Agricultural Personnel Management Program | University of California | Division of Agriculture and Natural Resources

# Labor Management Decisions

Volume 6, Number 2 | Summer-Fall 1997

## Hiring and Managing a Culturally Diverse Workforce: No Prescriptions Please

Brian K. Linhardt

As a human resource professional working in agriculture, I have seen comments recently from various labor consulting sources concerning "best management" practices in supervising individual workers from diverse cultures. In this brief article, I offer some of my own thoughts on why we should tailor our management practices to individuals and not ethnic groups.

From my experiences with different populations, and acquaintance with a fair amount of past research, it is clear to me that differences among individuals within any particular ethnic or racial group are much greater than differences between cultural groups as a whole, especially with respect to job-related abilities, including interpersonal skills. Individuals bring different levels of ability and experience to the job, both of which affect the development of their competence, knowledge, and performance in a particular position.

### Individual Differences and Lumpy Labels

Although members of a cultural group do tend to share some similarities among themselves and some

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## Looking Fresh at the ALRA

Howard R. Rosenberg

The California Agricultural Labor Relations Act is 22 years old this Fall, and it is drawing new looks. Although the law set off a rush of organizing and elections when first put in place, activity under the Act dropped off dramatically after the early years. Of late, however, the ALRA has drawn much greater attention from employers, labor organizations, and rule makers.

For at least the past 10 years employers have been quite focused, understandably, on significant additions to and changes in the body of employment regulation coming at them from various state and federal agencies. They have had to adjust to statutory and case law in such areas as employment eligibility verification, discrimination, pesticide safety, drug testing, record keeping, and discharge. All the while, the ALRA has been in effect, but not until recently has there been much call to examine its provisions.

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### In This Issue:

Against the backdrop of the American Federation of Labor - Congress of Industrial Organizations (AFL-CIO) rededicating itself to union growth, the United Farm Workers (UFW) union has made a return to vigorous field organizing and pursuit of contract negotiations. As broadcast perhaps most widely around the United Parcel Service strike and settlement last summer, organized labor in general has been feeling some oats under new leadership. Labor leaders have seen in the UPS experience a meaning far beyond resumption of package deliveries and brown trucks parked in traffic lanes. They figure the whole of a few successes to be worth much more than the sum of the parts, and the AFL has named among its highest national priorities both the UFW's campaign to organize strawberry workers in California and the UFW/Teamsters' efforts in the Washington apple industry. The affiliation of interests between the AFL and farm worker unions has never been stronger.

Current attention to the ALRA does not result solely from the step-up in union activity. The passage of time has yielded a stock of experience under the Act now available as an empirical basis for assessing rules and procedures the effects of which could only have been postulated when adopted. And time has seen the emergence of a few thorny issues that could not yet have existed 20 years ago. In addition, some of the conditions that gave rise to the ALRA in California have become more common across the nation. Agricultural associations, labor groups, and politicians in other states are remaining alert to the California experiment as they consider their own state laws to address farm labor issues.

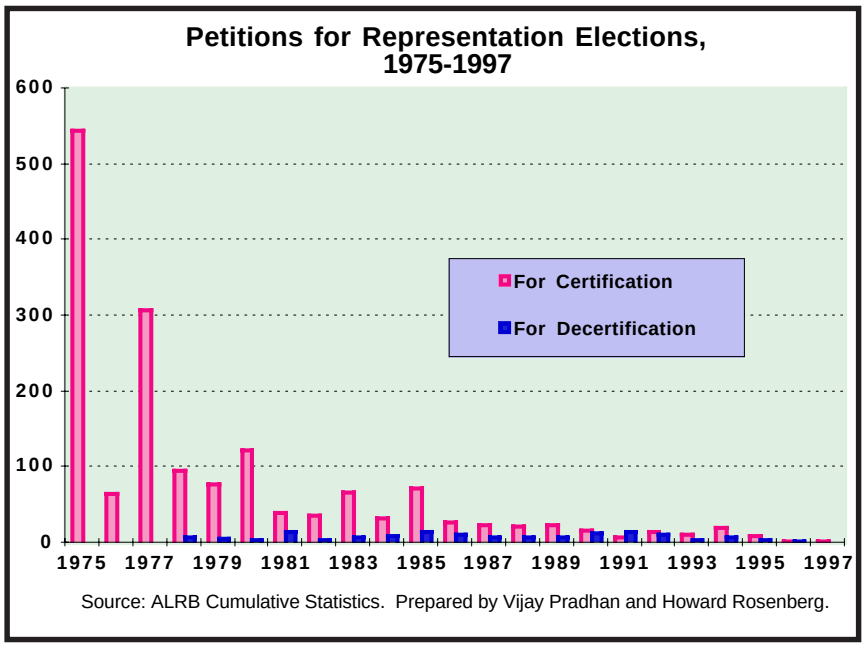
## ALRA Basics

Whereas most labor laws lay down minimums, maximums, requirements, and prohibitions that set boundaries for specific terms of employment or working conditions (e.g., minimum wages, rest periods, safety training, unemployment and workers' compensation insurance benefits), the ALRA is of a different nature. It prescribes not certain terms but rather the process by which employees and employers can negotiate these terms themselves. In general, the Act protects employees' right to act together to help themselves and to select their own representatives, and it prohibits unfair practices by which employers or unions might deter workers from exercising these rights. Its provisions are similar to those of the National Labor Relations Act (NLRA), passed 40 years earlier to cover most private sector employment, specifically excluding farm work.

California is among only a handful of states that have defined any course for agricultural workers to determine whom, if anyone, they want to represent them in negotiating terms of employment. By enacting the ALRA in 1975, the California legislature filled the legal vacuum in which farm labor organizing had been conducted here. It created an elaborate administrative apparatus to help agricultural workers in a given firm freely choose whether or not to designate a union as their representative; ensure that workers receive information relevant to their choice without coercion, intimidation, or reprisals from either a labor organization (union) or the employer; and resolve disputes that arise in this decision process, in bargaining toward agreement on wages, hours, and working conditions, and in living under a negotiated contract.

The Agricultural Labor Relations Board (ALRB) administers the Act. Its staff serves two key functions: (1) to conduct representation elections, oversee all the activity leading to them, and certify their results; and (2) to investigate charges of unfair labor practice (ULP) that are brought to the agency and pursue remedies for persons found to have been harmed by ULPs. The five-seat Board itself generally serves in an appellate capacity, adjudicating appeals from decisions made by Administrative Law Judges and other staff of the agency. ALRB staff work out of a main office in Sacramento and regional offices in El Centro, Salinas, and Visalia.

By almost any measure, the level of activity before the ALRB is considerably lower than it was in the years immediately following enactment (as it had been similarly for the NLRB). The two accompanying graphs, for example, indicate the decreases in petitions for elec-



Source: ALRB Cumulative Statistics. Prepared by Vijay Pradhan and Howard Rosenberg.

tion and unfair labor practices filed (1997 data incomplete). During 1975-77, unions filed for an average of more than 300 representation elections per year, and in the seven-year period of 1990-96 fewer than 20 per year. The drop in ULP charges (against employers and against unions combined), while also notable, occurred later and has been much less steep, from a yearly average of 782 during 1975-85 to 312 during 1986-96.

## Recent Organizing Activity

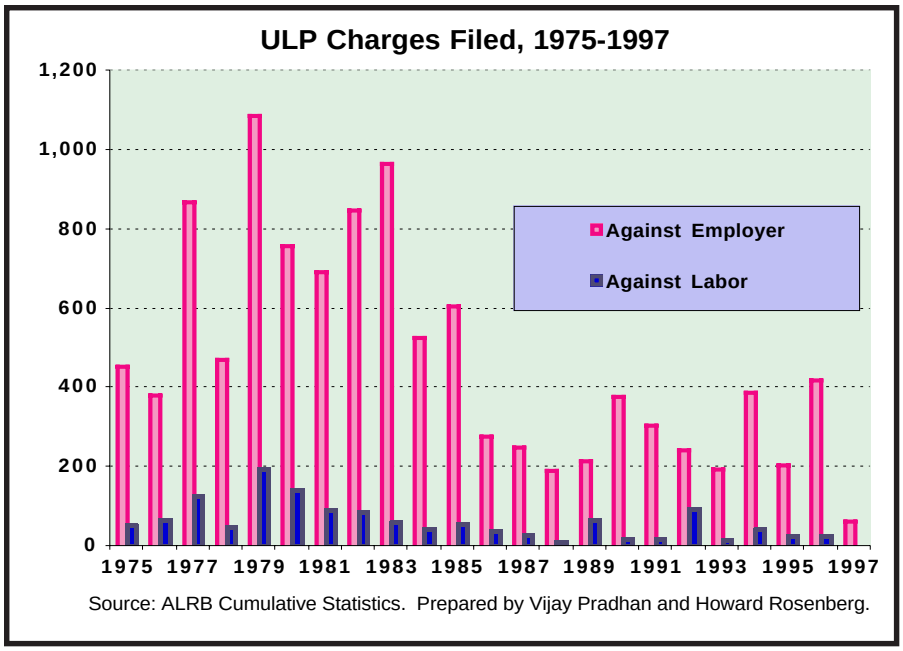
A surge of union activity not fully reflected in statistics has been observed on many fronts since 1994. In July that year the UFW won a disputed election at E. & J. Gallo's Sonoma County vineyards. The company appealed — first to the ALRB, and later in Superior Court — that employment at the time was not up to the 50 percent of peak standard required by the Act. Three years later, finding that the appeals and legal challenges had been used to delay bargaining in good faith with employees' chosen representative, the Board ordered Gallo to begin negotiating a retroactive contract that would make whole its employees for the presumably higher wages they would have been receiving since September 1995 under a negotiated contract. At *LMD* press time, there were indications of Gallo and the UFW nearing agreement on what would be the first contract under the ALRA in a Sonoma County grape operation.

Union negotiations with Bruce Church, Inc., another firm with which it has had well known differences, reached fruition when the long-time adversaries announced their agreement on a contract in May 1996. Less publicized has been a set of UFW elections and negotiations that have brought under union contract more than half the rose industry workers in California. The UFW reports that in all it has won 14 consecutive secret-ballot elections and signed 14 new contracts with employers since April 1994.

In 1995 the UFW launched its highest profile effort in at least a decade. With support from the AFL-CIO, the UFW has been very active in the strawberry industry along California's central coast. Intensifying each year, the efforts on both the union and employer sides have hardly been limited to winning the hearts and minds of workers in the fields through discussions, rallies, and filing of ULP charges. The strawberry campaign has also involved a colorful array of lawsuits, demonstrations, counter demonstrations, news releases and opinion columns, and coast-to-coast informational stops and meetings to enlist support from supermarket chain managers, religious groups, students, and the general public. In May 1997, Driscoll Strawberry Associates took the unusual measure of publishing an open letter "To Those Who Care About Strawberry Workers" on four full newspaper pages, spelling out its views on the myths and realities of strawberry work conditions, and reiterating its members' commitment to abide by any representation decision duly made by the workers themselves through ALRB-supervised procedures. Frequently expressing its own opposition to the UFW's efforts has been the Agricultural Workers Committee, an organization of strawberry workers that the union has charged is sponsored and controlled by growers.

Extraordinary even within this campaign have been events at Gargiulo, Inc., until recently owned by Calgene, a subsidiary of the Monsanto Company. In June 1997, after facing repeated demonstrations and organizing attempts, Monsanto announced the sale of the strawberry firm, one of the largest in the state, to out-of-state investors said to be "union friendly." In the wave of publicity about the transaction were news releases strongly implying that the road had been paved to certification of the UFW and a contract with the former Gargiulo (now B&G Berry Corp.). Monsanto announced that agreements with the UFW and AFL called "for a free and fair union representation election at Gargiulo's former berry operations. . . intended to result in the scheduling of a supervised election consistent with the Agricultural Labor Relations Act. . . ."

These statements prompted a coalition of employer groups, led by Western Growers Association, to cry "foul" in a set of charges against Monsanto, the UFW, and



Source: ALRB Cumulative Statistics. Prepared by Vijay Pradhan and Howard Rosenberg.

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# Developments in the Washington Apple Industry

## UFW and Teamsters Organizing Apple Workers in Washington State

Fred Krissman

*Dr. Krissman is a Visiting Scholar at the Center for Labor Studies, University of Washington, and Adjunct Researcher, Department of Anthropology, Washington State University. He has worked directly with union organizers in orchards and packing houses.*

A 15-month-old "United for Change" campaign being waged jointly in Washington state by the Teamsters (IBT) and United Farm Workers (UFW) unions heated up considerably this summer. The two unions seek recognition from employers in the state's apple industry to collectively bargain on behalf of 30,000 field and 15,000 packing house workers.

In the past decade wages in the industry have been stagnant and total hours of employment have fallen, while apple production has increased by 25 percent and revenues from it have skyrocketed. Currently, even the minority of apple workers employed 10 months per year earn poverty-level wages, while most in the workforce earn only about $7,000 annually. Besides low earnings, workers complain of: health and safety hazards in the workplace (pesticides, noxious fumes, repetitive stress, falls, and other injuries); the lack of job security; lack of fringe benefits or unaffordable co-payment levels (for health insurance and such); favoritism in job assignments; and sexual harassment. Thirty percent of apple field workers and 80 percent of packing house workers are women.

Ongoing concentration of production within the billion dollar industry has put effective control over workplace conditions into the hands of about 30 companies. This summer the IBT delivered letters of intent to two of the state's largest packing houses, which combined employ more than 700 workers, and the UFW represented field workers in a number of orchard walk-outs. The Teamsters union has already won a host of National Labor Relations Board rulings against the packing houses for unfair labor practices and discriminatory behavior, obtaining company concessions and tens of thousands of dollars in cash settlements for affected workers.

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## Positive Labor Relations For Apple Production

Mike Gempler

*Mr. Gempler is Executive Director of the Washington Growers League, Yakima.*

Producing the finest apples in the world requires a marriage of several factors. In addition to the right climate, soil, irrigation and growing conditions, human resources are critical to the success of Washington's orchards. Even with all its technological advances in the last century, agriculture requires hard work and good luck. It takes the right blend of growers and field employees, working hard, smart and fast to plant, cultivate and harvest one of the tastiest and healthiest crops anywhere. If all these natural and human factors align, Washington produces a quality apple harvest that is world-class and competitive with not only other fruits and snacks here but also the apples increasingly grown in other parts of the United States, New Zealand, China and Europe.

Today, however, the apple orchards and packing houses in Central Washington are facing a threat to their delicate balance of production factors, their global reputation, and their decades-long place as a mainstay of the Washington economy. The industry has become the focus of an intense union organizing effort that puts its competitiveness and continued success in jeopardy. It is not third-party representation by a labor organization itself that threatens the industry, but rather the approach and tactics being used by union organizers.

### The Organizing Background and Strategy

Over the past few decades, union membership and dues income have decreased remarkably. Nearly one of every three American workers belonged to a union in the 1950s, only one in seven now. Elected leaders of the Teamsters and United Farm Workers unions and the national AFL-CIO have staked their positions on reversing this slide. Clearly, they view the more than 65,000 seasonal and year-round workers in Washington's apple industry as a target of opportunity to swell union membership.

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# Workers Prefer Growers Over FLCs

Gregory Encina Billikopf

*Growers have increasingly used the services of farm labor contractors (FLCs) in recent years, and reasons for those decisions have been explored (see APMP project report* Directly Hiring Workers Versus Using Farm Labor Contractors, *publication APMP003, by Sabrina Isé, Jeffrey M. Perloff, Stephen R. Sutter, and Suzanne Vaupel). Most workers, on the other hand, prefer to work directly for growers, despite the potential advantages of employment by FLCs, such as fewer language barriers and an opportunity for longer work seasons. A better understanding of workers' preferences could benefit both growers and FLCs who want to attract and retain a productive workforce.*

*Following is a condensed version of "Workers prefer growers over FLCs," originally published in* California Agriculture, *Volume 51, Number 1, January-February 1997. The complete article may be found on the Internet at http://www.cnr.berkeley.edu/ucce50/research/7rsearch.htm.*

As part of a larger study about issues that concern agricultural employees, I asked 211 crew workers whether they preferred to work directly for growers or for farm labor contractors. With the consent of their supervisor or employer, I personally interviewed workers at 19 job sites in a variety of northern San Joaquin Valley orchard, vineyard, and vegetable operations in the summer of 1995. Most of the respondents were Latino, and nearly all of the interviews were conducted in Spanish. At the time of the interviews, 63% (133) of the workers were employed by FLCs, and the rest had been hired directly by growers.

Half (106) of the crew workers had been employed only by a grower or only by an FLC. I put particular effort into analyzing comments of the other 105, whose experience as employees of both growers and contractors gave them a basis for first-hand comparisons. Of those who had worked for both, 81% preferred growers as employers. Only 4% favored working for FLCs. The remaining crew workers either had no preference (14%) or said their choice would depend on other factors.

Some crew workers were vocal in denouncing FLCs, though others readily defended them. Those who had worked for both growers and FLCs were asked to give a reason for their preferences. Questions were open ended.

## Preference for Growers

A total of 115 comments were offered by the 105 workers who had been employed by both at least one grower and one contractor, and 111 of them expressed a preference for growers. These comments dealt with pay (62%), treatment and working conditions, benefits, and amount of work. Crew workers felt that growers paid "a little more" than FLCs did. Some believed that FLCs were sometimes guilty of not paying what they owed, not paying without a struggle on the part of the workers, and not paying on a timely basis. A few workers said they were unhappy that part of their salary went to the FLC; others said they were not informed by FLCs whether they were working for piece rate or hourly pay. One worker was concerned that FLCs might not always pay wage-related taxes.

Thirty (27%) of the 111 comments favoring growers were related to treatment or working conditions. Fifteen (14%) indicated that workers received better, less abusive treatment by growers. Six (5%) related to being able to deal with growers directly, receiving better explanations and having fewer conflicts with growers. Some said that work for growers was slower paced and that growers were more likely to provide breaks and toilets in the fields. One said that employment by growers entailed less stoop work. Another comment was that FLCs were more likely to fire a worker "who misses a little work."

Eight comments (7%) dealt with benefits, mostly stating that fewer FLCs provided health insurance. One worker spoke of benefits in general and another mentioned grower-furnished housing.

Four comments (6%) indicated that growers were able to offer more constant work or longer hours.

## Preference for FLCs

Only four comments favored FLCs over growers. Reasons given were that (1) there is no language barrier; (2) FLCs are less likely to get angry; (2) they provide better supervision; and (4) they pay better. Some of these seem to contradict comments made by those who preferred growers.

## Recommendations

Although FLCs may offer their employees several advantages, including less of a language barrier and the possibility of a longer work season, the crew workers whom I interviewed overwhelmingly preferred working directly for growers. FLCs are likely to improve their image with crew workers if they (1) arrange for smoother transitions between work at one operation and the next; (2) pay workers on a timely basis (regardless of when the FLC gets paid); (3) clearly indicate pay rates ahead of time; (4) make it easy for workers to keep track of what they are earning so that pay-day discrepancies can be reduced and more easily resolved

when they occur; (5) make work assignments clear; (6) provide safety training, such as instruction in safe lifting and pesticide safety (as required by the Worker Protection Standard); (7) provide breaks, toilets, and cold drinking water, as well as water, soap, and paper towels; (8) develop well-communicated reward and disciplinary procedures; and (9) seek continually to improve supervision and interpersonal relations when dealing with workers.

Some of these recommendations are simply common sense, and others are required by law. Perhaps the foremost challenge is that of pay and benefits. FLCs also need to be paid for services they contribute in recruiting and managing the workforce. Those who can provide technical expertise and supervision of such tasks as pruning, grafting, and harvesting may obtain a higher payment for their efforts.

It is hard for an FLC who offers a good salary and benefit package and complies with legal requirements to offer services at prices comparable to those who do not — for example, by paying "under the table," not paying taxes, or not providing required training. The very nature of the legal structure often does not help. Many laws extend essential benefits and protections to farm workers, but others simply add to the paperwork and stress of running a business, and enforcement is often inconsistent or nonexistent. □

## Hiring and Managing a Culturally Diverse Workforce: No Prescriptions Please

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differences from other groups, people are largely idiosyncratic critters. At times we perceive and respond to the same situations differently from other people of either our own or other backgrounds. We have individual differences in ability and personality that are independent of cultural background. The formation of personality—what motivates a person, how he or she relates to others—is a complex process unique to each individual. Personality is affected by and in turn affects each person's experiences and abilities. Because ability and work experience levels vary more from person to person than from cultural group to group, no generalized cultural guidelines or management prescriptions can possibly be valid across the range of individuals of any ethnicity.

As humans, we tend to categorize both things and other people, and it's often necessary and functional to do so. An overuse of categories, or stereotyping, however, can keep us from recognizing and respecting individual differences in even a single-ethnic workforce, let alone the multi-cultural environment of California agriculture.

The *California Findings from the National Agricultural Workers Survey* (1993)[1] reports that 82 percent of seasonal farm workers originate from Mexico, another 10 percent are foreign-born elsewhere, and only 8 percent are native U.S. citizens. In contrast, the majority of farm owners and general managers here are native U.S. citizens not of Hispanic origin.

Demographic statistics are blunt tools, however, and these do not reflect that, despite their common national origin, workers who come from Mexico are ethnically and individually diverse. In fact, the term "Hispanic," for example, is so broad as to be nearly worthless as a classification. It includes individuals living in the mountains of Chile, a Spanish suburb, and an indigenous rural community in Mexico. As many California farmers have learned, there can be dramatic individual differences in work performance within a group of employees from a single state in central Mexico, in addition to social differences between them and other Hispanic workers, such as Mixtecs from the state of Oaxaca. Like "Hispanic," most other broad ethnic group labels may refer to a host of varying peoples.

### Cultural Differences and Hiring Information

Tests for job-related knowledge are used occasionally in decisions about hiring and promotion to supervisory positions, and they have been found to be good predictors of successful performance in those jobs. The scores on this type of employment test are also positively correlated or associated with scores on general mental ability tests, such as high-school equivalence and college-entry exams. Some significant differences between ethnic groups, however, often show up on these tests of job-related abilities. Much of the difference in test scores between ethnic groups has been attributed to socioeconomic and other biasing influences, but a large body of research that has controlled for these factors still finds significant differences between groups. Typically "African-Americans" and "Hispanic-Americans" score lower on these tests, while "Asian-Americans" and "Caucasians" tend to score higher. Nevertheless, the scores among individuals within the same ethnicity differ more widely and significantly than do the average scores between ethnic groups. To underscore the point regarding the near meaninglessness of broad ethnic categories, Cuban "Hispanics" score similarly to American "Caucasians," while indigenous peoples of Mexico score similarly to, though slightly higher than, "African-Americans."

For the employer, hiring individuals who earn the highest scores on a job knowledge test will often bring

1. *California Findings from the National Agricultural Workers Survey, A Demographic and Employment Profile of Perishable Crop Farm Workers*, Research Report No. 3. 1993. U.S. Department of Labor, in collaboration with UC Agricultural Personnel Management Program and Aguirre International. Available in PDF format on the APMP website at http://are.berkeley.edu/APMP/pubs/projrepts.html.

aboard workers likely to perform best, but between-group differences raise possible legal difficulties if use of the test scores adversely impacts "protected" groups. Adverse impact is usually indicated by a significantly lower hire rate of applicants from a specific ethnic or gender group than from the whole applicant pool. The unintentional discrimination it may reflect is as unlawful as disparate or unequal treatment, even though the latter is more blatant and takes a more obvious toll on employment relations.

Many organizations have attempted to design tests to help choose the most qualified candidates without any cultural bias, so as to avoid both disparate treatment and adverse impact on minority groups (i.e., reduce the differences in average scores between respective ethnic groups). The Ravens Progressive Matrices, a non-verbal intelligence test that uses geometric shapes and differentiates among individuals with respect to their mechanical ability, is an example of a supposedly "culture-free" test. Because most if not all jobs require some cognitive or mental skills and abilities, these types of tests are generally among the highest single predictors of successful job performance in positions ranging from irrigator to mechanic to manager. They are inexpensive and of great efficacy. However, research studies in practical applications have found that even the Ravens test generally results in a high degree of adverse impact on minority group and female applicants, which could lead to legal difficulties as well as perpetuate differences in social and economic status between ethnic groups in our society.

How can it be that a "culture-free" test has this effect? A partial explanation is that despite our individuality, past experiences shared by members of a cultural group help shape their present perceptions and learning styles, and some level of culture is present in virtually everything we do. By this line of thinking, there is probably not such a thing as a completely "culture-free" test. For example, Hispanics put a high value on *educación*, a Spanish cognate for education. However, the meaning of *educación* is not the same as that of "education." At the core of *educación* are the social skills of respectful and correct behavior, in contrast to the mainstream U.S. notion of "education" having to do with the acquisition of knowledge and mental prowess. Thus, a Hispanic immigrant who seeks to become "educated" can do so mainly by acculturating and adapting to the social norms of a new society.

Many research studies that have addressed the issue of cultural bias in testing have found little indication of its existence. An interesting set of studies across several industries examined results from ability and job knowledge tests that were created by supervisors who were of the same ethnic background as the largest number of "minority" candidates for various positions. Despite the ethnic similarities between the test creators and the test takers in these trials, and the use of culturally familiar language and content, the minority candidates as a group fared no better or worse than in previous conventional tests, which had been created by persons ethnically dissimilar to them. These results strongly suggest that factors other than cultural influence are stronger determinants of job performance, or at least job knowledge.

Employers can structure their selection procedures to take advantage of job knowledge tests while reducing risks of legal difficulties stemming from adverse impact. For example, many employers use a job knowledge test for prospective supervisory staff as only one step of many in the pre-hire process. They also use such other assessment tools as reference checks and structured interviews to obtain information that provides a more complete view of an applicant's overall abilities than a job knowledge test could adequately reveal. If adverse impact does occur, and a member of the affected group files a discrimination complaint, use of the job knowledge test can be justified if it is both "job-related" (based on a job analysis and accurately predictive of job performance) and of "business necessity" for the particular employer. A standard for this latter condition is the unavailability of any other procedure that predicts job performance as well while resulting in less adverse impact.

## The Importance of Effective Supervision

Mental ability tests like the Ravens Progressive Matrices are not likely to be found directly job-related. Job knowledge tests, on the other hand, are likely to be both accepted by courts and highly useful as indicators of future employee performance when created in line with simple job analyses and job descriptions. Even the best job knowledge tests, however, cannot by themselves cover all the factors that make for good job performance and a successful employee. There is often a gap between what a worker knows and how he or she actually uses it in performing the job. Factors such as motivation, honesty, reliability, and ingenuity are often vital to superior employee performance and overall business success.

Employing and retaining individuals in the workforce with desirable but difficult-to-measure personal traits are not easy, but the odds of accomplishing them can be improved through well-designed hiring procedures and compensation systems. Research on non-ability predictors of job performance, such as personality, has become increasingly active in recent years, but relating well to individual employees, whoever they are, remains very important. No matter what personal traits, cultural groups, and job-related abilities are within a farm's workforce, skills of managers and supervisors heavily influence whether they are effectively applied to production.

As noted above, some significant and important "between group" differences have been found, for whatever reason, with respect to both race and gender. I believe that while these differences exist, most individual employee traits and behavioral responses to manage-

ment are not significantly associated with any particular ethnicity. These characteristics vary much more among individuals within any given ethnic group than between groups as a whole. Learning about various traditional customs and communication styles is helpful to managers, especially in becoming better acquainted with people of different cultures. However, I disagree with consultants who advise managers to use canned "best practice" techniques in dealing with a diverse workforce or a group of individuals who appear different from the predominant culture.

Cultural influences on employee performance matter, but individual ability, traits, and values matter more. Managers are best off if they pay attention to, respect, and consider in their everyday decisions the individual characteristics of their employees. Disappointment awaits those who subscribe to guidelines that purport to comprehensively describe the vast domain of human tendencies and behavior within any particular ethnic or racial group. □

Readers can find specific suggestions on how to communicate with employees who do not speak English well in "Supervising Across Language Barriers," *Labor Management Decisions*, Summer 1992, Volume 2, Number 2, page 3. The article is available on the *LMD* page on the APMP website at http://are.berkeley.edu/APMP/ or, in printed form, from Betsey Tabraham (see page 20).

# Q&A Practical Advice and References on FMLA Leave

*In response to an inquiry, APMP Farm Advisors Steve Sutter and Brian Linhardt recently examined applicability of the Family and Medical Leave Act to employees who need to care for family members living outside the United States. We thought their advice would be of interest to LMD readers, and, with Brian's and Steve's permission, present it below in question-and-answer format. At the end is an annotated list of additional references available on the Internet, provided by Howard Rosenberg.*

*We also welcome readers' queries and comments sent directly by e-mail, telephone, or regular mail (see "Agricultural Personnel Management Program Staff" on the back page) or by way of the "Electronic Farm Call" page on the APMP website at http://are.berkeley.edu/APMP/.*

**Q:** A worker whom I employ has an ill parent in rural Mexico. Does my company have to grant family medical leave if the employee requests it?

**A:** Yes, if the employee is covered at all by the FMLA. Employers with 50 or more employees (working within 75 miles of a single site) for each working day during each of 20 or more calendar work weeks in the current or preceding calendar year must post "Family and Medical Leave Act," WH 1420 or 1420S (Spanish). The poster informs employees that they're eligible for up to 12 weeks of unpaid leave to care for an ill family member who is incapacitated more than 3 consecutive days, if they have worked for at least 1 year, and for 1,250 hours over the previous 12 months.

**Q:** How can the company verify the seriousness of the parent's illness with the standard measures used, i.e., hospitalization or continuous medical care? Folks in rural Mexico usually have to make do with visiting physicians.

**A:** "A visiting physician would be considered a health-care provider under FMLA," according to a DOL officer contacted in Washington D.C. (202/219-8412). The person taking the leave doesn't need to do any administration of medical services, he said. "A lot of times it's just sitting by somebody's bedside."

Note, however, that treatment of the family member by a health-care provider must be either (1) two or more times or (2) at least one occasion that results in a "regimen of continuing treatment." Regimen of continuing treatment excludes simply taking of over-the-counter medications, bed rest, and other similar activi-

### Internet Resources on the FMLA

The U.S. Department of Labor has very helpful pages on the FMLA at:

http://www.dol.gov/dol/esa/public/regs/compliance/whd/whdfs28.htm — basic factsheet

http://www.dol.gov/dol/esa/public/regs/compliance/whd/1421.htm — compliance guide, with links to the legal code

http://www.dol.gov/dol/esa/public/regs/cfr/fmla/380wh.pdf — Medical Certificate Form

http://www.dol.gov/dol/esa/public/regs/cfr/fmla/wh.pdf — Employer Response Form

http://www.dol.gov/dol/esa/public/regs/compliance/posters/fmla.htm — poster WH 1420, "Your Rights under the FMLA"

http://www.dol.gov/dol/esa/public/regs/compliance/posters/fmlaspan.htm — Spanish version of the poster

More Q&A about the law are at:

http://www.lawguru.com/fmla.html.

ties that can be initiated without a visit to (or from) a health-care provider.

**Q:** Should the employee who is granted leave under FMLA be required to return with a letter from the family member's physician?

**A:** Sure. The employer can specify the form of documentation under the FMLA and California's similar Family Rights Act (FRA).

**Q:** Or is an employer best served to not require verification of the employee's claims?

**A:** That would certainly be a "liberal" policy (uniformly applied, of course) and would probably be appreciated by full- or close-to-full-time employees. Now, if everyone has a seriously ill parent, spouse, or child in November, the employer may want to reassess its FMLA medical certification policy.

The Wage and Hour Division discusses FMLA (Title 29, Part 825) at length in Publication WH 1419 (April 95), available by phoning: 916/979-2040. It contains a "Prototype Notice: Employer Response to Employee Request for FMLA Leave" (Form WH-381). □

## Call for Advisory Board Members

During the coming months we will be forming a Board of Advisors to help set priorities, shape policies, and steer activities of the statewide UC Agricultural Personnel Management Program. Members will be appointed by W. Reg Gomes, Vice President of the Division of Agriculture and Natural Resources, upon recommendation of program staff. Expressions of interest and willingness to serve on the Board are being solicited through a few channels, and one of them is right here. We greatly appreciate the perspectives of *LMD* readers, whatever their other contact with the APMP may be, and would like to hear more from them. If you would like to consider an active part in guiding the APMP as a member of the Board, we cordially invite you to contact us by January 1, 1998. Please direct initial inquiries, self-nominations, or other recommendations to Betsey Tabraham at 510/642-2296 or via email to tabraham@are.berkeley.edu.

# "New Employee" Reporting Required July 1, 1998

Stephen R. Sutter

In an effort to find parents who are delinquent in child support obligations, California lawmakers enacted legislation in 1992 requiring certain employers to report information on newly hired employees to the Employment Development Department. The law exempted agricultural employers, except those engaged in landscape and horticultural services (lawn and garden services, ornamental shrub and tree services), from the reporting requirements, although they may contribute hiring information voluntarily.

The nation's growing problem of nonpayment of child support (and the taxpayer burden joined to it) was addressed by Congress in the 1996 welfare reform legislation. Beginning July 1, 1998, all employers in California, *including agricultural employers*, will be required to report, within 20 days, the name, address, and social security number of every newly hired employee (along with their own employer name, address, and tax identifying numbers) to a state "new-hire directory." California's EDD has an information hotline: 916/654-8747.

In addition to facilitating collection of child support payments, the information will help states prevent fraudulent unemployment and workers' compensation claims.

Reports of new hires can be made on federal Form W-4 (or equivalent state form DE34), and employers may choose whether to transmit them by magnetic tape, electronically, or non-electronically by first class mail or fax (916/653-5214). Those reporting electronically or by magnetic tape are required to file twice a month, not less than 12 days and not more than 16 days apart. Non-electronic filers in California's current program are required to submit the employee-specific information within 30 days (only after they have a new hire), but that will drop back to within 20 days of hiring starting July 1, 1998, to be consistent with the federal program.

In cases where courts order wage withholding to meet child support obligations, employers will have 7 days to submit funds to a "state disbursement unit." Employers should review their accounting systems to ensure that any court-ordered payments generated by the new law can be made inside 7 days. □

## Looking Fresh at the ALRA, *continued from page 3*

B&G. Papers filed at the ALRB regional office in Salinas alleged that the agreement, the publicity about its intent, and the announcements' omitting mention of workers' right to choose *not* to be represented constituted an unfair labor practice (ULP).

Alluding to language in the ALRA itself, the grower group claimed that pronouncements made by the employer and the union had been intimidating, restraining, and coercive to workers, thus interfering with the right to free choice. It essentially argued that the company, in cahoots with the union, was conveying to workers that, "if you don't vote for the union, your job could be in jeopardy." Such a message could constitute illegal influence on workers both in the procedural steps prerequisite to an election and in the voting booth, if they ever got that far.

This ironic situation clearly falls in the "man bites dog" category. It is most unusual for an employer to welcome the prospect of workers voting to unionize, no less to face formal charges or wrongdoing for encouraging pro-union votes. Though surely not the purpose of its parties, the case is useful for illustrating a fundamental element of the ALRA that distinguishes the route to representation here from that in other states. Neither public respect and sympathy for farm workers nor pressure on employers can be parlayed into the right to represent workers in California agriculture. No matter how sympathetic the public or an employer may be, a union can obtain the legal right to represent the workforce on a given farm only through a majority vote of workers in an election scheduled, conducted, and certified by the ALRB.

### Knowing the Code

One result of the lull in election activity under the ALRA is that most people to whom it applies, particularly workers new to the agricultural workforce and the cohort of farm managers who have not dealt with the Act, do not now understand well what it holds for them and how it is applied. But unfamiliarity with and misconceptions about this law cannot be attributed entirely to lack of direct experience with it.

The ALRA is intricate and always subject to interpretation. Like all laws, what the legislature enacts is not nearly the whole story. As its administering agency, the ALRB is responsible for developing regulations to clarify and operationalize the statute. Rules of application are further molded through the body of case decisions by Investigative Hearing Examiners, Administrative Law Judges, the Board itself, and even appeals courts. These decisions sometimes set precedents that guide subsequent interpretation of the ALRA. Administrative decisions may affect not only the outcomes of immediate organizing efforts and ULP charges but also workers' propensity to exercise provisions of the Act in the future.

Controversy has persisted around parts of the statute itself, Board rule makings, and actual administration in the field. Though generally agreeing that the Act has not fully served its purpose, to ". . . ensure peace in the agricultural fields by guaranteeing justice for all agricultural workers and stability in labor relations," worker and employer representatives tend to differ, not surprisingly, on the merits of specific provisions and administrative practices. Labor organizers have attributed some disappointing results to unfair adjustments by employers, ineffective administration by ALRB staff, and a labor market glutted with newcomers. Many have seen the ALRB and its top staff since the early 1980s as employer-oriented, in contrast to the initial set of appointees who construed the Act to not only protect but moreover encourage union organization efforts.

California growers, for their part, have felt unfairly burdened and invaded by the Act, and especially by administrative regulations adopted by the initial Board (1975-76). They have been aggrieved perhaps most acutely by the rule, unique to the ALRA among labor relations laws, allowing a union that has filed proper notice to "take access," to enter a grower's property and speak to workers there for certain periods each day, despite the grower's wishes and property ownership. The ALRA statute does not provide for access of non-employee organizers on farms, but its regulations do. Under the NLRA, such access is permitted on a case-by-case basis and only within very narrow circumstances. This difference between the national and state laws alone may be reason enough for employers to try bringing their employee representation cases to the NLRB. With evolution of production technologies, the line between ALRA and NLRA coverage has indeed blurred a bit and the national Board has asserted jurisdiction over workplaces that had been classed as clearly agricultural in the past.

Grower associations and the current ALRB Chairman have called for at once simplifying the regulatory environment and reducing a California competitive disadvantage by (1) amending the NLRA to cover agricultural workers uniformly in all states, or, assuming that opposition from other states precludes such a change, (2) amending the ALRA to make its provisions conform to those of the national law. The California Farm Bureau Federation has long recognized the right of agricultural employees to organize and bargain for their services as well as their right to refrain from these activities. As published in its annual statement of policies, however, it also supports legislation to bring agriculture under the NLRA, and continues to seek changes at the state level that would conform the ALRA to general national standards.

### Observing the ALRA in 1997

Together with the Monterey County Cooperative Extension office, the APMP presented a seminar last

June to broaden and enhance understanding of the Act among growers, farm labor contractors, field supervisors, human resource managers, workers, employee representatives, and professional service providers. A superb collection of knowledgeable speakers delivered a full payload of facts, hard-earned lessons, advice, opinions, and philosophy relative to the Act.

The program integrated presentation of rules and discussion about their practical application within four major segments, respectively devoted to (1) pre-election organizing activity, (2) employee representation elections, (3) the collective bargaining process, and (4) unfair labor practices. In each segment, the rules were explained by Paul Richardson, ALRB General Counsel, and Freddie Capuyan, ALRB Regional Director (Salinas office). Realities and fine points of practical application were discussed by a panel of employer and union legal representatives, sagely and entertainingly moderated by James "Geraldo" Bogart from the Grower-Shipper Vegetable Association of Central California, wearing his finest neutral-for-a-day garb. Practitioners on the panel were: Mike Johnston, Teamsters Warehousemen and Helpers Union, Local 890; Mary Mecartney, United Farm Workers; Richard Quandt, Grower-Shipper Vegetable Association of Santa Barbara and San Luis Obispo Counties; and James Sullivan, of the Gilles, Minor & Sullivan law firm.

Michael Stoker, Chairman of the ALRB, provided his personal overview of the "Past, Present, and Future of the ALRA," and Charlie Atilano, Deputy Labor Commissioner, California Department of Industrial Relations, gave an update on other significant employment laws. As a former member of the ALRB staff, Mr. Atilano also contributed to the practitioner panel discussions. All speakers fielded provocative questions from the floor that extended them well beyond their prepared remarks.

If a single line could capture the essence of the entire day, it was one of Bogart's: "Reasonable minds can differ with respect to the application of this law." Opposing views were aired and clarification provided on such topics as: the need for access to organize workers, proper use of access privileges, distinctions between farm labor contractors and custom harvesters, whom to include on pre-petition lists of employees, determination of peak employment, timing and conduct of elections, the unlimited duty to bargain after a union is certified, mandatory and prohibited subjects for bargaining, the meaning of "good faith," forms of interference with and coercion of workers, and procedures for filing and investigating unfair practice charges.

A consensus among presenters and other seminar attendees alike was that the ALRA carries both rights and responsibilities for employers, labor organizations, and workers — along with innumerable subtleties and fine points. Those who want to take advantage of the rights and minimize the costs of meeting the responsibilities are behooved to learn about the law well in advance of facing a situation to which it pertains.

In the sidebar that accompanies this article is a small sampling of the seminar content (see pages 12-13). Presenters' comments will be much more fully featured in an educational videotape currently under development. Availability will be announced on the APMP website and in a future issue of *LMD*.

## Toward Tweaking the Rules

A forum for those seeking change is at hand. In accord with an Executive Order from the Governor to all state departments last Spring, the ALRB has commenced a review of all its existing administrative regulations. The Board will be assessing the necessity and cost effectiveness of each regulation, considering alternative approaches, and possibly recommending legislation as well as regulatory changes.

As *LMD* goes to press, the Board is conducting preliminary hearings around the state (see "Events") to receive public testimony that it will weigh in crafting an agenda for official revision proposals next year. Open sessions are scheduled for Indio, Ventura, Monterey, Tulare, and Sacramento. Even before the hearings began, the Board had received from the Agricultural Workers Committee a petition for changes in regulations. The petition seeks elimination of, or changes to, the rules concerning access. Changes it suggests are to allow access for only 1 hour per day (rather than the current maximum of 3) before or after work, and for only one 30-day period per year (rather than the four now permitted). In addition, the petition asks the

Board to raise from 10 percent to 50 percent the portion of a current workforce whose signatures are required to support a Notice of Intent to Organize (NO). Once an NO is properly filed, the employer is obligated to provide to the union a list of all employees' names and addresses.

Meanwhile, major efforts by the UFW and Teamsters unions to organize apple workers are under way in Washington (see articles on page 4). While the packing houses on which the Teamsters are focusing appear to fall under NLRA coverage, the UFW's attempts with orchard workers are proceeding absent the structure of any labor relations law. Enactment of a Washington state law that would cover farm workers was seriously considered in 1993, but the development of legislation was suspended when grower and worker advocates could not agree on key provisions.

In 1991, a Governor-appointed task force in New York strongly recommended altering a state labor regulations law to include farm workers. Just this year the Maine legislature took action to cover employees in selected agricultural enterprises. While drives to bring agriculture nationally under the NLRB are not likely to go far, we can certainly expect that attempts to regulate farm worker organizing in individual states will continue to emerge and to use the California experience as a primary reference.

The new California rule making may significantly alter the structure of agricultural labor relations here and elsewhere for many years to come. □

A new section in the APMP web site includes pages of educational material on the ALRA, and news releases and reports about current activity under or related to the Act. Find it at http://are.berkeley.edu/APMP/alra/alrabase.html.

## Heard at the Seminar

**Alastair Macaulay**
**Office of Senator Bruce McPherson**

*In light of recent events, the Senator's agricultural task force asked last month what could be done to help educate the public, the media, and new legislators about what is happening here in agricultural industry. Today we have a great opportunity to gain insight into some mechanisms and procedures that are already in place for determining work conditions and addressing grievances.*

**Freddie Capuyan**
**Agricultural Labor Relations Board**

*The Board's involvement in the election process is triggered by a union filing a Notice of Intent to Take Access (NA) with an ALRB regional office.*

**Rick Quandt**
**Grower-Shipper Vegetable Association of Santa Barbara and San Luis Obispo Counties**

*Some employers don't realize that the access rule only applies when a non-employee attempts to enter the private business property. It does not apply when employees are in a public place, where anybody is entitled to solicit them. Growers have to plan to train field supervisors about the ground rules and what they should do when approached by somebody who claims to have the right to talk to workers on the property. Supervisors and foremen have to know how to respond to visitors who attempt to take access to the crew, and how to deal with the crew itself in those circumstances. Training is very important.*

**Mary Mecartney**
**United Farm Workers**

*Too many employers don't seem to know what to do when organizers come to them after filing a Notice of Intent to Take Access. It would help if they called the Board office right away for an explanation. A lot of confusion can be eliminated if employers and union representatives communicate about what access means and how they will handle it as soon as they are served with an NA.*

*When you are served with a Notice of Intent to take Access, it's not the end of the world. Although there's a union campaign going on, it's important to keep on running an effective, profitable company. The union's purpose is to have a collective bargaining contract with you. We want to have contracts with healthy companies so that there are more benefits and money to go around.*

**Jim Sullivan**
**Gilles, Minor & Sullivan**

*There are friction points in the access process. There has been a lot of proper use of the access rights provided in ALRA regulations, but there has been a lot of improper use too. It's one thing when organizers take access to talk to workers about union representation, and the workers are free to listen or not. It's another when the union uses access for tactics not intended by the regulation, such as to videotape footage to use in "persuasion documentaries," or to masquerade as OSHA inspectors.*

**Freddie Capuyan**

*The Board has held that once certified, a representative of agricultural employees is conditionally entitled to enter the employer's premises to discuss contract negotiations and to investigate working conditions . . . The Board is not a party to any collective bargaining agreement, but it is always available for information — not advice — regarding rights and obligations under the Act.*

**Paul Richardson**
**Agricultural Labor Relations Board**

*For an employer to be in the position where there is going to be bargaining, first and foremost there must have been an election where a union is certified as the bargaining representative of a group of workers. The law does not require you to reach an agreement in your collective bargaining discussions. But it does require a bona fide attempt through active participation with a present intention to reach agreement. The parties are obligated to try sincerely and conscientiously to resolve their differences. The standard for bargaining performance is "good faith," and it is assessed within a totality of the circumstances.*

**Rick Quandt**

*Economics are always an issue in the employer's thinking, but unions are wrong when they assume that minimizing immediate costs is always paramount. Often more important to employers is preserving some of their freedoms and flexibility to operate their business well and to respond to rapidly changing industry conditions — trying to negotiate language that doesn't pin them down to an economically disadvantaged position in the longer run.*

**Mike Johnston**
**Teamsters Warehousemen and Helpers Union**

*I've seen a couple of kinds of bad faith bargaining over the years. In the simple kind, an employer who is angry at workers for having voted "against" him and at the union for trying to tell him how to run his business, starts off basically saying "take it or leave it." That's a common place to begin first negotiations, and it often can be worked around by people talking about what the real problems and issues are. The more sophisticated kind of bad faith bargaining is usually done by lawyers. The problems with that type from an employer standpoint is that the billable hours add up amazingly fast, it has a real bad impact on the morale of the workforce and how work gets done, and you may end up with a make-whole penalty later anyway from having bargained in bad faith.*

**Jim Bogart**
**Grower-Shipper Vegetable Association of Central California**

*How important is open, honest communication at the bargaining table? I think dialogue serves everybody well, and that an employer should not only state a proposal but also articulate reasons behind it, explain the rational basis for the proposal. It helps to establish a positive, effective relationship between the negotiators, and it is respected by the workforce as well.*

**Paul Richardson**

*The ALRA was enacted to provide rights for workers, not to support unions or employers. The rights are set out in the statute. Workers have the right to self-organize; to form, join, or assist labor organizations; to bargain collectively through representatives of their own choosing; to engage in other concerted activity; to participate in other mutual aid or protection; and to refrain from any involvement in labor organizing and mutual aid. That is the bedrock of the Act, and all ULPs can be understood as infringements on them.*

**Mary Mecartney**

*A number of charges that we filed last year were withdrawn because the Board didn't have the resources to deal with them. Most of them dealt with access violations, and many with foreman surveillance of workers and organizers. The Board couldn't handle them all, and we wanted it to focus on discharge cases.*

**Mike Johnston**

*Unfair labor charges can take 3-4 years to resolve. We have one out there that is about 4 years old. It's really intolerable, and it does discourage everybody from using the process. In fairness to the ALRB, a lot of the problem has been caused by round after round of funding cuts and staff reductions. So when you get a surge of activity like the UFW has in strawberries right now, the Board is ill-prepared to respond to it, because their staff is so short.*

**Freddie Capuyan**

*Our priorities are given to cases in which the remedy would be back pay, cases such as those involving unlawful layoffs, discharges, refusals to rehire. When such cases involve many workers, we give top priority and expedite our processes.*

**Michael Stoker**
**Agricultural Labor Relations Board**

*Jerry Brown said in 1975 that all farm workers in California should have the same rights and opportunities afforded to them as all non-agricultural employees had under the NLRA. And I agree 100% on that. There is no reason why agricultural workers should be exempt from NLRA coverage. They do some of the most strenuous work there is, and if we have a federal law that protects any workers' rights to organize and bargain, it should also apply to those in agriculture. Since 1987 the national Board has been considering as non-agriculture some of what used to be clearly agriculture and exempt from their jurisdiction. If I could wave a magic wand today, I would eliminate the agricultural exception in the NLRA altogether. Growers in this state would probably like that, but those in the other 49 states would not. If our ALRA were fully consistent with the national law, it would make for much more stability and reduce the "forum shopping" by growers who want to get their cases heard before the NLRB.*

**Charlie Atilano**
**Department of Industrial Relations**

*Our numbers have not gone down like they have for the ALRB. The Labor Commissioner's caseload has been pretty consistent, mainly because we deal mostly with unpaid wages. People who haven't been paid what they are owed want to get redress, and they come to us for it—whether it is compensation for overtime, piece rate, whatever. We deal substantially with more than 1000 cases per year here just in the Salinas office, and the department has offices throughout the state. Of 150 charges that might be brought to us in a month, about 60 would be resolved through settlement, 50 dismissed for lack of merit, and the rest would go to formal hearing.*

**Mary Mecartney**

*The ALRA could and should do a lot more worker education. It would be very helpful if the ALRB helped to level the playing field by going out there, talking to the workers, and explaining their rights.*

**Sonya Varea-Hammond**
**UC Cooperative Extension**

*Labor is a large portion of all production expenses in agriculture, and we're continually trying to balance paying good wages while making enough of a profit to stay in business, where we can continue to provide jobs and employ workers. The ALRA has a big influence on all of our lives, whether we realize it or not.* □

## Positive Labor Relations...

*Continued from page 4*

Apple industry employers respect the rights of employees to select third-party representation under the law. But unions have taken an unusual and very negative approach to make a "quick strike" in the apple industry. Rather than following the time-tested rules of the National Labor Relations Act (NLRA), they are pursuing a so-called "social justice strategy" that divides communities in Central Washington along lines of race, income, and social standing.

There has been an influx into the region of outside labor organizers seeking to drive a wedge between employers and employees. Organizers are conducting frequent media events and misleading people about working conditions in the Washington apple industry. They are disparaging the good name of the industry in the eyes of workers, consumers, public officials, the media, and local communities. We in the industry believe that such tactics are counter-productive to the economic success that is important to everyone connected with apple growing. What hurts the industry also hurts the workers that the union purports to be helping.

Most significantly, the organizers are pressuring workers to sign petitions to their employers, demanding instant recognition of a union as their bargaining agent. This approach flies in the face of the principle of free choice through secret ballot elections, which have been used for more than 60 years under the NLRA to determine the will of the workers. The current Teamsters organizing drive in several packing houses particularly seems based on the idea that the union's will is more important than the workers'. In more than a year of efforts, the union has yet to call for a single representation election.

The Washington Growers League, as the voice of the tree fruit industry on employment issues, has called on the unions to play by the rules of the NLRA, which provides a fair forum for workers to decide what, if any, union representation they desire. Union claims that the NLRA rules are stacked against organizing apple packing employees are simply unfounded.

### Facts about the Apple Packing Industry

Tree fruit packing jobs in Central Washington are among the most highly sought in the area. Many packers work year-round or nearly so, and receive employer-supported health insurance benefits. Wages in the industry average $7.50 per hour, which is 45 percent above the new federal minimum wage ($5.15) and 53 percent above the state's ($4.90). Several leading packing houses, including those targeted by the union, pay wages averaging as high as $8.45 per hour.

Contrary to the Teamsters' charges, the apple industry's safety record is very strong and continues to improve. Pesticides can protect fruit from harmful pests and diseases, and close adherence to all regulations that protect worker health has had excellent results. While very few pesticides are used in tree fruit packing operations, the industry is extremely diligent in following the rules governing their use.

Finally, apple packing employers do not and will not tolerate unlawful discrimination or sexual harassment. The industry follows the letter and spirit of all federal and state laws prohibiting mistreatment of workers.

Packing house employers support the NLRA as the forum for resolving labor representation issues in an equitable way, balancing the rights of both the worker and the employer. Like most good employers, they have established communication and grievance procedures that provide for direct and amicable resolution of employer-worker issues without union involvement. Packing house employers will not be deterred by the unions' campaign from communicating with their employees, as permitted under the Act.

### Facts about Apple Growers and Orchard Workers

One of the keys to success for any apple orchardist is a supply of capable workers ready when needed — during pruning, thinning, and especially harvesting. Many large growers have to employ hundreds of workers at peak season, perhaps only a month or two during harvest, and they are committed to providing the good working conditions necessary that bring back qualified workers year after year. Experience has shown that growers who pay a competitive wage and provide safe and healthful working conditions in the orchards are best able to attract the seasonal workers they need to successfully meet their peak needs for labor.

Today, apple pickers typically earn $8 to $10 per hour, nearly twice the minimum wage. Of the more than 50,000 field jobs in the apple industry, the majority are very short-term, just six weeks or so each year. Contrary to unions' unsubstantiated claims about these workers being forced into poverty, earning only a few thousand dollars per year picking apples, most orchard workers move to jobs in other crops or to non-farm employment the rest of the year.

Washington apple growers fully appreciate that a quality product requires decent and healthy working conditions in the orchards. Growers provide fresh water, toilets, and hand-washing facilities in the field for the sanitation of workers, and they comply with state and federal requirements to provide safety training and equipment.

The application of pesticides in the orchards is closely regulated by federal and state laws, and very few pesticide illnesses have been related to farm worker contact with Washington apples. The industry has been very supportive of a Pesticide Incident Reporting and

Tracking (PIRT) process, which independently investigates all reports of pesticide health problems.

Though not required by law, many growers also provide no-cost or low-cost housing to seasonal workers who need it. The industry has been working diligently to bring more housing on-line and to eliminate the need for the illegal labor camps that have sprung up in Central Washington.

Currently, there is no labor relations law setting specific rules for elections and collective bargaining negotiations in Washington agricultural field employment (the NLRA jurisdiction covers packing houses but specifically excludes farm work). In 1993, the Washington Growers League supported establishment of ground rules for field worker organizing through a state labor relations act modeled after the NLRA, but labor unions in the state backed away from negotiations on the proposal.

Despite their not being covered by a labor relations law, field workers enjoy rights under other employment laws and do have rights to take action against employers whom they believe to be in violation of state or federal laws on discrimination, sexual harassment, safety, wage and hour, and other labor practices. They also are legally protected against retaliation for their support of union organizing efforts.

### Economics and the Big Picture

In the global market for apples, neither growers nor packing house employers can unilaterally hike apple prices to fund wage increases for workers. Prices are set by the marketplace. Growers and packers together receive only about 25 percent of consumer expenditures on apples. The other 75 percent goes to retailers and wholesalers. Most apple growers in Washington struggle to earn any profit at all after paying for labor (more than half of their operating expenses), land, water, machinery and equipment, packing charges, marketing, fuel, supplies, insurance, and taxes.

As the taste and health benefits of apples have become known worldwide, Washington's apple industry finds itself competing with products from many places where pay and work conditions hardly measure up to standards here. About 35 percent of this state's apples are shipped abroad. Sustaining this vital segment of the market demands that our apples be of the highest quality possible and priced competitively. And in today's free market economy, Washington apples must also compete in the United States with the rising number of quality imports from throughout the world.

The industry knows that its work force is critical to the success of Washington's crop. It's good business — and the right thing — to provide quality working conditions and competitive compensation to its work force. More than 3,000 family-owned businesses growing and shipping apples in Washington have pledged to continue this tradition. □

### UFW and Teamsters...

*Continued from page 4*

In August, AFL-CIO Secretary-Treasurer Richard Trumka joined local activists for marches on packing houses in the region, and the IBT presented demands for recognition to corporation representatives during festive rallies that included banners, balloons, and noisemakers.

Considering that the UFW has also been running a major campaign to organize California's strawberry workers, the activity of its Washington contingent has been very impressive. The UFW led a successful effort to deny grower-sponsored legislation to permit substandard housing for migrant workers. A five-mile march protesting low wages drew at least 2,000 local farm workers and union activists from throughout the state to rural Mattawa. And UFW organizers have advised apple thinners and pickers whose pressing grievances had led them to spontaneous walk-outs from orchards. In several instances the workers were able to obtain dollar-an-hour wage increases. Growers have increasingly called for a new "guest worker" program that would flood the labor market with new workers.

The joint union campaign in Washington is important, of course, because it is helping America's most impoverished workers get a long-overdue raise. It is also noteworthy, however, for its basis in a historic agreement between the nation's two largest farm worker unions that are now actively cooperating to organize in the same industry. In overcoming a long and bitter legacy of in-fighting that has worked to the advantage of farm employers, the two unions are sharing information, participating in one another's activities, and perhaps presaging a more long-run labor solidarity. □

## INS Form I-9 in Transition

Stephen R. Sutter

On October 6, 1997, President Clinton signed legislation that included an extension of a September 30, 1997, deadline for the Immigration and Naturalization Service (INS) to implement the document reduction requirements of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). A week earlier, on September 30, 1997, the INS had published an "Interim Designation of Acceptable Documents for Employment" in the Federal Register.

The INS intends to propose soon a more extensive revision of the employment verification process — and unveil a new Form I-9 with instructions. Those rules

will "extend the date of the interim rule to the end of March," according to Marion Metcalf, INS Special Assistant, in Washington D.C.

Employers should continue using the current Form I-9 (edition dated 11/21/91) and its reference list of documents to complete the employment verification process until Form I-9 is revised. The INS will forgo enforcement actions against employers who continue to rely on the existing Form I-9 until it implements the new document reduction program, together with a revised Form I-9 and guidance for employers.

To minimize confusion among employers and workers, and the potential for discriminatory hiring practices, the interim rule makes only those changes to current regulations needed to conform with IIRIRA requirements. The interim rule reduces the list of documents acceptable for employment verification only under "List A" (documents that establish both identity and employment eligibility).

The interim rule keeps the "Alien Registration Card" (the so-called green card) as a List A document, but it is now described by regulation only as "Alien Registration Receipt Card or Permanent Resident Card, Form I-551" — removing the words "INS Form I-151," which followed the "Receipt Card" part of the former description. This confirms that (since March 21, 1996) only the newest version of the form, Form I-551, is acceptable for employment authorization purposes.

Documents now struck from List A are (1) a Certificate of U.S. Citizenship, (2) INS Form N-560 or N-561, and (3) a Certificate of Naturalization, INS Form N-550 or N-570. Use of a foreign passport with a Form I-94 is limited to those nonimmigrants authorized to work for a specific employer. The interim rule made no changes with respect to documents in either "List B" (evidence of identity only) or "List C" (evidence of employment authorization only), although all three lists will probably be pruned back in the next rule-making action.

Likely to stay on List A, among other documents, is the Employment Authorization Card, INS Form I-688A (if unexpired). Final rules will probably dislodge most List B documents, including federal and local ID cards. Almost certain to stay on List B will be a state-issued driver's license or ID card. Other List B documents likely to be retained include: Native American Tribal Document; driver's license issued by a Canadian government authority; and perhaps a "School ID Card with Photo."

A social security card (unrestricted) will continue as a List C document. However, the INS is likely to propose removal of birth certificates as well as certain other List C documents in future proposed rules that will supersede the interim rule.

The public will have an opportunity to comment on proposed changes perhaps as soon as November. Metcalf expects that documents will be listed on the front of the revised Form I-9 (like the original 1987 version with boxes to check and spaces in which to fill in document numbers). Instructions for Form I-9 will be two pages, and they will include information on reverification of eligibility and replacement of previously used documents that are no longer valid. □

Updates for employers on implementation of the IIRIRA are being posted on the INS Internet website at http://www.ins.usdoj.gov/employer/iirirawb.htm, which also includes a downloadable version of the current I-9 form.

## Social Security Administration Tightens Grip on Bad Numbers

Stephen R. Sutter

The Immigration and Naturalization Service (INS) is not the only agency checking on employee identifiers. Increasingly, the Social Security Administration (SSA) is using its computer systems to find numbers on employer tax returns that either are invalid or are registered to individuals different from those named on the return.

Employers who file 250 or more W-2s for a tax year are required to provide the information on personal computer diskettes or magnetic tape. The names and social security numbers (SSNs) on magnetic-media W-2 reports are now being checked against the SSA's records during processing.

This year, the SSA began returning the reports to employers without processing them if 70 percent or more of the W-2s were "bad"— either the social security number on the W-2 was never issued by the SSA, or the social security number was valid, but the name on the W-2 did not match the name on SSA's records. The SSA advised employers whose files were rejected to phone to discuss how to get their 1996 W-2s processed and prevent future problems. The 70 percent reject threshold that applied to 1996 W-2s will be lowered for 1997 W-2s.

Employers over the threshold will probably be encouraged to use the SSA's Enumeration Verification System. This free service enables employers to compare payroll records of employee names and social security numbers with SSA's records to verify their accuracy before completing Forms W-2. Verification can be requested on any worker for whom a W-2 will be pre-

pared — a current, former, or new employee (after a commitment to hire has been made).

The social security card is only one of the documents that a new hire may choose to show in proving U.S. employment eligibility and completing the Form I-9. If the employee presents one of the others, the social security card can be specifically requested after the hiring process to assist in accurate entry of name and social security number into personnel records.

The Internal Revenue Code provides for a penalty of $50 per W-2 for the inclusion of incorrect SSNs or for missing numbers, although these regulations are not being enforced at present, according to Bill Brees, SSA Regional Magnetic Media Coordinator, San Francisco. That is no guarantee, however, that IRS penalties will not be imposed for incorrect 1997 W-2s. Any failure to file a correct information return due to intentional disregard of the filing requirements is subject to a minimum penalty of $100 per W-2; there is no maximum penalty.

Also, the Social Security Administration is now required to notify the Immigration and Naturalization Service of any earnings reported on or after January 1, 1997, on a social security account number issued to an alien not authorized to work in the United States. The SSA must give the INS the "name and address of the alien, and the name and address of the person reporting the earnings and the amount of the earnings." □

## Instructors to Train Farm Labor Vehicle Drivers Are Scarce

Stephen R. Sutter

Employer-arranged transportation of workers in farm labor vehicles, a common practice in California and elsewhere, is subject to both state and federal regulation. At present in California, however, there is a weak link in the system — a shortage of certified instructors to provide the state-mandated training of the drivers of those vehicles.

The California Vehicle Code requires operators of farm labor vehicles, when transporting one or more farm worker passengers, to have in their possession a certificate issued by the California Department of Education permitting the operation of such vehicles. Applicants for the vehicle operator's certificate must present evidence that they have successfully completed the driver training course developed by the Department of Education. The certificate is granted after the driver has also passed a DMV/CHP examination and paid a $12 fee. As of July 1, 1997, there were approximately 1,900 active holders of "DL-45" certificates to drive a farm labor vehicle in California, according to John Rooney, Department of Motor Vehicles spokeman in Sacramento.

Instructors who give the courses to train drivers of farm labor vehicles are also required to be certified, and currently their numbers are low, especially in the Central Valley. There are only 44 such driver instructors who were certified and active in California. Of those, 33 lived in Monterey, 6 in Ventura, 2 in Imperial, 2 in Kern, and 1 in San Diego County.

To become certified as an instructor, it is necessary to take a training course given by the state. Courses are conducted seven times a year at the California Highway Patrol Academy in West Sacramento. To be accepted in a course, an applicant must be sponsored by his or her principal employer (or be an independent contractor) and have 3 years of experience operating farm labor vehicles with a class B commercial driver's license.

The 3-week, 120-hour course for instructors lasts a minimum of 8 hours a day, 5 days a week, and includes several night sessions. It covers 44 subject areas, with emphasis on the fundamentals of classroom and behind-the-wheel teaching techniques. Participants spend about half of the time in the classroom and half on the road. Room (double occupancy) and board (weekdays only), training materials, and instruction are provided. Transportation to and from the training facility is the responsibility of the applicant or employer. Application forms for "Bus and Farm Labor Vehicle Instructors" can be obtained from the California Department of Education, School of Transportation, P.O. Box 944272, Sacramento, CA 94244-2720. For more information, telephone 916/322-4879.

Among the rules pertaining to farm worker transportation, the California Vehicle Code defines a "farm labor vehicle" as any motor vehicle designed, used, or maintained for the transportation of nine or more farm workers, in addition to the driver, to or from a place of employment or employment-related activities. Every farm labor vehicle must be inspected annually by the CHP. For farm labor vehicle inspection sites and times, call your local CHP "School Pupil Safety Officer" at: 916/225-2715, Redding; 916/464-2090, Rancho Cordova; 707/648-4180, Vallejo; 209/445-6922, Fresno; 805/549-3261, San Luis Obispo; 909/383-4811, San Bernardino; 213/664-1108, Los Angeles; or 619/637-7158, San Diego. For additional information on applicable federal and state rules, also see *Labor Management Laws in California Agriculture*, publication 21404, by Howard Rosenberg et al. (for details on ordering, contact Steve Sutter, UCCE, Fresno, at 209/456-7560, or Communication Services—Publications, UC Division of Agriculture and Natural Resources, 6701 San Pablo Ave., Oakland, CA 94608-1239—phone 510/642-2431 or, in California, 800/994-8849). □

# Resources

## Publications

***Farm Safety*,** a quarterly newsletter, is published in English and Spanish by the UC Division of Agriculture and Natural Resources Farm Safety Program. Also included as inserts in most issues are fact sheets related to seasonal safety concerns. The Summer 1997 issue, for example, featured articles "Tomato Harvesttime: Tips for Safeguarding Worker Health" and "Summertime Field Hazards," and bilingual inserts illustrated and described "Hand Signals for Use In Agriculture" and "Heat Illness and How to Avoid It." Articles in that issue also included "Don't Think 'It Can't Happen to Me'" about a preventable farming accident and "Attention Farmers 55 Years and Older: Safety and Health Concerns for Aging Workers." The Fall 1997 issue features "Grain Handling Safety" with accompanying inserts on "Grain Entrapment Prevention" and "Zero Injuries: A Worthwhile Goal." For information about the newsletter, write or phone the Farm Safety Program, Department of Biological and Agricultural Engineering, 3022 Bainer Hall, University of California, Davis, CA, 916/752-0563 (fax 916/752-2640).

***An Assessment of Migrant and Farm Workers' Need for Housing in California: How a Cooperative Model Has Helped Meet That Need.*** Written by James Gordon, Principal Researcher, La Cooperativa Campesina de California, Sacramento, California, the 54-page book published in 1995 (Item No. R27, $6 plus shipping) documents the housing shortfall for both migrant and non-migrant seasonal workers. Recommendations include an increase in cooperatively produced housing and the creation of a government-grower-farm worker partnership to address the housing needs. For more information and a catalog of other publications available, contact the Center for Cooperatives, One Shields Avenue, University of California, Davis, CA 95616. Phone: 916/752-2408. Fax: 916/752-5451.

***Immigration in a Changing Economy: California's Experience,*** by Kevin F. McCarthy and Georges Vernez, is a report of a comprehensive study of how immigration has changed over the past three decades. It assesses the impact immigration has had on the state's demography, economy, people, and institutions. The 370-page book (ISBN: 0833024965) costs $20, plus tax and shipping, from RAND, P.O. Box 2138, Santa Monica, CA 90407-2138. For information, phone RAND Distribution Services at 310/451-7002 or fax: 310/451-6915.

***Rural Latino Resources: A National Guide,*** by Refugio I. Rochin, Director, and Emily Marroquin, Student Assistant, Julian Samora Research Institute (JSRI) is a compiled listing of researchers, educators, and organizations in North America who are resources on rural Latino issues, such as health, family, crime, poverty, and labor patterns. The guide also lists publications and other work produced by the participants. It is available in PDF format on the JSRI website at http://www.jsri.msu.edu, or in hard copy for $7 plus shipping and handling from Julian Samora Research Institute, Michigan State University, 112 Paolucci Bldg., East Lansing, MI 48824-1110.

**Two books on workers' compensation in California** provide alphabetical references by subject to the labor code, rules and regulations, case law and writings by noted legal authors, as well as California Compensation Cases and California Workers' Compensation Reporter. The *Workers Compensation Index*, 4th Edition is $74.50, and *Rehabilitation Index*, 8th Edition, is $54.50, including sales tax, shipping, and handling, ordered from: James T. Stewart, 1937 Santa Ana, Clovis, CA 93611-4126 (phone: 209/291-3238; fax: 209/485-3804).

**The National Pesticide Telecommunications Network** toll-free pesticide information service for callers in the United States, Puerto Rico, and the Virgin Islands, described in *LMD* Winter-Spring 1997 "Resources" (page 14) now operates 7 days a week, except holidays, from 6:30 a.m. to 4:30 p.m. Pacific Time. The service is cosponsored by Oregon State University and the U.S. Environmental Protection Agency. Phone: 800-858-7378. FAX: 1-541-737-0761. Email: nptn@ace.orst.edu. Or visit the NPTN website at http://ace.orst.edu/info/nptn/.

## Internet Resources

***A Profile of U.S. Farm Workers***. Based on data from the National Agricultural Workers Survey (NAWS), which has been conducted regularly since 1988 by the U.S. Department of Labor, this April 1997 report was written for the U.S. Commission on Immigration Reform and is on-line in HTML format at http://www.dol.gov/dol/asp/public/programs/agworker/report/main.htm. It describes the demographics, household composition, income and use of public services by people throughout the nation who perform "seasonal agricultural services," as defined by the 1986 immigration reform act. A special report on California workers, based on 1991 NAWS data, is available in PDF format (requires Adobe Acrobat) on the APMP website (http://are.berkeley.edu/APMP/) under "Project Reports." Work on a more current California report has begun.

**All issues of *Labor Management Decisions*** are now on-line at the APMP website (http://are.berkeley.edu/APMP in PDF format (requiries Adobe Acrobat), and a few issues are also available in HTML format. Very soon all published LMD articles will become accessible in HTML through a clickable index of titles. □

## Events

**Ag Personnel Management Workshops.** *Wednesday and Thursday, November 19 and 20, 1997.* Lakeport, California. Sponsored by UC Lake County Cooperative Extension and the Agricultural Personnel Management Program, the meetings will emphasize supervision of orchard and vineyard workers. Registration fees cover resource materials, lunch, and refreshments. For more information, phone 707/263-6838 or e-mail Farm Advisor Rachel Elkins (rbelkins@ucdavis.edu).

*Employers' workshop (in English). November 19.* Topics include a legal update (Steve Sutter), employee selection (Brian Linhardt), interpersonal relations on the job (Gregory Billikopf), and discipline and termination (Billikopf and Linhardt). Fee: $35.

*Supervisory training workshop (in Spanish). November 20.* The program includes interpersonal relations on the job; supervisory power, abuse of authority, and empowerment; and discipline and termination (presenter: Gregorio Billikopf). Fee: $15.

**AgFresno Ag Employers' Seminar.** *Thursday, November 20, 1998. 8:30 a.m. to Noon.* Fresno Fairgrounds: Fine Arts Building. The 8th annual seminar, presented by the UC Agricultural Personnel Management Program in cooperation with the AgFresno Farm Equipment Exposition, will cover payroll taxes, immigration, and labor law compliance, with panelists from state and federal agencies. Co-moderators are Michael C. Saqui, Attorney, and Steve Sutter, UC APMP Farm Advisor. The seminar is free, but there is a $4 admission fee at the gate. For information, contact Steve by phone (209/456-7560), fax (209/456-7575), or e-mail (srsutter@ucdavis.edu).

**Workshop on Disciplinary Action Policies (DAPs) for Enhancing Employee Compliance with WPS Training.** *November 25, 1997, beginning at 9:15 a.m.* Modesto: County Center III Auditorium. Gregory Billikopf is presenting a continuing education session for certified private applicators and others licensed by the California Department of Pesticide Regulation (e.g., PCAs, QALs, QACs). This session will cover effective employee discipline as a management tool to help agricultural employers reduce pesticide-related injury and illness. Attendance at this meeting will earn participants 2 hours of continuing education credit toward the total hours of credit. To receive credit, participants must arrive no later than 9:15 a.m., and Certified Private Applicators (CPAs) should bring their certification number. There is no cost for this meeting, but advance notice of plans to attend would be appreciated. Phone Gregory Billikopf at 209/525-6654 or send e-mail to gebillikopf@ucdavis.edu.

**Agricultural Supervision and Management (in Spanish).** *December 3–5, 1997.* Stockton, California. The sixth annual 3-day agricultural supervision and management workshop will include conflict management, supervisory communication, and other topics for Spanish-speaking supervisors and foremen. Cost of $45 includes all three lunches ($35 for early registration postmarked by November 21). For more information, hone Gregorio Billikopf-Encina at 209/525-6654, or send e-mail to gebillikopf@ucdavis.edu.

**Cal/Work Summit.** *Friday, December 5, 1997.* Downtown Fresno Holiday Inn. The rescheduled, day-long agricultural labor conference is intended to develop a comprehensive action plan linking agriculture to labor in the midst of welfare reform. For information, phone Manuel Cunha, Jr., Nisei Farmers League, at 209/251-8468.

**Worker Protection Standard Train-the-Trainer Workshops.** The next series of workshops for trainers of fieldworkers (4-hour courses) and for trainers of both pesticide handlers and fieldworkers (8-hour courses) will be offered by the Pesticide Education Program, UC Statewide IPM Project in January 1998. All workshops are filled on a first-come, first-served basis. For information, phone (530) 752-5273 (new area code) or send e-mail to diane.clarke@email.ipm.ucdavis.edu.

*Winters: January 7*, English; *January 8*, Spanish
*Carlsbad: January 13*, English; *January 14*, Spanish
*Napa: January 21*, English; *January 22*, Spanish

**Agricultural Supervision and Management (in English).** *February 24-26, 1998.* Stockton, California. The third annual 3-day workshop for supervisors and managers will include employee selection, pay, conflict management, supervisory communication, and labor law. Cost of $45 includes all three lunches ($35 for early registration, postmarked by February 13, 1998). Contact Gregory Encina Billikopf by phone (209/525-6654) or e-mail (gebillikopf@ucdavis.edu). □

## ALRB Invites Public Comment on ALRA Regulations

The Agricultural Labor Relations Board is seeking public comment on its regulations in a review ordered by Governor Pete Wilson. The Board held a series of hearings during the first two weeks of November at several locations around the state, and is accepting written comment until November 30, 1997, on ways to reduce, clarify, or improve all existing regulations, as well as on a petition from the Agricultural Workers Committee seeking elimination of or changes to the regulations concerning access. For more information, contact Antonio Barbosa, Executive Secretary, Agricultural Labor Relations Board, 915 Capitol Mall, Third Floor, Sacramento, CA 95814. Phone 916/653-3741. Fax 916/653-8750. □

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*Labor Management Decisions* is published by the Agricultural Personnel Management Program, Division of Agriculture and Natural Resources, University of California. The program's mission is to improve human resource management in California agriculture through applied research and extension education. Program information, back issues of *Labor Management Decisions*, and many other resources are available on the APMP website at http://are.berkeley.edu/APMP.

Articles published in *Labor Management Decisions* may be reprinted with credit. We welcome readers' opinions, news items, and other information. Letters will be published as space permits.

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*Howard Rosenberg* will be on an academic sabbatical leave during 1998. DANR Associate Vice President Henry Vaux has named *William E. Steinke* to serve as Acting Director of the APMP. Dr. Steinke is a Cooperative Extension Specialist in the Department of Biological and Agricultural Engineering, UC Davis, and also serves as Director of the DANR Farm Safety Program.

## NEW SUBSCRIPTION

**If you do not receive *Labor Management Decisions*** through the mail and want to have a free subscription, please complete and send this form to: Agricultural Personnel Management Program, 319 Giannini Hall, University of California, Berkeley, CA 94720-3310 (phone: 510/642-2296; fax: 510/642-6108; e-mail: tabraham@are.berkeley.edu).

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