

**AGRICULTURAL LABOR RELATIONS BOARD
CASE DIGEST SUPPLEMENT
VOLUME 42 (2016)**

- 101.04 Labor Code section 1148 requires the Board to follow applicable precedent under the NLRA, not precedent of the NLRB.
PREMIERE RASPBERRIES, LLC dba DUTRA FARMS, 42 ALRB No. 4.
- 101.04 Labor Code section 1148 requires the Board to follow applicable precedent under the NLRA, not precedent of the NLRB.
T.T. MIYASAKA, INC., 42 ALRB No. 5.
- 104.01 The ALRA, by section 1160.4, conveys upon the Board the power to seek injunctive relief in superior court.
ALRB v. SUPERIOR COURT (2016) 4 Cal.App.5th 675.
- 105.04 The General Counsel acts on behalf of the Board when seeking injunctive relief in superior court, and the relationship is one of attorney-client.
ALRB v. SUPERIOR COURT (2016) 4 Cal.App.5th 675.
- 105.05 The Board may delegate its injunctive relief authority to the General Counsel pursuant to Labor Code section 1149.
ALRB v. SUPERIOR COURT (2016) 4 Cal.App.5th 675.
- 300.02 Under the ALRA, in contrast to the NLRA, under no circumstances may an employer file for an election nor may it withdraw recognition from a certified union based on good faith belief that the union has lost majority support. Rather, except in very limited circumstances where a union disclaims interest in representing employees or becomes defunct, a union can be decertified only through an election initiated by employees.
GERAWAN FARMING, INC., 42 ALRB No. 1
- 316.01 Respondent unlawfully supported and assisted the gathering of signatures for a decertification petition by giving preferential access to decertification supporters by allowing them to circulate the decertification petition during worktime while prohibiting supporters of the incumbent union from circulating a pro-union petition during worktime; by granting the decertification petitioner a “virtual sabbatical” to run the decertification campaign and gather signatures for the petition while continuing to enforce its absence policies with respect to the rest of its employees; and by tacitly approving an unlawful blockage of access to the worksite, which, although instigated by employees supporting the decertification petition, directly facilitated the gathering of signatures for the showing of interest.
GERAWAN FARMING, INC., 42 ALRB No. 1

- 316.01 Respondent unlawfully supported decertification campaign by colluding with an employer association to provide free bus transportation and financial support for the decertification petitioners to travel to Sacramento during workday to protest the dismissal of a previously filed decertification petition. Despite absence of direct evidence that Respondent affirmatively enlisted the employer organization to provide monetary support to the decertification effort, evidence supports inference that Respondent was aware of employer organization's plan to fund employee activity to promote decertification campaign, and that at the very least gave tacit approval to the employer organization's efforts. Failure to do anything to repudiate or disassociate itself from employer organization's action results in finding that Respondent ratified those actions. Even if the employer organization's actions were not directed, authorized, or ratified by Respondent, liability is found on basis of apparent authority, in that employees had reasonable basis to that third party employer organization acted on behalf of Respondent, or on basis that Respondent gained an illegal benefit from third party's wrongful conduct and realistically could have prevented the conduct or could have alleviated its harmful effects on the employees' rights.
GERAWAN FARMING, INC., 42 ALRB No. 1
- 316.11 Respondent unlawfully supported decertification by granting a unilateral wage increase during the decertification campaign and by unlawfully soliciting employee grievances so as to encourage workers to bypass the union and deal directly with the employer.
GERAWAN FARMING, INC., 42 ALRB No. 1
- 316.13 After a decertification petition is filed, the employer has the right to campaign, but must refrain from making threats of force or promises of benefits. Where an employer champions its employees' right to choose against their certified bargaining representative, the Board is entitled to view the employer's actions with suspicion.
GERAWAN FARMING, INC., 42 ALRB No. 1
- 316.18 Respondent unlawfully supported and assisted the gathering of signatures for a decertification petition by giving preferential access to decertification supporters by allowing them to circulate the decertification petition during worktime while prohibiting supporters of the incumbent union from circulating a pro-union petition during worktime; by granting the decertification petitioner a "virtual sabbatical" to run the decertification campaign and gather signatures for the petition while continuing to enforce its absence policies with respect to the rest of its employees; and by tacitly approving an unlawful blockage of access to the worksite, which, although instigated by employees supporting the decertification petition, directly facilitated the gathering of signatures for the showing of interest.
GERAWAN FARMING, INC., 42 ALRB No. 1

- 316.19 An employer may not solicit its employees to circulate or sign decertification petitions, and it may not threaten or otherwise coerce employees in order to secure their support for such petitions. Other than to provide general information about the process in response to an employee's unsolicited inquiry, an employer has no legitimate role in that activity, either to instigate or to facilitate it.
GERAWAN FARMING, INC., 42 ALRB No. 1
- 316.19 Where it is found that an employer has instigated or initiated a decertification effort, the petition itself is tainted and the election must be set aside. However, in order to find instigation or initiation of decertification, the evidence must show that the employer implanted the idea of decertification in the minds of the employees who later pursued decertification. But even when the evidence fails to disclose unlawful instigation or initiation of a decertification effort, the employer's subsequent unlawful conduct in supporting the decertification effort may compel a finding that the decertification process was tainted by illegality, making it impossible to know whether the signatures gathered in support of the decertification petition represent the workers' true sentiments, so as to require dismissal of the decertification petition and setting aside the results of the decertification election.
GERAWAN FARMING, INC., 42 ALRB No. 1
- 405.07 Respondent unlawfully supported decertification by granting a unilateral wage increase during the decertification campaign and by unlawfully soliciting employee grievances so as to encourage workers to bypass the union and deal directly with the employer.
GERAWAN FARMING, INC., 42 ALRB No. 1
- 407.01 Employee group promoting decertification interfered with the rights of other employees who did not want to participate in a protest aimed at supporting the decertification effort, by blocking work entrances to prevent those employees from leaving the protest and going to work. Liability for this interference with workers' rights can be imputed to the employer, where the employer tacitly supported the blockage by taking no action to enable employees who wished to report to work to do so. An employer that acquiesces in the exclusion of employees from the work place by any union or antiunion group will be regarded as having discriminated against the excluded employees in violation of the Act.
GERAWAN FARMING, INC., 42 ALRB No. 1

- 407.02 Respondent unlawfully supported decertification campaign by colluding with an employer association to provide free bus transportation and financial support for the decertification petitioners to travel to Sacramento during workday to protest the dismissal of a previously filed decertification petition. Despite absence of direct evidence that Respondent affirmatively enlisted the employer organization to provide monetary support to the decertification effort, evidence supports inference that Respondent was aware of employer organization's plan to fund employee activity to promote decertification campaign, and that at the very least gave tacit approval to the employer organization's efforts. Failure to do anything to repudiate or disassociate itself from employer organization's action results in finding that Respondent ratified those actions. Even if the employer organization's actions were not directed, authorized, or ratified by Respondent, liability is found on basis of apparent authority, in that employees had reasonable basis to that third party employer organization acted on behalf of Respondent, or on basis that Respondent gained an illegal benefit from third party's wrongful conduct and realistically could have prevented the conduct or could have alleviated its harmful effects on the employees' rights.
GERAWAN FARMING, INC., 42 ALRB No. 1
- 409.03 Training conducted by ALRB Regional Director to advise Respondent's farmworkers of their right to support or oppose decertification of union does not establish that employer remediated or repudiated its misconduct, notwithstanding fact that Respondent voluntarily allowed the ALRB to take access to conduct the training. Under *Passavant Mem. Area Hospital* (1978) 237 NLRB 138, an employer may assert such repudiation as an affirmative defense. But in order to prevail with that defense, the employer must establish that it did not engage in any unlawful conduct after the publication of the repudiation; that the repudiation was timely, unambiguous and specific as to the coercive conduct; and that the employees were provided with assurances that the employer would not interfere with their rights in the future. Respondent's *Passavant* defense fails because it engaged in unlawful conduct following the ALRB training.
GERAWAN FARMING, INC., 42 ALRB No. 1
- 414.04 The analysis of protected concerted activity in *Nash-De-Camp Co. v. ALRB* (1983) 146 Cal.App.3d 92, which focused on whether employee's inquiry into his own and his wife's pay had "real consequence" to other employees and whether it was supported by other employees is inconsistent with the decisional precedent of the NLRB.
SABOR FARMS, 42 ALRB No. 2.

- 414.04 Conduct of two employees who left work in protest of assignment that they believed was unfair and contrary to employer's established practice was distinguishable from the facts of *Nash-De-Camp Co. v. ALRB* (1983) 146 Cal.App.3d 92 because the employees' complaints were not of a "personal character" and were not linked "merely incidentally" but, rather, the two employees acted together and in concert regarding an issue arising out of working conditions.
SABOR FARMS, 42 ALRB No. 2.
- 422.02 Employer's arbitration agreement was unlawful because employees reasonably would understand the agreement to prohibit the filing of unfair labor practice charges with the ALRB.
PREMIERE RASPBERRIES, LLC dba DUTRA FARMS, 42 ALRB No. 4.
- 422.02 Employer's arbitration agreement was unlawful because employees reasonably would understand the agreement to prohibit the filing of unfair labor practice charges with the ALRB.
T.T. MIYASAKA, INC., 42 ALRB No. 5.
- 423.01 The analysis of protected concerted activity in *Nash-De-Camp Co. v. ALRB* (1983) 146 Cal.App.3d 92, which focused on whether employee's inquiry into his own and his wife's pay had "real consequence" to other employees and whether it was supported by other employees is inconsistent with the decisional precedent of the NLRB.
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SABOR FARMS, 42 ALRB No. 2.
- 423.01 Two employees who left work rather than perform assignment that they believed was unfair and contrary to employer's normal policy of rotating employees around harvesting machine in a pre-determined order were engaged in protected concerted activity.
SABOR FARMS, 42 ALRB No. 2.

- 423.04 Conduct of two employees who left work in protest of assignment that they believed was unfair and contrary to employer's established practice was distinguishable from the facts of *Nash-De-Camp Co. v. ALRB* (1983) 146 Cal.App.3d 92 because the employees' complaints were not of a "personal character" and were not linked "merely incidentally" but, rather, the two employees acted together and in concert regarding an issue arising out of working conditions.
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SABOR FARMS, 42 ALRB No. 2.
- 438.09 Respondent unlawfully supported decertification by granting a unilateral wage increase during the decertification campaign and by unlawfully soliciting employee grievances so as to encourage workers to bypass the union and deal directly with the employer.
GERAWAN FARMING, INC., 42 ALRB No. 1
- 439.10 Under the ALRA, in contrast to the NLRA, under no circumstances may an employer file for an election nor may it withdraw recognition from a certified union based on good faith belief that the union has lost majority support. Rather, except in very limited circumstances where a union disclaims interest in representing employees or becomes defunct, a union can be decertified only through an election initiated by employees.
GERAWAN FARMING, INC., 42 ALRB No. 1
- 439.13 Under the ALRA, in contrast to the NLRA, under no circumstances may an employer file for an election nor may it withdraw recognition from a certified union based on good faith belief that the union has lost majority support. Rather, except in very limited circumstances where a union disclaims interest in representing employees or becomes defunct, a union can be decertified only through an election initiated by employees.
GERAWAN FARMING, INC., 42 ALRB No. 1
- 451.04 Even if an employer's workplace policy is adopted more than six-months before the filing of an unfair labor practice charge, the employer's ongoing maintenance and enforcement of the policy within the limitations period renders the charge timely.
PREMIERE RASPBERRIES, LLC dba DUTRA FARMS, 42 ALRB No. 4.

- 451.04 Even if an employer's workplace policy is adopted more than six-months before the filing of an unfair labor practice charge, the employer's ongoing maintenance and enforcement of the policy within the limitations period renders the charge timely.
T.T. MIYASAKA, INC., 42 ALRB No. 5.
- 502.17 (Concurring opinion) A rule of acquiescence that obliges the Board to follow the opinion of a single court of appeal is inconsistent with the development of statewide labor law, the role provided to the Board by the Legislature.
SABOR FARMS, 42 ALRB No. 2.
- 504.01 Class action waiver in employer's arbitration agreement did not violate the ALRA and was enforceable under the Federal Arbitration Act.
PREMIERE RASPBERRIES, LLC dba DUTRA FARMS, 42 ALRB No. 4.
- 504.01 Class action waiver in employer's arbitration agreement did not violate the ALRA and was enforceable under the Federal Arbitration Act.
T.T. MIYASAKA, INC., 42 ALRB No. 5.
- 506.01 The Board is bound to follow decisions of California courts over conflicting federal NLRA precedent.
PREMIERE RASPBERRIES, LLC dba DUTRA FARMS, 42 ALRB No. 4.
- 506.01 The Board is bound to follow decisions of California courts over conflicting federal NLRA precedent.
T.T. MIYASAKA, INC., 42 ALRB No. 5.
- 600.16 Communications between the Board and General Counsel when determining whether to seek injunctive relief are protected by the attorney-client privilege.
ALRB v. SUPERIOR COURT (2016) 4 Cal.App.5th 675.
- 703.01 Labor Code section 1164.9, providing for exclusive judicial review of the Board's orders in mandatory mediation and conciliation proceedings in the appellate courts, is unconstitutional because it divests the superior court of its original jurisdiction granted under article VI, section 10 of the California Constitution.
GERAWAN FARMING, INC. v. ALRB (2016) 247 Cal.App.4th 284.