

AGRICULTURAL LABOR RELATIONS BOARD
CASE DIGEST SUPPLEMENT
VOLUME 45 (2019)

MONTEREY MUSHROOMS, INC.
(Francisco Lopez)

45 ALRB No. 01
Case No. 2016-CE-032-SAL

423.06 Employee who was discussing the potential impact of new harvesting equipment on wage rates with other employees was engaged in protected concerted activity. MONTEREY MUSHROOMS, INC. 45 ALRB No. 01.

423.06 Supervisor's instruction to an employee not to "opine on anything" at an upcoming meeting where new harvesting equipment was to be discussed would reasonably restrain employees in the exercise of their rights under the Act where the employee had previously expressed concern that the new equipment would adversely impact employee wages. MONTEREY MUSHROOMS, INC. 45 ALRB No. 01.

466.04 Violation was not "isolated" or "technical" where supervisor's instruction to employee not to speak at a meeting occurred in a room where the entire crew was gathering for the meeting and there was evidence of significant interchange among different crews and, accordingly, standard employee noticing remedies were appropriate. However, because the bargaining unit was limited to employer's Royal Oaks facility, there was an absence of evidence concerning Respondent's other California facilities, and in light of the particular facts of the case, the Board limited noticing to the members of the bargaining unit. MONTEREY MUSHROOMS, INC. 45 ALRB No. 01.

466.04 The Board's standard remedy requires the respondent to mail copies of the notice of all employees employed during a one-year period commencing with the date of the violation. MONTEREY MUSHROOMS, INC. 45 ALRB No. 01.

GJ FARMS, INC.
(Damian Fuentes)

45 ALRB No. 2
Case No. 2017-CE-020-SAL

452.08 The usage of the postmark date as the controlling date for filing has been referred to as the "postmark rule." To trigger application of the Board's "postmark rule," a party must utilize either registered mail or certified mail to effect service. GJ FARMS, INC., 45 ALRB No. 2.

452.13 Board granted a motion to deem the allegations in the complaint admitted and motion for default judgment when Respondent failed to provide any reason to excuse its untimely filed answer. GJ FARMS, INC., 45 ALRB No. 2.

452.13 In determining the appropriateness of granting relief from default judgement, the Board has looked to the standard set forth in Code of Civil Procedure section 473. Under this statute, a party seeking relief from default judgement based on an alleged mistake must show good cause for that relief by proving the existence of satisfactory excuse for the occurrence of that mistake. GJ FARMS, INC., 45 ALRB No. 2.

GERAWAN FARMING, INC. 45 ALRB No. 03
(United Farm Workers of America) Case No. 2015-CE-023-VIS, et al.

101.04 The Board is bound to follow the NLRB's precedent in *The Boeing Co.* (2017) 365 NLRB No. 154 and *Lutheran Heritage Village-Livonia* (2004) 343 NLRB 646 in determining the validity of employer workplace rules. GERAWAN FARMING, INC. 45 ALRB No. 03.

420.20 Employer's maintenance of workplace rule prohibiting photography or recordings on its property was not unlawful and did not prevent employees from engaging in protected activity. GERAWAN FARMING, INC. 45 ALRB No. 03.

451.03 Where an employer's promulgation of a workplace rule is alleged to be unlawful, the six-month limitations period begins to run on the date the rule is promulgated. GERAWAN FARMING, INC. 45 ALRB No. 03.

451.04 Challenge to employer's ongoing maintenance of unlawful workplace rule is timely if filed within six months of time when rule has been maintained. GERAWAN FARMING, INC. 45 ALRB No. 03.

452.05 General Counsel adopted narrow legal theory of violation concerning employer's workplace rule by challenging only the maintenance of the rule and not the promulgation of the rule. GERAWAN FARMING, INC. 45 ALRB No. 03.

452.06 Board may not find an unfair labor practice for conduct not alleged in complaint nor fully and fairly litigated. GERAWAN FARMING, INC. 45 ALRB No. 03.

600.02 The simple presentation of evidence important to an alternative claim does not satisfy the requirement that any claim at variance from the complaint be "fully and fairly litigated" in order for the Board to decide

the issue without transgressing the respondent's due process rights. GERAWAN FARMING, INC. 45 ALRB No. 03.

600.13 Discriminatee's failure to testify at hearing did not require dismissal of unfair labor practice allegation because evidence from other sources may be sufficient to prove a prima facie case of retaliation. GERAWAN FARMING, INC. 45 ALRB No. 03.

UNITED FARM WORKERS OF AMERICA 45 ALRB No. 04
(GARCIA) Case No. 2018-CL-003-VIS

105.04 The ALRA, like the NLRA, gives the General Counsel complete and sole discretion as to whether to issue a complaint and the legal theories upon which to do so. UNITED FARM WORKERS OF AMERICA (GARCIA) 45 ALRB No. 04.

105.04 The General Counsel does not serve the private interests of the parties but rather acts on behalf of the public in vindicating public rights and interests. UNITED FARM WORKERS OF AMERICA (GARCIA) 45 ALRB No. 04.

428.02 Union's goal of seeking judicial review of earlier decertification decision
443.03 did not remove its threat to picket an employer from the proscription of Labor Code section 1154, subdivision (h) because union's threat plainly stated a recognitional purpose and a violation will be found so long as one of the union's objects in making a picketing threat is recognitional. UNITED FARM WORKERS OF AMERICA (GARCIA) 45 ALRB No. 04.

442.01 There must be restraint or coercion to constitute an unfair labor practice under Labor Code section 1154, subdivision (a)(1). UNITED FARM WORKERS OF AMERICA (GARCIA) 45 ALRB No. 04.

442.10 Labor Code section 1154, subdivision (a)(2), like NLRA Section 8(b)(1)(B) upon which it is based, prohibits a union from restraining or coercing an employer "in the selection of his representatives" for collective bargaining or grievance adjustment purposes. UNITED FARM WORKERS OF AMERICA (GARCIA) 45 ALRB No. 04.

442.10 An important interest that Congress was protecting in NLRA Section 8(b)(1)(B) was an employer's interest in having an individual of its own choosing to represent it in dealings with the union that represents its

employees. UNITED FARM WORKERS OF AMERICA (GARCIA) 45 ALRB No. 04.

- 450.01 The requirement that a charging party have “an interest in the outcome” of an unfair labor practice proceeding in order to file a charge is broadly construed consistent with the ALRA’s remedial purposes. UNITED FARM WORKERS OF AMERICA (GARCIA) 45 ALRB No. 04.
- 450.01 A charging party’s dubious character, evil or unlawful motives, or bad faith does not deprive the Board of its jurisdiction to conduct the inquiry into the alleged unfair labor practices. UNITED FARM WORKERS OF AMERICA (GARCIA) 45 ALRB No. 04.
- 453.02 Agricultural employee has standing to file unfair labor practice charge alleging non-certified union unlawfully threatened to picket the employee’s employer in violation of Labor Code section 1154, subdivision (h). UNITED FARM WORKERS OF AMERICA (GARCIA) 45 ALRB No. 04.
- 450.02 The General Counsel lacks authority to commence its own investigations or prosecutions of unfair labor practices. UNITED FARM WORKERS OF AMERICA (GARCIA) 45 ALRB No. 04.
- 451.03 Labor Code section 1160.2 contains an armed services tolling provision such that the six-month period shall be computed from the day the “person aggrieved” by an unfair labor practice is discharged. UNITED FARM WORKERS OF AMERICA (GARCIA) 45 ALRB No. 04.
- 453.02 The Board looks to the standards set forth in the Code of Civil Procedure and California decisional law to determine whether judgment on the pleadings is appropriate. UNITED FARM WORKERS OF AMERICA (GARCIA) 45 ALRB No. 04.
- 457.01 The Board has authority to consider remedial issues sua sponte in the absence of exceptions to an ALJ’s remedial order. UNITED FARM WORKERS OF AMERICA (GARCIA) 45 ALRB No. 04.
- 457.03 Causes of action alleged in unfair labor practice complaint remanded to ALJ for further proceedings after Board determined, on review of an ALJ order granting a motion for judgment on the pleadings, that the complaint failed to state facts sufficient to establish unfair labor practices as a matter of law. UNITED FARM WORKERS OF AMERICA (GARCIA) 45 ALRB No. 04.

DAVID ABREU VINEYARD.
MANAGEMENT, INC.
(Jose Manuel Campos Perez)

45 ALRB No. 5
Case No. 2017-CE-024-SAL

- 455.02 Board declined to dismiss exceptions where, although the exceptions were vague as to the particular errors in the ALJ's decision that were alleged, the party set forth the portions of the record relied upon and its legal arguments and the nature of the exceptions were sufficiently identifiable to enable the Board to consider them. DAVID ABREU VINEYARD MANAGEMENT, INC. 45 ALRB No. 5.
- 600.05 General Counsel's alleged failure to recall witnesses to rebut testimony that they had engaged in workplace misconduct did not result in "adoptive admission" of the misconduct. The adoptive admission exception to the hearsay rule had no application because no evidence was excluded under the hearsay rule. DAVID ABREU VINEYARD MANAGEMENT, INC. 45 ALRB No. 5.
- 600.17 ALJ appropriately declined to draw an adverse inference where, after employees testified on behalf of the General Counsel, respondent's witnesses accused the employees of having engaged in workplace misconduct and the employees were not recalled to rebut the accusations but had been open to cross-examination had respondent wished to examine them concerning the alleged misconduct. DAVID ABREU VINEYARD MANAGEMENT, INC. 45 ALRB No. 5.
- 455.03 ALJ was not required to credit supervisor's second-hand account of
600.14 incident during which an employee allegedly threatened a foreperson
600.17 merely because the testimony was un rebutted where the ALJ's reasons for discrediting the testimony were supported by the record. DAVID ABREU VINEYARD MANAGEMENT, INC. 45 ALRB No. 5.

REVEILLE FARMS, LLC
(LOPEZ)

45 ALRB No. 6
Case No. 2018-CE-066-SAL

- 452.13 The Board looks to precedent under Code of Civil Procedure section 473 for guidance in determining whether to grant a party relief from a default judgment. REVEILLE FARMS, LLC, 45 ALRB No. 6.
- 452.13 The party seeking relief from default has the burden of showing good cause for excusing its mistake, inadvertence, surprise, or neglect. REVEILLE FARMS, LLC, 45 ALRB No. 6.

- 452.13 Counsel's unfamiliarity with the ALRA or ALRB procedures does not constitute good cause to support granting relief from default. REVEILLE FARMS, LLC, 45 ALRB No. 6.
- 452.13 A party's, or its counsel's, failure to research the law or ALRB regulations will not support granting relief from default. REVEILLE FARMS, LLC, 45 ALRB No. 6.
- 452.13 The General Counsel has no legal obligation to notify a respondent before moving for entry of default judgment. REVEILLE FARMS, LLC, 45 ALRB No. 6.
- 452.13 A party must first establish good cause to support granting relief from default before the Board will consider whether such relief will result in any, or no, prejudice the General Counsel or charging party. REVEILLE FARMS, LLC, 45 ALRB No. 6.
- 452.13 A party's diligence after discovering its failure to timely answer a complaint is a separate requirement and not an alternative to the party's burden to show good cause for granting relief from default. REVEILLE FARMS, LLC, 45 ALRB No. 6.

<p>GERAWAN FARMING, INC. (HERNANDEZ/UNITED FARM WORKERS OF AMERICA)</p>	<p>45 ALRB No. 7 Case No. 2015-CE-014-VIS, et al.</p>
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- 309.04 Unfair labor practice charges were not rendered moot by union's decertification because the charges did not allege bargaining-related violations dependent on the union's certification. GERAWAN FARMING, INC., 45 ALRB No. 7.
- 414.01 Where the reason advanced by an employer for a discharge either did not exist or was in fact not relied on, the inference of unlawful motivation established by the General Counsel remains intact, and is indeed logically reinforced by the pretextual reason proffered by the employer. GERAWAN FARMING, INC., 45 ALRB No. 7.
- 414.01 The fact a discriminatee is subsequently rehired does not moot the earlier unlawful discriminatory failure to hire. GERAWAN FARMING, INC., 45 ALRB No. 7.
- 414.03 In order to establish a prima facie case of unlawful discrimination, the General Counsel must show protected concerted or union activity,

employer knowledge of such activity, and a causal connection between the activity and the adverse action of the employer. GERAWAN FARMING, INC., 45 ALRB No. 7.

414.03 Proof of general company anti-union animus aids the General Counsel's
421.01 burden of proof but is not sufficient in itself to prove the charge; it must be shown the employee's protected activity was a motivating factor in the employer's adverse action. GERAWAN FARMING, INC., 45 ALRB No. 7.

414.03 The fact an employer rehired one union supporter does not defeat a claim
416.05 of discrimination based on the employer's failure to rehire another employee. GERAWAN FARMING, INC., 45 ALRB No. 7.

414.03 To rebut a presumption of discrimination after the General Counsel demonstrates a prima facie case, it is not enough for the employer to simply present a legitimate reason for its action. It must persuade by a preponderance of the evidence that it would have taken the same action in the absence of the employee's protected activity. GERAWAN FARMING, INC., 45 ALRB No. 7.

414.04 The fact a crew boss attempted to conceal his knowledge of an employee's union activity while testifying and provided a false reason for his decision not to rehire the employee provides powerful evidence of a hidden unlawful motivation. GERAWAN FARMING, INC., 45 ALRB No. 7.

416.01 The timing of an employer's adverse action in a failure to rehire case
416.03 must take into account the seasonal nature of agricultural employment. In seasonal employment, the season following the employee's protected activity is often the first opportunity for the employer to retaliate against the employee without blatantly seeming to discriminate. GERAWAN FARMING, INC., 45 ALRB No. 7.

416.01 The General Counsel need to prove the existence of a "formal" policy for contacting former employees for recall to establish a prima facie case of discrimination in a failure to rehire case. Evidence of established, although informal, practices used by forepersons to fill their crews at the beginning of a season is sufficient. GERAWAN FARMING, INC., 45 ALRB No. 7.

- 451.01 While the General Counsel is permitted to include in an unfair labor practice complaint allegations broader than those specifically alleged in an underlying charge, the Board is barred under Labor Code section 1160.2 from enlarging or adding to the language of the charge so as to include unfair labor practice committed more than six months before the charge was filed. GERAWAN FARMING, INC., 45 ALRB No. 7.
- 451.01 Allegations that are time-barred under Labor Code section 1160.2, which insufficient to support a finding of a violation, nevertheless may be considered as background evidence relating to an alleged violation occurring within the limitations period. GERAWAN FARMING, INC., 45 ALRB No. 7.
- 452.06 Unfair labor practice charge which alleged discriminatory conduct as to several employees but did not mention another alleged discriminatee was insufficient to permit finding a violation as to that alleged discriminatee, especially as to an alleged violation occurring after the charge was filed. GERAWAN FARMING, INC., 45 ALRB No. 7.
- 456.03 The Board will reject a party's unsupported and speculative assertions
600.15 that the General Counsel failed to produce all prior statements of a witness after direct examination. GERAWAN FARMING, INC., 45 ALRB No. 7.

UNITED FARM WORKERS OF AMERICA 45 ALRB No. 8
(GARCIA) Case No. 2018-CL-003-VIS
(45 ALRB No. 4)

- 455.02 Where no party excepts to a remedy but the Board orders certain
457.12 remedies for an unfair labor practice *sua sponte* and remands other issues to the administrative law judge for further proceedings, respondent should have filed a motion for reconsideration before the Board and its exception to such remedies after the administrative law judge's decision on remand was barred. UNITED FARM WORKERS OF AMERICA (GARCIA) 45 ALRB No. 8.
- 428.01 Labor Code section 1154, subdivision (h) is intended to protect both employers and employees from recognitional picketing threats by noncertified unions. UNITED FARM WORKERS OF AMERICA (GARCIA) 45 ALRB No. 8.

- 434.04 Collective bargaining negotiations historically have been conducted in private and closed to public. GERAWAN FARMING, INC. v. ALRB (2019) 40 Cal.App.5th 241.
- 434.04 Rank-and-file employees generally do not have a right to attend collective bargaining negotiations between their certified representative and employer, and employee presence during negotiations would frustrate efforts at reaching agreement and with the union's role as exclusive representative. GERAWAN FARMING, INC. v. ALRB (2019) 40 Cal.App.5th 241.
- 434.04 A certified bargaining representative and employer each have the right to select their own bargaining teams without interference from the other party. GERAWAN FARMING, INC. v. ALRB (2019) 40 Cal.App.5th 241.
- 700.01 Proposition 59 (Cal. Const., art. I, § 3, subd. (b)) does not establish a constitutional right of public access to mandatory mediation and conciliation proceedings. GERAWAN FARMING, INC. v. ALRB (2019) 40 Cal.App.5th 241.
- 700.01 The mediator presiding at mandatory mediation and conciliation proceedings is not a public official. GERAWAN FARMING, INC. v. ALRB (2019) 40 Cal.App.5th 241.
- 701.10 Mandatory mediation and conciliation operates as a continuation of ordinary collective bargaining, and the availability of mandatory mediation and conciliation itself is an instrument of the bargaining process. GERAWAN FARMING, INC. v. ALRB (2019) 40 Cal.App.5th 241.
- 701.10 Mandatory mediation and conciliation is not intended to be an adversarial process; it is a factfinding procedure to allow the mediator to create a record from which to determine contract terms on which the parties are unable to reach agreement. GERAWAN FARMING, INC. v. ALRB (2019) 40 Cal.App.5th 241.
- 701.10 The parties to mandatory mediation and conciliation proceedings are able to reach agreement at any time throughout the process. GERAWAN FARMING, INC. v. ALRB (2019) 40 Cal.App.5th 241.

- 701.10 The mandatory mediation and conciliation statute does not divide the process into separate mediation and arbitration phases; the “mediation” referred to in statute is an interest arbitration proceeding, but the parties are able to mediate or negotiate throughout the process. GERAWAN FARMING, INC. v. ALRB (2019) 40 Cal.App.5th 241.
- 701.10 The purpose of mandatory mediation and conciliation is to build a labor negotiation relationship, and public access would frustrate efforts at compromise and achieving collective bargaining agreement. GERAWAN FARMING, INC. v. ALRB (2019) 40 Cal.App.5th 241.