Agricultural Labor Relations Board

Report to the Legislature

Fiscal Years 2002-03, 2003-04 & 2004-05 (July 1, 2002—June 30, 2005)

Members of the Board

Genevieve A. Shiroma, Chairwoman (Appointed 1/12/01)
Gloria A. Barrios (Separated 2/29/04)
Cathryn Rivera-Hernandez (Appointed 11/13/02)
Herbert O. Mason (Resigned 8/19/02)
Michael Bustamante (Appointed 11/12/03; Separated 3/1/05)
Daniel Zingale (Appointed 11/12/03)

J. Antonio Barbosa, Executive Secretary

Norma Turner, General Counsel (Separated 6/30/05)

Table of Contents

Attachments

1. Decisions Issued by the Board in Fiscal Year 2002-03 (with Case Summaries included)

2. Decisions Issued by the Board in Fiscal Year 2003-04 (with Case Summaries included)

3. Administrative Orders Issued in Fiscal Year 2002-03

4. Administrative Orders Issued in Fiscal Year 2003-04

5. Personnel Information (Separate Cover)

Introduction

Labor Code section 1143

State law mandates the Agricultural Labor Relations Board (ALRB) annually report to the California Legislature and to the Governor on cases heard; decisions rendered; the names, salaries, and duties of all employees and officers in the employ or under the supervision of the board; and, an accounting of all monies it has disbursed. The word "monies" includes 'backpay,' the monetary awards to farm workers in unfair labor practice cases.

In the interest of protecting ALRB employees' right to privacy, all sensitive information including the names, salaries, and duties of ALRB personnel is provided under separate cover and can be obtained through a written request to the ALRB Executive Secretary.

J. Antonio Barbosa
Executive Secretary
Agricultural Labor Relations Board

Message from the Board

Fiscal Years 2002-03, 2003-04, and 2004-05 were a time of both change and stability. The Board was charged with implementing the two most significant amendments to the Agricultural Labor Relations Act since its passage: Agricultural Employer-Employee Collective Bargaining and Mediation (AB 1156 and SB 2596) and the Agricultural Employee Relief Fund (SB 1198). The Board also operated well within its budget, while conducting all elections in a timely manner, issuing legal decisions based on past precedent, and providing further clarification to the governing body of law.

The Board was also fortunate to have a partner during this time in the newly created Labor and Workforce Development Agency. The Agency has a shared goal and provided considerable support in administrative and budget matters.

In 2005, the Board celebrated its 30th year of implementing the Act and reaching peace in the fields. There is a revitalized purpose and confidence in being able to maintain the Board's charge in implementing the Act. We look forward to building upon our successes and using every resource to serve California's agricultural employer and farm labor community.

Genevieve A. Shiroma
Chairwoman
Agricultural Labor Relations Board

Message from the General Counsel

Although I was appointed General Counsel after the conclusion of the time period covered by this report, it is my privilege to provide some introductory remarks for the report covering the fiscal years 2002-2003, 2003-2004, 2004-2005. The staff is small but very capable. During the years covered by this report, the staff distinguished itself in its handling of elections, investigation of unfair labor practice charges, and its disposition of such charges pursuant to settlement or dismissal where warranted. The staff is professional and dedicated. It has demonstrated that it is capable of providing the professionalism envisioned by the pioneering legislation which created the Agricultural Labor Relations Board. I look forward to working with the Board and staff as we seek to perform even more expertly and professionally, the tasks given us by the Act.

Michael Lee
General Counsel

Mission

The mission of the ALRB, as set forth in the preamble to the Agricultural Labor Relations Act (ALRA or Act), is "to ensure peace in the fields by guaranteeing justice for all agricultural employees and stability in agricultural labor relations." This mission is carried out through vigorous but fair enforcement of the ALRA, to protect the rights of agricultural workers to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as well as to refrain from such activities.

It is the mission of the Board to resolve disputes arising under the Act by issuing timely, consistent, and impartial decisions to increase the accountability and credibility so essential to engender respect for the purposes and policies of the Act. Through these efforts, together with public outreach designed to educate both farm workers and their employers of their respective rights and obligations under the Act, the Board strives to fully effectuate the purposes of the Act as intended by the Legislature at the time of its passage in 1975.

Administrative Activities

The ALRA was enacted in 1975 to recognize the right of agricultural employees to form, join or assist a labor organization to improve the terms and conditions of their employment and to engage in other concerted activity for their mutual aid and protection; to provide for secret ballot elections through which employees may freely choose whether they wish to be represented by a labor organization; to impose an obligation on the part of employers to bargain with any labor organization so chosen; and to declare unlawful certain practices which either interfere with, or are otherwise destructive of, the free exercise of the rights guaranteed by the Act.

The agency's authority is divided between a Board comprised of five members and a General Counsel, all of whom are appointed by the Governor and subject to confirmation by the Senate. Together, they are responsible for the prevention of those practices which the Act declares to be impediments to the free exercise of employee rights. When a charge is filed, the General Counsel conducts an investigation to determine whether an unfair labor practice has been committed. If the General Counsel believes that there has been a violation, he or she issues a complaint. The Board provides for a hearing to determine whether a respondent has committed the unfair labor practice alleged in the complaint.

Under the statute, the Board may delegate, and in practice has delegated, its authority to hear such cases to Administrative Law Judges (ALJ) who take evidence and make initial recommendations in the form of written decisions with respect to issues of fact or law raised by the parties. Any party may appeal the findings, conclusions or recommendations of the ALJ to the Board, which then reviews the record and issues its own decision and order in the case. Parties dissatisfied with the Board's order may petition for review in the Court of Appeal. Attorneys for the Board defend the decisions rendered by the Board. If review is not sought or is denied, the Board may seek enforcement of its order in superior court. When a final remedial order requires that parties be made whole for unfair labor practices committed against them, the Board has followed the practice of the National Labor Relations Board (NLRB) in holding supplemental proceedings to determine the amount of liability. These hearings, called compliance hearings, are also typically held before ALJ’s who write recommended decisions for review by the Board. Once again, parties dissatisfied with the decision and order issued by the Board upon review of the ALJ's decision may petition for review of the Board's decision in the court of appeal. If the court denies the petition for review or orders enforcement of the Board's order in a compliance case, the Board may seek enforcement in Superior Court.

In addition to the Board's authority to issue decisions in unfair labor practice cases, the Board, through personnel in three regional offices, conducts elections to determine

whether a majority of the employees of an agricultural employer wish to be represented by a labor organization or, if the employees are already so represented, to determine whether they wish to continue to be represented by that labor organization, another labor organization, or no labor organization at all.

Because of the seasonal nature of agriculture and the relatively short periods of peak employment, the Act provides for a speedy election process, mandating that elections be held within seven days from the date an election petition is filed, and within 48 hours after a petition has been filed in the case of a strike. Any party who believes an election was conducted in an inappropriate unit, or that misconduct occurred which tended to affect the outcome of the election, or that the election was otherwise not fairly conducted, may file objections to the election. The objections are reviewed by the Board's Executive Secretary, who determines whether they establish a prima facie case that the election should not have been held or that the conduct complained of affected its outcome. If such a prima facie case is found, a hearing is held before an Investigative Hearing Examiner to determine whether the Board should refuse to certify the election as a valid expression of the will of the employees. The Investigative Hearing Examiner's conclusions may be appealed to the Board. Except in very limited circumstances, courts will not review the decisions of the Board in representation matters. In addition to, and as part of the agency's processing of unfair labor practices, elections, and compliance matters, the Executive Secretary and the Board are frequently called upon to process and decide a variety of motions filed by the parties. These motions may concern novel legal issues or requests for reconsideration of prior Board actions, as well as more common requests for continuance of hearings, requests for extensions of filing deadlines for exceptions and briefs, motions to change the location of a hearing, requests by the parties to take a case off calendar because of a proposed settlement agreement, and approvals of proposed settlements.

The agency also receives frequent requests for information regarding the ALRA itself, the enforcement procedures used by the agency to seek compliance with the law, and case processing statistics. Such requests are routinely received from the media, trade associations, growers, unions, parties to particular cases, the Legislature, other state agencies, colleges and universities, and sister states considering the enactment of similar legislation.

Review of Accomplishments and Goals

On July 1, 2002, after standing alone since its creation in 1975, the ALRB became a part of the State's newly-created Labor and Workforce Development Agency. With the ALRB's independence as a quasi-judicial body assured by new legislation, the sharing of Agency resources allowed the ALRB to continue to do the job necessary to contribute to a coordinated labor policy for California.

The new Agricultural Employer-Employee Collective Bargaining and Mediation law (Mandatory Mediation and Conciliation) took effect January 1, 2003, the first major amendment to the Act affecting the bargaining process since its enactment. It allows a third party mediator to establish a collective bargaining agreement when an agricultural employer and a labor organization certified as the exclusive bargaining agent are at an impasse.

The Board worked with its Ad Hoc Advisory Committee (made up of representatives from union, employer, and nonprofit organizations) to develop proposed regulations to implement the new law. After a public comment process including a public hearing, the Board adopted the regulations, which became effective on May 7, 2003.

The first request invoking the new process was filed on April 3, 2003, and deemed filed and served on May 7, 2003, as soon as the Board's implementing regulations were approved by the Office of Administrative Law by the United Food and Commercial Workers Union, Fresh Fruit and Vegetable Workers, Local 1096 (UFCW). The UFCW indicated that they and the employer, Hess Collection Winery, had failed to reach a collective bargaining agreement and requested that the Board issue an order directing the parties to mandatory mediation and conciliation of their issues. The Board ordered the parties to mandatory mediation and conciliation on May 21, 2003. On September 26, the mediator issued his report fixing the terms of a contract between Hess and the UFCW. Hess filed a request for review of the mediator's report on October 6, 2003. On October 16, the Board issued a decision denying the request for review, and making final the mediator's report establishing the terms of a collective bargaining agreement. On November 14, 2003, Hess filed a petition for writ of review with the 3rd District Court of Appeal. The matter is pending oral argument before the court.

On July 7, 2003, the Board received a second petition for mediation, this one from the UFW concerning Pictsweet Mushroom Farms. The Board issued a decision referring the case to mandatory mediation on August 1, 2003. The mediator issued his report and recommendation on February 4, 2004. No exceptions to the report were filed, as within the mediation process the parties had agreed to a collective bargaining agreement, the terms of which were reflected in the mediator's report.

On February 13, 2004 the Executive Secretary issued his order making the mediator's report final.

Western Growers Association, et al. v. ALRB, et al.:
The mandatory mediation law also is the subject of a lawsuit challenging its constitutionality. The suit was filed on February 24, 2003 by the Western Growers Association and other named parties in the Sacramento County Superior Court. On February 18, 2004, the superior court issued granted the Board's request for a stay pending resolution of the Hess Collection Winery v. ALRB case pending before the 3rd DCA.

Agricultural Employee Relief Fund

SB 1198 (Chapter 408, Statutes of 2001), which created the Agricultural Employee Relief Fund (Fund), became effective on January 1, 2002. New section 1161 of the Agricultural Labor Relations Act states that when employees cannot be located for two years after collection of monies on their behalf, those monies will go into the Fund and distributed to employees in other cases where collection of the full amount owed is impossible. The Board immediately began formulating implementing regulations, with the assistance of the Board's Ad Hoc Advisory Committee consisting of interested parties, both labor and management, who appear before the Board. The formal rulemaking process was initiated with the publication of the notice of proposed regulatory action, published March 15, 2002, and concluded on July 10, 2002 when the Board voted to adopt the proposed regulation (section 20299) as originally proposed. On September 3, 2002, the Office of Administrative Law approved the regulation and it became effective October 3, 2002.

Subdivision (a) of the regulation, as originally adopted, restricted the monies that may be deposited in the Fund to those collected on or after January 1, 2002, the effective date of the legislation. Later, it was discovered that there was a class of cases in existence that was not considered at the time the regulation was adopted. In these cases, the employees on whose behalf the monies were collected had not been located after more than two years of efforts to do so, and the monies were collected prior to January 1, 2002. In addition, in these cases there was no enforceable promise to return the monies to the employer pursuant, for example, to an express provision in a settlement agreement, nor had the monies yet escheated to the state by operation of law.

Therefore, on October 17, 2003, the Board initiated the formal rulemaking process to amend section 20299 to provide for the deposit into the Fund of monies, otherwise eligible for the Fund, collected prior to January 1, 2002 if the monies were not subject to an enforceable promise to return them to the employer and had not escheated to the State by operation of law as of January 1, 2002. No comments were received, nor was a public hearing requested. On March 3, 2004, the Board adopted the amendment to

subdivision (a) as proposed. On April 19, 2004, the Office of Administrative Law approved the amendment, and it took effect on May 19, 2004.

In Fiscal Years 2002-03, 2003-04, and 2004-05 there were 456 unfair labor practice (ULP) charges filed with the ALRB. There were 45 complaints issued by ALRB regional offices. There were 30 filings for either union certification or decertification elections. Following investigation, 22 elections were held.

During this period, the Board issued 14 decisions involving allegations of ULPs or matters relating to employee representation. In addition, the Board issued 41 administrative orders.

Strategic Planning Activities

Previous Accomplishments

The past four years have been a period of great activity and achievement, but also uncertainty as the Legislature and the Administration grappled with a budget deficit. In spite of the budget limitations, the ALRB, through the Board and General Counsel, has produced significant results.

The General Counsel established timelines in order to emphasize immediate investigations and quick resolution of ULP cases. Regional office staff was encouraged to fully explore all informal settlement procedures to quickly and fairly resolve cases. These changes assisted the Board in responding to the across-the-board increase in ULP charges and elections the Board has experienced. As a consequence, there was also an increase in the number of investigations, settlements, adjudications, Board orders, and Board decisions. Over $1 million was distributed to agricultural employees as a result of the settlements and decisions.

The Board also took several steps to deal with cases where collection has been impossible due to bankruptcies and absence of successors. The Board, in a published decision, laid out clear and exacting standards for closing such cases. Regulatory steps were also taken to establish the Agricultural Employee Relief Fund (Labor Code section 1161), making it possible for the Board to provide some relief even where no collection from a respondent or successor has been possible. Further regulatory steps taken included streamlining the ULP process and establishing procedures for implementing the new Agricultural Employer-Employee Collective Bargaining and Mediation law, known as Mandatory Mediation and Conciliation.

Current Opportunities

Through these processes, the ALRB will face several significant challenges to carry out its statutory mandate:

- There is a new generation of farm workers and supervisors largely unaware of the Act and its requirements and protections.

- Farm workers often have limited access to the ALRB and its processes, due to transportation, telephone access, and language.

- The increased use of farm labor contractors has made enforcement of the Act more difficult.

- Recent decisions of the National Labor Relations Board have clouded agency jurisdiction.

- The ALRB has a major new responsibility in implementing the Agricultural Employer-Employee Collective Bargaining and Mediation Law. The new law is also under litigation.

- The ALRB suffered severe budget cuts, which greatly reduced the number of staff and offices. However, the new Labor Agency has provided much needed resources, and has made the ALRB a priority.

Future Goals

The ALRB concludes it must take strategic steps to do the following:

1) Continue and increase its educational activity to inform all parties, but especially farm workers, about the rights and responsibilities afforded by the Act;

2) Eliminate existing barriers which serve to deny full access to the ALRB and its processes, especially for underserved populations, by working closely with the Labor Agency teams, and in particular, with the EDD One-Stop service centers which are located throughout California;

3) Continue to seek ways to respond to evolving trends in agriculture, including the increasing reliance by growers on farm labor contractors;

4) Promote timely, effective investigations of unfair labor practice charges and enforcement of Board orders and decisions; and,

5) Continue to aggressively address resource needs.

Operational Summary

Unfair Labor Practices

During fiscal year 2002-03, 167 unfair labor practice (ULP) charges were filed with the ALRB; 157 were filed against employers and 10 were filed against labor organizations.

During fiscal year 2003-04, 171 unfair labor practice (ULP) charges were filed with the ALRB; 149 were filed against employers and 22 were filed against labor organizations.

During fiscal year 2004-05, 118 unfair labor practice (ULP) charges were filed with the ALRB; 96 were filed against employers and 22 were filed against labor organizations.

	FY 02-03	FY 03-04	FY 04-05
Against Employers	157	149	96
Against Unions	10	22	22
Total	167	171	118

The General Counsel closed 223 charges, sent 22 charges to complaint, and issued 15 complaints in fiscal year 2002-03. A total of 201 charges were closed due to dismissal, withdrawal or settlement in fiscal year 2002-03.

The General Counsel closed 306 charges, sent 65 charges to complaint, and issued 22 complaints in fiscal year 2003-04. A total of 241 charges were closed due to dismissal, withdrawal or settlement in fiscal year 2003-04.

The General Counsel closed 100 charges, sent 5 charges to complaint, and issued 8 complaints in fiscal year 2004-05. A total of 95 charges were closed due to dismissal, withdrawal or settlement in fiscal year 2003-04.

	FY 02-03	FY 03-04	FY 04-05
Dismissed	153	145	69
Withdrawn	32	75	19
In to Complaint	22	65	5
Settled	16	21	7
Total	223	306	100

A total of 8 complaints were withdrawn or settled before the hearing, none were settled at the hearing, and none were settled after the hearing in fiscal year 2002-03.

During fiscal year 2003-04, a total of 12 complaints were withdrawn or settled before the hearing, 1 was settled at the hearing, and 12 were settled after the hearing

During fiscal year 2004-05, a total of 11 complaints were withdrawn or settled before the hearing, 2 were settled at the hearing, and none were settled after the hearing

	FY 02-03	FY 03-04	FY 04-05
Withdrawn before hearing	0	1	2
Settled before hearing	8	11	9
Settled at hearing	0	1	2
Settled after hearing	0	12	0
Total	8	25	13

ALRB Administrative Law Judges (ALJs) commenced 4 ULP hearings in fiscal year 2002-03 and issued 1 decisions. In fiscal year 2003-04, ALJs commenced 2 ULP hearings and issued 2 decisions. In fiscal year 2004-05, ALJs commenced 3 ULP hearings and issued 2 decisions.

	FY 02-03	FY 03-04	FY 04-05
ULP Hearings	4	2	3
ULP Decisions	1	2	2

Elections

Seven (7) petitions for certification and five (5) petitions for decertification were filed in 2002-03. After investigation, one (1) of the petitions was dismissed, resulting in seven (7) elections being held during the fiscal year. Investigative Hearing Examiners (IHEs) commenced one (1) hearing involving election-related matters in fiscal year 2002 -03 and issued one (1) decision.

Six (6) petitions for certification and four (4) petitions for decertification were filed in 2003-04. After investigation, no petitions were dismissed, resulting in eight (8) elections being held during the fiscal year. Investigative Hearing Examiners (IHEs) commenced no hearings involving election-related matters in fiscal year 2003 -04 and issued no decisions.

Six (6) petitions for certification and two (2) petitions for decertification were filed in 2004-05. After investigation, no petitions were dismissed, resulting in seven (7) elections being held during the fiscal year. Investigative Hearing Examiners (IHEs) commenced no hearings involving election-related matters in fiscal year 2003 -04 and issued no decisions.

Board Decisions Issued

The Board issued a total of six (6) decisions involving allegations of ULPs or matters relating to employee representation during fiscal year 2002-03. Of the six (6) decisions, four (4) involved ULPs, and two (2) were related to elections. A summary of each decision is contained in Attachment 2 of this report.

In fiscal year 2003-04, the Board issued a total of four (4) decisions involving allegations of ULPs or matters relating to employee representation. Of the four (4) decisions, three (3) involved ULPs, and one (1) was related to elections. A summary of each decision is contained in Attachment 3 of this report.

In fiscal year 2004-05, the Board issued a total of four (4) decisions involving allegations of ULPs or matters relating to employee representation. Of the four (4) decisions, two (2) involved ULPs, and two (2) were related to elections. A summary of each decision is contained in Attachment 3 of this report.

Board Administrative Orders

The Board issued eleven (11) numbered administrative orders in the fiscal year 2002-03, ten (10) numbered administrative orders in fiscal year 2003-04, and twenty (16) numbered administrative orders in fiscal year 2004-05. A description of each order is contained in Attachment 3, 4 and 5 of this report.

Compliance Activity

At the start of fiscal year 2002-03, forty-five 45 cases were ready for compliance action. This included Board orders and ALJ decisions which had become final. Thirty (30) cases were closed in fiscal year 2002-03. During the fiscal year, a total of $534,736 was distributed to 239 agricultural employees.

At the start of fiscal year 2003-04, 39 cases were ready for compliance action. This included Board orders and ALJ decisions which had become final. Forty-seven (47) cases were closed in fiscal year 2003-04. During the fiscal year, a total of $232,051 was distributed to 251 agricultural employees.

At the start of fiscal year 2004-05, 54 cases were ready for compliance action. This included Board orders and ALJ decisions which had become final. Seven (7) cases were closed in fiscal year 2004-05. During the fiscal year, a total of $166,478 was distributed to 160 agricultural employees.

Litigation

In the majority of cases, parties to decisions of the Board file petitions for review in the courts of appeal pursuant to Labor Code section 1160.8. Thus, a significant portion of the Board's workload is comprised of writing and filing appellate briefs and appearing for oral argument in those cases. Where final orders of the Board are not complied with voluntarily, the Board must seek enforcement in the superior courts. At times, the Board is also required to defend against challenges to its jurisdiction and other types of collateral actions in both state and federal courts.

Descriptive summaries of the Board's litigation docket are provided below.

TURCO DESERT COMPANY v. ALRB
4th District Court of Appeal, E030125 (27 ALRB No. 4)

On August 28, 2001, Turco Desert Company filed a petition for writ of review of a Board decision in which it was found that an employee was unlawfully discharged for making comments to a supervisor about the supervisor's rude treatment of the work crew in the context of a dispute over the length of breaks. On July 5, 2002, the Court issued an unpublished decision annulling the Board's order. The Board did not seek review in the California Supreme Court.

THE ELMORE COMPANY v. ALRB
4th District Court of Appeal, D040054 (28 ALRB No. 3)

On May 6, 2002, The Elmore Company filed a petition for writ of review of a Board decision in which the Board found that an employee was unlawfully discharged for engaging in a group protest over schedule and work policy changes. The Board found that the employee's protest remained protected even though he used an obscene term towards his supervisor. The Board further found that even if the employee's epithet was unprotected he would not have been discharged but for his earlier activity that indisputably was protected. On September 10, 2002, the Court summarily denied the petition for writ of review. No appeal was filed and the case became final.

McCAFFREY GOLDNER ROSES v. ALRB
5th District Court of Appeal, FO41479 (28 ALRB No. 8)

On September 18, 2002, McCaffrey Goldner Roses filed a petition for writ of review of a Board decision finding that the employer unlawfully refused to recall an employee because of her participation in protected concerted activities, specifically, leading a group of employees in voicing their complaints about ill treatment by a forewoman. The Board had affirmed the administrative law judge's dismissal of similar allegations involving

three other employees. On June 12, 2003, the Court of Appeal summarily denied the petition for writ of review.

PICTSWEET MUSHROOM FARMS v. ALRB
2nd District Court of Appeal, B166260 (29 ALRB No. 1)

On April 10, 2003, the employer filed a petition for writ of review of the Board's decision finding that the employer violated section 1153(a), (c) and (e) of the Agricultural Labor Relations Act (Act) by: 1) laying off employees without first providing the union with notice and an opportunity to bargain; 2) laying off or recalling several employees in violation of the criteria agreed to between Respondent and the Union in a prior negotiating session; 3) failing to grant its pickers a raise in calendar year 2000 because biennial raises for pickers had become an established practice over the prior eight years; 4) failing to provide information relevant to its profit sharing plan requested by the Union; 5) conditioning an employee's request for a transfer on the employee's signing of a decertification petition; and 6) including in its employee handbook a statement that Respondent preferred that employees not seek union representation because the handbook provided that violation of any policy in the handbook was grounds for discipline or discharge and employees were required to sign a form stating that they would adhere to all policies in the handbook. On March 23, 2004, pursuant to a Settlement Agreement and Release of Claims, Stipulation re Dismissal and Order, and Stipulation to Vacate ALRB Decision 29 ALRB No.1 entered into by Pictsweet Mushroom Farms, the United Farm Workers of America, AFL-CIO, and the ALRB, the Court of Appeal approved Pictsweet's withdrawal of the appeal in this case. On March 26, 2004, the Board issued Admin. Order No. 2004-1, vacating its decision, noting that Pictsweet and the UFW had entered into a comprehensive collective bargaining agreement, and that Pictsweet and the UFW desired to settle all outstanding matters between them.

WESTERN GROWERS ASSOCIATION ET AL. v. ALRB, ET AL.
Sacramento County Superior Court, No. 03AS00987

A complaint for declaratory and injunctive relief was filed in Sacramento County Superior Court on February 24, 2003 by the Pacific Legal Foundation, on behalf of various agricultural employer organizations and one named individual agricultural employer, challenging the constitutionality of the Mandatory Mediation and Conciliation law (SB 1156 and AB 2596) signed into law by the Governor Davis in September 2002. The complaint names as defendants the ALRB, the three Board Members in their official capacities, and Executive Secretary in his official capacity. The relief sought includes a declaration that the law violates various constitutional provisions and is therefore, null and void, an injunction against enforcement of the law, costs of suit, and attorney fees.

The Board's demurrer to the original complaint was sustained by the Superior Court on the ground that the matter would not be ripe for adjudication until the Board had issued a

final order under the mediation law fixing the terms of a contract. The plaintiffs filed a writ of mandate in the Third District Court of Appeal seeking to overturn the ruling on ripeness. On November 20, 2003, the Court of Appeal summarily dismissed the petition for writ of mandate. In the interim, the first final Board order in a mandatory mediation case was issued in Hess Collection Winery, thus mooting the ripeness issue.

On December 5, 2003, the plaintiffs filed an amended complaint in the Superior Court and scheduled a hearing to seek a preliminary injunction. On December 16, 2003, the superior court, in response to the ALRB's ex parte motion to continue the hearing on a preliminary injunction scheduled for January 6, 2004, dropped the preliminary injunction hearing from the calendar pending a ruling by the Third District Court of Appeal in the related matter of Hess Collection Winery v. ALRB or further order of the superior court. On December 22, 2003, in response to the amended complaint, the Board filed a demurrer and request for a stay of the action pending resolution of the related case of Hess Collection Winery now pending before the 3rd District Court of Appeal. On February 18, 2004, the superior court issued a tentative ruling granting the request for a stay, which became final when no party requested to appear at the scheduled hearing by the 4:00 p.m. deadline. Further action on this case will await resolution of the Hess Collection Winery v. ALRB case pending before the 3rd District Court of Appeal.

HESS COLLECTION WINERY v. ALRB
3RD District Court of Appeal, C045405 (29 ALRB No. 6)

On September 26, 2003, the mediator in the first mandatory mediation case (Labor Code secs. 1164-1164.13, effect. Jan. 1, 2003), Hess Collection Winery (Hess), issued his report fixing the terms of a contract between Hess and the United Food & Commercial Workers, Local 1096 (UFCW). Hess filed a request for review of the mediator's report on October 6, 2003. On October 16, 2003, the Board issued a decision denying the request for review, and making final the mediator's report establishing the terms of a collective bargaining agreement. On November 14, 2003, Hess filed a petition for writ of review with the 3rd District Court of Appeal. On December 11, 2003, Hess and the UFCW filed a stipulation to stay the Board's decision pending the court's ruling on the merits of the appeal. Briefs were filed by all the parties. On February 19, 2004, the court issued a writ of review, directing the ALRB and the real party in interest (UFCW) to file returns (responses) by March 10, 2004 with Hess' replication (reply) due 10 days thereafter. Originally, the court treated the case as if it was governed by Rule 59 of the CA Rules of Court, which governs the procedures for review of final Board orders in unfair labor practice cases. Section 1164.9 of the MMC statute speaks of court review of Board orders fixing a contract in more traditional writ of review terms. Apparently, the Court has decided that the wrong procedures had thus far been utilized and the issuance of the writ of review was an attempt to fit the appeal within the normal writ of review procedures. On March 4, 2004, the plaintiffs in the Western Growers Association v. ALRB action (see above) filed an application for permission to file an amicus curiae

brief. The request was granted and the brief was filed on March 8. The parties filed their briefs in accordance with the schedule set forth in the writ of review. These briefs essentially reiterated the earlier briefs filed prior to the issuance of the writ of review**.** On May 25, the court issued an order asking for supplemental letter briefing related to whether the mandatory mediation process involves the delegation of legislative authority and whether such a delegation is valid. All parties submitted letter briefs, with all briefing in the case completed on July 9, 2004. The matter is pending oral argument.

GALLO VINEYARDS, INC V. ALRB
3rd District Court of Appeal, C048387, C048405 (30 ALRB No. 2)

The Board issued its decision in 30 ALRB No. 2 on November 5, 2004. The Administrative Law Judge (ALJ) found that two crew supervisors asked the members of their crews to sign papers in support of a decertification petition. The ALJ found that this conduct violated the Act and that word of this conduct was likely to have been disseminated and that it was impossible to determine how far the dissemination had gone. The Judge therefore found that the decertification petition was tainted and should be dismissed and the election set aside.

The Board affirmed the findings and conclusions of the ALJ, and found that the conduct in this case gave the employer control and influence that amounted to illegal influence. The Board rejected Employer's argument that the conduct was not proven, or if it was, that it was de minimis. The Board held that more than ministerial or de minimis employer involvement in the solicitation of the decertification petition had to be proven to dismiss a petition, and that the conduct in this case far exceeded de minimis employer involvement in the solicitation. The Board found that the Judge's presumption of dissemination was valid and that the petition was tainted.

The Board issued its decision on November 5, 2004. Gallo filed its petition for review on December 2, 2004. Roberto Parra filed a separate petition for review on December 3, 2004. On December 20, 2004, the Court on its own motion consolidated the petitions filed by Gallo and Parra. The parties stipulated to extend the briefing schedule, and the court approved the stipulation. Briefing was complete on November 28, 2005. On December 9, 2005, the court summarily denied both petitions for review. Gallo and Parra filed petitions for review in the Supreme Court, which were denied on January 25, 2006.

ALRB V. D'ARRIGO BROS.
Monterey County Superior Court, M 71328

Board Counsel appeared on behalf of the Board at a hearing in the Superior Court of Monterey County on Friday, October 1, 2004, to enforce a Board subpoena against D'Arrigo Bros. A notice in lieu of subpoena had been served on D'Arrigo Bros. by the charging party in the case, United Farm Workers of America, AFL-CIO (UFW), seeking,

inter alia, negotiation notes and various written correspondence. The court approved the Board's application for an order enforcing the UFW's notice in lieu of subpoena, but it did so on the condition that the negotiation notes and correspondence requested in the UFW's notice in lieu of subpoena not be disseminated or used outside the scope of ALRB Case No. 00-CE-5-SAL, et al.

Board Counsel prepared a formal order after hearing, and sent it to counsel for D'Arrigo for approval as conforming to the court's order as required by California Rule of Court 391. The proposed order was submitted to the court for signature on October 13, 2004. The court inadvertently signed two conflicting orders after hearing, including an alternative order sent inappropriately by D'Arrigo. When this was brought to the court's attention, the court issued an order setting aside both orders.

The Board applied to the Monterey County Superior court to have the subpoena enforcement matter put back on the calendar so a final order after hearing could be obtained from the court. The hearing was held on April 15, 2005, and the judge signed the Board's proposed order after hearing. The final order was served on all parties in the matter on April 18, 2005.

HADLEY DATE GARDENS, INC. V. ALRB
4th District Court of Appeal, E037704 (31 ALRB No. 1)

On February 18, 2005, the Board issued its decision in 31 ALRB No. 1. The Board summarily affirmed the Administrative Law Judge's (ALJ) decision, in which he found that Hadley Date Gardens, Inc. violated section 1153, subdivision (a) of the Agricultural Labor Relations Act by discharging Jose Angel Perez (Perez) for engaging in protected concerted activity. The ALJ found that Perez engaged in protected activity by concertedly complaining about work assignments and by arranging for his brother Miguel Perez, also an employee of Respondent, to obtain an attorney to assist Miguel in his workers' compensation claim.

A petition for review of the Board's decision was filed on March 18, 2005. However, the petition was not verified, as required by Rule 59 of the Cal. Rules of Court. An amended petition was filed on April 1. The Petitioner, Hadley Date Gardens, Inc., and the Board entered into a stipulation extending the time to file 30 days in order to allow a private party settlement agreement to be presented to the Board for its approval. On June 9, 2005, the court, on its own motion, stayed the pending proceedings and directed the parties to furnish the court with a letter informing it of the status of settlement negotiations 20 days from the date of its order. On June 21, 2005 the Petitioner and Real Party in Interest Perez submitted an informal settlement agreement resolving the underlying action, which the Board approved on June 24, 2005. The Board and the employer also negotiated a Stipulation re: Settlement Agreement providing for, in addition to the terms of the settlement, an educational session to be conducted among the employer's agricultural

employees by Board agents. On July 15, 2005, the Stipulation re: Dismissal and Order Dismissing Petition for Writ of Review, signed by all parties, was filed with the court. On August 2, 2005, the court approved the stipulated dismissal and remanded the case to the Board for the purpose of vacating its decision in accordance with the settlement and stipulation. The Board's order vacating the decision issued on August 10, 2005.

Regulatory Activity

Agricultural Employee Relief Fund

SB 1198 (Chapter 408, Statutes of 2001), which created the Agricultural Employee Relief Fund, became effective on January 1, 2002. The Agricultural Labor Relations Act section 1161 states when employees cannot be located for two years after collection of monies on their behalf, those monies will go into the Fund and distributed to employees in other cases where collection of the full amount owed is impossible. The Board immediately began formulating implementing regulations, with the assistance of the Board's Ad Hoc Advisory Committee consisting of interested parties, both labor and management, who appear before the Board. The formal rulemaking process was initiated with the publication of the notice of proposed regulatory action, published March 15, 2002. A public hearing was held on May 8, 2002, and the written comment period later was extended to July 1, 2002. After considering the comment received, the Board voted on July 10, 2002 to adopt the proposed regulation (section 20299) as originally proposed. On September 3, 2002, the Office of Administrative Law approved the regulation and it became effective October 3, 2002.

Subdivision (a) of the regulation, as originally adopted, restricted the monies that may be deposited in the Fund to those collected on or after January 1, 2002, the effective date of the legislation. This reflected the Board's view at the time the implementing regulation was adopted that monies collected prior to the effective date of the legislation could not be deposited in the Fund without engaging in an improper retroactive application of the new law. However, subsequent to the promulgation of the implementing regulation, the Board had occasion to reexamine this issue and came to a different conclusion.

There was a class of cases in existence that was not considered at the time the regulation was adopted. In these cases, the employees on whose behalf the monies were collected had not been located after more than two years of efforts to do so, and the monies were collected prior to January 1, 2002. In addition, in these cases there was no enforceable promise to return the monies to the employer pursuant, for example, to an express provision in a settlement agreement, nor had the monies yet escheated to the state by operation of law. Based on additional research, it became apparent that this class of cases could be used as sources for the Fund without engaging in unlawful retroactive application of SB 1198. Indeed, the Board concluded that under its revised analysis it was required to deposit such monies in the Fund. A Legislative Counsel opinion requested by the author of SB 1198 confirmed this analysis.

Therefore, on October 17, 2003, the Board initiated the formal rulemaking process to amend section 20299 to provide for the deposit into the Fund of monies, otherwise eligible for the Fund, collected prior to January 1, 2002 if the monies were not subject to an enforceable promise to return them to the employer and had not escheated to the State

by operation of law as of January 1, 2002. No comments were received, nor was a public hearing requested. On March 3, 2004, the Board adopted the amendment to subdivision (a) as proposed. On April 19, 2004, the Office of Administrative Law approved the amendment, and it took effect on May 19, 2004.

Mandatory Mediation and Conciliation

On September 30, 2002, Governor Davis signed two companion bills, SB 1156 (Chapter 1145, Statutes of 2002) and AB 2596 (Chapter 1146, Statutes of 2002), which amended Labor Code section 1140, et seq., to provide for binding mediation in selected circumstances where the parties have been unable to reach a collective bargaining agreement. The new law became effective on January 1, 2003, and the Board initiated the formal rulemaking process on January 17, 2003, with the publication of the Notice of Proposed Regulatory Action in the Notice Register. Prior to formulating the regulatory proposals, the Board sought the input of a representative group of arbitrators who meet the qualifications to be selected as mediators under the new law, as well as the input of the Board's Ad Hoc Advisory Committee. The initial proposed regulations represented a distillation of this varied input, along with the reasoned judgment of the Board and its staff as to the best of the alternatives presented. The written comment period ended on March 3, 2003. Written comments were received from several labor organizations, as well as various organizations representing agricultural employers. A public hearing held on March 4, 2003, where the Board received oral testimony from a variety of interested parties, including most of those who had submitted written comment. After considering all of the written and oral comments received, the Board voted 3-0 to adopt new sections 20400, 20401, 20402, 20403, 20404, 20405, 20408, and 20450 as originally proposed. In response to comments received from several employer representatives, the Board directed staff to draft amendments to proposed sections 20406 and 20407 to be consistent with *NLRB v. Truitt Manufacturing* (1956) 351 U.S. 149 (an employer is required to turn over information concerning its financial condition only where the employer has claimed an inability to pay the cost of wage or benefit proposals made by the union). As the amendments were substantial but related to the original proposals, they triggered an additional 15-day comment period. No comments were received. On March 26, 2003, the Board voted 3-0 to adopt sections 20406 and 20407, as amended. The adopted regulations, along with the entire rulemaking file, were submitted to the Office of Administrative Law (OAL) for approval on March 28, 2003**.** On May 7, 2003, OAL approved the regulations, as well as the Board's request that the regulations become effective upon filing with the Secretary of State, which also occurred on May 7, 2003.

Amendment of Conflict of Interest Code

The Political Reform Act requires every state agency to review its conflict of interest code biennially and determine whether or not the agency's code is in need of amendment. As part of this review process, the Board determined that its conflict of interest code

needed both substantive and non-substantive amendments. Consequently, the Board issued a notice of intention to amend its conflict of interest code. The proposed amendments included adding new classifications, eliminating classifications no longer used by the agency, and adding disclosure categories for selected employees. In the latter case, the addition of disclosure categories was designed to ensure that all employees who take part in decisions involving the purchase of goods or services or the lease of office or storage space are required to report interests under the categories governing that subject matter.

The comment period opened on April 4, 2003, and closed on May 19, 2003. No comments were received and the Board adopted the proposed amendments on May 21, 2003. On May 27, 2003, the amendments were submitted to the Fair Political Practices Commission (FPPC) for its approval. On June 18, 2003, the FPPC suggested an additional change in disclosure categories for regional employees to facilitate the elimination of the existing (unenforceable) requirement that regional employees file a supplemental Form 700 if they transfer to another regional office within the fiscal year. On July 18, 2003, the Board issued a supplemental notice of the additional amendment to the affected employees. After the notice period expired, the amendments were resubmitted to FPPC, which approved them on August 27, 2003. The amended conflict of interest code was filed with the Secretary of State on October 16, 2003 and took effect 30 days thereafter.

The Board engaged in no regulatory activity during fiscal year 2004-2005.

Legislation

Legislative Activity

While the Board on its own initiative does not propose legislation, nor publicly support or oppose pending legislation, it does track legislation that may have an impact on its operations. In this way, the Board is prepared to implement any such legislation should it become law.

The bills tracked during the 2002-2003, 2003-2004, and 2004-2005 fiscal years were:

SB 1236 (ALARCON) - LABOR AGENCY, CHAPTER 859, STATUTES OF 2002 - This bill would create a Labor & Workforce Development Agency headed by an agency secretary appointed by the Governor. The new agency would include the ALRB for administrative purposes, though there is language in the bill intended to ensure that the ALRB retains the independent policymaking authority. The bill was signed by the Governor on September 25, 2002, and became effective January 1, 2003.

SB 1736 (BURTON) - AGRICULTURAL EMPLOYER-EMPLOYEE DISPUTES: BINDING ARBITRATION - In its original form, this bill would have provided for binding interest arbitration in selected disputes between agricultural employers and labor organizations, including those situations where the parties reach impasse in negotiations for an initial collective bargaining agreement. It was later amended to incorporate by reference the provisions of the Business and Professions Code relating to collective bargaining for backstretch employees. These provisions were later amended out of the bill and replaced by straightforward provisions requiring mandatory mediation, and if that fails, binding interest arbitration. The bill was vetoed by the Governor on September 30, 2002. The Governor signed two alternative bills covering the same subject matter.

SB 1592 (BURTON) - AGRICULTURAL EMPLOYER/ EMPLOYEE COLLECTIVE BARGAINING - This bill originally concerned hours of work of employees at ski operations. On Aug. 28, 2002, it was gutted and replaced by language designed as an alternative to SB 1736. The bill provided for "mediation," though the mediator is given the same authority to fix a contract as an arbitrator. The principal difference from SB 1736 is that this bill provided for expanded review of the mediator/arbitrator's decision, first by the Board, then by the courts. The bill in its earlier form had passed the Senate on May 23, 2002 and was pending in the Assembly when the pertinent amendments were made. On August 31, 2002, the bill was placed on the inactive file, as SB 1156 (see below) became the favored vehicle.

SB 1156 (BURTON) - AGRICULTURAL EMPLOYER—EMPLOYEE COLLECTIVE BARGAINING AND MEDIATION, CHAPTER 1145, STATUTES OF 2002 - This bill is identical to SB 1592, providing for binding mediation with expanded review of the mediator's decision by the ALRB and the courts. The bill was signed by the Governor on September 30, 2002, and became effective January 1, 2003.

AB 2596 (WESSON) - AGRICULTURAL LABOR MEDIATION PROCEDURES, CHAPTER 1146, STATUTUES OF 2002 - This bill was designed as a companion to SB 1156 and would go into effect only if both bills were enacted. The bill amended the provisions created by SB 1156 in specified ways, inter alia, by making mediation available only in certain circumstances where the certification issued prior to January1, 2003, making mediation available after 180 days where the certification issued after January1, 2003, and adding a sunset provision effective January 1, 2008. The bill was signed by the Governor on September 30, 2002, and became effective January 1, 2003.

SB 1818 (ROMERO) - BACK PAY AWARDS, CHAPTER 1071, STATUTES OF 2002 Designed to counteract the U.S. Supreme Court's decision in *Hoffman Plastic Compounds v. NLRB*, in its original form, this bill provided that where back pay awards are preempted by federal immigration law, the amount of the back pay award shall instead be levied as a civil penalty, and the affected employee may recover the amount of the penalty. If this latter provision was found to be preempted, the penalty would be deposited in a special fund named the "Victimized Workers Labor Rights Enforcement Fund", to be administered by the Director of the Department of Industrial Relations. The bill was signed by the Governor on September 29, 2002, and became effective January 1, 2003.

SB 75 (BURTON) - AGRICULTURAL LABOR RELATIONS, CHAPTER 870, STATUTES OF 2003 - This bill in it original for would have required the Board, by July 1, 2004, to compile a list of all certified labor organizations that have not obtained a collective bargaining agreement with the employer of the agricultural employees represented by the labor organization and to post the list, along with specified information, on the Board's Web site. This bill further would have required the Board, by July 1, 2004, to advise each labor organization on the list and each respective employer of their rights and responsibilities under those provisions of the Labor Code providing for mandatory mediation to achieve a collective bargaining agreement. On July 21, 2003, the bill was amended to delete all of the original content of the bill and replace it with several amendments to the mandatory mediation law passed the previous year (Labor Code sections 1164-1164.14). Specifically, the amendments deleted the sunset provision, added nonexclusive standards to be followed by the mediator, and expanded the grounds for review of the mediator's report. On October 12, 2003, Governor Davis signed the bill into law.

SBX1 1 (POOCHIGIAN) - -STATE ECONOMY: SUSPENSION OF STATUTES Various statutes enacted in the 2001-02 regular session of the Legislature, relating to workers' compensation, labor standards, and agricultural labor relations, took effect on January 1, 2003. This bill would provide that these statutes shall not become operative until the date the Governor issues a proclamation declaring that the California economy has fully recovered from the recession that began in 2000. This bill would have declared that it is to take effect immediately as an urgency statute. No further action was taken on the bill.

SCA 1 (BURTON) - ACCESS TO GOVERNMENT INFORMATION - This constitutional amendment provides that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. It provides that, except as otherwise provided in the California Constitution, the people have a right to attend, observe, and be heard in the meetings of elected and appointed public bodies, and to inspect and obtain copies of records made or received in connection with the official business of any public body, agency, officer, or employee, or anyone acting on behalf of a public body, agency, officer, or employee. This measure also provides that nothing in its provisions supersedes the right to privacy guaranteed by the California Constitution, or limits the ability of the Legislature to provide by statute, or the Judicial Council to provide by rule not inconsistent with statute, for the protection of personal privacy. On January 12, 2004, the bill passed out of the Legislature, and was chaptered by the Secretary of State on January 14, 2004.

AB 556 (STRICKLAND) - STATE BOARDS AND COMMISSIONS SALARIES: SUSPENSION - This bill would have specified that members appointed to specified state boards and commissions, including the ALRB, shall receive no salary for the 2003-04, 2004-05, and 2005-06 fiscal years, except that they may receive a per diem payment set pursuant to these provisions during that time. On January 13, 2004, the bill failed passage out of the Committee on Appropriations.

AB 1722 (COMMITTEE ON LABOR AND EMPLOYMENT) - AGRICULTURAL LABOR RELATIONS BOARD - Existing law establishes in the Labor and Workforce Development Agency the Agricultural Labor Relations Board, consisting of 5 members appointed by the Governor with the advice and consent of the Senate. This bill would have required the Governor to appoint 2 legal advisors for each board member upon recommendation of that board member, to serve at the pleasure of the recommending board member and to receive a salary to be fixed by the board with the approval of the Department of Personnel Administration. On February 2, 2004, the bill died pursuant to Art. IV, Sec. 10(c) of the Constitution, without ever being heard in committee.

SB 796 (DUNN) - EMPLOYMENT (CHAPTER 906, STATUTES OF 2003) - Under existing law, the Labor and Workforce Development Agency and its departments, divisions, commissions, boards, agencies, or employees may assess and collect penalties

for violations of the Labor Code. This bill allowed aggrieved employees to bring civil actions to recover these penalties, if the agency or its departments, divisions, commissions, boards, agencies, or employees do not do so. The penalties collected in these actions would be distributed 50% to the General Fund, 25% to the agency for education, to be available for expenditure upon appropriation by the Legislature, and 25% to the aggrieved employee, except that if the person does not employ one or more persons, the penalties would be distributed 50% to the General Fund and 50% to the agency. In addition, the aggrieved employee would be authorized to recover attorney's fees and costs. For any violation of the code for which no civil penalty is otherwise established, the bill established a civil penalty. The primary focus of amendments on September 2, 2003 was to clarify that there shall be no penalty assessed if the allegation is that the LWDA has failed to act to enforce the relevant statute. On October 12, 2003, the Governor signed the bill into law.

AB 2900 (LAIRD) EMPLOYMENT: DISCRIMINATION - Previously, section 1156.3, subdivision (e) of the Agricultural Labor Relations Act (ALRA) required that the Board decertify a labor organization if it had been found by the EEOC to have discriminated on the basis of race, color, national origin, religion, sex, or other arbitrary or invidious classification in violation of Title 42 of the U.S. Code. This bill added as a basis for decertification a finding by the California Dept. of Fair Employment and Housing that a labor organization has engaged in discrimination on any basis listed in Government Code section 12940, subdivision (a) (race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation). This bill also made nonsubstantive changes to other provisions of section 1156.3. As of the end of fiscal year 2003-2004, this bill was pending in the Senate. On September 24, 2004, it was signed by the Governor.

SB 1809 (DUNN) LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004
This bill made several changes to SB 796, which was adopted by the Legislature the previous year and signed by the Governor on October 12, 2003. That bill provided for private actions to recover civil penalties for violations of the Labor Code. SB 1809 required, as a condition to bringing a civil action, that the plaintiff report the alleged violation to the LWDA and that no state enforcement action commenced within 15 calendar days of the report. The bill also allowed the court, in very limited circumstances, to award less than the specified maximum penalty. In addition, the bill allowed civil penalties for any violation of a posting or notice requirement to be recovered only by the LWDA. Amendments adopted on July 27, 2004, inter alia, added further exhaustion requirements involving notice to the employer and the LWDA and a 33-day period in which the agency may issue a citation preempting a civil action or the employer may cure the violation. As of the end of the 2003-2004 fiscal year, this bill was pending in the Assembly. On August 11, 2004, the bill was signed by the Governor.

AB 38 (TRAN, STRICKLAND) STATE BOARDS AND COMMISSIONS-SALARIES: SUSPENSION-This bill would specify that members appointed to specified state boards and commissions shall receive no salary for the 2005-06, 2006-07, and 2007-08 fiscal years, except that they may receive a per diem payment of $100 during that time. This bill is virtually identical to AB 556, which was introduced in 2003 and failed in committee early in January 2004. The bill was amended on April 13, 2005 to change the operative years to the 2006-07, 2007-08, and 2008-09 fiscal years, to update the name of one affected agency, to delete the Gambling Control Commission, and to make the provisions applicable to successor agencies. On April 26, 2005, the bill failed passage in the Committee on Business & Professions. No further action was taken on the bill, and it died pursuant to Art. IV, Sec. 10(c) of the Constitution.

AB 1561 (UMBERG) STATE BOARDS AND COMMISSIONS:REMOVAL AND PENALTIES-This bill would declare the intent of the Legislature to implement procedures that provide for the imposition of penalties, removal from office, or both, as to appointed members of state boards and commissions who do not adequately perform their duties, including the regular attendance of meetings. No action had been taken on the bill as of the end of the 2004-2005 fiscal year.

Attachment 1—Decisions Issued by the Board in Fiscal Year 2002-03

Case Name	Opinion Number
Ventura Coastal Corporation aka Rancho Val Nies and Desert Citrus Properties, Inc. and Bob Nies (UFW, AFL-CIO)	28 ALRB No. 6
Coastal Berry Company, LLC (Sergio Leal, et al.)	28 ALRB No. 7
McCaffrey Goldner Roses, et al. (UFW, AFL-CIO, et al.)	28 ALRB No. 8
Desert Spring Growers, Arz, Inc. dba Sun City Growers (UFW, AFL-CIO)	28 ALRB No. 9
Pictsweet Mushroom Farms (UFW, AFL-CIO)	29 ALRB No. 1
All Star Seed Company (Roberto Carlos Ibarra)	29 ALRB No. 2

Case Summaries – Fiscal Year 2002-03

VENTURA COASTAL CORPORATION aka Rancho Val Nies and Desert Citrus Properties, Inc. and Bob Nies
[United Farm Workers of America (UFW)]

Case No. 02-RC-02-EC(R)
28 ALRB No. 6

Background

The Employer operates citrus groves in Blythe, primarily with employees provided by two labor contractors, and a juicing plant in Indio. In the election, the Region challenged all ballots cast; the Blythe citrus employees because the Region could not determine from the payroll records provided whether the employees had worked in the eligibility period; and the Indio juice plant employees because the Region was unable to confirm their status as non-agricultural employees before the election was conducted.

Regional Director's Reports on Challenged Ballots

The Regional Director, as to the Blythe citrus employees, recommended that 106 challenges be overruled, based on having received records and declarations showing they had worked during the eligibility period. The Regional Director recommended that eight Blythe ballots be investigated further. The Regional Director sustained the challenges to all the Indio juicing plant employees' ballots. The Regional Director issued a supplemental report on 23 ballots in response to the Employer's contentions in its exceptions that these employees the Regional Director had found eligible did not appear on its payrolls for the eligibility period. The Regional Director recommended that 22 challenges be overruled and one sustained. The Regional Director issued a Second Supplemental Report on challenged ballots, recommending that the challenges to four of the eight remaining employees be overruled and four sustained.

Board Decision

The Board adopted the Regional Director's reports on the challenged ballots. It rejected Employer's contention that approximately 100 of the Blythe employees, who were employed by Gilbert Gomez, were ineligible on the basis that Gomez was a custom harvester. The Employer contended that the Gomez employees were ineligible.

The Board found that Gomez's contract for the most part called for him to provide only services customarily performed by labor contractors. The Employer contended that the contract called for Gomez to provide all costly equipment, provide or arrange for hauling and to exercise day-to-day control over the harvesting of oranges. The Board found the Employer failed to raise a material issue of fact that Gomez was a custom

harvester because the contract's only provision of compensation to Gomez was based on harvest labor wage costs plus a percentage override. No evidence was presented that any equipment provided by Gomez was expensive or specialized. No compensation for providing or arranging hauling services was provided in the contract, indicating that such services were not a significant part of the services to be provided under the contract. While the contract purported to give Gomez day-to-day control over the harvesting of oranges, the Board noted that in the crop involved, date of picking was not critical. The Board therefore overruled the Employer's exceptions, and adopted the Regional Director's recommendations.

***

This Case Summary is furnished for information only, and is not the Official Statement of the case, or of the ALRB.

CASE SUMMARY

COASTAL BERRY COMPANY, LLC (Sergio Leal, et al.)
Case No. 99-CE-1-SAL, et al.
28 ALRB No. 7

Background

In *Coastal Berry Company* v. *Agricultural Labor Relations Board* (2001) 94 Cal.App.4th 1, the Sixth District Court of Appeal set aside the Board's order in *Coastal Berry Company, LLC* (2000) 26 ALRB No. 3 and remanded the case to the Board for reconsideration in accordance with the principles outlined by the Court. The underlying facts involve a work stoppage on July 1, 1998, at Coastal Berry Company by a group of employees opposed to the organizing efforts of the United Farm Workers of America, AFL-CIO. After a peaceful demonstration at Coastal's Beach Street compound, the group proceeded to Silliman Ranch and entered the fields in an attempt to persuade those not observing the strike to stop working. The conduct of the group included physical confrontations, destruction of packed berries, and the blocking and assault of a vehicle containing Coastal's president, David Smith. In 26 ALRB No. 3, the Board concluded that the following charging parties were unlawfully discharged and ordered their reinstatement: Paulino Vega, Jose Guadalupe Fernandez, Alvaro Guzman, Hilarion Silva, Sergio Leal, Juan Perez, and Mariano Andrade. The Board also ordered the reinstatement of Ernesto Robles, who was the subject of a settlement agreement arrived at during the hearing but never memorialized. The Board upheld the discharges of Yolanda Lobato, Hilda Zuniga, and Jorge Perez. Only the reinstatement of the first seven individuals listed was at issue on remand.

Subsequent to the Court's remand, Coastal filed a motion for issue preclusion or to reopen the record due to the General Counsel's alleged failure to provide witness declarations containing exculpatory evidence from two election cases involving Coastal (Case Nos. 98-RC-1-SAL and 99-RC-4-SAL). In response to this motion, the Board ordered an in camera inspection of the declarations in the two cases. On May 21, 2002, the ALJ issued a supplemental decision after conducting an in camera inspection of the declarations and concluded that Coastal suffered no prejudice to the presentation of its case from any failure of the General Counsel to abide by its discovery obligations.

Board Decision

The Board reaffirmed its original conclusion that the discharges of Hilarion Silva, Paulino Vega, and Juan Perez were unlawful, finding that these conclusions were unaffected by the analytical errors identified by the Court. However, upon reevaluating the evidence in accordance with the Court's instructions on remand, the Board found that Sergio Leal, Alvaro Guzman, Mariano Andrade, and Jose Guadalupe Fernandez were lawfully discharged for engaging in serious strike misconduct. Further, the Board affirmed the supplemental decision of the ALJ, as Coastal's exceptions were either without merit or were rendered moot by the Board's decision on remand.

***

This Case Summary is furnished for information only, and is not the Official Statement of the case, or of the ALRB.

CASE SUMMARY

McCAFFREY GOLDNER ROSES, et al.
(United Farm Workers of America, AFL-CIO, et al.)

Case Nos. 00-CE-92-VI
00-CE-109-VI
01-CE-32-VI
01-CE-42-VI
28 ALRB No. 8

Background

The complaint alleged that Respondent violated section 1153(a) of the Act by failing to recall Gertrudis Ocampo and supervisor Robert Gallardo, and by discharging Gallardo, Rosa Velasquez and supervisor Gilberto Juarez.

In December 1999 and in the Spring of 2000, Ocampo, as primary spokesperson, Velasquez and other crew members approached supervisor Gallardo and assistant supervisor/foreman Juarez to complain that a forewoman was being abusive, and was reducing their earnings by distributing work inefficiently. Gallardo told Arrambide of the group's complaints and that Ocampo was the main person complaining.

In mid-April 2000, Arrambide asked Gallardo to point out Ocampo, and requested that Gallardo fire her because she was a "troublemaker." Gallardo refused, saying that Ocampo was a good worker. Gallardo was laid off on May 3, 2000, and was told it was due to Respondent's financial situation. The Respondent testified that Gallardo's unsatisfactory work performance was hurting the business. Ocampo and Velasquez continued to work until the regular summer seasonal layoff.

Juarez was in charge of recalling workers for the fall season. Ocampo complied with Respondent's recall procedure by providing her address and telephone number. Juarez obeyed Arrambide's order not to recall Ocampo because she had made trouble during the previous spring. Juarez and Velasquez were later discharged for falsifying Velasquez's time sheet. Gallardo sought work on unspecified dates in October, November and December 2000, but was told there was no work available for him.

ALJ Decision

The ALJ found the refusal to recall Ocampo violated the Act and dismissed allegations concerning Gallardo, Velasquez, and Juarez. The ALJ found a prima facie case of retaliation against Ocampo for the protected concerted activity and that Ocampo followed the proper recall procedure and sought work when it was available. The ALJ found insufficient evidence to establish that Respondent would not have recalled Ocampo even in the absence of her protected concerted activity.

The ALJ found that the allegations concerning Gallardo were untimely filed. The ALJ reasoned that had Gallardo exercised due diligence, he would have known by early October 2000 that he was not going to be recalled by Respondent. The ALJ found that Velaquez's protected activity was not a motivating factor in her discharge. Finally, the ALJ dismissed allegations concerning Juarez because he found that under the circumstances of the case, none of Juarez's conduct as a supervisor was protected by the Act.

Board Decision

The Board adopted the rulings, findings and conclusions of the ALJ, except with respect to Gallardo. The Board sustained the ALJ's conclusion that the charge was untimely filed as to Gallardo's May 3, 2000 layoff. While Gallardo may not have fully understood that he was being permanently, rather than temporarily laid off, the circumstances put him on notice that the May 3 layoff was unlawful and the time for filing a charge alleging that the May 3 layoff was unlawful commenced on that date.

The Board reversed ALJ's conclusion that the allegation concerning the failure to recall Gallardo was untimely because Respondent had not met its burden to show that October 24, 2000 was an unreasonably late date for Gallardo to have had clear, unequivocal notice that he was not going to be rehired. Gallardo engaged in protected concerted activity when he refused to fire Ocampo. The Board found that Respondent had established that it would not have rehired Gallardo due to his unsatisfactory job performance even in the absence of his protected activities.

***

CASE SUMMARY

DESERT SPRING GROWERS, ARZ, INC. Case No. 02-RC-3-EC(R)
dba SUN CITY GROWERS 28 ALRB No. 9
(UFW)

Background

An election was held at Desert Spring Growers, Arz, dba Sun City Growers (Employer) on November 1, 2002. The amended tally of ballots issued on November 4, 2002 reflected that 29 votes were cast for the United Farm Workers of America, AFL-CIO (UFW), 26 votes were cast for "No Union," and there were two unresolved challenged ballots. The Employer timely filed election objections, which were dismissed in their entirety by an order of the ALRB Executive Secretary dated November 13, 2002. The Executive Secretary dismissed the objections because the Employer did not, as required by Regulation 20365, subdivision (c) (2), attach declarations setting forth facts that, if uncontroverted or unexplained, would warrant setting aside the election. Further, the Executive Secretary noted that subdivision (b) of Regulation 20365 specifically provides that no extensions of time to file objections shall be permitted. In this case, the Employer filed an objections petition unaccompanied by any declarations. The Employer timely filed exceptions to the dismissal of its election objections. In its request for review, the Employer submitted text identical to its objections petition, with an added sentence at the bottom stating, "I affirm that I have made this declaration and if called to testify, I would attest to the above under oath as being true to my own knowledge and belief."

Board Decision

The Board affirmed the dismissal of the election objections. The Board observed that its regulations unequivocally require that adequate declarations be timely filed with the objections petition. The Board further observed that its regulations prohibit any exceptions to this rule, and that there is no precedent for these requirements being excused by the Board.

***

This Case Summary is furnished for information only, and is not the Official Statement of the case, or of the ALRB.

CASE SUMMARY

PICTSWEET MUSHROOM FARMS Case No. 00-CE-332-EC(OX)
(UFW, AFL-CIO) 29 ALRB No. 1

Background

The Union was certified to represent employees at a mushroom farm operated by the predecessor employer. The Respondent acquired the farm in 1989. The Union first requested the Respondent bargain collectively in 1999. The parties negotiated in a series of meetings from January to May 25, 2000. No further meetings were held until September 25, 2000. The Respondent became aware that a supermarket chain would cease buying from the Respondent pursuant to the Union's request that it boycott the Respondent. The Respondent adopted a plan to deal with the loss of business that called for layoffs and reductions in hours. The first layoff occurred on September 5, 2000, following the "steaming off" on August 30 of mushrooms that the pickers who were laid off on September 5 would have harvested.

Additional layoffs to adjust to the boycott followed in the next several weeks. The Respondent did not give the Union notice of the layoffs until September 14, 2000. The parties met on September 25, 2000, and agreed that layoffs and recalls would be in order of departmental seniority.

The Union requested information concerning the Respondent's profit-sharing plan. The Respondent provided some information, consisting primarily of information other than what the Union had requested.

The acting leadman of the Respondent's maintenance department told an employee that he would be transferred into the maintenance department if the employee signed a decertification petition. The employee did not sign the petition and was never transferred into the maintenance department.

The Respondent had granted raises to the pickers in 1992, 1994, 1996, and 1998, but not in 2000 and did not notify the Union that it intended not to follow pattern of biennial raises. The Respondent also maintained an employee manual that stated a company policy that employees not seek representation by "third parties," provided that non-adherence to any company policy was grounds for discharge and had a receipt form requesting that employees signing it acknowledged that they were subject to discharge for failing to adhere to all policies in the handbook.

ALJ Decision

The ALJ found that the Respondent's packing employees were non-agricultural and not subject to the Board's jurisdiction. The ALJ rejected Respondent's contention that the original certification was insufficient to establish the Union's status as bargaining representative of Respondent's agricultural employees.

The ALJ rejected the Respondent's alternative defenses of actual notice, waiver, and past practice, finding the September 5 layoff was a unilateral change. However, the ALJ found the September 5 layoff to be lawful because it was an economic weapon in response to the Union's boycott analogous to a lockout or strike stopgap measure. The ALJ found that several employees were laid off or recalled in violation of the criteria agreed to between Respondent and the Union in their September 25, 2000 negotiating session. The ALJ found that the Union failed to request bargaining concerning reductions in hours of employees who were not laid off.

The ALJ found the Respondent violated section 1153(e) by failing to grant its pickers a raise in 2000 because biennial raises for pickers had become an established practice over the prior eight years. The ALJ found that the Respondent failed to provide information relevant to its profit sharing plan requested by the Union. The Respondent had proposed the plan as a central element in its wage proposal and the Union's need to determine the plan's reliability as a source of wages made the information request reasonable. The ALJ also found that an acting leadman's statement to an employee that the employee's request for a transfer to the maintenance department would be granted if the employee signed a decertification petition and the failure to transfer him were violations. The ALJ found that Respondent's employee handbook statement that the Respondent preferred that employees not seek union representation was not a violation.

Board Decision

The Board affirmed the ALJ's findings and conclusions with three exceptions. It found that the September 5 layoff was an unlawful unilateral change and not a lockout. It was an adjustment to a lack of work, the layoff was not brought to the Union's attention, and the Union was not informed that it was intended to put economic pressure on the Union to influence the Union's position in bargaining. The Board found that the employee handbook's policy statement that employees not seek union representation was unlawful because the handbook provided that violation of any policy in the handbook was grounds for discipline or discharge and employees were required to sign a form stating that they would adhere to all policies in the handbook. While affirming the conclusion that the statements conditioning transfer on signing the decertification petition was unlawful, the Board found no violation as to the failure to transfer because it was established that there were no openings in classification the employee was

qualified for in maintenance department.

***

This Case Summary is furnished for information only, and is not the Official Statement of the case, or of the ALRB.

CASE SUMMARY

ALLSTAR SEED COMPANY 29 ALRB No. 2
(Roberto Carlos Ibarra) Case No. 02-CE-52-EC

Background

On January 17, 2003, the ALJ issued a ruling granting the General Counsel's motion for a default judgment against Allstar Seed Company (Respondent), as the record before the ALJ reflected that no answer to the complaint, nor any response to the General Counsel's motion, had been filed by Respondent. It was alleged in the complaint that Roberto Carlos Ibarra had been discharged for engaging in activity protected by the Agricultural Labor Relations Act. On February 7, 2003, the Respondent timely filed exceptions to the ALJ's ruling. Respondent requests that its failure to file an answer to the complaint be excused, based on its confusion as to the effect of the withdrawal of a parallel charge that had been filed with the National Labor Relations Board (NLRB).

Board Decision

Acknowledging that the courts have erred on the side of granting relief from default, the Board noted that 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, as here, the basis for relief is a mistake of law, the Board cited the established standard that 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. Here, the Board concluded that Respondent's error of law was reasonable considering the often vexing nature of the interplay between federal and state jurisdiction. However, since Respondent was served with the ALRB complaint nearly three weeks after notice of the withdrawal of the NLRB charge, the Board concluded that Respondent should have questioned its assumption that the disposition of the NLRB matter also resolved the matter before the ALRB, and therefore Respondent had a duty to make some inquiry into the legal significance of the complaint rather than ignore it. The Board concluded that Respondent's failure to make any inquiry into the significance of the complaint does not represent the conduct of a reasonably prudent person even in light of a reasonable mistake of law and, thus, does not constitute excusable neglect. Therefore, the Board affirmed the granting of a default judgment and adopted the ALJ's recommended remedies.

***

Attachment 2—Decisions Issued by the Board in Fiscal Year 2003-04

Case Name	Opinion Number
Pictsweet Mushroom Farms (UFW, AFL-CIO)	29 ALRB No. 3
Arie De Jong dba Milky Way Dairy (FFVW, U.F.C.W., AFL-CIO, Local 1096, CLC)	29 ALRB No. 4
Rivera Vineyards, Oasis Distributing, Blas Rivera, Inc., Linda Vineyards, Inc. and Rivera Vineyards, Inc. (Virginia Mejia, et al.)	29 ALRB No. 5
Hess Collection Winery (UFCW, FFVW, Local 1096)	29 ALRB No. 6

Case Summaries – Fiscal Year 2003-04

PICTSWEET MUSHROOM FARMS 29 ALRB No. 3
(United Farm Workers of America, AFL-CIO) No. 03-MMC-02

Background

The Union filed a declaration seeking mandatory mediation. The Employer purchased the farm involved in 1987 from Mushroom King, a predecessor employer who had entered into collective bargaining agreements with the certified union, as had West Foods, an earlier owner who was named in the certification. In 1999, the Union requested that the Employer bargain for a contract. Ten bargaining sessions were held in 2000 and 2001, but no contract was reached. The Union requested renewed negotiations in 2003. Three meetings were held but no contract was agreed to.

Declaration and Answer

The answer did not dispute that Pictsweet was a successor employer but denied declaration's assertion that the Employer had committed the unfair labor practice found by the Board in its decision at 28 ALRB No. 4. The Employer denied that the Employer was party to a certification because the certification issued had named West Foods, not Pictsweet as the employer. The answer further asserted that the contracts entered into between West Foods and Mushroom King and the Union precluded a finding that there had been no contract for purposes of the mandatory mediation law. The Employer also asserted that the Union had abandoned the certification by not engaging in collective bargaining from 1987 through 1999 and that the mandatory mediation law was unconstitutional and contrary to section 1155.2(a) of the Agricultural Labor Relations Act.

Board Decision

The Board rejected Pictsweet's argument that the predecessor employers' contracts with the Union precluded application of the mandatory mediation law to it. The statute was intended to apply to those who were parties to certifications after the statute became effective and, as to the successor employer, the Union was in a position analogous to that of a newly certified union that had never had a collective bargaining agreement. The Board held that it was without jurisdiction to consider Pictsweet's arguments that the mandatory mediation law was unconstitutional. The Board deemed its unfair labor practice finding to be established because no petition for review had been filed.

* * *

This Case Summary is furnished for information only, and is not the Official Statement of the case, or of the ALRB.

CASE SUMMARY

ARIE DE JONG dba MILKY WAY DAIRY
(Fresh Fruit & Vegetable Workers, U.F.C.W., AFL-CIO, Local 1096, CLC)

Case No. 02-RC-2-VI
29 ALRB No. 4

Background

A representation election was conducted on August 15, 2002 to determine whether or not agricultural employees at Arie De Jong dbd Milky Way Dairy (Employer or Milky Way) wished to be represented by Fresh Fruit & Vegetable Workers, U.F.C.W., AFL-CIO, Local 1096, CLC (UFCW or Union). A total of 65 ballots were cast, with 24 votes for the Union, 16 votes for "no union," and 25 unresolved challenged ballots. The Regional Director (RD) conducted a post election investigation of the challenged ballots, and on October 2, 2002, issued a Challenged Ballot Report recommending that 3 ballots be opened and counted, that the challenges to 21 ballots be sustained, and that 1 ballot remain unresolved unless it became outcome determinative. Milky Way and the Union both filed exceptions to the RD's report.

On November 22, 2002, the Board issued an Administrative Order which affirmed in part and rejected in part the RD's Challenged Ballot Report. The Board affirmed the RD's recommendation to open and count 3 ballots, and ordered that the challenges to 3 additional voters be overruled. The Board set an investigative hearing to resolve the challenges to the ballots of the remaining 19 individuals.

The IHE Decision

On May 20, 2002, the Investigative Hearing Examiner (IHE) issued her decision. She recommended that the challenges to the ballots of 4 of the remaining 19 voters be overruled and that their votes be counted. She further recommended that the challenges to the ballots of 15 of the remaining 19 voters be sustained. Both the Union and Milky Way filed exceptions to the IHE's recommended decision.

Board Decision

The Board affirmed in part and overruled in part the rulings findings and conclusions of the IHE. Ultimately, the Board ruled that the challenges of 10 of the 19 voters in question be sustained, and that the challenges to 9 of the voters be overruled and that their ballots be counted.

The Board found that the IHE's analyses of several workers' employment

relationships with Milky Way were incomplete as they turned solely on whether the workers were engaged in secondary agriculture. The determination whether a worker is engaged in secondary agriculture is not an analysis that can, in all circumstances, determine whether the worker is indeed an employee of the employer. The Board stated that where necessary to determine a person's employment status, it 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 the common law right of control test as informed by the policies underlying the ALRA. As to one worker in question, the Board affirmed the IHE's conclusion that he was not an eligible voter, but did so because the worker was the employee of an independent contractor.

The Board also rejected the IHE's conclusion that several workers were ineligible to vote because they lacked a sufficient connection with the employer to take on the status of employees. Instead, the Board emphasized that if workers were agricultural employees of the employer for any time during the eligibility period, this was sufficient to make them eligible voters. In its discussion of this issue, the Board noted that its previous decision in *Simon Hakker* (1994) 20 ALRB No. 6, did not accurately reflect the established principle that under the ALRA there is no exclusion for casual employees. The Board overruled *Simon Hakker* to the extent it is inconsistent with the present decision.

The Board found that with regard to some workers, the IHE placed too much emphasis on whether the amounts on paychecks exactly matched the number of hours during the eligibility period when several workers recalled they had worked. The payment practices at Milky Way were irregular and discrepancies between the amounts on formal paychecks and hours worked were not unusual. Where there was sufficient additional evidence to support an inference that the workers were employed at any time during the eligibility period, the Board ordered that the challenge to the workers' ballots be overruled despite such discrepancies.

The Board affirmed the IHE's conclusion that a crew of four men who worked on construction projects at the dairy were 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.

Finally, the Board affirmed the IHE's conclusion that an employee was a statutory supervisor because he used independent judgment in performing duties even where many of his 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. In addition, secondary indicia of supervisory status supported classifying an the employee as a supervisor where his rate of pay was $2.00 to $5.00 per hour more than the rest of the crew and where he was the only individual in the crew with the title "herdsman."

***

This Case Summary is furnished for information only, and is not the official statement of the case, or of the ALRB.

CASE SUMMARY

RIVERA VINEYARDS, ET AL. 29 ALRB No. 5
(Virginia Mejia, et al.) Case No. 01-CE-317-EC(R), et al.

Background

On June 6, 2003, Administrative Law Judge (ALJ) Douglas Gallop issued a decision in the above-entitled case in which he concluded that the complaint should be dismissed in its entirety. The complaint consisted of allegations that a foreperson, Virginia Mejia, and her crew were unlawfully discharged for engaging in union and other protected concerted activity. The ALJ dismissed the complaint as to Mejia, finding that she was a supervisor and, further, finding that no credible evidence established that she and her crew were discharged because she refused to discharge those who had engaged in protected activity. He also dismissed the complaint as to the crew members, concluding that even if the General Counsel successfully established a prima facie case, Rivera Vineyards (Employer) successfully demonstrated that the crew would have been discharged for poor work performance even in the absence of their protected activity.

Board Decision

The Board affirmed the decision of the ALJ, noting that the decision was based heavily on credibility determinations, and that the Board's review of the record provided no basis for disturbing those determinations. The Board also noted that an alternative theory proffered in exceptions, that Mejia was discharged in retaliation for reporting an allegation of sexual assault on one of her crew members by another supervisor, was precluded by admissions by Mejia that she did not report the incident to higher level management until long after the decision to discharge her was made and by the credited denial by the alleged perpetrator that Mejia discussed the matter with him shortly after the incident was brought to her attention.

***

CASE SUMMARY

HESS COLLECTION WINERY
(Fresh Fruit & Vegetable Workers,
U.F.C.W., AFL-CIO, Local 1096, CLC)

Case No. 2003-MMC-01
29 ALRB No. 6

Background

On April 3, 2003, the United Food and Commercial Workers Union, Fresh Fruit and Vegetable Workers, Local 1096 (Union or UFCW) filed a declaration with the Agricultural Labor Relations Board (Board) pursuant to Labor Code section 1164 et seq. indicating that the Union and Hess Collection Winery (Employer or Hess) had failed to reach a collective bargaining agreement and requesting that the Board issue an order directing the parties to mandatory mediation and conciliation of their issues. The Board evaluated the Employer's answer to the UFCW's declaration and found that the Employer's answer did not dispute any of the prerequisites for referral to mediation set forth in the mandatory mediation and conciliation statute or the Board's regulations. The Board ordered the parties to mandatory mediation and conciliation on May 21, 2003. The Mediator, who was selected by the parties pursuant to the mandatory mediation and conciliation statute, met with the parties informally and off the record on August 18, 2003. The Mediator explored a variety of issues that were unresolved between the parties, but the parties were not able to agree on any of the items in dispute. On September 17, 2003, the Mediator conducted a mandatory mediation and conciliation session. The Employer did not attend or participate in the session.

Mediator's Report and Recommendation for a Collective Bargaining Agreement

On September 24, 2003 the Mediator filed a report with the Board. The report resolved all remaining issues between the parties and established the final terms of a collective bargaining agreement. The Mediator based his recommendation on the evidence presented by the Union as to why its proposal should be adopted as the collective bargaining agreement between the parties. The Mediator pointed out that the Employer did not respond to the Union's evidence, and therefore the evidence submitted by the Union is not contradicted in the record.

Board's Decision

On October 6, 2003, the Employer filed a petition for review of the mediator's report. The Employer requested that the Board vacate and set aside the Mediator's report for a variety of reasons. The Board found no basis for accepting review of

the Mediator's report, and denied the Employer's petition in full. The Employer first argued that the Mediator's report and the process leading to it violated state and federal constitutional rights. The Board pointed out that it has no authority to declare a statute unconstitutional under Article 3, Section 3.5 of the California Constitution. The Board found that this argument provided no grounds for the Board to grant review of the Mediator's report

The Employer also argued that the Mandatory Mediation and Conciliation law violates Cal. Evidence Code sections 1119 and 1121, which pertain to confidentiality in mediation. The Employer insisted that because the law uses the term "mediation," the process must be subject to rules governing traditional mediation. The Board found it was clear that the law created a hybrid mediation/ arbitration process, which is not governed by California Evidence Code sections 1115-1128. The Board found that the Employer's argument that it could not participate in the September 17, 2003 session because it would be violating laws of evidence was without merit, and provided no basis for the Board to accept the Employer's petition for review.

The Employer further argued that the Mediator's report violated section 1155.2(a) of the ALRA, which gives parties to collective bargaining the right to turn down proposals made by the other side. The Board rejected this argument because it found that the Employer could not rely on the un-amended version of the Act to support its claim that the mandatory mediation process violates the ALRA. The ALRA was amended by the addition of Labor Code sections 1164-1164.14. These amendments went into effect on January 1, 2003.

The Employer argued that the collective bargaining agreement attached to the Mediator's report was based on the incorrect finding that no agricultural employees in the Napa Valley were covered by collective bargaining agreements. The Board found that the Employer did not establish a prima facie case that the collective bargaining agreement was based on a clearly erroneous finding of material fact. The Board found nothing in the record to support the Employer's assertion that the Union deliberately misled the Mediator into thinking that there were no other agricultural employees covered by collective bargaining agreements in the Napa Valley. The Board further concluded that by refusing to participate in the mandatory mediation session, the Employer waived the right to contest the relevance and authenticity of the evidence offered by the Union.

Finally, the Employer argued that the Mediator erred when he stated that the duration of the contract would be one year, while it is actually for 21 months (from October 1, 2003 to July 1, 2005). The Board found that while the Mediator's statement about the term of the contract was not entirely accurate, this was inconsequential. The Mediator clearly indicated that he wanted the contract to

cover one working season, plus he was also willing to accommodate the Union's requested termination date.

***

This Case Summary is furnished for information only, and is not the official statement of the case, or of the ALRB.

Attachment 3—Decisions Issued by the Board in Fiscal Year 2004-05

Case Name	Opinion Number
D'Arrigo Bros. Co. of California (UFW, AFL-CIO)	30 ALRB No. 1
Gallo Vineyards, Inc. (UFW, AFL-CIO)	30 ALRB No. 2
Hadley's Date Gardens, Inc. (Jose Angel Perez)	31 ALRB No. 1
Andres Farms, LLC (UFW, AFL-CIO)	31 ALRB No. 2

Case Summaries – Fiscal Year 2003-04

D'ARRIGO BROS. CO. OF CALIFORNIA
(United Farm Workers of America, AFL-CIO)

Case No. 00-CE-5-SAL, et al.
32 ALRB No. 1

Background:
This matter is based on charges filed by the United Farm Workers of America, AFL-CIO (UFW) alleging that D'Arrigo Brothers Company of California (Respondent or D'Arrigo) violated section 1153(a) and (e) of the Agricultural Labor Relations Act (ALRA or Act) by refusing to furnish information requested for representational purposes, and by engaging in unlawful surface bargaining.

ALJ Decision:
The ALJ found that Respondent had violated the Act by failing to respond to an information request made by the UFW on March 20, 2001, by failing to respond to three items of a six item request made by the UFW on November 4, 2003, and by engaging in surface bargaining during the statutory period, with the latter violation continuing to date. The ALJ dismissed an allegation that the Respondent failed to respond to an information request made on January 7, 2002, and also found no violations with respect to Respondent's failure to provide information on three items of the six item request mentioned above. The ALJ's order provided for a makewhole remedy to compensate employees for the delays in obtaining the benefits of collective bargaining caused by the employer's failure to bargain in good faith.

Respondent's Motions to Strike All or Portions of the GC's and UFW's Answering Briefs:
Following the ALJ's decision, the Respondent, General Counsel (GC), and UFW all timely filed exceptions to the ALJ's decision and order. Following the filing of exceptions, all parties filed briefs answering the opposing parties' exceptions. On January 3, 2006, Respondent filed a request with the ALRB's Executive Secretary (ES) to file reply briefs to the GC's and UFW's answering briefs, and at the same time filed motions to strike all or portions of the GC's and UFW's answering briefs. The ES denied the Respondent's request to file reply briefs and the Respondent appealed his ruling to the Board.

On February 2, 2006, the Board issued an order denying Respondent's appeal of

the ES ruling denying permission to file replies to the answering briefs (Admin. Order No. 2006-1). In its order, the Board indicated that it would address the merits of the Respondent's motions to strike all or portions of the GC's and UFW's answering briefs in its final decision and order in this matter.

Board Decision and Order:
In its Decision and Order, the Board denied the Respondent's motion to strike portions of the UFW's answering brief, and also denied the Respondent's motion to strike all or portions of the GC's answering brief, with the exception of that portion of the GC's brief that argued that the Huron operations were included in the bargaining unit. Accordingly, the Board disregarded that portion of the GC's answering brief.

The Board upheld the ALJ's decision and order except as otherwise noted. The Board found that the record supported the ALJ's conclusion that the Respondent had engaged in surface bargaining during the statutory period. The Board agreed with the ALJ that Respondent's pattern of paying the employees more than it was willing to offer in subsequent contract proposals was disturbing. The Board found it reasonable to infer from this kind of unexplained regressive bargaining that Respondent was merely giving the appearance of bargaining with no intention of reaching agreement.

The Board found the record supported the ALJ's conclusion that the economic grounds for the changes in overtime and funeral leave provisions in the Respondent's February 2, 2000 contract proposal were a pretext, and found that the ALJ properly concluded that Respondent's February 2, 2000 proposal was made in bad faith. The Board concluded that the content of Respondent's proposals evidenced an approach on Respondent's part that was inconsistent with a good faith effort to reach agreement, and when viewed in context with the totality of Respondent's conduct, supported the conclusion that Respondent engaged in surface bargaining.

The Board rejected the Respondent's argument that the ALJ impermissibly relied on evidence prior to the statute of limitations period to support his finding of surface bargaining. The Board found the record supported the ALJ's finding that the Respondent's February 2, 2000 proposal, in and of itself, was evidence of bad faith bargaining, as was its later conduct regarding requests for information. The Board found that the ALJ's discussion of similar conduct occurring before the limitations period was properly used to shed light on the true motivations behind the Feb. 2, 2000 proposal and establish a pattern of bad faith.

The Board found, contrary to the ALJ, that the Respondent's failure to provide employee telephone numbers and job classifications in response to the

November 4, 2003 information request did violate the Act. The Board also found that the Respondent's two-month delay in providing wage data in response to the November 4, 2003 request amounted to a violation of the Act.

The Board overturned the ALJ's finding that the Respondent's failure to provide information on the costs of farm labor contracts did not violate the Act. The Board reasoned that under Section 1140.4 (c) of the ALRA, the employees of farm labor contractors were part of the bargaining unit, therefore the compensation paid to the labor contractor was just as much an element of unit labor costs as the wages paid to the labor contractor's employees, and was presumptively relevant. The Board ordered that Respondent produce all information on labor costs, including compensation paid to the farm labor contractors, and further ordered that to the extent written agreements between Respondent and the labor contractors included language addressing the terms and conditions of the labor contractors' employees' employment, that Respondent provide that information as well.

The Board found that Respondent's refusal to provide employee social security numbers did not violate the Act. The Board followed recent NLRB authority holding that social security numbers requested by unions are not presumptively relevant, and therefore unions must therefore demonstrate the relevance of such information before the employer is required to provide them.

The Board adopted the ALJ's recommended order finding the makewhole remedy to extend from the period beginning January 28, 2000 until the date on which Respondent commences bargaining in good faith with the UFW.

***

This Case Summary is furnished for information only, and is not the official statement of the case, or of the ALRB.

CASE SUMMARY

GALLO VINEYARDS, INC. 30 ALRB No. 2
(United Farm Workers of America, AFL-CIO) Case Nos. 03-CE-9-SAL
03-CE-9-1-SAL

ALJ Decision

The Administrative Law Judge (Judge) found that two crew supervisors asked the members of their crews to sign papers in support of a decertification petition. One told his crew that a paper was about to be brought to them to get rid of the two percent union dues requirement. A few minutes after the supervisor's statement, all employees in the crew signed the petition. The supervisor was present while the petition was circulated. The circulation took place on working time. The Judge also found that in the other crew, in sight of the crew, the supervisor called an employee from the row where he was working, gave him papers to ask the employees to sign and told him that they were to get rid of the Union and the two percent dues requirement, and that he wanted the employee to circulate the paper to the crew. The employee approached each member of the crew while they were working and asked them to sign the papers. The supervisor was present when the employee circulated the papers to the crew members. Half the crew members signed the petitions. After circulating the papers, the employee returned the papers to the supervisor in sight of the crew members.

The Judge found that this conduct violated the Act and that word of this conduct was likely to have been disseminated and that it was impossible to determine how far the dissemination had gone. The Judge therefore found that the decertification petition was tainted and should be dismissed and the election set aside. The Judge also denied the Union's request that she find a violation as to Respondent's pre-trial questioning of a witness that had not been pled in the complaint. She held it was not sufficiently litigated to allow a separate violation to be found.

Board Decision

The Board noted that the ALRA requires that the Board protect employee free choice. The Board found that the conduct in this case gave the employer control and influence over the process of employee union selection, and that the conduct in this case gave the employer potential control that amounted to illegal influence. The Board rejected Employer's argument that the conduct was not proven, or if it was, that it was de minimis. The Board held that more than ministerial or de minimis employer involvement in the solicitation of the decertification petition had to be proven to dismiss a petition, and that the conduct in this case far exceeded de minimis employer involvement in the solicitation. The Board found that the Judge's presumption of dissemination was valid and that the petition was tainted. The Board affirmed the Judge's decision not to find the alleged

misconduct in Respondent's pretrial questioning of a witness a separate violation. The Board denied Respondent's motion to disqualify the Judge.

* * *

This Case Summary is furnished for information only, and is not the Official Statement of the case, or of the ALRB.

CASE SUMMARY

HADLEY'S DATE GARDENS, INC. 31 ALRB No. 1
(Jose Angel Perez) Case No. 03-CE-15-EC

Background

On December 23, 2004, Administrative Law Judge (ALJ) Douglas Gallop issued his decision in the above-referenced case, in which he found that Hadley Date Gardens, Inc. (Respondent) violated section 1153, subdivision (a) of the Agricultural Labor Relations Act (ALRA or Act) by discharging Jose Angel Perez (Perez) for engaging in protected concerted activity. The ALJ found that Perez engaged in protected activity by concertedly complaining about work assignments and by arranging for his brother Miguel Perez, also an employee of Respondent, to obtain an attorney to assist Miguel in his workers' compensation claim. The ALJ found that the General Counsel established a prima facie case of retaliation for engaging in protected activity, and further found that Respondent failed to meet its burden of proving that Perez would have been discharged even in the absence of the protected activity.

Board Decision

The Board summarily affirmed the ALJ's findings of fact and conclusions of law, and adopted his recommended decision.

***

This Case Summary is furnished for information only and is not an official statement of the case, or of the ALRB.

CASE SUMMARY

ANDREAS FARMS
(UFW)

31 ALRB No. 2
Case No. 96-CE-141-SAL, et. al.

Background

On November 30, 2001, the Regional Director of the Salinas office filed the initial Motion to Close in the above matter. The Board issued Admin. Order No. 2002-1 on January 11, 2002 denying the Motion to Close on procedural grounds, namely that the motion should be re-filed after regulations implementing the Agricultural Employee Relief Fund had been formally adopted.

On December 30, 2002, the Regional Director filed a Motion Seeking a Finding by the Board that the Case was Eligible for Pay Out Under the Agricultural Employee Relief Fund, or in the Alternative, Motion to Close. The Board found that the 2002 Motion to Close contained an insufficient and conclusory discussion of the steps taken to achieve full compliance, and therefore denied the 2002 Motion without prejudice on January 30, 2003 (Admin. Order No. 2003-1).

Decision and Order

On February 24, 2005, the Regional Director filed an Addendum to Regional Director's December 30, 2002 Motion Seeking a Finding that the Case is Eligible for Payout from the Fund and Motion to Close and indicated that the Addendum was intended to supplement the 2002 Motion.
Section 20299 (b) of the Board's regulations indicates that a motion seeking a finding that a case is eligible for payout under the fund "shall be accompanied by a statement describing the collection efforts made to date and the basis for the regional director's belief that collection of the full amount owing is not possible." The Board interpreted section 20299 (b) as requiring an accompanying statement consistent with the standards set forth in John V. Borchard, et. al. (2001) 27 ALRB No. 1.

The Board found that the requirements for a motion seeking a determination of eligibility for payout under the fund described in Board regulation section 20299 (b) were met in the 2005 Addendum which outlines in detail the basis for the Regional Director's belief that collection of the amount of money owed is not possible.

The Board therefore granted the Motion and ordered that interest on the back pay amounts due be calculated up to the date of the Board's Decision and Order in this matter.

* * *

This Case Summary is furnished for information only, and is not the official statement of the case, or of the ALRB.

* * *

Attachment 4- Administrative Orders Issued in Fiscal Year 2002-03

Admin.Order Number	Case Name	Case Number	Issue Date	Description
2002-7	Sonoma Cutrer Vineyards, Inc.	02-RC-1-SAL	7/22/02	Order accepting stipulation of facts and certifying representative
2002-8	Arie de Jong dba Milky Way Dairy	02-RC-2-VI	11/22/02	Order rejecting in part and affirming in part Regional Director's challenged ballot report and order setting challenges for hearing
2002-9	Arie de Jong dba Milky Way Dairy	02-RC-2-VI	12/06/02	Order setting time for responses to petitioner's motion for reconsideration
2002-10	Arie de Jong dba Milky Way Dairy	02-RC-2-VI	12/20/02	Order denying petitioner's motion for reconsideration
2003-1	Andreas Farms	96-CE-141-SAL	1/30/03	Order denying Regional Director's motion seeking a finding that the case is eligible for payout under the agricultural employee relief fund and order denying motion to close without prejudice
2003-2	Hess Collection Winery	03-MMC-01	4/04/03	Order setting due date for filing an answer to union's request for mediation
2003-3	Hess Collection Winery	03-MMC-01	4/14/03	Order granting joint request to hold matter in abeyance
2003-4	Hess Collection Winery	03-MMC-01	5/08/03	Order notifying parties that matter is no longer held in abeyance
2003-5	Hess Collection Winery	03-MMC-01	5/21/03	Order directing parties to mandatory mediation and conciliation
2003-6	Gallo Vineyards, Inc.	03-CE-9-SAL	6/18/03	Order denying application for special permission for an interim appeal of the administrative law judge's decision not to disqualify herself

Attachment 5- Administrative Orders Issued in Fiscal Year 2003-04

Admin.Order Number	Case Name	Case Number	Issue Date	Description
2003-7	Gallo Vineyards, Inc.	03-CE-9-SAL	6/20/03	Order Denying Request For Reconsideration Of Order Denying Application For Special Permission For An Interim Appeal Of The Administrative Law Judge's Decision Not To Disqualify Herself
2003-08	Pictsweet Mushroom Farms	03-MMC-02	7/11/03	Notice Setting Briefing Schedule On Novel Issue
2003-09	Pictsweet Mushroom Farms	03-MMC-02	7/14/03	Order Granting Request For Extension Of Time To File Briefs On Novel Issue
2003-10	Sonoma-Cutrer Vineyards, Inc.,	03-RD-3-SAL	7/31/03	Order Denying Request For Review of Regional Director's Decision Not To Impound Ballots
2003-11	Arie De Jong dba Milky Way Dairy	02-RC-2-VI	9/26/03	Order Denying Petitioner's Motion For Reconsideration
2003-12	Richard's Grove & Saralee's Vineyard, Inc.,	03-RD-4-SAL	10/21/03	Order Denying Requests For Review And Upholding Regional Director's Decision To Block Election
2003-13	Pictsweet Mushroom Farms	03-MMC-02	11/21/03	Order Referring Request For New Panel of Mediators
2003-14	Pictsweet Mushroom Farms	03-MMC-02	11/26/03	Order Placing Prior Order In Abeyance And Setting Date For Response
2003-15	Pictsweet Mushroom Farms	03-MMC-02	12/3/03	Order On Motion for Reconsideration and Clarification
2003-16	Coastal Berry Company, LLC	99-CE-1-SAL	12/19/03	Order Approving Formal Bilateral Settlement Agreement

Attachment 6- Administrative Orders Issued in Fiscal Year 2004-05

Admin.Order Number	Case Name	Case Number	Issue Date	Description
2004-01	Pictsweet Mushroom Farms	00-CE-332-EC	3/26/04	Order Vacating Board Decision at 29 ALRB No. 1
2004-02	D'Arrigo Bros. of California	00-CE-5-SAL	7/30/04	Order Setting Due Date For Opposition To UFW's Request For Order Authorizing Enforcement Of Charging Party's Notice In Lieu of Subpoena
2004-03	Gallo Vineyards, Inc	03-RD-2-SAL	8/4/04	Order Directing That Ballots Remain Impounded Pending Further Order of the Board
2004-04	D'Arrigo Bros. of California	00-CE-5-SAL	8/5/04	Order Granting Request For Extension of Time
2004-05	UFW	01-CL-3-EC	8/12/04	Order Granting Formal Bilateral Settlement Agreement
2004-06	D'Arrigo Bros. of California	00-CE-5-SAL	8/16/04	Order Granting Charging Party's Request For Order Authorizing Enforcement of Charging Party's Notice In Lieu of Subpoena; Notice Of Institution of Proceeding To Enforce Charging Party's Notice In Lieu of Subpoena
2004-07	D'Arrigo Bros. of California	00-CE-5-SAL	8/30/04	Order Referring To Administrative Law Judge Respondent's Application For Enforcement of Subpoenas Duces Tecum
2004-08	D'Arrigo Bros. of California	00-CE-5-SAL	9/14/04	Order Denying Respondent's Application For Enforcement of Subpoenas
2004-09	D'Arrigo Bros. of California	00-CE-5-SAL	10/27/04	Order Denying Respondent's Application for Permission To Appeal Ruling of Administrative Law Judge

Attachment 7- Administrative Orders Issued in Fiscal Year 2004-05

Admin.Order Number	Case Name	Case Number	Issue Date	Description
2004-10	Gallo Vineyards, Inc	03-CE-9-SAL	11/5/04	Order Denying Motion To Disqualify Board Members
2004-11	Gallo Vineyards, Inc	03-CE-9-SAL	11/23/04	Order Denying Motion For Reconsideration
2004-12	Gallo Vineyards, Inc	03-CE-9-SAL	11/30/04	Order Denying Motion For Reconsideration And To Reopen Record
2005-01	D'Arrigo Bros. of California	00-CE-5-SAL	1/13/05	Order Denying General Counsel's Request To Appeal Executive Secretary's Order On Continuance
2005-02	D'Arrigo Bros. of California	00-CE-5-SAL	4/15/05	Order Granting General Counsel's Application For Special Permission To Appeal Ruling of Administrative Law Judge And Order Granting Motion For Continuance
2005-03	Pacific Blue Ribbon Produce Co.	99-CE-165-EC	6/21/05	Order Granting Motion To Make Case Eligible For Payout From The Agricultural Employee Relief Fund
2005-04	Sun World International, Inc.,	01-CE-613-EC	6/21/05	Order Denying Regional Director's Motion To Make Cases Eligible For Payout From The Agricultural Employee Relief Fund
2005-05	Arturo Saikhon	01-CE-993-EC	6/21/05	Order Granting Motion To Make Case Eligible For Payout From The Agricultural Employee Relief Fund