AGRICULTURAL LABOR RELATIONS BOARD
CASE DIGEST SUPPLEMENT
VOLUME 46 (2020)

Note New Section 600.21 Sealing Records

KING CITY NURSERY, LLC (Elisabed Martinez)	Admin. Order No. 2020-01-P Case No. 2019-CE-040-SAL

450.05 508.01	Like its federal counterpart, NLRA Section 11(a), Labor Code section 1151, subdivision (a) clearly provides the Board shall have access to employer records at all reasonable times, whether the records belong to one "being investigated" or one already "proceeded against." KING CITY NURSERY, LLC, Admin. Order No. 2020-01-P.
453.11	As a general rule, the Board will entertain interlocutory appeals only when the issues raised cannot be addressed effectively through exceptions pursuant to regulations 20282 or 20370, subdivision (j). KING CITY NURSERY, LLC, Admin. Order No. 2020-01-P.
453.11	Interlocutory review pursuant to Board regulation 20242, subdivision (b) may be allowed where the issue involves an alleged violation of privacy rights that cannot be remedied effectively at a later date. KING CITY NURSERY, LLC, Admin. Order No. 2020-01-P.
508.01	The General Counsel has authority to obtain records or testimony from a respondent via subpoena to aid in its investigation of an unfair labor practice charge before issuance of a complaint. KING CITY NURSERY, LLC, Admin. Order No. 2020-01-P.
508.02	The General Counsel's investigative subpoena power is broad and limited only by the requirement that the information sought must be relevant to the inquiry. KING CITY NURSERY, LLC, Admin. Order No. 2020-01-P.
508.06	Failure to raise an objection to a subpoena in a petition to revoke constitutes a waiver of the objection. KING CITY NURSERY, LLC, Admin. Order No. 2020-01-P.

400.03
419.04 An employer's conduct in repudiating or attempting to avoid a collective bargaining agreement by closing down its business is inherently destructive of important employee rights under our Act. PREMIERE RASPBERRIES, LLC, Admin. Order No. 2020-05-P.

449.01 In a compliance proceeding, Board regulation 20291, subdivision (f) allows the region to join other persons or entities that may be derivatively liable to satisfy a Board ordered remedy. PREMIERE RASPBERRIES, LLC, Admin. Order No. 2020-05-P.

463.01 The Board's bargaining makewhole remedy compensates employees for the difference between their actual wages and benefits and the wages and benefits they would have earned under a contract resulting from good faith bargaining between their employer and union. PREMIERE RASPBERRIES, LLC, Admin. Order No. 2020-05-P.

463.01 Bargaining makewhole is not a punitive remedy, but rather is designed to make employees whole for losses of pay suffered as a result of delays in the bargaining process by providing them the economic benefits they would have received had a timely contract been reached. PREMIERE RASPBERRIES, LLC, Admin. Order No. 2020-05-P.

464.02 Typically, a bargaining makewhole award will run from the date the employer refused to bargain or began bargaining in bad faith until such time as the employer commences or resumes good faith bargaining. PREMIERE RASPBERRIES, LLC, Admin. Order No. 2020-05-P.

464.02 In a technical refusal to bargain case where the employer refuses to implement the terms of a mandatory mediation and conciliation contract ordered into effect by the Board, the effective date of the contract will not terminate the employer's bargaining makewhole liability. Rather, the employer's makewhole liability will continue to run until it implements the economic terms of the MMC contract. PREMIERE RASPBERRIES, LLC, Admin. Order No. 2020-05-P.

467.01 Modification of a prior remedial order may be warranted where the facts and the law make such modification necessary to remedy fully a party's unfair labor practice. PREMIERE RASPBERRIES, LLC, Admin. Order No. 2020-05-P.

400.01
402.01 The Board applies the standard prescribed in *Guess?, Inc.* (2003) 339 NLRB 432 to determine whether an employer's discovery inquiries in another adjudicatory proceeding interfere with or restrain employee rights in violation of Labor Code section 1153, subdivision (a). FOWLER PACKING CO., INC., 46 ALRB No. 1.

400.01
402.01 To determine whether an employer's discovery inquiries in another forum violate our Act, the Board applies a three-part test: (1) is the questioning relevant; (2) does the questioning have an illegal objective; and (3) if the questioning is relevant and does not have an illegal objective, the employer's interest in obtaining the information must outweigh the employees' confidentiality interests under Labor Code section 1152. FOWLER PACKING CO., INC., 46 ALRB No. 1.

451.04 Unfair labor practice charge is not time-barred where it alleges a continuing violation and the employer's alleged unlawful conduct continues during the six-month period preceding the filing of the charge. FOWLER PACKING CO., INC., 46 ALRB No. 1.

451.04 The Board appropriately may consider unfair labor practices occurring after a charge is filed so long as they relate to the allegations of the charge and arise from them. FOWLER PACKING CO., INC., 46 ALRB No. 1.

606.01 Res judicata, or claim preclusion, applies if a second lawsuit involves (1) the same cause of action (2) between the same parties (3) after a final judgment on the merits in the first lawsuit. FOWLER PACKING CO., INC., 46 ALRB No. 1.

606.01 Collateral estoppel, or issue preclusion, applies (1) after a final adjudication (2) of an identical issue (3) actually litigated and necessarily decided in the first action and (4) asserted against one who was a party or in privity with that party. FOWLER PACKING CO., INC., 46 ALRB No. 1.

606.01 Federal court's discovery order did not collaterally estop General Counsel from prosecuting unfair labor practice charge alleging discovery inquiries violated the ALRA, including because the General Counsel was not in privity with the charging parties involved in the federal litigation. FOWLER PACKING CO., INC., 46 ALRB No. 1.

WONDERFUL ORCHARDS, LLC | 46 ALRB No. 2
(Imelda Vazquez-Lozano) | Case No. 2016-CE-023-VIS

417.02 For an involuntary discharge to occur, it is not necessary for the employer to explicitly state the employee is discharged. A discharge occurs when an employer's words or conduct reasonably cause an employee to believe he was discharged. The analysis focuses on the perspective of the employee, not the employer, and whether the employee reasonably believed a termination occurred. WONDERFUL ORCHARDS, LLC, 46 ALRB No. 2.

417.02 Where supervisor halted work to instruct crew to work faster, responded to crew objections by stating that the crew could either work or put down their tools and leave, and failed to take any action as the crew began to depart, the crew reasonably understood they were being terminated. WONDERFUL ORCHARDS, LLC, 46 ALRB No. 2.

417.02 Where employees believed they had been terminated by their supervisor, safety official's request that the employees wait and talk to her failed to clarify that the employees were not terminated because the safety official never stated why she wanted the employees to wait or that they had not been terminated. WONDERFUL ORCHARDS, LLC, 46 ALRB No. 2.

458.01 Board acted sua sponte to add a reinstatement remedy inadvertently omitted by ALJ and to modify notice mailing period to conform to Board's standard remedies. WONDERFUL ORCHARDS, LLC, 46 ALRB No. 2.

PREMIERE RASPBERRIES, LLC | Admin. Order No. 2020-13-P
(United Farm Workers of America) | Case No. 2018-CE-004-SAL

106.02 While the Board encourages voluntary settlements of labor disputes, the Board only will approve such settlements that are consistent with, and further, the policies of the Agricultural Labor Relations Act. In deciding whether a settlement effectuates the purposes and policies of the Act, the Board considers such factors as the risks involved in protracted litigation which may be lost in whole or in part, the early restoration of industrial harmony by making concessions, and the conservation of the Board's resources. The Board additionally considers whether the parties to the dispute and the employees affected by the dispute have agreed to the settlement, whether the settlement was the product of a grievance-arbitration mechanism, and whether the agreement was entered into voluntarily by the parties, without fraud or coercion. One additional factor stressed by the Board is that a settlement agreement should be

given effect only where the unfair labor practices are substantially remedied by the agreement. PREMIERE RASPBERRIES, LLC, Admin. Order No. 2020-13-P.

106.02 Board regulation 20298, subdivision (f)(1)(A) requires the region to provide a full statement on behalf of the General Counsel in support of a settlement agreement when submitting an agreement to the Board for approval. PREMIERE RASPBERRIES, LLC, Admin. Order No. 2020-13-P.

106.02 While a charging party and respondent in an unfair labor practice proceeding are free to commence settlement negotiations, Board regulation 20298 requires the involvement of the region before the finalization of settlement terms, including for the purpose of ensuring the agreement is consistent with and furthers the policies of the ALRA. PREMIERE RASPBERRIES, LLC, Admin. Order No. 2020-13-P.

106.02 Bargaining makewhole is a form of backpay and thus constitutes wages, and the Board will not approve a settlement that fails to characterize such relief accurately for tax purposes. PREMIERE RASPBERRIES, LLC, Admin. Order No. 2020-13-P.

106.02 Where a settlement involving bargaining makewhole relief proposes to redistribute settlement proceeds due to workers who cannot be located to other affected workers who are located, such redistribution terms must be consistent with, and not restrict, the ALRB's obligation to use diligent efforts to locate employees for at least two years. PREMIERE RASPBERRIES, LLC, Admin. Order No. 2020-13-P.

106.02 Notice remedies serve important purposes aimed at dispelling the coercive effects of a party's unfair labor practices, informing the workers of the outcome of unfair labor practice proceedings, and educating workers of their rights under the ALRA. PREMIERE RASPBERRIES, LLC, Admin. Order No. 2020-13-P.

106.02 Notice remedies ordered by the Board should be included in any settlement reached during the course of compliance proceedings. PREMIERE RASPBERRIES, LLC, Admin. Order No. 2020-13-P.

106.02 While notice posting and reading remedies may be rendered moot where an employer has closed down, notice mailing to affected workers remains a viable remedy. PREMIERE RASPBERRIES, LLC, Admin. Order No. 2020-13-P.

SMITH PACKING, INC. | 46 ALRB No. 3
(Jose Vasquez) | Case No. 2018-CE-048-SAL

417.02 Employer telling workers they could return to work or go to another company after they engaged in a work stoppage to complain about malfunctioning equipment was unlawful discharge. SMITH PACKING, INC., 46 ALRB No. 3.

417.02
421.23
423.11
Employer violated the Act when it told employees it is their decision to go work for another company or return to work under employer's conditions. The ultimate effect of such words is the same whether phrased more explicitly as an ultimatum (i.e., "get to work or leave") or in less clear terms suggesting the employees are free to choose what they want to do (i.e., "it's your decision if you want to work or not"). In either case the message is the same: the employees must abandon their protected activity and return to work under the conditions dictated by the employer or they no longer have a job. Similar statements have been held sufficient to cause employees reasonably to believe they had been discharged. SMITH PACKING, INC., 46 ALRB No. 3.

423.11 It is not necessary for the employer to use any "magic words" or to state explicitly an employee is "fired," "terminated," or "discharged." SMITH PACKING, INC., 46 ALRB No. 3.

423.07 Workers' concerted complaints, expressed concerns, and work stoppage to protest malfunctioning belt and broken equipment that resulted in lower piece rate payments were protected under the Act. SMITH PACKING, INC., 46 ALRB No. 3.

RINCON PACIFIC, LLC. | 46 ALRB No. 4
(Juan Alvarez) | Case No. 2014-CE-044-SAL

604.01
606.03
Laches is not a defense in unfair labor practice proceedings to require dismissal of a complaint based on the General Counsel's delays in issuing a complaint. The Board will not punish wronged agricultural employees otherwise entitled to a remedy for the General Counsel's administrative delays, which are not the fault of the workers and are beyond their control. RINCON PACIFIC, LLC, 46 ALRB No. 4.

457.04
600.01
Due process generally requires only that a party be provided notice and an opportunity to be heard. There was no prejudice or due process violation when respondent received notice of the filing of the charge but failed to properly preserve information and witness contact information potentially relevant to its defense. Respondent was aware the charge was still being investigated, as it

responded twice to subpoenas issued by the General Counsel and never received notice of the dismissal of the charge. RINCON PACIFIC, LLC, 46 ALRB No. 4.

606.03 In circumstances where a respondent is uncertain of the status of a charge, it is incumbent on the party to clarify the status of the matter with the General Counsel. RINCON PACIFIC, LLC, 46 ALRB No. 4.

452.06 A complaint is not limited to the precise allegations in the charge. As long as there is a timely charge, the complaint may allege any matter sufficiently related to or growing out of the charged conduct. RINCON PACIFIC, LLC, 46 ALRB No. 4.

452.06 The Board has adopted the NLRB's three-factor test for determining whether new allegations in a complaint are "closely related" to those in the original charge. Factors considered are: 1) whether the new allegations are of the same class or involve the same legal theory; 2) whether the new allegations arise from the same factual situation or sequence of events; and 3) the Board may consider whether a respondent would raise the same or similar defenses to both allegations. RINCON PACIFIC, LLC, 46 ALRB No. 4.

452.06 The new allegation does not have to allege a violation of the same section of the Act. In addition, the second factor will be satisfied "where the two sets of allegations 'demonstrate similar conduct, usually during the same time period, with a similar object,' or there is a causal nexus between the allegations and they are part of a chain or progression of events, or they are part of an overall plan to undermine union activity." RINCON PACIFIC, LLC, 46 ALRB No. 4.

452.06 The complaint's failure-to-rehire allegations were "closely related" to and logically stemmed from the underlying charge allegations involving a discriminatory reduction in hours, and thus could be viewed as involving a similar pattern of conduct to punish workers who had exercised their rights by engaging in a work stoppage and participating in a Board investigation. RINCON PACIFIC, LLC, 46 ALRB No. 4.

451.02
452.06 Respondent was not denied due process when three new discriminatees who had not participated in the previous work stoppage and were not mentioned in the original ULP charge were added to the complaint two days before the hearing. The unpled allegations of the three discriminatees were closely related to the other failure to rehire claims in the original charge, and their claims were fully litigated. RINCON PACIFIC, LLC, 46 ALRB No. 4.

414.01 In seasonal employment, the season following protected union or other concerted activity is often the first opportunity for an employer to retaliate for such conduct without blatantly seeming to discriminate. Thus, it would be

416.03 misleading to place undue emphasis on the time periods involved. The passage of time between the concerted activity and the alleged unlawful retaliation in the case did not in and of itself support the conclusion that the allegations in the charge and complaint did not arise out of the same protected activity. RINCON PACIFIC, LLC, 46 ALRB No. 4.

455.03 No bias shown in mere fact ALJ credited General Counsel's witnesses over employer's. There is nothing inherently arbitrary in believing one side's witnesses and not the other's. RINCON PACIFIC, LLC, 46 ALRB No. 4.

452.01 All that is required in a complaint is that there is a plain statement of the conduct alleged to be an unfair labor practice so that a respondent can put on a defense. The General Counsel is not required to plead her evidence or the theory of the case in the complaint. RINCON PACIFIC, LLC, 46 ALRB No. 4.

602.01 The record did not establish a finding that punchers and row bosses had supervisory authority when row bosses assisted with hiring but ultimate hiring authority rested with the foremen. RINCON PACIFIC, LLC, 46 ALRB No. 4.

602.01 Whether the row bosses and punchers had actual supervisory authority is not dispositive of the issue of whether they acted as respondent's agents. The question of agency does not necessarily depend upon actual authorization or subsequent ratification of the actor's wrongful conduct. The dispositive issue is the workers' subjective belief and the employee's apparent authority. RINCON PACIFIC, LLC, 46 ALRB No. 4.

602.03 Row bosses and punchers acted as respondent's agents when the evidence showed they acted as conduits of information about work-related matters between respondent's supervisors and crew members. When various punchers and row bosses told former workers they were on a list of people the company would not hire or when they told them there was currently no work available, it was reasonable for the discriminatees to believe that the punchers and row bosses spoke on behalf of the employer. RINCON PACIFIC, LLC, 46 ALRB No. 4.

414.01
416.01 In cases such as this one, where the alleged adverse employment action is the failure to rehire an employee, the General Counsel's prima facie case must also include a showing that the employee applied for an available position for which they were qualified and were unequivocally rejected. If the employer has a practice or policy of contacting former employees to offer them re-employment, then the prima facie showing can be satisfied by proof of the employer's failure to offer the employee work when work became available. RINCON PACIFIC, LLC, 46 ALRB No. 4.

423.01 Where an employer takes action against employees based on protected group activity, the General Counsel is not required to prove specific individual employees engaged in the protected concerted activity. RINCON PACIFIC, LLC, 46 ALRB No. 4.

204.01
415.06
423.01 Former supervisory employee was unlawfully refused rehire as a rank-and-file employee because the employer treated those who previously worked at employer's other ranch, including the former supervisor, as categorically ineligible for rehire based upon the protected activity that had occurred there. Former supervisor was no longer a statutory supervisor at the time he sought harvesting work, and there was no evidence that he was denied rehire based upon his conduct as a supervisor. Thus, he was entitled to the Act's protection. RINCON PACIFIC, LLC, 46 ALRB No. 4.

421.10 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. RINCON PACIFIC, LLC, 46 ALRB No. 4.

422.01 A violation of ALRA section 1153, subdivision (d) is not derivative in nature, but rather requires an independent and separate analysis. To establish a violation of subdivision (d), it must be shown that the employer discriminated against an employee who filed a charge, testified in a proceeding, or otherwise participated in an ALRB proceeding. The record did not support finding that the employer violated section 1153(d) of the Act, since there was no evidence that employees were retaliated against for filing a charge or otherwise participating in an ALRB proceeding. RINCON PACIFIC, LLC, 46 ALRB No. 4.

466.04 The Board has made it clear that workers attending a notice reading are entitled to be compensated at a rate that ensures they do not lose pay as a result of their attendance. RINCON PACIFIC, LLC, 46 ALRB No. 4.

466.04 It would be absurd to penalize the workers by reducing their ordinary pay in order to attend a reading concerning employer's violations of the Act. The principles of the Act dictate that workers should receive a fair approximation of the pay they ordinarily would receive. In situations where workers are paid on a piece-rate basis, the Board orders the Regional Director to determine the rate of pay. After the Regional Director determines the reasonable rate of pay in compliance proceedings in this case, the employer will have the opportunity to challenge these calculations should it have a basis for arguing that employees will be paid more than they reasonably would be entitled to during the notice reading. RINCON PACIFIC, LLC, 46 ALRB No. 4.

466.04 Under Board precedent, the party opposing a standard Board remedy has the burden to show compelling reasons for departing from the standard remedy, such as showing the violation was “isolated” or “technical” in nature. The violations were neither isolated nor technical when 12 discriminatees from one ranch were subsequently denied rehire at several ranches. RINCON PACIFIC, LLC, 46 ALRB No. 4.

459.09 Although an employer need not offer reinstatement to a position that no longer exists for valid business reasons, the employer is nevertheless required to offer reinstatement to a substantially equivalent position. While an employee who handled human resources for the employer’s farming companies testified that raspberry harvesters tend not to like harvesting strawberries, because strawberry work is more labor intensive, this did not foreclose a finding that work in strawberries was substantially equivalent to raspberry harvesting. RINCON PACIFIC, LLC, 46 ALRB No. 4.

PREMIERE RASPBERRIES, LLC Admin. Order No. 2020-18-P
(United Farm Workers of America) Case No. 2018-CE-004-SAL

600.21 The Board denied the region’s request to seal employer’s confidential financial information from bank statements, check registers, income and expense statements, and balance sheets, since the region did not actually lodge any such records with its sealing request, but rather only offers second-hand descriptions of the contents of those records in its supporting statement and declaration. The region had argued that the public interest would be best served by sealing the information, which was typically private and some of it was proprietary but also essential to determining if the employer had hidden any assets or had an alter ego or successor. PREMIERE RASPBERRIES, LLC, Admin. Order No. 2020-18-P.

600.21 The Board has authority to allow the filing of records under seal, and adopted the standard set forth in California Rules of Court, rule 2.550 as the appropriate standard to be used by the Board in evaluating requests to file records under seal. PREMIERE RASPBERRIES, LLC, Admin. Order No. 2020-18-P.

600.21 Under California Rules of Court, rule 2.550, records are presumed to be open to the public unless confidentiality is required by law. The Board may order a record to be filed under seal only if it finds facts that establish: (1) There exists an overriding interest that overcomes the right of public access to the record; (2) the overriding interest supports sealing the record; (3) a substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; (4) the proposed sealing is

narrowly tailored; and (5) no less restrictive means exist to achieve the overriding interest. An order sealing records must state the facts that support the findings and direct the sealing of only those documents and pages, or portions of documents and pages, that contain the material that needs to be placed under seal. All other portions must be included in the public file. The sealing of a record based solely on a stipulation or agreement between the parties is expressly prohibited. PREMIERE RASPBERRIES, LLC, Admin. Order No. 2020-18-P.

600.21 Records filed in proceedings before the Board are considered public, and case files of such proceedings are publicly accessible. Settlement agreements submitted to the Board for approval pursuant to Board regulation 20298, including any accompanying statements in support, thus are a matter of public record. Under the new legal standard the Board adopted based on California Rules of Court, rule 2.550, to support sealing a record, the Region must state facts sufficient for the Board to conclude that there is an "overriding interest" in confidentiality that overcomes the presumption in favor of public access. PREMIERE RASPBERRIES, LLC, Admin. Order No. 2020-18-P.

600.21 The region failed to satisfy the standard to support sealing a record where the region made conclusory assertions of confidentiality and did not set forth any factual basis establishing the overriding interest that supports sealing. The region did not identify what records or confidential information the employer had designated as confidential under the protective order and did not identify any prejudice or harm if the allegedly confidential information was not sealed. The region's conclusory assertions that the unspecified information was "typically private" or "proprietary" was not sufficient to be worthy of the extraordinary measure of maintaining the Board's records under seal. PREMIERE RASPBERRIES, LLC, Admin. Order No. 2020-18-P.

600.21 The region's request to protect discrete portions of the statement in support of the settlement and accompanying declaration by sealing the entirety of both documents failed to meet this standard. The region did not identify the specific portions of the documents that were claimed to be confidential, and there appeared no reason why those portions could not be redacted with the remaining non-confidential portions available to the public. PREMIERE RASPBERRIES, LLC, Admin. Order No. 2020-18-P.

600.21
610.01 While a company may have certain privacy or confidentiality interests in information pertaining to its financial condition, such financial information is not necessarily "proprietary." Nor does California afford

protection to information generally described as "proprietary." As a general rule, the definition of "trade secret" under the California Uniform Trade Secrets Act sets forth the standard by which a company's alleged proprietary information will be deemed subject to protection. PREMIERE RASPBERRIES, LLC, Admin. Order No. 2020-18-P.

OCEAN MIST FARMS (Juan Antonio Ortiz) — 46 ALRB No. 5, Case No. 2017-CE-006-VIS

450.01 The General Counsel is not required to take witness statements from employees interviewed during an unfair labor practice investigation. OCEAN MIST FARMS, 46 ALRB No. 5.

423.01 Workers engaged in protected concerted activity when they stopped work due to conditions they perceived to be too wet and dangerous. Employer unlawfully suspended workers in response to their protected concerted activity. The holding in *Bertuccio v. ALRB* (1988) 202 Cal.App.3d 1369 was not applicable to render the employees' conduct unprotected because the workers were not engaged in an intermittent strike. OCEAN MIST FARMS, 46 ALRB No. 5.

202.06 Custom harvester status is an affirmative defense that the employer respondent has the burden of providing. OCEAN MIST FARMS, 46 ALRB No. 5.

202.06 Board rejected employer's custom harvester defense where Board had determined in a prior case that the alleged custom harvester was, in fact, a farm labor contractor, and no evidence of significant change in status had been presented at hearing. OCEAN MIST FARMS, 46 ALRB No. 5.

GERAWAN FARMING, INC. v. ALRB — 52 CAL.APP.5TH 141

435.01 The duty to bargain in good faith extends, at a minimum, to negotiations held outside the mediator's presence during the MMC process. GERAWAN FARMING, INC. v. ALRB (2020) 52 CAL.APP.5TH 141.

435.01 When negotiating outside the mediator's presence during the MMC process, parties are not required agree to proposals or make concessions. If they do not reach agreement then they can present their positions to the mediator, but their bargaining obligations will have been satisfied if done in good faith. GERAWAN FARMING, INC. v. ALRB (2020) 52 CAL.APP.5TH 141.

435.01 The Board may adjudicate and remedy unfair labor practice charges arising from conduct occurring outside the mediator's presence during

the MMC process. GERAWAN FARMING, INC. v. ALRB (2020) 52 CAL.APP.5TH 141.

435.01 The duty to bargain means more than demonstrating a willingness to meet and talk; rather, it requires a party do so with an open mind and a sincere purpose to find a basis for agreement. GERAWAN FARMING, INC. v. ALRB (2020) 52 CAL.APP.5TH 141.

435.01 Allegations a party has bargained in bad faith are evaluated based on the totality of circumstances. Although individual actions standing alone may not rise to the level of bad faith, they must be considered in the context of the totality of circumstances to determine whether the party has violated its good faith bargaining obligation. GERAWAN FARMING, INC. v. ALRB (2020) 52 CAL.APP.5TH 141.

439.01 Employer waived any argument the union lost its representative status when it entered into negotiations with the union and responded to the union's information requests. GERAWAN FARMING, INC. v. ALRB (2020) 52 CAL.APP.5TH 141.

435.01 The Board may examine the contents of the parties' proposals in determining whether a party negotiated in bad faith. GERAWAN FARMING, INC. v. ALRB (2020) 52 CAL.APP.5TH 141.

433.01 When employer opposes union security proposal on generalized philosophical grounds, an inference is warranted the employer engaged in bad faith bargaining. GERAWAN FARMING, INC. v. ALRB (2020) 52 CAL.APP.5TH 141.

435.07 Belated or shifting justifications for opposing a proposal demonstrate pretext. GERAWAN FARMING, INC. v. ALRB (2020) 52 CAL.APP.5TH 141.

433.01 Failure to offer a legitimate business justification for opposing a union security proposal is indicative of bad faith. GERAWAN FARMING, INC. v. ALRB (2020) 52 CAL.APP.5TH 141.

433.01 Opposing a union's no-strike proposal and insisting on employees' ability to engage in economic action is so far contrary to the purposes of the Act as to undermine any claim the proposal was advanced in good faith. GERAWAN FARMING, INC. v. ALRB (2020) 52 CAL.APP.5TH 141.

433.01 Opposition to a just cause proposal, which is well-known in the field of labor relations, based on a claim the party did not understand its meaning

reflects a lack of good faith. GERAWAN FARMING, INC. v. ALRB (2020) 52 CAL.APP.5TH 141.

438.01 Unilateral changes in wages, hours, or working conditions during collective bargaining negotiations and before a bona fide impasse is reached are indicative of a lack of good faith. GERAWAN FARMING, INC. v. ALRB (2020) 52 CAL.APP.5TH 141.

432.01 Farm labor contractors are not employers under the Act, but rather the employer engaging the farm labor contractor is deemed the employer for all purposes. GERAWAN FARMING, INC. v. ALRB (2020) 52 CAL.APP.5TH 141.

432.01 An employer's refusal to bargain over wages, hours, and terms or conditions of employment for farm labor contractor workers, or attempts to limit a collective bargaining agreement's application to them, is a per se violation of the duty to bargain. GERAWAN FARMING, INC. V. ALRB (2020) 52 CAL.APP.5TH 141.

463.01 Make-whole relief is a compensatory remedy to reimburse employees for losses incurred as a result of delays in the bargaining process. It is intended to give employees the economic benefits they would have received had an agreement been timely reached. GERAWAN FARMING, INC. v. ALRB (2020) 52 CAL.APP.5TH 141.

463.06 If the Board produces evidence showing the employer refused to bargain, a presumption arises that the parties would have reached an agreement providing for higher employee pay had the employer bargained in good faith. The burden of persuasion then shifts to the employer to rebut the presumption by producing evidence of some other alternative, legitimate cause for the parties' failure to reach agreement showing the parties would not have agreed even if the employer bargained in good faith. GERAWAN FARMING, INC. v. ALRB (2020) 52 CAL.APP.5TH 141.

323.02
453.03 Adjudicators are presumed to be impartial unless they have a financial interest in the outcome of a case. This presumption can be overcome only by specific evidence demonstrating actual bias against a party or a particular combination of factors creating an unacceptable risk of bias. But the mere appearance or suggestion of bias is not a ground for disqualification. GERAWAN FARMING, INC. v. ALRB (2020) 52 CAL.APP.5TH 141.

323.02
453.03
Chapter 5 of the Administrative Procedure Act does not apply to the ALRB. GERAWAN FARMING, INC. v. ALRB (2020) 52 CAL.APP.5TH 141.

323.02
453.03
Board members or administrative law judges may participate in deliberations or rulings concerning claims they should be disqualified from a case. GERAWAN FARMING, INC. v. ALRB (2020) 52 CAL.APP.5TH 141.