AGRICULTURAL EMPLOYMENT LAW AND POLICY

A Study of the Impact of Modern Social and Labor Relations Legislation on Agricultural Employment

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AGRICULTURAL LABOR-MANAGEMENT LAW

This chapter examines state and federal labor relations law as it relates to agricultural labor-management relations. It includes a review of the National Labor Relations Act 1/ (NLRA) and a discussion of the rationale of the NLRA agricultural exemption. A general discussion of developments in certain states is highlighted by the California Agricultural Labor Relations Act 2/ (hereinafter, the California Act) and the Arizona Agricultural Employment Relations Act 3/ (hereinafter, the Arizona Act).

Historical Development of Labor Relations Legislation

Development in General

Although early combinations of workers were found to be unlawful conspiracies, the common law came to accept unionization of workers as a lawful activity consistent with public policy.4/ However, there was nothing in the common law that prohibited employers from interfering with workers' efforts to organize or refusing to bargain once a union was formed.5/ Since employers could hire and fire whom they pleased, union members could be excluded from their employ. Such legal principles fostered bitterness, unrest, considerable violence, and economic disruption as the forces of labor and management clashed.

Government intervention came when the courts began to issue injunctions to restrain coercive activity by employees. This led to the charge that the courts were supporting management in labor disputes to the disadvantage of labor organizations, and eventually resulted in the passage of the Norris-LaGuardia Anti-Injunction Act in 1932.6/ This legislation severely limited the power of the federal courts to issue injunctions in labor dispute cases.

In 1935, Congress enacted the National Labor Relations Act to settle the industrial unrest which had typified labor-management relations for many decades.7/ Popularly known as the Wagner Act, the NLRA was designed to prevent conflict by the encouragement of collective bargaining. Conciliation, mediation and arbitration provisions were included to foster settlement of disputes. Major amendments were added in 1947 to equalize the rights granted to labor organizations and management.8/ The 1935 Act, as amended, is currently referred to as either the National Labor Relations Act or the Labor-Management Relations Act.

The NLRA expressed the conviction that federal legislation could prevent or minimize "industrial strife which interferes with the normal flow of commerce and with the full protection of articles and commodities for commerce...."9/ The Congressional declaration of purpose and policy indicates:

> It is the purpose and policy of this chapter, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare and to protect the rights of the public in connection with labor disputes affecting commerce.10/

The federal legislation pre-empted much of the state regulation of labor-management relations. Some states have "little NLRAs," but only on those phases of commerce unregulated at the federal level.11/

Under the NLRA, the employer has an affirmative obligation to bargain collectively with employee representatives.12/ The parties must meet in good faith to discuss wages, hours, and terms of employment. However, they are not compelled to come to an agreement. Economic warfare may still result, but theoretically it is to take place within the bounds of the statute. The right to strike, while not

created by statute, is protected under NLRA.13/

Not all methods of economic warfare are available to labor organizations. Under the NLRA and certain state statutes, labor organization unfair labor practices are enumerated and may not be legally engaged in.14/ Certain activities on the part of the employer may also constitute unfair labor practices and constitute violations of the legislative scheme.15/ Remedies are provided in the event prohibited activities are engaged in. The law, which has grown out of construing rights and duties under NLRA, is voluminous and complex.16/

Agricultural Exemption

Agriculture is exempted under both state and federal statutes in the definition of "employee." The critical language in NLRA reads in part:"... but shall not include any individual employed as an agricultural laborer ...."17/ In spite of a statutory definition of agricultural labor, there has been monumental difficulty in drawing the line between covered and noncovered activities.18/ An example of a state exemption is found in Minnesota labor-management legislation where the definition of "employee" is qualified: "... but does not include any individual employed in agricultural labor...."19/

Curiously, when the Wagner Act was being considered, none of the agricultural unions sent representatives to testify at the congressional hearings.20/ During the debate in the House of Representatives, Mr. Marcantonio tried to have the agricultural exemption stricken, arguing: "It is a matter of plain fact that the worst conditions in the United States are the conditions among the agricultural workers."21/ He predicted that "a continuance of these conditions is preparing the way for a desperate revolt of virtual serfs."22/ He concluded, "...there is not a single solitary reason why agricultural workers should not be included under the provisions of this bill."23/

However, opposition was strong and it appeared that if any labor legislation was to be enacted, it would be necessary to compromise out the interests of farmworkers. Mr. Ellenbogen expressed the opinion that agricultural labor would not come within the definition of "interstate commerce" and, therefore, that the Supreme Court would strike down the legislation.24/ Mr. Boileau said, "... but in the vast sections of the Middle West, especially in those states where the farms are smaller and more or less of a family affair, where only the family is employed on the farm except with occasional employment of others, it would be very unfortunate to permit the organization of casual farmworkers."25/ The situation was summed up by Mr. Connery: "... I am in favor of giving the agricultural workers every protection, but just now I believe in biting off one mouthful at a time. If we can get this bill through and get it working properly, there will be opportunity later, and I hope soon, to take care of the agricultural workers."26/ Thus, the political compromise was effected and the legislation enacted with the exemption of agricultural labor.

The precedent of exemption set forth in the NLRA was followed in various states. For example, the legislative history of the Minnesota Labor Relations Act 27/ reveals an active "farm bloc" which had as its primary interest promoting legislation that would prevent interference by strikers with the movement of farm products on the highways of the state. Extension of the benefits of the state legislation to agricultural labor was evidently not a serious issue and an exemption resulted.28/

Current Status of the Law

Early Regulation of Agricultural Labor Relations

There is a long history of efforts to organize agricultural workers into labor unions and the history of American agriculture in the twentieth century is dotted with incidents of labor disputes, strikes, and violence.29/ However, such unions have had a tenuous existence at best because, while strikes could be engaged in, they could not compel the employer to come to the bargaining table by invoking statute, nor could they press unfair labor practices charges or take advantage of other protective provisions available to the mainstream of the American labor force. Harvest strikes, picketing of fields, and other activities directed at the farm employer were attempted, but often had little effect. In an effort to call public attention to their demands and to exert more intense and constant economic pressure on growers, the farm labor organizations turned more and more to promoting consumer boycotts of products produced by uncooperative growers and to pressuring wholesalers and retail merchants to refuse to handle such products. Public support was generated through publicity campaigns, the picketing of retail merchants, and picketing of "struck" products. Economic pressure resulting at least in part from such activities, brought a number of growers to the bargaining table, partic-

ularly in the late 1960s.

In some parts of the country, jurisdictional disputes between competing unions became intense. Battles between the United Farm Workers Union (UFW) and the Teamsters to organize workers on many California farms provide the best known example. Often, growers, wholesalers, and retailers were caught in the middle of such jurisdictional conflicts and were picketed as each group attempted to bring attention to its efforts to convince a particular grower to negotiate with its union, rather than the competing union.

Upset by the disruption caused by union activities, growers, wholesalers, and retailers fought back in the courts. Thus, an important part of the law affecting agricultural labor relations is found in court decisions limiting certain types of picketing, secondary boycotts, and other activities. Judicial action has been premised on several theories and the case law varies sharply from jurisdiction to jurisdiction. Interesting applications of secondary boycott acts, anti-injunction acts, antitrust statutes, jurisdictional strike acts, and common law tort theory have resulted. Some examples of the diverse judicial responses to farmworker union activities provide the basis for certain conclusions about the desirability of continuing to resolve agricultural labor-management problems outside the framework of a labor-management relations statute.

Secondary boycott and anti-injunction acts. Many states have secondary boycott statutes. For example, the Minnesota Secondary Boycott Act declares a secondary boycott to be an "illegal combination in restraint of trade and in violation of the public policy of this state" and therefore "an unlawful act."30/ A secondary boycott results, for example, when a secondary employer, who is not involved in the primary labor dispute, finds that his customers or workers are being driven away by union activities.

In Johnson Brothers Wholesale Liquor Co. v. United Farm Workers National Union,31/ the defendants had picketed and distributed handbills at retail liquor stores and had approached retail store managers asking them to remove Gallo products from their shelves. The objective was to pressure Johnson Brothers Wholesale Liquor Company into terminating its contract as distributor for Gallo products in Minnesota. If enough retailers ceased handling Gallo products, Johnson might have little choice but to yield to demands to cease wholesaling Gallo products. The Minnesota Supreme Court held that the Minnesota Secondary Boycott Act, unlike the Minnesota Labor Relations Act, applied to agricultural workers. The Court noted that farmworkers were excluded from the Labor Act because employer-employee relations in agriculture were assumed to be significantly different from those in other industries. This rationale, in the Court's view, did not have relevancy in interpreting the scope of the Secondary Boycott Act which protects neutral employers and employees from the actions of third parties. There being no express exclusion of agricultural labor organizations in the Secondary Boycott Act, the Court determined that the defendants' activities constituted an illegal secondary boycott.

In Johnson Brothers,32/ the Court also determined that the Minnesota Anti-Injunction Act,33/ while severely limiting the power of the Court to enjoin peaceful picketing, did not prevent an injunction in the event of a violation of the Secondary Boycott Act. Anti-injunction acts at the state level severely limit the use of injunctions against strikes and related activity where a "labor dispute" exists as that term is defined by the law of the picketers' state. Given the Minnesota Anti-Injunction Act, the Court did not feel that it could curtail the "giving of publicity to the existence of, or the facts involved in, any labor dispute whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence."34/ Thus, while the Court felt that it was proper to terminate certain types of secondary boycott activity by injunction, it could not prohibit the picketing of a secondary employer where the purpose was merely to follow "struck goods."35/

Jurisdictional strike acts. Where an employer has negotiated a collective bargaining agreement with an agricultural union that cannot be certified because of the absence of labor-management relation legislation, jurisdictional strike acts allow injunctions to be issued to prevent another union from striking the employer, promoting work stoppages, and engaging in picketing. In United Farm Workers Organizing Committee v. Superior Court of Monterey County, 36/ the grower-plaintiff had entered into a collective bargaining agreement with the Teamsters. Thereupon, the UFW, in an attempt to gain the right to represent the workers, engaged in a variety of activities, but was enjoined under the California Jurisdictional Strike Act 37/ from engaging in strikes, work stoppages, and picketing at the employment site. While other labor legislation may have had no application in the agricultural setting, it had been determined that the Jurisdictional Strike Act did apply. The narrow issue that emerged on appeal was whether the real party in interest, here the grower, could use the Jurisdictional Strike Act as a basis for obtaining injunctive relief limiting the scope of picketing of retail merchants. The grower-plaintiff had stated in a supplemental complaint that the United Farm Workers'

Union had "wrongfully and unlawfully" instituted a boycott against plaintiff's agricultural products by ordering pickets to be placed at and around various grocery stores and other businesses selling plaintiff's products, throughout the state of California and the United States, for the purpose of urging the patrons of such stores not to buy products bearing plaintiff's trade name.38/ The injunction that issued in the lower court prohibited the UFW from "in any way promulgating or advertising" that a dispute existed with the grower. The injunction further precluded "urging, encouraging, or recommending, or asking any other person to urge, encourage or recommend, that any of plaintiff's customers boycott plaintiff's agricultural products."39/ The injunction also enjoined any appeal to the consuming public to refrain from purchasing the products in question. While the court on appeal felt that the California Jurisdictional Strike Act applied to the situation, it concluded that the injunction granted by the lower court was entirely too broad and ran afoul of the constitutional guarantee of free speech.40/ The court continued to sanction injunctive relief, but sharply curtailed its scope as to retail picketing, with the end result that the UFW was prohibited only from making "false and untruthful" statements in connection with the dispute. The court deemed it to be of significance that at the time of the decision no provision existed under California law for certification of the unit or to define the proper scope of union or employer activities. The court noted that it was entirely possible that none of the grower's employees wanted to be represented by the Teamsters. Thus publicity, including picketing, by a rival union had a proper function and the federal policy of limiting this kind of activity by an uncertified union where a rival union had already been certified offered no guidance.41/

Antitrust statutes. At least one case has raised the possibility that federal antitrust statutes may restrict the picketing and secondary boycott activities of farm labor unions. Bodin Produce Inc. v. United Farm Workers Organizing Committee 42/ involved an appeal from an interlocutory order denying a motion to dismiss the complaint of certain growers and shippers for failure to state a cause of action. While the district court rejected numerous allegations of the complaint because of labor exemptions in the antitrust statutes, it found a claim for relief to be stated in the allegations that, to the "great damage" of plaintiff growers and shippers, the UFW Organizing Committee had entered into a contract, combination, and conspiracy with various nonlabor groups, including retail merchants, the AFL-CIO, and other labor organizations, to impose a boycott of table grapes in California, Arizona, and elsewhere in the nation. Such allegations, according to the court, satisfied the Allen Bradley doctrine 43/ which subjects unions to the rules against restraint of trade where they act in concert with nonlabor entities that are subject to the antitrust provisions. The Ninth Circuit agreed, holding also that the exemption of agriculture under NLRA did not manifest a congressional intent to have farmworker unions treated differently than other unions for purposes of applying the protective provisions of the antitrust laws. The impact of Bodin may be to limit the use of the secondary boycott and certain other tactics by farmworker unions, when such unions act in concert with nonunion entities and thereby violate federal antitrust laws.

The tort of interference with business relations. Other cases have attempted to balance the right to recover for an unreasonable interference with business activities and the constitutionally protected right of free speech as it is exercised in the picketing process. In Metro Enterprises Inc. v. United Farm Workers Union 44/ the court was faced with picketing directed at the customers and employees of a retail merchant who refused to remove its stock of Gallo wine from its shelves. The court noted that under state law the right to picket is "not unlimited, and must be confined to peaceful dissemination of ideas."45/ The court found that, after the issuance of its initial order limiting the number of pickets, the union had again interfered with the pedestrian and vehicular traffic around the store, that the action of the union amounted to "threats, intimidation, harassment and coercion of customers of the plaintiff," and that the activity had become unlawful as an unreasonable interference with a third party's business and could be totally enjoined.46/ The court noted that "picketing as a means of exercising the right of free speech will be afforded constitutional protection only so long as it is lawfully conducted."47/ Nothing in the opinion, however, prohibited picketing a secondary employer merely to follow struck goods. What was objectionable was the effort to cause a general loss of patronage to the store.

M & H Fruit and Vegetable Corp. v. Doe 48/ is also illustrative of injunctive relief granted during the pendency of a tort action. In this case, UFW activists were picketing a retail merchant. While the court did not enjoin picketing a product of the primary employer, the offending farmer or grower, it did specifically enjoin certain types of activity:

> ...defendants shall not picket in front of plaintiff's place of business, but may picket no less than 50 feet away from plaintiff's extreme exterior store dimensions, ...enjoined from using any placards indicating any strike at plaintiff's establishment...but if the word "strike" is used in its placards, it shall indicate in the same sized letters--clearly readable and observable, that the strike is not

> as to plaintiff's employees or its place of business, but that it refers only to the primary employer-grower -- and it must fully name such primary target in equally sized large letters as above;...must state that it is solely as to the grapes grown or lettuce grown by such named primary target-grower-employer; that defendants shall not approach any customer at or closer than the distance of 50 feet...; that defendants shall not call out or insinuate that plaintiff is a murderer or child labor supporter or any other similar type of nefarious character; that defendants shall not tell any consumer or the public generally, nor attempt to influence them to buy at any other establishment;...49/

This order, which seeks to enjoin interference with business relations, does not prevent peaceful picketing of a struck product, but it does have the effect of prohibiting a fullfledged effort to promote a secondary boycott of plaintiff's retail store. Some courts have refused such a precisely delineated injunction on the theory that it is contrary to the First Amendment provision against prior restraint. Indeed, all of the cases discussed have had their sharp critics, and, while certain jurisdictions may momentarily have settled certain questions, there is wide diversity in the case law from jurisdiction to jurisdiction and within certain jurisdictions. Even in jurisdictions where definitive decisions exist, it has remained necessary to deal repeatedly with farmworker unions and their supporters who have not been easily dissuaded and who are believers in the effectiveness of the secondary boycott and aggressive picketing activities designed to discourage all patronage of stores handling struck products.

All of this suggests the necessity for legislative solution. In industry, generally, it became apparent several decades ago that some national effort was necessary to attempt to minimize the havoc wrought by industrial strife. The following comment on the experience prior to the adoption of the NLRA seems very timely when applied to the present state of labor relations law for agriculture:

> Behind the recent legislation there lies a long history of judicial attempts to regulate such activity. However, while the legislative attempts are by no means perfectly simple and clear-cut, the common law regulations were exceedingly complex and, in some cases, conflicting.50/

Agricultural Labor Relations Legislation

While the need for national legislation covering agricultural labor-management relations has not yet been perceived by a majority in Congress, a number of states have enacted agricultural labor relations laws. Kansas,51/ Idaho,52/ Hawaii,53/ Massachusetts,54/ and Wisconsin 55/ provide examples. Louisiana has a "right to work" statute covering agricultural labor.56/ Important and controversial pieces of state agricultural labor relations legislation emerged in Arizona and California. The Arizona Agricultural Employment Relations Act, which became effective August 13, 1972, attempts to provide a framework in which agricultural workers can organize and bargain.57/ The Arizona Act has a decidedly promanagement focus.58/ On April 20, 1978, in United Farm Workers Nat. Union v. Babbitt,59/ the Arizona Act was held to be unconstitutional in its entirety by a three-judge panel of the U.S. District Court for the District of Arizona. Oral arguments were heard in an appeal to the U.S. Supreme Court on February 21, 1979, and on June 5, 1979, the decision came down reversing the three-judge panel.60/

Perhaps the most significant agricultural labor relations legislation yet to be enacted is the California Agricultural Labor Relations Act, which became effective August 28, 1975.61/ The California Act is modeled to a great extent after the NLRA, although it has some unique provisions designed to fine-tune the Act to accommodate the realities of agricultural operations. Where possible, however, the California Act is, by its own terms, to be interpreted in light of NLRA.62/

Other states 63/ have also experimented with agricultural labor relations legislation, but a comparison of certain provisions of the Arizona Act, the California Act, and the NLRA provide's a basis for recommendations for future legislation, whether it comes at the state level, or at the national level in the form of an elimination of the agricultural exemption in the NLRA or a National Agricultural Labor-Management Relations Act.

While the right of union organization is guaranteed by all three statutes, it has long existed apart from legislative enactment.64/ Under both the Arizona and California acts, as well as under the NLRA, the bargaining representative selected by the certification process is to be the exclusive representative of the workers in the particular unit.65/

Sharp differences exist in the statutory schemes for certification of labor organizations. The

Arizona Act has a slow-moving certification process that the three-judge panel at the district court level in Babbitt found constitutionally deficient. While the U.S. Supreme Court reversed on the merits, it was not on the basis that the provisions of the Arizona Act were conducive to certification and the encouragement of collective bargaining under the act. The California Act, on the other hand, was designed to foster rapid certification through a process substantially more streamlined than even that of the NLRA.

In reviewing the certification procedure in the Arizona Act, the three-judge district court panel noted that before an election could be held, the union must demand and be denied recognition by the employer.66/ The Arizona Act is silent on how long the employer has to answer the demand. Once the demand is denied, the union is required to petition for an election showing that at least 30 percent of the employees in the unit wish to be represented by that particular union. The three-judge panel found that it would normally take 3 to 6 weeks for the union to gather such authorization cards. When the Arizona board has reasonable cause to believe that a sufficient number of workers desire the union to represent them, a pre-election hearing must be conducted. The Arizona Act does not indicate how quickly the hearing must be scheduled, but the three-judge panel concluded that the 20-day limit in the Arizona Administrative Procedure Act applies.67/ Once the Arizona board determines that an election can go forward, it is required to direct an election by secret ballot. Again, the Arizona Act makes no provision as to when the election shall be held. However, once the time is fixed, the employer is given 10 days to submit to the Arizona board a list of employees eligible to vote.68/ It becomes obvious that from the initial demand to the time of the election at least two months and very easily three and one-half months can elapse.

In its findings of fact the three-judge panel noted that the harvest period for many of the crops involved ran only three to seven weeks. Even in the case of crops harvested over a longer period of time, the work is likely to be intermittent and employees will often switch employers. Further, many of the workers, the three-judge panel found, would not return consistently to the same farm during the season or from year to year.

In connection with its consideration of the slow-moving features of the Arizona Act, the three-judge panel considered the matter of the designation of the bargaining unit. The Arizona Act provides that the bargaining representative is to be selected by a majority of the agricultural employees "in a unit appropriate for such purposes."69/ The Arizona board has the power in each case to determine the unit and is compelled by statute to decide whether it should consist of all temporary agricultural employees or all permanent agricultural employees of the particular employer.70/ The Arizona Act provides that a "permanent agricultural employee" is one, over 16 years of age, who worked for at least six months for the employer during the preceding calendar year.71/ A "temporary agricultural employee" is defined as any employee, over 16 years of age, who was employed during the preceding calendar year and is currently employed by the agricultural employer in question.72/ The Arizona board cannot create a unit made up of both permanent and temporary agricultural employees.

The three-judge panel concluded that as a practical matter the certification process, as defined in the Arizona Act, effectively prevents any meaningful election from ever being held. First, it is remote that the employees who initiate the demand for a union would still be employed at the time of the election. The rapid turnover of the employees, together with the lengthy certification process, compelled the three-judge panel to this conclusion. In addition, the panel felt that because many employees would not have worked for the employer in the preceding year, they would fall in neither the "permanent" nor "temporary" classification and would thus be excluded from the process entirely. The panel concluded that in many instances just a few workers, those who had been employed in the previous year, could participate and, if they should vote "no-union," other employees, no matter how numerous, would be barred from holding another election for 12 months. The three-judge panel indicated that an employer could encourage periodic elections which would be virtually certain to result in a "no-union" vote, effectively delaying certification and bargaining year after year.

Therefore, the three-judge panel found violations of the First and Fourteenth Amendments to the Constitution of the United States. The court noted violation of freedom of speech and of assembly provisions and of the due process and equal protection clauses. While the three-judge panel indicated that on this basis alone the entire act must fall, it nevertheless went on to discuss other constitutional deficiencies.73/

The U.S. Supreme Court, in reversing the three-judge panel on the merits of this issue, noted initially that the matter of election procedures did raise a case in controversy and that the abstention doctrine would not apply. The Supreme Court held that the constitution does not afford the right to compel an employer to engage in a dialogue or even to listen. Thus, the Arizona legislature was

not constitutionally obligated to provide a procedure whereby employees might compel their employers to negotiate. The Court did not see the Arizona Act as interfering with the constitutional guarantee of the right to individually or collectively voice views to an employer. Thus, the Supreme Court took the position that if the hired agricultural workers of Arizona have complaints about the statute, they should approach the Arizona legislature and not the federal courts. Given the unlikelihood of legislative relief, it appears that hired agricultural workers in Arizona will be compelled to live with the practical difficulties in the present Arizona Act.

The certification process under the California Act is markedly different and does not seem to suffer from the practical deficiencies found in the Arizona Act. An important feature of the California Act is that a valid certification election cannot be held unless the employer has not less than 50 percent of his peak agricultural work force employed.74/ This makes it virtually impossible for a handful of regular employees to organize, thus freezing seasonal workers out of the decision on bargaining representatives.

Under the California Act, the petition for the election must be signed by or accompanied by authorization cards signed by a majority of the currently employed agricultural workers in the bargaining unit. If, at the time the petition is filed, a majority of such employees are engaged in a strike, the California board is to use due diligence to attempt to hold a secret ballot election within 48 hours of the filing of the petition. Under normal circumstances, the election is to be conducted within a maximum of seven days of the filing of the petition.75/ This is to be contrasted with the current practice under the NLRA which results in election dates being set "by a process of negotiation in which each side seeks a tactical advantage, and in which the party seeking delay has the advantage of being able to force a pre-election hearing whether one is necessary or not,...."76/

Legislation was proposed in a recent session of the Congress to require the election under the NLRA to be held no less than 21 calendar days and no more than 30 calendar days from the service of petition. One of the issues that will face the Congress in considering the extension of the NLRA to cover agriculture is the matter of a sufficiently rapid election process to accommodate the seasonal and transient nature of much agricultural employment.

The secret ballot election requirements of the California and Arizona acts eliminate any opportunity to use the NLRA method of submitting signed authorization cards from workers to designate the exclusive bargaining representative. This, it has been argued, eliminates the chance of undue influence and threatening techniques being used on the part of pro-union and anti-union forces in the agricultural setting.77/

Under the California Act, a bargaining unit is usually made up of all agricultural employees of an employer, although where the farm is made up of two or more noncontiguous locations, the five-member California board will determine the appropriate unit.78/ Such legislation assumes a community of interest among the temporary and permanent employees, contrary to the presumption that prevails in the Arizona Act.

The Arizona Act limits the bargaining unit to a "farm." "Farm" is defined as any enterprise engaged in agriculture which is operated from one headquarters and includes separate tracts of land, if any, which are within a 50-mile radius of such headquarters.79/ The effect is to prevent multi-employer units and single units for employers who run a regional or statewide operation. This raises the possibility of some exceptionally large Arizona growers dealing with several bargaining units rather than one strong unified unit. Clearly, it is unlikely that multi-employer units will be provided for in any legislation, but the California model which allows the possibility of a statewide unit for an employer with many locations is noteworthy, particularly in light of the fact that in agriculture the same employee may often work at different locations for the same employer. To have an employee involved with several bargaining units may well be inappropriate.

Under the NLRA, the method of determining bargaining units when there is a dispute, is to have the National Labor Relations Board (NLRB) make the determination. A number of tests apply, subject to limitations imposed in 1947 by the Taft-Hartley Act.80/ In connection with establishing the bargaining unit, the balance of power between labor and management can likely be adjusted. If national legislation covering agricultural employment is again considered, special rules for determining the bargaining unit deserve to receive serious consideration.

Another matter of concern in the certification process relates to runoff elections. The Arizona Act provides that when the original ballot is prepared, the option to vote "no-union" must be included. If two or more unions are competing and a run-off is required, the Arizona Act has the unique provision

requiring that the run-off would be between the highest vote-getter and the "no-union" option, no matter how few votes the "no-union" option received initially.81/ This departs from the NLRB procedure and the California procedure, which call for the run-off election to be between the two largest vote-getters.82/ Under California practice, the workers are always to have the option to vote "no-union" in the initial election. They may also vote for a competing organization if it presents authorization cards from at least 20 percent of the employees within 24 hours before the election.83/

Right of access to farms by union organizers under the California, Arizona, and NLRA provisions sharply differ. The Arizona Act provides:

> No employer shall be required to furnish or make available to a labor organization, and no labor organization shall be required to furnish or make available to an employer, materials, information, time or facilities (emphasis added to enable such employer or labor organization, as the case may be, to communicate with employees of the employer, members of the labor organization, its supporters or adherents.)84/

The three-judge panel in Babbitt considered this provision in light of evidence indicating the vast majority of farmworkers in Arizona to be migratory and generally residing in areas or labor camps located on property owned by the employer. The panel concluded that the quoted provision clearly stated that an employer did not have to provide a time and place for union representatives to communicate with workers. In short, the employer would not have to allow a union representative to come onto his property. The three-judge panel, citing a long series of cases starting with Marsh v. Alabama,85/ found the provision constitutionally defective because it prohibited too broad a scope of activity involving, in part, freedom of association and speech.86/

The U.S. Supreme Court, in its decision in Babbitt, held that the three-judge panel erred in dealing with the access issue. The challenge was characterized as not raising a case or controversy and was thus not justiciable. The Court reasoned that it would be pure conjecture to anticipate that access would be denied in any particular instance and in particular to farm labor camps that might be likened to the company town involved in Marsh v. Alabama. It indicated that adjudication of the challenge to the access provision would have to wait until an interest in seeking access to particular facilities can be asserted along with a palpable basis for finding that access will be refused.

There is no comparable access provision in the California Act and indeed the California board, exercising its rulemaking power, established an administrative access rule in 1975.87/ The validity of this access rule was upheld in ALRB v. Superior Court.88/

Under current NLRB practice, authority indicates that if coverage were extended to agricultural employees, access to the place of employment by union organizers would be required in most instances. The decisions in NLRB v. Babcok & Wilcox 89/ and Hudgens v. NLRB 90/ indicate that restrictions on access will stand only if reasonable effort through other available channels of communication will enable the union to reach the employees and only if the employer does not discriminate against the union by allowing distribution of information by other nonemployees. It would seem, however, that an extension of the NLRA to cover agricultural workers would require the review of these access rules in light of decisions such as Peterson v. Talisman Sugar Co.91/ holding that a farm labor camp is analagous to the traditional company town, making the precedent of Marsh v. Alabama 92/ clearly applicable.

Once the certification election is over, time must be permitted for resolution of objections. The Arizona procedure was not explored in Babbitt either by the three-judge panel or the Supreme Court. The California experience, however, has been commented on at some length by James Rutkowski, General Counsel for the UFW.93/ Rutkowski reports that objections are being routinely filed in California within the required time period and that this has typically resulted in a period of 12 to 14 months between the election and the time the union is certified as bargaining representative.94/ Rutkowski asserts that this has had an adverse impact on the ability to organize agricultural workers and to initiate the collective bargaining process. He points out that the seasonal nature of agricultural employment and the constantly shifting work force results in many cases in an entirely different work force being in place by the time of certification. While there must be an objection process designed to root out irregularities, there appears to be a need to find a way to rapidly dispose of spurious objections and to accelerate the process of resolving those which appear to have merit. This problem will need the careful attention of federal policymakers in connection with any move to enact national agricultural labor relations legislation.

Regardless of the statutory scheme, there is a need for an agricultural labor relations board to administer it. The California Act calls for a five-person board, the members of which are appointed by the governor with the advice and consent of the senate.95/ The board is given rulemaking power and

may sit on various matters in three-member panels.96/ Among the powers granted to the California board is the authority to hear charges of unfair labor practices. If the board determines that the labor organization or the employer stands in violation of the act, it may issue a cease and desist order and, where appropriate, order affirmative action including reinstatement of employees with or without back pay.97/ In addition, the board may from time to time demand reports showing the extent to which the order has been complied with. In difficult cases, the board may petition the superior court of the county wherein the alleged unfair practice occurred for temporary relief or a restraining order. The board may also apply to the superior court for the enforcement of its order where necessary.98/

A similar scheme exists in Arizona with an added feature allowing the board to initiate criminal proceedings against one who violates the act.99/ A convicted party would be guilty of a misdemeanor punishable by a fine of not more that $5,000, imprisonment for not more than one year, or both.100/ This provision was declared unconstitutional on its face by the three-judge panel at the district court level in Babbitt. It was noted that, given the enormous variety of activities covered by the Arizona Act, there would be no way for anyone to guess whether criminal sanctions might attach to contemplated activities. Thus, the statute was deemed unconstitutionally vague and in violation of the due process clause of the Fourteenth Amendment. Further, the three-judge panel concluded that there seemed to be no requirement of a finding of actual intent or malice as a prerequisite to conviction. While the criminal provision in the Arizona Act reads much like the provision of the NLRA, the emphasized language in the following quotation caused the three-judge panel in Babbitt to strike down the entire provision:

> Any person who wilfully resists, prevents, impedes or interferes with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this article, or who violates any provision of this article is guilty of a misdemeanor punishable by a fine of not more than $5,000, by imprisonment of not more than one year, or both. Provided, however, that none of the provisions of this section shall apply to any activities carried on outside of the state of Arizona.101/

The U.S. Supreme Court in reviewing the decision of the three-judge panel in Babbitt, conceded that there was a case and controversy with respect to the criminal penalties issued. However, it held that the Arizona court should be given an opportunity to pass on the section given the Supreme Court's view that the statute can be read in different ways and that it is susceptible to constructions that might undercut or modify the vagueness attack. The Supreme Court conceded that if the criminal penalty provision is construed broadly to operate in conjunction with substantive provisions of the Arizona Act, it would unduly restrict the pursuit of First Amendment activities. Therefore, the matter of the criminal penalty provision is left unresolved and awaits a reading from the Arizona courts.

The Arizona Act contained unusual language on the scope of collective bargaining. While the three-judge panel and the U.S. Supreme Court in Babbitt did not deal with this matter, it is a matter that cannot be passed over lightly by policymakers in other states and at the federal level. Included in the Arizona Act's list of items legislatively left to employer discretion and control are setting of time of work, determining size and makeup of crew, assignment of work, determining place of work, hiring and discharging in accordance with employer's judgment as to ability, and determining the type of machinery and equipment to be used.102/ Cohen and Rose have suggested that it was probably intended to be unfair labor practice under the Arizona Act for labor organizations to even ask about these things at the bargaining table.103/ This could have a chilling effect on negotiations. While matters relating to wages, hours, conditions of work which directly affect the work of employees, matters of safety, sanitation, health, and the establishment of grievance procedures are subject to negotiations under the Arizona Act,104/ the listed restrictions clearly have the potential of impeding the resolution of some disputes.105/ Because the California experiment seems to be progressing satisfactorily without such limitations, a serious question emerges as to whether they have any merit.

Generally, the California Act, the Arizona Act and the NLRA list the following as employer unfair labor practices: interfering with employees as they attempt to organize;106/ dominating, interfering with, or being financially involved with a labor organization;107/ discrimination in hiring or tenure to encourage or discourage union membership;108/ discharging or otherwise discriminating against an employee who has filed charges or given testimony under the act;109/ refusal to bargain collectively: 110/ bargaining or entering into a collective bargaining agreement with a labor organization not certified pursuant to the act.111/

All three statutes provide a way for a labor organization to bring the employer to the bargaining table, something that was frequently impossible where no legislation existed unless the employer was

backed into a corner by the threat of a harvest strike or some other drastic measure. The California Act states that an employer can maintain an agreement with a duly certified union to require, as a condition of employment, that each worker join the union within five days following the beginning of employment.112/ This provision is to be contrasted with the Arizona Act which recognizes an individual's right to work without the necessity of joining a union.113/ At the federal level, Section 14 (b) of the Taft-Hartley Act gives the state "right-to-work" law precedence over the union-shop proviso in the NLRA.114/

A comparison of the Arizona, California, and NLRA provisions delineating the labor organization unfair labor practices reveals some similarities, but several sharp differences. While the California Act does mirror the NLRA with a few notable exceptions, the Arizona Act appears to be "cut from different cloth."

All three acts deal on more or less the same basis with the following labor organization unfair labor practices: restraining or coercing agricultural employers in the exercise of rights guaranteed under the respective acts;115/ restraining or coercing an agricultural employer in the selection of his bargaining representative;116/ causing or attempting to cause an agricultural employer to discriminate against an employee with respect to hiring, tenure, or terms of employment;117/ and refusal to bargain collectively in good faith when the union is duly certified.118/

Other areas where the three statutes are virtually identical on labor organization unfair labor practices include: (1) causing or attempting to cause an agricultural employer to pay for services which are not performed or are not to be performed,119/ and (2) the use of picketing or threats of picketing by an uncertified labor organization against an employer where the object is (a) to force the employer to recognize or bargain with the uncertified labor organization or (b) to force employees to accept such labor organization as their collective bargaining representative in instances where there is already a lawfully recognized labor organization, or there has been a valid election within the preceding 12 months, or, in some instances, a petition has been filed by another union.120/

Unfair labor practices by labor organizations can extend to certain types of strike activity, boycotting, and additional types of picketing activity. These provisions of the three acts vary markedly and the language becomes rather complex. The following comparison omits consideration of a number of technical legal issues.

There are at least three types of strikes: The economic strike, the strike in response to unfair labor practices by the employer, and the illegal strike. There are many examples of unlawful strikes: sit-down strikes denying the employer possession of the plant, strikes accompanied by violence, strikes where there is a no-strike agreement, wild-cat strikes (minority group action without authorization of the majority union,) certain jurisdictional strikes, certain secondary strikes, and strikes in the face of valid injunctions.121/ There is nothing in the NLRA or in the California Act prohibiting primary strikes or primary picketing where not otherwise unlawful.122/ In Arizona, however, there is a limitation on the "harvest strike." This does not take the form of an outright prohibition, but rather appears in the form of a grant of jurisdiction to the court to issue a 10-day restraining order, upon proper application, if the employer will agree to binding arbitration.123/ Actually, the language of the statute goes beyond "harvest strike" and authorizes the injunction when the resulting cessation of work will result in the "prevention of production or the loss, spoilage, deterioration, or reduction in grade, quality or marketability of an agricultural commodity or commodities for human consumption... with a market value of $5,000 or more."124/

The three-judge panel in Babbitt, considering the provision that allows binding arbitration to be unilaterally imposed on a union, struck down that part of the Arizona Act as unconstitutional on its face.125/ The lower court felt that the compulsory arbitration provision denied employees due process and the right to a jury trial as guaranteed by the Seventh Amendment. However, the U.S. Supreme Court held that a case or controversy did not exist and that for the Court to speak on the issue would be wholly advisory. The appellees (plaintiffs below) conceded that, if an unlawful strike occurrs, employers may elect to pursue a variety of responses other than seeking an injunction and forcing compulsory arbitration. Further, the appellees conceded that they did not contest the constitutionality of the arbitration clause and that the three-judge panel on its own motion had taken up the constitutional issue. It appears that a test of the binding arbitration provision awaits an actual incident where an employer, in the face of an unlawful strike, seeks an injunction and invokes the compulsory arbitration provision.

All three acts deal with secondary activities and limit them in varying degrees. A secondary activity is one directed by the union against an employer with whom no dispute exists, with a view to

persuading that employer to stop doing business with the primary employer with whom the union has a dispute.126/ Secondary activities take many forms, but two are considered for illustrative purposes. One involves efforts to get another employer's employees to cease delivering and transporting the goods of the primary employer. The second has to do with efforts to convince the public to stop buying the products of the primary employer at retail stores or to get the public to stop patronizing the stores that handle such products.

In the first instance, all three acts provide that publicity, including picketing, will not be permitted if it has the effect of inducing any individual employed by any person, other than the primary employer, to refuse in the course of his employment to pick up, deliver, or transport goods of the primary employer.127/ Thus, as one commentator put it: "California growers, who had expressed dismay over the passage of any bill which would not prohibit the secondary boycott, may now be assured that their products may not legally be prevented from being delivered and unloaded at the place of business of the retailer."128/

The situation is quite different when it comes to the matter of engaging in secondary activity, such as picketing, to discourage consumers from purchasing the goods of the primary employer, often referred to as "struck goods." Under the NLRA, there is a provision that prohibits publicity in the form of picketing designed to dissuade customers from purchasing the products of the primary employer.129/ However, given the First Amendment protection of speech, the U.S. Supreme Court has construed the provision to prohibit picketing designed to dissuade people from patronizing the retailer, but not to prohibit picketing designed to stop customers from buying the struck goods.130/ The California Act, on the other hand, allows a duly certified union to engage in publicity, including picketing, designed to request the public to cease patronizing the retail store entirely.131/ Such picketing may be carried out lawfully where the employer is failing in his obligations to bargain collectively or where he is engaged in certain other unfair labor practices. The basic ban on picketing to force recognition or to compel an employer to bargain with an uncertified union remains in effect.

In Arizona, quite a different story unfolded. The Arizona Act contains a provision, initially declared unconstitutional on its face by the three-judge panel in Babbitt, limiting consumer picketing to efforts to discourage the purchase of struck goods. Further, such picketing is permitted only where there is a primary dispute with the agricultural employer and where the publicity would not include language directed against any trade name, trademark, or generic name which might include the products of an uninvolved agricultural producer. The products of the employer with whom the primary dispute exists must be identified truthfully, honestly, and in a nondeceptive manner.132/ A constitutional problem was perceived by the three-judge panel because the violations of this provision, which is obviously designed to make picketing of struck products exceedingly difficult, is not just an unfair labor practice, but also a criminal act regardless of the intent of the violator. The three-judge panel saw this as a prior restraint on free speech.133/ Further, the requirement that there be a primary dispute was deemed inappropriate by the panel of judges since such a requirement does not exist for primary picketing. In AFL v. Swing,134/ the U.S. Supreme Court made clear that the right to free discussion, including picketing, does not turn on the existence or nonexistence of a primary dispute. Thus, there was a further chilling effect on free speech.135/ This analysis was relied upon to support the three-judge panel's finding that the Arizona consumer picketing provision violated the First Amendment and was unconstitutional on its face.

The U.S. Supreme Court, in reviewing the decision of the three-judge panel in Babbitt, conceded that there was a case and controversy with respect to the consumer publicity issue, but held that the lower court erred in failing to abstain from adjudicating. The Court felt that the language of the Arizona Act was sufficiently ambiguous to allow a construction that its proscriptions applied only in the case of misrepresentations made with knowledge of their falsity or in reckless disregard of truth or falsity. Since such an interpretation would, according to the Supreme Court, substantially affect the constitutional question presented, it was determined that it would be inappropriate to decide the matter on the merits until such time as the Arizona courts had construed the consumer publicity provision. Also, the Supreme Court read the Arizona Act in such a way that it does not prohibit publicity not directed at the products of employers with whom the labor organization has a primary dispute. Such publicity may not be given statutory protection, but neither is it proscribed. While it appears from the decision that the U.S. Supreme Court will not sanction the imposition of criminal penalties for unwitting misrepresentations in connection with consumer publicity and will not sanction the statutory provisions making it unlawful to treat as struck products products of a producer other than the primary employer, the state of the law in Arizona remains up in the air pending further litigation at the state level.

The agricultural employer in California is not forced to passively accept secondary activity by

employees even where it falls within legal limits. As one commentator suggests:

> An agricultural employer, however, will probably be permitted to use traditional countervailing tactics in response to this newly created right. Contractual remedies may be possible, although perhaps of limited effectiveness. Lockouts with temporary replacements may well prove to be the employer's most effective quid pro quo for the union's ability to engage in secondary activity. However, upon the union's abandonment of such activity or upon the employer's excessive response, the lockout with replacements should be prohibited and the process of orderly collective bargaining thereby preserved."136/

In many instances, those provisions of the three acts which have special importance as labor-management relations legislation in agriculture reflect efforts to fine-tune the balance of power between labor and management in the agricultural sector. There were sharply different views in California and Arizona as to the state of the balance of power before the enactment of agricultural labor relations legislation. The Arizona Act was, designed to introduce certain advantages for employers, whereas the California Act was designed to introduce certain advantages for labor organizations.

Emerging Developments

Four of the five issues raised in Babbitt v. United Farm Workers were left unresolved by the decision of the U.S. Supreme Court rendered on June 5, 1979.137/ Prior to the Court's decision, one commentator assessed the situation by noting that the courts had in almost every instance found the NLRA constitutionally acceptable.138/ The same commentator noted that the NLRA strikes the balance in labor-management relations in favor of employee rights over those of management.139/ The Arizona Act, it has been made clear, strikes the balance substantially in favor of management. It had been hoped, in some quarters, that the Supreme Court in Babbitt would have found a constitutional basis to say, at least in the area of agricultural labor relations, whether the balance struck in the NLRA is constitutionally required.140/ If that balance were required, the state legislatures would be well advised to model agricultural labor relations legislation after the NLRA or, if they elect, after the even more employee-oriented California Act.

Had the U.S. Supreme Court dealt with the merits on all constitutional issues in Babbitt and reversed, it is likely that the decision would have had enormous and, very possibly, immediate implications for the future of agricultural labor relations legislation. Congress would have been hard pressed to ignor agricultural labor relations under such circumstances, for it is certain that those who feel that labor relations in the agricultural sector should be treated at least on a par with industry generally would have clamored for federal pre-emption. The question that emerges, in light of the Babbitt decision, is whether the Congress will be inclined to continue to follow a wait-and-see attitude allowing the Arizona situation and the state-by-state experimentation to continue. Perhaps the decision on the merits and on the election provisions of the Arizona Act will provide enough incentive for the Congress to enact legislation designed to pre-empt. Should the Congress decide to act, numerous policy questions would arise.

There has been no rush on the part of the states that had not previously legislated to follow the lead of either California or Arizona. However, the issue has not been totally ignored at the state level. Legislation was introduced in the 1977 Minnesota legislature to create a part-time agricultural labor relations board to insure the right of farmworkers to bargain collectively. The bill detailed the rights of agricultural employees, defined unfair labor practices, and set forth the powers of the proposed board. However, the bill failed to become law.141/

Evaluation

The Arizona and California Acts raise three questions: (1) Given the experience of the years since the passage of the acts, which has been the most effective in bringing order to labor relations in the agricultural sector? (2) Do the lingering constitutional questions about the Arizona Act also exist in the California Act? and (3) Which underlying assumptions about the balance of power between labor and management in agriculture are the most accurate, those supporting the Arizona model or those calling for legislation such as that in California?

Apparently, widespread use has been made of the California Act, whereas little use was made of the Arizona Act. The constitutional challenge to the Arizona Act, which was mounted shortly after the statute was passed in 1972, probably has had a negative effect on its use. However, there is reason

to believe that the Arizona Act would have proved to be a rather ineffective tool, the litigation notwithstanding. There is little incentive for farmworkers to use the law given its impediments to organization, bargaining, and resolving of disputes. When any piece of legislation in the social or labor area is perceived by labor as a step backward, it is inevitable that rather than promoting improved relations between labor and management, the law will gather dust on the shelf. Laws in Kansas and Idaho, which from labor's standpoint have some of the less attractive features of the Arizona Act, have been little used.142/

The California experience, on the other hand, has been remarkably successful, though not without its problems. In the first five months the California Act was in existence, there were 225 representation elections, more than under the NLRA nationwide in the first three years of its existence.143/ The activity was so intense that in February 1976 it became necessary to suspend the activities of the board and lay off most of the staff because funds had been exhausted.144/ The board spent its initial appropriation of $1.3 million and an emergency loan of $1.25 million during this initial five-month period.145/ This frustrating situation led to the resignation of several board members.146/ However, on July 3, 1976, Governor Edmund Brown Jr. signed legislation approving a $12.8 billion state budget with new funding included for the board.147/ During the first two and one-half years of its operation, the board supervised more than 600 representation elections in California. The United Farm Workers Union was a party to about 470 of those elections and was formally certified in 227 instances.148/ By April 2, 1976, the UFW had obtained contracts in 104 cases and was involved in collective bargaining in 123 more units.149/ In some of the approximately 600 representative elections, other unions (the Teamsters, for example) were designated and there were also instances of a "no-union" vote. During the period to April 1978, the UFW was involved in 527 board hearings, including many dealing with unfair labor practices and representation.150/ This remarkable record is evidence of the vitality of the California Act which has brought order to what had been a troubled industry plagued with labor-management strife and bitter conflicts between unions.

Prior to the California Act, the UFW and the Teamsters had been locked in unremitting conflict over organizing agricultural workers in California.151/ Largely as a result of the structure provided by the act, these two unions, on March 11, 1977, signed an agreement that leaders of both said would terminate the destructive competition.152/ The UFW agreed to try to organize only those workers employed in agriculture, as described in the California Act. The Teamsters agreed to organize only among workers covered by the NLRA.153/ The "jurisdictional" division is decided by determining whether the employer is primarily engaged in farming. If he is, the UFW will have jurisdiction, even over truck drivers. If not, the Teamsters will have jurisdiction, even over a worker doing an agricultural job.154/

The fact that this legislative framework has in actual practice provided a way for farm labor problems to be resolved in California is a strong recommendation for the statute and provides a sharp contrast with the Arizona experience. Farmworker unions in California have shifted the use of their lawyers substantially since the act became law. As the general counsel for UFW indicated in an April 1978 presentation:

> When we had no Act, Union lawyers were constantly involved in litigation. It was often defensive litigation,...like the labor injunction, which labor unions had dealt with for 30 years prior to the passage of the NLRA. These the United Farm Workers have been dealing with regularly in the last ten years; we have had hundreds of cases involving labor injunctions against our activity. But we have also been dealing with offensive litigation in the courts involving areas only related to labor law. Since we have no labor law because of our exclusion from the NLRA, we had to rely on civil rights law, we had to rely on anti-trust law, we had to rely on the Contractor Registration Act, we had to use pesticide provisions to initiate litigation against employers. These were the only ways we could redress grievances. The result of this, however, was a tremendous tie-up of legal resources in this sort of litigation.155/

It is indeed encouraging to find that the California Act has provided a framework in which many agricultural labor problems can be resolved and that there has been a shift away from those time-consuming and far less promising types of litigation.

It is discouraging, on the other hand, to find that the one aspect of the Arizona Act which was submitted to constitutional test on the merits, the election procedure, survived in spite of its delay mechanism and tactical limitations. It is reasonable to anticipate that the election procedures of the Arizona Act will continue to be a disincentive to union organization in agriculture in that state.

It is unlikely that the constitutional questions that remain unanswered by Babbitt will be raised

by the California Act. The California Act has few of the features that were singled out in Babbitt that are likely to be the subject of further litigation as the Arizona courts take up the matters on which abstention was decreed and as cases in controversy arise in those matters that Supreme Court said would be prerequisites to further litigation.

The California Act has no general criminal sanctions which might be construed to punish virtually any violation of the act, no consumer publicity provisions that have the potential of being read to constitute undue restraints on secondary activities, no provisions that might be relied upon by employers to deny access by unions to migratory farmworkers residing on their property, and no mandatory compulsory arbitration provision that might in a given case result in the denial of due process and the right to a jury trial. Indeed, the fact that the California Act either conforms to the NLRA or provides even greater guarantees of free speech and freedom of association seems to insure its immunity to constitutional challenge.

The underlying assumptions that brought about the California Act are substantially different than those made in the legislative halls of Arizona. Deeply felt ideas about agriculture are involved and emotions tend to run high on some of the issues. Essentially, the Arizona view is that farm labor unions possess enormous power to disrupt agricultural production at critical times--harvest, for example. Because of the perceived tremendous advantage over farm operators, the Arizona view is that the law must be tilted to lessen the power of unions and give management a greater advantage than industry is generally granted under the NLRA. The California legislation, on the other hand, proceeds on the assumption that farmworkers and their unions are at a greater disadvantage in their dealings with management than is true of the national labor force generally.156/ Thus, the California Act was fashioned to deal with the particular circumstances of agriculture and to give agricultural labor more leverage than labor has been given under NLRA. Without saying that every provision of the California Act is necessary to satisfactory agricultural labor-management relations, it seems reasonable to conclude that the assumptions underlying the California Act are more accurate than those underlying the Arizona Act.

Fears of excessive power being granted to farmworker unions under legislation such as that in California have not been borne out by the California experience. As labor-management relations in agriculture reach new levels of maturity, fears of harvest strikes and other measures which threaten economic ruin to farmers should fade. Farmworkers, like laborers in most other industries, are not likely to intentionally destroy their employer and their jobs. Also, strikes during critical points in the agricultural production process are not likely to occur except under the most extreme circumstances because the loss of pay to workers will be so great. Farmworkers often depend on long hours during harvest season to make up for the slow times during the year. Further, in the agricultural sector, the ever-present possibility of increased mechanization exists and can be assumed to have a moderating effect on farmworker activities. Actions which force crop changes or mechanization will be to their decided disadvantage. In some segments of agriculture, mechanization may not be practical at present, but experience has demonstrated a remarkable capacity to produce machines to do jobs on farms in cases where mechanization had previously been thought to be remote, if not impossible.

This leaves the question of what steps are likely to be taken in the future on the state and federal level. In 1973, there were again efforts to either eliminate the agricultural exemption in the NLRA or to create a separate NLRB for agricultural matters.157/ While no legislation resulted, it was clear that few were satisfied with the present state of affairs.158/ What to do brought differing views. The Teamsters endorsed the extension of NLRA to include farmworkers. The United Farm Workers Union generally favored a bill including farmworkers under the NLRA if provision was made assuring no loss of the use of secondary activities as organizing and bargaining tools. The American Farm Bureau Federation preferred a bill that would establish a separate agency and a scheme along the lines of that enacted in Arizona.159/

It is likely that the whole matter will receive renewed attention in the Congress given the action of the U.S. Supreme Court in Babbitt. Four of the issues raised were left unresolved because of problems of justiciability and abstention. Assume, however, that (a) further litigation results in an access case where a violation of guarantees of free speech and association are established, given the terms of the Arizona Act; (b) that a compulsory arbitration matter develops which is found to result in a denial of employee due process and the right to a jury trial; (c) that the Arizona Supreme Court construes the criminal penalty provision of the statute so as to bring it within constitutional bounds; and (d) that the Arizona Supreme Court construes the consumer publicity provisions of the Arizona Act so as to salvage those provisions from constitutional attack. Even then, it is unlikely that the farm labor movement and the labor movement, generally, will be content to have the Arizona Act standing as a potential model for other states to follow as the movement to adopt agricultural labor relations leg-

islation spreads. The statutory election scheme of the Arizona Act is not remotely "as fair or efficacious" as labor interests would like. The obvious answer will be to press once again for national legislation pre-empting state statutes. Whether the political climate will be such that Congress will move is impossible to predict.

Finally, because farmworkers generally have great difficulty in negotiating with their farm employers about wages, conditions of employment, and related matters, pay levels, and other benefits have remained at relatively low levels when compared with other segments of the production economy. This is one of the primary conclusions reached in this study. Recognizing this, the Congress, and to some extent the state legislatures, have legislated to gradually include farmworkers under many pieces of social legislation from which they were excluded for so long. The result has been some improvements to the hired farm work force. However, wage levels remain low and, as a result benefits, for many other legislatively created programs also remain low because those benefits are tied to wages earned in the past. Enforcement of standards has been left primarily to a small and somewhat beleagured group of government inspectors in the areas of working conditions, employment of children illegally, occupational safety, and health.

Problems of poverty, poor health, and educational deficiency for young and old have been attacked in a variety of government programs that have produced benefits but have generally failed to root out underlying causes. While not a panacea, it must be suggested that logic plus the California experience indicate that the best chance for real improvement in the economic condition of the hired farm work force lies in the effective use of labor organization. There is evidence that the beginnings of this improvement can be noticed in California. As wages increase and, on an average, begin to approach double the minimum wage, effects will be felt in improved benefits under other social programs, including social security, worker's compensation, and unemployment compensation. At the same time it is hoped that the base cause of certain problems, poor health being the most notable example, will begin to be dealt with. For these reasons, it is recommended that efforts be made in the various states and at the national level, if necessary, to encourage the growth of farmworker labor unions by allowing them to operate under legislation at least as favorable as the NLRA, and hopefully under legislation that has at least some of the California modifications designed to deal with the special case of agriculture.

Inevitably, as the cost of hired labor increases, farm operators will be forced to deal with that cost. However, while there may be extreme difficulty in adjusting for some types of farming operations, every available indication is that over time these increased costs will be absorbed and passed to consumers and all but the most marginal of operators will survive.160/ Not only will they survive, but they are likely to have a more satisfied, thus more productive, labor force. In summary, Dyson's observation is directly on point: "The agricultural workers have been included gradually under more and more of the social legislation that this country offers its citizens, but a definite, steady labor relations policy would offer farmworkers the greatest chance for economic stability and advancement."161/

Recommendations

Given the decision of the U.S. Supreme Court in Babbitt, it is doubtful whether it remains feasible to continue to leave the regulation of agricultural labor relations to the states. The survival of the Arizona Act provides a substantial argument against allowing state experimentation to continue. Had the NLRA and the California Act been left as the primary models, the necessity of early federal action may not have been present and the desirable approach may have been to seek a greater experience at the state level.

Assuming that legislation will again be considered at the national level, the troublesome question of whether to eliminate the agricultural exemption from the NLRA or to create separate agricultural labor-management relations legislation will resurface. The question is not easily resolved. However, if a judgment must be made in the near future on the basis of existing experience, it seems that a simple elimination of the existing exemption would be an unwise approach. Too many things are unique to agriculture to attempt to apply the NLRA without modification.

Assuming that such modifications are necessary, the question then becomes whether to attempt to insert into the NLRA a number of special provisions applicable only in agricultural cases and whether the NLRB should be expected to absorb the resulting additional work. The best approach would seem to be to opt for separate legislation and the creation at the national level of a separate agricultural labor-management relations board.

Whichever option might be selected, it seems imperative that the following matters be given careful consideration as legislation is fashioned: (1) provision for a rapid certification process similar to that in California, allowing the employees who request an election to vote when it is held; (2) provision to insure that the election occurs at the time of the year when the employer has his maximum work force employed; (3) realistic definitions of "bargaining unit" to allow the creation of one unit even where the employer farms several locations; (4) provision for selection of bargaining representatives only by secret ballot with no alternative methods allowed; (5) provision for speedy resolution of election contests and representation disputes so that certification is not delayed for many months as has been often the case in California; (6) definition of "agricultural employment" as precisely as possible to eliminate disputes over which units must be organized under the NLRA and which under the Agricultural Labor Relations statute; (7) allowance of collective bargaining on at least as broad a range of issues as under the NLRA; (8) refraining from imposing restrictions on the timing of strikes which are otherwise legal; and (9) addressing the question of secondary activity with clarity and precision.

The last item may be the most difficult to deal with. The California Act provision allowing a certified union to engage in publicity, including picketing, designed to discourage consumers from patronizing a store that deals in struck goods is contorversial. If a truly effective labor-management relations scheme is provided, there is a serious question as to whether a certified agricultural labor organization really needs such power to effectively deal with management. No recommendation is made in this study on this point, but it must be observed that the elimination of such a provision as a compromise measure would undoubtedly "soften" the legislative measure and increase the chances that it would pass and become law.

The basic recommendation that farm labor unions receive encouragement is not made without consideration to the arguments of those who strongly oppose all extension of labor-management legislation to agriculture.162/ However, whatever evil some might perceive in the trade union movement today, it seems clear that through the years workers in covered industries have derived considerable benefit from being assured the right to bargain collectively with their employers. If there are problems that require reforming or fine-tuning the NLRA as it now applies to long-established unions, the Congress should be asked to make necessary changes. However, to deny labor-management relations legislation to agriculture because of alleged problems of imbalance in industries where strong unions have had many decades to develop seems manifestly unfair. By creating a separate agricultural labor-management relations act at the national level, the way is left open to adjust the NLRA as it affects the mainstream of the union movement without the necessity of adjusting the balance in the agricultural labor-management area.

Notes to Chapter 11

1. National Labor Relations Act (Wagner Act), ch. 372, §§1-13, 49 Stat. 449 (1935) (current version at 29 U.S.C. §§151-169 (1976).

2. Agricultural Labor Relations Act of 1975 (Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act of 1975), Cal. Labor Code §§1140-66 (West Supp. 1980).

3. Ariz. Rev. Stat. Ann. §§23-1381 to -1395 (1971-80 Supp.). Arizona has an active Sunset Law program. Unless continued, the Agriculture Employment Relations Board will terminate on July 1, 1982 as per Ariz. Rev. Stat. Ann. §§41-2362 and 41-2377. Ariz. Rev. Stat. Ann. §§23-1381 et. seq. is repealed effective 1-1-1983 under Ariz. Rev. Stat. Ann. §§41-2370. Note that the act and the board have been continued in the past. 1980 Ariz. Sess. Laws, Third Special Sess. ch. 1, Sec. 16 and Sec. 19. See 1980 Ariz. Sess.Laws ch.60, §6.

4. "Philadelphia Cordwainer's Case (1806)", 3 Common & Gilmore, Documentary History of American Industrial Society (1910-11) at 59.

5. Hitchman Coal Co. v. Mitchell, 245 U.S. 229 38 S. Ct. 65, 62 L.Ed. 260 (1917);

6. Norris-LaGuardia Act, ch. 90, §1, 47 Stat. 70 (1932); (current version at 29 U.S.C. §101 et. seq.).

7. See generally Morris, "Agricultural Labor and National Labor Legislation," 54 Cal. L.R. 1939.

8. Labor-Management Relations Act (Taft-Hartley Act) ch. 120, §101, 61 Stat. 136 (1947); (current version at 29 U.S.C. §§141-88 (1976).

9. 29 U.S.C. §141(b) (1976).

10. 29 U.S.C. §141(b) (1976).

11. See notes 51, 52, 53, 54, 55 infra for examples of state laws dealing with agriculture.

12. 29 U.S.C. §158(a)(5) (1976).

13. 29 U.S.C. §52 (1976); 29 U.S.C. §163 (1976).

14. 29 U.S.C. §158(b) (1976); see also N.L.R.B. Seventh Annual Report (1942) at 49.

15. 29 U.S.C. §158(a) (1976).

16. See generally J.A. Jenkins, Labor Law (1968); R. Smith, L. Merrifield & T. St. Antoine, Labor Relations Law (4th ed. 1968); R. Smith, L. Merrifield & D. Rothschild, Collective Bargaining & Labor Arbitration (1970); C. Morris, The Developing Labor Law (1971).

17. 29 U.S.C. §152(3) (1976).

18. On the difficulties in determining the line between agricultural labor and non-agricultural labor, see Dyson, "The Farm Workers and the N.L.R.A.: From Wagner to Taft-Hartley," 36 Fed. Bar J. 121 (1977).

19. Minn. Stat. §179.01 (1974)

20. Dyson, Supra note 18 at 125.

21. 79 Cong. Rec. 9720 (1935).

22. Ib.

23. Ib.

24. 79 Cong. Rec. 9721 (1935).

25. Ib.

26. Ib.

27. Minn. Stat. §§179.01-179.17 (1974), as amended; See "History and Provisions of the Minnesota Labor Relations Act," 24 Minn. L. Rev. 217 (1939).

28. Ib.

29. See generally Morris, supra note 7.

30. Minn. Stat. §§179.43-.44 (1974), as amended.

31. 308 Minn. 87, 241 N.W.2d 292 (1976).

32. Id.

33. Minn. Stat. §§185.07-.19 (1974).

34. Minn. Stat. §185.10(5) (1974).

35. 308 Minn. 87, 241 N.W.2d 292 (1976).

36. 4 Cal.3d 556, 483 P.2d 1215, 94 Cal. Rptr. 263 (1971).

37. Cal. Labor Code §§1115-1120 (West).

38. 4 Cal.3d 556, 56i, 483 P.2d 1215, 1218, 94 Cal. Rptr. 263, 266 (1971).

39. Ib.

40. 4 Cal.3d 556, 571, 483 P.2d 1215, 1226, 94 Cal. Rptr. 263,274 (1971).

41. 29 U.S.C. §158(b)(4) (1976).

42. 494 F.2d 541 (9th Cir. 1974).

43. Allen Bradley Co. v. Local 3, IBEW, 325 U.S. 797, 65 S. Ct. 1533, 89 L. Ed. 1939 (1945).

44. 41 Ohio Misc. 171, 324 N.E.2d 805 (1974).

45. 41 Ohio Misc. 171, 172, 324 N.E.2d 805, 807 (1974).

46. 41 Ohio Misc. 171, 174, 324 N.E.2d 805, 808 (1974).

47. 41 Ohio Misc. 171, 173, 324 N.E.2d 805, 807 (1974).

48. 80 Misc. 2d 1012, 364 N.Y.S.2d,413, 415 (1975).

49. 80 Misc. 2d 1012, 364 N.Y.S.2d 413, 421-2 (1975).

50. CCH 1976 Guide Book to Labor Relations at 239.

51. Kan. Stat. Ann. §§44-818,44-830.

52. Idaho Code §§22-4101,22-4113.

53. Hawaii Rev. Stat., Title 21, Ch. 377.

54. Mass. Gen. Laws Ann. 150A, §5A.

55. Wis. Stat. Ann. §111.11.

56. La. Rev. Stat. Ann. §§23-881, 23-888.

57. Ariz. Rev. Stat. Ann. §§23-1381 to -1395 (1971-80 Supp.); for an interesting discussion of the Arizona statute and the court test of its constitutionality see White and Gibney." The Arizona Farm Labor Law: A Supreme Court Test," 31 Labor Law Journal 87 (1980).

58. See generally Cohen & Rose, "State Regulation of Agricultural Labor Relations - The Arizona Farm Labor Law - An Interpretive and Comparative Analysis", 1973 Law and Social Order 313.

59. 449 F. Supp. 449 (D. Ariz. 1978).

60. Babbitt v. United Farm Workers National Union, 442 U.S. 289, 99 Sup. Ct. 2301, 60 L. Ed.2d 985 (1979).

61. Cal. Labor Code §§1140-66 (West Supp. 1979).

62. 29 U.S.C. §§151-168 (1976).

63. See notes 51, 52, 53, 54, 55, supra.

64. Ariz. Rev. Stat. Ann. §§23-1389(A) (1971-80 Supp.); Cal. Labor Code §1152 (West Supp. 1979).

65. Ariz. Rev. Stat. Ann. §231-1389(A) (1971-80 Supp.); Cal. Labor Code §1156 (West Supp. 1979); 29 U.S.C. §159(a) (1976).

66. Ariz. Rev. Stat. Ann. §23-1389(C)(1) (1971-80 Supp.).

67. Ariz. Rev. Stat. Ann. §41-1009.

68. Ariz. Rev. Stat. Ann. §23-1389(I) (1971-80 Supp.).

69. Ariz. Rev. Stat. Ann. §23-1389(A) (1971-80 Supp.).

70. Ariz. Rev. Stat. Ann. §23-1389(B) (1971-80 Supp.).

71. Ariz. Rev. Stat. Ann. §23-1382(1) (1971-80 Supp.).

72. Ariz. Rev. Stat. Ann. §23-1382(1) (1971-80 Supp.).

73. 449 F. Supp. 449, 459 (D. Ariz. 1978).

74. Cal. Labor Code §1156.3(a)(1) (West Supp. 1980).

75. Cal. Labor Code §1156.3(a)(4) (West Supp. 1980).

76. Senate Report No. 95-628, 95th Cong. 2nd Sess., Labor Law Reform Act of 1978 S. 2467 at 21.

77. "California's Attempt to End Farmworker Voicelessness: A Survey of the Agricultural Labor Relations Act of 1975." 7 PAC. L.J. 197, 214 (1976).

78. Cal. Labor Code §1156.2 (West Supp. 1979).

79. Ariz. Rev. Stat. Ann. §§23-1382(5) (1971-80 Supp.).

80. Morris, The Developing Labor Law at 200 ff.

81. Ariz. Rev. Stat. Ann. §23-1389(D) (1971-80 Supp.).

82. Cal. Labor Code §1157.2 (West Supp. 1980).

83. Cal. Labor Code §1156.3(a)(4)-(6) (West Supp. 1980).

84. Ariz. Rev. Stat. Ann. §23-1385(c) (1971-80 Supp.).

85. 326 U.S. 501, 66 S. Ct. 276, 90 L. Ed. 265 (1946).

86. For a criticism of the analysis of the court on this point see Note. "Labor - Arizona Agricultural Employment Relations Act - United Farm Workers Union v. Babbitt, 449 F. Supp. 449 (D. Ariz. 1978)," 1978 Ariz. State L. J. 257, 273 (1978).

87. Cal. Adm. Code, Title 8, §20900 as amended,

88. 16 Cal.3d 392, 546 P.2d 687, 128 Cal. Rptr. 183, appeal dismissed for want of substantial federal question, 429 U.S. 802 (1976). The access rule and the litigation sustaining its validity are discussed at length at Note, "ALRB v. Superior Court: Access to the Fields - Sowing the Seeds of Farm - Labor Peace," 7 Golden Gate U.L.R. 709 (1977).

89. 351 U.S. 105, 76 S. Ct. 679, 100 L. Ed. 975 (1956).

90. 424 U.S. 507, 96 S. Ct. 1029, 47 L. Ed.2d 196 (1976).

91. 478 F.2d 73 (5th Cir. 1973).

92. 326 U.S. 501, 66 S. Ct. 276, 90 L. Ed. 265 (1972).

93. Rutkowski, "Future of United Farm Workers," 1978 San Fernando Valley College of Law Symposium on Labor Law and Industrial Relations 21.

94. Id. at 26.

95. Cal. Labor Code §1141 (West Supp. 1980).

96. Cal. Labor Code §1144 (West Supp. 1980).

97. Cal. Labor Code §1160.3 (West Supp. 1980).

98. Cal. Labor Code §1160.4 (West Supp. 1980).

99. Ariz. Rev. Stat. Ann. §23-1392 (1971-80 Supp.).

100. Ariz. Rev. Stat. Ann. §23-1392 (1971-80 Supp.).

101. Ariz. Rev. Stat. Ann. §23-1392 (1971-80 Supp.); compare 29 U.S.C. §162 (1976).

102. Ariz. Rev. Stat. Ann. §23-1384(A)(1) (1971-80 Supp.).

103. Cohen & Rose, supra note 58 at 351.

104. Ariz. Rev. Stat. Ann. §23-1385(D) (1971-80 Supp.).

105. Cohen & Rose, supra note 58 at 351.

106. Ariz. Rev. Stat. Ann. §23-1385(A)(1) (1971-80 Supp.); Cal. Labor Code §1153(a) (West Supp. 1980); 29 U.S.C. §158(a)(1) (1976).

107. Ariz. Rev. Stat. Ann. §23-1385(A)(2) (1971-80 Supp.); Cal. Labor Code §1153(b) (West Supp. 1980);

108. Ariz. Rev. Stat. Ann. §23-1385(A)(3) (1971-80 Supp.); Cal. Labor Code §1153(c) (West Supp. 1980); 29 U.S.C. §158(a) (3) (1976).

109. Ariz. Rev. Stat. Ann. §23-1385(A)(4) & (6) (1971-80 Supp.); Cal. Labor Code §1153(d)(West Supp. 1980); 29 U.S.C. §158(a) (4) (1976).

110. Ariz. Rev. Stat. Ann. §23-1385(A)(5) (1971-80 Supp.); Cal. Labor Code §1153(e) (West Supp. 1980); 29 U.S.C. §158(a)(5) (1976).

111. Ariz. Rev. Stat. Ann. 23-13_; (1971-80 Supp.); Cal. Labor Code §1153(f) (West Supp. 1980); 29 U.S.C. §158(b)(4)(c) (1976).

112. Cal. Labor Code §1153(c) (West Supp. 1980).

113. Ariz. Rev. Stat. Ann. §23-1385(B)(2) (1971-80 Supp): Ariz. Rev. Stat. Ann. §§23-1301 et. seq.

114. 29 U.S.C. §158(a)(3) (1976).

115. Ariz. Rev. Stat. Ann. §23-1385(B)(1) (1971-80 Supp.); Cal. Labor Code §1154(a)(1) (West Supp. 1980); 29 U.S.C. §158(b) (1)(A) (1976).

116. Ariz. Rev. Stat. Ann. §23-1385(B)(2) (1971-80 Supp.); Cal. Labor Code §1154(a)(2) (West Supp. 1980); 29 U.S.C. §158(b)(1)(B) (1976).

117. Ariz. Rev. Stat. Ann. §23-1385(B)(5) (1971-80 Supp.); Cal. Labor Code §1154(b) (West Supp. 1980); 29 U.S.C. §158(b)(2) (1976); however, under the California Act at §1153(c) the union may make an agreement with the employer requiring that employees take membership in the union on or after the fifth day of employment. The provisions of NLRA coupled with those of Taft-Hartley leave this matter to the states. In Arizona an employee has the right to work without joining the union. Ariz. Rev. Stat. Ann. §§23-1301 et. seq.

118. Ariz. Rev. Stat. Ann. §23-1385(B)(3) (1971-80 Supp.); Cal. Labor Code §1154(c) (West Supp. 1980); 29 U.S.C. §158(b)(3) (1976).

119. Ariz. Rev. Stat. Ann. §23-1385(B)(5)(a) (1971-80 Supp.): Cal. Labor Code §1154(f) (West Supp. 1980); 29 U.S.C. §158(b)(6) (1976).

120. Ariz. Rev. Stat. Ann. §1385(B)(12) (1971-80 Supp.); Cal. Labor Code §1154(g); 29 U.S.C. §158(b)(7) (1980).

121. CCH 1979, supra note 50 at 242-3.

122. Cal. Labor Code §1154(d)(2) (West Supp. 1980).

123. Ariz. Rev. Stat. Ann. §23-1393(B) (1971-80 Supp.).

124. Ariz. Rev. Stat. Ann. §23-1393(B) (1971-80 Supp.).

125. 449 F. Supp. 449, 455 (D. Ariz. 1978).

126. Zepke, Labor Law at 125.

127. Cal. Labor Code §1154(d)(4) (West Supp. 1980), construed in light of Brewery and Beverage Drivers, Teamsters Local 67 v. NLRB, 220 F.2d. 380 (D.C. Cir. 1951); 29 U.S.C. §158(b)(4)(D) (1976); Ariz. Rev. Stat. Ann. §§23-1385(B)(6) and 23-1321 (1971-80 Supp.).

128. "California's Attempt to End Farmworker Voicelessness." supra note 77 at 224.

129. 29 U.S.C. §158(b)(4)(D).

130. NLRB v. Fruit and Vegetable Packers, 377 U.S. 58, 84 S.Ct. 1063,12 L.Ed.2d 129 (1964).

131. Cal. Labor Code §1154(d)(4) (West Supp. 1980).

132. 449 F. Supp. 449, 462 (D Ariz, 1978).

133. 449 F. Supp. 449, 463 (D. Ariz. 1978).

134. 312 U.S. 321, 61 S.Ct. 568, 85 L.Ed. 855 (1941).

135. 449 F. Supp. 449, 463 (D. Ariz. 1978).

136. "Secondary Boycotts and the Employer's Permissible Response Under the California Agricultural Labor Relations Act," 29 Stan. L. R. 277, 295-6 (1977).

137. 442 U.S. 289, 99 S.Ct. 2301, 60 L.Ed.2d 985 (1979).

138. Preview of United States Supreme Court Cases, Oct. 1978 Term, No. 28, at 2-4.

139. Ib.

140. Ib.

141. 11 Clearinghouse Review 239 (1977).

142. Linden, "Judges Strike Down Ariz. Ag. Labor Law," Packer, May 6, 1978 at AZ; Koziara, "Agricultural Labor Relations Laws in Four States - A Companion," 100 Monthly Lab. Rev. 14 (1977).

143. Rukowski, supra note 93 at 22.

144. "California ALRB on the Rocks," American Vegetable Grower, March 1976 at 48.

145. Ib.

146. "Farm Board Chief Resigns," San Francisco Chronicle, April 17, 1976 at 8; "Farm Labor Board Loses One More," San Francisco Chronicle, April 20, 1976 at 6.

147. New York Times, July 4, 1976 at 18.

148. Rutkowski, supra note 93 at 22-3.

149. Rutkowski, supra note 93 at 23.

150. Ib.

151. New York Times, March 11, 1977 at 1.

152. Ib.

153. Ib.

154. Ib.

155. Rutkowski, supra note 93 at 30.

156. Secondary Boycotts, supra note 136 at 295.

157. H.R. 881, H.R. 4007, H.R. 4011, H.R. 7513, 93rd Cong., 1st. Sess.

158. Dyson, supra note 18 at 141.

159. Ib.

160. See, e.g. Griffing, Walker, Weitzman & Youtie, A Social and Economic Analysis of the Exclusion of Farmworkers from Coverage Under the Indiana Workmen's Compensation Act of 1929 (1977).

161. Dyson, supra note 18 at 144.

162. See, e.g. Petro, "Agriculture and Labor Policy," Labor Law J. 24 (1973); see also Camp, "Trading Chavez for Big Brother," Manion Forum No. 958.