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THE AGRICULTURAL LABOR RELATIONS ACT OF 1975— LA ESPERANZA DE CALIFORNIA PARA EL FUTURO*

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On June 5, 1975, Governor Edmund G. Brown, Jr., signed the Agricultural Labor Relations Act (ALRA)[1] into law, which became effective August 28, 1975. Enactment of the ALRA set the stage for California's legislative attempt to resolve the numerous farm labor problems, often resulting in bitter and violent disputes, which have haunted the state for many years. The new legislation is the first state law which purports to deal with agricultural problems in a comprehensive and even-handed manner.[2]

When the National Labor Relations Act (NLRA)[3] was passed in 1935, agriculture was specifically excluded.[4] This ex-

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* California's Hope for the Future.

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1. Agricultural Labor Relations Act of 1975, CAL. LABOR CODE § 1140 *et seq.* (Deering 1975 Adv. Leg. Serv. No. 2) [hereinafter cited as ALRA]. The ALRA unfair labor practices and election sections are printed as an appendix *infra.*

2. *See, e.g.*, Agricultural Employment Relations Act, ARIZ. REV. STATS. §§ 23-1381 to 23-1395 (1972); Idaho Agricultural Labor Act, IDAHO CODE §§ 22-4101 to 22-4113 (1972); KANS. STATS. ANN. §§ 44-818 to 44-830 (1972), *as amended* (1974); Picketing of Agricultural Production Sites Act, ORE. REV. STATS. §§ 662.805 to 662.825 (1963). None of these statutes provides the kind of balanced, comprehensive regulatory scheme contemplated by the California legislation. *See* notes 6 & 7 and accompanying text *infra.*

3. National Labor Relations Act (1935), *as amended*, 29 U.S.C. §§ 151-68 (1970) [hereinafter cited as NLRA]. In 1947 the NLRA was amended and became section 101 of the Labor Management Relations Act, 29 U.S.C. §§ 141-97 (1970). Subsection 17 of section 101 (29 U.S.C. § 167 (1970)) authorizes continued use of the title "National Labor Relations Act" for the amended act as it appears in the Labor Management Relations Act.

4. NLRA § 2(3), 29 U.S.C. § 152(3) (1970) (emphasis added) provides:

> The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but *shall not include* any individual employed as an *agricultural laborer*, or in the domestic services of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an inde-

clusion was not based on the fact that agriculture was so unique an industry that the NLRA could not successfully regulate it. Rather, it reflected a political reality: the labor-oriented members of Congress needed the votes of legislators from agricultural districts to pass the NLRA, and the price exacted for these votes was the exclusion of agriculture from coverage by the NLRA.[5]

Concern about agricultural labor relations developed on both federal and state levels in the late sixties and early seventies. Some states passed piecemeal legislation,[6] while others, attempting a more comprehensive scheme, weighted the legislation in favor of grower interests.[7] Federal proposals were generally of two kinds: legislation to eliminate the agricultural exclusion and apply the NLRA to agriculture in the same way it applies to industries involved in interstate commerce;[8] or new legislation specifically directed to agriculture.[9] None of the proposed federal legislation has passed.

California had made prior legislative efforts to regulate agricultural labor relations. Bills were introduced in the legislature in the sixties and seventies, and an initiative, Proposition 22, was on the ballot in 1972.[10] None of the proposals, however, resulted in any new law. Some proposals favored special interests, while others failed to provide the type and scope of coverage needed.

Of the six legislative proposals submitted for consideration in early 1975, five were almost exact copies of the National Labor Relations Act, with certain omissions or additions.[11] The one exception was the bill offered by the United Farm Workers, which would have created a commission somewhat different from the agencies proposed by the other bills; it contained some provisions similar to the NLRA, and included others which varied from

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pendent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act [45 U.S.C. §§ 151-163, 181-188 (1970], as amended from time to time, or by any other person who is not an employer as herein defined.

5. Morris, *Agricultural Labor and National Labor Legislation*, 54 CALIF. L. REV. 1939, 1951-56 (1966).

6. *See, e.g.*, KANS. STATS. ANN. §§ 44-818 to 44-830 (1972), *as amended* (1974); ORE. REV. STATS. §§ 662.805 to 662.825 (1963).

7. *See, e.g.*, ARIZ. REV. STATS. §§ 23-1381 to 23-1395 (1971). *See also* Rose, *State Regulation of Agricultural Relations—The Arizona Farm Labor Law—A Constitutional Analysis*, 1973 LAW AND SOC. ORDER 373 (1973); Cohen & Rose, *State Regulation of Agricultural Labor Relations—The Arizona Farm Labor Law—An Interpretive and Comparative Analysis*, 1973 LAW AND SOC. ORDER 313 (1973).

8. S. 285, H.R. 4179, 4408, 4789, 94th Cong., 1st Sess. (1975).

9. H.R. 3256, 94th Cong., 1st Sess. (1975).

10. *See, e.g.*, Cal. S.B. 1723, 1724, 1887, A.B. 3370, 3816 (1974); S.B. 493, A.B. 2304 (1973); A.B. 9, 1214 (1972); A.B. 964 (1971); S.B. 307, 915, A.B. 1333, 1680 (1969); A.B. 776 (1968); A.B. 747, 749, 750, 751, 1163 (1967).

11. *See* Cal. S.B. 205, 239, 308, A.B. 159, 393 (1975).

NLRA provisions or were not encompassed by the NLRA.[12] None of these bills passed.

New bills which were introduced in April, 1975, and became the Agricultural Labor Relations Act of 1975[13] were modeled on the NLRA, with some substantial changes to accommodate the special needs of the agricultural industry or to correct provisions which clearly would be deficient or inappropriate if applied to agriculture. The choice of the NLRA model appeared to be a reasonable one under the circumstances: the NLRA has been in existence approximately 40 years, regulating labor-management relations in the private industrial sector. Although periodically subject to attack by both management and labor, the Act has proved, on the whole, to be fair to the competing interests. Other new or inventive approaches might have served the same purpose in agriculture, but there appeared to be no good reason to experiment with other models when there was an existing system which had stood the test of time.

The overriding principle guiding the drafting of this new legislation was fairness to all parties affected—growers, unions, farm workers, and the public. At the same time, the law had to provide a viable framework to regulate agricultural employers and unions, protect the workers, and deal effectively with the problems arising in this area.

This article will examine the more significant provisions of the ALRA and, where appropriate, compare and contrast them with the NLRA. In instances involving the less significant provisions, it will be noted without extended discussion that the ALRA provisions duplicate the NLRA.

The new law has great promise, but only the passage of time and the development of the legal framework will prove whether the ALRA can solve the problems of agriculture and serve the best interests of the public.

General Provisions and Definitions

The Agricultural Labor Relations Act borrows freely from the NLRA for such basic definitions as "labor organization,"[14] "person,"[15] "representative,"[16] "labor dispute,"[17] and "super-

12. *See, e.g.*, Cal. A.B. 1 §§ 1143, 1144, 1148 (1975).
13. Cal. S.B. 813, A.B. 1533 (1975); S.B. 1, A.B. 1 (3d Extraordinary Sess. 1975-76).
14. ALRA § 1140.4(f); *see* NLRA § 2(5), 29 U.S.C. § 152(5) (1970).
15. ALRA § 1140.4(d); *see* NLRA § 2(1), 29 U.S.C. § 152(1) (1970).
16. ALRA § 1140.4(e); *see* NLRA § 2(4), 29 U.S.C. § 152(4) (1970).
17. ALRA § 1140.4(h); *see* NLRA § 2(9), 29 U.S.C. § 152(9) (1970).

visor."[18] With its definitions of "agriculture," "agricultural employee" and "agricultural employer," the law provides as broad a coverage of agriculture as possible, while at the same time limiting its jurisdiction to those who are clearly agricultural employees.[19]

The NLRA excludes from coverage anyone who fits the Fair Labor Standards Act definition of an agricultural employee.[20] The ALRA, by adopting the same definition, extends its coverage to all persons excluded from the NLRA. This approach would appear to be perfectly balanced: what the NLRA excluded, the ALRA included, both relying on the Fair Labor Standard definition. However, prior to passage of the final draft of the law, the building and construction trade unions expressed concern that the ALRA definition appeared to encompass construction people working on farm land and to make them subject to the provisions of the ALRA.[21]

In order to meet this concern, and probably because the new Agricultural Labor Relations Board would have minimal interest in these construction workers, language was added to the ALRA definition of agricultural employee to exclude

> any employee who performs work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work . . . or logging timber or timber clearing work in initial preparation of land for farming or who does land leveling or only land surveying for any of the above.[22]

It may be that the exclusionary language of the ALRA has created a no-man's-land with respect to these workers. The NLRA may see them as falling within the Fair Labor Standards Act definition of agricultural workers when performing work on a farm, and thus exempt from NLRA coverage; but the ALRA specifically excludes them. If this is so, these workers, subject to neither Act, would be unregulated except to the extent that other state laws govern their activities.[23]

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18. ALRA § 1140.4(j); *see* NLRA § 2(11), 29 U.S.C. § 152(11) (1970).

19. *See* ALRA §§ 1140.4(a), 1140.4(b), 1140.4(c).

20. Fair Labor Standards Act of 1938, *as amended*, 29 U.S.C. §§ 203(f), 213 (1970).

21. For examples of the criteria the courts use to determine what occupations fall within the "agricultural employee" category, *see, e.g.*, NLRB v. Olaa Sugar Co., 242 F.2d 715 (9th Cir. 1957); Di Giorgio Fruit Corp. v. NLRB, 191 F.2d 642 (D.C. Cir.), *cert. denied*, 342 U.S. 869 (1951); NLRB v. John W. Campbell, Inc., 159 F.2d 184 (5th Cir. 1947).

22. ALRA § 1140.4(b).

23. The NLRB has had some recent court disputes concerning the exact scope of the agricultural laborer exemption. *See* Abbott Farms v. NLRB, 487 F.2d 904 (5th Cir. 1973); NLRB v. Ryckebosch, 471 F.2d 20 (9th Cir. 1972); NLRB

THE STRUCTURE OF THE AGENCY

The newly created Agricultural Labor Relations Board (ALRB) duplicates the National Labor Relations Board (NLRB) in form and responsibilities. Five members appointed for five year terms by the Governor are given the primary responsibility for administering the new law with respect to elections and unfair labor practices.[24] As in the federal law, the judicial and prosecutorial functions of the agency are kept separate: the General Counsel is appointed by the Governor, rather than by the board.[25] Permitting the board to select the General Counsel might have given rise to an objection that judicial and prosecutorial functions were merged under the board's direct control.

The law establishes the principal ALRB office in Sacramento and provides for regional offices as the Board deems necessary.[26] Regional offices have already been opened in Fresno, Salinas, Riverside and Sacramento.

Although some of the other farm labor bills introduced in the legislature[27] would have required the Governor to appoint two of the five board members from agriculture, two from labor and one from the public, the ALRA omits such limitations on the Governor's appointive power. It was felt that such a requirement might result in a board split along partisan lines, with the public member being the decisive vote. Without these limitations, the Governor can choose any rational and intelligent person who will administer the law competently, without being required to consider past or present affiliations.

There is another provision not specifically included in the NLRA or the ALRA but which has nevertheless become an unwritten policy controlling appointments to the NLRB. The policy is that the President shall appoint no more than three of the five board members from his own political party.[28] The purpose of the policy is to insulate the board from extreme political partisanship. Whether the present or future governors will adopt this unwritten rule of the NLRA in appointing ALRB members remains to be determined.[29]

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v. Strain Poultry Farms, Inc., 405 F.2d 1025 (5th Cir. 1969); NLRB v. Gass, 377 F.2d 438 (1st Cir. 1967).

24. ALRA §§ 1141-1151.6; *see* NLRA §§ 3-6, 11, 12, 29 U.S.C. §§ 153-156, 161, 162 (1970). Terms of ALRB members are staggered at one-year intervals. ALRA § 1141(b).

25. ALRA § 1149. The General Counsel is appointed for a four-year term.

26. ALRA § 1142.

27. *See, e.g.*, Cal. S.B. 205, 239, A.B. 159, 393 (1975); A.B. 1 (3d Extraordinary Sess. 1975-76).

28. Cal. S.B. 205, 239, A.B. 159, 393 (1975) contained provisions which limited appointments to no more than three from the same political party.

29. Appointment of the initial Agricultural Labor Relations Board, without

Among the organizational provisions of the Act is section 1148, which declares that "the board shall follow applicable precedents of the National Labor Relations Act, as amended."[30] The language of the statute appears to require the ALRB to adhere to the numerous decisions of the Supreme Court, courts of appeals and the NLRB interpreting the NLRA. The extent to which the ARLB will feel bound to follow these NLRA precedents in similar factual situations will have to be decided by the Farm Board in the forthcoming years. Regardless of the board's decisions, there may well be litigation by those who feel that the board has not met the statute's requirements.

Many NLRA precedents are based on a single case or a series of cases, and it is interesting to speculate how the ALRB will view these precedents when applied to the farm labor scene. For example, a major requirement of the new legislation is that all bargaining representatives must have been elected by secret ballot and must have been certified as the winners in those elections before they can negotiate collective bargaining agreements with employers. Under the NLRA, however, a union may secure the right to bargain with the employer even though it has never won a secret-ballot election, if the employer's unfair labor practices have made the holding of a fair election improbable. In these circumstances, the NLRB would adhere to the decision in *NLRB v. Gissel Packing Co.*[31] and order the employer to bargain with the union even though there had been no election. Query whether the ALRB, faced with a similar situation, would consider this NLRB decision an "applicable precedent" in view of the fact that the ALRA is committed to awarding bargaining status only through the election process. The Act even makes it an unfair labor practice for a farmer to bargain with a labor organization which has not been certified as the bargaining representative after an election.[32]

Overall, however, section 1148 should produce more benefits than problems for the board, because it can lighten the board's decisional burden by providing invaluable guidelines and established rationales for many of the initial decisions that will have to be made. This will allow the board more time to concentrate on the policies and decisions unique to the area of agriculture.

The ALRA follows the language of the NLRA in specifying the general investigatory powers necessary for the proper function-

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further comment, would not necessarily offer a clear indication of the adoption or rejection of the unwritten policy.

30. ALRA § 1148.

31. 395 U.S. 575 (1969).

32. ALRA § 1153(f).

ing of the agency.[33]

UNFAIR LABOR PRACTICES

Employer Unfair Labor Practices

The ALRA, like its model, proscribes certain unfair labor practices by employers and labor organizations. The employer unfair labor practices remain basically unchanged from the NLRA. Thus, agricultural employers are prohibited from interfering with, restraining or coercing employees in the exercise of rights guaranteed by the Act;[34] from dominating or supporting labor organizations;[35] from discriminating against employees in hiring or tenure of employment;[36] from discharging or discriminating against employees because they have filed charges or given testimony;[37] and from refusing to bargain collectively in *good faith* with certified labor organizations.[38]

One new provision contained in the ALRA makes it an unfair labor practice for an employer to recognize, bargain with, or sign a collective bargaining agreement with any labor organization not certified pursuant to the Act.[39] This section ties in with the election procedure of the Act, which specifies that the sole means by which a labor organization can achieve certification as bargaining representative is to win a secret ballot election conducted by the board.[40] These sections thus prohibit voluntary recognition of a labor organization by an employer based on authorization cards signed by the employees and presented by the labor organization, a practice permitted by decisions interpreting the NLRA.[41] The

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33. ALRA § 1151-1151.6; *see* NLRA §§ 11, 12, 29 U.S.C. §§ 161, 162 (1970).

34. ALRA § 1153(a); *see* NLRA § 8(a)(1), 29 U.S.C. § 158(a)(1) (1970). Section 1152 sets out the guaranteed rights of agricultural employees which are the same as section 7 of the NLRA:

> Employees shall have the right to self-organization, to form, join, or assist labor organization, to bargain collectively through representatives of their own choosing, and to engage in bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of continued employment as authorized in subdivision (c) of Section 1153.

35. ALRA § 1153(b); *see* NLRA § 8(a)(2), 29 U.S.C. § 158(a)(2) (1970).

36. ALRA § 1153(c); *see* NLRA § 8(a)(3), 29 U.S.C. § 158(a)(3) (1970).

37. ALRA § 1153(d); *see* NLRA § 8(a)(4), 29 U.S.C. § 158(a)(4) (1970).

38. ALRA § 1153(e); *see* NLRA § 8(a)(5), 29 U.S.C. § 158(a)(5) (1970). The ALRA adds the words "good faith" to the statute in defining the employer unfair labor practice while the NLRA incorporates the concept of good faith both in its decisions and its definition of "to bargain collectively," but the words were not included in section 8(a)(5).

39. ALRA § 1153(f).

40. *See* ALRA § 1156.3.

41. *See, e.g.*, NLRB v. Transport, Inc., of South Dakota, 453 F.2d 193 (8th

ALRA's certification procedure reflects the feeling that the best method for determining the employees' choice of a bargaining representative is via the secret ballot election.

Under the NLRA, there may not be a new election for 12 months following a certification, and for that period there is an irrebuttable presumption, absent unusual circumstances, that the labor organization has remained the majority representative.[42] If the employer commits an unfair labor practice by refusing to bargain during the certification year, the NLRB can order the employer to bargain even though the certification year has elapsed and the union may not have the same majority it had when it was certified.[43] To do otherwise would allow the employer to benefit from his violation of the NLRA; it might encourage him to drag out bargaining beyond the certification year and then claim he had no obligation to bargain because there had been a turnover of employees and the union no longer represented a majority of the employees.

The ALRA has a provision intended to achieve a similar result when an employer has not bargained in good faith with the labor organization during the certification year.[44] This ALRA section permits the board to extend the certification for up to one additional year when it finds that the employer has not bargained in good faith during the certification year. It may be, however, that this section is superfluous and that the ALRB, even without the provision, could have achieved the desired intention by following applicable NLRA precedent in this area, as required by section 1148.[45]

The ARLA permits the agricultural employer and the labor organization to negotiate a "union security agreement," whereby the farm worker is required, as a condition of employment, to become a member of the labor organization on or after the fifth day of employment (or the effective date of the agreement, whichever is later).[46] Similar agreements are allowed under the NRLA, with the employee required to join the union on or after the 30th day of employment.[47] The transient, often short-term nature of agricultural employment necessitated the shorter five day period.

Cir. 1971); NLRB v. Tom's Supermarket, Inc., 385 F.2d 198 (7th Cir. 1967); Filler Products, Inc. v. NLRB, 376 F.2d 369 (4th Cir. 1967).

42. NLRA § 9(c)(3), 29 U.S.C. § 159(c)(3) (1970); *see, e.g.*, Brooks v. NLRB, 348 U.S. 96 (1954); Mar-Jac Poultry Co., 136 N.L.R.B. 785 (1962); General Box Co., 82 N.L.R.B. 678 (1949).

43. *See, e.g.*, NLRB v. C. & C. Plywood Corp., 413 F.2d 112 (9th Cir. 1969).

44. ALRA § 1155.2(b).

45. *See* text accompanying note 30 *supra.*

46. ALRA § 1153(c).

47. NLRA § 8(a)(3), 29 U.S.C. § 158(a)(3) (1970).

The Act affords protection to the migrant worker who may be employed on a number of farms during a month's time, and thus subject to security agreements negotiated by different unions, by eliminating any obligation that an employee pay dues to more than one union during a calendar month.

The ALRA contains another feature related to the union security agreement which is not found in the NLRA. The new law defines union membership as satisfaction of all reasonable terms and conditions applicable to every member in good standing, and provides that union membership shall not be terminated except in compliance with a constitution and bylaws which afford democratic procedures to members and applicants for membership.[48] This provision appears to have been designed to encourage internal union democracy and to require that a labor organization negotiating union security agreements adhere to certain basic democratic principles.

A question may arise as to the exact scope of protection provided the employee by the ALRA. Under the NLRA, a union member subject to a valid union security agreement may be discharged at union request only for failure to tender periodic dues and initiation fees.[49] It is often said that this NLRA provision is designed to insulate a worker's job from his union activities. Only when an employee has failed to tender dues or initiation fees can the union demand his discharge; it cannot get his job merely because he has not paid a lawfully levied union assessment or failed to conform to general requirements of being a good union member.[50]

The ALRA, on the other hand, permits the union to seek a discharge pursuant to a union security agreement for "failure to satisfy membership requirements," which thus provides more grounds for discharge than the NLRA. The exact parameters of these "membership requirements" will have to be decided by the ALRB. It appears, however, that while this section of the ALRA permits the union a broader power to discharge pursuant to a lawful union security agreement, it seeks to balance the power by requiring adherence to "democratic procedures" and providing for more internal union regulation than does the NLRA.

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48. ALRA § 1153(c).

49. NLRA §§ 8(a)(3), 8(b)(2), 29 U.S.C. §§ 158(b)(2), 158(a)(3) (1970); *see, e.g.*, NLRB v. Broderick Wood Products Co., 261 F.2d 548 (10th Cir. 1958); NLRB v. International Ass'n of Machinists, 203 F.2d 173 (9th Cir. 1953).

50. *See, e.g.*, Radio Officers' Union v. NLRB, 347 U.S. 17 (1954); NLRB v. Spector Freight System, 273 F.2d 272 (8th Cir. 1960); *cf.* NLRB v. Die & Tool Makers Lodge 113, 231 F.2d 298 (7th Cir.), *cert. denied*, 352 U.S. 833 (1956); Mayer, *Union Security and the Taft-Hartley Act*, 1961 DUKE L.J. 505.

Union Unfair Labor Practices

The ALRA parallels the NLRB in the definitions of many union unfair labor practices. Like the NLRA, the state law prohibits restraint and coercion of employees in the exercise of their guaranteed rights and in their selection of representatives for purposes of collective bargaining;[51] specific discrimination against employees;[52] and refusal to bargain collectively in good faith.[53] The new law includes the NLRA provisions prohibiting excess dues payments,[54] featherbedding,[55] and certain types of payments by employers to labor organizations or employees.[56] It also specifies the procedures to be followed when one of the parties seeks to terminate or modify the collective bargaining agreement.[57]

Two areas of labor law where the ALRA has deviated from its NLRA model are the secondary boycott[58] and the "hot cargo clause."[59] The classic secondary boycott situation exists when a union having a labor dispute with a primary employer attempts to pressure secondary or neutral employers or employees with an object of having the neutral employers stop doing business with the primary employer.[60] The theory is to place maximum pressure on the primary employer and thus force him to concede to union demands in the labor dispute. Secondary boycotts were lawful under the NLRA until the 1947 Taft-Hartley amendments. The prohibitions were enacted because Congress felt that true neutrals were suffering economic injuries in labor disputes that were not their own, and that it was in the public interest to afford these neutrals protection.[61]

There was much controversy preceding the adoption of the ALRA's secondary boycott provision. Some bills in the legislature proposed that the NLRA's secondary boycott provisions be adopted *in toto*;[62] others sought to exclude any restrictions on the boycott.[63] The argument presented for permitting secondary boy-

51. ALRA § 1154(a)(1)-(2); *see* NLRA § 8(b)(1)(A)-(B), 29 U.S.C. § 158(b)(1)(A)-(B) (1970).
52. ALRA § 1154(b); *see* NLRA § 8(b)(2), 29 U.S.C. § 158(b)(2) (1970).
53. ALRA § 1154(c); *see* NLRA § 8(b)(3), 29 U.S.C. § 158(b)(3) (1970).
54. ALRA § 1154(e); *see* NLRA § 8(b)(5), 29 U.S.C. § 158(b)(5) (1970).
55. ALRA § 1154(f); *see* NLRA § 8(b)(6), 29 U.S.C. § 158(b)(6) (1970).
56. ALRA § 1155.4; *see* NLRA § 302, 29 U.S.C. § 186 (1970).
57. ALRA § 1153.3; *see* NLRA § 8(d), 29 U.S.C. § 158(d) (1970).
58. ALRA § 1154(d); *see* NLRA § 8(b)(4), 29 U.S.C. § 158(b)(4) (1970).
59. ALRA § 1154.5; *see* NLRA § 8(e), 29 U.S.C. § 158(e) (1970).
60. *See, e.g.*, NLRB v. Servette, Inc., 377 U.S. 46 (1964); NLRB v. Denver Bldg. & Construction Trades Council, 341 U.S. 675 (1951).
61. NLRB v. Denver Bldg. & Construction Trades Council, 341 U.S. 675, 692 (1951).
62. Cal. S.B. 308, A.B. 159 (1975).
63. Cal. A.B. 1 (1975).

cotts was that unions trying to organize agriculture should be given the same advantages under the ALRA that other unions had for 12 years under the NLRA before the banning of the secondary boycott in 1947. The legislation as enacted bans the classic secondary boycott with the original language of the NLRA.[64] But, like the NLRA, the ALRA does permit a labor organization to exercise its first amendment rights by truthfully advising the public that products produced by an agricultural employer with whom it has a dispute are being distributed by a neutral employer.[65] This type of informational publicity, which includes picketing, is sanctioned as long as it does not have the effect of inducing others not to make deliveries or perform services at the neutral's establishment (the NLRA has the same limitation), and provided that it does not have the effect of requesting the public to cease patronizing the neutral (NLRA statutory language does not include this limitation).[66]

The ALRA goes further with respect to publicity including picketing which has the effect of requesting the public to cease patronizing a neutral employer by permitting such publicity only if the labor organization is currently certified as representative of the primary employer's employees.[67] The ALRA further states that publicity other than picketing, but including peaceful distribution of literature which has the effect of requesting the public to cease patronizing the neutral employer, is permitted only if the labor organization has not lost an election for the primary employer's employees within the preceding 12 months and no other labor organization is currently certified as representative of those employees.[68]

Although the new legislation did not go as far as unions would have desired in permitting the use of the secondary boycott to bring pressure on the primary employer, it does go beyond what is permitted by the NLRA: it provides agricultural unions with an additional bargaining tool by allowing the unions, under the conditions specified in the Act, to bring indirect pressure on a primary employer by requesting that the public not patronize the neutral who is doing business with the primary. The agricultural unions, pursuant to the Act's specific limitations, could not only tell the public that a particular supermarket is selling lettuce pro-

64. This provision also includes all the other prohibitions of NLRA § 8(b)(4) (*e.g.*, the jurisdictional disputes section).

65. ALRA § 1154(d)(2); *see* NLRA § 8(b)(4)(B), 29 U.S.C. § 158(b)(4)(B) (1970); *cf.* NLRB v. Fruit & Vegetable Packers Local 670, 377 U.S. 58 (1964).

66. ALRA § 1154(d).

67. *Id.*

68. *Id.*

duced by a farmer with whom it has a primary labor dispute and request the public not to buy that product, but the union could also ask the public not to patronize that particular supermarket at all. According to decisions under the NLRA, a union whose publicity is directed to inducing the public not to patronize the neutral business establishment would be in violation of the law.[69]

California's labor organizations were particularly sensitive to the introduction of any ALRA limitations on the secondary boycott, since it is not prohibited by state law. Accordingly, the section which follows the ALRA secondary boycott provisions makes clear that a labor organization's intrastate activities involving non-agricultural employees will continue to be governed by section 923 of the Labor Code[70] and applicable judicial prededents, and thus not subject to the ALRA secondary boycott limitations.[71]

The ALRA modifies the "hot cargo" ban of the NLRA. Under the NLRA, a labor organization and an employer are prohibited from entering into an agreement under which the employer would cease using, handling, selling, transporting, or dealing in the products of any other employer, or cease doing business with any other person. The ALRA incorporates the same ban;[72] however, it does permit what might otherwise be considered a "hot cargo" agreement in a limited circumstance.[73] The statute provides that the hot cargo prohibition does not apply to an agreement between an employer and a labor organization representing his employees if that union is also the certified representative of the employees of a supplier of ingredients that are integrated into a product distributed or produced by the first employer, and if no collective bargaining agreement exists between the supplier and the union.

The law thus provides the union with an additional bargaining tool to pressure an employer who may be refusing to bargain with his employees' certified representative. For example, a union which represents the employees of a winery might lawfully include in its contract with the winery a clause prohibiting the purchase of grapes from any farmer whose employees the union has been certified to represent but who has not executed a collective bargaining agreement with the union. This same section also excludes from the hot cargo prohibition any agreement between a labor organization and an agricultural employer which relates to contracting or subcontracting work to be done on the farm.

69. *Cf.* Local 37, Honolulu Typographical Union v. NLRB, 401 F.2d 952 (D.C. Cir. 1968).
70. CAL. LABOR CODE § 923 (West 1971).
71. ALRA § 1154(d).
72. NLRA § 8(e), 29 U.S.C. § 158(e) (1970).
73. ALRA § 1154.5.

One major NLRA provision which has been deleted from the ALRA concerns recognitional picketing.[74] The NLRA prohibits picketing the object of which is to force employer recognition of the union or to force employees to select the union as their bargaining representative, when the employer has lawfully recognized another labor organization[75] or when there has been a valid election during the preceding 12 months.[76] Absent any of these circumstances, the NLRA allows the union to engage in picketing for a period not to exceed 30 days.[77] However, if the union does picket, it must file a petition for an election within a reasonable time (not to exceed 30 days), and the representation question will be resolved by this election.

One of the California legislative proposals sought to permit recognitional picketing for organizational purposes, and would have allowed the union to qualify as bargaining representative without an election, based on a showing that a majority of employees had participated in the picketing.[78] Others felt that permitting recognitional picketing for the purpose of establishing a bargaining relationship would seriously undermine the secret ballot election procedure, which was considered the most desirable means of selecting the bargaining representative. The ALRA therefore prohibits even the limited type of recognitional picketing permitted under the NLRA.[79]

A provision contained in the ALRA but not in the NLRA makes it an unfair labor practice for an employer or labor organization to arrange for persons to become employees for the primary purpose of voting in elections.[80] This section is designed to deal with a type of ballot box stuffing made possible by the transient, short-term nature of agricultural work. There was concern that parties might attempt to affect the results of an election by arranging for employees who could be relied upon to vote in a certain way to be hired before a scheduled election. The antitampering provision was intended to protect the integrity of the electoral process and to ensure that election results accurately reflect the wishes of the employees. This problem apparently does not arise under the NLRA, which covers a great number of

74. NLRA § 8(b)(7), 29 U.S.C. § 158(b)(7) (1970).
75. NLRA § 8(b)(7)(A), 29 U.S.C. § 158(b)(7)(A) (1970).
76. NLRA § 8(b)(7)(B), 29 U.S.C. § 158(b)(7)(B) (1970).
77. NLRA § 8(b)(7)(C), 29 U.S.C. § 158(b)(7)(C) (1970).
78. Cal. A.B. 1 (1975).
79. ALRA § 1154(g). However, this section follows the NLRA's specific limitations and permits picketing or other publicity for the purpose of truthfully advising the public (including consumers) that an employer does not employ members of, or have a contract with, a labor organization.
80. ALRA § 1154.6.

established industries with less transient work forces. In any event, if there was evidence of an attempt to influence an NLRB-supervised election in this manner, the NLRB would find a violation of the Act and set aside the election.[81]

THE ELECTIONS

Many of the major differences between the ALRA and the NLRA model occur in the provisions relating to the board's responsibility to conduct elections.[82] These deviations were necessitated by the differences between agriculture and the industries regulated by the NLRA. An electoral system for agricultural workers must provide a speedy, secret ballot election for all eligible voters. The election must be conducted when the employment payroll reflects a meaningful complement of workers, and the employees must be afforded the opportunity to decide freely whether they desire representation or not. The ALRA election procedures, in conjunction with certain unfair labor practice sections, are designed to accomplish this end.

When a representation petition requesting an election has been filed with the NLRB, the board may be required to hold hearings to determine the appropriate unit of employees for the election, and to determine which individual employees are eligible to vote.[83] These determinations are made before the board orders the election, and if the hearings are contested, a couple of months can elapse from the filing of a petition until the date of election.

The ALRA seeks to avoid the delays inherent in the NLRA procedure by specifying the appropriate unit[84] and substituting a post-election hearing for the NLRA pre-election hearing.[85] With respect to the appropriate unit, the ALRA provides that it must consist of *all* agricultural employees of an employer,[86] in contrast to the NLRA which allows the NLRB broad discretion as the size and nature of the unit for the election. The ALRB has some limited discretion to choose the unit when there are two or more non-contiguous geographical areas involved.[87] One persuasive

81. The NLRB attempts to provide "laboratory conditions" for elections. General Shoe Corp., 77 N.L.R.B. 124, 127 (1948). Where activities of the parties have interfered with those conditions, the board will set aside the election. *See, e.g.*, Sewell Mfg. Co., 138 N.L.R.B. 66 (1962).

82. ALRA §§ 1156-1159.

83. NLRA § 9(c)(1)(A), 29 U.S.C. § 159(C)(1)(A) (1970).

84. ALRA § 1156.2.

85. ALRA § 1156.3.

86. ALRA § 1156.2.

87. A statement of intent published in the Senate Journal notes with respect to non-contiguous geographical areas and the specific problem of processing, pack-

reason for including all employees in the unit, rather than permitting the board to choose from a variety of units, was that this approach would allow one union to represent both the field workers and the more highly skilled farm employees. It was felt that this type of representation might facilitate the advancement of the less skilled employees to the higher paid skilled positions, while representation of the skilled and unskilled employees by different unions might well hamper this desirable objective. However, it would appear that a little more discretion in the choice of appropriate units could have been vested in the ALRB without seriously affecting that objective.[88]

The ALRB post-election hearing[89] is part of the law's design to allow a speedy election at the time most eligible voters are available. Since the law requires that the election be conducted within seven days from the filing of the petition requesting an election,[90] any formal hearing would have to be held after ballots were cast. The fact that the appropriate unit is specified eliminates any necessity for an involved pre-election hearing on that issue, and it was felt that any other questions bearing on the election could be adequately dealt with after the election.

The election procedure is initiated when a labor organization or the employees file a petition signed by[91] (or accompanied by cards signed by) a majority of the employees currently in the bargaining unit.[92] The petition must allege the following:[93]

1. That the number of agricultural employees currently employed by the employer named in the petition, as determined

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ing and cooling operations not located on farm sites:

> It is the intent of SB 1 (Third Extraordinary Session) and AB 1 (Third Extraordinary Session) that the board, in exercising its discretion to determine bargaining units in non-contiguous geographical areas, may consider processing, packing, and cooling operations which are not conducted on a farm as constituting employment in a separate or non-contiguous geographic area for the purpose of Section 1156.2.

CAL. ST. S. JOUR. 16 (daily ed. May 29, 1975).

88. The adamant urging of the United Farm Workers that the unit include all employees may stem from that organization's past experiences with various governmental institutions which exercise broad discretion.

89. ALRA § 1156.3(c).

90. ALRA § 1156.3(a). This section also provides:

> If at the time the election petition is filed a majority of the employees in a bargaining unit are engaged in a strike the board shall, with all due diligence, attempt to hold a secret ballot election within 48 hours of the filing of such petition.

91. ALRA § 1156.3(a).

92. The NLRB requires authorization cards from 30% of employees in the bargaining unit. The ALRA's 50% requirement reflects the fact that there will be less time for organizational activity following the filing of the petition.

Any other labor organization can qualify to appear on the ballot by presenting authorization cards signed by 20% of the employees in the bargaining unit at least 24 hours prior to the election. ALRA § 1156.3(b).

93. ALRA § 1156.3(a)(1)-(4).

from his payroll immediately preceding the filing of the petition, is not less than 50 percent of the peak agricultural employment for the current calendar year.[94]

2. That no valid election has been conducted among agricultural employees of the employer named in the petition within the 12 months immediately preceding the filing.

3. That no labor organization is currently certified as the exclusive collective bargaining representative of the agricultural employees of the employer named in the petition.

4. That the petition is not barred by an existing collective-bargaining agreement.

Within five days after the election, a petition may be filed with the board asserting that the allegations in the petition were incorrect or that the board improperly determined the geographical scope of the unit. The petition may also object to the conduct of the election or to conduct affecting the results of the election. These questions can be resolved at the post-election hearing; but meanwhile, the expedited election procedure has enabled the board to obtain election ballots which reflect the employees' choice in a timely election, before they scatter to other farms as part of their seasonal and migratory employment.

The board will certify the results of the election if the allegations in the post-election petition do not provide sufficient grounds to invalidate the election. If the board finds that the allegations in the petition are correct—that the election was not properly conducted or that misconduct affected the results—the permissive language of the statute states that it *may* refuse to certify.[95] This language would appear to allow certification where the union has won the election and the allegation or objections, although correct, constitute a technical point of minor significance in view of the union's victory.

The ALRA also contains provisions allowing the decertification of bargaining representatives.[96] A petition for decertification requires the signatures of 30 percent of the employees in the bargaining unit. It must be filed when the number of agricultural employees is not less than 50 percent of the employer's peak agricultural employment for the current calendar year, and it may be filed only during the statutory open period when the union's col-

94. ALRA § 1156.4 provides in part:

[P]eak agricultural employment for the prior season shall alone not be the basis for determining employment but rather the board shall estimate peak employment on the basis of acreage and crop statistics which shall be applied uniformly throughout the State of California and upon all other relevant data.

95. ALRA § 1156.3(c).

96. ALRA § 1156.7(c).

lective bargaining agreement does not function as a contract bar.[97] These provisions, like their NLRA counterparts, assure that employees will be able to change representatives or decide upon no representation if they so desire.

An ALRA provision which has no counterpart in the NLRA allows the ALRB to decertify a labor organization that engages in employment discrimination.[98] The statute provides that the ALRB shall decertify a labor organization if the Equal Employment Opportunity Commission (EEOC) finds[99] that it has violated the federal equal employment statute[100] by engaging in discrimination based on race, color, national origin, sex or any other invidious classification. The reason for this section is obvious: state law should not afford bargaining status to a labor organization which flouts the national policy against discrimination. Furthermore, the ALRB makes this decision based on an EEOC determination and thus can avoid the pitfalls the NLRB has encountered in its attempts to comply with the court of appeals decision in *Mansion House v. NLRB*.[101]

The *Mansion House* decision held that proof of discrimination by a labor union in violation of Title VII of the 1964 Civil Rights Act[102] was a valid defense to an NLRB finding that an employer had refused to bargain with the union. In its attempts to adhere to the court's ruling, the NLRB has had to resolve some questions on discrimination similar to those decided by the EEOC. Some of these NLRB proceedings have not followed EEOC guidelines or evidentiary requirements, and the decisions may be inconsistent with those reached by the EEOC.[103] The ALRA decertification procedure for discrimination appears to be more practical, because the ALRB is permitted to rely on the expertise of EEOC and need not itself become a forum to decide questions of discrimination; this enables the board to concentrate its full efforts on problems directly related to farm labor.

By administrative decision, the NLRB has created a contract bar doctrine: a valid collective bargaining agreement will bar a

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97. *Id.* *See* notes 104-05 and accompanying text *infra.*

98. ALRA § 1156.3(e).

99. The statute does not specify exactly whether the EEOC finding to which the ALRB would refer relates to an EEOC finding of probable cause or some other decision involving the EEOC case. It would seem more likely, however, for due process reasons that the finding would have to relate to some final decision subsequent to the EEOC's finding of probable cause.

100. 42 U.S.C. § 2000e *et seq.* (Supp. III 1973).

101. 473 F.2d 471 (8th Cir. 1973).

102. 42 U.S.C. § 2000e *et seq.* (Supp. III 1973).

103. *See* Bell & Howell Co., 213 N.L.R.B. No. 79 (1974); Williams Enterprises, Inc., 212 N.L.R.B. No. 132 (1974); Bekins Moving & Storage Co., 211 N.L.R.B. No. 7 (1974).

representation election for the term of the agreement, but not longer than three years.[104] The purpose of this rule is to encourage the business stability that comes with a long term collective bargaining agreement and to prevent challenges to the bargaining representative and the disruption of business that would be caused by elections during the term of the agreement. The NLRB rules also provide that petitions for an election may be filed within a specified period prior to the termination of the agreement, so that the employees have the opportunity to substitute a new representative or decide to be unrepresented. Thus, the contract bar doctrine preserves stability without locking employees into a single union.[105]

This NLRB doctrine is codified in ALRA section 1156.7(b), which provides that a valid agreement bars an election for the term of the agreement, but not longer than three years. This section specifies that, to operate as a bar, the agreement must be in writing and executed by the parties; and it must include the substantive terms and conditions of employment. The statute incorporates an anti-lock-in device by providing for an election if a majority of the employees file a petition and sign authorization cards. This petition must be filed within the 12-month period before the expiration of the existing agreement. In addition the petition must be filed at a time when the number of employees is not less than 50 percent of a farmer's peak agricultural employment for the current calendar year, and it can be filed only if there was no valid election among these employees in the 12 months preceding the petition.[106]

Two sections of the ALRA relate to collective bargaining agreements executed prior to the effective date of the statute.

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104. *See, e.g.*, Carpenter's Local 1545 v. Vincent, 286 F.2d 127, 130-31 (2d Cir. 1960); General Cable Corp., 139 N.L.R.B. 1123 (1962).

105. *See, e.g.*, Leonard Wholesale Meats Co., 136 N.L.R.B. 1000 (1962); Deluxe Metal Furniture Co., 121 N.L.R.B. 995 (1958).

106. ALRA § 1156.7(c) provides for a one-year open period, in contrast to the 30-day period permitted by the NLRB. *See* cases cited in notes 104-05 *supra*. It was felt that, given the seasonal nature of agricultural employment, the one-year period was necessary to insure that a union could file at peak season, when the required complement of employees would be present. In addition, it prevents an incumbent union from blocking any challenge by arranging for its contract to terminate on a date when the required 50 percent of the peak work force would not be present, thus preventing a rival union or dissatisfied employees from filing an election petition.

If a petition is properly filed, the election will be held within seven days, in accord with the provisions of ALRA § 1156.3(a). If the incumbent union loses, the status of the old contract after the election is a matter that will have to be settled by future decisions of the ALRB. Applicable NLRB precedent would permit the new bargaining representative to void the existing contract and renegotiate a new agreement immediately. American Seating Co., 106 N.L.R.B. 250 (1953).

One states that such agreements shall not bar a petition for an election.[107] The other, the statement of legislative intent that appears at the beginning of the statute, resolves any question as to whether contracts pre-dating the ALRA became void on the effective date of the statute.[108] If the agreements were void, employees might immediately be deprived of medical care and other benefits afforded by the contractual agreement. The statement of intent declares that these agreements are not void on the Act's effective date, but are rendered void by a subsequent election and certification.

When these provisions are read with other parts of the ALRA, it seems that labor organizations with pre-existing contracts must undergo the electoral process and allow the employees to choose their bargaining representative; the statement of intent apparently provides a grace period for the contract only until an election can be held under the ALRA. Thus, an incumbent union with a pre-existing contract may have to undergo an election prior to the expiration of its contract in order to establish its status as a certified bargaining representative.[109] This interpretation is consistent with other provisions of the ALRA, which establish that it is an unfair labor practice for a union to act as a representative without certification; that certification can only follow an election; and that a pre-existing contract will not bar an election.[110]

The sections rendering pre-existing agreements voidable might be subject to attack on the theory that they constitute an impairment of contract However, the state's police power gives it broad authority to regulate businesses within the state; when the ALRA provisions are measured against this authority, the new law will probably withstand judicial scrutiny.[111]

The ALRA spells out in somewhat more detail than the NLRA the eligibility of employees to vote. The Act specifies that all agricultural employees whose names appear on the employer's payroll immediately preceding the filing of the representation

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107. ALRA § 1156.7(a).

108. ALRA § 1.5.

109. The language of the statute could also give rise to a contrary contention that the pre-existing contract of an incumbent does not require the incumbent to undergo any electoral test absent the filing of a decertification petition or petition by a rival union and the incumbent can continue to act as bargaining representative under the contract until its expiration.

110. ALRA §§ 1156.3(c), 1157(a), 1159, 1153(f). For a discussion of § 1156.3(c) and § 1153(f), *see* text accompanying notes 39-40 *supra.*

111. *See, e.g.,* Nebbia v. New York, 291 U.S. 502 (1934); Home Bldg. & Loan Ass'n v. Blaisdell, 290 U.S. 398 (1934); *In re* Marriage of Walton, 28 Cal. App. 3d 108, 104 Cal. Rptr. 472 (1972); Castleman v. Scudder, 81 Cal. App. 2d 737, 185 P.2d 35 (1947); *In re* Lasswell, 1 Cal. App. 2d 183, 36 P.2d 678 (1934).

petition shall be eligible to vote.[112] A provision similar to one in the NLRA allows economic strikers to vote under specified conditions. The statute also has special provisions relating to elections conducted within 18 months of the effective date of the Act that involve labor disputes commenced prior to that date; in such cases, the board may adopt "fair, equitable, and appropriate eligibility rules."

ADMINISTRATIVE PROCEDURE, REMEDIES, COURT REVIEW, AND SUITS BETWEEN LABOR ORGANIZATIONS AND EMPLOYERS

The procedures established by the ALRA for handling charges that the law has been violated are near-duplicates of NLRA regulations, including provisions for hearings;[113] review by the board;[114] applications to the courts for appropriate injunctive relief;[115] specific remedies available to the board;[116] review and enforcement of board orders by the courts;[117] and suits between labor organizations and employers.[118] Two provisions which do not have equivalents in the NLRA should be noted. One pertains to a specific ALRA remedy,[119] and the other to the procedure by which board orders are reviewed and enforced.[120]

The ALRA provides a specific "make whole" remedy to be used "when the board deems such relief appropriate," in order to compensate employees for losses sustained as a result of an employer's refusal to bargain with the employees' certified bargaining representative.[121] Under the NLRA, there have been instances when employers have refused to bargain with a union, relying on insubstantial or frivolous grounds, and have pursued the case through the administrative and court systems. These tactics often create a two or three year period in which the employer can avoid bargaining with the union, since bargaining can be compelled only after final court enforcement of the board's order.[122] Meanwhile, the employer has managed to delay for a two or three year period any possible increase in wages or fringe benefits that might have

112. ALRA § 1157; *see* NLRA 9(c)(3), 29 U.S.C. 159(c)(3) (1970).
113. ALRA § 1160.2; *see* NLRA § 10(b), 29 U.S.C. § 160(b) (1970).
114. ALRA § 1160.3; *see* NLRA § 10(c), 29 U.S.C. § 160(c) (1970).
115. ALRA §§ 1160.4, 1160.6; *see* NLRA §§ 10(j)-(l), 29 U.S.C. §§ 160(j)-(l) (1970).
116. ALRA § 1160.3; *see* NLRA § 10(c), 29 U.S.C. § 160(c) (1970).
117. ALRA § 1160.8; *see* NLRA §§ 10(e), (f), 29 U.S.C. §§ 160(e), (f) (1970).
118. ALRA § 1165; *see* NLRA § 301, 29 U.S.C. § 185 (1970).
119. ALRA § 1160.3.
120. ALRA § 1160.8.
121. ALRA § 1160.3.
122. *See, e.g.*, United Steel Workers Union v. NLRB, 496 F.2d 1342 (5th Cir. 1974).

resulted from collective bargaining. There is no penalty attached to this use of board and court procedures to avoid the bargaining obligation, and if the legal expense involved in manufacturing the delay is less than the increased costs of earlier bargaining, it is to the employer's advantage to stall. Another advantage of this tactic is that the union's strength may be dissipated during the delay and its ability to bargain effectively impaired.

Naturally, the unions petitioned the NLRB for relief in these situations, requesting that employees be "made whole" for losses suffered by the refusal to bargain. Unions sought an order forcing employers to execute retroactively the contracts that they would have entered into two or three years earlier if they had bargained in good faith. The NLRB delayed taking a position on this for a number of years; the difficulty in such a remedy is that it requires determining what the collective agreement would have been if the bargaining process had taken place at an earlier date. The NLRB finally resolved the problem in a split decision by concluding that Congress had not given the board the power to order such a remedy.[123]

Although the question of whether Congress granted this power to the NLRB still is debated by some labor lawyers, there is no doubt that the ALRA has given this potent remedy to the ALRB. The grant of power, however, is tempered by the phrase "when the board deems such relief appropriate." The board is not likely to use this remedial power in every refusal to bargain case, but the fact that it is available may cause employers to be more cautious in refusing to bargain for insubstantial or frivolous reasons.

The other significant change from the NLRA pertains to the manner in which board orders are reviewed and enforced by the courts.[124] Review of NLRB orders is obtained either by a petition for enforcement filed by the board, or a petition for review filed by the aggrieved party.[125] In either event, the appropriate United States Court of Appeals reviews the board's action and determines whether the decision and order should be enforced. If the employer or labor organization has not sought review in the courts and has not voluntarily complied with the order, the board is required to initiate a petition for enforcement, since NLRB orders are not self-enforcing. Because of the numerous petitions the board must file, there is a backlog of cases and the petitions

123. Ex-Cell-O Corp., 185 N.L.R.B. 107 (1970), *rev'd sub nom.* Int'l Union, UAW v. NLRB, 449 F.2d 1046 (D.C. Cir. 1971). *See also* Tidee Products, Inc., 194 N.L.R.B. 1254 (1972).

124. ALRA § 1160.8.

125. NLRA §§ 10(e), (f), 29 U.S.C. §§ 160(e), (f) (1970).

are not always filed immediately; this results in delays in the vindication of the parties' rights under the Act. In other instances, the aggrieved party decides to comply voluntarily only after the petition or briefs have been filed with the court.

The ALRA seeks to speed the review process and eliminate some wasted money and energy by placing the responsibility for review of the board's order on the party affected by the order rather than on the ALRB. Thus, the Act requires that the aggrieved party initiate the review by filing a petition for review with the appropriate court of appeal[126] within 30 days from the issuance of the board's order. If no such petition is filed, the board has a simplified method for enforcement of its orders. Once the time for review has elapsed, the board may file a petition for enforcement with the appropriate superior court. In deciding to enforce this order, the court is limited to consideration of whether the order was issued according to established board procedures. The statute specifically denies the superior court the power to review the merits of the order.[127]

Like the NLRA, the ALRA includes provisions permitting suits for violation of contracts between employers and labor organizations to be brought in any superior court having jurisdiction of the parties.[128]

STATEMENT OF INTENT

A statement of intent published in the Senate Journal[129] notes that the ALRA shall not prohibit the free exercise of religion as guaranteed by article 1, section 4 of the California Constitution and the first amendment of the United States Constitution. The only time the question of religious freedom appears to have arisen with respect to the ALRA was during an attempt to accommodate Seventh Day Adventists' religious objections to membership in labor unions by providing a religious exemption in the law.[130] Immediately prior to the passage of the law, amendments were introduced to create the exemption, but since all the parties directly affected by the new legislation had agreed not to seek amendments once the final version of the bill had been agreed upon, the religious exemption provision was rejected. It

126. Either a court of appeal having jurisdiction over the county where the alleged unfair labor practice occurred or where the person resides or transacts business.

127. ALRA § 1160.8.

128. ALRA § 1165; *see* NLRA § 301, 29 U.S.C. § 185 (1970).

129. CAL. ST. S. JOUR. 16 (daily ed. May 26, 1975).

130. *Cf.* NLRA § 19, 29 U.S.C.A. § 169 (Supp. 1975) (religious exemption provided in new provisions for employees of health care institutions).

is possible that this simple statement that the ALRA is not intended to abridge religious rights might permit the board to excuse a Seventh Day Adventist from union membership under a union security agreement.

CONCLUSION

The new ALRA provides a viable legal framework for resolving California's farm labor problems. The law may not be perfect in all respects, but it is a law which is intended to be fair to all affected by it. As Governor Brown remarked when he signed the legislation, however, it is "just a beginning."[131]

The preamble to the law states, "It is the hope of the Legislature that farm laborers, farmers and all the people of California will be served by the provisions of this act."[132] The fulfillment of this hope and the success of the new legislation depend, of course, on the cooperation, the efforts and the good faith of the board and those whose activities are regulated by the law.

131. San Francisco Chronicle, June 6, 1975, at 10, col. 1.
132. ALRA § 1.

APPENDIX

Excerpts from the California Agricultural Labor Relations Act of 1975

CHAPTER 3. RIGHTS OF AGRICULTURAL EMPLOYEES

1152. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of continued employment as authorized in subdivision (c) of Section 1153.

CHAPTER 4. UNFAIR LABOR PRACTICES AND REGULATION OF SECONDARY BOYCOTTS

1153. It shall be an unfair labor practice for an agricultural employer to do any of the following:

(a) To interfere with, restrain, or coerce agricultural employees in the exercise of the rights guaranteed in Section 1152.

(b) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it. However, subject to such rules and regulations as may be made and published by the board pursuant to Section 1144, an agricultural employer shall not be prohibited from permitting agricultural employees to confer with him during working hours without loss of time or pay.

(c) By discrimination in regard to the hiring or tenure of employment, or any term or condition of employment, to encourage or discourage membership in any labor organization.

Nothing in this part, or in any other statute of this state, shall preclude an agricultural employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this section as an unfair labor practice) to require as a condition of employment, membership therein on or after the fifth day following the beginning of such employment, or the effective date of such agreement whichever is later, if such labor organization is the representative of the agricultural employees as provided in Section 1156 in the appropriate collective-bargaining unit covered by such agreement. No employee who has been required to pay dues to a labor organization by virtue of his employment as an agricultural worker during any calendar month, shall be required to pay dues to another labor organization by virtue of similar employment during such month. For purposes of this chapter, membership shall mean the satisfaction of all reasonable terms and conditions uniformly applicable to other members

in good standing; provided, that such membership shall not be denied or terminated except in compliance with a constitution or bylaws which afford full and fair rights to speech, assembly, and equal voting and membership privileges for all members, and which contain adequate procedures to assure due process to members and applicants for membership.

(d) To discharge or otherwise discriminate against an agricultural employee because he has filed charges or given testimony under this part.

(e) To refuse to bargain collectively in good faith with labor organizations certified pursuant to the provisions of Chapter 5 (commencing with Section 1156) of this part.

(f) To recognize, bargain with, or sign a collective-bargaining agreement with any labor organization not certified pursuant to the provisions of this part.

1154. It shall be an unfair labor practice for a labor organization or its agents to do any of the following:

(a) To restrain or coerce:

(1) Agricultural employees in the exercise of the rights guaranteed in Section 1152. This paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein.

(2) An agricultural employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances.

(b) To cause or attempt to cause an agricultural employer to discriminate against an employee in violation of subdivision (c) of Section 1153, or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated for reasons other than failure to satisfy the membership requirements specified in subdivision (c) of Section 1153.

(c) To refuse to bargain collectively in good faith with an agricultural employer, provided it is the representative of his employees subject to the provisions of Chapter 5 (commencing with Section 1156) of this part.

(d) To do either of the following: (i) To engage in, or to induce or encourage any individual employed by any person to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services; or (ii) to threaten, coerce, or restrain any person; where in either case (i) or (ii) an object thereof is any of the following:

(1) Forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by Section 1154.5.

(2) Forcing or requiring any person to cease using, selling, transporting, or otherwise dealing in the products of any other producer,

processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees. Nothing contained in this paragraph shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing.

(3) Forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his agricultural employees if another labor organization has been certified as the representative of such employees under the provisions of Chapter 5 (commencing with Section 1156) of this part.

(4) Forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class, unless such employer is failing to conform to an order or certification of the board determining the bargaining representative for employees performing such work.

Nothing contained in this subdivision (d) shall be construed to prohibit publicity, including picketing for the purpose of truthfully advising the public, including consumers, that a product or products or ingredients thereof are produced by an agricultural employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services at the establishment of the employer engaged in such distribution, and as long as such publicity does not have the effect of requesting the public to cease patronizing such other employer.

However, publicity which includes picketing and has the effect of requesting the public to cease patronizing such other employer, shall be permitted only if the labor organization is currently certified as the representative of the primary employer's employees.

Further, publicity other than picketing, but including peaceful distribution of literature which has the effect of requesting the public to cease patronizing such other employer, shall be permitted only if the labor organization has not lost an election for the primary employer's employees within the preceding 12-month period, and no other labor organization is currently certified as the representative of the primary employer's employees.

Nothing contained in this subdivision (d) shall be construed to prohibit publicity, including picketing, which may not be prohibited under the United States Constitution or the California Constitution.

Nor shall anything in this subdivision (d) be construed to apply or be applicable to any labor organization in its representation of workers who are not agricultural employees. Any such labor organization shall continue to be governed in its intrastate activities for nonagricultural workers by Section 923 and applicable judicial prededents.

(e) To require of employees covered by an agreement authorized under subdivision (c) of Section 1153 the payment, as a condition precedent to becoming a member of such organization, of a fee in an amount which the board finds excessive or discriminatory under all circumstances. In making such a finding, the board shall consider, among other relevant factors, the practices and customs of labor organizations in the agriculture industry and the wages currently paid to the employees affected.

(f) To cause or attempt to cause an agricultural employer to pay or deliver, or agree to pay or deliver, any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed.

(g) To picket or cause to be picketed, or threaten to picket or cause to be picketed, any employer where an object thereof is either forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees, or forcing or requiring the employees of an employer to accept or select such labor organization as their collective-bargaining representative, unless such labor organization is currently certified as the representative of such employees, in any of the following cases:

(1) Where the employer has lawfully recognized in accordance with this part any other labor organization and a question concerning representation may not appropriately be raised under Section 1156.3.

(2) Where within the preceding 12 months a valid election under Chapter 5 (commencing with Section 1156) of this part has been conducted.

Nothing in this subdivision shall be construed to prohibit any picketing or other publicity for the purpose of truthfully advising the public (including consumers) that an employer does not employ members of, or have a contract with, a labor organization, unless an effect of such picketing is to induce any individual employed by any other person in the course of his employment, not to pick up, deliver, or transport any goods or not to perform any services.

Nothing in this subdivision (g) shall be construed to permit any act which would otherwise be an unfair labor practice under this section.

(h) To picket or cause to be picketed, or threaten to picket or cause to be picketed, any employer where an object thereof is either forcing or requiring an employer to recognize or bargain with the labor organization as a representative of his employees unless such labor organization is currently certified as the collective-bargaining representative of such employees.

(i) Nothing contained in this section shall be construed to make unlawful a refusal by any person to enter upon the premises of any agricultural employer, other than his own employer, if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this part.

1154.5. It shall be an unfair labor practice for any labor organization which represents the employees of the employer and such employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains, or agrees to cease or refrain, from handling, using, selling, transporting, or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person, and any contract or agreement entered into heretofore or hereafter containing such an agreement shall be, to such extent, unenforceable and void. Nothing in this section shall apply to an agreement between a labor organization and an employer relating to a supplier of an ingredient or ingredients which are integrated into a product produced or distributed by such employer where the labor organization is certified as the representative of the employees of such supplier, but no collective-bargaining agreement between such supplier and such labor organization is in effect. Further, nothing in this section shall apply to an agreement between a labor organization and an agricultural employer relating to the contracting or subcontracting of work to be done at the site of the farm and related operations. Nothing in this part shall prohibit the enforcement of any agreement which is within the foregoing exceptions.

Nor shall anything in this section be construed to apply or be applicable to any labor organization in its representation of workers who are not agricultural employees. Any such labor organization shall continue to be governed in its intrastate activities for nonagricultural workers by Section 923 and applicable judicial precedents.

1154.6. It shall be an unfair labor practice for an employer or labor organization, or their agents, willfully to arrange for persons to become employees for the primary purpose of voting in elections.

1155. The expressing of any views, arguments, or opinions, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute evidence of an unfair labor practice under the provisions of this part, if such expression contains no threat of reprisal or force, or promise of benefit.

1155.2. (a) For purposes of this part, to bargain collectively in good faith is the performance of the mutual obligation of the agricultural employer and the representative of the agricultural employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any questions arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

(b) Upon the filing by any person of a petition not earlier than the 90th day nor later than the 60th day preceding the expiration of the 12-month period following initial certification, the board shall determine whether an employer has bargained in good faith with the currently certified labor organization. If the board finds that the employer has not bargained in good faith, it may extend the certification for up

to one additional year, effective immediately upon the expiration of the previous 12-month period following initial certification.

1155.3. (a) Where there is in effect a collective-bargaining contract covering agricultural employees, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification does all of the following:

(1) Serves a written notice upon the other party to the contract of the proposed termination or modification not less than 60 days prior to the expiration date thereof, or, in the event such contract contains no expiration date, 60 days prior to the time it is proposed to make such termination or modification.

(2) Offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications.

(3) Notifies the Conciliation Service of the State of California within 30 days after such notice of the existence of a dispute, provided no agreement has been reached by that time.

(4) Continues in full force and effect, without resorting to strike or lockout, all the terms and conditions of the existing contract, for a period of 60 days after such notice is given, or until the expiration date of such contract, whichever occurs later.

(b) The duties imposed upon agricultural employers and labor organizations by paragraphs (2), (3), and (4) of subdivision (a) shall become inapplicable upon an intervening certification of the board that the labor organization or individual which is a party to the contract has been superseded as, or has ceased to be the representative of the employees, subject to the provisions of Chapter 5 (commencing with Section 1156) of this part, and the duties so imposed shall not be construed to require either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any agricultural employee who engages in a strike within the 60-day period specified in this section shall lose his status as an agricultural employee of the agricultural employer engaged in the particular labor dispute, for the purposes of Section 1153 to 1154 inclusive, and Chapters 5 (commencing with Section 1156) and 6 (commencing with Section 1160) of this part, but such loss of status for such employee shall terminate if and when he is reemployed by such employer.

1155.4. It shall be unlawful for any agricultural employer or association of agricultural employers, or any person who acts as a labor relations expert, adviser, or consultant to an agricultural employer, or who acts in the interest of an agricultural employer, to pay, lend, or deliver, any money or other thing of value to any of the following:

(a) Any representative of any of his agricultural employees.

(b) Any agricultural labor organization, or any officer or em-

ployee thereof, which represents, seeks to represent, or would admit to membership, any of the agricultural employees of such employer.

(c) Any employee or group or committee of employees of such employer in excess of their normal compensation for the purpose of causing such employee or group or committee directly or indirectly to influence any other employees in the exercise of the right to organize and bargain collectively through representatives of their own choosing.

(d) Any officer or employee of an agricultural labor organization with intent to influence him in respect to any of his actions, decisions, or duties as a representative of agricultural employees or as such officer or employee of such labor organization.

1155.5. It shall be unlawful for any person to request, demand, receive, or accept, or agree to receive or accept, any payment, loan, or delivery of any money or other thing of value prohibited by Section 1155.4.

1155.6. Nothing in Section 1155.4 or 1155.5 shall apply to any matter set forth in subsection (c) of Section 186 of Title 29 of the United States Code.

1155.7. Nothing in this chapter shall be construed to apply or be applicable to any labor organization in its representation of workers who are not agricultural employees. Any such labor organization shall continue to be governed in its intrastate activities for nonagricultural workers by Section 923 and applicable judicial precedents.

CHAPTER 5. LABOR REPRESENTATIVES AND ELECTIONS

1156. Representatives designated or selected by a secret ballot for the purposes of collective bargaining by the majority of the agricultural employees in the bargaining unit shall be the exclusive representatives of all the agricultural employees in such unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, or other conditions of employment. Any individual agricultural employee or a group of agricultural employees shall have the right at any time to present grievances to their agricultural employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect, if the bargaining representative has been given opportunity to be present at such adjustment.

1156.2. The bargaining unit shall be all the agricultural employees of an employer. If the agricultural employees of the employer are employed in two or more noncontiguous geographical areas, the board shall determine the appropriate unit or units of agricultural employees in which a secret ballot election shall be conducted.

1156.3. (a) A petition which is either signed by, or accompanied by authorization cards signed by, a majority of the currently employed employees in the bargaining unit may be filed in accordance

with such rules and regulations as may be prescribed by the board, by an agricultural employee or group of agricultural employees, or any individual or labor organization acting in their behalf alleging all the following:

(1) That the number of agricultural employees currently employed by the employer named in the petition, as determined from his payroll immediately preceding the filing of the petition, is not less than 50 percent of his peak agricultural employment for the current calendar year.

(2) That no valid election pursuant to this section has been conducted among the agricultural employees of the employer named in the petition within the 12 months immediately preceding the filing thereof.

(3) That no labor organization is currently certified as the exclusive collective-bargaining representative of the agricultural employees of the employer named in the petition.

(4) That the petition is not barred by an existing collective-bargaining agreement.

Upon receipt of such a signed petition, the board shall immediately investigate such petition, and, if it has reasonable cause to believe that a bona fide question of representation exists, it shall direct a representation election by secret ballot to be held, upon due notice to all interested parties and within a maximum of seven days of the filing of the petition. If at the time the election petition is filed a majority of the employees in a bargaining unit are engaged in a strike, the board shall, with all due diligence, attempt to hold a secret ballot election within 48 hours of the filing of such petition. The holding of elections under strike circumstances shall take precedence over the holding of other secret ballot elections.

The board shall make available at any election under this chapter ballots printed in English and Spanish. The board may also make available at such election ballots printed in any other language as may be requested by an agricultural labor organization, or agricultural employee eligible to vote under this part. Every election ballot, except ballots in runoff elections where the choice is between labor organizations, shall provide the employee with the opportunity to vote against representation by a labor organization by providing an appropriate space designated "No Labor Organizations".

(b) Any other labor organization shall be qualified to appear on the ballot if it presents authorization cards signed by at least 20 percent of the employees in the bargaining unit at least 24 hours prior to the election.

(c) Within five days after an election, any person may file with the board a signed petition asserting that allegations made in the petition filed pursuant to subdivision (a) were incorrect, that the board improperly determined the geographical scope of the bargaining unit, or objecting to the conduct of the election or conduct affecting the results of the election.

Upon receipt of a petition under this subdivision, the board, upon due notice, shall conduct a hearing to determine whether the election shall be certified. Such hearing may be conducted by an officer or employee of a regional office of the board. He shall make no recommendations with respect thereto. If the board finds, on the record of such hearing, that any of the assertions made in the petition filed pursuant to this subdivision are correct, or that the election was not conducted properly, or misconduct affecting the results of the election occurred, the board may refuse to certify the election. Unless the board determines that there are sufficient grounds to refuse to do so, it shall certify the election.

(d) If no petition is filed pursuant to subdivision (c) within five days of the election the board shall certify the election.

(e) The board shall decertify a labor organization if the United States Equal Employment Opportunity Commission has found, pursuant to Section 2000(e)(5) of Title 42 of the United States Code, that the labor organization engaged in discrimination on the basis of race, color, national origin, religion, sex or any other arbitrary or invidious classification in violation of Subchapter VI of Chapter 21 of Title 42 of the United States Code during the period of such labor organization's present certification.

1156.4. Recognizing that agriculture is a seasonal occupation for a majority of agricultural employees, and wishing to provide the fullest scope for employees' enjoyment of the rights included in this part, the board shall not consider a representation petition or a petition to decertify as timely filed unless the employer's payroll reflects 50 percent of the peak agricultural employment for such employer for the current calendar year for the payroll period immediately preceding the filing of the petition.

In this connection, the peak agricultural employment for the prior season shall alone not be a basis for such determination, but rather the board shall estimate peak employment on the basis of acreage and crop statistics which shall be applied uniformly throughout the State of California and upon all other relevant data.

1156.5. The board shall not direct an election in any bargaining unit where a valid election has been held in the immediately preceding 12-month period.

1156.6. The board shall not direct an election in any bargaining unit which is represented by a labor organization that has been certified within the immediately preceding 12-month period or whose certification has been extended pursuant to subdivision (b) of Section 1155.2.

1156.7. (a) No collective-bargaining agreement executed prior to the effective date of this chapter shall bar a petition for an election.

(b) A collective-bargaining agreement executed by an employer and a labor organization certified as the exclusive bargaining representative of his employees pursuant to this chapter shall be a bar to a

petition for an election among such employees for the term of the agreement, but in any event such bar shall not exceed three years, provided that both the following conditions are met:

(1) The agreement is in writing and executed by all parties thereto.

(2) It incorporates the substantive terms and conditions of employment of such employees.

(c) Upon the filing with the board by an employee or group of employees of a petition signed by 30 percent or more of the agricultural employees in a bargaining unit represented by a certified labor organization which is a party to a valid collective-bargaining agreement, requesting that such labor organization be decertified, the board shall conduct an election by secret ballot pursuant to the applicable provisions of this chapter, and shall certify the results to such labor organization and employer.

However, such a petition shall not be deemed timely unless it is filed during the year preceding the expiration of a collective-bargaining agreement which would otherwise bar the holding of an election, and when the number of agricultural employees is not less than 50 percent of the employer's peak agricultural employment for the current calendar year.

(d) Upon the filing with the board of a signed petition by an agricultural employee or group of agricultural employees, or any individual or labor organization acting on their behalf, accompanied by authorization cards signed by a majority of the employees in an appropriate bargaining unit, and alleging all the conditions of paragraphs (1), (2), and (3), the board shall immediately investigate such petition and, if it has reasonable cause to believe that a bona fide question of representation exists, it shall direct an election by secret ballot pursuant to the applicable provisions of this chapter:

(1) That the number of agricultural employees currently employed by the employer named in the petition, as determined from his payroll immediately preceding the filing of the petition, is not less than 50 percent of his peak agricultural employment for the current calendar year.

(2) That no valid election pursuant to this section has been conducted among the agricultural employees of the employer named in the petition within the 12 months immediately preceding the filing thereof.

(3) That a labor organization, certified for an appropriate unit, has a collective-bargaining agreement with the employer which would otherwise bar the holding of an election and that this agreement will expire within the next 12 months.

1157. All agricultural employees of the employer whose names appear on the payroll applicable to the payroll period immediately preceding the filing of the petition of such an election shall be eligible to vote. An economic striker shall be eligible to vote under such regulations as the board shall find are consistent with the purposes and pro-

visions of this part in any election, provided that the striker who has been permanently replaced shall not be eligible to vote in any election conducted more than 12 months after the commencement of the strike.

In the case of elections conducted within 18 months of the effective date of this part which involve labor disputes which commenced prior to such effective date, the board shall have the jurisdiction to adopt fair, equitable, and appropriate eligibility rules, which shall effectuate the policies of this part, with respect to the eligibility of economic strikers who were paid for work performed or for paid vacation during the payroll period immediately preceding the expiration of a collective-bargaining agreement or the commencement of a strike; provided, however, that in no event shall the board afford eligibility to any such striker who has not performed any services for the employer during the 36-month period immediately preceding the effective date of this part.

1157.2. In any election where none of the choices on the ballot receives a majority, a runoff shall be conducted, the ballot providing for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election.

1157.3. Employers shall maintain accurate and current payroll lists containing the names and addresses of all their employees, and shall make such lists available to the board upon request.

1158. Whenever an order of the board made pursuant to Section 1160.3 is based in whole or in part upon the facts certified following an investigation pursuant to Sections 1156.3 to 1157.2 inclusive, and there is a petition for review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under Section 1160.8 and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

1159. In order to assure the full freedom of association, self-organization, and designation of representatives of the employees own choosing, only labor organizations certified pursuant to this part shall be parties to a legally valid collective-bargaining agreement.