to the employees of a harvester later determined to be a labor contractor (and whose employees were therefore eligible to vote in the election) and to certain other employees of entities also determined to be labor contractors (because the labor contractors failed to provide their names to the Regional Director), the Board ordered subsequent briefing to address the effect

of the obligation of the parties to shoulder some of the obligation to notify eligible employees of an upcoming election.
SEQUOIA ORANGE CO., 11 ALRB No. 21

457.02 Pursuant to broad court remand, Board modified seven percent interest rate of original Order to provide for imposition of adjustable Lu-Ette rate from date of issuance of Lu-Ette Decision. (Lu-Ette, Farms, Inc. (Aug. 18, 1982) (8 ALRB No. 55.)
McANALLY ENTERPRISES, INC., 11 ALRB No. 2
Accord: FRUDDEN PRODUCE, INC., 11 ALRB No. 6

457.02 On granting General Counsel's motion to amend the complaint, the Board re- considered its Decision in 9 ALRB No. 22, and issued a Supplemental Decision amending its partial summary judgment Decision in 9 ALRB No. 22, vacating the Remand Order and substituting a final Order awarding summary judgment against employer.
F & P GROWERS ASSOCIATION, 9 ALRB No. 28

457.02 The Board properly corrected an error in an order to a farmer that was clerical and not the result of the exercise of judicial discretion where the order misidentified an agricultural employer as a corporation rather than as a general partnership, even though it referred to the partnership as the party which committed the unlawful practices and the corporation did not exist when the practices were committed.
UKEGAWA BROTHERS v. ALRB (1989) 212 Cal.App.3d 1314

457.02 Clerical error is to be distinguished from judicial error which cannot be corrected by amendment. The distinction between clerical error and judicial error is whether the error was made in rendering the judgment or in recording the judgment rendered.
UKEGAWA BROTHERS v. ALRB (1989) 212 Cal.App.3d 1314

457.02 Board had no duty to hold an evidentiary hearing to correct error where the clerical nature of the error appeared on the face of the record, nor was there unreasonable delay in correcting the error six years after the order was issued.
UKEGAWA BROTHERS v. ALRB (1989) 212 Cal.App.3d 1314

457.02 A court has the inherent power to correct clerical errors in its records so as to make these records reflect the true facts.
UKEGAWA BROTHERS v. ALRB (1989) 212 Cal.App.3d 1314

457.02 An error in an order of the Board misidentifying an agricultural employer as a corporation rather than as a partnership did not preclude the agricultural employer from seeking review of the order and thus did not deny the agricultural employer due process.
UKEGAWA BROTHERS v. ALRB (1989) 212 Cal.App.3d 1314

457.02 Board may return an unreasonably disciplined worker to union disciplinary process for lesser sanction.
PASILLAS v. ALRB (1984) 156 Cal.App.3d 312

457.02 Board supervision of union efforts to remedy unfair discipline of member does not unreasonably discourage or undermine union efforts to police itself.
PASILLAS v. ALRB (1984) 156 Cal.App.3d 312

457.02 Failure to pursue motion for reconsideration (reg. 20286) prevents employer from arguing that it was denied opportunity to be heard on issue decided by Board.
SUPERIOR FARMING CO. v. ALRB (1984) 151 Cal.App.3d 100

457.02 Request for reconsideration does not toll 30-day period for filing petition under section 1160.8. If court assumes jurisdiction before Board rules on request, then request is denied by operation of law. If Board grants request and later issues modified or revised decision, 30-day period for seeking court review begins again.
NISH NOROIAN FARMS v. ALRB (1984) 35 Cal.3d 726

457.02 Pursuant to Board's request, court would modify remedial order to delete reference to particular crop year and provide instead that offer of reinstatement should remain open until end of harvest season following issuance of court decree.
M. B. ZANINOVICH, INC. v. ALRB (1981) 114 Cal.App.3d 665

457.02 Term "final order" as used in 1160.8 has been construed to mean "an order of the board either dismissing a complaint in whole or in part or directing a remedy for the unfair labor practices found."
JACKSON & PERKINS CO. v. ALRB (1978) 77 Cal.App.3d 830

457.02 If court is without jurisdiction to review Board's order, filing of record with court does not divest Board of jurisdiction to modify its order under 1160.3.
JACKSON & PERKINS CO. v. ALRB (1978) 77 Cal.App.3d 830

457.02 Legislature expressly gave Board authority to reconsider its orders (see 1160.3).
JACKSON & PERKINS CO. v. ALRB (1978) 77 Cal.App.3d 830

457.02 Board's regulation regarding rehearing or reconsideration (sec. 20286(c)) does not affect finality of Board order.
JACKSON & PERKINS CO. v. ALRB (1978) 77 Cal.App.3d 830

457.02 Fact that party aggrieved by Board's order has filed motion for reconsideration does not extend time within which to petition for review.
JACKSON & PERKINS CO. v. ALRB (1978) 77 Cal.App.3d 830

457.02 Board's order is subject to modification by Board at any time before record is filed.
JACKSON & PERKINS CO. v. ALRB (1978) 77 Cal.App.3d 830

457.02 Board's rehearing procedure adds nothing to Board's statutory authority under 1160.3 to modify an order; it merely limits time and grounds for seeking reconsideration.
JACKSON & PERKINS CO. v. ALRB (1978) 77 Cal.App.3d 830

457.02 Pursuant to 1160.3, ALRB adopted its rehearing procedures whereby, in extraordinary circumstances, party may move for reconsideration or reopening record after Board decision or order.
JACKSON & PERKINS CO. v. ALRB (1978) 77 Cal.App.3d 830

457.02 If Board modifies its order before record is filed, any party aggrieved by new order has 30 days from date of modification to petition for court review.
JACKSON & PERKINS CO. v. ALRB (1978) 77 Cal.App.3d 830

457.02 A Board decision referring parties to the mandatory mediation and conciliation process set forth in Labor Code sections 1164 to 1164.13 is an interim non-final Board order that is non-reviewable. The Board retains its jurisdiction to reconsider or modify such a decision until a party seeks review of a final Board order confirming a mediator's report under Labor Code section 1164.5
FRANK PINHEIRO DAIRY, 36 ALRB No. 1

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

457.03 Remand For Further Hearings

457.03 It is not an abuse of discretion for the Board to remand a case for further evidence and argument after the filing of exceptions to the administrative law judge's decision where it affords the parties notice, an opportunity to make further oral and written submissions, and there is no actual prejudice.
ROBERT MEYER dba MEYER TOMATOES, 17 ALRB No. 17

457.03 Where a party is provided an opportunity to submit additional evidence on remand, does not seek clarification, and declines to do so, it has waived that opportunity.
ROBERT MEYER dba MEYER TOMATOES, 17 ALRB No. 17

457.03 Board has discretion to remand for development of more complete evidentiary record.
ROBERT MEYER dba MEYER TOMATOES, 17 ALRB No. 5

457.03 Board remands for development of more complete evidentiary record where General Counsel's case was so thinly presented that equities tip against deciding case on marginal record, ALJ was forced to confess near impossibility of rendering satisfactorily grounded decision, and proof of violations was incomplete.
ROBERT MEYER dba MEYER TOMATOES, 17 ALRB No. 5

457.03 Dissent: Dissent would find remand for further hearing inappropriate where parties had the opportunity to fully litigate the issues in dispute but chose to present only a sparse evidentiary record. In such circumstances, the Board should decide the matter on the record before it.
ROBERT MEYER dba MEYER TOMATOES, 17 ALRB No. 5

457.03 Board declined to remand case to hearing to examine nature and compellability of union expenditures when charging parties had not paid dues or availed themselves of union rebate procedure.
UFW/GILES BREAUX, et al., 11 ALRB No. 32

457.03 In a stipulated record, where the General Counsel had charged a continuing course of bad faith bargaining and the Board found a prima facie case beginning with facts contained in later submitted and contested stipulations, the Board remanded for further proceedings.
O. E. MAYOU & SONS, 11 ALRB No. 25

457.03 Board remanded to ALJ case which ALJ had remanded to General Counsel for recomputation of the makewhole amounts; Board directed ALJ to exercise his discretion whether to reopen the record and/or recalculate the makewhole in accordance with J. R. NORTON (1984) 10 ALRB No. 12 (now vacated).
C. MONDAVI & SONS, dba CHARLES KRUG WINERY, 10 ALRB No. 19

457.03 Where backpay discriminatee did not comply with nor move to revoke subpoena served by the respondent, ALJ erred in reviewing requested documents in camera and/or then failing to turn them over to the respondent on grounds matters related thereto not probative or too consumptive of time; Board remanded to ALJ to reopen record to enforce subpoena, take additional evidence if necessary, and issue supplemental decision.
GEORGE LUCAS & SONS, 10 ALRB No. 6

457.03 Board granted partial summary judgment by awarding summary judgment against employer on liability issue but remanding for portion of makewhole period.
F & P GROWERS ASSOCIATION, 9 ALRB No. 22

457.03 It is prejudicial and a violation of a respondent's due process rights for the Board to find a violation when the specific allegation was dismissed by the ALJ after General Counsel's case in chief; since the respondent must be allowed an opportunity to contest or rebut facts used by the Board in its findings. In such circumstances, if the Board disagrees with the ALJ's dismissal, a remand is generally warranted; in this case, it was deemed unnecessary.
NICK J. CANATA, 9 ALRB No. 8

457.03 Where the parties had resolved their differences, and as the charging party had withdrawn its exceptions to the ALJ's decision, the Board held it would not effectuate the purposes of the Act tore-open the hearing to take evidence on this novel issue of strike replacements recruited without knowledge of the strike.
SUN HARVEST, INC., 6 ALRB No. 4

457.03 (Concurring opinion) Remand case to ALO for specific findings as to extent of respondent's "patently frivolous" defenses and assess costs and attorneys' fees to General Counsel and charging party commensurate with those findings.
SAM ANDREWS' SONS, 3 ALRB No. 45

457.04 Issues Fully Litigated But Not Pleaded Or Raised In Brief

457.04 Implicit in fully litigated rule of George Luca & Sons (1978) 4 ALRB No. 86 is that respondent must be put on notice that it has to defend against the new allegation. There need not be a formal amendment to the complaint, as notice may be apparent from circumstances in the hearing and/or argument in post-hearing briefs.
OASIS RANCH MANAGEMENT, INC., 18 ALRB No. 11

457.04 ALJ properly considered closely related allegations that were not in the complaint but were fully litigated and evidence came in without objection.
S & J RANCH, INC., 18 ALRB No. 2

457.04 Board has broad discretion in fashioning appropriate remedy and may grant particular relief even though not requested in complaint by General Counsel.
D. PAPAGNI FRUIT CO., 11 ALRB No. 38

457.04 By analogy to General Counsel's jurisdiction over issues not specifically pleaded in complaint but fully litigated and sufficiently related to allegations in complaint, Board has jurisdiction over continuation of bad faith bargaining after the unfair labor practice hearing without necessity of filing a new charge.

McFARLAND ROSE PRODUCTION, 11 ALRB No. 34

457.04 Employee layoff not alleged in the complaint was related to allegations concerning other employees and was fully litigated.
PAUL BERTUCCIO, 10 ALRB No. 10

457.04 Charge of refusing to provide transportation to employees who had filed unfair labor practice charges with ALRB charging unlawful reduction in work hours fully litigated and sufficiently related to ULP charges to justify finding of 1153Z(d) violation despite absence of allegation in complaint.
GRAMIS BROTHERS FARMS, INC., and GRO-HARVESTING, INC., 9 ALRB No. 60

457.04 Where the question of employer's good faith was raised by employer's defense of bona fide impasse, ALJ properly analyzed employer's overall course of conduct in collective bargaining, despite General Counsel's desire to limit pleadings to allegations of per se refusal-to-bargain.
ROBERTS FARMS, INC., 9 ALRB No. 27

457.04 Although unilateral wage change not alleged in complaint as violation of 1153(e), it was fully litigated at hearing and clearly related to allegation of bad faith bargaining which was included in complaint.
SIGNAL PRODUCE COMPANY, 6 ALRB No. 47

457.04 Where neither charge nor complaint allege wage increase as violation of 1153(e), increase not treated as per se violation, and ALO did not conclude it was a violation, issue has not been fully litigated as independent violation and regarded thus as background evidence of employer's attitude toward bargaining.
MASAJI ETO, et al., 6 ALRB No. 20

457.04 Where the layoff of certain employees was neither alleged in the complaint nor fully litigated the Board refused to make a finding concerning the layoff.
CORONA COLLEGE HEIGHTS ORANGE AND LEMON ASSOCIATION 5 ALRB No. 15

457.04 Incident not charged in complaint but subject of one of union's objections to election fully litigated at consolidated hearing established new and separate violation of Act.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

457.04 Even if incident not specifically alleged in complaint, it is incumbent on Board to determine whether conduct violated Act when fully litigated by the parties, related to the subject matter of complaint and basic facts not in dispute.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

457.04 Where foreman's demotion not specifically charged in complaint as violation, Board makes no findings of fact and reaches no conclusions of law regarding Respondent's treatment of him.
SAM ANDREWS' SONS, 3 ALRB No. 45

457.04 When evidence is introduced on one issue set by the pleadings, its introduction cannot be regarded as authorizing the determination of some other issue not presented by the pleadings.
J.R. NORTON CO. v. ALRB (1987) 192 Cal.App.3d 874

457.04 Where conduct is litigated solely to prove defense to ULP allegation, it may not be held to itself constitute ULP.
GEORGE ARAKELIAN FARMS v. ALRB (1986) 186 Cal.App.3d 94

457.04 Where conduct not charged as ULP, Board may determine that such conduct constituted ULP if it is related to, and intertwined with, other conduct which has been alleged in complaint, provided that matter is fully litigated.
GEORGE ARAKELIAN FARMS v. ALRB (1986) 186 Cal.App.3d 94

457.04 Where conduct is neither charged as ULP nor alleged as such in complaint, Board may not find that conduct constituted ULP unless it is fully and fairly litigated.
GEORGE ARAKELIAN FARMS v. ALRB (1986) 186 Cal.App.3d 94

457.04 A party may be estopped from claiming that his/her uncharged conduct constituted ULP where he/she has acquiesced in the trial of such conduct as ULP.
GEORGE ARAKELIAN FARMS v. ALRB (1986) 186 Cal.App.3d 94

457.04 Notwithstanding General Counsel's objection, Board properly admitted evidence necessary to consider remedy for ULP's charged by General Counsel in his complaint.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

457.04 Employer not denied due process where it had actual notice that authorization cards and bargaining order would be considered, and where it had full opportunity to challenge validity of cards and propriety of remedy.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

457.04 Violation not alleged in complaint may nevertheless be found when activity was related to and intertwined with allegations in complaint and was fully litigated.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209
[Appendix]

457.04 Incidents not fully litigated where employer had no way of knowing whether conduct was merely being used as factor for setting aside election, or as independent ULP's Board's finding of ULP's; was therefore contrary to principles of due process.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209
[Appendix]

457.04 If the pertinent facts are established by independent testimony, a matter can be said to have been fully and fairly litigated, even if theory of liability was never specifically pleaded in complaint.
SUPERIOR FARMING CO. v. ALRB (1984) 151 Cal.App.3d 100

457.04 Fact that, in response to General Counsel's brief, employer argued in its post-hearing brief against "mistake" theory of liability, lends support to conclusion that issue was fully and fairly litigated.
SUPERIOR FARMING CO. v. ALRB (1984) 151 Cal.App.3d 100

457.04 Board has obligation to decide material issues which have been fairly litigated even though they have not been specifically pleaded.
SUPERIOR FARMING CO. v. ALRB (1984) 151 Cal.App.3d 100

457.04 Board may draw any reasonable inference from evidence fully and fairly litigated, regardless of specific litigation theories of the parties.
NISH NOROIAN FARMS v. ALRB (1984) 35 Cal.3d 726

457.04 Employer's claim of unfair surprise and request for rehearing rejected where it failed to point to any evidence it would have introduced had it had more notice.
NISH NOROIAN FARMS v. ALRB (1984) 35 Cal.3d 726

457.04 Board properly made finding of bad faith refusal to bargain over layoff and rehire policies where timely charge alleged layoff and failure to rehire was discriminatory, finding only affected one additional employee, and finding did not disrupt a prior agreement or relationship.
NISH NOROIAN FARMS v. ALRB (1984) 35 Cal.3d 726

457.04 Board's plenary jurisdiction to vindicate public rights is invoked by filing of charge, and after investigation, Board is not limited in its inquiry to specific matters alleged in the charge, but may inquire into related matters.
NISH NOROIAN FARMS v. ALRB (1984) 35 Cal.3d 726

457.04 Issue fully litigated where threats, though not charged in complaint, were made by persons named in complaint and where evidence introduced without objection by all these parties.
PROHOROFF POULTRY FARMS v. ALRB (1980) 107 Cal.App.3d 622

457.04 Board properly found unlawful isolation of pro-union crew. Though charge not included in complaint, issue was fully litigated at hearing.
KAWANO, INC. v. ALRB (1980) 106 Cal.App.3d 937

457.04 Board's sua sponte finding of 1153(b) violation denied due process where there was no record support for argument that issue was raised and fully litigated at

hearing.
SUNNYSIDE NURSERIES, INC. v. ALRB (1979) 93 Cal.App.3d 922

457.04 ALJ properly refused to find violation not pled in complaint because it was insufficiently litigated.
GALLO VINEYARDS, INC., 30 ALRB No. 2

457.05 Precedential Authority Of ALRB Decisions; Res Judicata And Collateral Estoppel

457.05 Board declines to reach issue of whether court of appeal's denial of review of 8 ALRB No. 88 on jurisdictional grounds raises bar of res judicata to Board's reconsideration of that Decision. Since Respondent's third motion for re-consideration raises no new issues and cites no extraordinary circumstances, it is denied.
MARIO SAIKHON, INC., 17 ALRB No. 6

457.05 Board declined to follow previous makewhole formula set forth in Adam Dairy (1978) 4 ALRB No. 24 for computation of fringe benefits, finding that fringe benefit provisions of comparable contracts were more appropriate basis for computation than formula derived from 1974 Bureau of Labor statistics report.
J. R. NORTON COMPANY, INC., 10 ALRB No. 42

457.05 Denial of an interim appeal/request for review filed pursuant to the Board's regulations is not a decision on the merits as to any issue(s) raised in the interim appeal/request for review.
GEORGE A. LUCAS & SONS, 10 ALRB No. 33

457.05 Summary denial of review of a Board decision is a decision on the merits for purposes of collateral estoppel and res judicata.
KAWANO, INC., 10 ALRB No. 17

457.05 It is inherent in California's system of judicial review of agency adjudication that once a court has passed on a question of law in its review of agency action, the agency cannot act inconsistently with the court's orders. Instead, absent unusual circumstances, the decision of the reviewing court establishes the law of the case and binds the agency in all further proceedings.
George Arakelian Farms, Inc. v. ALRB (1989) 49 Cal.3d 1279

457.05 Res judicata rules are generally applicable to administrative orders. The bifurcated administrative process the ALRB utilizes in determining a makewhole order, and the consequent interlocutory nature of the order, may justify flexible application of res judicata.
George Arakelian Farms, Inc. v. ALRB (1989) 49 Cal.3d 1279

457.05 A make-whole order is interlocutory in nature and a Supreme Court decision affirming the order is res judicata only as to the issues encompassed in the order. George Arakelian Farms, Inc. v. ALRB (1989) 49 Cal.3d 1279

457.05 Res judicata did not preclude the ALRB from reopening its previous make-whole order to allow the parties to litigate an intervening change in the controlling rule of law, notwithstanding the California Supreme Court's affirmance of the order.
George Arakelian Farms, Inc. v. ALRB (1989) 49 Cal.3d 1279

457.05 Finality for the purposes of appellate review is not the same as finality for purposes of res judicata.
George Arakelian Farms, Inc. v. ALRB (1989) 49 Cal.3d 1279

457.05 There must be a change in the controlling rules of law in order to justify disregarding the established law of the case.
George Arakelian Farms, Inc. v. ALRB (1989) 49 Cal.3d 1279

457.05 Like res judicata, the doctrine of law of the case serves to promote finality of litigation by preventing a party from relitigating questions previously decided by a reviewing court. Since the rule of the law of the case may operate harshly, several exceptions have been fashioned; where there has been an intervening change in the law, where disputed issue was not presented or considered in the proceedings below, or where application of the doctrine would result in manifest injustice.
George Arakelian Farms, Inc. v. ALRB (1989) 49 Cal.3d 1279

457.05 The shortened period of time for seeking judicial review of the ALRB's orders as well as the abbreviated enforcement procedures in the superior court manifest a legislative intent to avoid undue litigious delay. A procedural system that encourages successive reviews by appellate courts of question that were previously decided affects this legislative purpose and burdens the statutory rights and interest of agricultural workers, the class for whose benefit the law was adopted. There are occasional instances in which, to prevent injustice, the Board may reopen a case after a decision by an appellate court because of a change in the controlling rule of law, but such cases will arise infrequently.
George Arakelian Farms, Inc. v. ALRB (1989) 49 Cal.3d 1279

457.05 Administrative agencies may not void the judgments of an appellate court. However, when an appellate court has announced a change in the controlling rules of law, an administrative agency may appropriately apply that

decision to all pending cases.
George Arakelian Farms, Inc. v. ALRB (1989) 49 Cal.3d 1279

457.05 Makewhole orders are interlocutory judgments. They are general orders that manifestly contemplate further administrative action on the part of the ALRB. Such general orders are analogous to interlocutory judgments of courts fixing liability but leaving for future determination questions as to the amount of liability. Court decrees affirming or enforcing them are analogous to affirmance of interlocutory judgments on appeal.
George Arakelian Farms, Inc. v. ALRB (1989) 49 Cal.3d 1279

457.05 Res judicata and collateral estoppel will operate with respect to a final order of an administrative body.
J. R. NORTON CO. v. ALRB (1987) 192 Cal.App.3d 874

457.05 Res judicata precludes parties or those in privity with them from relitigating issues that were directly in issue and in fact decided in a prior action that has resulted in a final judgment.
J. R. NORTON CO. v. ALRB (1987) 192 Cal.App.3d 874

457.05 Collateral estoppel will preclude relitigation of an issue of fact or law necessarily decided in a prior judgment in a subsequent suit involving a party to the first case.
J. R. NORTON CO. v. ALRB (1987) 192 Cal.App.3d 874

457.05 Employer may not reargue appropriateness of make-whole award in petition for review of computation of actual losses, since order became final when underlying Board decision finding ULP was upheld.
HOLTVILLE FARMS, INC. v. ALRB (1985) 168 Cal.App.3d 388

457.05 Board refusal to extend certification under 1155.2(b) is not res judicata as to later-instituted ULP charges, since G.C. was not a party to initial proceedings and such an interpretation would make unlikely any further use of extension of certification procedure.
MONTEBELLO ROSE CO. v. ALRB (1981) 119 Cal.App.3d 1

457.06 De Novo Review; Standard Of Review By Board

457.06 Denial of an interim appeal/request for review filed pursuant to the Board's regulations is not a decision on the merits as to any issue(s) raised in the interim appeal/request for review.
GEORGE A. LUCAS & SONS, 10 ALRB No. 33

457.06 Board found it unnecessary to comment on each of many exceptions filed by parties. Many concerned ALO's supposed failure to find facts which would be cumulative or which related to alleged ULPs never formally charged.
SAM ANDREWS' SONS, 3 ALRB No. 45

457.06 Board's practice of adopting the findings of ALJ "consistent with" or "as modified" in Board decision unfairly leaves reviewing court to determine upon which findings Board decision rests, and brings into question sufficiency of findings as required by 1160.3.
LAFLIN & LAFLIN v. ALRB (1985) 166 Cal.App.3d 368

457.07 Advisory Opinions

457.08 Rulemaking Powers, Labor Code Section 1144

457.08 Board and Executive Secretary empowered to simultaneously dismiss without setting for hearing, objections which are factually unsupported on legally insufficient grounds to set election aside.
D. PAPAGNI FRUIT CO., 11 ALRB No. 38

457.08 Board acted within its discretion in choosing to deal with an immediate strike access problem by adjudication, rather than rule-making, since choice is within informed discretion of agency. The choice of adjudication is particularly fitting as to a new issue like strike access, since "cumulative experience begets understanding and insight by which judgments are validated or qualified or invalidated." ALRB v. CALIFORNIA COASTAL FARMS, INC. (1982) 31 Cal.3d 469

457.08 Possible infringement of constitutional right to privacy in residential picketing case does not require ALRB to adopt formal regulations, rather than create a rule by adjudication.
CALIFORNIA COASTAL FARMS v. ALRB (1980) 111 Cal.App.3d 734

457.08 ALRB may control picketing, or any alleged unfair labor practice, either by regulation of general application or by case-by-case adjudication. The choice is within informed discretion of ALRB.
CALIFORNIA COASTAL FARMS v. ALRB (1980) 111 Cal.App.3d 734

457.08 Courts will defer to expertise of Board when reviewing Board's regulations and interpreting ALRA, unless Board action is arbitrary and capricious. Board properly considered peculiar conditions of agriculture in creating its access regulations.
ALRB v. SUPERIOR COURT (PANDOL) (1976) 16 Cal.3d 392

457.08 ALRB has broad power to hold elections and remedy unfair labor practices. To that end, Board has both adjudicatory and rule-making powers.
ALRB v. SUPERIOR COURT (PANDOL) (1976) 16 Cal.3d 392

457.08 Formal rulemaking procedures are not the exclusive method for statutory interpretation; Board may proceed by adjudication on a case-by-case basis; Board not bound to

follow regulation found invalid by appellate court until regulation formally changed.
GALLO VINEYARDS, INC., 23 ALRB No. 7

457.09 Proceeding During Or After Court Enforcement, Review, Or Remand

457.09 Matter remanded to regional director for recalculation of makewhole in accordance with Court of Appeal's remand order. ABATTI FARMS, INC., 18 ALRB No. 3

457.09 Absent compelling reasons, the Board will not, on remand from the Court, reopen access interference allegations in light of the existence of a presently harmonious bargaining relationship which has reached a negotiated agreement on access by union representatives to the work force.
SAM ANDREW'S SONS, 13 ALRB No. 7

457.09 Unilateral settlement final with respect to only 1 of 11 charging parties, who did not seek 1160.8 review of settlement, and Board retains jurisdiction to determine acquiescing party's backpay entitlement under settlement despite pending court review and remand to Board of order approving settlement.
UFW/CERVANDO PEREZ, 11 ALRB No. 33

457.09 Board declined to remand case to hearing to examine nature and compellability of union expenditures when charging parties had not paid dues or availed themselves of union rebate procedure.
UFW/GILES BREAUX, et al., 11 ALRB No. 32

457.09 Reaffirmed original makewhole order, except to modify beginning of makewhole period to comport with six month rule in Desert Seed Co., Inc. (1983) 9 ALRB No. 72
JOHN ELMORE FARMS, et al., 11 ALRB No. 22

457.09 On remand from the reviewing court, following annulment of the Board's Order, jurisdiction was revested in the Board, and the Board limited the scope of a previously ordered mailing remedy and amended the interest rate awarded on backpay reimbursements to conform with Lu-Ette Farms, Inc. (1982) 8 ALRB No.55
VESSEY & COMPANY, INC., 11 ALRB No. 3

457.09 Pursuant to broad court remand, Board modified mailing and posting periods to conform to current practice.
McANALLY ENTERPRISES, INC. 11 ALRB No. 2
Accord: FRUDDEN PRODUCE, INC., 11 ALRB No. 6

457.09 Where previous Board finding of failure to reinstate strikers was on appeal to courts, Board referred allegations of later delays in reinstatement to compliance phase of earlier case.
LU-ETTE FARMS, INC., 10 ALRB No. 20

457.09 Summary denial of review of a Board decision is a decision on the merits for purposes of collateral estoppel and res judicata.
KAWANO, INC., 10 ALRB No. 17

457.09 On remand, Board specified number of organizers allowed during one-hour period of access on company time by limiting number of organizers to two organizers per fifteen employees.
PROHOROFF POULTRY FARMS, 6 ALRB No. 45

457.09 Dissent: Dissent limits number of organizers to one organizer per fifteen employees.
PROHOROFF POULTRY FARMS, 6 ALRB No. 45

457.09 On remand, Board deleted its reference to the end of the 1979 harvest season in its original order providing a reinstatement offer, since the case is still on appeal and the 1979 harvest season has passed.
M.B. ZANINOVICH, INC., 6 ALRB No. 23

457.09 On remand, Board followed NLRB rule in Hickmott Foods, Inc. (1979) 242 NLRB No. 177, 101 LRRM 1342, and found that employer's conduct was not such as to warrant the imposition of a broad cease-and-desist order.
M.B. ZANINOVICH, INC., 6 ALRB No. 23

457.09 On remand, Board finds it unnecessary to mail Notice to all employees who appeared on employer's payroll for the 1976 harvest season since case involves isolated unfair labor practice. Instead, Board orders that Notice be mailed only to those employees whose names were on employer's payroll during the month of August 1976, when unfair labor practice occurred.
M.B. ZANINOVICH, INC., 6 ALRB No. 23

457.09 Upon remand from the Court of Appeal, the Board revised its prior expanded access remedy by permitting union access by twice the number of organizers ordinarily permitted under 8 Cal. Admin. Code 20900(e)(4)(A).
JACK PANDOL AND SONS, INC., 6 ALRB No. 1

457.09 Board decision on remand is not a final order, requiring a new petition for review; rather, it is advisory in nature and becomes part of the appellate record in the original writ proceeding. Aggrieved parties given time to file opposition to new order in the reviewing court.
PANDOL & SONS v. ALRB (1979) 98 Cal.App.3d 580

457.10 Retroactive Effect Of Changes In Board Rulings

457.10 Board applied new formula for calculating makewhole fringe benefits prospectively only, i.e., to cases that have not yet gone to hearing before the ALJ, leaving application in cases in which and ALJ Decision has not yet been transferred to the Board to the ALJ's discretion.

J. R. NORTON COMPANY, INC., 10 ALRB No. 42

457.10 Board decision changing formula for calculation of makewhole remedy given retroactive effect only in cases that had not yet been subject to compliance hearing; in cases where hearing was closed but ALJ decision had not issued, ALJ given discretion to reopen the record for trial under new formula.
HOLTVILLE FARMS, INC., 10 ALRB No. 13

457.10 Board Decision in Nish Noroian Farms (1982) 8 ALRB No. 25 applied retroactively to refusal to bargain based on claim loss of majority support.
F&P GROWERS ASSOCIATION, 9 ALRB No. 22

457.10 Court of Appeal affirms ALRB's prospective application of new fringe benefit formula in J. R. Norton (10 ALRB No. 42) and upholds Board's decision not to apply the new formula in case in which make-whole had already been computed by an ALJ.
HOLTVILLE FARMS, INC. v. ALRB (1985) 168 Cal.App.3d 388

457.10 Prospective application of rule not required where ALRB only applied an existing rule of California law in a new statutory context.
PASILLAS v. ALRB (1984) 156 Cal.App.3d 312

457.11 Procedural Issues; Standard Of Review

457.11 It is prejudicial and a violation of a respondent's due process rights for the Board to find a violation when the specific allegation was dismissed by the ALJ after General Counsel's case in chief; since the respondent must be allowed an opportunity to contest or rebut facts used by the Board in its findings. In such circumstances, if the Board disagrees with the ALJ's dismissal, a remand is generally warranted; in this case, it is deemed unnecessary.
NICK J. CANATA, 9 ALRB No. 8

457.11 Because the Board's findings of fact must be supported on review by substantial evidence, the Board's findings may not rest on suspicion, surmise, mere implications, or plainly incredible evidence.
George Arakelian Farms, Inc. v. ALRB (1989) 49 Cal.3d 1279

457.11 Employer's claim of unfair surprise and request for rehearing rejected where it failed to point to any evidence it would have introduced had it had more notice.
NISH NOROIAN FARMS v. ALRB (1984) 35 Cal.3d 726

457.12 Reconsideration Of Board Decision

457.12 Board declines to reach issue of whether court of appeal's denial of review of 8 ALRB No. 88 on jurisdictional grounds raises bar of res judicata to

Board's reconsideration of that Decision. Since Respondent's third motion for re-consideration raises no new issues and cites no extraordinary circumstances, it is denied.
MARIO SAIKHON, INC., 17 ALRB No. 6

457.12 Doctrine prohibiting relitigation of representation issues in subsequent related unfair labor practice proceedings is applicable to proceedings under ALRA. In absence of newly-discovered or previously-unavailable evidence or extraordinary circumstances, respondent in a refusal-to-bargain proceeding may not litigate matters which were or could have been raised in prior representation proceeding.
PERRY FARMS, INC., 4 ALRB No. 25

457.12 Failure to pursue motion for reconsideration (reg. 20286) prevents employer from arguing that it was denied opportunity to be heard on issue decided by Board.
SUPERIOR FARMING CO. v. ALRB (1984) 151 Cal.App.3d 100

457.12 Request for reconsideration does not toll 30-day period for filing petition under 1160.8. If court assumes jurisdiction before Board rules on request, then request is denied by operation of law. If Board grants request and later issues modified or revised decision, 30-day period for seeking court review begins again.
NISH NOROIAN FARMS v. ALRB (1984) 35 Cal.3d 726

457.12 Even if Board's theory surprised the employer, there was no denial of due process because employer could have moved for reconsideration.
NISH NOROIAN FARMS v. ALRB (1984) 35 Cal.3d 726

457.12 Legislature expressly gave Board authority to reconsider its orders (see 1160.3).
JACKSON & PERKINS CO. v. ALRB (1978) 77 Cal.App.3d 830

457.12 Pursuant to 1160.3, ALRB adopted its rehearing procedures whereby, in extraordinary circumstances, party may move for reconsideration or reopening record after Board decision or order.
JACKSON & PERKINS CO. v. ALRB (1978) 77 Cal.App.3d 830

457.12 30-day time limit imposed by 1160.8 is not tolled by filing of petition for reconsideration with Board, since such petition does not stay Board's final order.
UNITED FARM WORKERS v. ALRB (ROBERT ANDREWS) (1977) 74 Cal.App.3d 347

457.12 A Board decision referring parties to the mandatory mediation and conciliation process set forth in Labor Code sections 1164 to 1164.13 is an interim non-final Board order that is non-reviewable. The Board retains its jurisdiction to reconsider or modify such a decision until a party seeks review of a final Board order confirming a mediator’s report under Labor Code section

1164.5
FRANK PINHEIRO DAIRY, 36 ALRB No. 1

457.13 Motions to Close

457.13 Where, in the judgment of the regional director, there is no reasonable likelihood that further efforts will result in full or additional compliance with the Board's order in a fully adjudicated case, the regional director may file a motion to close the case. Motions to close such cases shall be filed with the Board and served on the parties in accordance with Title 8, California Code of Regulations, sections 20160 and 20166. Parties shall have thirty (30) days from the date of service to file a response to the motion to close. A reply, if any, shall be filed within ten (10) days after service of the response. The motion shall contain, inter alia, the case name and number(s), the number(s) of the underlying Board decision(s), a brief summary of the case and the remedies ordered by the Board, the date the case was released for compliance, a detailed description of the steps taken to achieve full compliance, factors preventing full compliance, and the reasons why there is no reasonable likelihood that further efforts will be successful.
JOHN V. BORCHARD, et al., 27 ALRB No. 1

457.13 The Board interpreted section 20299 (b) of the Board's regulations implementing the Agricultural Employee Relief Fund (AERF or Fund) as requiring that a motion seeking a determination of eligibility for payout from the Fund must be accompanied by a statement consistent with standards set forth in *John V. Borchard et al*. (2001) 27 ALRB No. 1.
ANDREAS FARMS, 31 ALRB NO. 2

457.13 A motion seeking a determination of eligibility for payout from the Agricultural Employee Relief Fund (AERF or Fund) must be accompanied by a statement that contains a detailed description of key steps taken to achieve full compliance, factors preventing compliance, and the reasons why there is no reasonable likelihood that further compliance efforts will be successful.
ANDREAS FARMS, 31 ALRB NO. 2

457.13 The Board found that the accompanying statement required by section 20299 (b) of the Board's regulations implementing the Agricultural Employee Relief Fund (AERF or Fund) was sufficient when it included a thorough discussion of the Region's collection efforts following bankruptcy proceedings, and a complete description of the Region's efforts to determine whether derivative liability existed.
ANDREAS FARMS, 31 ALRB NO. 2

458.00 REMEDIES FOR ULPS

458.00 CEASE AND DESIST ORDERS AGAINST EMPLOYERS

458.01 Scope Of Orders And Authority Of Board In General

458.01 Board has broad discretion in fashioning appropriate remedy and may grant particular relief even though not requested in complaint by General Counsel.
D. PAPAGNI FRUIT CO., 11 ALRB No. 38

458.01 By analogy to General Counsel's jurisdiction over issues not specifically pleaded in complaint but fully litigated and sufficiently related to allegations in complaint, Board has jurisdiction over continuation of bad faith bargaining after the unfair labor practice hearing without necessity of filing a new charge.
McFARLAND ROSE PRODUCTION, 11 ALRB No.34

458.01 Evidence established that the commission of ULP(s) justified the Board's usual remedies.
GEORGE LUCAS & SONS, 11 ALRB No. 11

458.01 On remand, Board followed NLRB rule in Hickmott Foods, Inc. (1979) 242 NLRB No. 177, 101 LRRM 1342, and found that employer's conduct was not such as to warrant the imposition of a broad cease-and-desist order.
M.B. ZANINOVICH, INC., 6 ALRB No. 23

458.01 Broad C/D order reconsidered and limited on remand since Respondent's conduct did not show proclivity to violate Act and was not so egregious and widespread as to show general disregard for Employees' fundamental rights under Act.
M. CARATAN, 6 ALRB No. 14

458.01 A broad cease and desist order is appropriate only where a respondent engages in repeated, egregious, or widespread misconduct; therefore, such an order is not appropriate here where respondent engaged in only a single unlawful act.
Golden Valley Farming, 6 ALRB No. 8

458.01 The Board has found that cease-and-desist order, and the posting, mailing, distribution, and reading of Board Notice to Agricultural Employees are necessary and desirable remedies in the agricultural setting.
S & F GROWERS, 4 ALRB No. 58

458.01 Board had broad discretion to devise remedies, provided only that they effectuate purposes of Act.
PERRY FARMS, INC., 4 ALRB No. 25

458.01 Board order which decrees, inter alia, that employer must refrain from "in any other manner interfering with, restraining, or coercing any employee in the exercise of rights guaranteed by Section 1152 of the ALRA" is impermissible overbroad.

LAFLIN & LAFLIN v. ALRB (1985) 166 Cal.App.3d 368

458.01 Board's power to command affirmative action is remedial, not punitive.
LAFLIN & LAFLIN v. ALRB (1985) 166 Cal.App.3d 368

458.01 With regard to company labor camp access, Board must balance conflicting rights to privacy and to communication by issuing limited and specific access order. A general and unqualified remedial access order is unreasonable and improper.
SAM ANDREWS' SONS v. ALRB (1984) 162 Cal.App.3d 923

458.01 ALRB remedies are designed to effectuate public policy and not redress individual injuries of a private nature.
SANDRINI BROTHERS v. ALRB (1984) 156 Cal.App.3d 878

458.01 Differences between 1160.3 and NLRA section 10(c) indicate that ALRB was intended to have broader remedial powers than NLRB.
SANDRINI BROTHERS v. ALRB (1984) 156 Cal.App.3d 878

458.01 ALRB should not relegate enforcement of its remedies to courts, since Board has the expertise to enforce compliance with the Act.
PASILLAS v. ALRB (1984) 156 Cal.App.3d 312

458.01 1160.3 mandates issuance of remedial order in every case in which ULP has been committed.
PASILLAS v. ALRB (1984) 156 Cal.App.3d 312

458.01 Board has broad power to create remedies that effectuate policies of Act in infinite variety of situations. Courts must refrain from entering this area unless remedy is patent attempt to achieve ends other than policies of Act.
CARIAN v. ALRB (1984) 36 Cal.3d 654

458.01 Board may not order employer to leave labor camp open indefinitely; however, Board can order wrongdoer to cease using evictions to discriminate and to refrain from closing camp until bargaining over the future of employee housing has occurred.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

458.01 Board properly ordered that no former employees be evicted from company housing until Board determines, in compliance, which discriminatees are entitled to reinstatement.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

458.01 Alleged joint employer not unfairly surprised when General Counsel requested amendment of complaint, since president of and counsel for both companies were present during entire hearing and no request for continuance or reopening was made by joint employer.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

458.01 Lara's remedial purpose, as set forth in 1140.2, is to encourage and protect employees' collective bargaining rights.
AGRICULTURAL LABOR RELATIONS BOARD v. RULINE NURSERY CO. (1981) 115 Cal.App.3d 1005

458.01 Board found narrow cease-and-desist order appropriate where employer's conduct did not demonstrate a proclivity to violate Act or engage in widespread or egregious misconduct showing fundamental disregard for employee statutory rights.
JASMINE VINEYARDS, INC. v. ALRB (1980) 113 Cal.App.3d 968

458.01 Particular means by which effects of ULP's are to be expunged are for Board and not courts to decide.
JASMINE VINEYARDS, INC. v. ALRB (1980) 113 Cal.App.3d 968

458.01 Broad cease and desist order is generally inappropriate. Board must make orders specific and limited to such actions as will remedy the unlawful conduct.
GEORGE ARAKELIAN FARMS v. ALRB (1980) 111 Cal.App.3d 258

458.01 Remedial order of Board will not be disturbed by courts unless order is patent attempt to achieve ends other than effectuation of policies of Act.
BUTTE VIEW FARMS v. ALRB (1979) 95 Cal.App.3d 961

458.01 In fashioning remedies, Board is not limited to specific record before it, but can rely on its knowledge from past hearings.
TEX-CAL LAND MANAGEMENT, INC. v. ALRB (1979) 24 Cal.3d 335

458.01 It is not function of Board to impose punitive measures upon recalcitrant employers at expense of the rights of employees whom the ALRA was designed to protect.
PERRY FARMS INC. v. ALRB (1978) 86 Cal.App.3d 448

458.01 Any employees are entitled to claim backpay who can demonstrate in compliance proceedings that they would have been recalled if Employer had not unilaterally changed its work experience requirements. Remedy is not limited to those named in the complaint.
Scheid Vineyards and Management Company, Inc., 21 ALRB No. 10

458.01 The Board has wide discretion when determining the particular means by which the effects of an unfair labor practice are to be expunged. Moreover, the determination of remedies is within the domain of policy and therefore peculiarly a matter for the administrative body.
VINCENT B. ZANINOVICH & SONS, INC., 25 ALRB No. 4

458.02 Application To Particular Area, Ranch, Farm, Or Union

458.02 Publication provision of ALJ's remedial order not

overbroad or punitive in light of nature of violations.
THE GARIN COMPANY, 12 ALRB No. 14

458.02 Board order which requires reading a remedial notice to assembled employees and which allows expanded access by union organizers, but does not specify which employees to whom the communications are directed, is overbroad.
LAFLIN & LAFLIN v. ALRB (1985) 166 Cal.App.3d 368

458.02 Board order which requires reading a remedial notice to assembled employees, but places no limit on number of readings, nor number of question-and-answer periods, but rather leaves these matters to uncircumscribed discretion of R.D., is overbroad.
LAFLIN & LAFLIN v. ALRB (1985) 166 Cal.App.3d 368

458.03 Cessation Of Unfair Labor Practices, Effect Of; Mootness; Isolated Practices

458.03 After reversal of the Board's finding of an unlawful unilateral implementation of wage increases, upon remand from the court, there remained one isolated violation of the Act. The Board therefore modified its prior order leaving as the only remedy for the isolated violation a cease and desist order.
BRUCE CHURCH, INC., 17 ALRB No. 12

458.03 In effectuation of remand order, Board deleted remedial provisions requiring that employer cease and desist from bad faith bargaining and commence good faith bargaining. The Board also deleted its normal extension of certification remedy in bad faith bargaining cases, and confined the period of time for which employees of Respondent would receive mailed copies of the Board's notice to the actual period of Respondent's bad faith bargaining. The Board's modifications were made to reflect the date at which the Court of Appeal found Respondent had commenced bargaining in good faith.
PAUL W. BERTUCCIO dba BERTUCCIO FARMS, 15 ALRB No. 15

458.03 Even if employer's grant of preferential access to Teamsters and supervisor's reading of names of UFW supporters listed in UFW organizer's notebook were de minimis, minimal effect of remedial order is appropriate.
HIGHLAND RANCH v. ALRB (1981) 29 Cal.3d 848

458.03 Board could reasonably infer that employer's solicitation on behalf of Teamsters was neither isolated nor de minimis, where supervisor admitted one incident and could not remember whether there were others.
JASMINE VINEYARDS, INC. v. ALRB (1980) 113 Cal.App.3d 968

458.04 Disestablishment Of Labor Organization

459.00 REINSTATEMENT AND BACKPAY

459.01 In General

459.01 Since Respondent has not yet offered claimant reinstatement, backpay is ordered from date of discrimination to ending date of General Counsel's calculations, and thereafter until Respondent's bona fide offer of reinstatement.
MARIO SAIKHON, INC., 17 ALRB No. 10

459.01 Party seeking to overcome a Board reinstatement order bears heavy burden of proving that the discriminatees could not have been retained in their former or substantially equivalent positions.
UKEGAWA BROTHERS, et al., 16 ALRB No. 18

459.01 Although an employer need not offer reinstatement to a position which for valid business reasons no longer exists, employer nevertheless is required to offer reinstatement to a substantially equivalent position or to one which the discriminatee is qualified to perform if such work is available.
UKEGAWA BROTHERS, et al., 16 ALRB No. 18

459.01 Upon receipt of a firm, clear and unconditional offer of reinstatement, a discriminatee may make a choice, including whether to accept work at a lower rate of pay than he or she received prior to the unfair labor practice.
UKEGAWA BROTHERS, et al., 16 ALRB No. 18

459.01 Since Employer merely asked witness in course of hearing why he had not again applied for work after strike commenced, Employer cannot rely on testimonial explanation that he would not have crossed the picket line either to waive obligation to offer reinstatement for prior discrimination or to toll backpay during period of strike since no valid offer of reinstatement made; employer bears uncertainty as to how employee would have responded had a proper offer been tendered.
SAM ANDREWS' SONS, 16 ALRB No. 6

459.01 Since a legally sufficient offer of reinstatement must be made in positive terms and give employee sufficient time to consider, a purported offer couched in hypothetical terms such as "would you take back your job were it offered to you" is not a valid offer of reinstatement.
SAM ANDREWS' SONS, 16 ALRB No. 6

459.01 Only an offer of reinstatement which is specific, unequivocal, and unconditional may serve to toll the backpay period. (Chromalloy American (1982) 263 NLRB 244, and Verde Produce Company, Inc. (1984) 10 ALRB No. 35.)
SAM ANDREWS' SONS, 16 ALRB No.6

459.01 In case where it was not clear whether a pre-strike discriminatee would have accepted an offer of

reinstatement had one been extended during the course of an economic strike, Board followed NLRB's Winn Dixie rule (206 NLRB 777) which holds that any uncertainty as to the amount of loss suffered by a discriminatee was caused by the wrongdoer who violated the law in the first instance and therefore should be resolved against the wrongdoer.
SAM ANDREWS' SONS, 16 ALRB No. 6

459.01 A question put to an employee as to whether he or she would return to work if offered reinstatement does not represent a specific, unequivocal offer of reinstatement. (Wen Hwa Ltd. (1974) 208 NLRB 828.)
SAM ANDREWS' SONS, 16 ALRB No. 6

459.01 Employer's duty of reinstatement runs until a proper offer of reinstatement is made and unequivocally rejected by the employee. (Chromalloy American (1982) 263 NLRB 244, Verde Produce Company, Inc. (1984) 10 ALRB No. 35.)
SAM ANDREWS' SONS, 16 ALRB No. 6

459.01 Undocumented aliens are entitled to traditional remedial provisions for unlawful discharges, including reinstatement and backpay.
RIGI AGRICULTURAL SERVICES, INC., 11 ALRB No. 27

459.01 Employees who were unlawfully discharged for one day are entitled to backpay was well as makewhole relief where their employer was also found to be bargaining in bad faith.
MARTORI BROTHERS, 11 ALRB No. 26

459.01 Spouse who was fired when her foreman husband refused to commit an unfair labor practice is ordered reinstated with backpay.
GEORGE LUCAS & SONS, 11 ALRB No. 11 (See 13 ALRB No. 4)

459.01 On remand from the Court of Appeal, often the court annulled the Board's status quo ante remedy for the employer's discriminatory replacement of a tomato hand crew with additional mechanical harvesters, the Board revised its order to provide that the hand-crew employees be awarded backpay based on the amounts they would have earned had they not been discriminatorily replaced.
FRUDDEN PRODUCE, INC., 11 ALRB No. 6

459.01 Although it may be possible after the investigatory stage for a Board representative to act as an agent for the discriminatee in receiving a re-instatement offer, the representative must have the consent or ratification of the discriminatee.
KITAYAMA BROTHERS, 10 ALRB No. 47

459.01 Offers of reinstatement must be unambiguous and unconditional; general conversation about work is not sufficient.
VERDE PRODUCE CO. INC., 10 ALRB No. 35

459.01 Alleged replacement of discharged economic strikers and alleged lack of work at time they presented themselves for rehire will not affect backpay remedy.
SUMNER PECK RANCH, INC., 10 ALRB No. 24

459.01 The finding of an unlawful discriminatory discharge is presumptive proof that the discriminatee is owed some amount of backpay by the respondent.
ABATTI FARMS, INC., 9 ALRB No. 59

459.01 An offer to reinstate a discriminatee in a temporary position does not satisfy a respondent's obligation to offer the discriminatee reinstatement to his or her former job.
ABATTI FARMS, INC., 9 ALRB No. 59

459.01 A discriminatee's voluntary removal from the labor market and his or her intent to abandon reemployment with a respondent terminates the respondent's backpay liability.
ABATTI FARMS, INC., 9 ALRB No. 59

459.01 A respondent's bona fide offer to reinstate the discriminatee to his or her former or substantially equivalent job terminates the backpay period. A discriminatee is entitled to an offer of reinstatement to his or her former job; if the discriminatee's former job no longer exists, the respondent must reinstate the discriminatee to a substantially equivalent job.
ABATTI FARMS, INC., 9 ALRB No. 59

459.01 Determination of whether a discriminatee has been offered reinstatement to a substantially equivalent is made on a case-by-case basis. Factors considered include wages, hours, type of employment, fringe benefits such as medical insurance, vacation pay and holidays; both the similarities and dissimulates of the former job and alleged substantially equivalent job are considered.
ABATTI FARMS, INC., 9 ALRB No. 59

459.01 The burden is on the respondent to establish its affirmative defenses, including interim earnings, willful loss of interim earnings, disability and impropriety of the General Counsel's backpay formula.
ABATTI FARMS, INC., 9 ALRB No. 59

459.01 As a means of restoring the status quo ante that existed prior to the employer's unlawful change in hiring practices, the Board ordered the employers to offer their terminated employees reinstatement to their former jobs or other employment for which they are qualified.
MOUNT ARBOR NURSERIES, INC., and MID-WESTERN NURSERIES, INC., 9 ALRB No. 49

459.01 The proper remedy for a failure to provide a meaningful opportunity to bargain over the effects of a decision to cease operations is a limited backpay award coupled with an order to bargain; the limited backpay award is

remedial, and its purpose is to restore the situation, as nearly as possible, to that which would have been obtained but for the violation.
PICK'D RITE, INC., and CAL-LINDA, INC., 9 ALRB No. 39

459.01 Where ALJ failed to recommend that employer/respondent be ordered to offer reinstatement to an employee discharged because of his union and other protected concerted activities, Board included in it Order a requirement that employer/respondent make such an offer.
SAM ANDREWS' SONS, 9 ALRB No.32

459.01 Unlawfully discharged discriminatee owed some backpay. (p. 66)
MARIO SAIKHON INC., 8 ALRB No. 88

459.01 Employer has burden of proof to establish factors which negative or reduce its liability such as: interim earnings, failure to reasonably seek interim employment, willful loss of interim earnings and disability. (p. 67)
MARIO SAIKHON INC., 8 ALRB No. 88

459.01 Employer does not meet its burden of proof that discriminatee failed to diligently seek work by showing discriminatee was unsuccessful in obtaining interim employment or had low interim earnings. Must have affirmative evidence discriminatee did not make reasonable efforts to find work. (p. 67)
MARIO SAIKHON INC., 8 ALRB No. 88

459.01 Whenever uncertainties exist, they will be resolved against Employer who's illegal conduct created the uncertainties. (p. 68)
MARIO SAIKHON INC., 8 ALRB No. 88

459.01 Whether Employee suffered any damages as result of Employer's unlawful layoff is matter for compliance proceedings.
ABATTI FARMS, INC., & ABATTI PRODUCE, INC., 7 ALRB No. 36

459.01 Board has been entrusted with broad discretion in choosing appropriate backpay formula, as warranted by circumstances of each case.
ARNAUDO BROTHERS, 7 ALRB No.25

459.01 Policy of Act reflected in Backpay Order is to restore discriminatee to same position she/he would have enjoyed had there been no discrimination.
ARNAUDO BROTHERS, 7 ALRB No.25

459.01 Board held that crew of employees was entitled to backpay after being discharged for engaging in concerted refusal to work overtime on one day, despite the fact that the crew employees did not request reinstatement since crew employees engaged in mere refusal to work overtime on one day and would have returned to work the following day but for the discharge.

PAPPAS & COMPANY, 5 ALRB No. 52

459.01 Board held that crew of employees was entitled to backpay and reinstatement despite employer's contention that crew engaged in misconduct subsequent to unlawful discharge, where Board found isolated pushing incident and general threat unaccompanied by any physical acts or gestures were insufficient to bar backpay and reinstatement to crew employees.
PAPPAS & COMPANY, 5 ALRB No. 52

459.01 The Board remedies Ale's failure to order reinstatement where the record was insufficient to support a finding that the discriminatees' employment would not have continued.
S & F GROWERS, 4 ALRB No. 58

459.01 In backpay cases, absent a showing of bad faith or lack of cooperation on the part of an employee, respondent has the burden of establishing all factors tending to mitigate its liability notwithstanding the employee's incomplete recollection and inadequate records regarding interim employment.
MAGGIO-TOSTADO, 4 ALRB No. 36

459.01 A reinstatement offer must be made clearly and unconditionally in order to estimate respondent's backpay liability.
MAGGIO-TOSTADO, 4 ALRB No. 36

459.01 The purpose of backpay proceedings is to restore the employee to the position he would have enjoyed if he had not been discriminatorily discharged. As the exact amount of compensation due may be impossible to determine in an agricultural setting, the Board will choose a method of calculation which it considers to be equitable, practicable, and in consonance with the policy of the Act.
MAGGIO-TOSTADO, 4 ALRB No. 36

459.01 The finding of an unfair labor practice and discriminatory discharge is presumptive proof that some backpay is owed by the employer.
MAGGIO-TOSTADO, 4 ALRB No. 36

459.01 Despite the fact that agricultural employees frequently change employers and seldom file tax returns or keep accurate records of their work, respondent has the burden of proof as to facts that would mitigate backpay liability including facts concerning the employees' interim employment.
MAGGIO-TOSTADO, 4 ALRB No. 36

459.01 Employee ordered reinstated to position as assistant foreman and to receive as backpay with interest difference between what would have been earned as assistant foreman and what he earned as thinner.

SAM ANDREWS' SONS, 3 ALRB No. 45

459.01 Where the Board finds that an employer has committed illegal discrimination under the Act, it may order the employer to reinstate, with backpay, the employees who are objects of the discrimination.
VESSEY & COMPANY, INC. v. ALRB (1989) 210 Cal.App.3d 629

459.01 Backpay is intended to compensate an employee whose opportunity to earn his or her previously established pay and benefits has been improperly denied or limited, and is measured by the preexisting rates.
PAUL W. BERTUCCIO v. ALRB (1988) 202 Cal.App.3d 1369

459.01 ALRB award is not transferable like private judgment, since it is public in nature. Employee has no property right in award pending actual receipt thereof.
SANDRINI BROTHERS v. ALRB (1984) 156 Cal.App.3d 878

459.01 There is no money judgment in ALRB compliance proceeding until Board orders payment of specific amount of money and that order is enforced in superior court, Court of Appeal, or Supreme Court.
SANDRINI BROTHERS v. ALRB (1984) 156 Cal.App.3d 878

459.01 ALRB remedies are designed to effectuate public policy and not redress individual injuries of a private nature.
SANDRINI BROTHERS v. ALRB (1984) 156 Cal.App.3d 878

459.01 Differences between 1160.3 and NLRA section 10(c) indicate that ALRB was intended to have broader remedial powers than NLRB.
SANDRINI BROTHERS v. ALRB (1984) 156 Cal.App.3d 878

459.01 ALRB is not a court, and its decisions are not judgments, since judicial power of state is vested by constitution in the various courts.
SANDRINI BROTHERS v. ALRB (1984) 156 Cal.App.3d 878

459.01 1160.3 mandates issuance of remedial order in every case in which ULP has been committed.
PASILLAS v. ALRB (1984) 156 Cal.App.3d 312

459.01 Purpose of backpay is to make whole discriminatee by entitling him or her to what would have been earned during period of discrimination, less what was actually earned during that period.
FRUDDEN ENTERPRISES, INC. v. ALRB (1984) 153 Cal.App.3d 262

459.01 Reinstatement and backpay are appropriate remedies where an employer has unlawfully discharged and/or refused to hire employees to avoid successorship status.
BABBITT ENGINEERING & MACHINERY v. ALRB (1984) 152 Cal.App.3d 310

459.01 Award of backpay is statutorily authorized and is common

remedy to redress effects of unlawful discharge.
SUPERIOR FARMING CO. v. ALRB (1984) 151 Cal.App.3d 100

459.01 Even though crew's discharge was product of foreman's mistake and was unaccompanied by evil or unlawful intent on employer's part, a coercive impact was guaranteed because of crew's belief that discharge occurred immediately following their protected wage protest. Board award of backpay is therefore within policies of Act.
SUPERIOR FARMING CO. v. ALRB (1984) 151 Cal.App.3d 100

459.01 There are two limitations on award of backpay. First, record must support inference that subject employees had reasonable expectation of continuing employment at company in question had unlawful conduct not occurred. Second, Board must consider mitigation of damages.
SUPERIOR FARMING CO. v. ALRB (1984) 151 Cal.App.3d 100

459.01 Reinstatement and backpay properly limited to loss of California work resulting from unilateral change in hiring practices.
NISH NOROIAN FARMS v. ALRB (1984) 35 Cal.3d 726

459.01 The goal of backpay award is to return employee to situation that would have existed but for the illegal discharge. That goal requires consideration of the sporadic and part-time nature of the work to avoid windfalls to wrongdoing employers.
NISH NOROIAN FARMS v. ALRB (1984) 35 Cal.3d 726

459.01 Board properly ordered payment of backpay, plus expenses of seeking or holding interim employment, with interest.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

459.01 Board may leave determination of specific identity of discriminatees and their respective reinstatement rights to compliance proceedings after court enforcement.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

459.01 Prospective remedies of backpay and reinstatement may be rendered ineffective by inherent delays of administrative process. Injunction under 1160.4 may be required to prevent destruction of employees' rights pending final disposition by the Board.
ALRB v. RULINE NURSERY CO. (1981) 115 Cal.App.3d 1005

459.01 Backpay remedy is not only punishment for ULP, but is also remedy designed to restore, so far as possible, status quo that would have obtained but for wrongful act.
M. B. ZANINOVICH, INC. v. ALRB (1981) 114 Cal.App.3d 665

459.01 Board is not required to place the consequences of its own delay, even if inordinate, upon wronged employees to benefit of wrongdoing employers.
M. B. ZANINOVICH, INC. v. ALRB (1981) 114 Cal.App.3d 665

459.01 Pursuant to Board's request, court would modify remedial order to delete reference to particular crop year and provide instead that offer of reinstatement should remain open until end of harvest season following issuance of court decree.
M. B. ZANINOVICH, INC. v. ALRB (1981) 114 Cal.App.3d 665

459.01 ALRB was well within its remedial authority where limited backpay/ makewhole remedy (Transmarine Navigation Corp. (1968) 170 NLRB 389) was applied in specific, narrow circumstances that NLRB has long recognized as justifying such remedy.
HIGHLAND RANCH v. ALRB (1981) 29 Cal.3d 848

459.01 Board erred in including in group of employees entitled to backpay five workers who were not working on the day of the unlawful discharge.
GEORGE ARAKELIAN FARMS v. ALRB (1980) 111 Cal.App.3d 258

459.01 Backpay can only be awarded to those employees who would have worked during backpay period but for discriminatory practices of employer.
GEORGE ARAKELIAN FARMS v. ALRB (1980) 111 Cal.App.3d 258

459.01 Board erred in ordering "open-ended" backpay liability regarding crew of seasonal cantaloupe harvesters, since record failed to prove that employees would have been rehired in subsequent seasons.
GEORGE ARAKELIAN FARMS v. ALRB (1980) 111 Cal.App.3d 258

459.01 Effect Of Immigration Laws on Compliance (See also 460.05, 461.07

459.01 Immigration Reform Act has no application with regard to reinstatement and backpay where discriminatee was both discharged and reinstated prior to effective date of Act.
O.P. MURPHY CO., INC., 13 ALRB No. 27

459.01 Any employees are entitled to claim backpay who can demonstrate in compliance proceedings that they would have been recalled if Employer had not unilaterally changed its work experience requirements. Remedy is not limited to those named in the complaint.
Scheid Vineyards and Management Company, Inc., 21 ALRB No. 10

459.01 Where respondent had been ordered to reinstate discriminatee by assigning him irrigation work in same manner as it did prior to discrimination, discriminatee's status as irrigator of last resort constitutes failure to reinstate.
OASIS RANCH MANAGEMENT, INC., 20 ALRB No. 19

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

459.02 Conditional Reinstatement

459.02 Reinstatement offer, made through a union representative, was conditioned on the union's promise to use its best efforts to get ULP charges withdrawn, and thus did not terminate employer's backpay obligation.
KITAYAMA BROTHERS, 10 ALRB No. 47

459.02 Where employer terminated its lettuce harvest business, Board ordered employer to reinstate discriminatees if and when lettuce harvest operations recommended.
VERDE PRODUCE CO, INC., 10 ALRB No. 35

459.02 An offer to reinstate a discriminatee in a temporary position does not satisfy a respondent's obligation to offer the discriminatee reinstatement to his or her former job.
ABATTI FARMS, INC., 9 ALRB No. 59

459.03 Back Pay Without Reinstatement

459.03 Where the union was found to have unlawfully caused employee's discharge under union security clause, union was liable for employee's losses and backpay order was appropriate; however, since employee had been reinstated, Board order did not include reinstatement, and, since the employee died, backpay was ordered to be paid to his estate.
UFW/ODIS SCARBROUGH, 9 ALRB No. 17

459.03 Board appropriately awarded limited backpay remedy (Transmarine Navigation Corp. (1968) 170 NLRB 389) where employer closed its operations without bargaining. Backpay obligation places economic burden on employer which mere bargaining order does not, and restores to employees a measure of bargaining power which they would otherwise lose after the closure.
HIGHLAND RANCH v. ALRB (1981) 29 Cal.3d 848

459.04 Reinstatement Without Back Pay

459.05 Joint Or Several Back Pay Liability In General; Relief Sought Or Ordered Against Both Employer And Union

459.06 Prior Reinstatement Offers; Effect On Board Order

459.06 Respondent's unconditional offer of reinstatement to a discriminatee, which was refused, prior to or at the

opening of the unfair labor practice hearing, does not affect the Board's conventional remedial order of reinstatement with or without backpay; the issue of the respondent's compliance with an expected Board order should not be resolved at the unfair labor practice hearing, but at the compliance phase.
KITAYAMA BROTHERS, 9 ALRB No. 23

459.06 Whether Employee suffered any damages as result of Employer's unlawful layoff is matter for compliance proceedings.
ABATTI FARMS, INC., & ABATTI PRODUCE, INC., 7 ALRB No. 36

459.07 Private Agreements Concerning Reinstatement And Backpay; Effect On Board Order

459.07 Discriminatees were discharged by interim employer during instant employer's backpay period, and interim employer settled its backpay liability to the discriminatees; amounts received as a result of the settlement were treated as interim earnings deductible from instant employer's liability, offset on a daily basis on the days when the backpay periods of the two different employers were found to overlap.
MARIO SAIKHON, INC., 9 ALRB No. 50

459.07 In ordering a limited backpay award, Board will not set seniority requirements of eligibility for benefits; but will leave to the parties negotiations of the eligibility for and amount of severance pay to be received by each employee.
PIK'D RITE, INC., and CAL-LINA, INC., 9 ALRB No. 39

459.07 A discriminatee cannot bargain away or comprise the relief (e.g., reinstatement and backpay remedies) the Board orders an employer to make because of its unfair labor practice. Reinstatement and backpay are remedies which the Board provides in the public interest to enforce a public right; such relief is not a private right belonging to the discriminatee to do with what he wills; any agreement between the discriminatee and the respondent concerning such relief does not affect the Board's statutory obligation in section 1160.3 of the Act to issue an order, upon finding an unfair labor practice, directing respondent to make appropriate relief.
KITAYAMA BROTHERS, 9 ALRB No. 23

459.08 Applicable Rate On Reinstatement

459.09 Availability Of Work; Reduction In Workforce Or Elimination Of Jobs As Affecting Reinstatement

459.09 Although an employer need not offer reinstatement to a position which for valid business reasons no longer exists, employer nevertheless is required to offer reinstatement to a substantially equivalent position or to one which the discriminatee is qualified to perform if

such work is available.
UKEGAWA BROTHERS, et al., 16 ALRB No. 18

459.09 When knowledge of discriminatory hiring practices leads an applicant to reasonably believe that further efforts to seek reinstatement would be futile, the applicant is relieved of a duty to reapply for work and backpay is computed from the date of the first available opening which the applicant is qualified to fill.
SWINE PRODUCERS UNLIMITED, INC. 13 ALRB No. 12

459.09 Alleged replacement of discharged economic strikers and alleged lack of work at time they presented themselves for rehire will not affect backpay remedy.
SUMNER PECK RANCH, INC., 10 ALRB No. 24

459.09 A respondent's bona fide offer to reinstate the discriminatee to his or her former or substantially equivalent job terminates the backpay period. A discriminatee is entitled to an offer of reinstatement to his or her former job; if the discriminatee's former job no longer exists, the respondent must reinstate the discriminatee to a substantially equivalent job.
ABATTI FARMS, INC., 9 ALRB No. 59

459.09 Board held that employer unlawfully refused to hire predecessor's employees to avoid dealing with union and ordered it to offer employment to each discriminatee, discharging present employees if necessary to provide job openings, and, if there are not sufficient jobs for all discriminatees, to place them on a preferential hiring list and hire them as jobs become available.
RIVCOM CORPORATION and RIVERBEND FARMS, INC., 5 ALRB No. 55

459.09 There are two limitations on award of backpay. First, record must support inference that subject employees had reasonable expectation of continuing employment at company in question had unlawful conduct not occurred. Second, Board must consider mitigation of damages.
SUPERIOR FARMING CO. v. ALRB (1984) 151 Cal.App.3d 100

459.09 Reinstatement and backpay properly limited to loss of California work resulting from unilateral change in hiring practices.
NISH NOROIAN FARMS v. ALRB (1984) 35 Cal.3d 726

459.09 No gross backpay accrues during periods when discriminatee would have been on seasonal layoff unrelated to the unlawful discrimination.
NISH NOROIAN FARMS v. ALRB (1984) 35 Cal.3d 726

459.09 Labor contractors are not indispensable parties in ALRB proceedings; reinstatement remedies maybe ordered against growers, despite potential interference with contracts to provide labor and absence of labor contractors during hearings.

RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

459.09 Board order to reinstate employees to available positions assumed that employer may have lawfully reduced number of total positions and, therefore, a priority rehire list may be established in compliance proceedings.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

459.09 Backpay can only be awarded to those employees who would have worked during backpay period but for discriminatory practices of employer.
GEORGE ARAKELIAN FARMS v. ALRB (1980) 111 Cal.App.3d 258

459.09 Where Board order requires respondent to reinstate discriminatee by assigning him irrigation work in same manner as prior to discrimination, it is not General Counsel's burden to prove that each irrigation assignment was denied for discriminatory reasons; rather, it was respondent's burden to show legitimate reasons why available assignments were not given to discriminatee.
OASIS RANCH MANAGEMENT, INC., 20 ALRB No. 19

459.09 Irrigators need not be displaced in favor of discriminatee with regard to regular assignments they had prior to discrimination, but this did not provide legitimate reason for not giving assignments to discriminatee on days someone other than regular irrigators performed the work.
OASIS RANCH MANAGEMENT, INC., 20 ALRB No. 19

459.09 Finding that ranch owner preferred other irrigator over discriminatee is not legitimate reason for failing to give discriminatee the assignment once other irrigator removed from assignment.
OASIS RANCH MANAGEMENT, INC., 20 ALRB No. 19

459.09 Assertion that regular irrigation assignments not given to discriminatee to avoid liability for employees operating own vehicles on public highways during work hours does not provide legitimate defense to reinstatement where there was no showing that no other employees drive their own vehicles nor an explanation given as to why this was not a concern prior to the discrimination.
OASIS RANCH MANAGEMENT, INC., 20 ALRB No. 19

459.09 Evidence indicates there were apparently not enough jobs available to offer re-employment to all discriminatees denied rehire even if the employer had hired workers in a totally non-discriminatory manner. Therefore, Board's remedial order will require employer to offer reinstatement to those discriminatees who would currently be employed but for employer's unlawful refusal to rehire them, and to make whole all those who suffered economic losses as a result of employer's refusal to rehire them. The matter of how many jobs were available and which employees would have been hired into those jobs is a

matter to be resolved in compliance proceedings.
TSUKIJI FARMS, 24 ALRB No. 3

459.10 Lockouts, Employees Directly Or Incidentally Affected

459.11 After Demotion, Transfer, Pay Or Benefit Reduction, Or Other Change In Conditions Of Employment

459.11 Employer who ceased providing employees with work-related equipment at reduced cost immediately following election ordered to reimburse them for cost of equipment purchased above what they otherwise would have paid employer.
BAKER BROTHERS/SUNKIST PACKING HOUSE, 12 ALRB No. 17

459.11 As a means of restoring the status quo ante that existed prior to the employer's unlawful change in hiring practices, the Board ordered the employers to offer their terminated employees reinstatement to their former jobs or other employment for which they are qualified.
MOUNT ARBOR NURSERIES, INC., and MID-WESTERN NURSERIES, INC., 9 ALRB No. 49

459.12 Strikers' Rights

459.12 The proper remedy for a failure to provide a meaningful opportunity to bargain over the effects of a decision to cease operations is a limited backpay award coupled with an order to bargain; the limited backpay award is remedial, and its purpose is to restore the situation, as nearly as possible, to that which would have been obtained but for the violation.
PIK'D RITE, INC., and CAL-LINA, INC., 9 ALRB No. 39

459.12 Alleged replacement of discharged economic strikers and alleged lack of work at time they presented themselves for rehire will not affect backpay remedy.
SUMNER PECK RANCH, INC., 10 ALRB No. 24

459.12 A strike, economic at its outset, was converted to an unfair labor practice strike when the employer's unlawful bargaining strategy came to fruition, and, after conversion, the employer's unlawful conduct served to prolong the strike by preventing the development of conditions under which strikers would have returned to work. Employees who, subsequent to the date of conversion, made unconditional offers to return to work were therefore entitled to reinstatement to their former or equivalent positions even if replacements had been hired.
BRUCE CHURCH, INC., 9 ALRB No. 74

459.12 In class discrimination cases; the General Counsel has the burden of proving: (1) that the alleged discriminatory conduct was directed against an entire group, and (2) that the individual was a member of that group. Absent proof of a plan or a scheme, a group discrimination analysis is unwarranted. An intent to do

no more than absolutely necessary to comply with minimal legal standards of recall for economic strikers is insufficient to imply an underlying discriminative motive in the design of a seniority recall plan or system.
BRUCE CHURCH, INC., 9 ALRB No. 74

459.12 Strikers permanently replaced prior to conversion of strike from economic to ULP strike entitled to immediate reinstatement upon making unconditional offer to return absent Respondent's showing of necessity to offer replacements employment beyond the first harvesting season in which hired.
COLACE BROTHERS, INC., 8 ALRB No. 1

459.12 In compliance hearing to determine if strikers were permanently replaced, Board's decision is Seabreeze Berry Farms (1981) (7 ALRB No. 40) controls and if only some strikers were permanently replaced, least senior Employees deemed those first replaced.
ADMIRAL PACKING CO., et al, 7 ALRB No. 43

459.12 ULP strikers entitled to reinstatement to former or equivalent position upon unconditional offer to return even if replacement Employees must be discharged to make room.
ADMIRAL PACKING CO., et al, 7 ALRB No. 43

459.12 Except as to two employees who threatened non-strikers, the Board refused to deny backpay to the discharged ULP strikers because of misconduct by some of the strikers. The Board held that the misconduct was not so serious as to justify denial of backpay, and noted that the misconduct could not generally be attributed to individual employees.
O.P. MURPHY & SONS, 5 ALRB No. 63

459.12 The Board ordered backpay for unfair labor practice strikers who had been unlawfully discharged, and distinguished the rule in Southwestern Pipe (1969) 179 NLRB 364--which permits the employer in some circumstances to limit backpay liability by offering reinstatement to some but not all strikers--because it found that the employees here had been discharged.
O.P. MURPHY & SONS, 5 ALRB No. 63

459.13 Nonstrikers, Rights Of

459.14 Effect of Immigration Laws on Compliance

459.14 Respondent land management company was an agricultural employer as defined by Migrant and Seasonal Workers Protection Act (MSPA), and therefore not a farm labor contractor under MSPA, which excludes agricultural employers from its definition of farm labor contractors. Respondent failed to show that it had farm labor contractor status, and therefore was not required to refrain from employing aliens not authorized to accept

employment in the United States.
PHILLIP D. BERTELSEN, INC., 18 ALRB No. 13

459.14 Immigration Reform Act has no application with regard to reinstatement and backpay where discriminatee was both discharged and reinstated prior to effective date of Act.
O. P. MURPHY CO., INC., 13 ALRB No. 27

459.14 Stipulation that discriminatees did not have any of the documents evidencing authorization to work listed in 29 CFR 500.59 did not conclusively demonstrate that they were not authorized to work, but stipulation was sufficient to create a presumption that they were not so authorized, such that burden shifted to discriminatees to show they were in fact authorized to work in the U.S. at the time in question. Employer under no duty to tell discriminatees that they had to return to INS for work authorization stamp.
PHILLIP D. BERTELSEN, INC. v. ALRB (1992) 2 Cal.App.4th 506

459.14 Board correctly found that "dual status" employer, i.e., farmer who also provided labor to other farmers, was not a "labor contractor" as defined under MSPA, and was thus not subject to MSPA's prohibition on the hiring of undocumented aliens by labor contractors. Therefore, MSPA did not preempt Board's make-whole order covering undocumented discriminatees.
Phillip D. Bertelsen, Inc. v. ALRB, (1994) 23 Cal.App. 4th 759 [29 Cal.Rptr.2d 204]

459.14 Petitioners for political asylum who have not been authorized to work by the Atty. Gen. are not "unavailable for work," and thus the INA does not preempt make-whole relief to such discriminatees.
Phillip B. Bertelsen, Inc. v. ALRB, (1994) 23 Cal.App. 4th 759 [29 Cal.Rptr.2d 204]

460.00 FACTORS LIMITING OR TERMINATING LIABILITY

460.01 Physical Disability; Incapacity; Death Of Discriminatee

460.01 Doctors' reports which were not admitted for truth of the matter asserted, but only as evidence of employer's state of mind, may not be used as proof of disability so as to terminate reinstatement and backpay rights.
GIANNINI PACKING CORP., 19 ALRB No. 16

460.01 Backpay terminated as of date of expert testimony that discriminatee was a qualified injured worker who risked re-injury if returned to former work, since no evidence that employer was previously aware of medical report or other information that would have created good faith doubt in ability of discriminatee to return to work.
GIANNINI PACKING CORP., 19 ALRB No. 16

460.01 Immigration Reform Act has no application with regard to reinstatement and backpay where discriminatee was both discharged and reinstated prior to effective date of Act.
O.P. MURPHY CO., INC., 13 ALRB No. 27

460.01 Where, in compliance hearing, for purposes of mitigating backpay, Respondent failed to establish that any discriminatee had left the country during one month backpay period, post-compliance Sure-Tan Motion to Reopen Record denied in light of 9th Circuit's interpretation of Sure-Tan as applicable only where illegal alien has in fact left country.
O.P. MURPHY CO., INC., 13 ALRB No.27

460.01 Backpay claimant not entitled to backpay for period during which she was unavailable for employment due to hospitalization for surgery and subsequent period of recuperation.
UFW/SUN HARVEST (Moses), 13 ALRB No. 26

460.01 A discriminatee's rheumatism and back condition resulted from his interim employment "pitching watermelons," as they first occurred following the melon season; the respondent failed to show that the rheumatism and back condition were a usual incident of the hazards of living generally, and failed to rebut the inference that the disabilities were related to the discriminatee's interim employment.
ABATTI FARMS, INC., 9 ALRB No. 59

460.01 Periods when a discriminatee is unavailable for work due to illness, willful idleness or vacation shall be excluded from the gross backpay liability.
ABATTI FARMS, INC., 9 ALRB No. 59

460.01 The burden is on the respondent to establish its affirmative defenses, including interim earnings, willful loss of interim earnings, disability and impropriety of the General Counsel's backpay formula.
ABATTI FARMS, INC., 9 ALRB No. 59

460.01 Where the union was found to have unlawfully caused employee's discharge under union security clause, union was liable for employee's losses and backpay order was appropriate; however, since employee had been reinstated, Board order did not include reinstatement, and, since the employee dies, backpay was ordered to be paid to his estate.
UFW/ODIS SCARBROUGH, 9 ALRB No. 17

460.01 Even if a discriminatee voluntarily leaves, or refuses to accept, substantially equivalent interim work, the respondent's backpay liability does not terminate as of that time. In such a case, respondent's liability is determined as if the employee had never left or refused the interim job and the interim earnings he would have received will be subtracted from the respondent's gross

backpay obligation.
MAGGIO-TOSTADO, 4 ALRB No. 36

460.02 Misconduct Relating To Employment

460.02 No inherent conflict exists between awarding backpay and possibility that claimant may have used more than one social security number.
CERTIFIED EGG, 19 ALRB No. 9

460.02 Board held that crew of employees was entitled to backpay and reinstatement despite employer's contention that crew engaged in misconduct subsequent to unlawful discharge, where Board found isolated pushing incident and general threat unaccompanied by any physical acts or gestures were insufficient to bar backpay and reinstatement to crew employees.
PAPPAS & COMPANY, 5 ALRB No. 52

460.02 Board erred in finding a grower's refusal to rehire a union activist at the end of a strike an unfair labor practice, since the activist had engaged in serious strike-related misconduct for which he was convicted of several misdemeanors.
PAUL W. BERTUCCIO v. ALRB (1988) 202 Cal.App.3d 1369

460.02 Though the grower's refusal to rehire a union activist was motivated by both the activist's union activities and strike-related misconduct, the refusal to rehire the activist was justifiable as a matter of law and not due to illegal discrimination.
PAUL W. BERTUCCIO v. ALRB (1988) 202 Cal.App.3d 1369

460.02 Where the reason for the unlawful failure to reinstate a striker who unconditionally offers to return to work is unrelated to alleged strike misconduct, and thereby the alleged misconduct is not placed squarely at issue, it is not incumbent upon the employer to prove in the liability phase that the employee is nonetheless unfit for reinstatement.
SUNRISE MUSHROOMS, INC., 22 ALRB No. 2

460.02 Employer cannot escape a finding of unlawful discharge by relying on conduct of the employee that was not considered in the discharge, however, evidence of serious misconduct can nevertheless be the basis for denying the standard remedy of reinstatement and backpay; Since unfitness for reinstatement is in the nature of a defense to the standard remedy, the burden of proving the misconduct in properly placed on the party asserting the defense.
SUNRISE MUSHROOMS, INC., 22 ALRB No. 2

460.02 The present standard for strike misconduct is that adopted by the NLRB in *Clear Pine Mouldings, Inc.* (1984) 268 NLRB 1044, i.e., that strike misconduct is "serious" (thereby justifying dismissal or denial of reinstatement)

if it reasonably tends to coerce or intimidate nonstriking workers.
COASTAL BERRY CO. v. ALRB (2001) 94 Cal.App.4th 1, 114 Cal.Rptr.2d 228

460.02 Strike misconduct need not consist of physical acts, but may consist of an expression of hostility that may tend to coerce or intimidate nonstriking employees; the misconduct need not be directed at nonstriking employees, as threatening customers and company officials and striking their vehicles has been deemed misconduct even where no actual damage resulted, as has acts of vandalism or sabotage directed against the employer; actions that promote or encourage misconduct by other strikers may also justify discharge.
COASTAL BERRY CO. v. ALRB (2001) 94 Cal.App.4th 1, 114 Cal.Rptr.2d 228

460.02 Once the G.C. has established that a striker was denied reinstatement for conduct related to a strike, the burden shifts to the employer to establish that it had an honest belief that the striker engaged in strike misconduct. (The employer's determination not to reinstate a striker must be based on evidence that the striker personally engaged in strike misconduct.) If the employer meets its burden, the G.C. then has the burden of establishing that the striker did not in fact engage in the alleged misconduct or that it was not sufficiently serious to remove the protection of the Act.
COASTAL BERRY CO. v. ALRB (2001) 94 Cal.App.4th 1, 114 Cal.Rptr.2d 228

460.02 Where strike misconduct is at issue, acts discovered after a discharge are nonetheless relevant to establishing entitlement to reinstatement and backpay.
COASTAL BERRY CO. v. ALRB (2001) 94 Cal.App.4th 1, 114 Cal.Rptr.2d 228

460.02 The proper standard for evaluating serious strike misconduct is that enunciated in *Clear Pine Mouldings, Inc*. (1984) 268 NLRB 1044. Under the *Clear Pine Mouldings, Inc*. standard, a striker may be found to have engaged in serious strike misconduct, thus causing the striker to lose the protection of the Act if his or her conduct in the course of the strike "may reasonably tend to coerce or intimidate employees in the exercise of rights protected under the Act."
COASTAL BERRY COMPANY, LLC, 28 ALRB No. 7

460.02 An employer's determination not to reinstate a striker must be based on evidence that the striker personally engaged in strike misconduct. It is insufficient to conclude that much of the conduct of the group of which the striker was a part was unprotected.
COASTAL BERRY COMPANY, LLC, 28 ALRB No. 7

460.02 To justify a discharge, the employer may not rely on

strike misconduct that was not the basis for the discharge, but such conduct may be a basis for denying reinstatement and limiting back pay.
COASTAL BERRY COMPANY, LLC, 28 ALRB No. 7

460.03 Disloyalty To Or Competition With Employer

460.04 Sale, Transfer, or Discontinuance Of Business; "Successor" Companies; Subcontracting; Removal Of Operations; Order To Resume Operations

460.04 Where employer terminated its lettuce harvest business, Board ordered employer to reinstate discriminatees if and when lettuce harvest operations recommended.
VERDE PRODUCE CO., INC., 10 ALRB No. 35

460.04 The proper remedy for a failure to provide a meaningful opportunity to bargain over the effects of a decision to cease operations is a limited backpay award coupled with an order to bargain; the limited backpay award is remedial, and its purpose is to restore the situation, as nearly as possible, to that which would have been obtained but for the violation.
PIK'D RITE, INC., and CAL-LINA, INC., 9 ALRB No. 39

460.04 Board held that employer unlawfully refused to hire predecessor's employees to avoid dealing with union and ordered it to offer employment to each discriminatee, discharging present employees if necessary to provide job openings, and, if there are not sufficient jobs for all discriminatees, to place them on a preferential hiring list and hire them as jobs become available.
RIVCOM CORPORATION and RIVERBEND FARMS, INC., 5 ALRB No. 55

460.04 Upon affirming ALJ's conclusion that respondent violated section 1153(e) and (a) of the Act, the Board, acting on a join motion of respondent and the charging party stating that all parties had entered into a private settlement agreement, dispensed with issuing a remedial order, finding that the private settlement agreement was in accordance with the policies of the Act, in view of the unique circumstances presented in the case, and noting that respondent had terminated its agricultural operations.
HEMET WHOLESALE COMPANY, 4 ALRB No. 75

460.04 Reinstatement and backpay properly limited to loss of California work resulting from unilateral change in hiring practices.
NISH NOROIAN FARMS v. ALRB (1984) 35 Cal.3d 726

460.04 Board appropriately awarded limited backpay remedy (Transmarine Navigation Corp. (1968) 170 NLRB 389) where employer closed its operations without bargaining. Backpay obligation places economic burden on employer which mere bargaining order does not, and restores to

employees a measure of bargaining power which they would otherwise lose after the closure.
HIGHLAND RANCH v. ALRB (1981) 29 Cal.3d 848

460.05 Bankruptcy; Receivership, Insolvency

460.05 Where, in compliance hearing, for purposes of mitigating backpay, respondent failed to establish that any discriminatee had left country during one month backpay period, post-compliance Sure-Tan Motion to Reopen Record denied in light of 9th Circuit's interpretation of Sure-Tan as applicable only where illegal alien has in fact left country.
O.P. MURPHY CO., INC., 13 ALRB No. 27

460.05 Immigration Reform Act has no application with regard to reinstatement and backpay where discriminatee was both discharged and reinstated prior to effective date of Act.
O.P. MURPHY CO., INC., 13 ALRB No. 27

460.05 Where, in the judgment of the regional director, there is no reasonable likelihood that further efforts will result in full or additional compliance with the Board's order in a fully adjudicated case, the regional director may file a motion to close the case. Motions to close such cases shall be filed with the Board and served on the parties in accordance with Title 8, California Code of Regulations, sections 20160 and 20166. Parties shall have thirty (30) days from the date of service to file a response to the motion to close. A reply, if any, shall be filed within ten (10) days after service of the response. The motion shall contain, inter alia, the case name and number(s), the number(s) of the underlying Board decision(s), a brief summary of the case and the remedies ordered by the Board, the date the case was released for compliance, a detailed description of the steps taken to achieve full compliance, factors preventing full compliance, and the reasons why there is no reasonable likelihood that further efforts will be successful.
JOHN V. BORCHARD, et al., 27 ALRB No. 1

460.06 Reinstatement Offer as Terminating Employer's Back Pay Liability; Sufficiency of Offer; Substantially Equivalent Employment After Reinstatement

460.06 Employer's petition in bankruptcy terminated the accrual of additional interest on the backpay awards.
KAWANO, INC., 9 ALRB No. 62

460.06 Insolvency of employer, making value of backpay awards highly speculative, made it pointless to calculate awards with time-consuming mathematical precision.
KAWANO, INC., 9 ALRB No. 62

460.06 Employer's duty of reinstatement runs until a proper offer of reinstatement is made and unequivocally rejected by the employee, (Chromalloy American (1982) 263 NLRB

244, Verde Produce Company, Inc. (1984) 10 ALRB No. 35.)
SAM ANDREWS' SONS, 16 ALRB No. 6

460.06 Absent an offer of reinstatement which is unequivocally rejected by the employee, Board cannot presume that a pre-strike discriminatee would reject such an offer if made during the strike notwithstanding the employee's support for and participation in the strike.
SAM ANDREWS' SONS, 16 ALRB No. 6

460.06 In case where it was not clear whether a pre-strike discriminatee would have accepted an offer of reinstatement had one been extended during the course of an economic strike, Board followed NLRB's Winn Dixie rule (206 NLRB 777) which holds that any uncertainty as to the amount of loss suffered by a discriminatee was caused by the wrongdoer who violated the law in the first instance and therefore should be resolved against the wrongdoer.
SAM ANDREWS' SONS, 16 ALRB No. 6

460.06 Where Respondent erred in sending offer of reinstatement to Regional Director for mailing to discriminatee, and Region properly returned such offer to Respondent but also provided Respondent with its last known, albeit incorrect, address and Board determined that Respondent reasonably relied on such address, backpay tolled from the earliest point at which Respondent could reasonably have been expected to rely on the Region's incorrect address until such time as Respondent had notice that the offer was not received but made no showing that it subsequently attempted to independently ascertain discriminatee's whereabouts in order to redirect offer.
HARRY CARIAN, INDIVIDUALLY, and dba HARRY CARIAN SALES, 15 ALRB No. 14

460.06 An employee may have been found to have waived reinstatement by failing to respond to a valid offer.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC. 14 ALRB No. 8

Where extrinsic evidence indicates that an offer of reinstatement, valid on its face, is not bona fide, backpay is not tolled.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC. 14 ALRB No. 8

460.06 A valid offer must be specific, unequivocal and unconditional.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC. 14 ALRB No. 8

460.06 Upon receipt of a valid offer of reinstatement, a discriminatee is required to make some sort of response. What is reasonable will depend on the circumstances of the case.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC. 14 ALRB No. 8

460.06 Valid offer tolls backpay for employees who do not accept reinstatement on the date of rejection or on the date of the last opportunity to accept.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC. 14 ALRB No. 8

460.06 Backpay claimants were not required, after expiration of their suspensions from union, to reapply for work both employer. Since claimants were terminated from their employment, the backpay period remained open until the employer offered reinstatement.
UFW/SUN HARVEST (Moses), 13 ALRB No. 26

460.06 Vague reference to undelivered recall letters made to union representatives in context of contract negotiations respecting hiring did not constitute offer of reinstatement which terminates employer's backpay liability.
McFARLAND ROSE PRODUCTION, 11 ALRB No. 34

460.06 Reinstatement offer, made through a union representative, was conditioned on the union's promise to use its best efforts to get ULP charges withdrawn, and thus did not terminate employer's backpay obligation.
KITAYAMA BROTHERS, 10 ALRB No. 47

460.06 An offer to reinstate a discriminatee in a temporary position does not satisfy a respondent's obligation to offer the discriminatee reinstatement to his or her former job.
ABATTI FARMS, INC., 9 ALRB No. 59

460.06 The mailing of a certified letter which was returned undelivered and two postcards containing an offer to re-instate the discriminatee insufficient to terminate the respondent's backpay liability in light of the discriminatee's testimony that he did not receive the postcards or letter.
ABATTI FARMS, INC., 9 ALRB No. 59

460.06 Determination of whether a discriminatee has been offered reinstatement to a substantially equivalent job is made on a case-by-case basis. Factors considered include wages, hours, type of employment, and fringe benefits such as medical insurance, vacation pay and holidays; both the similarities and dissimilarities of the former job and alleged substantially equivalent job are considered.
ABATTI FARMS, INC., 9 ALRB No. 59

460.06 Employment is not substantially equivalent where: the job is temporary, he salary is less, the work or assignment is less desirable, the work requires different skills and involves different working conditions, the work is hard, the job classification is different with different duties, the work shift is different, the job is in a

different location, or the job is seasonal while the former job was year-round.
ABATTI FARMS, INC., 9 ALRB No. 59

460.06 Discriminatee's expenses in seeking, obtaining or working at interim employment may be recovered by Discriminatee. (pp. 76-77)
MARIO SAIKHON INC., 8 ALRB No. 88

460.06 Discriminatee entitled to recover rental expenses incurred when discriminatee had to move to area outside Imperial Valley to find work although discriminatee kept the house he had while working for Employer and did not seek to rent his home which sat vacant. (I, B, pp. 8-9)
MARIO SAIKHON INC., 8 ALRB No. 88

460.06 Discriminatee entitled to recover cost of tires so that he could travel substantial distance to work in Arizona. (I, B, pp. 18-19)
MARIO SAIKHON INC., 8 ALRB No. 88

460.06 Discriminatee not entitled to recover cost of repairing his van where no evidence need for repairs was attributable to Employer's ULP, for example caused by discriminatee's use of the van to seek or obtain work. (I, B, pp. 1-8)
MARIO SAIKHON INC., 8 ALRB No. 88

460.06 Backpay liability not terminated by one-time telephone call by ranch foreman which did not reach discriminatee.
ARNAUDO BROTHERS, 7 ALRB No.25

460.06 Employer acted reasonably in serving General Counsel and Union with offers of employment for employees for whom it had no addresses. Since ER was not the initial employer of the discriminatees, it was not unreasonable that it would lack addresses of its predecessor's employees.
GREWAL ENTERPRISES, INC., 24 ALRB No. 7

460.06 Although contents of employer's letters offering employment to discriminatees was somewhat defiant in tone, the letters repeatedly stated that employees would be treated fairly and thus were not so coercive as to invalidate the offers.
GREWAL ENTERPRISES, INC., 24 ALRB No. 7

460.07 Retraining Or Trial Period For New Jobs; Mechanization, Effect Of

460.07 Where former job had not been eliminated, Respondent had no duty to train and assign discriminatee to do work that he had not done prior to the discrimination.
OASIS RANCH MANAGEMENT, INC., 20 ALRB No. 19

460.08 Availability Of Employee; Rejection Of Proper Reinstatement Offer; Application; Desire For Reinstatement

460.08 Respondent failed to establish unauthorized immigration status of fourteen discriminatees, the basic premise from which its "preemption" and "unavailability" arguments were made. For this reason Board declined to address Respondent's contentions, holding that Respondent's refusal to reinstate the discriminatees upon their application to return to work was unwarranted.
PHILLIP D. BERTELSEN, INC., dba COVE RANCH MANAGEMENT, 16 ALRB No. 11

460.08 Where bona fide offer of reinstatement provides that discriminatee may accept by contacting his supervisor or going to the fields and discriminatee only visited home of absent supervisor twice without doing more, discriminatee held to have waived reinstatement.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC., 14 ALRB No. 8

460.08 Undocumented alien agricultural employees are not "unavailable for work" merely because they may lack documentation entitling them to be lawfully in the country.
RIGI AGRICULTURAL SERVICES, INC., 11 ALRB No. 27

460.08 Discriminatee not entitled to backpay to extent that he/she fails to remain in labor market (here, on vacations out of country), refuses to accept substantially equivalent employment, fails to diligently search for alternative work, or voluntarily quits alternative employment without good cause.
GEORGE LUCAS & SONS, 10 ALRB No. 6

460.08 Discriminatee could not remember when he refused an offer of reinstatement to a temporary job, but his statement to the respondent's agent who made the offer that he could not accept the job because he had his own business was sufficient evidence that the discriminatee voluntarily waived or abandoned his right to be reinstated.
ABATTI FARMS, INC., 9 ALRB No. 59

460.08 When the respondent fails to question the discriminatee about an alleged period of unavailability for work, and there is evidence that the discriminatee was in fact available for work, such as interim earnings, the gross backpay for the period shall not be excluded because the respondent has failed to prove that the discriminatee was unavailable for work.
ABATTI FARMS, INC., 9 ALRB No. 59

460.08 A discriminatee's voluntary removal from the labor market and his or her intent to abandon reemployment with a respondent terminates the respondent's backpay liability.
ABATTI FARMS, INC., 9 ALRB No. 59

460.08 The mailing of a certified letter which was returned undelivered and two postcards containing an offer to

reinstate the discriminatee insufficient to terminate the respondent's backpay liability in light of the discriminatee's testimony that he did not receive the postcards or letter.
ABATTI FARMS, INC., 9 ALRB No. 59

460.06 Discriminatee was not diligently seeking interim work during a four-month period in which he sat in the office of his union representative and waited for assistance.
BRUCE CHURCH, INC., 9 ALRB No. 19

460.08 Fact that discriminatee has regular employment and did not accept reinstatement does not establish discriminatee abandoned intent to return to work for Employer so as to terminate Employer's backpay liability. Abandonment shown only where Discriminatee clearly states intent not to return to work for Employer and such statement is made under circumstances which show its reliability, and decision is not tainted by Employer's unlawful actions.
MARIO SAIKHON, INC., 8 ALRB No. 88

460.08 Employer may adduce evidence as to whether discriminatee abandon all interest in returning to work for Employer. (p. 84)
MARIO SAIKHON, INC., 8 ALRB No. 88

460.08 When discriminatee is working at time reinstatement is offered, discriminatee has reasonable time to consider the offer and arrange for quitting without imposing undue hardship on interim employer. (I, A, p. 36)
MARIO SAIKHON, INC., 8 ALRB No. 88

460.08 Discriminatee entitled to be reinstated where discriminatee reported to Employer as soon as his seasonal job ended (8 days after the date discriminatee told by Employer discriminatee must report to work) where discriminatee had committed to interim employer that discriminatee would finish the season and discriminatee would lose bonus for entire season if failed to complete season. (I, A, pp. 37-38)
MARIO SAIKHON, INC., 8 ALRB No. 88

460.08 No abandonment of desire to return to Employer where discriminatee did not decide to return until after offer of reinstatement and after receiving raise at interim employer's where discriminatee regularly worked. (I, B, pp. 184-185)
MARIO SAIKHON, INC., 8 ALRB No. 88

460.08 Discriminatee found not to be unavailable for work due to Union volunteer status where he was seeking work during backpay period and made no definite commitment to Union that would have precluded him from accepting work.
ARNAUDO BROTHERS, 7 ALRB No. 25

460.08 No backpay awarded for period when discriminatee customarily took 2 weeks leave of absence.

ARNAUDO BROTHERS, 7 ALRB No. 25

460.08 Discriminatees were entitled to backpay for as long as they were available for work. Board correctly awarded backpay until discriminatee returned to school.
BUTTE VIEW FARMS v. ALRB (1979) 95 Cal.App.3d 961

460.09 Acceptance Of Substantially Equivalent Employment, Effect Of; Military Service

460.09 Employee did not obtain substantially equivalent employment since wages, hours, supervision, and duties were different than at discriminating employer. Therefore, an offset in earnings was not appropriate.
GRAMIS BROTHERS FARMS, INC. and GRO-HARVESTING, INC., 14 ALRB No. 12

460.09 Discriminatee not entitled to backpay to extent that he/she refuses to accept substantially equivalent employment.
GEORGE LUCAS & SONS, 10 ALRB No. 6

460.09 Employees did not obtain substantially equivalent employment where wages, hours, and seniority were different than at discriminating employer.
KAWANO, INC, 9 ALRB No. 62

460.09 Employment is not substantially equivalent where; the job is temporary, the salary is less, the work or assignment is less desirable, the work requires different skills and involves different working conditions, the work is harder, the job classification is different with different duties, the work shift is different, the job is in a different location, or the job is seasonal while the former job was year-round.
ABATTI FARMS, INC., 9 ALRB No. 59

460.09 A respondent's backpay liability is not terminated when a discriminatee obtains substantially equivalent employment with another employer; rather, the daily gross backpay is offset by the daily interim earnings, but will not be offset by an amount more than the daily interim earnings.
ABATTI FARMS, INC., 9 ALRB No. 59

460.09 Board offset discriminatee's earnings in Salinas lettuce harvest even though seasons in which they were earned did not coincide with the respondent's backpay periods in the Imperial Valley lettuce harvest; discriminatee substituted Salinas employment for Imperial Valley employment.
MARIO SAIKHON, INC., 9 ALRB No. 50

460.09 Employee did not leave work for purely personal reasons where family matters affected him at work and overall history shows diligent effort to obtain interim employment.
BRUCE CHURCH, INC., 9 ALRB No. 19

460.09 Even if a discriminatee voluntarily leaves, or refuses to accept, substantially equivalent interim work, the respondent's backpay liability does not terminate as of that time. In such a case, respondent's liability is determined as if the employee had never left or refused the interim job and the interim earnings he would have received will be subtracted from the respondent's gross backpay obligation.
MAGGIO-TOSTADO (1978) 4 ALRB No. 36

460.10 Duty To Minimize Back Pay By Seeking Or Accepting Other Employment; Quitting, Layoff, Or Discharge From Interim Job

460.10 Discriminatee reasonably and diligently sought interim employment since his unrebutted testimony revealed he registered with the State unemployment office in three areas of the state and with several union offices, sought work on a daily basis including travel to other areas to seek employment. A discriminatee need not apply to every possible job source as long as he proves he was diligent in his job search.
GRAMIS BROTHERS FARMS, INC. and GRO-HARVESTING, INC., 14 ALRB No. 12

460.10 Respondent company failed to rebut discriminatee's intention he had been laid off from interim employer rather than voluntarily and unjustifiably quit as claimed by Respondent; therefore, an offset of wages was inappropriate.
GRAMIS BROTHERS FARMS, INC. and GRO-HARVESTING, INC., 14 ALRB No. 12

460.10 The Board held Charging Party's overall good record in searching for and retaining employment fails to rehabilitate a nonjustifiable relinquishment of interim employment since the former factor has no bearing on a determination of whether a voluntary quit was in fact justified.
UFW/SCARBROUGH, 12 ALRB No. 23

460.10 Leaving work because of the anticipation of receiving an offer of reinstatement, in the absence of evidence that thereafter a diligent search for work was not made, was not a willful loss of earnings.
UFW/SCARBROUGH, 12 ALRB No. 23

460.10 Backpay claimants' failure to appeal the Union's National Executive Board's decision to suspend them does not constitute a failure to mitigate damages, since claimants could not have known how long such an appeal would take, or whether it would be unsuccessful or only partially successful.
UFW/SCARBROUGH, 12 ALRB No. 23

460.10 Backpay claimant did not act unreasonably in abandoning

his efforts to find work in agriculture, nor did his failure to file charges against growers who failed to hire him constitute a failure to mitigate damages. Although he reasonably concluded that discrimination caused growers to refuse to hire him, that did not necessarily mean there was evidentiary proof of an 1153(c) violation.
UFW/SCARBROUGH, 12 ALRB No. 23

460.10 Backpay claimant is not required to work more than 40 hours per week at interim employment although he worked 60 to 70 hours per week as tractor driver for backpay employer. After reasonably deciding to seek nonagricultural employment, claimant was obligated only to obtain what was considered full-time employment in the industry where he sound work.
UFW/SCARBROUGH, 12 ALRB No. 23

460.10 Respondent union did not meet its burden of proving that claimants looked for work in areas where there were so few jobs available that they incurred a willful loss of earnings.
UFW/SCARBROUGH, 12 ALRB No. 23

460.10 Discriminatees who joined strike one-half day after beginning work with interim employer were not entitled to backpay where they could have sought alternative work before or after picketing duty but did not.
McFARLAND ROSE PRODUCTION, 11 ALRB No. 34

460.10 Respondent union did not meet its burden of proving that charging party union member failed to make reasonable search for employment by seeking work exclusively with non-union lettuce growers.
UFW/CERVANDO PEREZ, 11 ALRB No. 33

460.10 Discriminatee was justifiably terminated from his interim employment for failure to seek permission to leave work when ill, and thus his backpay was tolled for the period he would have continued work but for his unjustified conduct.
KITAYAMA BROTHERS, 10 ALRB No. 47

460.10 Respondent did not meet its burden of proving that two discriminatees failed to mitigate their losses by not making reasonable efforts to find interim employment.
MARIO SAIKHON, INC., 10 ALRB No. 36

460.10 Board adopted NLRB's policy of not allowing respondents to question discriminatees concerning their interim earnings or search for employment outside the confines of an administrative hearing.
MARIO SAIKHON, INC., 10 ALRB No. 36

460.10 The duty to minimize backpay by seeking or accepting other employment is equally applicable whether the interim earnings offset the backpay obligation or the

makewhole wage rate liability.
KAWANO, INC., 10 ALRB No. 17

460.10 Discriminatee not entitled to backpay to extent that he/she fails to remain in the labor market (here, on vacation out of country), refuses to accept substantially equivalent employment, fails to diligently search for alternative work, or voluntarily quits alternative employment without good cause.
GEORGE LUCAS & SONS, 10 ALRB No. 6

460.10 Seasonal workers who worked sporadically during backpay period were engaged in a diligent overall search for work.
KAWANO, INC., 9 ALRB No. 62

460.10 A discriminatee who participates in a strike against an agricultural employer is not relieved of his or her obligation to make reasonable efforts to seek interim employment.
ABATTI FARMS, INC., 9 ALRB No. 59

460.10 Board offset discriminatee's earnings in Salinas lettuce harvest even though seasons in which they were earned did not coincide with the respondent's backpay periods in the Imperial Valley lettuce harvest; discriminatee substituted Salinas employment for Imperial Valley employment.
MARIO SAIKHON, INC., 9 ALRB No. 50

460.10 Discriminatee was not diligently seeking interim work during a four-month period in which he sat in the office of his union representative and waited for assistance.
BRUCE CHURCH, INC., 9 ALRB No. 19

460.10 Employee did not leave work for purely personal reasons where family matters affected him at work and overall history shows diligent effort to obtain interim employment.
BRUCE CHURCH, INC., 9 ALRB No. 19

460.10 Employer does not meet its burden of proof that discriminatee failed to diligently seek work by showing discriminatee was unsuccessful in obtaining interim employment or had low interim earnings. Must have affirmative evidence discriminatee did not make reasonable effort to find work. (pp. 6-7)
MARIO SAIKHON INC., 8 ALRB No. 88

460.10 Discriminatee must make reasonable exertions in finding interim work but is not held to highest standard of diligence. In determining reasonableness of effort discriminatee's skill, qualification, age, and labor conditions in the area are factors to consider. (pp. 67-68)
MARIO SAIKHON INC., 8 ALRB No. 88

460.10 Only unjustified refusals to find or accept substantially equivalent employment are penalized. Discriminatee need not seek work which is not constant with his or her skills, background, and experience or which involves conditions which are substantially more onerous then discriminatee's position with employer. (p. 69)
MARIO SAIKHON INC., 8 ALRB No. 88

460.10 Fact that one does not exhaust every job possibility does not disqualify discriminatee from receiving backpay. (p. 69)
MARIO SAIKHON INC., 8 ALRB No. 88

460.10 No presumption that low interim earnings mean discriminatee must not have made a diligent search for work. Failure to find as much work as co-discriminatee does not establish discriminatee did not make sufficient search for work. (p. 70)
MARIO SAIKHON INC., 8 ALRB No. 88

460.10 Discriminatee's inability to remember many specifics regarding search for interim work not necessarily mean discriminatee did not diligently look for work especially where backpay period goes for some time. (p. 70)
MARIO SAIKHON INC., 8 ALRB No. 88

460.10 Duty to diligently seek work is measured by whether discriminatee made adequate effort over the backpay period as a whole, even if search was not made in each and every quarter where backpay is calculated quarterly by NLRB. Thus, where backpay is calculated daily discriminatee not required to seek work each and every day. (pp. 70-71)
MARIO SAIKHON INC., 8 ALRB No. 88

460.10 Registration with State Employment Department is factor to consider in determining whether discriminatee made reasonable search for work. Meeting requirements to remain eligible for unemployment benefits sufficient to meet diligent search for work requirement. (p. 72)
MARIO SAIKHON INC., 8 ALRB No. 88

460.10 So long as discriminatee looks for work and does not refuse employment, fact that discriminatee is on picket line does not mean discriminatee not qualify for backpay. (p. 73)
MARIO SAIKHON INC., 8 ALRB No. 88

460.10 Discriminatee may seek work out of area where discriminatee worked for Employer and not required to have job waiting in new area. (p. 72)
MARIO SAIKHON INC., 8 ALRB No. 88

460.10 So long as discriminatee remains available for work, attendance at school or job training programs not disqualify discriminatee from receiving backpay.

(p. 73)
MARIO SAIKHON INC., 8 ALRB No. 88

460.10 Participation in CETA program treated as employment. Wages therefrom are interim earnings. (p. 74)
MARIO SAIKHON INC., 8 ALRB No. 88

460.10 Claimant who leaves suitable interim employment for justified reason remains eligible for backpay. Justifiable reasons include: (1) Work too difficult; (2) Less pay than at gross employment and belief can earn more elsewhere; (3) poor hours; (4) harassment by Employer; (5) More onerous working conditions that at gross Employer. Quitting for personal reasons not based on necessity or difficulties inherent in job may not constitute justifiable reason. (p. 75)
MARIO SAIKHON INC., 8 ALRB No. 88

460.10 Where discriminatee discharged from interim employment, Employer must show willful loss of earnings by discriminatee failure to retain job in order to reduce liability. If willful loss, backpay claim not cut off. Gross backpay reduced by amount discriminatee would have earned had discriminatee retained interim job. (pp. 75-76)
MARIO SAIKHON INC., 8 ALRB No. 88

460.10 Where agricultural employee does not seek work while on short-term layoff, not disqualified from obtaining backpay. So long as discriminatee diligently seeks interim employment during backpay period as a whole, discriminatee remains eligible for backpay. (p. 76)
MARIO SAIKHON INC., 8 ALRB No. 88

460.10 Discriminatee did not fail to make diligent search for work simply because discriminatee went to pick-up points at later hour than other discriminatees.
(I, B, pp. 90-91)
MARIO SAIKHON INC., 8 ALRB No. 88

460.10 Discriminatee entitled to backpay when looked for work in Salinas during the time period of Imperial Valley lettuce season where discriminatee had moved to Salinas in order to work there in lettuce season which covered different time of year than Imperial Valley season. (I, B, pp. 89-90; 112-113)
MARIO SAIKHON INC., 8 ALRB No. 88

460.10 Discriminatee entitled to backpay where discriminatee left work with Employer and went to work for different company which had better benefits but latter company laid him off a short time later. (I, B, pp. 102-103)
MARIO SAIKHON INC., 8 ALRB No. 88

460.10 No willful loss of earnings where discriminatee left interim job because of fight with co-worker whom he considered dangerous although discriminatee did not ask

supervisor to transfer him because company did not transfer people for such reasons. (I, B, pp. 109-111)
MARIO SAIKHON INC., 8 ALRB No. 88

460.10 Discriminatee required to leave work area where only offered the possibility there might be work for him in another area of the state even though on other occasions he had obtained interim employment outside the Imperial Valley. (I, B, pp. 125-127)
MARIO SAIKHON INC., 8 ALRB No. 88

460.10 No willful loss of earnings where discriminatee left interim work after twice being stopped from work that day due to heavy rain, and rain did not abate, despite discriminatee not asking foreman for permission to leave. (I, B, pp. 1430145)
MARIO SAIKHON INC., 8 ALRB No. 88

460.10 No willful loss of earnings where discriminatee struck supervisor only after being fired by supervisor during verbal dispute. (I, B, p. 162)
MARIO SAIKHON INC., 8 ALRB No. 88

460.10 Employer argument that discriminatee should have relocated approximately 190 miles away to seek interim work rejected.
ARNAUDO BROTHERS, 7 ALRB No.25

460.10 Record supports discriminatee's efforts to find work by making several applications, registering with State Employment Service, and asking friends. Discriminatee did not withdraw from job market nor refused any offer of employment. Respondent found not to have met burden of establishing willful loss of earnings.
ARNAUDO BROTHERS, 7 ALRB No.25

460.10 Discriminatee found not to be unavailable for work due to Union volunteer status where he was seeking work during backpay period and made no definite commitment to Union that would have precluded him from accepting work.
ARNAUDO BROTHERS, 7 ALRB No.25

460.10 A discriminatee's right to backpay is not affected by his leaving the area to look for work elsewhere as long as he continues to exercise due diligence in his efforts to obtain interim employment.
MAGGIO-TOSTADO, 4 ALRB No. 36

460.10 To be entitled to backpay, an employee must take reasonable efforts to find new or interim employment, suitable to a person of his background and experience. Willful loss of earnings is an affirmative defense and respondent has the burden of proof as to that defense.
MAGGIO-TOSTADO, 4 ALRB No. 36

460.10 A discriminatee may quit interim employment without forfeiting his right to continuing backpay if there is an

acceptable reason for quitting.
MAGGIO-TOSTADO, 4 ALRB No. 36

460.10 An illegally discharged employee's efforts to find new employment are measured against a standard of reasonableness rather than by the highest standards of diligence.
GOURMET HARVESTING & PACKING, 4 ALRB No. 14

460.10 There are two limitations on award of backpay. First, record must support inference that subject employees had reasonable expectation of continuing employment at company in question had unlawful conduct not occurred. Second, Board must consider mitigation of damages.
SUPERIOR FARMING CO. v. ALRB (1984) 151 Cal.App.3d 100

460.10 Discriminatee must use reasonable diligence to mitigate loss by seeking interim employment; such earnings to be deducted from gross backpay.
NISH NOROIAN FARMS v. ALRB (1984) 35 Cal.3d 726

460.11 Sporadic Work History Of Discriminatee

460.11 Burden is on employer to prove discriminatee would not have returned to work in subsequent seasons; mere allegation of turnover and sporadic nature of agricultural employment is not enough in face of discriminatee's steady work history prior to and during the backpay period.
VERDE PRODUCE CO., INC., 10 ALRB No. 35

460.11 The goal of backpay award is to return employee to situation that would have existed but for the illegal discharge. That goal requires consideration of the sporadic and part-time nature of the work to avoid windfalls to wrongdoing employers.
NISH NOROIAN FARMS v. ALRB (1984) 35 Cal.3d 726

460.12 Pattern Of Absenteeism

460.12 Evidence of absenteeism must be adduced at hearing.
MARIO SAIKHON, INC., 9 ALRB No. 50

460.13 Self-Employment As Affecting Back Pay

460.13 Discriminatee could not remember why he refused an offer of reinstatement to a temporary job, but his statement to the respondent's agent who made the offer that he could not accept the job because he had his own business was sufficient evidence that the discriminatee voluntarily waived or abandoned his right to be reinstated.
ABATTI FARMS, INC., 9 ALRB No. 59

460.13 Discriminatee may mitigate backpay by engaging in self-employment even though discriminatee may earn less money than when not self-employed. (p. 71)
MARIO SAIKHON INC., 8 ALRB No. 88

460.14 Willful Concealment of Interim Earnings

460.14 Where evidence indicates pattern of willful concealment of earnings including subornation of perjury at compliance hearing so that Board is not convinced that stipulation as to additional earnings is complete, NLRB rule striking all backpay will be followed.
ABATTI FARMS, INC., & ABATTI PRODUCE, INC., 14 ALRB No. 8

460.15 Waiver of Reinstatement and Backpay

460.15 Where bona fide offer of reinstatement provides that discriminatee may accept by contacting his supervisor or going to the fields and discriminatee only visited home of absent supervisor twice without doing more, discriminatee held to have waived reinstatement.
ABATTI FARMS, INC., & ABATTI PRODUCE, INC., 14 ALRB No. 8

461.00 BACK PAY COMPUTATION, DEDUCTIONS AND OFFSET

461.01 Method Of Computing Back Pay

461.01 Board adopts regional office's revised calculations of backpay after finding that they accurately apply the rulings, findings and conclusions of the Board.
MARIO SAIKHON, INC., 17 ALRB No. 10

461.01 Although the most prevalent backpay formula utilized by the NLRB is based on actual earnings of discriminatees prior to unfair labor practice, NLRB's compliance manual cautions against application of formula in seasonal industries where "average of employee earnings during such period could be inordinately low and result in failure to make the discriminatee whole. "ALRB recognized NLRB caveat in that regard but approved General Counsel's use of "prior hours" formula where employer proposed that backpay be measured according to earnings of comparable or replacement employee but formula not feasible due to lack of payroll information which would be essential to basing backpay on that basis.
UKEGAWA BROTHERS, et al., 16 ALRB No. 18

461.01 Board rejects employer's contention that it has adopted comparable or replacement employee approach to calculating backpay as standard practice, distinguishing use of that formula in Bruce Church, Inc. (1983) 9 ALRB No. 19 where the one employee involved testified that he would have continued to work in the same crew throughout the backpay period. Under those circumstances, exact replacement earnings were available and contribute a more appropriate measure than one predicated on history of prior earnings.
UKEGAWA BROTHERS, et al., 16 ALRB No. 18

461.01 In order to respond to sporadic nature of employment

patterns in agriculture, General Counsel may present backpay formulas calculated on a daily or weekly basis or by any other method, or combination of methods, that is practicable and reasonable, which accords with the underlying theory of the liability case in order to be truly remedial, and thereby further the purposes and policies of the Act.
PLEASANT VALLEY VEGETABLE CO-OP, 16 ALRB No. 12

461.01 Although Regional Director is normally accorded wide discretion in devising procedures and methods by which to compute backpay, method must be one which most nearly remedies Board's underlying theory of liability case. Thus, where Board had determined that a particular crew clearly would have been granted higher paying work but for its union activities, Regional Director's determination that no backpay was owing caused Board to independently review payroll data, to reject Regional Director's seasonal formula in favor of a weekly computation formula, and to conclude that backpay was due.
PLEASANT VALLEY VEGETABLE CO-OP, 16 ALRB No. 12

461.01 Board affirmed computation of backpay on a weekly basis since the Respondent and interim employers had paid on either a weekly or bi-weekly basis and because it was supported by Board precedent. GRAMIS BROTHERS FARMS, INC. AND GRO-HARVESTING, INC., 14 ALRB No. 12

461.01 In a backpay compliance proceeding, the Board added interest, which the ALJ had inadvertently omitted, to the discriminatee's award pursuant to standard Board practice and in accordance with E.W. Merritt Farms (1988) 14 ALRB No.5 GRAMIS BROTHERS FARMS, INC. AND GRO-HARVESTING, INC., 14 ALRB No. 12

461.01 Standard set forth in Kyutoku Nursery (1982) 8 ALRB No. 73 for evaluating General Counsel's backpay specifications construed to read disjunctively so that a Respondent need not prove that proposed method of calculating makewhole is arbitrary, unreasonable, or inconsistent with Board precedents, but may merely present some other method which Board may find more appropriate.
O.P. MURPHY CO., INC., 13 ALRB No. 27

461.01 Immigration Reform Act has no application with regard to reinstatement and backpay where discriminatee was both discharged and reinstated prior to effective date of Act.
O.P. MURPHY CO., INC., 13 ALRB No. 27

461.01 When knowledge of discriminatory hiring practices leads an applicant to reasonably believe that further efforts to seek reinstatement would be futile, the applicant is relieved of a duty to reapply for work, and backpay is computed from the date of the first available opening which the applicant is qualified to fill.

SWINE PRODUCERS UNLIMITED, INC., 13 ALRB No. 12

461.01 By not demonstrating a probable relationship between an illness and the hazards of the interim employment General Counsel failed to establish exception to the general rule that claimants are not awarded backpay for periods of disability.
UFW/JUAN MARTINEZ 13 ALRB No. 6

461.01 Respondent, who made no objection to the daily formula at the backpay hearing, did not carry its burden to establish facts sufficient to reject or modify the formula of the General Counsel.
UFW/JUAN MARTINEZ, 13 ALRB No. 6

461.01 It is illogical to base distinctions about whether backpay awards should be reduced or increased on the mere difficulty of ascertaining expenses in uncertain situations.
UFW/SCARBROUGH, 12 ALRB No. 23

461.01 The Board refused to credit a discriminatee's previously reimbursed medical expenses since there was no additional out of pocket loss, except for substitute insurance premiums, because a contrary policy would bestow an unrelated benefit upon the Charging Party.
UFW/SCARBROUGH, 12 ALRB No. 23

461.01 The Board noting a lack of precedent authorizing payment to Charging Party for medical expenses for which he had already been fully reimbursed by the substitute carrier, declined to adopt a rule which would punish Respondent rather than focus on making the discriminatee whole.
UFW/SCARBROUGH, 12 ALRB No. 23

461.01 It is inappropriate to award Respondent union an offset for union dues Charging Party was not required to pay because his absence from employment was caused by the union's unlawful conduct. A contrary rule would not only reward Respondent for its own wrongdoing but would also require Charging Party to pay for unperformed union services.
UFW/SCARBROUGH, 12 ALRB No. 23

461.01 Once the General Counsel has shown a loss of earnings resulting from the discrimination, the burden shifts to the Respondent to establish a reduction in the amount of the backpay award for reasons unrelated to the discrimination.
UFW/SCARBROUGH, 12 ALRB No. 23

461.01 General Counsel's method of computing backpay affirmed by ALJ's granting General Counsel's motion to have gross earnings set forth in specification deemed true.
UFW/CERVANDO PEREZ, 11 ALRB No. 33

461.01 Board applied a seasonal method of computing net backpay

where the discriminatee's full-time, full season interim employment fit the same overall seasonal pattern as the gross backpay earnings.
VERDE PRODUCE CO., INC., 10 ALRB No. 35

461.01 Where the discriminatee's history of interim employment shows periods of sporadic day-to-day employment and also periods of longer-term stable employment, different methods of computation of net backpay may be appropriate during those different periods.
VERDE PRODUCE CO., INC., 10 ALRB No. 35

461.01 Since the daily method of computation was appropriate and the respondent failed to produce interim earnings data in daily form, the Regional Director properly averaged the available interim earnings data, including quarterly EDD reports, into daily form.
VERDE PRODUCE CO., INC., 10 ALRB No. 35

461.01 Method of computing backpay was reasonable where compliance officer used discriminatee's hours in year prior to the discrimination as basis for gross backpay.
KAWANO, INC., 9 ALRB No. 62

461.01 Where an anomaly in the daily method produced an inflated net backpay liability, the Board reduced the net backpay in the specifications by a standard formula and declined to recalculate each discriminatee's backpay by a non-daily method.
KAWANO, INC., 9 ALRB No. 62

461.01 Insolvency of employer, making value of backpay awards highly speculative, made it pointless to calculate awards with time consuming mathematical precision.
KAWANO, INC., 9 ALRB No. 62

461.01 The finding of an unlawful discriminatory discharge is presumptive proof that the discriminatee is owed some amount of backpay by the respondent.
ABATTI FARMS, INC., 9 ALRB No. 59

461.01 A discriminatee is entitled to backpay for a period when he or she is disabled if the disability is closely related to the nature of the interim employment or arises from the unlawful discharge and is not a usual incident of the hazards of living generally.
ABATTI FARMS, INC., 9 ALRB No. 59

461.01 Board affirmed the computation of backpay on a daily basis; because of the nature of agricultural labor in California, it is necessary to divide the backpay period into components shorter than calendar quarters.
ABATTI FARMS, INC., 9 ALRB No. 59

461.01 Where interim earnings are earned on a day when no work is available at the respondent's farm or ranch, such interim earnings do not offset the respondent's gross

backpay liability.
ABATTI FARMS, INC., 9 ALRB No. 59

461.01 The Board's daily-computed backpay formula is accurate and encourages the respondent to immediately offer reinstatement to the discriminatee because it is liable for backpay, plus interest, for every day the discriminatee would have worked for the respondent (absent its unfair labor practice(s)), and on which the discriminatee is unable to find interim employment at wages equal to or greater than the respondent would pay.
ABATTI FARMS, INC., 9 ALRB No. 59

461.01 A discriminatee's rheumatism and back condition resulted from his interim employment "pitching watermelons," as they first occurred following the melon season; respondent failed to show that the rheumatism and back condition were a usual incident of the hazards of living generally, and failed to rebut the inference that the disabilities were related to the discriminatee's interim employment.
ABATTI FARMS, INC., 9 ALRB No. 59

461.01 The Board will convert the available interim earnings to daily figures based on a six-day work week (or other appropriate work week), unless the respondent proves that daily interim earnings records cannot be obtained.
ABATTI FARMS, INC., 9 ALRB No. 59

461.01 When the respondent fails to question the discriminatee about an alleged period of unavailability for work and there is evidence that the discriminatee was in fact available for work, such as interim earnings, the gross backpay for the period shall not be excluded because the respondent has failed to prove that the discriminatee was unavailable for work.
ABATTI FARMS, INC., 9 ALRB No. 59

461.01 Discriminatees were discharged by interim employer during instant employer's backpay period, and interim employer settled its backpay liability to the discriminatees; amounts received as a result of the settlement were treated as interim earnings deductively from instant employer's liability, offset on a daily basis on the days when the backpay periods of the two different employers were found to overlap.
MARIO SAIKHON, INC., 9 ALRB No. 50

461.01 Where employee worked entire five-month season for two years, then one month the next season, it was no appropriate to average earnings over three years to obtain a monthly average; the appropriate method of computation was daily where daily gross earnings of a representative employee were available.
BRUCE CHURCH, INC., 9 ALRB No. 19

461.01 No deduction is made for willful loss of earnings or for

interim earnings during any period that no gross earnings are attributable to discriminatee. (p. 15)
MARIO SAIKHON INC., 8 ALRB No. 88

461.01 No deduction is made for willful loss of earnings or for interim earnings during any period that no gross earnings are attributable to discriminatee.
MARIO SAIKHON INC., 8 ALRB No. 88

461.01 Applying NLRB policy, no award of backpay during period seasonal employees would not have worked for Employer and no deduction for any money discriminatee earned elsewhere during that time. (pp. 5-6; 61-62)
MARIO SAIKHON INC., 8 ALRB No. 88

461.01 Board has wide discretion in devising procedures and methods which effectuate purposes of Act since no formulas can precisely measure backpay owed. (p. 68)
MARIO SAIKHON INC., 8 ALRB No. 88

461.01 Where discriminatee not seek work for a period of time, exclude those time periods from discriminatee's eligibility for gross backpay and claim continues when discriminatee re-enters labor market.
(p. 73)
MARIO SAIKHON INC., 8 ALRB No. 88

461.01 ALRB uses NLRB 4 basic formulas in computing backpay awards. There are many variations of these formulas and each one must usually be adjusted in details to meet requirements of specific cases. More than 1 formula may be applicable to a given case.
ARNAUDO BROTHERS, 7 ALRB No. 25

461.01 Board has been entrusted with broad discretion in choosing appropriate backpay formula, as warranted by circumstances of each case.
ARNAUDO BROTHERS, 7 ALRB No. 25

461.01 ALO reference to pay of representative Employee during backpay period and discriminatee's hours of preceding year held to be appropriate and reasonable.
ARNAUDO BROTHERS, 7 ALRB No. 25

461.01 Board has authorized calculation of backpay to be made on daily, weekly, or any method that is practicable, equitable, and in accordance with policy of Act.
ARNAUDO BROTHERS, 7 ALRB No. 25

461.01 Policy of Act reflected in Backpay Order is to restore discriminatee to same position she/he would have enjoyed had there been no discrimination.
ARNAUDO BROTHERS, 7 ALRB No. 25

461.01 Board directed regional director to consider both the basic wage rate and percentage increase methods of calculating the loss of pay of respondent's piece-rate

employees and to use the method which best effectuates the purposes of the Act.
ROBERT H. HICKAM, 4 ALRB No. 73

461.01 The Board remedied ALO's failure to use Sunnyside Nurseries for purposes of calculating backpay.
S & F GROWERS, 4 ALRB No. 58

461.01 In view of the large and fluctuating numbers of employees employed by Respondent after the discharge of the eight discriminatees, the high turnover among those employees, and the lack of a discernible seniority system in layoff and rehiring, a precise restoration of the status quo ante is not possible. Thus, the Board has devised a method of calculation of the backpay formula which is equitable, practicable, and in consonant with the policy of the Act.
MAGGIO-TOSTADO, 4 ALRB No. 36

461.01 The purpose of backpay proceedings is to restore the employee to the position he would have enjoyed if he had not been discriminatorily discharged. As the exact amount of compensation due may be impossible to determine in an agricultural setting, the Board will choose a method of calculation which it considers to be equitable, practicable, and in consonance with the policy of the Act.
MAGGIO-TOSTADO, 4 ALRB No. 36

461.01 Employee ordered reinstated to position as assistant foreman and to receive as backpay with interest difference between what would have been earned as assistant foreman and what he earned as thinner.
SAM ANDREWS' SONS, 3 ALRB No. 45

461.01 Backpay is intended to compensate an employee whose opportunity to earn his or her previously established pay and benefits has been improperly denied or limited, and is measured by the preexisting rates.
PAUL W. BERTUCCIO v. ALRB (1988) 202 Cal.App.3d 1369

461.01 In determining the amount of backpay due an employee, a "daily" formula may be equitably tailored to the particular facts of the case at hand. Evidence of a particular employee's work history may be introduced to show that an employee's new work is a true substitute for the former employment and thus subject to a wage offset, even if the new work is performed on different week days or in different seasons.
J.R. NORTON CO. v. ALRB (1987) 192 Cal.App.3d 874

461.01 Board did not err in refusing to attribute annual or quarterly interim earnings to backpay period, where interim earnings data did not indicate whether interim earnings were earned during backpay period.
FRUDDEN ENTERPRISES, INC. v. ALRB (1984) 153 Cal.App.3d 262

461.01 No gross backpay accrues during periods when discriminatee would have been on seasonal layoff unrelated to the unlawful discrimination.
NISH NOROIAN FARMS v. ALRB (1984) 35 Cal.3d 726

461.01 Daily method of deducting interim earnings appropriate where work pattern of discriminatee is sporadic. However, daily method should not be utilized where the pattern of interim employment indicates that the interim was "true substitute employment," though it does not completely overlap the backpay period.
NISH NOROIAN FARMS v. ALRB (1984) 35 Cal.3d 726

461.01 The daily method of computation prevents employer from denying reinstatement and then escaping liability for backpay because the interim job pays better.
NISH NOROIAN FARMS v. ALRB (1984) 35 Cal.3d 726

461.01 The goal of backpay award is to return employee to situation that would have existed but for the illegal discharge. That goal requires consideration of the sporadic and part-time nature of the work to avoid windfalls to wrongdoing employers.
NISH NOROIAN FARMS v. ALRB (1984) 35 Cal.3d 726

461.01 Interim earnings are not deducted, even under quarterly method, during periods when no gross backpay accrued due to sporadic employment.
NISH NOROIAN FARMS v. ALRB (1984) 35 Cal.3d 726

461.01 Board erred in ordering "open-ended" backpay liability regarding crew of seasonal cantaloupe harvesters, since record failed to prove that employees would have been rehired in subsequent seasons.
GEORGE ARAKELIAN FARMS v. ALRB (1980) 111 Cal.App.3d 258

461.01 Where several methods of computing backpay are reasonable estimations of discriminatee's losses, Board's choice of method that maximizes backpay is not an abuse of discretion.
BUTTE VIEW FARMS v. ALRB (1979) 95 Cal.App.3d 961

461.01 Board did not abuse discretion by selecting, as representative employee for gross backpay purpose, employee who was promoted during the backpay period.
BUTTE VIEW FARMS v. ALRB (1979) 95 Cal.App.3d 961

461.01 In agriculture, due to normal fluctuations in labor needs from year to year, a comparable employee formula is preferred. However, a prior earnings formula may be used where more accurate methods are not available, though an attempt should be made to account for fluctuations in the amount of work available from year to year.
Oasis Ranch Management, Inc., 21 ALRB No. 11

461.01 In view of Respondent's failure to answer specification,

lack of Respondent's records to establish what comparable employees may have earned not an insurmountable barrier to arriving at a backpay figure, where other sources of information, the individual discriminatee, are shown by pleadings and record.
VALLEY FARMING COMPANY, 20 ALRB No. 4

461.01 Backpay is necessarily an approximation. If approximation is reasonable, it may be adopted, especially where lack of other information is a result of Respondent's conscious decision to ignore the Board proceeding.
VALLEY FARMING COMPANY, 20 ALRB No. 4

461.01 Though ALJ's use of prior earnings formula not unreasonable in light of his conclusion that record provided no reasonable alternative, Employer met burden of providing a more reasonable formula where Board's review of payroll records indicated that Employer's exhibit based on daily comparison of discriminatee's hours with hours worked by those who performed irrigation work that should have been assigned to discriminatee, which was inherently more accurate than use of prior earnings, did provide a reasonably accurate calculation based on that formula.
Oasis Ranch Management, Inc., 21 ALRB No. 11

461.01 Calculation of backpay is by definition an estimate and absolute precision is not required nor expected. The Board has broad discretion in choosing an appropriate backpay formula and it need only be a reasonable means of estimating the amount necessary to make the discriminatee whole. Uncertainties in the calculation of backpay will be resolved against the wrongdoing party, whose unlawful conduct created the uncertainties.
OASIS RANCH MANAGEMENT, INC., 20 ALRB No. 19

461.02 Interest On Backpay Awards

461.02 Interest on backpay is to be computed according to the full range of interest rates adopted by Board since inception to date, as follows: from date of discharge in June, 1980 to August 18, 1982, in accordance with simple seven percent per annum rate of Valley Farms and Rose J. Farms (1976) 2 ALRB No. 41; thereafter, but only to April 6, 1988, in accordance with an adjustable rate based upon fluctuations in the prime interest rate as set forth in Lu-Ette Farms, Inc. (1982) 8 ALRB No. 55; from April 26, 1988 forward on the basis of an adjustable rate tied to the short-term federal rate as established in E.W. Merritt Farms (1988) 14 ALRB No. 5
HARRY CARIAN, INDIVIDUALLY, and dba HARRY CARIAN SALES, 15 ALRB No. 14

461.02 Employer's payment of net backpay without interest discharged employer's backpay obligation and established amount due as interest on backpay award, but left

employer with obligation to pay amount due and interest thereon.
VENUS RANCHES, INC., 14 ALRB No. 17

461.02 Where employer paid net backpay amount but withheld interest due on backpay employer was ordered to pay amount owing with interest.
VENUS RANCHES, INC., 14 ALRB No. 17

461.02 In a backpay compliance proceeding, the Board added interest, which the ALJ had inadvertently omitted, to the discriminatee's award pursuant to standard Board practice and in accordance with E.W. Merritt Farms (1988) 14 ALRB No. 5
GRAMIS BROTHERS FARMS, INC. AND GRO-HARVESTING, INC., 14 ALRB No. 12

461.02 Board modified backpay order to apply E.W. Merritt Farms (Lu-Ette) interest rate from date of issuance of supplemental order.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC., 14 ALRB No. 8

461.02 Interest rate formula of Lu-Ette Farms (1982) 8 ALRB No. 55, which is based on adjusted prime rate of Internal Revenue Code section 6621, is modified to reflect amendments to that section contained in the Tax Reform Act of 1986, and to conform to applicable NLRB precedent, New Horizons for the Retarded (1987) 283 NLRB No. 181 [125 LRRM 1177], in which the NLRB did the same.
E.W. MERRITT FARMS, 14 ALRB No. 5

461.02 In backpay proceeding pursuant to settlement, interest computed at 7 percent until August 18, 1982, date of issuance of Lu-Ette Farms, Inc. (1982)
8 ALRB No. 55 (Lu-Ette), and thereafter in conformity with Lu-Ette decision.
UFW/CERVANDO PEREZ, 11 ALRB No. 33

461.02 On remand from the reviewing court, following annulment of the Board's order, jurisdiction was revested in the Board, and the Board limited the scope of a previously ordered mailing remedy and amended the interest rate awarded on backpay reimbursements to conform with Lu-Ette Farms, Inc. (1982) 8 ALRB No. 55
VESSEY & COMPANY, INC., 11 ALRB No. 3

461.02 Pursuant to broad court remand, Board modified seven percent interest rate of original Order to provide for imposition of adjustable Lu-Ette rate from the date of issuance of Lu-Ette Decision. (Lu-Ette Farms, Inc. (Aug. 18, 1982) 8 ALRB No. 55.)
McANALLY ENTERPRISES, INC., 11 ALRB No. 2 Accord:
FRUDDEN PRODUCE, INC., 11 ALRB No. 6

461.02 Interest rate on backpay modified prospectively in compliance decision to conform to Lu-Ette formula,

despite Superior Court enforcement of Board order prior to backpay proceeding.
VERDE PRODUCE CO., INC., 10 ALRB No. 35

461.02 Interest awarded on makewhole awards will be modified prospectively whenever the Board retains jurisdiction following summary denial of review by the Court of Appeal. KAWANO, INC., 10 ALRB No. 17

461.02 Employer's petition in bankruptcy terminated the accrual of additional interest on the backpay awards.
KAWANO, INC., 9 ALRB No. 62

461.02 Where the Board's Remedial Order has been enforced by a California Court of Appeal, the Board does not have jurisdiction to modify the interest rate on backpay award. ABATTI FARMS, INC., 9 ALRB No. 59

461.02 Board directed Regional Director to seek to vacate portions of backpay order enforced by superior court which awards seven percent interest and to modify to conform with interest formula set forth in Lu-Ette Farms, Inc. (1982) 8 ALRB No. 55
MARIO SAIKHON, INC., 9 ALRB No. 50

461.02 Board modified interest rate on backpay prospectively, since Court of Appeals declined to take jurisdiction over the merits of the case.
BRUCE CHURCH, INC., 9 ALRB No. 19
Accord: C. MONDAVI & SONS, dba CHARLES KRUG WINERY, 10 ALRB No. 19

461.02 The Board's use of a sliding interest rate on backpay awards was proper despite the limitation on interest rates in Cal. Const., art. XV, sec. 1, since the backpay awards were not a "loan or forbearance" or an "account on demand" and the Board was not a court nor were its orders judgments.
J.R. NORTON CO. v. ALRB (1987) 192 Cal.App.3d 874

461.02 Absent some constitutional or statutory limitation on the interest rate to be allowed on Board backpay awards, the order could not be disturbed unless it was shown that it was an attempt to achieve ends other than those reasonably calculated to effectuate the policies of the Act.
J.R. NORTON CO. v. ALRB (1987) 192 Cal.App.3d 874

461.02 Since the sliding interest rate on backpay awards more adequately compensated the victims of unfair labor practices and tended to encourage voluntary settlements of disputes and to discourage dilatory tactics, its adoption was proper.
J. R. NORTON CO. v. ALRB (1987) 192 Cal.App.3d 874

461.02 ALRB award of interest on backpay and makewhole helps promote stable labor relations by discouraging ULP's and

dilatory litigation while encouraging settlement.
SANDRINI BROTHERS v. ALRB (1984) 156 Cal.App.3d 878

461.02 ALRB interest rates, tied to fluctuation in prime interest rate, are not punitive because they closely approximate actual cost of money.
SANDRINI BROTHERS v. ALRB (1984) 156 Cal.App.3d 878

461.02 Enforcement initial Board order in Court of Appeal does not convert order to money judgment for interest rate purposes, since that would allow petitioners to obtain lower interest rates even when they lost, and would encourage more petitions.
SANDRINI BROTHERS v. ALRB (1984) 156 Cal.App.3d 878

461.02 California Constitution Article XV section 1, which imposes 10 percent interest limit on court judgments, does not prevent ALRB from setting higher interest rates on its backpay awards and other monetary remedies.
SANDRINI BROTHERS v. ALRB (1984) 156 Cal.App.3d 878

461.03 Additional Amounts Awarded: Bonuses, Insurance, Pension Contributions, Moving Expenses, Vacation Pay, Etc.

461.03 The Board, noting a lack of precedent authorizing payment to Charging Party for medical expenses for which he had already been fully reimbursed by the substitute carrier, declined to adopt a rule which would punish Respondent rather than focusing on making the discriminatee whole.
UFW/SCARBROUGH, 12 ALRB No. 23

461.03 The Board refused to credit a discriminatee's previously reimbursed medical expenses since there was no additional out of pocket loss, except for substitute insurance premiums, because a contrary policy would bestow an unrelated benefit upon the charging party.
UFW/SCARBROUGH, 12 ALRB No. 23

461.03 Failure to timely notify incumbent union of impending closure warrants, in addition to usual order to effects bargain, limited backpay remedy equivalent to a minimum of two-weeks' pay for all employees employed from time of decision to actual closure in order to restore a semblance of bargaining strength that would have obtained had Respondent fulfilled its bargaining obligation at a time when the employee unit was still intact.
ROBERT J. LINDELEAF, 12 ALRB No. 18

461.03 Discriminatee's claim for vacation pay is modified to take into account the amount he would have earned if he had not unjustifiably left his interim employment.
KITAYAMA BROTHERS, 10 ALRB No. 47

461.03 Bonuses, vacation pay and company paid housing which are given as compensation directly related to and based upon normal performance of regularly-assigned work are deducted as interim earnings.

ABATTI FARMS, INC., 9 ALRB No. 59

461.03 Discriminatee's expenses to return to Imperial Valley to visit family recoverable where discriminatee moved to different area of state to work after being unable to find regular work in Imperial Valley. (p. 78)
MARIO SAIKHON INC., 8 ALRB No. 88

461.03 Discriminatee's moving expenses to move discriminatee and family to another area in order to obtain work recoverable where discriminatee unable to find regular work in Imperial Valley. (p.76)
MARIO SAIKHON INC., 8 ALRB No. 88

461.03 Estimates of expenses are sufficient. Discriminatee need not have records of expenses nor be able to set forth in detail the amount of expenses in order to recover them. (pp. 78-79)
MARIO SAIKHON INC., 8 ALRB No. 88

461.03 Medical expenses which would have been covered by employee's medical plan are recovered. (p. 77)
MARIO SAIKHON INC., 8 ALRB No. 88

461.03 Bonus based on number of works discriminatee worked at interim job deductible as interim earnings. (pp. 80-81)
MARIO SAIKHON INC., 8 ALRB No. 88

461.03 Discharge who lived rent free at Gross Employer's company housing who was forced to live in housing project during backpay period entitled to housing expenses, including electricity. Amount is not subject to deduction by interim earnings.
ARNAUDO BROTHERS, 7 ALRB No.25

461.04 Rights And Privileges Incidental To Reinstatement: Seniority, Retirement Benefits, Hours, Housing, Etc.

461.04 Leaving work because of the anticipation of receiving an offer of reinstatement, in the absence of evidence that thereafter a diligent search for work was not made, was not a willful loss of earnings.
UFW/SCARBROUGH, 12 ALRB No. 23

461.04 Where a discriminatee's history of interim employment shows periods of sporadic day-to-day employment and also periods of longer-term stable employment, different methods of computation of net backpay may be appropriate during those different periods.
VERDE PRODUCE CO., INC., 10 ALRB No. 35

461.04 Since the daily method of computation was appropriate and the respondent failed to produce interim earnings data in daily form, the regional Director properly averaged the available interim earnings data, including quarterly EDD reports, into daily form.

VERDE PRODUCE CO., INC., 10 ALRB No. 35

461.04 In computing makewhole for employees unlawfully denied employment by an employer who is also bargaining in bad faith, interim earnings will be offset against the makewhole wage rate before the fringe benefit supplement is calculated.
KAWANO, INC., 10 ALRB No. 17

461.04 Vacation pay is interim earning but no offset unless the respondent can show that it was earned during gross backpay period.
GEORGE LUCA & SONS, 10 ALRB No. 6

461.04 The burden is on the respondent to establish its affirmative defense, including interim earnings, willful loss of interim earnings, disability and impropriety of the General Counsel's backpay formula.
ABATTI FARMS, INC., 9 ALRB No. 59

461.04 The discriminatee's $600 capitol loss was attributed to the respondent's discriminatory action and therefore compensable.
ABATTI FARMS, INC., 9 ALRB No. 59

461.04 Bonuses, vacation pay and company paid housing which are given as compensation directly related to and based upon normal performance of regularly-assigned work are deducted as interim earnings.
ABATTI FARMS, INC., 9 ALRB No. 59

461.04 Strike benefits which are not conditions upon engaging in picketing activities are not interim earnings and are not deducted from the gross backpay.
ABATTI FARMS, INC., 9 ALRB No. 59

461.04 A respondent's backpay liability is not terminated when a discriminatee obtains substantially equivalent employment with another employer; rather, the daily gross backpay is offset by the daily interim earnings, but will not be offset by an amount more than the daily interim earnings.
ABATTI FARMS, INC., 9 ALRB No. 59

461.04 Where the interim earnings are earned on a day when no work is available at the respondent's farm or ranch, such interim earnings do not offset the respondent's gross backpay liability.
ABATTI FARMS, INC., 9 ALRB No. 59

461.04 The Board will convert the available interim earnings to daily figures based on a six-day work week (or other appropriate work week), unless the respondent proves that daily interim earnings records cannot be obtained.
ABATTI FARMS, INC., 9 ALRB No. 59

461.04 Employer's liability, offset on a daily basis on the days when the backpay periods of the two different employers

were found to overlap.
MARIO SAIKHON, INC., 9 ALRB No. 50

461.05 Interim Earnings; Method Of Deducting From Gross Backpay

461.05 Board rejects employer's contention that its right to mitigate backpay need not arise unless and until General Counsel has established the most accurate, and thus the only appropriate, backpay formula. ALJ properly allocated respective burdens of proof in compliance matters, holding that once General Counsel has set forth a reasonable backpay formula, burden shifts to respondent to demonstrate that its proposed alternative formula is more appropriate.
UKEGAWA BROTHERS, et al., 16 ALRB No. 18

461.05 Absent showing that discriminatee sought to deceive either Respondent or ALRB by fabricating social security numbers when obtaining interim employment, such conduct does not rise to the level of culpability which would warrant a finding that he thereby intentionally failed to disclose interim earnings in order to reap a windfall; thus, there is no basis for striking the whole of his backpay award pursuant to the NLRB's doctrine of "willful concealment." HARRY CARIAN, INDIVIDUALLY, and dba HARRY CARIAN SALES, 15 ALRB No. 14

461.05 Discriminatee's not required to produce income tax records or W-2 forms to disclose contents of same in order to receive backpay. (pp. 26-30)
MARIO SAIKHON INC., 8 ALRB No. 88

461.05 Board has authorized calculation of backpay to be made on daily, weekly, or any method that is practicable, equitable, and in accordance with policy of Act.
ARNAUDO BROTHERS, 7 ALRB No.25

461.05 Additional hours worked by discriminatee during backpay period properly treated as additional job which would not be used to reduce Employer's backpay liability.
ARNAUDO BROTHERS, 7 ALRB No.25

461.05 Even if a discriminatee voluntarily leaves, or refuses to accept, substantially equivalent interim work, the respondent's backpay liability does not terminate as of that time. In such a case, respondent's liability is determined as if the employee had never left or refused the interim job and the interim earnings he would have received will be subtracted from the respondent's gross backpay obligation.
MAGGIO-TOSTADO (1978) 4 ALRB No. 36

461.05 Wages earned outside backpay period do not serve to reduce gross backpay.
FRUDDEN ENTERPRISES, INC. v. ALRB (1984) 153 Cal.App.3d 262

461.05 Discriminatee must use reasonable diligence to mitigate loss by seeking interim employment; such earnings to be deducted from gross backpay.
NISH NOROIAN FARMS v. ALRB (1984) 35 Cal.3d 726

461.05 Daily method of deducting interim earnings appropriate where work pattern of discriminatee is sporadic. However, daily method should not be utilized where the pattern of interim employment indicates that the interim was "true substitute employment," though it does not completely overlap the backpay period.
NISH NOROIAN FARMS v. ALRB (1984) 35 Cal.3d 726

461.05 Interim earnings may not be deducted for periods of seasonal layoff when discriminatees were available for other work.
NISH NOROIAN FARMS v. ALRB (1984) 35 Cal.3d 726

461.05 Earnings from supplementary work outside the hours the employee would have worked for the discriminating employer are not deductible from gross backpay.
NISH NOROIAN FARMS v. ALRB (1984) 35 Cal.3d 726

461.05 Wages earned outside backpay period do not serve to reduce gross backpay.
NISH NOROIAN FARMS v. ALRB (1984) 35 Cal.3d 726

461.06 Expenses; Deduction From Interim Earnings

461.06 Reasonable housing, utility, transportation, and uniform costs incurred while working at interim employer or searching for work are reimbursable expenses since General Counsel proved they were provided by Respondent company, without charge, as part of the working conditions and/or benefits. GRAMIS BROTHERS FARMS, INC. AND GRO-HARVESTING, INC., 14 ALRB No. 12

461.06 Board affirmed tool storage fee award to discriminatee since General Counsel proved Respondent required shop workers to provide their own tools. Storage was necessary while discriminatee sought interim employment, and the fee was reasonable.
GRAMIS BROTHERS FARMS, INC. AND GRO-HARVESTING, INC., 14 ALRB No. 12

461.06 Backpay claimant is entitled to expenses in commuting from his residence to his interim employment approximately 15-25 miles away. However, claimant is not entitled to commuting expenses or increased living expenses after his move to town where interim employer was located, since he was not required by the interim employer to move his residence.
UFW/SUN HARVEST (Moses) 13 ALRB No. 26

461.06 A backpay claimant's travel expense claim was carelessly inaccurate, Board reduced her claim to a reasonable amount. UFW/SUN HARVEST (Moses) 13 ALRB No. 26

461.06 Travel expenses incurred in work search outside of backpay period not reimbursable absent evidence that discriminatees would not have incurred the expenses had they not believed, albeit erroneously, that employer would not rehire them the next budding or harvest season. McFARLAND ROSE PRODUCTION, 11 ALRB No. 34

461.06 The Board refused to credit a discriminatee's previously reimbursed medical expenses since there was no additional out of pocket loss, except for substitute insurance premiums, because a contrary policy would bestow an unrelated benefit upon the Charging Party. McFARLAND ROSE PRODUCTION, 11 ALRB No. 34

461.06 The Board noting a lack of precedent authorizing payment to Charging Party for medical expenses for which he had already been fully reimbursed by the substitute carrier, declined to adopt a rule which would punish Respondent rather than focus on making the discriminatee whole. McFARLAND ROSE PRODUCTION, 11 ALRB No. 34

461.06 It is inappropriate to award Respondent union an offset for union dues Charging Party was not required to pay because his absence from employment was caused by the union's unlawful conduct. A contrary rule would not only reward Respondent for its own wrongdoing but would also require Charging Party to pay for unperformed union services. McFARLAND ROSE PRODUCTION, 11 ALRB No. 34

461.06 Discriminatee not entitled to reimbursement for expense of treatment of medical condition, because General Counsel did not prove that treatment would have been covered under respondent's medical plan. KITAYAMA BROTHERS, 10 ALRB No. 47

461.06 Discriminatee is entitled to reimbursement for reasonable travel expenses based on estimates, and for union dues and initiation fees paid for use of union hiring hall in seeking interim employment. KITAYAMA BROTHERS, 10 ALRB No. 47

461.06 Union dues paid by discriminatee while working for interim employer are reimbursable expenses. VERDE PRODUCE CO., INC., 10 ALRB No. 35

461.06 Transportation costs which are incurred by the discriminatee while seeking interim employment and medical expenses which would have been covered by the respondent's medical insurance plan are compensable because they are an economic loss which resulted from the respondent's unlawful discrimination. ABATTI FARMS, INC., 9 ALRB No. 59

461.06 Discriminatee's expenses in seeking, obtaining or working at interim employment may be recovered by discriminatee. (pp. 76-77)

MARIO SAIKHON INC., 8 ALRB No. 88

461.06 Estimate of expenses are sufficient. Discriminatee need not have records of expenses nor be able to set forth in detail the amount of expenses in order to recover them. (pp. 78-79)
MARIO SAIKHON INC., 8 ALRB No. 88

461.06 Medical expenses which would have been covered by employee's medical plan are recoverable. (p. 77)
MARIO SAIKHON INC., 8 ALRB No. 88

461.06 Discriminatee entitled to reimbursement for medical expenses after date employment ended because under Employer's medical plan discriminatee would have been covered entire month. (I, B, p. 108)
MARIO SAIKHON INC., 8 ALRB No. 88

461.06 Moving expenses and expenses incurred in seeking interim employment are deductible from interim earnings.
ARNAUDO BROTHERS, 7 ALRB No.25

461.06 Employer's claim that all liability for rent and utilities expense should cease rejected in absence of proof that discriminatee earned greater amount in interim employment than he would have working for Employer.
ARNAUDO BROTHERS, 7 ALRB No.25

461.06 Discharge who lived rent free at Gross Employer's company housing who was forced to live in housing project during backpay period entitled to housing expenses, including electricity. Amount is not subject to deduction by interim earnings.
ARNAUDO BROTHERS, 7 ALRB No.25

461.06 Board properly ordered payment of backpay, plus expenses of seeking or holding interim employment, with interest.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

461.07 Unemployment Compensation; Worker's Compensation Or Disability Compensation

461.07 Employer argument that it was denied due process by failure of EDD to comply with subpoena rejected. ALO not served with copy of Petition to revoke, and Employer presented no evidence as to whether discriminatee received unemployment benefits. In any event, unemployment insurance compensation benefits are not interim earnings and are not deductible from backpay awards.
ARNAUDO BROTHERS, 7 ALRB No.25

461.08 Back Pay Award To Third Persons; Assignment, Garnishment, Or Execution; Death Of Employee

461.08 Where the union was found to have unlawfully caused employees discharge under union security clause, union

was liable for employee's losses and backpay order was appropriate; however, since employee had been reinstated, Board order did not include reinstatement, and, since the employee died, backpay was ordered to be paid to his estate.
UFW/ODIS SCARBROUGH, 9 ALRB No. 17

461.08 ALRB award is not transferable like private judgment, since it is public in nature. Employee has no property right in award pending actual receipt thereof.
SANDRINI BROTHERS v. ALRB (1984) 156 Cal.App.3d 878

461.08 ALRB remedies are designed to effectuate public policy and not redress individual injuries of a private nature.
SANDRINI BROTHERS v. ALRB (1984) 156 Cal.App.3d 878

461.09 IDENTITY OF DISCRIMINATEES; UNLOCATED DISCRIMINATEES

461.09 Discriminatees not located by close of compliance hearing shall have their backpay paid to Regional Director who shall place the money in an escrow account for 2 years. (pp. 32-34)
MARIO SAIKHON INC., 8 ALRB No. 88

461.09 Employee on layoff at time of strike who learned of strike and joined picket line is striker and entitled to backpay where Employer locked out all striking Employees. (I, B, p. 191)
MARIO SAIKHON INC., 8 ALRB No. 88

462.00 BARGAINING ORDERS: REMEDIES AGAINST EMPLOYERS

462.01 In General

462.01 Dissent, particularly one that disregarded established distinction between impact of conduct of agents of parties and third parties on election, does not make refusal to bargain in that case a close question under J. R. Norton (1980) 26 Cal.3d 1, nor does ALJ decision denying certification for reasons rejected by Board.
TRIPLE E PRODUCE CORP., 19 ALRB No. 2

462.01 Sufficient grounds did not exist to award other than the traditional remedy for failure to bargain over decision to use a labor contractor.
ROBERTS FARMS, INC., 13 ALRB No. 14

462.01 Board had broad discretion to devise remedies, provided only that they effectuate purposes of Act.
PERRY FARMS, INC., 4 ALRB No. 25

462.01 Neither ALRA nor NLRA expressly authorizes or prohibits Gissel bargaining orders; both NLRB and ALRB rely on their general authority to provide such relief as well effectuate policies of Act.(1160.3)
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

462.01 Outcome of election is not determinative of whether bargaining order should issue.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

462.02 Order To Sign Agreement Or Incorporate Or Abide By Terms; Compliance With Existing Agreement

462.02 Failure of the parties to fully agree on every article in the proposed collective bargaining agreement, establishes a defense to an alleged failure to sign a fully executed contract; bargaining ordered to resume at the point it was abandoned.
ARAKELIAN FARMS, 9 ALRB No. 25

462.03 Order To Furnish Information

462.04 Bargaining Order Where Union Has Lost Election Due To Pervasive Unfair Labor Practices

462.04 Bargaining orders are not permanent; once effects of employer's ULP's have worn off, employees are free to file a decertification petition.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

462.04 ALRA provides only one means for union seeking recognition to obtain it: the secret ballot election. It does not follow, however, that Board is prohibited from issuing remedial bargaining order where ULP's have made free and fair election impossible.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

462.04 If ALRA were interpreted to prohibit bargaining orders, employers would be free to commit egregious ULP's to avoid union organization or to defeat union in election, without fear of significant sanction. This would defeat purpose of Act and make meaningless workers' 1140.2 right to be free from interference in designation of their representatives.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

462.04 Outcome of election is not determinative of whether bargaining order should issue.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

462.04 Where employer forecloses possibility of free election by committing egregious ULP's, bargaining order may be only way to ensure uncoerced worker self-determination.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

462.04 Question for court is only whether cards are reliable enough to support bargaining order where fair election probably could not have been held, or where election which was held has been set aside.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

462.04 Gissel bargaining orders are appropriate whether or not

there was pre-ULP bargaining duty.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

462.04 Bargaining orders may be even more important under ALRA than they are under NLRA, because rerun elections are less feasible in light of peak requirements (1156.4) and 7-day rule (1156.3(c)).
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

462.04 Rapid employee turnover is reason to enforce, rather than annul, bargaining order; otherwise, employer is encouraged to litigate as long as possible to maximize turnover.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

462.04 Board should clearly articulate reasons behind bargaining order in each case. Specifically, Board should analyze immediate and residual impact of ULP's on election process, likelihood of recurring misconduct, and potential effectiveness of ordinary remedies. Board should also distinguish similar cases wherein bargaining orders were not issued.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

462.04 There is nothing inconsistent between Legislature's desire to prevent coercion by employers, by prohibiting voluntary recognition, and Board's power to issue bargaining orders where coercion by employers has been so pervasive as to preclude free election.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

462.04 If authorization card unambiguously states that signer authorizes union to represent employee in collective bargaining, card will be counted unless employee was told that sole purpose of card was to obtain election. Cumberland Shoe test should not be applied mechanistically; question is whether totality of circumstances reflects assurance to signer that his card will be used for no purpose other than to help get election.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

462.04 Neither ALRA nor NLRA expressly authorizes or prohibits Gissel bargaining orders; both NLRB and ALRB rely on their general authority to provide such relief as well effectuate policies of Act.(1160.3) [No citation]
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

462.04 Gissel court's bargaining order analysis established three categories of cases: first, "exceptional" cases with outrageous and pervasive ULP's wherein bargaining order may issue without card majority; second, less pervasive ULP cases where bargaining orders are permissible if union had majority at one point and chance of dispelling effect of ULP's through traditional remedies is slight; and, third, cases with only minor ULP's with minimal impact on election mechanism, where

bargaining orders are not appropriate.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

462.04 It is well settled that bargaining orders can be issued even where, at time of order, union represents only a minority of workers.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

462.04 Although Board should generally determine election outcome before deciding on appropriate remedy, time-consuming challenged ballot proceedings are not necessary before issuing bargaining order where ULP's are so pervasive as to require setting aside election, and employer is not prejudiced by Board's failure to determine outcome.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

462.04 To support "second category" bargaining order, Board must find that possibility of erasing effects of past ULP's, though present, is slight, and that employee sentiment once expressed through cards would, on balance, be better protected by bargaining order.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

462.04 "Card majority" refers to unions having authorization cards signed by majority of employees in bargaining unit.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

462.04 Because Board has issued bargaining order expressly to remedy employer's ULP's, bargaining duty can be enforced under 1160.8 whether or not failure to comply would, itself, be independent ULP under 1153(e).
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

462.04 ALRB has authority to issue remedial bargaining orders in appropriate cases.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

462.04 Bargaining order appropriate even though three years between ULP's and court enforcement of order.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

462.04 Card is not made invalid merely because signer was told that he would have right to vote either way even though he signed card.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

462.04 Legislative history regarding exclusivity of secret ballot election refers to 2 unions' options of obtaining recognition, not to Board's remedial power.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

462.04 Cards are valid where organizers encouraged workers to read cards, emphasized benefits of union representation, and did not urge workers to sign regardless of their feelings or solely to support democratic process.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

462.05 Sale, Discontinuance, Or Reorganization Of Business; Subcontracting Or Removal Of Operations; "Successor" Employers; "Alter Egos"

462.05 Where the employer refused to bargain over its employees' wages, etc., prior to the termination of its business, the employer must make its employees whole for any loss of pay from the date its duty to bargain matured until the time it ceased operations.
P & P Farms, 5 ALRB No. 59

462.05 Board appropriately awarded limited backpay remedy (Transmarine Navigation Corp. (1968) 170 NLRB 389) where employer closed its operations without bargaining. Backpay obligation places economic burden on employer which mere bargaining order does not, and restores to employees a measure of bargaining power which they would otherwise lose after the closure.
HIGHLAND RANCH v. ALRB (1981) 29 Cal.3d 848

462.05 A violation is committed at the time that an employer fails to give advance notice of its decision to close its operations so that meaningful effects bargaining may take place.
GREWAL ENTERPRISES, INC., (2000) 26 ALRB No. 5

462.05 The Board overruled its decision in *Valdora Produce Company and Valdora Produce Company, Inc.*, (1984) 10 ALRB No. 3, to the extent that it failed to award the limited back pay remedy approved in *Transmarine Navigation Corp.* (1968) 170 NLRB 389 and *John V. Borchard, et al.* (1982) 8 ALRB No. 52.
GREWAL ENTERPRISES, INC., (2000) 26 ALRB No. 5

462.05 The union in *Valdora Produce Company and Valdora Produce Company, Inc.*, (1984) 10 ALRB No. 3, was well within its rights when it chose to file an unfair labor practice charge rather than to continue effects bargaining in which it had been stripped of all leverage due to the lack of timely notice of the employer's closing.
GREWAL ENTERPRISES, INC., (2000) 26 ALRB No. 5

462.06 Unit For Bargaining; Multi-Employer Bargaining

462.07 Contracts With Unions Ordered Discontinued

462.08 Reimbursement Of Union For Dues Not Checked Off, Welfare Funds, Etc.

462.08 Where an employer ceases making contributions to employee benefit funds, Board will order it to make such payments and to make its employees whole for all economic losses they suffered as a result of its failure to make the payments.
LU-ETTE FARMS, INC., 11 ALRB No. 20

462.09 Restoration Of Conditions Of Employment Prior To Unilateral Change

462.09 A decision to, in effect, subcontract the growing and harvesting of beets, which is found to have been entered into unilaterally, will not be remedied by a status quo ante remedy where the decision was not motivated by antiunion animus.
CARDINAL DISTRIBUTING COMPANY, INC. et al., 9 ALRB No. 36

462.10 Access To Company Property; Meetings And Bulletin Board Use

463.00 BARGAINING MAKEWHOLE REMEDY; APPLICABILITY

463.01 In General

463.01 When the record as a whole reflects dilatory tactics or an effort to stall bargaining efforts which continues over a period of many months and long after any need for "clarification" has vanished, it is appropriate to order the employer to makewhole its agricultural employees for the losses suffered as a result of the employer's unlawful refusal to bargain.
ROBERT MEYER dba MEYER TOMATOES, 17 ALRB No. 17

463.01 The burden of establishing a Dal Porto defense, i.e., that no contract would have been arrived at even if bargaining had been conducted solely in good faith, is on the employer found to have engaged in bad faith bargaining, and that burden is a heavy one.
ROBERT H. HICKAM, 17 ALRB No. 7

463.01 Where record shows numerous collective bargaining agreements entered into by union and other employers similarly situated to respondent all providing for a uniform level of wages, it may be taken as established for purposes of showing prima facie case under Dal Porto that union would have demanded standard area wages from respondent.
ROBERT H.HICKAM, 17 ALRB No. 7

463.01 The presence of the rebuttable presumption affecting the burden of proof created by the court in William Dal Porto & Sons v. ALRB (1987) 191 Cal.App.3d 1195 does not affect the ability of the Board to grant summary disposition of the question whether the parties negotiating for a collective bargaining agreement would have reached agreement in the absence of a party's bad faith bargaining conduct.
MARIO SAIKHON, INC., 15 ALRB No. 3

463.01 The failure of similarly situated employers to reach agreement on wage proposals steadfastly advanced by the union, even when the employers were bargaining in good faith, is highly probative as to the question of whether

agreement could have been reached in the absence of bad faith bargaining by the employer who is subject to a Dal Porto inquiry.
MARIO SAIKHON, INC., 15 ALRB No. 3

463.01 Proof that a union consistently offered to the employer only wage proposals economically unacceptable to similarly situated employers is not irrelevant to a determination whether the employer and the union would have agreed to a collective bargaining agreement in the absence of the employer's bad faith bargaining conduct.
MARIO SAIKHON, INC., 15 ALRB No. 3

463.01 Where employees are discharged for engaging in work stoppage, and subsequently engage in strike activities, strikers as well as their replacements are entitled to makewhole wages since replacements were in actuality hired to replace wrongfully discharged employees rather than strikers. O.P. MURPHY CO., INC. 13 ALRB No. 27

463.01 A makewhole award is in the nature of an equitable remedy and cannot be invoked without reference to the conduct of both parties to the bargaining process.
MARIO SAIKHON, INC., 13 ALRB No. 8

463.01 Board finds makewhole relief appropriate to the extent that the collective bargaining process was clearly frustrated by Employer's overall course of surface or other bad faith bargaining.
MARIO SAIKHON, INC., 13 ALRB No. 8

463.01 Makewhole imposed in nontechnical refusal to bargain case where harm to employees, occasioned by refusal to bargain, outweighs public interest in litigation of employer's position.
JOE. G. FANUCCHI & SONS 12 ALRB No. 8

463.01 Makewhole relief warranted in nontechnical refusal to bargain case where employer's defense, an employee poll indicating loss of majority support for union, had been rejected in other cases and was contrary to an unambiguous principle of law.
JOE. G. FANUCCHI & SONS 12 ALRB No. 8

463.01 Employees who were unlawfully discharged for one day are entitled to backpay as well as makewhole relief where their employer was also found to be bargaining in bad faith. MARTORI BROTHERS, 11 ALRB No. 26

463.01 Where employer's harvest crews worked in California and Arizona during the makewhole period, the employees were entitled to a makewhole remedy only for the period of time when they worked in California.
MARTORI BROTHERS, 11 ALRB No. 26

463.01 On remand from the Court of Appeal, the Board reaffirmed its makewhole order finding no public interest served by

an alter-ego posing as a wholly separate entity and non-successor.
JOHN ELMORE FARMS, et al., 11 ALRB No. 22

463.01 Although employers delayed in commencing bargaining and failed timely to provide information to the union, they did not engage in overall course of surface bargaining; a makewhole remedy therefore would not be appropriate, and a cease-and-desist order will effectively remedy the violations.
HOLTVILLE FARMS, INC., 10 ALRB No. 49

463.01 Makewhole remedy is tailored to fit the losses suffered by unfair labor practice strikers.
PAUL W. BERTUCCIO, 10 ALRB No. 16

463.01 Employer is required to make whole its employees for losses they suffered as a result of its unlawful repudiation of its contract, and also for its failure to negotiate upon expiration of its contract.
PETER D. SOLOMON and JOSEPH R. SOLOMON dba CATTLE VALLEY FARMS/TRANSCO LAND AND CATTLE CO., 9 ALRB No. 65

463.01 Given employer's substantial, consistent and unreasonable refusal to provide the bargaining representative with information requested from which the inference clearly arises that employer's illegality was conscious and in bad faith, it is appropriate to order that employer make whole its agricultural employees for the losses they suffered as a result of employer's unlawful refusal to bargain. CARDINAL DISTRIBUTING COMPANY, INC., et al., 9 ALRB No. 36

463.01 Test for imposition of makewhole in nontechnical refusal to bargain cases absent finding of bad faith involves weighing of public interest in pursuit of employer's position against harm to employees occasioned by refusal to bargain.
F & P GROWERS ASSOCIATION, 9 ALRB No. 22

463.01 Test for imposition of makewhole announced by Supreme Court in J.R. Norton v. ALRB (1979) 26 Cal.3d 1, limited to technical refusal to bargain cases and not applicable to case involving loss of majority support defense.
F & P GROWERS ASSOCIATION, 9 ALRB No. 22

463.01 Makewhole awarded for refusal to bargain based on claimed loss of majority support to commence with issuance of Board Decisions in Cattle Valley Farms (1982) 8 ALRB No. 24 and Nish Noroian Farms (1982) 8 ALRB No. 25.
F & P GROWERS ASSOCIATION, 9 ALRB No. 22

463.01 Makewhole test announced in J.R. Norton v. ALRB (1979) 26 Cal.3d 1 applicable only to technical refusal to bargain cases. Not applicable where Employee free choice not an issue.
MONTEBELLO ROSE COMPANY, 8 ALRB No. 3

463.01 Where no question of Employee free choice raised by Respondent's appeal (certificate allegedly lapsed after one year) and where Respondent's total course of conduct indicates intent to frustrate and delay bargaining process, makewhole remedy warranted.
MONTEBELLO ROSE COMPANY, 8 ALRB No. 3

463.01 No remedy, including make-whole, should be imposed automatically. Rather, all circumstances of case--including overall conduct of each party and probable effect of remedy on negotiation process--should be considered before deciding what remedy is most appropriate.
N. A. PRICOLA PRODUCE, 7 ALRB No. 49

463.01 Remedy should be minimally intrusive into bargaining process and should encourage resumption of that process.
N. A. PRICOLA PRODUCE, 7 ALRB No. 49

463.01 Board concluded that makewhole remedy was not appropriate where respondent reasonably challenged Board's failure to find violation of formal post-election settlement agreement. BEE & BEE PRODUCE, INC., 6 ALRB No. 48

463.01 Make whole remedy should be minimally intrusive to, and should facilitate resumption of negotiation.
KAPLAN'S FRUIT AND PRODUCE COMPANY, 6 ALRB No. 36

463.01 On court remand of a prior High & Mighty Farms decision, ALRB No. 51, for review of the appropriateness of ordering makewhole for the employer's technical refusal to bargain, the Board determined that makewhole was not warranted since the Employer's litigation posture was reasonable and in good faith. The Board found that the Employer's challenge to the election on peak issues was reasonable since this was the first case in which the Board had used a combination of methods to compute the percentage of peak employment and there were no judicial decisions involving the Board's determination of peak employment; thus, this was a close case raising important issues of employee free choice.
AS-H-NE FARMS, 6 ALRB No. 9

463.01 Makewhole remedy is appropriate whenever employer has been found to have refused to bargain in violation of section 1153(e) and (a) of Act and employees have suffered losses of pay as result. NOTE: Overruled in J.R. Norton.
PERRY FARMS, INC., 4 ALRB No. 25

463.01 ALRB granted remedial authority to award makewhole for refusal to bargain.
PERRY FARMS, INC., 4 ALRB No. 25

463.01 Makewhole remedy applies whether employer's refusal to bargain was designed solely to procure review in courts

of underlying election issues, or whether it was of flagrant or willful variety. In either case, employees have lost their statutorily created rights to be represented by their Board certified representative during negotiations of wages, hours, and other terms and conditions of employment.
PERRY FARMS, INC., 4 ALRB No. 25

463.01 To grant makewhole relief whenever there has been refusal to bargain and loss in pay by employees would make superfluous Legislature's policy requiring remedy be "appropriate" as determined by Board. Board should proceed on case-by-case basis.
PERRY FARMS, INC., 4 ALRB No. 25

463.01 Make-whole relief is a compensatory remedy that reimburses employees for the losses they incur as the result of delays in the collective bargaining process.
George Arakelian Farms, Inc. v. ALRB (1989) 49 Cal.3d 1279

463.01 Since makewhole is an equitable remedy, Board erred in striking the grower's affirmative defense to the makewhole remedy and excluding evidence as to union strike violence on the question whether the grower should have been required to make his employees whole for economic losses.
PAUL W. BERTUCCIO v. ALRB (1988) 202 Cal.App.3d 1369

463.01 The provisions of the ALRA for making employees whole for the loss of pay resulting from a grower's refusal to bargain has both compensatory and dissuasive function: it is compensatory in that it reimburses employees for the losses they incur as a result of delays in the collective bargaining process.
At the same time, it reduces a grower's financial incentive for refusing to bargain in order to avoid the expenses he would be required to pay if he had entered into a collective bargaining agreement.
PAUL W. BERTUCCIO v. ALRB (1988) 202 Cal.App.3d 1369

463.01 The Board's makewhole order for an employer's refusal to bargain in good faith must reflect the exercise of sound discretion based upon the facts and equities of the case before it.
PAUL W. BERTUCCIO v. ALRB (1988) 202 Cal.App.3d 1369

463.01 If the Board finds that the grower has failed to prove no contract would have been entered into absent his refusal to bargain, the Board should then impute an agreement and measure losses of pay and benefits with reference to the imputed contract.
PAUL W. BERTUCCIO v. ALRB (1988) 202 Cal.App.3d 1369

463.01 A contract may be imputed from comparable contracts actually negotiated by the union with other growers.
PAUL W. BERTUCCIO v. ALRB (1988) 202 Cal.App.3d 1369

463.01 The Board's General Counsel has the initial burden of producing evidence to show the grower unlawfully refused to bargain. Once the General Counsel produces such evidence, the burden of persuasion shifts to the grower to prove no agreement calling for higher pay would have been concluded in the absence of the illegality.
PAUL W. BERTUCCIO v. ALRB (1988) 202 Cal.App.3d 1369

463.01 If the grower fails to carry its burden to prove no contract would have been agreed to absent the grower's refusal to bargain, the Board may find an agreement providing for higher pay would have been concluded but for the grower's refusal to bargain.
PAUL W. BERTUCCIO v. ALRB (1988) 202 Cal.App.3d 1369

463.01 Makewhole relief may be imposed only where the Board has made a finding that the parties would have entered into a collective bargaining agreement for higher pay but for the grower's refusal to bargain.
PAUL W. BERTUCCIO v. ALRB (1988) 202 Cal.App.3d 1369

463.01 Section 1160.3 of the ALRA authorizing the Board to order that employees be made whole for loss of pay resulting from employer's refusal to bargain and to provide other relief to effectuate policies of Act does not permit the Board to order union to make employees whole as a remedy for bad faith bargaining.
CARL MAGGIO v. ALRB (1987) 194 Cal.App.3d 1329

463.01 The Board erred in ordering makewhole relief against the employer without first making a finding as to whether the parties had bargained in good faith to impasse, or whether they would have consummated an agreement in the absence of the employer's bad faith.
WILLIAM DAL PORTO & SONS, INC. v. ALRB (1987) 191 Cal.App.3d 1195

463.01 In proceedings before the ALRB seeking a makewhole remedy under Lab. Code sec 1160.3 for an employer's refusal to bargain in good faith, there is a rebuttable presumption, placing the burden of proof on the employer, that the parties would have consummated a collective bargaining agreement had the employer bargained exclusively in good faith. WILLIAM DAL PORTO & SONS, INC. v. ALRB (1987) 191 Cal.App.3d 1195

463.01 If the employer fails to carry the burden of proving that no contract would have been concluded in good faith, the Board should impute to the parties an agreement, and measure losses of pay and benefits with reference to it.
WILLIAM DAL PORTO & SONS, INC. v. ALRB (1987) 191 Cal.App.3d 1195

463.01 The placing of the burden on the employer to rebut the presumption that the parties would have entered into an agreement had the employer bargained in good faith, does

not unconstitutionally violate due process, since empirical data supports a rational connection between good faith bargaining and the consummation of an agreement. WILLIAM DAL PORTO & SONS, INC. v. ALRB (1987) 191 Cal.App.3d 1195

463.01 Under Labor Code sec. 1160.3 authorizing makewhole relief for the loss of pay resulting from an employer's refusal to bargain, makewhole relief may be imposed only where the parties would have entered into a collective bargaining agreement providing for higher pay, but for the employer's refusal to bargain.
WILLIAM DAL PORTO & SONS, INC. v. ALRB (1987) 191 Cal.App.3d 1195

463.01 Purpose of makewhole is to place employees in economic position they would likely have been in but for employer's ULP.
MARTORI BROS. DISTRIBUTORS v. JAMES- MASSENGALE (9th Cir., 1986) 781 F.2d 1349, modified 791 F.2d 799

463.01 Makewhole awards do not constitute a "taking" of employers' assets in violation of the just compensation clause of the Fifth Amendment. MARTORI BROS. DISTRIBUTORS v. JAMES- MASSENGALE (9th Cir., 1986) 781 F.2d 1349, modified 791 F.2d 799

463.01 ALRB's makewhole awards do not violate the Contract Clause of the U.S. Constitution.
MARTORI BROS. DISTRIBUTORS v. JAMES- MASSENGALE (9th Cir., 1986) 781 F.2d 1349, modified 791 F.2d 799

463.01 Clarification of applicability of makewhole order to particular employees is matter for Board compliance proceedings and may not be obtained during court review of Board liability order.
GEORGE ARAKELIAN FARMS v. ALRB (1986) 186 Cal.App.3d 94

463.01 Makewhole relief appropriate where union prevails in election by sizeable margin, employer's evidentiary objections to Board's ruling were neither substantial nor of a nature that have affected outcome of election, and workers have endured a prolonged delay.
LINDELEAF v. ALRB (1986) 41 Cal.3d 861

463.01 The Board properly awarded makewhole relief because "neither the objections which were dismissed by the Executive Secretary nor those which were the subject of a hearing raised novel questions of statutory interpretation or difficult legal issues. "This is not close case "raising important issues concerning whether the election was conducted in a manner that truly protected employees right of free choice."
LINDELEAF v. ALRB (1986) 41 Cal.3d 861

463.01 A Board-order makewhole remedy which runs until employer commences to bargain in good faith (leading to either

contract or bona fide impasse) is not "open-ended" and does not compel employer to make concessions. It is therefore proper.
RULINE NURSERY CO. v. ALRB (1985) 169 Cal.App.3d 247

463.01 Method by which Board undertakes case-by-case review of appropriateness of make-whole remedy is within Board's discretion. Therefore, Board's balancing test--weighing harm done to employees against public interest in litigating employer's position--is proper.
F&P GROWERS ASSN. v. ALRB (1985) 168 Cal.App.3d 667

463.01 Even if employer was precluded by Board decision from raising "loss of majority defense" to refusal-to-bargain charge, Board could not impose make-whole automatically, but was required to review particular facts and circumstances of case.
F&P GROWERS ASSN. v. ALRB (1985) 168 Cal.App.3d 667

463.01 Make-whole remedy is not automatic or per se, and 1160.3 requires that Board order make-whole only when such relief is appropriate - i.e., after examining particular facts and circumstances of each case.
F&P GROWERS ASSN. v. ALRB (1985) 168 Cal.App.3d 667

463.01 Employer may not reargue appropriateness of make-whole award in petition for review of computation of actual losses, since order became final when underlying Board decision finding ULP was upheld.
HOLTVILLE FARMS, INC. v. ALRB (1985) 168 Cal.App.3d 388

463.01 Board's makewhole order annulled, and case remanded for reconsideration of remedy, where Court annulled one of three bargaining-related violations found by Board.
WILLIAM DAL PORTO & SONS, INC. v. ALRB (1984) 163 Cal.App.3d 541

463.01 Board appropriately applied make-whole remedy in case involving unilateral wage increase and failure to provide information. Norton only applies to technical refusal-to-bargain to test certification, not to case where employer engages in unlawful bargaining.
CARDINAL DISTRIBUTING CO. v. ALRB (1984) 159 Cal.App.3d 758

463.01 Remedies which are exceedingly harsh in relation to ULP conduct will be deemed punitive and annulled. However, make-whole for failure to provide information and for unilateral wage changes bears an appropriate relation to the policies of ALRA.
CARDINAL DISTRIBUTING CO. v. ALRB (1984) 159 Cal.App.3d 758

463.01 Differences between 1160.3 and NLRA section 10(c) indicate that ALRB was intended to have broader remedial powers than NLRB.
SANDRINI BROTHERS v. ALRB (1984) 156 Cal.App.3d 878

463.01 ALRB remedies are designed to effectuate public policy and not redress individual injuries of a private nature.
SANDRINI BROTHERS v. ALRB (1984) 156 Cal.App.3d 878

463.01 Supreme Court's concern in J.R. Norton is with the employer's good faith--did the employer have a reasonable, good-faith belief its actions were in keeping with policy of Act. BABBITT ENGINEERING & MACHINERY v. ALRB (1984) 152 Cal.App.3d 310

463.01 ALRB was well within its remedial authority where limited backpay/ makewhole remedy (Transmarine Navigation Corp. (1968) 170 NLRB 389) was applied in specific, narrow circumstances that NLRB has long recognized as justifying such remedy.
HIGHLAND RANCH v. ALRB (1981) 29 Cal.3d 848

463.01 Board's remedial powers do not exist simply to reallocate monetary loss to whomever it considers to be most deserving; they exist to effectuate the policies of the ALRA.
J. R. NORTON CO. v. ALRB (1979) 26 Cal.3d 1

463.01 It is not function of the Board to impose punitive measures upon recalcitrant employers at expense of rights of employees whom ALRA was designed to protect.
PERRY FARMS INC. v. ALRB (1978) 86 Cal.App.3d 448

463.01 Bargaining makewhole remedy appropriate for employer's refusal to respond to union inquiries and to continue negotiations where such conduct significantly disrupted the bargaining process and effectively prevented the possibility of reaching a contract.
P.H. RANCH, INC., et al., 21 ALRB No. 13

463.01 No makewhole awarded for employer's failure to provide bargaining information requested by union. Makewhole remedy is generally reserved for cases in which employer has engaged in overall course of refusing to bargain or surface bargaining.
TRIPLE E PRODUCE CORP., 23 ALRB No. 8

463.02 Surface Bargaining

463.02 Makewhole inappropriate where employer successfully demonstrated that the parties would not have agreed to a contract calling for higher wages even if the employer had not bargained in bad faith because 1) it had a good faith basis for resisting the union's wage demands, and 2) the union was inflexible in its insistence on such wage rates.
PAUL W. BERTUCCIO, 17 ALRB No. 16

463.02 Despite its occasional reference to the "true reason" for the conduct at issue, i.e., the parties' failure to reach contractual agreement, the Dal Porto court clearly

adopted the but-for analysis set out in Martori Bros. Distributors v. ALRB (1981) 29 Cal.3d 721
PAUL W. BERTUCCIO, 17 ALRB No. 16

463.02 Dal Porto does not require an employer to show that the parties reached actual impasse, but rather that legitimate differences would have eventually led to impasse.
PAUL W. BERTUCCIO, 17 ALRB No. 16

463.02 Dal Porto does not require an employer to show that it could not afford wage rates demanded by union, but only that it had a good faith basis for resisting the demands.
PAUL W. BERTUCCIO, 17 ALRB No. 16

463.02 Where violations of employer's statutory bargaining obligation are isolated and do not establish a pattern of conduct amounting to surface bargaining, Board has declined to apply the makewhole remedy.
MARIO SAIKHON, INC., 13 ALRB No. 8

463.02 In compliance proceeding, General Counsel has the burden of proving the appropriate duration of the makewhole remedy. MARIO SAIKHON, INC., 13 ALRB No. 8

463.02 Board cannot conclude that Employer was engaged in other than a course of surface bargaining during period which was not only preceded by bad faith bargaining but also followed by a lengthy period of bad faith bargaining; makewhole liability not tolled.
MARIO SAIKHON, INC., 13 ALRB No. 8

463.02 On remand, Board finds makewhole remedy still appropriate where (1) employer's bargaining over union security issue provides strong evidence of a lack of intent to reach any agreement at all and (2) the manner in which it implemented a unilateral wage change crippled the bargaining process.
WILLIAM DAL PORTO & SONS, INC., 11 ALRB No. 13

463.02 Board agent default judgment did not award contractual makewhole prayed for in the complaint where the allegations of the complaint did not support a finding of bad faith bargaining.
KAPLAN'S FRUIT & PRODUCE CO., 11 ALRB No. 7

463.02 Although employers delayed in commencing bargaining and failed timely to provide information to the union, they did not engage in overall course of surface bargaining; a makewhole remedy therefore would not be appropriate, and a cease-and-desist order will effectively remedy the violations.
HOLTVILLE FARMS, INC., 10 ALRB No. 49

463.02 Equitable doctrine of "clean hands" applies, and makewhole relief imposed beginning with the employer's bad faith, but suspended or tolled during the period when

the union attempted to avoid impasse by obfuscation and delay.
BRUCE CHURCH, INC., 9 ALRB No. 74

463.02 Since Union impeded bargaining by not providing relevant information on its RFK and Martin Luther King Funds, no makewhole for the increased amounts Employer's would have contributed to funds.
ADMIRAL PACKING CO., et al, 7 ALRB No. 43

463.02 Substantial evidence supports the Board's conclusion that no agreement would have been reached even in the absence of the employer's bad faith bargaining, since it was shown that the employer had a good faith basis for resisting union's wage demands and union was inflexible in its insistence on such rates throughout the makewhole period.
UFW v. ALRB (Bertuccio) (1993) 16 Cal.App.4th 1629 [20 Cal.Rptr.2d 879]

463.02 Board correctly held that employer need not show, as a matter of historical fact, that impasse had occurred in order to meet its burden under Dal Porto. Employer need only show that the parties would not have reached agreement even if it had not bargained in bad faith and need not show that its bad faith bargaining had no effect upon the failure to reach agreement.
UFW v. ALRB (Bertuccio) (1993) 16 Cal.App.4th 1629 [20 Cal.Rptr.2d 879]

463.02 Case number for Paul W. Bertuccio, at pages 400-445, should be 17 ALRB No. 16.

463.03 Technical Refusal To Bargain (see also section 432.02)

463.03 Where Board in decision on objections found them 462.01 insufficient to deny certification, but that the misconduct bordered on level of misconduct that had caused Board to set aside elections in past, sufficient to make refusal to bargain seeking Board and judicial review of the misconduct on that present one showing good faith belief in that election might be overturned. Board noted that Employer's remaining contentions were exaggerated or unsupported by evidence, but that they did not negate the one contention presented in this case showing good faith contention.
TRIPLE E PRODUCE CORP., 19 ALRB No. 2

463.03 Dissent, particularly one that disregarded established distinction between impact of conduct of agents of parties and third parties on election, does not make refusal to bargain in that case a close question under J. R. Norton (1980) 26 Cal.3d 1, nor does ALJ decision denying certification for reasons rejected by Board.
TRIPLE E PRODUCE CORP., 19 ALRB No. 2

463.03 Where employer failed to produce declaratory support

which was legally or factually sufficient to establish a prima facie showing that its peak objection should be heard, employer has not shown reasonable litigation posture in arguing that Board's dismissal of its objection was erroneous.
SCHEID VINEYARDS AND MANAGEMENT CO., 19 ALRB No. 1

463.03 Evidence that may tend to show that the parties would not have reached agreement had they bargained in good faith thought too speculative to be relevant to the question of whether the parties would have reached agreement, may be relevant to a determination of the proper measure of makewhole to be imposed.
ABATTI FARMS, INC., 16 ALRB No. 17

463.03 Absent a bargaining history, there is no relevant evidence available to an employer to prove that the parties would not have reached agreement had they bargained in good faith.
ABATTI FARMS, INC., 16 ALRB No. 17

463.03 Employer presented factually close case under J. R. Norton Company v. ALRB (1979) 26 Cal.3d 1 [160 Cal.Rptr. 716] so that makewhole remedy was not appropriate where Board conceded gaps and uncertainties in, and generally poor quality of, testimony of sole witness to employer's promise of benefit, Investigative Hearing Examiner refused to rely on testimony of sole witness to employer's promise of benefit and would have dismissed union's objection based thereon, and two dissenting Board members in prior representation case agreed with Investigative Hearing Examiner and would have certified election.
LIMONEIRA COMPANY, 15 ALRB No. 20

463.03 Factual question can present close case raising important issues concerning whether election was conducted in manner truly protective of employees' right of free choice under J. R. Norton Company v. ALRB (1979) 26 Cal.3d 1 [160 Cal.Rptr. 716] LIMONEIRA COMPANY, 15 ALRB No. 20

463.03 Concurrence: Portions of majority decision may create false impression that Board no longer supports its findings and conclusions in 13 ALRB No. 13. Nevertheless, because of ambiguities in the record and variety of possible interpretations of primary witness's testimony, concurring Member finds Employer's litigation posture reasonable under Norton and makewhole consequently inappropriate.
LIMONEIRA COMPANY, 15 ALRB No. 20

463.03 On remand from Court of Appeal, Board found that two month delay between request and refusal to bargain, absent other evidence of bad faith, was insufficient to support finding of bad faith. Board concluded that it was improper to rely upon other factors which were either

not relied upon by the ALJ due to credibility resolutions or not fully litigated in the underlying election objection proceedings.
SAN JUSTO RANCH/WYRICK FARMS 14 ALRB No.1

463.03 Concurrence/Dissent: Member McCarthy would hold the employer's unexplained 70-day delay in responding to union's bargaining request to be evidence of lack of reasonableness and good faith. He would impose makewhole from 30 days after the bargaining request until the employer notified union of its technical refusal to bargain.
SAN JUSTO RANCH/WYRICK FARMS 14 ALRB No.1

463.03 Makewhole relief is appropriate when an employer, in deciding to contest the validity of a certification, adopts a litigation posture which is either unreasonable or not pursued in good faith.
S&J RANCH, INC., 12 ALRB No. 32

463.03 As no evidence was presented on the second, or "good faith" aspect of the Norton test, the appropriateness of awarding makewhole turned on the reasonableness of the employer's litigation posture.
S&J RANCH, INC., 12 ALRB No. 32

463.03 It is the Board's policy not to award in situations involving "novel" legal theories or issues in close cases that raise important issues concerning whether an election was conducted in a way that protected the employee's right of free choice.
S&J RANCH, INC., 12 ALRB No. 32

463.03 In determining whether to award makewhole relief for Respondent's technical refusal to bargain, Board found the employer's position regarding the issue of proper unit designation to be reasonable where the Board certified a unit which was broader than that in which the election was held. As the employer maintained a litigation posture which was reasonable, at least until the unit clarification issue was resolved, no makewhole award was imposed for the period up to and including the date of amendment of certification.
S&J RANCH, INC., 12 ALRB No. 32

463.03 In determining whether to award makewhole relief for Respondent's technical refusal to bargain, Board found the employer's position regarding the identity of the statutory employer to be reasonable because the issue involved a weighing of policy considerations and created a close case, facts which the Board had acknowledged in the underlying representation proceeding.
S&J RANCH, INC., 12 ALRB No. 32

463.03 In determining whether to award makewhole relief for Respondent's technical refusal to bargain, Board found the employer's position regarding the conduct of the

election to be reasonable because alleged electioneering occurred in close proximity to the polls, occurred over an extended period of time and involved very visible acts in support of the union. Under either of the tests which were discussed in Pleasant Valley Co-Op. (1982) 8 ALRB No. 82 at p. 12, Respondent had arguable grounds for its litigation posture in this regard.
S&J RANCH, INC., 12 ALRB No. 32

463.03 Dissent: Member Carrillo finds that employer's litigation posture is unreasonable when it is based upon Board's resolution of employer identity issue, citing San Justo Ranch/Wyrick Farms (1983) 9 ALRB No. 55.
S&J RANCH, INC., 12 ALRB No. 32

463.03 Board ordered makewhole remedy where there was no reasonable basis for challenging Board agents' exercise of discretion in setting and conducting the election.
MURANAKA FARMS, 12 ALRB No. 9

463.03 Board ordered makewhole remedy where there was no evidence that non-party threats of loss of employment for failure to vote for union were widely disseminated or created an atmosphere of fear in which employees were unable freely to choose a bargaining representative.
MURANAKA FARMS, 12 ALRB No. 9

463.03 Litigation posture which conflicts with well-established precedent is not "reasonable" makewhole relief warranted in such case.
D. PAPAGNI FRUIT CO., 11 ALRB No. 38

463.03 Employer's insistence on presenting evidence regarding all of its election objections, including those dismissed by Executive Secretary of the Board, in an effort to establish the "cumulative effect" of purported election conduct, disregarded discretion of Executive Secretary and Board to screen objections and was thus not a "reasonable" litigation posture.
D. PAPAGNI FRUIT CO., 11 ALRB No. 38

463.03 Mere reiteration of substance of objections in ULP case, without demonstrating where prior rulings regarding them in the representation phase were arbitrary or clearly erroneous does not present a "close case" based on a "reasonable good faith belief" that the union would not have prevailed in a fairly conducted election; makewhole relief therefore appropriate.
D. PAPAGNI FRUIT CO., 11 ALRB No. 38

463.03 Makewhole is appropriate where the employer refuses to bargain to test the continuing validity of the union's certification, since such a defense is not cognizable under the Act.
O.E. MAYOU & SONS, 11 ALRB No. 25

463.03 Test for imposition of makewhole in J.R. Norton (1976) 26

Cal.3d 1, not applicable to case where Board found employer to be alter-ego.
JOHN ELMORE FARMS, et al., 11 ALRB No. 22

463.03 The Board refused to award makewhole relief following an employer's technical refusal to bargain after it concluded that the employer's argument concerning the peak calculation in the underlying representation proceeding was reasonable.
ADAMEK AND DESSERT, INC., 11 ALRB No. 8

463.03 Makewhole remedy appropriate where employer could not have entertained a reasonable good faith belief that employees were disenfranchised absent showing of lack of notice or evidence that voters were prevented from voting by misconduct of Board or any party.
LEO GAGOSIAN FARMS, INC., 10 ALRB No. 39

463.03 Makewhole remedy appropriate where employer's technical-refusal-to-bargain based on successorship was not raised in reasonable good faith; employer's legal theory was highly impractical, mechanical, and totally without support in state or federal precedent, and employer tried to create its own claim through illegal discrimination.
SAN CLEMENTE RANCH, LTD., 10 ALRB No. 21

463.03 Employees will be made whole where employer persists in challenging the certification order merely as a means of delaying the negotiations process; allegations of Board agency misconduct, even if true, did not describe conduct which would tend to affect results of election.
GEORGE A. LUCAS & SONS, 10 ALRB No. 14

463.03 Board ordered makewhole remedy, finding that employer's seven-month delay in answering union's request to bargain indicated lack of good faith. FRUDDEN PRODUCE, INC., DENNIS FRUDDEN, dba FRUDDEN PRODUCE COMPANY, and FRUDDEN ENTERPRISES, INC., 9 ALRB No. 73

463.03 Makewhole remedy began six months from the date of the first bargaining-related charge, since that charge raised the employer's complete defense.
DESSERT SEED COMPANY, INC., 9 ALRB No. 72

el4 6 Employer had no reasonable, good faith belief that election was invalid where dismissal of similar election objections was previously upheld upon judicial review.
DESSERT SEED COMPANY, INC., 9 ALRB No. 72

463.03 Makewhole remedy ordered where employer demonstrated bad faith by waiting ten weeks to inform the union of intent to seek judicial review and demonstrated anti-union animus by other acts of discrimination and interference.
SAN JUSTO RANCH/WYRICK FARMS, 9 ALRB No. 55

463.03 Makewhole remedy ordered where employer's argument regarding the appropriate employer of certain employees

was unreasonable in that it rested on insubstantial legal formalities, furthered no policy of the Act, and challenged the Board's judgment in an area of wide discretion.
SAN JUSTO RANCH/WYRICK FARMS, 9 ALRB No. 55

463.03 board ordered makewhole remedy, finding that employer's litigation posture was unreasonable and noting that employer's two-month delay in answering union's request to bargain indicated lack of good faith.
ROBERT J. LINDELEAF, 9 ALRB No. 35

463.03 Test for imposition of makewhole announced by Supreme Court in J.R. Norton v. ALRB (1979) 26 Cal.3d 1, limited to technical refusal to bargain cases and not applicable to case involving loss of majority support defense.
F & P GROWERS ASSOCIATION, 9 ALRB No. 22

463.03 Post-election objections dismissed by the Board, based on credibility resolutions or a failure of proof, do not constitute close cases or meritorious challenges that would relieve a respondent of makewhole liability.
THOMAS S. CASTLE FARMS, INC., 9 ALRB No. 14

463.03 Employer's challenge of the non-reviewability of the showing of interest is not reasonable in the face of long-standing and well-established precedent.
THOMAS S. CASTLE FARMS, INC., 9 ALRB No. 14

463.03 Challenging to concept of excluding unrepresentative days from peak calculations without any supporting data or arguments is an unreasonable litigation posture.
GRANT HARLAN FARMS, 9 ALRB No. 1

463.03 In determining whether an employer's litigation posture was reasonable pursuant to J.R. Norton Co. (1980) 6 ALRB No. 26, the Board looks to the actual litigation posture of employer, not a hypothetical position employer might have taken.
GRANT HARLAN FARMS, 9 ALRB No. 1

463.03 Board concluded that makewhole remedy was not appropriate where respondent reasonably challenged Board's failure to find violation of formal post-election settlement agreement.
BEE & BEE PRODUCE, INC., 6 ALRB No. 48

463.03 Because the employer's election objections were insubstantial and the UFW enjoyed a wide margin of victory, the employer lacked a reasonable belief that the election was not conducted properly or that misconduct occurred which affected the outcome of the election. Therefore, the Board required the employer to make its employees whole.
C. MONDAVI & SONS, d/b/a CHARLES KRUG WINERY 6 ALRB No. 30

463.03 The determination whether makewhole relief is appropriate in a given case is made by ascertaining whether the employer's litigation posture was reasonable and whether the employer litigated the case with a good faith belief that the election was not conducted properly on that misconduct occurred which affected the outcome of the election.
C. MONDAVI & SONS, d/b/a CHARLES KRUG WINERY
6 ALRB No. 30

463.03 The Board must determine in technical refusal to bargain cases whether makewhole relief is appropriate on a case-by-case basis.
C. MONDAVI & SONS, d/b/a CHARLES KRUG WINERY 6 ALRB No. 30

463.03 No make whole in technical refusal to bargain case because Employer relied on NLRB's "laboratory conditions" standard, Board had not heretofore considered applicability of such standards, and therefore Employer presented a "close [case] that [raises] important issues concerning whether the election was conducted in a manner that truly protected the employees' right of free choice" within the meaning of J. R. Norton Co. v. ALRB (1980) 26 Cal.3d 1
D'ARRIGO BROTHERS OF CALIFORNIA 6 ALRB No. 27

463.03 In accordance with remand of Court of Appeal, Board reconsiders make whole remedy for technical refusal to bargain in light of J. R. Norton Co. v. ALRB (1980) 26 Cal.3d 1 and holds that it will consider "whether the employer litigated in a reasonable good-faith belief that the election was conducted in a manner which did not fully protect employees' rights, or that misconduct occurred which affected the outcome of the election." On that basis, Board strikes prior make whole remedy.
D'ARRIGO BROTHERS OF CALIFORNIA 6 ALRB No. 27

463.03 In determining whether to grant makewhole in technical refusal-to-bargain cases, the Board considers whether the employer's litigation posture was reasonable at the time of the refusal to bargain and whether the employer acted in good faith in seeking judicial review of the certification.
J. R. NORTON COMPANY, 6 ALRB No. 26

463.03 On court remand of a prior High & Mighty Farms decision, ALRB No. 51, for review of the appropriateness of ordering makewhole for the employer's technical refusal to bargain, the Board determined that makewhole was not warranted since the Employer's litigation posture was reasonable and in good faith. The Board found that the Employer's challenge to the election on peak issues was reasonable since this was the first case in which the Board had used a combination of methods to compute the percentage of peak employment and there were no judicial decisions involving the Board's determination of peak

employment; thus, this was a close case raising important issues of employee free choice.
AS-H-NE FARMS, 6 ALRB No. 9

463.03 Makewhole appropriate for technical refusal to bargain.
TRIPLE E PRODUCE CORP., 5 ALRB No. 65

463.03 Remedy for technical refusal to bargain is makewhole, so as to deem the employer the bearer of the risks of litigation rather than employees.(Reversed by Supreme Court in J. R. Norton v. ALRB.)
GEORGE ARAKELIAN, 4 ALRB No. 53

463.03 The costs of the delay that results from an employer's unsuccessful technical refusal to bargain will be assessed entirely against the employer; in such cases, the Board will award makewhole. (But see J.R. Norton v. Agricultural Labor Relations Board (1978) 26 Cal.3d 1, rejecting "automatic" makewhole.
C. MONDAVI & SONS dba CHARLES KRUG WINERY, 4 ALRB No. 52

463.03 The costs of the delay that results from an employer's unsuccessful technical refusal to bargain will be assessed entirely against the employer; in such cases, the Board will award makewhole. (But see J. R. Norton v. ALRB (1978) 26 Cal.3d 1, rejecting "automatic" makewhole.
J.R. NORTON COMPANY, 4 ALRB No. 39

463.03 Makewhole remedy applies whether employer's refusal to bargain was designed solely to procure review in courts of underlying election issues, or whether it was of flagrant or willful variety. In either case, employees have lost their statutorily created rights to be represented by their Board certified representative during negotiations of wages, hours, and other terms and conditions of employment.
PERRY FARMS, INC., 4 ALRB No. 25

463.03 In arguing that RD failed to conduct an adequate investigation of peak and that employer's objection should not have been dismissed without a hearing, employer failed to raise novel legal issues or important issues concerning whether election was conducted in a manner that truly protected employees' right of free choice. Therefore, makewhole remedy is warranted for employer's refusal to bargain.
(J.R. Norton Co. v. ALRB (1979) 26 Cal.3d 1.)

463.03 The most significant distinction between surface bargaining and a technical refusal to bargain lies in the quantum of evidence available to show that both innocent and wrongful factors combined to preclude agreement with union representatives.
George Arakelian Farms, Inc. v. ALRB (1989) 49 Cal.3d 1279

463.03 In surface-bargaining cases, the employer can produce

evidence of the actual negotiations between the parties to prove that they would not have entered into a collective bargaining agreement despite the employer's wrongful conduct.
George Arakelian Farms, Inc. v. ALRB (1989) 49 Cal.3d 1279

463.03 The two unfair labor practices of surface bargaining and technical refusal to bargain are factually distinguishable and require different standards for evaluating the employer's conduct.
George Arakelian Farms, Inc. v. ALRB (1989) 49 Cal.3d 1279

463.03 In cases involving a technical refusal to bargain, any relevant evidence tending to show that no contract would have been consummated between the parties is more appropriately introduced in the compliance proceedings of the Board's bifurcated determination process, rather than the liability proceedings, because the question of what the parties might have agreed to concerns the amount of damages rather than the fact of damages.
George Arakelian Farms, Inc. v. ALRB (1989) 49 Cal.3d 1279

463.03 The most significant distinction between surface bargaining and a technical refusal to bargain lies in the quantum of evidence available to show that both innocent and wrongful factors combined to preclude agreement with union representatives.
George Arakelian Farms, Inc. v. ALRB (1989) 49 Cal.3d 1279

463.03 Unless litigation of the employer's position furthers the policy and purposes of the Act, the employer, not the affected employees, should ultimately face the consequences of its choice to litigate the representation issues rather than bargain with the employees in good faith.
George Arakelian Farms, Inc. v. ALRB (1989) 49 Cal.3d 1279

463.03 In technical refusal to bargain cases the evidence that the parties would not have entered into an agreement even if they had negotiated in good faith is necessarily speculative because there is no bargaining history between the parties. George Arakelian Farms, Inc. v. ALRB (1989) 49 Cal.3d 1279

463.03 Board correctly declined to require employer to make its employees whole in light of Board's finding that employer reasonably and in good faith believed that it was not at 50% of peak employment when petition for certification was filed.
ADAMEK & DESSERT, INC. v. ALRB (1986) 178 Cal.App.3d 970

463.03 Makewhole relief is appropriate when an employer

unreasonably refuses to accept the results of free and fair election, in effect using litigation as pretense to thwart collective bargaining process.
LINDELEAF v. ALRB (1986) 41 Cal.3d 861

463.03 Makewhole relief is appropriate even where there is a lone dissenting hearing officer, Board member, or appellate judge who finds merit in an employer's claim of election misconduct. A holding otherwise would potentially eliminate any disincentive for employers to pursue dilatory appeals by too easily immunizing them against makewhole demands.
LINDELEAF v. ALRB (1986) 41 Cal.3d 861

463.03 Makewhole relief is not automatically available whenever the Board finds that an employer has failed to present a prima facie case in support of its objections; any other view would inhibit challenges in close cases raising important questions of fact or law concerning fairness of an election.
LINDELEAF v. ALRB (1986) 41 Cal.3d 861

463.03 Board's two-part test for makewhole in technical refusal cases (see J. R. Norton (1980) 6 ALRB No. 26) accords with Supreme Court's guidelines in Norton v. ALRB (1979) 26 Cal.3d 1.
GEORGE ARAKELIAN FARMS, INC. v. ALRB (1985) 40 Cal.3d 654

463.03 District courts of appeal are not required to follow each other's decisions, and employer was reasonable in pursuing legal theory in 4th District after it was rejected in 5th District.
GEORGE ARAKELIAN FARMS, INC. v. ALRB (1985) 40 Cal.3d 654

463.03 Employer could not reasonably believe 1) that ruling in favor of union's suggestion for time and place of election affected outcome of election; or 2) that delaying pre-election conference for 90 minutes and allowing union representative to translate pre-election conference for a few minutes to a few employees showed Board agent bias that would affect employee free choice.
GEORGE ARAKELIAN FARMS, INC. v. ALRB (1985) 40 Cal.3d 654

463.03 In applying makewhole in technical refusals-to-bargain, Board must look at facts and equities and determine whether litigation is pretense to avoid bargaining or employer believed in reasonable good faith that election conduct deprived employees of free choice.
GEORGE ARAKELIAN FARMS, INC. v. ALRB (1985) 40 Cal.3d 654

463.03 The reasonableness of election challenge depends upon an objective evaluation of claims in light of legal precedents, common sense, standards of judicial review, the nature of the objections, prior substantive rulings of Board and appellate courts, size of the election, extent of voter turnout, and margin of victory.
GEORGE ARAKELIAN FARMS, INC. v. ALRB (1985) 40 Cal.3d 654

463.03 Makewhole remedy upheld where employer failed to exhaust administrative remedies and relied on insufficient declarations regarding alleged bias and misconduct, and where union received 92 percent of vote.
GEORGE ARAKELIAN FARMS, INC. v. ALRB (1985) 40 Cal.3d 65

463.03 In determining whether makewhole is appropriate in technical refusal to bargain cases, Board must look at the totality of employer's conduct to determine whether litigation of its election objections was simply to delay bargaining or whether it litigated in a reasonable good faith belief that employees were denied free choice.
J.R. NORTON CO. v. ALRB (1979) 26 Cal.3d 1

463.03 Neither the ALRA's language, its overall purpose, or the legislative history support the interpretation that 1160.3 allows automatic imposition of makewhole in all bargaining cases.
J.R. NORTON CO. v. ALRB (1979) 26 Cal.3d 1

463.03 Blanket imposition of make whole remedy places unreasonable restrictions on those who legitimately seek judicial resolution of close election cases in which a potentially meritorious claim is raised that the ALRB abused its discretion or acted arbitrarily and thereby denied employees their free choice.
J.R. NORTON CO. v. ALRB (1979) 26 Cal.3d 1

463.03 ALRB failed to balance protection of employee free choice against potential harm to employees from dilatory employer litigation when it ruled that makewhole remedy was appropriate in all technical refusal-to-bargain cases, regardless of the merit of an election objection.
J.R. NORTON CO. v. ALRB (1979) 26 Cal.3d 1

463.03 Makewhole not appropriate--particularly where makewhole for 10 years could ruin the employer--where employer did not file frivolous election challenges to delay bargaining, but rather, raised three fundamental questions relating to election procedure and board agent bias, and attempted to expedite resolution of the challenges.(Lucas Dissent.)
J.R. NORTON CO. v. ALRB (1979) 26 Cal.3d 1

463.03 Makewhole appropriate where one of initial grounds for technical refusal to bargain, that election took place in atmosphere of violence and coercion, was frivolous, and where litigation posture was otherwise unreasonable because Board's finding that Respondent was the employer because the harvesting entity was a labor contractor, not a custom harvester, was unassailable and Respondent would have bargaining obligation in any event because it clearly had the substantial long term interest in the agricultural operations.
SAN JOAQUIN TOMATO GROWERS, INC., 20 ALRB No. 13

463.03 Makewhole appropriate where employer's claim that RD did not conduct a sufficient investigation into peak was frivolous and claim that election was improperly held when payroll not at 50% of peak was based on crop and acreage information not provided to the RD prior to the election, which, under the established standards for evaluating peak, is irrelevant. Therefore, employer's claims do not present a "close case" or raise novel legal issues.
Scheid Vineyards and Management co. v. ALRB, (1994) 22 Cal. App. 4th 303 [27 Cal.Rptr.2d 36], affirming 19 ALRB No. 1

463.03 Where employer did not follow the normal route of review of the Board's decision in a representation matter, but instead sought *Leedom v. Kyne* direct review in the superior court, Board took into account the likelihood that employer would not prevail on that basis when deciding to invoke the makewhole remedy.
GALLO VINEYARDS, INC., 23 ALRB No. 7

463.03 Where employer's attempt to invoke narrow *Leedom v. Kyne* standard as grounds for direct review of Board's certification decision raised issues it could have properly asserted before Board and court of appeal on the merits under the broader standard of review, Board could conclude that trial court action was filed for the sole purpose of delaying the bargaining obligation.
GALLO VINEYARDS, INC., 23 ALRB No. 7

463.03 Where review of election certification was available by the normal process of a technical refusal to bargain first before the Board and then in the court of appeal, Respondent failed to demonstrate the need for an extraordinary remedy in equity by its effort to seek direct review in the superior court.
GALLO VINEYARDS, INC., 23 ALRB No. 7

463.03 Where Respondent is on notice that its arguments had previously been considered and rejected by various courts of appeal, filing of *Leedom v. Kyne* action in superior court did not reflect good faith litigation.
GALLO VINEYARDS, INC., 23 ALRB No. 7

463.03 Employer’s willingness to discuss changes in working conditions with the union during the course of its technical refusal to bargain, which was the employer’s legal duty, and the employer’s decision, after 10 months, not to pursue judicial review, were not probative of the employer’s good faith at the time it technically refused to bargain with the union.
THE HESS COLLECTION WINERY, 27 ALRB No. 2

463.03 Election objections that would require that the Board disregard mandatory provisions of the ALRA with regard to bargaining unit designations, that lack the required declaratory support, that are based on misstatements of

applicable legal standards, and that completely lack legal support to the point of being frivolous, do not constitute a reasonable good faith basis for seeking judicial review of a certification. Therefore, the bargaining makewhole remedy is appropriate.
THE HESS COLLECTION WINERY, 27 ALRB No. 2

463.03 Ten month delay occasioned by employer's aborted technical refusal to bargain is not without consequence. Any delay in bargaining due to a technical refusal to bargain that is not undertaken in reasonable good faith undermines the Act and interferes with employee free choice at a critical period and postpones the union's ability to negotiate a contract on behalf of the employees in the bargaining unit.
THE HESS COLLECTION WINERY, 27 ALRB No. 2

463.03 Early notification of intent to engage in technical refusal to bargain is some evidence of good faith challenge to underlying representation decision.
ARTESIA DAIRY, 33 ALRB No. 6

463.03 In light of the substantial evidence standard of review of the Board's factual findings, in the Board's view a close factual question does not in and of itself provide a reasonable litigation posture.
ARTESIA DAIRY, 33 ALRB No. 6

463.03 Where novel legal issues requiring clarification or extension of existing law governed the resolution of five challenges and the margin of victory in the election was two votes, it was reasonable to seek judicial review, thus the bargaining makewhole remedy was not appropriate.
ARTESIA DAIRY, 33 ALRB No. 6

463.04 Unilateral Changes

463.04 Failure to timely notify incumbent union of impending closure warrants, in addition to usual order to effects bargain, limited backpay remedy equivalent to a minimum of two weeks' pay for all employees employed from time of decision to actual closure in order to restore a semblance of bargaining strength that would have obtained had Respondent fulfilled its bargaining obligation at a time when the employee unit was still intact.
ROBERT J. LINDELEAF 12 ALRB No. 18

463.04 As a general rule, the Board will not award contractual makewhole as a remedy for the discrete unilateral change although two members have indicated they would be receptive to such a remedy when, in their view, the discrete change was such that it served to impede the negotiations process.
MARIO SAIKHON, INC., 12 ALRB No. 4

463.04 To the extent that Kaplan's Fruit & Produce Company (1980) 6 ALRB No. 36 may be read to propose that the

amount of a unilateral increase in wages (e.g., bringing employee's wages up to the prevailing rate) is determinative as to remedy, it is overruled. The Kaplan's Board declined to award makewhole for two unilateral wage increases on the theory that employees were benefitted rather than harmed, thereby overlooking the teaching of NLRB v. Katz (1962) 369 U.S. 735 [50 LRRM 2177] which holds that unilateral changes constitute per se violations of the duty to bargain because such conduct bypasses and undermines the employee's closed bargaining representative.
MARIO SAIKHON, INC., 12 ALRB No. 4

463.04 Makewhole relief awarded to remedy unilateral wage increase, reinstitution of pay advance system, and effects of decision to use melon harvesting machinery.
LU-ETTE FARMS, INC., 12 ALRB No. 3

463.04 Where an employer ceases making contributions to employee benefit funds, Board will order it to make such payments and to make its employees whole for all economic losses they suffered as a result of its failure to make the payments.
LU-ETTE FARMS, INC., 11 ALRB No. 20

463.04 Deceptive manner in which employer implemented unilateral wage change deemed factor in award of makewhole relief.
WILLIAM DAL PORTO & SONS, INC., 11 ALRB No. 13

463.04 Make-whole not appropriate remedy for unilateral wage increase where Employer committed only 1 per se violation of duty to bargain, Employer showed general lack of bad faith, Union was responsible for delays in bargaining, and wage increase appeared to have brought workers' wages up to prevailing rate.
N. A. PRICOLA PRODUCE, 7 ALRB No. 49

463.04 Board appropriately applied make-whole remedy in case involving unilateral wage increase and failure to provide information. Norton only applies to technical refusal-to-bargain to test certification, not to case where employer engages in unlawful bargaining tactics.
CARDINAL DISTRIBUTING CO. v. ALRB (1984) 159 Cal.App.3d 758

463.04 Board appropriately awarded limited backpay remedy (Transmarine Navigation Corp. (1968) 170 NLRB 389) where employer closed its operations without bargaining. Backpay obligation places economic burden on employer which mere bargaining order does not, and restores to employees a measure of bargaining power which they would otherwise lose after the closure.
HIGHLAND RANCH v. ALRB (1981) 29 Cal.3d 848

463.04 Board declines to award bargaining makewhole remedy for a unilateral change which is a discrete violation of the bargaining obligation; bargaining makewhole

traditionally reserved for situations in which there is record evidence of an extensive bargaining history so that remedy may be evaluated on basis of totality of circumstances.
WARMERDAM PACKING, 22 ALRB No. 13

463.05 Successor's Refusal To Bargain.

463.05 Board rejects employer's defense that makewhole remedy cannot be applied absent finding that "but for" employer's refusal to bargain, or contract would have been signed.
PERRY FARMS, INC., 4 ALRB No. 25

463.05 Employer's refusal to bargain on ground of no successorship was based on employer's discriminatory refusal to hire former pro-union employees. Such discrimination is act of "bad faith" under Norton standards.
BABBITT ENGINEERING & MACHINERY v. ALRB (1984) 152 Cal.App.3d 310

463.05 Where employer used unlawful tactic in attempting to avoid successorship obligations, its bad faith was obvious, and no purpose of Act would be served by insulating it from the losses caused by its refusal to bargain.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

463.06 Del Porto Presumption

463.06 Makewhole inappropriate where employer successfully demonstrated that the parties would not have agreed to a contract calling for higher wages even if the employer had not bargained in bad faith because 1) it had a good faith basis for resisting the union's wage demands, and 2) the union was inflexible in its insistence on such wage rates.
PAUL W. BERTUCCIO, 17 ALRB No. 16

463.06 Despite its occasional reference to the "true reason" for the conduct at issue, i.e., the parties' failure to reach contractual agreement, the Dal Porto court clearly adopted the but-for analysis set out in Martori Bros. Distributors v. ALRB (1981) 29 Cal.3d 721
PAUL W. BERTUCCIO, 17 ALRB No. 16

463.06 Dal Porto does not require an employer to show that the parties reached actual impasse, but rather that legitimate differences would have eventually led to impasse.
PAUL W. BERTUCCIO, 17 ALRB No. 16

463.06 Dal Porto does not require an employer to show that it could not afford wage rates demanded by union, but only that it had a good faith basis for resisting the demands.
PAUL W. BERTUCCIO, 17 ALRB No. 16

463.06 Board deletes bargaining makewhole award from remedial order where employer demonstrates that union insistence on Salinas Valley wage levels, economically unacceptable to similarly situated Imperial Valley growers, was the cause of the parties' failure to reach agreement, not the employer's bad faith bargaining conduct.
MARIO SAIKHON, INC., 15 ALRB No. 3

463.06 The burden of establishing a Dal Porto defense, i.e., that no contract would have been arrived at even if bargaining had been conducted solely in good faith, is on the employer found to have engaged in bad faith bargaining, and that burden is a heavy one.
ROBERT H. HICKAM, 17 ALRB No. 7

463.06 Absent a bargaining history, there is no relevant evidence available to an employer to prove that the parties would not have reached agreement had they bargained in good faith.
ABATTI FARMS, INC., 16 ALRB No. 17

463.06 The failure of similarly situated employers to reach agreement on wage proposals steadfastly advanced by the union, even when the employers were bargaining in good faith, is highly probative as to the question of whether agreement could have been reached in the absence of bad faith bargaining by the employer who is subject to a Dal Porto inquiry.
MARIO SAIKHON, INC., 15 ALRB No. 3

463.06 Employer failed to show that no contract would have been reached even in absence of refusal to bargain where its failure to respond to union inquiries and continue negotiations derailed promising negotiations where parties' differences were not shown to be intractable and where, despite continuing disagreements on several outstanding issues, union had shown a willingness to compromise.
P.H. RANCH, INC., et al., 21 ALRB No. 13

463.06 Substantial evidence supports the Board's conclusion that no agreement would have been reached even in the absence of the employer's bad faith bargaining, since it was shown that the employer had a good faith basis for resisting union's wage demands and union was inflexible in its insistence on such rates throughout the makewhole period.
UFW v. ALRB (Bertuccio) (1993) 16 Cal.App.4th 1629 [20 Cal.Rptr.2d 879]

463.06 Board correctly held that employer need not show, as a matter of historical fact, that impasse had occurred in order to meet its burden under *Dal Porto*. Employer need only show that the parties would not have reached agreement even if it had not bargained in bad faith and need not show that its bad faith bargaining had no effect

upon the failure to reach agreement.
UFW v. ALRB (Bertuccio) (1993) 16 Cal.App.4th 1629 [20 Cal.Rptr.2d 879]

463.06 Case number for Paul W. Bertuccio, at pages 400-458, should be 17 ALRB No. 16.

464.00 COMPUTATION OF BARGAINING MAKEWHOLE

464.00 In a surface bargaining case, the makewhole period begins from a date after which no legitimate dispute over the extension of a certification, or the nature of a request for information could reasonably have existed, and the employer remained intransigent on non-wage proposals even though superficially it appeared to engage in bargaining wages.
ROBERT MEYER dba MEYER TOMATOES, 17 ALRB NO. 17

464.00 The Board ordered a makewhole remedy for the employer's refusal to bargain in good faith. The Board fixed the beginning of the makewhole period by looking to the convergence of evidence which first established the employer's bad faith:
1) The refusal to provide information after its nature had been clarified.
2) An adherence to predictably unacceptable proposals on non-wage items which extended beyond hard bargaining.
3) The use of negotiators who lacked sufficient authority as demonstrated by the unilateral modification of terms agreed to by those negotiators.
ROBERT MEYER dba MEYER TOMATOES, 17 ALRB NO. 17

464.01 In General

464.01 The criteria the Board generally uses to determine whether a contract is comparable have nothing to do with what wages and benefits are contained within it. Rather, the Board looks to see whether the operations are similar; if they are, the contract with whatever its wages and benefits happen to be is then applied to the makewhole remedy.
VENTURA COUNTY FRUIT GROWERS, INC., 15 ALRB No. 18

464.01 Board does not view its J. R. Norton decision at 10 ALRB No. 42 so narrowly as to render all employee housing immune from consideration as an element of the basic wage when assessing a makewhole remedy in an appropriate case.
VENTURA COUNTY FRUIT GROWERS, INC., 15 ALRB No. 18

464.01 Board has always contemplated that "comparability" for purposes of arriving at a "model" contract from which to measure makewhole in any given case would be founded on a similarity of operations rather than a similarity of contracts, and, therefore, it looks to such factors as crops, nature of the industry, locale and method of operations, work force, etc.

VENTURA COUNTY FRUIT GROWERS, INC., 15 ALRB No. 18

464.01 Board emphasizes that an employer who contests the Regional Director's method of computing makewhole does not need to demonstrate that the method is arbitrary or capricious, but needs only to persuade the Board that it has proposed a more appropriate method or formula for computing makewhole.
VENTURA COUNTY FRUIT GROWERS, INC., 15 ALRB No. 18

464.01 Where two or more similar operations are under contract, an averaging of their contracts, for the purpose of arriving at a general wage rate, presents a more appropriate basis by which to measure monetary liability for a failure to bargain.
VENTURA COUNTY FRUIT GROWERS, INC., 15 ALRB No. 18

464.01 Board Order requiring employer to make employees whole for losses resulting from unlawful discontinuance of bus transportation includes the actual cost of alternate transportation, as well as reimbursement for day of work missed due to the employee's inability to secure alternate transportation.
MARTORI BROTHERS, 11 ALRB No. 26

464.01 Where employer's harvest crews worked in California and Arizona during the makewhole period, the employees were entitled to a makewhole remedy only for the period of time when they worked in California.
MARTORI BROTHERS, 11 ALRB No. 26

464.01 Compliance proceeding bifurcated to enable parties to litigate appropriateness of Regional Director's makewhole formula first and, after Board review of the ALJ's findings regarding the formula, to consider a detailed specification computed in accordance with the Board's decision on the formula.
J.R. NORTON COMPANY, INC., 10 ALRB No. 42

464.01 Amendment of specification to include additional employees, exclude others, and correct inaccuracies was appropriate where errors were discovered during Board-ordered recomputation of makewhole award.
ROBERT HICKAM, 10 ALRB No. 24

464.01 Specifications approved where alleged inaccuracy of computations was caused by reasonable rounding off of figures and sequence of calculations.
ROBERT HICKAM, 10 ALRB No. 24

464.01 Specification prepared on programmable calculator need not show each step of computations where methodology was explained in sufficient detail to allow verification of net figures.
ROBERT HICKAM, 10 ALRB No. 24

464.01 Board remanded to ALJ case which ALJ had remanded to

General Counsel for recomputation of the makewhole amounts; Board directed ALJ to exercise his discretion whether to reopen the record and/or recalculate the makewhole in accordance with J.R. Norton (1984) 10 ALRB No. 12 (now vacated). C. MONDAVI & SONS, dba CHARLES KRUB WINERY, 10 ALRB No. 19

464.01 In computing makewhole, it is inappropriate to assess wage increases in comparable contracts prior to the date those increases were effective in the comparable contracts. C. MONDAVI & SONS, dba CHARLES KRUB WINERY, 10 ALRB No. 19

464.01 In computing makewhole for employees unlawfully denied employment by an employer who is also bargaining in bad faith, interim earnings will be offset against the makewhole wage rate before the fringe benefit supplement is calculated.
KAWANO, INC., 10 ALRB No. 17

el4 6 Interest awarded on makewhole awards will be modified prospectively whenever the Board retains jurisdiction following summary denial of review of the Court of Appeal.
KAWANO, INC., 10 ALRB No. 17

464.01 Makewhole remedy is tailored to fit the losses suffered by unfair labor practice strikers.
PAUL W. BERTUCCIO, 10 ALRB No. 16

464.01 Burden of proof in makewhole proceeding was on employer to prove that Regional Director was unreasonable in his selection of comparable contracts and characterization of certain items as wages.
HOLTVILLE FARMS, INC., 10 ALRB No. 13

464.01 Board decision changing formula for calculation of makewhole remedy given retroactive effect only in cases that had not yet been subject to compliance hearing; in cases where hearing was closed but ALJ decision had not issued, ALJ given discretion to reopen the record for trial under new formula.
HOLTVILLE FARMS, INC., 10 ALRB No. 13

464.01 Employees who earn more than the general labor hourly wage can be made whole by receiving a proportional increment above the makewhole base wage (average general labor hourly wage).
ROBERT R. HICKAM, 9 ALRB No. 6

464.01 Pursuant to Adam Dairy dba Dos Rios Ranch (1978) 4 ALRB No. 24, the makewhole wage rates computed will be assigned a value of 78.0 percent and fringe benefits will be assigned a value of 22.0 percent, 15.7 percent for voluntary benefits and 6.3 percent for mandatory benefits.
ROBERT R. HICKAM, 9 ALRB No. 6

464.01 General Counsel may include an employer's actual payments into mandatory benefit funds as a part of employee's gross earnings to offset the employer's mandatory contributions, but it is more appropriate to reduce the gross makewhole wage by 6.3 percent to reflect the mandatory payments.
ROBERT R. HICKAM, 9 ALRB No. 6

464.01 In computing makewhole for piece rate workers, it is appropriate to increase their actual pay by the percentage difference between the employer's general labor hourly rate and the average general hourly wage (from comparable contracts).
ROBERT R. HICKAM, 9 ALRB No. 6

464.01 The employer's voluntary payments to fringe benefit funds or directly to the employee are deducted from the gross makewhole award to the employee for that particular year.
ROBERT R. HICKAM, 9 ALRB No. 6

464.01 Employees who earn more than the general labor hourly wage can be made whole by receiving a proportional increment above the makewhole base wage (average general labor hourly wage.) ROBERT R. HICKAM, 9 ALRB No. 6

464.01 Where the General Counsel has established at the hearing that the proposed makewhole formula(s) and calculations are reasonable and conform to the standards set forth in the Board's decisions, the Board will adopt those formulas and calculations; the Board may reject or modify the formulas or calculations where an employer proves the General Counsel's method of calculating makewhole is arbitrary, unreasonable, or inconsistent with Board precedent, or presents some more appropriate method of determining the makewhole amount(s).
ROBERT H. HICKAM, 9 ALRB No. 6
Accord: KYUTOKU NURSERY, INC., 8 ALRB No. 73

464.01 The term "pay" in statute has broad meaning encompassing all elements of compensation due employee.
PERRY FARMS, INC., 4 ALRB No. 25

464.01 Board chose to take generalized approach to calculation of actual makewhole sums in order to avoid complexities and delay attendant to costing-out approach.
PERRY FARMS, INC., 4 ALRB No. 25

464.01 Employees who receive compensation above basic wage rate awarded makewhole on proportional percentage basis.
PERRY FARMS, INC., 4 ALRB No. 25

464.01 Board rejected proposal that employer pay makewhole amounts into escrow fund during actual bargaining process, on grounds of potentially harmful impact on collective bargaining process. Board left open possibility of future modification of remedy if

circumstances warranted sharper incentive to good faith bargaining.
PERRY FARMS, INC., 4 ALRB No. 25

464.01 The Board did not adopt ALO's recommendation that union be compensated for its loss of union dues during makewhole period where employer had refused to bargain with union. PERRY FARMS, INC., 4 ALRB No. 25

464.01 In cases involving a technical refusal to bargain, any relevant evidence tending to show that no contract would have been consummated between the parties is more appropriately introduced in the compliance proceedings of the Board's bifurcated determination process, rather than the liability proceedings, because the question of what the parties might have agreed to concerns the amount of damages rather than the fact of damages.
George Arakelian Farms, Inc. v. ALRB (1989) 49 Cal.3d 1279

464.01 ALRB's makewhole award is difference between compensation, including wages and fringe benefits, actually received and compensation which Board determines would have been received had wrongdoer bargained in good faith.
MARTORI BROS. DISTRIBUTORS v. JAMES- MASSENGALE (9th Cir., 1986) 781 F.2d 1349, modified 791 F.2d 799

464.01 In choosing method of computing makewhole, Board must approximate, and Board's choice among equally reasonable methods of computation does not make out abuse of discretion.
HOLTVILLE FARMS, INC. v. ALRB (1985) 168 Cal.App.3d 388

464.01 ALRB award of interest on backpay and makewhole helps promote stable labor relations by discouraging ULP's and dilatory litigation while encouraging settlement.
SANDRINI BROTHERS v. ALRB (1984) 156 Cal.App.3d 878

464.01 Board allows for alternative formulas where "comparable" contracts are not available, as reflected in Board Regulation 20291, subdivision (b)(3), which states that a makewhole specification shall explain the basis for the calculation, including the "comparable contracts or other economic measures upon which it is based."
HESS COLLECTION WINERY, 31 ALRB No. 3

464.01 In determining if a contract should be utilized in formulating a bargaining makewhole specification, whether the union at issue was a party to the contract may be weighed, along with the numerous other factors, such as geographic area, type of industry, the types of crops grown, nature of the work force, size of the employer, and time period when the contract was signed. Thus, while the fact that a different union was a party to the contract would be a factor to be considered, the numerous other relevant factors may be analyzed to determine if

the contract nevertheless is comparable, particularly in the absence of contracts negotiated by the same union.
HESS COLLECTION WINERY, 31 ALRB No. 3

464.01 Parties' early bargaining proposals are not appropriate measures of bargaining makewhole, as they may or may not bear any relation to what they might agree to at the conclusion of good faith negotiations. In addition, where the employer has been found to have bargained in bad faith or unlawfully delayed negotiations, it is likely the union would suffer a loss of support, and be forced to bargain from a weakened position. Thus, using proposals from such negotiations might allow employers to benefit from their unlawful act.
HESS COLLECTION WINERY, 31 ALRB No. 3

464.01 The averaging of bargaining proposals to calculate makewhole would discourage good faith bargaining in the future by providing an incentive for both sides to proffer extreme proposals at the outset of bargaining, with an eye toward the possible calculation of makewhole.
HESS COLLECTION WINERY, 31 ALRB No. 3

464.01 Makewhole specification properly was dismissed without a hearing where it was based on a facially unreasonable methodology that did not effectuate the purposes of the ALRA. HESS COLLECTION WINERY, 31 ALRB No. 3

464.01 The Board's task is to arrive at a reasonable approximation of what the employees lost as a result of the employer's refusal to bargain in good faith, not to arrive at a perfect calculation of the loss. (citing *Holtville Farms, Inc. v. ALRB* (1985) 168 Cal. App.3d 388, 393.)
HESS COLLECTION WINERY, 31 ALRB No. 3

464.02 Duration Of Bargaining Makewhole Period

464.02 In a surface bargaining case, the makewhole period begins from a date after which no legitimate dispute over the extension of a certification, or the nature of a request for information could reasonably have existed, and the employer remained intransigent on non-wage proposals even though superficially it appeared to engage in bargaining wages.
ROBERT MEYER dba MEYER TOMATOES, 17 ALRB No. 17

464.02 The Board ordered a makewhole remedy for the employer's refusal to bargain in good faith. The Board fixed the beginning of the makewhole period by looking to the convergence of evidence which first established the employer's bad faith:
1) The refusal to provide information after its nature had been clarified.
2) An adherence to predictably unacceptable proposals on non-wage items which extended beyond hard bargaining.
3) The use of negotiators who lacked sufficient authority

as demonstrated by the unilateral modification of terms agreed to by those negotiators.
ROBERT MEYER dba MEYER TOMATOES, 17 ALRB No. 17

464.02 Dissent: Chairman Janigian would hold that the makewhole period in this surface bargaining case commences contemporaneously with the first occasion on which the employer failed to bargain in good faith. The Chairman would fix this date at respondent's submission of its non-wage proposals, proposals to which it steadfastly held.
ROBERT MEYER dba MEYER TOMATOES, 17 ALRB No. 17

464.02 Board determines duration of makewhole period by reference to good faith bargaining when ULP for which remedy imposed involved serious interference with employee rights.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC. 14 ALRB No. 8

464.02 Board will not conclude that mere recognition of union "undoes" an employer's previous refusal to bargain when employer's refusal based upon decertification campaign it actually supported.
ABATTI FARMS, INC., and ABATTI PRODUCE,INC. 14 ALRB No. 8

464.02 Board will not terminate makewhole at some reasonable point within makewhole period on statute of limitations analogy; statute of limitations only exists by positive law and Board is not required to impose one.
ABATTI FARMS, INC., and ABATTI PRODUCE,INC. 14 ALRB No. 8

464.02 Evidence does not support employer's contention that it did not refuse to bargain during makewhole period; uncontradicted testimony of UFW representatives and of employer's own agents indicates continued refusal.
ABATTI FARMS, INC., and ABATTI PRODUCE,INC. 14 ALRB No. 8

464.02 Board rejects union's contention that employer bargained in bad faith when bargaining resumed.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC. 14 ALRB No. 8

464.02 Board's practice of cutting off makewhole by reference to bargaining not violative of due process.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC. 14 ALRB No. 8

464.02 Board's practice of cutting off makewhole by reference to resumption of good faith conduct does not require a new charge; unfair labor practice procedures not only statutory route to test good faith.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC. 14 ALRB No. 8

464.02 Board will not terminate makewhole liability on grounds of union failure to request bargaining during makewhole

period, as it was employer's violation of the Act. Employer may reasonably be required to offer to bargain to terminate liability.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC. 14 ALRB No. 8

464.02 Board will continue to maintain flexible approach to determine cutoff date to makewhole in its orders in initial liability cases.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC. 14 ALRB No. 8

464.02 Board cuts off makewhole on date of first offer to bargain when employer determined to have bargained in good faith when bargaining resumed.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC. 14 ALRB No. 8

464.02 Makewhole period to run until respondent recognizes union and commences good faith negotiations following offer to bargain by respondent and union's acceptance.
JOE G. FANUCCHI & SONS 12 ALRB No. 8

464.02 In determining the duration of the makewhole period, post-liability hearing conduct that bears a close resemblance to pre-hearing conduct will inevitably be colored by the Board's previous findings, making it that much more difficult for the employer to show it was no longer operating in bad faith.
McFARLAND ROSE PRODUCTION, 11 ALRB No. 34

464.02 Board declined to judge employer by nature and quantity of concessions or refusals to concede during post-hearing bargaining, instead analyzing employer's post-hearing conduct in the total context of its bargaining history with the UFW.
McFARLAND ROSE PRODUCTION, 11 ALRB No. 34

464.02 By analogy to General Counsel's jurisdiction over issues not specifically pleaded in complaint but fully litigated and sufficiently related to allegations in complaint, Board has jurisdiction over continuation of bad faith bargaining after the unfair labor practice hearing without necessity of filing a new charge.
McFARLAND ROSE PRODUCTION, 11 ALRB No. 34

464.02 Where Board finds, in underlying liability decision, that bad faith bargaining continued through unfair labor practice hearing, whether violation continued after hearing will be litigated in compliance proceeding, with General Counsel, as agent for Board, bearing burden of affirmatively proving continuation.
McFARLAND ROSE PRODUCTION, 11 ALRB No. 34

464.02 Board adopted as makewhole termination date effective date of retroactive wage increase negotiated subsequently in contact because it was used for computing the

makewhole amount in the Regional Director's specification, was not objected to by the charging party, and was reasonable.
McFARLAND ROSE PRODUCTION, 11 ALRB No. 34

464.02 Controversy regarding duration of makewhole period not mooted by parties' ultimate execution of collective bargaining agreement almost one year after close of unfair labor practice hearing.
McFARLAND ROSE PRODUCTION, 11 ALRB No. 34

464.02 Makewhole for employer's bad faith refusal to sign agreed-upon contract is ordered from the date of the refusal to sign until the date of the first negotiation meeting when the employer engaged in good faith bargaining by explaining its problems with the agreement's subcontracting language.
TEX-CAL LAND MANAGEMENT, INC., 11 ALRB No. 28

464.02 Makewhole period delayed during employer's negotiator's incapacitation, and makewhole begins two weeks following notice to the employer of its negotiator's continuing unavailability.
O.E. MAYOU & SONS, 11 ALRB No. 25

464.02 Makewhole period generally extends from date if refusal to bargain to date of first negotiation request from employer and thereafter until good faith bargaining commences. O.E. MAYOU & SONS, 11 ALRB No. 25

464.02 Reaffirmed original makewhole order, except to modify beginning of makewhole period to comport with six month rule in Desert Seed Co., Inc. (1983) 9 ALRB No. 72.
JOHN ELMORE FARMS, et al., 11 ALRB No. 22

464.02 Board declined to adopt ALJ's finding that makewhole period terminated at nominal end of employer's technical refusal to bargain, leaving determination of when employer commenced good faith bargaining to second phase of compliance proceeding.
J.R. NORTON COMPANY, INC., 10 ALRB No. 42

464.02 Defense of statute of limitations will limit makewhole remedy but evidence of bad faith bargaining prior to six-month period is relevant background for finding of violation.
SUMNER PECK RANCH, INC., 10 ALRB No. 24

464.02 Makewhole period ended when employer terminated its operations, not the date on which union was notified of termination.
HOLTVILLE FARMS, INC., 10 ALRB No. 13

464.02 Board limits award of makewhole because certain losses of pay, due to unlawful change in hiring practices, did not occur within six months of the filing of the charge.
VALDORA PRODUCE COMPANY and VALDORA PRODUCE COMPANY,

INC., 10 ALRB No. 3

464.02 Equitable doctrine of "clean hands" applied, and makewhole relief imposed beginning with the employer's bad faith, but suspended or tolled during the period when the union attempted to avoid impasse by obfuscation and delay.
BRUCE CHURCH, INC., 9 ALRB No. 74

464.02 Makewhole remedy began six months from the date of the first bargaining-related charge, since that charged raised the employer's complete defense.
DESSERT SEED COMPANY, INC., 9 ALRB No. 74

464.02 When the makewhole remedy is imposed for a technical-refusal-to-bargain in violation of section 1153(e), the makewhole period begins on the date the employer receives the certified representative's request to bargain; if the request was sent by mail, the makewhole period begins three days from the date of mailing (excluding Sundays and legal holidays).
ROBERT J. LINDELEAF, 9 ALRB No. 35

464.02 In surface bargaining case, makewhole period begins as of the date the employer first manifested its bad faith by unilaterally increasing wages.
ROBERTS FARMS, INC., 9 ALRB No. 27

464.02 Makewhole award for refusal to bargain based on claimed loss of majority support to commence with issuance of Board Decisions in Cattle Valley Farms (1982) 8 ALRB No. 24 and Nish Noroian Farms (1982) 8 ALRB No. 25
F & P GROWERS ASSOCIATION, 9 ALRB No. 22

464.02 Makewhole from date of conversion of economic strike to ULP, based on same equities as NLRB rule of awarding backpay to illegally discharged strikers.
ADMIRAL PACKING CO., et al, 7 ALRB No. 43

464.02 ULP strikers need not abandon strike and unconditionally offer to return to work to receive makewhole. Makewhole to run from date of conversion of economic status to ULP until Employer begins to bargain in good faith.
ADMIRAL PACKING CO., et al, 7 ALRB No. 43

464.02 Makewhole period ordered to begin on date employer's in position to bargain in good faith.
MASAJI ETO, et al., 6 ALRB No. 20

464.02 Dissent: Board member would confine makewhole remedy to stages of negotiations where there was evidence of employer's bad faith bargaining.
MASAJI ETO, et al., 6 ALRB No. 20

464.02 Makewhole period extended from commencement of employer's lack of good faith to time when employers commence good faith negotiations and bargain either to contract or

genuine impasse.
MASAJI ETO, et al., 6 ALRB No. 20

464.02 Makewhole remedy not applied to periods during which employer acting as labor contractor.
PERRY FARMS, INC., 4 ALRB No. 25

464.02 Period of makewhole award from date of first demand to bargain until employer commences to, and does bargain is good faith to contract or impasse.
PERRY FARMS, INC., 4 ALRB No. 25

464.02 Make-whole relief compensates employees for losses incurred in the period between the time the employer first refuses to bargain until negotiations actually begin.
George Arakelian Farms, Inc. v. ALRB (1989) 49 Cal.3d 1279

464.02 Grower was not subject to an order to make his workers whole for economic losses for any period after his unqualified acceptance of the union's contract offer.
PAUL W. BERTUCCIO v. ALRB (1988) 202 Cal.App.3d 1369

464.02 Bargaining remedy is not available to an employee for any period during which the employee was on strike.
PAUL W. BERTUCCIO v. ALRB (1988) 202 Cal.App.3d 1369

464.02 A makewhole remedy imposed against an employer pursuant to Labor Code section 1160.3 does not require the employer to make concessions to the union, since such an order is not open-ended, but extends only until such time as the employer commences good faith bargaining which results in either a contract or a bona fide impasse.
WILLIAM DAL PORTO & SONS, INC. v. ALRB (1987) 191 Cal.App.3d 1195

464.02 Makewhole award is one-time, lump sum payment, though Board may divide makewhole period into smaller periods and require payment of lump sum for each such period until employer bargains in good faith.
MARTORI BROS. DISTRIBUTORS v. JAMES- MASSENGALE (9th Cir., 1986) 781 F.2d 1349, modified 791 F.2d 799

464.02 A Board-order makewhole remedy which runs until employer commences to bargain in good faith (leading to either contract or bona fide impasse) is not "open-ended" and does not compel employer to make concessions. It is therefore proper.
RULINE NURSERY CO. v. ALRB (1985) 169 Cal.App.3d 247

464.02 Appropriate not to award makewhole for intervening period of union-caused delay in bargaining, but not appropriate to also offset employer's earlier period of avoiding negotiations.
P.H. RANCH, INC., et al., 21 ALRB No. 13

464.02 The makewhole period in a technical refusal to bargain case shall begin on the date the employer receives the union's request to bargain or, in the case of a written request where the date of receipt is unknown, three working days after the mailing of the request. The makewhole period ends on the date that good faith bargaining commences.
THE HESS COLLECTION WINERY, 27 ALRB No. 2

464.03 Fringe Benefits; Mandatory And Non-Mandatory

464.03 Board does not view its J. R. Norton decision at 10 ALRB No. 42 so narrowly as to render all employee housing immune from consideration as an element of the basic wage when assessing a makewhole remedy in an appropriate case.
VENTURA COUNTY FRUIT GROWERS, INC., 15 ALRB No. 18

464.03 Board applies Adam Dairy/Hickam fringe benefit formula when no "comparable contracts" available to compute fringe benefits.
ABATTI FARMS, INC., & ABATTI PRODUCE, INC. 14 ALRB No. 8

464.03 Board rejects employer's argument to compute medical benefits as component of makewhole by employee "claim-by-claim" approach; approach is onerous and unnecessary.
ABATTI FARMS, INC., & ABATTI PRODUCE, INC. 14 ALRB No. 8

464.03 Adam Dairy/Hickam fringe benefit formula applied to case transferred to Board before issuance of J.R. Norton (1984) 10 ALRB No. 42; employer failed to show formula arbitrary or unreasonable either for nursery industry or for piece rate workers.
McFARLAND ROSE PRODUCTION, 11 ALRB No. 34

464.03 Board declined to follow previous makewhole formula set forth in Adam Dairy (1978) 4 ALRB No. 24 for computation of fringe benefits, finding that fringe benefit provisions of comparable contracts were more appropriate basis for computation than formula derived from 1974 Bureau of Labor Statistics Report.
J.R. NORTON COMPANY, INC., 10 ALRB No. 42

464.03 Employer will not receive credit for administrative costs assessed by a third party against employer for the expense of providing its employees with voluntary or mandatory fringe benefits.
C. MONDAVI & SONS, dba CHARLES KRUG WINERY, 10 ALRB No. 19

464.03 Employer will not receive credit for union dues that would have been collected under a collective bargaining agreement that employer would have signed had it bargained in good faith.
C. MONDAVI & SONS, dba CHARLES KRUG WINERY, 10 ALRB No. 19

464.03 Use of single comparable contract reasonable where

comparable employer grew same crops in same area; employees had similar skills and job classifications; produce sold in same markets; labor hired from same pool; comparable contract was in effect during makewhole period; and employer twice raised wages to level in comparable contract.
HOLTVILLE FARMS, INC., 10 ALRB No. 13

464.03 COLA and paid lunch periods reasonably considered as wages, not fringe benefits.
HOLTVILLE FARMS, INC., 10 ALRB No. 13

464.03 Payments to employee benefit funds which are mandated by law (i.e., Social Security, Workers' Compensation, Unemployment) are not and cannot be affected by the collective bargaining process; a worker's makewhole award therefore is reduced by that amount which represents the mandatory payments into those accounts (6.3 percent).
ROBERT H. HICKAM, 9 ALRB No. 6

464.03 The term "pay" in statute has broad meaning encompassing all elements of compensation due employee.
PERRY FARMS, INC., 4 ALRB No. 25

464.03 In calculating fringe benefit loss, Board chose to rely upon recent B.L.S. publication showing relative proportions which pay for straight time worked and various fringe benefits to occupy in relation to total computation.
PERRY FARMS, INC., 4 ALRB No. 25

464.03 ALRB makewhole awards do not create new ERISA plans. Board does not order payment of specific fringe benefits, but is concerned only with total amount of compensation.
MARTORI BROS. DISTRIBUTORS v. JAMES-MASSENGALE (9th Cir., 1986) 781 F.2d 1349, modified 791 F.2d 799

464.03 ALRB makewhole awards do not require any change whatsoever in employer's existing ERISA plans, nor do the makewhole payments come out of ERISA trust funds. Rather, makewhole is no different than any other award of damages.
MARTORI BROS. DISTRIBUTORS v. JAMES-MASSENGALE (9th Cir., 1986) 781 F.2d 1349, modified 791 F.2d 799

464.03 Board reasonable in deciding that paid half-hour lunch break was part of employee's wages and not fringe benefit, since break aided employer and was too short for employees to use for their own purposes.
HOLTVILLE FARMS, INC. v. ALRB (1985) 168 Cal.App.3d 388

464.03 Court of Appeal affirms ALRB's prospective application of new fringe benefit formula in J. R. Norton (10 ALRB No. 42) and upholds Board's decision not to apply the new formula in case in which make-whole had already been computed by an ALJ.
HOLTVILLE FARMS, INC. v. ALRB (1985) 168 Cal.App.3d 388

464.03 Fringe benefits are part of "pay" for purpose of computing employee losses resulting from unlawful refusal-to-bargain.
HOLTVILLE FARMS, INC. v. ALRB (1985) 168 Cal.App.3d 388

464.04 Comparable Contracts; Calculation Of Basic Wage Rate

464.04 Evidence of wages paid by comparable employers who bargained in good faith to impasse is relevant to determine the appropriate measure of makewhole as it is an indicator of the reasonable gains to be expected from bargaining.
ABATTI FARMS, INC., 16 ALRB No. 17

464.04 In the absence of "comparable contracts" upon which to base a measure of makewhole damages, the Board may look to other data to formulate an appropriate measure of makewhole.
ABATTI FARMS, INC., 16 ALRB No. 17

464.04 Board has always contemplated that "comparability" for purposes of arriving at a "model" contract from which to measure makewhole in any given case would be founded on a similarity of operations rather than a similarity of contracts, and, therefore, it looks to such factors as crops, nature of the industry, locale and method of operations, work force, etc.
VENTURA COUNTY FRUIT GROWERS, INC., 15 ALRB No. 18

464.04 For lack of any supporting evidence, Board rejects General Counsel's contention that a particular contract is not "comparable" because (1) employees receive above-standard housing in exchange for lower general hourly wage rate and/or (2) such housing was in the negotiations process and influenced ultimate contract provisions. Board also rejects General Counsel's alternative argument that such contract may be deemed comparable but only after the cost of housing is factored in.
VENTURA COUNTY FRUIT GROWERS, INC., 15 ALRB No. 18

464.04 The criteria the Board generally uses to determine whether a contract is comparable have nothing to do with what wages and benefits are contained within it. Rather, the Board looks to see whether the operations are similar; if they are, the contract with whatever its wages and benefits happen to be is then applied to the makewhole remedy.
VENTURA COUNTY FRUIT GROWERS, INC., 15 ALRB No. 18

464.04 Sun harvest not comparable contract for purposes of makewhole in case of Imperial Valley grower primarily growing non-lettuce crop.
ABATTI FARMS, INC., & ABATTI PRODUCE, INC. 14 ALRB No. 8

464.04 Board will not take union dues into account in computation of basic wage rate.

ABATTI FARMS, INC., & ABATTI PRODUCE, INC. 14 ALRB No. 8

464.04 Board will look to comparable contracts to determine basic wage rate without affording Respondent opportunity to prove it would not have reached contract even if it had bargained in good faith; Dal Porto analysis does not apply to non-surface bargaining cases.
ABATTI FARMS, INC., & ABATTI PRODUCE, INC. 14 ALRB No. 8

464.04 Since good faith bargaining leads to contract or impasse and all uncertainties are to be resolved against the wrongdoer, Board will not look to wage rates of employers who bargained to impasse to determine if any makewhole is due.
ABATTI FARMS, INC., & ABATTI PRODUCE, INC. 14 ALRB No. 8

464.04 Board will apply makewhole formula of General Counsel where reasonable after exercising its independent judgment that formula is reasonable.
ABATTI FARMS, INC., & ABATTI PRODUCE, INC. 14 ALRB No. 8

464.04 Where General Counsel argued persuasively that there was only one "comparable" contract for purposes of measuring the general makewhole rate, Board adopted same contract rather than Adam Dairy as measure of fringe benefit portion of makewhole award.
O.P. MURPHY CO., INC., 13 ALRB No. 27

464.04 Regional Director properly computed base wage rate by application of percentage differential derived from comparison of Adam Dairy rate with employer's "hire-in" rate.
McFARLAND ROSE PRODUCTION, 11 ALRB No. 34

464.04 Board rejects employer's alternate makewhole formula after finding that the operations of the agricultural employers whose contracts it submitted were not comparable to the employer's operations.
MARTORI BROTHERS, 11 ALRB No. 26

464.04 Lettuce industry contracts chosen by Regional Director were comparable to employer, rather than contracts involving dissimilar crops, covering farming operations in different geographical areas, or involving unique financial/economic circumstances.
J.R. NORTON COMPANY, INC., 10 ALRB No. 42

464.04 Makewhole formula will not be based upon a subsequently negotiated collective bargaining agreement, if any, between the parties, but employers and collective bargaining representatives who have reached contracts may choose to settle makewhole orders based on the agreement reached.
J.R. NORTON COMPANY, INC., 10 ALRB No. 42

464.04 General Counsel makes a sufficient prima facie showing of contract comparability by presenting contracts negotiated

by the same union and covering operations in at least some of the same commodities and locations as that of the employer and in effect during the makewhole period; other parties can then raise fine points of comparability in an attempt to show that General's method of calculating makewhole is arbitrary, unreasonable or inconsistent with Board precedent or that a more appropriate contract should be used.
J.R. NORTON COMPANY, INC., 10 ALRB No. 42

464.04 Regional Director averaged wages for nonharvest employees, since computation of actual earnings and classifications would be prohibitively time consuming due to the multitude of classifications and mobility of the employees.
J.R. NORTON COMPANY, INC., 10 ALRB No. 42

464.04 Expired contracts used to calculate makewhole for 9-month period when no comparable contracts in effect, since terms of an expired collective bargaining agreement remain in effect until notice and bargaining alter them.
J.R. NORTON COMPANY, INC., 10 ALRB No. 42

464.04 ALJ properly admitted testimony of UFW negotiator regarding the vegetable industry, the pattern of vegetable industry negotiations and the nature of the operations covered by contracts the regional Director relied on in his makewhole formula.
J.R. NORTON COMPANY, INC., 10 ALRB No. 42

464.04 In computing makewhole, it is inappropriate to assess wage increases in comparable contracts prior to the date those increases were effective in the comparable contracts. C. MONDAVI & SONS dba CHARLES KRUG WINERY, 10 ALRB No. 19

464.04 Use of single comparable contract reasonable where comparable employer grew same crops in same area; employees had similar skills and job classifications; produce sold in same markets; labor hired from same pool; comparable contract was in effect during makewhole period; and employer twice raised wages to level in comparable contract.
HOLTVILLE FARMS, INC., 10 ALRB No. 13

464.04 COLA and paid lunch periods reasonably considered as wages, not fringe benefits.
HOLTVILLE FARMS, INC., 10 ALRB No. 13

464.04 In computing makewhole for piece rate workers, it is appropriate to increase their actual pay by the percentage difference between the employer's general labor hourly wage and the average general hourly wage (from comparable contracts).
ROBERT H. HICKAM, 9 ALRB No. 6

464.04 Employees who receive compensation above basic wage rate

awarded makewhole on proportional percentage basis.
PERRY FARMS, INC., 4 ALRB No. 25

464.04 Board chose to take generalized approach to calculation of actual makewhole sums in order to avoid complexities and delay attendant to costing-out approach.
PERRY FARMS, INC., 4 ALRB No. 25

464.04 A contract may be imputed from comparable contracts actually negotiated by the union with other growers.
PAUL W. BERTUCCIO v. ALRB (1988) 202 Cal.App.3d 1369

464.04 Board's current methods of calculating makewhole is to use comparable contracts to derive a cash wage rate and a cash value of fringe benefits which would likely have been paid if employer had bargained in good faith, and to subtract from this amount the total compensation actually paid.
MARTORI BROS. DISTRIBUTORS v. JAMES- MASSENGALE (9th Cir., 1986) 781 F.2d 1349, modified 791 F.2d 799

464.04 Board's use of only Sun Harvest contract for comparability was reasonable, since it was executed approximately when make-whole began, Sun Harvest grows some crops in same area as respondent, job classifications at respondent are similar to Sun Harvest's, and respondent twice raised its employees' wages to Sun Harvest levels.
HOLTVILLE FARMS, INC. v. ALRB (1985) 168 Cal.App.3d 388

464.04 Board did not create irrebutable presumption that wrongdoer's employees would have earned higher wages if it had bargained in good faith, since Board considered all comparable contracts offered.
HOLTVILLE FARMS, INC. v. ALRB (1985) 168 Cal.App.3d 388

464.04 Board allows for alternative formulas where "comparable" contracts are not available, as reflected in Board Regulation 20291, subdivision (b)(3), which states that a makewhole specification shall explain the basis for the calculation, including the "comparable contracts or other economic measures upon which it is based."
HESS COLLECTION WINERY, 31 ALRB No. 3

464.04 In determining if a contract should be utilized in formulating a bargaining makewhole specification, whether the union at issue was a party to the contract may be weighed, along with the numerous other factors, such as geographic area, type of industry, the types of crops grown, nature of the work force, size of the employer, and time period when the contract was signed. Thus, while the fact that a different union was a party to the contract would be a factor to be considered, the numerous other relevant factors may be analyzed to determine if the contract nevertheless is comparable, particularly in the absence of contracts negotiated by the same union.
HESS COLLECTION WINERY, 31 ALRB No. 3

464.05 Employer's Ability To Pay

464.05 Board correct in refusing to allow litigation of employer's financial condition, since Board must estimate employee losses, must intrude minimally into actual bargaining relationship, and must not inquire into which specific terms parties might have negotiated absent bad faith.
HOLTVILLE FARMS, INC. v. ALRB (1985) 168 Cal.App.3d 388

465.00 REMEDIES AGAINST UNION

465.01 In General

465.01 Where the union was found to have unlawfully caused employee's discharge under union security clause, union was liable for employee's losses and backpay order was appropriate; however, since employee had been reinstated, Board order did not include reinstatement, and, since the employee died, backpay was ordered to be paid to his estate. UFW/ODIS SCARBROUGH, 9 ALRB No. 17

465.01 Section 1160.3 of the ALRA authorizing the Board to order that employees be made whole for loss of pay resulting from employer's refusal to bargain and to provide other relief to effectuate policies of Act does not permit the Board to order union to make employees whole as a remedy for bad faith bargaining.
CARL MAGGIO v. ALRB (1987) 194 Cal.App.3d 1329

465.01 ALRB should not relegate enforcement of its remedies to courts, since Board has the expertise to enforce compliance with the Act.
PASILLAS v. ALRB (1984) 156 Cal.App.3d 312

465.01 1160.3 mandates issuance of remedial order in every case in which ULP has been committed.
PASILLAS v. ALRB (1984) 156 Cal.App.3d 312

465.01 Board may not defer its remedial jurisdiction to union internal appeal procedures; however, Board may tailor its remedy to measures already in progress while reserving jurisdiction should those measures fail.
PASILLAS v. ALRB (1984) 156 Cal.App.3d 312

465.02 Bargaining: Remedies Against Unions

465.02 The language and legislative history of Labor Code section 1160.3 preclude and award of makewhole against a union. UNITED FARM WORKERS OF AMERICA, AFL-CIO (MAGGIO, INC.) 12 ALRB No. 16

465.02 Although Board found makewhole remedy against union inappropriate, Board disagreed with some of ALJ's policy arguments against imposing the remedy against union.

UNITED FARM WORKERS OF AMERICA, AFL-CIO (MAGGIO, INC.)
12 ALRB No. 16

465.02 Surface Union impeded bargaining by not providing relevant information on its RFK and Martin Luther King Funds, no makewhole for the increased amounts Employer's would have contributed to funds.
ADMIRAL PACKING CO., et al, 7 ALRB No. 43

465.02 Where Union violated 1154(c) by failing to provide relevant information, mailing, posting and reading of notice with Union paying appropriate pro rate share of costs as determined by RD is appropriate remedy.
ADMIRAL PACKING CO., et al, 7 ALRB No. 43

465.03 Strikes, Picketing, Secondary Boycotts

465.03 Any person injured in his or her business or property by union's unlawful secondary boycott of supermarkets, may seek damages against union in Board's compliance proceedings.
UNITED FARM WORKERS OF AMERICA, 19 ALRB No. 15

465.03 Board orders labor organization found to have violated secondary boycott provisions of ALRA to mail notice of Board's decision to secondary entities with respect to whom the labor organization's secondary conduct was found violative of ALRA. Mailing serves function of informing most directly affected entities of Board's resolution of issues never previously addressed.
UFW (THE CAREAU GROUP dba EGG CITY), 15 ALRB No. 10

465.03 Board orders labor organization to compensate persons injured in their business or property by union's violations of the secondary boycott provisions of the ALRA. Such persons may participate, by intervention if necessary, in compliance proceedings following the Board's liability determination, but no compensation shall be awarded for conduct not found violative of the Act in the liability proceeding. Regional Directors shall conduct secondary boycott compliance proceedings in conformity with the procedures and practices set forth in Title 8, California Code of Regulations, section 20290, et seq., so far as possible.
UFW (THE CAREAU GROUP dba EGG CITY), 15 ALRB No. 10

465.03 Board rejected ALO suggestion to impose limitations as to number of picketers who may picket residence and times when such picketing may be permitted. Board to review such matters on case-by-case basis.
UFW/CALIFORNIA COASTAL FARMS, 6 ALRB No. 64

465.03 Where union violated section 1154(a)(1) by picketing residences of agricultural employees, remedy concluded submission of written apology to residents of picketed houses.
UFW/CALIFORNIA COASTAL FARMS, 6 ALRB No. 64

465.03 ALRB does not have the authority to award compensatory damages to those harmed by illegal secondary boycott activity.
UFW v. ALRB (Table Grape Commission), 41 Cal. App. 4th 303 [48 Cal.Rptr.2d 696 (setting aside *UFW* (*Table Grape Commission*) (1993) 19 ALRB No. 15 and overruling *Egg City* (1989) 15 ALRB No. 10)

465.04 Discriminatory Practices Ordered Discontinued: Union-Security; Contracts; Hiring Halls; Seniority

465.05 Hot-Cargo Contracts

465.06 Reimbursement Of Employees For Dues, Fees And Exaction: Union Liability

465.07 Reimbursement Of Employer

465.08 Fair Representation; Racial, National Origin, Sex, Etc. Discrimination

465.09 Union Liability For Economic Losses Due To Failure To Grieve Or Arbitrate

465.10 Denial Of Access

465.10 Motion to deny access should be granted where there is: (1) significant disruption of Employer's operations; (2) intentional or harassment of Employer or Employees; or (3) intentional or reckless disregard of access rule.
FRUDDEN ENTERPRISES, INC., 7 ALRB No. 22

465.10 Motions to Deny Access pursuant to 8 Cal. Admin. Code section 20900(e)(5)(A) will not be granted unless the evidence establishes violations of the access rule involving significant disruptions of agricultural operations, intentional harassment of employer or its employees, or reckless or intentional disregard of the time, place, or number limitations by which the right of access is qualified.
M. CARATAN, INC. (1979) 5 ALRB No. 16

465.10 Motion to deny post-certification access under Board regulation section 20900 is denied on grounds that the regulation governs only organizational access, not post-certification access. (L & C Harvesting, Inc. (1993) 19 ALRB No. 19; D'Arrigo Brothers, Admin. Order No. 91-7; The Herb Farm, Admin. Order No. 91-5.)
TRIPLE E PRODUCE CORP., 23 ALRB No. 6

465.11 Restoration Of Union Membership And Privileges

465.11 Board approved settlement in which (1) the good standing of union members who objected to payment of CPD dues on the ground that they were used for political expenditures was reinstated and passed dues forgiven; (2) union agreed

to seek reinstatement for union member who had been discharged from employment as a consequence of loss of union good standing for non-payment of dues; (3) union agreed to utilize internal rebate procedure established to return non-compellable dues to objecting members; and (4) union agreed not to terminate good standing in the future for non-payment of dues without giving objecting member opportunity to use rebate procedure. Board noted that dues of objecting members held in escrow under settlement procedure and conditioned its approval of settlement on one year limit on rebate, payment of interest on rebate dues, and deletion of timeliness limitations on objections.
UFW/GILES BREAUX, et al., 11 ALRB No. 32

465.11 Board may not defer its remedial jurisdiction to union internal appeal procedures; however, Board may tailor its remedy to measures already in progress while reserving jurisdiction should those measures fail.
PASILLAS v. ALRB (1984) 156 Cal.App.3d 312

465.11 Board supervision of union efforts to remedy unfair discipline of member does not unreasonably discourage or undermine union efforts to police itself.
PASILLAS v. ALRB (1984) 156 Cal.App.3d 312

466.00 MISCELLANEOUS REMEDIAL PROVISIONS

466.01 In General

466.01 Board computed interest due on amount owing when employer paid net backpay but failed to pay interest due from date employer was first notified of amount owing.
VENUS RANCHES, INC., 14 ALRB No. 17

466.01 Board found imposition of interest on amount owing when employer paid net backpay but failed to pay interest due effectuated purposes of act by compensating discriminatee and by encouraging prompt compliance with Board orders.
VENUS RANCHES, INC., 14 ALRB No. 17

466.01 It is inappropriate to award Respondent union an offset for union dues Charging Party was not required to pay because his absence from employment was caused by the union's unlawful conduct. A contrary rule would not only reward Respondent for its own wrongdoing but would also require Charging Party to pay for unperformed union services. UFW/SCARBROUGH 12 ALRB No. 23

466.01 Board Order required employer to make employees whole for losses resulting from unlawful discontinuance of bus transportation includes the actual cost of alternate transportation, as well as reimbursement for day of work missed due to the employees' inability to secure alternate transportation.
MARTORI BROTHERS, 11 ALRB No. 26

466.01 Board rejects reimbursement to union for dues which employer did not deduct from earnings of employees it employed as part of an unlawful change in hiring practices. VALDORA PRODUCE COMPANY and VALDORA PRODUCE COMPANY, INC., 10 ALRB No. 3

466.01 Where Employer exhibited no bad faith and committed only 1 per se violation of 1153(e) and (a), Employer required to continue periodic notification to RD only if latter determines Employer has not fully complied with terms of order within reasonable time after issuance.
N. A. PRICOLA PRODUCE, 7 ALRB No. 49

466.01 Reading notice to Employees on work time places burden on Employer found guilty of ULP, but Employees should not have to use non-work time to be apprised of their rights and Employer's violation thereof. The burden of remedying the ULP properly falls on the wrongdoer.
M. CARATAN, 6 ALRB No. 14

466.01 Board rejected union's request that it be compensated for dues lost as a result of respondent's unlawful refusal to bargain, finding that the remedy provided was adequate.
ROBERT H. HICKAM 4 ALRB No. 73

466.01 Remedy permitting union to petition for election without being required to make showing of employee support ordinarily required by section 1156.3(c) appropriate where Board set aside relatively close election-with high voter turnout, because of employer's extensive ULPs. There is no doubt but that ongoing question of representation exists.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

466.01 Board has broad power to create remedies that effectuate policies of Act in infinite variety of situations. Courts must refrain from entering this area unless remedy is patent attempt to achieve ends other than policies of Act.
CARIAN v. ALRB (1984) 36 Cal.3d 654

466.01 Board may not order employer to leave labor camp open indefinitely; however, Board can order wrongdoer to cease using evictions to discriminate and to refrain from closing camp until bargaining over the future of employee housing has occurred.
RIVCOM CORPORATION v. ALRB (1983) 34 Cal.3d. 743

466.01 Automatic issuance of particular affirmative remedy in every 1153(a) case contravenes the "spirit and principle" of J.R. Norton v. ALRB (1979) 26 Cal.3d 1.
M. B. ZANINOVICH, INC. v. ALRB (1981) 114 Cal.App.3d 665

466.01 Employer’s supervisors’ coercion of substantial numbers of employees to sign decertification petition in presence of entire crews warrants invalidation of decertification

petition. Dissemination may be presumed and impossible to determine how far it spread.
GALLO VINEYARDS, INC., 30 ALRB No. 2

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

466.02 Restoration Of Conditions Of Employment Prior To A Discriminatory Act

466.02 Employer ordered to reinstate raitero hiring system, since dismantling of that system was the method by which the employer's discriminatory refusal-to-rehire was implemented.
KAWANO, INC., 9 ALRB No. 62

466.02 A decision to, in effect, subcontract the growing and harvesting of beets, which is found to have been entered into unilaterally, will not be remedied by a status quo ante remedy where the decision was not motivated by antiunion animus.
CARDINAL DISTRIBUTING COMPANY, INC., et al., 9 ALRB No. 36

466.02 The purpose of backpay proceedings is to restore the employee to the position he would have enjoyed if he had not been discriminatorily discharged. As the exact amount of compensation due may be impossible to determine in an agricultural setting, the Board will choose a method of calculation which it considers to be equitable, practicable, and in consonance with the policy of the Act.
MAGGIO-TOSTADO (1978) 4 ALRB No. 36

466.02 Enforcement of Board order requiring rescission of medical plan might have unfortunate and ironic result of depriving employees of an excellent medical plan. But, "The beneficence of an employer is likely to be ephemeral if prompted by a threat of unionization which is subsequently removed. Insulating the right of collective organization from calculated good will of this sort deprives employees of little that has lasting value."

ROYAL PACKING CO. v. ALRB (1980) 101 Cal.App.3d 826

466.03 Access

466.03 As a remedy for employer's two-pronged interference with union access, to wit prohibiting access to parking lot until after quitting time and misleading union as to when quitting time was, Board upheld ALJ's imposition of expanded access of one hour of access to employees on work time.
ANDREWS DISTRIBUTION CO., 15 ALRB No. 6

466.03 Dissent: In response to remand order in which court had found Board's cumulative remedies excessive in light of single 1153(a) violation (failure to adequately comply with name and address requirement upon filing of a Notice of Intent to Organize), Board preserved initial provisions granting Union expanded work site access (i.e., double normal number of organizers plus one additional access period) but struck as inappropriate work site access on company paid time as remedy for interference with Union's home visitation rights.
LAFLIN & LAFLIN, aka LAFLIN DATE GARDENS 12 ALRB No. 6

466.03 On remand from Court of Appeals, Board's modified allowing unrestricted organizer access to employer's labor camp, by limiting time and number of organizers. Board also followed Velez v. Armenta (D. Conn. 1974) 370 F.Supp. 1250 in allowing employer to question, under certain circumstances and for general nondiscriminatory security purposes only, non-residents seeking access to camp.
SAM ANDREWS' SONS, 11 ALRB No. 29

466.03 In citrus harvest setting, employer is under an affirmative obligation to make the union's access rights meaningful by providing a certain amount of information that will aid the union in locating crews that it wishes to contact.
F & P GROWERS ASSOCIATION, 10 ALRB No. 28
Accord: VENUTRA COUNTY FRUIT GROWERS, INC., 10 ALRB No. 45

466.03 For purposes of post-certification access, employer not required to provide union with names of owners of groves where employer harvests since such information is not relevant to the locating crews.
F & P GROWERS ASSOCIATION, 10 ALRB No. 28
Accord: VENUTRA COUNTY FRUIT GROWERS, INC., 10 ALRB No. 45

466.03 Union not reimbursed for expenses incurred in search for employer's crews during post-certification access, where length of search partially due to union representative's lack of familiarity with area.
F & P GROWERS ASSOCIATION, 10 ALRB No. 28 Accord: VENUTRA COUNTY FRUIT GROWERS, INC., 10 ALRB No. 45

466.03 To remedy employer's failure to provide union and Board with adequate propitiation list, Board ordered employer to provide employee list upon next filing of Notice of intent to Take Access by union; Board also ordered employer to grant union expanded access during period following next filing of Notice of Intent to Take Access. M. B. ZANINOVICH, INC., 9 ALRB No. 63

466.03 Motion to deny access should be granted where there is: (1) significant disruption of Employer's operations; (2) intentional or harassment of Employer or Employees; or (3) intentional or reckless disregard of access rule. FRUDDEN ENTERPRISES, INC., 7 ALRB No. 22

466.03 On remand, Board specified number of organizers allowed during one-hour period of access on company time by limiting number of organizers to two organizers per fifteen employees.
PROHOROFF POULTRY FARMS 6 ALRB No. 45

466.03 Dissent: Dissent limits number of organizers to one organizer per fifteen employees.
PROHOROFF POULTRY FARMS 6 ALRB No. 45

466.03 Upon remand from the Court of Appeal, the Board revised its prior expanded access remedy by permitting union access by twice the number of organizers ordinarily permitted under 8 Cal. Admin. Code 20900(e)(4)(A).
JACK PANDOL AND SONS, INC. 6 ALRB No. 1

466.03 Expanded access remedies not warranted where union victory in election indicates that employer's failure to provide list did not prevent successful communication between employees and union standard cease and desist remedy ordered.
PAUL W. BERTUCCIO and BERTUCCIO FARMS, 5 ALRB No. 5

466.03 Board orders that union shall have one access period of 30 days or until the parties execute a contract or reach a bona fide impasse, whichever comes first, in order to remedy effects of Respondent's dilatory tactics in bargaining. ROBERT H. HICKAM 4 ALRB No. 73

466.03 Respondent, charged with failing to provide propitiation lists, defended on grounds regulation was unlawful and provision violated employee's right to privacy. ALO found said defense "frivolous" and therefore warranted award of attorney's fees and litigation costs to general counsel and charging party. Board rejected attorney's fees but granted expanded access.
AMERICAN FOODS, INC. 4 ALRB No. 29

466.03 Standardized remedy for propitiation list violations set forth in Henry Moreno (1977) 3 ALRB No. 40, modified to allow union one extra organizer per fifteen employees during regular access hours, and to provide one hour of

regular working time for union to disseminate information to and conduct organizational activities among employees.
LAFLIN AND LAFLIN, et al. 4 ALRB No. 28

466.03 To dispel effects of employer's interference with employees' rights to receive information from union organizer, Board removes restrictions on number of organizers allowed to come onto respondent's property and extends access periods, and grants union organizers company time to disseminate information.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

466.03 Because of suspension of Board's operations and consequent delays in litigation remedies made available to union during its next organizational period.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

466.03 In light of a Court of Appeal decision in a similar case, the Board modified its order providing for expanded access by permitting one additional organizer to visit each group of 15 or more employees in addition to the two permitted by the Board's regulation.
VENUS RANCHES 3 ALRB No. 55

466.03 Remedy for egregious and coercive interference with access was determined to include an obligation for the employer to mail a letter of apology to all workers, the union and each individual union organizer.
WESTERN TOMATO, et al., 3 ALRB No. 51

466.03 Board modified ALO's proposed remedy to permit Union to meet with respondent's employees on company time for two hours during respondent's next harvest season.
SAM ANDREWS' SONS, 3 ALRB No. 45

466.03 Remedies for multiple violations of the access rule include obligation to provide employee list for any subsequent access period, for 30-day periods within twelve months without restriction on the number of organizers. (The unrestricted number of organizers portion of the remedy was annulled by a Court of Appeals).
JACK PANDOL & SONS, INC., 3 ALRB No. 29

466.03 In proceedings before the ALRB to resolve a labor dispute regarding the right of access of a farm workers' union to workers housed in the grower's labor camps, the Board's order mandating unlimited and unrestricted access to the labor camp was overbroad, since access rights are subject to reasonable time, place and manner regulation.
SAM ANDREWS' SONS v. ALRB (1988) 47 Cal.3d 157

466.03 A remedial order by the ALRB requiring a grower to provide a farm workers' union one hour of compensated field access time to agricultural workers during working hours was not indefinite and overbroad.
SAM ANDREWS' SONS v. ALRB (1988) 47 Cal.3d 157

466.03 A remedial order by the ALRB requiring a grower to provide a farm workers' union one hour of compensated field access time was justified on the basis of the grower's admitted denials of field access, and was therefore not punitive with regard to unfair labor practices involving denial of labor camp access.
SAM ANDREWS' SONS v. ALRB (1988) 47 Cal.3d 157

466.03 It is the grower, and not the Board, which has the right to make reasonable regulations as to camp access in the first instance.
SAM ANDREWS' SONS v. ALRB (1988) 47 Cal.3d 157

466.03 Where employer's only ULP was failure to provide ALRB with current street addresses of group of temporary employees who left ranch within one-half day after petitioner learned list was required, Board's order requiring employer to provide expanded union access to all of employer's workforce was clearly punitive and therefore in excess of Board's authority.
LAFLIN & LAFLIN v. ALRB (1985) 166 Cal.App.3d 368

466.03 Board order which requires reading a remedial notice to assembled employees and which allows expanded access by union organizers, but does not specify which employees to whom the communications are directed, is overbroad.
LAFLIN & LAFLIN v. ALRB (1985) 166 Cal.App.3d 368

466.03 With regard to company labor camp access, Board must balance conflicting rights to privacy and to communication by issuing limited and specific access order. A general and unqualified remedial access order is unreasonable and improper.
SAM ANDREWS' SONS v. ALRB (1984) 162 Cal.App.3d 923

466.03 Order granting union one hour of access to employees during work time was reasonably related to offense--failing to provide employee list--which prevented adequate communication between union and employees.
CARIAN v. ALRB (1984) 36 Cal.3d 654

466.03 It is not necessary or warranted to permit union to have unrestricted numbers of agents on employer's property during expanded access periods. Board properly limited such access to 2 organizers for every 15 employees in each work crew.
JASMINE VINEYARDS, INC. v. ALRB (1980) 113 Cal.App.3d 968

466.03 Board-ordered remedy which allowed union unlimited access to poultry farm was improper.
PROHOROFF POULTRY FARMS v. ALRB (1980) 107 Cal.App.3d 622

466.03 Expanded access is a proper remedy; however, unlimited access by union organizers is an abuse of discretion. Case remanded to Board to decide a reasonable number of access-takers.

PANDOL & SONS v. ALRB (1979) 98 Cal.App.3d 580

466.03 Board's expertise renders it particularly qualified to decide question of expanded access; therefore, remand was appropriate.
PANDOL & SONS v. ALRB (1979) 98 Cal.App.3d 580

466.03 Unlimited access remedy unwarranted and abuse of discretion where no evidence that company had interfered, or attempted to interfere, with union organizers' access to property. SUNNYSIDE NURSERIES, INC. v. ALRB (1979) 93 Cal.App.3d 922

466.03 An access remedy unlimited as to number of union organizers is contrary to policies of ALRA.
JACKSON & PERKINS CO. v. ALRB (1978) 77 Cal.App.3d 830

466.03 Removal of certain language from legislation during revision sometimes indicates legislative intent. However, silence is not a clear expression of intent, and history of ALRA does not clearly indicate rejection of concept of Board-ordered access to the employers' premises.
ALRB v. SUPERIOR COURT (PANDOL) (1976) 16 Cal.3d 392

466.04 Notice; Posting, Reading, And Mailing

466.04 Mailing, reading, and educational requirements appropriate where several violations involving antiunion animus found and conduced cannot be construed as isolated. Normal Board practice is for a mailing period of one year, a posting period of 60 days, provision of notices to all employees hired for 12 months after posting, and extension of non-economic remedies to all agricultural employees of the respondent.
OASIS RANCH MANAGEMENT, INC., 18 ALRB No. 11

466.04 In effectuation of remand order, Board deleted remedial provisions requiring that employer cease and desist from bad faith bargaining and commence good faith bargaining. The Board also deleted its normal extension of certification remedy in bad faith bargaining cases, and confined the period of time for which employees of Respondent would receive mailed copies of the Board's notice to the actual period of Respondent's bad faith bargaining. The Board's modifications were made to reflect the date at which the Court of Appeal found Respondent had commenced bargaining in good faith.
PAUL W. BERTUCCIO dba BERTUCCIO FARMS, 15 ALRB No. 15

466.04 In light of the separate certification for the employer's California operations and the absence of any evidence of an interchange of employees between the San Joaquin and Brawley/Salinas operations, the mailing, posting, and reading requirements are limited to the Employer's San Joaquin Valley operations.

D'ARRIGO BROTHERS, 13 ALRB No. 1

466.04 Evidence established that the commission of ULP(s) justified the Board's usual remedies.
GEORGE A. LUCAS & SONS, 11 ALRB No. 11 (See 13 ALRB No. 4)

466.04 On remand from the reviewing court, following annulment of the Board's Order, jurisdiction was revested in the Board, and the Board limited the scope of a previously ordered mailing remedy and amended the interest rate awarded on backpay reimbursements to conform with Lu-Ette Farms, Inc. (1982) 8 ALRB No.55
VESSEY & COMPANY, INC., 11 ALRB No. 3

466.04 Pursuant to broad court remand, Board modified mailing and posting periods to conform to current practice.
McANALLY ENTERPRISES, INC., 11 ALRB No. 2
Accord: FRUDDEN PRODUCE, INC., 11 ALRB No. 6

466.04 On remand, Board modified its mailing order in Harry Carian Sales (1983) 9 ALRB No. 13
HARRY CARIAN SALES., 10 ALRB No. 51

466.04 No reading and limited mailing remedy tailored to single isolated interrogation.
JACK OR MARION RADOVICH, 10 ALRB No. 1

466.04 Board declines to set an arbitrary time limit on the reading of the Board's notice to employees and question-and-answer period following the reading.
PETER D. SOLOMON and JOSEPH R. SOLOMON dba CATTLE VALLEY FARMS/TRANSCO LAND AND CATTLE CO., 9 ALRB No. 65

466.04 In a bad faith bargaining case, an open-ended period for the mailing of the notice is appropriate, since all employees from commencement of makewhole period until compliance are potentially affected by remedy and should receive notice.
ROBERTS FARMS, INC., 9 ALRB No. 27

466.04 Board extended the mailing the ALJ ordered from a month to a year; unlike M.B. Zaninovich (1980) 6 ALRB No. 23, the violation was not isolated and its coercive impact would affect migrants who worked only in seasons after the violation because the large permanent work force would speak to them. The mailing period began as of the discriminatee's role there, the retaliatory nature of the discharge and its proximity to the election.
KITAYAMA BROTHERS, 9 ALRB No. 23

466.04 Because Employer exhibited no bad faith and committed only 1 per se violation of 1153(e) and (a), and because of Union's responsibility for delays in bargaining, it is appropriate to permit provision for 12 months' notification to new Employees as excessive under circumstances. Sufficient notification will be achieved

through 60 day posting and mailing of remedial notice to Employees employed during payroll period immediately preceding illegal wage increase and reading of notice to all current Employees.
N. A. PRICOLA PRODUCE, 7 ALRB No. 49

466.04 Board's Order provided for cease and desist order, together with posting and mailing of Notice to Employees at all its offices, union halls, and strike headquarters throughout state, and placement of Notice in all newsletters and other publications which it publishes and distributes to its members for period from one month to six months following date of issuance of Order.
UFW/CALIFORNIA COASTAL FARMS, 6 ALRB No. 64

466.04 Where union violated section 1154(a)(1) by picketing residences of agricultural employees, remedy concluded submission of written apology to residents of picketed houses.
UFW/CALIFORNIA COASTAL FARMS, 6 ALRB No. 64

466.04 On remand, Board finds it unnecessary to mail Notice to all employees who appeared on employer's payroll for the 1976 harvest season since case involves isolated unfair labor practice. Instead, Board orders that Notice be mailed only to those employees whose names were on employer's payroll during the month of August 1976, when unfair labor practice occurred.
M.B. ZANINOVICH, INC. 6 ALRB No. 23

466.04 Because of the high turnover in agricultural employment, mailing of Notice is essential in conveying remedial information to employees who were in employer's employ at or about the time the unfair labor practice occurred but who may not be employed by employer at the time the Board issues its decision.
M.B. ZANINOVICH, INC. 6 ALRB No. 23

466.04 On remand, Board adhered to requiring reading of Notice during work time to ensure widest dissemination since nature of agricultural work makes it difficult to assemble workers whose lunch periods and starting and ending times often do not coincide and where Employees do not typically congregate at these times.
M. CARATAN, 6 ALRB No. 14

466.04 Appropriate to mail notice to all Employees on payroll during 2 week period when ULP's occurred and appropriate to read Notice to all Employees even these not employed at time of ULP's to dispel residual effects of ULP's and to minimize logistical difficulties and confusion if only some Employees were informed about ULP's and rights under ALRA.
M. CARATAN, 6 ALRB No. 14

466.04 Board reverse ALO failure to recommend Remedial Notice to Employees be read to employees during work followed by

question-and-answer period of with Board agent.
OCEANVIEW FARMS, INC., 5 ALRB No. 71

466.04 Notice of Board's decision in refusal-to-bargain case should be distributed by mail to employees employed by respondent at the time of the representation election which led to the union's certification.
ROBERT H. HICKAM 4 ALRB No. 73

466.04 The Board has found that cease-and-desist order, and the posting, mailing, distribution, and reading of Board Notice to Agricultural Employees are necessary and desirable remedies in the agricultural setting.
S & F GROWERS, 4 ALRB No. 58

466.04 Where the employer violated the Act in a technical refusal to bargain case, Board expands notice provisions of remedial order to include distribution of the Notice to employees who were in the payroll in the period immediately preceding representation election.
C. MONDAVI & SONS dba CHARLES KRUG WINERY, 4 ALRB No. 52

466.04 Where the employer violated the Act in a technical refusal to bargain case, Board expands notice provisions of remedial order to include distribution of the Notice to employees who were in the payroll in the period immediately preceding representation election.
J.R. NORTON COMPANY, 4 ALRB No. 39

466.04 The Board ordered standard reading of the notice to employees in lieu of distribution by hand.
ROD McLELLAN CO., 3 ALRB No. 71

466.04 Remedy for egregious and coercive interference with access was determined to include an obligation for the employer to mail a letter of apology to all workers, the union and each individual union organizer.
WESTERN TOMATO, et al., 3 ALRB No. 51

466.04 Board ordered "Notice to Workers" to be posted at Respondent's premises for two periods of 90 consecutive days and posted in Respondent's buses at places specified by the regional director.
SAM ANDREWS'S SONS, 3 ALRB No. 45

466.04 The reading of notices acknowledging an employer's violation(s) of the Act is an appropriate remedial provision in the agricultural labor context.
PINKHAM PROPERTIES, 3 ALRB No. 15

466.04 To remedy the unlawful denial of access to union organizers, the employer is required to (1) mail a notice in English and Spanish to those employees who were on the payroll when the violation occurred; (2) either read or permit a Board agent to read the notice to assembled employees at the commencement of the harvesting season following the season in which the violation occurred and

to allow the Board agent to answer any employee questions at that time, (3) post the notice at the beginning of the next harvest season for a 60-day period; and (4) report to the Regional Director on the progress of mailing the notices.
PINKHAM PROPERTIES, 3 ALRB No. 15

466.04 Board order which requires reading a remedial notice to assembled employees and which allows expanded access by union organizers, but does not specify which employees to whom the communications are directed, is overbroad.
LAFLIN & LAFLIN v. ALRB (1985) 166 Cal.App.3d 368

466.04 Board order which requires reading a remedial notice to assembled employees, but places no limit on number of readings, nor number of question-and-answer periods, but rather leaves these matters to uncircumscribed discretion of R.D., is overbroad.
LAFLIN & LAFLIN v. ALRB (1985) 166 Cal.App.3d 368

466.04 Board order requiring reading and posting of notice is remedial, not punitive, due to limited literacy of agricultural workers.
SAM ANDREWS' SONS v. ALRB (1984) 162 Cal.App.3d 923

466.04 Mailing and reading requirements were within Board's discretion where employees generally knew of unlawful conduct and Board properly assumed illiteracy of workers.
NISH NOROIAN FARMS v. ALRB (1984) 35 Cal.3d 726

466.04 Absent evidence of open, repetitive, or egregious employer misconduct from which it reasonably may be inferred that other workers acquired knowledge of misconduct, it cannot be inferred that ULP had impact on other employees; such impact must be proved to justify imposition of mailing remedy.
M. B. ZANINOVICH, INC. v. ALRB (1981) 114 Cal.App.3d 665

466.04 Board's order to mail notices to past and present employees was not justified where there was no evidence that any other employees knew of conduct constituting ULP.
M. B. ZANINOVICH, INC. v. ALRB (1981) 114 Cal.App.3d 665

466.04 Posting, reading, and question-and-answer requirements are appropriate remedial measures notwithstanding substantial employee turnover since time of violations. (Citing M. Caratan, Inc. (1980) 6 ALRB No. 14.)
JASMINE VINEYARDS, INC. v. ALRB (1980) 113 Cal.App.3d 968

466.04 Courts should assume that reading will be handled expeditiously and impartially by Board agents and should refrain from questioning integrity of agency.
JASMINE VINEYARDS, INC. v. ALRB (1980) 113 Cal.App.3d 968

466.04 Since respondent is wrongdoer, any inconvenience and expense related to remedial notice of ULP must

necessarily be borne by respondent and not by wronged employees.
JASMINE VINEYARDS, INC. v. ALRB (1980) 113 Cal.App.3d 968

466.04 Reading remedial notice to current employees on company time serves valid purpose, because conditions of agriculture—i.e., no central gathering point, illiteracy, irregular lunch breaks in fields, piece-rate work—make non-work time reading ineffective.
JASMINE VINEYARDS, INC. v. ALRB (1980) 113 Cal.App.3d 968

466.04 Board within its discretion in ordering posting, mailing, and reading of notice and provision of employee list, despite burden placed on employer.
PANDOL & SONS v. ALRB (1979) 98 Cal.App.3d 580

466.04 If Board considers it necessary to give farm workers opportunity to read Board-ordered notice privately, outside intimidating presence of management, it may compel employer to mail notices.
TEX-CAL LAND MANAGEMENT, INC. v. ALRB (1979) 24 Cal.3d 335

466.04 Board order requiring employer or Board agent to read notice to employees which describes company violations of ALRA and Board-ordered remedies is appropriate in agricultural setting, where Board is aware of significant illiteracy and semi-literacy among farm workers.
TEX-CAL LAND MANAGEMENT, INC. v. ALRB (1979) 24 Cal.3d 335

466.04 Where employer has thousands of employees and many locations throughout the state, and conduct at issue affected only employees at one location and is not of the nature that it was likely to become widely known, order clarified so that reading, posting, and mailing remedies are restricted to employer's operations at location where unlawful act occurred.
DOLE FARMING, INC., 22 ALRB No. 8

466.04 The Board's adherence to standard (non-economic) remedies has served to further the purposes and policies of the Act, and it is incumbent upon the respondent to demonstrate compelling reasons for departing from such remedies. Only where the violation is "isolated" or technical" might it be warranted to depart from standard remedies. (Citing *Nish Noroian Farms v. ALRB* (1984) 35 Cal.3d 726, at p. 747.)
VINCENT B. ZANINOVICH & SONS, INC., 25 ALRB No. 4

466.04 Notice to Agricultural Employees shall be included with *Breaux* notice required by Board order.
UFW (VIRGEN/MENDOZA), 33 ALRB No. 2

466.04 In light of the findings that supervisors made numerous unlawful threats and harassed union supporters, it was appropriate, in addition to the notice remedies directed

at employees, to require that a separate notice reading be conducted among the employer's current supervisors and that notices be given to supervisors hired in ensuing year.
VINCENT B. ZANINOVICH & SONS, 34 ALRB No. 3

466.05 Furnishing Of Employee Lists

466.05 Dissent: In response to remand order in which court had found Board's cumulative remedies excessive in light of single 1153(a) violation (failure to adequately comply with name and address requirement upon filing of a Notice of Intent to Organize), Board preserved initial provisions granting Union expanded work site access (i.e., double normal number of organizers plus one additional access period) but struck as inappropriate work site access on company paid time as remedy for interference with Union's home visitation rights.
LAFLIN & LAFLIN, aka LAFLIN DATE GARDENS 12 ALRB No. 6

466.05 To remedy employer's failure to provide union and Board with adequate propitiation list, Board ordered employer to provide employee list upon next filing of Notice of Intent to Take Access by union; Board also ordered employer to grant Union expanded access during period following next filing of Notice of Intent to Take Access.
M.B. ZANINOVICH, INC., 9 ALRB No. 63

466.05 Employer required to file statement with Regional Director when it anticipates peak requirement, and to develop effective method for maintaining accurate lists of employee names and addresses.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

466.05 Board order which requires that employer provide list of employees to ALRB "forthwith" is inconsistent with ALRB regulations which only require production of employee list upon union's filing of both notice of intent to organize and 10% showing of interest.
LAFLIN & LAFLIN v. ALRB (1985) 166 Cal.App.3d 368

466.05 ALRB not limited to NLRB remedy of setting aside election where employer violates pre-petition list rule, since ALRB has greater interest in providing employees with access to union representatives.
CARIAN v. ALRB (1984) 36 Cal.3d 654

466.06 Attorneys Fees And Costs

466.06 Board rejects Respondent's request for attorney fees and costs on the basis of Neumann Seed (1982) 7 ALRB No. 23 and Sam Andrews' Sons v. ALRB (1988) 47 Cal.3d 157 which hold that such costs and fees are not recoverable under the ALRA.
VENTURA COUNTY FRUIT GROWERS, INC., 15 ALRB No. 18

466.06 Court of Appeal held Board unauthorized to award

attorney's fees and costs to a party. Pursuant to court remand, Board struck award of attorney's fees and costs from its order.
SAM ANDREWS' SONS, 15 ALRB No. 1

466.06 Although the Board has the authority to award costs in the proper case, the remedy should be reserved only for those cases of flagrant misconduct.
TEX-CAL LAND MANAGEMENT, INC., ET AL. 12 ALRB No. 26

466.06 Costs and attorney's fees are not appropriate where there is no evidence that the respondent union has violated its statutory obligations or engaged in misconduct showing flagrant disregard for employee rights or, in defending itself herein, has engaged in frivolous litigation.
UNITED FARM WORKERS OF AMERICA, AFL-CIO (MAGGIO INC.)
12 ALRB No. 16

466.06 Attorneys fees not appropriate as sanction against respondent's lack of cooperation in compliance proceedings, absent a more pervasive pattern of disregard for Board's processes.
VERDE PRODUCE CO., 10 ALRB No. 35

466.06 Board has authority to award fees and costs; fees and costs awards where employer had long history of denying union agents access to its fields and labor camps in defiance of numerous outstanding Board Orders.
SAM ANDREWS' SONS, 10 ALRB No. 11

466.06 Attorney's fees and costs not awarded; employer presented nonfrivolous defenses to allegations in complaint.
PETER D. SOLOMON and JOSEPH R. SOLOMON dba CATTLE VALLEY FARMS/TRANSCO LAND AND CATTLE CO., 9 ALRB NO. 65

466.06 Board does not have authority to award attorney's fees and litigation costs against General Counsel.
DEL MAR MUSHROOMS, INC., 7 ALRB No. 41

466.06 Board does not have authority to award attorneys' fees and litigation costs against General Counsel and to a Respondent who has been exonerated of all ULPs alleged in Complaint.
NEUMAN SEED COMPANY, 7 ALRB No. 35

466.06 Assuming without deciding, that Board has power to award attorney fees, same not justified where reasonable grounds to believe allegations in complaint was true when complaint issued.
TENNECO WEST, INC., 7 ALRB No. 12

466.06 General Counsel's presentation of case may have been inept but case was not frivolous even though Board agent refused to examine or consider evidence proffered by Employer during investigation of charge. Attorneys' fees thus not warranted assuming Board has power to award same.

TENNECO WEST, INC., 7 ALRB No. 12

466.06 Where the merits tuned on issues of witness credibility the Board refused to award litigation costs to the respondent when the General Counsel failed to prevail on its complaint. GOLDEN VALLEY FARMING 4 ALRB No. 79

466.06 Request for attorney's fees and other expenses incurred due to respondent's conduct denied because respondent's defenses were found not to be frivolous.
ROBERT H. HICKAM 4 ALRB No. 73

466.06 On the record before it, the Board denied respondent employer's request for attorney's fees, litigation fees and emotional distress damages. Three concurring opinions and one dissenting opinion discuss issue of awarding costs or damages to a prevailing party.
SECURITY FARMS, 3 ALRB No. 81

466.06 (Concurring opinion) Remand case to ALO for specific findings as to extent of respondent's "patently frivolous" defenses and assess costs and attorneys' fees to General Counsel and charging party commensurate with those findings.
SAM ANDREWS' SONS, 3 ALRB No. 45

466.06 The general language of Lab. Code sec. 1160.3, providing that, in addition to the remedies enumerated there, the ALRB may order such other relief as will effectuate the policies of the ALRA, does not provide specific statutory authority for an award of attorney fees.
SAM ANDREWS' SONS v. ALRB (1988) 47 Cal.3d 157

466.06 The Board erred in awarding the union attorney fees based on the allegedly frivolous actions of the grower.
SAM ANDREWS' SONS v. ALRB (1988) 47 Cal.3d 157

466.06 The only recognized exceptions in California to the general rule that attorney fees are not recoverable by the prevailing party in the absence of agreement or specific statutory authority (CCP 1021) are the common fund, substantial benefit, and private attorney general theories.
SAM ANDREWS' SONS v. ALRB (1988) 47 Cal.3d 157

466.06 Although federal courts award attorney fees based on bad faith or vexatious litigation conduct, California courts have not recognized such an exception to the general rule that attorney fees are not recoverable.
SAM ANDREWS' SONS v. ALRB (1988) 47 Cal.3d 157

466.06 Board is without authority to award attorney's fees in derivative liability proceeding.
Claassen Mushrooms, Inc. 20 ALRB No. 9

466.07 Extension Of Certification

466.07 In effectuation of remand order, Board deleted remedial provisions requiring that employer cease and desist from bad faith bargaining and commence good faith bargaining. The Board also deleted its normal extension of certification remedy in bad faith bargaining cases, and confined the period of time for which employees of Respondent would receive mailed copies of the Board's notice to the actual period of Respondent's bad faith bargaining. The Board's modifications were made to reflect the date at which the Court of Appeal found Respondent had commenced bargaining in good faith.
PAUL W. BERTUCCIO dba BERTUCCIO FARMS, 15 ALRB No. 15

466.07 Extension of certification not appropriate for denial of post-certification access.
F & P GROWERS ASSOCIATION, 10 ALRB No. 28

466.07 Extension of Union certification proper remedy for Employer refusal to bargain.
ADMIRAL PACKING CO., et al, 7 ALRB No. 43

466.07 Board rejected proposal that employer pay makewhole amounts into escrow fund during actual bargaining process, on grounds of potentially harmful impact on collective bargaining process. Board left open possibility of future modification of remedy if circumstances warranted sharper incentive to good faith bargaining.
PERRY FARMS, INC., 4 ALRB No. 25

466.07 Board properly followed NLRA precedent in extending union's certification after finding that employer had unlawfully refused to bargain.
ADAMEK & DESSERT, INC. v. ALRB (1986) 178 Cal.App.3d 970

466.07 Board properly extended UFW's certification for one year although union had not filed petition to extend its certification pursuant to 1155.2(b).
ADAMEK & DESSERT, INC. v. ALRB (1986) 178 Cal.App.3d 970

466.07 Extension of certification for one year appropriate remedy for employer's failure to respond to union inquiries and continue initial round of negotiations, in order to provide full opportunity for (collective bargaining) process to work.
P.H. RANCH, INC., et al., 21 ALRB No. 13

466.07 Where Board finds employer's Leedom v. Kyne action was based on an unreasonable litigation posture, initial certification year to begin anew commencing when employer agrees ultimately to recognize union and union responds affirmatively.
GALLO VINEYARDS, INC., 23 ALRB No. 7

466.08 Missing Discriminatees; Escrow Accounts

466.08 Backpay for missing discriminatees will be held in escrow

account for two years. Escrow period will begin either upon Respondent's compliance by payment of backpay and interest for deposit into escrow, or upon date Board's Supplemental Decision and Order become final, including court enforcement thereof, whichever is later.
MARIO SAIKHON, INC., 17 ALRB No. 10

466.08 Escrow account is established for unlawfully discharged discriminatees who did not testify at compliance proceeding. MARTORI BROTHERS, 11 ALRB No. 26

466.08 When a discriminatee could not be located during a compliance proceeding, an escrow account was established for him in the amount of his gross backpay less any interim earnings known to the General Counsel.
MARIO SAIKHON, INC., 10 ALRB No. 36

466.08 Escrow account for missing discriminatee established for two-year period instead of one year in recognition of the highly mobile nature of agricultural employees and the difficulty in locating missing discriminatees.
MARIO SAIKHON, INC., 10 ALRB No. 36

466.09 Exclusion From Participation Before Board(See also section 449.02)

466.09 Having found that a former Board employee was prohibited from participating in a compliance cause pursuant to section 20800 of the Board's regulations and California Government Code section 87400 et seq., the Board ordered the former employee to cease and desist from aiding the respondent in determining its backpay liability and from representing, aiding, advising., counseling., consulting or assisting in representing any person, other than the State of California, in that proceeding.
MARIO SAIKHON, INC., 10 ALRB No. 46

467.00 MODIFICATION OF PRIOR REMEDY

467.01 In General

467.01 After reversal of the Board's finding of an unlawful unilateral implementation of wage increases, upon remand from the court, there remained one isolated violation of the Act. The Board therefore modified its prior order leaving as the only remedy for the isolated violation a cease and desist order.
BRUCE CHURCH, INC., 17 ALRB No. 12

467.01 In effectuation of remand order, Board deleted remedial provisions requiring that employer cease and desist from bad faith bargaining and commence good faith bargaining. The Board also deleted its normal extension of certification remedy in bad faith bargaining cases, and confined the period of time for which employees of Respondent would receive mailed copies of the Board's notice to the actual period of Respondent's bad faith

bargaining. The Board's modifications were made to reflect the date at which the Court of Appeal found Respondent had commenced bargaining in good faith.
PAUL W. BERTUCCIO dba BERTUCCIO FARMS, 15 ALRB No. 15

467.01 In granting the General Counsel motion to correct clerical error, the Board found its omission of eight discriminatees from the remedial orders in Vessey & Co., Inc. (1985) 11 ALRB No. 3 and (1983) 7 ALRB No. 44, was due to clerical error; and issued a Supplemental Decision and Corrected Order substituting the corrected order, including the eight names.
VESSEY & COMPANY, INC., 14 ALRB No. 4

467.01 On remand from Court of Appeal, Board applied two-prong test in J.R. Norton Co. v. Agricultural labor relations Board (1979) 26 Cal. 3d 1 to determine whether Employer's refusal to bargain with employees certified collective bargaining representative was both reasonable and undertaken in good faith.
SAN JUSTO RANCH/WYRICK FARMS, 14 ALRB No. 1

467.01 On remand from Court of Appeal, Board found that two month delays between request and refusal to bargain, absent other evidence of bad faith, was insufficient to support a finding of bad faith. Board concluded that it was improper to rely upon other factors which were either not relied upon by the ALJ due to credibility resolutions or not fully litigated in the underlying election objection proceedings.
SAN JUSTO RANCH/WYRICK FARMS, 14 ALRB No. 1

467.01 Board amended its Decision and Order by finding that respondent hired permanent replacements before the economic strikers' unconditional offers to return to work, and limiting the Order to require full and immediate reinstatement to those returning economic strikers who were deprived of reinstatement solely due to Respondent's altered, discriminatory seniority system.
VESSEY & COMPANY, INC., et al., 13 ALRB No. 22

467.01 On remand, Board modified its mailing order in J.R. Norton Company (1983) 9 ALRB No. 18 by providing for a mailing of the Notice to all agricultural employees in the certified bargaining unit where the ULP's occurred for a one year period.
J.R. NORTON COMPANY, 13 ALRB No. 21

467.01 The Court of Appeal construed a previous remand of a case to permit the Board only to delete the status quo ante remedy of which it had disapproved. The court concluded that the Board was not authorized to specify the method of calculating backpay due to strikers who had been discriminatorily replaced or to modify the interest rate.
FRUDDEN PRODUCE, INC., 13 ALRB No. 3

467.01 Court of Appeal overturned Board decision at 11 ALRB No.

6 in its entirety. In that case the Board specified the method of calculating backpay owed to strikers who had been discriminatorily replaced, and it modified the interest rate in the Order to the Lu-Ette rate. The court opined that the Board was not permitted to make these changes following a previous remand. The Board issued an Order vacating its decision at 11 ALRB No. 6 in its entirety.
FRUDDEN PRODUCE, INC., 13 ALRB No. 3

467.01 On remand from the Court of Appeal, Board issued a Supplemental Decision and Modified Order wherein it deleted the status quo ante remedy. In addition, the Board vacated a decision it had issued after an earlier remand from the same court in which it had specified the method of calculating backpay due to strikers who had been discriminatorily replaced and had modified the interest rate.
FRUDDEN PRODUCE, INC., 13 ALRB No. 3

467.01 Pursuant to broad court remand, Board modified seven percent interest rate of original Order to provide for imposition of adjustable Lu-Ette rate from date of issuance of Lu-Ette Decision. (Lu-Ette Farms, Inc. [Aug. 18, 1982] 8 ALRB No. 55
GEORGE ARAKELIAN FARMS, 12 ALRB No. 29

467.01 On remand from the Court of Appeal, after the court annulled several Board findings of unlawful unilateral changes, the Board revised its order to delete references to those changes. In addition, the Board deleted its makewhole award after concluding that the remaining findings of unfair labor practices did not merit this remedy.
GEORGE ARAKELIAN FARMS, 12 ALRB No. 29

467.01 On remand from Court of Appeals, Board's modified allowing unrestricted organizer access to employer's labor camp, by limiting time and number of organizers. Board also followed Velez v. Armenta (D. Conn. 1974) 370 F.Supp. 1250 in allowing employer to question, under certain circumstances and for general nondiscriminatory security purposes only, non-residents seeking access to camp.
SAM ANDREWS' SONS., 11 ALRB No. 29

467.01 Reaffirmed original makewhole order, except to modify beginning of makewhole period to comport with six month rule in Desert Seed Co., Inc. (1983) 9 ALRB No. 72
JOHN ELMORE FARMS, et al., 11 ALRB No. 22

467.01 On remand from the Court of Appeal, often the court annulled the Board's status quo ante remedy for the employer's discriminatory replacement of a tomato had crew with additional mechanical harvesters, the Board revised its order to provide that the hand-crew employees be awarded backpay based on the amounts they would have

earned had they not been discriminatorily replaced.
FRUDDEN PRODUCE, INC., 11 ALRB No. 6

467.01 Pursuant to broad court remand, Board modified mailing and posting periods to conform to current practice.
McANALLY ENTERPRISES, INC., 11 ALRB No. 2
Accord: FRUDDEN PRODUCE, INC., 11 ALRB No. 6

467.01 Pursuant to broad court remand, Board modified seven percent interest rate of original Order to provide for imposition of adjustable Lu-Ette rate from date of issuance of Lu-Ette Decision. (Lu-Ette Farms, Inc. (Aug. 18, 1982) 8 ALRB No. 55.) McANALLY ENTERPRISES, INC., 11 ALRB No. 2
Accord: FRUDDEN PRODUCE, INC., 11 ALRB No. 6

467.01 On remand, Board modified its mailing order in Harry Carian Sales (1983) 9 ALRB NO. 13.
HARRY CARIAN SALES, 10 ALRB No. 51

467.01 On remand, Board withdrew and rescinded prior remedial order in Anton Caratan & Sons (1982) 8 ALRB No. 83
ANTON CARATAN & SONS, 9 ALRB No. 37

467.01 On granting General Counsel's motion to amend the complaint, the Board reconsidered its Decision in 9 ALRB No. 22; and issued a supplemental Decision amending its partial summary judgment Decision in 9 ALRB No. 22, vacating the Remand Order and substituting a final Order awarding summary judgment against employer.
F & P GROWERS ASSOCIATION, 9 ALRB No. 28

467.01 On remand, Board specified number of organizers allowed during one-hour period of access on company time by limiting number of organizers to two organizers per fifteen employees.
PROHOROFF POULTRY FARMS 6 ALRB No. 45

467.01 Dissent: Dissent limits number of organizers to one organizer per fifteen employees.
PROHOROFF POULTRY FARMS 6 ALRB No. 45

467.01 On remand, Board followed NLRB rule in Hickmott Foods, Inc.(1979) 242 NLRB No. 177, 101 LRRM 1342, and found that employer's conduct was not such as to warrant the imposition of a broad cease-and-desist order.
M.B. ZANINOVICH, INC. 6 ALRB No. 23

467.01 On remand, Board deleted its reference to the end of the 1979 harvest season in its original order providing a reinstatement offer, since the case is still on appeal and the 1979 harvest season has passed.
M. B. ZANINOVICH, INC. 6 ALRB No. 23

467.01 On remand, Board finds it unnecessary to mail Notice to all employees who appeared on employer's payroll for the 1976 harvest season since case involves isolated unfair

labor practice. Instead, Board orders that Notice be mailed only to those employees whose names were on employer's payroll during the month of August 1976, when unfair labor practice occurred.
M. B. ZANINOVICH, INC. 6 ALRB No. 23

467.01 Broad C/D order reconsidered and limited on remand since Respondent's conduct did not show proclivity to violate Act and was not so egregious and widespread as to show general disregard for Employees' fundamental rights under Act. M. CARATAN 6 ALRB No. 14

467.01 On remand, Board adhered to requiring reading of Notice during work time to ensure widest dissemination since nature of agricultural work makes it difficult to assemble workers whose lunch periods and starting and ending times often do not coincide and where Employees do not typically congregate at these times.
M. CARATAN, 6 ALRB No. 14

467.01 Upon remand from the Court of Appeal, the Board revised its prior expanded access remedy by permitting union access by twice the number of organizers ordinarily permitted under 8 Cal. Admin. Code 20900(e)(4)(A).
JACK PANDOL AND SONS, INC. 6 ALRB No. 1

467.01 In light of a Court of Appeal decision in a similar case, the Board modified its order providing for expanded access by permitting one additional organizer to visit each group of 15 or more employees in addition to the two permitted by the Board's regulation.
VENUS RANCHES 3 ALRB No. 55

467.01 The decision whether a remedy is appropriate after considerable passage of time is for the Board, not the courts; therefore, remand was proper course for Court of Appeal.
GEORGE ARAKELIAN FARMS v. ALRB (1986) 186 Cal.App.3d 94

467.01 Clarification of applicability of makewhole order to particular employees is matter for Board compliance proceedings and may not be obtained during court review of Board liability order.
GEORGE ARAKELIAN FARMS v. ALRB (1986) 186 Cal.App.3d 94

467.01 Where court disapproved of some of Board's ULP findings, it remanded matter to Board for reformulation of remedial order.
GEORGE ARAKELIAN FARMS v. ALRB (1986) 186 Cal.App.3d 94

500.00 ALRA IN THE COURTS: PRELIMINARY RELIEF; REVIEW OF DECISIONS, ENFORCEMENT OF ORDERS

500.00 PRELIMINARY COURT RELIEF AGAINST RESPONDENTS

500.01 In General, Labor Code Section 1160. and 1160.6

500.01 In 1160.4 case concerning bargaining violations, court's focus should be not on remedies ultimately available through ALRB, but on likelihood of harm to bargaining process in interim.
ALRB v. TEX-CAL LAND MANAGEMENT, INC. (1985) 165 Cal.App.3d 429

500.01 Purpose of 1160.4 injunction is to preserve status quo, not to resolve underlying dispute or effectuate remedial or compensatory relief. In general, prohibitory relief from superior court will be sufficient to achieve that purpose. ALRB v. SUPERIOR COURT (SAM ANDREWS' SONS) (1983) 149 Cal.App.3d 709

500.01 Test for superior court injunction under 1160.4 is drawn from NLRA precedent, since 1160.4 is closely modeled after NLRA section 10(j).
ALRB v. CALIFORNIA COASTAL FARMS, INC. (1982) 31 Cal.3d 469

500.01 Board's ULP proceedings are inherently protracted. Such delays sometimes render ALRB's ultimate remedy meaningless, thereby frustrating remedial purposes of Act. 1160.4 was enacted to partially avoid these problems.
ALRB v. RULINE NURSERY CO. (1981) 115 Cal.App.3d 1005

500.01 The standard for issuance of preliminary injunctions under 1160.4 is the same two-fold test for granting temporary relief under section 10(j) of the NLRA: first, is there reasonable cause to believe the alleged ULP's actually occurred; and second, is the relief requested "reasonably necessary to preserve the status quo or to prevent frustration of the basic remedial purposes of the Act." In the words of the statute, the requested relief must be "just and proper".
ALRB v. RULINE NURSERY CO. (1981) 115 Cal.App.3d 1005

500.01 Court of Appeal refused to consider whether trial court could have acted pursuant to its general equity jurisdiction when ALRB never asked trial court to exercise such general authority at trial level.
ALRB v. LAFLIN & LAFLIN (1979) 89 Cal.App.3d 651

500.01 In determining whether to issue injunctive relief under 1160.4, superior court must determine whether such relief is "just and proper," which requires the exercise of

discretion.
ALRB v. LAFLIN & LAFLIN (1979) 89 Cal.App.3d 651

500.01 Court of Appeal will only countermand trial court's discretion in the exercise of its general equitable powers upon demonstration of manifest abuse of discretion.
ALRB v. LAFLIN & LAFLIN (1979) 89 Cal.App.3d 651

501.01 No denial of due process where Board declined to follow invalidated regulation and had previously announced method in which prospective peak would be calculated in light of invalidation.
ALRB v. SUPERIOR COURT (Gallo Vineyards, Inc.) (1996) 48 Cal.App.4th 1489 [56 Cal.Rptr.2d 409]

501.01 No denial of due process by placing burden on employer to provide information to support contention that petition filed when at less than 50 percent of peak employment.
ALRB v. SUPERIOR COURT (Gallo Vineyards, Inc.) (1996) 48 Cal.App.4th 1489 [56 Cal.Rptr.2d 409]

501.01 It is questionable whether *Fay v. Douds* (2nd Cir. 1949) 172 F.2d 720, which assertedly established a right to immediate review of NLRB decisions where the NLRB fails to afford due process, has any continuing vitality, as the Supreme Court has never approved it, other circuits have questioned or criticized it, even the Second Circuit has limited its application, and no California courts have actually followed the case.
ALRB v. SUPERIOR COURT (Gallo Vineyards, Inc.) (1996) 48 Cal.App.4th 1489 [56 Cal.Rptr.2d 409]

501.01 Since 50 percent of peak requirement is to "provide the fullest scope for employees' enjoyment of the rights included in" the Act, procedural provisions of section 1156.4 do not confer any "right" upon the employer in the sense necessary under the *Leedom v. Kyne* exception.
ALRB v. SUPERIOR COURT (Gallo Vineyards, Inc.) (1996) 48 Cal.App.4th 1489 [56 Cal.Rptr.2d 409]

501.01 Application of *Leedom v. Kyne* exception to the general rule against direct judicial review of election decisions is dependent on three factors, all of which must be present. First, the challenged order must be a "plain violation of an unambiguous and mandatory" statutory provision. Second, the order must deprive the complaining party of a right assured to it by the statute. Third, indirect review of the order, through an unfair labor practice proceeding, must be unavailable or patently inadequate.
ALRB v. SUPERIOR COURT (Gallo Vineyards, Inc.) (1996) 48 Cal.App.4th 1489 [56 Cal.Rptr.2d 409]

500.02 Conditions Precedent; "Investigation"; "Complaint"; Limitation on Court's Authority; Effect of Code of Civil Procedure Section 527.3

500.02 1160.4 was not intended as means for interim enforcement of remedial or compensatory aspects of Board orders pending finality; rather, that section was intended to put an end to conduct, continuing in nature, which Board reasonably believes constitutes ULP and which threatens to frustrate purposes of ALRA.
ALRB v. LAFLIN & LAFLIN (1979) 89 Cal.App.3d 651

501.02 Pursuant to a ruling of the Superior Court that the issuance of a decision was invalid because accomplished by means of "certificate of mailing" as authorized by Board regulations, but regulation inconsistent with express statutory language, Board reissues a prior final decision and order in accordance with strict statutory provisions ('1151.4(a)) and rules regulation invalid to the extent it fails to comport with statute. New issuance date begins running of new 30-day period in order to grant Respondent a statutory right of appeal within meaning of section 1160.8.
CERTIFIED EGG (1994) 20 ALRB No. 1

501.02 In light of the ambiguous language of section 1156.4, the Board's own interpretation, the employer's failure to present evidence of crop and acreage statistics that it claims the Board did not uniformly apply, and the Scheid decision (22 Cal.App.4th 139) (which held that it *is* employer's burden to provide crop and acreage statistics and does not suggest that Board has duty to create uniform statistics to be used in calculating peak), there was no plain violation of an unambiguous statute justifying application of *Leedom v. Kyne* exception.
ALRB v. SUPERIOR COURT (Gallo Vineyards, Inc.) (1996) 48 Cal.App.4th 1489 [56 Cal.Rptr.2d 409]

500.03 Notice Requirement; Bond

500.04 Standards for Granting Injunction; "Just and Proper" Relief

500.04 Injunctive relief is appropriate under 1160.4 where evidence establishes employer's long saga of litigation and delay in its relation with union, and employer admits that decertification was its goal. Reasonable cause to believe that employer was engaged in pattern of displacing union workers to force abandonment of certification and to discredit union as protector of workers' rights is grounds for granting injunctive relief.
ALRB v. TEX-CAL LAND MANAGEMENT, INC. (1985) 165 Cal.App.3d 429

500.04 Before injunctive relief may be granted on request of either NLRB or ALRB, trial court must determine that there exists reasonable cause to believe ULP has been committed and that relief sought is just and proper.
ALRB v. TEX-CAL LAND MANAGEMENT, INC. (1985) 165 Cal.App.3d 429

500.04 Trial court retains discretion to issue any order that is just and proper under circumstances, and is not bound by recommendation of NLRB or ALRB. Traditional equitable considerations come into play during this part of test.
ALRB v. TEX-CAL LAND MANAGEMENT, INC. (1985) 165 Cal.App.3d 429

500.04 Preservation and restoration of status quo are appropriate considerations in granting 1160.4 temporary relief pending determination of issues by Board. Status quo is defined as last uncontested status which preceded pending controversy.
ALRB v. TEX-CAL LAND MANAGEMENT, INC. (1985) 165 Cal.App.3d 429

500.04 Board need not demonstrate rare emergency situation to obtain 1160.4 injunctive relief. Although injunctive relief is extraordinary remedy, it may be used whenever either employer or union has committed ULP's which, under circumstances, render any final order of Board meaningless or so devoid of force that remedial purposes of ALRA will be frustrated.
ALRB v. TEX-CAL LAND MANAGEMENT, INC. (1985) 165 Cal.App.3d 429

500.04 Traditional equitable standards are properly considered in 1160.4 injunctions; however, traditional idea of irreparable harm or harm for which there is no adequate legal remedy is met when employer's practices may frustrate purposes of ALRA.
ALRB v. TEX-CAL LAND MANAGEMENT, INC. (1985) 165 Cal.App.3d 429

500.04 In proceedings under 1160.4, trial court is not bound by the recommendation of ALRB, but retains discretion to issue any order that is "just and proper" under circumstances. ALRB v. CALIFORNIA COASTAL FARMS, INC. (1982) 31 Cal.3d 469

500.04 Although superior court is guided by ALRB's judgment in 1160.4 proceedings, court may consider any relevant fact, including nature of ULP, its probable effect on status quo and statutory objectives, relief sought, timing of the request, circumstances of the parties, and probable effect of order on parties.
ALRB v. CALIFORNIA COASTAL FARMS, INC. (1982) 31 Cal.3d 469

500.04 In section 1160.4 proceedings, "reasonable cause" prong is met if ALRB's theory is neither insubstantial nor frivolous.
ALRB v. CALIFORNIA COASTAL FARMS, INC. (1982) 31 Cal.3d 469

500.04 The Superior Court's decision not to bar all strike access was clearly related to a major purpose of the

ALRA--to "ensure peace in the agricultural field."
ALRB v. CALIFORNIA COASTAL FARMS, INC. (1982) 31 Cal.3d 469

500.04 Superior court finding that Board had "reasonable cause" will be upheld on appeal unless clearly erroneous.
ALRB v. CALIFORNIA COASTAL FARMS, INC. (1982) 31 Cal.3d 469

500.04 In 1160.4 proceeding, trial court must determine (1) whether reasonable cause exists and (2) whether injunction is reasonably necessary to preserve status quo and prevent frustration of remedial purposes of Act.
ALRB v. CALIFORNIA COASTAL FARMS, INC. (1982) 31 Cal.3d 469

500.04 In 1160.4 injunction proceedings, "status quo" has been defined as the "last uncontested status which preceded the pending controversy."
ALRB v. RULINE NURSERY CO. (1981) 115 Cal.App.3d 1005

500.04 Under 1160.4, it is not superior court's province to decide whether ALRB's theory would eventually prevail, but only that it is neither insubstantial nor frivolous. This is all that is required by "reasonable cause" aspect of two-prong test.
ALRB v. RULINE NURSERY CO. (1981) 115 Cal.App.3d 1005

500.04 The standard for issuance of preliminary injunctions under 1160.4 is the same two-fold test for granting temporary relief under section 10(j) of the NLRA: first, is there reasonable cause to believe the alleged ULP's actually occurred; and second, is the relief requested "reasonably necessary to preserve the status quo or to prevent frustration of the basic remedial purposes of the Act." In the words of the statute, the requested relief must be "just and proper".
ALRB v. RULINE NURSERY CO. (1981) 115 Cal.App.3d 1005

500.04 "Just and proper" standard for injunctive relief is met if there exists a probability that the purposes of Act will be frustrated, or if it is reasonable to believe that administrative procedures will be rendered meaningless or that efficacy of Board's final order may be nullified.
ALRB v. RULINE NURSERY CO. (1981) 115 Cal.App.3d 1005

500.04 In determining whether to issue injunctive relief under 1160.4, superior court must determine whether such relief is "just and proper," which requires the exercise of discretion.
ALRB v. LAFLIN & LAFLIN (1979) 89 Cal.App.3d 651

500.04 In 1160.4 proceeding, court must issue injunction where Board shows it had reasonable cause to believe that ULP had been committed and that injunctive relief would be just and proper. Court is not empowered to decide merits

of ULP charge, and Board is not required to prove that ULP was actually committed.
ALRB v. LAFLIN & LAFLIN (1979) 89 Cal.App.3d 651

500.04 No showing that failure to provide employee lists would frustrate purposes of Act where, without lists, union was able to file a valid petition for certification.
ALRB v. LAFLIN & LAFLIN (1979) 89 Cal.App.3d 651

500.04 In 1160.4 proceedings, superior court must consider nature of ULP (whether it is violent or coercive, ongoing or single act), its probable effect on status quo, relief sought, timing, circumstances of parties, and effects of order on parties.
ALRB v. LAFLIN & LAFLIN (1979) 89 Cal.App.3d 651

500.04 ALRB undermined its own argument regarding the urgency of its need for injunctive relief by waiting over six weeks from filing of charges to file for injunction.
ALRB v. LAFLIN & LAFLIN (1979) 89 Cal.App.3d 651

500.04 Court properly denied requests for employee lists where, due to passage of time, lists would no longer be useful.
ALRB v. LAFLIN & LAFLIN (1979) 89 Cal.App.3d 651

500.04 Superior Court abused its discretion by refusing to order employer to comply with ALRB regulations as to pre-petition employee lists, since court erroneously based its refusal primarily on conclusion that Board's regulation 20910 was invalid. (Dissent by Tamura, J.)
ALRB v. LAFLIN & LAFLIN (1979) 89 Cal.App.3d 651

500.04 Trial court properly denied injunction request regarding expanded access where no evidence was submitted that union had filed notice of intent to take access within two months or that respondents had refused to allow such access.
ALRB v. LAFLIN & LAFLIN (1979) 89 Cal.App.3d 651

500.05 Who May Institute Proceedings; Parties; Intervention

500.06 Defenses in General; Dismissal of Board Complaint; Moot Controversy

500.06 Rehiring of seniority crew workers before hearing on 1160.4 injunction does not necessarily end pattern of ULP's involved, because employer may have rehired workers just to avoid injunction.
ALRB v. TEX-CAL LAND MANAGEMENT, INC. (1985) 165 Cal.App.3d 429

500.06 Injunctive relief is appropriate even where offending acts ceased at time or after the ULP charge was made, because trial court may infer that ceasing was caused by filing of ULP charge.
ALRB v. TEX-CAL LAND MANAGEMENT, INC. (1985) 165 Cal.App.3d 429

500.06 Despite potential mootness of underlying labor dispute by the time the appellate court can act, alternative writ granted where issues are of broad public interest, likely to recur, and call for prompt resolution.
BERTUCCIO v. SUPERIOR COURT (1981) 118 Cal.App.3d 363

500.07 Board Orders and Certifications, Conclusiveness

500.07 Superior Court was without authority to decide merits of ULP, since that authority is exclusively in ALRB under 1160.9.
CARIAN v. ALRB (1984) 36 Cal.3d 654

500.07 Under ALRA, order certifying bargaining representative is not final order of ALRB which may be judicially reviewed.
PERRY FARMS INC. v. ALRB (1978) 86 Cal.App.3d 448

500.07 Only way employer may obtain judicial review of election and certification is to refuse to bargain, be found guilty of ULP, and obtain review of election and certification in course of review of ULP decision.
PERRY FARMS INC. v. ALRB (1978) 86 Cal.App.3d 448

500.08 Evidence and Burden of Proof; Discovery; Subpoenas

500.08 In 1160.4 proceedings, a reviewing court begins with presumption that record contains evidence supporting lower court's findings of fact.
ALRB v. TEX-CAL LAND MANAGEMENT, INC. (1985) 165 Cal.App.3d 429

500.08 When appellant claims that evidence is insufficient below, it must demonstrate that there is no substantial evidence to support challenged findings. In doing so, it must set forth in its brief all material evidence on point and not merely its own evidence. Unless this is done, error is deemed to be waived.
ALRB v. TEX-CAL LAND MANAGEMENT, INC. (1985) 165 Cal.App.3d 429

500.08 Though events prior to 6-month statute-of-limitations period cannot constitute ULP's in and of themselves, evidence of such events is admissible to shed light on later conduct or on motive for such later conduct.
ALRB v. RULINE NURSERY CO. (1981) 115 Cal.App.3d 1005

500.08 When determining whether reasonable cause exists in 1160.4 cases, if several inferences may be drawn from evidence, court must accept the inference most favorable to Board's theory.
ALRB v. RULINE NURSERY CO. (1981) 115 Cal.App.3d 1005

500.08 In 1160.4 proceedings, court does not determine merits of ULP charges, but merely weighs them on the substantial/frivolous balance scale. Board has minimal burden of proof in establishing "reasonable cause."

ALRB v. RULINE NURSERY CO. (1981) 115 Cal.App.3d 1005

500.08 Under 1160.4, it is not superior court's province to decide whether ALRB's theory would eventually prevail, but only that it is neither insubstantial nor frivolous. This is all that is required by "reasonable cause" aspect of two-prong test.
ALRB v. RULINE NURSERY CO. (1981) 115 Cal.App.3d 1005

500.08 Scope of judicial inquiry limited in subpoena enforcement proceedings under 1151 to whether administrative subpoena was regularly issued and records sought are relevant to administrative inquiry and identified with sufficient particularity, unless subpoena is overbroad or unreasonably burdensome or oppressive.
ALRB v. LAFLIN & LAFLIN (1979) 89 Cal.App.3d 651

500.08 No showing that failure to provide employee lists would frustrate purposes of Act where, without lists, union was able to file a valid petition for certification.
ALRB v. LAFLIN & LAFLIN (1979) 89 Cal.App.3d 651

500.08 In 1160.4 proceedings, superior court must consider nature of ULP (whether it is violent or coercive, ongoing or single act), its probable effect on status quo, relief sought, timing, circumstances of parties, and effects of order on parties.
ALRB v. LAFLIN & LAFLIN (1979) 89 Cal.App.3d 651

500.08 ALRB undermined its own argument regarding the urgency of its need for injunctive relief by waiting over six weeks from filing of charges to file for injunction.
ALRB v. LAFLIN & LAFLIN (1979) 89 Cal.App.3d 651

500.09 Scope and Duration of Injunction; Dissolution

500.09 In 1160.4 case concerning bargaining violations, court's focus should be not on remedies ultimately available through ALRB, but on likelihood of harm to bargaining process in interim.
ALRB v. TEX-CAL LAND MANAGEMENT, INC. (1985) 165 Cal.App.3d 429

500.09 Preservation and restoration of status quo are appropriate considerations in granting 1160.4 temporary relief pending determination of issues by Board. Status quo is defined as last uncontested status which preceded pending controversy.
ALRB v. TEX-CAL LAND MANAGEMENT, INC. (1985) 165 Cal.App.3d 429

500.09 Requirement that employer hire workers is within superior court's authority under 1160.4 because trial court is not limited to same remedial function as ALRB.
ALRB v. TEX-CAL LAND MANAGEMENT, INC. (1985) 165 Cal.App.3d 429

500.09 Trial court retains discretion to issue any order that is just and proper under circumstances, and is not bound by recommendation of NLRB or ALRB. Traditional equitable considerations come into play during this part of test.
ALRB v. TEX-CAL LAND MANAGEMENT, INC. (1985) 165 Cal.App.3d 429

500.09 Trial court reasonably balanced interests of employer (in avoiding property damage and interruption of operations), nonstrikers (in avoiding violence, coercion, or union activity) and strikers (in informing nonstrikers and public about strike), in limiting the time, place and manner of picketing and on-site access.
ALRB v. CALIFORNIA COASTAL FARMS, INC. (1982) 31 Cal.3d 469

500.09 In 1160.4 injunction proceedings, "status quo" has been defined as the "last uncontested status which preceded the pending controversy."
ALRB v. RULINE NURSERY CO. (1981) 115 Cal.App.3d 1005

500.09 1160.4 was not intended as means for interim enforcement of remedial or compensatory aspects of Board orders pending finality; rather, that section was intended to put an end to conduct, continuing in nature, which Board reasonably believes constitutes ULP and which threatens to frustrate purposes of ALRA.
ALRB v. LAFLIN & LAFLIN (1979) 89 Cal.App.3d 651

500.09 Trial court properly denied injunction request regarding expanded access where no evidence was submitted that union had filed notice of intent to take access within two months or that respondents had refused to allow such access.
ALRB v. LAFLIN & LAFLIN (1979) 89 Cal.App.3d 651

500.09 Trial court properly denied requests for injunctive relief that would be compensatory in effect, since employer was under no pre-existing duty to give bi-weekly updated employee lists.
ALRB v. LAFLIN & LAFLIN (1979) 89 Cal.App.3d 651

500.10 Appeals; Stay Pending Appeal; Persons Entitled to Review

500.10 Question whether 1160.4 injunction is automatically stayed on appeal is procedural issue, so NLRB precedent does not apply under 1148.
ALRB v. SUPERIOR COURT (SAM ANDREWS' SONS) (1983) 149 Cal.App.3d 709

500.10 An "action" is distinguished from "special proceeding" by remedy sought. Board's request for injunction, though temporary, is essentially an action in equity, and the "uniqueness" of section 1160.4 does not make it "special" for purpose of this distinction.
ALRB v. SUPERIOR COURT (SAM ANDREWS' SONS) (1983) 149 Cal.App.3d 709

500.10 Superior Court injunction proceeding under 1160.4 is an "equitable action," and, to extent the injunction is mandatory, any injunction is stayed pending appeal under CCP section 917.
ALRB v. SUPERIOR COURT (SAM ANDREWS' SONS) (1983) 149 Cal.App.3d 709

500.10 Injunction is mandatory, even if couched in "cease and desist" language, if practical effect is to require employer to discharge employee from continuing employment.
ALRB v. SUPERIOR COURT (SAM ANDREWS' SONS) (1983) 149 Cal.App.3d 709

500.10 Charging party is "aggrieved" by court order granting access to its premises and therefore has standing to appeal the injunction.
ALRB v. CALIFORNIA COASTAL FARMS, INC. (1982) 31 Cal.3d 469

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

500.11 Findings of Court, Conclusiveness on ALRB

500.12 Contempt Proceedings

500.13 Standard of Review on Appeal

500.13 When appellant claims that evidence is insufficient below, it must demonstrate that there is no substantial evidence to support challenged findings. In doing so, it must set forth in its brief all material evidence on point and not merely its own evidence. Unless this is done, error is deemed to be waived.
ALRB v. TEX-CAL LAND MANAGEMENT, INC. (1985) 165 Cal.App.3d 429

500.13 In 1160.4 proceedings, a reviewing court begins with presumption that record contains evidence supporting lower court's findings of fact.
ALRB v. TEX-CAL LAND MANAGEMENT, INC. (1985) 165 Cal.App.3d 429

500.13 Superior court finding that Board had "reasonable cause" will be upheld on appeal unless clearly erroneous.

ALRB v. CALIFORNIA COASTAL FARMS, INC. (1982) 31 Cal.3d 469

500.13 On appeal, superior court's finding of "reasonable cause" under 1160.4 will stand unless there was "clear error." ALRB v. RULINE NURSERY CO. (1981) 115 Cal.App.3d 1005

501.00 PRELIMINARY RELIEF AGAINST BOARD OR GENERAL COUNSEL

501.01 In General - Standard for Judicial Intervention

501.01 Board is administrative agency over which appellate courts exercise original jurisdiction in proceeding in nature of mandamus.
SANDRINI BROTHERS v. ALRB (1984) 156 Cal.App.3d 878

501.01 Automatic stay provision of federal Bankruptcy Code (11 U.S.C.A. sec. 362) does not prevent ALRB from conducting proceedings to determine whether ULP was being committed or proceedings to establish claims of employees which were subject of such ULP.
IN RE KAWANO, INC. (S.D. Cal., 1983) 27 B.R. 855

501.01 ALRB, not Bankruptcy Court, has expertise to establish amount of backpay owed to victims of ULP's. Court can determine allowability or priority of such a claim once it is filed.
IN RE KAWANO, INC. (S.D. Cal., 1983) 27 B.R. 855

501.01 Injunction staying ALRB's ULP proceedings pending bankruptcy action would be contrary to public policy.
IN RE KAWANO, INC. (S.D. Cal., 1983) 27 B.R. 855

501.01 ALRB ULP and compliance proceedings will not be enjoined under sec. 105 of federal Bankruptcy Code (11 U.S.C.A. sec. 105) where plaintiff has failed to show: (1) that plaintiff will otherwise suffer irreparable harm; (2) that plaintiff will probably prevail on merits; (3) that equities balance in favor of such relief; and (4) that injunction will further public interest.
IN RE KAWANO, INC. (S.D. Cal., 1983) 27 B.R. 855

501.01 General rule is that judicial intervention in Board proceedings is inappropriate, since Legislature intended labor problems to be initially handled by expert agency.
CALIFORNIA COASTAL FARMS v. DOCTOROFF (1981) 117 Cal.App.3d 15

501.01 Determination of steps necessary to conduct elections fairly is matter entrusted to Board alone.
SAN DIEGO NURSERY CO. v. ALRB (1979) 100 Cal.App.3d 128

501.01 Judicial review is not available until the Board issues a final order. The Kyne exception to that rule only applies where the Board's action is patently without legality and in disregard of a specific and unambiguous

statutory directive.
CADIZ v. ALRB (1979) 92 Cal.App.3d 365 (Hopper Dissent.)

501.01 Standing: An employer had sufficient beneficial interest in decertification process to file petition for writ of mandate, challenging ALRB's dismissal of election petition as untimely.
CADIZ v. ALRB (1979) 92 Cal.App.3d 365

501.01 Judicial review is not available until Board issues final order. The Kyne exception to that rule only applies where Board's action is patently without legality and in disregard of specific and unambiguous statutory directive.
CADIZ v. ALRB (1979) 92 Cal.App.3d 365 (Hopper Dissent.)

501.01 Employer cannot obtain immediate review of Board's decision certifying union; it can only obtain review of such election matters after being found guilty of refusing to bargain -- a "technical refusal."
J. R. NORTON CO. v. ALRB (1979) 26 Cal.3d 1

501.01 Board order dismissing election objections without hearing on grounds of insufficiency of declarations is factual determination and is not subject to intermediate review under Leedom v. Kyne.
DESERT SEED COMPANY, INC. v. BROWN (1978) 96 Cal.App.3d 69

501.01 In federal precedent under NLRA and in California cases under ALRA, normal rule is nonreviewability of intermediate Board decisions unless order falls within narrow exceptions noted in Belridge Farms v. ALRB (1978) 21 Cal.3d 551
DESERT SEED COMPANY, INC. v. BROWN (1978) 96 Cal.App.3d 69

501.01 Mandamus is available to review General Counsel's erroneous interpretation of statute; however, whether a particular act constitutes unlawful restraint or coercion is question of fact, not matter of statutory construction, and General Counsel's exercise of discretion is not subject to extraordinary writ.
BELRIDGE FARMS v. ALRB (1978)
21 Cal.3d 551

501.01 General Counsel's refusal to issue complaint is immune from judicial review except where there is a colorable claim of violation of constitutional right, an act in excess of specific grant of authority, or an erroneous construction of applicable statute.
BELRIDGE FARMS v. ALRB (1978) 21 Cal.3d 551

501.01 General Counsel's refusal to issue complaint is not a final order of Board under 1160.8 and therefore is not reviewable. BELRIDGE FARMS v. ALRB (1978) 21 Cal.3d 551

501.01 Non-final order of Board may be reviewed only if (1) fact of statutory violation cannot seriously be argued and deviation resulted in deprivation of 'right' guaranteed by the Act, or (2) constitutional rights of complaining party have been violated. Under exception (2) above, there must be substantial showing that Board action has violated due process or some other constitutional right. Further, continued validity of exception (2) is questionable.
UNITED FARM WORKERS v. SUPERIOR COURT (MT. ARBOR) (1977) 72 Cal.App.3d 268

501.01 NLRA precedent barring courts from issuing declaratory relief in labor-management disputes held applicable to ALRA. UNITED FARM WORKERS v. SUPERIOR COURT (MT. ARBOR) (1977) 72 Cal.App.3d 268

501.01 If any party involved in alleged ULP could first obtain declaratory relief in superior court instead of from Board, work of Board would be effectively impaired, its decisions similar in impression to that of tinkling triangle practically unnoticed in triumphant blare of trumpets. Result would substitute court for Board as exclusive adjudicative body established under Act. That would fly in face of legislative will.
UNITED FARM WORKERS v. SUPERIOR COURT (MT. ARBOR) (1977) 72 Cal.App.3d 268

501.01 Exceptions to general rule of judicial non-intervention occur when (1) questions involve national interest because of their international complexion; (2) constitutional rights are involved; or (3) there is a plain violation of an unambiguous and mandatory provision of the statute which would result in the deprivation of a right guaranteed by the Act.
NISHIKAWA FARMS, INC. v. MAHONY (1977) 66 Cal.App.3d 781

501.01 Leedom v. Kyne exception is very limited, applicable only where Board is shown to be in clear defiance of the statute. NISHIKAWA FARMS, INC. v. MAHONY (1977) 66 Cal.App.3d 781

501.01 Supreme Court has original jurisdiction to compel superior court by writ of mandate to deny a request for injunction where superior court was without jurisdiction to enjoin Board regulations.
ALRB v. SUPERIOR COURT (PANDOL) (1976) 16 Cal.3d 392

501.01 Superior Court is without jurisdiction to enjoin ALRB from exercising its statutory authority to make regulations, unless regulation or underlying statute is unconstitutional or otherwise invalid.
ALRB v. SUPERIOR COURT (PANDOL) (1976) 16 Cal.3d 392

501.02 Clear Violation of the Statute Shown

501.02 Showing of interest requirements of 1156.3(a) do not

create any employer right not to have election. Neither timeliness nor location of showing of interest are jurisdictional prerequisites to election, and neither issue is subject to direct judicial review.
THOMAS S. CASTLE v. ALRB (1983) 140 Cal.App.3d 668

501.02 In Leedom v. Kyne, NLRB acted in direct violation of specific NLRA provision, and board did not contest claim that it acted in excess of its jurisdiction. The Leedom v. Kyne exception is a narrow one, and even erroneous assertion of authority is insufficient to invoke it.
THOMAS S. CASTLE v. ALRB (1983) 140 Cal.App.3d 668

501.02 Court is without jurisdiction to compel ALRB to dismiss election petition by writ of mandate unless fact of violation of statute cannot seriously be argued and deviation resulted in deprivation of right guaranteed by Act.
THOMAS S. CASTLE v. ALRB (1983) 140 Cal.App.3d 668

501.02 Where statute mandates specific finding before Board can take action, failure to make such a finding renders administrative action fatally defective.
YAMADA BROS. v. ALRB (1979) 99 Cal.App.3d 112

501.02 Despite the use of word "shall" in 1156.7(c), Act is not so clearly mandatory as to timeliness of election petitions that there was no room for reasonable people to differ as to its interpretation.
CADIZ v. ALRB (1979) 92 Cal.App.3d 365 (Hopper Dissent.)

501.02 Judicial intervention in ALRB non-final order was appropriate where Board violated express provision of statue regarding timeliness of election petition, and uncertainty of election process subjected employer to blind choice as to whether to bargain when the contract expired.
CADIZ v. ALRB (1979) 92 Cal.App.3d 365

501.02 Mere act that petitioner raises legal, rather than factual, question does not invoke Leedom v. Kyne exception. Petitioner must show undisputable statutory violation and deprivation of right guaranteed by Act.
RADOVICH v. ALRB (1977) 72 Cal.App.3d 36

501.02 Whether there was evidence to support Board's dismissal of election objections without hearing is factual question which does not fall within Leedom v. Kyne exception.
RADOVICH v. ALRB (1977) 72 Cal.App.3d 36

501.02 Objection based on union's showing of interest is not reviewable by appellate court and does not fall within Leedom v. Kyne exception for intermediate review.
RADOVICH v. ALRB (1977) 72 Cal.App.3d 36

501.02 Leedom v. Kyne exception not applicable where Board has

committed no flagrant violation of statute.
RADOVICH v. ALRB (1977) 72 Cal.App.3d 36

501.03 Adequacy Of Remedy Under ALRA; Exhaustion Of Administrative Remedies

501.03 Inconvenience and expense of defending against charges in ALRB ULP or compliance proceedings do not constitute irreparable injury for purposes of injunction under Bankruptcy Code.
IN RE KAWANO, INC. (S.D. Cal., 1983) 27 B.R. 855

501.03 Court without jurisdiction to review Board's ALJ disqualification procedures by writ of mandamus, since adequate remedy existed under section 1160.8 review. Employer must exhaust administrative remedies.
CALIFORNIA COASTAL FARMS v. DOCTOROFF (1981) 117 Cal.App.3d 15

501.03 In residential picketing case, employer had to wait until Board issued final order on ULP, then proceed under section 1160.8. Mandamus was not available, since adequate remedy exists under Act.
CALIFORNIA COASTAL FARMS v. ALRB (1980) 111 Cal.App.3d 734

501.03 Neither statute nor regulations provide any avenue for courts to review ALRB orders extending certification. Employer cannot obtain indirect review thereof by refusing to bargain. YAMADA BROS. v. ALRB (1979) 99 Cal.App.3d 112

501.03 Judicial intervention in ALRB non-final order was appropriate where Board violated an express provision of the statute regarding the timeliness of an election petition and the uncertainty of the election process subjected the employer to a blind choice as to whether to bargain when the contract expired.
CADIZ v. ALRB (1979) 92 Cal.App.3d 365

501.03 Court of Appeal determined that no adequate remedy at law existed when it granted an alternative writ of mandate.
CADIZ v. ALRB (1979) 92 Cal.App.3d 365

501.03 Though employer may suffer some hardship in having to seek review by refusing to bargain and running risk of ULP charge, Legislature has mandated that remedy--and accompanying hardship--do not constitute "irreparable injury".
DESERT SEED COMPANY, INC. v. BROWN (1978) 96 Cal.App.3d 69

501.03 Legislature intended to foreclose actions for declaratory relief when issue could be raised in ULP proceeding. Under ALRA, only way judicial review of Board's decisions can be obtained is through ULP proceeding.

UNITED FARM WORKERS v. SUPERIOR COURT (MT. ARBOR) (1977) 72 Cal.App.3d 268

501.03 Possibility of being subject to ULP finding, and attendant expense of administrative litigation, do not constitute "irreparable injury" justifying court intervention. Legislature concluded that inconvenience of deferring judicial review is preferable to potential chaos created by permitting initial jurisdiction in courts.
UNITED FARM WORKERS v. SUPERIOR COURT (MT. ARBOR) (1977) 72 Cal.App.3d 268

501.03 Orders in certification proceedings are not directly reviewable in courts, but only become reviewable by resistance to a ULP charge, at which time various issues involved in the certification may be reviewed.
NISHIKAWA FARMS, INC. v. MAHONY (1977) 66 Cal.App.3d 781

501.03 *Leedom v. Kyne* exception inapplicable where employer has remedy of indirect judicial review through technical refusal to bargain, as employer in no different position than any other which claims that the Board erred in its certification decision.
ALRB v. SUPERIOR COURT (Gallo Vineyards, Inc.) (1996) 48 Cal.App.4th 1489 [56 Cal.Rptr.2d 409]

501.04 Standing and Other Issues of Justiciability

501.04 Elemental principles of justice require that parties to administrative proceedings retain their status throughout final court review, since fundamental issues in litigation remain the same.
YAMADA BROS. v. ALRB (1979) 99 Cal.App.3d 112

501.04 Employer has beneficial interest in mandamus proceeding, where employer was named as party to and appeared in ALRB's extension-of-certification proceedings, and where Board's extension of certification imposed absolute bargaining duty on employer and conferred on union certain rights vis-à-vis employer.
YAMADA BROS. v. ALRB (1979) 99 Cal.App.3d 112

501.04 Standing: An employer had sufficient beneficial interest in the decertification process to file a petition for writ of mandate, challenging the ALRB's dismissal of an election petition as untimely.
CADIZ v. ALRB (1979) 92 Cal.App.3d 365

501.04 Employer and individual employee had no standing to seek writ of mandate against Board for refusal to allow decertification election, since their obligations were not affected by the Board's nonfinal order.
CADIZ v. ALRB (1979) 92 Cal.App.3d 365 (Hopper Dissent.)

501.05 Form of Relief: Mandate, Prohibition, Injunction

502.00 APPELLATE COURT REVIEW AND ENFORCEMENT OF BOARD ORDERS

502.01 In General

502.01 Unilateral settlement final with respect to only 1 of 11 charging parties, who did not seek 1160.8 review of settlement, and Board retains jurisdiction to determine acquiescing party's backpay entitlement under settlement despite pending court review and remand to Board of order approving settlement.
UFW/CERVANDO PEREZ, 11 ALRB No. 33

502.01 By agreeing to a settlement, the union and the Board foreclosed adjudication of the original dispute and thus rendered irrelevant defenses that might have been asserted in proceedings on that dispute.
GILES BREAUX v. ALRB (1990) 217 Cal.App.3d 730

502.01 An appellate court is guided in its review of orders of the ALRB by decisions under the National Labor Relations Act on which the ALRA was modeled.
VESSEY & COMPANY, INC. v. ALRB (1989) 210 Cal.App.3d 629

502.01 Under the Agricultural Labor Relations Act, an employer may not obtain immediate judicial review of the Board's decision certifying a union. An employer can seek judicial review only by refusing to bargain with the union.
George Arakelian Farms, Inc. v. ALRB (1989) 49 Cal.3d 1279

502.01 ALRA provides for judicial review in state Court of Appeal, which can modify, enforce, or set aside Board's order, or summarily deny petition for review. However, Board findings are conclusive if supported by substantial evidence.
MARTORI BROS. DISTRIBUTORS v. JAMES-MASSENGALE (9th Cir., 1986) 781 F.2d 1349, modified 791 F.2d 799

502.01 Administrative agency cannot legally alter or amend, or enlarge or impair scope of statute it is interpreting.
ADAMEK & DESSERT, INC. v. ALRB (1986) 178 Cal.App.3d 970

502.01 Court of Appeal may summarily deny petition for review of ALRB order without explanation.
ADAMEK & DESSERT, INC. v. ALRB (1986) 178 Cal.App.3d 970

502.01 In defining its approaches to calculating peak employment, Board should not develop procedures to deal with purely hypothetical problems.
ADAMEK & DESSERT, INC. v. ALRB (1986) 178 Cal.App.3d 970

502.01 No award of attorney's fees, despite Court's recognition of sham appeal, where issue of appealability was novel and warranted hearing.

ALRB v. ABATTI PRODUCE, INC. (1985) 168 Cal.App.3d 504

502.01 1160.9 makes ALRA exclusive method of redressing ULP's; therefore, 1160.8 is exclusive avenue for judicial review of Board decisions.
ALRB v. ABATTI PRODUCE, INC. (1985) 168 Cal.App.3d 504

502.01 1160.8 allows for petition for review of ALRB decision within 30 days of issuance. The Court of Appeal may summarily deny petition.
ALRB v. ABATTI PRODUCE, INC. (1985) 168 Cal.App.3d 504

502.01 Due process does not require oral argument in all cases.
ALRB v. ABATTI PRODUCE, INC. (1985) 168 Cal.App.3d 504

502.01 Grounds for review of ALRB decision are (1) error of law, (2) lack of procedural soundness, or (3) lack of substantial evidence.
ALRB v. ABATTI PRODUCE, INC. (1985) 168 Cal.App.3d 504

502.01 Review of ALRB decisions by Court of Appeal is within that Court's original jurisdiction to review extraordinary writs of mandate. Summary denial by Court is therefore a function of the Court's discretionary power and does not necessarily indicate constitutional judicial power in the ALRB.
ALRB v. ABATTI PRODUCE, INC. (1985) 168 Cal.App.3d 504

502.01 Legislative intent to make 1160.8 exclusive avenue of judicial review is evident in shortened time limits, option of summary denial, and abbreviated superior court review. Appeal of superior court enforcement would thwart overall intent--to make review speedy and expeditious.
ALRB v. ABATTI PRODUCE, INC. (1985) 168 Cal.App.3d 504

502.01 Employer may not reargue appropriateness of make-whole award in petition for review of computation of actual losses, since order became final when underlying Board decision finding ULP was upheld.
HOLTVILLE FARMS, INC. v. ALRB (1985) 168 Cal.App.3d 388

502.01 Although court can summarily deny review, every petition is first carefully considered by way of memorandum considered and modified by each justice.
HOLTVILLE FARMS, INC. v. ALRB (1985) 168 Cal.App.3d 388

502.01 District courts of appeal are not required to follow each other's decisions, and employer was reasonable in pursuing legal theory in 4th District after it was rejected in 5th District.
GEORGE ARAKELIAN FARMS, INC. v. ALRB (1985) 40 Cal.3d 654

502.01 There is strong public policy in favor of hearing cases on their merits and against depriving appeal rights on basis of technical noncompliance with matters of form.
UFW v. ALRB (ADMIRAL PACKING) (1985) 37 Cal.3d 912

502.01 Enforcement of initial Board order in Court of Appeal does not convert order to money judgment for interest rate purposes, since that would allow petitioners to obtain lower interest rates even when they lost, and would encourage more petitions.
SANDRINI BROTHERS v. ALRB (1984) 156 Cal.App.3d 878

502.01 ALRB proceedings are neither civil actions nor proceedings known to common law.
SANDRINI BROTHERS v. ALRB (1984) 156 Cal.App.3d 878

502.01 Court declined to address petitioner's argument where issue was spuriously raised without citation to authority.
PASILLAS v. ALRB (1984) 156 Cal.App.3d 312

502.01 Right to judicial review is guaranteed by 1160.8 and is triggered by filing of petition for review.
SUPERIOR FARMING CO. v. ALRB (1984) 151 Cal.App.3d 100

502.01 Judicial review procedures of 1160.8 exist to insure that Board operates within parameters of statutory labor policy.
SUPERIOR FARMING CO. v. ALRB (1984) 151 Cal.App.3d 100

502.01 Court of Appeal may grant review of some, but not all, issues raised by a petition for review, in absence of objection from parties.
NISH NOROIAN FARMS v. ALRB (1984) 35 Cal.3d 726

502.01 A court of appeal must consider ALRB record and petitioner's points and authorities before summarily denying petition for review of Board decision under 1160.8.
TEX-CAL LAND MANAGEMENT, INC. v. ALRB (1979) 24 Cal.3d 335

502.01 Elemental principles of justice require that parties to administrative proceedings retain their status throughout final court review, since fundamental issues in litigation remain the same.
YAMADA BROS. v. ALRB (1979) 99 Cal.App.3d 112

502.01 Neither statute nor regulations provide any avenue for courts to review ALRB orders extending certification. Employer cannot obtain indirect review thereof by refusing to bargain.
YAMADA BROS. v. ALRB (1979) 99 Cal.App.3d 112

502.01 1158 provides that record of election proceedings and investigations be included in record which Board ultimately files with Court of Appeal, if such election matters are at issue in ULP proceedings. However, 1158 does not provide for inclusion of extension of certification proceedings.
YAMADA BROS. v. ALRB (1979) 99 Cal.App.3d 112

502.01 On review, courts must now assume more responsibility for reasonableness and fairness of labor board decisions. Reviewing courts must be influenced by feeling that they are not to abdicate conational judicial function. SUNNYSIDE NURSERIES, INC. v. ALRB (1979) 93 Cal.App.3d 922

502.01 California Rules of Court, rule 56(a), grants reviewing court discretion to accept filing of petition pursuant to 1160.8 without service. SUNNYSIDE NURSERIES, INC. v. ALRB (1979) 93 Cal.App.3d 922

502.01 Section 1156.7 clearly allows decertification or rival union petition anytime within last year of collective bargaining agreement, and Board exceeded its authority in fashioning a more limited period for the filing of such petitions. CADIZ v. ALRB (1979) 92 Cal.App.3d 365

502.01 Judicial opinion on matters not necessary to decision are advisory only and have no binding precedential value. ALRB v. LAFLIN & LAFLIN (1979) 89 Cal.App.3d 651

502.01 1160.8 differs significantly from sections 10(e) and (f) of NLRA. TEX-CAL LAND MANAGEMENT, INC. v. ALRB (1979) 24 Cal.3d 335

502.01 Scope of judicial review applicable to decisions of the Board is defined in 1160.8 which, after vesting review jurisdiction directly in the courts of appeal, provides in part that "The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive." PERRY FARMS INC. v. ALRB (1978) 86 Cal.App.3d 448

502.01 1160.8 is exclusive means of seeking review of ULP finding. BELRIDGE FARMS v. ALRB (1978) 21 Cal.3d 551

502.01 Sufficiency of showing of interest is never reviewable, since trial of that issue could violate secrecy of employees' choice regarding representation and since showing is not jurisdictional, but merely a step in administrative screening process whereby Board decides whether claim of representation warrants expense and effort of election. NISHIKAWA FARMS, INC. v. MAHONY (1977) 66 Cal.App.3d 781

502.01 Pursuant to a ruling of the Superior Court that the issuance of a decision was invalid because accomplished by means of "certificate of mailing" as authorized by Board regulations, but regulation inconsistent with express statutory language, Board reissues a prior final decision and order in accordance with strict statutory provisions ('1151.4(a)) and rules regulation invalid to the extent it fails to comport with statute. New

issuance date begins running of new 30-day period in order to grant Respondent a statutory right of appeal within meaning of section 1160.8.
CERTIFIED EGG (1994) 20 ALRB No. 1

501.01 Direct review of representation matters available only in narrow situations where there is a plain violation of an unambiguous and mandatory provision of the ALRA, the complaining party is deprived of a right issued to it by the statute, and indirect review through a ULP proceeding is unavailable or patently inadequate.
GALLO VINEYARDS, INC., 23 ALRB No. 7

501.01 Where review of election certification was available by the normal process of a technical refusal to bargain first before the Board and then in the court of appeal, Respondent failed to demonstrate the need for an extraordinary remedy in equity by its effort to seek direct review in the superior court.
GALLO VINEYARDS, INC., 23 ALRB No. 7

502.01 The Board concluded that the 60-day enforcement provision in ALRA section 1164.3, subdivision (f) was intended to apply only in cases where no review is sought in the Court of Appeal. In contrast, in matters where court review of the Board's order is sought, and the Court of Appeal issues a decision affirming the Board's order, it is not necessary to use the enforcement procedure set forth in section 1164.3, subdivision (f), as the Court's decision constitutes a judgment that can later be enforced through contempt or other enforcement proceedings in the appropriate court.
HESS COLLECTION WINERY, 35 ALRB No. 3

502.02 Conclusiveness of Board's Factual Findings; Substantial Evidence Test on Judicial Review

502.02 The burden of proving unlawful conduct is on the Board, and such conduct will not lightly be inferred. The standard of review is met, however, if there is relevant evidence in the record which a reasonable mind might accept in support of the findings.
VESSEY & COMPANY, INC. v. ALRB (1989) 210 Cal.App.3d 629

502.02 Substantial evidence, within the meaning of the rule that the Board's findings as to questions of fact are conclusive if supported by substantial evidence, is not established by just any evidence and is not shown by mere suspicions of unlawful motivation.
VESSEY & COMPANY, INC. v. ALRB (1989) 210 Cal.App.3d 629

502.02 Because the evaluation of the credibility of witnesses is a matter particularly for the trier of fact, the Board's findings based on the credibility of witnesses will not be disturbed unless the testimony is incredible or inherently improbable.
VESSEY & COMPANY, INC. v. ALRB (1989) 210 Cal.App.3d 629

502.02 If there is a plausible basis for the Board's factual decisions, the court is not concerned that contrary findings may seem equally reasonable or even more so.
VESSEY & COMPANY, INC. v. ALRB (1989) 210 Cal.App.3d 629

502.02 Those findings and conclusions that are within the Board's realm of expertise are entitled to special deference.
VESSEY & COMPANY, INC. v. ALRB (1989) 210 Cal.App.3d 629

502.02 In reviewing an order of the ALRB it is not permissible to determine the substantiality of evidence supporting the decision merely on the basis of evidence that in and of itself justified it, without taking into account contradictory evidence or evidence from which conflicting inferences could be drawn.
VESSEY & COMPANY, INC. v. ALRB (1989) 210 Cal.App.3d 629

502.02 The substantiality of evidence must take into account whatever in the record fairly detracts from its weight.
VESSEY & COMPANY, INC. v. ALRB (1989) 210 Cal.App.3d 629

502.02 In reviewing a decision and order of the Board, the court must abide by the Board's derivative inferences unless they are drawn from discredited testimony, or are irrational, tenuous or unwarranted.
VESSEY & COMPANY, INC. v. ALRB (1989) 210 Cal.App.3d 629

502.02 The Board's choice between two fairly conflicting views of the evidence will not be rejected unless the court cannot conscientiously find that the evidence supporting that choice is substantial.
VESSEY & COMPANY, INC. v. ALRB (1989) 210 Cal.App.3d 629

502.02 The Board, not the administrative law judge, is the statutory finder of fact.
VESSEY & COMPANY, INC. v. ALRB (1989) 210 Cal.App.3d 629

502.02 Substantial evidence supported a finding of the Board that an agricultural employer had not permanently replaced strikers before it received the strikers' offers to return to work where nothing in the record indicated that the employer's general manager had communicated to the replacement workers his subjective belief that they were permanent.
VESSEY & COMPANY, INC. v. ALRB (1989) 210 Cal.App.3d 629

502.02 The Board's findings as to questions of fact are conclusive if supported by substantial evidence on the record considered as a whole. The reviewing court does not reweigh the evidence.
VESSEY & COMPANY, INC. v. ALRB (1989) 210 Cal.App.3d 629

502.02 Because the Board's findings of fact must be supported on review by substantial evidence, the Board's findings may not rest on suspicion, surmise, mere implications, or

plainly incredible evidence.
George Arakelian Farms, Inc. v. ALRB (1989) 49 Cal.3d 1279

502.02 The credibility of witnesses is particularly for the determination of the Board and is not reviewable by the court unless the testimony is incredible on its face or inherently improbable.
PAUL W. BERTUCCIO v. ALRB (1988) 202 Cal.App.3d 1369

502.02 In evaluating the sufficiency of evidence, a reviewing court is obliged to assess the entire record. The substantiality of evidence must take into account whatever in the record fairly detracts from its weight.
PAUL W. BERTUCCIO v. ALRB (1988) 202 Cal.App.3d 1369

502.02 A finding by the Board that an employer's failure to rehire a crew after a layoff constituted an unfair labor practice in violation of Labor Code section 1153, subdivision (a) and (c), was not supported by substantial evidenced, where, though the Board found the entire 30-person crew was not recalled, testimony by three workers about their reemployment efforts related only to them, the Board ignored evidence of rehire of a fourth employee, and no evidence was introduced to show any other member of the crew sought or was refused rehire.
J. R. NORTON CO. v. ALRB (1987) 192 Cal.App.3d 874

502.02 Although in matters of credibility of witnesses, the finder of fact will only be reversed in exceptional circumstances, a finding by the Board that an agricultural employer threatened an employee with discharge because of union activities was not supported by substantial evidence and was annulled.
J. R. NORTON CO. v. ALRB (1987) 192 Cal.App.3d 874

502.02 The Board's findings are entitled to respect but they must nevertheless be set aside when the record clearly prevents the Board's decision from being justified by a fair estimate of the worth of the testimony of the witnesses or its informed judgment on matters within its special competence or both.
J. R. NORTON CO. v. ALRB (1987) 192 Cal.App.3d 874

502.02 A court is required to accept the Board's credibility resolutions and any derivative findings unless the Board has chosen to credit testimony that is incredible or inherently improbable.
J. R. NORTON CO. v. ALRB (1987) 192 Cal.App.3d 874

502.02 The Board's finding that an agricultural employer's refusal to rehire two employees resulted from their union activities and violated Labor Code section 1153, subdivisions, (a) and (c), was not supported by substantial evidence, and thus was annulled, where the record as a whole failed to demonstrate any causal relationship between the failure to rehire and the

protected activity, but rather rested entirely on inference and guesswork.
J. R. NORTON CO. v. ALRB (1987) 192 Cal.App.3d 874

502.02 In determining whether there is substantial evidence to support a finding by the Board, substantiality must be measured on the basis of the entire record.
J. R. NORTON CO. v. ALRB (1987) 192 Cal.App.3d 874

502.02 ALRA provides for judicial review in state Court of Appeal, which can modify, enforce, or set aside Board's order, or summarily deny petition for review. However, Board findings are conclusive if supported by substantial evidence. MARTORI BROS. DISTRIBUTORS v. JAMES-MASSENGALE (9th Cir., 1986) 781 F.2d 1349, modified 791 F.2d 799

502.02 Appellate court's review of ALRB factual findings is limited; if Board's findings are supported by substantial evidence they are conclusive.
F & P GROWERS ASSN. v. ALRB (1985) 172 Cal.App.3d 1127

502.02 Legislature accorded finality to expert decisions of ALRB that are supported by substantial evidence and made under procedural safeguards.
ALRB v. ABATTI PRODUCE, INC. (1985) 168 Cal.App.3d 504

502.02 Board decision must be upheld if there is plausible basis for Board's findings.
HOLTVILLE FARMS, INC. v. ALRB (1985) 168 Cal.App.3d 388

502.02 Board's practice of adopting the findings of ALJ "consistent with" or "as modified" in Board decision unfairly leaves reviewing court to determine upon which findings Board decision rests, and brings into question sufficiency of findings as required by 1160.3.
LAFLIN & LAFLIN v. ALRB (1985) 166 Cal.App.3d 368

502.02 Where party challenges Board finding but fails to support challenge with any argument or discussion, reviewing court must assume that finding is supported by substantial evidence.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

502.02 Because credibility is matter particularly for trier of fact, Board's credibility findings must stand unless testimony is incredible or inherently improbable.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

502.02 Substantial evidence test is not modified when Board and ALJ disagree; Board's finding must be upheld so long as it can point to substantial evidence supporting its inferences.
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[Appendix]

502.02 Board's findings will be upheld if supported by substantial evidence. Court does not reweigh evidence,

so long as there is plausible basis for Board's findings.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

502.02 Finding's within Board's realm of expertise are entitled to special deference.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

502.02 Whether particular interrogation tends to interfere with rights guaranteed by ALRA is determination within Board's expertise and must be affirmed if supported by substantial evidence.
KARAHADIAN RANCHES,INC. v. ALRB (1985) 38 Cal.3d 1

502.02 Board's makewhole order annulled, and case remanded for reconsideration of remedy, where Court annulled one of three bargaining-related violations found by Board.
WILLIAM DAL PORTO & SONS, INC. v. ALRB (1984) 163 Cal.App.3d 541

502.02 Board's findings are conclusive if supported by substantial evidence. Expertise of Board presumed, and inferences drawn from credited testimony must be upheld unless tenuous, unwarranted, or irrational.
WILLIAM DAL PORTO & SONS, INC. v. ALRB (1984) 163 Cal.App.3d 541

502.02 The question of what type of access is reasonable is for Board, and will not be interfered with if supported by record.
SAM ANDREWS' SONS v. ALRB (1984) 162 Cal.App.3d 923

502.02 Findings of ALRB with respect to questions of fact shall be conclusive if supported by evidence in the record as a whole.
SAM ANDREWS' SONS v. ALRB (1984) 162 Cal.App.3d 923

502.02 Courts will not reweigh evidence or rejudge credibility of witnesses if there is plausible basis for Board's decision. "Substantial evidence" test entitles Board to high degree of deference because of its special expertise.
CARDINAL DISTRIBUTING CO. v. ALRB (1984) 159 Cal.App.3d 758

502.02 Courts will not reweigh evidence or rejudge credibility of witnesses if there is plausible basis for Board's decision. "Substantial evidence" test entitles Board to high degree of deference because of its special expertise.
CARDINAL DISTRIBUTING CO. v. ALRB (1984) 159 Cal.App.3d 758

502.02 Board's credibility resolutions are binding absent testimony which is incredible or inherently improbable. Self-interest of a witness is simply one factor Board may consider. PASILLAS v. ALRB (1984) 156 Cal.App.3d 312

502.02 Reviewing court must uphold Board's finding if they are supported by substantial evidence; however, court is not a rubber stamp, and therefore must look at whole record and decide whether it can conscientiously determine that evidence in support of Board's decision is substantial.
CARL JOSEPH MAGGIO, INC. v. ALRB (1984) 154 Cal.App.3d 40

502.02 Substantial evidence does not mean "any" evidence, and is not established by mere suspicions of unlawful motive. Such findings regarding motive are not lightly to be inferred.
CARL JOSEPH MAGGIO, INC. v. ALRB (1984) 154 Cal.App.3d 40

502.02 On review, findings of Board with respect to facts shall be conclusive, if supported by substantial evidence.
FRUDDEN ENTERPRISES, INC. v. ALRB (1984) 153 Cal.App.3d 262

502.02 ALJ's credibility resolutions adopted by Board must be accepted by courts unless they are patently incredible or inherently improbable.
BABBITT ENGINEERING & MACHINERY v. ALRB (1984) 152 Cal.App.3d 310

502.02 ALRB's findings shall be conclusive if supported by substantial evidence on record as whole.
BABBITT ENGINEERING & MACHINERY v. ALRB (1984) 152 Cal.App.3d 310

502.02 Under ALRA, Board's factual findings are conclusive if supported by substantial evidence on record considered as whole.
SUPERIOR FARMING CO. v. ALRB (1984) 151 Cal.App.3d 100

502.02 Review of entire record requires assessment not only of evidence supporting Board but also of other relevant facts which rebut or explain evidence.
SUPERIOR FARMING CO. v. ALRB (1984) 151 Cal.App.3d 100

502.02 Board's choice between two fairly conflicting views, each supported by evidence, will be allowed to stand although court might have justifiably made different choice had matter been before court de novo.
SUPERIOR FARMING CO. v. ALRB (1984) 151 Cal.App.3d 100

502.02 Inferences drawn by Board from credited testimony will be upheld unless demonstrably irrational, tenuous, or arbitrary, notwithstanding contrary inferences by ALJ.
SUPERIOR FARMING CO. v. ALRB (1984) 151 Cal.App.3d 100

502.02 The reviewing court must stop short of reweighing evidence.
SUPERIOR FARMING CO. v. ALRB (1984) 151 Cal.App.3d 100

502.02 Board has been delegated primary authority to make credibility determinations and resolve evidentiary conflicts, subject to limed judicial review.

SUPERIOR FARMING CO. v. ALRB (1984) 151 Cal.App.3d 100

502.02 Test of substantiality of evidence must be measured on basis of entire record, rather than by simply isolating evidence which supports Board and ignoring other relevant facts of record which rebut or explain that evidence.
NASH-DECAMP CO. v. ALRB (1983) 146 Cal.App.3d 92

502.02 Board decision must be supported by substantial evidence on record as whole.
NASH-DECAMP CO. v. ALRB (1983) 146 Cal.App.3d 92

502.02 Factual findings of Board are conclusive if supported by substantial evidence on record considered as a whole.
TRIPLE E PRODUCE CORP. v. ALRB (1983) 35 Cal.3d 42

502.02 Board expertise entitles it to considerable deference in deciding questions of motive.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

502.02 Reviewing court does not reweigh evidence but will uphold Board's findings if there is a plausible basis, even if other findings seem equally reasonable, even more so.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

502.02 Board must accept as true uncontradicted and unimpeached evidence unless there is some rational basis for disbelieving it.
TEX-CAL LAND MANAGEMENT, INC. v. ALRB (1982) 135 Cal.App.3d 906

502.02 Factual findings of Board are conclusive if supported by substantial evidence on record considered as whole.
TEX-CAL LAND MANAGEMENT, INC. v. ALRB (1982) 135 Cal.App.3d 906

502.02 Test of substantiality must be measured on basis of entire record; courts may not simply isolate evidence which supports Board and ignore other relevant facts which rebut or explain that evidence.
TEX-CAL LAND MANAGEMENT, INC. v. ALRB (1982) 135 Cal.App.3d 906

502.02 Board's findings must be upheld if they are supported by substantial evidence, regardless of what General Counsel's burdens may be before the Board. Court has no powers to judge effect or value of evidence, to weigh evidence, to consider credibility of witnesses, or to resolve conflicts in evidence or in reasonable inferences that may be drawn therefrom.
MONTEBELLO ROSE CO. v. ALRB (1981) 119 Cal.App.3d 1

502.02 Credibility resolutions of witnesses are particularly for trier of fact; such decisions are not reviewable by court unless testimony is inherently incredible or improbable.
MONTEBELLO ROSE CO. v. ALRB (1981) 119 Cal.App.3d 1

502.02 Substantial evidence standard of review does not change simply because Board has disagreed with ALJ, where Board has not disturbed ALJ's demeanor-based credibility resolutions.
HIGHLAND RANCH v. ALRB (1981) 29 Cal.3d 848

502.02 While administrative agency under substantial evidence test is empowered to resolve conflicts in evidence and to make its own credibility determination, test of substantiality must be measured on basis of entire record, rather than by simply isolating evidence which supports Board and ignoring other relevant facts of record which rebut or explain that evidence.
MARTORI BROTHERS DISTRIBUTORS v. ALRB (1981) 29 Cal.3d 721

502.02 Findings of the Board with respect to questions of fact are conclusive if supported by substantial evidence on record considered as whole.
MARTORI BROTHERS DISTRIBUTORS v. ALRB (1981) 29 Cal.3d 721

502.02 On review, issue is whether there is substantial evidence for Board decision. Lack of substantial evidence does not prove bias of the fact finder.
ANDREWS v. ALRB (1981) 28 Cal.3d 781

502.02 Witness credibility is particularly for Board's determination and is not reviewable unless testimony is incredible on its face or inherently improbable.
JASMINE VINEYARDS, INC. v. ALRB (1980) 113 Cal.App.3d 968

502.02 Substantial evidence test means court must review entire record, including evidence which detracts from Board's decision, and determine whether Board has, in its expertise, relied on substantial evidence in choosing between two fairly conflicting views. It is clearly not de novo review.
JASMINE VINEYARDS, INC. v. ALRB (1980) 113 Cal.App.3d 968

502.02 Where there was direct, though conflicting, testimony that event occurred on certain date, Board was reasonable in crediting one version and in basing its findings on that evidence.
JASMINE VINEYARDS, INC. v. ALRB (1980) 113 Cal.App.3d 968

502.02 In matters of credibility, fact finder's determinations will be reversed only in exceptional circumstances.
MERRILL FARMS v. ALRB (1980) 113 Cal.App.3d 176

502.02 Board's findings of fact are conclusive where supported by substantial evidence.
MERRILL FARMS v. ALRB (1980) 113 Cal.App.3d 176

502.02 Reviewing court is limited to determining whether substantial evidence supports Board's findings. Where two conflicting views are supportable, court is bound by

the Board's choice. (Dissent by Tamura, J.)
GEORGE ARAKELIAN FARMS v. ALRB (1980) 111 Cal.App.3d 258

502.02 Substantial evidence test presumes expertise of Board but requires court to review any evidence in record that detracts from Board's findings.
GEORGE ARAKELIAN FARMS v. ALRB (1980) 111 Cal.App.3d 258

502.02 Whether an employer's granting of benefits is coercive is question requiring special deference to expertise of Board.
PROHOROFF POULTRY FARMS v. ALRB (1980) 107 Cal.App.3d 622

502.02 It is the province of Board to decide on conflicting evidence employer's motivation. Where employer's motive is central issue, fact finder must often rely heavily on circumstantial evidence and references. Only rarely will there be probative direct evidence of motivation. Board is free to draw inferences from all circumstances and need not accept self-serving declaration of intent, even if they are uncontradicted. (Concurrence by Staniforth, J.)
ABATTI FARMS, INC. v. ALRB (1980) 107 Cal.App.3d 317

502.02 Employer's First Amendment right to free speech does not outweigh employees' rights under 1153(a) to be free of threats of reprisal for engaging in protected activities. Balance is to be struck in each case by expert agency, based on context of statements. (Concurrence by Staniforth, J.)
ABATTI FARMS, INC. v. ALRB (1980) 107 Cal.App.3d 317

502.02 Unlawful denial of access to shop in early morning before employer began instructing workers as to day's work. Board finding that such access does not disrupt other kinds of work is "not inherently incredible."
ABATTI FARMS, INC. v. ALRB (1980) 107 Cal.App.3d 317

502.02 Court's power to review Board's factual findings is limited. Such findings are conclusive if supported by substantial evidence on record considered as a whole. If there is evidence to support each of two conflicting views, findings of Board must be allowed to stand despite fact that Court might have reached opposite conclusion on its own. (Concurrence by Staniforth, J.)
ABATTI FARMS, INC. v. ALRB (1980) 107 Cal.App.3d 317

502.02 Court may not substitute its judgment for that of Board in Board's special area of expertise, i.e., the assessment of the weight of circumstantial evidence.
ABATTI FARMS, INC. v. ALRB (1980) 107 Cal.App.3d 317

502.02 The test on appellate review is whether substantial evidence supports Board's findings that employer interrogation or expression contained threat of reprisal and reasonably tended to restrain or interfere with employees in exercise of their protected rights.

(Concurrence by Staniforth, J.)
ABATTI FARMS, INC. v. ALRB (1980) 107 Cal.App.3d 317

502.02 Questions or comments by company agents must be viewed in context of labor relations setting in which they are made. Board's determination as to what is coercive is normally one peculiarly within the discretion of the agency.
ABATTI FARMS, INC. v. ALRB (1980) 107 Cal.App.3d 317

502.02 Courts must defer to Board's expertise in determining what words interfere with employee rights in specific circumstances. (Concurrence by Staniforth, J.)
ABATTI FARMS, INC. v. ALRB (1980) 107 Cal.App.3d 317

502.02 Substantial evidence test requires court to determine whether record contains evidence which reasonable mind might accept in support of elements of charge.
KAWANO, INC. v. ALRB (1980) 106 Cal.App.3d 937

502.02 Because evidence of impact of statements was in conflict, court defers to Board's findings.
ROYAL PACKING CO. v. ALRB (1980) 101 Cal.App.3d 826

502.02 Proceedings for review of Board orders are in nature of applications for extraordinary proceedings for review, or certiorari. Findings of Board with respect to questions of fact will be sustained if supported by substantial evidence on record considered as whole.
SUNNYSIDE NURSERIES, INC. v. ALRB (1979) 93 Cal.App.3d 922

502.02 Declaration of legislator who drafted ALRA was not conclusive as to legislative intent where it only indicated the understanding of one individual and was, at best, ambiguous. CADIZ v. ALRB (1979) 92 Cal.App.3d 365

502.02 Because ALRB is agency equipped to deal with specialized field of knowledge, its findings carry authority of expertness which courts do not possess and must therefore respect.
TEX-CAL LAND MANAGEMENT, INC. v. ALRB (1979) 24 Cal.3d 335

502.02 Appellate proceedings under 1160.8 are in nature of mandamus within meaning of California Constitution, Article VI, section 10, giving courts of appeal original jurisdiction in such proceedings.
TEX-CAL LAND MANAGEMENT, INC. v. ALRB (1979) 24 Cal.3d 335

502.02 Upon appellate review, findings of ALRB are conclusive if supported by substantial evidence on record as whole.
TEX-CAL LAND MANAGEMENT, INC. v. ALRB (1979) 24 Cal.3d 335

502.02 ALRA designed to make full use of Board's expertise and

to minimize delay from judicial review.
TEX-CAL LAND MANAGEMENT, INC. v. ALRB (1979) 24 Cal.3d 335

502.02 Scope of judicial review applicable to decisions of the Board is defined in 1160.8 which, after vesting review jurisdiction directly in the courts of appeal, provides in part that "The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive."
PERRY FARMS INC. v. ALRB (1978) 86 Cal.App.3d 448

502.02 Substantial evidence test in 1160.8 is notably similar to test applied in administrative review proceedings under C.C.P. 1094.5.
PERRY FARMS INC. v. ALRB (1978) 86 Cal.App.3d 448

502.02 Where decision of NLRB is supported by substantial evidence, that decision will not be overturned by an appellate court, even though the situation may have been susceptible to contrary views and appraisals.
PERRY FARMS INC. v. ALRB (1978) 86 Cal.App.3d 448

502.02 Credibility determinations are peculiarly within the province of trier of fact, and are not to be disturbed absent demonstration that credited testimony is incredible on its face or is inherently improbable.
PERRY FARMS INC. v. ALRB (1978) 86 Cal.App.3d 448

502.03 Only Final Board Orders Reviewable

502.03 "Final order" under 1160.8 means order dismissing ULP complaint in whole or in part or directing remedy for ULP's found.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

502.03 Request for reconsideration does not toll 30-day period for filing petition under 1160.8. If court assumes jurisdiction before Board rules on request, then request is denied by operation of law. If Board grants request and later issues modified or revised decision, 30-day period for seeking court review begins again.
NISH NOROIAN FARMS v. ALRB (1984) 35 Cal.3d 726

502.03 Scheduling, conducting, and certifying election is not "final" order of Board and therefore cannot be reviewed under 1160.8, except by "technical refusal-to-bargain."
THOMAS S. CASTLE v. ALRB (1983) 140 Cal.App.3d 668

502.03 Although substantial evidence test is applicable even where Board makes findings inconsistent with those of ALJ, court should scrutinize those findings which are inconsistent because ALJ's credibility resolutions are to be given special weight.
M. B. ZANINOVICH, INC. v. ALRB (1981) 114 Cal.App.3d 665

502.03 In residential picketing case, employer had to wait until Board issued a final order on ULP, then proceed under section 1160.8. Mandamus was not available, since adequate remedy exists under Act.
CALIFORNIA COASTAL FARMS v. ALRB (1980) 111 Cal.App.3d 734

502.03 Although indirect method of reviewing Board's representation decisions imposes significant delay, Congress precisely intended such a delay.
YAMADA BROS. v. ALRB (1979) 99 Cal.App.3d 112

502.03 Board decision on remand is not a final order, requiring a new petition for review; rather, it is advisory in nature and becomes part of the appellate record in the original writ proceeding. Aggrieved parties given time to file opposition to new order in the reviewing court.
PANDOL & SONS v. ALRB (1979) 98 Cal.App.3d 580

502.03 Employer cannot obtain immediate review of Board's decision certifying union; it can only obtain review of such election matters after being found guilty of refusing to bargain -- a "technical refusal."
J.R. NORTON CO. v. ALRB (1979) 26 Cal.3d 1

502.03 Though employer may suffer some hardship in having to seek review by refusing to bargain and running risk of ULP charge, Legislature has mandated that remedy--and accompanying hardship--do not constitute "irreparable injury".
DESERT SEED COMPANY, INC. v. BROWN (1978) 96 Cal.App.3d 69

502.03 In federal precedent under NLRA and in California cases under ALRA, normal rule is nonreviewability of intermediate Board decisions unless order falls within narrow exceptions noted in Belridge Farms v. ALRB (1979) 21 Cal.3d 551.
DESERT SEED COMPANY, INC. v. BROWN (1978) 96 Cal.App.3d 69

502.03 Under ALRA, order certifying bargaining representative is not final order of ALRB which may be judicially reviewed.
PERRY FARMS INC. v. ALRB (1978) 86 Cal.App.3d 448

502.03 Only way employer may obtain judicial review of election and certification is to refuse to bargain, be found guilty of ULP, and obtain review of election and certification in course of review of ULP decision.
PERRY FARMS INC. v. ALRB (1978) 86 Cal.App.3d 448

502.03 Term "final order" as used in 1160.8 has been construed to mean "an order of the board either dismissing a complaint in whole or in part or directing a remedy for the unfair labor practices found."
JACKSON & PERKINS CO. v. ALRB (1978) 77 Cal.App.3d 830

502.03 General Counsel's refusal to issue complaint is not a final order of Board under 1160.8 and therefore is not reviewable.
BELRIDGE FARMS v. ALRB (1978) 21 Cal.3d 551

502.03 The 30-day period for seeking review under 1160.8 is intended to reduce backlog and delay and does not make inapplicable federal precedent limiting judicial review.
BELRIDGE FARMS v. ALRB (1978) 21 Cal.3d 551

502.03 "Final order" means solely an order of Board either dismissing complaint in whole or in part or directing remedy for ULP's found.
UNITED FARM WORKERS v. ALRB (ROBERT ANDREWS) (1977) 74 Cal.App.3d 347

502.03 Legislature intended to foreclose actions for declaratory relief when issue could be raised in ULP proceeding. Under ALRA, only way judicial review of Board's decisions can be obtained is through ULP proceeding.
UNITED FARM WORKERS v. SUPERIOR COURT (MT. ARBOR) (1977) 72 Cal.App.3d 268

502.03 Objection based on union's showing of interest is not reviewable by appellate court and does not fall within the Leedom v. Kyne exception for intermediate review.
RADOVICH v. ALRB (1977) 72 Cal.App.3d 36

502.03 Question of when Board order is "final" and therefore appealable is controlled by NLRB precedent, since 1160.8 is closely modeled after NLRA section 10(e).
NISHIKAWA FARMS, INC. v. MAHONY (1977) 66 Cal.App.3d 781

502.03 Orders in certification proceedings are not directly reviewable in courts, but only become reviewable by resistance to a ULP charge, at which time various issues involved in the certification may be reviewed.
NISHIKAWA FARMS, INC. v. MAHONY (1977) 66 Cal.App.3d 781

502.03 A Board decision referring parties to the mandatory mediation and conciliation process set forth in Labor Code sections 1164 to 1164.13 is an interim non-final Board order that is non-reviewable. The Board retains its jurisdiction to reconsider or modify such a decision until a party seeks review of a final Board order confirming a mediator’s report under Labor Code section 1164.5
FRANK PINHEIRO DAIRY, 36 ALRB No. 1

502.04 Deference To Board's Interpretation Of Statute

502.04 In a proceeding to review a decision and order of the Board approving a written settlement agreement the scope and standard of review involved an assessment of the Board's legal conclusions and, ultimately, the propriety of the decision and order as a matter of law.
GILES BREAUX v. ALRB (1990) 217 Cal.App.3d 730

502.04 It is the primary responsibility of the Board and not of the courts to strike the proper balance between the asserted business justifications and the invasions of the employee rights in light of the ALRA and its policy.
VESSEY & COMPANY, INC. v. ALRB (1989) 210 Cal.App.3d 629

502.04 An order of the Board to make whole striking employees who were deprived of reinstatement after requesting it solely due to the employer's altered, discriminatory seniority system was potentially overbroad. The Board must be given relatively free rein in determining which remedy will effectuate policies of the ALRA. Nevertheless, the employer's new seniority system did not necessarily violate the Act; rather it was the employer's discriminatory conduct in applying it that was a violation.
VESSEY & COMPANY, INC. v. ALRB (1989) 210 Cal.App.3d 629

502.04 Board impermissibly altered terms of 1156.3(a)(1) when it employed an averaging formula to determine whether employer was at 50% of peak employment for calendar year.
ADAMEK & DESSERT, INC. v. ALRB (1986) 178 Cal.App.3d 970

502.04 Administrative agency is entitled to deference when interpreting policy in its area of expertise.
ADAMEK & DESSERT, INC. v. ALRB (1986) 178 Cal.App.3d 970

502.04 Administrative agency cannot legally alter or amend, or enlarge or impair scope of statute it is interpreting.
ADAMEK & DESSERT, INC. v. ALRB (1986) 178 Cal.App.3d 970

502.04 ALRB is agency entrusted with enforcement of Act, and its interpretation of Act is to be accorded great respect and followed unless clearly erroneous.
RULINE NURSERY CO. v. ALRB (1985) 169 Cal.App.3d 247

502.04 Because of Board's expertise, its policy determinations are entitled to great weight unless clearly erroneous, and courts may not substitute their judgment for that of Board.
J.R. NORTON CO. v. ALRB (1984) 162 Cal.App.3d 692

502.04 Administrative agency entitled to strong deference when interpreting policy of ALRA in its field of expertise.
MONTEBELLO ROSE CO. v. ALRB (1981) 119 Cal.App.3d 1

502.04 Although ultimate interpretation of legislation rests with courts, construction of statute by officials charged with its administration must be given great weight.
HIGHLAND RANCH v. ALRB (1981) 29 Cal.3d 848

502.04 ALRB's interpretation of Act is to be accorded great respect by courts and will be followed unless clearly erroneous.
SAN DIEGO NURSERY CO. v. ALRB (1979) 100 Cal.App.3d 128

502.04 Section 1156.7 clearly allows decertification or rival union petition anytime within the last year of collective bargaining agreement, and Board exceeded its authority in fashioning a more limited period for the filing of such petitions.
CADIZ v. ALRB (1979) 92 Cal.App.3d 365

502.04 Although Board entitled to deference when interpreting policy in its field of expertise, when an agency makes rules or regulations that alter or amend the statute or enlarge or impair its scope, those rules or regulations are void and the courts must strike them down.
J.R. NORTON CO. v. ALRB (1979) 26 Cal.3d 1

502.04 ALRA designed to make full use of Board's expertise and to minimize delay from judicial review.
TEX-CAL LAND MANAGEMENT, INC. v. ALRB (1979) 24 Cal.3d 335

502.05 Standard Of Review For Board-Ordered Remedies

502.05 A remedial order of the Board should stand unless it can be shown that the order is a patent attempt to achieve ends other than those that can be fairly said to effectuate the policies of the ALRA.
VESSEY & COMPANY, INC. v. ALRB (1989) 210 Cal.App.3d 629

502.05 The scope of the Board's discretion, within its area of presumed administrative expertise, is broad and a reviewing court's role is said to be correspondingly limited. The Board's remedial order should stand unless it can be shown that the order is a patent attempt to achieve ends other than those which can be fairly said to effectuate the policies of the ALRA.
PAUL W. BERTUCCIO v. ALRB (1988) 202 Cal.App.3d 1369

502.05 The Board must be given a relatively free rein in determining which remedy would effectuate policies of the Act. Nevertheless, the Board's discretion in ordering affirmative action to remedy unfair labor practices is not unbounded. It must be exercised reasonably by the Board, whose power to command affirmative action is remedial, not punitive. If an order is so severe in comparison to the conduct involved in the unfair labor practice that it is clearly punitive in character, it will be annulled.
J.R. NORTON CO. v. ALRB (1987) 192 Cal.App.3d 874

502.05 An order of the Board requiring an employer to mail notices to all its agricultural employees covering a time span in excess of four years, was impermissibly punitive, and thus was annulled, where the Board's findings that the employer had committed four unfair labor practices were not supported by substantial evidence as to two of the violations.
J. R. NORTON CO. v. ALRB (1987) 192 Cal.App.3d 874

502.05 Remedy necessary to alleviate effects of ULP is issue within special knowledge and expertise of ALRB, and Board's exercise of its remedial discretion must be given special respect by courts.
ADAMEK & DESSERT, INC. v. ALRB (1986) 178 Cal.App.3d 970

502.05 Board has broad discretion in fashioning remedies, and courts will only overturn patent attempt to achieve ends other than policies of Act.
HOLTVILLE FARMS, INC. v. ALRB (1985) 168 Cal.App.3d 388

502.05 When Board order is so severe in comparison to both the conduct involved and its effect on free exercise of employee rights that it is clearly punitive in character, order will be annulled.
LAFLIN & LAFLIN v. ALRB (1985) 166 Cal.App.3d 368

502.05 Because relation of remedy to policy is peculiarly matter of administrative competence, Board must be given relatively free rein in determining which remedies will best effectuate policies of Act. However, Board's authority is not unbounded; it must be exercised reasonably.
LAFLIN & LAFLIN v. ALRB (1985) 166 Cal.App.3d 368

502.05 Bargaining order appropriate even though three years between ULP's and court enforcement of order.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

502.05 In reviewing propriety of ALRB bargaining order, courts should not consider events that occur subsequent to issuance of order. To do so would put a premium on litigation by employer
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

502.05 Rapid employee turnover is reason to enforce, rather than annul, bargaining order; otherwise, employer is encouraged to litigate as long as possible to maximize turnover.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

502.05 Board draws on its expertise in fashioning remedies, and reviewing courts cannot reverse Board's choice absent abuse of discretion.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

502.05 Board has broad discretion in choosing most appropriate remedies, and nothing in ALRA or regulations suggests that Board is limited to remedies specifically requested in General Counsel's prayer for relief.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

502.05 Remedies which are exceedingly harsh in relation to ULP conduct will be deemed punitive and annulled. However, make-whole for failure to provide information and for unilateral wage changes bears an appropriate relation to the policies of ALRA.

CARDINAL DISTRIBUTING CO. v. ALRB (1984) 159 Cal.App.3d 758

502.05 Remedial orders will not be disturbed unless they are patent attempt to achieve ends other than effectuation of policies of Act, since relation of remedy to policy is peculiarly a matter of administrative competence.
CARDINAL DISTRIBUTING CO. v. ALRB (1984) 159 Cal.App.3d 758

502.05 Remedial orders will not be disturbed unless they are patent attempt to achieve ends other than effectuation of policies of Act, since relation of remedy to policy is peculiarly a matter of administrative competence.
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CARDINAL DISTRIBUTING CO. v. ALRB (1984) 159 Cal.App.3d 758

502.05 Board has wide discretion in fashioning remedies, and decision will only be interfered with when abuse of discretion appears.
FRUDDEN ENTERPRISES, INC. v. ALRB (1984) 153 Cal.App.3d 262

502.05 Board in its presumed expertise must be given relatively free reign in determining which remedy will best effectuate policies of Act. It is only when remedies ordered by Board are patently out of Board's authority that reviewing court can interfere.
SUPERIOR FARMING CO. v. ALRB (1984) 151 Cal.App.3d 100

502.05 Board has broad power to create remedies that effectuate policies of Act in infinite variety of situations. Courts must refrain from entering this area unless remedy is patent attempt to achieve ends other than policies of Act.
CARIAN v. ALRB (1984) 36 Cal.3d 654

502.05 Automatic issuance of particular affirmative remedy in every 1153(a) case contravenes the "spirit and principle" of J.R. Norton v. ALRB (1979) 26 Cal.3d 1.
M. B. ZANINOVICH, INC. v. ALRB (1981) 114 Cal.App.3d 665

502.05 Courts can interfere with Board's broad discretion in fashioning remedies only when Board-ordered remedies are patently out of Board's authority.
JASMINE VINEYARDS, INC. v. ALRB (1980) 113 Cal.App.3d 968

502.05 Remedial matters are peculiarly within discretion of Board and will not be reviewed except where obviously

punitive or beyond Board's jurisdiction.
KAWANO, INC. v. ALRB (1980) 106 Cal.App.3d 937

502.05 Courts must not interfere with Board's discretion in fashioning remedies, and must guard against sliding unconsciously from narrow confines of the law into more spacious domain of policy.
PANDOL & SONS v. ALRB (1979) 98 Cal.App.3d 580

502.05 In fashioning remedies, Board may rely on facts known through its cumulative experience, though not in the record of a case, and may rely on its expertise.
PANDOL & SONS v. ALRB (1979) 98 Cal.App.3d 580

502.05 Remedial order of Board will not be disturbed by courts unless order is patent attempt to achieve ends other than effectuation of policies of Act.
BUTTE VIEW FARMS v. ALRB (1979) 95 Cal.App.3d 961

502.05 In fashioning remedies, Board is not limited to specific record before it, but can rely on its knowledge from past hearings.
TEX-CAL LAND MANAGEMENT, INC. v. ALRB (1979) 24 Cal.3d 335

502.06 Board Reversal Of Trial Examiner's Findings

502.06 That the administrative law judge found the replacement workers to be permanent did not negate the substantial evidence supporting the Board's contrary finding since the administrative law judge's findings are merely part of the record to be reviewed along with the other evidence when determining whether substantial evidence supports the Board's findings.
VESSEY & COMPANY, INC. v. ALRB (1989) 210 Cal.App.3d 629

502.06 The Board did not err in reversing the finding of an administrative law judge that an employer had lawfully refused immediately to reinstate striking tractor drivers and irrigators even though no specific exception was taken as to the status of those workers and Cal. Code Reg., tit. 8, Sec. 20286, provides that an administrative law judge's decision becomes pro forma the Board's decision if no exceptions are filed within 20 days after the judge's decision is served on all parties.
VESSEY & COMPANY, INC. v. ALRB (1989) 210 Cal.App.3d 629

502.06 Cal. Code Reg., tit. 8, Sec 20286 only requires a single exception to be made to the judge's decision before the Board makes an independent review of the record. Such an exception was made to the judge's decision, and thus the Board was not bound by the judge's factual findings.
VESSEY & COMPANY, INC. v. ALRB (1989) 210 Cal.App.3d 629

502.06 If the Board identifies evidence that supports its inference and such evidence is substantial when measured against the contrary administrative law judge's findings

as well as the opposing evidence, its findings must be upheld.
VESSEY & COMPANY, INC. v. ALRB (1989) 210 Cal.App.3d 629

502.06 The substantial evidence standard is not modified when the Board and the administrative law judge disagree; the judge's findings are merely part of the record to be reviewed along with the other evidence.
VESSEY & COMPANY, INC. v. ALRB (1989) 210 Cal.App.3d 629

502.06 Inferences drawn by Board from credited testimony will be upheld unless demonstrably irrational, tenuous, or arbitrary, notwithstanding contrary inferences by ALJ.
SUPERIOR FARMING CO. v. ALRB (1984) 151 Cal.App.3d 100

502.06 Even if employer motive were a factor in 1153(a) violation, Board is free to disagree with ALJ by drawing inference of improper motive based on its finding that employer's conduct was inherently destructive of employee rights.
M. B. ZANINOVICH, INC. v. ALRB (1981) 114 Cal.App.3d 665

502.06 Substantial evidence standard of review does not change simply because Board has disagreed with ALJ, where Board has not disturbed ALJ's demeanor-based credibility resolutions.
HIGHLAND RANCH v. ALRB (1981) 29 Cal.3d 848

502.06 Board, not ALJ, is ultimate face finder under the ALRA.
ANDREWS v. ALRB (1981) 28 Cal.3d 781

502.06 Board, not ALJ, is fact finder to which statutory deference must be paid. Therefore, standard of review is not altered when Board and ALJ disagree or draw different inferences from evidence. WCAB cases relied on by majority are based on specific statute not relevant here. (Dissent by Tamura, J.)
GEORGE ARAKELIAN FARMS v. ALRB (1980) 111 Cal.App.3d 258

502.06 Supporting evidence must be stronger when Board disagrees with trial examiner and credibility is a fact in case, since ALJ observes demeanor of witnesses and lives with case. GEORGE ARAKELIAN FARMS v. ALRB (1980) 111 Cal.App.3d 258

502.06 Underlying policy of ALRA is to protect collective bargaining rights of farm workers; hence, no special weight need be given an ALJ decision that dismisses an unfair labor practice charge. (Dissent by Tamura, J.)
GEORGE ARAKELIAN FARMS v. ALRB (1980) 111 Cal.App.3d 258

502.06 Board, not ALJ, is fact finder to which statutorily mandated deference must be paid. The rule does not change when Board and ALJ disagree, even where testimonial demeanor was factor in the ALJ's findings. Demeanor is an unreliable indication of truthfulness and is only a factor in overall evaluation of testimony in

light of its rationality or internal consistency and manner in which it hangs together with other evidence. (Concurrence by Staniforth, J.)
ABATTI FARMS, INC. v. ALRB (1980) 107 Cal.App.3d 317

502.06 Substantial evidence standard of review does not change simply because Board has disagreed with the ALJ.
ROYAL PACKING CO. v. ALRB. (1980) 101 Cal.App.3d 826

502.07 Failure To Cite Record

502.07 Failure to cite record in support of contentions in petition for review is a waiver of those contentions.
BUTTE VIEW FARMS v. ALRB (1979) 95 Cal.App.3d 961

502.08 Matters Not Presented Before Board Or Court

502.08 Cal. Code Reg., tit. 8, Sec 20286 only requires a single exception to be made to the judge's decision before the Board makes an independent review of the record. Such an exception was made to the judge's decision, and thus the Board was not bound by the judge's factual findings.
VESSEY & COMPANY, INC. v. ALRB (1989) 210 Cal.App.3d 629

502.08 Clarification of applicability of makewhole order to particular employees is matter for Board compliance proceedings and may not be obtained during court review of Board liability order.
GEORGE ARAKELIAN FARMS v. ALRB (1986) 186 Cal.App.3d 94

502.08 Courts ordinarily accord administrative agencies the initial opportunity to address claims involving interpretation of their own regulations, and a petitioner is deemed to waive an objections that could have been but were not raised before ALRB.
LINDELEAF v. ALRB (1986) 41 Cal.3d 861

502.08 Employer failed to exhaust administrative remedies, having filed request for Board review of Executive Secretary's partial dismissal of election objections four days late and having failed to seek Board reconsideration of denial of request for review or to provide explanation for untimeliness.
GEORGE ARAKELIAN FARMS, INC. v. ALRB (1985) 40 Cal.3d 654

502.08 Incidents not fully litigated where employer had no way of knowing whether conduct was merely being used as factor for setting aside election, or as independent ULP's. Board's finding of ULP's was therefore contrary to principles of due process.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209 [Appendix]

502.08 Failure of employer to raise objections to relevancy of requested information during bargaining constitutes waiver of that contention on review.
CARDINAL DISTRIBUTING CO. v. ALRB (1984) 159 Cal.App.3d

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502.08 Failure of employer to raise objections to relevancy of requested information during bargaining constitutes waiver of that contention on review.
CARDINAL DISTRIBUTING CO. v. ALRB (1984) 159 Cal.App.3d 758

502.08 Petitioner allowed to raise issue not raised before Board where issue was purely legal and Board was required to address issue in similar, consolidated petitions by other parties.
PASILLAS v. ALRB (1984) 156 Cal.App.3d 312

502.08 Petitioner was a "person aggrieved" by the Board's order, despite the Board's award of reinstatement with backpay, where the petitioner also sought cease-and-desist orders prohibiting future violations of her constitutional rights.
PASILLAS v. ALRB (1984) 156 Cal.App.3d 312

502.08 Issue of legality of discharge was not presented for court review where union failed to raise the issue before Board. PASILLAS v. ALRB (1984) 156 Cal.App.3d 312

502.08 Failure to pursue motion for reconsideration (reg. 20286) prevents employer from arguing that it was denied opportunity to be heard on issue decided by Board.
SUPERIOR FARMING CO. v. ALRB (1984) 151 Cal.App.3d 100

502.08 Failure to raise legal issue through timely exceptions to Board constitutes waiver, and party may not later raise issue in Court of Appeal.
CARIAN v. ALRB (1984) 36 Cal.3d 654

502.08 Employer waived Sure-Tan argument by failing to raise it until after oral argument in the Supreme Court.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

502.08 Judicial review unavailable where employer failed to appeal interim ruling of ALJ to Board, pursuant to ALRB regulation section 20240(f).
CALIFORNIA COASTAL FARMS v. DOCTOROFF (1981) 117 Cal.App.3d 15

502.08 1158 provides that record of election proceedings and investigations be included in record which Board ultimately files with Court of Appeal, if such election matters are at issue in ULP proceedings. However, 1158 does not provide for inclusion of extension of certification proceedings.
YAMADA BROS. v. ALRB (1979) 99 Cal.App.3d 112

502.08 Failure to file exceptions before Board constitutes failure to exhaust administrative remedies and therefore precludes judicial review of those exceptions.
BUTTE VIEW FARMS v. ALRB (1979) 95 Cal.App.3d 961

502.08 Employer's failure to contest Executive Secretary's dismissal of certain election objections is tantamount to concession that dismissal was valid.
J. R. NORTON CO. v. ALRB (1979) 26 Cal.3d 1

502.09 Default; Withdrawal Of Review Petition

502.10 Time Limits For Filing Petition For Court Review

502.10 "Filing", under 1160.8, means actual delivery of petition to court clerk.
UFW v. ALRB (ADMIRAL PACKING) (1985) 37 Cal.3d 912

502.10 Clerk's rejection of petition for technical defects, under rule 46, cannot undo "filing" which occurred when petition was delivered to court clerk.
UFW v. ALRB (ADMIRAL PACKING) (1985) 37 Cal.3d 912

502.10 Petition for review must be filed within 30-days jurisdictional limit; however, lack of verification is defect curable by amendment where petition filed within 30-day period.
UFW v. ALRB (ADMIRAL PACKING) (1985) 37 Cal.3d 912

502.10 Request for reconsideration does not toll 30-day period for filing petition under 1160.8. If court assumes jurisdiction before Board rules on request, then request is denied by operation of law. If Board grants request and later issues modified or revised decision, 30-day period for seeking court review begins again.
NISH NOROIAN FARMS v. ALRB (1984) 35 Cal.3d 726

502.10 Petition for review of final order of Board must be filed within 30 days from date of issuance of Board's order, and the time to seek judicial review is jurisdictional.
MARIO SAIKHON, INC. v. ALRB (1983) 140 Cal.App.3d 581

502.10 Legislature intended the term "issuance", as used in 1160.8, to mean "entry" and not "service"; therefore, CCP section 1013(a) does not apply to extend 30-day period in which to petition for review.
MARIO SAIKHON, INC. v. ALRB (1983) 140 Cal.App.3d 581

502.10 California Rules of Court, rule 56(a), grants reviewing court discretion to accept filing of petition pursuant to 1160.8 without service.
SUNNYSIDE NURSERIES, INC. v. ALRB (1979) 93 Cal.App.3d 922

502.10 If Board modifies its order before record is filed, any party aggrieved by new order has 30 days from date of modification to petition for court review.
JACKSON & PERKINS CO. v. ALRB (1978) 77 Cal.App.3d 830

502.10 Failure to file petition for review within 30 days of Board's order bars judicial review of Board's order.

JACKSON & PERKINS CO. v. ALRB (1978) 77 Cal.App.3d 830

502.10 Board's order is subject to modification by Board at any time before record is filed.
JACKSON & PERKINS CO. v. ALRB (1978) 77 Cal.App.3d 830

502.10 Fact that party aggrieved by Board's order has filed motion for reconsideration does not extend time within which to petition for review.
JACKSON & PERKINS CO. v. ALRB (1978) 77 Cal.App.3d 830

502.10 The 30-day period for seeking review under 1160.8 is intended to reduce backlog and delay and does not make inapplicable federal precedent limiting judicial review.
BELRIDGE FARMS v. ALRB (1978) 21 Cal.3d 551

502.10 Petition for review of final Board order must be filed within 30 days from date of issuance of Board's order, and time to seek judicial review is jurisdictional.
UNITED FARM WORKERS v. ALRB (ROBERT ANDREWS) (1977) 74 Cal.App.3d 347

502.10 30-day time limit imposed by 1160.8 is not tolled by filing of petition for reconsideration with Board, since such petition does not stay Board's final order.
UNITED FARM WORKERS v. ALRB (ROBERT ANDREWS) (1977) 74 Cal.App.3d 347

502.11 Modification Or Setting Aside Of Board Or Court Orders; Partial Enforcement

502.11 Board decisions or orders that rest on erroneous legal foundations must be set aside.
VESSEY & COMPANY, INC. v. ALRB (1989) 210 Cal.App.3d 629

502.11 The decision whether a remedy is appropriate after considerable passage of time is for the Board, not the courts; therefore, remand was proper course for Court of Appeal.
GEORGE ARAKELIAN FARMS v. ALRB (1986) 186 Cal.App.3d 94

502.11 Where court disapproved of some of Board's ULP findings, it remanded matter to Board for reformulation of remedial order.
GEORGE ARAKELIAN FARMS v. ALRB (1986) 186 Cal.App.3d 94

502.11 Request for reconsideration does not toll 30-day period for filing petition under 1160.8. If court assumes jurisdiction before Board rules on request, then request is denied by operation of law. If Board grants request and later issues modified or revised decision, 30-day period for seeking court review begins again.
NISH NOROIAN FARMS v. ALRB (1984) 35 Cal.3d 726

502.11 Pursuant to Board's request, court would modify remedial order to delete reference to particular crop year and provide instead that offer of reinstatement should remain

open until end of harvest season following issuance of court decree.
M. B. ZANINOVICH, INC. v. ALRB (1981) 114 Cal.App.3d 665

502.11 If Board modifies its order before record is filed, any party aggrieved by new order has 30 days from date of modification to petition for court review.
JACKSON & PERKINS CO. v. ALRB (1978) 77 Cal.App.3d 830

502.11 If court is without jurisdiction to review Board's order, filing of record with court does not divest Board of jurisdiction to modify its order under 1160.3.
JACKSON & PERKINS CO. v. ALRB (1978) 77 Cal.App.3d 830

502.11 Legislature expressly gave Board authority to reconsider its orders (see 1160.3).
JACKSON & PERKINS CO. v. ALRB (1978) 77 Cal.App.3d 830

502.12 Remand For Additional Evidence, Findings, Or New Order; Newly Discovered Evidence

502.12 Consistent with decision of the 5th DCA that respondent's evidence was sufficient to shift burden to discriminatees to demonstrate that they were authorized to work in the United States during the backpay period, and the need to have a complete record before deciding any remaining issues, case is remanded to Chief ALJ for the taking of further evidence of discriminatees' authorization to work.
PHILLIP D. BERTELSEN, 18 ALRB No. 1

502.12 Court of Appeal held Board unauthorized to award attorney's fees and costs to a party. Pursuant to court remand, Board struck award of attorney's fees and costs from its order. SAM ANDREWS' SONS, 15 ALRB No. 1

502.12 Pursuant to court remand, Board revised its labor camp access order, acknowledging the employer's right to establish reasonable time, place and manner restrictions on labor camp access.
SAM ANDREWS' SONS, 15 ALRB No. 1

502.12 In effectuation of remand order, Board deleted remedial provisions requiring that employer cease and desist from bad faith bargaining and commence good faith bargaining. The Board also deleted its normal extension of certification remedy in bad faith bargaining cases, and confined the period of time for which employees of Respondent would receive mailed copies of the Board's notice to the actual period of Respondent's bad faith bargaining. The Board's modifications were made to reflect the date at which the Court of Appeal found Respondent had commenced bargaining in good faith.
PAUL W. BERTUCCIO dba BERTUCCIO FARMS, 15 ALRB No. 15

502.12 Depublished Court of Appeal opinion is not precedential; however, Court's remand order and legal analysis is still

binding on Board under doctrine of "law of the case."
SAN CLEMENTE RANCH, LTD., 10 ALRB No. 21

502.12 Board requests remand from Court of Appeal to reconsider case in light of subsequent case involving similar comparison of benefits.
JACK OR MARION RADOVICH, 10 ALRB No. 1

502.12 Where court disapproved of some of Board's ULP findings, it remanded matter to Board for reformulation of remedial order.
GEORGE ARAKELIAN FARMS v. ALRB (1986) 186 Cal.App.3d 94

502.12 The decision whether a remedy is appropriate after considerable passage of time is for the Board, not the courts; therefore, remand was proper course for Court of Appeal.
GEORGE ARAKELIAN FARMS v. ALRB (1986) 186 Cal.App.3d 94

502.12 Case remanded to Board for new order with more limited and specific provision for remedial access to labor camp.
SAM ANDREWS' SONS v. ALRB (1984) 162 Cal.App.3d 923

502.12 Case remanded to Board to determine whether employer refused to bargain in good faith belief that its duty expired with certification year.
MONTEBELLO ROSE CO. v. ALRB (1981) 119 Cal.App.3d 1

502.12 Case remanded to Board where Board may have used wrong legal test for determining causality is "dual motive" case. MARTORI BROTHERS DISTRIBUTORS v. ALRB (1981) 29 Cal.3d 721

502.12 Board's expertise renders it particularly qualified to decide question of expanded access; therefore, remand was appropriate.
PANDOL & SONS v. ALRB (1979) 98 Cal.App.3d 580

502.12 Board decision on remand is not a final order, requiring a new petition for review; rather, it is advisory in nature and becomes part of the appellate record in the original writ proceeding. Aggrieved parties given time to file opposition to new order in the reviewing court.
PANDOL & SONS v. ALRB (1979) 98 Cal.App.3d 580

502.12 Court has inherent power to remand cases to Board so that Board, as statutory fact finder, may apply facts to proper legal standard in first instance.
PANDOL & SONS v. ALRB (1979) 98 Cal.App.3d 580

502.12 Case remanded to Board where wrong legal standard was applied in awarding makewhole.
J. R. NORTON CO. v. ALRB (1979) 26 Cal.3d 1

502.12 Where the Board's decision rests on "erroneous legal foundations," the matter should be returned to the Board for reconsideration of its decision. (Citing *Vessey &*

Company, Inc. (1989) 210 Cal.App.3d 629, 643.)
COASTAL BERRY CO. v. ALRB (2001) 94 Cal.App.4th 1, 114 Cal.Rptr.2d 228

502.13 Change In Conditions Or Board Rulings; Compliance With Board Order; Moot Controversy

502.13 A request by agricultural employees for review of a decision and order of the ALRB approving a written agreement in settlement of unfair labor practice charges against the union over the objection of the employees was not moot.
GILES BREAUX v. ALRB (1990) 217 Cal.App.3d 730

502.13 The decision whether a remedy is appropriate after considerable passage of time is for the Board, not the courts; therefore, remand was proper course for Court of Appeal.
GEORGE ARAKELIAN FARMS v. ALRB (1986) 186 Cal.App.3d 94

502.13 Subpoena enforcement issues not moot, despite decision of General Counsel to try case without subpoenaed information, where issue of trade secret privilege was of continuing public interest and likely to recur in the future.
ALRB v. RICHARD A. GLASS CO. (1985) 175 Cal.App.3d 703

502.13 We would urge the Regional Director to cease the practice of closing cases prior to the expiration of the compliance period. Closing a case before the compliance period has expired gives the imprimatur of the Board that compliance has been met and unnecessarily places the onus on the prevailing party to disprove compliance with little, if any, tools at its disposal to do so.
GALLO VINEYARDS, INC., 34 ALRB No. 6

502.13 The Board cannot review a Regional Director's decision to direct an election; it is constrained to judge the conduct alleged as a basis for blocking the election, in this case non-compliance with a remedial Board Order, to determine if the conduct comprising non-compliance, if true, had an effect on the election.
GALLO VINEYARDS, INC., 34 ALRB No. 6.

502.14 Injunction Or Other Relief Pending Review

502.14 Appellate court may issue mandatory injunction pending review to preserve status quo, to prevent final Board order from being threatened by events, and to preserve its own jurisdiction.
ALRB v. SUPERIOR COURT (SAM ANDREWS' SONS) (1983) 149 Cal.App.3d 709

502.15 Supreme Court Review

502.16 Authority Of Board To Act Pending Review; Stay Pending Review

502.16 Unilateral settlement final with respect to only 1 of 11 charging parties, who did not seek 1160.8 review of settlement, and Board retains jurisdiction to determine acquiescing party's backpay entitlement under settlement despite pending court review and remand to Board of order approving settlement.
UFW/CERVANDO PEREZ, 11 ALRB No. 33

502.17 Authority Of Board; Court Rulings On Review As Binding Precedents

502.17 Depublished Court of Appeal opinion is not precedential; however, Court's remand order and legal analysis is still binding on Board under doctrine of "law of the case."
SAN CLEMENTE RANCH, LTD., 10 ALRB No. 21

502.17 Summary denial of petition for review under section 1160.8 is review on the merits and has res judicata effect in future litigation.
ALRB v. ABATTI PRODUCE, INC. (1985) 168 Cal.App.3d 504

502.18 Contempt Proceedings

502.18 Enforcement of initial Board order in Court of Appeal does not convert order to money judgment for interest rate purposes, since that would allow petitioners to obtain lower interest rates even when they lost, and would encourage more petitions.
SANDRINI BROTHERS v. ALRB (1984) 156 Cal.App.3d 878

502.19 Judicial Review Of Agency Regulations

502.19 Writ of mandate was proper procedure to enforce Board's citrus regulations, since ALRB has beneficial interest in appellant's compliance with citrus regulations, packinghouses were able but refused to perform, and ALRB had no other adequate means to compel enforcement
ALRB v. EXETER PACKERS, INC. (1986) 184 Cal.App.3d 483

502.19 Whether a plain, speedy, and adequate remedy for enforcement of regulations exists at law is a question primarily within trial court's discretion.
ALRB v. EXETER PACKERS, INC. (1986) 184 Cal.App.3d 483

502.19 In reviewing regulations enacted pursuant to agency's legislative power, judicial function is limited to determining whether the regulation is (1) within authority conferred; and (2) reasonably necessary to effectuate purposes of statute.
ALRB v. EXETER PACKERS, INC. (1986) 184 Cal.App.3d 483

502.19 Writ of mandate was proper procedure to enforce Board's citrus regulations, since ALRB has beneficial interest in appellant's compliance with citrus regulations, packinghouses were able but refused to perform, and ALRB had no other adequate means to compel enforcement

ALRB v. EXETER PACKERS, INC. (1986) 184 Cal.App.3d 483

502.19 If proper scope of review in trial court was whether the administrative decision and/or administrative regulation was supported by substantial evidence, function of appellate court on appeal is the same as that of the trial court.
ALRB v. EXETER PACKERS, INC. (1986) 184 Cal.App.3d 483

502.19 Unfair labor practice procedure was not adequate remedy since no charge was filed and procedure is lengthy; thus, in case of first impression where outcome of other cases may depend upon validity of regulations, it was reasonable for trial court to conclude that it was necessary to decide enforceability of regulations promptly.
ALRB v. EXETER PACKERS, INC. (1986) 184 Cal.App.3d 483

502.19 Reviewing court has limited role in examining validity of regulations promulgated pursuant to agency's legislative power.
ALRB v. EXETER PACKERS, INC. (1986) 184 Cal.App.3d 483

502.19 Unfair labor practice procedure was not adequate remedy since no charge was filed and procedure is lengthy; thus, in case of first impression where outcome of other cases may depend upon validity of regulations, it was reasonable for trial court to conclude that it was necessary to decide enforceability of regulations promptly.
ALRB v. EXETER PACKERS, INC. (1986) 184 Cal.App.3d 483

502.19 UFW had standing to bring action for declaration of regulation's validity since actual controversy clearly existed concerning the validity of the regulations and UFW was an "interested party."
ALRB v. EXETER PACKERS, INC. (1986) 184 Cal.App.3d 483

502.19 Government Code section 11350(b) provides that a regulation may be declared invalid if no substantial evidence supports agency's determination that regulation is reasonably necessary to effectuate statute's purpose.
ALRB v. EXETER PACKERS, INC. (1986) 184 Cal.App.3d 483

502.19 Subpoena process in the citrus regulations was inadequate to obtain enforcement of regulations because it is slow and cumbersome.
ALRB v. EXETER PACKERS, INC. (1986) 184 Cal.App.3d 483

502.19 Whether a plain, speedy, and adequate remedy for enforcement of regulations exists at law is a question primarily within trial court's discretion.
ALRB v. EXETER PACKERS, INC. (1986) 184 Cal.App.3d 483

502.19 Reviewing court has limited role in examining validity of regulations promulgated pursuant to agency's legislative power.

ALRB v. EXETER PACKERS, INC. (1986) 184 Cal.App.3d 483

502.19 Subpoena process in the citrus regulations was inadequate to obtain enforcement of regulations because it is slow and cumbersome.
ALRB v. EXETER PACKERS, INC. (1986) 184 Cal.App.3d 483

502.19 Mandamus is proper remedy to enforce ALRB citrus regulations since ordinary legal means for enforcing ALRB regulations were inadequate.
ALRB v. EXETER PACKERS, INC. (1986) 184 Cal.App.3d 483

502.19 Administrative rules and regulations come to reviewing court freighted with strong presumption of regularity.
ALRB v. EXETER PACKERS, INC. (1986) 184 Cal.App.3d 483

502.19 ALRB's interpretation of Act is to be accorded great respect by courts and will be followed unless clearly erroneous.
SAN DIEGO NURSERY CO. v. ALRB (1979) 100 Cal.App.3d 128

502.19 Board's "worker education" program must be disapproved where it results from neither rule-making nor adjudication, but is policy of limited access arrived at by "administrative ad hoc fiat."
SAN DIEGO NURSERY CO. v. ALRB (1979) 100 Cal.App.3d 128

502.19 Based upon the reasoning and authority of ALRB v. Superior Court (1976) 16 Cal.3d 392, which affirmed Board's authority to enact regulation permitting union organizers qualified access to employer's property to communicate with employees, it follows that a duly promulgated administrative regulation authorizing uncounted but specifically limited entry on employer's property by ALRB agents in performance of duties imposed by Act (E.g., disseminating information concerning rights and responsibilities under ALRA) would be constitutionally permissible.
SAN DIEGO NURSERY CO. v. ALRB (1979) 100 Cal.App.3d 128

502.19 Although Board entitled to deference when interpreting policy in its field of expertise, when an agency makes rules or regulations that alter or amend the statute or enlarge or impair its scope, those rules or regulations are void and the courts must strike them down.
J. R. NORTON CO. v. ALRB (1979) 26 Cal.3d 1

502.19 ALRB's interpretation of its own regulations is entitled to judicial deference.
TEX-CAL LAND MANAGEMENT, INC. v. ALRB (1979) 24 Cal.3d 335

502.19 Courts will defer to expertise of Board when reviewing Board's regulations and interpreting ALRA, unless Board action is arbitrary and capricious. Board properly considered peculiar conditions of agriculture in creating its access regulations.

ALRB v. SUPERIOR COURT (PANDOL) (1976) 16 Cal.3d 392

502.19 Superior Court is without jurisdiction to enjoin ALRB from exercising its statutory authority to make regulations, unless regulation or underlying statute is unconstitutional or otherwise invalid.
ALRB v. SUPERIOR COURT (PANDOL) (1976) 16 Cal.3d 392

502.19 Board properly created per se pre-certification access rule based on its observation of peculiar characteristics of agricultural workforce, i.e., mobile, seasonal, non-English speaking, low literacy.
ALRB v. SUPERIOR COURT (PANDOL) (1976) 16 Cal.3d 392

502.19 ALRB access rule is constitutionally permissible regulation of use of private property, since it serves an important societal interest in promoting collective bargaining and a rational basis for the regulation exists.
ALRB v. SUPERIOR COURT (PANDOL) (1976) 16 Cal.3d 392

502.19 Board's access regulation is not unconstitutional simply because it creates a rule of general application, rather than a case-by-case application, so long as rule is reasonably related to valid public goal.
ALRB v. SUPERIOR COURT (PANDOL) (1976) 16 Cal.3d 392

502.19 Pursuant to a ruling of the Superior Court that the issuance of a decision was invalid because accomplished by means of "certificate of mailing" as authorized by Board regulations, but regulation inconsistent with express statutory language, Board reissues a prior final decision and order in accordance with strict statutory provisions (' 1151.4(a)) and rules regulation invalid to the extent it fails to comport with statute. New issuance date begins running of new 30-day period in order to grant Respondent a statutory right of appeal within meaning of section 1160.8.
CERTIFIED EGG (1994) 20 ALRB No. 1

502.20 Harmless Error

502.20 Board's peak determination affirmed where it appeared, in spite of Board's improper use of an averaging formula, that employer was at least 50% of peak employment.
ADAMEK & DESSERT, INC. v. ALRB (1986) 178 Cal.App.3d 970

502.20 ALJ's refusal to admit evidence, if error, was harmless because it is unlikely Board would have reached different result even if evidence had been admitted.
M. B. ZANINOVICH, INC. v. ALRB (1981) 114 Cal.App.3d 665

502.21 Summary Denial: Decision On Merits; Res Judicata

502.21 Court of Appeal may summarily deny petition for review of ALRB order without explanation.
ADAMEK & DESSERT, INC. v. ALRB (1986) 178 Cal.App.3d 970

502.21 Because the California Court of Appeal summarily denied federal plaintiff's petition for writ of review of adverse ALRB decision under 1160.8, no determination on merits was necessary. (But see ALRB v. Abatti (1985) 168 Cal.App.3d 504.)
BELTRAN v. STATE OF CALIFORNIA (1985) 617 F.Supp. 948

502.21 1160.8 allows for petition for review of ALRB decision within 30 days of issuance. The Court of Appeal may summarily deny petition.
ALRB v. ABATTI PRODUCE, INC. (1985) 168 Cal.App.3d 504

502.21 1160.9 makes ALRA exclusive method of redressing ULP's; therefore, 1160.8 is exclusive avenue for judicial review of Board decisions.
ALRB v. ABATTI PRODUCE, INC. (1985) 168 Cal.App.3d 504

502.21 Review of ALRB decisions by Court of Appeal is within that Court's original jurisdiction to review extraordinary writs of mandate. Summary denial by Court is therefore a function of the Court's discretionary power and does not necessarily indicate constitutional judicial power in the ALRB.
ALRB v. ABATTI PRODUCE, INC. (1985) 168 Cal.App.3d 504

502.21 Summary denial of petition for review under section 1160.8 is review on the merits and has res judicata effect in future litigation.
ALRB v. ABATTI PRODUCE, INC. (1985) 168 Cal.App.3d 504

502.22 United States Supreme Court Review

502.22 Since California appellate court's disposition of plaintiff's constitutional claim rested on independent state grounds, viz., plaintiff's failure to exhaust internal union remedies, United States Supreme Court was without jurisdiction to review state appellate court's incorrect determination of federal "state action" question.
BELTRAN v. STATE OF CALIFORNIA (1985) 617 F.Supp. 948

502.22 U.S. Supreme Court's dismissal of appeal for lack of jurisdiction is not dismissal on merits, because the Court lacks jurisdiction to adjudicate questions presented. (See, Hopfmann v. Connolly (1985) 471 U.S. 459, [105 S.Ct. 2106].)
BELTRAN v. STATE OF CALIFORNIA (1985) 617 F.Supp. 948

502.22 U.S. Supreme Ct. dismissal of appeal for want of substantial federal question is dismissal on merits, and lower courts are bound by this type of summary disposition until Court informs them otherwise. (See, Hopfmann v. Connolly (1985) 471 U.S. 461 [105 S.Ct. 2106].)
BELTRAN v. STATE OF CALIFORNIA (1985) 617 F.Supp. 948

503.00 JURISDICTION OF COURTS IN SUITS INVOLVING EMPLOYERS AND LABOR ORGANIZATIONS; LABOR CODE SECTION 1165

503.01 In General

503.01 1165(b) does not shield individual union members or agents from liability in cases which do not involve or relate to breach of a collective bargaining agreement. PESCOSOLIDO v. MADDOCK (1985) 172 Cal.App.3d 230

503.01 Where lawsuit did not arise out of breach of collective bargaining agreement, trial court erred when it sustained defendant's demurrer to complaint based on 1165. PESCOSOLIDO v. MADDOCK (1985) 172 Cal.App.3d 230

503.01 Congress developed federal analog to 1165(a) and 1165(b) to permit employers and labor organizations to maintain suits to enforce collective bargaining agreements. PESCOSOLIDO v. MADDOCK (1985) 172 Cal.App.3d 230

504.00 JURISDICTION AS BETWEEN ALRB AND NLRB OR STATE OR FEDERAL COURTS; PREEMPTION; ABSTENTION

504.01 In General

504.01 Board order to employer to rescind retirement benefits upon request of union, not preempted by ERISA since Board does not regulate terms and conditions of the retirement plans or other benefit plans and is only concerned with the process by which such matters are negotiated. BRUCE CHURCH, INC., 14 ALRB No. 20

504.01 District Court's grant of summary judgment is reviewed de novo by Court of Appeals. MARTORI BROS. DISTRIBUTORS v. JAMES- MASSENGALE (9th Cir., 1986) 781 F.2d 1349, modified 791 F.2d 799

504.01 Automatic stay provision of federal Bankruptcy Code (11 U.S.C.A. sec. 362) does not prevent ALRB from conducting proceedings to determine whether ULP was being committed or proceedings to establish claims of employees which were subject of such ULP. IN RE KAWANO, INC. (S.D. Cal., 1983) 27 B.R. 855

504.01 Injunction staying ALRB's ULP proceedings pending bankruptcy action would be contrary to public policy. IN RE KAWANO, INC. (S.D. Cal., 1983) 27 B.R. 855

504.01 ALRB, not Bankruptcy Court, has expertise to establish amount of backpay owed to victims of ULP's. Court can determine allowability or priority of such a claim once it is filed. IN RE KAWANO, INC. (S.D. Cal., 1983) 27 B.R. 855

504.01 Inconvenience and expense of defending against charges in

ALRB ULP or compliance proceedings do not constitute irreparable injury for purposes of injunction under Bankruptcy Code.
IN RE KAWANO, INC. (S.D. Cal., 1983) 27 B.R. 855

504.01 ALRB ULP and compliance proceedings will not be enjoined under sec. 105 of federal Bankruptcy Code (11 U.S.C.A. sec. 105) where plaintiff has failed to show: (1) that plaintiff will otherwise suffer irreparable harm; (2) that plaintiff will probably prevail on merits; (3) that equities balance in favor of such relief; and (4) that injunction will further public interest.
IN RE KAWANO, INC. (S.D. Cal., 1983) 27 B.R. 855

504.01 Federal precedents on preemption are applicable under ALRA.
BERTUCCIO v. SUPERIOR COURT (1981) 118 Cal.App.3d 363

504.01 Where violence or obstruction of access are concerned, issue presented to court is not identical to that presented to Board. The state court is concerned with such conduct as it affects person and safety of all individuals and public; ALRB is concerned only with impact on concerted activity.
BERTUCCIO v. SUPERIOR COURT (1981) 118 Cal.App.3d 363

504.01 Courts may enjoin picketing which is violent or which blocks ingress and egress to employer's premises, based on a private party suit, since it is an exception to preemption doctrine, regardless of purpose of picketing. Injunction of only those matters subject to ALRB's jurisdiction may not provide full relief necessary, and broader superior court authority does not interfere with ALRB's ultimate review of underlying labor dispute.
BERTUCCIO v. SUPERIOR COURT (1981) 118 Cal.App.3d 363

504.01 Preemption doctrine is not limited to federal/state conflicts; it also applies by analogy to resolution of controversies between California agencies and California courts.
KAPLAN'S FRUIT & PRODUCE CO. v. SUPERIOR CT. (1979) 26 Cal.3d 60

504.01 Since employer can only seek ALRB remedy, including injunctive relief, for obstruction of access if that obstruction interferes with employees' 1152 rights or constitutes an unlawful secondary boycott, employer may seek broader superior court relief without incurring conflicting adjudications or interfering with ALRB's jurisdiction. KAPLAN'S FRUIT & PRODUCE CO. v. SUPERIOR CT. (1979) 26 Cal.3d 60

504.01 An important purpose of preemption doctrine is to avoid conflicting adjudications which would interfere with regulatory activity of Board.
KAPLAN'S FRUIT & PRODUCE CO. v. SUPERIOR CT. (1979) 26 Cal.3d 60

504.01 Preemption doctrine holds that Board has exclusive jurisdiction over any act that is arguably either protected or prohibited under Act. Exceptions include matters of particular local concern, such as: violence, trespass, and obstruction to access.
KAPLAN'S FRUIT & PRODUCE CO. v. SUPERIOR CT. (1979) 26 Cal.3d 60

504.01 Superior court jurisdiction is generally preempted by ALRB's statutory jurisdiction to redress ULP's, which is exclusive under 1160.9.
KAPLAN'S FRUIT & PRODUCE CO. v. SUPERIOR CT. (1979) 26 Cal.3d 60

504.01 Preemption does not apply to mass picketing, even if peaceful, which obstructs customer access to employer's premises, since obstruction of customer access is neither protected nor prohibited by ALRA. Court injunction is accordingly permissible so long as it does not limit other protected activity.
KAPLAN'S FRUIT & PRODUCE CO. v. SUPERIOR CT. (1979) 26 Cal.3d 60

504.01 Although ALRB has primary jurisdiction over ULP's, tenants defending against unlawful detainer action must be permitted to produce evidence that their eviction is motivated by employer- landlord's desire to retaliate for activities protected by ALRA.
VARGAS v. MUNICIPAL COURT (1978) 22 Cal.3d 902

504.01 Municipal court did not exceed its jurisdiction in allowing trial of unlawful detainer action, though eviction was arguably ULP, where court allowed Board reasonable time to resolve problem, where Board was closed and without funds, and where ALRB was not empowered to order possession restored to landlord. However, court erred in refusing to admit evidence that employee's termination and eviction was in retaliation for conduct protected by Act.
VARGAS v. MUNICIPAL COURT (1978) 22 Cal.3d 902

504.01 Unlawful detainer actions which arise in context of agricultural labor dispute are subject to jurisdiction of both courts and ALRB; however, courts should give deference to ALRB by postponing trial if circumstances permit and allow ALRB to resolve dispute.
VARGAS v. MUNICIPAL COURT (1978) 22 Cal.3d 902

504.01 If any party involved in alleged ULP could first obtain declaratory relief in superior court instead of from Board, work of Board would be effectively impaired, its decisions similar in impression to that of tinkling triangle practically unnoticed in triumphant blare of trumpets. Result would substitute court for Board as exclusive adjudicative body established under Act. That would fly in face of legislative will.

UNITED FARM WORKERS v. SUPERIOR COURT (MT. ARBOR) (1977) 72 Cal.App.3d 268

504.01 Assertion of prospective jurisdiction by the NLRB preempts ALRB from asserting jurisdiction over an earlier period, absent evidence that the employer's operations had changed, even where ALRB jurisdiction had previously been undisputed.
Bud Antle v. Barbosa, et al., 45 F.3d 1261 (1994)

504.01 Matter dismissed because, under existing precedent, Board preempted from proceeding to adjudicate merits of unfair labor practice allegations where prior NLRB decision finding employer's packing shed to be commercial operation under the rule adopted in Camsco Produce Co., Inc. (1990) 297 NLRB 905 included factual findings showing that employer packed outside produce during the period up to and including the time of the alleged unfair labor practices.
GERAWAN FARMING CO., INC., et al., 21 ALRB No. 6

504.01 In accordance with Vargas v. Municipal Court (1978) 506.0422 Cal.3d 902, court's rejection of retaliatory eviction defense in context of denying injunction against eviction has no res judicata or collateral estoppel effect upon ALRB, as Board has exclusive jurisdiction to adjudicate the merits of unfair labor practice charges.
TAYLOR FARMS, 20 ALRB No. 8

504.02 Labor-Management Reporting And Disclosure Act

504.03 Authority To Determine Preemption Question; Time Of Determination; Burden Of Proof; Waiver Of Objections

504.03 ALRB and its state reviewing courts are competent tribunals to determine initially whether a disputed group of employees are subject to ALRA or NLRA jurisdiction.
BUD ANTLE, INC., 18 ALRB No. 6

504.03 Section 1160.8 judicial review proceedings provide adequate opportunity to raise federal claims under Younger abstention analysis. Whether party actually raises claims is immaterial; abstention element is met if they have opportunity to present the federal issues.
FRESH INTERN. v. ALRB (9th Cir. 1986) 805 F.2d 1353

504.03 Article III, section 3.5 of California Constitution prohibits ALRB -- as opposed to state reviewing court -- from considering federal preemption questions.
FRESH INTERN. v. ALRB (9th Cir. 1986) 805 F.2d 1353

504.03 Because employer's petition for review in state Court of Appeal is not truly the initiation of state ULP proceeding, employer's ERISA-preemption claim is a defense to ULP prosecution, rather than the basis for an action to enforce ERISA as contemplated by 29 U.S.C. 1132(a)(3). Hence, state court is not deprived of

jurisdiction to hear ERISA claim.
FRESH INTERN. v. ALRB (9th Cir. 1986) 805 F.2d 1353

504.03 Article III, section 3.5 of California Constitution prevents ALRB from ruling on constitutionality of its own statute. (But see, Dash (9th Cir. 1982) 683 F.2d 1229.)
BELTRAN v. STATE OF CALIFORNIA (1985) 617 F.Supp. 948

504.03 Article III, section 3.5, of California Constitution prevents ALRB from ruling on constitutionality of its own statute. Therefore, ALRB's statements concerning the constitutionality of 1153(c) are not preclusive, even though, in some instances, the findings of an administrative board will be accorded res judicata effect. (But see Dash, (9th Cir. 1982) 683 F.2d 1229.)
BELTRAN v. STATE OF CALIFORNIA (1985) 617 F.Supp. 948

504.03 ALRB, not courts, must make initial determination whether arguably protected conduct is in fact protected under the Act.
BANALES v. MUNICIPAL COURT (1982) 132 Cal.App.3d 67

504.03 There is no exception to preemption allowing courts to exercise jurisdiction over peaceful labor activity merely because it involves trespass on private property.
BANALES v. MUNICIPAL COURT (1982) 132 Cal.App.3d 67

504.03 Declarations submitted in criminal trespass proceedings were conflicting and necessarily established that conduct was arguably protected by the ALRA; court was therefore without jurisdiction to proceed.
BANALES v. MUNICIPAL COURT (1982) 132 Cal.App.3d 67

504.03 Legislature intended to vest ALRB with exclusive jurisdiction over conduct covered by Act.
BANALES v. MUNICIPAL COURT (1982) 132 Cal.App.3d 67

504.03 Whether obstruction of access was "arguably" protected, for jurisdictional purposes, did not turn on whether access was actually obstructed, but rather on whether obstruction of access - as a type of activity - was subject to superior court injunction.
KAPLAN'S FRUIT & PRODUCE CO. v. SUPERIOR CT. (1979) 26 Cal.3d 60

504.03 Supreme Court declined to direct Superior Court to issue permanent injunction where Superior Court's gratuitous findings, after determining that it lacked jurisdiction, indicated that trial court did not properly review record before making findings.
KAPLAN'S FRUIT & PRODUCE CO. v. SUPERIOR CT. (1979) 26 Cal.3d 60

504.03 Although ALRB has primary jurisdiction over ULP's, tenants defending against unlawful detainer action must be permitted to produce evidence that their eviction is motivated by employer- landlord's desire to retaliate for

activities protected by ALRA.
VARGAS v. MUNICIPAL COURT (1978) 22 Cal.3d 902

504.04 Proceedings Pending Before NLRB Or Federal Courts

504.04 ALRB ULP and compliance proceedings will not be enjoined under sec. 105 of federal Bankruptcy Code (11 U.S.C.A. sec. 105) where plaintiff has failed to show: (1) that plaintiff will otherwise suffer irreparable harm; (2) that plaintiff will probably prevail on merits; (3) that equities balance in favor of such relief; and (4) that injunction will further public interest.
IN RE KAWANO, INC. (S.D. Cal., 1983) 27 B.R. 855

504.04 Private party may bring an action in a federal district court seeking injunctive relief on the basis of Garmon preemption. Anti-Injunction Act applies only to state court proceedings and does not bar injunction against ongoing administrative proceedings.
Bud Antle v. Barbosa, et al., 45 F.3d 1261 (1994)

504.05 Abstention

504.05 Younger abstention doctrine represents strong federal policy against federal- court interference with pending state judicial proceedings; hence, federal courts should normally refuse to enjoin pending proceedings in state courts. (Citing Dayton (1986) 106 S.Ct. 2718.)
FRESH INTERN. v. ALRB (9th Cir. 1986) 805 F.2d 1353

504.05 Younger abstention applies to pending state administrative proceedings involving important state interests. (citing Dayton (1986) 106 S.Ct. 2718.) Martori Bros. v. James-Massengale (9th Cir. 1986) 781 F.2d 1349, amended 791 F.2d 799, is overruled on this point.
FRESH INTERN. v. ALRB (9th Cir. 1986) 805 F.2d 1353

504.05 The ALRA, which protects associational rights and encourages peaceful collective bargaining for California's farm workers, represents sufficiently important state interest under Younger, and the contrary holding in Martori Bros. v. James- Massengale (9th Cir. 1986) is overruled. (Citing Dayton (1986) 106 S.Ct. 2718.) This interest is underscored by fact that ULP proceedings under Act are initiated by agency of the State, acting as prosecutor, rather than by private parties. Though agricultural employer technically initiated state judicial review proceeding, that is just one procedural step in ULP proceeding initiated when General Counsel filed complaint.
FRESH INTERN. v. ALRB (9th Cir. 1986) 805 F.2d 1353

504.05 When a case satisfies Younger elements for abstention, federal court has no discretion to grant injunctive relief, but must dismiss federal action. Because application of Younger abstention is absolute, district

court's refusal to abstain is reviewed de novo in the Court of Appeals.
FRESH INTERN. v. ALRB (9th Cir. 1986) 805 F.2d 1353

504.05 The Younger abstention doctrine applies to civil proceedings as well as criminal, when important state interests are at stake.
FRESH INTERN. v. ALRB (9th Cir. 1986) 805 F.2d 1353

504.05 Younger abstention in favor of state proceeding is appropriate if 1) state proceedings are ongoing -- i.e., begun before any federal court proceedings of substance, 2) important state interests are implicated, and 3) state proceedings provide opportunity to raise federal questions.
FRESH INTERN. v. ALRB (9th Cir. 1986) 805 F.2d 1353

504.05 Section 1160.8 judicial review proceedings provide adequate opportunity to raise federal claims under Younger abstention analysis. Whether party actually raises claims is immaterial; abstention element is met if they have opportunity to present the federal issues.
FRESH INTERN. v. ALRB (9th Cir. 1986) 805 F.2d 1353

504.05 Even if state administrative agency lacks authority to consider federal claims itself, Younger abstention will be required so long as the claims may be raised in state court judicial review of the administrative proceeding. (citing Dayton (1986) 106 S.Ct. 2718.)
FRESH INTERN. v. ALRB (9th Cir. 1986) 805 F.2d 1353

504.05 Younger abstention is not appropriate where federal preemption is readily apparent. (Citing Champion International Corp. v. Brown (9th Cir. 1984) 731 F.2d 1406.)
FRESH INTERN. v. ALRB (9th Cir. 1986) 805 F.2d 1353

504.05 Federal abstention is exception, not rule. Younger v. Harris abstention is required when there is an ongoing state judicial proceeding, it concerns vital states interests, and it provides an adequate opportunity to present federal claims. Also, state proceedings must have been initiated before any federal proceeding of substance on the merits. (But see Fresh Intern.)
MARTORI BROS. DISTRIBUTORS v. JAMES- MASSENGALE (9th Cir., 1986) 781 F.2d 1349, modified 791 F.2d 799

504.05 ALRB proceedings are not judicial proceedings within meaning of the abstention doctrine. Furthermore, Article 3, section 3.5 of the California Constitution, which prohibits the ALRB from declaring the Act un-constitutional or preempted by federal law, indicates that the employers did not have a meaningful opportunity to raise their federal claims before the Board. (But see Fresh Intern.)
MARTORI BROS. DISTRIBUTORS v. JAMES- MASSENGALE (9th Cir., 1986) 781 F.2d 1349, modified 791 F.2d 799

504.05 To have "vital state interest" under Younger, state proceeding must be criminal, closely related to criminal, or related to the fundamental operation of the state's court system. A petition for review under section 1160.8 does not fall within any of these categories, and though ALRA represents substantial state interest, it is not as vital or central as interest in criminal justice system or operation of court system. (But see Fresh Intern.)
MARTORI BROS. DISTRIBUTORS v. JAMES- MASSENGALE (9th Cir., 1986) 781 F.2d 1349, modified 791 F.2d 799

504.05 Abstention doctrine does not prevent federal district court from enjoining state proceedings where preemption is "readily apparent."
Bud Antle v. Barbosa, et al., 45 F.3d 1261 (1994)

504.06 ERISA Preemption

504.06 Because employer's petition for review in state Court of Appeal is not truly the initiation of state ULP proceeding, employer's ERISA-preemption claim is a defense to ULP prosecution, rather than the basis for an action to enforce ERISA as contemplated by 29 U.S.C. 1132(a)(3). Hence, state court is not deprived of jurisdiction to hear ERISA claim.
FRESH INTERN. v. ALRB (9th Cir. 1986) 805 F.2d 1353

504.06 ERISA-preemption not "readily apparent" where ALRB finds unlawful unilateral changes in benefit plans and orders rescission of such changes if labor union so demands. Neither ALRA nor Board order directly imposes substantive requirements on the benefit plans, and it would be anomalous for employees under NLRA to have collective bargaining rights over benefit plans while employees under ALRA do not.
FRESH INTERN. v. ALRB (9th Cir. 1986) 805 F.2d 1353

504.06 ALRB makewhole awards do not require any change whatsoever in employer's existing ERISA plans, nor do the makewhole payments come out of ERISA trust funds. Rather, makewhole is no different than any other award of damages.
MARTORI BROS. DISTRIBUTORS v. JAMES- MASSENGALE (9th Cir., 1986) 781 F.2d 1349, modified 791 F.2d 799

504.06 A state law is pre-empted by section 514(a) of ERISA if it regulates matters regulated by ERISA: i.e., disclosure, funding, reporting, vesting, and enforcement of benefit plans.
MARTORI BROS. DISTRIBUTORS v. JAMES- MASSENGALE (9th Cir., 1986) 781 F.2d 1349, modified 791 F.2d 799

504.06 ALRB makewhole awards do not create new ERISA plans. Board does not order payment of specific fringe benefits, but is concerned only with total amount of compensation.
MARTORI BROS. DISTRIBUTORS v. JAMES- MASSENGALE (9th

Cir., 1986) 781 F.2d 1349, modified 791 F.2d 799

504.06 Section 1160.3 does not "relate to" ERISA plans for preemption purposes. Neither does section 1160.3 "purport to regulate" ERISA plans.
MARTORI BROS. DISTRIBUTORS v. JAMES- MASSENGALE (9th Cir., 1986) 781 F.2d 1349, modified 791 F.2d 799

504.06 In enacting ERISA, Congress was concerned with two historic abuses: (1) mismanagement of benefit funds, and (2) failure to pay promised benefits. It was not concerned with employers' refusals to bargain in good faith, and it did not purport to regulate the broad spectrum of employer unfair labor practices. Hence, ERISA does not prevent the state from including a "fringe benefit" component in its makewhole awards.
MARTORI BROS. DISTRIBUTORS v. JAMES- MASSENGALE (9th Cir., 1986) 781 F.2d 1349, modified 791 F.2d 799

504.06 To be preempted by ERISA, state law must "relate to" an ERISA plan and purport to regulate, directly or indirectly, ERISA plans.
MARTORI BROS. DISTRIBUTORS v. JAMES- MASSENGALE (9th Cir., 1986) 781 F.2d 1349, modified 791 F.2d 799

504.06 In enacting ERISA, Congress did not intend to pre-empt areas of traditional state regulation.
MARTORI BROS. DISTRIBUTORS v. JAMES- MASSENGALE (9th Cir., 1986) 781 F.2d 1349, modified 791 F.2d 799

504.06 Mere fact that makewhole calculations are made by reference to existing ERISA plans in comparable contracts does not mean makewhole award "relates to" plans for preemption purposes. Such an expansive reading would lead to absurd results.
MARTORI BROS. DISTRIBUTORS v. JAMES- MASSENGALE (9th Cir., 1986) 781 F.2d 1349, modified 791 F.2d 799

505.00 SCOPE OF ALRB JURISDICTION; APPLICABILITY OF ALRA

505.01 In General

505.01 Board may conduct hearing to determine derivative liability after compliance decision has been reviewed by the courts. Proceeding to determine alter ego and successor responsibility is not a primary action to determine violations of law, but rather ancillary enforcement. Superior court erred by staying Board proceedings.
ALRB v. SUPERIOR COURT OF IMPERIAL COUNTY (SAIKHON) (1993) 18 Cal.Rptr.2d 907

505.01 A ruling by the Board that would control the hiring practices of an out-of-state employer, employing out-of-state workers, working in out-of-state employment would overstep state authority.

J. R. NORTON CO. v. ALRB (1987) 192 Cal.App.3d 874

505.01 With respect to an agricultural employer whose fields in California, Arizona and New Mexico were worked on a "circuit" system, with the harvesting season beginning in one field as it ended in another and with the employees encouraged to follow the circuit, unfair labor practices could not properly be found in Arizona and New Mexico.
J. R. NORTON CO. v. ALRB (1987) 192 Cal.App.3d 874

505.01 The Board could not issue a remedial order directly affecting Arizona and New Mexico fields, even if it could have been established that the employer's refusal to rehire employees in Arizona and New Mexico was a result of earlier condoned activities in a field in California and thus constituted an unfair labor practice for the California fields.
J. R. NORTON CO. v. ALRB (1987) 192 Cal.App.3d 874

505.01 Bill Johnson case not applicable where employer's retaliatory suit (e.g. eviction) is for discriminatory purpose or involves unlawful refusal to bargain, and therefore has no reasonable basis.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

505.01 Municipal court did not exceed its jurisdiction in allowing trial of unlawful detainer action, though eviction was arguably ULP, where court allowed Board reasonable time to resolve problem, where Board was closed and without funds, and where ALRB was not empowered to order possession restored to landlord. However, court erred in refusing to admit evidence that employee's termination and eviction was in retaliation for conduct protected by Act.
VARGAS v. MUNICIPAL COURT (1978) 22 Cal.3d 902

505.01 Board has exclusive primary jurisdiction over all phases of administration of ALRA with respect to ULP's. Declaratory relief is unavailable to determine bargaining rights and obligations of employers and unions under ALRA.
UNITED FARM WORKERS v. SUPERIOR COURT (MT. ARBOR) (1977) 72 Cal.App.3d 268

505.02 Protected Or Prohibited Activities In General

505.02 Labor statutes limit an employer's substantive rights under general law, and where a dispute concerns arguably protected or prohibited activity under ALRA, Board has primary jurisdiction.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

505.02 Preemption does not apply to mass picketing, even if peaceful, which obstructs customer access to employer's premises, since obstruction of customer access is neither protected nor prohibited by ALRA. Court injunction is accordingly permissible so long as it does not limit

other protected activity.
KAPLAN'S FRUIT & PRODUCE CO. v. SUPERIOR CT. (1979) 26 Cal.3d 60

505.02 Since employer can only seek ALRB remedy, including injunctive relief, for obstruction of access if that obstruction interferes with employees' 1152 rights or constitutes an unlawful secondary boycott, employer may seek broader superior court relief without incurring conflicting adjudications or interfering with ALRB's jurisdiction. KAPLAN'S FRUIT & PRODUCE CO. v. SUPERIOR CT. (1979) 26 Cal.3d 60

505.02 Prohibition in ALRA against secondary picketing to induce customers to stop doing business with struck employer does not prohibit primary picketing which induces customers to refuse to pick up orders.
KAPLAN'S FRUIT & PRODUCE CO. v. SUPERIOR CT. (1979) 26 Cal.3d 60

505.02 Moscone Act did not intend to merely codify existing law on mass picketing but, instead, recognized need to eliminate injunctions against peaceful picketing while preserving rights of employer to seek damages or criminal sanctions for picketing which was "peaceful" but "unlawful." (Newman concurrence.)
KAPLAN'S FRUIT & PRODUCE CO. v. SUPERIOR CT. (1979) 26 Cal.3d 60

505.03 Jurisdiction Standards; Refusal Of NLRB Or ALRB To Take Jurisdiction

505.03 Regional Director denied charging party's request to withdraw section 1154(d)(4) charge and issued notice of hearing under section 1160.5; Board denied charging party's request for enforcement of subpoenas of agency officials on grounds that determination that section 1154(d)(4) charge has merit not required for section 1160.5 hearing to proceed, but ultimately quashed notice of hearing on grounds that dispute not subject to resolution under sections 1160.5 and 1154(d)(4).
UNITED VINTNERS, INC., 10 ALRB No. 34

505.04 Prior Rulings By NLRB Or Federal Courts; Advisory Opinions By NLRB, Refusal By NLRB To Issue Complaint; Withdrawal Of Charges, Effect On Subsequent ALRB Determination

505.04 Matter dismissed because, under existing precedent, Board preempted from proceeding to adjudicate merits of unfair labor practice allegations where prior NLRB decision finding employer's packing shed to be commercial operation under the rule adopted in Camsco Produce Co., Inc. (1990) 297 NLRB 905 included factual findings showing that employer packed outside produce during the period up to and including the time of the alleged unfair labor practices.

GERAWAN FARMING CO., INC., ET AL., 21 ALRB No. 6

505.05 State Police Power; Violence Or Tortious Conduct; Action For Damages

505.05 Bill Johnson case not applicable where employer's retaliatory suit (e.g. eviction) is for discriminatory purpose or involves unlawful refusal to bargain, and therefore has no reasonable basis.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

505.05 Moscone Act clearly contained conflict as to court jurisdiction to enjoin peaceful picketing which obstructs ingress and egress. Court therefore construed statute in accordance with existing case law--namely, that superior courts may enjoin obstruction of access. Further, since obstruction tends to lead to violence, it is not "peaceful." KAPLAN'S FRUIT & PRODUCE CO. v. SUPERIOR CT. (1979) 26 Cal.3d 60

505.05 Municipal court did not exceed its jurisdiction in allowing trial of unlawful detainer action, though eviction was arguably ULP, where court allowed Board reasonable time to resolve problem, where Board was closed and without funds, and where ALRB was not empowered to order possession restored to landlord. However, court erred in refusing to admit evidence that employee's termination and eviction was in retaliation for conduct protected by Act.
VARGAS v. MUNICIPAL COURT (1978) 22 Cal.3d 902

506.00 PRECEDENTIAL EFFECT OF STATE COURT DECISIONS ON ALRB

506.01 Federal Laws As Binding On State Courts And ALRB

506.01 Preemption doctrine is not limited to federal/state conflicts; it also applies by analogy to resolution of controversies between California agencies and California courts.
KAPLAN'S FRUIT & PRODUCE CO. v. SUPERIOR CT. (1979) 26 Cal.3d 60

506.02 Decisions of State Courts And ALRB As Binding On Federal Courts And NLRB

506.02 Court of Appeal's determination that no "state action" is implicated by union shop agreement was not necessary to its further determination that ALRB correctly dismissed federal plaintiff's ULP charges because dismissal was based on failure to exhaust union remedies. Therefore, issue preclusion does not attach to Court of Appeal's findings to prevent re- litigation of those issues in federal court.
BELTRAN v. STATE OF CALIFORNIA (1985) 617 F.Supp. 948

506.02 State Court of Appeal's decision upholding ALRB's

dismissal of ULP complaint--because petitioner had failed to exhaust intra-union remedies--was not a final determination in the merits of petitioner's claim to which other courts must give preclusive effect, but rather a dismissal for want of jurisdiction which is not on merits and to which the principles of claim preclusion do not apply.
BELTRAN v. STATE OF CALIFORNIA (1985) 617 F.Supp. 948

506.02 28 U.S.C. section 1738 mandates federal courts to apply California's laws of claim preclusion and issue preclusion.
BELTRAN v. STATE OF CALIFORNIA (1985) 617 F.Supp. 948

506.03 Conflicts Between District Courts Of Appeal

506.04 Trial Court Decisions As Binding On ALRB

506.04 Superior Court was without authority to decide merits of ULP, since that authority is exclusively in ALRB under 1160.9.
CARIAN v. ALRB (1984) 36 Cal.3d 654

506.04 Superior Court refusal to enforce subpoenas seeking employee lists did not estop Board from later determining in administrative proceedings that employer failed to provide adequate lists.
CARIAN v. ALRB (1984) 36 Cal.3d 654

506.04 Court's determination of retaliatory eviction defense in unlawful detainer action has no res judicata or collateral estoppel effect on related ALRB proceedings.
VARGAS v. MUNICIPAL COURT (1978) 22 Cal.3d 902

506.04 Although ALRB has primary jurisdiction over ULP's, tenants defending against unlawful detainer action must be permitted to produce evidence that their eviction is motivated by employer- landlord's desire to retaliate for activities protected by ALRA.
VARGAS v. MUNICIPAL COURT (1978) 22 Cal.3d 902

506.04 Unlawful detainer actions which arise in context of agricultural labor dispute are subject to jurisdiction of both courts and ALRB; however, courts should give deference to ALRB by postponing trial if circumstances permit and allow ALRB to resolve dispute.
VARGAS v. MUNICIPAL COURT (1978) 22 Cal.3d 902

507.00 PICKETING; COURT RELIEF; JURISDICTION AND PROCEDURE IN SUITS FOR INJUNCTION OR DAMAGES

507.01 In General

507.01 Orders restraining picketing must be narrowly drawn to avoid determining underlying labor dispute while protecting constitutional rights and essential needs of

public order. ALRB v. CALIFORNIA COASTAL FARMS, INC. (1982) 31 Cal.3d 469

507.01 Courts may enjoin picketing which is violent or which blocks ingress and egress to employer's premises, based on a private party suit, since it is an exception to preemption doctrine, regardless of purpose of picketing. Injunction of only those matters subject to ALRB's jurisdiction may not provide full relief necessary, and broader superior court authority does not interfere with ALRB's ultimate review of underlying labor dispute. BERTUCCIO v. SUPERIOR COURT (1981) 118 Cal.App.3d 363

507.01 Violence is not protected by ALRA. A court injunction barring such acts, so long as it does not bar legitimate union conduct, invades no right of union under Act. BERTUCCIO v. SUPERIOR COURT (1981) 118 Cal.App.3d 363

507.01 ALRB acted within discretion where, after G.C. issued complaint in residential picketing case, the Board sought to enjoin the unlawful picketing in superior court. The specific terms of the injunction are not an "ad hoc" policy created by fiat; they are within the Board's power to adjudicate unlawful conduct on a case-by-case basis. CALIFORNIA COASTAL FARMS v. ALRB (1980) 111 Cal.App.3d 734

507.01 Moscone Act clearly contained conflict as to court jurisdiction to enjoin peaceful picketing which obstructs ingress and egress. Court therefore construed statute in accordance with existing case law--namely, that superior courts may enjoin obstruction of access. Further, since obstruction tends to lead to violence, it is not "peaceful." KAPLAN'S FRUIT & PRODUCE CO. v. SUPERIOR CT. (1979) 26 Cal.3d 60

507.01 Injunction restraining picketing should be couched in the narrowest terms that will accomplish the pin-pointed objective permitted by constitutional mandate and the essential needs of public order, since temporary orders may have effect of determining or terminating entire labor dispute.
KAPLAN'S FRUIT & PRODUCE CO. v. SUPERIOR CT. (1979) 26 Cal.3d 60

507.02 Employer Misconduct As Bar; Clean-Hands Rule; Laches

507.03 Persons Entitled To Relief; Parties; Notice; Bond

507.04 Scope Of Injunction; Number Of Pickets Permitted

507.04 Trial court reasonably balanced interests of employer (in avoiding property damage and interruption of operations), nonstrikers (in avoiding violence, coercion, or union activity) and strikers (in informing nonstrikers and public about strike), in limiting the time, place and manner of picketing and on-site access.

ALRB v. CALIFORNIA COASTAL FARMS, INC. (1982) 31 Cal.3d 469

507.04 Orders restraining picketing must be narrowly drawn to avoid determining underlying labor dispute while protecting constitutional rights and essential needs of public order. ALRB v. CALIFORNIA COASTAL FARMS, INC. (1982) 31 Cal.3d 469

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KAPLAN'S FRUIT & PRODUCE CO. v. SUPERIOR CT. (1979) 26 Cal.3d 60

507.04 Since employer can only seek ALRB remedy, including injunctive relief, for obstruction of access if that obstruction interferes with employees' 1152 rights or constitutes an unlawful secondary boycott, employee may seek broader superior court relief without incurring conflicting adjudications or interfering with ALRB's jurisdiction. KAPLAN'S FRUIT & PRODUCE CO. v. SUPERIOR CT. (1979) 26 Cal.3d 60

507.05 Duration of Injunction; Modification Or Dissolution; Costs; Withdrawal Of Suit; Settlement Agreements

507.06 Duration Or Cessation Of Picketing; Termination Of Labor Dispute; Appeals; Stay Pending Appeal; Moot Controversy

507.06 Despite potential mootness of underlying labor dispute by the time the appellate court can act, alternative writ granted where issues are of broad public interest, likely to recur, and call for prompt resolution.
BERTUCCIO v. SUPERIOR COURT (1981) 118 Cal.App.3d 363

507.07 Contempt Proceedings; Fine Or Other Penalty; Persons Or Organizations Liable, Knowledge Or Notice

507.08 Jurisdiction As Between Courts And ALRB: Alternative Remedies; Relief In Suits Under Labor Code Section 1165

507.08 Determination of whether violence, threats of violence, or obstructions to access have occurred is well within competence of courts, and that determination can be made without considering merits of underlying labor dispute. Possible inconsistency of ultimate remedy is not alone a sufficient reason for preempting court jurisdiction with respect to such conduct.
BERTUCCIO v. SUPERIOR COURT (1981) 118 Cal.App.3d 363

507.08 Because effectiveness of picketing and potential for violence in agriculture present a unique problem of balancing, views of ALRB as to proper terms of injunctive

superior court order are significant, and may differ from parties' views. Therefore, superior court's jurisdiction is conditioned upon private party's filing charges with ALRB and allowing a reasonable opportunity for Board to participate in or initiate proceedings.
BERTUCCIO v. SUPERIOR COURT (1981) 118 Cal.App.3d 363

507.08 Where violence or obstruction of access are concerned, issue presented to court is not identical to that presented to Board. The state court is concerned with such conduct as it affects person and safety of all individuals and public; ALRB is concerned only with impact on concerted activity.
BERTUCCIO v. SUPERIOR COURT (1981) 118 Cal.App.3d 363

507.08 ALRB may control picketing, or any alleged unfair labor practice, either by regulation of general application or by case-by-case adjudication. The choice is within informed discretion of ALRB.
CALIFORNIA COASTAL FARMS v. ALRB (1980) 111 Cal.App.3d 734

507.08 Preemption does not apply to mass picketing, even if peaceful, which obstructs customer access to employer's premises, since obstruction of customer access is neither protected nor prohibited by ALRA. Court injunction is accordingly permissible so long as it does not limit other protected activity.
KAPLAN'S FRUIT & PRODUCE CO. v. SUPERIOR CT. (1979) 26 Cal.3d 60

508.00 SUBPOENA ENFORCEMENT; LABOR CODE SECTION 1151

508.01 In General

508.01 Res judicata does not apply where Board's subpoena was denied enforcement based on technical defect, not on merits, and Board later reissued subpoena without the defect.
ALRB v. RICHARD A. GLASS CO. (1985) 175 Cal.App.3d 703

508.01 Trial court order enforcing subpoena is interlocutory and not final.
ALRB v. RICHARD A. GLASS CO. (1985) 175 Cal.App.3d 703

508.01 Trial court rulings on issues of law in subpoena enforcement case not entitled to deference in court of appeal.
ALRB v. RICHARD A. GLASS CO. (1985) 175 Cal.App.3d 703

508.01 Subpoena enforcement issues not moot, despite decision of General Counsel to try case without subpoenaed information, where issue of trade secret privilege was of continuing public interest and likely to recur in the future.
ALRB v. RICHARD A. GLASS CO. (1985) 175 Cal.App.3d 703

508.01 Scope of judicial review by trial court is quite limited in subpoena enforcement action under section 1151.
ALRB v. RICHARD A. GLASS CO. (1985) 175 Cal.App.3d 703

508.01 Entire election process is an "investigation" within meaning of 1151(a).
SAN DIEGO NURSERY CO. v. ALRB (1979) 100 Cal.App.3d 128

508.01 California Legislature intended to give ALRB broader investigatory powers than NLRB.
SAN DIEGO NURSERY CO. v. ALRB (1979) 100 Cal.App.3d 128

508.01 Scope of judicial inquiry limited in subpoena enforcement proceedings under 1151 to whether administrative subpoena was regularly issued and records sought are relevant to administrative inquiry and identified with sufficient particularity, unless subpoena is overbroad or unreasonably burdensome or oppressive.
ALRB v. LAFLIN & LAFLIN (1979) 89 Cal.App.3d 651

508.02 Relevance And Necessity To Investigation Or Hearing

508.03 Particularity Of Request

508.04 Unduly Burdensome Requests

508.05 Good Faith Efforts To Comply

508.06 Defenses To Disclosure; Waiver, Privileges

508.06 Union cannot, by contract, waive the ALRB's right to subpoena information from an employer.
ALRB v. RICHARD A. GLASS CO. (1985) 175 Cal.App.3d 703

508.06 Trade secret privilege not applicable where allowance of privilege would tend to conceal fraud and work an injustice on agricultural workers.
ALRB v. RICHARD A. GLASS CO. (1985) 175 Cal.App.3d 703

508.06 Where information subpoenaed was clearly relevant and necessary to ULP proceeding, and not overbroad or burdensome, burden shifted to employer to prove trade secret privilege.
ALRB v. RICHARD A. GLASS CO. (1985) 175 Cal.App.3d 703

508.06 Employer failed to establish trade secret privilege where (1) only evidence referred to costs and prices which were not shown to be secret or that disclosure to ALRB would result in disclosure to competitors; (2) no showing that risk to claimant outweighed ALRB's need for information; (3) no showing why protective order would not solve problem.
ALRB v. RICHARD A. GLASS CO. (1985) 175 Cal.App.3d 703

508.06 Even if trade secret exists, claimant of privilege has burden to show why the secret should be protected.

ALRB v. RICHARD A. GLASS CO. (1985) 175 Cal.App.3d 703

509.00 SUPERIOR COURT ENFORCEMENT OF BOARD ORDERS

509.01 In General

509.01 If no petition is filed in the Court of Appeal, or if such a petition was summarily denied, Board may apply for enforcement in state superior court.
MARTORI BROS. DISTRIBUTORS v. JAMES- MASSENGALE (9th Cir., 1986) 781 F.2d 1349, modified 791 F.2d 799

509.01 No award of attorney's fees, despite Court's recognition of sham appeal, where issue of appealability was novel and warranted hearing.
ALRB v. ABATTI PRODUCE, INC. (1985) 168 Cal.App.3d 504

509.01 Superior Court enforcement of ALRB order merely transforms administrative order to identical judicial order which is interlocutory and contemplates further contempt proceedings. Writ review of such enforcements should await a judgment in contempt.
ALRB v. ABATTI PRODUCE, INC. (1985) 168 Cal.App.3d 504

509.01 In enforcement proceedings, defending party may raise due process issues but not the substantive issues resolved in prior review proceedings.
ALRB v. ABATTI PRODUCE, INC. (1985) 168 Cal.App.3d 504

509.01 Use of term "injunction" in 1160.8 does not convert the carefully limited enforcement process to a general injunction proceeding, since such interpretation would substitute Superior Court jurisdiction for original jurisdiction of Court of Appeal.
ALRB v. ABATTI PRODUCE, INC. (1985) 168 Cal.App.3d 504

509.01 There is no money judgment in ALRB compliance proceeding until Board orders payment of specific amount of money and that order is enforced in superior court, Court of Appeal, or Supreme Court.
SANDRINI BROTHERS v. ALRB (1984) 156 Cal.App.3d 878

509.01 Judicial discretion plays little part in issuance of superior court orders to enforce final remedial orders of Board, since court's review is limited to determining whether order was issued pursuant to procedures established by Board and whether person refuses to comply with the order.
ALRB v. LAFLIN & LAFLIN (1979) 89 Cal.App.3d 651

509.01 If Court of Appeal has summarily denied petition for review of ALRB decision, then time for appellate review has "lapsed" within meaning of 1160.8, and Board can seek enforcement in superior court.
TEX-CAL LAND MANAGEMENT, INC. v. ALRB (1979) 24 Cal.3d 335

509.01 The Board concluded that the 60-day enforcement provision in ALRA section 1164.3, subdivision (f) was intended to apply only in cases where no review is sought in the Court of Appeal. In contrast, in matters where court review of the Board's order is sought, and the Court of Appeal issues a decision affirming the Board's order, it is not necessary to use the enforcement procedure set forth in section 1164.3, subdivision (f), as the Court's decision constitutes a judgment that can later be enforced through contempt or other enforcement proceedings in the appropriate court.
HESS COLLECTION WINERY, 35 ALRB No. 3

509.02 Procedural Regularity Of Board Decision

509.02 If time for appellate review of Board order has lapsed, Board may apply to superior court for enforcement. Superior court must enforce Board's order if it determines order was issued pursuant to established Board procedures and there is refusal to comply.
TEX-CAL LAND MANAGEMENT, INC. v. ALRB (1979) 24 Cal.3d 335

509.03 Evidence Of Noncompliance

509.03 Although Board order prohibiting eviction conflicted with county's duty to close uninhabitable housing, employer/landlord was not entitled to assert estoppel effect of county action as to Board order and bears heavy burden in enforcement proceedings to show that uninhabitability was not an effort to avoid Board's order.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

509.04 Appellate Review Of Superior Court Order; Stay Pending Review

509.04 A superior court judgment enforcing a final order of the ALRB is appealable.
ALRB v. Tex-Cal Land Management, Inc. (1987) 43 Cal.3d 696

509.04 The only issues that may be raised on appeal from a superior court judgment enforcing a final Board order are procedural irregularity and refusal to comply with the Board order. ALRB v. Tex-Cal Land Management, Inc. (1987) 43 Cal.3d 696

509.04 A judgment or decree which leaves nothing for further determination between the parties except the fact of compliance or noncompliance with its terms is final, not interlocutory.
ALRB v. Tex-Cal Land Management, Inc. (1987) 43 Cal.3d 696

509.04 When a Court of Appeal determines that an appeal is frivolous, it may exercise its power to dismiss the

appeal and, after proper notice and hearing, to award damages against the appealing party.
ALRB v. Tex-Cal Land Management, Inc. (1987) 43 Cal.3d 696

509.04 A superior court enforcement order under Labor Code section 1160.8 is subject to the general appellate stay provisions of CCP sec. 916 et seq.
ALRB v. Tex-Cal Land Management, Inc. (1987) 43 Cal.3d 696

509.04 The summary enforcement procedure set forth in Labor Code sec. 1160.8 is not a "special proceeding" to which appellate stay provisions are inapplicable.
ALRB v. Tex-Cal Land Management, Inc. (1987) 43 Cal.3d 696

509.04 Trial court rulings on issues of law in subpoena enforcement case not entitled to deference in court of appeal.
ALRB v. RICHARD A. GLASS CO. (1985) 175 Cal.App.3d 703

509.04 Superior Court enforcement of ALRB order merely transforms administrative order to identical judicial order which is interlocutory and contemplates further contempt proceedings. Writ review of such enforcements should await a judgment in contempt.
ALRB v. ABATTI PRODUCE, INC. (1985) 168 Cal.App.3d 504

509.04 1160.9 makes ALRA exclusive method of redressing ULP's; therefore, 1160.8 is exclusive avenue for judicial review of Board decisions.
ALRB v. ABATTI PRODUCE, INC. (1985) 168 Cal.App.3d 504

509.04 No award of attorney's fees, despite Court's recognition of sham appeal, where issue of appealability was novel and warranted hearing.
ALRB v. ABATTI PRODUCE, INC. (1985) 168 Cal.App.3d 504

509.04 The right of appeal is statutory, and a judgment or order is not appealable unless expressly made so by statute.
ALRB v. ABATTI PRODUCE, INC. (1985) 168 Cal.App.3d 504

509.04 Legislative intent to make 1160.8 exclusive avenue of judicial review is evident in shortened time limits, option of summary denial, and abbreviated superior court review. Appeal of superior court enforcement would thwart overall intent--to make review speedy and expeditious.
ALRB v. ABATTI PRODUCE, INC. (1985) 168 Cal.App.3d 504

509.05 Procedure And Evidence In Superior Court; Enforcement Stage

509.05 In enforcement proceedings, defending party may raise due process issues but not the substantive issues resolved in prior review proceedings.
ALRB v. ABATTI PRODUCE, INC. (1985) 168 Cal.App.3d 504

509.06 Contempt Proceedings; Procedure, Burden Of Proof, Issues Before Court

509.06 Although Board order prohibiting eviction conflicted with county's duty to close uninhabitable housing, employer/landlord was not entitled to assert estoppel effect of county action as to Board order and bears heavy burden in enforcement proceedings to show that uninhabitability was not an effort to avoid Board's order.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

509.07 Modification Of Board Decision After Enforcement

600.00 GENERAL LEGAL PRINCIPLES

600.00 EVIDENCE

600.01 In General

600.01 Evidence of conduct after the makewhole period not relevant to what the parties would have agreed to during the makewhole period.
PAUL W. BERTUCCIO, 17 ALRB No. 16

600.01 Where employer seeks to resubmit in Dal Porto proceeding evidence purporting to demonstrate that it would not have entered into a contract calling for higher wages due to its weak financial condition that was previously proffered and rejected in the liability stage without explanation, rehabilitation, or expansion of supporting documentation, Board has no basis to retreat from prior rejection of such proof, and employer has suffered no prejudice entitling it to a Dal Porto hearing.
ROBERT H. HICKAM, 17 ALRB No. 7

600.01 Board affirms ALJ's ruling that Respondent was not entitled to ask backpay claimants whether they worked during periods which were outside the backpay period and, if they did, whether then had unjustifiably quit or been fired for misconduct.
MARIO SAIKHON, INC., 17 ALRB No. 6

600.01 Board follows Brown v. Superior Court (1977) 71 Cal.App.3d 141 which held that since W-2 forms must be attached to both state and federal income tax returns, they constitute an integral part of such returns and thereby fall within the judicially created privilege against disclosure of tax returns. Board overrules its prior decisions to extent that they may be inconsistent with Brown. (George Lucas, 10 ALRB No. 6.)
UKEGAWA BROTHERS, et al., 16 ALRB No. 18

600.01 ALO conclusion was based on the testimony of one witness, with no corroboration or refutation and complaint was not amended to allege the conduct as a violation. Board determined that issue was not fully litigated and made no determination as to whether Act was violated.
C. MONDAVI & SONS, dba CHARLES KRUG WINERY 5 ALRB No. 53

600.01 In cases involving a technical refusal to bargain, any relevant evidence tending to show that no contract would have been consummated between the parties is more appropriately introduced in the compliance proceedings of the Board's bifurcated determination process, rather than the liability proceedings, because the question of what the parties might have agreed to concerns the amount of damages rather than the fact of damages. GEORGE

ARAKELIAN FARMS, INC. v. ALRB (1989) 49 Cal.3d 1279

600.01 The most significant distinction between surface bargaining and a technical refusal to bargain lies in the quantum of evidence available to show that both innocent and wrongful factors combined to preclude agreement with union representatives.
GEORGE ARAKELIAN FARMS, INC. v. ALRB (1989) 49 Cal.3d 1279

600.01 Because the Board's findings of fact must be supported on review by substantial evidence, the Board's findings may not rest on suspicion, surmise, mere implications, or plainly incredible evidence.
GEORGE ARAKELIAN FARMS, INC. v. ALRB (1989) 49 Cal.3d 1279

600.01 The ALRB has the authority to establish evidentiary standards in unfair labor practice proceedings and may appropriately bar at the threshold proffered evidence that fails to meet these standards.
GEORGE ARAKELIAN FARMS, INC. v. ALRB (1989) 49 Cal.3d 1279

600.01 In technical refusal to bargain cases the evidence that the parties would not have entered into an agreement even if they had negotiated in good faith is necessarily speculative because there is no bargaining history between the parties.
GEORGE ARAKELIAN FARMS, INC. v. ALRB (1989) 49 Cal.3d 1279

600.01 On making determination whether factors other than bad faith bargaining prevented contractual agreement, wholly speculative evidence is not relevant and is properly excluded.
WILLIAM DAL PORTO & SONS, INC. v. ALRB (1987) 191 Cal.App.3d 1195

600.01 Employer not denied due process where it had actual notice that authorization cards and bargaining order would be considered, and where it had full opportunity to challenge validity of cards and propriety of remedy.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

600.01 Hearsay admitted without objection is sufficient to sustain finding in ALRB proceedings. ALRB not governed by APA, which clearly prohibits use of uncorroborated hearsay as basis for finding.
FRUDDEN ENTERPRISES, INC. v. ALRB (1984) 153 Cal.App.3d 262

600.01 Board's regulations, (20382(g)) preclude admission in ULP proceedings of Board order extending certification.
YAMADA BROS. v. ALRB (1979) 99 Cal.App.3d 112

600.01 IHE properly refused to allow employer to introduce

evidence on last scheduled day of hearing where employer had moved to quash a subpoena seeking the same information and had submitted a response to the decertification petition, under penalty of perjury, which contained statements which were misleading, if not intentionally false, and were inconsistent with the evidence proffered at hearing.
NASH DE CAMP COMPANY, 26 ALRB No. 4

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 Background Evidence And Matters Not Alleged ; Stipulations

600.02 Stipulations must be given a reasonable construction with a view to giving effect to the intent of the parties. Unless it is clear from the record that both parties assented, there is no stipulation.
UFW/JUAN MARTINEZ 13 ALRB No. 6

600.02 The Board affirmed the ALJ's Decision, declining to find a violation of 1153(d) despite strong evidence that the reasons for the layoff of a worker were in fact pretextual, since the allegation was not part of the complaint nor fully litigated, the ALJ having permitted evidence of the layoff only to provide background information relevant to the central issue being litigated at trial.
KIRSCHENMAN ENTERPRISES, INC. 12 ALRB No. 2

600.02 Board excluded stipulation entered into by General Counsel and respondent during the hearing on the underlying unfair labor practice charge, because the stipulation was made for a limited purpose, and there was substantial proof that respondent did not make an unconditional offer of reinstatement on the date recited in the stipulation.
KITAYAMA BROTHERS, 10 ALRB No. 47

600.02 Subpoenas duces tecum of agency officials quashed where evidence sought (unwritten agency practice of printing ballots with union choice on left) was irrelevant to question of interference with employee free choice.
VISALIA CITRUS PACKERS, 10 ALRB No. 32

600.02 Charge of refusing to provide transportation to employees who had filed unfair labor practice charges with ALRB charging unlawful reduction in work hours was fully litigated and sufficiently related to ULP charges to justify finding of 1153(d) violation despite absence of allegation in complaint.
GRAMIS BROTHERS FARMS, INC., and GRO-HARVESTING, Inc., 9 ALRB No. 60

600.02 Although evidence of presettlement conduct is admissible as background to allegations of postsettlement misconduct, a written settlement agreement is not, itself, admissible as proof of that presettlement conduct.
ROBERTS FARMS, INC., 9 ALRB No. 27

600.02 Union alleged independent viol of 1153(a) proper where events surrounding disciplinary action are integral part of events alleged in complaint and were fully litigated.
SUPERIOR FARMING COMPANY, 8 ALRB No. 40

600.02 General Counsel may amend a complaint at close of case in chief where events fully litigated, R had notice of amendment prior to presenting its case, and no prejudice shown because of timing of amendment. Exception thereto untimely.
ROGERS FOODS, INC., 8 ALRB No. 19

600.02 Evidence introduced solely to establish animus in 1153(c) case cannot be basis for independent 1153(a) viol where respondent had no notice that evidence would be so considered.
NASH-DE CAMP COMPANY, 8 ALRB No. 5

600.02 Not improper for ALO to utilize evidence of Employer's anti-union acts and statements in his consideration of case.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC.,7 ALRB No. 36

600.02 Not improper for ALO to utilize evidence of Employer's anti-union acts and statements in his consideration of case.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC., 7 ALRB No. 36

600.02 Evidence of incidents not charged as ULP's may be used as background evidence of Employer's anti-union bias.
KITAYAMA BROS. NURSERY, 4 ALRB No. 85

600.02 When evidence is introduced on one issue set by the pleadings, its introduction cannot be regarded as authorizing the determination of some other issue not presented by the pleadings.
J.R. NORTON CO. v. ALRB (1987) 192 Cal.App.3d 874

600.02 Where conduct is neither charged as ULP nor alleged as such in complaint, Board may not find that conduct constituted ULP unless it is fully and fairly litigated.
GEORGE ARAKELIAN FARMS v. ALRB (1986) 186 Cal.App.3d 94

600.02 Where conduct is litigated solely to prove defense to ULP allegation, it may not be held to itself constitute ULP.
GEORGE ARAKELIAN FARMS v. ALRB (1986) 186 Cal.App.3d 94

600.02 A party may be estopped from claiming that his/her uncharged conduct constituted ULP where he/she has acquiesced in the trial of such conduct as ULP.
GEORGE ARAKELIAN FARMS v. ALRB (1986) 186 Cal.App.3d 94

600.02 Any evidence concerning any potentially appropriate remedy is material and relevant, regardless of whether G.C. has requested remedy in his complaint.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

600.02 Evidence of union's card majority was clearly relevant to bargaining order, and was therefore properly admitted over G.C.'s objection.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

600.02 Board will not consider evidence of ULP's which antedate settlement agreement, unless parties agree to reserve certain conduct from the settlement.
NISH NOROIAN FARMS v. ALRB (1984) 35 Cal.3d 726

600.02 Though events prior to statute-of-limitations period cannot constitute ULP's in and of themselves, evidence of such events is admissible to shed light on later conduct or on the motive for such later conduct.
ALRB v. RULINE NURSERY CO. (1981) 115 Cal.App.3d 1005

600.02 Board properly found unlawful isolation of pro-union crew. Though charge not included in complaint, issue was fully litigated at hearing.
KAWANO, INC. v. ALRB (1980) 106 Cal.App.3d 937

600.02 Subject to relevancy objections, evidence relating to election objections that have been dismissed is admissible in order to elucidate the circumstances surrounding alleged conduct that is set for hearing.
NASH DE CAMP CO., 25 ALRB No. 7

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 Burden Of Proof; Weight Of Evidence; Presumptions And Inferences; Affirmative Defenses

600.03 Proof provided by admissible hearsay document and testimony outweighed contrary showing provided by ambiguous stipulation entered into by parties at hearing.
MARIO SAIKHON, INC., 17 ALRB No. 13

600.03 In discrimination in employment cases under Labor Code section 1153(c) and (a), the initial burden of establishing a prima facia case is on the General

Counsel. The General Counsel must show by a preponderance of the evidence that 1) the alleged discriminatee(s) engaged in protected activity in support of the union; 2) the employer had knowledge of such conduct, and 3) there was a causal relationship between the employees' protected activity and the employer's adverse action in order to show an inference that union activity was a motivating factor in the employer's action.
CALIFORNIA VALLEY LAND CO., INC., AND WOOLF FARMING CO. OF CALIFORNIA, INC., 17 ALRB No. 8

600.03 In cases involving employer motivation, the Board has adopted the two-part test of causation established in *Wright Line, A Division of Wright Line, Inc.* (1980) 251 NLRB 1083 (105 LRRM 1169). The General Counsel must first make a prima facie showing sufficient to support the inference that protected conduct was a "motivating factor" in the employer's decision. The burden of proof then shifts to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct.
CALIFORNIA VALLEY LAND CO., INC., AND WOOLF FARMING CO. OF CALIFORNIA, INC., 17 ALRB No. 8

600.03 The burden of establishing a Dal Porto defense, i.e., that no contract would have been arrived at even if bargaining had been conducted solely in good faith, is on the employer found to have engaged in bad faith bargaining, and that burden is a heavy one.
ROBERT H. HICKAM, 17 ALRB No. 7

600.03 Where record shows numerous collective bargaining agreements entered into by union and other employers similarly situated to respondent all providing for a uniform level of wages, it may be taken as established for purposes of showing prima facie case under Dal Porto that union would have demanded standard area wages from respondent.
ROBERT H. HICKAM, 17 ALRB No. 7

600.03 Party asserting an affirmative defense has the burden of proof as to that defense.
BRUCE CHURCH, INC., 17 ALRB No. 1

600.03 Respondent failed to establish unauthorized immigration status of fourteen discriminatees, the basic premise from which its "preemption" and "unavailability" arguments were made. For this reason Board declined to address Respondent's contentions, holding that Respondent's refusal to reinstate the discriminatees upon their application to return to work was unwarranted.
PHILLIP D. BERTELSEN, INC. dba COVE RANCH MANAGEMENT, 16 ALRB No. 11

600.03 Proof of an employer's bad faith refusal to furnish requested bargaining-related information at one stage of

negotiations is not sufficient to raise a triable issue that such refusal caused the parties' ultimate failure to reach agreement when record evidence establishes that the union raised its wage proposals above already unacceptable levels prior to the receipt of the requested information.
MARIO SAIKHON, INC., 15 ALRB No. 3

600.03 The presence of the rebuttable presumption affecting the burden of proof created by the court in William Dal Porto & Sons v. ALRB (1987) 191 Cal.App.3d 1195 does not affect the ability of the Board to grant summary disposition of the question whether the parties negotiating for a collective bargaining agreement would have reached agreement in the absence of a party's bad faith bargaining conduct.
MARIO SAIKHON, INC., 15 ALRB No. 3

600.03 Proof that a union perceived itself as having failed to obtain intended wage levels does not constitute proof of wage level flexibility sufficient to raise a triable issue that the employer's bad faith bargaining conduct, rather than the union's unvarying wage proposals, caused the parties' failure to reach contractual agreement.
MARIO SAIKHON, INC., 15 ALRB No. 3

600.03 The rebuttable presumption created by the court in William Dal Porto & Sons v. ALRB (1987) 191 Cal.App.3d 1195 that parties negotiating for a collective bargaining agreement would have reached agreement in the absence of a party's bad faith bargaining conduct is a presumption affecting the burden of proof.
MARIO SAIKHON, INC., 15 ALRB No. 3

600.03 Proof that a union consistently offered to the employer only wage proposals economically unacceptable to similarly situated employers is not irrelevant to a determination whether the employer and the union would have agreed to a collective bargaining agreement in the absence of the employer's bad faith bargaining conduct.
MARIO SAIKHON, INC., 15 ALRB No. 3

600.03 The failure of similarly situated employers to reach agreement on wage proposals steadfastly advanced by the union, even when the employers were bargaining in good faith, is highly probative as to the question of whether agreement could have been reached in the absence of bad faith bargaining by the employer who is subject to a Dal Porto inquiry.
MARIO SAIKHON, INC., 15 ALRB No. 3

600.03 Adherence to the Board's procedures for the processing of unit clarification petitions is necessary to ensure that unit clarification proceedings remain purely investigative in nature and do not result in inappropriate imposition of burdens of proof.
SILVA HARVESTING, INC., 15 ALRB No. 2

600.03 Board finds it inherently improbable that, in describing the circumstances of his discharge to a union representative who assisted him in preparing ULP charge, employee would not have told the representative that his wife was fired at the same moment he was fired, if that had in fact occurred. Board concludes that General Counsel failed to establish a prima facie case that the wife was discharged because of her husband's union activity.
BAIRD-NEECE PACKING CORPORATION, 14 ALRB No. 16

600.03 A Respondent's production of weak evidence, where stronger evidence available, permits inference that the production of strong evidence would have been adverse, citing The Goodyear Tire & Rubber Company (1984) 271 NLRB 343 [117 LRRM 1086].
RICHARD A. GLASS COMPANY, INC.,
14 ALRB No. 11

600.03 NLRB precedents place burden on employer to establish permanent status of replacements by showing that prior to offer to return, there was a mutual understanding between employer and replacement that status of latter was that of a permanent employee.
SAM ANDREWS' SONS 12 ALRB No. 30

600.03 Respondent was able to make a prima facie showing of a willful loss of earnings by demonstrating that: (1) Charging Party had obtained interim employment; (2) he voluntarily departed from that employment; and (3) the stipulated reason for his departure, a personal conflict with another employee, was not related to the nature of the job nor the prospect of obtaining better employment. At that point, the burden of proof shifted back to the General Counsel to rebut the evidence that Charging Party's loss of work was willful, in this case, to show that the conflict made the new job totally unacceptable despite any attempts at resolution.
UFW/SCARBROUGH 12 ALRB No. 23

600.03 Once the General Counsel has shown a loss of earnings resulting from the discrimination, the burden shifts to the Respondent to establish a reduction in the amount of the backpay award for reasons unrelated to the discrimination.
UFW/SCARBROUGH 12 ALRB No. 23

600.03 General Counsel, acting as agent for Board rather than independent prosecutor, bears burden of proof in compliance proceedings with respect to continuation of bad faith bargaining, but post-hearing conduct that bears a close resemblance to pre-hearing conduct will inevitably be colored by the Board's findings in underlying liability decisions.
McFARLAND ROSE PRODUCTION, 11 ALRB No. 34

600.03 On remand from Court of Appeals to place restrictions on labor camp access order, Board analogize to solicitation on non-work-time cases for presumption that restrictions on labor camp organizer access are invalid.
SAM ANDREWS' SONS, 11 ALRB No. 29

600.03 Where facts stipulated to Board without hearing, the General Counsel failed to establish that the employer refused to provide information or otherwise refused to bargain where there existed a factual conflict in the record, which was impossible to resolve without credibility determinations.
O. E. MAYOU & SONS, 11 ALRB No. 25

600.03 Stipulations entered into during the election portion of a consolidated hearing carry over into the unfair labor practice phase and presumptively establish the facts to which the stipulations apply. Such stipulations constitute authorized and adoptive admissions, and, absent a showing that fundamental concepts of fairness and due process require that the stipulations be set aside, or that the stipulations are based on a material excusable mistake of fact, a party will not be relieved of the consequences of the stipulations.
SEQUOIA ORANGE CO., 11 ALRB No. 21

600.03 ALJ's reliance upon adverse inferences drawn because of employer's failure to call a witness to rebut discriminatee's testimony was unnecessary in light of Evidence Code section 411, which allows a finding of fact to be based upon the credited direct evidence of one witness. In addition, ALJ credited discriminatee's testimony based upon other factors, including demeanor of the discriminatee and corroborating testimony of another witness.
THE GARIN COMPANY, 11 ALRB No. 18

600.03 In general, adverse inferences are permitted where a party fails to produce evidence or witnesses within its control, or introduces weaker or less satisfactory evidence than it is within its power to produce. (Cal. Evidence Code sec. 412); drawing of adverse inference against a party for failure to call a witness is inappropriate where there is no evidence the witness is within party's control.
THE GARIN COMPANY, 11 ALRB No. 18

600.03 Where employer's asserted reason for a discharge is proven to be false, Board can infer that there is another, unlawful, motive which employer desires to conceal, where surrounding facts, such as antiunion animus, tend to reinforce that inference.
THE GARIN COMPANY, 11 ALRB No. 18

600.03 General Counsel is relieved of its burden to show availability of work in a refusal to hire allegation if General Counsel proves that the timely and appropriate

application was treated discriminatorily by employer.
MATSUI NURSERY, INC., 11 ALRB No. 10

600.03 General Counsel failed to establish by a preponderance of the evidence that employer harassed and pressured employee because of activities on behalf of union.
BRUCE CHURCH, INC., 11 ALRB No. 9

600.03 General Counsel did not meet its burden of establishing a violation of section 1153(e) by the employer's failure to reestablish bus service which the Board found it had lawfully discontinued where the record is devoid of any evidence regarding the bus situation subsequent to the discontinuance.
BRUCE CHURCH, INC., 11 ALRB No. 9

600.03 Violation found where record did not clearly indicate the number of organizers taking work site access, since the burden of proof was on the employer to show that access was excessive.
SAM ANDREWS' SONS, 11 ALRB No. 5

600.03 On remand from Court, Board held employer overcame presumption that wage and benefit increases during union organizational drive were primarily motivated by antiunion purposes.
McANALLY ENTERPRISES, INC., 11 ALRB No. 2

600.03 To prove a violation of section 1153(c), the General Counsel must establish that a person engaged in activities protected by the Act, that this activity was known to the employer and that the employee was denied rehire or terminated because of the protected activity; once the General Counsel thus establishes a prima facie case of unlawful discrimination, the burden of proof shifts to the employer to establish that the employee would have been denied rehire or terminated notwithstanding any protected activities.
BEN AND JERRY NAKASAWA d/b/a NAKASAWA FARMS AND B. J. HAY HARVESTING,
10 ALRB No. 48

600.03 To establish a violation of section 1153(d) the General Counsel must prove that the discriminatees filed charges or gave testimony (or otherwise involved themselves in the processes of the Board), and must also establish that a respondent knew of the above activity and discriminated against the employees because of their protected activities.
BEN AND JERRY NAKASAWA d/b/a NAKASAWA FARMS AND B. J. HAY HARVESTING, 10 ALRB No. 48

600.03 General Counsel makes a sufficient prima facie showing of contract comparability by presenting contracts negotiated by the same union and covering operations in at least some of the same commodities and locations as that of the employer and in effect during the makewhole period; other

parties can then raise fine points of comparability in an attempt to show that General Counsel's method of calculating makewhole is arbitrary, unreasonable or inconsistent with Board precedent or that a more appropriate contract should be used.
J. R. NORTON COMPANY, INC., 10 ALRB No. 42

600.03 Reduction in hours of work following testimony adverse to employer in backpay compliance proceeding raises inference of discrimination sufficient to establish prima facie case and shifts to employer burden of showing change would have occurred even in absence of participation in Board processes.
ABATTI FARMS, INC., 10 ALRB No. 40

600.03 Bad faith inferred from employer's failure to assert, until hearing, defense that it was not bound by certification and was not successor of previous employer.
SUMNER PECK RANCH, INC., 10 ALRB No. 24

600.03 The party objecting to the certification of an election bears the burden of proving by specific evidence that misconduct occurred which tended to affect employee free choice to the extent that it affected the election results. BRIGHT'S NURSERY, 10 ALRB No. 18
Accord: J. OBERTI, INC., et al., 10 ALRB No. 50

600.03 Burden of proof in makewhole proceedings was on employer to prove that Regional Director was unreasonable in his selection of comparable contracts and characterization of certain items as wages.
HOLTVILLE FARMS, INC., 10 ALRB No. 13

600.03 Board held that General Counsel failed to meet his burden of proving: (1) a causal connection between employees' union support and their subsequent harassment and assignments to isolated jobs; (2) that employer coercively interrogated employees; and (3) that employer had knowledge of laid-off employees' union sympathies.
MONROVIA NURSERY COMPANY, 9 ALRB No. 5

600.03 General Counsel not establish prima facie 1153(a) refusal to rehire violation where conflicts in testimony could not be resolved.
NASH-DE CAMP COMPANY, 8 ALRB No. 5

600.03 No viol of 1153(d) where Employee filed charge and was refused rehire, absent evidence labor contractor who did not rehire him was aware charge filed.
NASH-DE CAMP COMPANY, 8 ALRB No. 5

600.03 No violation of 1153(c) or (a) where work unavailable for persons not previously employed in R's harvest and all alleged discriminatees were new Employees.
NASH-DE CAMP COMPANY, 8 ALRB No. 5

600.03 Discriminatory motive may be inferred where: (1) anti-

union animus by Sup; (2) interrogation of crew regarding their Union support; (3) Sup's statements that aware of time, place and attendance of Union meetings; and (4) Employer offered crew leader money and solicited assistance in discouraging Employees from supporting Union.
NASH-DE CAMP COMPANY, 8 ALRB No. 5

600.03 Where testimony conflicting, Board rejected date Employee filed ULP as basis for determining date first applied for work.
NASH-DE CAMP COMPANY, 8 ALRB No. 5

600.03 Under statutory interpretation approved in Bacchus Farms, 4 ALRB No. 26, contacting ALRB regarding an employ. Complaint is PCA even though charge not filed.
NASH-DE CAMP COMPANY, 8 ALRB No. 5

600.03 No violation 1153(a) where General Counsel fails to prove discriminatee sought rehire when work available or show causal connection between PCA and refusal to rehire even though timing of refusal was suspicious.
NASH-DE CAMP COMPANY, 8 ALRB No. 5

600.03 Layoff one week before election and soon after Employer learned of Employee's support for Union, coupled with hostility of Employer toward Union, established prima facie case.
NASH-DE CAMP COMPANY, 8 ALRB No. 5

600.03 Facts fully litigated without objection and closely related to violations alleged in complaint properly considered as independent viol. of 1153(c) and (a).
NASH-DE CAMP COMPANY, 8 ALRB No. 5

600.03 Circumstances which merely raise a suspicion do not establish a violation of the Act.
ADMIRAL PACKING CO., et al, 7 ALRB No. 43

600.03 Employer's labor relations representative admission that company abrogated Employee's seniority in response to Union grievance filed on Employee's behalf essentially constitutes admission of violation of Act.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC., 7 ALRB No. 36

600.03 Mere suspicion that Employee discharged for Union activity or PCA because of Employer hostility to Union insufficient to prove discrimination.
TENNECO WEST, INC., 7 ALRB No. 12

600.03 No causal connection between PCA and discharge where some 6 months elapsed and Employee destroyed Employer's crops, was fired immediately after such destruction, and Employee had fewer problems at work after PCA until the discharge.
TENNECO WEST, INC., 7 ALRB No. 12

600.03 Mere suspicion that Employee discharged for Union activity or PCA because of Employer hostility to Union insufficient to prove discrimination.
TENNECO WEST, INC., 7 ALRB No. 12

600.03 General Counsel failed to establish prima facie case of illegal retaliation against Employees who had arranged a UFW radio broadcast critical of alleged supervisor.
TENNECO WEST, INC., 7 ALRB No. 12

600.03 No prima facie case of discriminatory discharge because no causal connection between PCA and firing. Employer not required to show legitimate basis for firing.
TENNECO WEST, INC., 7 ALRB No. 12

600.03 Evidence did not establish a retaliatory layoff for PCA. Employees voluntarily chose not to work until they could discuss wage for redoing work with Employer who was reasonably unavailable to meet immediately.
GIUMARRA VINEYARDS, INC., 7 ALRB No. 7

600.03 Slogans of Union agents designed to dissuade individuals from working during Union's strike provide ample evidence from which to infer the individuals were agricultural Employees within meaning of Act.
UNITED FARM WORKERS OF AMERICA, AFL-CIO., 6 ALRB No. 58

600.03 Whether or not employees actually witnessed an assault on a union organizer by an agent of the employer is immaterial since the employees were in the immediate vicinity and it can be inferred that they were, or became, aware of the incident.
HIGH & MIGHTY FARMS (1980) 6 ALRB No. 34

600.03 Reading notice to Employees on work time places burden on Employer found guilty of ULP, but Employees should not have to use non-work time to be apprised of their rights and Employer's violation thereof. The burden of remedying the ULP properly falls on the wrongdoer.
M. CARATAN, 6 ALRB No. 14

600.03 Burden of proof to establish Union agency on party asserting same.
SAN DIEGO NURSERY CO., INC., 5 ALRB No. 43

600.03 Small plant doctrine not basis for inferring Employer knowledge of Employee's Union activity where Employee worked alone, supervision was sporadic and limited, and Union activity was minimal.
MARIO SAIKHON, INC., 4 ALRB No. 107

600.03 ALO improperly used failure to rehire as evidence of bias and then found discriminatory failure to rehire in light of anti-union bias. Violation of 1153(c) and (a) upheld because other evidence of anti-union bias.
KITAYAMA BROS. NURSERY, 4 ALRB No. 85

600.03 Presumptions in Board Regulation 20310(d) (2) regarding voter eligibility not penalty but serve to insure Employees' voting rights not delayed by Employer failure to keep and provide adequate information to determine voter eligibility.
KITAYAMA BROS. NURSERY, 4 ALRB No. 85

600.03 RD did not abuse discretion by invoking presumption in Board Regulation 20310(d)(2) that unchallenged Employees are eligible to vote where Employer had inadequate payroll records and did not submit complete data in timely manner to verify Employee status and voter eligibility.
HARRY SINGH & SONS, 4 ALRB No. 63

600.03 Use of presumption in Board Regulation 20310(d) (2) proper unless Employer shows RD invocation thereof is abuse of discretion and resulted in prejudice.
HARRY SINGH & SONS, 4 ALRB No. 63

600.03 Insufficient proof of 1153(a) violation where various testifying employees offered widely disparate versions of alleged statement, and labor contractor himself at first confirmed making statement, then later specifically denied having done so.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

600.03 The failure to present evidence reasonably available to respondent, such as insurance policies, gives rise to inference that respondent's insurance policies contain no exclusion of coverage for non-workers and respondent's justification not supported by credible evidence.
SAM ANDREWS' SONS, 3 ALRB No. 45

600.03 Permanent employment elsewhere does not overcome presumption of continuing interest in struck job. Employer must produce objective evidence to defeat presumption.
MARLIN BROTHERS, 3 ALRB No. 17

600.03 The key factor for showing a mutual understanding between the employer and replacement employees that the replacement employees are permanent is whether the employer communicated its intentions to the replacement workers.
VESSEY & COMPANY, INC. v. ALRB (1989) 210 Cal.App.3d 629

600.03 The burden of proving the replacements for economic strikers were hired as permanent employees is on the employer, and the employer must show a mutual understanding between itself and the replacements that the replacements are permanent.
VESSEY & COMPANY, INC. v. ALRB (1989) 210 Cal.App.3d 629

600.03 A unilateral, undisclosed belief by the general manager was inadequate to satisfy the requisite burden of proving

a mutual belief that the replacement workers were permanent employees.
VESSEY & COMPANY, INC. v. ALRB (1989) 210 Cal.App.3d 629

600.03 Once a prima facie case of discrimination is established, the employer may avoid liability by proving, by a preponderance of the evidence, that its actions were consistent with past business practices and that it would have taken the same action even in the absence of the union activities.
VESSEY & COMPANY, INC. v. ALRB (1989) 210 Cal.App.3d 629

600.03 The burden of proving unlawful conduct is on the Board, and such conduct will not lightly be inferred. The standard of review is met, however, if there is relevant evidence in the record which a reasonable mind might accept in support of the findings.
VESSEY & COMPANY, INC. v. ALRB (1989) 210 Cal.App.3d 629

600.03 If the grower fails to carry its burden to prove no contract would have been agreed to absent the grower's refusal to bargain, the Board may find an agreement providing for higher pay would have been concluded but for the grower's refusal to bargain.
PAUL W. BERTUCCIO v. ALRB (1988) 202 Cal.App.3d 1369

600.03 The Board's General Counsel has the initial burden of producing evidence to show the grower unlawfully refused to bargain. Once the General Counsel produces such evidence, the burden of persuasion shifts to the grower to prove no agreement calling for higher pay would have been concluded in the absence of the illegality.
PAUL W. BERTUCCIO v. ALRB (1988) 202 Cal.App.3d 1369

600.03 If the Board finds that the grower has failed to prove no contract would have been entered into absent his refusal to bargain, the Board should then impute an agreement and measure losses of pay and benefits with reference to the imputed contract.
PAUL W. BERTUCCIO v. ALRB (1988) 202 Cal.App.3d 1369

600.03 The placing of the burden on the employer to rebut the presumption that the parties would have entered into an agreement had the employer bargained in good faith, does not unconstitutionally violate due process, since empirical data supports a rational connection between good faith bargaining and the consummation of an agreement.
WILLIAM DAL PORTO & SONS, INC. v. ALRB (1987) 191 Cal.App.3d 1195

600.03 In considering need for post- certification access, employer bears burden of overcoming presumption that there are no other adequate alternative means of communicating with employees.
F&P GROWERS ASSN. v. ALRB (1985) 172 Cal.App.3d 1127

600.03 In backpay proceeding, General Counsel has burden of proving gross backpay. Once General Counsel has done so, employer has burden of proving any facts in mitigation of its gross backpay liability.
FRUDDEN ENTERPRISES, INC. v. ALRB (1984) 153 Cal.App.3d 262

600.03 Board need not treat self-serving declarations of employer as conclusive, even if uncontradicted. Board must determine motive from all circumstances of case. (Dissent by Tamura, J.)
GEORGE ARAKELIAN FARMS v. ALRB (1980) 111 Cal.App.3d 258

600.03 Mere suspicion is not sufficient to sustain finding that discriminatory conduct was motivated by employer animus. Evidence must support rational inference of causal nexus between anti-union animus and discrimination.
GEORGE ARAKELIAN FARMS v. ALRB (1980) 111 Cal.App.3d 258

600.03 In discrimination case, once General Counsel proves significant improper motivation, burden of proof shifts to employer to prove it had a legitimate reason, sufficient in itself, for discharge.
ABATTI FARMS, INC. v. ALRB (1980) 107 Cal.App.3d 317

600.03 Once Board has shown significant improper motivation, burden is on employer to prove that it had good reason, sufficient in itself, to initiate discharge. (Concurrence by Staniforth, J.)
ABATTI FARMS, INC. v. ALRB (1980) 107 Cal.App.3d 317

600.03 Charging party has burden of proving prima facie case of significant unlawful motive for discharge or refusal to rehire; if it does so, then burden shifts to employer to show legitimate business reason, sufficient in itself to produce discharge.
KAWANO, INC. v. ALRB (1980) 106 Cal.App.3d 937

600.03 Proof of general employer anti-union animus aids General Counsel's burden of proof but is not in itself sufficient to prove charge.
KAWANO, INC. v. ALRB (1980) 106 Cal.App.3d 937

600.03 Board found that General Counsel proved by a preponderance of the evidence that the employer knew that the employees had engaged in protected concerted activity and discharged them for that reason. General Counsel’s prima facie case was supported by both direct and circumstantial evidence.
CIENIGA FARMS, INC., 27 ALRB No. 5

600.03 In an investigative hearing to resolve challenged ballots, the IHE properly drew adverse inferences from employer's failure to provide documentary evidence that was under its control regarding the employment status of challenged voters during the eligibility period.
ARIE DE JONG dba MILKY WAY DAIRY, 29 ALRB No. 4

600.03 In an investigative hearing to resolve challenged ballots, the IHE properly found that declarations by the voters in question were not adequate to supplement or explain the non hearsay documentary evidence submitted regarding those voters where the voters did not testify at the hearing, and where other testimony about these voters was discredited.
ARIE DE JONG dba MILKY WAY DAIRY, 29 ALRB No. 4

600.03 In an investigative hearing to resolve challenged ballots, the burden on the party seeking to upset the status quo established by the eligibility list by challenging a voter is a burden of production rather than one of persuasion.
ARIE DE JONG dba MILKY WAY DAIRY, 29 ALRB No. 4

600.03 In order to demonstrate that good cause for the issuance of a protective order, a party must show that the documents in question are truly confidential, and that disclosure of the documents would cause a clearly defined and serious injury. Broad allegations of harm are not sufficient; the party must provide specific demonstrations of fact supported by affidavits and concrete examples.
D'ARRIGO BROS. CO. OF CALIFORNIA, 30 ALRB NO. 1.

600.03 It is well established under California and federal case law that the party seeking a protective order bears the burden, for each particular document it seeks to protect, of showing the specific harm or prejudice will result if no protective order is granted.
D'ARRIGO BROS. CO. OF CALIFORNIA, 30 ALRB NO. 1.

600.03 Respondent seeking a protective order for negotiation notes did not provide adequate support for its argument that the notes were confidential when it merely stated that its bargaining representatives did not contemplate that the notes would ever be disclosed to a third party.
D'ARRIGO BROS. CO. OF CALIFORNIA, 30 ALRB NO. 1.

600.03 The Board held that the IHE was correct in assigning the burden of producing evidence supporting challenges to the party asserting the challenges to voters' eligibility. The Board has stated that with respect to the evidentiary burdens upon the parties in representation proceedings, the party supporting the challenge to a voter carries a burden of production, but not of persuasion. (*Artesia Dairy* (2007) 33 ALRB No. 3; *Milky Way Dairy* (2003) 29 ALRB No. 4; *Artesia Dairy* (2006) 32 ALRB No. 3)
KAWAHARA NURSERIES, INC., 37 ALRB No. 4

600.03 The Board overruled the challenges to employees of a nursery who held the job title "merchandiser" where the union that challenged the employees' eligibility failed to meet its burden of producing evidence in support of

the challenges.
KAWAHARA NURSERIES, INC., 37 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], enfd (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 Circumstantial Evidence

600.04 Intent of parties in unfair bargaining case must nearly always be determined from circumstantial evidence.
ADMIRAL PACKING CO., et al, 7 ALRB No. 43

600.04 In relying on circumstantial evidence to establish discharge, consider totality of the evidence based on record as a whole.
DEL MAR MUSHROOMS, INC., 7 ALRB No. 41

600.04 In a case involving charge of unlawful assistance by Employer in decertification election, reliance on circumstantial evidence is not only permissible, but often essential. There will seldom be discoverable data showing direct statements by party charged with violence that he has performed improper acts.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC., 7 ALRB No. 36

600.04 State of mind—the key issue in bad-faith bargaining case—is not question of law but of fact, and is most often established by circumstantial evidence. Such determinations must be made on basis of totality of circumstances.
WILLIAM DAL PORTO & SONS, INC. v. ALRB (1984) 163 Cal.App.3d 541

600.04 Court may not substitute its judgment for that of Board in Board's special area of expertise, i.e., the assessment of the weight of circumstantial evidence.
ABATTI FARMS, INC. v. ALRB (1980) 107 Cal.App.3d 317

600.04 It is the province of Board to decide on conflicting evidence employer's motivation. Where employer's motive is central issue, fact finder must often rely heavily on circumstantial evidence and references. Only rarely will there be probative direct evidence of motivation. Board is free to draw inferences from all circumstances and need not accept self-serving declaration of intent, even if they are uncontradicted. (Concurrence by Staniforth, J.)
ABATTI FARMS, INC. v. ALRB (1980) 107 Cal.App.3d 317

600.04 Circumstantial evidence is sufficient to establish unlawful discharge or refusal to rehire.
ABATTI FARMS, INC. v. ALRB (1980) 107 Cal.App.3d 317

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]; *Glassforms, Inc.* (2003) 339 NLRB 1108 [173 LRRM 1156]. (ALJD at p. 46.)
SOUTH LAKES DAIRY FARM, 39 ALRB No. 1

600.05 Hearsay

600.05 Board affirms ALJ's ruling that summaries of interim employer's payroll records did not qualify as business records and were inadmissible hearsay. (People v. Doble (1928) 203 Cal. 510.)
MARIO SAIKHON, INC., 17 ALRB No. 6

600.05 Board affirms ALJ's finding that testimony from prior litigation is hearsay. Thus, ALJ committed no error in refusing to consider such testimony in her decision.
MARIO SAIKHON, INC., 17 ALRB No. 6

600.05 IHE properly excluded, as inadmissible hearsay, declaration of employee which employer sought to introduce as corroboration of alleged coemployee threats. Reliability of declaration was especially questionable since it constituted "double hearsay"--i.e., the declaration itself was hearsay and it also purported to quote statements made by other persons.
AGRI-SUN NURSERY, 13 ALRB No. 19

600.05 Where there is insufficient evidence to establish the trustworthiness of the mode of preparation of a business record, the Board will not give full probative weight to the record's representations.
ROBERTS FARMS, INC., 13 ALRB No. 11

600.05 ALJ properly admitted testimony of UFW negotiator regarding the vegetable industry, the pattern of vegetable industry negotiations and the nature of the operations covered by contracts the Regional Director relied on in his makewhole formula.
J. R. NORTON COMPANY, INC., 10 ALRB No. 42

600.05 Objections based upon threats of physical violence and loss of jobs made by Union organizers and supporters dismissed where only evidence such threats was hearsay and admitted for limited purpose of showing state of mind of Employees before election.
ROBERT J. LINDELEAF, 8 ALRB No. 22

600.05 Hearsay statements by workers that they might not have jobs if Union won election does not demonstrate Employees' state of mind was the result of actual Union threats.
ROBERT J. LINDELEAF, 8 ALRB No. 22

600.05 Hearsay statements in ALRB investigative hearing insufficient to support a finding of fact unless they would be admissible in a civil action. Hearsay statements that workers threatened by Union would not be admissible in civil action and are insufficient to support finding that threats were made.
ROBERT J. LINDELEAF, 8 ALRB No. 22

600.05 Hearsay statements of several Employees that they were frightened insufficient to find crew members were afraid and not basis to set aside election.
FRUDDEN ENTERPRISES, INC., 7 ALRB No. 22

600.05 Declarations to support election objections inadmissible hearsay. Objection dismissed where counsel offered no other evidence at hearing.
ABATTI FARMS, INC. AND ABATTI PRODUCE, INC. 3 ALRB No. 83

600.05 While hearsay testimony is admissible, mere uncorroborated hearsay evidence does not constitute substantial evidence to support a finding of the Board.
O.P. MURPHY & SONS, 3 ALRB No. 26

600.05 Under 8 California Administrative Code section 20390(a), reenacted as section 20370(b) in 1976, hearing officer was correct in refusing to admit into evidence declarations of declarants absent from the post-election objection hearing.
O.P. MURPHY & SONS, 3 ALRB No. 26

600.05 Proffered testimony of threats by unidentified persons was inadmissible hearsay. The Board regulations clearly provide that although hearsay evidence may be used at investigative hearings to supplement or explain other evidence, it may not in itself support a finding unless it would be admissible in a civil action.

LINDELEAF v. ALRB (1986) 41 Cal.3d 861

600.05 Since "contemporaneous objection" evidentiary rule is applicable to ALRB proceedings, employer waived its opportunity for court review of obvious hearsay testimony and documents by failing to make timely hearsay objection during compliance hearing.
FRUDDEN ENTERPRISES, INC. v. ALRB (1984) 153 Cal.App.3d 262

600.05 Hearsay admitted without objection is sufficient to sustain finding in ALRB proceedings. ALRB not governed by APA, which clearly prohibits use of uncorroborated hearsay as basis for finding.
FRUDDEN ENTERPRISES, INC. v. ALRB (1984) 153 Cal.App.3d 262

600.05 Testimony of some workers that others were afraid of losing their jobs as result of union organizers' threats insufficient, standing alone, to invalidate election. However, evidence was admissible and supported application of NLRB rule that statements made to handful of employees may reasonably be anticipated to reach larger part of workforce.
TRIPLE E PRODUCE CORP. v ALRB (1983) 35 Cal.3d 42

600.05 Branding evidence as hearsay in representation hearings does not affect its admissibility but only its weight if there is controversial evidence.
TRIPLE E PRODUCE CORP. v. ALRB (1983) 35 Cal.3d 42

600.05 In an investigative hearing to resolve challenged ballots, the IHE properly found that declarations by the voters in question were not adequate to supplement or explain the non hearsay documentary evidence submitted regarding those voters where the voters did not testify at the hearing, and where other testimony about these voters was discredited.
ARIE DE JONG dba MILKY WAY DAIRY, 29 ALRB No. 4

600.05 Hearsay statement not admissible under Evidence Code section 1202 to impeach earlier admitted hearsay statement of declarant where it was not necessarily inconsistent with the earlier hearsay statement, where the witness was not shown to be unavailable, and where the first hearsay statement was not necessarily adverse to the party seeking to impeach it.
TULE RIVER DAIRY and P&M VANDERPOEL DAIRY, 35 ALRB No. 4

600.05 The Board has held that in representation hearings "while hearsay evidence is admissible, mere uncorroborated hearsay evidence does not constitute substantial evidence to support a finding of the Board." (*Triple E Produce v. ALRB* (1983) 35 Cal.3d 42 at p. 52 citing *O.P. Murphy & Sons* (1977) 3 ALRB No. 26, p.6, fn. 3)

KAWAHARA NURSERIES, INC., 37 ALRB No. 4

600.05 Board regulation section 20370 (d) states that "hearsay evidence may be used for the purpose of supplementing other evidence, but shall not be sufficient in itself to support a finding unless it would be admissible in civil actions.'
KAWAHARA NURSERIES, INC., 37 ALRB No. 4

600.05 The Board held that the IHE improperly relied on uncorroborated hearsay evidence in sustaining the challenges to twenty employees of a nursery with the job title "merchandiser" who did not testify at the hearing. As the record contained no other evidence to support these challenges, the Board found that the union failed to meet its burden of producing evidence to support the challenges, thus requiring that the challenges to all twenty individuals be overruled.
KAWAHARA NURSERIES, INC., 37 ALRB No. 4

600.06 Judicial Notice And Administrative Notice

600.06 In fashioning remedies, Board may rely on facts known through its cumulative experience, though not in the record of a case, and may rely on its expertise.
PANDOL & SONS v. ALRB (1979) 98 Cal.App.3d 580

600.07 Offer Of Proof

600.08 Opinion Evidence And Expert Testimony

600.08 Unrebutted expert testimony is conclusive only if the subject matter is peculiarly within the knowledge of the expert and not within the knowledge of laypeople.
PAUL W. BERTUCCIO, 17 ALRB No. 16

600.08 ALJ was correct in excluding expert testimony, in light of employer's refusal to make available records on which the proposed expert testimony was based and its failure to substantiate an inability to present testimony from other knowledgeable sources.
TEX-CAL LAND MANAGEMENT, INC., 11 ALRB No. 31

600.08 ALJ incorrectly relied upon expert testimony based upon alcohol blood test results as conclusive proof that discriminatee did not drink beer within the time period in dispute; nonetheless, ALJ properly gave the test results some weight as they tended to discredit employer's assertion that discriminatee was openly and defiantly drinking beer in the presence of employer's supervisors.
THE GARIN COMPANY, 11 ALRB No. 18

600.08 Witness' characterization of language in leaflet

constituted legal conclusion and was therefore discounted. (ALJD, p. 5, n. 7.)
KARAHADIAN RANCH, INC., 4 ALRB No. 69

600.08 General Counsel called expert witness in languages to testify re: meaning of English-Spanish versions of employer leaflet. (ALJD, p. 3.)
KARAHADIAN RANCH, INC., 4 ALRB No. 69

600.08 Board is not bound to accept "expert" testimony regarding standard ''management principles" in hiring after a take-over, and has power to apply its experienced common sense against formal evidence.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

600.09 Parole Evidence

600.10 Books And Records As Evidence; Inspection; Documentary Evidence; Recordings; Best Evidence

600.10 Board affirms ALJ's ruling that summaries of interim employer's payroll records did not qualify as business records and were inadmissible hearsay. (People v. Doble (1928) 203 Cal. 510.)
MARIO SAIKHON, INC., 17 ALRB No. 6

600.10 Summaries of payroll records are not admissible where it is not established that both the records and summaries thereof come within the business records exception to the hearsay rule. (p. 23)
MARIO SAIKHON INC., 8 ALRB No. 88

600.10 Foreman explained that family selected for layoff because grower wished to avoid dividing larger families contracted by payroll records demonstrating a contrast of sales and the hiring of new personnel subsequent to the layoff.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

600.10 A written instrument must be construed as a whole, including multiple writings that are part of same contract. The factual context in which agreement is reached is relevant to interpretation of the agreement, unless the words are susceptible to only one interpretation.
NISH NOROIAN FARMS v. ALRB (1984) 35 Cal.3d 726

600.10 Custodian of payroll records properly identified records by indicating that records were prepared in normal course of business for applicable time period, pursuant to wage-payment laws. Hence, records were properly admitted.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

600.11 Record Or Testimony In Other Proceedings Or Before Other Agencies

600.11 Board affirms ALJ's finding that testimony from prior

litigation is hearsay. Thus, ALJ committed no error in refusing to consider such testimony in her decision.
MARIO SAIKHON, INC., 17 ALRB No. 6

600.11 Evidence of the existence of a final order of deportation entered against a discriminatee entitled to reinstatement and backpay is not relevant to an employer's obligation to reinstate or pay back wages. Final orders of deportation are not easily susceptible to definition, and draw the ALRB into areas beyond its statutory jurisdiction and expertise. Further, adoption of such defense could chill the exercise of ALRB guaranteed rights by persons (undocumented aliens) entitled to assert those rights and create an incentive for respondents to retaliate against undocumented employees that charge them with unfair labor practices.
RIGI AGRICULTURAL SERVICES, INC., 11 ALRB No. 27

600.11 Transcribed arguments of counsel for predecessor employer and union in prior representation proceedings which resulted in stipulation to withdraw objections, resulting in certification of union, properly excluded as irrelevant to successor employer's duty to bargain with union.
SUMNER PECK RANCH, INC., 10 ALRB No. 24

600.11 Although evidence of presettlement conduct is admissible as background to allegations of postsettlement misconduct, a written settlement agreement is not, itself, admissible as proof of that presettlement conduct.
ROBERTS FARMS, INC., 9 ALRB No. 27

600.11 Not improper for ALO to utilize evidence of Employer's anti-union acts and statements in his consideration of case.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC.,7 ALRB No. 36

600.11 Absent new evidence, ALO in ULP hearing may base findings on Evidence taken at prior representation hearing or on Board's findings in Decision in same.
ALBERT C. HANSEN, 4 ALRB No. 41

600.11 Board reversed ALO's grant of motion for summary judgment. Respondent entitled to trial de novo to determine if conduct litigated in elections objections case constituted violations of 1153(a) and (b). Consistent with Evidence Code, Evidence from representation trial may be part of record in later ULP hearing.
ALBERT C. HANSEN, 4 ALRB No. 41

600.12 Statement Of Deceased Persons

600.13 Witnesses: Who May Testify; Board Agents As Witnesses; Self-Incrimination; Immunity; Labor Code Section 1151.2

600.13 Board relied on testimony as corroborative even though Employee not present for entire conversation.
MARIO SAIKHON, INC., 4 ALRB No. 107

600.14 Witnesses: Credibility, Cross-Examination And Impeachment Generally

600.14 It is both permissible and not unusual to credit some but not all of a witness's testimony.
SUMA FRUIT INT'L (USA), INC., 19 ALRB No. 14

600.14 The Board will not overrule demeanor-based credibility resolutions unless the clear preponderance of all the relevant evidence demonstrates it is incorrect.
CALIFORNIA VALLEY LAND CO., INC. AND WOOLF FARMING CO. OF CALIFORNIA, INC., 17 ALRB No. 8

600.14 Where credibility resolutions are based on factors such as reasonable inferences, the consistency of witness testimony, whether a witness's alleged behavior comported with common experience, and the presence of corroboration, the Board is not constrained and may reject the ALJ's findings in favor of its own where the ALJ's findings conflict with well supported inferences from the record considered as a whole.
CALIFORNIA VALLEY LAND CO., INC., AND WOOLF FARMING CO. OF CALIFORNIA, INC., 17 ALRB No. 8

600.14 The Board will not disturb credibility resolutions based on demeanor unless the clear preponderance of the evidence demonstrates that they are in error. Objecting party was not prejudiced by improper credibility resolutions where the testimony of its witnesses was rejected not due to perceived bias but due to the unclear or inconsistent nature of the testimony.
FURUKAWA FARMS, INC., 17 ALRB No. 4

600.14 To the extent that an ALJ's credibility resolutions are based on demeanor, the Board will not disturb them unless the clear preponderance of the relevant evidence demonstrates they are incorrect.
RANCH NO. 1, 12 ALRB No. 21

600.14 ALJ's reliance upon adverse inferences drawn because of employer's failure to call a witness to rebut discriminatee's testimony was unnecessary in light of Evidence Code section 411, which allows a finding of fact to be based upon the credited direct evidence of one witness. In addition, ALJ credited discriminatee's testimony based upon other factors, including demeanor of the discriminatee and corroborating testimony of another witness.
THE GARIN COMPANY, 11 ALRB No. 18

600.14 Employer's testimony to the poor work habits of discriminatee was too vague and general to credit.

MATSUI NURSERY, INC., 11 ALRB No. 10

600.14 ALJ properly discredited employer where testimony was aggressive, argumentative, scornful of the proceedings, and inconsistent, particularly in contrast to other testimony by employer which was straight-forward and unargumentative.
VERDE PRODUCE CO., INC., 10 ALRB No. 35

600.14 Where an IHE's credibility resolutions are based on testimonial demeanor, they will be upheld unless a clear preponderance of the evidence indicates they are in error; no such error occurred where witnesses were contradicted by more credible witnesses and testimony was fraught with inconsistencies and vague, non-responsive answers.
BRIGHT'S NURSERY, 10 ALRB No. 18

600.14 IHE's credibility resolutions upheld where findings based on testimonial demeanor and logical consistency of the testimony.
DON MOORHEAD HARVESTING CO., INC., 9 ALRB No. 58

600.14 Board reaffirmed ALJ's credibility resolutions in favor of discriminatees where resolutions were based on logical consistency, detailed corroboration, and testimonial demeanor.
RIGI AGRICULTURAL SERVICES, INC., 9 ALRB No. 31

600.14 The Board will not overrule an ALJ's credibility resolution based on demeanor unless the clear preponderance of the evidence demonstrates the resolution was an error.
KITAYAMA BROTHERS, 9 ALRB No. 23

600.14 A witness' occupation is not a factor which should be considered to determine the credibility of the witness.
KITAYAMA BROTHERS, 9 ALRB No. 23

600.14 Total rejection of an opposed view cannot of itself impugn integrity or competence of trier of fact.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC., 7 ALRB No. 36

600.14 The Board will not reverse an ALJ's credibility resolutions based on demeanor unless the clear preponderance of all the relevant evidence convinces the Board that they are incorrect.
HIGH & MIGHTY FARMS (1980) 6 ALRB No. 31

600.14 Witness' own conflicting and evasive descriptions of job duties cannot be credited in light of direct admissions of immediate supervisor.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

600.14 Where the ALJ's decision does not explain how the ALJ mane his/her credibility resolutions, the Board will make

an independent review of the record, examine undisputed facts and the reasonable inferences which can be drawn therefrom, and test those inferences against the ALJ's findings and conclusions.
S. KURAMURA, INC., 3 ALRB No. 49
MONROVIA NURSERY COMPANY, 9 ALRB No. 5

600.14 Supervisor's threat of refusal to rehire in future is ULP. Minor inconsistencies in testimony of principal witnesses are not sufficient to cast doubt on their testimony.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209 [Appendix]

600.14 Anti-union testimony of current employees is inherently suspect, since such employees are likely, months after organizational drive and in response to questions by company counsel, to give testimony damaging to union, especially where employer has threatened reprisals for union activity.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

600.14 Board's credibility resolutions are binding absent testimony which is incredible or inherently improbable. Self-interest of a witness is simply one factor Board may consider.
PASILLAS v. ALRB (1984) 156 Cal.App.3d 312

600.14 Board erred in rejecting uncontradicted and unimpeached testimony of employer's negotiator indicating sincere belief that employer could suffer sanctions for violating president's wage guidelines.
CARL JOSEPH MAGGIO, INC. v. ALRB (1984) 154 Cal.App.3d 40

600.14 Credibility must be assessed in light of all facts; uncontradicted testimony of an interested witness may be rebutted circumstantially. (Citing Martori.)
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

600.14 When new employer acquires unionized business, he has clear incentive to rid business of union by refusing to hire former employees. Hence, Board was entitled to reject self-serving but unconvincing justifications given by new employer for failure to hire predecessor employees.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

600.14 Board must accept as true intended meaning of uncontradicted and unimpeached evidence. Interest of witness does not warrant rejection of his or her testimony in all circumstances, particularly where contrary evidence is available and opposing party fails to produce it.
MARTORI BROTHERS DISTRIBUTORS v. ALRB (1981) 29 Cal.3d 721

600.14 Where there was direct, though conflicting, testimony

that event occurred on certain date, Board was reasonable in crediting one version and in basing its findings on that evidence.
JASMINE VINEYARDS, INC. v. ALRB (1980) 113 Cal.App.3d 68

600.14 Board disagreed with ALJ who did not credit the General Counsel's witnesses' testimony that they were fired. The ALJ's credibility determinations were not demeanor based, but rather based upon what he perceived to be the implausibility and inconsistency of the witnesses' testimony. Board reviewed the record de novo and found this testimony to be both plausible and consistent.
CIENIGA FARMS, INC., 27 ALRB No. 5

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

600.15 Witnesses: Pretrial Statements

600.15 General Counsel's use of declarations provided to the General Counsel by an Employer pursuant to the external complaint procedure in an unfair labor practice procedure undermines and jeopardizes the effectiveness of the external complaint procedure. Litigants may be inhibited from complaining about allegedly improper Board employee conduct for fear that any documents they submit might be used against them at a subsequent hearing. However, the impact of the General Counsel's actions on the effectiveness of the external complaint policy does not establish any failure to provide the Employer full due process in the unfair labor practice hearing. The Board found that General Counsel's use of the declarations in

the ULP case did not result in any prejudice to the Employer, since the declarations were not necessary to the decision and the Board did not rely on them in reaching its conclusion.
LIGHTNING FARMS, 12 ALRB No. 7

600.15 Where respondent given full opportunity during hearing to examine witnesses about any inconsistencies in pretrial declarations and to have such portions of declarations admitted as prior inconsistent statements, ALJ properly refused to admit entire declarations on grounds that remainder of declarations constitute inadmissible hearsay, are irrelevant, and admission would not allow witness to explain any inconsistencies beyond those identified at hearing.
DOLE FARMING, INC., 22 ALRB No. 8

600.15 In addition to the question of its admissibility, the reliability of a witness's hearsay testimony concerning an alleged statement by a former supervisor was placed in further doubt because the witness did not mention the subject matter in a declaration taken two months after the alleged statement.
TULE RIVER DAIRY and P&M VANDERPOEL DAIRY, 35 ALRB No. 4

600.16 Privileged Communications

600.16 Board affirms ALJ's ruling that backpay claimants' income tax returns and W-2 forms are privileged. Claimants need not produce such tax records where there is alternative evidence of their interim earnings. (Webb v. Standard Oil Company (1957) 49 Cal.2d 509.)
MARIO SAIKHON, INC., 17 ALRB No. 6

600.16 Attorney-client meeting not privileged where nonessential third parties were present and open setting of meeting prevented expectation of confidentiality. However, party not prejudiced by IHE's contrary ruling because he allowed testimony of communications relevant to the objections at issue.
FURUKAWA FARMS, INC., 17 ALRB No. 4

600.16 Board erred in creating an attorney-negotiator privilege, since Evidence Code section 911 expressly forbids extension of privileges created by Legislature.
MONTEBELLO ROSE CO. v. ALRB (1981) 119 Cal.App.3d 1

600.16 Communications between employer and attorney negotiator are not covered by attorney-client privilege unless dominant purpose was to obtain legal advice from lawyer in his professional capacity.
MONTEBELLO ROSE CO. v. ALRB (1981) 119 Cal.App.3d 1

600.16 Negotiator-client communications do not fall within "attorney work product" privilege, even if negotiator is lawyer, if they pertain to bargaining and not preparation for litigation.

MONTEBELLO ROSE CO. v. ALRB (1981) 119 Cal.App.3d 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

600.17 Adverse Inferences

600.17 Improper to draw adverse inference from party's failure to call witnesses where witnesses equally available to both parties.
CONAGRA TURKEY CO., 18 ALRB No. 14

600.17 Respondent's production of weak evidence, where stronger evidence available, permits inference that the production of strong evidence would have been adverse, citing The

Goodyear Tire & Rubber Company (1984) 271 NLRB 343 [117 LRRM 1086].
RICHARD A. GLASS, 14 ALRB No. 11

600.17 Where evidence in support of defense falls within ambit of confidentiality or some other validly recognized privilege, Board may not draw adverse inference from a respondent's failure to come forward with such evidence.
RICHARD A. GLASS, 14 ALRB No. 11

600.17 Since ALJ did not credit any of witness' testimony concerning a supervisor's alleged role in decertification campaign, Respondent was under no burden to refute the testimony with other witnesses. (ALJD, p. 56, n. 68.)
MAYFAIR PACKING COMPANY, 13 ALRB No. 20

600.17 To insure fairness to litigants and to prevent "trial by surprise" the Board requires that issues and positions of the parties be set forth at a prehearing conference to be held no later than the first day of the hearing. The adverse inference drawn by the ALJ for belated introduction of an additional justification was an appropriate sanction.
RANCH NO. 1, 12 ALRB No. 21

600.17 The belated introduction of a new justification can be a factor suggesting the existence of a concealed and improper motive.
RANCH NO. 1, 12 ALRB No. 21

600.17 ALJ's reliance upon adverse inferences drawn because of employer's failure to call a witness to rebut discriminatee's testimony was unnecessary in light of Evidence Code section 411, which allows a finding of fact to be based upon the credited direct evidence of one witness. In addition, ALJ credited discriminatee's testimony based upon other factors, including demeanor of the discriminatee and corroborating testimony of another witness.
THE GARIN COMPANY, 11 ALRB No. 18

600.17 In general, adverse inferences are permitted where a party fails to produce evidence or witnesses within its control, or introduces weaker or less satisfactory evidence than it is within its power to produce. (Cal. Evidence Code section 412); drawing of adverse inference against a party for failure to call a witness is inappropriate where there is no evidence the witness is within party's control.
THE GARIN COMPANY, 11 ALRB No. 18

600.17 Board declined to make negative inference from Employer's failure to call witness.
MARIO SAIKHON, INC., 4 ALRB No. 107

600.17 Board must accept as true intended meaning of uncontradicted and unimpeached evidence. Interest of

witness does not warrant rejection of his or her testimony in all circumstances, particularly where contrary evidence is available and opposing party fails to produce it.
MARTORI BROTHERS DISTRIBUTORS v. ALRB (1981) 29 Cal.3d 721

600.18 Subpoenas: Issuance

600.19 Subpoenas: Compliance With; Petitions To Revoke

600.20 Stipulations

600.20 General Counsel and Employer may stipulate to facts over objection of Charging Party; Charging Party may introduce contrary evidence or adduce additional facts. (p. 25)
MARIO SAIKHON, INC., 8 ALRB No. 88

600.20 Even if the parties had stipulated to the beginning and ending dates of the bargaining makewhole period, the Board would not be bound to accept those dates. The Board has the ultimate authority to determine the appropriate remedy in a given case, and to draw its own legal conclusions, notwithstanding the relief requested by the General Counsel or other parties. (*Harry Carian Sales v. ALRB* (1985) 39 Cal.3d 209; *D. Papagni Fruit Co.* (1985) 11 ALRB No. 38.)
THE HESS COLLECTION WINERY, 27 ALRB No. 2

601.00 AGENCY: RESPONSIBILITY FOR CONDUCT OF OTHERS

601.01 In General; Broad Definition Of Agency, Labor Code Section 1165.4

601.01 When applying the principles of apparent authority, Board will consider whether any act or omission of any principal, however subtle, has given the employees reasonable cause to believe an agency relationship exists.
S.A. GERRARD FARMING CORP., 6 ALRB No. 49

601.01 In determining whether an Employee is an agent of the Union for purposes of assessing alleged election misconduct, Board finds that the perceptions or beliefs of the affected employees as to apparent authority are relevant since a major purpose of the ALRA is to free collective bargaining from all taint of compulsion, domination, or undue influence by either union or management, including their agents. Therefore, Board required to scrutinize all factors which tend to restrain employees' exercise of free choice.
S.A. GERRARD FARMING CORP., 6 ALRB No. 49

601.01 Although it may be possible after the investigatory stage for a Board representative to act as an agent for the discriminatee in receiving a reinstatement offer, the

representative must have the consent or ratification of the discriminatee.
KITAYAMA BROTHERS, 10 ALRB No. 47

601.01 Employer acted as an agent and violated the ALRA by participating in blacklisting scheme of agricultural employers, despite the non-agricultural status of the discriminating employer.
DESSERT SEED COMPANY, INC., 9 ALRB No. 72

601.01 Familial relationship of decertification employees to employer's owner and foreman is insufficient grounds to find employer responsible for those employees' actions.
PETER D. SOLOMON and JOSEPH R. SOLOMON dba CATTLE VALLEY FARMS/TRANSCO LAND AND CATTLE CO., 9 ALRB No. 65

601.01 "Leadman," stipulated by parties not to be supervisor within the meaning of section 1140.4(j), held to be employer's agent under general principles of employer responsibility as set forth in IAM v. Labor Board (1940) 311 U.S. 72 [61 S.Ct. 83], cited in Vista Verde Farms v. ALRB (1981) 29 Cal.3d 307 [172 Cal.Rptr. 720].
V. B. ZANINOVICH & SONS, 9 ALRB No. 54

601.01 Common law principles of agency control under both ALRA and NLRA.
SAN DIEGO NURSERY CO., INC., 5 ALRB No. 43

601.01 There is no basis for finding that a voter, who approached a group of union organizers during an election and informed them of his opinion as to how employees had voted or would vote, was acting as a union agent, or that voter's conduct was previously authorized or subsequently ratified by the union.
TEPUSQUET VINEYARDS, 4 ALRB No. 102

601.01 Employee found not to be a union agent despite his: (1) being an active union supporter; (2) voluntarily passing out union leaflets and authorization cards to other employees; and (3) attending a union meeting for employees.
TEPUSQUET VINEYARDS, 4 ALRB No. 102

601.01 An agency relationship is not established by evidence that an employee has solicited signatures for union authorization cards.
S & F GROWERS, 4 ALRB No. 58

601.01 Supervisor's conduct attributable to respondent.
ANDERSON FARMS COMPANY, 3 ALRB No. 67

601.01 Question of employer liability under ALRA is not governed by common law agency principles. Fact that alleged agent is not supervisor is not controlling on question of agency.
SUPERIOR FARMING CO. v. ALRB (1984) 151 Cal.App.3d 100

601.01 1165.4 and Vista Verde Farms v. ALRB (1981) 29 Cal.3d 307, direct that standard for determining employer involvement in and liability for unlawful activity is not an objective test requiring proof of affirmative company participation, but rather depends on employees' subjective perception of employer's actions. Thus, employer may be held liable even if it is completely unaware of coercive conduct of subordinate.
SUPERIOR FARMING CO. v. ALRB (1984) 151 Cal.App.3d 100

601.01 Under ALRA, even when employer has not directed, authorized, or ratified improperly coercive actions directed against its employees, employer may nonetheless be held responsible for ULP (1) if workers could reasonably believe that coercing individual was acting on behalf of employer, or (2) if employer has gained illicit benefit from misconduct and realistically has ability either to prevent repetition of misconduct or to alleviate deleterious effect of misconduct on employees' statutory rights. (Citing Vista Verde Farms v. ALRB (1981) 29 Cal.3d 307 [172 Cal.Rptr. 720].)
SUPERIOR FARMING CO. v. ALRB (1984) 151 Cal.App.3d 100

601.01 If employers were generally to escape liability for labor contractor misconduct, many protections of ALRA would be nullified. It is unlikely that Legislature enacted a statute that was inherently inoperative.
VISTA VERDE FARMS v. ALRB (1981) 29 Cal.3d 307

601.01 Employer's responsibility for coercive acts of others under ALRA is not limited to technical agency doctrines or strict principles of respondeat superior, but must be determined with reference to broad purposes of underlying statutory scheme.
VISTA VERDE FARMS v. ALRB (1981) 29 Cal.3d 307

601.01 1140.4(c) does not make agricultural employer strictly liable for any act of labor contractor.
VISTA VERDE FARMS v. ALRB (1981) 29 Cal.3d 307

601.01 Even when employer has not directed, authorized, or ratified unlawful acts against its employees, it will be held responsible 1) if employees could reasonably believe that individual was acting on behalf of employer or 2) employer has gained an illicit benefit from misconduct and realistically has ability either to prevent repetition or to alleviate deleterious effect of such misconduct on employee's rights.
VISTA VERDE FARMS v. ALRB (1981) 29 Cal.3d 307

601.01 Employer may escape liability for isolated labor contractor misconduct if employer publicly repudiates acts and reprimands labor contractor or demonstrates over period of time that it will not discriminate.
VISTA VERDE FARMS v. ALRB (1981) 29 Cal.3d 307

601.01 ALRA clearly intended employers to be bound by acts of

their agents, as reflected in 1140.2, 1165(b), and 1165.4.
VISTA VERDE FARMS v. ALRB (1981) 29 Cal.3d 307

601.01 Employer asserting that union agents engaged in pre-election misconduct has burden of proving agency relationship.
OCEANVIEW PRODUCE CO., 21 ALRB No. 1

602.00 AGENCY: RESPONSIBILITY OF EMPLOYER FOR CONDUCT OF OTHERS

602.01 Apparent Supervisory Authority

602.01 Circulation of decertification petition by crew leader attributed to employer where employees reasonably perceived crew leader to be acting on behalf of management. Employees perceived crew leader as having the authority to direct their work, petition was circulated openly during work hours, and conduct was consistent with that of labor consultants.
S & J RANCH, INC., 18 ALRB No. 2

602.01 Special status of "second foreman," as well as assistance and acquiescence of foreman, combined to make it reasonable for employees to believe "second foreman" was operating on employer's behalf in circulating antiunion petition.
V. B. ZANINOVICH & SONS, 9 ALRB No. 54

602.01 A supervisor-trainee, given temporary supervisory duties, with the authority to independently direct crew assignments for short periods of time and universally seen as the supervisor's brother rather than a co-worker, acted on behalf of the employer in seeking decertification of the exclusive representative.
M. CARATAN, INC., 9 ALRB No. 33

602.01 Where labor contractor's foreman was present at the labor camp to identify union organizers so they could be ejected from the camp, at the special interest and request of the employer's head foreman, he is deemed an agent of the employer and the employer is responsible for his actions.
HIGH & MIGHTY FARMS (1980) 6 ALRB No. 34

602.01 Employer is generally responsible for acts of its supervisors.
KARAHADIAN RANCHES,INC. v. ALRB (1985) 38 Cal.3d 1

602.01 Employer is responsible for anti-union statements or acts of supervisors whether or not they are specifically authorized, and such anti-union remarks are evidence of unlawful motive.
BABBITT ENGINEERING & MACHINERY v. ALRB (1984) 152 Cal.App.3d 310

602.01 Under ALRA, even when employer has not directed, authorized, or ratified improperly coercive actions directed against its employees, employer may nonetheless be held responsible for ULP (1) if workers could reasonably believe that coercing individual was acting on behalf of employer, or (2) if employer has gained illicit benefit from misconduct and realistically has ability either to prevent repetition of misconduct or to alleviate deleterious effect of misconduct on employees' statutory rights. (Citing Vista Verde Farms v. ALRB (1981) 29 Cal.3d 307 [172 Cal.Rptr. 720].)
SUPERIOR FARMING CO. v. ALRB (1984) 151 Cal.App.3d 100

602.01 1165.4 and Vista Verde Farms v. ALRB (1981) 29 Cal.3d 307, direct that standard for determining employer involvement in and liability for unlawful activity is not an objective test requiring proof of affirmative company participation, but rather depends on employees' subjective perception of employer's actions. Thus, employer may be held liable even if it is completely unaware of coercive conduct of subordinate.
SUPERIOR FARMING CO. v. ALRB (1984) 151 Cal.App.3d 100

602.01 ALRA clearly intended employers to be bound by acts of their agents, as reflected in 1140.2, 1165(b), and 1165.4.
VISTA VERDE FARMS v. ALRB (1981) 29 Cal.3d 307

602.01 Employer's responsibility for coercive acts of others under ALRA is not limited to technical agency doctrines or strict principles of respondeat superior, but must be determined with reference to broad purposes of underlying statutory scheme.
VISTA VERDE FARMS v. ALRB (1981) 29 Cal.3d 307

602.01 1140.4(c) does not make agricultural employer strictly liable for any act of labor contractor.
VISTA VERDE FARMS v. ALRB (1981) 29 Cal.3d 307

602.01 Employer is responsible for statements of supervisor, whether or not employer authorized them, unless statements are repudiated.
MERRILL FARMS v. ALRB (1980) 113 Cal.App.3d 176

602.01 Irrigator/truck driver who in prior years had notified returning workers when they could start working, was acting as employer's agent in discouraging discriminatees from following new hiring procedure by telling them they probably would not get work because of their union activities.
TSUKIJI FARMS, 24 ALRB No. 3

602.01 Although irrigator/truck driver who often directed day-to-day work and had general authority to put people to work who had worked the prior season was not a statutory supervisor, employees would reasonably have perceived him

as acting as the employer's agent in making threats that employer was going to plant very little acreage and would hire only non-union supporters the following year. Under standards of *Vista Verde Farms v. Agricultural Labor Relations Bd.* (1981) 29 Cal.3d 307, an employer may be held responsible for unlawful conduct by a nonsupervisor even if the employer did not direct, authorize or ratify the conduct if the nonsupervisor has apparent authority to speak for the employer.
TSUKIJI FARMS, 24 ALRB No. 3

602.01 Foremen who assigned work, corrected employee errors, and whose reports on poor employee performance were relied on to discipline employees were supervisors and had apparent authority to speak for employer.
GALLO VINEYARDS, INC., 30 ALRB No. 2

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

602.02 Conduct Outside Workplace; Conduct At Labor Camp

602.02 The unlawful conduct of the employer's agent need not occur on the employer's premises in order to find the employer liable.
FRUDDEN PRODUCE, INC., 4 ALRB No. 17

602.02 The degree of control retained by an employer who leases out its labor camp to its labor contractor is immaterial to a determination of the employer's liability for the labor contractor's violations of the ALRA. This is because, under the ALRA, a labor contractor is an agency of the employer and the employer is therefore liable for all of the labor contractor's violations.
FRUDDEN PRODUCE, INC., 4 ALRB No. 17

602.02 The employer violates the Act when its labor contractor--who leases the employer's labor camp--threatens physical violence against union organizers who attempt to speak with employees who reside at the camp.
FRUDDEN PRODUCE, INC., 4 ALRB No. 17

602.03 Direction Of, Acquiescence In, Or Ratification Of Agent's Or Supervisors' Activities

602.03 The burden is on a respondent to show that it effectively disavowed or otherwise repudiated the unlawful conduct.
J. R. NORTON COMPANY, 10 ALRB No. 7

602.03 A respondent may relieve itself of liability for the unlawful conduct of its supervisor and/or agent by

retracting, disavowing or otherwise repudiating isolated and relatively minor unfair labor practices.
J. R. NORTON COMPANY, 10 ALRB No. 7

602.03 Special status of "second foreman," as well as assistance and acquiescence of foreman, combined to make it reasonable for employees to believe "second foreman" was operating on employer's behalf in circulating antiunion petition.
V. B. ZANINOVICH & SONS, 9 ALRB No. 54

602.03 A supervisor-trainee, given temporary supervisory duties, with the authority to independently direct crew assignments for short periods of time and universally seen as the supervisor's brother rather than a co-worker, acted on behalf of the employer in seeking decertification of the exclusive representative.
M. CARATAN, INC., 9 ALRB No. 33

602.03 Employer foreman, who witnessed labor contractor foreman's assault on a union organizer, ratified the conduct by failing to reprimand him and by assisting him immediately after his arrest.
HIGH & MIGHTY FARMS (1980) 6 ALRB No. 34

602.03 Even when employer has not directed, authorized, or ratified unlawful acts against its employees, it will be held responsible 1) if employees could reasonably believe that individual was acting on behalf of employer or 2) employer has gained an illicit benefit from misconduct and realistically has ability either to prevent repetition or to alleviate deleterious effect of such misconduct on employees' rights.
VISTA VERDE FARMS v. ALRB (1981) 29 Cal.3d 307

602.04 Attorney Of Employer; Consultants

602.05 Unions, Union Representatives, And Welfare Fund Trustees As Employer Agents

602.06 Nonsupervisory Employees Generally

602.06 Workers reasonably perceived personnel employees as acting on behalf of management because she was a person workers normally dealt with on most official matters such as reporting times, immigration, benefits, etc.
S & J RANCH, INC., 18 ALRB No. 2

602.06 Board finds decertification petitioner not agent of employer on basis of apparent authority where petitioner, in speaking to members of unit, did not stand with management representatives or answer questions from unit on behalf of management, and where under the totality of the circumstances the other members of the unit could not reasonably believe that the petitioner was speaking or acting for the employer; the petitioner had made two prior attempts to decertify the union, the employer had

not assisted petitioner in forwarding the decertification process, and the petitioner had engaged in no other conduct as an agent of the employer.
MANN PACKING CO., INC. 16 ALRB No. 15

602.06 Special status of "second foreman," as well as assistance and acquiescence of foreman, combined to make it reasonable for employees to believe "second foreman" was operating on employer's behalf in circulating antiunion petition.
V. B. ZANINOVICH & SONS, 9 ALRB No. 54

602.06 A supervisor-trainee, given temporary supervisory duties, with the authority to independently direct crew assignments for short periods of time and universally seen as the supervisor's brother rather than a co-worker, acted on behalf of the employer in seeking decertification of the exclusive representative.
M. CARATAN, INC., 9 ALRB No. 33

602.06 Fact that crew foreman--although not a supervisor--frequently relayed management directives to crew is substantial evidence upon which to conclude that, when foreman told crew they had been discharged, crew members reasonably believed they had, in fact, been discharged.
SUPERIOR FARMING CO. v. ALRB (1984) 151 Cal.App.3d 100

602.06 Fact that crew foreman--although not supervisor--acted as conduit to relay and translate management instructions and pay rates makes reasonable crew's assumption that employer had discharged them when foreman delivered that message immediately following his discussion with supervisor; Board therefore properly found employer liable for crew foreman's actions.
SUPERIOR FARMING CO. v. ALRB (1984) 151 Cal.App.3d 100

602.06 Question of employer liability under ALRA is not governed by common law agency principles. Fact that alleged agent is not supervisor is not controlling on question of agency.
SUPERIOR FARMING CO. v. ALRB (1984) 151 Cal.App.3d 100

602.06 Under ALRA, even when employer has not directed, authorized, or ratified improperly coercive actions directed against its employees, employer may nonetheless be held responsible for ULP (1) if workers could reasonably believe that coercing individual was acting on behalf of employer, or (2) if employer has gained illicit benefit from misconduct and realistically has ability either to prevent repetition of misconduct or to alleviate deleterious effect of misconduct on employees' statutory rights. (Citing Vista Verde Farms v. ALRB (1981) 29 Cal.3d 307 [172 Cal.Rptr. 720].)
SUPERIOR FARMING CO. v. ALRB (1984) 151 Cal.App.3d 100

602.06 Labor contractor, like leadman, is in strategic position to translate to its subordinates policies and desires of

management. Therefore, labor contractor's acts may wield coercive power even if the contractor lacks power to hire, fire, or discipline.
VISTA VERDE FARMS v. ALRB (1981) 29 Cal.3d 307

602.07 Business Associates And Other Employers

602.07 Employers acted as an agent and violated the Act by participating in blacklisting scheme of agricultural employers, despite the non-agricultural status of the discriminating employer.
DESSERT SEED COMPANY, INC., 9 ALRB No. 72

602.08 Law Enforcement Officers

602.08 Employer's use of law enforcement officers to prevent organizers from communicating with workers in labor camp does not make lawful an otherwise unlawful interference.
VISTA VERDE FARMS v. ALRB (1981) 29 Cal.3d 307

602.09 Employer Associations

602.10 Lease Or License Arrangements

602.11 Labor Contractors

602.11 Actions of labor contractor imputable to grower where protected activity directed at both, grower aware of situation and made no effort to stop it, and labor contractor's behavior affected by pressure from grower.
GIANNINI PACKING CORP., 19 ALRB No. 16

602.11 A co-op supplying labor to an employer discharged three persons belonging to the co-op in retaliation for their protected activity by orchestrating a dissolution and reemergence of the co-op without disclosing the reemergence to the three, and the employer engaging the Co-op was liable for the discharges.
SAHARA PACKING COMPANY, 11 ALRB No. 24

602.11 A farm operator engaging a person to supply agricultural workers is responsible for the unfair labor practices of that person absent a showing that, by public repudiation or by significant isolation of the unlawful practices from the operator's labor policy, such conduct by the supplier was unattributable to the operator.
SAHARA PACKING COMPANY, 11 ALRB No. 24

602.11 Where a production cooperative corporation's sole purpose is to provide workers to another agricultural employer, and the co-op has no intention of managing any agricultural land, the co-op's marginal entrepreneurial risk in the harvest of the crop is insufficient to make it an employer under section 1140.4(c).
SAHARA PACKING COMPANY, 11 ALRB No. 24

602.11 The employer violates the Act when its labor contractor--

who leases the employer's labor camp--threatens physical violence against union organizers who attempt to speak with employees who reside at the camp.
FRUDDEN PRODUCE, INC., 4 ALRB No. 17

602.11 The degree of control retained by an employer who leases out its labor camp to its labor contractor is immaterial to a determination of the employer's liability for the labor contractor's violations of the ALRA. This is because, under the ALRA, a labor contractor is an agency of the employer and the employer is therefore liable for all of the labor contractor's violations.
FRUDDEN PRODUCE, INC., 4 ALRB No. 17

602.11 Fact that labor contractor was no longer supplying labor on date of unlawful act does not shield employer from liability, since technical agency doctrines do not control in labor relations.
VISTA VERDE FARMS v. ALRB (1981) 29 Cal.3d 307

602.11 1140.4(c) does not make agricultural employer strictly liable for any act of labor contractor.
VISTA VERDE FARMS v. ALRB (1981) 29 Cal.3d 307

602.11 Employer may escape liability for isolated labor contractor misconduct if employer publicly repudiates acts and reprimands labor contractor or demonstrates over period of time that it will not discriminate.
VISTA VERDE FARMS v. ALRB (1981) 29 Cal.3d 307

602.11 Language of 1140.4 and Labor Code 1697, and overall intent of ALRA, indicate that agricultural employers are responsible for acts of labor contractors.
VISTA VERDE FARMS v. ALRB (1981) 29 Cal.3d 307

602.11 Labor contractor, like leadman, is in strategic position to translate to its subordinates policies and desires of management. Therefore, labor contractor's acts may wield coercive power even if the contractor lacks power to hire, fire, or discipline.
VISTA VERDE FARMS v. ALRB (1981) 29 Cal.3d 307

603.00 UNION RESPONSIBILITY FOR THE CONDUCT OF OTHERS

603.00 Fact that people who entered field carried flags bearing Union symbol is by itself insufficient to establish agency relationship. However, where violence is committed prior to election, violence will be viewed according to whether it tended to interfere with free choice. Agency status will not be controlling factor.
JOSEPH GUBSER CO., 7 ALRB No. 33

603.01 In General

603.01 Third party standard applied where misconduct is by union supporters or pickets, but no other indication of agency

relationship. Burden of proving agency is on party asserting agency relationship.
SAN JOAQUIN TOMATO GROWERS, INC./LCL FARMS, INC., 19 ALRB No. 4

603.01 Common law principles of agency are applicable to agency issues arising under the statute. To establish an agency relationship based upon apparent authority, the "agent" must purport to act on behalf of the principal or third parties must reasonably believe such a relationship exists, and the principal must act in a manner consistent with the existence of such a relationship. Where there is no reason why third parties would reasonably believe that the conduct was on behalf of the principal, there is no apparent agency relationship which may be given legal effect through ratification or adoption.
FURUKAWA FARMS, INC., 17 ALRB No. 4

603.02 Joint Or Several Responsibility Of Different Unions

603.03 Union Responsibility For Acts Of Its Officers, Members And Others

603.03 To the extent that third parties who joined union table grape boycott acted independently, they are not subject to Board's Order forbidding unlawful secondary boycott. Third parties are subject to the Order only to extent they acted as agents of the union.
UNITED FARM WORKERS OF AMERICA, 19 ALRB No. 15

603.03 In light of the IHE's findings that no threats of violence were made before or during the election, no union organizer was responsible for any threats and the fact that the margin of victory was significant, the employer failed to establish an overall atmosphere of fear and reprisal rendering a free election impossible.
J. OBERTI, INC., et al., 10 ALRB No. 50

603.03 Union letter to employer bestowed authority on named members of Ranch Committee to negotiate on union's behalf.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC., 9 ALRB No. 70

603.03 Presence of union negotiator at time of employees' demand for wage increase constituted ratification or approval of employees' demands by the union.
ABATTI FARMS, INC., and ABATTI PRODUCE, INC., 9 ALRB No. 70

603.03 Fact that Employees carrying UFW flags or shouting pro-UFW slogans insufficient to establish they were authorized by UFW to organizer on its behalf. Nonetheless, their conduct attributed to UFW organizer where he not only failed to disassociate himself or UFW from their conduct but accompanied them, gave encouragement and direction. (ALJD pp. XXI-XXII.)

FRUDDEN ENTERPRISES, INC., 7 ALRB No. 22

603.03 Employee committee not agent of Union where it only met with Union officials to get advice to conduct organizing campaign.
SAN DIEGO NURSERY CO., INC., 5 ALRB No. 43

603.03 Agency not established where Employees solicited authorization cards and distributed leaflets in support of Union, but Union officials did not direct or control Employees' organizing efforts. Evidence not support finding that Employees organizing were viewed by fellow Employees as acting as Union agents.
SAN DIEGO NURSERY CO., INC., 5 ALRB No. 43

603.03 There is no basis for finding that a voter, who approached a group of union organizers during an election and informed them of his opinion as to how employees had voted or would vote, was acting as a union agent, or that voter's conduct was previously authorized or subsequently ratified by the union.
TEPUSQUET VINEYARDS, 4 ALRB No. 102

603.03 Employee found not to be a union agent despite his: (1) being an active union supporter; (2) voluntarily passing out union leaflets and authorization cards to other employees; and (3) attending a union meeting for employees.
TEPUSQUET VINEYARDS, 4 ALRB No. 102

603.03 An agency relationship is not established by evidence that an employee has solicited signatures for union authorization cards.
S & F GROWERS, 4 ALRB No. 58

603.03 Members of an in-plant organizing committee are not agents of the UFW where evidence shows that they were not paid by or formally associated with the UFW, and absent evidence that the union authorized or ratified their actions.
SECURITY FARMS, 3 ALRB No. 81

603.03 The fact that a person is an active proponent of a union is not sufficient to attribute to the union responsibility for the misconduct of the individual.
D'ARRIGO BROS., 3 ALRB No. 37

603.03 A special agency relationship does not arise in all circumstances involving the solicitation of authorization cards. Rather, as stated in Davlan Engineering, Inc. (1987) 283 NLRB 803, those soliciting authorization cards will be deemed special agents of the union for the limited purpose of assessing the impact of statements about union fee waivers or other purported union policies that can be counteracted simply by making the union's internal policies known.
OCEANVIEW PRODUCE CO., 21 ALRB No. 1

604.00 LACHES

604.01 In General

604.01 A complaint need not be dismissed for laches or an alleged violation of administrative and constitutional due process, where a period of approximately two years passes between the filing of the charges and the complaint, and all declarations in support of the charges are not filed with them, if the respondent receives timely notice of the charges, at least one declaration is filed with the charges and there is no showing of specific facts resulting in actual prejudice to the respondent.
STAMOULES PRODUCE CO., 16 ALRB No. 13

604.01 Despite inaction by union in asserting bargaining rights and delays in processing unfair labor charges, laches is unavailable as defense to refusal to bargain charge.
JOE G. FANUCCHI & SONS 12 ALRB No. 8

605.00 WAIVER

605.01 In General

605.01 A waiver of bargaining rights must be clear and unmistakable. Union did not waive the right to further bargaining by the time of an unauthorized walkout where the union stated at the last negotiating session that it had to talk with the workers about the employer's latest proposal on pruning quotas and the walkout occurred on the morning of the second workday after the negotiating session and likely on the first working day for the union and the employer's negotiator. Therefore, the demands of those who staged the walkout were not contrary to what the union had already agreed to.
BRIGHTON FARMING CO., INC., 18 ALRB No. 4

605.01 A complaint need not be dismissed for laches or an alleged violation of administrative and constitutional due process, where a period of approximately two years passes between the filing of the charges and the complaint, and all declarations in support of the charges are not filed with them, if the respondent receives timely notice of the charges, at least one declaration is filed with the charges and there is no showing of specific facts resulting in actual prejudice to the respondent.
STAMOULES PRODUCE CO., 16 ALRB No. 13

605.01 The failure of a party opposing a motion for summary disposition to challenge the admissibility of evidence brought forward by the moving party in support of its motion constitutes a waiver of further challenge to the admissibility of such proof.

MARIO SAIKHON, INC., 15 ALRB No. 3

605.01 Employer's refusal to present evidence in support of objections set for hearing, after IHE denied employer's motion to expand hearing to include consideration of dismissed objections, constituted a waiver of the right to hearing.
D. PAPAGNI FRUIT CO., 10 ALRB No. 31

605.01 Employer waived right to refuse to bargain by not asserting defense of loss of majority support at time of request or refusal to bargain.
SUMNER PECK RANCH, INC., 10 ALRB No. 24

605.01 Respondent's failure to present to the ALJ its constitutional challenge to the Board's authority to exercise its jurisdiction precludes the Board from considering the issue.
BUD ANTLE, INC., 3 ALRB No. 56

605.01 Where named intervenor appeared at election objection hearing, rejected offer of postponement, and agreed to proceed with/participate in hearing. Board declined to reopen hearing or overturn election because of failure of proper notice.
SAM BARBIC, 1 ALRB No. 25

605.01 One who appears in administrative proceeding without notice to which he is entitled by law cannot be heard to complain of alleged insufficiency of notice.
SAM BARBIC, 1 ALRB No. 25

605.01 Although waiver is general rule when parties fail to exhaust their administrative remedies, Supreme Court may agree to hear a case involving important questions of public policy.
LINDELEAF v. ALRB (1986) 41 Cal.3d 861

605.01 Courts ordinarily accord administrative agencies the initial opportunity to address claims involving interpretation of their own regulations, and a petitioner is deemed to waive an objections that could have been but were not raised before ALRB.
LINDELEAF v. ALRB (1986) 41 Cal.3d 861

605.01 Union cannot, by contract, waive the ALRB's right to subpoena information from an employer.
ALRB v. RICHARD A. GLASS CO. (1985) 175 Cal.App.3d 703

605.01 Employer who fails to seek court review of Board's ruling on access violations has waived the point.
GEORGE ARAKELIAN FARMS, INC. v. ALRB (1985) 40 Cal.3d 654

605.01 Where party challenges Board finding but fails to support challenge with any argument or discussion, reviewing court must assume that finding is supported by substantial evidence.

HARRY CARIAN SALES v. ALRB 1985 39 Cal.3d 209

605.01 Failure of employer to raise objections to relevancy of requested information during bargaining constitutes waiver of that contention on review.
CARDINAL DISTRIBUTING CO. v. ALRB (1984) 159 Cal.App.3d 758

605.01 Failure of employer to raise objections to relevancy of requested information during bargaining constitutes waiver of that contention on review.
CARDINAL DISTRIBUTING CO. v. ALRB (1984) 159 Cal.App.3d 758

605.01 Since "contemporaneous objection" evidentiary rule is applicable to ALRB proceedings, employer waived its opportunity for court review of obvious hearsay testimony and documents by failing to make timely hearsay objection during compliance hearing.
FRUDDEN ENTERPRISES, INC. v. ALRB (1984) 153 Cal.App.3d 262

605.01 Failure to raise legal issue through timely exceptions to Board constitutes waiver, and party may not later raise issue in Court of Appeal.
CARIAN v. ALRB (1984) 36 Cal.3d 654

605.01 Waiver language in first settlement was superseded by later agreement which reserved the Board's right to investigate and resolve issues emanating from initial layoff and failure to rehire.
NISH NOROIAN FARMS v. ALRB (1984) 35 Cal.3d 726

605.01 Employer waived right to object to use of daily method of backpay computation by failing to challenge ALJ's decision on that ground.
NISH NOROIAN FARMS v. ALRB (1984) 35 Cal.3d 726

605.01 Employer waived Sure-Tan argument by failing to raise it until after oral argument in the Supreme Court.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

605.01 Employer waived evidentiary objection to ALJ's decision by failing to raise issue in exceptions filed with Board.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

605.01 Failure to cite record in support of contentions in petition for review is a waiver of those contentions.
BUTTE VIEW FARMS v. ALRB (1979) 95 Cal.App.3d 961

605.01 Employer's failure to contest Executive Secretary's dismissal of certain election objections is tantamount to concession that dismissal was valid.
J.R. NORTON CO. v. ALRB (1979) 26 Cal.3d 1

606.00 ESTOPPEL

606.01 In General

606.01 Dismissal with prejudice of previous charges does not bar litigation of later incidents involving similar conduct.
UNITED FARM WORKERS OF AMERICA, 19 ALRB No. 15

606.01 Board affirms ALJ's ruling that Respondent was not entitled to ask backpay claimants whether they worked during periods which were outside the backpay period and, if they did, whether they had unjustifiably quit or been fired for misconduct.
MARIO SAIKHON, INC., 17 ALRB No. 6

606.01 Board declines to reach issue of whether Court of Appeal's denial of review of 8 ALRB No. 88 on jurisdictional grounds raises bar of res judicata to Board's reconsideration of that Decision. Since Respondent's third motion for reconsideration raises no new issues and cites no extraordinary circumstances, it is denied.
MARIO SAIKHON, INC., 17 ALRB No. 6

606.01 Estoppel not defense to refusal to bargain charge where union, for extended periods, did not assert bargaining rights. Board obliged to give "paramount consideration to the provisions of the Act regardless of earlier positions taken by any party." Said provisions allow union to revive representative status after period of inaction. Additionally, employer can show no detriment or prejudice from reliance on such inaction since it has been left free to unilaterally determine wages and working conditions without union or Board intervention.
JOE G. FANUCCHI & SONS, 12 ALRB No. 8

606.01 Summary denial of review of a Board decision is a decision on the merits for purposes of collateral estoppel and res judicata.
KAWANO, INC., 10 ALRB No. 17

606.01 Employer estopped from contending it was not part of Employer bargaining group and not properly a respondent when issue first raised in post-hearing brief, not fully litigated and conduct indicated Employer considered itself part of group.
ADMIRAL PACKING CO., et al., 7 ALRB No. 43

606.01 A party may be estopped from claiming that his/her uncharged conduct constituted ULP where he/she has acquiesced in the trial of such conduct as ULP.
GEORGE ARAKELIAN FARMS v. ALRB (1986) 186 Cal.App.3d 94

606.01 Res judicata does not apply where Board's subpoena was denied enforcement based on technical defect, not on merits, and Board later reissued subpoena without the

defect.
ALRB v. RICHARD A. GLASS CO. (1985) 175 Cal.App.3d 703

606.01 Employer is not estopped from refusing to adhere to arbitration award where award was based on illegal contract and application of estoppel principle would run afoul of public policy reflected in 1153(f).
JOE A. FREITAS & SONS v. FOOD PACKERS (1985) 164 Cal.App.3d 1210

606.01 Superior Court refusal to enforce subpoenas seeking employee lists did not estop Board from later determining in administrative proceedings that employer failed to provide adequate lists.
CARIAN v. ALRB (1984) 36 Cal.3d 654

606.01 Although Board order prohibiting eviction conflicted with county's duty to close uninhabitable housing, employer/landlord was not entitled to assent estoppel effect of county action as to Board order and bears heavy burden in enforcement proceedings to show that uninhabitability was not an effort to avoid Board's order.
RIVCOM CORP. v. ALRB (1983) 34 Cal.3d 743

606.01 Board refusal to extend certification under 1155.2(b) is not res judicata as to later-instituted ULP charges, since G.C. was not a party to initial proceedings and such an interpretation would make unlikely any further use of extension of certification procedure.
MONTEBELLO ROSE CO. v. ALRB (1981) 119 Cal.App.3d 1

606.01 Court's determination of retaliatory eviction defense in unlawful detainer action has no res judicata or collateral estoppel effect on related ALRB proceedings.
VARGAS v. MUNICIPAL COURT (1978) 22 Cal.3d 902

606.01 UFW is not estopped from arguing for separate units because of its previous position that the unit should be statewide. UFW cannot be penalized for exercising its right to file election objections on the unit question, which is specifically included as a ground for objection in Labor Code sec. 1156.3(c).
COASTAL BERRY COMPANY, LLC, 26 ALRB No. 2

606.01 Board's prior administrative rulings, even if construed to imply that Board would have found a single unit appropriate, did not preclude Board from making a contrary determination, exercising its sound discretion, in a subsequent proceeding. (*Pacific Greyhound Lines* (1938) 9 NLRB 557, 573 [3 LRRM 303].)
COASTAL BERRY COMPANY, LLC, 26 ALRB No. 2

606.01 The ALRB has primary jurisdiction over matters arising under the ALRA. Section 1160.9 of the ALRA provides that "[T]he procedures set forth in this chapter shall be the exclusive method of redressing unfair labor practices."

In *Belridge Farms v. ALRB* (1978) 21 Cal.3d 551, 558, the California Supreme Court held that this was a codification of the federal law approach recognizing the primary jurisdiction of the NLRB. This was affirmed in *Vargas v. Municipal Court* (1978) 22 Cal.3d 902, 916 and *Kaplan's Fruit & Produce Co. v. Superior Court* (1979) 26 Cal.3d 60, 67-68. Therefore, prior decision by Labor Commissioner does not have collateral estoppel effect in ALRB proceeding.
LASSEN DAIRY, INC., 35 ALRB No. 7

606.01 An entity to which collective bargaining responsibility should attach that was not a party to the proceedings in which such a finding was made may not be bound by that finding in subsequent proceedings.
HENRY HIBINO FARMS, LLC., 35 ALRB No. 9

606.02 Settlement Agreements As Bar Of Estoppel

606.02 Settlement agreement which excluded a particular discrimination charge did not preclude litigation of an amended charge alleging refusal-to-bargain, since the bargaining allegation was related to the incident which the parties intended to litigate.
NISH NOROIAN FARMS v. ALRB (1984) 35 Cal.3d 726

606.03 Conduct Of Board Or Its Agents As Estoppel

606.03 General Counsel's "off-the-cuff" remark that union "finally got it [the language in its leaflet] right" does not estop the Board from making its own evaluation of the leaflet's contents.
UNITED FARM WORKERS OF AMERICA, 19 ALRB No. 15

606.03 A complaint need not be dismissed for laches or an alleged violation of administrative and constitutional due process, where a period of approximately two years passes between the filing of the charges and the complaint, and all declarations in support of the charges are not filed with them, if the respondent receives timely notice of the charges, at least one declaration is filed with the charges and there is no showing of specific facts resulting in actual prejudice to the respondent.
STAMOULES PRODUCE CO., 16 ALRB No. 13

606.03 Even if the employer had been able to establish allegations of Board agent misconduct, which it could not, the employer would not be entitled to dismissal of pending unfair labor practice charges; rather, the employer could invoke the General Counsel's external complaint procedure.
SPRINGFIELD MUSHROOMS, INC., 14 ALRB No. 10

606.03 Board is not required to place the consequences of its own delay, even if inordinate, upon wronged employees to benefit of wrongdoing employers.

M. B. ZANINOVICH, INC. v. ALRB (1981) 114 Cal.App.3d 665

606.03 Employer's asserted good-faith belief that Board had communicated offers of reinstatement to employees and that employees had not responded thereto did not justify employer's later assignment of negative seniority to employees when they requested reinstatement.
M. B. ZANINOVICH, INC. v. ALRB (1981) 114 Cal.App.3d 665

607.00 CONTRACT LAW

607.01 In General

607.01 Formal rules of contract formation are not binding in collective bargaining negotiations.
ARAKELIAN FARMS, 9 ALRB No. 25

607.01 The common law rule that a rejection or counterproposal necessarily terminates an offer has little relevance in the collective bargaining setting as such contract principles run counter to federal labor law policy which encourages the formation of collective bargaining agreements. Thus, a contract offer is not automatically terminated by the other party's rejection or counter-proposal, but may be accepted within a reasonable time unless it is expressly withdrawn prior to acceptance.
PAUL W. BERTUCCIO v. ALRB (1988) 202 Cal.App.3d 1369

607.01 A mere change in bargaining strength does not create such unfairness as to negate acceptance of an offer on a collective bargaining agreement.
PAUL W. BERTUCCIO v. ALRB (1988) 202 Cal.App.3d 1369

607.01 An offer for a collective bargaining agreement remains open and may be accepted within a reasonable time unless it is expressly withdraw prior to acceptance, is expressly made contingent upon some condition subsequent, or is subject to intervening circumstances which make it unfair to hold the offeror to the bargain.
PAUL W. BERTUCCIO v. ALRB (1988) 202 Cal.App.3d 1369

607.01 An offer for a collective bargaining agreement, once made, will remain on the table unless explicitly withdrawn by the offeror or unless circumstances arise which would lead the parties to reasonably believe that the offer had been withdrawn.
PAUL W. BERTUCCIO v. ALRB (1988) 202 Cal.App.3d 1369

607.01 Where it is conceded that an offer on a collective bargaining agreement has not been withdrawn, the correct test for determining whether the offer has lapsed is the reasonable belief of the parties. If one of the parties believes that the offer has lapsed, then it is necessary to consider whether the belief is reasonable, that is, whether circumstances would lead a party to reasonably believe that the offer has expired. Length of time

between offer and acceptance is only one of the circumstances to be considered.
PAUL W. BERTUCCIO v. ALRB (1988) 202 Cal.App.3d 1369

607.01 ALRB's makewhole awards do not violate the Contract Clause of the U.S. Constitution.
MARTORI BROS. DISTRIBUTORS v. JAMES-MASSENGALE (9th Cir., 1986) 781 F.2d 1349, modified 791 F.2d 799

607.01 A labor contract voided by certification of another union is unenforceable, including arbitration awards issued under voided contract.
JOE A. FREITAS & SONS v. FOOD PACKERS (1985) 164 Cal.App.3d 1210

607.01 A union's constitution and bylaws constitute a binding contract between union and members as to discipline of a member.
PASSILAS v. ALRB (1984) 156 Cal.App.3d 312

607.01 Collective bargaining agreement need not be reduced to writing to be enforceable.
TEX-CAL LAND MANAGEMENT, INC. v. ALRB (1982) 135 Cal.App.3d 906

607.02 Contract Law: Parties, Proposals, and Acceptance

607.02 Where reasonable person in position of Board agent would be aware that under Board's regulations and compliance manual she/he was without authority to accept purported proposal, that employer had failed to controvert allegation in specification of interest liability, and that purported settlement proposal was one-sided unnecessary compromise, Board found reasonable person would not understand employer's purported proposal as bona fide settlement offer.
VENUS RANCHES, INC., 14 ALRB No. 17

607.02 Board agents had not accepted purported settlement proposal by employer where Board agents contemporaneously, consistently, and repeatedly informed employer that liquidated interest amount was still due and that Board would take legal steps to collect amount owing.
VENUS RANCHES, INC., 14 ALRB No. 17

607.02 Whether employer has made settlement proposal to agent of Board capable of binding Board under Civil Code Section 1584 is determined by understanding of reasonable person in position of Board agent to whom purported proposal was made.
VENUS RANCHES, INC., 14 ALRB No. 17

607.03 Contract Law: Consideration

607.03 Employer's purported settlement proposal failed to present sufficient consideration to support Board's

purported promise to compromise amounts owing under remedial order where employer's consideration was payment of net backpay owing and thus consisted merely of satisfaction of prior-existing legal obligation.
VENUS RANCHES, INC., 14 ALRB No.17

607.03 For employer's purported settlement proposal to be capable of binding the Board under the provisions of Civil Code Section 1584 employer must present legally adequate consideration to support Board's purported promise to compromise amounts due under remedial order.
VENUS RANCHES, INC., 14 ALRB No. 17

608.00 STATUTORY CONSTRUCTION

608.01 In General

608.01 In construing statute, one should avoid construction that would make some words surplusage; significance should be given to every word, phrase, and sentence.
F&P GROWERS ASSN. v. ALRB (1985) 168 Cal.App.3d 667

608.01 If employers were generally to escape liability for labor contractor misconduct, many protections of ALRA would be nullified. It is unlikely that Legislature enacted a statute that was inherently inoperative.
VISTA VERDE FARMS v. ALRB (1981) 29 Cal.3d 307

608.01 Moscone Act clearly contained conflict as to court jurisdiction to enjoin peaceful picketing which obstructs ingress and egress. Court therefore construed statute in accordance with existing case law--namely, that superior courts may enjoin obstruction of access. Further, since obstruction tends to lead to violence, it is not "peaceful."
KAPLAN'S FRUIT & PRODUCE CO. v. SUPERIOR CT. (1979) 26 Cal.3d 60

608.01 Neither the ALRA's language, its overall purpose, or the legislative history support the interpretation that 1160.3 allows automatic imposition of makewhole in all bargaining cases.
J. R. NORTON CO. v. ALRB (1979) 26 Cal.3d 1

608.01 The Board construed the 60-day provision on enforcement actions in Labor Code section 1164.3, subdivision (f) as pertaining only to situations where no court review of the Board’s order is sought. The Board found this construction was supported by several textual factors. First, section 1164.3, subdivision (f) is contained in the section of the statute dealing with the Board’s review of the mediator’s report, not in section 1164.5 which is the section covering court review of the Board’s order. Second, this provision is analogous to the provision of Labor Code section 1160.8, and both provisions establish procedures for reducing a Board

order to a judgment where no appellate court review has been sought. Finally, section 1164.7, subsection (a) provides that "the court of appeal or the Supreme Court shall enter judgment either affirming or setting aside the order of the board." Therefore, in a case where a judgment of the Court of Appeal affirming the Board's order has been entered, it would be unnecessary to bring a separate proceeding in superior court under 1164.3, subdivision (f) in order to transform the Board's order into a judgment.
HESS COLLECTION WINERY, 35 ALRB No. 3

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

608.02 Clear Language of Statute

608.02 When statutory language is clear and unambiguous, there is no need for construction and courts should not indulge in it.
WILLIAM DAL PORTO & SONS, INC. v. ALRB (1987) 191 Cal.App.3d 1195

608.02 Act provides, "Such hearings may be conducted by an officer or employee of a regional office of the Board. He shall make no recommendation with respect thereto. "[T]he pronoun `He' must refer to entire immediately preceding sentence, and terms `an officer or employee' must be read together, both being qualified by phrase, `of a regional office of the Board.'"
LINDELEAF v. ALRB (1986) 41 Cal.3d 861

608.02 Language of 1140.4 and Labor Code 1697, and overall intent of ALRA, indicate that agricultural employers are responsible for acts of labor contractors.
VISTA VERDE FARMS v. ALRB (1981) 29 Cal.3d 307

608.02 Section 1156.7 clearly allows decertification or rival union petition anytime within last year of collective bargaining agreement, and Board exceeded its authority in fashioning a more limited period for the filing of such petitions.
CADIZ v. ALRB (1979) 92 Cal.App.3d 365

608.02 Construction of statute should not treat any words as

surplusage.
J.R. NORTON CO. v. ALRB (1979) 26 Cal.3d 1

608.02 ALRB access rule supersedes general trespass statute because Legislature intended ALRA to prevail in such a conflict. (1166.3(b).)
ALRB v. SUPERIOR COURT (PANDOL) (1976) 16 Cal.3d 392

608.03 Construction By Reference To Similar Statutes

608.03 Language of 1156.3 is clearly derived from the NLRA. But NLRA provision is for pre-election hearings on questions of representation--i.e., determinations as to the appropriate bargaining unit--to which there is no comparable ALRA procedure.
LINDELEAF v. ALRB (1986) 41 Cal.3d 861

608.03 Because 1148 requires Board to follow NLRA precedent, and because bargaining orders--unlike make-whole relief--were well-established federal precedent when ALRA was passed, Legislature did not need to expressly authorize such bargaining orders.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

608.03 Differences between 1160.3 and NLRA section 10(c) indicate that ALRB was intended to have broader remedial powers than NLRB.
SANDRINI BROTHERS v. ALRB (1984) 156 Cal.App.3d 878

608.03 ALRA was patterned after NLRA, with changes necessary to meet special needs of California agriculture. Therefore, administrative and judicial interpretations of the federal act are persuasive indicators of the appropriate interpretation of ALRA legislature.
PASILLAS v. ALRB (1984) 156 Cal.App.3d 312

608.03 If the drafters of ALRA had intended to eliminate concept of successorship that is firmly recognized under NLRA, they would have included provision in ALRA specifically so providing. Since they did not, it will be assumed that successorship doctrine applies under ALRA.
SAN CLEMENTE RANCH, LTD. v. ALRB (1981) 29 Cal.3d 874

608.03 NLRB precedent regarding "contract bar" not applicable because ALRA specifically creates a contract bar rule in section 1156.7 which diverges from the NLRB practice. In this instance, the ALRA was not modeled after the NLRA, which contains no parallel language on contract bar.
CADIZ v. ALRB (1979) 92 Cal.App.3d 365

608.03 When statute has been judicially construed and subsequent legislation is framed in identical language, it is presumed that Legislature intended that new statute receive same construction as original statute. This rule includes state statutes modeled after federal statutes.
KAPLAN'S FRUIT & PRODUCE CO. v. SUPERIOR CT. (1979) 26 Cal.3d 60

608.03 When legislation has been applied in judicial decisions and then a subsequent statute on an analogous subject employs identical language, it is to be presumed that Legislature intended language in new statute to be given a like interpretation.
NISHIKAWA FARMS, INC. v. MAHONY (1977) 66 Cal.App.3d 781

608.03 The Board construed the 60-day provision on enforcement actions in Labor Code section 1164.3, subdivision (f) as pertaining only to situations where no court review of the Board's order is sought. The Board found this construction was supported by several textual factors. First, section 1164.3, subdivision (f) is contained in the section of the statute dealing with the Board's review of the mediator's report, not in section 1164.5 which is the section covering court review of the Board's order. Second, this provision is analogous to the provision of Labor Code section 1160.8, and both provisions establish procedures for reducing a Board order to a judgment where no appellate court review has been sought. Finally, section 1164.7, subsection (a) provides that "the court of appeal or the Supreme Court shall enter judgment either affirming or setting aside the order of the board." Therefore, in a case where a judgment of the Court of Appeal affirming the Board's order has been entered, it would be unnecessary to bring a separate proceeding in superior court under 1164.3, subdivision (f) in order to transform the Board's order into a judgment.
HESS COLLECTION WINERY, 35 ALRB No. 3

608.04 Construction To Be Consistent With Overall Intent Of Statute

608.04 Regulations, read as a whole, should achieve a result consistent with their overall intent. Section 20213 may be read to require the filing of all the charges, but this would be inconsistent with section 20216 because the General Counsel may obtain additional declarations in conducting a thorough investigation.
STAMOULES PRODUCE CO., 16 ALRB No. 13

608.04 Whatever is necessarily implied in a statute is as much a part of it as that which is expressed.
WILLIAM DAL PORTO & SONS, INC. v. ALRB (1987) 191 Cal.App.3d 1195

608.04 The Code specifically empowers Board to appoint hearing officers, whose function would be rendered nugatory by a requirement that they may not make preliminary determinations. Such a rule would strain the Board's resources in manner not contemplated by the Legislature.
LINDELEAF v. ALRB (1986) 41 Cal.3d 861

608.04 Legislative intent to make 1160.8 exclusive avenue of judicial review is evident in shortened time limits,

option of summary denial, and abbreviated superior court review. Appeal of superior court enforcement would thwart overall intent--to make review speedy and expeditious.
ALRB v. ABATTI PRODUCE, INC. (1985) 168 Cal.App.3d 504

608.04 Rules of statutory construction require that provision be interpreted in manner which promotes, rather than defeats, overall policy and purpose of Act. This requires consideration of such factors as context, object in view, evils to be remedied, history, other legislation on same subject, public policy, and contemporaneous construction.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

608.04 Express purpose of ALRA requires, rather than precludes, Board's having authority to issue bargaining orders.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

608.04 1153(f) must be interpreted in light of overall purpose of ALRA. Legislative committee hearings, testimony, and law review article written by a consultant to legislative committee are indicia of general legislative intent.
HIGHLAND RANCH v. ALRB (1981) 29 Cal.3d 848

608.04 Statutory interpretation must be rejected if it conflicts with fundamental purpose of entire legislative scheme.
VISTA VERDE FARMS v. ALRB (1981) 29 Cal.3d 307

608.04 Language of 1140.4 and Labor Code 1697, and overall intent of ALRA, indicate that agricultural employers are responsible for acts of labor contractors.
VISTA VERDE FARMS v. ALRB (1981) 29 Cal.3d 307

608.04 Allowing election at any time during last year of a contract does not destroy purpose of ALRA nor does it lead to absurd results, since a primary purpose of the ALRA is to promote employee free choice.
CADIZ v. ALRB (1979) 92 Cal.App.3d 365

608.04 Where uncertainty exists, statute should be interpreted in light of the consequences of a particular interpretation and reconciled with the purposes of the statute as a whole. A statute should be interpreted so as to obtain a reasonable result and a result that promotes the general purpose of the statute. (Hopper dissent)
CADIZ v. ALRB (1979) 92 Cal.App.3d 365 (Hopper Dissent.)

608.04 Statutory language should be harmonized with the overall statutory framework.
J. R. NORTON CO. v. ALRB (1979) 26 Cal.3d 1

608.04 The Mandatory Mediation and Conciliation legislation (California Labor Code section 1164 et seq.) sought to accomplish the stated purpose of achieving a more effective collective bargaining process between

agricultural employers and agricultural employees by creating a process to jump-start negotiations that have not been productive. The Legislature provided that if no Board review of a mediator's report is sought, or if the mediator's report is upheld, the report becomes a "final order of the board." Accordingly, the Board has a legal obligation to ensure that its order is carried out.
HESS COLLECTION WINERY, 35 ALRB No. 3

608.05 Legislative History; Other Evidence Of Legislative Intent

608.05 Declarations a legislator are permitted as part of legislative history which may be helpful in construing statute.
F & P GROWERS ASSN. v. ALRB (1985) 168 Cal.App.3d 667

608.05 Legislative history regarding exclusivity of secret ballot election refers to unions' options of obtaining recognition, not to Board's remedial power.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

608.05 Legislature's failure to pass amendment to Act specifically authorizing bargaining orders does not justify inference that it intended to preclude such orders. History of amendment is "pedestrian and unrevealing," amendment contained another, unrelated, major provision, and Legislature may have deemed amendment unnecessary in light of 1148 and well-established bargaining order precedent under NLRA.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

608.05 Comments of drafters are perfectly consistent with Board's conclusion that Act's secret ballot provisions were intended to preclude voluntary recognition, not bargaining orders. Drafters contrasted worker-initiated secret elections with various means of voluntary recognition used by unions and employers, such as recognitional strikes or employer-triggered elections.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

608.05 At best, legislative silence is a Delphic divination.
HARRY CARIAN SALES v. ALRB (1985) 39 Cal.3d 209

608.05 California Legislature plainly anticipated that discharge for strike breaking would result from language of 1153(c): Moreover, the legislative history shows that retroactive enforcement was assumed without dispute, indicating legislative agreement that such an assumption was correct and intended.
PASILLAS v. ALRB (1984) 156 Cal.App.3d 312

608.05 General rule is that judicial intervention in Board proceedings is inappropriate, since Legislature intended labor problems to be initially handled by expert agency.
CALIFORNIA COASTAL FARMS v. DOCTOROFF (1981) 117 Cal.App.3d 15

608.05 1153(f) must be interpreted in light of overall purpose of ALRA. Legislative committee hearings, testimony, and law review article written by a consultant to legislative committee are indicia of general legislative intent.
HIGHLAND RANCH v. ALRB (1981) 29 Cal.3d 848

608.05 Legislative history of 1140.4 indicates that its purpose was to define appropriate bargaining units and did not relate to ULP's at all.
VERDE FARMS v. ALRB (1981) 29 Cal.3d 307

608.05 Declaration of legislator who drafted ALRA was not conclusive as to legislative intent where it only indicated the understanding of one individual and was, at best, ambiguous.
CADIZ v. ALRB (1979) 92 Cal.App.3d 365

608.05 Failure of Legislature to enact bill which would have clarified ambiguous provision of statute does not prove Legislature rejects proposed construction.
KAPLAN'S FRUIT & PRODUCE CO. v. SUPERIOR CT. (1979) 26 Cal.3d 60

608.05 Removal of certain language from legislation during revision sometimes indicates legislative intent. However, silence is not a clear expression of intent, and history of ALRA does not clearly indicate rejection of concept of Board-ordered access to the employers' premises.
ALRB v. SUPERIOR COURT (PANDOL) (1976) 16 Cal.3d 392

608.06 Deference To Interpretation Of Expert Administrative Agency

608.06 Administrative agency entitled to strong deference when interpreting policy of ALRA in its field of expertise.
MONTEBELLO ROSE CO. v. ALRB (1981) 119 Cal.App.3d 1

608.06 California Legislature intended to give ALRB broader investigatory powers than NLRB.
SAN DIEGO NURSERY CO. v. ALRB (1979) 100 Cal.App.3d 128

609.00 EXHAUSTION

609.00 EXHAUSTION OF ADMINISTRATIVE REMEDIES

609.01 In General

609.01 Courts ordinarily accord administrative agencies the initial opportunity to address claims involving interpretation of their own regulations, and a petitioner is deemed to waive an objections that could have been but were not raised before ALRB.
LINDELEAF v. ALRB (1986) 41 Cal.3d 861

609.01 Employer failed to exhaust administrative remedies, having filed request for Board review of Executive

Secretary's partial dismissal of election objections four days late and having failed to seek Board reconsideration of denial of request for review or to provide explanation for untimeliness.
GEORGE ARAKELIAN FARMS, INC. v. ALRB (1985) 40 Cal.3d 654

609.01 Exhaustion of administrative remedies is jurisdictional and will bar judicial consideration of issues not preserved before ALRB.
GEORGE ARAKELIAN FARMS, INC. v. ALRB (1985) 40 Cal.3d 654

609.01 Judicial review unavailable where employer failed to appeal interim ruling of ALJ to Board, pursuant to ALRB regulation section 20240(f).
CALIFORNIA COASTAL FARMS v. DOCTOROFF (1981) 117 Cal.App.3d 15

609.01 Failure to file exceptions before Board constitutes failure to exhaust administrative remedies and therefore precludes judicial review of those exceptions.
BUTTE VIEW FARMS v. ALRB (1979) 95 Cal.App.3d 961

609.02 What Constitutes Sufficient Raising Of Issue

609.03 Futility Exception

609.03 Futility exception to requirement that parties exhaust their administrative remedies demands that petitioner state with assurance that the Board would rule adversely in its own particular case. Because issue had never been presented to the ALRB, its probable decision could not be forecast. To permit Lindeleaf retroactively to second-guess Board would improperly dilute Board's power to "make, amend, and rescind" its own regulations.
LINDELEAF v. ALRB (1986) 41 Cal.3d 861

609.03 Futility exception to exhaustion doctrine applies only when claimant can positively state that agency has declared what its ruling will be in a particular case.
GEORGE ARAKELIAN FARMS, INC. v. ALRB (1985) 40 Cal.3d 654

609.04 Issues Beyond Jurisdiction Of Administrative Agency

609.05 Other Exceptions

609.05 Although waiver is general rule when parties fail to exhaust their administrative remedies, Supreme Court may agree to hear a case involving important questions of public policy.
LINDELEAF v. ALRB (1986) 41 Cal.3d 861

609.05 Petitioner could not rely on depublished court of appeal opinion to argue that--as an exceptional circumstance or a change of law--its late challenge to Board's procedure was excused from the requirement that petitioner first exhaust its administrative remedies.
LINDELEAF v. ALRB (1986) 41 Cal.3d 861

610.00 TRADE SECRETS

610.01 In General

610.01 Even if trade secret exists, claimant of privilege has burden to show why the secret should be protected.
ALRB v. RICHARD A. GLASS CO. (1985) 175 Cal.App.3d 703

610.01 Employer failed to establish trade secret privilege where (1) only evidence referred to costs and prices which were not shown to be secret or that disclosure to ALRB would result in disclosure to competitors; (2) no showing that risk to claimant outweighed ALRB's need for information; (3) no showing why protective order would not solve problem.
ALRB v. RICHARD A. GLASS CO. (1985) 175 Cal.App.3d 703

610.01 Where information subpoenaed was clearly relevant and necessary to ULP proceeding, and not over broad or burdensome, burden shifted to employer to prove trade secret privilege.
ALRB v. RICHARD A. GLASS CO. (1985) 175 Cal.App.3d 703

700.00 MANDATORY MEDIATION AND CONCILIATION; PREREQUISITES

700.01 In General; Constitutionality

700.01 As an administrative agency, the ALRB does not have the authority to declare a statute unconstitutional (Art. 3, Sec. 3.5, Cal. Const.)
PICTSWEET MUSHROOM FARMS, 29 ALRB No. 3

700.01 As the mandatory mediation law constitutes an amendment to the ALRA, provisions of the unamended ALRA, such as section 1155.2, cannot be a basis for finding that the amendments violate the ALRA.
PICTSWEET MUSHROOM FARMS, 29 ALRB No. 3

700.01 Because the Board has no authority to declare a statute unconstitutional, Employer's argument that the mandatory mediation and conciliation law found in Labor Code sections 1164-1164.14 violates rights guaranteed under the California and United States Constitutions provides no grounds for the Board to grant Employer's petition for review.
HESS COLLECTION WINERY, 29 ALRB No. 6

700.01 The Employer's argument that the mandatory mediation law found in Labor Code sections 1164-1164.14 violates section 1155.2(a) of the Labor Code is without merit. Labor Code sections 1164-1164.14 are amendments to the ALRA which took effect on January 1, 2003. The Employer cannot rely on the un-amended version of the ALRA to argue that the mandatory mediation law violates Labor Code section 1155.2(a).
HESS COLLECTION WINERY, 29 ALRB No. 6

700.01 Employer's argument that the mandatory mediation and conciliation law violates sections 1119 and 1121 of the California Code of Evidence is without merit and provides no basis for the Board to grant Employer's petition for review. These Evidence Code sections pertain to confidentiality in the mediation process. Labor Code sections 1164-1164.14 create a hybrid mediation/arbitration process, and the portion of the process that is akin to arbitration is not governed by these Evidence Code sections.
HESS COLLECTION WINERY, 29 ALRB No. 6

700.01 Mandatory mediation statute, which is in fact one imposing interest arbitration, is constitutional. The statute does not violate substantive due process, the scope of judicial review is adequate to safeguard constitutional rights, does not constitute unlawful protectionism, does not violate equal protection guarantees, and constitutes a lawful delegation of

legislative authority.
HESS COLLECTION WINERY v. ALRB (2006) 140 Cal.App.4th 1584

700.01 Constitutionality of the MMC statute has been upheld by the courts (*Hess Collection Winery v. ALRB* (2006) 140 Cal.App.4th 1584.) and, in any event, the Board has no authority to declare a statute unconstitutional (Cal. Const., art. 3, sec. 3.5.)
D'ARRIGO BROS. CO., 33 ALRB No. 1

700.01 No merit in argument that the MMC provisions are invalid because they are inconsistent with a pre-existing provision of the ALRA, section 1155.2, subdivision (a), that states in pertinent part that the bargaining obligation "does not compel either party to agree to a proposal or require the making of a concession." An identical argument was made and rejected in Pictsweet Mushroom Farms, supra, 29 ALRB No. 3, at p. 12. There the Board pointed out that the MMC provisions amended the existing provisions of the ALRA to provide for a hybrid mediation/binding interest arbitration process in specified circumstances and that reliance on the unamended statute is unavailing. The principle reflected in section 1155.2, subdivision (a), continues to control during bargaining outside the MMC process.
SAN JOAQUIN TOMATO GROWERS, INC., 37 ALRB No. 5

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

700.02 Certification; Abandonment

700.02 Certification naming predecessor bound successor employer for purpose of mandatory mediation law, where other statutory prerequisites were met.
PICTSWEET MUSHROOM FARMS, 29 ALRB No. 3

700.02 Period of dormancy in collective bargaining activity does not cause union to lose status as certified representative under the ALRA's statutory scheme, under which union representative status can come only from

certification following Board-conducted election and can only be terminated by same means, unless union disclaims interest in representing the unit or becomes defunct.
PICTSWEET MUSHROOM FARMS, 29 ALRB No. 3

700.02 Employer cannot claim that MMC unavailable because union "abandoned" bargaining unit merely based on union being absent "for years," as under the ALRA the concept of abandonment has no significance beyond a union disclaimer of interest or union defunctness. Abandonment defense has no relevance where bargaining has resumed after a period of dormancy.
SAN JOAQUIN TOMATO GROWERS, INC., 37 ALRB No. 5

700.03 Previous Contract; Successorship

700.03 Successor employer should not be treated as "standing in shoes" of predecessors who had entered into collective bargaining agreements so as to be treated as if it had itself entered into a contract with the certified union. Successorship law does not require successors to accept predecessor collective bargaining agreements except by some form of voluntary agreement. A certified union bargaining with a successor employer is in substantially the same position as a newly certified union seeking its first contract.
PICTSWEET MUSHROOM FARMS, 29 ALRB No. 3

700.03 Section 1159 of the ALRA prohibits contracts with uncertified labor organizations, but only contracts entered into after the effective date of the ALRA. A contract whose duration expired prior to the passage of the ALRA was legally valid during its existence and the passage of the ALRA had no retroactive effect upon that status. However, such a contract is not disqualifying under Labor Code section 1164.11, subdivision (c).
D'ARRIGO BROS. CO., 33 ALRB No. 1

700.03 Requirement that there have been no binding contract between the parties refers only to contracts entered into after certification of the labor organization under the provisions of the ALRA. Therefore, pre-ALRA contracts are not disqualifying.
D'ARRIGO BROS. CO., 33 ALRB No. 1

700.03 A contract need not be formalized or signed in order to be binding. Rather, a binding collective bargaining agreement may be formed by a variety of manifestations of acceptance of an outstanding offer, whether or not the agreement is reduced to writing or signed. However, it is the parties' intent that controls, and parties are free to make formalization and execution a condition precedent to enforceability. No previous binding contract where the evidence showed that the understanding and intent of both parties was that the agreement would not be binding and enforceable until it was formalized and executed.

700.04 Renewed Demand to Bargain; Initial Request to Bargain

700.05 Minimum Number of Employees (25)

700.05 The Board interprets Labor Code section 1164(a) as requiring that an employer employ or engage 25 or more agricultural employees throughout the duration of a calendar week in the year preceding the request for a referral to mandatory mediation and conciliation (MMC) in order to qualify for the MMC process
FRANK PINHEIRO DAIRY, 36 ALRB No. 1

700.05 Statutory supervisors are not counted toward the 25 agricultural employee threshold set forth in Labor Code section 1164(a).
FRANK PINHEIRO DAIRY, 36 ALRB No. 1

700.05 Agricultural employees who have regularly scheduled days off within a calendar week in the year preceding the request for a referral to mandatory mediation and conciliation (MMC) will count toward the 25 agricultural employee threshold set forth in Labor Code section 1164(a), as will employees on vacation, sick leave, or other type of absence where the employment relationship is not severed.
FRANK PINHEIRO DAIRY, 36 ALRB No. 1

700.05 An employee on seasonal layoff cannot be counted toward the 25 agricultural employee threshold set forth in Labor Code section 1164(a) as a layoff terminates the employment relationship.
FRANK PINHEIRO DAIRY, 36 ALRB No. 1

700.05 Questions of supervisory status are deeply fact-intensive. In determining whether an individual is a statutory supervisor, the Board will inquire into actual duties, not merely titles or job classifications.
FRANK PINHEIRO DAIRY, 36 ALRB No. 1

700.06 Commission of Unfair Labor Practice

700.06 Employer's claim that there has been no bad faith bargaining by Hess during the prior 23 negotiation sessions with the Union is irrelevant. A finding of bad faith bargaining is not a prerequisite for the Board to order parties to the mandatory mediation process set forth in Labor Code sections 1164-1164.14.
HESS COLLECTION WINERY, 29 ALRB No. 6

700.06 Finding of unfair labor practice (ULP) pending review of appellate court is not final and, therefore, not a qualifying ULP.
D'ARRIGO BROS. CO., 33 ALRB No. 1

700.06 Board may take official notice of qualifying unfair labor

practices rather than relying on cases cited by party submitting request for mediation.
D'ARRIGO BROS. CO., 33 ALRB No. 1

700.07 Limitation of 75 Declarations Per Party

700.08 Requirement of Previous Unfair Labor Practice

700.08 Requirement that employer have "committed an unfair labor practice" is satisfied regardless of the remoteness in time of the violation.
SAN JOAQUIN TOMATO GROWERS, INC., 37 ALRB No. 5

701.00 MANDATORY MEDIATION PROCEDURE

701.01 Timeliness of Request for Mediation and Answer; Service and Filing Requirements

701.01 The reference in Regulation 20400 allowing "documentary and other evidence" to be filed in support of a declaration does not preclude the submission of argument in support of a party's declaration that the statutory prerequisites for invoking the mandatory mediation process have been met.
D'ARRIGO BROS. CO., 33 ALRB No. 1

701.02 Board Evaluation of Request for Mediation and Answer

701.02 A Board decision referring parties to the mandatory mediation and conciliation process set forth in Labor Code sections 1164 to 1164.13 is an interim non-final Board order that is non-reviewable. The Board retains its jurisdiction to reconsider or modify such a decision until a party seeks review of a final Board order confirming a mediator's report under Labor Code section 1164.5
FRANK PINHEIRO DAIRY, 36 ALRB No. 1

701.02 Incorrect unit description and initial demand to bargain dates are not fatal to request for referral to MMC where the Board can simply take administrative notice of the correct information.
SAN JOAQUIN TOMATO GROWERS, INC., 37 ALRB No. 5

701.03 Hearing on Disputed Issues of Material Fact; Conduct of Hearing; Board Review

701.03 Hearing necessary where parties have made competing factual allegations that, if true, may provide the basis for estopping either party from asserting or denying the existence of a prior binding agreement that would preclude referral to mandatory mediation and conciliation.
SAN JOAQUIN TOMATO GROWERS, INC., 37 ALRB No. 5

701.04 Selection of Mediator

701.05 Disqualification of the Mediator

701.06 Notice of Mediation; Commencement of Mediation

701.07 Discovery; Witness and Document Lists; Subpoenas; Enforcement/Sanctions

701.08 Identification of Issues and Standards

701.09 30-Day Timelines for Mediation

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 Evidence; Procedure; Conduct of Mediation; Mediator's Authority

701.10 Employer's argument that the mandatory mediation and conciliation law violates sections 1119 and 1121 of the California Code of Evidence is without merit and provides no basis for the Board to grant Employer's petition for review. These Evidence Code sections pertain to confidentiality in the mediation process. Labor Code sections 1164-1164.14 create a hybrid mediation/arbitration process, and the portion of the process that is akin to arbitration is not governed by these Evidence Code sections.
HESS COLLECTION WINERY, 29 ALRB No. 6

701.10 MMC is a hybrid mediation/binding interest arbitration process with a level of formality that is largely controlled by the parties and the mediator. Regulation 20407, subdivision (a)(4), specifically states that the rules of evidence need not be observed. Whether or not a comparable contract technically falls within the hearsay exception for business records is not controlling. Mediator properly found that the declaration of union's lead negotiator was sufficient to indicate the trustworthiness of the contract as a business record where employer did not proffer any reasonable basis for doubting the authenticity of the contract.
ACE TOMATO COMPANY, INC., 38 ALRB No. 6

701.10 Pursuant to Regulation 20407, the mediator has broad authority to control the conduct of the MMC process and rule on the admissibility of evidence, which necessarily would include reopening of the record for good cause. Therefore, mediator properly allowed submission of a recently negotiated comparable contract after the deadline given for the parties' final submissions to the mediator.
ACE TOMATO COMPANY, INC., 38 ALRB No. 6

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

701.11 Standards; Factors That May be Considered by the Mediator

701.11 Though Labor Code section 1164, subdivision (e) and Regulation 20407, which list factors to be considered by the mediator, use the term "may," in this context it means "must."
HESS COLLECTION WINERY v. ALRB (2006) 140 Cal.App.4th 1584

701.11 Mediator properly utilized contract of larger grower, as he explained that while its operations may be more widespread, when it harvests tomatoes in the San Joaquin Valley the operations covered by the contract used for comparison constitute "similar agricultural operations with similar labor requirements," one of the appropriate factors mediators may consider that are listed in Labor Code section 1164, subdivision (e).
ACE TOMATO COMPANY, INC., 38 ALRB No. 6

701.12 Issuance and Service of Mediator's Report

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

702.00 BOARD REVIEW OF MEDIATOR'S REPORT

702.01 In General

702.01 Employer who refused to participate in a mandatory mediation session ordered pursuant to Labor Code sections 1164-1164.14 waived the right to contest, in its petition for review of the mediator's report, the relevance, authenticity and accuracy of evidence offered by the Union during the session.
HESS COLLECTION WINERY, 29 ALRB No. 6

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

702.02 Filing and Service Requirements for Petition for Review

702.03 Board Acceptance or Denial of Petition; Prima Facie Case for Review

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

702.04 Grounds for Review: Provision of Report Unrelated to Mandatory Subjects of Bargaining

702.05 Grounds for Review: Clearly Erroneous Findings of Material Fact

702.05 Witness's misstatement that other wine industry employees in Napa Valley were not covered by collective bargaining agreements did not result in a clearly erroneous finding of material fact warranting review of the mediator's report. The record does not indicate that the witness deliberately misled the mediator, nor did the party

petitioning for review of the mediator's report explain how it was prejudiced by this misunderstanding.
HESS COLLECTION WINERY, 29 ALRB No. 6

702.05 Mediator's statement that he was imposing what amounted to a one-year contract while in reality the duration of the contract was 21 months was not a clearly erroneous finding of material fact warranting review of the mediator's report. The mediator made it clear that he established the term of the agreement by extending coverage through one full work season.
HESS COLLECTION WINERY, 29 ALRB No. 6

702.05 Mediator properly utilized contract of larger grower, as he explained that while its operations may be more widespread, when it harvests tomatoes in the San Joaquin Valley the operations covered by the contract used for comparison constitute "similar agricultural operations with similar labor requirements," one of the appropriate factors mediators may consider that are listed in Labor Code section 1164, subdivision (e).
ACE TOMATO COMPANY, INC., 38 ALRB No. 6

702.05 Mediator's finding that employer's concerns of difficult economic conditions were outweighed by certainty and needed stability in the parties' bargaining relationship provided by establishing wage and piece rates for all three years of contract, rather than having 2nd and 3rd year reopeners, not clearly erroneous nor arbitrary or capricious.
ACE TOMATO COMPANY, INC., 38 ALRB No. 6

702.05 Review not warranted based on mediator's comments about employer's ability to pay wage rates or adjust prices where mediator's statements did not constitute clearly erroneous findings of material fact, were not arbitrary or capricious, and no provisions of the report were improperly based on those statements.
SAN JOAQUIN TOMATO GROWERS, INC., 38 ALRB No. 7

702.05 Mediator properly used recently negotiated contract covering comparable operations as basis for wage rates, including increases in 2nd and 3rd year. But review granted to allow mediator to clarify intent in light of apparent arithmetic error.
SAN JOAQUIN TOMATO GROWERS, INC., 38 ALRB No. 7

702.05 Mediator properly included bonus program that had existed previously to avoid inappropriate wage concession. But review granted to allow mediator to clarify intent as to what appeared to be clearly erroneous inclusion of tractor drivers. No review granted as to amount of bonus for punchers, as employer failed to explain why punchers should receive a lower amount, nor did it cite any relevant evidence in the record.
SAN JOAQUIN TOMATO GROWERS, INC., 38 ALRB No. 7

702.05 Mediator decision to have a 3-year contract with set wage rates was appropriate and would serve to add stability to bargaining relationship in light of parties' bargaining history, the failure to reach a contract, and employer's unilateral implementation of changes in wage rates.
SAN JOAQUIN TOMATO GROWERS, INC., 38 ALRB No. 7

702.06 Grounds for Review: Provision Arbitrary or Capricious in Light of Findings of Fact

702.06 Mediator's finding that retroactive wage increase for transplant crews was warranted to ensure that they benefited from 2012 wage rates fixed in his report was reasonable and certainly nothing in the record indicated that this finding was clearly erroneous, or arbitrary or capricious.
ACE TOMATO COMPANY, INC., 38 ALRB No. 6

702.06 Mediator did not err by making contract retroactive to beginning of picking season, as no basis in law for concluding that retroactive provisions that normally may be part of collective bargaining agreements are precluded from inclusion in contracts imposed in the MMC process.
SAN JOAQUIN TOMATO GROWERS, INC., 38 ALRB No. 7

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

702.07 Grounds for Review (Sec. 1164.3(e)): Corruption, Fraud, Misconduct of Mediator; Expedited Hearing to Resolve Disputed Material Facts

702.08 Referral for Additional Mediation

703.00 COURT REVIEW OF BOARD ORDERS IN MMC CASES

703.01 In General; Procedure

703.01 A Board decision referring parties to the mandatory mediation and conciliation process set forth in Labor Code sections 1164 to 1164.13 is an interim non-final Board order that is non-reviewable. The Board retains its jurisdiction to reconsider or modify such a decision until a party seeks review of a final Board order confirming a mediator's report under Labor Code section 1164.5
FRANK PINHEIRO DAIRY, 36 ALRB No. 1

703.02 Enforcement After Review or Where no Review is Sought

703.02 The Board concluded that the 60-day enforcement provision in ALRA section 1164.3, subdivision (f) was intended to apply only in cases where no review is sought in the Court of Appeal. In contrast, in matters where court review of the Board's order is sought, and the Court of Appeal issues a decision affirming the Board's order, it is not necessary to use the enforcement procedure set forth in section 1164.3, subdivision (f), as the Court's decision constitutes a judgment that can later be enforced through contempt or other enforcement proceedings in the appropriate court.
HESS COLLECTION WINERY, 35 ALRB No. 3

703.02 The Mandatory Mediation and Conciliation legislation (California Labor Code section 1164 et seq.) sought to accomplish the stated purpose of achieving a more effective collective bargaining process between agricultural employers and agricultural employees by creating a process to jump-start negotiations that have not been productive. The Legislature provided that if no Board review of a mediator's report is sought, or if the mediator's report is upheld, the report becomes a "final order of the board." Accordingly, the Board has a legal obligation to ensure that its order is carried out.
HESS COLLECTION WINERY, 35 ALRB No. 3

703.02 The Board construed the 60-day provision on enforcement actions in Labor Code section 1164.3, subdivision (f) as pertaining only to situations where no court review of the Board's order is sought. The Board found this construction was supported by several textual factors. First, section 1164.3, subdivision (f) is contained in the section of the statute dealing with the Board's review of the mediator's report, not in section 1164.5 which is the section covering court review of the Board's order. Second, this provision is analogous to the provision of Labor Code section 1160.8, and both provisions establish procedures for reducing a Board order to a judgment where no appellate court review has been sought. Finally, section 1164.7, subsection (a) provides that "the court of appeal or the Supreme Court shall enter judgment either affirming or setting aside the order of the board." Therefore, in a case where a judgment of the Court of Appeal affirming the Board's order has been entered, it would be unnecessary to bring a separate proceeding in superior court under 1164.3, subdivision (f) in order to transform the Board's order into a judgment.
HESS COLLECTION WINERY, 35 ALRB No. 3

703.02 Section 1160.8 not applicable to MMC case, as by its terms it applies only to court review and enforcement of Board decisions in unfair labor practice cases. Distinct statutory provisions govern MMC cases, including court review. (ALRA sections 1164-1164.13.)

Moreover, the enforcement provision of section 1160.8 expressly applies only where the time for review of the Board's decision has lapsed.
ACE TOMATO COMPANY, INC., 38 ALRB No. 8

703.02 Section 1164.3, subdivision (f), provides a procedure for reducing a Board decision to a judgment where no appellate court review has been sought and cannot be utilized where the time for review has not yet lapsed.
ACE TOMATO COMPANY, INC., 38 ALRB No. 8

703.02 The Board's decisions are not self-enforcing. Rather, in order to enforce its decisions, the Board must first obtain a judgment. That can occur in two ways, 1) obtaining an order of an appellate court affirming the Board's decision, or 2) where a Board order becomes final because the time for appellate court review has lapsed and the Board reduces its final order to a judgment by order of a superior court pursuant to ALRA section 1164.3, subdivision (f). Consequently, there is no legal mechanism through which the Board can seek to enforce its decision when the time for appellate review has not expired.
ACE TOMATO COMPANY, INC., 38 ALRB No. 8

703.02 The location of the second sentence of section 1164.3, subdivision (f), limiting the grounds for staying a Board decision, is the result of an obvious drafting error and that sentence actually belongs in section 1164.5, which governs court review of Board decisions in MMC cases.
ACE TOMATO COMPANY, INC., 38 ALRB No. 8

703.02 There are no provisions of the ALRA governing the MMC process that may be construed to provide any authority for seeking temporary injunctive relief during the pendency of the 30-day period for seeking appellate review.
ACE TOMATO COMPANY, INC., 38 ALRB No. 8

703.03 Standard of Review