

AGRICULTURAL LABOR RELATIONS BOARD
CASE DIGEST SUPPLEMENT, VOLUME 31 (2005)

[NOTE: HADLEY DATE GARDENS, 31 ALRB No. 1, was vacated pursuant to a settlement agreement (Admin. Order No. 2005-06).]

- 102.01 As the definition of “agricultural laborer” contained in section 3(f) of the Fair Labor Standards Act on which it is based has not been amended, nor has it been overruled, it was appropriate to apply the analysis of *Farmers Reservoir & Irrigation Co. v. McComb* (1949) 337 U.S. 755, in determining whether a mutual water company’s employees were engaged in agriculture.
SUTTER MUTUAL WATER CO. 31 ALRB NO. 4.
- 102.01 Only employees of a mutual water company who performed flood irrigation, a primary agricultural function, a substantial amount of the time were under the jurisdiction of the ALRB.
SUTTER MUTUAL WATER CO. 31 ALRB NO. 4.
- 102.01 Employees of a mutual water company not engaged in secondary agriculture, even assuming they could be said to be working on company shareholders’ farms via easements held by the water company, because employees’ work was not incidental to the farming operations.
SUTTER MUTUAL WATER CO. 31 ALRB NO. 4.
- 102.01 An administrative agency created by statute is vested only with the powers expressly conferred by the Legislature and cannot exceed the powers granted to it. (citing *United Farm Workers of America v. ALRB* (1995) 41 Cal.App.4th 303, 314). Therefore, the ALRB is restricted to the definition of “agriculture” set forth in section 1140.4(b).
SUTTER MUTUAL WATER CO. 31 ALRB NO. 4.
- 102.02 ALRB’s jurisdiction is restricted to those employees who fall within the definition of agriculture contained in section 1140(a), with the further limitation that they must also be exempt from NLRB jurisdiction. Annual NLRB budget rider prohibiting NLRB from asserting jurisdiction over certain types of employees of mutual water companies does not affect these jurisdictional limitations.
SUTTER MUTUAL WATER CO. 31 ALRB NO. 4.

- 102.02 Mutual water employees covered by ALRA only when engaged in flood irrigation. Otherwise, they, along with other employees who do not perform primary agricultural work, are in a “no man’s land” not covered by any collective bargaining statute. While this creates an unfair situation, it could be remedied if the California Legislature amended the ALRA to include employees of mutual water companies excluded by the annual NLRB budget rider.
SUTTER MUTUAL WATER CO. 31 ALRB NO. 4.
- 200.01 As the definition of “agricultural laborer” contained in section 3(f) of the Fair Labor Standards Act on which it is based has not been amended, nor has it been overruled, it was appropriate to apply the analysis of *Farmers Reservoir & Irrigation Co. v. McComb* (1949) 337 U.S. 755, in determining whether a mutual water company’s employees were engaged in agriculture.
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SUTTER MUTUAL WATER CO. 31 ALRB NO. 4.

312.01 Section 20355(c) of the Board's regulations requires that voters present identification deemed adequate by the Board agent and lists five examples of adequate identification documents. Where challenged ballot report indicated that the voters contacted after the election presented one or more of the specified forms of identification documentation and that the documentation provided by the listed voters was sufficient to satisfy the Board agents as to the voters' identity, there was no need to specify on an individual basis what form or forms of identification each voter presented. Absent a claim that one or more of the types of documents listed in the report was inherently deficient, listing the documents submitted by each voter would add no further factual basis for challenging the Regional Director's conclusions.

GIUMARRA VINEYARDS CORPORATION AND GIUMARRA FARMS INC., 31 ALRB No. 5

315.01 The Board concluded that the proper unit in an election under the ALRA consisted only of those specified employees of a mutual water company who engaged in primary agriculture a substantial amount of the time. Because the votes of those employees not properly in the unit could not be segregated without affecting the result of the election, the Board dismissed the petition for certification and set aside the election.

SUTTER MUTUAL WATER CO. 31 ALRB NO. 4.

316.06 Election objection dismissed where, even if it were found that the employer's campaign literature concerning union dues was misleading, particularly in light of the unique vulnerability of the agricultural workforce, the union had ample time to refute or explain away the misrepresentations. In so holding, the Board continued to apply the broader standard articulated in *Hollywood Ceramics* (1962) 140 NLRB 221, finding it unnecessary to decide if the narrower standard of *Midland National Life Insurance Co.* (1982) 263 NLRB 127 is applicable precedent that must be followed pursuant to section 1148 of the Agricultural Labor Relations Board.

GUIMARRA VINEYARDS CORP., 31 ALRB No. 6

319.08 The Board concluded that the proper unit in an election under the ALRA consisted only of those specified employees of a mutual water company who engaged in primary agriculture a substantial amount of the time. Because the votes of those employees not

properly in the unit could not be segregated without affecting the result of the election, the Board dismissed the petition for certification and set aside the election.

SUTTER MUTUAL WATER CO. 31 ALRB NO. 4.

457.13 The Board interpreted section 20299 (b) of the Board's regulations implementing the Agricultural Employee Relief Fund (AERF or Fund) as requiring that a motion seeking a determination of eligibility for payout from the Fund must be accompanied by a statement consistent with standards set forth in *John V. Borchard et al.* (2001) 27 ALRB No. 1.

ANDREAS FARMS, 31 ALRB NO. 2

457.13 A motion seeking a determination of eligibility for payout from the Agricultural Employee Relief Fund (AERF or Fund) must be accompanied by a statement that contains a detailed description of key steps taken to achieve full compliance, factors preventing compliance, and the reasons why there is no reasonable likelihood that further compliance efforts will be successful.

ANDREAS FARMS, 31 ALRB NO. 2

457.13 The Board found that the accompanying statement required by section 20299 (b) of the Board's regulations implementing the Agricultural Employee Relief Fund (AERF or Fund) was sufficient when it included a thorough discussion of the Region's collection efforts following bankruptcy proceedings, and a complete description of the Region's efforts to determine whether derivative liability existed.

ANDREAS FARMS, 31 ALRB NO. 2

464.01 Board allows for alternative formulas where "comparable" contracts are not available, as reflected in Board Regulation 20291, subdivision (b)(3), which states that a makewhole specification shall explain the basis for the calculation, including the "comparable contracts or other economic measures upon which it is based."

HESS COLLECTION WINERY, 31 ALRB No. 3

464.01 In determining if a contract should be utilized in formulating a bargaining makewhole specification, whether the union at issue was a party to the contract may be weighed, along with the numerous other factors, such as geographic area, type of industry, the types of

crops grown, nature of the work force, size of the employer, and time period when the contract was signed. Thus, while the fact that a different union was a party to the contract would be a factor to be considered, the numerous other relevant factors may be analyzed to determine if the contract nevertheless is comparable, particularly in the absence of contracts negotiated by the same union.

HESS COLLECTION WINERY, 31 ALRB No. 3

464.01 Parties' early bargaining proposals are not appropriate measures of bargaining makewhole, as they may or may not bear any relation to what they might agree to at the conclusion of good faith negotiations. In addition, where the employer has been found to have bargained in bad faith or unlawfully delayed negotiations, it is likely the union would suffer a loss of support, and be forced to bargain from a weakened position. Thus, using proposals from such negotiations might allow employers to benefit from their unlawful act.

HESS COLLECTION WINERY, 31 ALRB No. 3

464.01 The averaging of bargaining proposals to calculate makewhole would discourage good faith bargaining in the future by providing an incentive for both sides to proffer extreme proposals at the outset of bargaining, with an eye toward the possible calculation of makewhole.

HESS COLLECTION WINERY, 31 ALRB No. 3

464.01 Makewhole specification properly was dismissed without a hearing where it was based on a facially unreasonable methodology that did not effectuate the purposes of the ALRA.

HESS COLLECTION WINERY, 31 ALRB No. 3

464.01 The Board's task is to arrive at a reasonable approximation of what the employees lost as a result of the employer's refusal to bargain in good faith, not to arrive at a perfect calculation of the loss. (citing *Holtville Farms, Inc. v. ALRB* (1985) 168 Cal. App.3d 388, 393.)

HESS COLLECTION WINERY, 31 ALRB No. 3

464.04 Board allows for alternative formulas where "comparable" contracts are not available, as reflected in Board Regulation 20291, subdivision (b)(3), which states that a makewhole specification shall

explain the basis for the calculation, including the “comparable contracts or other economic measures upon which it is based.”
HESS COLLECTION WINERY, 31 ALRB No. 3

464.04 In determining if a contract should be utilized in formulating a bargaining makewhole specification, whether the union at issue was a party to the contract may be weighed, along with the numerous other factors, such as geographic area, type of industry, the types of crops grown, nature of the work force, size of the employer, and time period when the contract was signed. Thus, while the fact that a different union was a party to the contract would be a factor to be considered, the numerous other relevant factors may be analyzed to determine if the contract nevertheless is comparable, particularly in the absence of contracts negotiated by the same union.
HESS COLLECTION WINERY, 31 ALRB No. 3