

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

KUSUMOTO FARMS,)	
)	
Employer,)	
)	Case No. 96-PM-4-SAL
and)	
)	22 ALRB No. 11
UNITED FARM WORKERS OF)	(October 11, 1996)
AMERICA, AFL-CIO,)	
)	
Labor Organization.)	
)	
and)	
)	
FOUR UNNAMED INDIVIDUALS,)	
)	
<u>UFW Organizers.</u>)	

DECISION AND ORDER SETTING MATTER FOR HEARING

Pursuant to the provisions of Title 8, California Code of Regulations, section 20900 et seq.,¹ Kusumoto Farms (Employer) has filed the instant motion to deny access by the United Farm Workers of America, AFL-CIO (UFW or Union) to its agricultural operations for one year and, in addition, to bar four unnamed UFW organizers from any agricultural operations in the area covered by the Salinas region of the Agricultural Labor Relations Board (ALRB or Board), also for one year.

As we explained in Navarro Farms (1996) 22 ALRB No. 10, the ALRB promulgated an Access Rule which permits union organizers to take preelection access to the worksite in order to communicate

¹Unless otherwise indicated, all section references herein are to the Regulations of the Agricultural Labor Relations Board which govern access by union organizers to the premises of agricultural employers.

with employees about unionization. Such access is permitted under strict procedural and time and manner limitations. (Section 20900 (e)(3)(A), section 20900(e) (3) and (B).)

Section 20900(e)(5)(A) authorizes the Board to bar labor organizations as well as individual organizers who violate the rule from taking access for a period of time to be determined by the Board following due notice and hearing.

In Dutra Farms (1996) 22 ALRB No. 5, the Board held that an evidentiary hearing may be held upon the filing of a motion to deny access which is accompanied by declarations in which the declarant states under penalty of perjury that he or she has personal knowledge of conduct which demonstrates prima facie a violation of the various provisions of the access regulation which, if uncontroverted or unexplained, would warrant the denial of access. For the reasons discussed below, the Board finds that the Employer herein has met the Dutra standard.

According to the declarations submitted in support of the motion, four UFW organizers entered the Employer's strawberry fields near Watsonville on July 23, 1996 while employees were taking their lunch break.² Before speaking with any employees,

²There is no allegation that the organizers entered at an improper time, or in a number disproportionate to the number of employees, or that they failed to wear UFW badges or otherwise identify themselves as UFW organizers. In all of those particular respects, therefore, as the declaratory support for the motion indicates, there was no violation of the access rule. Indeed, as the UFW pointed out in its response to the motion, the organizers never purported to represent themselves as acting for or on behalf of any governmental agency and the Employer does not contend that the conduct complained of was more than a single, isolated

however, the organizers proceeded directly to the employees' toilet facilities and appeared to be inspecting them. One organizer later approached an employee to ask how often the toilets were cleaned, was the drinking water fresh, did the Company have a limit on the use of the toilets? A supervisor was asked where mandatory notices for employees were posted and, upon being advised that the bulletin board was located at a different Company facility, handed him what he interpreted to be a "citation" from the California Occupational Safety and Health Administration (OSHA).³

The alleged conduct in Navarro Farms (1996) 22 ALRB No. 10 is strikingly similar. There, two UFW organizers took access, ostensibly to meet with employees in order to urge them to support the Union, but appeared primarily interested in conducting an inspection of Navarro's drinking water and toilet facilities. The Board differentiated between asking employees for their view of working conditions and purporting to be overseers of matters which are not within the purview of the ALRB, but of different regulatory agencies. We held there that, "inspection of the property and posing as representatives of a governmental health and safety agency clearly is not consistent with a limited right

incident. The Union does not believe, therefore, that the motion establishes the level of conduct which would warrant the denial of access to either the Union or its individual organizers.

³The Employer has provided the Board with one page of what appears to be a copy of a form provided by OSHA. The handwritten notations refer to a lack of posters setting forth minimum wage and/or safety regulations.

of a labor organization to communicate with and seek the support of the employees."

While it may be true in this case that the organizers did not pretend to be other than representatives of the UFW, the supporting declarations do suggest that the organizers were primarily interested in inspecting water and toilet facilities which the Employer provides for employees. Having done so, they then attempted to serve a supervisor with a document which can only be construed as a warning to the Employer of alleged infractions, apparently of OSHA requirements. (See footnote 3, supra.) To that extent therefore, the Employer has established sufficient grounds to warrant a hearing in order to determine whether the UFW, or its individual organizers, abused the access rule in a manner which would demonstrate intentional or reckless disregard of the rule and/or intentional harassment of the employer. (Ranch No. 1. Inc. (1979) 5 ALRB No. 36; L&C Harvesting. Inc. (1993) 19 ALRB No. 19.)⁴

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⁴The Board does not purport to examine the content of discussions between union organizers and employees which relate to organizational purposes. As we explained, in Navarro Farms (1996) 22 ALRB No. 10, sl. op. at p. 5, "[t]here can be no dispute that asking employees for their view of various working conditions is consistent with the communicative purposes of access." Where, however, as here, organizers appear to have utilized the Board's access rule, not for communicating with employees, but for their own first hand inspection of the employer's facilities, the Board can legitimately ask whether such conduct is consistent with "the purpose of meeting and talking with employees and soliciting their support." (Section 20900 (e).)

ORDER

The Executive Secretary is hereby directed to set a time and place for a hearing before an investigative hearing examiner (IHE) in order to determine whether:

On July 23, 1996, did four UFW organizers take access to the Employer's premises for the primary purpose of inspecting toilet and water facilities and then issue to the Employer what would appear to be either a notice of unrelated infractions of requirements of the California Occupational Safety and Health Administration (OSHA), or a notice of intent to file a complaint with OSHA and, further, whether such conduct falls outside the narrow purpose of the Board's access rule and accordingly is actionable by the Board and subject to sanctions limiting or barring altogether the further taking of access by the Union and/or its individual organizers for one year.

The Employer shall have the burden of proving that the Union and/or its agents engaged in conduct which warrants the granting of the motion to deny access. The Union will have full party status, including the opportunity to call, examine, and cross examine witnesses. Thereafter, the IHE will issue a

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recommended decision to which any party may file exceptions with the Board.

DATED: October 11, 1996

MICHAEL B. STOKER, Chairman

IVONNE RAMOS RICHARDSON, Member

LINDA A. FRICK, Member

CASE SUMMARY

Kusumoto Farms
(United Farm Workers
of America, AFL-CIO)

22 ALRB No. 11
Case No. 96-PM-4-SAL

Background

The Board's Access Rule grants labor organizations preelection access to worksites under strict time, manner and procedural limitations in order to communicate with employees about unionization. The rule also provides for the filing of motions, to deny such access by aggrieved agricultural employers who believe labor organizations and/or their individual agents have violated the rule when they (1) disrupt operations, (2) engage in intentional harassment of an employer or employees, or (3) intentionally or recklessly disregard the rule.

Such a motion was filed by Kusumoto Farms on the grounds that organizers for the United Farm Workers of America, AFL-CIO (UFW or Union), under the guise of taking access for the purpose of organizing employees, appeared to be primarily interested in examining the toilet facilities which the Company provides for its employees. Having completed that task, one organizer attempted to serve a supervisor with what purported to be a one-page form supplied by the California Occupational Safety and Health Administration (OSHA) on which the organizer noted that the Employer has failed to post minimum wage information for the benefit of employees.

It is the Employer's position that the conduct described above is outside the purposes for which the access rule was adopted and that the Board should bar both the Union and its individual organizers from taking access to any agricultural areas within the coverage of the Board's Salinas regional office for one year.

Board Action

The Board found that the declaratory support provided by the Employer in support of the motion established sufficient grounds to at least hold an evidentiary hearing in order to permit the Employer to prove that the Union and/or its agents engaged in conduct which warrants a denial of access. Accordingly, the Board directed that a hearing be held before an Investigative Hearing Examiner who will issue a recommended ruling which any of the parties may appeal to the Board.

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This Case Summary is furnished for information only and is not an official statement of the case, or of the ALRB.