An Agricultural Law Research Article

Decertification of Unions Under California's Agricultural Labor Relations Act: A Need for Stability and Certainty vs. Employees' Freedom of Choice

by

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COMMENTS

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In the political and business spheres, the choice of the voters in an election binds them for a fixed time. This promotes a sense of responsibility in the electorate and needed coherence in administration. These considerations are equally relevant to healthy labor relations.

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A union should be given ample time for carrying out its mandate on behalf of its members, and should not be under exigent pressure to produce hothouse results or be turned out.[1]

Introduction

ON AUGUST 28, 1975, the Agricultural Labor Relations Act (ALRA)[2] went into effect. This legislation sets forth California's

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1. Brooks v. N.L.R.B., 348 U.S. 96, 99, 100 (1954) (summarizing the reasoning of the National Labor Relations Board and lower courts).

2. CAL. LAB. CODE §§ 1140-1167 (West Supp. 1979). All references in the text to code sections refer to the California Labor Code unless otherwise stated. For two excellent discussions of the ALRA in general, see Levy, *The Agricultural Labor Relations Act of 1975 - La Esperanza De California Para El Futuro*, 15 SANTA CLARA LAW. 783 (1975) (Professor Levy served as a labor law consultant to the Agriculture and Services Agency in the drafting of the ALRA); Comment, *California's Attempt to End Farmworker Voicelessness: A Survey of the Agricultural Labor Relations Act of 1975*, 7 PAC. L.J. 197 (1976). *See also* Lewin, *"Representatives of Their Own Choosing:" Practical Considerations in the Selection of Bargaining Representatives for Seasonal Farmworkers*, 64 CALIF. L. REV. 732 (1976).

policy with regard to agricultural labor relations.[3] In enacting the ALRA, the state sought to "ensure peace in the agricultural fields by guaranteeing justice for all agricultural workers and stability in labor relations."[4] The legislation was intended "to bring certainty and a sense of fair play to a presently unstable and potentially volatile condition in the state."[5]

The ALRA defines the rights, powers, and duties of both agricultural employers and their employees, and labor organizations representing or desiring to represent such employees.[6] The ALRA also creates the Agricultural Labor Relations Board (ALRB).[7] The ALRB is a quasi-judicial entity empowered to hold secret ballot representation elections,[8] to certify the results of the elections,[9] and to certify[10] or decertify[11] a labor organization as the exclusive representative of agricultural employees.[12] To guide the Board in administering the ALRA, the ALRB is directed to follow applicable precedents of the National Labor Relations Act (NLRA),[13] as

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3. Agricultural employees were expressly excluded from coverage by the National Labor Relations Act (NLRA) passed in 1935, which governs industrial labor relations. 29 U.S.C. § 152(3) (1976). The decision to exclude agricultural employees was based on the fact that the labor-oriented members of Congress needed the votes of legislators from agricultural districts to pass the NLRA. In order to obtain these votes, Congress excluded agriculture from coverage by the NLRA. Levy, *supra* note 2, at 784. *See* Lewin, *supra* note 2, at 732 n.2. Thus, the responsibility for regulating agricultural labor relations has been left to the states.

4. Agricultural Labor Relations Act, 1975 Cal. Stats. 3d Ex. Sess., c.1, p. 4013, §1.

5. *Id.*

6. *See* CAL. LAB. CODE §§ 1152-1155.7 (West Supp. 1979).

7. *Id.* § 1141.

8. *See id.* § 1156.3(a). The choice of a union to act as bargaining agent for a particular group of employees lies within the province of the employees themselves. The determination of whether a certain union is the chosen bargaining agent of a majority of the employees is settled by allowing employees to vote for or against the union in an election. *See id.* § 1156.

9. After the conclusion of an election the votes are tallied. Within five days after the service of the tally of ballots on the parties, any person may file with the ALRB any objections to the election. *Id.* § 1156.3(c). If no objections are filed within five days, or if the challenged ballots are not sufficient in number to be determinative of the outcome of the election, the election results are certified. *See id.* § 1156.3(d).

10. A certification of a bargaining representative is a declaration by the ALRB that a named labor organization is the exclusive collective bargaining representative of the agricultural employees of an employer. *See generally* [1972] 2 LAB. L. REP. (CCH) ¶ 2580.

11. A decertification is a declaration by the ALRB that a certified union's authority to act as a collective bargaining representative of the agricultural employees is revoked. *See id.* ¶ 2765.

12. The ALRB is also authorized to investigate and adjudicate unfair labor practice charges. CAL. LAB. CODE § 1142(b) (West Supp. 1979).

13. 29 U.S.C. §§ 151-169 (1976).

amended.[14]

One of the most controversial provisions of the ALRA is that allowing for decertification[15] of bargaining representatives. Section 1156.7 of the Act provides that an employee or group of employees may file a petition, signed by thirty percent or more of the employees in a bargaining unit, requesting an election to decertify the union. A decertification petition, however, is only deemed timely if it is filed during the year preceding the expiration of a collective bargaining agreement and when the number of agricultural employees is at least fifty percent of the employer's peak agricultural employment for the current calendar year.[16]

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14. CAL. LAB. CODE § 1148 (West Supp. 1979). *See* notes 98-125 and accompanying text *infra*.

15. *See* note 11 *supra*.

16. CAL. LAB. CODE § 1156.7 (West Supp. 1979). Section 1156.7 provides that:

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

(b) A collective-bargaining agreement executed by an employer and a labor organization certified as the exclusive bargaining representative of his employees pursuant to this chapter shall be a bar to a petition for an election among such employees for the term of the agreement, but in any event such bar shall not exceed three years, provided that both the following conditions are met:

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

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

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

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

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

(1) That the number of agricultural employees currently em-

Recently, in *M. Caratan, Inc.*,[17] the ALRB first faced the controversy regarding the interpretation of the ALRA's decertification provision. The issue before the ALRB concerned the applicability of the decertification procedure in situations where the employer and the certified union had negotiated a one-year collective bargaining agreement. If the decertification procedure were intended to apply to one-year collective bargaining agreements, employees would be permitted to undercut the collective bargaining process. Employees could decide that they no longer wished to be represented by their chosen representative as soon as the union had negotiated a contract with their employer.

The purpose of this comment is to determine when, under the ALRA, a petition for decertification of a collective bargaining representative should be timely filed. The first section discusses the evolution of the federal rules limiting the timeliness of elections. The second section considers the adoption of these federal rules into the ALRA. The third section analyzes the major arguments presented in *Caratan,* and on appeal in *Cadiz v. ALRB.*[18] Section four critiques the ALRB's approach to rulings on the timeliness of decertification petitions. Section five proposes a future model for the California Legislature. The comment concludes that in view not only of California's past history of agricultural labor relations but also of the policies and objectives of the ALRA, employees should be bound to their choice of collective bargaining representative for at least one year.

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ployed by the employer named in the petition, as determined from his payroll immediately preceding the filing of the petition, is not less than 50 percent of his peak agricultural employment for the current calendar year.

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

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

17. 4 A.L.R.B. No. 68 (1978).

18. 92 Cal. App. 3d 365, 155 Cal. Rptr. 213 (1979).

I. BACKGROUND TO DECERTIFICATION UNDER THE ALRA: EVOLUTION OF THE FEDERAL RULES LIMITING THE TIMELINESS OF ELECTIONS

The NLRA was designed to protect the right of employees to organize and to bargain collectively through unions, on the theory that labor disputes were largely due to the inequality of bargaining power between an employer and his employees.[19] The NLRA provides that an employer must bargain with the chosen representative of his employees concerning wages, hours, and other conditions of employment.[20] It is hoped that as a result of such bargaining the employer and the union will execute a collective bargaining agreement, which in turn will promote industrial stability.[21]

Section 9 of the NLRA delineates the National Labor Relations Board's (NLRB) role in determining collective bargaining representatives.[22] This section directs the NLRB to conduct representation elections and details the manner in which such elections are to be conducted.[23] The NLRB is authorized to act through the same election procedure[24] in the event employees seek decertification of a union which has been certified or is currently recognized

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19. F. BARTOSIC & R. HARTLEY, LABOR RELATIONS LAW IN THE PRIVATE SECTOR 152 (1977).

20. 29 U.S.C. § 159(a) (1976).

21. American Finishing Co., 50 N.L.R.B. 313, 315-16 (1943); Owens-Illinois Pac. Coast Co., 36 N.L.R.B. 990, 995-96 (1941).

22. 29 U.S.C. § 159 (1976).

23. *Id.* The NLRB's procedures in representation cases are set forth in 29 C.F.R. §§ 101.17-.21 (1979) (NLRB Statements of Procedure). A representation proceeding begins with the filing of a petition with a regional office by a union, an employer, or an employee. The case is investigated to determine the following: whether it falls within the Board's jurisdiction; whether the bargaining unit sought is appropriate; whether there is any bar to conducting an election; and, if the petition is filed by an employer or a union, whether there is a 30% showing of interest by employees in the bargaining unit, generally established by authorization cards designating the union to serve as the bargaining agent. The Regional Director either secures the parties' consent to holding an election, or conducts a hearing to determine whether an election should be held. Elections are conducted by secret ballot and decided by a majority of eligible employees voting. Objections challenging the election may be filed. If no objections are filed or no objections are sustained, the results of the election are certified. If a union has won, it becomes the certified exclusive bargaining representative. F. BARTOSIC & R. HARTLEY, *supra* note 19, at 17.

24. *See* note 23 *supra*.

as the bargaining representative.[25] In the interest of stability, however, the NLRB over a period of several decades has developed rules[26] to protect the collective-bargaining process from disruption, by limiting the timeliness of a decertification petition.[27]

A. *The Contract-Bar Doctrine*

One of the most critical of these rules is the NLRB's contract-bar doctrine. Under this rule the NLRB will dismiss as untimely an election petition which is filed during the term of the collective bargaining agreement.[28] The major objective of this doctrine is to achieve a reasonable balance between the frequently conflicting aims of industrial stability and freedom of employees' choice.[29] The doctrine is intended to afford the contracting parties and the employees a reasonable period of stability in their relationship without interruption.[30] At the same time it attempts to give employees the opportunity to change or eliminate their bargaining representative at reasonable intervals.[31]

The contract-bar principle is not statutory. As early as 1938, three years after the enactment of the NLRA, the NLRB held that a contract for a term of one year would bar an election until such time as the contract was about to expire.[32] Contracts which had been in effect for a period of more than one year did not bar an election.[33] The NLRB later held that a two-year contract which was customary in the industry[34] precluded an election, although it

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25. 29 U.S.C. § 159(c)(1)(A)(ii) (1976).

26. The NLRB's power to make rules and regulations is found in 29 U.S.C. § 156 (1976).

27. The timeliness of a decertification petition is governed by the same rules applicable to certification cases. Therefore, the cases discussing the timeliness of certification petitions are applicable. *See* Arlan's Dept. Store, 131 N.L.R.B. 565 (1961).

28. R. GORMAN, BASIC TEXT ON LABOR LAW, UNIONIZATION AND COLLECTIVE BARGAINING 54 (1976). Under the current rule, a contract bars an election for a period of three years or the term of the contract, whichever is shorter. General Cable Corp., 139 N.L.R.B. 1123 (1962). *See* notes 46-53 and accompanying text *infra*.

29. F. BARTOSIC & R. HARTLEY, *supra* note 19, at 79.

30. NATIONAL LABOR RELATIONS BOARD, AN OUTLINE OF LAW AND PROCEDURE IN REPRESENTATIONS CASES 74 (June 1974).

31. *Id.*

32. National Sugar Refining Co., 10 N.L.R.B. 1410, 1415 (1939); Superior Electrical Prods. Co., 6 N.L.R.B. 19, 22 (1938).

33. Columbia Broadcasting Sys. Inc., 8 N.L.R.B. 508, 511-12 (1938).

34. For example, in Owens-Illinois Pac. Coast Co., 36 N.L.R.B. 990 (1941), substantially all of the company's bargaining agreements had been customarily made for a term of two

had already run for more than one year.[35] The Board reasoned that the purpose of stabilizing labor relations in industry through collective bargaining agreements would be furthered by refraining from representation elections until a reasonable time prior to the contract expiration.[36] In 1945, the NLRB modified its previous decisions regarding the contract-bar. In the interest of industrial stability, the Board held that a two-year contract was presumed to be of reasonable duration and thus barred a representation election.[37] To challenge this presumption, the petitioner carried the burden to establish that the two-year contract ran counter to the well-established custom in the industry or was otherwise unreasonable in term. Failure to sustain this burden of proof resulted in a dismissal of the petition.[38]

As contracts of longer fixed duration became common in particular industries, the NLRB held that a two-year contract would conclusively bar an election.[39] The NLRB stated that the time had come when stability of industrial relations could be better served, without unreasonably restricting employees in their right to change representatives, by refusing to interfere with bargaining relations secured by collective agreements of two-years' duration.[40] A contract longer than two years was held to bar an election if a sub-

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years or longer. *Id.* at 995.

35. *Id.* at 990.

36. American Finishing Co., 50 N.L.R.B. 313, 315-16 (1943); Owens-Illinois Pac. Coast Co., 36 N.L.R.B. 990, 995-96 (1941).

37. Uxbridge Worsted Co., Andrews Mill, 60 N.L.R.B. 1395, 1397-98 (1945).

38. *Id.*; Sutherland Paper Co., 64 N.L.R.B. 719, 721 (1945).

39. Reed Roller Bit Co., 72 N.L.R.B. 927, 930 (1947). The NLRB stated:

> Whenever a contract is urged as a bar, the Board is faced with the problem of balancing two separate interests of employees and society which the Act was designed to protect: the interest in such stability as is essential to encourage effective collective bargaining, and the sometimes conflicting interest in the freedom of employees to select and change their representatives. In furtherance of the purposes of the act, we have repeatedly held that employees are entitled to change their representatives, if they so desire, at reasonable intervals; or conversely, that a collective bargaining contract may preclude a determination of representatives for a reasonable period.

Id. at 929.

40. The NLRB reasoned that collective bargaining for most employees had recently emerged from a trial-and-error stage during which it had been necessary to emphasize the right of workers to select and change their representatives. The Board's insistence in the past upon prolonged adherence to a chosen bargaining agent would have been wholly incompatible with the experimental and transitional period. At the time of this decision, however, the NLRB thought that the emphasis could be better placed elsewhere. *Id.* at 930.

stantial part of the industry[41] was covered by contracts of a similar term.[42] In 1958, the NLRB abandoned the substantial part of the industry test[43] by adopting a uniform period during which a contract will bar a representation proceeding.[44] In abandoning this test, the Board insured certain and predictable intervals in which representation petitions could be filed, and overcame administrative difficulties it had previously encountered.[45]

Finally, in 1962, the NLRB enlarged the period of the contract-bar rule from two to three years.[46] The NLRB stated:

> We are mindful that the 3-year rule will delay for one year the time when specific groups of employees desiring an election will be afforded an opportunity to exercise their right under the Act freely to choose bargaining representatives. And if. . .we were at present to cause further delay by expanding the bar period to more than 3-years, stability of industrial relations would in our judgment be so heavily weighed against employee freedom of choice as to create an inequitable balance.[47]

In establishing this three-year bar the NLRB believed that the added delay of one year was relatively slight and fully warranted.[48] At present, the NLRB has not extended the contract-bar rule beyond three years.[49]

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41. The substantial part of the industry test determines reasonableness of contract duration for contract-bar purposes on the basis of whether a substantial part of the industry is covered by contracts of a similar term. To determine whether a substantial part of the industry in which a long-term contract exists is covered by contracts of similar duration, the Board employs one of many available methods for classifying industries. It must select a basis upon which to determine what constitutes a substantial part of a particular industry. It must also formulate a criterion for assigning a particular employer, plant, or operation to a particular industry, a problem compounded by the industrial diversification found among most large employers having long-term contracts. Pacific Coast Ass'n of Pulp & Paper Mfrs., 121 N.L.R.B. 990, 992-93 (1958).

42. *See* General Motors Corp., Detroit Transmission Div., 102 N.L.R.B. 1140 (1953); Bendix Prods. Div., 102 N.L.R.B. 1137, 1138 (1953); Allis Chalmers Mfg. Co., 102 N.L.R.B. 1135, 1136 (1953).

43. *See* note 41 *supra.*

44. Pacific Coast Ass'n of Pulp & Paper Mfrs., 121 N.L.R.B. 990, 992 (1958).

45. *Id.* The application of the substantial part of the industry test entails the assembly of considerable bodies of information. The complexities and burdens inherent in the application of the test rendered accurate predictions as to long-term contracts prohibitively difficult for employers, employees, and unions. *Id.* at 993.

46. General Cable Corp., 139 N.L.R.B. 1123 (1962).

47. *Id.* at 1125.

48. *Id.*

49. The effect is that almost all contracts under the NLRA are for three years.

Under the NLRB's current contract-bar policy, there exists one thirty-day "open period" in the life of a contract when an election petition is not barred.[50] A representation petition is timely if filed during the "open period" which runs ninety to sixty days prior to the termination of an existing contract.[51] The sixty-day period which immediately precedes and includes the contract's expiration date is referred to as the "insulated period."[52] Election petitions filed during these sixty days are dismissed as untimely. These principles serve the following purposes: to furnish clear guidelines to employees, unions, and employers; to minimize and concentrate the disruption attendant upon the filing and processing of election petitions and the conduct of pre-election campaigns; and to afford the employer and incumbent union a period of sixty days at the end of the contract-bar period when serious negotiations for a new contract may be conducted free of the pressures generated by an election campaign between the incumbent and insurgent unions.[53]

B. *The Election-Bar*

The statutory election-bar rule[54] prohibits a representation election in any bargaining unit or subdivision in which a valid election was held during the preceding twelve-month period.[55] Although this prohibition does not preclude the processing of a representation petition filed no more than sixty days prior to the expiration of the statutory period, the resulting election will not be held until the expiration of the twelve-month period.[56]

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50. F. BARTOSIC & R. HARTLEY, *supra* note 19, at 80.

51. Leonard Wholesale Meats, Inc., 136 N.L.R.B. 1000, 1001 (1962). Originally, the "open period" extended for 90 days, beginning 150 days before the contract termination date. But in *Leonard Wholesale Meats, Inc.*, the Board shortened this to a 30-day period beginning 90 days before the contract ends, noting, *inter alia*, that new bargaining representatives chosen far in advance of the termination of the existing contract may undermine the existing bargaining relationship. *Id.* at 1001. The NLRB has departed from this rule in cases involving seasonal industries. *See* notes 102-25 and accompanying text *infra*.

52. Deluxe Metal Furniture Co., 121 N.L.R.B. 995, 1000 (1958).

53. R. GORMAN, *supra* note 28, at 59 (1976).

54. *See* 29 U.S.C. § 159(c)(3) (1976).

55. *Id.*

56. F. BARTOSIC & R. HARTLEY, *supra* note 19, at 78.

C. *The Certification Bar*

The NLRB has gone beyond the statutory provisions of the NLRA and held that if an election results in the certification of a union as a bargaining representative, the certification bars all representation petitions filed within one year from the date of the certification.[57] This rule was upheld by the United States Supreme Court in *Brooks v. NLRB.*[58] The *Brooks* Court stated that Congress had devised a formal mode for selection and rejection of bargaining agents and had fixed the interval of elections with a view toward furthering industrial stability and with due regard to administrative prudence.[59] For example, if a union wins an election, the one-year certification bar serves the dual purpose of encouraging the execution of a collective bargaining contract and enhancing the stability of industrial relations.[60]

D. *The Overlapping Purposes of the Election Bars*

When a collective bargaining representative is chosen by a majority of the employees, the union is designated the exclusive representative for all employees, including those who voted for another union or for no union.[61] As a result of the election bars,[62] there is an irrebuttable presumption of the union's continued ma-

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57. *See, e.g.,* N.L.R.B. v. Botany Worsted Mills, 133 F.2d 876 (3d Cir. 1943), *enforcing* 41 N.L.R.B. 218 (1942); Kimberly-Clark Corp., 61 N.L.R.B. 90 (1945); Monarch Aluminum Mfg. Co., 41 N.L.R.B. 1, 4-5 (1942). However, the NLRB has extended the certification bar where the employer has not bargained in good faith. Mar-Jac Poultry Co., 136 N.L.R.B. 785, 787 (1962). "The certification bar differs from the election-bar in that the former requires dismissal of any representation petition filed within one year after certification and the latter prohibits the holding of an election in the twelve month period following a valid representation election." F. BARTOSIC & R. HARTLEY, *supra* note 19, at 79.

58. 348 U.S. 96 (1954).

59. *Id.* at 103.

60. Centr-O-Cast & Eng'r Co., 100 N.L.R.B. 1507, 1508 (1952). One of the reasons for the one-year certification rule is to afford a certified union and an employer time to negotiate a contract free of interference by rival claims of representation. If the parties are able to reach an agreement in less than one year there is no reason to allow them the remainder of the year free from rival claims. Rather, the certification year merges with the contract year and the latter controls the timeliness of the filing of a rival petition. Ludlow Typograph Co., 108 N.L.R.B. 1463, 1465 (1954).

61. F. BARTOSIC & R. HARTLEY, *supra* note 19, at 152.

62. The term "election bars" is used in reference to the contract-bar, election-bar, and certification-bar.

jority status for at least one year.[63] After the termination of the certification year[64] and absent an existing contract barring[65] a representation election, the presumption of continued majority status continues but becomes rebuttable.[66] Thus the election bars which freeze the collective bargaining situation for a fixed time also encourage deliberation by employees in initially voting for or against a particular union.[67] These rules which control the timeliness of election petitions attempt to strike a balance between freedom of employees in choosing or turning out their bargaining representative and some measure of repose and responsibility in the structure of collective bargaining.[68]

II. LIMITATIONS ON THE TIMELINESS OF DECERTIFICATION ELECTIONS UNDER THE ALRA: THE ADOPTION OF THE THREE FEDERAL BARS TO ELECTIONS

In enacting the Agricultural Labor Relations Act,[69] the California Legislature adhered closely to the teachings of the previous forty years of federal labor law history. The California statute is modeled on the National Labor Relations Act,[70] with certain changes to accomodate the special problems of agriculture.

Many of the major differences between the ALRA and its NLRA model are found in the provisions concerning the ALRB's responsibility to conduct elections.[71] These changes were necessitated by the differences between agriculture and the industries regulated by the NLRA. Unlike most industries covered by the fed-

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63. F. BARTOSIC & R. HARTLEY, *supra* note 19, at 171. *See, e.g.*, Brooks v. N.L.R.B., 348 U.S. 96 (1954); Mar-Jac Poultry Co., 136 N.L.R.B. 785 (1962); General Box Co., 82 N.L.R.B. 678 (1949).

64. *See* text accompanying notes 57-60 *supra*.

65. *See* text accompanying notes 46-53 *supra*.

66. Brooks v. N.L.R.B., 348 U.S. 96 (1954); Automated Business Sys., 205 N.L.R.B. 532, 534 & nn.8-9 (1973).

67. R. GORMAN, *supra* note 28, at 52.

68. *Id.*

69. CAL. LAB. CODE §§ 1140-1167 (West Supp. 1979).

70. 29 U.S.C. §§ 151-169 (1976). *See generally* Levy, *supra* note 2. While the ALRA incorporated many of the NLRA and NLRB rules, this incorporation is distinguishable from subsequent interpretation of the provisions of the ALRA. *See* CAL. LAB. CODE § 1148 (West Supp. 1979). *See* text accompanying notes 98-173 *infra* for a detailed discussion of the interpretation of the ALRA's decertification provisions.

71. *See* CAL. LAB. CODE §§ 1156-1159 (West Supp. 1979).

eral statute, where employees work without interruption for the duration of the contract, agricultural employees may work as few as one or two months per year.[72] As a result, the lengthy NLRB election process would not be suited to the particular needs of seasonal farmworkers.[73]

The ALRA seeks to avoid the delays inherent in the NLRA election procedure by providing a speedy secret ballot election at a time when most eligible voters are available.[74] The ALRA requires that the election be conducted within seven days from the filing of the petition requesting an election.[75] The ALRA further avoids delays by specifying the appropriate bargaining unit[76] and substituting a post-election hearing for the NLRA pre-election hearing.[77]

Despite the fact that the statutory basis for representation elections under the ALRA differs from that under the NLRA, the ALRA makes it clear that certain federal limitations on the timeliness of elections were intended to apply to agriculture. The California Legislature went beyond the federal model by specifically incorporating into the ALRA the three federal bars to elections: the election-bar,[78] the certification bar,[79] and the contract-bar,[80]

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72. Seasonality of employment is a major element in the life of an agricultural employee, especially for the harvesters of fruits and vegetables. SENATE SUBCOMM. ON MIGRATORY LABOR OF THE COMM. ON LABOR AND PUBLIC WELFARE, THE MIGRATORY FARM LABOR PROBLEM IN THE UNITED STATES, S. REP. No. 83, 91st Cong., 1st Sess. (1969).

73. Under the NLRA, after an election petition is filed, a NLRB representative holds a hearing to determine whether a question of representation exists and to establish an appropriate bargaining unit. 29 U.S.C. § 159(c) (1976). *See* note 23 *supra*. The combined requirements of an election petition and a pre-election hearing would preclude most farmworkers from both petitioning and voting during a single harvest season. It may take several days to gather the requisite number of signatures for the petition, and it takes the NLRB a median of about 75 days to process a petition from filing to election. M. Caratan, Inc., 4 A.L.R.B. No. 68, 7 (1978).

74. CAL. LAB. CODE § 1156.3(a)(1) (West Supp. 1979). *See* note 90 *infra*.

75. CAL. LAB. CODE § 1156.3(a) (West Supp. 1979). The ALRB has found that the purpose of this requirement is to insure that a maximum number of eligible voters can vote. AGRICULTURAL LABOR RELATIONS BOARD, FIRST ANNUAL REPORT OF THE AGRICULTURAL LABOR RELATIONS BOARD 31 (1976-1977).

76. When a representation petition requesting an election has been filed with the NLRB, a hearing may be required to determine the appropriate unit of employees for the election, and to determine which individual employees are eligible to vote. 29 U.S.C. § 159(c)(1) (1976). The ALRB, unlike the NLRB, does not have discretion to determine the scope of the bargaining unit along craft and plant lines. The ALRA requires that the bargaining unit "shall be all the agricultural employees of the employer." CAL. LAB. CODE § 1156.2 (West Supp. 1979).

77. CAL. LAB. CODE § 1156.3 (West Supp. 1979).

78. *See* text accompanying notes 54-56 *supra*.

leaving no doubt that these rules apply.[81]

Although many of the federal rules were incorporated into the ALRA, the provisions of the two Acts differ significantly in respect to selection of bargaining representatives. Consequently, the ALRB has been confronted with issues of first impression regarding the applicability of the federal labor laws to California agricultural elections. In 1978, three years after the enactment of the ALRA, the ALRB was confronted with the issue of the applicability of the contract-bar in the context of decertification elections.

III. DECERTIFICATION OF UNIONS UNDER THE ALRA: THE *CARATAN* DECISIONS

M. Caratan, Inc.[82] represents the first matter to come before the ALRB concerning a petition for decertification filed under section 1156.7(c).[83] *Caratan* involved a one-year contract between the United Farm Workers (UFW or Union) and M. Caratan (employer), reached after more than one year of bargaining.[84] Approximately three and one-half months after the commencement of the contract, an employee (Cadiz) in the bargaining unit filed a peti-

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79. *See* text accompanying notes 57-60 *supra*.

80. *See* text accompanying notes 46-53 *supra*.

81. Section 1156.5 of the California Labor Code restates the NLRA's one-year election-bar: "The board shall not direct an election in any bargaining unit where a valid election has been held in the immediately preceding twelve-month period." CAL. LAB. CODE § 1156.5 (West Supp. 1979). The NLRA provides that: "No election shall be directed in any bargaining unit or any subdivision within which in the preceding twelve-month period, a valid election shall have been held. . . ." 29 U.S.C. § 159(c)(3) (1976).

Section 1156.6 of the California Labor Code codified the NLRB's one-year certification-bar: "The board shall not direct an election in any bargaining unit which is represented by a labor organization that has been certified within the immediately preceding twelve-month period. . . ." CAL. LAB. CODE § 1156.6 (West Supp. 1979). Both the election-bar and the certification-bar are also incorporated into California Labor Code § 1156.7(d).

Section 1156.7(b) of the California Labor Code sets forth the *General Cable Corp.* rule, the current contract-bar rule. *See* text accompanying notes 46-47 *supra*. Section 1156.7(b) provides:

> A collective-bargaining agreement executed by an employer and a labor organization certified as the exclusive bargaining representative of his employees pursuant to this chapter shall be a bar to a petition for an election among such employees for the term of the agreement, but in any event such bar shall not exceed three years. . . .

CAL. LAB. CODE § 1156.7(b) (West Supp. 1979).

82. 4 A.L.R.B. No. 68 (1978).

83. *See* note 16 *supra*.

84. 4 A.L.R.B. No. 68, at 2.

tion to decertify the UFW as the bargaining representative.[85] Despite the UFW's claim that the one-year contract barred such a petition, the ALRB directed an election.[86] The UFW moved to dismiss the decertification petition, or in the alternative to stay the election pending resolution of the legal question of whether the contract constituted a bar to an election.[87] Although the ALRB refused to stay the election, the ballots were impounded to maintain the status quo pending a decision on the contract-bar issue.[88]

The ALRB held that reading the ALRA as a whole, with emphasis on its purposes and its mandate to follow applicable NLRA precedent, indicated that the legislature intended that the language in section 1156.7(c) regarding the period for filing a decertification petition apply only to three-year contracts.[89] The ALRB further held that a one-year contract barred a petition filed during the first eleven months of its term. However, a decertification petition could be timely filed during the twelve months following the thirtieth day preceding the expiration date of a contract, as long as the peak season[90] and other filing requirements of section 1156.7[91]

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85. *Id.*

86. *Id.*

87. *Id.* *See* text accompanying notes 28-53 *supra* for a detailed discussion of the contract-bar.

88. M. Caratan Inc., 4 A.L.R.B. No. 68, at 2.

89. *Id.* at 9.

90. Peak season is the payroll period during which an employer employs the largest number of employees for that calendar year. STAFF OF THE AGRICULTURAL LABOR RELATIONS BOARD, A HANDBOOK ON THE AGRICULTURAL LABOR RELATIONS LAW 9 (June 1978). A petition for election may be filed only when employment is at least 50% of peak. CAL. LAB. CODE § 1156.4 (West Supp. 1979). Section 1156.4 provides:

> Recognizing that agriculture is a seasonal occupation for a majority of agricultural employees, and wishing to provide the fullest scope for employees' enjoyment of the rights included in this part, the board shall not consider a representation petition or a petition to decertify as timely filed unless the employer's payroll reflects 50 percent of the peak agricultural employment for such employer for the current calendar year for the payroll period immediately preceding the filing of the petition.
>
> In this connection, the peak agricultural employment for the prior season shall alone not be a basis for such determination, but rather the board shall estimate peak employment on the basis of acreage and crop statistics which shall be applied uniformly through the State of California and upon all other relevant data.

Id. The ALRB has used several different methods for determining peak agricultural employment. *See* Kawano Farms Inc., 3 A.L.R.B. No. 25 (1977); Valdora Produce Co., 3 A.L.R.B. No. 8 (1977); Luis A. Scattini & Sons, 2 A.L.R.B. No. 43 (1976); Ranch No. 1, Inc., 2 A.L.R.B. No. 37 (1976); Mario Saikhon Inc., 2 A.L.R.B. No. 2 (1976).

were satisfied.[92]

In *Cadiz v. ALRB*,[93] the California Court of Appeal issued a writ of mandamus directing the ALRB to set aside its order in *Caratan* nullifying and dismissing the petition for decertification of the UFW. The court further directed the ALRB to count the impounded ballots.[94] The court held that since section 1156.7 on its face unambiguously permitted a decertification petition to be filed at any time during the term of a one-year contract, there could be no other interpretation of its provisions.[95] The California Supreme Court denied a hearing.[96]

Although the *Caratan* opinions consider only the right of employees to decertify a union early in the term of a first one-year contract, the cases and comprehensive arguments presented in the opinions provide an excellent context in which to consider the issue of the timeliness of a petition for a decertification election. Both *Caratan* and *Cadiz* address two interrelated issues: 1) the applicability of NLRA precedent to the timeliness of a decertification election under the ALRA, and 2) the legislative intent of the decertification provisions in the ALRA. These issues will be discussed in the context of the court of appeal's decision.[97]

A. *THE ROLE OF NLRA PRECEDENT IN ALRA DECERTIFICATION ELECTIONS*

In interpreting the ALRA, and in particular the contract-bar provisions of the Act, section 1148 provides that "[t]he board shall follow applicable precedents of the National Labor Relations Act, as amended."[98] In *ALRB v. Superior Court*,[99] the California Su-

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91. *See* note 16 *supra*.

92. M. Caratan, Inc., 4 A.L.R.B. No. 68 at 11.

93. 92 Cal. App. 3d 365, 155 Cal. Rptr. 213 (1979). When both the ALRB decision and the court of appeals decision are discussed, they will be referred to as the *Caratan* decisions.

94. The result of the September 1, 1978 decertification election was as follows: UFW - 66; no union - 122; challenged ballots - 5. Total ballots - 193.

95. 92 Cal. App. 3d at 371, 155 Cal. Rptr. at 217.

96. 92 Cal. App. 3d at 390, 155 Cal. Rptr. at 230 (Tobriner and Newman, JJ., dissenting).

97. Cadiz v. A.L.R.B., 92 Cal. App. 3d 365, 155 Cal. Rptr. 213 (1979). The *Cadiz* opinion also discusses three procedural issues which are not applicable here.

98. CAL. LAB. CODE § 1148 (West Supp. 1979). This provision appears to require that the ALRB adhere to the numerous decisions of the United States Supreme Court, the various courts of appeals, and the NLRB interpreting the NLRA. Levy, *supra* note 2, at 788.

99. 16 Cal. 3d 392, 546 P.2d 687, 128 Cal. Rptr. 183 (1976).

preme Court observed that section 1148 directs the ALRB to be guided by the "applicable" precedents of the NLRA, not merely "the precedents thereof."[100] The court reasoned that from this language the legislature intended the ALRB to select and follow only those federal precedents which are relevant to the particular problems of agricultural labor relations in California.[101] In determining whether the contract-bar rules devised by the NLRB are "applicable" to ALRA decertification elections, the NLRB decisions regarding timeliness of elections in seasonal industries must be analyzed.

With respect to seasonal industries,[102] the NLRB has held that while the sixty-day insulated period[103] immediately preceding and including the expiration date of an existing contract is applicable,[104] the fixed thirty-day filing period[105] is not.[106] The short duration of seasonal employment necessitates this departure from the general rule. If a petition were required to be filed within ninety days prior to the expiration of a collective bargaining agreement in a seasonal industry, the ninety-day period might well begin when few or no employees were present to sign the petition.[107] Thus, the employees would be denied their right to change representatives or

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100. *Id.* at 412-13, 546 P.2d at 700, 128 Cal. Rptr. at 196. *See also* Belridge Farms v. A.L.R.B., 21 Cal. 3d 551, 580 P.2d 665, 147 Cal. Rptr. 165 (1978).

101. A.L.R.B. v. Superior Court, 16 Cal. 3d at 412-13, 546 P.2d at 700, 128 Cal. Rptr. at 196. Obviously it would be ludicrous for the ALRB to follow *all* NLRA precedent. For example, the NLRA has no provision for ordering an employer to make whole its employees when the employer has committed an unfair labor practice. Section 1160.3 of the California Labor Code, however, provides for such a remedy. CAL. LAB. CODE § 1160.3 (West Supp. 1979). The NLRA and ALRA also provide for vastly different bargaining unit considerations. The ALRA, unlike the NLRA, does not have the broad discretion to determine the scope of the bargaining unit. *See* note 76 *supra*.

102. The sugar and molasses industries are examples of seasonal industries covered by the NLRA. *See, e.g.*, Cooperative Azucarera Los Canos, 122 N.L.R.B. 817 (1958).

103. *See* text accompanying note 52 *supra*.

104. Cooperative Azucarera Los Canos, 122 N.L.R.B. 817, 817 n.2 (1958); Deluxe Metal Furniture Co., 121 N.L.R.B. 995, 999 n.9 (1958).

105. *See* text accompanying note 50 *supra*. *See also* note 51 and accompanying text *supra*.

106. Cooperative Azucarera Los Canos, 122 N.L.R.B. 817, 817 n.2 (1958).

107. Under the ALRA, the number of persons currently employed at the time of the petitioning must not be less than 50% of the employer's peak agricultural employment for the current calendar year. CAL. LAB. CODE § 1156.3(a)(1) (West Supp. 1979). According to the NLRB, a union submitting an election petition may demonstrate its majority status among those currently employed. *See* Bordo Prods. Co., 117 N.L.R.B. 313, 317 (1957); Sebastopol Coop. Cannery, 111 N.L.R.B. 530, 532 (1955).

choose no representation.

Regarding seasonal employment the NLRB has generally held that a representation petition may be timely filed at a reasonable time prior to the expiration of the existing contract.[108] A reasonable time commences approximately at the end of the last seasonal peak of employment and continues until sixty days before the expiration of the contract.[109] The election is held during the next seasonal peak following the expiration of the contract to insure that a representative number of employees can vote.[110] In *Cooperativa Azucarera Los Canos*,[111] the NLRB accepted an election petition filed prior to the "open period" which precedes the sixty-day "insulated period." The election was directed to be held at or near the peak of the following season which occurred after the expiration of the contract. Thus, to the extent that the NLRB has ruled that in a seasonal industry it will direct an election at or about the peak of the season, the ALRA is in accord with the federal precedent.

In *Cadiz v. ALRB*,[112] the employer argued that under the NLRA employees in a seasonal industry are assured the right to file a petition seeking to change representatives or to choose no representation at any time from the end of the last seasonal peak until sixty days preceding the expiration of the agreement. The employer further argued that employees under the ALRA should similarly be entitled to file a decertification petition prior to the expiration of any collective bargaining agreement, regardless of its duration. However, because the ALRA mandates that an election be held within seven days of the filing of a petition,[113] unlike the NLRA precedent, the decertification election would occur during the term of the contract.[114] Although the NLRB allows the filing of a decertification petition during the term of the contract it does

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108. *See* Cooperative Azucarera Los Canos, 122 N.L.R.B. 817, 818 n.4 (1958); South Porto Rico Sugar Co., 100 N.L.R.B. 1309 (1952).

109. Cadiz v. A.L.R.B., 92 Cal. App. 3d at 374, 155 Cal. Rptr. at 219.

110. *See* Cooperative Azucarera Los Canos, 122 N.L.R.B. 817, 818 n.4 (1958); South Porto Rico Sugar Co., 100 N.L.R.B. 1309, 1311 (1952).

111. 122 N.L.R.B. 817 (1958). Here, the employer was engaged in the production of sugar and molasses.

112. 92 Cal. App. 3d 365, 155 Cal. Rptr. 213 (1979).

113. CAL. LAB. CODE § 1156.3(a) (West Supp. 1979). *See* note 75 *supra*.

114. The seven day rule in conjunction with the peak season requirement also precludes the ALRB from accepting a decertification petition during a nonpeak period and directing that an election be held during the next seasonal peak.

not hold an election during that time.[115] The contract-bar still serves as a bar for most of the contract term.

Seasonal industries constitute a very small portion of the industries covered by the federal act.[116] As a result, the rules in this area have not been as fully developed as those in other areas of federal labor law. This is evident from the NLRB's failure to declare a consistent policy regarding application of the contract-bar to seasonal industries.[117] Recognizing this and relying on the guidelines and established rationales provided by the NLRB decisions, the drafters of the ALRA, in an attempt to make the NLRB precedent workable, went beyond the few established NLRB rules in the area of seasonal industry.[118] Concluding that the NLRB's "open period"[119] would not be applicable to a seasonal industry, the California legislators provided for a one-year open period[120] in contrast to the thirty-day period permitted by the NLRB.[121] This one-year period is in effect a codification of the NLRB thirty-day "open period" for timely filing of a decertification petition, made workable in the seasonal industry of agriculture.

Although the NLRA differs from the ALRA in the area of seasonal industry,[122] and therefore, under *ALRB v. Superior Court*,[123]

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115. Aside from the peak season factor, the election is not held during the term of the contract because in elections requiring a Regional Director decision, it now takes the NLRB a median of about 75 days to process a petition from filing to election. Thus the NLRB does not conduct decertification elections during the life of an existing contract with a term of three years or less. M. Caratan Inc., 4 A.L.R.B. No. 68 at 7.

116. Neither the National Labor Relations Board nor the Bureau of Labor Statistics has compiled statistics to this effect. However, an overview of the NLRB decisions indicates that seasonal industry cases comprise a small percentage of the total number of cases brought before the Board.

117. Lewin, *supra* note 2, at 780.

118. It should be noted that most of the seasonal industries cases occurred in the 1950's when the contract-bar was of two years' duration. *See* notes 104 and 107 *supra*.

119. *See* text accompanying notes 50-51 *supra*.

120. *See* CAL. LAB. CODE § 1156.7(c) (West Supp. 1979).

121. *See* text accompanying notes 50-51 *supra*. As one of the principal draftsmen of the ALRA stated: "It was felt that, given the seasonal nature of agricultural employment, the one-year period was necessary to insure that a union could file at peak season, when the required complement of employees would be present." Levy, *supra* note 2, at 800 n.106. It should be noted that all three parties (Caratan, the ALRB, and the UFW) agreed that this was the purpose of section 1156.7(c).

122. This is necessitated by the peak season and seven-day election rules. *See* notes 74-75 and 113-14 and accompanying text *supra*.

123. 16 Cal. 3d at 412-13, 546 P.2d at 700, 128 Cal. Rptr. at 196. *See* notes 99-101 and accompanying text *supra*.

is arguably not "applicable precedent," this does not necessarily suggest that the legislature intended to abandon NLRB precedent entirely. Rather, by limiting the timeliness of elections with a contract-bar[124] and an "open period,"[125] the ALRA suggests an intent to adhere closely to the federal guidelines.

B. *THE INTERPRETATION AND INTENT OF SECTION 1156.7(c)*

Statutory interpretation is a function of the courts[126] when, as in the passage of the ALRA, a record of legislative history is virtually nonexistent.[127] The rules relating to the construction of statutes to ascertain the legislative intent are applicable only where the statutory language is uncertain and ambiguous.[128]

1. *The Uncertainty and Ambiguity of Section 1156.7(c)*

In *Cadiz*,[129] the employer argued that the statutory language of section 1156.7(c) is clear and unambiguous. It requires that every contract, regardless of length, be open to the filing of a petition within one year preceding the expiration of the contract, as long as the peak season[130] requirement is met. The court of appeal agreed and held that the language of section 1156.7(c) on its face "explicitly permits a decertification petition to be filed at any time during the term of a one-year contract and is too clear to permit any administrative or judicial tampering with its provisions."[131] However, the court's interpretation of section 1156.7(c) is open to question as a result of the provision's apparent conflict with other sections of the Act.[132]

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124. *See* CAL. LAB. CODE § 1156.7(b) (West Supp. 1979).

125. *See id.* § 1156.7(c).

126. *See* 45 CAL. JUR. 2d *Statutes* § 103, at 617 (1958), which states that "[t]he ultimate interpretation of statutes is an exercise of the judicial power. . . ."

127. *See generally* Smith, *Legislative Intent: In Search of the Holy Grail*, 53 CAL. ST. B.J. 294 (1978).

128. Copeland v. Raub, 36 Cal. App. 2d 441, 445, 97 P.2d 859, 861 (1940); Scott v. McPheeters, 33 Cal. App. 2d 629, 631, 92 P.2d 678, 679 (1939).

129. 92 Cal. App. 3d 365, 155 Cal. Rptr. 213 (1979).

130. *See* note 90 *supra*.

131. Cadiz v. A.L.R.B., 92 Cal. App. 3d at 371, 155 Cal. Rptr. at 217.

132. *See id.* at 389, 155 Cal. Rptr. at 229 (Hopper, J., dissenting). It can also be argued that the appellate court's literal interpretation of section 1156.7(c) is inappropriate. It is a "familiar rule, that a thing may be within the letter of the statute and yet not within the

Section 1156.7(b) states that a collective bargaining agreement shall be a bar to election petitions for the term of the agreement, not to exceed three years.[133] Section 1156.7(c) states that a decertification petition "shall not be deemed timely unless it is filed during the year preceding the expiration of a collective bargaining agreement which would *otherwise bar the holding of an election*. . . ."[134] As the union and the ALRB argued, if the legislature had contemplated decertification petitions during a one-year contract, it would not have utilized the "otherwise bar" phrase, since a one-year contract would never bar the holding of an election.[135] These two phrases taken together are incompatible with an intent to permit decertification petitions during a one-year contract. The first phrase assumes that the term of labor agreements subject to decertification would run more than one year.[136] If section 1156.7(c) were applied to a one-year contract, it would entirely eliminate the contract-bar in section 1156.7(b).[137]

In addition, section 1156.7(c) arguably conflicts with section 1156.5,[138] which provides for the election-bar, and with section 1156.6,[139] which provides for the certification-bar. Admittedly, few collective bargaining agreements are entered into immediately after a representation election and certification of the collective bargaining representative.[140] If a one-year collective bargaining agreement were to be immediately entered into after the election and certification of the labor organization, decertification would be pro-

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statute, because not within its spirit, nor within the intention of its makers." Holy Trinity Church v. United States, 143 U.S. 457, 459 (1892). Frequently words of general meaning are used in a statute, and are broad enough to include an act in question. Yet a consideration of the whole legislation, or of the circumstances surrounding its enactment, or of the absurd results which would follow from giving such broad meaning to the words, makes it unreasonable to believe that the legislature intended to include the particular act. *Id.*

133. CAL. LAB. CODE § 1156.7(b) (West Supp. 1979).

134. *Id.* § 1156.7(c) (emphasis added).

135. Cadiz v. A.L.R.B., 92 Cal. App. 3d at 376, 155 Cal. Rptr. at 220.

136. *Id.*

137. This is true for one-year contracts only. See note 81 and accompanying text *supra* for a discussion of the clear legislative intent that the ALRB apply contract-bar principles to collective bargaining agreements.

138. *See* note 81 *supra.*

139. *Id.*

140. In *Cadiz*, the union was certified 18 months after the election, and negotiations continued for more than a year before a collective bargaining agreement was executed. *See* M. Caratan, Inc., 4 A.L.R.B. No. 68 at 1-2.

hibited during the term of a one-year contract.[141]

The court of appeal in *Cadiz* stated that the words "otherwise bar" in section 1156.7(c) refer to section 1156.7(b)(1) requiring that the contract be in writing and to section 1156.7(b)(2) requiring that all of the substantive terms and conditions of employment be in the contract.[142] Although the court's interpretation is reasonable and provides a purpose for the phrase, the only conclusion that can be drawn from this argument is that the legislature's intention in using the "otherwise bar" language is unclear.[143]

Finally, in enacting section 1156.7(c), the legislature sought to provide an open period of sufficient duration to include an annual peak season.[144] The ALRB and the UFW argued in *Cadiz* that application of this open period to a one-year contract would lead to absurd results.[145] The ALRB would be required to entertain decertification petitions as early as the first day of a collective bargaining agreement. This would eliminate the contract-bar established by the NLRB[146] and incorporated into section 1156.7(b).[147] Since section 1156.7(c) is ambiguous, contradicts other provisions of the ALRA, and read literally would lead to absurd results, the *Cadiz* court erred by summarily refusing to look behind the words of the statute to determine the legislative intent.

2. *Looking Behind the Statute*

In *Steilberg v. Lackner*,[148] the California Court of Appeal set out the basic rules relating to interpretation of statutes:

> In construing a statute, the court should ascertain the intent of the Legislature so as to effectuate the purpose of the law. In determining the legislative intent, the court turns first to the words used in the statute. The words, however, must be read in context, keeping in mind the nature and *obvious purpose* of

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141. This was not an issue in *Cadiz* v. A.L.R.B., 92 Cal. App. 3d 365, 155 Cal. Rptr. 213 (1979). *See* note 140 *supra*.

142. Cadiz v. A.L.R.B., 92 Cal. App. 3d at 376 n.7, 155 Cal. Rptr. at 220 n.7. *See* note 16 *supra*.

143. Cadiz v. A.L.R.B., 92 Cal. App. 3d at 387, 155 Cal. Rptr. at 228 (Hopper, J., dissenting).

144. *See* CAL. LAB. CODE § 1156.7(c) (West Supp. 1979). *See also* note 120 *supra*.

145. Cadiz v. A.L.R.B., 92 Cal. App. 3d at 376, 155 Cal. Rptr. at 220.

146. *See* notes 46-53 and accompanying text *supra*.

147. *See* note 81 *supra*.

148. 69 Cal. App. 3d 780, 138 Cal. Rptr. 378 (1977).

> the statute and the statutory language applied must be given such interpretation as will promote rather than defeat the objective and policy of the law. Statutes or statutory sections relating to the same subject must be construed together and harmonized if possible. Finally, in ascertaining legislative intent, the courts should consider not only the words used, but should also take into account other matters, such as the *object in view*, the *evils to be remedied*, the *history of the times*, legislation upon the same subject, public policy and contemporaneous construction.[149]

In construing section 1156.7(c) in light of the foregoing principles, it is difficult to conclude that the California Legislature intended to permit decertification petitions during the term of a one-year contract. This is especially true when the obvious purpose[150] of the ALRA and the history of the times[151] are taken into account. Twice in the preamble to the ALRA, the legislature made clear that the intent of the Act was to promote stability.[152] The history of turmoil and bitterness in California farm labor, which forced the passage of the Act, mandated nothing less.[153]

Collective bargaining relationships are often difficult to establish. Many UFW certifications have failed to result in collective bargaining agreements.[154] This is the result, at least in part, of the long history of distrust from the pre-ALRA days.[155] In some situa-

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149. *Id.* at 785, 138 Cal. Rptr. at 381 (citations omitted) (emphasis added).

150. For a discussion of the necessity of construing statutes in their proper context, see Johnstone v. Richardson, 103 Cal. App. 2d 41, 46, 229 P.2d 9, 12 (1951).

151. For a discussion of courts taking into account the history of the times in construing statutes, see Alford v. Pierno, 27 Cal. App. 3d 682, 688, 104 Cal. Rptr. 110, 114 (1972); Estate of Jacobs, 61 Cal. App. 2d 152, 155, 142 P.2d 454, 456 (1943).

152. The legislature stated:

> In enacting this legislation the people of the State of California seek to ensure peace in the agricultural fields by guaranteeing justice for all agricultural workers and *stability* in labor relations. This enactment is intended to bring certainty and a sense of fair play to a presently *unstable* and potentially *volatile condition* in the state.

Agricultural Labor Relations Act, 1975 Cal. Stats. 3d Ex. Sess. c.1, p. 4013, § 1 (emphasis added).

153. *See generally* Englund v. Chavez, 8 Cal. 3d 572, 504 P.2d 457, 105 Cal. Rptr. 521 (1972).

154. The UFW stated that roughly one-half of nearly 300 UFW certifications do not result in collective bargaining agreements. Memorandum of Points and Authorities in Support of Real Party in Interest's Return and Opposition to Alternative Writ of Mandate at 15, Cadiz v. A.L.R.B., 92 Cal. App. 3d 365, 155 Cal. Rptr. 213 (1979).

155. *See generally* Englund v. Chavez, 8 Cal. 3d 572, 504 P.2d 457, 105 Cal. Rptr. 521

tions the growers and union enter into a one-year contract in an attempt to determine if the relationship will work.[156] Thus, short-term contracts are fragile, and need time to mature and enable the relationship between the parties to stabilize. It is difficult to imagine how decertification of a union during the term of a one-year contract, when the relationship between the union and the employer has just commenced, would accomplish the purpose clearly expressed by the legislature. If the statute is construed to apply to a one-year contract, as the employer in *Cadiz* argued, it would defeat rather than promote one of the general purposes and policies of the law.[157]

In determining legislative intent, courts also look to extrinsic aids.[158] Two such aids often used by the courts are legislative committee reports and statements by the bill's author.[159] Recently, Assemblyman Howard Berman, coauthor of the ALRA,[160] declared that section 1156.7(b) was intended to incorporate the contract-bar doctrines of the NLRB, under which a collective bargaining agreement bars a decertification election for the term of a contract of up to three years' duration.[161] Assemblyman Berman indicated that

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(1972).

156. Although the UFW still enters into one-year agreements, as under the federal law, most collective bargaining contracts are now three years in duration. Interview with Marcos Camacho, Legal Department, United Farm Workers of America, AFL-CIO (March 28, 1980).

157. *See* City of Los Angeles v. Pacific Tel. & Tel. Co., 164 Cal. App. 2d 253, 256, 330 P.2d 888, 890 (1958). *See* note 152 *supra*.

158. Smith, *supra* note 127, at 294. *See generally* White, *Sources of Legislative Intent in California*, 3 PAC. L.J. 63 (1972). *See also* People v. Knowles, 35 Cal. 2d 175, 217 P.2d 1 (1950).

159. *See* Smith, *supra* note 127, at 294.

160. Assemblyman Howard Berman coauthored Assembly Bill No. 1533, introduced in the Senate by Senator John Dunlap as Senate Bill No. 813, and reintroduced with amendments in the Third Extraordinary Session as Senate Bill No. 1. This bill became the Agricultural Labor Relations Act of 1975. Two sections of the bill contained the exact language ultimately adopted by the legislature as sections 1156.7(b) and 1156.7(c).

After the bill was introduced, Assemblyman Berman was the chief participant on behalf of the legislature in meetings and negotiations concerning the bill. He explained the operation of the bill in the Assembly and the Senate, and appeared at all committee hearings in which the bill was considered, including hearings before the Assembly Committee on Ways and Means, the Assembly Labor Committee, the Senate Finance Committee, and the Senate Industrial Committee. Affidavit of Howard Berman, executed at Sacramento, California, on January 3, 1979.

161. Assemblyman Berman's affidavit provides in relevant part that:

> Utilizing my background in labor law, I represented to fellow legislators that section 1156.7(b) was intended to incorporate the contract-bar doctrines of the National Labor Relations Board, under which a collective bargaining agree-

the contract-bar and open period contained in section 1156.7(b) and section 1156.7(c) were discussed only as they applied to contracts lasting three years or longer.[162] Finally, Assemblyman Berman stated that at no time during the legislative or informal discussions preceding passage of the ALRA did any legislator or other participant suggest that the open period provided by section 1156.7(c) was intended to nullify the contract-bar provided in section 1156.7(b).[163] No legislator indicated that section 1156.7(c) would or should eliminate the contract-bar for a one-year collective-bargaining agreement.[164]

The employer in *Cadiz* argued that Assemblyman Berman's statement purports to show only that there was no explicit legislative discussion of the operation of section 1156.7 as applied to one-year contracts.[165] The employer also argued that even if this declaration were read as a personal opinion it would carry little weight.

> ment bars a decertification or rival union election for the term of a contract up to three years' duration. To my knowledge, the contract-bar and open period contained in these two sections were discussed only as they applied to contracts lasting three years or longer.
>
> I am informed that some agricultural employers and employees are now contending that these provisions mean that, in the case of a one-year collective bargaining agreement, the open period provided by section 1156.7(c) would completely cancel out the bar provided in section 1156.7(b), leaving no contract-bar for one-year agreements. To my knowledge, at no time during the legislative or informal discussions preceding passage of the ALRA did any legislator or other participant suggest that such an interpretation was intended. The one-year open period in section 1156.7(c) was treated merely as an accommodation to the seasonal nature of agriculture, to ensure that decertification or rival union elections would be held only during peak employment seasons. To my knowledge, no legislator ever expressed the notion, during the legislative or informal discussions leading to passage of the Act, that section 1156.7(c) would or should eliminate the contract-bar for a one-year agreement.

Affidavit of Howard Berman, executed at Sacramento, California, on January 3, 1979. Assemblyman Berman made this declaration pursuant to the decertification issue in *Cadiz*. The affidavit was attached to the Agricultural Labor Relations Board's Return to Alternative Writ of Mandate and Memorandum of Points and Authorities in Support of Return, Cadiz v. A.L.R.B., 92 Cal. App. 3d 365, 155 Cal. Rptr. 213 (1979).

162. Affidavit of Howard Berman, executed at Sacramento, California, on January 3, 1979.

163. *Id.*

164. *Id.* In an interview on March 20, 1979, Assemblyman Berman reiterated that the legislature did not consider the implication of section 1156.7(c) on contracts of less than three years in duration. Interview with Howard Berman, Assemblyman, State of California, in Sacramento (March 20, 1979). This lends further support to the *Holy Trinity Church* argument. *See* note 131 *supra*.

165. Cadiz v. A.L.R.B., 92 Cal. App. 3d at 379, 155 Cal. Rptr. at 222.

While the statements of individual legislators as to events which occurred during the consideration of legislation may be competent evidence of legislative intent, their testimony as to their own individual motives or views is irrelevant.[166]

In *Rich v. State Board of Optometry*,[167] however, the court accepted the testimony of an assemblyman as an indicator of the legislative intent, because the court was satisfied that the "testimony was not an expression of his own opinion . . . but a reiteration of the discussion and events which transpired in the Assembly committee hearing when the amendments . . . were under consideration."[168] The *Rich* court distinguished between the author's opinion of legislative intent and his testimony concerning what was said and done in the legislature regarding the bill.[169]

It can be argued that Assemblyman Berman's declaration is competent evidence of legislative intent, as it represents a reiteration of the discussion and events which transpired during an Assembly Committee on Ways and Means hearing.[170] This argument is supported by a transcript[171] of the Committee hearing itself. Twice during the hearing the length of the contract bar was stated to be three years.[172] The only reference to the open-period for the

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166. *Id. See also In re* Marriage of Bouquet, 16 Cal. 3d 583, 589-90, 546 P.2d 1371, 1375, 128 Cal. Rptr. 427, 430-31 (1976).

167. 235 Cal. App. 2d 591, 45 Cal. Rptr. 512 (1965).

168. *Id.* at 603, 45 Cal. Rptr. at 520. In *Rich*, the court construed a statute designed to permit optometrists to maintain existing branch offices without complying with a regulatory scheme established by California Business and Professions Code § 3077. *See also In re* Marriage of Bouquet, 16 Cal. 3d 583, 589-90, 546 P.2d 1371, 1375, 128 Cal. Rptr. 427, 430-31; Smith, *supra* note 127 (the trend of the courts is to admit authors' statements of events in the legislative process).

169. 235 Cal. App. 2d at 603, 45 Cal. Rptr. at 520.

170. Assembly Bill No. 1533, which was ultimately enacted as the ALRA, was heard in several committees. The only hearing which discussed the decertification provision, section 1156.7(c), occurred on May 27, 1975, before the Assembly Committee on Ways and Means.

171. Cara Johnson, custodian of certain tape recordings of hearings before the Assembly Committee on Ways and Means, declared in an affidavit that the transcription of the testimony was a true and accurate representation of that portion of the Committee's proceedings it purported to represent. Affidavit of Cara Johnson, executed at Sacramento, California, on November 27, 1978.

172. The transcript states in relevant part:

> Warren: Let me ask you this. You say there's a contract bar, is there any period as to length of bar, the contract bar, which will be acceptable?
> Berman: *3 years.*
> Warren: Is that set forth in the bill?
> Dunlap: Yes. Specifically.

timely filing of a peititon occurred in the context of three-year contracts.[173] Such testimony is competent evidence that the one-year period in section 1156.7(c) was not intended to eliminate the contract-bar in one-year contracts.

IV. THE TIMELY FILING OF DECERTIFICATION PETITIONS UNDER THE ALRA: THE ALRB'S ATTEMPT TO CLARIFY SECTION 1156.7(c)

In an attempt to clarify the decertification provision of the ALRA, the ALRB in *M. Caratan, Inc.*,[174] tried to strike a balance between employees' freedom of choice and stability in agricultural labor relations. The ALRB decision provides for at least eleven months free of the interruption or disruption which an organization campaign might cause.[175]

The ALRB decision, however, disrupts rather than promotes stability and certainty.[176] The *Caratan* decision does not recognize

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> Byrd: Also, under our bill you can have, even with a 3 year contract, a decertification in the last year by the employees if they desire to be rid of the Union, and they don't want it.

* * * *

> Byrd: Well, if you file an untimely election petition, you just file another one at the proper time, that's all. It's not a bar. The only time it is a bar is when you actually have an election and then you have a bar for at least 12 months unless you have a collective bargaining agreement and that can be up to 3 years *except for you can have a decertification within the last year of that 3 year contract.*

Transcript of Proceedings of the Assembly Committee on Ways and Means of May 27, 1975, at 1, 4 (emphasis added).

Cara Johnson also declared that to the best of her knowledge and belief, no further discussion of the issue appears in subsequent tapes. Affidavit of Cara Johnson, executed at Sacramento, California, on November 27, 1978.

173. *See* Transcript of Proceedings of the Assembly Committee on Ways and Means of May 27, 1975, at 1, 4. It can also be argued that since most collective bargaining contracts under the NLRB are three-year contracts, and since the legislature was thinking in terms of the NLRA, it is understandable that the legislature overlooked the apparent contradictions created within the ALRA.

174. 4 A.L.R.B. No. 68 (1978).

175. *Id.* at 10, 11.

176. *See* Cadiz v. A.L.R.B., 92 Cal. App. 3d at 373 n.4, 155 Cal. Rptr. at 218 n.4. Notwithstanding the destabilizing effect of the ALRB's decision, the ALRB had no authority to modify or ignore the decertification provisions set forth in the ALRA. *Id.* at 372-73, 155 Cal. Rptr. at 218.

Section 1144 provides that the ALRB may promulgate rules and regulations necessary to carry out the provisions of the ALRA. CAL. LAB. CODE § 1144 (West Supp. 1979). Section

the right to decertify a union at reasonable intervals. Rather, it permits two decertification elections during the life of a contract. Moreover, the decision's differentiation between initial contracts and renewal contracts allows the filing of a decertification petition during up to twenty-three months of a new contract term. Finally, *Caratan* permits a decertification election to take place while collective bargaining is in progress.

A. *The Possibility of Two Decertification Elections During the Life of a Contract*

Both the employer and union pointed out[177] that the ALRB's decision permits two elections to be held during the term of one

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1144 is limited by California Government Code Section 11374, which provides that "no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute." CAL. GOV'T CODE § 11374 (West 1966).

The ALRB has less discretion than the NLRB in regulating decertification, since unlike the NLRA, the ALRA sets forth the applicable rules for processing a decertification petition and conducting a representation election. *See* CAL. LAB. CODE §§ 1156-1159 (West Supp. 1979). Any alterations made by the ALRB to carry out the purpose of the decertification provision of the ALRA will be limited in scope, since the legislature has spoken on the subject. *See* California Welfare Rights Organization v. Brian, 11 Cal. 3d 237, 520 P.2d 970, 113 Cal. Rptr. 154 (1974). Although the court of appeals in *Cadiz* could have engaged in a judicial rewording of section 1156.7, it declined to do so. Thus, to the extent that further alterations are needed to strike a balance between the conflicting interests of employee freedom of choice and stability in bargaining relationships, the necessary changes should be left to the legislature. *See* Cadiz v. A.L.R.B., 92 Cal. App. 3d at 372-73 n.4, 155 Cal. Rptr. at 218 n.4 (discussing the conclusion that these matters are questions of legislative policy and wisdom). *See also* notes 194-202 and accompanying text *infra*.

Although the ALRB decision in *Caratan* was overruled by the court of appeals in *Cadiz*, a discussion of the ALRB's approach to clarifying the decertification provision of the ALRA is helpful in determining additional solutions.

177. After the initial *Caratan* decsion, the UFW filed a Request for Reconsideration of the ALRB Decision and Request for Oral Argument, 4 A.L.R.B. No. 68 (1978). [hereinafter cited as Request for Reconsideration]. Although the UFW agreed with the ALRB's position in *Caratan* that a one-year contract acts as a bar during the contract period, it disagreed with the ALRB's establishment of the period during which petitions can be timely filed. Cadiz v. A.L.R.B., 92 Cal. App. 3d at 373 n.4, 155 Cal. Rptr. at 218 n.4. The employer petitioned the California Supreme Court for a Writ of Mandate commanding the ALRB to dissolve its order impounding the ballots cast in the decertification election and its order dismissing the decertification petition, and to allow the Regional Director to tally the ballots. The employer filed a Motion for Leave to File Supplemental Memorandum of Points and Authorities in Support of Petition for Writ of Mandate and Supplemental Memorandum of Points and Authorities in Support of Petition for Writ of Mandate, Cadiz v. A.L.R.B., 92 Cal. App. 3d 365, 155 Cal. Rptr. 213 (1979). [hereinafter cited as Supplemental Points and Authorities].

contract.[178] For example, if a union and employer renew or renegotiate an initial one-year contract for two years, and no peak season occurs in the twelfth month of the initial contract, the new contract would be subject to decertification during its first eleven months. If a decertification election occurred early in the life of the two-year contract and the union won the election, a second decertification election during the term of the contract would be permitted after the election-bar had passed.[179] The second decertification election could occur during the last twelve months preceding the expiration of the contract.[180]

Section 1156.7 provides that a three-year contract shall bar a decertification petition. The only exception contained in the ALRA is section 1156.7(c), which permits decertification petitions during the last year of such contracts. The ALRA does not provide for a decertification election to be held during the first year of a three-year contract.[181] Furthermore, section 1156.7(c), which permits decertification petitions during the final year of the contract, read in conjunction with section 1156.5, which prohibits decertification elections where a valid election was held in the preceding twelve months, cannot possibly be construed to conclude that the legislature intended to allow two decertification elections during the life of the same contract.[182]

B. *The Differential Treatment of Initial Contracts and Renewal Contracts*

Both the union and employer in *Caratan* also noted[183] that the ALRB's decision creates a different rule for an initial contract than it creates for a renewal contract.[184] There is no basis in the ALRA or in NLRB precedent for treating initial contracts differently than

178. Supplemental Points and Authorities at 8-9; Request for Reconsideration at 6-7, 14-15.

179. Supplemental Points and Authorities at 8-9; Request for Reconsideration at 6-7, 14-15.

180. Request for Reconsideration at 14. *See* CAL. LAB. CODE § 1156.7(c) (West Supp. 1979).

181. Request for Reconsideration at 14.

182. Supplemental Points and Authorities at 9; Request for Reconsideration at 14-15.

183. *See* note 177 *supra*.

184. The ALRB held that: "A renewal of the existing contract or the execution of a new contract prior to the filing of such a petition will not act as a bar to the petition." M. Caratan Inc., 4 A.L.R.B. No. 68 at 11.

renewal contracts.[185] Under the NLRB rules, a renewal contract constitutes a bar to an election unless a timely petition is filed before the beginning of the insulated period.[186] Unlike the NLRB rules, where a renewed or renegotiated contract is subject to a thirty-day open filing period, the ALRB's differential treatment of such contracts allows a decertification petition to be filed for as long as twenty-three months of the new contract term.[187]

There is no rationale for disallowing insulation against decertification petitions in subsequent contracts between the same union and employer. A stable collective bargaining agreement is subject to disruption at virtually any time.[188] Realizing the difficulty of maintaining a stable collective bargaining relationship under a renewed contract, the parties may be discouraged from renewing the contract at all.[189] The employer and union will not be as willing to work out problems if there is the constant possibility of a decertification election.[190] This result would not only injure employees, but also would clearly conflict with the legislature's intention of encouraging collective bargaining.[191]

C. *A Decertification Election Can Take Place While Collective Bargaining Is In Progress*

The ALRB decision in *Caratan* also departs from the NLRB policy of dismissing as untimely election petitions filed during the sixty day insulated period preceding the expiration date of an existing contract.[192] In contrast to this well-established NLRB practice the ALRB rule permits decertification elections to be conducted during the last days prior to the expiration of the

185. One exception to this statement occurs under the federal law, where a successor employer has continued to accept an incumbent union as the representative of its employees but does not accept the predecessor's union contract which, had the predecessor continued the operation, would have acted as a bar to an election. *See* Southern Moldings Inc., 219 N.L.R.B. 119 (1975).

186. *See* Deluxe Metal Furniture Co., 121 N.L.R.B. 995, 1000-01 (1958).

187. This would include 11 months following the last month of the initial one-year contract, plus 12 months preceding the expiration of the renewed or renegotiated contract.

188. Request for Reconsideration at 13, M. Caratan, Inc., 4 A.L.R.B. No. 68 (1978).

189. *Id.*

190. This is because the parties will spend their time preparing for an eventual decertification election. *Id.*

191. *Id.*

192. Cooperative Azucarera Los Canos, 122 N.L.R.B. at 817 n.2. This also applies to seasonal industries. *See* notes 101-20 and accompanying text *supra*.

contract.[193] If peak season falls during the last thirty days of the initial contract, an election will occur while bargaining is in process. Serious negotiations during this time, free of election campaigning, cannot take place, since electioneering is disruptive to harmonious employer-union relations.

V. DECERTIFICATION OF UNIONS UNDER THE ALRA: A PROPOSED MODEL FOR THE CALIFORNIA LEGISLATURE

To balance stability and a sense of certainty in collective bargaining with employees' right to change or reject their bargaining representation, and to enable the election provisions of the ALRA to be administratively workable, the California Legislature[194] must develop rules in three areas: the contract-bar doctrine, the open period, and the insulated period.[195]

To clarify the contract-bar doctrine and to protect one-year contracts from decertification or rival union petitions, section 1156.7(c) must be amended to indicate that only a multi-year contract of up to three years' duration is subject to decertification or rival union petitions.[196] Thus, if a union and employer enter into

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193. *See* Deluxe Metal Furniture, 121 N.L.R.B. 995, 999-1000 (1958), in which the NLRB stated:

> The Board considers the establishment of a specific period for the timely filing of a petition desirable because it will preserve as much time as possible during the life of a contract free from the disruption caused by organizational activities. Also, employees and any outside unions will be put on notice of the earliest time for the filing of a petition. This will create a guide as to the appropriate time to organize for, and seek a change of, representatives and, since there will be little desire to engage in organizational activities much before the time when a petition will be accepted, it should also provide longer periods of stability.

194. *See generally* note 176 *supra*.

195. In proposing an amended statute for election procedures, other state agricultural labor relations acts lend little aid. In addition to California, Arizona, Idaho, and Kansas have passed legislation on agricultural employment. California's Act is by far the most comprehensive of the state agricultural labor relations legislation. *See* 8 ARIZ. REV. STAT. ANN. §§ 23-1381 to 1395 (West Supp. 1971-1979); 5 IDAHO CODE §§ 22-4101 to 22-4113 (1977); 3A KANSAS STAT. ANN. §§ 44-818 to 830 (1973).

196. It could be argued that there is no rationale for disallowing a decertification petition during a one-year contract, while allowing such a petition to be timely filed in one year and one month, if peak should occur at that time. However, the one-year bar to an election will at least promote stability in labor relations for a period of one year. The development of an insulated period and a limited open period, *see* text accompanying notes 199-202 *infra*, will usually prevent this situation from occurring.

an initial one-year contract which is not renewed or renegotiated at the end of the contract period, employees may file an election petition. In the event the initial one-year contract is renewed or renegotiated for two or three years, the latter contract would bar a decertification petition until the year preceding the expiration of the contract.[197] This proposal would not differentiate between an initial contract and a renewed or renegotiated contract. If, however, a new two- or three-year contract is renegotiated prior to the expiration of the one-year contract, the NLRB's premature extension doctrine[198] should be applied. In other words, such an extension prior to the expiration date of the old contract will not bar a timely petition.

In addition to clarifying the contract-bar doctrine, the legislature must provide for a limited open period, as provided for by NLRB decision.[199] This would protect collective bargaining by limiting the period during which the collective bargaining relationship may be disrupted by an election. As under the NLRB, a single thirty-day period should be available for filing petitions. Such a period would have to be determined in accordance with the individual employer's crops.[200] Where an employer has a year-round peak or several peaks per year, the open period should be limited to a period of fixed duration occurring during the last peak season preceding expiration of the contract. The one-year period referred to in section 1156.7(c) should constitute the maximum period during which employees may file a decertification petition.

Finally, the legislature must provide for an insulated period,

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197. It is crucial that section 1156.7(c) be amended to clarify its application to three-year contracts, since the current trend in agriculture, as in industries covered by the NLRA, is to agree to a contract of three years' duration. Although this is the current trend, it does not render moot the issue of one-year contracts which may still be entered into. Interview with Marcos Camacho, Legal Department, United Farm Workers of America, AFL-CIO (March 28, 1980).

198. If the parties during the term of an existing contract execute an amendment or a new contract containing a later termination date, the contract is deemed prematurely extended. Deluxe Metal Furniture Co., 121 N.L.R.B. 995, 1001-02 (1958). *See* New England Tel. & Tel. Co., 197 N.L.R.B. 531 (1969); Lord Baltimore Press, Inc., 144 N.L.R.B. 1376 (1963). The purpose of this doctrine is to protect petitioners from being faced with prematurely extended contracts at a time when a petition would normally be permitted. H.L. Klion, Inc., 148 N.L.R.B. 656, 660 (1964). *See* Gorman, *supra* note 28, at 58.

199. *See* text accompanying notes 50-53 *supra*.

200. Obviously the NLRB's fixed 30-day rule cannot be adopted. *See* text accompanying note 30 *supra*. For example, an employer may have a year-round peak (such as with artichokes) or several peaks each year.

similar to the NLRB's, which would afford the parties at the end of a contract an opportunity to negotiate and execute a new or amended agreement without the disruption of an election.[201] Although the NLRB provides for a sixty-day insulated period,[202] to avoid the possibility that the ALRA's insulated period may fall during peak season, it should be limited to the final thirty days prior to the expiration of the contract. In the event that an employer's final peak season should occur during the insulated period, the latter would yield to the holding of an election.

Conclusion

In enacting the ALRA, California sought to remedy some of the inequities that existed in a labor sector specifically excluded from the federal law.[203] The California Legislature, relying on the NLRA as a model, incorporated into the ALRA many of the NLRB rules and precedents that evolved during the forty years of federal labor law history. Among the rules adopted by the California Legislature was the long established principle that employees must have the opportunity at reasonable intervals to change or reject their bargaining agent. To effectuate this policy the legislature included section 1156.7 which provides for the timely filing of election petitions.[204] The unclear language of this provision, however, not only provides for the expression of employees' choice at uncertain intervals, but also creates the possibility of undue disruption in collective bargaining relationships.

Before certainty and a sense of stability can be created out of the bitter and violent history of California agriculture,[205] collective bargaining relationships between growers and labor unions must be allowed to solidify. In the interest of promoting and encouraging collective bargaining between growers and unions, election petitions should not be permitted until at least one year after the collective bargaining relationship has commenced.

In view of the legislative intent to follow applicable NLRA

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201. *See* text accompanying notes 52-53 *supra*.

202. *Id.*

203. *See* 29 U.S.C. § 152(3) (1976). *See* text accompanying notes 4-5 *supra*.

204. *See* note 16 *supra*.

205. *See generally* Englund v. Chavez, 8 Cal. 3d 572, 504 P.2d 457, 105 Cal. Rptr. 521 (1972).

precedent[206] and to provide for a three-year contract-bar,[207] the ALRA must be amended to promote the purposes of the Act. In the past, amendments to the ALRA have consistently failed.[208] However, as more cases of first impression arise under various sections of the Act, it will become apparent, as it did in the *Caratan* decisions,[209] that certain provisions will have to be clarified and amended. Since the ALRB is limited in its powers to make such amendments,[210] the California Legislature must take the proper steps. The obvious place to begin is section 1156.7.[211]

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Class of 1980

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206. *See* text accompanying notes 13-14 and 98-125 *supra*.

207. *See* text accompanying notes 129-73 *supra*.

208. This is partially explained by the fact that before an amendment to the ALRA becomes law, it is heard in several committees including the Senate Industrial Relations Committee and the Labor Committee. The Senate Industrial Relations Committee, in effect, serves as a veto committee of all pro-union bills, and the labor committee serves as a veto committee of all pro-grower bills. Since the enactment of the ALRA, the legislature has passed only three bills. These include Senate Bill 1785, introduced by Senator Vuich on March 16, 1978, and Assembly Bill 341, introduced by Assemblyman Perino on January 2, 1979, both of which provide for a 24-hour telephone service for persons interested in information concerning their rights and responsibilities under the Act, and Assembly Bill 3747, introduced by Assemblyman Suitt on April 13, 1978 which provides that all employees appointed by both the Board and the General Counsel shall perform their duties in an objective and impartial manner. *See* S.B. 1785, Cal. Leg. 1978-79 Reg. Sess.; A.B. 341, Cal. Leg. 1979-80 Reg. Sess.; A.B. 3747, Cal. Leg. 1977-78 Reg. Sess.

209. *See* text accompanying notes 83-173 *supra*.

210. *See* note 176 *supra*.

211. There have been two decertification-related bills since the passage of the ALRA. Assembly Bill 470 introduced by Assemblyman Duffy on February 5, 1979, would have, *inter alia*, repealed the requirement that a certified labor organization be a party to a valid collective bargaining contract before employers could file a decertification petition. The bill would have also repealed the provisions requiring that a decertification petition be filed during the year preceding the expiration of the collective bargaining agreement. *See* A.B. 470, Cal. Leg. 1979-80 Reg. Sess. Assembly Bill 838, introduced by Assemblyman Mori on March 12, 1979, and amended in both the Assembly and Senate, is currently pending. The bill was voted down in the Senate Finance Committee, but the Committee was granted a rehearing on February 11, 1980. The bill will be reheard in the Senate Finance Committee in the spring or summer of 1980. Assembly Bill 838, as amended, repeals the requirement that a certified labor organization be a party to a valid collective bargaining agreement in order for employees to file a decertification petition. The bill also provides that a collective bargaining agreement need not be in existence in order for a decertification petition to be deemed timely.