

REPORT BY THE
AUDITOR GENERAL
OF CALIFORNIA

**AGRICULTURAL LABOR RELATIONS BOARD:
EXPENDITURE OF FUNDS IN THE GROWERS
EXCHANGE CASE AND RELATED CASES**

REPORT BY THE
OFFICE OF THE AUDITOR GENERAL
TO THE
JOINT LEGISLATIVE AUDIT COMMITTEE

P-253

AGRICULTURAL LABOR RELATIONS BOARD:
EXPENDITURE OF FUNDS IN THE
GROWERS EXCHANGE CASE
AND RELATED CASES

MARCH 1983

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March 16, 1983

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Honorable Art Agnos
Chairman, and Members of the
Joint Legislative Audit Committee
State Capitol, Room 3151
Sacramento, California 95814

Dear Mr. Chairman and Members:

The Office of the Auditor General respectfully submits its report concerning the Agricultural Labor Relations Board's expenditure of funds in the Growers Exchange Case and related cases.

Respectfully submitted,

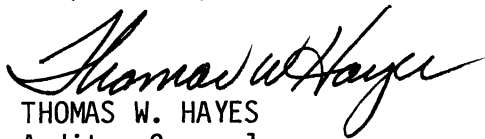

THOMAS W. HAYES
Auditor General

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SUMMARY

The Agricultural Labor Relations Board (ALRB) administers state law governing the relations between agricultural labor unions and employers. Through its General Counsel, the ALRB investigates charges of unfair labor practice filed against employers and unions. This report provides information on the ALRB's involvement in specific charges of unfair labor practice filed from 1980 to 1982. These charges are concerned with Growers Exchange, Inc., and other growers allegedly associated with Growers Exchange, including Holtville Farms, Inc. The ALRB's involvement in acting upon these charges was within its administrative and statutory authority.

We reviewed the direct cost of the ALRB's involvement in the Holtville Farms/Growers Exchange case, including the actions taken in pursuing an injunction against Holtville Farms. Since the ALRB does not maintain information about expenditures for specific cases, we developed estimates from available cost records, case-related documents and files, and interviews with the involved ALRB staff. We estimate that the cost of ALRB involvement was approximately \$94,160. This total includes costs of investigating the charges, pursuing the injunction, and conducting the hearings.

We also reviewed the cost of investigating charges alleging that work formerly performed by members of the United Farm Workers of America (UFW) had been contracted out to other companies. We found that seven charges were filed with the ALRB's Salinas regional office and subsequently transferred to and investigated by the El Centro regional office. Such

transfers are allowed under ALRB regulations and have occurred in other cases. We estimate that the direct labor and travel costs of the ALRB's involvement with these charges is at least \$1,490. Our review also determined that other similar charges were filed with and investigated by the El Centro regional office. In addition, Growers Exchange filed a charge in the Salinas regional office against the UFW; this charge was also transferred to the El Centro regional office. We estimate that the direct labor and travel costs of the ALRB's investigating and handling of these other charges is at least \$11,360.

We were also asked to determine if the State incurred additional costs as a result of the ALRB's decision to transfer the investigation of seven charges from the Salinas regional office to the El Centro regional office. We believe that if the investigation had remained in the Salinas region, some investigative costs, especially travel costs, would have been higher since most of the work was conducted in the El Centro region. We did not estimate the cost of investigating the charges from the Salinas regional office because the estimate would have been based on many assumptions about the way the staff of the Salinas regional office would have conducted the investigations.

Finally, we reviewed the ALRB's involvement in the process of negotiating a settlement of the Holtville Farms/Growers Exchange case. We found that some negotiations did take place during the ALRB's hearings on the case. However, the parties were unable to reach a satisfactory settlement. In addition, we found that opinions differ on the course that the negotiation process took. The Growers Exchange attorneys stated that the ALRB's General Counsel agreed to settle unilaterally with Growers Exchange if the

collective bargaining were unsuccessful. However, the General Counsel told us that his intention was to get the parties to resolve their differences through collective bargaining and to consider a unilateral settlement only if a private party settlement was not possible.

INTRODUCTION

The Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act (act) took effect in August of 1975. This act sets forth California's agricultural labor relations policy and defines the rights, powers, and duties of agricultural employers and employees, and of labor organizations that represent agricultural employees. The policy seeks to ensure peace in the agricultural fields by guaranteeing justice for all agricultural workers and by guaranteeing stability in labor relations. This labor relations policy also protects the right of agricultural employees to associate and organize, and it permits employees to have representatives of their choice to negotiate the terms and conditions of their employment through collective bargaining that is free of interference, restraint, and coercion by employers.

Agricultural Labor Relations Board

The act provides for an independent, five-member board to administer its provisions. The Agricultural Labor Relations Board (ALRB) is empowered to hold secret ballot elections enabling agricultural employees to choose their labor representatives, to adjudicate cases involving election

misconduct, and to certify the results of elections. The ALRB is also empowered to investigate and adjudicate charges of unfair labor practices filed against agricultural employers and labor organizations, and to make rules and regulations necessary to carry out the provisions of the act. The five-member board acts primarily as a quasi-judicial body in deciding cases.

The ALRB's General Counsel is responsible for investigating charges, conducting elections, and issuing and prosecuting complaints of unfair labor practices. The General Counsel supervises the ALRB's attorneys (except for administrative law officers and legal assistants to the five-member board) and also supervises the staff in four regional offices.

The ALRB's administrative law officers hear cases and issue decisions that include findings of fact, conclusions of law, and recommendations for resolving the issues. Any party involved may appeal an administrative law officer's decision. If no appeals are filed, the ALRB adopts the decision. The ALRB has no independent statutory power to enforce its decisions and remedial orders, but it may seek enforcement in the superior courts. Parties to ALRB cases may also seek judicial review of an ALRB decision in the courts of appeal.

The costs of ALRB programs are funded from the State's General Fund. According to the 1983-84 Governor's Budget, the ALRB's expenditures were \$8.8 million for the 1981-82 fiscal year and an estimated \$9.0 million for the 1982-83 fiscal year.

Holtville Farms, Incorporated,
and Growers Exchange, Incorporated

In 1980, when charges were filed against Holtville Farms, Inc., by the United Farm Workers of America, AFL-CIO (UFW), Holtville Farms grew lettuce in the Imperial Valley. Also at that time, Growers Exchange, Inc., harvested and shipped agricultural products in the Imperial and Salinas valleys. Following representation elections in 1977 and 1979, the UFW was certified as the bargaining agent for both of these companies.

SCOPE AND METHODOLOGY

In the audit request, the Legislature asked us to provide information on four specific issues related to the ALRB's involvement in certain cases. As contained in the request, the four issues are as follows:

1. The direct cost of the ALRB involvement (i.e., investigation and legal staff, consultant fees, and board costs) in the Holtville/Growers Exchange case, including the actions taken in pursuit of the injunction.
2. The cost of the investigation of the eight charges leveled by the UFW against companies allegedly associated with Growers Exchange.
3. The additional cost to the State of California for the decision made by the ALRB to transfer the investigation of the present charges (in reference to #2, above) from Salinas to the El Centro office.
4. The involvement of ALRB staff in the process of negotiating a settlement of the Holtville Farms/Growers Exchange case.

We found that the ALRB does not maintain information on the cost of its involvement in specific cases. Therefore, we developed estimates of costs from available timekeeping and travel records, from other case documents, and from interviews with the involved staff. These estimates include only direct costs for work performed by ALRB professional staff. The estimates do not include indirect, support, or overhead costs.

During our review, we interviewed staff responsible for ALRB functions. We interviewed staff at two regional offices to identify the policies and procedures they follow in investigating charges of unfair labor practice, issuing complaints, and conducting hearings. In addition, we reviewed case files and hearing transcripts pertinent to the cases involving Holtville Farms and Growers Exchange, and we developed a chronology of the major events in those cases. We also reviewed accounting records, personnel time sheets, and other documentation that could be used as a basis for determining resource costs associated with the cases. Finally, we interviewed ALRB personnel involved in these cases, and with them we reviewed their major activities and the available cost data to develop reasonable estimates of the total costs of ALRB involvement.

In this report, we provide only information that is relevant to the specific issues contained in the audit request. We provide no conclusions in our analysis. Some of the issues we have been asked to address are in litigation or are pending litigation. We identify these issues in the report.

In the following sections, we first provide background on the case involving Holtville Farms and Growers Exchange. We then present information on the cost of the

ALRB's involvement in the case, the cost of investigating certain charges, and the cost of transferring the investigation of charges from one regional office to another. Finally, we discuss the involvement of ALRB staff in settlement negotiations.

ANALYSIS

I

BACKGROUND ON THE HOLTVILLE FARMS/GROWERS EXCHANGE CASE*

The United Farm Workers of America (UFW) organized the employees of both Growers Exchange, Inc., and Holtville Farms, Inc. As a result of representation elections held in 1977 and 1978, the Agricultural Labor Relations Board (ALRB) certified the UFW as the bargaining agent for employees of those companies. Growers Exchange signed a collective bargaining agreement with the UFW; however, Holtville Farms disputed the election and, to test its validity, refused to bargain with the UFW. In 1979, the UFW filed a charge of unfair labor practice with the ALRB, alleging that Holtville Farms, by refusing to bargain, had violated state labor laws. Because of this charge, the ALRB issued a complaint and conducted hearings. The ALRB's decision, based on the hearings, concluded that there had been labor law violations, and the ALRB ordered Holtville Farms to bargain with the UFW.

* Throughout this report, we use the term "Holtville Farms/Growers Exchange case" to refer to the charges filed by the United Farm Workers against Holtville Farms, Inc., and Growers Exchange, Inc.

Before the ALRB could gain compliance with its order, Holtville Farms began to close down its operations. From October 1980 through May 1981, the UFW filed four charges of unfair labor practice against Holtville Farms and Growers Exchange. The charges alleged that the two companies changed working conditions of employees who were members of the UFW, discriminated against other employees, and violated the act by having workers who were not members of the UFW perform work formerly done by UFW members. After investigating the charges, the ALRB issued a complaint in June 1981, alleging that Holtville Farms and Growers Exchange, as a single employing enterprise, violated the Agricultural Labor Relations Act.

At the time the ALRB issued the complaint, the staff of the ALRB's General Counsel determined that if Holtville Farms ceased its operations while a lengthy hearing was in progress, the employees of Holtville Farms would have no opportunity for a remedy if the charge of unfair labor practice were substantiated. In order to protect that opportunity, the ALRB's General Counsel sought and received an injunction from the Imperial County Superior Court. The injunction prohibited Holtville Farms from closing any of its operations before bargaining the effects of the closure with the union. The injunction also prohibited Holtville Farms and Growers Exchange from subcontracting work formerly performed by Holtville Farms employees who were members of the UFW.

The ALRB hearings on the complaint dealing with the closure of Holtville Farms began in July 1981 and concluded in October of that year. During that period, the administrative law officer heard testimony both in El Centro, California, where the charges had been filed, and in Salinas, California, where Growers Exchange had some operations.

During the hearings, the General Counsel encouraged the parties to reach a mutually satisfactory settlement as an alternative to litigation. During this period, both parties to the dispute indicated a willingness to reach a negotiated settlement; therefore, the hearings were recessed pending the outcome of the negotiations. However, the negotiations stopped when the parties could not agree on a remedy for the effect that closing Holtville Farms would have on the UFW members employed by Holtville Farms. Subsequently, Growers Exchange attorneys alleged that the UFW had not bargained in good faith during these negotiations, and the attorneys representing Growers Exchange discussed a unilateral settlement of the case with the ALRB's General Counsel. A unilateral settlement between Growers Exchange, as the charged party, and the ALRB would have resolved the complaint provided that the settlement remedied the alleged unfair labor practice. However, a unilateral settlement was not reached, and the hearings were resumed and completed. As of February 14, 1983, the decision of the administrative law officer was still pending.

During the hearings pertaining to the closure of Holtville Farms, a farm worker employed by Growers Exchange in Salinas filed a charge of unfair labor practice alleging that Growers Exchange eliminated some operations to undermine the UFW. During the hearings, Growers Exchange had notified the UFW that all of the operations of Growers Exchange were to be discontinued. On April 13, 1982, the UFW filed charges in El Centro, California, alleging that Growers Exchange was being closed in order to undermine the UFW. On April 27, 1982, Growers Exchange filed a charge in Salinas alleging that the UFW did not bargain in good faith on the effects of closing Growers Exchange. Citing the General Counsel's policy of handling in one regional office all charges arising from the same set of facts, General Counsel staff transferred the Growers Exchange's charge from Salinas to El Centro. Such transfers are allowed under ALRB regulations and have occurred in other cases. All of these charges, except the one filed by the farm worker in Salinas, were investigated by staff of the ALRB's El Centro regional office.

On June 28, 1982, in Salinas, the UFW filed charges of unfair labor practice against several companies alleged to have been doing business with Growers Exchange. These charges alleged that work formerly performed by UFW members employed by

Growers Exchange was being contracted out to other companies. In July 1982, in El Centro, the UFW filed similar charges against other companies doing business with Growers Exchange. The ALRB transferred the charges filed in Salinas to the El Centro regional office.

II

DIRECT COST OF ALRB INVOLVEMENT IN THE HOLTVILLE FARMS/GROWERS EXCHANGE CASE

The audit request asked us to determine the cost of the ALRB's involvement, including the pursuit of an injunction, in the Holtville Farms/Growers Exchange case. Pursuing injunctions is within the statutory authority of the ALRB, and the ALRB has done it in other cases. Our review of case-related documents and our interviews with ALRB staff indicate that the estimated cost of ALRB involvement in the Holtville Farms/Growers Exchange case is at least \$94,160.

ALRB involvement began in October 1980 when the UFW filed charges of unfair labor practice against Holtville Farms and Growers Exchange. ALRB field examiners and attorneys investigated these and other subsequent charges filed against Holtville Farms and Growers Exchange. The investigations resulted in the ALRB's issuing a complaint that consolidated all of the charges.

When the complaint was issued in June 1981, attorneys of the ALRB's General Counsel determined that if Holtville Farms closed while a lengthy hearing was in progress, the

Holtville Farms employees would have no opportunity for a remedy if the charge of unfair labor practice were substantiated. Accordingly, the ALRB attorneys requested and received permission from the five-member board to seek an injunction requiring Holtville Farms to meet its legal obligation to bargain. The attorneys filed for an injunction in the Imperial County Superior Court; the injunction was granted in July 1981.

After the complaint was issued in June 1981, ALRB attorneys also prepared for the hearings scheduled to begin in July. When the hearings were completed in October, the case was submitted to an administrative law officer for decision, and the attorneys prepared final briefs. ALRB attorneys and field examiners have had little involvement in this case since October 1981, and as of February 14, 1983, the administrative law officer had not issued a decision in the case.

We developed estimates of the major costs of ALRB involvement in the Holtville Farms/Growers Exchange case by estimating the direct labor and travel costs and by calculating the cost of conducting the hearings. We estimate the direct labor cost for the ALRB field examiners, attorneys, and other professional staff working on the case to be \$37,550. This estimate includes direct wages and benefits paid to ALRB staff

for the time that they worked on this case. We computed the direct wage costs by multiplying the estimated time spent on the case by applicable staff wage rates. To compute direct benefit costs, we multiplied the direct wage cost estimates by the applicable benefit factor, which we obtained from the ALRB's Chief of Administration.

We can only estimate the direct wage and benefit costs for ALRB staff involved in the Holtville Farms/Growers Exchange case because some data were not available for our review. Although case files contained some documents such as investigation reports and hearing motions, some case files did not contain supporting information such as witness lists and interview notes that might have enabled us to estimate more accurately the time spent by staff researching and preparing the documents. In addition, staff frequently could only estimate a range of time that they may have spent working on some elements of the case. When staff provided an estimated time range, we used the lower estimate in our calculations. Therefore, we believe that our estimates of direct labor cost are conservative.

We estimate the travel costs for ALRB staff working on the Holtville Farms/Growers Exchange case to be approximately \$9,710. To arrive at this estimate, we reviewed

the paid travel claims for the ALRB staff involved, and when we could identify travel associated with the Holtville Farms/Growers Exchange case, we computed actual travel costs. However, some travel documents did not identify the purpose of the travel, and staff could not always recall the purpose of some of the travel that was unidentified. Therefore, our estimates for travel costs are also conservative and may not include all travel costs associated with the case.

Finally, we calculated the cost of conducting the hearings on the Holtville Farms/Growers Exchange case. We reviewed payroll data and travel costs for the administrative law officer from July 1981 through November 1982, the latest period for which documents are available, and we examined payment invoices and travel claims for a special consultant hired by the ALRB to review agricultural accounting data. We also reviewed the cost of using the facilities where the hearings were held. We estimate that the cost of conducting the hearings was about \$46,900. However, since the administrative law officer's decision is pending, the ALRB will incur additional costs to complete the case.

Table 1 below summarizes our estimate of the ALRB's costs associated with the Holtville Farms/Growers Exchange case. The figures include the costs of pursuing the injunction.

TABLE 1

HOLTVILLE FARMS/GROWERS EXCHANGE CASE
ESTIMATED DIRECT COSTS TO THE ALRB

<u>Cost Element</u>	<u>Amount</u>
Labor	\$37,550
Travel	9,710
Hearings	<u>46,900</u>
Total	<u>\$94,160</u>

III

COST OF INVESTIGATING THE CHARGES

The audit request asked us to determine the cost of the ALRB's involvement in investigating the charges leveled by the United Farm Workers against companies allegedly associated with Growers Exchange. Our review revealed that on June 28, 1982, the UFW filed seven charges of unfair labor practice at the ALRB's regional office in Salinas. We estimate that the direct labor and travel costs of the ALRB's involvement with these charges is at least \$1,490.

All seven of the charges alleged that work formerly performed by UFW members had been contracted out to other companies. In addition, the charges alleged that Growers Exchange, although supposedly out of business, continued to operate through its association with the companies named in the charges. The ALRB transferred the handling of these charges to the El Centro regional office on June 29, 1982. Such transfers are allowed under ALRB regulations and have occurred in other cases. A field examiner from the El Centro regional office investigated the charges and, as a result, the regional director dismissed one charge. In addition, one charge was later withdrawn. Two charges were consolidated into a

complaint, and the other three charges have not yet been resolved. The ALRB will incur additional costs because some actions must yet be taken to resolve the complaint and the remaining charges.

In addition to investigating the seven charges of unfair labor practice filed by the UFW in Salinas, the ALRB staff investigated other charges filed by the UFW and by Growers Exchange, both in Salinas and in El Centro. We concluded that a report on the estimated costs of ALRB involvement in investigating the charges against Growers Exchange and the companies allegedly associated with it should include the cost of investigating all charges that resulted from the same set of facts. Thus, we estimate that the direct labor and travel costs of the ALRB's involvement in investigating and handling other cases related to Growers Exchange is at least \$11,360.

As mentioned above, these other charges were filed in the Salinas and the El Centro regional offices. In one case, in October 1981, a farm worker in Salinas charged that Growers Exchange had changed its employment practices by eliminating some operations. Field examiners from the Salinas regional office investigated the case; however, the farm worker withdrew the charge in May 1982. Field examiners from Salinas also

investigated a charge against the UFW filed by Growers Exchange in Salinas. That charge, later transferred to El Centro, alleged that the UFW refused to bargain in good faith over the closure of Growers Exchange. Action on the charges has been suspended until the charges against Growers Exchange and the companies allegedly associated with it are resolved.

In April 1982, the UFW filed charges of unfair labor practice in El Centro against Growers Exchange; in July, the UFW filed charges against companies allegedly associated with Growers Exchange. The charge against Growers Exchange alleged that the company had closed without bargaining the effects of its decision to close and that it intended to undermine the UFW. The charges against the other companies alleged that they displaced the UFW by using their workers to perform work formerly done by UFW members employed by Growers Exchange. Field examiners in the El Centro regional office investigated these charges. The ALRB consolidated three of the charges filed in El Centro with two charges filed in Salinas into an unfair labor practice complaint. Of the remaining charges, three were dismissed, and one is yet to be resolved.

During our review, we estimated the direct labor and travel costs associated with the ALRB's involvement in the Growers Exchange and related cases. We reviewed case files, attendance and overtime records, and travel claims. ALRB staff

involved in the handling of these cases reviewed these documents with us and estimated the staff time and travel costs for investigating the cases. Based on the time estimates and travel data, we computed total direct labor and travel costs for investigating the seven charges filed in Salinas and for investigating the other charges related to Growers Exchange filed in Salinas and El Centro. Table 2 below summarizes these cost estimates. Since case files did not uniformly contain notes and records of staff investigation work and since some ALRB staff could not always accurately estimate the time they spent in specific investigative activities, we may not have included some costs in our review.

TABLE 2

GROWERS EXCHANGE CHARGES AND RELATED CHARGES
ESTIMATED DIRECT COST OF ALRB INVESTIGATION

<u>Cost Element</u>	<u>Growers Exchange Charges^a</u>	<u>Related Charges^b</u>
Labor	\$1,210	\$ 7,960
Travel	<u>280</u>	<u>3,400</u>
Total	<u>\$1,490</u>	<u>\$11,360</u>

^a Seven charges filed in Salinas.

^b Other charges filed in Salinas and in El Centro.

IV

COST OF INVESTIGATING THE CHARGES WITHOUT TRANSFERRING THE INVESTIGATION

We were asked by the Legislature to determine the additional cost to the State of the ALRB decision to transfer the investigation of seven charges from the Salinas regional office to the El Centro regional office. Our analysis shows that the ALRB might have incurred somewhat higher costs if the investigation of the charges had not been transferred.

Title 8, Section 20244(a) of the California Administrative Code authorizes the General Counsel of the ALRB to transfer cases from one region to another. Furthermore, it is the policy of the General Counsel to investigate cases in one region when these cases arise from the same set of facts. Therefore, the seven charges of unfair labor practice filed in Salinas on June 28, 1982, were transferred to the El Centro regional office. Such transfers have occurred in other cases.

The seven charges alleged that Growers Exchange had been closed to undermine the UFW. They also alleged that work formerly done by the UFW members employed by Growers Exchange was shifted to workers employed by other companies.

A field examiner from the El Centro regional office investigating the charges interviewed witnesses, researched case background and law, and analyzed company ownership data and other information. He conducted most of the investigative work in the El Centro area. However, this field examiner did travel to Guadalupe and to Oxnard to conduct some work.

We believe that if the charges had remained in the Salinas region and had been investigated by field examiners from the Salinas regional office, some investigative costs would have been higher. For example, since most of the investigation was centered in the Imperial Valley, Salinas field examiners would have had to travel there to conduct the investigation. Furthermore, because it is the General Counsel's policy is to keep similar charges in the same area, it is likely that all the charges arising from the Growers Exchange closure and filed in El Centro would have been transferred to Salinas. As a result, the ALRB would have incurred higher costs to send investigators from the Salinas regional office to El Centro.

Although we were able to estimate the cost of the El Centro regional office's investigation of the Salinas charges in El Centro, we did not estimate the cost of

investigating those charges from the Salinas regional office. Such an estimate would have required us to make assumptions about the way the staff of the Salinas regional office would have conducted the investigation.

INVOLVEMENT OF ALRB STAFF
IN SETTLEMENT NEGOTIATIONS

The audit request asked us to review the ALRB's involvement in the process of negotiating a settlement of the Holtville Farms/Growers Exchange case. We reviewed the case files and hearing transcripts, and we interviewed ALRB staff, attorneys for Growers Exchange, and staff of the UFW. During the period of the hearings, some negotiations did take place between the UFW and Growers Exchange and between the ALRB and Growers Exchange; however, the parties were unable to reach a satisfactory settlement. In addition, we found some differences of opinion on the ALRB's involvement in the negotiation process.

In August 1981, during the hearings on the closure of Holtville Farms, Growers Exchange and the UFW resumed talks to settle some of the issues contained in the charges. The hearings were then recessed pending the outcome of the negotiations. According to subsequent hearing testimony, a Growers Exchange attorney contacted the UFW negotiator to arrange a meeting date during the recess. Although both sides had indicated during the hearings that they wanted to settle

the case, no firm meeting date was arranged. An attorney representing Growers Exchange testified that the UFW negotiator told him that other UFW activities precluded his attending any meetings. The attorney further testified that the UFW negotiator was not available for any meetings immediately after the hearings recessed. According to UFW staff, discussions with the Growers Exchange attorneys did take place in June and July of 1981. However, the UFW negotiator was not available for approximately one week in early August because he was involved in a UFW matter of higher priority.

After the hearings recessed in August 1981, the staff of the ALRB's General Counsel met with a Growers Exchange attorney to develop a framework for settling the complaint. Those discussions between the General Counsel and the Growers Exchange attorneys continued while the Growers Exchange attorneys attempted to arrange negotiations with the UFW.

Because the Growers Exchange attorneys felt that the UFW would not negotiate, one of the attorneys advised the General Counsel of the problem of getting the UFW to bargain. Furthermore, this Growers Exchange attorney and the General Counsel discussed a possible unilateral settlement of the complaint in the event that the UFW would not bargain. This attorney told us that the General Counsel agreed to use his

position to get the UFW to negotiate, and that if the UFW would not negotiate, the General Counsel indicated he would settle unilaterally with Growers Exchange. The General Counsel stated, however, that if the company was willing to bargain and fulfill its obligation under the law, then the case should be settled. He intended for the parties to resolve their differences through collective bargaining. However, if the UFW did not meet to bargain, then a unilateral settlement could be a consideration. UFW staff told us that they were not approached directly about a potential unilateral settlement. The administrative law officer informed the UFW about a potential unilateral settlement when she asked the UFW when it would be available for negotiations.

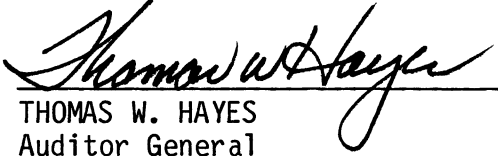
Under certain circumstances, the ALRB's policy permits the General Counsel to enter into a unilateral settlement of a complaint with the charged party. For example, the General Counsel can settle unilaterally when the charging party refuses to approve settlement terms that are otherwise sufficient to remedy the unfair labor practice. In the Growers Exchange case, the General Counsel did not enter into a unilateral settlement. The General Counsel did, however, contact the UFW in an attempt to get serious settlement negotiations started between the UFW and Growers Exchange. The UFW agreed to negotiate with the growers, and talks began in mid-August 1981.

A Growers Exchange attorney told us that the General Counsel had withdrawn ALRB staff before the UFW negotiator arrived. Therefore, the General Counsel left no one with whom to negotiate. According to the General Counsel, there was no need for his staff to be available during this period. However, there were two ALRB attorneys litigating the case. One attorney went on leave because of an emergency, and the other attorney withdrew from the case at about the same time. Our review of case-related documents showed that ALRB General Counsel attorneys were unavailable for settlement discussion for approximately one week.

The Growers Exchange attorneys and the UFW negotiators met for bargaining in mid-August 1981, but they did not reach a settlement. The General Counsel stated that he directed one of his attorneys to contact both parties to determine if the law had been fulfilled through collective bargaining. The attorney ascertained that although bargaining had been conducted, the parties had not reached an agreement and the alleged unlawful conduct was still unremedied. As a result, the hearings were continued and concluded in October 1981. The administrative law officer's decision is pending as of February 14, 1983.

We conducted this review under the authority vested in the Auditor General by Section 10500 et seq. of the California Government Code and according to generally accepted government auditing standards. We limited our review to those areas specifically contained in the audit request.

Respectfully submitted,


THOMAS W. HAYES
Auditor General

Date: March 14, 1983

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March 7, 1983

Mr. Thomas W. Hayes
Auditor General
660 J St., Suite 300
Sacramento, CA 95814

Dear Mr. Hayes:

Re: Draft Report of the Office of the Auditor
General to the Joint Legislative Audit Committee

This is to provide the Board's comments on the Auditor General's draft report regarding the ALRB's involvement in the Growers Exchange case and related cases.

The Auditor General's report outlines the expense to the State of California incurred in the investigation and prosecution of unfair labor practices allegedly committed by Growers Exchange and Holtville Farms, Inc. While the information contained in the report appears to be accurate, we wish to call to your attention the following in order to provide a fuller perspective.

First, the unfair labor practice charges filed against Growers Exchange and Holtville Farms alleged that they, as joint employers, effected a "partial closure" and sub-contracted out bargaining unit work in order to circumvent their statutory duty to bargain collectively in good faith with the certified bargaining representative of their agricultural employees. In addition, the charges alleged that Growers Exchange and Holtville discriminatorily terminated and refused to reinstate 36 bargaining unit employees because of their union activities and made unilateral changes in their employees' wages and working conditions without giving the Union notice or an opportunity to bargain.

This case therefore involved complicated issues of law and fact, including bargaining conduct, subcontracting, joint employer status, and a large number of alleged discriminatees. In addition, relatively few "partial closure" charges have been previously filed with the Board,

and they are uniquely complex, both factually and legally. The complexity of this case is suggested by the length of the hearing, which included 50 hearing days. It must be pointed out that such a large number of discriminatees and such a lengthy hearing is the exception rather than the rule before this agency. This case is one of the more complex investigations and hearings this agency has handled, and, in light of the above-mentioned factors, we do not believe the expense incurred in the Growers Exchange case to be extraordinary.

Second, as noted in the Auditor General's report, General Counsel, before the hearing, sought and obtained from the Imperial County Superior Court an injunction prohibiting Holtville and Growers Exchange from refusing to bargain with the UFW over the decision to close down or subcontract bargaining unit work, and the effects of that decision, and from refusing to reinstate the employees Holtville laid off as long as bargaining unit work continued to be available. In granting the injunction, the Superior Court of Imperial County did not rule on the merits of the case, but applied a two-prong test. First, the court determined that there was reasonable cause to believe that the alleged ULP's actually occurred. Second, the court found that the requested relief was "reasonably necessary to preserve the status quo or to prevent frustration of the basic remedial purposes of the Act." ALRB v. Ruline Nursery Co. (1981) 115 Cal. App. 3d 1005. Although this injunction was not a ruling on the merits, it does indicate that the court found that the unfair labor practice charges were not insubstantial.

Again, we note that this is one of the more complex cases that the agency has handled and that, based on our experience with other cases involving the complicated issues present in this case, the costs incurred in investigating and litigating the unfair labor practice charges were reasonable.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'A. Song'.

ALFRED H. SONG
Chairman

cc: Members of the Legislature
Office of the Governor
Office of the Lieutenant Governor
State Controller
Legislative Analyst
Director of Finance
Assembly Office of Research
Senate Office of Research
Assembly Majority/Minority Consultants
Senate Majority/Minority Consultants
Capitol Press Corps