ANNUAL REPORT

OF THE

AGRICULTURAL LABOR RELATIONS BOARD

FOR FISCAL YEAR

1999-2000

Members of the Board

GENEVIEVE A. SHIROMA, Chairwoman
IVONNE RAMOS RICHARDSON
MICHAEL B. STOKER[1]
GLORIA A. BARRIOS
HERBERT O. MASON

J. ANTONIO BARBOSA, Executive Secretary

PAUL RICHARDSON, General Counsel

[1] Term expired December 31, 1999. Holdover period expired February 29, 2000.

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LIST OF ATTACHMENTS

INTRODUCTION

Labor Code section 1143 requires the Agricultural Labor Relations Board (ALRB or Board) to report in writing to the Legislature and to the Governor stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board, and an account of all moneys (backpay)[2] it has disbursed.

The Annual Report provides the information required by statute and, in addition, a report on litigation involving the Board.

A report of the names, salaries, and duties of ALRB employees has been provided to the Governor, the Speaker of the Assembly, the President pro Tempore of the Senate, and members of the Legislature. Any other readers wishing to view such data are asked to make a separate request to the Board's Executive Secretary.

[2] Backpay represents monetary awards to farm workers in unfair labor practice cases.

I

THE AGRICULTURAL LABOR RELATIONS BOARD

A. 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, so as to protect the right 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. Moreover, it is the mission of the Board to resolve disputes arising under the Act by issuing timely, consistent, and impartial decisions, thus increasing the accountability and credibility so essential to engendering 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.

B. Administration

The ALRA was enacted in 1975 to recognize the right of agricultural employees to form, join or assist a labor organization in order to improve the terms and conditions of their employment and the right 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's) 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 the Board's order in a compliance case enforced, 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 various regional offices, is responsible for conducting 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, a rival 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 believing that 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 action, 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.

C. Review of Accomplishments and Goals

Early in fiscal year 1999-2000, the three new Board Members appointed by Governor Gray Davis were unanimously confirmed by the Senate.

During fiscal year 1999-2000, the new Board and the General Counsel continued to respond to the three-year organizing campaign among the strawberry workers in the Watsonville and Oxnard areas of California. In the 25-year history of the ALRA, this campaign was one of the most complex in the number and type of issues presented, including the occurrence of violence between groups of employees supporting rival unions. It involved three highly contested elections, and over 200 election objections. Each matter which came before the Board was given appropriate due process and deliberation, and handled expeditiously despite limited resources. The Board certified the election in April 2000, bringing a peaceful conclusion to the campaign.

The Board continued to recognize that to have an effective program, the farm workers, unions, and employers need to know the requirements of the Act and the implementing regulations. The staff continued to participate in job fairs, seminars, conferences, and other opportunities to provide information to interested parties.

The new Board itself was extremely conscious of the need to hear from all viewpoints and gain insights. Thus, efforts were made to increase its outreach among farm workers, employers, unions, trade associations, legislators, and representatives of other governmental agencies.

During fiscal year 1999-2000, the ALRB budget was approximately $4.5 million, which supported four offices statewide and fewer than 50 staff members. The headquarters office is in Sacramento, with three regional offices located in Visalia, Salinas, and El Centro. The El Centro office covered the Oxnard and Santa Maria areas with assistance from the Visalia office. Because both Oxnard and Santa Maria are seven hours from El Centro and four hours from Visalia by car, and such great distances hamper the ability of both employees and employers alike from the central coast to avail themselves of Board processes, the Board requested a budget change proposal to open a satellite office in the Oxnard or Santa Maria area. The proposal was approved by Governor Gray Davis and the Legislature for the next fiscal year 2000-01 budget. With the budget change was also a requirement for the ALRB to assess its overall ability to fulfill its statutory mandate, including:

1. To evaluate the current outreach and education efforts and project future needs in this area;

2. To assess the ease with which members of the farm worker and grower communities can avail themselves of the ALRB's services and to recommend remedying shortfalls in this area;

3. To project anticipated workload changes that might result from changes in worker populations or industry practices; and

4. To assess the ALRB's ability to monitor compliance and its ability to process unfair labor practice charges and to submit backpay and makewhole payments as directed by adjudication.

The Board was to submit a report to the Legislature by January 10, 2001. The Board anticipated embarking on this effort at the beginning of the new fiscal year, and opening

the new satellite office. (At this writing, the Board submitted its assessment in January 2001 to the Legislature as required, and a new office has opened in Oxnard.)

Overall, the Board continues to be committed to fair, timely, and impartial decisions. In recognition that the Act was created to "ensure peace in the agricultural fields by guaranteeing justice for all agricultural workers and stability in labor relations," the Board continues to be committed to vigorously implementing and enforcing the Act so that all parties can rely on its processes.

D. Operational Summary for Fiscal Year 1999-2000

1. Unfair Labor Practices

During the 1999-2000 fiscal year, 376 unfair labor practice (ULP) charges were filed with the ALRB (Chart I). Of the 376 charges, 322 were filed against employers and 54 were filed against labor organizations.

Chart I: ULP Charges Filed

Type of Charge	FY 1997-98	FY 1998-99	FY 1999-00
Against Employers	219	281	322
Against Unions	20	14	54
Total	239	295	376

The General Counsel closed 232 charges, sent 42 charges to complaint, and issued 10 complaints in Fiscal Year 1999-2000 (Chart II). One hundred and ninety (190) charges were closed due to dismissal, withdrawal or settlement.

Chart II: ULP Charges Closed

Type of Closure	FY 1997-98	FY 1998-99	FY 1999-00
Dismissed	149	175	109
Withdrawn	31	28	80
In to Complaint	34	18	42
Settled	20	7	1
Total	234	228	232

Chart III: Disposition of Complaints

(Prior to ALJ or Board Decision)

Disposition	FY 1997-98	FY 1998-99	FY 1999-00
Withdrawn before hearing	4	2	0
Settled before hearing	3	7	2
Settled at hearing	8	3	2
Settled after hearing	0	1	0
Total	15	13	4

Administrative Law Judges commenced three ULP hearings in 1999-2000 and issued three decisions (Chart IV).

Chart IV: Hearings and ALJ Decisions

Hearings and Decisions	FY 1997-98	FY 1998-99	FY 1999-00
ULP Hearings	12	5	3
ULP Decisions	4	3	3

2. Elections

Five petitions for certification were filed in 1999-2000 and two petitions for decertification. After investigation, one of the petitions was dismissed, resulting in six

elections being held during the fiscal year. In four cases, objections were filed and the Board issued six certifications in 1999-2000.

Investigative Hearing Examiners (IHE's) commenced three hearings involving election-related matters in fiscal year 1999-2000, regarding Coastal Berry Company, and issued four decisions.

3. Board Decisions Issued

The Board issued a total of nine decisions involving allegations of ULP's or matters relating to employee representation during fiscal year 1999-2000. Of the nine decisions, two involved ULPs, and seven were related to elections. A summary of each decision is contained in Attachment B.

4. Board Administrative Orders

The Board issued 22 numbered administrative orders in fiscal year 1999-2000. A description of each order is contained in Attachment C.

5. Compliance Activity

At the beginning of 1999-2000, 38 cases were ready for compliance action. This included Board orders and ALJ decisions which had become final. Nine cases were closed in 1999-2000.

During the 1999-2000 fiscal year, a total of $368,399.86 was distributed to 202 agricultural employees.

II

LITIGATION

In the majority of cases, parties to decisions of the Board file petitions for review in the Court 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.

UNITED FARM WORKERS OF AMERICA, AFL-CIO (WARMERDAM PACKING CO.) v. ALRB
5th District Court of Appeal, FO30921 (24 ALRB No. 2)

On May 28, 1998, the UFW filed a petition for review of a Board decision in which it was found that the evidence was insufficient to establish that two employees who had been leaders of a union organizing campaign were subjected to various adverse actions, including layoff and discharge, due to their protected activities. This matter was pending before the court as of the end of the 1999-2000 fiscal year.

TSUKIJI FARMS v. ALRB
6th District Court of Appeals, HO18662 (24 ALRB No. 3)

On June 11, 1998, Tsukiji Farms filed a petition for review of a Board decision in which it was found that the employer had unlawfully threatened employees concerning their union activities and refused to rehire 19 employees who had been union supporters. On June 1, 2000, the Court of Appeal, in an unpublished opinion, affirmed the Board's decision. There was no further appeal.

GREWAL ENTERPRISES v. ALRB
UNITED FARM WORKERS OF AMERICA, AFL-CIO v. ALRB
4th District Court of Appeal, EO24145 (24 ALRB No. 7)

On January 21, 1999, both Grewal Enterprises and the United Farm Workers of America, AFL-CIO (UFW) filed petitions for review of a Board decision in which it was found that Grewal violated section 1153, subdivisions (a) and (c) by refusing to hire its predecessor's employees due to their union affiliation. In addition, based on a private party settlement, the Board dismissed allegations that Grewal unlawfully refused to recognize and bargain with the UFW. On September 28, 1999, the Court of Appeal summarily denied Grewal's petition for review, and on September 29, 1999, the Court summarily denied the UFW's petition for review. There were no further appeals.

VINCENT B. ZANINOVICH & SONS, INC. v. ALRB
5th District Court of Appeal, FO34095 (25 ALRB No. 4)

On September 24, 1999, Vincent B. Zaninovich & Sons, Inc. filed a petition for writ of review of a Board decision in which it was found that Zaninovich's Vice President threatened employees with discharge if they again sought the assistance of a union. The Board dismissed an additional allegation that a crew was not rehired due to its central role in a union organizing campaign. This matter was pending before the court as of the end of the 1999-2000 fiscal year.

COASTAL BERRY COMPANY, LLC v. ALRB
6th District Court of Appeal, HO21585 (26 ALRB No. 3)

On June 6, 2000, Coastal Berry Company, LLC filed a petition for writ of review of a Board decision in which it was found that Coastal unlawfully discharged seven employees who allegedly engaged in serious strike misconduct. An additional employee was ordered reinstated pursuant to a settlement agreement reached at hearing. The Board found that, as to the seven individuals, it was not proven that they engaged in serious strike misconduct warranting discharge or they engaged only in conduct for which others suffered no discipline. This matter was pending before the court as of the end of the 1999-2000 fiscal year.

III

REGULATORY ACTIVITY

During the fiscal year 1999-2000, the Board completed the regulatory process initiated in the prior fiscal year with regard to changes in three areas of its regulations. One regulatory package involved two subjects, the methodology to be utilized in estimating peak employment when determining the timeliness of election petitions and ex parte communications. A second package involved changes to the Board's conflict of interest code.

The proposed amendments with regard to estimating peak employment eliminated references to the averaging of the pre-petition eligibility period in estimating peak employment, which was held to be contrary to statute in *Adamek & Dessert, Inc.* v. *ALRB* (1986) 178 Cal.App.3d 970. The proposed amendments also eliminated unnecessary language by eliminating two existing subdivisions and replacing them with one simplified provision.

The proposed amendments regarding ex parte communications (1) codified existing practice by extending the prohibition to communications between Board members or Board counsel and the investigative hearing examiner or administrative law judge assigned to the matter, (2) expanded the definition of a "pending" action so as to conform to the historical practice of avoiding ex parte communications as to any matter that is either already before the Board or may come before the Board at a later time, and (3) provided that any Board member or

other Board employee who initiates a prohibited communication, in addition to adhering to the reporting requirements contained in other provisions, shall disqualify himself or herself from participating in the action to which the prohibited communication relates.

The proposed amendments to the Board's conflict of interest code were modeled on the provisions of Government Code section 84308[3] and would have prohibited Board members and other designated employees from accepting or directing a campaign contribution of more than $250 from any party to an action pending before the agency and, in such event, would have prohibited the Member, General Counsel, or employee from taking part in any decision regarding that action.

After receiving written public comment, holding a public hearing, and making changes in the proposals in response to public comment, the Board adopted the proposed changes on August 25, 1999. The amendments with regard to estimating peak employment and ex parte communications were approved by the Office of Administrative Law on November 1, 1999, and became effective on December 1, 1999.

[3] Section 84308 applies only to proceedings involving a "license, permit or other entitlement for use" and, therefore, does not govern the Board's processes.

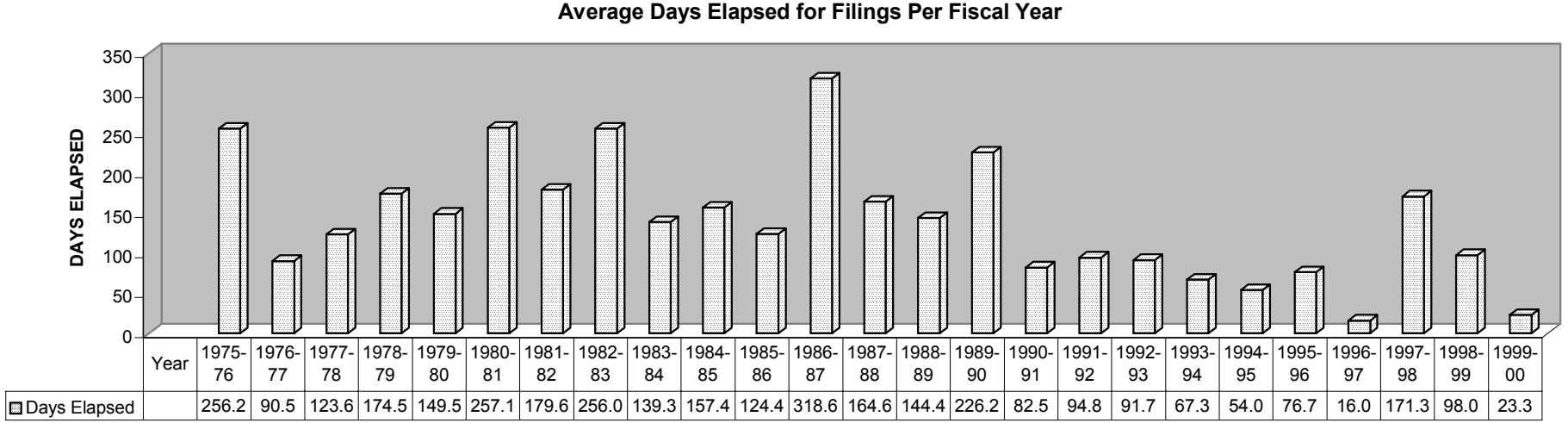
The amendments to the Board's conflict of interest code were submitted to the Fair Political Practices Commission (FPPC) for approval on November 22, 1999. By letter dated June 21, 2000, the FPPC informed the Board that it could not approve the proposed amendments because they included restrictions beyond those set forth in the Political Reform Act (PRA). As such, the FPPC would have no authority to enforce such restrictions. Generally, the PRA requires public officials to disclose financial interests that might pose a conflict of interest with their official duties and, further, prohibits public officials from participating in governmental decisions in which would have a "material financial effect" upon the official. Since the definitions of "financial interest" in the PRA do not include campaign contributions, the proposed amendments sought to fill this gap. However, it was the determination of the FPPC that, to be enforceable, this gap first must be filled by Legislative amendment to the PRA. The Board did not challenge the FPPC's determination.

IV

LEGISLATION

While the Board on its own initiative does not 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. Among the bills tracked during the fiscal year were SB 150, which would create a cabinet level labor agency within which the ALRB would reside for administrative purposes (though it would remain independent in terms of policy and case adjudication), AB 486, which was vetoed by the Governor on October 8, 1999, and would have provided for advisory opinions by administrative agencies and created a consent regulatory procedure for noncontroversial regulatory changes, and AB 2799, which was signed by the Governor on September 29, 2000, and which provides, among other things, that records kept in electronic format which are obtainable under the Public Records Act must be made available in that format and that denials of written requests for public records be in writing.

Petition to Certification



	Year	1975-76	1976-77	1977-78	1978-79	1979-80	1980-81	1981-82	1982-83	1983-84	1984-85	1985-86	1986-87	1987-88	1988-89	1989-90	1990-91	1991-92	1992-93	1993-94	1994-95	1995-96	1996-97	1997-98	1998-99	1999-00
Days Elapsed		256.2	90.5	123.6	174.5	149.5	257.1	179.6	256.0	139.3	157.4	124.4	318.6	164.6	144.4	226.2	82.5	94.8	91.7	67.3	54.0	76.7	16.0	171.3	98.0	23.3

Attachment A

Attachment B

DECISIONS ISSUED BY THE BOARD

Fiscal Year 1999-2000

CASE NAME	OPINION NUMBER
COASTAL BERRY COMPANY	25 ALRB No. 3
ZANINOVICH & SONS	25 ALRB No. 4
SAN CLEMENTE RANCH	25 ALRB No. 5
ASSOCIATED-TAGLINE, INC.	25 ALRB No. 6
NASH DE CAMP COMPANY	25 ALRB No. 7
COASTAL BERRY COMPANY	26 ALRB No. 1
COASTAL BERRY COMPANY	26 ALRB No. 2
COASTAL BERRY COMPANY	26 ALRB No. 3
NASH DE CAMP COMPANY	26 ALRB No. 4

CASE SUMMARY

COASTAL BERRY CO., LLC
(UFW, CBCFC)

Case No. 99-RC-4-SAL
25 ALRB No. 3

Background

In the election held on June 3 and 4, 1999, the initial tally of ballots reflected the following results: Coastal Berry of California Farmworkers Committee (Committee) 688, United Farm Workers of America, AFL-CIO (UFW) 598, Unresolved Challenged Ballots 92. As no choice on the ballot received an outright majority of ballots cast, the challenged ballots were outcome determinative. In his Report on Challenged Ballots, the Regional Director recommended that 56 of the challenges be overruled and the ballots counted, that 17 of the challenges be sustained, and that 19 remain unresolved because they require further investigation. The UFW timely filed exceptions to the Regional Director's resolution of 35 of the challenged ballots.

Board Decision

The Board reviewed the Regional Director's Report on Challenged Ballots in light of the exceptions and supporting materials filed by the UFW. The Board concluded that the UFW failed to provide a sufficient basis for disturbing any of the Regional Director's recommendations. Therefore, the Report on Challenged Ballots was affirmed in its entirety. The Board also noted that the UFW's service of its exceptions and supporting materials on the other parties was defective. However, in light of the failure of the exceptions to provide a basis for disturbing the Regional Director's recommendations, the Board found it unnecessary to rule on the Employer's motion to compel the UFW to correct its service.

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

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CASE SUMMARY

VINCENT B. ZANINOVICH & SONS, INC., a California Corporation (UFW)

Case Nos. 97-CE-34-VI
98-CE-12-VI
25 ALRB No. 4

Background

On May 18, 1999, Administrative Law Judge (ALJ) Douglas Gallop issued a decision in the above-referenced case, finding that Vincent B. Zaninovich & Sons, Inc. (Employer or VBZ) violated section 1153(a) of the Agricultural Labor Relations Act (ALRA or Act). Specifically, the ALJ found that Vincent J. Zaninovich, Vice President of VBZ, implicitly threatened employees with discharge if they again sought assistance from a union when he told them, "Well, if the Union is so powerful, then let them give you a job." The ALJ dismissed an allegation that the Employer unlawfully laid off and refused to rehire a crew because of its central role in a union organizing campaign. The ALJ concluded that an element of the prima facie case, employer knowledge of the employees' protected activity, was not proven. The ALJ found that any knowledge of protected activity held by supervisors was not communicated to those who made the decision to lay off and not rehire the crew. Therefore, such knowledge need not be imputed to the Employer. Both the Employer and the Charging Party, United Farm Workers of America, AFL-CIO (UFW), timely filed exceptions to the ALJ's decision.

Board Decision

The Board summarily affirmed the ALJ's decision. In response to VBZ's claim that the Board's standard non-economic remedies would be excessive in this case, the Board stated that such remedies have served to further the purposes of the Act and that it is incumbent upon respondents to demonstrate compelling reasons for departing from such remedies. Here, VBZ failed to show that the violation was so "isolated" or "technical" as to warrant such departure.

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

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CASE SUMMARY

SAN CLEMENTE RANCH, LTD. (UFW)

25 ALRB No. 5
Case No. 99-RD-1-EC(SD)

Background

Following a decertification election conducted on June 18, 1999, which resulted in a majority for No Union, the United Farm Workers of America, AFL-CIO (UFW), filed ten election objections. On September 17, 1999, the Board's Executive Secretary issued a ruling setting some objections for hearing, dismissing some, and partially dismissing others. The UFW requested review of the Executive Secretary's dismissal of Objection No. 2, alleging that San Clemente Ranch, Ltd. (Employer) made an unlawful promise of benefits when it assured employees that all benefit levels would remain in place if the UFW were voted out, and Objection No. 9, alleging that the Employer conducted unlawful "captive audience" meetings within a period less than 24 hours prior to the election.

Board Decision

The Board overruled the Executive Secretary's dismissal of Objection No. 2 and set it for hearing. The Board held that the UFW had made a prima facie showing that the Employer was not just promising to maintain existing medical benefits if the employees voted to decertify the UFW, but was impliedly promising to withdraw its current proposal to institute a premium cap on what it would pay toward employee health benefits. Thus, a reasonable employee could conclude that the Employer was promising to change the status quo by withdrawing its plan to institute a premium cap on medical benefits in exchange for a nonunion vote by the employees. The objection therefore made a prima facie showing that the Employer had made an unlawful promise of benefit under the standard of NLRB v. Gissel Packing Co. (1969) 395 U.S. 575.

The Board found insufficient declaratory basis for setting Objection No. 9. Therefore, the Board found it did not need to reach the issue of whether the "captive audience" rule adopted by the NLRB in Peerless Plywood Company (1953) 107 NLRB 427 is applicable under the ALRA. Therefore, the Board affirmed the Executive Secretary's dismissal of Objection No. 9.

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CASE SUMMARY

ASSOCIATED-TAGLINE, INC.
(Teamsters Local 890)

Case No. 99-RC-2-SAL
25 ALRB No. 6

Background

Teamsters Local 890 (Union) filed a petition with the National Labor Relations Board (NLRB or national board) seeking to represent the employees of Associated-Tagline, Inc. (Tagline or Employer). The NLRB conducted an election and certified the Union as exclusive representative for purposes of collective bargaining under the National Labor Relations Act (NLRB or national act). Meanwhile, the Union had filed a petition for certification with the Salinas Region of the Agricultural Labor Relations Board (ALRB) in order to represent Tagline's agricultural employees, namely the so-called "application" workers. Although Tagline is a commercial producer of fertilizer products for sale to retail outlets and others, including growers, the Company also provides personnel and equipment to perform field work for grower-customers such as the application of soil amendments and fertilizers as well as the development of irrigation furrows and planting beds. The Salinas Regional Director of the ALRB dismissed the latter petition because it appeared that the national board had asserted jurisdiction over all Tagline employees and the Union appealed the dismissal. The ALRB directed that an evidentiary hearing be held in order that it may examine the actual work of the application employees. Following the hearing, the Investigative Hearing Examiner (IHE) concluded that, as the application employees were engaged in agriculture, the ALRB had jurisdiction and therefore the petition should have resulted in an election among those employees. The Employer filed exceptions to the IHE's decision.

Board Decision

As a threshold matter, the ALRB noted that since "agricultural laborers" are exempt from the coverage of the NLRA, the California Legislature had enacted the Agricultural Labor Relations Act in order to provide farm workers in this State with virtually the same protections afforded their counterparts in the industrial sector. The issue, therefore, was whether the application employees were engaged in agriculture and thereby within the jurisdiction of the ALRB.

Both the NLRB (by Congressional action) and the ALRB (by Legislative direction) are required to define agriculture in accordance with the federal Fair Labor Standards Act (29 USC § 201 et

seq.) and the interpretive bulletins of the United States Department of Labor. On the basis of such authorities, the ALRB found that the application employees, at least when working in the fields of Tagline's grower-customers, were engaged in actual and direct farming (e.g., cultivation and tillage of the soil, fertilizing, and the preparation of seed beds) activities which the U.S. Supreme Court has designated "primary" agriculture. Employees engaged in primary agriculture are exempt from the NLRA regardless of whether their employer is a "farmer." Accordingly, the ALRB affirmed the IHE's finding that the application employees are agricultural employees and directed that an election be held should the Union again file an appropriate petition for certification.

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

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CASE SUMMARY

NASH DE CAMP CO.
(Romualdo Cardenas; UFW)

Case No. 99-RD-2-VI
25 ALRB No. 7

Background

On September 9, 1999, a decertification election was held among the employees of Nash De Camp Company (Employer). The ballots were impounded pursuant to Administrative Order No. 99-9 (September 7, 1999). After the election, the UFW timely filed election objections. On November 22, 1999, the Executive Secretary of the ALRB issued an order setting various election objections for hearing and dismissing various others. Of the objections dismissed, the UFW sought review of two, Objection Nos. 3 and 4.

Board Decision

In Objection No. 3, it is alleged that the Employer initiated and assisted the decertification effort. The Executive Secretary dismissed the objection to the extent that it alleged that checkers and weighers solicited signatures during work time. The Board affirmed the dismissal on the basis that the supporting declarations fail to reflect facts indicating that these employees were either supervisors or would have been perceived as acting on behalf of the Employer. It is not objectionable for an employer to simply allow employees to circulate a decertification petition on company time. (See, e.g., TNH Farms, Inc. (1984) 10 ALRB No. 37.). To the extent that the UFW expressed concern that the dismissal of these allegations strikes from consideration many of the circumstances surrounding the activity of Samuel Cervantes, whose alleged conduct in soliciting signatures was set for hearing, the Board stated that the concern is unwarranted, as the dismissal does not preclude, subject to relevancy objections, the admission of evidence concerning the activity of others in order to elucidate the circumstances surrounding the alleged conduct set for hearing.

In Objection No. 4, it is alleged that Supervisor Miguel Marquez injured UFW organizer Salvador Madrigal by trying to force the door closed on him when Madrigal was getting out of his car to take access. Shortly thereafter, with the assistance of sheriff's deputies, Madrigal effectuated a citizen's arrest and Marquez was handcuffed and taken away in a sheriff's vehicle. The Executive Secretary, while acknowledging the coercive effect of witnessing violence upon a union organizer, concluded that the witnessing by employees of the arrest of Marquez would have had a salutary effect sufficient to negate any potential coercion. The Board found that though it was reasonable to conclude that the observation by employees of the arrest of Marquez would lessen the coercive effect of any violent conduct toward the union organizer, it was not

prepared at this time to conclude that, as a matter of law, it would have completely negated the coercive effect.

Rather, only after a hearing to determine the exact nature of the assault and the surrounding circumstances, including the relative level of dissemination of knowledge of the assault and arrest, would it be possible to fully evaluate the ameliorative effect of the subsequent arrest. Therefore, the dismissal of Objection No. 4 was reversed and the matter set for hearing.

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CASE SUMMARY

COASTAL BERRY COMPANY, LLC 26 ALRB No. 1
99-RC-4 -SAL

Background

An election was conducted among the agricultural employees of Coastal Berry Company, LLC (Coastal or Employer) on June 2 and June 4, 1999, resulting in a final tally of ballots showing 725 votes for the Coastal Berry of California Farmworkers Committee (Comite), 616 votes for the UFW and 19 unresolved challenged ballots. Two hundred thirty-four election objections were timely filed by the United Farm Workers of America, AFL-CIO (UFW). By order dated October 14, 1999, the Board's Executive Secretary set some of the objections for hearing and dismissed others.

Executive Secretary's Order

Of the 234 election objections filed, the Executive Secretary set 98 for hearing. Within the Executive Secretary's order, the objections set for hearing were grouped into 18 broad categories:

I. Whether the designated statewide bargaining unit in which the election was held is inappropriate because (1) employees are employed in two or more noncontiguous geographical areas and (2) there is sufficient dissimilarity in their terms and conditions of employment to warrant other than a statewide unit.

II. Whether the petitioner in the election held on July 23, 1998 and the intervenor in subsequent elections held on May 26, 1999 and June 4, 1999 (respectively Coastal Berry Farmworkers Committee [Committee I] and the Coastal Berry of California Farmworkers Committee [Committee II or Comite]) circulated petitions prior to the 1998 and 1999 elections in order to have an election in which employees would vote, not to select a bargaining representative, but to register opposition to the UFW; whether, on or about July 7, 1998, the puncher for crew four, the wife of a foreman, urged employees to sign her petition "so the Union will stay away"; and whether on or about May 21, 1999, a signature gatherer explained that the "paper" was "for No-Union"; and whether the Committees are therefore inherently incapable of acting as bona fide bargaining representatives insofar as they were created for the primary purpose of thwarting the organizational efforts of the UFW rather than for the purpose of negotiating with Coastal Berry Company, LLC, concerning employees' hours, wages, and other terms and conditions of employment.

III. Whether, prior to the 1998 election, employees with actual or perceived supervisory capacity wore and/or facilitated the distribution of hats with "No UFW" logos on them during work time, monitored the gathering of signatures on the election petitions by questioning signature gatherers about their progress and inquired as to which employees had or had not yet signed the petition; whether signature gatherers on behalf of Committee I suggested to employees that their willingness to sign the petitions was being watched; and consequently, whether lead employees who might reasonably be perceived to possess supervisory authority engaged in anti-UFW conduct prior to the first election which created such a substantial amount of disorder and confusion that it had a continuing and pervasive impact on the ability of employees to exercise free choice in the elections which were held the following season.

IV. Whether, on or about July 15, 1998, and again on or about May 31, 1999, supporters of the anti-UFW effort warned employees that the Employer would disc the fields, resulting in a loss of jobs, if the UFW won the election and, further, that the UFW was forcing the Employer to check employees' legal status and that any employee whose status was in doubt would be denied further employment; whether employees reasonably would believe that the speakers were in a position to know the matters addressed so that such statements might tend to coerce them when exercising their choice in the election; and, if so, whether such conduct had a continuing and pervasive impact on the ability of employees to exercise free choice in the 1999 elections.

V. Whether anti-UFW employees staged a work stoppage prior to the first election in order to isolate employees who presumably were not sympathetic to Committee I by threatening them and actually engaging in violent acts directed at some employees who declined to join the work stoppage and whether such conduct reasonably would tend to compromise employee choice to such an extent that a free and fair election would be impossible during the subsequent season.

VI. Whether the company's failure promptly to discipline anti-UFW employees who were instrumental in various acts of threats and violence towards UFW supporters would lead employees reasonably to believe that the Company was sympathetic to those opposed to

the UFW and whether such inaction by the Employer tended to interfere with employee free choice and to have a continuing impact on the elections held in 1999.

VII. Whether the Company, at the urging of Committee I supporters, agreed to and did in fact isolate UFW supporters and then deny access to them by UFW organizers and whether such treatment was discriminatory and of a nature that would tend to interfere with employee free choice; and whether such conduct, prior to the first election, created an atmosphere of fear and coercion to such an extent that the ability of employees to exercise free choice in the following elections was compromised.

VIII. Whether, approximately one week prior to the May 26, 1999 election, the Employer granted benefits to employees in the form of a 10-cent-an-hour increase in wages, and in addition, announced that for the first time employees would receive double time pay for Memorial Day; and, if so, whether the employees would perceive the proposed changes as an inducement to vote against the UFW; and whether the Employer's conduct tended to interfere with employee free choice.

IX. Whether, on or about May 11, 18, 19, and 22, 1999, the Employer, through various foremen, made a promise of future benefits in the form of revisions to the established bonus program which rewarded those crews which reported no injuries to crew members during a specified time period or crews with perfect attendance, and whether such conduct tended to interfere with employee free choice.

X. Whether some employees were advised by their crew leaders or foremen that the revised bonus program, providing for raffles for such items as TV's, stereos, and a new truck, would not be open to employees who supported the UFW, and whether such pronouncements had a tendency to interfere with employee free choice.

XI. Whether employees perceived the Employer and/or third parties to be instrumental in the anti-UFW campaign and, specifically, whether employees were told that the Employer paid for hats and flyers used in the 1999 campaign and whether, on or about May 25, 1999 and again on May 27, 1999, the crew No. 4 puncher suggested to employees that growers had been financing the anti-UFW effort; and whether the dissemination of such information tended to affect employee free choice.

XII. Whether, in connection with XI, employees would believe reports that area growers were maintaining a "blacklist" of known UFW supporters, the implication being that their job opportunities in the industry were in peril, and whether such rumors tended to interfere with employee free choice.

XIII. Whether, between about May 1 and July 3, 1999, the Company granted anti-UFW supporters preferential access to various crews during work time, including access by nonemployees in excessive numbers while allegedly discharging a foreman for his failure to discipline a UFW supporter who similarly was collecting signatures on work time and whether there was a disparity of treatment that tended to interfere with employee free choice.

XIV. Whether, prior to the June 3, 1999 election, Committee II agents and/or supporters and/or Employer agents threatened other employees that the Employer would cease operations if the UFW won the election by, variously, disking the fields, renting out the land now planted in strawberries, converting to vegetable production, or selling off the Company and, in addition, the INS would be summoned, and whether the hearers reasonably could believe that the spokespersons were acting on behalf of the Employer and/or Committee II, and, if so, whether such statements tended to coerce employees in the exercise of free choice.

XV. Whether, prior to the 1999 elections, Company supervisors and/or Committee II supporters and/or agents engaged in surveillance or created the impression of surveillance that tended to interfere with employee free choice.

XVI. Whether employer representatives and/or Committee II supporters or agents engaged in specific threats as outlined below and if so, whether such threats created an atmosphere of fear or coercion tending to interfere with employee free choice in the election: (1) promise to discharge any employee who failed to vote for Committee II; (2) threats of violence against UFW supporters; (3) forewoman's harassment, discipline, and/or threat to discipline workers because of their support for the UFW; (4) threat by Company's General Manager to discipline an employee for his expression of pro-UFW views; (5) statements by organizers for Committee II immediately preceding the 1999 initial and runoff elections that voting for the UFW "would go bad" for employees.

XVII. Whether the Employer discharged UFW supporters in reprisal for their union activities and whether such conduct reasonably tended to interfere with employee free choice.

XVIII. Whether employees who assisted in the anti-UFW effort were rewarded or compensated by being credited for boxes of berries they did not actually pick, thereby suggesting that the Employer supported the efforts to defeat the UFW, and whether such conduct tended to interfere with employee free choice.

On November 24, 1999, the UFW timely filed a request for review of the dismissal of approximately 140 of its election objections.

Board Decision

The Board found that most of the objections dismissed by the Executive Secretary had been properly dismissed. However, the Board overruled the Executive Secretary's dismissal of four of the objections and set those for hearing:

Objection No. 128: Whether a forewoman predicted that the Employer would go out of business if the UFW won the election, and whether the statement was made by a management official or by someone whom employees would view as being in a position to speak for management;

A portion of Objection No. 130: Whether a foreman predicted to his crew that the field they were working in would not be planted the following year, and whether the foreman was a supervisor or an agent of the Employer or was someone whom employees would view as being in a position to speak for management, and therefore whether his statement constituted a threat of job loss in the event that a particular union won the election;

A portion of Objection No. 148: Whether a forewoman told employees they should vote for the Comite in order to save the Employer from going under, and whether the forewoman was a supervisor or an agent of the Employer or was someone whom employees would view as being in a position to speak for management, and therefore whether her statement could reasonably be perceived by the employees as a threat; and

Objection No. 208: Whether, on or about June 4, Comite supporter Juan Perez made a threat of violence against a UFW supporter and, if so, whether such threat created an atmosphere of fear or coercion tending to interfere with employee free choice in the election.

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CASE SUMMARY

COASTAL BERRY COMPANY, LLC 26 ALRB No. 2
Case No. 99-RC-4-SAL

Background

An election was held among the agricultural employees of Coastal Berry Company, LLC (ER) on May 25 and 26, 1999. No party received a majority of votes, making a runoff necessary. A runoff election was held June 3 and 4, 1999, resulting in a final tally as follows: Coastal Berry of California Farm Workers Committee (Committee) 725; United Farm Workers of America, AFL-CIO (UFW) 616; Unresolved Challenged Ballots 19.

The UFW filed hundreds of elections objections. The Executive Secretary set a number of objections for hearing, including an objection to the geographical scope of the unit. On November 29, 1999, pursuant to motion, the Executive Secretary ordered that the objection to the geographical scope of the unit be heard alone. The unit question was heard by an Investigative Hearing Examiner (IHE) on January 11, 12, and 13, 2000. On March 6, 2000, the IHE issued his decision finding that the separate geographical areas of the ER's operations lacked the requisite community of interest to constitute a statewide unit.

Exceptions to the IHE's decision were timely filed by the Committee, and a reply brief was filed by the UFW. No other party filed exceptions. On March 29, 2000, the Board granted the requests of the Ventura County Agricultural Association and Western Growers Association to file amicus curiae briefs in this matter.

IHE Decision

The IHE made the following factual conclusions: 1) The ER exemplifies a high degree of administrative centralization; 2) While many labor relations decisions are subject to the ultimate control of President Ernie Farley, a great deal of day-to-day discretion in labor matters is lodged in local foremen, who not only enforce quality standards but also routinely decide whether or not to grant leaves of absence or to initiate discipline; 3) There is little common supervision of the employees in the two regions; 4) The nature of the work performed at the two locations is similar; 5) Oxnard employees typically receive lower hourly or piece-rate wages than the Watsonville/Salinas employees; 6) There is little or no interchange of employees between the two geographical locations; and 7) Other terms and conditions of employment are pretty much the same.

In analyzing the unit question, the IHE noted that under the Agricultural Labor Relations Act (ALRA), this Board has been given discretion to divide an employer's employees into more than one unit only where, as here, they are located in two or more noncontiguous areas. The IHE observed that this Board has borrowed from the National Labor Relations Board (NLRB or national board) a variety of factors considered relevant in determining the appropriate unit when an employer operates on noncontiguous areas. These include: 1) The physical or geographical location(s) in relation to each other; 2) The extent to which administration is centralized, particularly with regard to labor relations; 3) The extent to which employees at different locations share common supervision; 4) The extent of interchange among employees from location to location; 5) The nature of the work performed at the various locations and the similarity or dissimilarity of the skills involved; 6) The similarity or dissimilarity in wages, hours, and other terms and conditions of employment; and 7) The pattern of bargaining history among employees. (Bruce Church, Inc. (1977) 2 ALRB No. 38.)

The IHE included a quotation from the decision in Kalamazoo Paper Box Corporation (1962) 136 NLRB 134 [49 LRRM 1715] cited in John Elmore Farms (1977) 3 ALRB No. 16, cautioning that in exercising its discretion in determining the appropriate unit, the national board:

> must maintain the two-fold objective of insuring to employees their rights to self-organization and freedom of choice in collective bargaining and of fostering industrial peace and stability through collective bargaining.... (Kalamazoo Paper Box Corporation, supra, 136 NLRB at p. 137.)

The IHE noted that the NLRB has stated,

> The chief object of the Board...is to join in a single unit only such employees...as have a...community of interest which is likely to further harmonious organization and facilitate collective bargaining. (NLRB Second Annual Report (1937) at p. 125.)

The IHE found that a "legislative presumption" for statewide units was overcome by the facts in this case. He noted the obvious hostility between the group of employees who have organized as the Committee and the UFW. The pro-UFW and anti-UFW employees, he found, simply do not

have that community of interest which is likely to further harmonious organization and facilitate collective bargaining.

The IHE noted that recent NLRB cases have held that the lack of significant employee interchange between two groups of the employer's employees is a strong indicator that the employees enjoy a separate community of interest. (Citing Executive Resources Associates (1991) 301 NLRB 400 [136 LRRM 1308] and Spring City Knitting Co. v. NLRB (9th Cir. 1981) 647 F.2d 1011 [107 LRRM 3307].) The IHE concluded that because of the different union majorities reflected in the voter tallies at Oxnard and Watsonville/Salinas, as well as the differences in the labor pools and the degree of autonomy possessed by Coastal's regional managers, the two geographic areas lacked the requisite community of interest to make a statewide unit appropriate.

Board Decision

The Board noted that the express language of the ALRA limits the Board's discretion in designating appropriate bargaining units. Only when an agricultural employer operates in two or more noncontiguous geographical locations does the Legislature grant the Board some discretion in selecting appropriate bargaining units. When an employer operates in two or more noncontiguous areas, the ALRB has borrowed the NLRB's community of interest factors to help the Board determine whether it is appropriate to certify a statewide unit or separate bargaining units. The Board has stated many times that the specific factors it will consider are the same factors the NLRB has relied upon in determining unit appropriateness.

The Board concluded that there is no statutory language indicating a legislative preference or presumption for a statewide unit in separate sites which are not geographically contiguous. As is apparent from the language of section 1156.2 of the ALRA, the Board found, the only presumption in favor of statewide bargaining units is the irrebuttable presumption in favor of statewide units where the employer's operations are in contiguous geographical areas. Where the operations are in noncontiguous geographical areas, section 1156.2 simply provides that the Board has discretion to determine the appropriate unit or units. There is no language in section 1156.2 or in any other provision of the ALRA which instructs the Board to favor or disfavor statewide units where the employer's operations are noncontiguous. Rather, the Board is free to determine in each case, based on all reasonable and relevant factors, whether a statewide unit or

multiple units are more appropriate. To the extent that prior Board decisions appeared to require the utilization of such a factor, the Board held that they were overruled.

The Board noted that under recent NLRB unit cases, the lack of significant employee interchange between two groups of an employer's employees "is a strong indicator" that the employees enjoy a separate community of interest. (Executive Resources Associates (1991) 301 NLRB 400 [136 LRRM 1308]; Spring City Knitting Co. v. NLRB (9th Cir. 1981) 647 F.2d 1011 [107 LRRM 3307].) Not only was lack of employee interchange a factor in this case, but there was evidence that the Employer was determined to keep the labor pools for its northern and southern operations separate by discouraging the migration of its Oxnard employees north to the Watsonville/Salinas area.

The Committee's contention that "the desires of the employees" constitute one of the specific factors to be considered in determining the appropriate unit was in error, the Board found. That factor was not one of the traditional NLRB community of interest factors. Further, there was no need for the IHE to take testimony on "employees' desires" when there was sufficient other evidence from which to conclude that the two groups of employees did not share a community of interest.

The IHE had also properly rejected the Committee's claim that the UFW should be estopped from arguing for separate units because of its previous position that the unit should be statewide. As the IHE pointed out, the Committee itself made repeated efforts to obtain an election in a Watsonville/Salinas unit only, and specifically reserved the right to appeal the preliminary unit determination in this case. There was no evidence that the Committee was "induced" by the UFW not to file election objections. The UFW could not be penalized for exercising its right to file election objections on the unit question, which is specifically included as a ground for objection in Labor Code section 1156.3(c).

The Board also found that the IHE had correctly ruled that the Board's prior administrative rulings did not preclude a later finding that separate units were appropriate. As the IHE had noted, even if the Board's prior rulings could be construed to imply a determination that the Board would have made the same decision as the Regional Director did at the time it issued its Administrative Order, the Board was still free to make a contrary determination, exercising its sound discretion, in a subsequent proceeding. (Pacific Greyhound Lines (1938) 9 NLRB 557, 573 [3 LRRM 303].)

The Board concluded that it did not need to rely on the IHE's consideration of the relationship between the two groups of employees (i.e., hostility, outcome of the election, and extent of organization) because there were enough other factors to persuade the Board that two units were appropriate under the traditional community of interest factors.

The Board concluded that based on the lack of interchange of employees between the Employer's geographically noncontiguous operations, the Employer's determination to keep labor pools for the two operations separate, the degree of autonomy possessed by the Employer's regional managers and general lack of common supervision of employees in the two regions, the fact that wages of the separate groups of employees are different, and the fact that quality standards and initiation of employee discipline are lodged in local foremen, the finding that the employees in the separate geographical areas of Coastal's operations lacked the requisite community of interest to constitute a statewide unit was correct. The Board thus affirmed the IHE's conclusion that two units were appropriate: one for Monterey/Santa Cruz Counties and one for Ventura County.

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Background

On June 13, 1998, several hundred Coastal Berry Company employees opposed to the organizing efforts of the United Farm Workers of America, AFL-CIO (UFW), staged a work stoppage and demonstration in order to challenge the Company's admitted stance in favor of unionization. They submitted a list of demands, some of which the Company accepted. Nearly one month later, on July 1 and 2, 1998, in response to what the anti-UFW employees perceived as a continuation of a pro-UFW stance by the Company, the work stoppage and demonstration was repeated over a two day period. On the first day, a number of the protestors rushed a field where UFW supporters were harvesting strawberries and attempted with some success to prevent an unspecified number of them from working by such means as intimidation, threats and physical violence. The next day, the protesters presented the Company with a new ultimatum, including demands that there be no retaliation against any of the demonstrators, that the UFW supporters be isolated, and that UFW organizers not be permitted within 100 meters of harvest crews. The Company agreed and the protestors resumed work. Approximately six months later, the Company discharged eleven employees for misconduct during the work stoppage.

Decision of the Administrative Law Judge

Following a full evidentiary hearing in which all parties participated, the Administrative Law Judge (ALJ) found that Respondent had condoned the very misconduct which served as the basis of the discharges. Notwithstanding Respondent's act of forgiveness, however, the ALJ declined to extend the principle of condonation to one of the discriminatees because, in physically assaulting and injuring an employee who declined to support the work stoppage, he was deemed to have engaged in serious and egregious misconduct that rendered him unfit for future employment. The ALJ believed such conduct does not further the purposes and policies of the Act and therefore should not be tolerated under any circumstances. As one of the discriminatees had been the subject of a settlement between the parties, and reinstated prior to hearing, he made no findings as to him, but did recommend that the remaining discriminatees be reinstated with backpay. He found the latter discriminatees to be subject to condonation as well as, in the alternative, to an independent analysis in which he found that they had not engaged in misconduct which would warrant their discharge.

Board Decision

As a threshold matter, the Board acknowledged its established commitment to the principles of condonation, but declined to honor this particular agreement which was designed to discriminate against a group of employees and thus was contrary to the Act and public policy. The Board found the agreement invalid on its face due to Respondent's promise to isolate pro-UFW employees and to deny them access by nonemployee Union organizers. By these pledges, Respondent promised to discriminatorily change a condition of employment of the UFW supporters and to deny both the employees and the organizers their right to communicate with each other as provided by the Board's access regulation. Having rejected condonation under these circumstances, the Board then examined the individual discharge cases in the absence of condonation, and agreed with the ALJ that one of the dischargees had engaged conduct which did not warrant a remedy. The Board also found that two additional employees should not be entitled to reinstatement.

Concurrence and Dissent

Member Mason concurred with the majority's decision to order the reinstatement of Sergio Leal, Paulino Vega, Hilarion Silva, Juan Perez, Alvaro Guzman, Jose Guadalupe Fernandez, Mariano Andrade, and Ernesto Robles. Though Member Mason believes that the Board is constrained by precedent to find that Coastal condoned these employees' unprotected activity, he agrees with the conclusions of the ALJ and the majority that even in the absence of condonation it was not proven that these employees engaged in the conduct for which they were discharged, or their misconduct was not sufficiently serious to warrant discharge in light of the same conduct being tolerated of others who were not discharged. He also concurred with the decision to deny reinstatement to Jorge Perez and Yolanda Lobato, but based this conclusion on the Board's discretion to deny remedies to those who have engaged in misconduct which by its nature would make reinstatement and back pay incompatible with the purposes of the Act. Because Member Mason dissented from the majority's failure to find the condonation doctrine applicable to this case, he would find that Coastal condoned the conduct of Hilda Zuniga, therefore making her subsequent discharge unlawful. Lastly, Member Mason concurred with the majority's

rejection of Coastal's exceptions regarding the General Counsel's alleged failure to fulfill discovery obligations because Coastal has failed to demonstrate prejudice.

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CASE SUMMARY

NASH DE CAMP COMPANY
(UFW)
(Romualdo Cardenas)

Case No. 99-RD-2-VI
26 ALRB No. 4

Background

On September 9, 1999, a decertification election was held among the employees of Nash De Camp Company (Employer). Two hundred and forty-two (242) employees voted in the election. The ballots were impounded pursuant to Administrative Order No. 99-9 (September 7, 1999). The United Farm Workers of America, AFL-CIO (UFW) timely filed election objections, some which were set for hearing by the Executive Secretary and the Board (see Nash De Camp Company (1999) 25 ALRB No. 7). On April 13, 2000, Investigative Hearing Examiner (IHE) Douglas Gallop issued a decision in which he recommended that Objection No. 2, which posed the question of whether the decertification election was held in the same bargaining unit as that which was certified, be sustained. In light of the parties' stipulation that during the pre-petition eligibility period the Employer had 269 agricultural employees at its operations other than at Ducor Ranch, where the election was held, and in light of his ruling that the Employer did not timely raise the issue of whether the 269 employees should not be considered part of the certified statewide bargaining unit, the IHE concluded that an outcome determinative number of potential voters were disenfranchised. He therefore recommended that the election be set aside. The IHE also recommended dismissal of the remaining objections, including one in which the UFW asserted that the decertification petition was barred by a contract agreed to shortly before the filing of the petition. The UFW filed exceptions concerning the contract bar issue, and the Employer filed exceptions concerning the unit issue.

Board Decision

The majority affirmed the IHE's findings and conclusions. However, in affirming the IHE's refusal to allow the Employer to introduce evidence that the 269 agricultural employees who were not included in the election should not be considered part of the certified bargaining unit, the Board relied on the following considerations. Prior to its attempt to introduce such evidence on the last scheduled day of hearing, the Employer had a consistent history of refusing to divulge information about the operations it acquired since the original certification. In its written response to the decertification petition, the Employer stated, under penalty of perjury, that the petitioned-for unit, which consisted only of the workers at Ducor Ranch, included all of its agricultural employees in the state. The Employer also stated in its response that it did not have agricultural operations in two or more noncontiguous geographical areas, which is a statutory

prerequisite for having other than one, statewide bargaining unit. Prior to hearing, the UFW attempted to subpoena information concerning the Employer's other operations, for the specific purpose of determining whether the bargaining unit presently consists of employees other than those at Ducor Ranch. The Employer moved to quash the subpoena, arguing that this information was irrelevant to issues set for hearing. In lieu of compliance with the subpoena, the UFW accepted a stipulation that 269 additional agricultural employees were employed during the voter eligibility period. Then, on the final scheduled day of hearing, the Employer attempted to introduce the very evidence that it sought to quash, evidence which was contrary to the Employer's sworn statements in its response to the petition.

The Board concluded that the Employer's pattern of conduct constituted a serious abuse of the Board's processes that warranted the IHE's decision to exclude the proffered evidence. Therefore, the Board sustained Objection No. 2, set aside the election, and dismissed the petition.

Concurrence and Dissent

Member Ramos Richardson concurred with the majority in affirming the IHE's findings and conclusions as to Objection Nos. 1, 3, 4, 5, and 6. However, with regard to Objection No. 2, Member Ramos Richardson would remand to the IHE to take evidence as to whether the employees in the operations acquired after the original certification should be considered to have been accreted into the unit. While she, too, found the Employer's manipulation of Board processes unacceptable, she would strike the balance in favor of deciding the case on the merits and providing much needed guidance to all parties as to the present scope of the bargaining unit.

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Attachment C

ADMINISTRATIVE ORDERS

ISSUED DURING FISCAL YEAR

1999/2000

ADMIN. ORDER NUMBER	CASE NAME	CASE NUMBER	ISSUE DATE	DESCRIPTION
99-5(a)	Coastal Berry	99-RC-4-SAL	7/22/99	Order Setting Due Date for Filing Response to Coastal Berry Co. with Unexpurgated Copy of Materials in Support Of Exceptions to Challenged Ballot Report
99-5(b)	Coastal Berry	99-RC-4-SAL	7/28/99	Order Granting Petitioner's Request For an Extension of Time to File Response to Employer's Motion To be Served with Unexpurgated Copy Of Exceptions to Challenged Ballot Report
99-6	Sunrise Mushroom	93-CE-43-SAL	7/28/99	Order Approving Formal Bilateral Settlement Agreement

99-7	Coastal Berry	99-RC-4-SAL	8/16/99	*CORRECTED* Order Granting Petitioner's Request for an EOT to File Response to Employer's Motion to be Served With Unexpurgated Copy of Materials in Support of Exceptions to Challenged Ballot Report
99-8	Coastal Berry	99-CE-1-SAL	9/1/99	Order Granting GC's Request for Special Permission for an Interim Appeal of a Ruling By the ALJ and Order Affirming Ruling of ALJ
99-9	Nash de Camp	99-RD-2-VI	9/7/99	Order Denying Request for Review; Order Directing RD to Impound Ballots
99-10	Nash de Camp	99-RD-2-VI	9/14/99	Order Denying Request for Reconsideration
99-11	Nash de Camp	99-RD-2-VI	9/29/99	Order Denying Request for Reconsideration
99-12	Coastal Berry	99-CE-1-SAL	10/13/99	Order Granting Joint Motion for an EOT to File Post-Hearing Briefs

99-13	Scheid Vineyards	92-CE-49-SAL	11/19/99	Order Directing RD to Submit Recommendation
99-14	Ranjit Grewal	98-UC-1-EC	11/24/99	Order Remanding Unit Clarification Petition to RD
2000-1	Nash de Camp	99-RD-2-VI	1/12/00	Order Denying Respondent's Request For Reconsideration
2000-2	Teamsters Local 890	99-UC-1-VI	1/13/00	Order Directing RD to Issue Investigative Report Or Request Issuance Of Notice of Hearing
2000-3	Bud Antle, Inc.	99-UC-1-VI	1/20/00	Order Denying Employer's Request for EOT for RD to Issue Investigative Report or Request Issuance of Notice Of Hearing
2000-4	Bud Antle, Inc.	99-UC-1-VI	1/26/00	Order Denying Request of Teamsters Local 890 that Board Seek to Enjoin Arbitration Proceeding
2000-5	Bud Antle, Inc.	99-CE-25-SAL	1/26/00	Order Denying Request of Teamsters Local 890 that Board Seek to Enjoin Arbitration Proceeding

2000-6	Scheid Vineyards	92-CE-49-SAL (19 ALRB No. 1) 92-CE-51-SAL	3/01/00	Order Granting Joint Parties Request to Hold Matter In Abeyance
2000-7	Coastal Berry	99-RC-4-SAL	3/30/00	Order Granting Leave to File Amicus Curiae Brief
2000-8	Coastal Berry	99-RC-4-SAL	4/04/00	*AMENDED* Order Granting Leave to File Amicus Curiae Brief
2000-9a	Coastal Berry	99-RC-4-SAL	5/04/00	Order Granting UFW Request to Withdraw Remaining Objections and Order Issuing Certifications
2000-9b	Scheid Vineyards	92-CE-49-SAL (19 ALRB No. 1) 92-CE-51-SAL (21 ALRB No. 10)	5/17/00	Order Taking Matter Out Of Abeyance And Directing Parties to Respond to General Counsel's Opposition to Private Party Settlement Agreement
2000-10	Vinifera, Inc.	00-RC-2-SAL	6/28/00	Order Denying Petitioner's Request For Review