

Labor Relations in California Agriculture: Review and Outlook

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California enacted the Agricultural Labor Relations Act (ALRA) to “ensure peace in the agricultural fields by guaranteeing justice for all agricultural workers and stability in labor relations.” Almost four decades later, fewer than 20,000 of the 600,000 to 800,000 workers employed for wages sometime during the year on state farms are covered by collective bargaining agreements. Unions argue that employers discourage workers from exercising their union rights by interfering during union-organizing campaigns, prompting an amendment to the ALRA effective in 2012, that increases penalties on farm employers who unlawfully interfere with worker rights during organizing campaigns.

The federal National Labor Relations Act excludes farm workers. California is the only major farm state with a state law that grants union rights to farm workers, establishes election procedures under which workers decide whether they want to be represented by unions, and remedies unfair labor practices committed by employers and unions. The Agricultural Labor Relations Act (ALRA) was enacted in 1975 after a decade of strife, as the fledgling United Farm Workers union challenged farm employers and the Teamsters for the right to represent farm workers.

Experience during the late 1960s, with farm employers sometimes selecting the Teamsters to represent their workers without elections, led to provisions in the ALRA. These allowed the Agricultural Labor Relations Board (ALRB) to recognize a union as the bargaining representative of farm workers only after workers vote in secret-ballot elections. After the ALRA went into effect in Fall 1975, there were over 100 elections a month on the state’s

farms, and it appeared that many of the state’s farm workers wanted to be represented by unions. Between 1975 and 1977, Figure 1 shows there were almost 700 elections on California farms, and unions were certified to represent workers on two-thirds of the farms involved (in some cases, an election was held in one year but the certification did not occur until the next year).

Unions on most large vegetable farms and many of the largest fruit farms were expected to transform the farm labor market by raising wages and obtaining benefits such as health insurance and pensions for the seasonal workers they represented. After pushing entry-level wages in lettuce contracts to twice the minimum wage, *Business Week* on March 5, 1979 predicted that the United Farm Workers (UFW) would help seasonal farm workers “to win wage parity with industrial workers.” The UFW became a major force in state politics, and sued the University of California to stop the use of taxpayer funds to support labor-saving mechanization research.

Union organizing slowed to an average of 30 elections a year in the 1980s,

and the share of elections that resulted in a union being certified to represent workers fell to 55%. Unions or workers can request secret-ballot elections, and during the 1990s requests fell to an average of 10 a year, with unions winning half. In the first decade of the 21st century, the average number of elections fell to seven a year, and many involved workers trying to decertify the union representing them. In some years, the UFW requested no elections to win certification to represent more workers, and was decertified at farms including L.E. Cooke, Vista Vineyard, and Henry Hibino.

Over 15 organizations have been certified by the ALRB to represent workers on California farms, but today, three major unions represent most of the farm workers covered by contracts. The best-known union, the UFW, reported 4,300 active members (and 900 retirees) to the U.S. Department of Labor at the end of 2010, and 2,500 active participants in its Juan de la Cruz pension fund; that is, workers on whose behalf employers made pension contributions sometime during the year. Teamsters Local 890 represents

Figure 1. Farm Worker Elections and Certifications

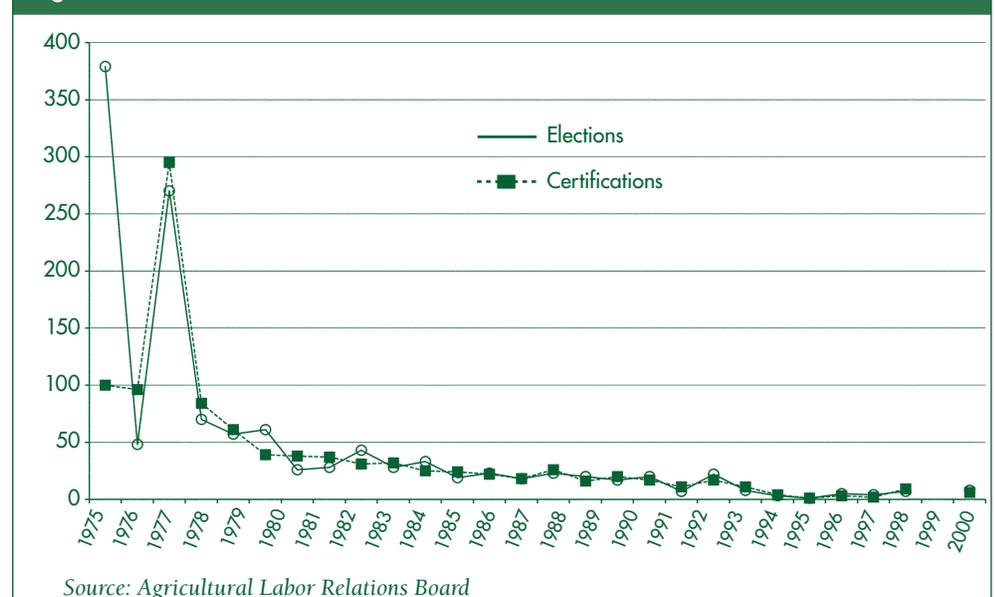
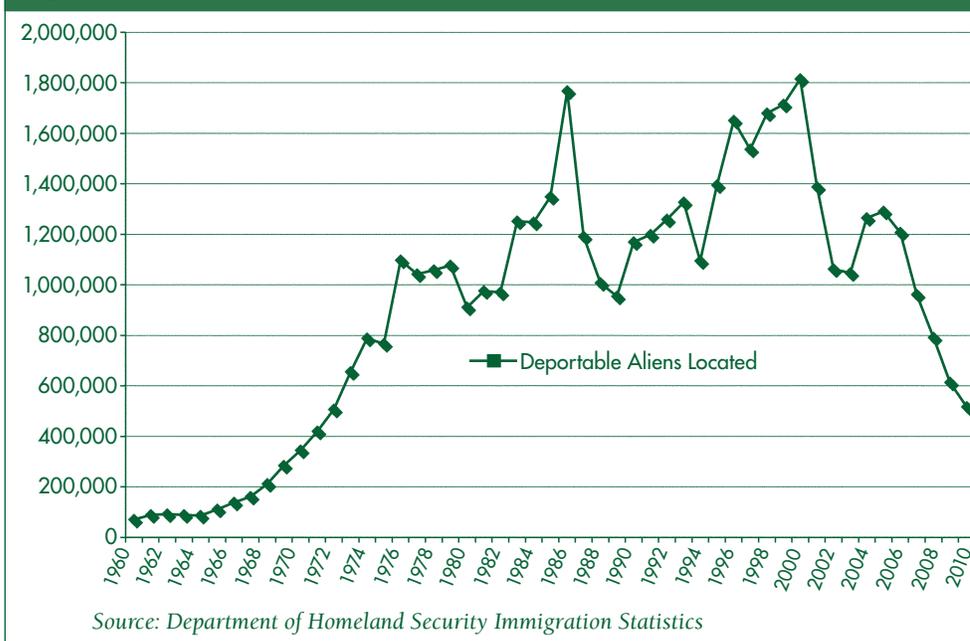


Figure 2. Deportable Aliens Located in the United States, 1960-2010



several thousand workers employed in the Salinas area, while United Food and Warehouse Workers Local 5 (previously Local 1096) represents workers in the Salinas areas and at several wineries and dairies around the state. The UFW does not have local unions.

Union Decline

There are four major explanations for why farm worker unions have been unable to represent more California farm workers and transform the farm labor market. The first involves flawed union leadership, especially of the UFW. Journalist Miriam Pawel praised UFW leader Cesar Chavez as a charismatic leader, able to articulate the hopes and dreams of farm workers, but concluded that Chavez was unwilling to turn the UFW into a business union that negotiated and administered contracts. Chavez seemed more interested in using the UFW to achieve broader social change than in organizing more farm workers who might challenge his leadership.

The second explanation involves state politics. Democratic governors made key appointments to the ALRB between 1975 and 1982, Republicans between 1983 and 1998, Democrats

between 1999 and 2004, Republicans between 2005 and 2011, and Democrats since. Sociologists Linda and Theo Majka concluded that the ability of farm worker unions to organize and represent farm workers in the 1970s and early 1980s depended on which political party made appointments to the ALRB. Since then, arguments about political interference with the ALRB have diminished.

The third explanation deals with changes in the structure of farm employment. Farm worker unions were most successful in the 1960s and 1970s with farms that belonged to conglomerates with brand names that made them vulnerable to boycotts, including Seven-Up, Shell Oil, and United Brands (Chiquita). During the 1980s, many conglomerates sold their California farming operations to growers who were more likely to hire farm workers via intermediaries such as custom harvesters and farm labor contractors. Unions found it hard to organize workers brought to farms by intermediaries.

The fourth explanation is rising unauthorized migration that added to the supply of labor, making it hard for unions to win wage increases. Figure 2 shows that the number of deportable aliens located, mostly foreigners

apprehended just inside the Mexico-U.S. border, was rising when unions had their maximum impacts on wages. This occurred between the mid-1960s and the late 1980s, after the Bracero program (1942-64) ended and before unauthorized migration increased in the 1980s with recession and peso devaluations in Mexico. By the mid-1980s, when apprehensions rose to almost 1.8 million a year, unions found it hard to organize workers fearful of being discovered by Border Patrol agents. It was also difficult to win wage and benefit increases after they were certified to represent workers because newcomers from Mexico were flooding the labor market.

Farm worker unions acknowledge their difficulty organizing and representing farm workers, and hope for federal and state legislative changes to restore union power. Their primary federal goal is enactment of the Agricultural Jobs, Opportunity, Benefits and Security Act (AgJOBS), a compromise negotiated with farm employers that would legalize currently unauthorized farm workers and make employer-friendly changes to the H-2A guest worker program.

Unions believe that legal workers grateful to them for legal status would be easier to organize. However, AgJOBS is unlikely to be negotiated soon, prompting the UFW to urge changes to the ALRA. The UFW won an amendment to the ALRA in 2002 that guarantees a union contract within eight months, and another in 2011 that allows the ALRB to intervene after employers unlawfully interfere before a union election.

Mandatory Mediation: 2002

Unions certified to represent farm workers want to negotiate agreements that set wages and benefits and protect the union as an institution by requiring workers to join the union and pay dues. There is no master list of contracts signed between farm employers and unions, preventing analysis

on which union certifications failed to result in contracts. However, it is clear that most of the over 800 farms on which unions were certified to represent workers never had a union contract. Furthermore, unions were unable to renew contracts with many of the farms that signed first contracts.

Unions tackled the difficulty of turning election victories into contracts with mandatory mediation in 2002, an amendment to the ALRA that should have been unnecessary. The ALRA includes a unique remedy to encourage employers to bargain in good faith with their certified union. If employers fail to bargain in good faith, the ALRB can order the employer to make employees whole for lost wages and benefits during the time that the employer failed to bargain.

Unions led by the UFW argued that the make-whole remedy was not effective because of long lags between when an election is held and ALRB certification of the results. Employers often contest the ALRB's certification decision in the courts and, by the time the employer is ordered to begin good-faith bargaining, there may have been significant worker turnover and shifts in union priorities. Meanwhile, separate procedures to determine the amount of make whole owed to workers can take years, frustrating workers who expected wage and benefit increases soon after voting for union representation.

Unions argued that such employer behavior discouraged worker interest in the benefits of collective bargaining. The California Legislature agreed, approving an amendment to the ALRA that allowed mandatory mediation if employers and unions are unable to reach a first agreement via good-faith bargaining. Since 2003, employers and their certified unions bargain for at least 180 days to reach a first contract (reduced to 90 days in 2012). If they fail, either party can request help from a mediator for an additional 30 days of bargaining. If

this mediated effort fails, the mediator can set the terms of an agreement that the ALRB can impose on the parties.

Mandatory mediation, which aims to ensure that unions get first contracts quickly, was denounced by growers as a perversion of collective bargaining, whose goal is to allow the parties closest to the workplace to negotiate wages, benefits, and working conditions. Fears that unions would frequently invoke mandatory mediation, to try to gain via mediation what they could not win at the bargaining table, prompted limits on how often it could be invoked; no union could request mediation more than 75 times between 2003 and 2007.

This limit proved unnecessary. Mandatory mediation has been invoked seven times in nine years. In two cases, Hess Collection Winery and Boschma and Sons Dairy, a mediator imposed a collective bargaining agreement; in two others, Bayou Dairy and Frank Pinheiro Dairy, the employer went out of business. In Pictsweet, Valley View Farms, and D'Arrigo, the parties reached a collective bargaining agreement during the mediation process.

Mandatory mediation did not usher in a new era for farm labor relations because unions requested and won few elections, the first step to invoke the procedure. Unions do not request secret-ballot elections until they feel confident they will win, and they gauge their support by persuading workers to sign union authorization cards that express worker support for the union.

ALRB regulations require at least 50% of currently employed workers to sign authorization cards before a union can request an election. The UFW had signed authorization cards from 70% of the workers employed at the Giumarra table grape farm, but received only 48% of the votes cast when workers voted on September 1, 2005. The UFW's election loss at Giumarra prompted a union push for another amendment to the ALRA, card check.

Election Changes: 2011

Card check would enable unions to be certified to represent farm workers without secret ballot elections. For example, if card check had been in effect in the Giumarra case, the UFW could have presented the signed authorization cards to the ALRB and been certified without an election. Nonfarm unions have been urging Congressional approval of the Employee Free Choice Act for almost a decade to allow card check, but there is strong resistance to ending secret-ballot elections.

Cesar Chavez insisted in 1975 that the ALRA include secret-ballot elections to avoid having employers recognize a union as a bargaining agent for their farm workers without elections. The UFW argues that times have changed. The Teamsters are no longer competing to organize farm workers, and employers have become more sophisticated to encourage workers to vote against union representation.

The California Legislature approved some version of card check for four consecutive years between 2008 and 2011, but each of these bills was vetoed by the governor. The 2011 bill, SB 104, the Fair Treatment for Farm Workers Act, would have amended the ALRA to provide a "majority sign-up" alternative to secret-ballot elections. Under SB 104, the ALRB could have certified a union as a bargaining agent for workers if the union submitted signed authorization cards from a majority of current employees on a farm. The ALRB would have had five days to investigate the petition, and then could have certified the union.

Farm employers and major media urged Governor Jerry Brown, who signed the ALRA into law in 1975, to veto SB 104, which he did. Brown said he "appreciated the frustrations" of the UFW in trying to organize farm workers, but was unwilling to "alter in a significant way the guiding assumptions of the ALRA."



UFW President Arturo Rodriguez speaking on September 4, 2011 following the march to the California State Capitol for "Fair Treatment for Farm Workers Now." Photo courtesy of UFW.org

The compromise signed into law was SB 126. It allows the ALRB to certify a union as the bargaining representative for farm workers, beginning in 2012, if it finds that unlawful employer pre-election conduct prevented a fair election and concludes that the employer's conduct "render(s) slight the chances of a new election reflecting the free and fair choice of employees." SB 126 also lowers the legal threshold for obtaining preliminary injunctive relief from the California courts to reinstate employees fired during organizing campaigns.

Conclusions

Almost four decades after California's pioneering ALRA was signed into law, there are fewer union members and contracts in California agriculture than there were before there was a state farm labor relations law. Explanations for the failure of the self-help ALRA to transform the farm labor market include flawed union leadership, politics, the changing structure of farm employment, and unauthorized migration.

The UFW and many farm worker advocates hope that what they see as the unfulfilled promise of the ALRA can be achieved with comprehensive federal immigration reform and state-level amendments to the ALRA. Comprehensive federal immigration reform

is unlikely before 2013. At the state level, the 2002 enactment of mandatory mediation is rarely used and has had few effects. The 2011 amendments to the ALRA promise more evolutionary rather than revolutionary changes by making it slightly easier for the ALRB to intervene when employers interfere with union elections.

Will unions flourish in California agriculture? The peak of union power appears to have been the 15 years between the mid-1960s and late 1970s, when unions won one-year wage increases of 40% or more, raising entry-level wages on farms with contracts to twice the minimum wage—equivalent to \$16 an hour today. In the late 1970s, seasonal farm workers on unionized farms received benefits such as employer-paid health insurance and pension benefits.

Farm labor trends point in opposite directions for unions. On the one hand, more workers are employed for longer periods in nurseries, dairies, and other farming operations that operate year-round, providing unions with more stable workers who have higher earnings. Unions might also try to organize workers in commodities with brand names, such as strawberries and citrus, and where some large employers hire workers directly, as in table grapes.

Unauthorized migration is declining, which may make it easier for unions to win wage increases on the farms where they are certified to represent workers.

On the other hand, as a farm worker union leader recognized in 1930, for most workers seasonal farm work remains a short-term job rather than a lifetime career. J. F. Duncan said: "The first obstacle to the formation of agricultural trade unions is the fact that agriculture is not regarded as a life occupation by the great majority of those who begin to work in the industry as wage earners. In every country in the world, agricultural workers seek to escape from agriculture into other walks of life, and the more vigorous and enterprising among them leave early."

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For additional information, the author recommends:

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