

California's ALRA and ALRB After 40 Years

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"The greatest accomplishment of my administration was the enactment of a farm labor relations law." (California Governor Jerry Brown, 1975-83)

The United Farm Workers Union claimed 67,000 members and 180 contracts in March 1973, and the Teamsters Union had dozens more contracts covering California farm workers before the Agricultural Labor Relations Act (ALRA) was enacted in 1975. Forty years later, the number of unionized workers has fallen to less than 10,000 and there are fewer than 40 contracts with California farms. Farm labor remains in the news as additional laws to protect farm workers are debated in the California Legislature, but there is little prospect of a return to the levels of unionization of the early 1970s.

California enacted the ALRA in 1975 "to ensure peace in the agricultural fields by guaranteeing justice for all agricultural workers and stability in labor relations." When the ALRA granted union rights to farm workers, contemporary observers expected most of the state's farms to have collective bargaining agreements, a belief reinforced by almost 100 elections a month in fall 1975. Unions won over 95% of the elections whose results were certified.

The ALRA granted farm workers the right to engage in concerted activities, organize into unions, bargain collectively, and refrain from union activities—free from interference from employers and unions—and to decide by secret ballot whether they wanted a union to represent them. The

Agricultural Labor Relations Board (ALRB) was created to supervise elections, to determine if farm workers in secret ballot elections want to be represented by unions, and to resolve unfair labor practice (ULPs) charges alleging that worker rights were violated.

The ALRB supervised almost 700 elections its first 2.5 years, over half of all elections in the ALRB's 40-year history. The results of 500 of these elections were certified, and unions became bargaining representatives for farm workers almost 95% of the time. (Figure 1)

Election activity slowed to between 60 and 70 a year at the end of the 1970s, and fell further to an average 27 elections a year during the 1980s, when the ALRB certified the results of an average 28 elections a year. The union victory rate fell to 57% in the 1980s.

During the 1990s, elections fell to an average 11 a year, the ALRB certified the results of 10 elections a year, and unions won six or 60%. Between 2000 and 2015, the ALRB supervised an average six elections a year, certified the results of five, and unions won an average two or 40%. Unions petition the ALRB to supervise elections, and they are requesting far fewer elections.

The ALRB protects worker rights by adjudicating ULP charges, allegations that worker rights were violated that are filed by workers, unions, or employers. Since 1975, the ALRB's General Counsel (GC) received 16,560 ULP charges and issued over 1,900 complaints; by issuing a complaint covering one or more charges, the GC agrees that worker rights were violated and tries to get the parties to settle the dispute. If settlement talks fail, Administrative Law Judges (ALJ) hold trials on the complaints, and their decisions can be and often are appealed to the ALRB's Board, which issued 1,100 decisions over the past four decades upholding, modifying, or reversing ALJ decisions.

Election and ULP activities reflect union activities. There was far more union activity during the first two decades of the ALRA than since 1995: 70% of the ULP charges, 83% of the complaints, and 85% of Board decisions were issued before 1995. In 1979 and 1983, over 1,000 ULP charges were filed (the 2001 spike reflects a temporary administrative change), while in 2011 and 2014 less than 100 ULP charges were filed. The number of complaints topped 100 each year between 1977 and 1982, but dropped to 10 or less since 2005. There were over 100 Board decisions in two years, 1978 and 1982, and fewer than 10 a year in most years since 1998.

The ALRB's budget increased, from \$4.4 million and 33 full-time employees (FTE) in 2010–11 to \$9.5 million and 64 FTE in 2015–16.

Farm Labor Changes

In 1975 union organizers asked for automatic access to workers on farms to inform workers of their ALRA rights. Farmers opposed access for non-employee organizers, arguing access would violate their private property rights. The ALRB agreed with unions, granting union organizers automatic but limited access to workers on farms before work begins, during lunch time, and after work. They justified the access rule by asserting that many workers were migrants who "arrive in town in time for the local harvest, live in motels, labor camps, or with friends or relatives, then move on when the crop is in...[making union] home visits, mailings, or telephone calls ...impossible." Short stays in an area, contractors or supervisors driving workers directly on to private property, and workers living on farms meant, the ALRB reasoned, that union organizers would find it difficult to communicate with farm workers as they enter and exit farms, which is how nonfarm unions communicate with nonfarm workers.

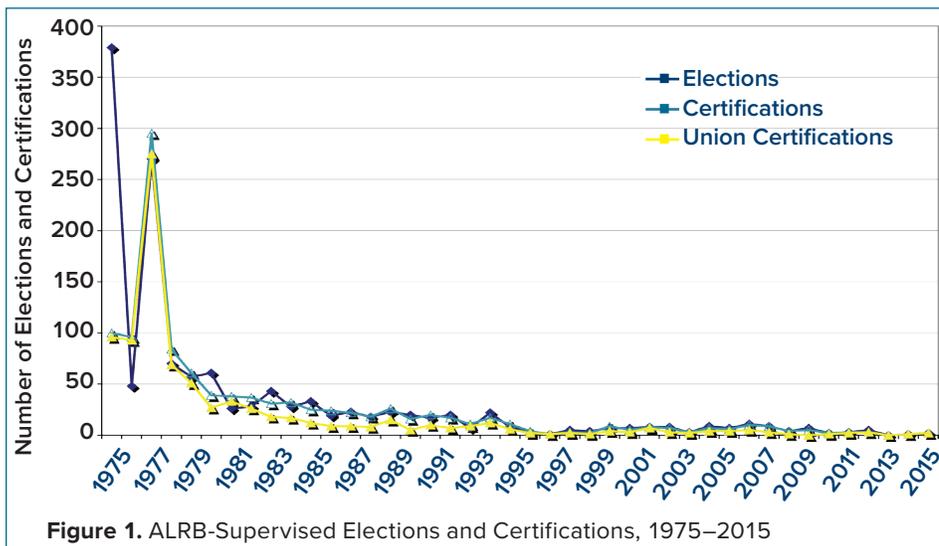


Figure 1. ALRB-Supervised Elections and Certifications, 1975–2015

The California Supreme Court in 1976 upheld the access rule, citing the combination of workforce characteristics and quick elections (the ALRB must hold an election within seven days of receiving a valid union petition, or within 48 hours if workers are on strike). A 2016 federal court decision cited the same migrancy, non-English, and similar factors to reject the efforts of several employers to restrict the access of union organizers to their properties.

The farm workforce has changed since 1975. The average employment of hired workers on the state’s farms was 275,000 in 1975, versus 420,000 in 2015. Farm employers changed as well. In 1975, almost 90% of the state’s farm workers were hired by the farm where they worked; by 2015, less than half of all crop workers were hired directly, meaning that nonfarm labor contractors and custom harvesters brought more workers to farms than were hired directly by farmers.

Farm workers have changed. A 1965 profile of the state’s hired farm workforce found that 46% were Hispanic and 44% white, often the descendants of so-called Arkie and Okie fruit tramps. About 30% of the state’s farm workers were migrants, staying away at least one night from their usual home to do farm work, and most were employed less than 150 days a year in agriculture.

Today, the farm workforce is more Hispanic and more immigrant but less migrant. Over 90% of California crop workers were born abroad, most often in Mexico, and 53% are not authorized to work in the U.S. The National Agricultural Worker Survey (NAWS), which defines migrants as persons who moved at least 75 miles from their usual residence to do farm work. The NAWS found that the migrant share of California crop workers fell from over 50% in 2000—when a quarter of workers arrived in the U.S. within the past year and were considered migrants because they moved from Mexico to the U.S.—to less than 15% migrants today. In 1965 migrant usually meant having at least two farm jobs in California too far apart to return home. Today, migrants who have two farm jobs at least 75 miles apart are less than 5% of farm workers.

The share of California crop workers who are indigenous, often from southern Mexican states such as Oaxaca where some residents do not speak Spanish, peaked at almost 30% in 2000 and has since fallen to less than 10%. Indigenous workers were the most recent unauthorized newcomers from Mexico, joining workers who moved to the U.S. from rural areas of West Central and Northern Mexico. The slowdown in Mexico-U.S. migration after 2008–09 explains the falling share of indigenous Mexicans in the farm workforce.

The NAWS finds that crop workers are aging, settling in California with their families, and usually working for only one farm employer. The average age of California farm workers is approaching 40, similar to the average age of all U.S. workers, and two-thirds are living in the state with their families. California crop workers have an average 16 years of U.S. farm work experience and do an average 36 weeks of farm work a year. Over 80% say they plan to continue doing farm work for at least five years or as long as they can.

Farm labor data suggest that farm workers are increasingly like nonfarm workers, living off the farm where they work and driving or car pooling to work. Few migrate from one farm employer to another, but some who work for contractors are employed on multiple farms during the year. The share who speak at least some English is similar to the share who are unauthorized, about 55%.

Workers and Laws

Farm employers opposed many of the regulations issued to implement the ALRA, arguing that the access rule and other implementing regulations tilted the playing field too much in favor of unions. A Republican governor appointed a new general counsel and Board in the 1980s, prompting the dominant United Farm Workers to call for defunding the ALRB. After organizing one major strawberry grower in the late 1990s, Coastal Berry (now Dole), the UFW switched from organizing workers to pressuring Congress to legalize unauthorized farm workers.

The UFW also revisited “old” certifications. The UFW was certified to represent workers on over 500 farms, but never had more than 250 contracts. Once the ALRB certifies a union to represent workers on a farm, the employer has an obligation to bargain in good faith with the union to reach a collective bargaining agreement, but a legitimate impasse or deadlock in

negotiations can prevent an agreement. To ensure more contracts, the UFW in 2002 persuaded the Legislature to approve the first major amendment to the ALRA since 1975, Mandatory Mediation and Conciliation (MMC).

Under MMC, newly certified unions bargain with employers for at least 180 days. If they fail to reach agreement, either party may request a mediator to help them. If mediation fails, the mediator is required to recommend the terms of a collective bargaining agreement that the ALRB can impose, assuring workers a CBA within 10 months of voting for union representation.

MMC was expected to unleash another wave of elections and contracts, but there were fewer than five union certifications a year after MMC went into effect. Instead, the UFW persuaded the Legislature to enact card check, a procedure under which a majority of workers on a farm could sign authorization cards attesting that they wanted the union to represent them, and the ALRB could recognize these signatures without a secret-ballot election. One reason for card check was that the UFW had signed authorization cards from 70% of the Giumarra workers in September 2005, but lost the secret-ballot election 48–52%.

Governors Arnold Schwarzenegger and Jerry Brown vetoed card-check bills, prompting the UFW to turn to “old certifications,” farms where the UFW was certified to represent workers before 2002. On some farms where the UFW was certified but no agreement was negotiated, the UFW requested negotiations. When these negotiations failed, the UFW invoked MMC.

This is what happened at Gerawan Farms, the state’s largest fresh tree-fruit grower. The UFW won a 1990 election to represent Gerawan workers, Gerawan committed a ULP, and the ALRB certified the UFW to represent Gerawan workers. The UFW in 2012 requested that bargaining resume

and, after no agreement was reached, the UFW requested MMC. Mediation failed, and the mediator developed a contract that the ALRB ordered Gerawan to implement.

Gerawan refused to implement the MMC agreement and challenged the constitutionality of the MMC law. In May 2015, the Fifth District Court of Appeal declared the MMC law unconstitutional on equal protection grounds because it allows the state to impose “a distinct, unequal, and individualized set of rules” on each farm employer. By contrast, the Third District Court of Appeal in 2006 upheld the constitutionality of MMC, and the California Supreme Court refused to hear an appeal. The conflict between the two appeals courts sets the stage for another Supreme Court review of MMC.

Conclusions

California enacted the ALRA at a time when farm labor disputes were front-page news. The wave of elections and union victories after 1975 seemed to confirm that most farm workers wanted the UFW to represent them, and that wages and benefits on most large farms would be negotiated in union contracts.

Today the union picture is different. There is little union organizing activity, explaining why there are few elections and ULP charges. The UFW has far fewer organizers in the fields than in the past, and devotes most its resources to federal and state campaigns to legalize and protect unauthorized workers.

Regardless of the constitutionality of MMC, there is little prospect of a resurgence in union activity in California agriculture for several reasons. First, seasonal farm work is more often a job than a career, and the workers most likely to organize and bargain for higher wages and better benefits are usually among the first to leave for nonfarm jobs. Second, the structure of

farm employment has changed. With labor contractors as the largest single employer of farm workers, unions find it hard to threaten boycotts of the nonfarm products of the conglomerates that were quick to recognize the UFW and agree to wage increases as in the 1970s.

What could change this picture? Many unions believe that legalizing currently unauthorized farm workers could embolden them to demand union representation and higher wages. However, after legalization in 1978–88, most newly legalized farm workers found nonfarm jobs and were replaced by unauthorized workers. A second alternative would be for unions to organize the fast-growing H-2A guest worker labor force, as occurred in North Carolina. Finally, with more settled farm workers employed almost year-round, a renewed organizing campaign may be able to persuade more workers to vote for union representation. If there were a resurgence of unions in agriculture, farm workers would once again be a great exception, since the share of private sector workers in unions has declined to less than 7%.

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