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CURRENT DEVELOPMENTS IN FARM LABOR LAW

By CHARLES A. RUMMEL*

*Pickers Get Back Pay--Grapes Gone***

THE news item under this headline states that a contract providing for \$90,000 in back wages was signed by the Di Giorgio Fruit Company and the United Farm Workers Organizing Committee, AFL-CIO on April 2, 1967, following protracted negotiations between the employer and its agricultural workers. Most of the 1,300 jobs which produced the back wages are now gone. The table grapes formerly packed for the "Fruit of the Month Club" will now go to the grape crushers to be made into wine for a glutted market. The extra cost to produce fresh grapes for the table is no longer justified.

The bountiful 4,400-acre Sierra Vista Ranch which produced the jobs and the back pay for workers now without work, has also been subjected to another type of "agrarian reform." The federal acreage limitation law¹ which is applicable with minor exceptions to all farms west of the 97th meridian is forcing the owner either to sell the ranch down to 160 acres or be deprived of all supplemental irrigation water.²

This is the setting in which current farm-labor developments are taking place in California. Only a handful of agreements have been signed by farmers and farm laborers.³ Farmers are questioning their

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** Bakersfield Californian, July 1, 1967, at 11, cols. 2-3.

¹ Irrigation Act of 1902 (Reclamation Act), 43 U.S.C. §§ 431, 434 (1964); *Ivanhoe Irrig. Dist. v. McCracken*, 357 U.S. 275 (1958).

² After allowing the economy of the Imperial Valley of California to develop for 31 years from a desert to an agricultural production of \$205 million (AG. CROP REP. OF IMPERIAL COUNTY FOR 1964), and after water rights were paid for by the farmers, the Justice Department on January 11, 1967, filed suit to break up the farms of the Imperial Valley. *United States v. Imperial Irrig. Dist.*, Civil No. 67-7-K (S.D. Cal., filed Jan. 11, 1967).

³ Contracts which have been signed are: (1) Bud Antle, Inc. of Salinas and General Teamsters, Warehousemen and Helpers Union Local 890, December 27, 1961 and July 15, 1966; (2) Schenley Industries, Inc. and United Farm Workers Organizing Committee AFL-CIO, effective June 21, 1966; (3) A. Perelli-Minetti & Sons and Western Conference of Teamster and Teamsters Farm Workers Union, Western Conference of Teamsters, September 18, 1966; (4) Di Giorgio Fruit Corp. and United Farm Workers Organizing Committee AFL-CIO, April 3, 1967; (5) Almaden Vineyards, Inc. and United Farm Workers of America AFL-CIO, July 31, 1967; and (6) Mont LaSalle Vineyards (Christian Bros. Napa, St. Helena and vicinity, and Rudley, Alta Vista and Vicinity) and United Farm Workers Organizing Committee AFL-CIO, September 8, 1967.

ability to cope with the forces of nature, archaic water laws, and labor regulations geared to urban industrial operations.⁴

Fundamental differences exist between the factories in the cities and the so-called "factories in the fields."⁵ This is particularly so in California, which produces a large share of the nation's perishable food supply.⁶ This production comes from 4,218 farms producing vegetables; 40,053 farms producing fruits, grapes, and nuts; and 647 farms producing strawberries.⁷ It is questionable if any of these can be classified as "factories." Although many of these farms do require extra labor at the peak of the harvest for short periods of time, the need for large amounts of additional harvest help is decreasing with the increased mechanization of harvest operations.

The Wagner Act Exclusion

It is noteworthy that when the Wagner Act was drafted it expressly excluded agricultural workers from its coverage.⁸ The National Labor Relations Act of 1935 (Wagner Act) as amended by the Labor Management Relations Act of 1947⁹ (Taft-Hartley Act) exempts five groups of employees, as follows:

any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a super-

⁴ The economic plight of the individual farmer generally and his ability to cope with a powerful labor organization which can draw strength from union treasuries and engage in internecine conflicts was the subject of two articles to which the reader's attention is directed: Note, *Agricultural Labor Relations—The Other Farm Problem*, 14 STAN. L. REV. 120 (1961). The author points out that although from some standpoints unions might solve some problems, farm unionization could imperil the nation's food supply. In an answering article entitled *Comment: Agricultural Labor Relations—The Other Farm Problem: A Rebuttal*, (15 STAN. L. REV. 616 (1963)) the authors, Ivan G. McDaniel and Leon L. Gordon, stress the point that the farmer and his laborer are in the same economic boat and that to force unionization on the farmer will only aggravate the problem and add to the inequities faced by both.

⁵ C. McWILLIAMS, *FACTORIES IN THE FIELD* (1939).

⁶ *Hearings on H.R. Res. 51 Before the Select House Comm. on Small Business*, 86th Cong., 1st Sess., Vol. 1, pt. 2, at 673 (1959) (testimony of Sydney Hoos).

⁷ U.S. DEP'T OF COMMERCE, *PRELIMINARY 1964 AG. CENSUS REP., CAL.* (1966).

⁸ National Labor Relations Act (Wagner Act) § 2, ch. 372, § 2, 49 Stat. 450 (1935), as amended, 29 U.S.C. § 152(3) (1964).

In *Origin and Early Years of the National Labor Relations Act*, 18 HASTINGS L.J. 571, 583 (1967), J. Warren Madden says that the exclusion did not express any intention on the part of Congress that farm workers should not be allowed to have unions. It meant, he says, only that Congress was not willing to extend national protection to an effort by farm workers to organize and join unions.

⁹ 29 U.S.C. §§ 141-68 (1964).

visor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or any other person who is not an employer as herein defined.¹⁰

When the Labor Management Relations Act of 1947¹¹ was being considered by the Committee of Conference, the Senate proposed to change the words of the original Wagner Act from "agricultural workers" to "individuals employed in agriculture."¹² However, because for 2 years the "agricultural" exemption had been dealt with in the Appropriation Act for the National Labor Relations Board, the Conference determined not to disturb the existing language. The Labor-Management Reporting and Disclosure Act of 1959¹³ also failed to change the exemption provisions of the original Wagner Act.

The limitations imposed by the several Appropriation Acts starting with 1947¹⁴ provide in essence that

no part of this appropriation shall be available to organize or assist in organizing agricultural laborers or used in connection with investigations, hearings, directives, or orders concerning bargaining units composed of agricultural laborers as referred to in Section 2(3) of the Act of July 5, 1935 (29 U.S.C. 152), and as amended by the Labor-Management Relations Act, 1947, as amended, and as defined in Section 3(f) of the Act of June 25, 1938 (29 U.S.C. 203), and including in said definition employees engaged in the maintenance and operation of ditches, canals, reservoirs, and waterways when maintained or operated on a mutual, nonprofit basis and at least 95 per centum of the water stored or supplied thereby is used for farming purposes.¹⁵

The Fair Labor Standards Act definition which the above language incorporated into the National Labor Relations Act is as follows:

"Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 1141j(g) of Title 12), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.¹⁶

Because the funds which the several appropriation acts supplied could be used only for activities which met the criteria established by the Fair Labor Standards Act, the latter has provided the extent of coverage and exclusion under all of the National Labor Relations acts.

¹⁰ 29 U.S.C. § 152(3) (1964).

¹¹ 29 U.S.C. §§ 141-68 (1964).

¹² H.R. REP. No. 510, 80th Cong., 1st Sess. (1947).

¹³ 29 U.S.C. § 402 (1964).

¹⁴ National Labor Relations Board Appropriation Act, 1947, ch. 672, 60 Stat. 698, *through* Dep'ts of Labor, and Health, Education and Welfare Appropriation Act 1967, Pub. L. No. 89-787, 80 Stat. 1378.

¹⁵ The quoted language appears in Pub. L. No. 89-787, § 3 (Nov. 7, 1966).

¹⁶ 29 U.S.C. § 203(f) (1964).

Decisional Interpretation

The decisional law defining the agricultural exemption has been influenced both by the changing statutory and interpretive clarifications of the Fair Labor Standards Act and by agricultural and labor conditions. For the purposes of this article the cases will be divided into those decided prior to the adoption of the 1947 FLSA definition of "agriculture," and those decided subsequent to that event.

The criteria used prior to 1947 were vague. For example, employees in a farmer cooperative's orange and lemon packing shed, where there was a relatively large concentration of workers and the work was done under mechanized and industrial conditions, were held not exempt.¹⁷ Even though the work was essentially agricultural, if it was an integral part of an industrial enterprise, the workers were not agricultural laborers.¹⁸ The essential-nature-of-the-work test provided exemption where the employees planted, grafted, and cultivated trees in open fields under natural conditions.¹⁹ However, where artificial conditions were needed, as in the growing of mushroom rooms or flowers, there was reason to deny the exemption.²⁰

The course of the decisions after 1947 was more distinct. The Fair Labor Standards definition²¹ has been a guiding force even to the extent of causing previous decisions to be reversed.²²

Considerable reliance has been placed on the "incident of farming operations" language in that definition.²³ The exempted classifications of employees engaged in activities on the farm or activities closely connected with a farming operation appear to be: dairy company employees tending the herd, raising poultry, and handling milk;²⁴ egg processors, their maintenance workers, and truck drivers;²⁵ nursery employees who spent 68 to 77 percent of their time in

¹⁷ *North Whittier Heights Citrus Ass'n v. NLRB*, 109 F.2d 76 (9th Cir.), cert. denied, 310 U.S. 632 (1940).

¹⁸ *NLRB v. Tovrea Packing Co.*, 111 F.2d 626 (9th Cir.), cert. denied, 311 U.S. 724 (1940).

¹⁹ *Stark Bros. Nurseries & Orchards Co.*, 40 N.L.R.B. 1234 (1942).

²⁰ *Great W. Mushroom Co.*, 27 N.L.R.B. 352 (1940); *Park Floral Co.*, 19 N.L.R.B. 403 (1940).

²¹ Text at note 16 *supra*.

²² *Great W. Mushroom Co.*, 27 N.L.R.B. 352 (1940) was overruled by *Michigan Mushroom Co.*, 90 N.L.R.B. 774 (1950); and *Park Floral Co.*, 19 N.L.R.B. 403 (1940) was overruled by *William H. Elliott & Sons*, 78 N.L.R.B. 1078 (1948).

²³ A test for "incidental operations" was set down in *Mitchell v. Hunt*, 263 F.2d 913 (5th Cir. 1959). See also *Farmers Reservoir v. McComb*, 337 U.S. 755 (1949) which established a distinction between "primary" and "secondary" activities.

²⁴ *Pine State Creamery Co.*, 130 N.L.R.B. 892 (1961).

²⁵ *McAnally Ent., Inc.*, 152 N.L.R.B. 527 (1965); cf. *Fairmont Foods Co.*, 81 N.L.R.B. 1092 (1949) (only hatchery employees working with eggs).

the open fields and the balance in covered work;²⁶ greenhouse employees;²⁷ mushroom growing employees;²⁸ and tobacco warehouse employees.²⁹

A number of borderline cases which deserve special mention developed in the consideration of packing shed workers.

Celery packing shed employees were held exempt because (1) the shed operations were an incident to farming operations, (2) the employees participated in the harvest operations, and (3) there was only a small amount of third party packing.³⁰ Vegetable packing employees of a producer growing his own vegetables were exempt,³¹ as were packing shed employees working for a family partnership packing only products grown on land of individual employees.³²

In *Arena-Norton Co.*,³³ contradictory conclusions arose out of an attempt by the National Labor Relations Board to reconcile the status of packing shed employees who were also farm employees, and that of employees engaged only in packing shed operations. In the *Bodine Produce Co.*³⁴ case the Board attempted to set aside this dichotomy by overruling or distinguishing the previous landmark case of *Imperial Garden Growers*,³⁵ which had held that packing shed employees of a company which packed and shipped melons and lettuce grown by itself were not exempt. Bodine's packing shed was located 5 to 10 miles from the place of harvest which was a 2,700-acre ranch, but the Board held that the employees were agricultural laborers.³⁶ The Board placed considerable reliance on the Department of Labor's interpretation of the FLSA definition,³⁷ which it said had been applied in *Imperial Garden Growers* as it was "then understood."³⁸

While the Board and the courts were trying to determine the exact status of packing shed workers, and had decided that such workers were not exempt, *Di Giorgio Fruit Corp. v. NLRB*³⁹ arose. The court understood that a determination of the issue was essential

²⁶ NLRB v. Kelly Bros. Nurseries, Inc., 341 F.2d 433 (2d Cir. 1965).

²⁷ William H. Elliot & Sons Co., 78 N.L.R.B. 1078 (1948).

²⁸ Michigan Mushroom Co., 90 N.L.R.B. 774 (1950).

²⁹ American Sumatra Tobacco Corp., 48 L.R.R.M. 1691 (Aug. 2, 1961).

³⁰ John C. Maurer & Sons, 127 N.L.R.B. 1459 (1960).

³¹ Burnett & Burnett, 82 N.L.R.B. 720 (1949). This case was apparently overruled by *Imperial Garden Growers*, *infra* note 35, but is probably good law under *Bodine Prod. Co.*, *infra* note 34.

³² Doffemyer v. NLRB, 206 F.2d 813 (9th Cir. 1953).

³³ 93 N.L.R.B. 375 (1951).

³⁴ 147 N.L.R.B. 832 (1964).

³⁵ 91 N.L.R.B. 1034 (1950).

³⁶ Bodine Prod. Co., 147 N.L.R.B. 832 (1964).

³⁷ *Id.* at 834.

³⁸ *Id.* at 837.

³⁹ *Di Giorgio Fruit Corp. v. NLRB*, 191 F.2d 642 (D.C. Cir. 1951).

to the case.⁴⁰ Ironically the court ignored the question and spoke as if packing shed workers already had been held exempt. The court pointed out that the farm union was composed of "harvest and field workers, irrigators and *packing shed workers*, all of whom are employed by the fruit corporation as *agricultural laborers*."⁴¹

With the exception of the temporary return to the pre-1947 position in *Imperial Garden Growers*,⁴² the dichotomy in *Arena-Norton*,⁴³ and the unexplained unawareness of the problem in *Di Giorgio*,⁴⁴ it now seems clear that packing shed employees of a farmer producing fruits and vegetables to be packed in his own packing shed not located on a farm are exempt, even where the farm consists of over 2,700 acres.

Decisions holding that particular agricultural employees are not exempt are clearly distinguishable on their facts from cases approving exemption. Some of the principal factors upon which the cases turn are: (1) whether the produce being processed was grown by the employer; (2) whether the crop was materially changed; (3) whether the employees worked in the incidental operation and in the fields, or just in the fields; and (4) the size of the incidental operation.⁴⁵

The post-1947 nonexempt classifications appear to be: cannery employees of a vegetable farmer because of heavy investment in machinery and the form of the product produced being materially changed;⁴⁶ carpenters and mechanics employed by independent contractors on a large farm;⁴⁷ mushroom company's canning and warehouse employees who were not performing work incident to farming operations;⁴⁸ poultry processing employees whose employer purchased all poultry and eggs;⁴⁹ farmer cooperative employees marketing seed, processing feed and seed of its members, and selling farm supplies;⁵⁰ rice dryer's employees drying employer's rice as well as the rice of tenant farmers;⁵¹ vegetable seed mill employees whose employers processed seed 75 percent of which came from growers other than

⁴⁰ *Id.* at 644.

⁴¹ *Id.* at 643 (emphasis added).

⁴² *Imperial Garden Growers*, 91 N.L.R.B. 1034 (1950).

⁴³ *Arena-Norton, Inc.*, 93 N.L.R.B. 375 (1951).

⁴⁴ *Di Giorgio Fruit Corp. v. NLRB*, 191 F.2d 642 (D.C. Cir. 1951).

⁴⁵ *See, e.g., Bodine Prod. Co.*, 147 N.L.R.B. 832, 834-35 (1964).

⁴⁶ *G.L. Webster Co.*, 133 N.L.R.B. 440 (1961).

⁴⁷ *NLRB v. Monterey Bldg. & Constr. Trades Council*, 335 F.2d 927 (9th Cir. 1964).

⁴⁸ *Oxford Royal Mushroom Prod., Inc.*, 139 N.L.R.B. 1015 (1962).

⁴⁹ *George I. Petit, Inc.*, 89 N.L.R.B. 710, 711 n.4 (1950).

⁵⁰ *Lucas County Farm Bureau Coop. Ass'n v. NLRB*, 289 F.2d 844 (6th Cir. 1961).

⁵¹ *Sweetlake Land & Oil Co. v. NLRB*, 334 F.2d 220 (5th Cir. 1964).

employer;⁵² canal workers servicing canal for farmers and others;⁵³ truck drivers and box stitchers of a grower-shipper who packs crops grown by another;⁵⁴ and warehouse employees storing and cooling farm crops grown by farmers other than the employer.⁵⁵

Inroads on the Exemption

The New "Instant" National Labor Relations Act

Growers of cantaloupes, melons, and vegetables, who employ workers on their farms adjacent to Mexico, were recently concerned with the publication of a proposed rule which was subsequently put into effect.⁵⁶ Whenever the Secretary of Labor makes a certification of a "labor dispute" following a "work stoppage or layoff," the Immigration and Naturalization Service is now required to invalidate the permit or "Green Card" of regular Mexican workers who pass freely across the border each day to work on these farms. The obvious ease of establishing a "labor dispute" at any particular farm or at any particular time regardless of the crippling effect on the production of food is readily apparent.

A "National Labor Relations" law which can be activated instantly on telegraphic notification from Washington and can thereby affect large numbers of agricultural employees,⁵⁷ is somewhat novel.

⁵² *Waldo Rohnert Co. v. NLRB*, 322 F.2d 46 (9th Cir. 1963).

⁵³ *Twin Falls Canal Co.*, 97 N.L.R.B. 1473 (1952). *Contra*, *Sutter Mutual Water Co.*, 160 N.L.R.B. No. 84 (1967) (canal water to farms only). *But see*, Dep'ts of Labor, and Health, Education and Welfare Appropriation Act of 1965, 78 Stat. 979 (ditch and canal workers are agricultural workers when 95% of the water is used for farm purposes).

⁵⁴ *Stockbridge Veg. Prod., Inc.*, 131 N.L.R.B. 1395 (1961). In the *Stockbridge* case, *supra*, the employer was a corporation composed of 11 farmers. The corporation packed lettuce for these 11 farmer-shareholders only, and in addition, bought the seed, allocated acreage, supervised picking, and transported the crop to the packing shed. Such a corporation is not packing its own produce. *Lucas County Farm Bureau Coop. Ass'n v. NLRB*, 289 F.2d 844 (6th Cir. 1961); *Waldo Rohnert Co. v. NLRB*, 322 F.2d 46 (9th Cir. 1963).

⁵⁵ *Crown Crest Fruit Corp.*, 90 N.L.R.B. 422 (1950). In the *Crown Crest* case, *supra*, the employer acquired 90% of its produce (grapes and fruit) by contractual arrangement under which it tended, harvested, transported, and packed the crop. 8% of the crop was grown on the employer's own land and 2% was purchased outright.

⁵⁶ 32 Fed. Reg. 7025 (1967). A new sentence was added to 8 C.F.R. § 211.1 (1967) reading: "When the Secretary of Labor certifies that a labor dispute involving a work stoppage or layoff of employees is in progress at a named place of employment, Form 1-151 shall be invalid when presented in lieu of an immigrant visa or reentry permit by an alien who has departed for and seeks reentry from any foreign place and who, prior to his departure . . . has in any manner entered into an arrangement to return to the United States for the primary purpose, or seeks reentry with the intention, of accepting employment at the place where the Secretary of Labor has certified that a labor dispute exists, or of continuing employment which commenced at such place subsequent to the date of the Secretary of Labor's certification."

⁵⁷ On January 11, 1967, by actual count, 16,609 "Green Card" holders

The new rule, which was established on 20 days' prior notice in the Federal Register, effectively removes the "agricultural exemption" of the National Labor Relations Act which Congress has found difficult to amend during a period of 32 years. This provision which can deprive a farmer of his work force through a simple determination of a "labor dispute" by the Secretary of Labor, apparently also abrogates all of the elaborate safeguards long established by industry. A single worker regardless of tenure can now effectively provoke a "labor dispute" affecting the entire Mexican work force upon which the farmer has historically depended. In effect such a provocation automatically puts the Secretary of Labor and subsequently the Secretary of the Department of Justice into motion.

The new instant rule is even more strange when considered in light of the provisions of the California Labor Code. A farm labor contractor is not denied a license if he first notifies his workers that they are being sent to a place where a "strike or lockout exists."⁵⁸ Thus under the code the worker is told the circumstances, and he himself is given the opportunity to determine whether he desires to work or not; whereas under the new rule the determination is made by the Secretary of Labor.

Possibility of State Action

Although certain congressmen have expressed interest in an outright elimination of the federal agricultural labor exemption, it has continued in effect since 1935.⁵⁹

Due to the lack of statutory preemption by the Federal Government of state agricultural labor disputes, it would be possible for a system of state agricultural labor laws to be established and to continue to function over a period of time. How successful such a system might be in the preservation of the production of perishable food is a matter of conjecture. The consequences of a few hours delay in caring for live animals and poultry, or in the harvesting of fresh fruits, berries, and vegetables, in areas where temperatures soar beyond 100 degrees, or where there are unseasonable weather and flood conditions,⁶⁰ not to mention short peak seasonal labor demands, clearly point up the essential differences between rural and urban

came across the border to California. 7,324 who came through Calexico were classified as agricultural workers, as were 3,134 who came through Tijuana. Letter from Western Growers Ass'n to Raymond F. Farrell, Commissioner, Immigration and Naturalization Service, Washington D.C., Jan. 11, 1967.

⁵⁸ CAL. LABOR CODE § 1696.

⁵⁹ H.R. 4769, 90th Cong., 1st Sess. (1967). (Congressman O'Hara would eliminate the exclusion of persons employed "as an agricultural laborer from Section 2(3) of the NLRA."); S. 8, 90th Cong., 1st Sess. (1967) (Senator Williams).

⁶⁰ Flood conditions prevailed in 1954-1955, 1964-1965 and again in 1967.

production conditions and resultant employee-employer relations. These differences are of long standing and have far reaching implications.

Only California and nine other states provide for compulsory workmen's compensation;⁶¹ only California has disability insurance for farm labor. No state has enacted any law which seeks to regulate labor disputes after the fashion of the Wagner Act. The most recent attempt to enter into this disputatious forum was made in 1967 with the introduction of Assembly Bill 1163 by Assemblyman Veysey in the California legislature,⁶² following a recommendation to review this matter expressed by candidate, now Governor, Ronald Reagan, during the gubernatorial campaign of 1966.⁶³ The complexities which would result from the adoption of such a law and the lack of support caused its author to drop the bill on May 19, 1967. A previous effort to adopt a comprehensive agricultural labor bill in 1959⁶⁴ drew formidable agricultural opposition and failed to pass the California Senate Labor Committee.

Attempts to Organize

While the decisions of the courts and the National Labor Relations Board gradually and with some difficulty have established the sphere of exemption of agricultural labor under the National Labor Relations Act, there have been frequent references in the press to various attempts to organize farm workers. Such efforts have been

⁶¹ ARIZ. REV. STAT. Tit. 23, §§ 901-1087 (1956); CONN. ANN. STAT. Tit. 31, §§ 139-221(a) (1955); HAWAII REV. LAWS Tit. 11, §§ 97-1 to -123 (1955); MASS. ANN. LAWS ch. 152, §§ 1-127 (1958); N.J. ANN. STAT. Tit. 34, ch. 15, §§ 1-127 (1959); N.Y. WORKMEN'S COMP. LAW, §§ 1-401 (McKinney 1965); ORE. REV. STAT. Tit. 51, ch. 656, §§ 1-990 (1965); VT. ANN. STAT. Tit. 21, §§ 601-709 (1967); WASH. REV. ANN. CODE Tit. 51, §§ 4.010-98.050 (1962).

⁶² A.B. 1163 (1967). The essential features of the bill were (1) that the State Board of Agriculture could conduct hearings and make recommendations to the Governor concerning agricultural labor disputes affecting the public interest, (2) that the Board could make recommendations to the Agricultural Conciliation Service in the Department of General Services; and (3) provisions for the proffering of the services of the Conciliation Service—authorized arbitration on terms mutually agreed upon by employer and employee.

⁶³ California Agricultural Conference, Reprint of Feb. 8, 1967 (11th & L Building, Sacramento, California) quotes Candidate Reagan as stating: "Farm labor disputes have increased significantly in the past several years with the intensified efforts of labor to organize agricultural workers. No adequate machinery now exists for resolving labor disputes in agriculture. I shall ask the State Board of Agriculture to study the problem, looking toward my appointment of conciliators with agricultural labor knowledge who will be given general authority to look into serious labor disputes, bring the parties together and recommend a disposition of the problem for the good of the public interest. I would ask that such a mediation board receive its administrative assistance through the Department of General Services."

⁶⁴ A.B. 419 (1959) (introduced by Assemblyman Allen Miller).

through primary confrontations, secondary picket lines, and informational picket lines. Both state and federal laws and federal regulations have been used to uphold and to deny such efforts.

In a unanimous decision, the California Supreme Court⁶⁵ held that pickets seeking to organize farm workers on a farm, could not claim a union organizing exemption⁶⁶ from the general trespass laws of the state.⁶⁷ The court held that the exempting section applied only to posted *industrial* property and not to a farm labor camp.⁶⁸

A jury in San Diego County convicted certain defendants for trespassing on agricultural lands in violation of Penal Code section 602(n) (2). The appeal was not perfected, and the fines were levied and paid.⁶⁹

In 1963 a libel case arose in which the right of a corporate farmer to collect general and punitive damages of \$10,000 and \$50,000 respectively was upheld, where false statements were made during a labor dispute by the defendant who lacked belief in their truth.⁷⁰ In an earlier decision involving a dairy which was changing from agricultural distributors to independent contractor deliveries, the supreme court had held that it was not actionable for a union to label the tactics of the employer as "unfair."⁷¹

In addition to the trespass and libel cases, the decisional law is also developing around the issue of secondary confrontations of agricultural labor organizers and farmers. Primary picketing appears to be expensive and generally without noticeable or long-lasting results.

Even though the Labor Management Relations Act of 1947 contains the agricultural labor exemption, it appears from the express language of the Act that it is an unfair labor practice for a labor

⁶⁵ *Cotton v. Superior Court*, 56 Cal. 2d 459, 364 P.2d 241, 15 Cal. Rptr. 65 (1961).

⁶⁶ CAL. PEN. CODE §§ 552-55.5 provides a system of protecting posted industrial properties, i.e. petroleum, gas, electricity, telephone, water, explosives and railroad facilities. It also recognizes that although posted, union organizing activities may be conducted thereon, but that such activities must be peaceful.

⁶⁷ CAL. PEN. CODE §§ 602(1) (entering and occupying real property without the consent of the owner or person in possession); 602(m) (entering certain posted property); and 602(n) (entering any privately owned lands which are cultivated or posted immediately after being requested to leave), are misdemeanors.

⁶⁸ *Cotton v. Superior Court*, 56 Cal. 2d 459, 463, 364 P.2d 241, 243, 15 Cal. Rptr. 65, 67 (1961).

⁶⁹ *People v. Chavez*, No. 3929 (Justice Ct. of Ramona Judicial Dist., San Diego County, Cal., Sept. 7, 1966).

⁷⁰ *Di Giorgio Fruit Corp. v. AFL-CIO*, 215 Cal. App. 2d 560, 30 Cal. Rptr. 350 (1963).

⁷¹ *Emde v. San Joaquin County Cen. Labor Council*, 23 Cal. 2d 146, 143 P.2d 20 (1943).

organization to engage in a secondary boycott.⁷² The National Labor Relations Board has so interpreted the Act. In *Hawaii Teamsters and Allied Workers*,⁷³ the general counsel of the NLRB issued a complaint against a union which had directed the employees of a processor to refuse to accept milk from a dairyman. This constituted a secondary boycott, and the Board ordered the union to cease and desist.⁷⁴ The case was not appealed.

In a case involving dock workers⁷⁵ the Board (in dicta) addressed itself to the question of whether or not a farmer could file a complaint alleging an unfair labor practice against a secondary boycotting union at the point of delivery. The Board said that the farmer could⁷⁶ since he was a "person" against whom secondary boycott activities are unlawful under section 158(b) (4) (i).⁷⁷ Although from this case it seems possible to prevent the unfair labor practice of a secondary boycott, in *Di Giorgio Fruit Corp. v. NLRB*⁷⁸ an agricultural employer was denied the right to prosecute an action against an organization of agricultural employees. In a two-to-one decision the United States Court of Appeals for the District of Columbia, reasoned that because agricultural workers were exempted in the same language which exempts "any individual employed by an employer subject to the Railway Labor Act," and because such railway employees cannot be charged with an unfair labor act, therefore by analogy, a union of agricultural workers could not be so charged.⁷⁹

The court also held that section 8(a) which confers benefits, and 8(b) which imposes restrictions, should be construed in harmony and that if section 8(b) were to be construed to apply to organizations of agricultural laborers, such a construction would nullify the exclusion of such laborers from the statutory definition of "employees."⁸⁰

⁷² Labor-Management Relations Act (Taft-Hartley Act), 29 U.S.C. § 158 (b) (4) (1964). "It shall be an unfair labor practice for a labor organization or its agents . . . to engage in, or to induce or encourage any individual employed by any person engaged in commerce . . . to engage in, a strike or a refusal in the course of his employment . . . to handle . . . goods . . . or . . . services; or to threaten . . . any person engaged in commerce . . . where . . . an object thereof is—(A) forcing or requiring any employer . . . to join any labor . . . organization or to enter into any agreement which is prohibited by subsection (e) of this section." Subsection (e) makes it an unfair labor practice to agree or contract to refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer. 29 U.S.C. § 158(e) (1964).

⁷³ Local 996, *Hawaii Teamsters*, 111 N.L.R.B. 1220 (1955).

⁷⁴ *Id.* at 1221.

⁷⁵ Local 833, *UAW - AFL-CIO*, 116 N.L.R.B. 267 (1956).

⁷⁶ *Id.* at 277.

⁷⁷ *Id.* at 278.

⁷⁸ 191 F.2d 642 (D.C. Cir. 1951).

⁷⁹ *Id.* at 646.

⁸⁰ *Id.* at 647.

The court seemed to pass over lightly the question of whether or not the union members were truly analogous to railway workers, and, in the interest of harmony, held an agricultural laborer excluded by the NLRA to be in the same category as an individual employed by an employer subject to the Railway Act.⁸¹

While the holding in *Di Giorgio* denied to the farmer as a "person" the benefit of bringing an "unfair labor complaint" because the union was composed only of agricultural laborers,⁸² no employer may bring such a charge against a union which engages in peaceful picketing where the sole object is to persuade customers not to buy a "struck" product.⁸³ This was the holding where union representatives made their appearance before retail chain stores for the alleged purpose of pointing out that the packing sheds of certain employers were in the opinion of the union run unfairly. The majority of the court was careful to point out, however, that "peaceful consumer picketing to shut off all the trade with a secondary employer unless he aids the union in its dispute with the primary employer, is poles apart from such picketing which only persuades its customers not to buy the struck product."⁸⁴

A strong dissent⁸⁵ pointed out that the union's activities were plainly within the definition of unfair labor practices.⁸⁶ Moreover, the minority opinion strongly suggested that while the first amendment of the Constitution protects primarily informational picketing and thus does not proscribe the "communicative" aspect of picketing, Congress was not required to permit the "communicative picketing" other than at the location of the labor dispute.⁸⁷

It is interesting to note that the type of picketing upheld in the above case appears to be unsuccessful. In spite of the court's decision, Washington apples are still in demand even though they are packed in the same manner as they were before the suit was brought. The secondary consumer picket line seems to be unable to diminish the housewife's interest in providing a perishable food product for the family table.

⁸¹ *Id.* at 646-47.

⁸² *Id.* at 649. Miller, J., strongly dissenting in part, felt that since the national union was not entirely composed of agricultural workers, and the local union was acting as an agent for the national, relief on an "unfair labor complaint" should have been given.

⁸³ *NLRB v. Fruit & Veg. Packers Union*, 377 U.S. 58 (1964).

⁸⁴ *Id.* at 70.

⁸⁵ *Id.* at 80 (dissenting opinion).

⁸⁶ Labor Management Relations Act (Taft-Hartley Act), 29 U.S.C. § 158 (b) (4) (1964).

⁸⁷ *NLRB v. Fruit & Veg. Packers Union*, 377 U.S. 58, 93-94 (1964) (dissenting opinion). For a discussion of the limits on free speech in this regard, see *AFL-CIO Union v. Superior Court*, 254 A.C.A. 841, 62 Cal. Rptr. 567 (1967).

Conclusion

In summary, current developments in farm labor law indicate the following:

1. There has been a constant review and re-review of the scope of the "agricultural labor" exemption. The fundamental definition has not changed since the 1947 Fair Labor Standards Act, although the courts have clarified its meaning.

2. There is a well recognized distinction between trespass on agricultural land and trespass on industrial properties.

3. The Secretary of Labor is now able to deprive farmers of their traditional work force by edict without benefit of any established standards of conduct.

4. Although the federal law has not preempted the right of states to establish their own agricultural labor laws, the states' approach, like that of Congress, has been very cautious. California has been the leader in providing benefits for agricultural labor.

5. Primary peaceful picketing is permitted under state and federal law, but it appears to have been generally expensive and without long lasting results.

6. While secondary picketing by a farm labor organization is not actionable under federal acts for technical reasons, it may be otherwise actionable where the union is not exclusively composed of agricultural laborers even though farm labor is exempt under the federal acts.

7. Secondary product boycotting where the product has a nationally known label which the employer wants to protect, particularly if the products are alcoholic beverages, has been productive of subsequent contractual relations in only a limited number of cases.⁸⁸

8. There has been some recent congressional interest in eliminating the agricultural exemption of the National Labor Relations Act.

It is submitted that until agricultural methods are more fully mechanized causing a reduction in the number of agricultural laborers, the temporary tacit approval of the housewife who is forced to pay higher prices and to eliminate certain produce from the family table will determine the future course of agricultural legislation.

⁸⁸ Wall Street Journal, Aug. 29, 1967, at 10, col. 4-5.