

THE STORY OF THE CALIFORNIA AGRICULTURAL LABOR RELATIONS ACT:

How Cesar Chavez Won the Best Labor Law in the Country and Lost the Union

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After many months of political wrangling, and after Governor Jerry Brown had staked his first year in office on bringing peace to the historically violent struggle for workers' rights in California agriculture, the Alatorre–Zenovich–Dunlop–Berman Agricultural Labor Relations Act was signed into law in the first week of June, 1975.¹ One would be hard

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¹ For contemporary reports of the event immediately preceding passage, see: *California Farm Bill Backed By Panel as Unionists Fight*, UNITED PRESS INTERNATIONAL, May 14, 1975; Leo Stammer, *Farm Labor Bill OKd by Assembly Panel*, L.A. TIMES, May 13, 1975; *Parade Here Backs Efforts by Chavez To Unionize Farms*, N.Y. TIMES, May 11, 1975; Harry Bernstein, *McCarthy Joins Unions in Seeking Farm Bill Change*, L.A. TIMES, May 15, 1975; —, *Pact on Farm Bill Rejected by Teamsters*, L.A. TIMES, May 17, 1975; *2,800 Rally at Capitol to Back Farm Measure*, L.A. TIMES, May 19, 1975; Harry Bernstein, *Agreement Reached on Farm Labor Bill*, L.A. TIMES, May 20, 1975; —, *Farm Labor Accord Sets Stage for Special Session*, L.A. TIMES, May 20, 1975; *Teamsters Back Farm Labor Accord*, N.Y. TIMES, May 21, 1975; Jerry Gilliam, *Farm Bill Clears Senate Panel 4-1, Faces One More*, L.A. TIMES, May 22, 1975; —, *Senate Passes Farm Labor Bill*, L.A. TIMES, May 27, 1975; —, *Farm Labor Bill Moves Quickly Toward Passage*, L.A. TIMES, May 28, 1975; —, *Assembly Sends Farm Bill to Brown for Signing*, L.A. TIMES, May 30, 1975.

pressed to overestimate the significance of this legislation, which remains the only state law in the nation to govern the rights of farm workers to act collectively and engage in union activity.² In 1975, few could have predicted that this new legal order would lead to the disintegration of the farm worker movement in California.

Ever since the Delano grape strike a decade earlier, Cesar Chavez had grasped and utilized a national mood of social and legal transformation taking place across the country. This was, of course, a period of great social turmoil, including racial violence, police repression and armed military intervention that culminated in the passage of landmark legislation, massive student and youth activism, a War on Poverty, and what many have argued to be the high-water mark of judicial liberalism in America.

Chavez was a keen student of the civil rights movement and King's and Gandhi's incorporation of religion and nonviolence as a means of organizing. As an alumnus of the Community Service Organization started by Saul Alinsky and trained by the famous organizer Fred Ross, Sr., he had worked across California and Arizona to register hundreds of thousands of Hispanic voters and witnessed citizens of all races coming together to fight injustice. As the urban movements to register voters, oppose unconstitutional laws, and challenge stereotypes and bigotry expanded across the country, it became more difficult to separate issues of race and class. Claims of racial injustice in America became enmeshed with claims of economic justice. The federal government started initiatives addressed to poverty; Catholics and Jews, once excluded from the middle class, turned to help the entre of others; and young people began to focus on these issues in their own communities. By uniting the issues of fair pay and fair treatment in a demand for dignity, Chavez and his farm worker movement focused the nation's attention on some of the most invisible and vulnerable workers in the country.

However, Chavez's effort was not solely directed at consciousness-raising or the repeal of racist laws or even gaining legislative protection; he and the countless others who dedicated themselves to this struggle aimed to empower workers to form a union and bargain collectively with their employers for better wages and working conditions. These two goals, creating a farm

² Hawaii's state labor code includes agricultural workers along with the rest of the state's employees, but the code extends no special provisions to this sector of work.

worker union and creating a social movement focused on issues of the working poor, proved difficult to hold aloft simultaneously. Competing social and legal strategies had also led to conflict within the civil rights movement between the efforts of the NAACP and more radical groups like the Student Non-violent Coordinating Committee or Malcolm X's Nation of Islam.³

John Lewis, president of the SNCC and a future congressional leader, spoke at the March on Washington for Freedom and Jobs alongside Martin Luther King, Jr. and United Auto Workers president, Walter Reuther, among others.⁴ March organizers excised several phrases from his controversial speech including one about the proposed Civil Rights Act introduced by President Kennedy: "The revolution is a serious one. Mr. Kennedy is trying to take the revolution out of the streets and put it into the courts."⁵ This conflict between a revolution and a legal order, between gaining public support and gaining legislative victories, between organizing a union and organizing a social movement would prove to be a defining one for Chavez and the UFW.

In this article, I will address the tension between a movement for social justice and a legal regime designed to deliver that justice as manifested in the efforts to organize California farm workers and the passage and subsequent administration of the Agricultural Labor Relations Act (ALRA). I will describe how balancing the needs and priorities of maintaining a broad social movement for the vulnerable and dispossessed and a focused legal fight for good contracts and union rights ultimately led to the collapse of the United Farm Workers' organizing efforts. Ironically, winning the strongest, most protective labor law in the country produced new organizing victories at the same time it exacerbated the internal conflict between these two missions.

Although the events leading to the passage of the ALRA started with the "Great Delano Grape Strike" and the signing of the first contract with

³ See DOUG MCADAM, *POLITICAL PROCESS AND THE DEVELOPMENT OF BLACK INSURGENCY, 1940-1970* (1999).

⁴ It is interesting in this context to note that the name of the march at which Dr. King gave his most famous speech nodded at this dual goal of economic and racial justice and that the speakers included civil rights and union leaders.

⁵ JOHN LEWIS, *WALKING WITH THE WIND* (1998).

DiGiorgio, farm worker organizing in California had begun almost a century earlier. From the 1890s to 1960, there were several waves of farm worker organizing, all involving some admixture of ethnic workers' groups, traditional AFL-style unionism, and radical elements such as the International Workers of the World (IWW).⁶ Large-scale farming in California is nearly as old as the state itself. Ranchers and farming interests received large parcels of land in as much as 35 million acre "bonanza farms" because of exemption from the Homestead Act. With the new railroad and investments in irrigation, farming soon became more lucrative than ranching. Beginning with the hiring of thousands of Chinese, unemployed after the completion of the transcontinental railroad, the history of field labor in California agriculture can be told through various immigrant groups.⁷ In the end, several salient factors led to the failure of farm workers to successfully form a union or win lasting contracts: the transience and vulnerability of an immigrant workforce, the exclusion of agricultural workers from the National Labor Relations Act (NLRA), the introduction of the *Bracero* program, and the general unfamiliarity with and lack of interest in the agricultural sector by traditional AFL-CIO unionism — all set against a backdrop of employer violence and hostility toward organizing efforts backed by law enforcement, judges and politicians.

Field labor in California was initially performed by Asian immigrants, followed by Mexican and Filipino workers, with a brief interlude of white workers during the Depression. Early on, growers learned to recruit a workforce of non-citizen, newly-arrived immigrants who were often barred from other sectors of employment.⁸ But in 1882, with the passage of the Chinese Exclusion Act, huge tracts of newly irrigated land lay fallow,

⁶ MARSHALL GANZ, *WHY DAVID SOMETIMES WINS* 23 (2009). For the summary of California farm worker organizing, I have used the following sources: CAREY MCWILLIAMS, *FACTORIES IN THE FIELD: THE STORY OF MIGRATORY FARM LABOR IN CALIFORNIA* (1939); STUART MARSHALL JAMIESON, *LABOR UNIONISM IN AMERICAN AGRICULTURE*, BULLETIN 836 (BUREAU OF LABOR STATISTICS, U.S. DEPARTMENT OF LABOR; reprint 1975); JUAN GOMEZ-QUIÑONES, *MEXICAN AMERICAN LABOR, 1790–1990* (1994); MAJKA & MAJKA, *FARM WORKERS, AGRIBUSINESS AND THE STATE* (1983). Although there are many others of high quality, these provide a concise account of the activity of the time and are sufficient for this survey.

⁷ MCWILLIAMS, *supra* note 6, at 66–67.

⁸ GANZ, *supra* note 6, at 24.

requiring a new source of cheap labor. Growers looked west and south. With the planting of sugar beets, large numbers of Japanese with specialized cultivation skills learned in Hawaii began arriving in California.⁹ With early organizing successes centered around a system in which crew bosses acted as agents of the workers rather than growers, the Japanese won season-long contracts and higher wages.¹⁰ The strategy was to accept below-market wages and corner the labor market in a certain crop, and then when the crops were ready to harvest, they would threaten to strike unless wages were raised.¹¹ Through ethnic solidarity and high-demand agricultural skills, as well as their accommodation to local market forces, this strategy proved successful from season to season; however, it never amounted to a stable labor organization.¹² Although two outside organizations attempted to recruit Japanese workers, both efforts ultimately failed. The AFL knew little about farm worker life or how to organize in the fields, and proved racially hostile. The IWW, on the other hand, was more concerned about revolutionary politics than about the concerns of workers, many of whom sought higher wages and entry into the landowning classes. Indeed, despite racist laws restricting land sales, many Japanese farmers became successful as growers. As Carey McWilliams wrote, “it is impossible to even approximate the enormous contribution the Japanese made, in the course of a quarter century, to California agriculture.”¹³

With the start of World War I, organizing in the fields came to a halt. In the postwar period the “red scare” in California led to the arrest of more than 500 IWW activists, prosecuted under the Criminal Syndicalism Act, and open-shop, anti-union campaigns led to the loss of a quarter of AFL membership and labor movement demoralization.¹⁴ After the war, with labor militancy all but vanquished, California growers looked to Mexico to provide the supply to meet the increase in agricultural labor requirements. Under pressure from the growers, Congress exempted

⁹ McWILLIAMS, *supra* note 6, at 103.

¹⁰ JAMIESON, *supra* note 6, at 53; GANZ, *supra* note 6, at 26.

¹¹ *Id.*

¹² For example, the Japanese and Chinese were favored for their ability to provide their own food and shelter, as well as disappearing after the harvests were over, thus saving growers considerable expense. See JAMIESON, *supra* note 6, at 51.

¹³ McWILLIAMS, *supra* note 6, at 110.

¹⁴ GANZ, *supra* note 6, at 30.

Western Hemisphere nations from immigration quotas established in 1921, and Mexican immigration soared to about 9 percent of all immigrants in the first half of the decade.¹⁵ This source of cheap labor was exploited by the growers — the Mexican workers were organized in work gangs much like the Japanese, only the loyalties of the contractors were with the bosses. The workers were paid piece rate, and so the contractors could increase their earnings by keeping the hourly wages down.¹⁶ This system worked to the advantage of the growers because organizing was hampered as workers were confused about for whom they were in fact working and a few contractors were able to set wages and conditions for their whole harvest.¹⁷ There was, however, intense opposition to this vast increase in Mexican labor, as reflected by the Box and Harris bills in Congress, which took up the same racist and nativist language used against the Chinese and Japanese and reflected racial divisions within the working-class population.¹⁸ To hedge against possible statutory limitations on the Mexican labor supply, growers also began recruiting Filipino workers from the Philippines and Hawaii — both U.S. territories and thus not subject to immigration quotas.¹⁹

In addition to exploiting the vulnerability of immigrant workers, who spoke little or no English, lacked knowledge of the legal system, and were often reliant on their employer for food and shelter, the growers received an added benefit with the passage of the NLRA in 1935. Because of the massive waves of unemployment caused by the Depression, the labor market was thrown into upheaval with plummeting wages and increased labor strife across the country. Senator Robert Wagner of New York introduced the NLRA with the purposes of bringing industrial peace and encouraging union organizing to raise wages. The Act gave workers and unions powerful organizing tools and protection from employer retaliation. It also established the National Labor Relations Board, an independent agency charged with overseeing the administration of the Act, running union elections, and certifying unions as the exclusive bargaining representative

¹⁵ *Id.* at 31; GÓMEZ-QUIÑONES, *supra* note 6, at 104.

¹⁶ GÓMEZ-QUIÑONES, *supra* note 6, at 130.

¹⁷ GANZ, *supra* note 6, at 32.

¹⁸ MAJKA & MAJKA, *supra* note 6, at 64.

¹⁹ JAMIESON, *supra* note 6, at 74.

of employees.²⁰ The NLRA initially proved quite successful, as union membership soared throughout the next twenty years. It unfortunately had quite the opposite effect for agricultural workers. In order to get the bill through Congress, Wagner and other northern New Deal Democrats were forced to compromise with conservative western and southern senators, who succeeded in excluding agricultural and domestic workers from the law's protections — both groups largely comprising people of color. So as it became clear that it was the Mexican and Filipino field workers, rather than the white packing shed and cannery workers who fell under the agricultural exception, AFL and CIO organizers took little interest organizing those not within the law's protective reach. It also meant that farm workers could only use unprotected strikes and slow-downs to achieve recognition.²¹

The great wave of organizing took place in the first twelve years after the Act's passage. In 1947, Congress, over the veto of President Truman, passed the Taft–Hartley Act. Also known as the Labor Management Relations Act, or the “slave-labor act” by labor leaders, Taft–Hartley amended the NLRA with many provisions hostile to unions, taking away many of their most potent weapons.²² The NLRA originally only provided for unfair labor practices committed by employers; now it included many that could be committed by unions. It prohibited wildcat strikes, jurisdictional strikes, and solidarity or political strikes. It outlawed the closed shop, and restricted the union shop by allowing states to pass “right-to-work” laws, which prohibited union-security clauses in contracts requiring employees to obtain union membership. It restricted political contributions by unions and required union officers to sign affidavits repudiating communism. Most importantly for the subsequent farm worker movement, it outlawed the secondary boycott. This involves a union engaging in picketing or other activity against a separate employer, who has no labor dispute, doing

²⁰ Exclusive representation means that, once certified, the employer must bargain with the union in good faith to arrive at a contract governing wages, hours, and other conditions of employment. The employer cannot deal directly with employees. Additionally, only one union may represent a certified group of workers, or bargaining unit at a time. Other unions are barred from running an election for the duration of the collective bargaining agreement.

²¹ MAJKA & MAJKA, *supra* note 6, at 95.

²² See 29 U.S.C. §§ 141–197.

business with a struck employer, with the goal of the secondary employer's pressuring the primary employer to settle its strike or dispute. While Taft-Hartley ultimately had a negative effect on unions' ability to organize, the fact the agricultural workers were excluded from the protections of NLRA, but were allowed to keep the economic weapons taken away from industrial unions with the LMRA would prove critical to the UFW's organizing success as well as its later decision to seek legislative protection and what kind.²³

The *Bracero* Program and undocumented workers presented further challenges to efforts to organize farm workers. The Depression saw a major contraction in the farm labor market, and the government began repatriating workers by the thousands to Mexico. During World War II, the demand for manual labor surged, and, in a series of diplomatic agreements with Mexico, the government began bringing in several hundred "guest" workers for the fields and railroads.²⁴ At the behest of growers, the program in agriculture was extended and would continue to be renewed every two years until 1964. Between 1942 and 1964, about 4.6 million Mexicans were admitted to do agricultural work. Many Mexicans returned year after year, but the one to two million individual workers who participated in the program gained U.S. work experience and wages, and some decided to remain illegally in the country.²⁵ Although the program stipulated that no *braceros* could replace domestic workers (and so could not be used as strikebreakers), the law was rarely enforced, and growers would replace workers with *braceros* after firing them.²⁶ The program gained a new lease on life when it was renewed and extended as PL-78 in 1952. Although the program would end in 1964, Chavez, the UFW, and other unions would continually struggle against the wealth and political connections of growers, and their ability to utilize cheap, surplus labor.

²³ Joseph Shister, *The Impact of the Taft-Hartley Act on Union Strength and Collective Bargaining*, 11 INDUSTRIAL AND LABOR RELATIONS REVIEW 339, Apr. 1958.

²⁴ See Michael Snodgrass, *The Bracero Program, 1942-1964*, in MARK OVERMYER-VELÁSQUEZ, ED., *BEYOND THE BORDER: THE HISTORY OF MEXICAN-U.S. MIGRATION* 79 (2011).

²⁵ *Braceros: History, Compensation*, 12 RURAL MIGRATION NEWS, Apr. 2006.

²⁶ DEBORAH COHEN, *BRACEROS: MIGRANT CITIZENS AND TRANSNATIONAL SUBJECTS IN THE POST-WAR UNITED STATES* 154 (2011).

And so, it was against this background of racism, exclusion from political and legal protection, and violent strikebreaking tactics that Cesar Chavez began organizing farm workers, founding the National Farm Workers Association (NFWA) in 1962. As this brief sketch shows, for over seventy years, efforts to organize field workers were met by growers and their allies in the courts, the Legislature and law enforcement with extreme hostility, violence, injunctions and arrests, anti-union ordinances and the importation of workers with no rights and no affiliations. Such efforts were also rewarded by tepid support from organized labor, which, even when finally fully engaged, found it difficult to win on the growers' turf.

By the time the Delano strike was called in 1965, Chavez had already formulated his response to many of these issues. It is impossible to understand the formation of this strategy apart from the context of the civil rights movement and the end of the *Bracero* program. In 1963, amid intense grower opposition, Congress voted to allow the *Bracero* program to end without further extension. This enraged California growers, who embarked on a propaganda campaign to consumers predicting soaring produce prices as a result of fewer crops and a dire labor shortage. In an effort to compromise, the Department of Labor allowed growers to bring in emergency green card workers under the condition that they raise wages.²⁷ The labor market contraction caused by the new absence of vulnerable nonresident workers created a new organizing opportunity, which Chavez would seize. The question remained how to effectively mobilize farm workers and avoid the fate suffered by earlier efforts. He would draw on three tactics utilized by civil rights leaders to achieve this: a broad base of support from the people actually facing injustice, massive mobilization of outside supporters and the media, and strategic utilization of the legal system.

After ten years of working as a director for the CSO, Chavez (along with Huerta and Padilla) resigned to start an organization focused on agricultural labor and the injustices of the *Bracero* program when the CSO convention voted not to go in that direction.²⁸ He established his new NFWA in Delano in the San Joaquin Valley, the heart of the table grape industry and the center of California's agricultural belt. Because of its prime

²⁷ GANZ, *supra* note 6, at 96.

²⁸ MAJKA & MAJKA, *supra* note 6, at 170.

location near year-round farming, Delano offered Chavez the opportunity to gain initial support among more stable residents rather than the difficult to organize and vulnerable migrant populations. He believed that many earlier efforts had failed due to a lack of a stable organizational base engendered by traditional union organizing strategies of focusing on one contract or workplace at a time.²⁹ For the next two years, the organizers solidified their base of support using the community organizing methods common to the CSO, such as orchestrating house meetings, constructing community service centers and establishing a credit union for farm workers.³⁰ Chavez began building allies for his movement with growing confidence of a potential victory, remarking “the reason the farm worker organizing drive could win was because they could ally themselves with a new feature in American social and political activity — the movement for civil rights, the movement of the youth, and the movement of the poor.”³¹ Chavez thought that the union should be a service-oriented movement, with organizers taking only the money donated to them by farm workers, and not organizing along a traditional AFL-CIO-style “business” model.³²

In 1965, when Filipino grape workers in the Coachella valley, led by AWOC director Larry Itliong, demanded the \$1.40 per hour prevailing wage set by the Secretary of Labor, the growers initially refused. After a short strike, however, management conceded the extra \$0.15. When the harvest moved north, the growers again refused the higher wage and ultimately prevailed. With the work now moving to Delano, and the growers repeating the low-ball offer, Filipino workers staged a sit-down strike, refusing to leave their camps. Although Chavez felt his fledgling union insufficiently prepared for a strike, the Mexican workers (many of whom toiled in the same fields as the Filipinos) voted to join the strike. At the center of the strike were two large ranches encompassing 10,000 acres, and ultimately more than 3,000 AWOC and NFWA workers participated in “La Huelga.”³³ The growers, quickly recognizing the size and enthusiasm of the strike and lacking *bracero* replacement workers, saw this as a battle for control over California agriculture, and

²⁹ *Id.* At 171; Gómez-Quiñones, *supra* note 6, at 244.

³⁰ *Id.*

³¹ Quoted in SAM KUSHNER, *THE LONG ROAD TO DELANO* 122 (1975).

³² GÓMEZ-QUIÑONES, *supra* note 6, at 244.

³³ MAJKA & MAJKA, *supra* note 6, at 173.

would not give in easily. The traditional methods were used. They evicted workers from the camps, sprayed picketers with pesticides, assaulted striking workers, and illegally brought in 2,000 undocumented strikebreakers from Juarez.³⁴ Local courts issued injunctions of the strike and local law enforcement staged mass arrests of strikers.

Recognizing that it would be difficult to outlast these powerful interests, Chavez took a page from the civil rights playbook and looked outward for support. The involvement of the federal government, the grower outcry over labor shortages and the end of the *Bracero* program, and efforts in the Assembly to pass legislation favorable to farm workers generated a great deal of press coverage and interest from the general public. Chavez staged a rent strike after the local housing authority raised rent in the migrant encampments by forty percent. He also used the media attention to craft a message of social injustice and moral imperative, and called on all segments of society for support — many of the images from the rent strike evoked those of the march that had taken place in Selma, Alabama, just three months earlier, with workers surrounded by police refusing to move. The Mexican trade union and the UAW gave generously to support the strike, with UAW president Walter Reuther making a nationally publicized appearance in Delano. Chavez started a farm worker newspaper, *El Malcriado*, contacted local civil rights leaders in Los Angeles about nonviolent protest training, and continued to orient the union alongside the larger civil rights struggle. In a July 9 editorial in *El Malcriado*, the union reiterated its message: “[E]very day more and more working people prove their courage as the Negroes are doing in their movement. The day we farm workers apply this lesson with the same courage the Negroes have shown in Alabama and Mississippi, on that day the misery of the farm worker will come to an end.”³⁵ Unlike the AWOC, the NFWA defined itself as a farm worker civil rights movement. And as the strike issue of *El Malcriado* read:

Sometime in the future they will say that in the hot summer of California in 1965 the movement of the farm workers began. It began with a small series of strikes. It started so slowly that at first it was only one man, then five, then one hundred. This is how a

³⁴ RONALD TAYLOR, *CHAVEZ AND THE FARMWORKERS*, 146 (1976).

³⁵ Quoted in GANZ, *supra* note 6, at 115.

movement begins. This is why the Farm Workers Association *is a movement more than a union*.³⁶

Clergy and students began to arrive on the picket lines and national media attention increased as a result. Students involved in the Free Speech Movement at Berkeley had politicized the population, including a law student named Jerry Cohen. Up to this point, the NFWA had relied on pro bono work from Bay Area labor lawyers, who turned out to be so mired in the NLRA restrictions on union activity that they could not approach the problems presented to the fledgling union through any other lens, despite the fact that farm workers were exempt from coverage.³⁷

However, this exemption allowed the union to take advantage of tactics unavailable to industrial unions. In October, the union called on the general public to boycott grapes. Both the Teamsters and the ILWU honored the picket lines at the points where the grapes were loaded for transport.³⁸ Reuther's visit to Delano helped spread support for the boycott throughout organized labor across the country. Importantly, Chavez declared that the strike would be for union recognition, not just a wage increase — serving as a reminder to labor, the clergy, and the public that farm workers, unprotected by the NLRA, had to strike for recognition and hence needed public support.³⁹ In order to garner further sympathy for the boycott and to remain in the national media spotlight, Chavez and the union staged a 280-mile march to the Capitol in Sacramento. The march was intended to stress the nonviolence of the strikers, evoking not only the Selma march, but also religious pilgrimages so familiar to the Catholic Mexican and Filipino workers. By this point, the boycott began to take its toll as liquor stores across the country cleared products from Schenley, the other grower targeted along with DiGiorgio, from their shelves.

Marching to Sacramento served another purpose: to put pressure on Governor Pat Brown in an election year to support the union. Ronald

³⁶ Quoted in GANZ, *supra* note 6, at 126 (emphasis added).

³⁷ Jennifer Gordon, *Law, Lawyers and Labor: The United Farm Workers Legal Strategy in the 1960s and 1970s and the Role of Law in Union Organizing Today*, 8 U. PA. J. OF L. & EMP. 14 (2005).

³⁸ MAJKA & MAJKA, *supra* note 6, at 174.

³⁹ GANZ, *supra* note 6, at 125.

Reagan had announced his candidacy and his platform involved a return to the *Bracero* program. Although Brown had been an ally of farm workers in the past, his support took the form that all governors had taken going back to Hiram Johnson in 1912. By giving public funds to housing commissions and service centers for agricultural workers, politicians in the governor's mansion had framed the issue as a social problem rather than a labor problem. By treating the issue as one of providing social services, the politicians could avoid taking a side against the growers or the workers. Chavez sought to rectify this dichotomy. Workers picketed the 1966 State Democratic Convention, and supportive delegates introduced a unanimous resolution calling for the establishment of collective bargaining rights in agriculture, support of the boycott, and intervention by the governor.⁴⁰ The governor responded by saying that he would not intervene because "we have collective bargaining laws to take care of differences between workers and employers." He clearly had not read the NLRA.

Just as the march was beginning, at the urging of Reuther, the Senate subcommittee on migratory and farm labor arrived to hold hearings on SB 1866 which would bring agricultural workers under the purview of the NLRA.⁴¹ Chavez at this point had not seen the ultimate effectiveness that the boycott would go on to have, and so supported inclusion at this date, which would, of course, end his ability to utilize secondary activity such as picketing grocers. The growers vehemently opposed the plan, claiming over and over again that there was no strike, no labor problem, and that the workers did not support this group of radicals.⁴² Within five years the tables would be turned.

Before the march reached Sacramento, Schenley, fearing further negative press coverage and an illegal Bartenders Union boycott, agreed to recognize NFWA and negotiate a contract. The next day, DiGiorgio had agreed to hold secret-ballot elections for recognition. However, Chavez wanted NLRB rules to protect the election and the workers from unfair

⁴⁰ *Id.* at 150.

⁴¹ *Id.*; МАЈКА & МАЈКА, *supra* note 6, at 175. Senator Robert Kennedy also attended at the urging of Reuther. He would go on to become the farm workers' most outspoken supporter in national politics.

⁴² *Id.*

labor practices; without this guarantee, the union would neither suspend its pickets or boycotts.⁴³

Winning a contract with DiGiorgio would require not only bargaining with the grower, but also competing against another union for the votes of the workers. Strengthened by the passage of the NLRA and masters of secondary activity, the International Brotherhood of Teamsters (IBT) had spent the past three decades expanding their power base on the West Coast from the trucking and shipping at the ports, to the agricultural warehouses and packing sheds of the growers.⁴⁴ The Teamsters were a conservative union, which viewed unions as a business organization for the sale of labor services, not as a force for social change as did the Longshoremen or the Miners. The IBT had never sought to organize in the fields, and early on decided to leave the farm workers out of any agricultural organizing efforts.⁴⁵ As early as the thirties, the Teamsters took advantage of growers' anxiety about the radical CIO and the power of union field workers allied with the white women of the canneries and packing shed, and they employed a strategy that they would use against farm workers for four decades — they appealed to the employers rather than the workers, and growers signed contracts to avoid the social movement side of labor unionism.⁴⁶

Prior to the negotiations with DiGiorgio, the IBT had supported the farm workers from the shipping and packing sheds they represented. Yet, they had a rivalry with the AFL-CIO, having been expelled years prior for corruption. The reason the Teamsters decided to enter the fields, whether it was because they already had extensive contracts with growers including DiGiorgio in canneries, packing sheds, and cold-storage warehouses or because they were a conservative group that disfavored radical social unionism, or because there was a rift within the Teamsters leadership against its then-president Jimmy Hoffa, has never been fully understood.⁴⁷

But the Western Conference of the IBT decided, either on their own or at the behest of the bosses, to go into the fields and challenge the NFWA in the DiGiorgio elections. This signaled the beginning of a decade of strife

⁴³ GANZ, *supra* note 6, at 160.

⁴⁴ MAJKA & MAJKA, *supra* note 6, at 37–40.

⁴⁵ JAMIESON, *supra* note 6, at 144.

⁴⁶ *Id.* at 152–154; McWILLIAMS, *supra* note 6, at 270–273.

⁴⁷ MAJKA & MAJKA, *supra* note 6, at 180.

and conflict between the two unions. DiGiorgio then held a surprise election that the Teamsters won and the NFWA challenged. Under pressure, Brown's investigator recommended a new election, and DiGiorgio responded by firing 200 workers, most of whom were NFWA supporters. None of this would have been possible under the NLRA. As soon as the issues became focused on union recognition and long-term contracts rather than single-season wage increases, the protection of labor laws became much more appealing. Because the election represented the future of the union and fearing a loss of support for the boycotts in the case of a loss, Chavez agreed to merge the NFWA with AWOC and affiliate with the AFL-CIO, losing some of his cherished independence, to form the UFWOC.⁴⁸ Although the merger brought strength and capital, Chavez worried that the union would lose its image as a democratic, grassroots organization fighting for the freedom of an oppressed minority.⁴⁹ Now, however, the ethnic leaders, radical organizers and the AFL were on the same side for the first time in California history.

Despite DiGiorgio's pressuring its workers to vote Teamsters, the UFWOC won the election 530 to 331.⁵⁰ Though it had taken three quarters of a century, farm workers finally had a union contract. However, the UFWOC could neither have won the election without the secondary boycott nor without the NLRB-style election rules and the supervision of an arbitrator. Thirty years after the passage of the NLRA, and after several failed legislative attempts, the pieces — the secondary boycott, the IBT rivalry, the AFL-CIO affiliation, and union elections — were now in place to begin moving the nascent farm worker movement toward legislation. Would this revolution be taken out of the streets and placed in the courts, as John Lewis had feared?

After the success of the Delano strike, the UFWOC began targeting individual companies using a table-grape boycott to win union contracts. Growers soon consolidated their efforts and the union was essentially battling the entire industry. With the administration of contracts, the multiplicity of pickets and a nationwide secondary boycott of supermarkets, legal matters became considerably more complex. Chavez hired a young

⁴⁸ JACQUES LEVY, CESAR CHAVEZ: AUTOBIOGRAPHY OF LA CAUSA 239–244 (1975).

⁴⁹ GANZ, *supra* note 6, at 128–130.

⁵⁰ GÓMEZ-QUIÑONES, *supra* note 6, at 246.

lawyer named Jerry Cohen who had been working at the California Rural Legal Assistance nonprofit for only a few months when he met Chavez.

With no background in labor law, Cohen worried that he would be of little assistance to Chavez.⁵¹ He very quickly proved his worth. The pro bono lawyers had had a practice of signing consent decrees with the NLRB on the union's behalf stating that they would not engage in secondary boycotts because that's what the NLRA said, thus taking away the union's biggest and most strategic weapon. Although the NLRA excludes farm workers, if even one worker in the union is in fact a covered employee as defined by the Act, the union becomes a labor organization under the Act, and subject to prohibitions on the secondary boycott.⁵² So when Cohen discovered that nine workers in a peanut-shelling shed were NLRA employees, he quickly created the "United Peanut Shelling Workers of America," a new union under the AFL-CIO, successfully divesting the UFWOC of any NLRA covered employees.⁵³ As a result of this and other efforts, Cohen's role expanded quickly, and Chavez began using the law for the first time to his advantage — using discovery motions to gain access to bargaining unit information, and fighting back against restrictive legislation, as well as negotiating contracts with growers. The California Supreme Court handed down a case in 1968, *In re Berry*, holding that the violation of an order of the court, such as an injunction or temporary restraining order, which is unconstitutional, cannot result in a valid judgment of contempt.⁵⁴ This led Cohen and Chavez to a strategy where an injunction would be issued against the union, for example for the use of bullhorns, the union would then violate the injunction, and Cohen would challenge the order in court. This would result in case law explicitly granting the union their First Amendment rights, which Cohen would then wave in the face of local judges the next time they attempted to restrict the union's activities.⁵⁵

⁵¹ GORDON, *supra* note 37, at 15.

⁵² See NLRA § 2(5).

⁵³ GORDON, *supra* note 37, at 15.

⁵⁴ 68 Cal. 2d. 137, 147 (1968).

⁵⁵ GORDON, *supra* note 37, at 17. See Jerry Cohen, *Gringo Justice* (The Jerry Cohen '63 Papers at Amherst College), <https://www.amherst.edu/media/view/314670/original/Gringojustice.pdf> (last visited Oct. 11, 2012).

In 1968, with the boycott in full swing, Chavez and the UFWOC were put in a difficult position after the assassination of Robert Kennedy. Kennedy had been a loyal supporter since his first trip to Delano in 1965, and the UFW repaid him with a significant voter registration and turnout effort, which many attribute to putting him over the top in the important California primary. Both Chavez and Dolores Huerta attended the victory celebration at the Ambassador Hotel in Los Angeles where Kennedy was shot and killed. Now hesitantly backing the AFL-supported candidate, Hubert Humphrey, Chavez demanded that Humphrey pressure growers to negotiate.⁵⁶ He would not. Humphrey was convinced that the strife in California and the grape boycott resulted from the fact that agricultural workers were exempted from the NLRA.⁵⁷

Consensus in Washington began to build around bringing agricultural workers under the Act. Prior to 1968, Chavez and Larry Itliong had supported such legislation. Now, however, Chavez witnessed the benefits reaped by organizational strikes and secondary boycotts, both now prohibited by the NLRA. He also observed that few CIO unions had emerged after Taft-Hartley had stripped unions of many such weapons, placed damages provisions into the law creating union liability, and authorized the President to end strikes. Accordingly, he determined that such legal protection was no protection at all.⁵⁸ Furthermore, because of delays in the enforcement mechanisms, Chavez felt that the NLRA could not accommodate agricultural labor with its short harvesting periods and migrant work force.⁵⁹ According to Cohen, one of the most important reasons for opposing inclusion under the NLRA was the nature of bargaining units, which, after the AFL trade model, were organized by a community of interest, meaning by craft. The UFWOC wanted an industrial unit.

[U]nder the craft unit approach different groups of the work force, such as truck drivers, tractor drivers, irrigators, could be in different units from weeders, hoers, and pickers. Under an industrial unit approach all the grower's workers would be in one unit and

⁵⁶ MAJKA & MAJKA, *supra* note 6, at 191.

⁵⁷ *Humphrey Charges Nixon is Engaging in 'Razzle Dazzle, Frizzle Frazzle,'* UNITED PRESS INTERNATIONAL, Sep. 26, 1968.

⁵⁸ *Id.*

⁵⁹ Ronald Taylor, *Why Chavez Spurns the Labor Act*, THE NATION, Apr. 12, 1971.

have an opportunity to move to the more skilled, higher paying jobs. For example, a picker could aspire to drive a tractor or a truck. Given the racism of some growers, the craft unit approach could relegate Mexicans, Filipinos and other minorities to the harder, lower paying jobs. Therefore, craft units would create legislatively mandated ghettos in the fields.⁶⁰

Instead, Chavez envisioned a union where all agricultural workers on a ranch were in the same unit, under the same contract regardless of their job. Without UFWOC support, no efforts to incorporate farm workers would succeed. At this point, it seemed that the law might not even be necessary.

By 1970, the boycott had had a tremendous impact, resulting in the UFWOC's holding contracts with 85 percent of the table-grape ranches. When the Delano strike officially ended and the boycott on grapes was called off, farm workers' wages had nearly doubled, the union had established hiring halls for the ranches, a ban on DDT, and a health and welfare trust fund with accompanying medical clinics had been created.⁶¹ During this time Cohen and Chavez continued to use innovative legal strategies to pressure growers into negotiating. Because of the setting in state courts that historically favored growers, coupled with the fact that court decisions often came years after judicial action would prove an effective measure, Cohen had little interest in winning cases.⁶² Instead they focused on bringing cases regarding the lack of protection that workers had against toxic pesticides, the health and sanitation conditions in the fields, law enforcement assaults on picketers, antitrust violations and illegally utilizing federally subsidized water.⁶³ This litigation had the effect of putting pressure on regulators to step up enforcement, maintaining a presence in the press, continuing to convince consumers not to buy grapes or other boycotted products, and costing the growers significant money in legal

⁶⁰ COHEN, *supra* note 55, at 17–18.

⁶¹ GÓMEZ-QUIÑONES, *supra* note 6, at 247.

⁶² Jennifer Gordon interview with Jerry Cohen. Professor Gordon was kind enough to share with me all of the original transcripts of her extensive interviews with UFW legal personnel, and for this I thank her.

⁶³ GORDON, *supra* note 37, at 24; GORDON, *supra* note 62, at 306. For a list of cases, see <https://www.amherst.edu/media/view/69688/original/Case-summaries.pdf>.

expenses. The pesticide case in particular captured the public attention when tests conducted on grapes at Safeway stores, the target of a secondary boycott, revealed levels of the pesticide Aldrin far above government safety levels — linking the workers interests with those of the consumer.⁶⁴ The UFW now wielded the law as another organizing weapon in its arsenal. And indeed, the organizing priorities always took precedence over any individual legal victory.

As the pesticide cases continued, Cohen continued to file suits over back pay, torts for workers injured on the job, Section 1983 civil rights claims, and any cases he could find arising under the California Labor Code. This was a new kind of organizing, unprecedented from the growers' standpoint. They had previously done battle with their own employees and union organizers, which, given the sympathies of county courts and sheriffs, allowed them play to avoid legal constraints upon their conduct. Now they were forced to play by a different, much costlier, set of rules. This legal strategy, combined with the effectiveness of the boycott and religious support garnered by Chavez's fast for nonviolence eventually made growers eager to negotiate. The Teamsters sought to take advantage of the willingness to sign contracts, and their efforts to form a farm worker union of their own would drive a series of violent confrontations and create pressures on the UFWOC that would ultimately lead to a legislative solution.

In 1965 and 1966, the IBT, along with the ILWU, had supported the Delano strike and the grape boycott by refusing to pack, load, or ship non-union grapes and wines in areas where they controlled labor in the sheds, on the roads, or in the warehouses. In 1967, the two unions had even reached a temporary agreement: the UFWOC had jurisdiction over the fields and the Teamsters over the canneries, packing sheds and warehouses, trucking and processing facilities. Between 1970 and 1973, the Farm Workers initiated a campaign to organize lettuce workers from Salinas to Coachella. The UFWOC put intense effort and major resources into strikes in the fields, subsequently initiating another secondary boycott on lettuce in major grocery chains. This campaign occurred while other Teamster contracts were up for renegotiation. Fearful of what took place in the grape fields, growers reached out to the Teamsters to represent field workers as

⁶⁴ MAJKA & MAJKA, *supra* note 6, at 194.

well. Within days, the twenty-nine largest growers in the Salinas Valley had signed and negotiated sweetheart contracts with the Teamsters.⁶⁵ This was a major blow to both the UFWOC and the workers. These contracts were signed “without worker knowledge or input, and had few mechanisms for worker participation, no protection from pesticides, and inadequate grievance procedures. Workers who refused to agree to Teamster representation were immediately fired.”⁶⁶ This arrangement reaped benefits for both the Teamsters, who could collect dues without engaging in any organizing, and the growers, who could now exclude the UFW and count on a union that would not generate any problems.

The UFW called on growers to renounce the unfair contracts and sign with the UFW, but in August, when the president of the Grower–Shipper Vegetable Association announced that he would maintain the Teamster contracts and had received assurances that they would be honored, the strike was called. Cohen remarked that ironically the sweetheart contracts had organized the workers for them.⁶⁷ A general strike involving 10,000 workers swept through Salinas and down to Santa Maria. The *Los Angeles Times* called it the “largest strike of farm workers in U.S. history,”⁶⁸ virtually shutting down the fields. The courts, at the request of the growers and believing the conflict to be a jurisdictional dispute between unions, responded with a general injunction against picketing. This created huge problems leading to mass arrests and a restriction of UFWOC organizers to the strikebreakers that the growers brought in.⁶⁹ The Teamsters again responded with violence: attacking picketers, opening fire on UFWOC headquarters, bombing the Watsonville office, assaulting Jerry Cohen, and shooting three picketers.⁷⁰

During this time the Teamsters, the growers and their political allies placed a measure on the California ballot in 1972, which would have prohibited secondary boycotts and other agricultural-union activity. A

⁶⁵ *Id.* at 201. A sweetheart contract is a contract made through collusion between management and labor, which contains terms beneficial to management and unfavorable to union workers.

⁶⁶ GORDON, *supra* note 37, at 26–27.

⁶⁷ COHEN, *supra* note 55, at 22.

⁶⁸ Quoted in MAJKA & MAJKA, *supra* note 6, at 203.

⁶⁹ *Id.* at 204.

⁷⁰ *Id.*

massive effort to defeat Proposition 22 was undertaken while Cohen was fighting consolidated cases to overturn the injunctions against UFWOC pickets. Although the measure was defeated and the California Supreme Court overturned the injunctions and held the picketing to be legal, these efforts in addition to the strike and the boycott and false starts with growers who claimed they would relinquish their Teamster contracts, took a huge toll on the union's resources.⁷¹ To administer over 100 contracts and incorporate tens of thousands of workers required training farm workers as stewards and ranch committee members. In addition to running the vegetable boycott across the country, grievances had to be pursued, hiring halls and benefit programs managed, and medical care facilities coordinated, which in turn required an ever-increasing staff.⁷² In short, in addition to functioning as a grassroots, social justice movement, the UFW now had the traditional responsibilities of a union. With this growth, its income from dues and fundraising increased to the point where the AFL-CIO determined the union was no longer an organizing committee and chartered the union as the United Farm Workers of America. The union now had to revise its 1963 constitution, hold new executive board elections, and hold a constitutional convention.⁷³

Between the spring of 1972 and the end of 1973 the conditions came together that would ultimately force Chavez and Cohen to advocate for a farm worker labor law. First, around the country the Nixon administration, in alliance with growers and state governments spearheaded legislative initiatives, like that of Proposition 22, many of which banned secondary boycotts, harvest-time strikes, and collective bargaining over pesticide control.⁷⁴ In Oregon, Washington, Arizona, New York, Florida, and California, the UFW was forced to expend significant energy fighting these bills. Although the UFW efforts proved largely successful not only in defeating these measures through the political process, but also in registering and mobilizing many Chicano voters, they drained time, resources, and

⁷¹ See *Englund v. Chavez*, 8 Cal. 3d 572 (1972); GÓMEZ-QUIÑONES, *supra* note 6, at 248.

⁷² GANZ, *supra* note 6, at 230.

⁷³ *Id.* at 231.

⁷⁴ MAJKA & MAJKA, *supra* note 6, at 208.

precious attention — particularly from the administration of contracts and the management of their hiring halls.

Second, during this time many of the original contracts signed with the Delano grape growers were expiring, and the Teamsters' president Fitzsimmons urged the growers to sign with the Teamsters.⁷⁵ The growers wanted assurances that the hiring halls would be abolished and that the Teamsters would not negotiate over pesticide use. They received such assurances. When the contracts did expire, 90 percent of the grape growers signed contracts with the IBT.⁷⁶ The Teamsters, having been expelled from the AFL, were free to raid other AFL unions. As a result, the UFW lost a significant portion of its membership and thus important dues income. The workers across the valley, on all but the two ranches that re-signed with the UFW, were called out on strike.

Third, this conflict predictably grew violent. The Teamsters sent armed members to guard the fields as security personnel and prevent UFW organizers from speaking to the workers.⁷⁷ A superior court judge issued an injunction without providing notice to the parties, and just as quickly the UFW violated it. By the time the union called off the strike in August “two strikers were murdered, while picketers endured 44 shootings, 400 beatings, and 3,000 arrests . . . [W]hen it was all over, the UFW was left with 10 contracts, 6,000 members, a shattered dues income, and a fight for its life.”⁷⁸ The boycott of grapes, lettuce, and Gallo wine was reactivated.

Fourth, becoming chartered by the AFL-CIO did not come without strings. When the AFL-CIO president George Meany contributed \$1.6 million to the UFW strike fund, it came on the condition that the union pursue some kind of labor relations law. Meany saw all the UFW activity as disruptive and sapping energy. For the AFL-CIO, victory was not defined in terms of changing social consciousness through a movement, it was

⁷⁵ The NLRA, which governed the Teamsters, provides for exclusive representation of workers by bargaining representatives. This means that only one union can represent a unit of workers at a time. The Teamsters thus had to wait until the UFW contracts expired to attempt to represent those same workers, unless workers held an election to “decertify” a union as their representative.

⁷⁶ GORDON, *supra* note 37, at 29.

⁷⁷ MIRIAM PAWEL, *THE UNION OF THEIR DREAMS: POWER, HOPE, AND STRUGGLE IN CESAR CHAVEZ'S FARM WORKER MOVEMENT* 108 (2009).

⁷⁸ GANZ, *supra* note 6, at 232.

defined in terms of winning contracts, adding members, collecting dues, and gaining political leverage.⁷⁹ Cohen saw this correctly as an “NLRB” mentality, but there was no other legal way to protect the UFW from the Teamster raids on their contracts and for UFW organizers to gain access to workers on ranches. Additionally, in 1974, the Safeway boycott was ended in exchange for backing of the grape and lettuce boycott, in part to placate unionized grocery workers.⁸⁰

For many years, the UFW staff, particularly Chavez and Cohen, had struggled with whether to seek the protection of a law for farm workers. They had run up against problems with access to workers and private property issues with growers, conflicts with the Teamsters, and the lack of a method to protect workers who were fired for union organizing. However, there were far too many problems with the NLRA, such as inadequate remedies, the prohibition on secondary activity, and the structure of bargaining units, to seek its protection. Additionally, the political climate in California, with a Republican governor in office and strong grower support in the Senate, bode poorly for the passage of any good legislation. Chavez had observed what the Taft–Hartley Act had done to industrial unions once they lost some of their more potent weapons still available to the UFW, and he believed that legislative victories had quelled the momentum of the civil rights movement in the South.⁸¹ Cohen also believed that “legalizing” the farm worker struggle would come at a cost. He had not taken labor law in school, but he knew that it was only a matter of time before an industry of capable anti-union lawyers formed and began to use the law to erect barriers to organizing efforts.⁸² Most of the staff, and especially Chavez, wanted to maintain the social movement aspect of the UFW. They feared that being bogged down in an “administrative nexus” — in a lawyer’s game — threatened to sap the power the movement had worked so hard to build.⁸³

Nevertheless, the political dynamic in California was shifting. In 1974 two major political events coalesced to make passage of a favorable law seem feasible. The Democratic secretary of state, Jerry Brown, succeeded

⁷⁹ Gordon, notes from interview with Sandy Nathan.

⁸⁰ GÓMEZ-QUIÑONES, *supra* note 6, at 249.

⁸¹ TAYLOR, *supra* note 59; LEVY, *supra* note 48, at 529.

⁸² Gordon, Cohen interview.

⁸³ Gordon, interviews with Cohen and Nathan.

Ronald Reagan as governor, and had run on a platform of bringing peace to the fields.⁸⁴ A year earlier, the California Supreme Court had ordered reapportionment that ended decades long rural domination of the state Senate.⁸⁵ New, pro-farm worker senators from Southern California, Howard Berman and Richard Alatorre, were recently elected and commanded a majority in the Legislature ready to work with the governor. The union decided that its best chance to regain many of the workers it had lost, prevent sweetheart contracts, run fair elections and have structured bargaining lay in legislative action.⁸⁶ So Cohen began taking stock of all the innovations and protections needed to craft a law that would benefit farm worker organizing.⁸⁷

[W]e figured we needed elections in seven days. We needed an industrial unit. We needed access [to the fields] somehow. We needed some basic things like, for the workers who couldn't read and write, symbols on the ballots I went around and talked to some law professors just to find out what elements they would want if they were going to change the NLRB and things like the "make whole" remedy, which I didn't know about, came up. And we learned about some of those remedies and decided, "We'll just load up — we'll ask for everything. We'll ask for the whole damn thing."⁸⁸

Chavez remained ambivalent about seeking a law governing the fields. His primary concern was losing the boycott. With the kitchen sink approach, Cohen reassured Chavez that "we'll introduce a bill that can't be passed see what reasonable sounding things we can put in there that are impossible."⁸⁹ This strategy would either yield a powerful set of rights

⁸⁴ GANZ, *supra* note 6, at 234.

⁸⁵ In 1971 the governor vetoed the Legislature's reapportionment act following the decennial census. The California Supreme Court appointed three Special Masters to recommend to the Court plans for possible adoption together with their underlying rationale. The Special Masters report was adopted by the Court in November 1973.

⁸⁶ GORDON, *supra* note 37, at 30.

⁸⁷ Gordon, Cohen interview.

⁸⁸ *Id.*

⁸⁹ Tape of NEB meeting, Dec. 17–23, 1973, UFW, Wayne State, quoted in PAWEL, *supra* note 77, at 148.

and protections or at the least appease Meany and the AFL and Governor Brown that the UFW had attempted to seek a legislative solution. The union would then try to place the law on the ballot and win a constitutional amendment.⁹⁰ Cohen took up residence in Sacramento, and, over a period of months wrangled with Brown, his secretary of agriculture, Rose Bird, and numerous attorneys and legislators. Cohen attempted to convince Brown to support a version of the bill authored by Richard Alatorre that contained most of the union's demands, and promised UFW support.⁹¹

Rather than a wave of unified opposition, support for the measure came from expected sources as well as their traditional enemies. Both supermarket chains and rural county government advocated for the measure. Economic concerns from the boycott and from mass arrests and continual picket-line violence respectively had convinced them to support whatever measures would restore stability to agriculture.⁹² The Teamsters were ambivalent, fearing on the one hand that the law would nix their sweetheart contracts, and hoping that regulated elections could legitimize and stabilize their union in the fields on the other. Although most growers opposed the bill, some, including large ranches like Gallo, favored it because much of the economic harm they had suffered as a result of UFW activities had come from the boycott rather than a cadre of organized workers. They felt that they could win an election and free themselves from the burdensome tactics of the union.⁹³ Others felt that with the secondary boycott itself banned, they would be able to negotiate with the union terms more favorable to the employer.

By early in 1975, Chavez had resigned himself to the inevitability of legislation. The UFW applied considerable pressure on Brown to support Alatorre's bill rather than his original bill drafted by Rose Bird and based on the NLRA.⁹⁴ In 1975 there were six bills on agricultural labor relations introduced into the Assembly, and when a showdown in the labor relations committee

⁹⁰ PAWEL, *supra* note 77, at 149. The main point of this would be to protect the law from the changing of political tides.

⁹¹ GORDON, *supra* note 37, at 31. See Levy, interview with Cohen, Nathan and Gaenslen.

⁹² GANZ, *supra* note 6, at 234.

⁹³ GORDON, *supra* note 37, at 32. See Levy, interview with Cohen, Nathan and Gaenslen.

⁹⁴ MAJKA & MAJKA, *supra* note 6, at 238.

seemed inevitable, Brown amended his bill to include provisions more favorable to the UFW. The union and Alatorre endorsed the bill. After calling a special legislative session at Chavez's urging so that the bill could go into effect by late summer, the bill passed the Assembly and Senate without grower-backed amendments that would have removed key protections.⁹⁵

Certainly the bill did not give the union everything it wanted. It included a ban on recognition strikes, no secondary boycotts at delivery doors, and it maintained the Teamster contracts until elections were held.⁹⁶ Nevertheless, the bill gave the farm workers a powerful set of organizing tools, and its preamble began with an endorsement of farm labor organizing and a stated goal of "guaranteeing justice for all agricultural workers."⁹⁷ Although the ALRA was crafted around premises of the NLRA and required the Agricultural Labor Relations Board, created by the Act, to follow applicable NLRA precedent, it contained significant customized changes tailored to the nature of agricultural work.⁹⁸

The law significantly altered NLRA election rules by providing for elections within seven days of the filing of an election petition, essential for a workforce composed of many migrant laborers. It also required conducting elections within a 48-hour period during a labor dispute such as a strike. Additionally, elections had to take place during peak-season with more than 50 percent of the workforce present to prevent a small number of year-round employees loyal to the grower from determining an election outcome.⁹⁹ Unlike the NLRA, the ALRA contained a prohibition on voluntary employer recognition of any non-certified labor organizations.¹⁰⁰ The UFW insisted on such a restriction to prevent future sweetheart contracts with the Teamsters or any other union that did not have the support of the workers. In contrast to the NLRA's determination of bargaining units by craft or a community of interest-based job-specific issues, the ALRA created wall-to-wall or industrial units of all of an employer's "agricultural

⁹⁵ *Id.* at 239.

⁹⁶ Levy, interview with Cohen, Nathan and Gaenslen.

⁹⁷ 1975 CAL. STAT. AND AMENDMENTS TO THE CODE, 3D EXTRAORDINARY SESS. C. 1, § 1, at 4013, quoted in GORDON, *supra* note 37, at 33.

⁹⁸ CAL. LAB. CODE § 1140, et seq.

⁹⁹ CAL. LAB. CODE § 1156.3(a)(1)–(4).

¹⁰⁰ CAL. LAB. CODE § 1153(f).

employees.” This permits tractor drivers, irrigation employees, harvest employees, thin and hoe workers, mechanics and others to be covered by the same contract.¹⁰¹ This operated to the benefit of the union by disallowing the segregation of workers of color into lower paid units and by facilitating organizing among all workers on a ranch. It benefited growers because there could not be a series of staggered strikes continually halting production, nor year-round contract negotiations draining resources. The ALRA also expanded the NLRA’s make-whole remedies from reinstatement and back pay to include the loss of pay resulting from an employer’s refusal to bargain in good faith.¹⁰² Indeed, under existing labor law, the NLRB does not have the authority to award damages for an employer’s refusal to bargain.¹⁰³ This change created a powerful incentive for the grower to bargain once a union has won recognition as well as not to refuse to recognize the union in bad faith. Critically, the ALRA did not ban the use of secondary boycotts. Although the law prohibited picketing to support a secondary boycott staged by a union that had not yet been certified to represent the workers in question as well as supermarket delivery door picketing to ask for secondary boycotts, it retained the right to the secondary boycott by a certified union and pickets in support of that boycott at the site of the sale of struck products.¹⁰⁴ Although the ALRA did not specifically grant access to non-employee union organizers in the text of the statute, in 1975 the ALRB quickly adopted a rule to permit such access by a limited number of organizers one hour prior to the start or one hour after the end of the workday and one hour at lunch.¹⁰⁵

On top of securing rights designed to advance collective bargaining rights for farm workers, the UFW used its political muscle to gain sympathetic appointments to the Agricultural Labor Relations Board. Bishop Roger Mahoney of Fresno was the Board’s chair. Joe Grodin, a labor lawyer, law professor and future member of the California Supreme Court; Leroy Chatfield, a former UFW staff member and Brown’s director of administration; Joseph Ortega, an attorney for Los Angeles Model Cities

¹⁰¹ CAL. LAB. CODE § 1156.2. Agricultural employees are defined in § 1140.4(b).

¹⁰² CAL. LAB. CODE § 1160.3.

¹⁰³ *Ex-Cell-O Corporation v. NLRB*, 449 F.2d 1058 (D.C. Cir. 1971).

¹⁰⁴ CAL. LAB. CODE § 1154(d)

¹⁰⁵ 8 CAL. CODE OF REG. § 20900 et seq.

Program, and Richard Johnson, a grower attorney, filled the remaining four positions.. After over a century of struggles, and ten years of “organizing, boycotting, striking, people going to jail,” by the UFW, California now had a law governing the fields, and one that was arguably the strongest labor law in the country.¹⁰⁶

The law signaled a sea change in the way that the UFW had to move forward with its organizing. Cohen hurried about to ensure that the measures that were not included in the law, such as organizer access, were implemented in the form of regulations by the ALRB and to train the union’s legal and organizing staff in the new rules of the game. However, Chavez’s mind was elsewhere. “‘The whole fight is going to change,’ he predicted. Until now, his movement had been rooted in the quest for recognition, ‘which is the one that appeals to the human mind and the heart more than anything else.’ From now on the fight would center on issues Chavez considered more mundane — contracts, wages, benefits and grievances,” in short, the administration of a labor law.¹⁰⁷

In order to turn the ALRA into a tool benefiting workers, the union had to both run and win elections and generate enough pressure through boycotts and strikes to win good contracts. Chavez’s commitment to volunteer organizers increased as the union deployed over 200 farm workers who left their jobs to organize elections on ranches across the state, surviving on subsistence wages.¹⁰⁸ Cohen split the legal department in two with one half dedicated to existing litigation and the other, under Sandy Nathan, a young attorney working with Cohen, to ALRA issues. The legal department quickly grew to its height with 17 attorneys, 44 paralegals and numerous volunteer lawyers and law students in various roles.¹⁰⁹ Before the Board opened its doors in early September, the UFW frantically sent organizers and lawyers to ranches across the state to communicate to workers their new rights and to organize them around the power of the new law. The day the Board opened, 30 election petitions were filed, 28 by the UFW. By February of the next year, the UFW shocked the Teamsters,

¹⁰⁶ Gordon, Cohen interview. COHEN, *supra* note 55, at 27.

¹⁰⁷ PAWEL, *supra* note 77, at 156.

¹⁰⁸ GANZ, *supra* note 6, at 235.

¹⁰⁹ GORDON, *supra* note 37, at 35.

winning over half the elections in which they went head to head. In the first five months of operations, 45,915 farm workers had cast ballots in 382 elections, with the UFW winning representation in 214 of them.¹¹⁰

During the period leading up to the elections until late in 1975, the union faced numerous problems with the Board itself and enforcement of the new law. Many of the field agents and attorneys, including General Counsel Walter Kintz, were brought in from the NLRB, steeped in its ways of doing things and accustomed to its tectonic pace.¹¹¹ Growers favored Kintz for the position. Cohen considered his appointment by Governor Brown a concession to their anger once they realized that the law had not banned secondary boycotts.¹¹² The union experienced immediate problems with Kintz, accusing him of issuing rulings legitimizing the grower-Teamster alliance, failing to take action against violent Teamster and grower tactics during the first 200 elections, and acting in favor of employers rather than with impartiality.¹¹³ According to Sandy Nathan, the growers seemed to simply disregard the law.¹¹⁴ Kintz allowed the Teamsters to use dues cards as proof of qualification for election ballots. The growers would hire crews simply for the purpose of voting for Teamsters in the elections. And most importantly, growers continued to deny access to UFW organizers for the purpose of organizing for elections and gathering signatures for the ballots.¹¹⁵ The union filed hundreds of complaints based on sworn affidavits. Eventually the Board began processing unfair labor practice charges against growers and appointed a special enforcement team to oversee election-related activities, which seemed to diminish employer abuses.¹¹⁶ The union fought with the Board to influence election procedures at any chance possible. “Every step of every election procedure was contested — the order in which regional offices accepted petitions, the scheduling of elections, election rules, worker education, pre-election conference proceedings, unfair labor practice processing, and throwing

¹¹⁰ *Id.* at 39; GANZ, *supra* note 6, at 236.

¹¹¹ GORDON, *supra* note 37, at 36.

¹¹² *Id.* at 36 n.125.

¹¹³ UNITED FARM WORKERS OF AMERICA/AFL-CIO, THE SABOTAGE AND SUBVERSION OF THE AGRICULTURAL LABOR RELATIONS ACT: A WHITE PAPER 4-5 (1976).

¹¹⁴ Levy, interview with Cohen, Nathan, and Gaenslen.

¹¹⁵ UFW WHITE PAPER, *supra* note 113, at 6-7; MAJKA & MAJKA, *supra* note 6, at 243.

¹¹⁶ MAJKA & MAJKA, *supra* note 6, at 243.

elections out. The whole process was political and subject to pressure.”¹¹⁷ Jerry Brown created a task force of independent attorneys to train Board staff and engage in external enforcement against growers.¹¹⁸ Under extreme pressure from the UFW, Kintz resigned at the end of 1975. As increased enforcement of the law led to more and more election results in the UFW’s favor, growers and the Teamsters turned their efforts to attacking the ALRA.

The UFW, with its huge strategic capacity and army of volunteers, overcame many of these problems to win an historic number of election victories further strengthening the continuing boycott. However, in processing the complaints, stepping up enforcement and handling hundreds of elections, the Board had blown through its entire budget in a mere five months. In January of 1976, the Legislature was scheduled to consider additional appropriations to keep the Board functioning through the fiscal year. Advocates in the Legislature failed to receive the necessary two-thirds vote to fund the Board, although they were able to defeat grower initiatives to weaken the law and bring it more into line with the NLRA.¹¹⁹

In response, Chavez put considerable resources into a petition drive to protect the law from legislative changes. If passed, Proposition 14 would have placed the ALRA in the state constitution. This would have allowed modification of the legislation only by a ballot initiative, thus insulating the union from political opposition when unfavorable parties came to power as well as AFL-CIO insistence on compromises.¹²⁰ Proposition 14 also called for continued legislative funding of the ALRB, enshrinement of the right of access by organizers to the fields, and treble damages against growers for ULPs. In what seemed like a tactic to get lawmakers to restore funding to the Board, legislators buckled when the union turned in twice the requisite signatures to place the measure on the ballot. The Board’s funding was restored and it was set to reopen by the end of the year. The measure went down to defeat by a significant margin after growers

¹¹⁷ GORDON, *supra* note 37, at 38, from Miriam J. Wells & Don Villarejo, *State Structures and Social Movement Strategies: The Shaping of Farm Labor Protections in California*, 32 *POLITICS & SOCIETY* 291, 305 (quoting Marshall Ganz).

¹¹⁸ *Id.*; MAJKA & MAJKA, *supra* note 6, at 244–45.

¹¹⁹ MAJKA & MAJKA, *supra* note 6, at 244.

¹²⁰ *Id.* at 245.

spent \$2 million on an ad campaign focused on private property rights and protecting small farms. The tremendous effort that the union placed on winning the ballot referendum again deprived organizers of precious resources to consolidate gains made in the elections, continue fighting legal challenges in the courts, and preparing for contract renewal campaigns in the following year. Many privately questioned Chavez's pursuit of Proposition 14 and allocation of resources. Nathan would call it one of the worst mistakes the union made.¹²¹ While the union would experience several more fat years, the seeds had been sown for its eventual contraction. Chavez had become paranoid about losing control of the union to the legal department; he ceased allocating resources to new organizing drives; he distrusted the power of new independent citrus strikes near Oxnard; he began purging those who wanted to focus on organizing, like former farm worker and executive board member Eliseo Medina; and he paid little attention to existing contracts — in short, he stopped using the law.¹²² By the mid-eighties, the UFW, as well as the ALRB, was all but comatose.¹²³

The United Farm Workers of America's efforts in the years immediately following the passage of the ALRA were more successful than any of their previous efforts. Much like the NLRA did for industrial unions, the law seemed to deliver on its promises to support farm worker organizing and bringing peace to the fields. There are many critics of the NLRA who claim that the law de-radicalized the labor movement or that the union would have been better off sticking to the AFL model of controlling the flow of labor.¹²⁴ Many of these critics agree that the law eventually came to encumber unions as Taft–Hartley restricted their weapons, and the NLRB and courts came to interpret the law against, rather than on behalf of, union organizing efforts.¹²⁵ “This remarkable melding of movement and law did

¹²¹ Gordon, notes from Nathan interview.

¹²² See PAWEL, *supra* note 77, at 238–252; GANZ, *supra* note 6, at 241–250.

¹²³ See GORDON, *supra* note 37, at 40, n.146.

¹²⁴ See CHRIS TOMLINS, *THE STATE AND THE UNIONS* (1985); NELSON LICHTENSTEIN, *THE STATE OF THE UNION* (2002); JAMES ATLESON, *LABOR AND THE WARTIME STATE* (1998).

¹²⁵ Jennifer Gordon, *A Movement in the Wake of a New Law: The United Farm Workers and the California Agricultural Labor Relations Act 2–3* (Jun. 1, 2005), Fordham Law Legal Studies Research Paper No. 86, available at SSRN: <http://ssrn.com/abstract=733424> or <http://dx.doi.org/10.2139/ssrn.733424> (last visited Oct. 5, 2012).

not last.”¹²⁶ Unlike many scholars’ accounts of the fall of the New Deal’s political coalition and the structural limits of postwar liberalism, where labor unions clashed with other social movements, the UFW survived attacks by the Nixon administration, conservative working-class labor like the IBT and George Meany, and co-opting efforts by politicians to bring it under an established administrative rubric.¹²⁷ Perhaps because whites and blacks were not competing for jobs in agriculture, perhaps because of the de facto segregation of Mexican migrant farm workers, perhaps because of their prominent public image as vulnerable, low-wage workers who put food on America’s plates, or perhaps because of Chavez himself, *La Causa* enjoyed legislative, labor, and public support for a decade after the conflict between the struggle for independent rights and collective power had rent many liberal alliances asunder. However, the UFW ultimately succumbed to internal struggles.

As a result of incredibly dedicated and creative lawyering by Cohen and other UFW attorneys, in 1977 the UFW settled an antitrust suit with the Teamsters originally filed in 1970 after the initial sweetheart contracts were signed with the growers in exchange for a five-year jurisdictional settlement similar to that of 1967. The Teamsters were out of the fields, Brown was governor, and the Board was open for business. However, with the external competition from the Teamsters gone, Chavez turned inward, and became increasingly worried about his power over the union.¹²⁸ As Cohen relates, with the completion of the ALRA victory, Chavez seemed to lose interest in the union as an objective.¹²⁹ He was easily bored by the administrative tasks required in running a bureaucratic organization. He was committed to maintaining the original principles of *his* movement — volunteerism, self-sacrifice, and a commitment to the poor. Indeed, he sought to create a poor people’s union that would live and worship and work together. That farm workers were demanding higher and higher wages and accumulating real political power seemed to bother him.¹³⁰ Yet he would

¹²⁶ *Id.* at 2.

¹²⁷ See Reuel Schiller, *The Emporium Capwell Case: Race, Labor Law, and the Crisis of Post-war Liberalism* 25 BERKELEY J. EMP. & LAB. L. 129, 131 (2004).

¹²⁸ See GANZ, *supra* note 6, at 243–247; PAWEL, *supra* note 77.

¹²⁹ Gordon, Cohen interview.

¹³⁰ PAWEL, *supra* at note 6, at 156.

not let go: “[for Cesar], ‘This is *won*. I’m going to go do something else.’ And a lot of people didn’t understand that element of him, and they expected him to be focused in a way that wasn’t interesting to him . . . and I think the shame was that he couldn’t then just delegate it. Let us generate the dues money so that he could go do whatever the hell he wanted.”¹³¹ As several sources have noted, he turned inward, requiring staff to participate in a cultish psychological game run by the drug-rehab group Synanon.¹³² Years previously he had moved union headquarters away from the farm workers to a remote compound called La Paz in the foothills outside of Fresno, while the legal department stayed in Salinas, near the action.¹³³

Under the ALRA two sources of independent power began to grow within the union over which he had little control. The legal department had refused to relocate to La Paz from Salinas. As the department grew in numbers, it grew in significance under the ALRA, as occurs under any administrative regime that requires a cadre of lawyers. Additionally, lead organizers Marshall Ganz and Jessica Govea had a great deal of success organizing citrus and vegetable growers out of Salinas and Oxnard. Due to the rights granted by the ALRA, the youth of the workers, and their independence from the boycott, the workers were confident in asserting demands for higher wages and improved conditions without support from Chavez. The real break came when the legal department asked for an increase in their monthly salary. In 1977, staff lawyers for the UFW were earning \$7,200 a year, in some cases, less than farm workers.¹³⁴ Chavez demanded that the lawyers, who up until this time had been exempted from the union’s volunteer system, receive the same subsistence wages as organizers. When they refused, he dismissed the legal staff. Those who were not fired quit.¹³⁵ Chavez also put down attempts by workers to run their own candidates for the Executive Board and sent organizers like Ganz to far-off places like Toronto to run boycotts.¹³⁶ Additionally, by 1977 the UFW had stopped organizing and moved to direct mail and marketing campaigns. Between 1979 and 1981, almost all voices

¹³¹ Gordon, Cohen interview.

¹³² GANZ, *supra* note 6, at 243–250.

¹³³ PAWEL, *supra* at note 77, at 80–82.

¹³⁴ *Id.* at 240–41.

¹³⁵ GANZ, *supra* note 6, at 246. PAWEL, *supra* note 77, at 265.

¹³⁶ GORDON, *supra* note 37, at 43.

that disagreed with the direction Chavez was taking the union, including farm worker representatives, had been purged from the union.¹³⁷

By the early eighties, the union organized few workers under the law and allowed many contracts to lapse unattended.¹³⁸ Things got so bad that when George Deukmejian, elected governor in 1982, appointed an anti-union general counsel to the ALRB and gained control of the Board in 1986, the UFW actively sought to de-fund the agency it had once tried to protect with a constitutional amendment.¹³⁹ By the time of Chavez's death in 1993, the union clung to between 5,000 and 10,000 members and fewer than 40 contracts.¹⁴⁰ The UFW was no longer functioning as a farm workers union, but rather as a series of nonprofit organizations run by the Chavez family.¹⁴¹ It operates radio stations in Phoenix, builds affordable housing in Bakersfield and Texas, runs political campaigns for Indian casinos, and attempts to organize workers in some other sectors ranging from furniture factories to construction; but, it engages in little to no activity with farm workers.¹⁴² In fact, it eliminated any reference to farm workers in its constitution in an effort to appeal to a broader Latino constituency.¹⁴³ When the union organized a group of furniture assemblers in Bakersfield who qualified as employees under the NLRA, it even gave up its right to the once cherished secondary boycott that Jerry Cohen early on so innovatively protected by creating the United Peanut Shelling Workers union.

In recent years, amendments to the ALRA have been made in response to a more conservative California Supreme Court's limitations on the ALRB's make-whole remedy, including adding mandatory mediation for first contracts in 2002 and, most recently in 2011, giving the Board the power to certify a union after an employer has corrupted the environment for an election such that a re-run would be presumptively unfair. However, these provisions will be of little use if unions are not running representation campaigns. In fact, rather than ushering in a new era of farm labor

¹³⁷ GANZ, *supra* note 6, at 246–49.

¹³⁸ GORDON, *supra* note 37, at 43.

¹³⁹ *Id.* at 44.

¹⁴⁰ *Id.*

¹⁴¹ Miriam Pawel, *Farm Workers Reap Little as Union Strays from its Roots*, L.A.

TIMES, Jan. 8, 2006.

¹⁴² *Id.*

¹⁴³ *Id.*

organizing, the mandatory mediation provision has only been utilized eight times since it went into effect nine years ago, most of the time by the United Food and Commercial Workers at dairy farms.

Now in California, as we drive down Cesar Chavez boulevards, past Cesar Chavez middle schools and celebrate Cesar Chavez's birthday, the labor organizer from Yuma, Arizona has been memorialized in much the same way as Martin Luther King, Jr., as a civil rights leader, with relatively little public emphasis on the UFW or the ALRA. Yet farm workers in the state remain some of the most vulnerable workers in the country, the labor contractor system has returned in force, and little but changing national economic conditions has stemmed the flow of undocumented immigrants into the fields. Out of the some 250,000 farms in California, fewer than 1 percent are working under a union contract. During the peak season, the minimum wage earned by the 650,000 to 800,000 farm workers, most of them undocumented, is less in today's dollars than that earned by workers under UFW contracts in 1970.¹⁴⁴ California remains the only state in the country, with the exception of Hawaii's general labor code, to have passed a law giving its farm workers the right to bargain collectively. In a great irony of California legal history, a fledgling farm worker union used the strategies of the civil rights movement and the early labor movement to achieve sufficient political influence to win powerfully protective legislation that their attorney didn't think they could get passed, and that their leader neither wanted at the time, nor vigorously employed as it matured. Ultimately, the great wave of farm worker organizing, like that of industrial workers before them, receded, leaving many to continue to question the extent to which the process of a legal regime must necessarily displace the energy of a social movement.

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¹⁴⁴ Philip Martin, *Labor Relations in California Agriculture: Review and Outlook*, http://giannini.ucop.edu/media/are-update/files/articles/V15N3_2.pdf (last visited Oct. 5, 2012).