

ALRA Card Check Legislation

What It Is, What It's Not, and What You Need to Know

Information for Agricultural Employers,
Agricultural Employees, Supervisors, and
Farm Labor Contractors

April 2024



AB 2183/AB 113 is a Huge Change in how Farm Employees Choose Union Representation (or Not)

- **The “old way”:** Agricultural Labor Relations Board (ALRB)-supervised secret ballot elections
- **The “new way”:** Card Check



The “Old Way”: ALRB-supervised Secret Ballot Elections

- Created by the Agricultural Labor Relations Act (ALRA, **1975**) (**nearly 50 years ago**); U.S. labor relations law (the National Labor Relations Act) doesn't cover ag employees
- Majority of employees at 50% of the employer's peak seasonal employment must indicate a desire for the Ag Labor Relations Board to hold a secret ballot election to determine if the employees want to be represented by a union
- Under the ALRA, an authorization card or petition indicates the union is the representative of the employee signing the petition or card for the purpose of seeking an election **only**
- The ALRB will certify a union seeking representation rights only if the union wins the support of a majority of the employees voting in the election



The “Old Way”: ALRB-supervised Secret Ballot Elections

- The ALRB’s role is to serve as a “referee” for the
 - Union’s petition for a secret ballot election
 - Employer’s response to the union’s petition (where the employer may be required to provide a list of employees in the previous pay period to determine 50% peak seasonal employment) and
 - The election if the union can show enough support among the employees to require an election
- Another important role for the ALRB is to carefully monitor the election, both on the day of the election and what the employer and union do and communicate to employees before the election
- Some claims and communications are “unfair labor practices” (ULPs), and employees are entitled to “make whole” remedies if they suffered any monetary loss as a result of the ULP



The “Old Way”: ALRB-supervised Secret Ballot Elections

- **One of the ALRB’s roles in a secret ballot election is to monitor the election to ensure neither the employer nor the union intimidates employees to influence their decision about whether to be represented by the union**
- Once the election has been held, the ALRB tallies the votes to determine whether a majority of the employees voting in the election chose union representation
- If they did not choose union representation, nothing changes
- If they chose union representation, the ALRB certifies the union as the exclusive collective bargaining representative of those employees
- **IMPORTANT:** Under the “old way” of secret ballot elections, authorization cards and petitions are used only to determine employee interest in having an ALRB-supervised election



Unions Now Have Another Way to Gain Representation Rights

The Card Check/“Majority Support Petition” Process:

- Union can demonstrate majority support of employees by submitting authorization cards/petitions that are (allegedly) signed by a majority of the employer’s employees at 50% of the employer’s peak seasonal employment
- Authorization cards/petitions are valid for one year with a petition to the ALRB for recognition of the union as the employee’s collective bargaining agent
- Employer must then furnish to the ALRB and the union a list of employees in the prior payroll period
- Under the old election process, the ALRB compared the petitions/authorization cards submitted by the union with the petition; unclear if/how the ALRB is doing this under card check
- ALRB decides within 5 days whether the union has demonstrated majority support



Unions Now Have Another Way to Gain Representation Rights

The Card Check Process:

- If the union has not provided enough authorization cards/petitions to meet the 50% threshold, the union (which is already in possession of the employer's employee list) **can be granted an additional 30 days** by the ALRB to gather additional support (to "perfect" their claim of majority support)
- Under the card check process, **signing an authorization card or petition is effectively voting for union representation**
- **It is no longer merely an indication of support for having a secret ballot election** supervised by the ALRB to determine whether employees want union representation



New (and Big) ALRA Penalty Authority

Penalty Authority for ULPs

- ALRB has new power to levy civil money penalties (CMPs) on employers for Unfair Labor Practices
- What's an employer Unfair Labor Practice?
 - According to the ALRB's *Handbook on the California Agricultural Labor Relations Law*, it is an employer unfair labor practice to
 - *Interfere with, restrain or coerce agricultural employees in the exercise of their protected rights*
 - This includes, among many other things, to
 - *Threaten to fire employees if they organize, vote for, or join a union, or if they engage in activities on behalf of the union*
 - *Threaten to harm workers or their property if they join or vote for a union*
 - *Question employees about their union, activities or their support of a union*



Employer ULPs

Still More Employer ULPs *(per the ALRB Handbook)*

- *Spy on or engage in surveillance of employees, or threaten or appear to do so, while they are engaging in union activities, such as talking to organizers or other workers about a union*
- *Offer or give employees higher wages, better working conditions, or increased benefits in order to influence workers' votes or support for a union*
- *Prohibit employees from engaging in union activities during breaks, lunch period, or before or after work, while on the employer's property*
- *Deny access to union organizers during the time periods established by the Board, or refuse to turn over current lists of employees' names and current residence addresses when requested by the Board*
- *Intimidate or prohibit employees from wearing union buttons, insignia or other symbols at work*
- *In any other way interfere with, coerce or restrain employees in the exercise of their rights under the Act*



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Employer ULPs

Still More Employer ULPs *(per the ALRB Handbook)*

- *Dominate or interfere with the formation or administration of any labor organization or to contribute financial aid or any other support to it*
- *Discriminate in regard to hiring, or firing, or any term or condition of employment, so as to encourage or discourage membership in any labor organization*
- *Discharge or discriminate against an employee because the employee has filed charges or given testimony under the Act*
- *Refuse to bargain in good faith with a union that has been certified by the ALRB as the collective bargaining representative of the employees*



Union ULPs?

Are There Any Union ULPs? Not as many as for employers

- *Threatening employees with force and violence on the picket line or in connection with a strike*
- *Threatening employees with force or violence for refusing to support the union, for refusing to sign cards, for making statements against the union, etc.*
- *Threatening employees with bodily injury or loss of employment if they do not support a strike*
- *Entering into a contract with an employer when the union is not certified as the bargaining representative of the employees*
- *Threatening employees with arrest, deportation, loss of work, seniority or other benefits for supporting or refusing to support a union*

Observers of the ALRB will tell you union ULP complaints are very rare



Why Do ULPs Matter? Aren't ULPs Addressed by "remedial measures?"

Before 2023, the ALRA addressed ULPs through remediation

- An ALRB representative reads to the employees a notice describing the employer's ULP and why it's a violation, and posts the notice at the workplace
- If a ULP resulted in a job or monetary loss to one or more employees, the ALRB could order monetary remediation (reinstatement and back pay)

Now the ALRB must issue civil money penalties (over and above any back pay or other financial remedy) of up to

- \$10,000 per violation (per employee whose rights the employer violated)
- \$25,000 per violation involving discrimination or retaliation



Defending a ULP?

If the ALRB general counsel issues a ULP complaint against you based on a ULP charge filed by an employee or union, you can defend yourself in an ALRB hearing and then, if you lose there, appeal to ... the ALRB itself

- A ULP complaint is issued based on a decision by the ALRB's general counsel (a former CA Rural Legal Assistance lawyer, who supervises a staff of attorneys who are mostly former CRLA or UFW lawyers)
- The complaint is heard by an ALRB-employed administrative law judge (ALJ)
- The ALRB reviews and either affirms or overturns the ALJ's decision in whole or in part
- The ALRB, through its staff and ALJ's, acts as figurative judge, jury, and executioner
- Employers usually lose cases at the ALRB



Appealing a ULP?

But I can appeal to a court an adverse decision by an agency like the ALRB, right?

- Yes, you can
- But now you must first obtain an “Appellate Bond” in the full amount of any payments you’re been ordered to make by the ALRB (including backpay and CMPs)
- If the union you’re dealing with invokes the ALRA’s Mandatory Mediation and Conciliation provisions and the mediator imposes a collective bargaining agreement (CBA), you’d have to bond the entire amount of the pay and benefits you’d owe for the likely 3-year life of the CBA
- In effect, you’d have to bond the value of a CBA with money you haven’t earned yet, or mortgage your equipment and land



What's Happened So Far With Card Check?

- **DiMare Fresh/DMB Packing, Newman, October 2023**
 - @ 300 employees
 - Union filed claiming majority support; ALRB said initial attempt failed majority support
 - After some back-and-forth, the union submitted additional signatures for “employees” DiMare said were not their employees
 - Union claimed these were “ghost employees” employed by DiMare “under the table”
 - ALRB then certified that 51% of DMB employees “voted” for unionization
 - DMB has filed “objections” to the “vote” (under the old election system, the recourse provided to the employer allowed objections to the validity of voters and integrity of the election process
 - Objections are being litigated through ALRB process, status of contract negotiations not public
- **Olive Hill Nursery, Fallbrook, January 2024**
 - @ 80 employees
 - ALRB immediately found a majority
 - No election objections filed
 - Contract negotiations ongoing (as far as I am aware...)



What's Happened So Far With Card Check?

- **Wonderful Nurseries, Wasco, February 2024**
 - @ 650 employees, said to be largest grapevine nursery in the U.S.
 - ALRB initially certified UFW as collective bargaining representative
 - @ 150 Wonderful employees filed affidavits to the effect that UFW misused their information (given to access COVID financial assistance being distributed through UFW and affiliated organizations)
 - Election objections are being litigated through ALRB processes
 - Status of bargaining not public
- **Ho Sai Gai Farms, Bakersfield, March 2024**
 - No information publicly available about this, other than the notation on the ALRB's closed meeting agendas



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