

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD
REGIONAL DIRECTORS' MEETING MINUTES

TUESDAY, JUNE 23, 2020

There was no physical meeting location. Attendance was by remote meeting only (meeting number 160 232 9226), via the attendee's choice of either Webex video-conference or teleconference.

Time: 2:00 p.m.

Board Members Present: Chair Victoria Hassid

Members Barry Broad, Cinthia Flores, Isadore Hall,
and Ralph Lightstone

Others Present:

Executive Secretary Santiago Avila-Gomez

Chief Board Counsel Todd Ratshin

Executive Assistant to the Board Chair Ed Hass

General Counsel (GC) Julia Montgomery

AGPA (GC) Audrey Hsia

Regional Director (Salinas) Franchesca Herrera

Regional Director (Visalia) Chris Schneider

PUBLIC COMMENT

The ALRB affords an opportunity to members of the public to address the Board or Regional Directors on items of interest that are either on the meeting agenda, or within the jurisdiction of the Board or Regional Directors but are not on the noticed agenda, during the public meeting. The ALRB is not permitted to take action on items that are not on the noticed agenda, but may refer items to staff for future consideration. The ALRB reserves the right to limit the time for speakers.

1. Compliance Report for Salinas Region

Presented by Franchesca Herrera

The Compliance Report for the ALRB Salinas Region, submitted on June 22, 2020, was accepted as submitted.

The Salinas Region also submitted a report about Settlement Agreements, on May 31, 2020. This report was accepted as submitted.

2. Compliance Report for Visalia Region

Presented by Chris Schneider

The Compliance Report for the ALRB Visalia Region, submitted on June 4, 2020, was accepted as submitted.

3. Comments on Compliance Reports

One Compliance Report item was about a grower who denied access to their property, for a reading to farmworkers in their employ, about a Charge against Labor (CL) case.

In response to the Board Chair's question about the ALRB's authority, in cases where growers refuse to grant access for a reading related to a CL case, Franchesca Herrera provided the following additional details:

- If both a CE and a CL case are related, ALRB tries to persuade growers to combine the readings, even though the CL reading doesn't apply to the grower directly. Growers are not always cooperative in such cases.

- If the denial of access is *only* for a Charge against Labor (CL), and there is no related Charge against an Employer (CE), ALRB has to be creative, to inform farmworkers about the CL case and about their rights:
 - TV and radio.
 - Social media.
 - Direct mail.

In response to a question about how well growers understand the basics of the ALRA law, Franchesca Herrera stated that the issue is often more with managers in the field, than with the owners of the farms. Some managers don't know that they can't fire an employee for asking for a raise, for reporting unsafe working conditions, for handing out union flyers on their own time, etc.

ALRB and growers need to educate field managers, so that they don't violate the ALRA law.

Franchesca Herrera cited a few examples:

- An employee requested a wage increase, was fired, and was awarded makewhole pay for what they would have earned through the end of the season.
- In a Charge against Labor (CL) case, a company and a union were both in error, because they were negotiating without union certification.
- An employee was wrongfully fired for complaining about a supervisor. This employee declined to be reinstated, but received full backpay for what they would have earned, had they not been fired.

4. Regional Office Personnel

Presented by Chris Schneider and Franchesca Herrera

- Salinas had a 40% vacancy rate, but is now 100% staffed.
- Two new staff members in Salinas were brought on-board during the Shelter in Place order for Covid-19.
- There are currently two open positions in Visalia. Interviews have been conducted for one of the two positions.

5. Effects of Covid-19 on Various ALRB Offices

Presented by Chris Schneider and Franchesca Herrera

If Covid-19 follows the pattern seen in previous infectious disease pandemics, a second wave of Covid-19 might strike during this autumn.

The way that the public prefers to interact with the ALRB varies by office. The ways in which the current first wave of Covid-19 has affected those interactions, and how a second wave might affect future interactions, also varies by office.

Salinas Office

Only one charge was filed during the period when this office was closed, from March 19 until June 8. After this office physically reopened, five new charges were filed in two weeks. Some reasons for this discrepancy in filed charge volume include:

- Many farmworkers are distrustful in the current environment, to conduct business by phone.
- It can be more difficult if farmworkers have to reach out electronically, rather than in person. The farmworkers haven't met face to face first, to build trust.
- There were problems with forwarding office calls to staff cell phones, causing many disconnects.
- The preferred access in most offices is to walk in the door and file the charge in person, not by phone, social media, or email.
- Farmworkers have continued working during the pandemic, and were at health risk. But ALRB offices were closed, so the staff wasn't facing a health risk. As a result, some farmworkers perceived ALRB as not helpful to the public interest, when the office wasn't open to serve farmworkers, their concerns, and their resource needs.

Santa Rosa Office

This office is still closed to the public, and won't reopen until at least mid-July

Only one staff member is currently on site:

- Meets with appointments that were made by telephone first, and come to the office at the appointed time to file a charge.
- Calls are sometimes made from just outside the office door, via cell phone, to ask staff to open the door, to collect the charge filing.

Reopening this office is difficult, because visitors have to walk through another (not ALRB) office/waiting room, which is closed.

Oxnard Office

This office was closed, but five charges were filed in May.

There is a separate ALRB door, without going through the lobby, but this door is locked now.

This office has a close working relationship with other community organizations, so farmworkers are used to accessing ALRB Oxnard through those community organizations, rather than by dropping in.

As a result, interactions between this office and farmworkers hasn't changed much from the existing model, because of office closure due to Covid-19.

Indio and Visalia offices

- Staff from these offices drive to a farmworker at their location, even far away, to get their signature on a charge declaration – even on holidays.
- Staff participate in Friday evening and Saturday radio shows, to raise public awareness of the ALRA, and of resources available through the ALRB.
- No unions have contracts in the Indio/Visalia area, and there is not as much organizing as in other areas of state.
- From 2016 to now, the Visalia region received on average 3 to 6 new CEs per month; this spiked to 14 new filings in March 2020.
- Only six new CEs were received in April-May, while the office was closed due to the pandemic
- The volume of CEs received picked up again after the office reopened in June.

Covid-19 Precautions in Regional Offices:

- All ALRB offices have Plexiglas dividers
- All staff use cloth masks, hand sanitizer, and disinfectant wipes.
- All offices provide disposable paper masks to farmworkers who drop in.
- ALRB Administrative Division has been very responsive about providing masks, hand sanitizer, and other supplies quickly, and reimbursing Regional Directors for outlays to buy these supplies out of their own pockets.

Social Distancing

- To obtain declaration signatures, office staff reads documents over the phone, so farmworkers know in advance, what they will be signing. This pre-signature discussion reduces exposure time at the office.
- Offices now use contactless drop off and pickup of documents.
- Only one person is in a car on ALRB visits to farmworker locations (ALRB staff can't be 6 feet apart in a car)

Impact of Covid-19 on number of charges filed by farmworkers

- In Visalia, most CEs are initiated by phone
- In Indio, most CEs are initiated by walk-in
- More charges were filed at start of year 2020 than usual.
- 23 new CEs were filed in 2019.
- 37 new CEs were filed in 2017.

2017 was an anomaly, because a local community-based organization filed 17 charges. If these charges had been filed through the standard GC process, it would have been only one case for all 17 workers, not a separate case for each of the 17 farmworkers. So there were technically only 21 distinct CEs filed in 2017, not 38.

Comments about Effects of Covid-19 on ALB Regional Offices

Board Member Cinthia Flores remarked that the first wave of Covid-19 caught everyone, including ALRB, off guard. How is ALRB better prepared to meet the anticipated second wave of Covid-19 in the autumn of 2020? Specifically, if the reopened ALRB regional offices have to close again, what plans have the regional offices made for maintaining contact, if and when farmworkers can no longer simply drop in? How will ALRB inform the public about these alternatives (telephone, web site, etc.) instead of dropping in?

In response to these questions, Chris Schneider and Franchesca Herrera provided the following additional details:

- In Salinas, the current phone system can't accept messages, and the outgoing message is in English only. ALRB needs to install a better system if offices have to close again
- Using ALRB staff cell phones is not a viable option; the phones don't work well for ALRB needs, and there are security and privacy issues, too

- If another shelter in place order is issued for the anticipated Wave 2 in the fall, it will limit investigations (access) for CE cases. That would delay the process for farmworkers, for hearing their issues and obtaining compensation, due to more complicated logistics.
- The shelter in place order in Monterey was lifted only two weeks ago. Monterey is still in process of getting back to normal, and might have to go back to sheltering in place in the fall.
- Some issues are still being figured-out now, including the number of people in a room, social distancing, remote connectivity issues, and rotating who staffs each reopened office and who works remotely.
- Some interviews with farmworkers about CE and CL charges are being conducted via Webex/Zoom, which sometimes has connectivity issues
- One regional office video-conferenced one compliance/ULP mediation session, during the Stay at Home order. This mediation was successful, even though there was no face-to-face, in-person interaction.
- To help identify who the charge will be filed against, farmworkers who have smart phones can send photos of their latest pay stub to ALRB. The pay stub shows the name of the actual employer to file charges against, instead of the name of the supervisor or of the farm labor contractor.
- California's Central Valley is still in the first wave of Covid-19. Not many in the agricultural sector are thinking ahead to Wave 2; most are still coping with the ongoing Wave 1.

As a general comment, it was noted that farmworkers are often directed to ALRB by their union or by a community-based organization. Thus, ALRB is their second outreach for help.

On top of this perceived “runaround” of having to work through two or more organizations before getting needed help, farmworkers are further hindered in reaching out to obtain justice, due to the Shelter in Place orders.

These two factors are already frustrating enough for farmworkers. Therefore, the ALRB experience needs to be as easy as possible, so as not to further frustrate farmworkers who are seeking justice.

For the anticipated Wave 2, ALRB must not allow short staffing and faulty telephone equipment to make the experience even more frustrating for farmworkers.

Meeting participants discussed ideas for ALRB to be better prepared for the anticipated Covid-19 Wave 2:

- A better phone system would help in the anticipated second wave shutdowns, because there would be less wait time and fewer dropped calls.
- ALRB is creating a simple online form for filing charge information (CE and CL), including what is the issue, names of charging party and charged party, and how and when to contact the charging party.
- These “smart forms” need to be encrypted, to protect farmworker information.
- Does ALRB have any data security concerns, beyond the standard security features already provided in WhatsApp and on Facebook? Need to research, how will ALRB provide any needed higher levels of security, beyond these standards?
- ALRB will investigate the validity of each CE or CL charge remotely (using phone, email, and social media), when Shelter in Place orders won’t allow on-site investigations at farms or at farmworkers’ homes.
- To encourage farmworkers to continue to reach out to ALRB, even when they can’t drop into a closed regional office, make the alternative phone/text/email/web as easy to use as possible.
- Reach out to farmworkers who have no access or limited access to phone, text, email, or web.
- Encourage farmworkers who do have phone/text/email/web access, to share information with their coworkers.
- Increase the use of contactless pick-up and drop-off at regional offices, only one staff person on site in each office (to maintain social distancing).
- Rotate who is on office duty for contactless drop-off and pick-up on any given day.
- Establish easy-to-use web portals in Spanish, and in the most common indigenous languages (such as Mixteco).
- Provide better web accessibility, compliant with Americans with Disabilities Act (ADA) requirements.
- Investigate how new technology might help ALRB to be more responsive to farmworkers needs during the Covid-19 pandemic. For example, a farmworker could ring the doorbell at a closed ALRB regional office, and the doorbell triggers a call to an ALRB staff member’s cell phone. By merely ringing the doorbell, the farmworker can talk instantly and directly with ALRB staff, even when nobody is physically in the office.

Union Membership in CE Cases

The majority of charges filed against employers in the Visalia and Salinas regions are individual filers, not filed for them by a union. Because farmworkers are working directly with ALRB and not through their union, accessibility of regional office staff (via electronic means) continues to be essential during the Covid-19 pandemic.

In response to a question about how ALRB knows whether a farmworker has union representation, when the worker files a CE, Franchesca provided the following additional details:

- Sometimes a charge is filed by a union on behalf of one or more farmworkers.
- Sometimes a farmworker answers the question on the charge form, asking how did you hear of ALRB, by stating “through the union.”
- Regional Offices can start to specifically gather information about whether each farmworker who files charges has union representation for the filed charge, if the Board requests that the regional offices routinely collect this information.

6. Effects of Covid-19 on Election Activity

Presenter: Franchesca Herrera

Covid-19 has slowed down election activity and organizing:

- Early in 2020, there was a big push to organize in the cannabis industry. Many Notices to Take Action (NAs) were filed before the pandemic, but since then, there has been little follow-up activity.
- One election (in the cannabis industry) was held in the Salinas region so far in 2020. There was no election challenge.
- Chris Schneider added that there was also one election in Visalia so far this year. The votes was overwhelmingly in favor of the union, and there was no election challenge.

In response to a question from Board Member Ralph Lightstone, about whether ALRB can and should relax the tight timelines for elections, due to Covid-19, Franchesca Herrera added the following details:

- The tight timeline between election notice, election, and ballot counting does not appear to be affected by Covid-19.
- To protect farmworker health, stationary central polling places for union elections have been equipped with Plexiglas dividers.

- There are also mobile voting booths now. These booths go out to each crew in the fields, so they can vote without a central polling place, where risk of exposure might increase due to closer proximity.
- The biggest remaining challenge is how to distribute notices of an upcoming union election to farmworkers, before an election.

ALRB Outreach Activity

Presenters: Franchesca Herrera and Chris Schneider

ALRB makes radio broadcasts in Spanish and Mixteco:

- GC Field Examiner Santiago Ventura, from the Visalia office, went along on several broadcasts, to make comments in Mixteco.
- Listeners are from Oaxaca and all over the U.S., and especially in all areas of California that are covered by one of their network stations. This radio outreach is heard primarily in agricultural areas.

The GC has been discussing the idea of including informational pamphlets in packages of food that are distributed to farmworkers. This idea has not been implemented yet.

Office hours, for the ALRB offices that are currently open, include both before and after farmworker hours, so workers can meet with ALRB on their own time.

7. Future ALRB Meetings

Presenter: Victoria Hassid

The Board plans to hold public Board meetings every other month:

- There will be no public meeting for July.
- The next public meeting will be on August 11, 2020, via video conference and telephone.
- ALRB will reach out to community groups that can participate in the second Covid-19 discussion, at the August public Board meeting.

Regional Director (RD) meetings will be held quarterly.

- Each RD meeting includes updates on ALRB Regional Office activities.
- No presentation topic has been decided yet, for the next RD meeting.

8. Meeting adjourned at 3:14 P.M.