

Written Testimony from Genevieve A. Shiroma, Chairwoman and Norma A. Turner, General Counsel, Agricultural Labor Relations Board on the Governor Gray Davis Reorganization Plan No. 1 of 2002

Little Hoover Commission Hearing
March 19, 2002

Modeled on the National Labor Relations Board (NLRB) formed in 1935 by the enactment of the National Labor Relations Act (NLRA), the Agricultural Labor Relations Board (ALRB) formed in 1975 by the Agricultural Labor Relations Act (ALRA), is comprised of two components: a five member Board and a General Counsel, all appointed by the Governor and confirmed by the Senate for specified terms. Generally, the Board is responsible for conducting and certifying the results of secret ballot elections and deciding unfair labor practice cases brought before it by the General Counsel, who has the final authority on behalf of the Board to investigate and prosecute such cases. The General Counsel is responsible by statute for the general supervision of the regional staff.

The Board and General Counsel see advantages in the Governor's proposal. For one, the Board has only five offices to serve California's 900,000 farm workers and 30,000 employers. One of the components of the proposal is to consolidate and share service points throughout California for the ALRB, EDD, and DIR. Further, in the ordinary course of business, the ALRB staff can only come into contact with a handful of farm workers and employers. The cross-training that will result from the combination of a number of labor agencies will permit staff from other agencies to be alert to matters falling within the Board's jurisdiction (and vice versa) and to direct farm workers and employers to the Board's offices. The visibility, and therefore, the effectiveness of the agency will thus be enhanced.

Additionally, in a small agency like the ALRB, we at times need assistance on administrative and business service functions. The inclusion of the Board in a cabinet agency will assure that we have access to these resources.

Within a cabinet labor agency, it is important to assure that the ALRB maintain its independent nature, including the capacity to allocate resources. Under the ALRA, as under the NLRA, the General Counsel cannot begin an investigation in the absence of a properly filed charge. Thus, even in a combined labor agency, no agency or functionary can initiate an investigation. Moreover, in performing her prosecutorial functions, the General Counsel must be free to exercise the kind of discretion ordinarily accorded any prosecutor within our system of justice. While the ALRA specifically insulates the General Counsel's discretion to issue and unfair labor practice complaint from the Board's oversight, her discretion must be similarly kept insulated from the oversight of any super-agency personnel.

The Board's independence must be maintained at another level as well. When the General Counsel has decided to issue a complaint, the matter is heard before Administrative Law Judges appointed by the Board. These records are ordinarily made in trial type hearings and are generally conducted under the rules of evidence. The Board must make its decision exclusively on the record made before the Administrative Law Judge. Whatever advantages for coordinated development of state labor policy might inhere in a super-agency, unless the considerations that underlie them be explicitly part of the record before the Board, they may not be used as the basis of any decision by the Board.