

State Structures and Social Movement Strategies: The Shaping of Farm Labor Protections in California

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This article aims to explain the declining efficacy of California's Agricultural Labor Relations Act over the past quarter century. It argues that the origins, terms, and outcomes of the Act emerged from an interplay between state and society: between the capacity of the state to initiate and implement social reform policy and the capacities of key social classes to tilt outcomes to their benefit. In contrast to both "state-centered" and "society-centered" views of the relationship among social classes, state structures, and public policies, an historical-institutional theoretical frame reveals that social forces and political institutions are reciprocally constitutive, and that policy outcomes emerge from their interaction. Whereas labor union decline and policy failure are usually attributed to shifts in the political climate, in this case shifts in class leverage effected by the strategic choices of the farm labor movement were at certain points more influential.

Keywords: *Agricultural Labor Relations Act; United Farm Workers; social movements; labor-protective legislation*

When California's Agricultural Labor Relations Act (ALRA) was passed in 1975, hopes and misgivings ran high. Farm workers and their advocates anticipated a new era of entitlement in which union representation in California agriculture would increase substantially, as farm workers attained the organizing protec-

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tions accorded most nonagricultural workers during the New Deal. Agricultural employers were by no means as sanguine. Having opposed their employees' coverage under the National Labor Relations Act (NLRA) for years, they found themselves saddled with a law that was even more restrictive. Moreover, the ALRA was to be administered by an appointed board and the appointing governor was liberal and labor friendly. Growers feared that unions would be crammed down their throats, aided and abetted by state officials. They warned that rising costs and flexibility limits could damage the state's farm economy.

In practice, neither prediction has come to pass. Labor-intensive agriculture has continued to prosper in California, while agricultural union density has dropped below its modest start. The Act now attracts little controversy, and neither supporters nor opponents expect much from it. How do we explain the ALRA's altered reception and evidently limited success at fostering agricultural unionization? The quarter-century anniversary of this—the nation's strongest, most celebrated, and still almost only attempt to accord farm workers the rights to organize and bargain collectively free from employer coercion—constitutes an appropriate occasion upon which to evaluate and attempt to explain the Act's character and consequences.

This article argues that the initiation, terms, and outcomes of the ALRA emerged from an interaction between state and society: between the ability of the state to initiate and implement social reform policy, as determined by its institutional structures and the ideologies and support bases of dominant political parties and actors, and the ability of key social classes to tilt outcomes in their direction, as determined by their strategies and the labor market conditions shaping the balance of power between them. This argument engages the debate as to whether the character and impacts of social reform policies such as the ALRA and NLRA are best explained by political-institutional conditions inhering in the arena of the state, or by socioeconomic forces originating in the wider society.¹ The analysis presented here suggests that such a "state versus society" framing overdraws the separation between state institutions and class forces, and neglects the ways in which they in fact construct one another. Thus while many observers attribute the ALRA's terms and limited efficacy to shifts in the political climate, this article will show that political-institutional constraints and class initiatives were mutually constitutive, and that shifts in the latter were at certain points more consequential. Employing the useful theoretical lens of historical institutionalism,² the analysis shows that while in this case class-based organizations helped shape the form and impacts of state institutions, those institutions themselves set the conditions for

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class organizing and political contestation and structured the conditions for political success.

This analysis signals the causal import of *class strategy* for social movement, as well as social policy, outcomes. This variable, in fact, is undertreated in the state versus society debates, and in analyses of social movements and the California farm worker movement as well. The latter tend to attribute movement successes and failures to the environmental conditions that determine movement resources and opportunities, rather than to the strategic choices and capacities of movement organizations themselves.³ In this case, it was a shift in union strategy that occasioned the first and sharpest decline in policy efficacy. The model proposed here is one in which unions and employers compete strategically to mobilize their power bases in a context structured by labor market, political, and cultural conditions on the one hand, and by state institutions on the other, and in which political institutions and class strategies shape one another.

The ensuing analysis (1) describes the struggle leading up to the Act, showing how the interplay between workers' class capacity and changing state capacity shaped the law that was passed; (2) shows how the institutional structure of the Act made policy efficacy dependent on certain aspects of the political and socio-economic context; (3) examines the implementation pattern, surfacing the timing of and evidence for declining efficacy; and (4) shows how the interaction between political-institutional and social forces helps explain changing social policy outcomes.

THE STRUGGLE FOR FARM LABOR RELATIONS LEGISLATION: 1962-1975

Most analysts attribute the passage and character of the ALRA to favorable state capacity—to the election of a governor inclined to support farm labor legislation and relatively independent of agribusiness support.⁴ However, one cannot fully account for the timing, level of support for, and terms of the Act without attending to the impact of class capacity—to the rise of the strongest farm labor union in the nation's history, the United Farm Workers (UFW), and its deployment of a strategy that tilted the balance of class power in California agriculture in workers' direction. In this period, political struggle in California agriculture was underinstitutionalized, in that farm workers had few legal or political-institutional resources to draw upon or constrain them in their contests with growers. The UFW did, however, evolve an organizing and pressure-exertion strategy that increased workers' leverage in the local political arena by destabilizing the local economy and bringing outside influences to bear. This strategy forced a somewhat sympathetic, but politically-opportunistic governor to pass a piece of legislation that has conditioned class struggle in California agriculture ever since.

Farm workers were explicitly excluded from the NLRA and other New Deal recovery legislation because agribusiness opposed their coverage, organized labor and the public were largely unconcerned, and the government pursued a pol-

icy of accommodating dominant interests.⁵ While industrial workers were well organized, disruptive, and had a range of allies, farm workers were relatively unorganized and isolated. Not until the early 1960s was the “agricultural exclusion” seriously challenged, as the recession renewed concern with unemployment and the civil rights movement heightened attention to the problems of minorities and the poor. In 1961, the California State Senate held hearings on the conditions of farm labor and growers reiterated their arguments for exclusion.⁶ This time, however, an alliance of civil rights, labor, religious, and antipoverty groups spoke up and pressed for their protection. Over the 1960s and early 1970s, a range of state and federal laws were extended to farm laborers. In addition, a campaign was mounted to end the bracero program, an agreement between the United States and Mexico that had imported cheap, malleable, and easily-deportable contract workers from Mexico since 1942.⁷ Its termination in December 1964 removed a major barrier to the growth of the UFW.

Founded as a community-based service organization in 1962, and burgeoning after the end of the bracero program, the UFW began to organize farm workers in California’s San Joaquin Valley to address their felt economic and social needs. Its efforts culminated in 1965 with the historic Delano grape strike and boycott, which consolidated the UFW’s base of support within the state and around the country. The UFW mobilized in this period through a two-constituency, triangular organizing strategy: it deployed its position in the local arena in order to generate support outside it, creating a rebound of outside pressure on California growers that in turn magnified the union’s influence at the local level. Using direct organizing, strikes, marches, picketing, and legal attacks, the UFW mobilized farm workers in California’s fields and exerted economic pressure at the point of production. It then deployed the evidence of this support to help secure allies and generate economic and political pressure in cities across the country, with the help of media campaigns, speaking tours, national political lobbying and contributions, and consumer boycotts—plus an extensive national network of boycott support organizations. The goal of this two-pronged approach was to ultimately pressure the state’s growers to sign union contracts. The UFW’s organizational capacity reinforced this strategy, in that it had a large cadre of volunteer and paid legal professionals and of labor, community, and boycott organizers, plus a diversely comprised and committed leadership, and an organizational structure that fostered innovative strategic decision making.⁸ With this strategic approach, the UFW was able to bring the issues at stake in California’s fields alive to distant elements of the American public, and to wield far more influence over politicians and farm employers in California than its position in the local economy and polity alone could motivate.

As the UFW’s influence grew, growers became increasingly ambivalent about the agricultural exclusion, both because it freed the UFW from the NLRA’s restrictions on secondary boycotts and because California courts had reduced its utility by ruling that growers could not discriminate against farm workers for

union activity.⁹ Thus, beginning in 1969, a coalition of employer groups led by California growers and the Farm Bureau began to press for bills that would limit agricultural union activity. By 1975, it had initiated bills at the federal level and in the legislatures of seventeen states, including California. The Nixon administration spearheaded the attack at the federal level.¹⁰ All of these bills banned the secondary boycott; some introduced “cooling off” periods that included the harvest; others barred harvest-time strikes entirely and sharply reduced the issues that could be negotiated through collective bargaining. The UFW sent staff around the country to counter growers’ proposals and began to consider a legislative initiative of its own. In 1974, it sponsored a bill in the State Assembly to set up an agricultural labor relations commission. The bill passed, but died in the Senate, before Governor Ronald Reagan could deliver his expected veto.¹¹

As the second facet of their anti-UFW campaign, growers approached the Western Conference of Teamsters to sign minimally restrictive collective bargaining agreements that would forestall more demanding contracts with the UFW. Growers’ fears of UFW contracts had grown, as the UFW’s table grape boycott and organizing campaign began to take a public relations and economic toll.¹² On July 29, 1970, twenty-seven San Joaquin Valley grape growers signed three-year contracts with the UFW, bringing the union’s number of contracts to 150, with over 10,000 members statewide.¹³ On the evening of this signing, the UFW learned that almost half of the large vegetable growers on the central coast had signed five-year contracts with the Teamsters. The UFW demanded that growers void the contracts and on August 24 initiated what may have been the largest strike in California’s agricultural history, involving some 10,000 workers.

This strike escalated the UFW-Teamsters rivalry to a new level, ushering in a five-year period of unprecedented violence in California’s agricultural heartland. Between 1970 and 1972, the UFW won contracts in Florida, Arizona, Colorado, and New Mexico and was a threat in Texas, Oregon, Washington, Idaho, and elsewhere. Its gains intensified the Farm Bureau’s opposition and solidified an alliance between it, California growers, the Teamsters, and the Nixon administration.¹⁴ In 1973, when the table grape contracts were slated to expire and growers resisted their renewal, a strike erupted that spread from Coachella to Modesto that resulted in three thousand arrests, forty-four beatings, two murders, and the loss of most table grape contracts.¹⁵ In response, the UFW renewed its grape, lettuce, and wine boycotts and launched a campaign of strikes and civil disobedience. In short, California’s fields had become battlegrounds on which workers and their supporters marched, held rallies, and squared off against local police and growers’ security guards, under the critical gaze of the national media.

In 1974, a window opened for policy responses to this pressure when Democrat Jerry Brown succeeded Republican Ronald Reagan as governor, freeing the state’s administration for the first time in many years from the dominance of agribusiness. In contrast to the business and agribusiness support bases of the Republican Party, the Democratic Party’s support was firmly ensconced among urban

liberals, ethnic minorities, and organized labor, and its ideology promoted civil, labor, and minority rights. Jerry Brown, already planning to run for president and aware of the financial and electoral backing the UFW could generate, saw an opportunity to “do well while doing good”: to further his career while accomplishing something in which he himself believed.¹⁶ As Brown drafted his farm labor relations bill, he identified “bringing peace to the fields” as his explicit goal. The bill was touted as “by far the biggest accomplishment of the first quarter of his term.”¹⁷ It was the hallmark of his 1976 bid for the Democratic presidential nomination; UFW president Cesar Chavez made Brown’s nominating speech.

It would be a mistake, however, to attribute the terms and passage of the ALRA solely to the advent of an administration whose support bases and ideology inclined it toward labor-protective legislation—or even to a political leader whose own values and ambitions could be furthered by its passage. Rather, it was the UFW’s economic and political pressure that brought so many interests together to press for a farm labor relations act. A decade of virtually continuous turmoil through strikes and national—eventually international—consumer boycotts had focused attention on the state government, as the guarantor of social order, to devise a solution to diffuse the conflict. In contrast to the 1930s, California farm workers had mobilized a range of allies in support of legislative protection. Government officials and the public wanted such a law because of the sustained disruption—indeed some counties faced bankruptcy due to overtime pay for sheriffs and the costs of strike-related jury trials. Supermarkets wanted a law because of the boycotts. The Teamsters thought they could win confirmation of their contracts with it. Growers thought they could shape it to their ends. For its part, the UFW was open to a law because it had lost most of its contracts and thought that legislative protections might help. The UFW’s major patron, the AFL-CIO, insisted on it, as did many of the churches that comprised an influential segment of the union’s support.

Moreover, it was the union’s strategy of mobilizing allies and financial support nationally that made its agenda so attractive to Brown in California, and it was the union’s ongoing pressure that led to the labor-supportive design of the Act. Jerry Brown was not, as growers claimed, “in the UFW’s pocket.” Rather, he was a savvy politician who wanted to craft a bill that would secure broad support. His initial stances were always more moderate than the UFW wanted. He withheld his support from the UFW’s farm labor bill until the union placed twenty pickets outside his San Francisco campaign office. Similarly, despite Brown’s promise to introduce such a bill, a canny Chavez kept pressure on him by announcing to a rally of fifteen thousand people that the union would march on Sacramento if Brown broke his promise. And, indeed, when Brown’s bill was unveiled, it was much closer to the grower-proposed legislation of the prior year than to that of the UFW. Only after the UFW publicly denounced the bill and mobilized opposition to it, did he reshape it to include most of the union’s terms. In its final form, the Act gave something to all key parties: it gave growers protection against picketing and

boycotts, it allowed the UFW to hold harvest-time elections, it permitted the Teamsters to retain existing contracts until elections were held, and it protected unions that represented employees under the NLRA from infringement, since it applied only to agricultural field workers.

CALIFORNIA'S ALRA: THE INSTITUTIONAL FRAMEWORK

The ALRA accorded farm workers legal and political-institutional resources that bolstered their leverage in contests with growers. It also constrained subsequent patterns of political organization and class conflict, and shaped the conditions of political success.

The Terms of the ALRA

As befits a law patterned after the UFW's proposals and shaped by its influence, the ALRA expressly aimed to encourage and protect farm workers in their efforts to organize and bargain collectively.¹⁸ At the same time, it intended to "(ensure) peace in the agricultural fields by . . . (bringing) certainty and a sense of fair play to a presently unstable and potentially volatile condition in the state" (sec. 1140). The Act recognizes the right of employees to form, join, or assist a labor organization and to engage in other concerted activity for their mutual aid and protection. It provides for secret ballot elections through which employees may freely choose whether they want to be represented by a union—and, if so, by which one—and it obliges employers to bargain with a so-chosen organization. It defines, declares unlawful, and aims to remedy practices committed by either unions or employers—called unfair labor practices (ULPs)—that interfere with or destroy workers' free exercise of the rights guaranteed by the Act.

The ALRA covers all "employees" engaged in agriculture, with the exception of those covered by the NLRA (sec. 1140.4(a), (b)). It excludes workers defined as "independent contractors" and "supervisors," since they are employers' agents and have the authority to hire, fire, reward, and/or direct employees. It construes the term "agricultural employer" liberally to include any person acting directly or indirectly in the interest of an employer in regard to agricultural employees (sec. 1140.4(c)). While it considers some intermediaries to be employers, it excludes farm labor contractors, largely because the UFW argued that their marginality and small size would make it hard for workers to develop stable bargaining relationships with them, and for the agency to hold them responsible. As a result, for purposes of the ALRA, the entity engaging the contractor's services—the grower or farm operator—is considered the employer.

The ALRA provides for the determination and prevention of ULPs and the conduct of union certification and decertification elections. Authority for administering the Act is divided between the appointed five-member Agricultural Labor Relations Board (ALRB) and the general counsel. The board has three main

responsibilities: it adopts regulations necessary to implement the Act, it conducts elections through the staff of its regional offices, and it acts as a quasi-judicial body in reviewing appeals of administrative law judge decisions on ULP and election cases. The general counsel is responsible for issuing charges and petitions, investigating the issuance and prosecution of ULP complaints, and supervising the officers and employees in the agency's regional offices. The general counsel has substantial control over the Act's administration. Although election petitions and ULP charges are filed first with the nearest regional office, which oversees the election process on behalf of the board and investigates and rules on ULP charges on behalf of the general counsel, the general counsel can truncate the involvement of regional staff. The general counsel also hears appeals of regional staff decisions and has the "final authority" to decide whether to dismiss ULP charges or move them forward to the status of complaint, a decision that is not reviewable by the board (secs. 1149, 1160.2; ALRB regs. {20220}). If a complaint is issued, a hearing is scheduled before an administrative law judge at which the general counsel represents the charging party. The judge's decision can be appealed to the board and ultimately to a California court of appeal. In sum, though the board and appeals court ultimately determine whether a ULP has occurred once a complaint is issued, the general counsel controls the issues to be adjudicated through his unfettered discretion as to which charges should be prosecuted as complaints.

In several important regards, California's ALRA is more favorable to labor than the federal NLRA. All of these differences were proposed by the UFW and instituted to accommodate the unique character of farm employment. First, unlike the NLRA and in recognition of the ease with which farm workers can be replaced, section 1160.3 institutes a "make-whole" remedy for ULPs that cause workers to lose their jobs. This remedy empowers the board to require an employer who fails to bargain in good faith to pay employees the difference between what they received and what they would have been paid had the employer bargained in good faith. Second, to facilitate unionization in the nonunionized employment context, the ALRA has a much broader definition of "good standing" than does the NLRA—one that in effect requires employees to join the union and gives it more influence over its members. It includes an early date at which workers are required to join the union in a union shop, more stringent rules as to what workers must and cannot do to remain members in good standing, and stronger sanctions against those who breach those rules. Third, also in recognition of the germinal state of agricultural unionization, the ALRA permits unions a tactic denied by the NLRA—secondary consumer boycotts—although like the NLRA it forbids traditional secondary boycotts.¹⁹

Fourth, in August 1975, the ALRB adopted an "access" rule that is much more generous than the NLRA's: it grants union organizers access to an employer's fields and premises in order to communicate with employees and solicit their support (ALRB Regs. {20900}).²⁰ This access was attacked vehemently by growers as a dangerous infringement on private property rights, but was included to protect

farm workers' right to self-organization in a context where elections happen quickly, where many workers are migrant and cannot be reached at permanent addresses, where they move from site to site in the course of each day, where there are rarely adjacent public gathering areas, and where many workers are illiterate and do not speak English. Finally, to accommodate the short duration and seasonal fluctuation of employment, the ALRA provides for circumscribed election times and expedited election procedures. To prevent the lengthy election delays permitted by federal law and ensure that a representative sample of workers will be present, elections may be held only when the employer's workforce is at 50 percent or more of its normal annual peak number, and, once an election is held, another may not be held for at least twelve months (secs. 1156.3, 1156.7).

Political-Institutional Constraints

The terms and structure of the ALRA constrain the forms and impacts of class strategies, economic conditions, and political climate. First, the Act builds in a role for labor unions. For the Act to achieve its goal of fostering labor organizing and collective bargaining, workers and their advocates must bring election petitions and ULP charges before it. In practice, because farm workers are mobile, economically and politically vulnerable, and limited in their ability to exercise their rights within the United States, most petitions and charges are brought by labor unions. Moreover, because bureaucracies and political actors tend toward the middle, and because the Act grants discretion to administrative agents, constituencies must exert pressure to ensure favorable outcomes. As a result, farm workers rely on labor unions to help coalesce, present, and build wider support for their claims. Moreover, union contracts, once established, protect workers against arbitrary dismissal and make it easier for them to speak out, so that a decline in the number and strength of contracts can undercut implementation of the Act. In short, the law made accomplishment of its goals dependent on active union organizing, pressure exertion, and spearheading of workers' claims.

Second, the ALRA defines who it will bind and protect. The law was written with the assumption that workers would be directly hired and managed by farm owners or operators, as was overwhelmingly the case when it was passed. While a variety of intermediaries can qualify as employers, farm labor contractors (FLCs) are excluded.²¹ This exclusion makes policy enforcement contingent on the structure of agricultural employment. The use of FLCs makes it difficult to determine who is the responsible employer: it is not always clear in practice whether an intermediary is covered by the law; indeed it sometimes takes a court to decide. Although employers are technically responsible for their contractors' ULPs, the practices of FLCs are hard to observe and public agencies have had limited success policing them.²² In addition, because FLCs tend to hire recent, illegal immigrants who are unaware of their rights, poorly connected to broader support and job acquisition networks, and highly dependent on their relationships with their

contractors, such workers are often hard to organize and unwilling to speak out. Securing union coverage for contracted workers can also be a prodigious undertaking because a contractor's crew could work on ten different farms in a single season, thus requiring ten separate organizing campaigns, collective bargaining relationships, and union contracts to protect them. In short, the law made policy efficacy easily undermined by—and growers' class capacity potentially augmented by—a shift away from directly hired to contracted labor.

Third, the enforcement of the ALRA is politically contingent: its budget is determined by the governor and state legislature and its activities are carried out by appointed staff with considerable discretionary latitude. As a result, the very capacity of the state to achieve the labor-supportive policy goal of fostering farm labor unionization and collective bargaining depends on the predilections of elected officials and their relative autonomy from growers. The willingness of the contestants to bring claims before the board, the sympathy with which these are viewed, and the vigor and dispatch with which election petitions and ULP charges are processed, all shift with the election of a new governor. Also, while the courts and legislature set the terms of the Act, boards and general counsels can establish and alter procedures for its implementation. The leanings of the general counsel are especially important, since s/he can unilaterally dismiss ULP charges and supersede the decisions of regional staff.

THE PATTERN OF POLICY EFFICACY: 1975-1999

The efficacy of a social reform policy such as the ALRA is commonly assessed by its accomplishment of the substantive changes it was intended to effect: in this case, the institutionalization of union representation in California agriculture.²³ Two bodies of evidence speak to the pattern of declining efficacy: the Act's implementation record, as revealed through the *Annual Reports* that the board submits to the state legislature for each fiscal year (July 1 through June 30), and the larger trajectory of declining union density.

The Implementation Record

The number and outcomes of union elections, and the number and disposition of workers' ULP charges, are important indicators of the Act's efficacy. Overall, the *Annual Reports* reveal a pattern of declining election activity, union victories, and support for workers' ULP charges. As Figure 1 shows, the numbers of ALRA election petitions filed, elections held, and union-won elections were greatest by far in the Act's first three years and dropped significantly thereafter. Election activity peaked in the first five months, when 604 election petitions were filed, 423 elections were held, and a remarkable total of 47,812 farm workers voted. On April 2, 1976, however, the agency closed its doors due to grower-supported legislators' refusal to approve its funding; it did not accept election petitions again

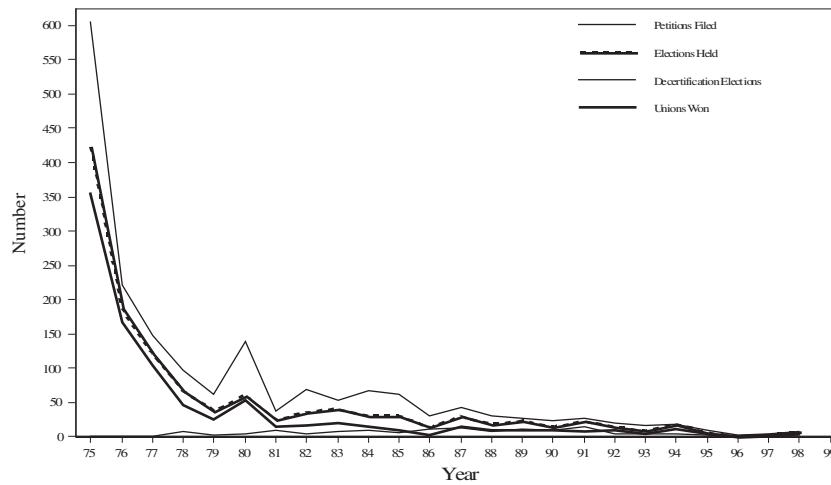


Figure 1. Agricultural Labor Relations Act elections, September 1975 to June 30, 1999.

until December 1, 1976.²⁴ Nonetheless, even if we exclude the astonishing first year which reflected both pent-up demand for unionization and vigorous and effective union organizing activity, we see that the annual average of election petitions filed sustained at 155 over the following two years (FY 1976-77, 1977-78), as opposed to an annual average of only 36 for the ensuing 21 years of our period. Similarly, a continued substantial annual average of 9,179 votes were cast in union elections in the law's second and third years, as opposed to an average of only 2,726 for the years following. And, unions continued to win an annual average of 87.5 percent of all elections held in FY 1976-77 and 1977-78, as opposed to only 41 percent per year for the 21 years following, with the exception of an outlier upswing in 1980. Especially striking is the drop after 1977-78 in the number of elections held, number of votes cast, and union-won elections. Elections held fell from 122 (82 percent of election petitions filed) in 1977-78, to 67 (69 percent of petitions filed) in 1978-79, to 38 (60 percent of petitions filed) in 1979-80. While the number of petitions filed rose to 140 in 1980-81, only 44 percent (61) resulted in elections. Similarly, numbers voting dove from 9,302 in 1977-78 to 5,640 in 1978-79, to 1,611 in 1979-80, rising briefly to 6,224 in 1980-81, but continuing to fall thereafter. Union-won elections, too, dropped sharply: from 105 (86 percent) in 1977-78, to 47 (70 percent) in 1978-79, to 25 (66 percent) in 1979-80. Union decertification elections only began after 1977-78, averaging 33 percent over the next 21 years, and 57 percent between 1986-87 and 1991-92. The annual average of "no union"-won elections was only 9 percent in the first three years, but 35 percent over the next 21.

ULP charges—over 90 percent of which are submitted by or on behalf of workers against employers—show a different pattern. The number of charges filed continued strong through 1982-83 and then plummeted. Although they ral-

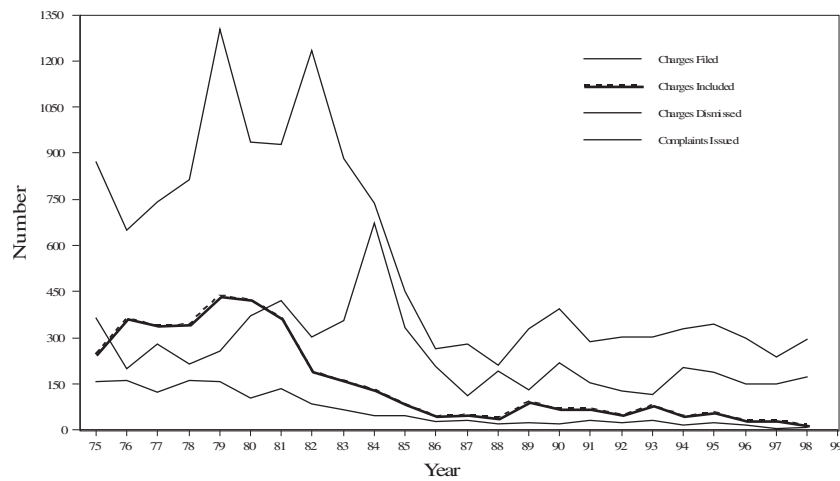


Figure 2. Unfair labor practice cases, September 1975 through June 30, 1999.

lied somewhat after 1988, they remained at a fraction of the first period (see Figure 2). As with election petitions, ULP charges filed were most numerous in the agency's first six months of operation. Overall, an annual average of 936 charges were filed in the first eight years (through 1982-83), as opposed to an annual average of only 372 for the sixteen years thereafter. In 1982-83 the favorable treatment of workers' ULP charges took a sharp downturn, as the percentage of charges filed that were forwarded to be included in a complaint, and the percentage on which complaints were actually issued, dropped precipitously and persisted at a low level thereafter. Overall, the average annual percentage of charges included in complaint through 1981-82 was 42 percent with a high of 56 percent in 1976-77, as contrasted with only 18 percent for the remaining years, with a low of 6 percent in 1998-99. The proportion of ULP charges dismissed varied inversely, rising most markedly after 1982-83 and reaching highs of 91 percent and 92 percent in 1984-85 and 1988-89. The average annual percentage of charges dismissed through 1983-84 was only 34 percent, as opposed to an annual average of 59 percent in the fifteen years thereafter.

In sum, what is most striking about the ALRA election data is the sharp drop in election activity and union wins after 1977-78 (with the exception of the 1980 upswing), coupled with a rise in the proportion of decertification and "no union"-won elections. In 1986-87 there was a second sharp drop from an already-decimated pool of elections held and an overall slide to negligible election activity thereafter. And what is notable about the ULP data is the abrupt decline in 1982-83 in the general counsel's tendency to deem workers' ULP charges meritorious (percentage of charges included in a complaint), the one-year-later drop in the number of charges filed, and the continued decline of both thereafter. Overall, there is a decided contrast between the years up to 1983 and the years thereafter in

all measures of worker-favorable resolution of ULP charges (charges included in a complaint, charges dismissed, and complaints issued).

Declining Union Strength

Union vitality in California agriculture peaked in the late 1970s and declined significantly after the early 1980s. At the peak, union contracts and organizing activity bolstered the leverage, wages, and working conditions of farm workers in unionized as well as nonunionized firms.²⁵ As many as 90 percent of California farm workers may have been union influenced at that time, although probably no more than 10 percent were under union contract. After the early 1980s, however, the level of unionization fell off sharply, eroding the base of contractual protections and advocates on which the state's farm workers could rely. UFW membership may have been as high as 100,000 in the late 1970s, but by the mid-1980s it had dropped to about 40,000, and by the turn of the century to between 7,000 and 8,000.²⁶ The increase in union decertification elections and "no union"-won elections, and the drop in union-won elections, confirm declining union strength.

Over the 1980s, the UFW lost most of its remaining table grape contracts, and its support in the Monterey County vegetable industry and Ventura citrus industry began to crumble. As contract after contract expired, the few new ones signed were significantly weaker. Union organizers began to warn workers that they could jeopardize their jobs by speaking out; in some instances their fears were realized.²⁷ In a retreat from its policy of setting high contract goals, making as few concessions as possible, and requiring successor employers to meet the terms of prior contracts, in the late 1980s the UFW began to sign contracts providing no wage increases or company contributions to the UFW's special benefit programs, and eliminating the provision that workers not in good standing with the union could be dismissed. The union defended such contracts as necessary, because it could win so few legal battles through the ALRB, redirecting its energy to the consumer boycotts on lettuce and grapes, in hopes that the economic pressure would make growers press the agency to enforce the law.²⁸

In the mid-1990s, union activity in California agriculture showed some signs of revival. The UFW, Teamsters Local 890, the United Food and Commercial Workers, and the Christian Labor Union all began to step up their efforts to organize the state's farm workers. When Cesar Chavez died in 1993, leadership shifted to his son-in-law, Arturo Rodriguez, who was seen as more pragmatic and concerned with organizing. In 1995, the UFW launched a widely publicized campaign to organize California's strawberry workers, gaining the unprecedented support of the revitalized AFL-CIO in the process. By the late 1990s, it had signed contracts covering workers in the tomato, wine grape, mushroom, flower nursery, and lettuce industries. Still, ALRB union election activity remained at a trickle compared with that in the 1970s and 1980s: an annual average of only 4.25 elections were held in the last four years of the Wilson administration.

THE FATE OF FARM LABOR PROTECTIONS IN CALIFORNIA

The interplay between the changing *capacity of the state* to implement the ALRA's intended reforms and the changing *capacities of social classes* to shape policy outcomes helps explain both the Act's remarkable record of accomplishment in its first three years and its precipitous drop in efficacy thereafter. Over both periods, political institutions and social forces interacted in a dialectical process of mutual influence, each shaping the forms and impacts of the other.

Class Capacity and Union Strategy

Shifts in union and employer strategies, and in the labor market conditions structuring the balance of power between them, shaped policy outcomes.²⁹ Roughly through FY 1977-78, the UFW's strategy meshed well with the institutional regulatory structure of labor-management relations in California agriculture. The result was the most remarkable record of policy success at fostering unionization in the Act's history. The first and most sizable break in this record came after FY 1977-78, at the peak of union vitality, when political climate, growers' strategies, and labor market conditions were all favorable. Sharp drops in the number of elections held, votes cast, and union-won elections after that point coincided with a shift in union policy that interrupted the forms of pressure exertion that had proved so effective. With the two-constituency strategy that the UFW developed in its early years—organizing workers in the fields and supporters in the cities so as to pressure California growers to sign union contracts and politicians to enforce the Act—the union was able to move outside the agribusiness-dominated communities in which it organized, while still exerting pressure within them, and to bring the ideological and political leverage it generated in the wider society to bear on local actors. This strategy helped ensure the prolabor implementation of the Act at the outset and generate the UFW's early election successes.

Thus when growers—stunned by the rapid succession of UFW victories in the first months of the board's operation—pressured their supporters in the state legislature not to authorize its continued funding in winter 1976, the UFW responded with a grassroots campaign for an agricultural labor relations initiative that was even more prolabor than the ALRA and, if passed, would have barred all legislative changes to the act.³⁰ Although the measure was defeated, its threat forced legislators to approve the agency's budget. Former UFW staff interviewed about this period emphasize the union's tremendous organizational capacity and exertion of pressure. The union engaged in direct organizing, strikes, picketing, marches, public speeches, consumer boycotts, court challenges, and political lobbying. Tens of thousands of people attended its marches and rallies; over 3,500 went to jail protesting the Teamsters' contracts alone. From the moment the ALRB's regional offices opened, workers, union staff, and supporters were at their doors.

The UFW held press conferences almost daily and staged sit-ins at ALRB offices. Its general counsel, Jerry Cohen, had a team of seventeen lawyers and forty-four paralegals—plus an extensive network of volunteer lawyers called on for special purposes—who challenged and pressured the agency. This minimally paid legal staff gave the union a great economic and tactical edge over growers, who had to pay market rate for legal advice. In the words of Marshall Ganz, former UFW organizing director and executive board member,

Every step of every election procedure was contested, fought over—the order in which the regional offices accepted petitions, the scheduling of elections, election rules, worker education, pre-election conference proceedings, unfair labor practice processing, and throwing elections out. The whole process was political and subject to pressure. . . . We negotiated who was appointed to the board, the content of the hearings on regulations, as well as the regulations themselves. We negotiated who would be appointed general counsel and we lobbied board members.³¹

Former UFW general counsel, Jerry Cohen, emphasized the importance of active pressure:

Whether there are Republicans or Democrats sitting in power, if you don't put pressure on them you don't get action. Especially if you're representing poor people. Without pressure, the lawyers take over the timing. They had a different timetable than we did, than we could afford. They had to be pressured to enforce the law. And there was a cumulative effect on workers. For farm workers to have faith in the law, you have to show them that they can demand enforcement.³²

The vigorous union-organizing activity of the ALRA's first nineteen months of operation³³—and also the flood of election petitions and ULP charges filed—was spurred by the active competition between the UFW and the Teamsters. Because the ALRA barred voluntary recognition of a union by an employer without the express vote of workers (secs. 1156.7, 1159), both the UFW and the Teamsters had to put each of their voluntary contracts up for a vote in order to be certified as the employees' representative. The Teamsters decided to limit themselves to elections at the many ranches with which they already had contracts, while the UFW (with fewer contracts to defend) chose to challenge the Teamsters in most of their elections, but also to stake out new territory where the Teamsters were unknown. This approach redefined the terrain of the conflict and gave the UFW an absolute advantage in the number of elections won and workers voting, creating more momentum than could have been achieved by focusing on the Teamsters challenge alone.

On March 10, 1977, however, the Teamsters and the UFW reached a landmark accord that was to bind the parties for five years. In it, the Teamsters agreed not to renew their prior farm worker contracts and not to seek new ones, the UFW agreed not to organize truck drivers or indoor workers, and each agreed to honor the

other's picket lines. This pact stimulated a shift in UFW strategy, causing a fracturing of its leadership, a falling off of direct organizing, and an interruption of the forms of pressure exertion that had proved so effective to that point. That is, free of the Teamsters threat, UFW president, Cesar Chavez, moved to focus the union's efforts away from organizing and toward internal consolidation and control. The primary reasons given for this shift were the need for improved internal coordination and management practices, and the perceived threat of internal subversion.³⁴ The union was experiencing tremendous difficulties managing its rapid growth and the complexity of its administrative affairs. Its finances were confused, its various programs were poorly coordinated, follow through was erratic, and the medical plan had internal problems. Chavez began a search for a management approach that would work. Perhaps more consequential in its impact on the organization was his conviction that agents from within and without were trying to subvert the organization and his authority.

He presented the methods of the drug treatment program, Synanon, as a solution to the problems of internal allegiance as well as of management. As the UFW-Teamster settlement appeared likely, he scheduled the UFW's February 25-28, 1977, executive board meeting at the Synanon headquarters in the hills above Fresno. The centerpiece of the program was the famous "Synanon game," a form of group therapy in which participants aggressively indicted one another for real or contrived offenses, and indictees tried to rebut the attacks and shift the charges to someone else. Synanon founder, Charles Dederich, used the game to maintain loyalty, prevent challenges to his authority, and accomplish power-consolidating changes of his organization, eventually transforming it into an authoritarian cult.³⁵ Within the union, the game was framed as a means of strengthening character and creating an atmosphere of honesty and accountability by bringing concerns out into the open. According to meeting transcripts and union staff present during this period, a group of twelve staff members began to play the game in 1977; its use reached a peak in spring-summer 1978 when field staff traveled every Saturday to UFW headquarters in Kern County's Tehachapi Mountains to play it; it continued to be played at least into 1980. The atmosphere surrounding the game was highly intimidatory and accompanied by a progressive branding of those who disagreed with Chavez as "disloyal."

Internal disagreements mounted regarding the appropriate roles that direct organizing and legal pressure should play in union strategy, and the viability of Chavez's ideological commitment to the notion of an all-volunteer staff. In late summer 1977, Chavez moved a vote at the executive board meeting, which was passed by strong majority, to discontinue organizing until the union's loyalty and management problems were resolved. "Organizing" in this context meant mobilizing the previously unorganized, seeking new elections and contracts. Organizing director Marshall Ganz disagreed with this move, arguing that new organizing was necessary to maintain existing contracts and capitalize on the support gener-

ated by prior contract gains. This withdrawal from organizing new members was accompanied by an inattention to building organization within companies that already had union contracts, and to long-term strategic planning regarding the goals and methods of organizing. Internal tensions mounted as a number of the field office directors, most of whom were former farm workers, began to challenge the principle of an all-volunteer staff, arguing that they needed salaries to support their families. In late summer 1978, Chavez proposed a return to the “no salaries” commitment required of full-time union staff, targeting the legal department, some of whose members received modest salaries. The executive board moved in a sharply divided decision to shift to an all-volunteer legal staff.³⁶ Over the next months, the legal department was phased out, and most of its salaried and volunteer staff departed.

The result was a dismantling of the legal-organizing collaboration that was a hallmark of the initial period, and a sharp decline in the amount and success of organizing. Of the three new organizing campaigns that were undertaken between the summer of 1977 and the early 1980s (Bakersfield/Delano, grapes, fall 1977; Oxnard, citrus, winter 1977-78; Salinas/Gilroy, vegetables, summer 1980), Chavez neither initiated nor participated in the planning of any. None was the result of a sustained and proactive union organizing strategy. Rather, they were spurred by striking workers and/or engaged field staff, and approved by Chavez upon petition. Similarly, it was only in November 1978 that staff were hastily assigned to prepare for the upcoming expiration of the union’s Salinas and Imperial Valley vegetable contracts in January 1979. The outlier upturn in election activity in 1980 was almost entirely due to the garlic strike campaign in Gilroy, begun by a worker walkout, escalated into a regional general strike, and pursued by field staff. Although Chavez initially supported staff involvement because he was loath to turn down worker requests for assistance, he subsequently reversed his position and withdrew resources. As a result, there was minimal follow up to this campaign in terms of converting election petitions to elections held, or election wins to contracts signed, and very few contracts were achieved from it. Finally, Ganz, among others, believed that the union needed to develop an integrated organizing plan in order to situate itself advantageously for a potential shift in political climate after Jerry Brown. But although a substantial plan was developed, the executive board never considered it.

By the end of 1981, internal polarization and mistrust had reached a crisis state and the preexisting leadership had dispersed. Most of the experienced lead organizers, the majority of the board, and the bulk of the emerging worker leadership—which had run a slate of three executive board candidates to oppose three on Chavez’s slate at the union’s fall 1981 convention³⁷—had been forced out of the union or left. From then on, Chavez decisively rejected further organizing and turned his attention toward securing the union’s interests through political contri-

butions and direct-mail and media-fostered consumer boycotts. Direct organizing in the fields and in the cities fell largely by the wayside.

While the UFW's leadership attributed the subsequent drop in union elections, wins, and contracts to the unsupportive political climate, critics saw the matter differently. Some pointed to the diminution of the legal and organizing personnel who had exerted such effective pressure in the fields and on the agency in the mid-1970s.³⁸ Jerry Cohen, for example, argued that it was the union's strategy change that accounted for its declining influence:

Chavez has the capability to ensure that the UFW fulfills its potential. . . . During its early years the forces arrayed against the UFW were formidable: the growers, the Teamsters, and a host of government officials. Yet the union prevailed. . . . The tools were not only the boycott but also the picket line, the strike, and the aggressive use of the courts. Now there is an additional tool, the ALRA, which is quite simply the best labor law in America. . . . Even with the current hostile Administration, the law would be an asset and not an obstacle in the context of a real struggle, which would generate the power needed to counter the power of agribusiness. . . . Unions that do not organize, die.³⁹

Some ALRB staff interviewed voiced a parallel critique of the union, characterizing it as a necessary player—even a partner—in the implementation of the Act, and arguing that the agency could not protect workers' rights if unions did not bring matters before it.

Class Capacity and Growers' Strategies

Just as the UFW changed its strategy after the Act's early years, growers too shifted theirs, thereby altering the political terrain to the detriment of labor and increasing the costs and difficulty of a union rededication to organizing. No longer trusting Jerry Brown and the board to secure evenhanded decisions, growers began to invest in the next generation of state leaders. This investment paid off in 1982 with the election of George Deukmejian. Then, beginning with the 1979 lettuce strike, growers adopted an aggressive new legal tactic, just as the UFW's legal department was dismantled. When the UFW's vegetable contracts expired at the end of 1978, growers balked at union demands and the union initiated an industry-wide strike. It began in January in the Imperial Valley and quickly spread to other parts of the state and Arizona. The violence associated with this strike was tremendous, and neither the ALRB nor law enforcement officers were able to contain it.⁴⁰ In response, some growers adopted a daunting new strategy: they turned to the courts for treble and punitive damages. In April 1979, Sun Harvest, the nation's largest lettuce company, filed a damage suit in Kern County Superior Court charging that the UFW was trying to shut it down through the use of violence. It sought \$25 million in compensatory damages for strike-related damages and crop losses, plus \$250 million in punitive damages.⁴¹ Shortly thereafter, Maggio and Bruce Church filed comparable suits claiming treble and punitive

damages. More recently, a strike in fall 1989 by Teamsters Local 890 also led to civil litigation based on this type of complaint, generating claims of over \$12 million in damages and tying up union resources for years.⁴² While Sun Harvest settled in August 1979 and the claim against Teamsters Local 890 was reduced substantially, ultimately Maggio was awarded \$1.7 million and Bruce Church, \$5.4 million.⁴³ All in all, this shift in grower strategy took labor-management contests out of the fields and the purview of the ALRA and into the civil courts, thus reducing the Act's ability to promote and protect union representation. It also made harvest season strikes very costly, steering unions away from this traditionally effective weapon. It is perhaps no accident that Teamsters Local 890 and the UFW have not struck a fresh vegetable farm since.

Finally, as a third element of their strategy change in the late 1970s, some growers sought to circumvent union demands through economic restructuring. One approach was to disrupt the employment relationship with a unionized or unionizing workforce through geographical relocation, a real or apparent change of ownership (via bankruptcy, merger, or sale), or a change in the crop grown. This method was effective because, although the ALRA requires a "successor" firm that is essentially the same entity as the previous to continue to bargain with affected employees, identity is difficult to prove and workers may be gone before it is established. While the exact extent of such disruptive reorganization is unknown, its association with union pressure and demands is well documented.⁴⁴ Another approach was to alter the structure of employment so that employers and/or workers were harder to cover under the Act. During the height of UFW pressure on the central coast strawberry industry in the 1970s, for example, some growers replaced their direct-hire workers with sharecroppers who were, on the face of it, independent contractors and labor supervisors and thus not covered by the Act.⁴⁵ Similarly, after the expiration of the UFW's initial contracts with Delano table grape producers, after the 1978-79 UFW vegetable strike in the Salinas Valley, and after the expiration of their contract with a unionized citrus harvesting association in Ventura County in 1981, many growers began to replace direct-hire unionized workers with the nonunion crews of farm labor contractors.⁴⁶ This latter tactic contributed to a broader change in the structure of the farm labor market that has tilted the balance of class power toward growers.

Class Capacity and Labor Market Conditions

Labor market changes since the Act's passage have strengthened growers' class capacity and weakened that of workers. These changes began in the early 1980s, reinforcing the sharp drop in union elections and wins initiated by UFW strategy in 1977-78, and overlapping with the decline in favorable implementation induced by the political climate watershed after 1982.

First, California agriculture has shifted away from the direct-hire pattern prevalent when the law was passed, making it harder for unions to organize and secure

contracts, harder for the ALRA to protect them in the process, and thus harder for the UFW to stage a comeback. Between 1974 and 1997, the seasonal demand for hired farm labor in California grew by about 25 percent, and almost all of this increase was due to a *tripling* of reported employment by FLCs.⁴⁷ One of the most striking changes in the farm labor market is the sharp reduction in direct-hire seasonal workers, the substantial increase in direct-hire longer-term workers, and the movement of contract workers into the breach. Currently, contract jobs outnumber direct-hire seasonal jobs and growers rely primarily on FLCs to fill their demand for short-term and seasonal labor.⁴⁸ The use of contract labor grew unevenly: it rose slowly and steadily from 1978 through 1986, fed by employers' efforts to circumvent union demands and ALRA constraints; then it shot up and continued to expand after 1987, because of its advantages in mitigating the burdens of the Immigration Reform and Control Act of 1986 (IRCA).⁴⁹

Second, the burgeoning supply and undocumented status of farm laborers also undercut workers' class capacity, enhancing their vulnerability and increasing the difficulty of organizing them. The farm labor supply rose sharply in the early 1980s, as Mexico experienced its most severe economic downturn since the Depression, and it has sustained at high levels despite growers' frequent claims to the contrary. The undocumented share of the workforce shot up after the end of the *bracero* program, fell somewhat with the legalization programs of the IRCA, but has restabilized at the present at about 55 percent.⁵⁰ This has been especially damaging to the UFW because of its long-standing ambivalence toward, and periodic opposition to, undocumented workers. The increased fortification of the U.S.-Mexican border since 1996, which has intensified since the events of 9/11, has increased the cost and difficulty of crossing, again augmenting workers' vulnerability.

State Capacity and Political Leadership

The institutional structures of the state and the ideologies and support bases of political parties and actors combined with changes in social class capacities to shape policy outcomes. The state's capacity to implement the law declined sharply after 1982 because the law made the class tilt of enforcement dependent on the orientations of elected officials. The replacement of liberal, prolabor Democrat Jerry Brown by conservative, proagribusiness Republican George Deukmejian, and Deukmejian's succession by moderate Republican Pete Wilson, tended overall to favor growers. While this shift cannot explain the sharp drop in election activity and union success between 1978 and 1982, it helps explain the decline in enforcement budget and personnel, the negative turn in the treatment of workers' election petitions and ULP charges after 1982-83, the decline in election petitions and ULP charges submitted, and a range of legislative and administrative decisions regarding the procedures and vigor of enforcement.

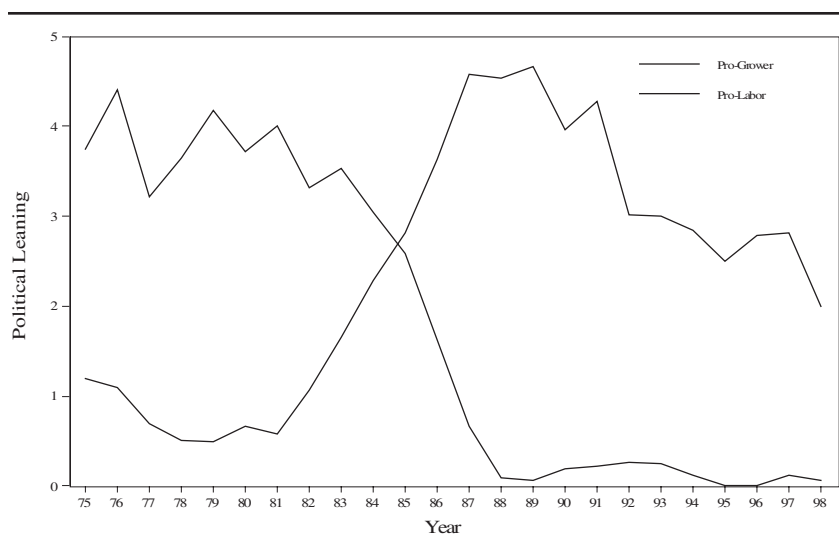


Figure 3. Political orientation of boards and general counsels, September 1, 1975 to June 30, 1999.

Indicators of such impacts include the sharp drop in ULP charges included in complaints in 1982-83 and the sharp rise in the proportion of ULP charges dismissed after 1983-84,⁵¹ the significant drop in the number of ULP charges filed in 1983-84 and even sharper drop in 1986-87 (the first full year of a Deukmejian-appointed majority on the board), and the sharp drop in the number of election petitions filed in that same year and their continued decline thereafter. Dividing the years of agency operation roughly into the administrations of the three governors overseeing it⁵² reveals a tremendous and progressive decline in the annual average number of election petitions and ULP charges filed during the administrations of the three governors (see Figure 1). Unions fared best under Brown, worst under Deukmejian, and in between under Wilson, as indicated by union success rates, “no union”-won elections, ULP charges dismissed, and annual average percentages of decertification elections (with a high of 79 percent in 1986-87, the first full fiscal year of solely Deukmejian appointees). Some measures of support for workers’ concerns declined progressively, with the sharpest drop after Brown’s tenure, such as the annual average percentages of ULP charges forwarded to complaint and ULP complaints issued.

Figure 3 provides a visual representation of swings in the progrower and prolabor sympathies, involvements, and reception of agency administrators from fiscal years 1975-76 through 1998-99, as derived from a review of the ALRB members’ and general counsels’ prior occupations, political party involvements, bases of support at the time of appointment, sources of explicit opposition to appointment, and voiced sympathies.⁵³ Figure 3 shows the strongly prolabor proclivities of administrators under Brown, their strongly progrower leanings under Deukmejian, and their moderately progrower orientation under Wilson. It also

reveals the lag in agency leanings after the shift in political administration, due to board members' staggered terms.

Jerry Brown, the "Farm Workers' Friend:" 1975 through 1982. Jerry Brown, a liberal Democrat imbued with the values of the civil rights movement, was eager for the financial and electoral support that the UFW could muster, and unprecedentedly independent of California agribusiness. He enjoyed the UFW's public endorsement throughout his tenure, despite their disagreement on particular matters. Almost all of Brown's appointees had prior occupations and sympathies that were related to labor or farm labor. With a couple of exceptions, all were Democrats and voiced a firm commitment to protecting workers' rights.⁵⁴ As board member Jerome Waldie put it, "I make no bones about my belief that the law was enacted to protect farm workers in their effort to organize for collective bargaining."⁵⁵ As late as 1982 there was a consistent 4-1 majority on the board favoring the UFW.

As the Act's implementation gathered momentum, growers were shocked by the flood of successful union certification elections conducted under its auspices. They felt betrayed by the fact that the board, once created, operated in a relatively autonomous and labor-supportive manner. Increasingly, they viewed Brown as an agent of the UFW. In 1980, J. R. Norton III, the chair of the Western Growers' Association, charged that

Brown is unilaterally and absolutely totally dedicated to doing Chavez's will. He is without question the most venomous and vindictive politician toward agribusiness interests in all of the United States. At this time he is the most vicious enemy of agriculture in California.⁵⁶

The proworker leaning of the Brown agency also affected the way the Act was implemented and the fate of efforts to weaken it. In August 1975, the board adopted the controversial access rule and all efforts to eliminate it were defeated. The Brown-appointed general counsel supported workers' ULP charges at a higher-than-customary rate.⁵⁷ The board's prolabor sympathies were evident during the bitterly fought 1979 Imperial Valley lettuce strike, when it failed to seek contempt citations against the UFW for clear and repeated violations of the board's own injunction against mass picketing.⁵⁸ Finally, during Brown's administration growers sponsored dozens of bills to weaken the Act: they attempted to do away with the "make-whole" remedy, the union's right of access, and the NLRA "good standing" requisite for union membership. They also tried to ban all secondary boycotts and change the organizing unit from the overall ranch to specific job categories within it, so as to fragment the union's following. Most of these bills failed, and the governor vetoed those that passed.⁵⁹

George Deukmejian, the "Farmers' Friend:" 1983 through 1990. When George Deukmejian took office on January 1, 1983, the balance of power began to

shift. Deukmejian was the growers' candidate from the start, receiving \$1.5 million from agribusiness between 1982 and 1987, alone.⁶⁰ During his campaign he spoke forcefully against the grape boycott and proposed to bring a new "balance" to enforcement of the Act by representing growers' interests. One of his first acts after election was to cut 28 percent from the ALRB's FY 1983-84 budget, eliminating fifty staff positions. In July 1986 the legislature cut another 25 percent from the FY 1986-87 budget, necessitating the closing of the Oxnard regional office and the San Diego field office, and eliminating another thirty-three positions.⁶¹ Meanwhile, the Department of Food and Agriculture received a more than \$2 million augmentation to its budget for grower-requested programs.⁶²

With few exceptions, Deukmejian's ALRB appointees were overtly favorable to agribusiness and vigorously opposed by the UFW;⁶³ all but two were Republicans. In January 1983, Deukmejian selected former Republican state assemblyman David Stirling as the agency's general counsel, reappointing him in 1987. Stirling was overtly and militantly anti-UFW. Using taxpayers' money, he traversed the United States urging officials and the public to ignore the UFW's renewed grape boycott.⁶⁴ He attacked Chavez as "zealous, uncompromising, litigious, demanding, and frequently heavy handed" with a "credo of 'let's stick it to the farmers every chance we get.'"⁶⁵ Stirling launched his tenure by increasing the amount of technical information that workers had to submit to support a ULP charge—a procedure that reduced the number of worker charges filed and investigated.⁶⁶ From 1983 through 1985, enforcement was slowed, if not halted, by administrative conflicts between the general counsel and outstanding Brown appointees—culminating in the latter's request that Stirling be disciplined by the State Bar for his failure to enforce the Act.⁶⁷ Stirling used his prerogative as general counsel to centralize his control over the regional offices, reducing the scope of their authority and taking decisions into his own hands. The heads of the Salinas, El Centro, and Delano offices protested that he dismissed worthy ULP charges and settled others for inappropriately small amounts.⁶⁸ When Deukmejian appointees became a majority in early 1986, the board increased his authority over the settlement of complaints that had gone to a hearing, and over the compliance phase of adjudication, enabling him to reach settlements without board review or approval.

The result was a dismissal of (primarily worker-initiated) ULP charges at an extraordinarily high rate: an average of about 64 percent over his tenure, with highs of 91 percent in 1984-85 and 92 percent in 1988-89. Similarly, Stirling included an annual average of only 19 percent of ULP charges in a complaint—significantly below the approximately one-third customarily found meritorious by the NLRB. Figure 4 illustrates the substantial impact of the general counsel's initiative on ULP processing, showing that the gap between the number of ULP charges filed and the number dismissed (i.e., the proportion of charges filed that were deemed meritorious) was narrower during Stirling's tenure than at any other

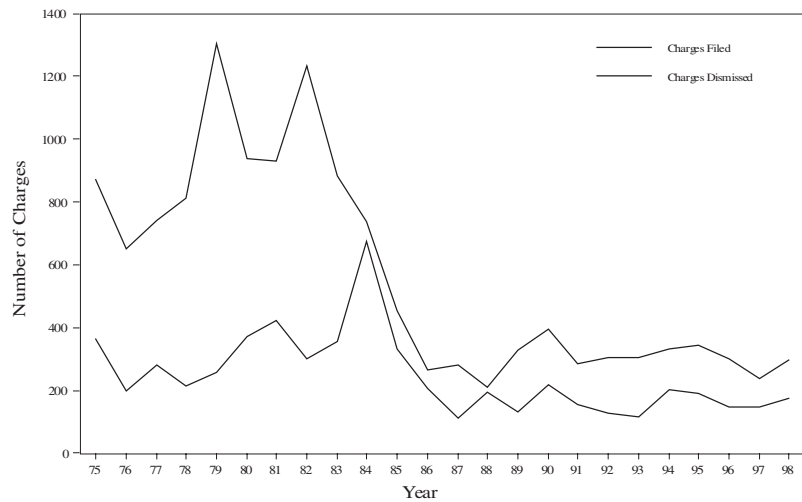


Figure 4. Number of unfair labor practice charges filed and dismissed, September 1, 1975 to June 30, 1999.

Source: Data obtained from Agricultural Labor Relations Board *Annual Reports* to the legislature 1975-99, except where noted.

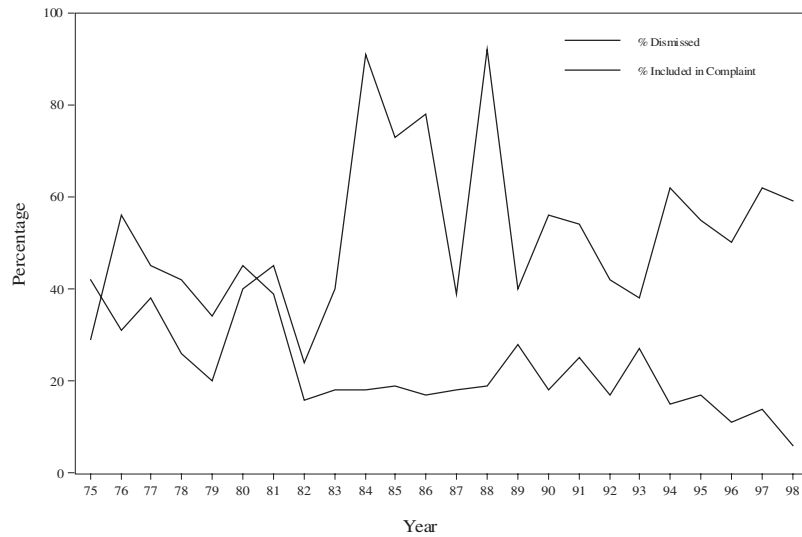


Figure 5. Percentage of unfair labor practice charges dismissed and included in complaint, September 1, 1975 to June 30, 1999.

Source: Data obtained from Agricultural Labor Relations Board *Annual Reports* to the legislature 1975-99, except where noted.

point in the agency’s history. As Figure 5 shows, the percentages of ULP charges found meritorious (included in a complaint) were lowest under Stirling and the percentages of complaints dismissed were highest.

The progrowth political climate affected efforts to change the Act as well. After Deukmejian appointees became a board majority in 1986, formal proposals to amend the Act virtually ceased, as growers could achieve most of their objectives through favorable agency decisions and court rulings.⁶⁹ By 1987, the ALRB was dubbed “the farmer’s friend” and the Farm Bureau proclaimed it “irresponsible” to close it.⁷⁰ The UFW, although supportive and participatory in the Act under Brown, moved to opposition and withdrawal under Deukmejian. UFW political director, Roberto de la Cruz, declared, “The law has ceased to exist. We think we’re not going to get any relief from the Deukmejian administration. The relief we’re going to get is through the marketplace and the boycott.”⁷¹

Pete Wilson, Not-So-Benign Neglect: 1991 through 1998. When Wilson was elected governor, agricultural labor relations were barely mentioned, although observers expected he would continue his predecessor’s practice of not putting “too much burden on the growers.”⁷² And, indeed, Wilson cut the agency’s budget even more and proposed as his first appointment former GOP senator Jim Nielsen, an avowed enemy of the agency. When the Democratic Senate Rules Committee refused to confirm Nielsen’s appointment because of his open bias, and Deukmejian-appointee Joseph Shell resigned, Wilson left the board with a partial membership of three for most of the rest of his administration. His subsequent appointees were all Republicans. Almost all had prior agribusiness connections and/or were seen as favoring growers.

Wilson’s agency confronted problems faced, and created, by its predecessors: gutted staff and financial resources, barely a dribble of business coming in, and a huge backlog of unprocessed claims and petitions. In March 1992, the Senate Industrial Relations Committee stated that it had “written off the agency for now” because it was ineffectual and biased toward growers. Journalists characterized the agency’s performance with article titles such as “Do Not Disturb: Agency Asleep.”⁷³ Yet not all indications merited such pessimism. Several of Wilson’s appointees had little vested stake in the issues and, though politically conservative, took measures to enforce the Act in a more evenhanded way. The agency’s *Annual Reports* detail its efforts to conduct its business more cheaply and efficiently by reducing the caseload backlog and decreasing the turnaround time for holding and certifying elections. The agency solicited the help of farm worker groups to help prepare declarations for ULP charges, and it reduced election turnaround time from the average of 240 days at the end of Stirling’s tenure to an average of 40 to 41 days. Moreover, despite the UFW’s skepticism about the agency’s likely support, the board expedited the election process during the UFW’s strawberry organizing campaign, completing the election in forty-eight hours.⁷⁴ The agency’s upholding of the make-whole remedy and access rule against efforts to abolish them suggest a more temperate orientation as well, as does the widening gap between ULP charges filed and charges dismissed, although the few charges filed makes generalization difficult (see Figure 4).⁷⁵

Yet despite such tempering actions, Wilson's agency generally favored growers and did little. It operated with a skeleton staff and processed few election petitions or ULP charges. The charges it did process were dismissed at a relatively high rate, declining proportions were forwarded to complaint, and few complaints were issued. In spring 1997, a *San Francisco Chronicle* journalist reflected sadly that "the agency that was created two decades ago in the white heat of the battle for control of the fields . . . is now almost nonexistent"; it "has become so small and so marginalized that the state's legislative analyst routinely proposes that it be abolished."⁷⁶

STATE STRUCTURES, SOCIAL ACTORS, AND
LABOR RELATIONS IN CALIFORNIA AGRICULTURE

This analysis demonstrates that social forces and state institutions shaped one another in the implementation of labor protections in California agriculture, and that policy outcomes emerged from their interaction. The passage, terms, and impacts of the ALRA were the result of an interplay between state and society: between the institutional capacity of the state to initiate and implement social reform policy and the capacities of key social classes to tilt outcomes to their advantage. Contrary to theories that privilege state-based forces as the source of social reform, in this case the institutions and actions of the state were themselves structured by class forces. Also contrary to theories that locate the explanation for policy outcomes at the societal level, here, state institutions shaped the forms and consequences of class conflict. And, finally, contrary to most analyses of the California farm worker movement, while the shifts in movement resources and opportunities occasioned by changes in political leadership and the structure of agricultural employment did affect social policy and social movement outcomes, the strategic choices and capacities of the farm labor movement were at certain points more influential.

An historical-institutional theoretical perspective effectively explicates these dynamics. In the struggle for the institutionalization of union representation in California agriculture, social forces and political institutions were engaged in an ongoing dialectical process of mutual transformation, each shaping and altering the impacts of the other. While the farm workers' movement and growers' organizations acted to alter state institutions, those institutions, once in place, set the conditions for class organizing and political contestation, and structured the conditions for political success. One cannot attribute the origins, terms, or initial efficacy of the ALRA solely to changing state capacity—to the advent of a state administration relatively free from dependency on agribusiness and ideologically disposed toward labor-protective legislation. Rather, there was an ongoing tension between the farm labor movement and the Brown board and administration. The timing, level of support for, design, and early prolabor implementation of the

Act were crucially influenced by changing class capacity—by the rise of the UFW and its use of a highly effective organizing strategy.

Once in place, and as historical institutionalism would expect, the structure of the Act shaped the forms and impacts of subsequent political struggle. The identities, structures, and roles that it offered made the accomplishment of social reform policy goals keenly responsive to class strategies, labor market conditions, and political climate. By structuring in a role for labor unions, the law made implementation dependent on union strategies that involved active organizing and the spearheading of workers' claims. By excluding farm labor contractors from employer status, the law made policy efficacy easily undermined by—and growers' class capacity potentially increased by—a shift away from direct-hire and toward the use of labor contractors. By making its administration dependent on elected and appointed officials, the law ensured that the state's capacity to implement policy goals would be greatest under liberal Democratic regimes and least under conservative Republican ones, and always responsive to class strategies that could push implementation away from hostile leadership or an interest-balancing bureaucratic middle. These political-institutional features fostered, and established certain consequences for, evolving patterns of class strategy, political climate, and economic organization.

The interrelation between political institutions and class movements in this case unfolded in three periods. Prior to the passage of the ALRA, political contests between growers and farm workers were underinstitutionalized, in that workers had few legal or political-institutional resources to constrain or assist them. The dominance of grower-allied Republican administrations in this period meant that the state had limited capacity to initiate legislative reform. The advent of a Democratic leadership, backed by a labor movement employing an effective pressure-exertion strategy, increased both state capacity and workers' class capacity, leading to the passage of a law that provided an institutional-regulatory structure for the conduct of farm labor relations. The law was most effective between 1975 and 1978, when union strategy augmented both state capacity and farm workers' class capacities, and when heightened state capacity further empowered the UFW. Growers' strategies and labor market conditions were not interruptive in this period and policy outcomes favored the subordinate class. Policy efficacy fell sharply after FY 1977-78, at the peak of the union's electoral and jurisdictional victories and despite its continued support by state political leadership—a decline that would be unanticipated by state-centered theories. The most effective explanation for this drop is that the UFW's 1977-78 strategy shift undercut both social class and state capacities to further social reform. Thus, despite institutional change in the form of the ALRA, the power and strategies of class contestants remained central to policy outcomes.

These observations signal the import of class strategy as a condition of social reform. That is, a state may have considerable capacity to administer without hav-

ing the capacity to institute social change. The production of social change requires not only an institutional apparatus, but a set of social relations that alter power. Here, the strategies of insurgent groups make a difference. This article contends that the UFW was more successful than any prior farm labor union because it developed a triangular, dual-constituency strategy that deployed its position in the local arena in order to generate support outside it, creating what Kathryn Sikkink⁷⁷ calls a “boomerang effect” that in turn magnified the union’s influence at the local level. Deploying a range of tactics, the UFW organized workers in California’s fields in order to mobilize support in cities around the country, so as to ultimately pressure local growers into signing contracts, and politicians into passing and implementing the law. This approach—similar to that used by the U.S. civil rights movement, Mahatma Ghandi, and some contemporary transnational movements⁷⁸—underscores the merit of E. E. Schattschneider’s claim that scope is crucial for the outcomes of social movement insurgencies: that established power holders do best to localize conflict, while repressed and low-status challengers do well to generalize it.⁷⁹

After 1978, several dimensions of changing state and class capacities converged to disempower the subordinate class and undercut policy implementation. First, having turned away from its triangular mobilization strategy and dismantled its legal and direct organizing capacity, the UFW withdrew the pressure necessary to preserve and capitalize on existing gains and consolidate new ones. Relying increasingly on its political capital to assert its interests in the state arena, it became both more dependent on the law and less able to get the law to do what it wanted. Second, growers, alarmed by the flood of union wins under the Act and spurred by increasing union demands, launched a widely targeted array of oppositional strategies—ranging from political lobbying, to economic restructuring, to punitive damages suits in the civil courts. These strategies began to bear fruit in the early 1980s, most importantly with the election of Republican governor George Deukmejian, which slashed the state’s and labor movement’s capacities to foster unionization. Without the support of labor-friendly agency administrators and politicians, the UFW’s organizing and election campaigns faced greater obstacles. Without the union’s two-constituency organizing pressure, the agribusiness-supported state became less willing and able to make decisions that would further labor’s interests. The shift in political climate altered the agency’s operations to labor’s detriment in a range of ways—from the declining protection of workers against ULPs, to the delayed and negative processing of election petitions and ULP charges, the gutting of agency staff and funding, and shifts in administrative practices that concentrated decision-making power in the pro-grower general counsel. These practices engendered a union withdrawal from agency involvement that further diminished policy efficacy. Labor market shifts—especially the rise in labor contracting—further consolidated the shift in the balance of class power, making it harder for the UFW to organize and gain

contracts, harder for the ALRA to protect them in the process, and thus harder for the UFW to reverse its decline.

This analysis suggests that class movements gain potency from a symbiosis with political institutions and that such mutual enhancement is heavily historically conditioned. The symbiosis between political institutions and the farm labor movement was strongest from 1975 through 1977-78, in the period of early institutionalization, when the UFW's approach meshed constructively with the institutional regulatory structure of labor-management relations. It was weaker in the preceding and subsequent periods, when particular institutional structures were somewhat less determinant. After 1978, changes in the organizational strategies of farm workers and the implementation of the ALRA led to the decline of the labor movement. Although one could argue that labor union and policy decline after 1978 were overdetermined, in that labor market conditions, class strategies, and eventually state leadership all converged to press in the same direction, this does not necessarily mean that a change in union strategy would have been fruitless. History offers ample evidence that social movements and liberal social change do not always require a favorable political environment. The UFW's remarkable mobilization of support while Ronald Reagan was California governor and Richard Nixon was U.S. president is a prime example of such an instance. Although the political climate made a redirection of union strategy more difficult, the UFW's history demonstrates the strategy-based relative autonomy of class capacity.⁸⁰

This interpretation points to striking parallels between the experience of the ALRA and that of labor and agricultural policies during the 1930s. It also speaks to the role of political institutions in producing social change more generally. It underscores the conclusion of some legal scholars that the key question is not whether political institutions produce significant social reform, but rather to what degree and under what conditions they can be used to this end.⁸¹ In the case of the ALRA, an increase in subordinate class capacity—as effected by the deployment of a class strategy that broadened the scope of political-economic conflict and in the context of labor market conditions that enhanced subordinate class leverage—augmented the capacity of state institutions to effect social change. Such an interplay between class capacities and state capacities was crucial to policy outcomes during the New Deal as well.⁸² In both the case of the NLRA and the ALRA, labor protections were extended and enforced when workers became organized, militant, economically disruptive, and supported by outside allies. In both cases, a decline in workers' insurgency led to enforcement patterns that were less supportive of labor. These findings provide fuel for the arguments of some social movement scholars that disruption of normal economic and political processes is a precondition for the poor to advance their interests, and that political concessions to poor peoples' movements require the active involvement of beneficiaries to fulfill their promise.⁸³

The processes surrounding the two acts also contrast in important ways, and these may help account for their differing success at institutionalizing unionization. That is, the strike wave that motivated passage of the NLRA and convinced employers that labor peace and productivity improvements were more important than trying to directly defeat organized labor lasted from 1934 into World War II, when the imperatives of wartime production stabilized existing agreements and created new ones. As a result, there was more than a decade of institutionalization that took almost thirty years to roll back. The strike wave in California agriculture, by contrast, largely ended with the 1979 vegetable strike. Thus the period of legally supported effective struggle was relatively brief and rollback could occur in less than ten years. The brevity of institutionalization also means, however, that the possibilities for class contests in California agriculture may be more open. Research shows that industrial labor unions were not only strengthened, but co-opted, by the NLRA's institutionalization of labor relations, because it focused them on winning concessions through the bureaucratic structures of the law, thus controlling and disciplining them, and diverting attention from organizing.⁸⁴ Farm labor relations in California, by contrast, have never reached this level of institutionalization, so that while unions have not fully engaged the potential of the ALRA, they have also escaped the confining experience of bureaucratic incorporation. Because the relations between farm employers and labor unions remain at the threshold of institutionalization, a range of organizational strategies—from institutional pressure exertion and participation, to insurgency and disruption—are possible.

Finally, this study highlights the ongoing interplay between the law and class struggle, one in which each transforms and spurs changes in the other. Laws such as the ALRA help establish the resources available to, and constraints upon, social actors with particular relations to the means of production. In defining their covered parties, laws endow class actors with rights, claims, and protections, as well as limits on their ranges of action. Because laws also exclude certain parties from constraint, they can motivate employers to reconfigure production arrangements so as to free themselves from legal strictures. As legal struggles across the country attest, such changes in employers' strategies themselves engender—even invite—counterstrategies by labor, so as to draw the new participants in production back under the protective mantle of the law.⁸⁵ Although it has yet to be pursued vigorously by labor, the ALRA's exclusion of farm labor contractors from the definition of "employer" is a likely target for modification of the Act. And based on the dynamics anticipated by historical institutionalism, we would expect that, should the employer status of farm labor contractors be redefined, their prevalence and the structure of the farm labor market would shift once again as well.

NOTES

1. Kenneth Finegold and Theda Skocpol, *State and Party in America's New Deal* (Madison: University of Wisconsin Press, 1995); Michael Goldfield, "Worker Insurgency, Radical Organization, and New Deal Labor Legislation," *American Political Science Review* 83, no. 4 (December 1989): 1257-82; Nicos Poulantzas, *State, Power, Socialism* (London: NLB, 1978); and Gerald N. Rosenberg, *The Hollow Hope: Can Courts Bring about Social Change?* (Chicago: University of Chicago Press, 1991).

2. Sven Steinmo, Kathleen Thelen, and Frank Longstreth, *Structuring Politics: Historical Institutionalism in Comparative Analysis* (Cambridge: Cambridge University Press, 1992); and David Woodruff, "Rules for Followers: Institutional Theory and the New Politics of Economic Backwardness in Russia," *Politics & Society* 28, no. 4 (2000): 437-82.

3. For example, Craig Jenkins, *The Politics of Insurgency: The Farmworker Movement in the 1960s* (New York: Columbia University Press, 1985); Linda Majka and Theo Majka, *Farmworkers, Agribusiness and the State* (Philadelphia: Temple University Press, 1982); Doug McAdam, John McCarthy, and Meyer Zald, eds., *Comparative Perspectives on Social Movements* (New York: Cambridge University Press, 1996); and Charles Tilly, *From Mobilization to Revolution* (Reading, PA: Addison-Wesley, 1978). Marshall Ganz, "Resources and Resourcefulness: Strategic Capacity in the Unionization of California Agriculture, 1959-1966," *American Journal of Sociology* 105, no. 4 (January 2000): 1003-62, details the importance of strategic capacity for the United Farm Workers' (UFW's) success in its early period of mobilization.

4. Jenkins, *Politics of Insurgency*; Majka and Majka, *Farmworkers, Agribusiness and the State*.

5. S. J. Austin Morris, "Agricultural Labor and National Labor Legislation," *California Law Review* 54, no. 5 (1966): 1939-89.

6. California State Senate Fact Finding Committee on Labor and Welfare, *California's Farm Labor Problems* (Sacramento: State of California, 1961), pt. I, 202ff.

7. Ernesto Galarza, *Merchants of Labor* (Santa Barbara, CA: McNally and Loftin, 1964); and Miriam J. Wells, *Strawberry Fields: Politics, Class, and Work in California Agriculture* (Ithaca, NY: Cornell University Press, 1996).

8. Marshall Ganz, "Five Smooth Stones," (Ph.D. diss., Cambridge, MA, Harvard University, Department of Sociology, 2000).

9. *Wetherton v. Growers Farm Labor Association*, Ca. App. 2D 168 (1969).

10. Stephen H. Sosnick, *Hired Hands: Seasonal Farmworkers in the United States* (Santa Barbara, CA: McNally and Loftin, West, 1978).

11. Majka and Majka, *Farmworkers, Agribusiness and the State*, 208-16.

12. In 1969 alone, its economic impact may have been as high as \$20 million. Sosnick, *Hired Hands*, 322.

13. Jenkins, *Politics of Insurgency*, 162-74.

14. Majka and Majka, *Farmworkers, Agribusiness and the State*, 212-14.

15. Interviews with former UFW staff provided detail on this period unavailable in published sources.

16. John C. Bollens and G. Robert Williams, *Jerry Brown: In a Plain Brown Wrapper* (Pacific Palisades, CA: Palisades Publishers, 1978); and Ed Salzman, ed., "Has Brown's Ambition Kept the ALRB Bankrupt?" *California Journal* (June 1976): 182-83.

17. Salzman, "Has Brown's Ambition," 68.

18. This description of the Act benefits from the work of Martha West in Miriam J. Wells and Martha S. West, "Regulation of the Farm Labor Market: An Assessment of Farmworker Protections under California's Agricultural Labor Relations Act," Working Paper #5, Working Group on Farm Labor and Rural Poverty (Davis, CA: California Institute for Rural Studies, 1989). Joseph A. Wender, Senior Board Counsel, Agricultural Labor Relations Act (ALRA), and John E. Higgins, National Labor Relations Board (NLRB), provided important clarification of the legal issues involved.

19. Analyses of the courts' interpretation of the ALRA's make-whole remedy and of the ALRA's and National Labor Relations Act's (NLRA's) secondary boycott and good standing provisions are available from the author upon request.

20. Such access may be allowed by the NLRA, but only on a case-by-case basis where there is no reasonable alternative means of communication.

21. According to the California Labor Code, farm labor contractors (FLCs) may recruit, supervise, or hire workers on behalf of a farm employer; pay workers, keep payroll records, and pay payroll taxes; for a fee, furnish board, lodging, or transportation for such workers; and supervise, time, check, count, weigh, or otherwise direct or measure their work.

22. *Farm Labor Contractors in California* (Sacramento, CA: California Department of Employment Development, Labor Market Information Division, July 1992); Howard Rosenberg, "Contractor Crackdown," *California Farmer* January 3, 1993, 19-22.

23. Rosenberg, *Hollow Hope*, 2, 269.

24. Agricultural Labor Relations Board, *First Annual Report of the Agricultural Labor Relations Board for the Fiscal Years Ended June 30, 1976, and June 30, 1977* (Sacramento, CA: ALRB, January 24, 1978, 9-18).

25. Jeffrey M. Perloff, "Unions and Demographic Wage, Hours, and Earnings Differentials in the Agricultural Labor Market," Working Paper No. 387 (Berkeley: University of California, Agricultural Experiment Station, 1986).

26. Philip Martin, Suzanne Vaupel, and Daniel Egan, "Farmworker Unions: Status and Wage Impact," *California Agriculture* (July-August 1986):11-13; and Marc Lifsher, "UFW Numbers Are Overstated, Critics Say," *Wall Street Journal*, September 9, 2000, CA1, 4. In September 2000, the UFW claimed a membership of 24,000, up from a claimed 20,000 in 1994 when it launched a statewide organizing drive. However, research by Don Villarejo suggests that the number of members in 1994 was closer to 5,000. In 2000, non-union sources estimated UFW membership at from 7,000 to 8,000. Lifsher, "UFW Numbers Are Overstated."

27. Rick Rodriguez, "ALRB to Bear Duke's Stamp," *Sacramento Bee*, December 25, 1985, A1, A12.

28. Harry Bernstein, "Settlements with 2 Growers Mark Policy Shift by UFW," *Los Angeles Times* July 30, 1986, section 4, pp. 1, 3; and Jerome Cohen, "UFW Must Get Back to Organizing; Despite Opposition, Farm Labor Law Is Still a Potent Weapon," *Los Angeles Times*, January 15, 1986, Metro section, pt. 2, p. 5.

29. This section has benefited especially from Miriam Wells's interviews with farm workers in the Salinas-Watsonville area (1976-87), communications with current and former ALRB administrators and attorneys, and conversations with Jerry Cohen, Marshall Ganz, Theo and Linda Majka, and Frank Bardacke. Paul Henggeler, who is reconstructing this period of the UFW's history through study of the union's archives and meeting transcripts, read and provided valuable clarifications on this section. The argument and theoretical framing are those of lead author.

30. Agricultural Labor Relations Board, *First Annual Report*, 14-15.

31. Marshall Ganz, e-mail communication, November 21, 2000.

32. Jerry Cohen, telephone interview, November 17, 2000.

33. Organizing subsided, of course, during the months the agency was closed.

34. See note 30, also: Frank Bardacke, "Decline and Fall of the UFW: Cesar's Ghost," *The Nation*, July 26/August 2, 1993, 130-35; Frank Bardacke, "Exchange: The Chavez Legacy," *The Nation*, November 22, 1993, 606, 635-36; Wayne King, "Chavez Faces Internal and External Struggles," *New York Times*, December 6, 1981; Linda C. Majka and Theo J. Majka, "The Decline of the Farm Labor Movement in California: Organizational Crises and Political Change," *Critical Sociology* 19, no. 3 (1992): 3-36; and Michael Yates, "A Union Is Not a Movement," *The Nation*, November 19, 1977.

35. Richard Ofshe, "The Social Development of the Synanon Cult: The Managerial Strategy of Organizational Transformation," *Sociological Analysis* 41, no. 2 (1980): 109-27.

36. At the caucus preceding the formal vote, four of the nine board members voiced their strong opposition to the proposal, including Eliseo Medina, Jessica Govea, Mack Lyons, and Marshall Ganz. Once it was clear that Chavez's proposal was going to get a majority, Lyons and Medina switched their votes, so that the final formal vote was seven to two. E-mail communications with Marshall Ganz (June 11-June 13, 2003) and Paul Henggeler (June 27, 2003). Henggeler holds that the UFW's dual identity as both social movement and labor union, and Chavez's charismatic centrality to both, made it impossible for the board to effectively counter his positions, because when it did—as on several occasions—he would threaten to quit.

37. King, "Chavez Faces Internal and External Struggles."

38. Harry Bernstein, "Workers Can't Expect a Fair Shake from the Farm Board," *Los Angeles Times*, January 24, 1987, Metro section, pt. 1, pp. 1, 13; Cohen, "UFW Must Get Back to Organizing"; Rick Del Vecchio, "Chavez Returns to Battle for His Union's Life," *San Francisco Chronicle*, June 8, 1987, 6; John Hubner, "The God of the Movement," *San Jose Mercury News*, August 19, 1984, West edition, 10, 33; "What Happened to Chavez' Union?" *Newsweek*, December 14, 1981, 22, 24; and Constanza Montana and John Emshwiller, "Staying Alive: Its Ranks Eroding, Farm Worker Union Struggles to Survive," *Wall Street Journal*, September 9, 1986, 25.

39. Cohen, "UFW Must Get Back to Organizing," 5.

40. Eric Brazil, "Why the ALRB Is under Constant Attack," *California Journal* (June 1979): 194-96. This section has benefited particularly from press accounts of the conflicts discussed and from interviews with Mike Johnston, business agent, Teamsters Local 890, and Duane B. Beeson, Esq., Beeson, Tayer, and Bodine, San Francisco.

41. "UFW Violence Charged in Lettuce Grower Suit," *Daily Democrat*, April 10, 1979, 17.

42. The treble and punitive damages claimed in these cases were based on the substantial violent conduct of strikers, which can justify such damages under California law (secs. 51.7, 52, California Civil Code), especially if the union fails to take reasonable steps to prevent striker misconduct (sec. 3294, California Civil Code).

43. "Bruce Church Awarded \$5.4 Million in 1984 Lawsuit against UFW Boycott," *The Packer*, April 9, 1988, 3A; *Bruce Church, Inc., v. UFW (Church v. UFW)*, Memorandum Decision, Appeal from the Superior Court of Yuma County, Division 1, Court of Appeals, State of Arizona, Division 1 (February 13, 1996).

44. Auditor General, *The Agricultural Labor Relations Board's Administration of the Agricultural Labor Relations Act*, Report to the Joint Legislative Audit Committee, California Legislature (Sacramento, CA: Auditor General, 1985); Philip Martin, *Promises to Keep: Collective Bargaining in California Agriculture* (Ames: Iowa State University Press, 1996); and Ann Marie Vandeman, "Labor Contracting in California Agriculture"

(Ph.D. diss., University of California, Berkeley, Department of Agricultural Economics, 1988).

45. Wells, *Strawberry Fields*, 251-77.

46. Fred Krissman, "California Agribusiness and Mexican Farmworkers (1942-1992): A Binational Agricultural System of Production/Reproduction" (Ph.D. diss., University of California, Santa Barbara, 1996); Vandeman, *Labor Contracting*; and Jack Lloyd, John Mamer, and Philip Martin, "The Ventura Citrus Labor Market," (unpublished manuscript, University of California, Davis, Department of Agricultural Economics, May 1987).

47. These figures are based on the state Employment Development Department's unemployment insurance files, which report monthly employment in major employer categories. See Don Villarejo, "California Farm Employers: 25 Years Later," (paper presented at "The ALRA at 25," Davis, CA, October 4, 2000).

48. Villarejo, "California Farm Employers," 11-12.

49. *Ibid.*, 13ff.; *Farm Labor Contractors*, 37; Sabrina J. Ise and others "Grower Beliefs Determine Hiring Practices," *California Agriculture* (March-April 1996):17-21. Because FLCs are the "employers" for purposes of the Immigration Reform and Control Act of 1986 (IRCA), their engagement enables growers to offload the burdens of immigration record keeping and verification, as well as the liability for hiring unauthorized workers.

50. Because of their fugitive status, undocumented workers are always undercounted and their numbers can only be estimated. In 2002, agricultural economist Philip Martin estimated that from about 50 percent to 67 percent of the U.S. farm labor force was undocumented. See Robert L. Bach and Howard Brill, *Impact of the IRCA on the U.S. Labor Market and Economy* (Binghamton: SUNY, Institute for Multiculturalism and International Labor, 1991); Philip Martin, "Farm Labor Policies: Status Quo, Guest Workers, Legalization" (Davis, California, March 15, 2002); Kala Mehta and others, *Findings from the National Agricultural Workers Survey (NAWS) 1997-1998: A Demographic and Employment Profile of United States Farmworkers* (Washington, DC: U.S. Department of Labor, March 2000); and Jeffrey Passel, "Immigration Today: Emerging Patterns in the U.S. and California" (Oxnard, CA, April 4, 2002).

51. The appointed general counsel has final authority to dismiss unfair labor practice (ULP) charges or include them in a complaint; Deukmejian's general counsel took office in 1983, and 1983-84 was the first full fiscal year of his administration.

52. Governors' terms begin on January 1; ALRB fiscal years end on June 30. Because of the carryover in reputation and appointees' tenures, we include the six months of overlap in the prior governor's term.

53. Data for these ratings were derived from newspapers, magazines, and books describing the period; interviews with agency and union staff; and biographies, letters of support and opposition, and the texts of appointment hearings for board members and general counsels generously provided by the State Senate Rules Committee. Each individual was assigned a progrower and prolabor score on the following dimensions: (1) prior (business or agribusiness-related/labor or farm labor-related) occupation, (2) work for or membership in (Republican/Democratic) Party, (3) appointment explicitly supported by (grower/labor) interests, (4) appointment explicitly opposed by (labor/grower) interests, (5) appointment substantially supported by (labor/grower) interests, (6) expressed open sympathy for (grower/labor) perspective before appointment, (7) expressed open critique of (labor/ grower) perspective before appointment. A score of +1 or 0 was recorded for all questions except (5), which received a -1 when (3) was +1, to temper the intensity of leaning in cases where individuals received more balanced support. To get the progrower and prolabor ratings for a single year, the scores of each individual were totaled for each axis

and multiplied by the fraction of a year the individual served. Then individual scores were totaled and divided by the sum of person-years served by all individuals in that year.

54. Harry Bernstein, "5 Named to New Farm Labor Unit," *Los Angeles Times*, July 27, 1975, Metro section, pt. 1, p. 3. Detailed information as to the names, terms, and prior occupations and involvements of Board appointees under Brown, Deukmejian, and Wilson is available from the author on request.

55. Rodriguez, "ALRB to Bear Duke's Stamp," A12.

56. John Norton III, "Norton: Labor-Law 'Balance' Poses Uphill, Essential Goal," *The Packer*, October 4, 1980, 1AA, 3AA.

57. That is, from 1975-76 through 1981-82 an annual average of 42 percent of ULP charges filed (the vast majority of which are filed by unions against employers) were included in a complaint, with a high of 56 percent in 1976-77. This proportion is significantly higher than the average of less than 33 percent of charges filed that are customarily forwarded to complaint by the NLRB, a proportion that many regard as a baseline for neutral agency operation. Telephone communications, Solicitor John E. Higgins, NLRB, January 24-29, 2001.

58. Brazil, "Why the ALRB Is under Constant Attack."

59. Majka and Majka, *Farmworkers, Agribusiness and the State*, 272-73; Scholz, "Duke's ALRB," 376.

60. Herbert A. Sample, "Controversy Is Farm Board's Steadiest Crop," *Sacramento Bee*, August 16, 1987, A3.

61. Diane Wagner, "Some Staff Attorneys Say the Farm Labor Board Now Favors Growers," *California Lawyer*, March, 23-26, 1987, 63.

62. Scholz, "Duke's ALRB," 376.

63. Henry Weinstein, "Labor Faction Loses Majority on Farm Board," *Los Angeles Times*, January 3, 1986, sec. 1, pp. 1, 26.

64. Montana and Emshwiller, "Staying Alive."

65. David Stirling, "Farm Labor Board Is Now Fair: No Thanks to Chavez," *Los Angeles Times*, September 24, 1985, Metro section, pt. 2, p. 5.

66. Auditor General, *Agricultural Labor Relations Board's Administration*, 41; Scholz, "Duke's ALRB"; Wagner, "Some Staff Attorneys Say."

67. Auditor General, *Agricultural Labor Relations Board's Administration*.

68. Wagner, "Some Staff Attorneys Say," 24-25.

69. Joan Smith, "State High Court Hands Farmworkers Labor Law Defeat," *San Francisco Examiner*, August 4, 1987, 25.

70. Eric Brazil, "Growers Back Faltering ALRB in Rare Move," *San Francisco Examiner-Chronicle*, February 8, 1987, B4; Scholz, "Duke's ALRB," 375-76.

71. Rodriguez, "ALRB to Bear Duke's Stamp," B8; Sample, "Controversy," A3.

72. Elizabeth Schilling, "The ALRB in the '90s—Do Not Disturb . . . Agency Asleep," *California Journal*, March 1, 1992, 3.

73. *Ibid.*

74. Senate Rules Committee, State of California Hearing (Sacramento: California Senate, May 13, 1996).

75. Manuel Alcantar, "Keep the Access," *Fresno Bee*, December 11, 1997, B6; Mike Lewis, "Access Rule for Farm Labor Organizers Left Alone; Agriculture Board Decides Not to Rewrite 22-Year-Old Regulation," *Fresno Bee*, May 14, 1998, Telegraph section, A3; Paul Richardson, "Chapter Two: Labor on the Farm; Agriculture: If the Promise of the ALRB Is to Be Realized, All Parties Must Be Given a Forum," *Los Angeles Times*, April 7, 1997, Metro section, 5; and Senate Rules Committee, 20-21.

76. Robert B. Gunnison, "A New Era Flowers in California's Fields," *San Francisco Chronicle*, Sacramento Bureau, April 20, 1997, sec. 3, p. 1.

77. Kathryn Sikkink, "Transnational Advocacy Networks," in *Activists beyond Borders*, ed. Margaret E. Keck and Kathryn Sikkink (Ithaca, NY: Cornell University Press, 1998).

78. Ibid.

79. E. E. Schattschneider, *The Semisovereign People: A Realist's View of Democracy in America* (New York: Holt, Rinehart, & Winston, 1960), 9-19.

80. In September 2002, California Governor Gray Davis signed the first major amendments to the ALRA in twenty-seven years, providing that if a farm employer and certified union cannot negotiate a first collective bargaining agreement within six months, a mediator can impose an agreement. The foregoing analysis suggests that, given current labor market conditions and union strategy, this change is unlikely to significantly increase union representation in California agriculture. See Philip Martin and Bert Mason, "Mandatory Mediation Changes Rules for Negotiating Farm Labor Contracts," *California Agriculture* 57, no. 1 (January-March 2003): 13-17.

81. Rosenberg, "Contractor Crackdown."

82. Jess Gilbert and Carolyn Howe, "Beyond 'State vs. Society': Theories of the State and New Deal Agricultural Policies," *American Sociological Review* 56 (April 1991): 204-20.

83. Goldfield, "Worker Insurgency"; Jenkins, *The Politics of Insurgency*; Frances Fox Piven and Richard Cloward, *Poor Peoples' Movements: Why They Succeed, How They Fail* (New York: Pantheon, 1977); and Majka and Majka, *Farmworkers, Agribusiness and the State*.

84. David Montgomery, *Workers' Control in America: Studies in the History of Work, Technology, and Labor Struggles* (New York: Cambridge University Press, 1979).

85. Bruce Goldstein and others, "Enforcing Fair Labor Standards in the Modern American Sweatshop: Rediscovering the Statutory Definition of Employment," *UCLA Law Review* 46 (April 1999): 983-1164; Wells, *Strawberry Fields*.

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