Lakeview, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

SAM ANDREWS' SONS, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	Case No. 81-CE-258-D 11 ALRB No. 29 (8 ALRB No. 87)

SUPPLEMENTAL DECISION AND MODIFIED ORDER

Pursuant to the Remand Order *of* the Second District Court of Appeal, Division Four, in Sam Andrews' Sons v. ALRB (1984) 162 Cal.App.3d 923, we have reconsidered our remedial Order respecting labor camp access in Sam Andrews' Sons (19825 8 ALRB No. 87, and have reframed it pursuant to the Court's instruction to include "specific detail as to time and number of organizers."

Pursuant to the provision of section 1146,[1/] the Board has delegated its authority in this proceeding to a three-member panel.[2/]

In order to best comply with the Court of Appeal' s Remand Order, we issued an order to the parties requesting them to submit proposals and arguments in support thereof. In keeping

[1/]All section references herein are to the California Labor Code unless otherwise specified.

[2/]Chairperson James-Massengale has not participated in this case.

with previous Agricultural Labor Relations Act (ALRA or Act) precedent, we requested that any proposed restrictions be supported by a showing that they do not interfere with the rights of labor camp tenants to be visited or to have visitors. (See Merzoian Brothers (1977) 3 ALRB No. 62 and Anderson Farms Company (1977) 3 ALRB No. 67, cited in Vista Verde Farms v. ALRB (1981) 29 Cal.3d 307, 317 [172 Cal.Rptr 720] and Whitney Farms (1977) 3 ALRB No. 68. See also, Karahadian Ranches, Inc. v. ALRB (Feb. 1985) 38 Cal.3d 1, 9.)

Only Respondent submitted a response. The "primary position" Respondent articulated in its response was that the Board should convene a hearing to present additional evidence regarding the current physical layout and operation of the labor camp in order to properly assess the adequacy of access restrictions. In the alternative, Respondent argued that the Agricultural Labor Relations Board (ALRB or Board) should adopt the Recommended Order of the Administrative Law Judge (ALJ)[3/] who personally viewed the labor camp premises while hearing the case in 1982. In his Recommended Decision, the ALJ stated:

> My personal observation of the barracks facility were that neither of the two barracks are adequate for meeting purposes. A meeting consisting of more than a handful of people would intrude upon all those persons in the barracks. A raised voice to address several people would be disruptive to the barracks.

In his Recommended Order the ALJ proposed the United Farm Workers

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[3/] At the time of the issuance of the ALJ's Decision, all ALJ's were referred to as Administrative Law Officers. (See Cal. Admin Code tit. 8, § 20125, amended eff. Jan. 30, 1983.)

of America, AFL-CIO (UFW or Union) be afforded access “at all reasonable hours" to post notices of meetings, invitations to meet with union representatives and information concerning other union-related business matters on bulletin boards. With respect to union meetings, the ALJ proposed:

> The Company is not required to permit union meetings in the barracks. However union representatives, not to exceed two at one time, shall be permitted access to the barracks and/or dining halls for the purpose of announcing the time and place of union meetings.

The ALJ did not recommend any restrictions on any other part of the camp or explain why union representatives should be limited to two in the dining halls. Neither did he suggest why any restrictions should be imposed on meetings or contacts with union representatives involving only "a handful of people."

After setting forth these alternative positions, Respondent presented its own proposal pursuant to the Board's request. Respondent proposed that labor camp access be limited in time and in place to between 5:00 p.m. and 7:00 p.m. in the recreation park adjacent to the camp and that access takers be limited in number to one union representative for each 15 camp inhabitants "present when the representative(s) seek access." Respondent also proposed that union representatives be required to wear identifying badges and be barred from engaging in specified "prohibited conduct." Finally, Respondent proposed a notice procedure whereby the Union would provide written notice of intent to take access or to hold a general meeting and must wait until Respondent "inform(s) the Union in writing of designated representative(s} whom the Union shall notify before

actually taking access each day . . . . " (Emphasis added.)

The major difficulty in analyzing the issue of restrictions on labor camp access is that those decisions which address the question of the permissible limitations on access have arisen in a different context than this one. Those cases -- whether access or solicitation cases -- involve the validity, either under the National Labor Relations Act (NLRA) or the First Amendment, of restrictions placed by an employer/land owner on access and solicitation. In the instant case, the challenge is to the breadth of the Board's Order prohibiting an employer from restricting organizer access. The scope of the Board's Order is intended not only to reflect the parameters of employees' section 1152 rights, but also to remedy repeated and egregious interference with employee organizational rights by an employer who has disobeyed three other ALRB Orders concerning union access, thus "showing that [it] was persistently hostile to union attempts to organize the employees." (Sam Andrews' Sons v. ALRB, supra, 162 Cal.App.3d at 934..) Beginning in 1975, Respondent has banned union access to its labor camp facilities in order to frustrate organizing efforts (Sam Andrews' Sons (1977) 3 ALRB No. 45) and to interfere with its workers' rights to be fully represented by their freely chosen representatives. (Sam Andrews' Sons (1979) 5 ALRB No. 68; Sam Andrews' Sons, supra, 8 ALRB No. 87).

Even conceding the applicability of the NLRA precedent

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cited by the Court of Appeal,[4/] however, it is our view that an unrestricted access order for union organizers, such as that included in our original Order, is appropriate. Lack of specific limitations as to time, place and number of organizers would clearly not operate to allow workers or union organizers to commit access abuses presenting actual threats to the property or operations of the employer or the personal property or privacy of the camp tenants. Coercive tactics by visiting union organizers would remain subject to unfair labor practice charges and if not otherwise subject to this Board's exclusive remedial

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[4/]We continue to believe that NLRA work site access precedent is not applicable to the labor camp or other home setting due to the dual considerations that (1) employees in the camp are. by definition, not "working" so that discussions with organizers will not impact on the employer's operation, and restrictions on such discussions should be presumed invalid, cf. Montgomery Ward & Co., Inc. v. NLRB (7th Cir. 1982) 692 F.2d 1115 [111 LRRM 3021]; and (2) employees have a privacy interest in the home setting which is protected by the California State Constitution, whether that home be in a labor camp with bunkhouses or a separate house. (See UFW v. Superior Court (William Buak Fruit Company, Inc.) (1975) 14 Cal.3d 902, 910 [122 Cal.Rptr.877] ; see also Velez v. Armenta (D. Conn. 1974.) 370 F.Supp. 1250.) As the California Supreme Court noted in Vista Verde, the right of agricultural workers to converse with organizers at home is a right "statutorily guaranteed" by Labor Code section 1152. The Court quoted with approval this Board's finding that, with respect to employer ejection of a union organizer from a labor camp, "the normal effect of such a showing of control over employees' lives is to give workers a sense of futility and thereby restrain the exercise of self-organizational rights in violation of the Act." (Vista Verde Farms v. ALRB, supra, 29 Cal.3d 307, 317.) See also Karahadian Ranches, Inc. v. ALRB, supra, 38 Cal.3d 1, 9, where the Supreme Court cited approvingly this Board's holding in Silver Creek Packing Company (1977) 3 ALRB No. 13, that Labor Code "section 1152 recognizes the rights of workers to be visited by union organizers at their homes regardless of where their homes are located." In Karahadian, workers were meeting with the UFW attorney in a labor camp kitchen in a "bachelor camp" much like the one at issue herein.

jurisdiction (see section 1160.9), to the full panoply of civil and criminal remedies. (Cf. Vargas v. Municipal Court (1978) 22 Cal.3d 902, 906 [150 Cal.Rptr. 918].) Even the National Labor Relations Board (NLRB or national board) test for limitations on organizer access in the somewhat analogous lumber camp setting would allow only those restrictions "which are necessary in order to maintain production or discipline." (See NLRB v. Lake Superior Lumber Corp. (6th Cir. 1948) 167 F. 2d 147, cited with approval by U.S. Supreme Court in NLRB v. Babcock & Wilcox Company (1956) 351 U.S. 105 and by the California Court of Appeal in Sam Andrews' Sons v. ALRB, supra, 162 Cal.App.3d 923, 933.)[5/]

Respondent's proposed restrictions on labor camp access do not even purport to be "necessary in order to maintain production or discipline."

Time Restrictions

None of Respondent's three rationales for limiting access to 5:00 to 7:00 p.m. relates to Respondent's interests in "maintaining production or discipline." The fact that "the presence of all [camp] residents . . . is virtually assured" during those hours does not justify limiting access so drastically. The fact that field access is available under the Board's work

[5/]In a physical context similar to the instant case -- the lumber camp had bunkhouses and a separate mess hall -- the federal court upheld the national board's findings that excluding organizers from the bunkhouses and limiting camp access to one union organizer only once a week illegally interfered with the organizational rights of the lumber workers. In the interest of maintaining "discipline," however, the court and national board upheld a prohibition on union meetings after 8:00 p.m. because of evidence that later meetings would disrupt the employer's early morning production schedule.

site access regulations is similarly unavailing as a justification for camp access limitations, because, as the California Supreme Court has recognized in Vista Verde Farms v. ALRB, supra, 29 Cal.3d 307, 317, work site access is not a substitute for unsupervised contact with union representatives in the home. (See also Henry Moreno (1977) 3 ALRB No. 40.)

Finally, Respondent's express desire to "vindicate the rights of those employee/camp residents who desire not to be disturbed by outsiders" has been repeatedly rejected by the Board, the Court of Appeal and the Supreme Court as a rationale for labor camp access restrictions. (See Sam Andrews' Sons v. ALRB, supra, 162 Cal.App.3d 923, 937, and Vista Verde Farms v. ALRB, supra, 29 Cal.3d 307, 317.) Although we find Respondent's proposed restrictions unsupported by any legitimate or articulated property interest, we have modified our Order to restrict access to labor representatives during an eight-hour period, to be designated by the Regional Director, when the employees can be presumed to be sleeping, and during the time when there are no employees in the camp. It is apparent that Respondent's presumed interest in the security of its property would outweigh camp residents' interest in being visited during those times when they are asleep or at work. We intend hereby to comply with the Court's Remand Order without actually interfering with camp residents' right to be visited or to have visitors.

Place Restrictions

Respondent's proposal to limit access to the "recreation park immediately adjacent to camp facilities and camp kitchen

but not camp barracks" is purportedly supported by the personal observation and recommendation of the ALJ. In fact, the ALJ only recommended against meetings "of more than a handful" in the barracks, and his recommendation is explicitly based on his concern for the camp residents' privacy -- a rationale expressly disapproved by the Court of Appeal as discussed above. Like the national board and federal court in NLRB v. Lake Superior Lumber Camp, supra, 167 F.2d 147, 151-152, we are not persuaded that access should be prohibited in the barracks area.

Restrictions on Numbers of Organizers

Respondent proposed to limit organizers to one per fifteen employees throughout the camp. The proposal is admittedly "derived from the Board's field access regulation." We reject Respondent's contention that field access involves the "same interests" as labor camp access. Not only is any threat to production or discipline far more attenuated in the labor camp than in the field; there are also constitutional considerations of privacy which come into play when a farm worker is in his or her home (see UFW v. Superior Court, supra, 14 Cal.3d 902, 910),[6] and practical problems in enforcing access regulations

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[6]This Board is of course not empowered to remedy violations of farm workers' constitutional rights which do not interfere with their section 1152 organizational rights. However, inextricably intertwined with the constitutional privacy interests recognized by the California Supreme Court in UFW v. Superior Court (Buak), supra, 14 Cal.3d 902, 910, are the organizational rights at issue in Vista Verde Farms v. ALRB, supra, 29 Cal.3d 307, 317. In Vista Verde, the same court invoked section 1152 protections against an employer's similar "showing of control" over its employees' private lives.

which could draw the employer into potentially coercive contact with residents.

Accordingly we would permit only numerical restrictions which reasonably seek to prevent abuses which could present an actual threat to Respondent's property interests. Of course, any restrictions on numbers of individuals promulgated by fire departments or other governmental officials are per se reasonable. Given the already crowded conditions in the barracks, as described by the ALJ, more than one organizer for every ten residents assigned to a particular bunk room could arguably lead to dangerous overcrowding. Although the actual extent of the threat will vary depending upon the number of residents actually present in the bunk room, in order to comply with the Court's directive, we set a maximum of six organizers for a bunk room with sixty bunks. Other than to prevent the number of organizers from exceeding the number of employees present in the camp at any one time, we do not deem it appropriate to further restrict numbers of organizers. By these modifications to our access Order, we intend to comply with the Court's directive.

Identification and Registration Requirements

Respondent again proposed to incorporate provisions of the work site access regulation requiring union organizers to wear identification badges and to register in advance with Respondent before taking access. We find that, in the labor camp setting, badges and/or advance registration for union organizers would interfere with camp residents' right to meet privately with union organizers without fear of surveillance

or at least without having to advertise their interest in the Union.[7/]

Conclusion

Given the presumption that restrictions on non-working time access are invalid, Montgomery Ward & Company, Inc. v. NLRB, supra, 692 F.2d 1115, and given the heavy burden on labor camp operators/owners to show that any rule restricting access does not also restrict the rights of the tenants to be visited or have visitors, Merzoian Brothers Farm Management Company, Inc., supra, 3 ALRB No. 62 and Anderson Farms Company, supra, 3 ALRB No. 67, we decline to adopt Respondent's proposed restrictions. We further find the ALJ's recommended restrictions to be arbitrary and inappropriate, based as they are upon the presumed wishes of employees. We also reject Respondent's suggestion that we convene a hearing on "the current physical layout and operation of labor camp." The ALJ visited the camp at the time of the unfair labor practice hearing and provided

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[7/]If Respondent's agents question nonresidents for general nondiscriminatory security purposes, it will not constitute "restraint" in violation of our Order to ask union organizers to identify themselves and to state their general purpose if their identity is not known or if the security guard has reasonable cause to believe the visitor is attempting to enter for an unlawful purpose. A visitor specifically designated by a resident, however, or a guest accompanied by a resident shall be admitted without questioning, even if unknown to the guard. Such authorization by a camp resident would minimize any security concerns of Respondent while at the same time minimizing the potential for surveillance and retaliation were questioning to be permitted. This approach was adopted by the federal district court in the labor camp case of Velez v. Armenta, supra, 370 F.Supp. 1250, cited with approval by the California Supreme Court in UFW v. Superior Court (Buak), supra, 14 Cal. 3d 902 910.

us with a detailed physical description. Absent a claim that significant changes have occurred since the ALJ's visit, we see no necessity to further delay resolution of this case.

The modifications which we have made impose the minimal restrictions on access time and number of organizers which we believe necessary to comply with the Court's remand order without actually interfering with workers' rights to be visited in their homes. However, we wish to emphasize that these restrictions should not be deemed applicable precedent in any other case.[8/]

MODIFIED ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board (Board) hereby orders that Respondent Sam Andrews' Sons, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Preventing, limiting or restraining any non-resident union organizers or agents from entering and/or remaining on the premises of Respondent's labor camps for the purpose of contacting, visiting or talking to any agricultural employees on the premises, unless such organizers or agents,

(1) are present in a bunkhouse in numbers

[8/]As noted in footnote 6, this Board would have no jurisdiction to nullify a landowner's regulation *of* access having no effect upon agricultural employees' section 1152 rights. Therefore, if a nonresident who is not a union organizer or agent is excluded from the premises under circumstances that would constitute a violation of this Order if the nonresident were a union agent, aggrieved camp residents or visitors must seek another forum to pursue their claims. Our Order affects Respondent's regulation of nonorganizer access only to the extent necessary to protect its employees' section 1152 rights.

which exceed one organizer for every 10 employees residing in the bunkhouse;

(2) seek to enter the camp or remain in the camp during an eight-hour period, to be designated by the Regional Director, when the camp residents are usually sleeping; or

(3) exceed in number the number of employees present in the camp.

(b) In any like or related manner, interfering with, restraining, or coercing agricultural employees in their right to communicate freely with union organizers or agents on the premises of Respondent's labor camps.

2. Take the following affirmative actions which are deemed necessary to effectuate the policies of the Agricultural Labor Relations Act (Act):

(a) Sign the Notice to Agricultural Employees attached hereto and, after its translation by a Board agent into all appropriate languages, reproduce sufficient copies in each language for the purposes set forth hereinafter.

(b) Mail copies of the attached Notice, in all appropriate languages, within 30 days after the date of issuance of this Order, to all agricultural employees employed by Respondent at any time during the period from October 28, 1981, until the date on which said Notice is mailed.

(c) Post copies of the attached Notice, in all appropriate languages, in conspicuous places on its property for 60 days, the period(s) and place(s) of posting to be determined by the Regional Director, and exercise due care to

replace any Notice which has been altered, defaced, covered or removed.

(d) Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice, in all appropriate languages, to all of its agricultural employees on company time and property at time(s) and place(s) to be determined by the Regional Director. Following the reading, the Board agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions the employees may have concerning the Notice or their rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all nonhourly wage employees in order to compensate them for time lost at this reading and during the question-and-answer period.

(e) Notify the Regional Director in writing, within 30 days after the date of issuance of this Order, of the steps Respondent has taken to comply with its terms, and continue to report periodically thereafter, at the Regional Director's request, until full compliance is achieved.

Dated: December 10, 1985

JORGE CARRILLO, Member

PATRICK W. HENNING, Member

MEMBER WALDIE, Dissenting:

I dissent. I find that the restrictions here adopted by the majority interfere with the rights of labor camp tenants to be visited or to have visitors. In 1977 this Board stated, "It is emphatically not the right of the employee's employer, supervisor, or landlord to prevent communication." (Whitney Farms, et al. (1977) 3 ALRB No. 68.

Now, in 1985, the majority does the job for the employer by narrowing these farm workers' home visitation rights in the guise of " . . . prevent[ing] abuses which could present an actual threat to Respondent's property interests." Thus, the majority forbids " . . . the number of organizers from exceeding the number of employees present in the camp at any one time . . . " and finds that more than one organizer for every ten residents " . . . could arguably lead to dangerous overcrowding." The majority also directs the Regional Director to conduct a bed check of sorts to determine an eight-hour period " . . . when the employees can be presumed to be sleeping" and

prohibit union organizer access during that period.

I am not opposed to workers having a good night's sleep, nor am I opposed to laws prohibiting overcrowding; but, as the majority candidly admits, insuring quiet enjoyment and health and fire standards are accomplished with existing civil and criminal laws. No visitor -- be he or she union organizer or concessionaire -- is immune from such codes. Yet, the majority's restrictions affect no other visitor, but only union organizers; they certainly do not prohibit the employer's foremen and labor consultants from visiting these workers at their homes at any time and in any numbers. On the other hand, workers are prohibited from inviting union organizers except at specified times and numbers. what of the union organizer who wants to pay a social call to his uncle at the camp? Is his right to do so narrowed because of his occupation?

We are not concerned here with work place access, but visits to a worker's labor camp home. As we stated in Whitney Farms, supra, 3 ALRB No. 68, and at every opportunity since then, "The right of home access flows directly from section 1152, and does not depend in any way on the 'access rule' contained in our Regulations, which only concerns access at the work place." What the majority has done, is to limit the 1152 rights of those farm workers who live in one particular labor camp -- the Lakeview Camp, southwest of Bakersfield. No other farm worker in the state is affected by this decision; no other grower-landlord has this Board's blessing to limit union organizers to the homes of workers, even where a worker has invited the organizer. Farm workers in Michigan enjoy greater protection of the First Amendment than do those who

happen to live at Lakeview Camp. (Folgueras v. Hassle (W.D. Mich. 1971) 331 F.Supp. 615.)

This Employer may now say -- as no other can -- that he must restrict a union's access to workers' homes so as to comply with an Agricultural Labor Relations Board Order. That is certainly a redefinition of the purposes of the Agricultural Labor Relations Act which will be welcomed by other employers owning other labor camps. For them, the line forms to the right.

Dated: December 10, 1985

JEROME R. WALDIE, Board Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Delano Regional Office by the United Farm Workers of America, AFL-CIO, the certified, exclusive bargaining agent for our agricultural employees, the General Counsel of the Agricultural Labor Relations Board (Board) issued a complaint which alleged the we, Sam Andrews' Sons, had violated the law. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the law by denying union organizers access to agricultural employees at our Lakeview Labor Camp. The Board has told us to post and publish this Notice. We will do what the Board has ordered us to do.

We also want to tell you that the Agricultural Labor Relations Act is a law that gives you and all other farm workers in California these rights:

1. To organize yourselves;
2. To form, join, or help unions;
3. To vote in a secret ballot election to decide whether you want a union to represent you;
4. To bargain with your employer about your wages and working conditions through a union chosen by a majority of the employees and certified by the Board;
5. To act together with other workers to help and protect one another; and
6. To decide not to do any of these things.

Because it is true that you have these rights, we promise that:

WE WILL NOT hereafter prevent, limit, or restrain any organizers or agents from entering and remaining on the premises of our labor camps for the purpose of contacting, visiting, and/or talking with any agricultural employee, other than during an 8 hour period when employees are sleeping and other than a bunkhouse limit on one organizer per 10 employees who reside in the bunkhouses and a camp-wide limit that the number of organizers does not exceed the number of employees present in the camp.

WE WILL NOT in any other manner restrain or interfere with the right of our employees to communicate freely with any union organizers or agents on the premises of our labor camps.

Dated: SAM ANDREWS' SONS

By: _____
(Representative) (Title)

If you have a question about your rights as farm workers or about this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 627 Main Street, Delano, California 93215. The telephone number is (805) 725-5770,

This is an official Notice of the Agricultural Labor Relations Board, an agency of the State of California.

DO NOT REMOVE OR MUTILATE.

CASE SUMMARY

SAM ANDREWS' SONS

11 ALRB No. 29
(8 ALRB No. 87)
Case No. 81-CE-258-D

Court Decision

The Second District Court of Appeal, Division Four, approved the Board's finding in Sam Andrews' Sons (1982) 8 ALRB No. 87 that the Respondent violated section 1153(a) by interfering with union organizers' efforts to take access to the Respondent's labor camp to meet with the Respondent's employees. However, the Court rejected the broad remedial order granting access without restrictions and remanded the case to the Board with instructions to include in the remedial order "specific detail as to time and number of organizers."

Board Decision on Remand

On remand, the Board solicited from the parties proposals for labor camp access restrictions which do not interfere with the rights of labor camp tenants to be visited or have visitors. The Board rejected the Respondent's proposed restrictions, finding them based on improper assumptions with respect to the wishes of employees and on an erroneous analogy to work site access regulations. The Board also rejected the Respondent's suggestion to convene *a* hearing on "the current physical layout and operation of the labor camp," preferring to rely on the ALJ's description absent claims of significant changes.

The Board reiterated its preferance for an "unrestricted" labor camp access order. However, to comply with the Court's instructions on remand, the Board adopted restrictions as to time and number of organizers. The Board modified its Order to restrict access to labor representatives during an eight-hour period, to be designated by the Regional Director, when the employees can be presumed to be sleeping and when there are no employees in the camp. The Board also set a bunk room access maximum of one organizer for every ten employees residing in the bunk room and prohibited the number of organizers in the camp from exceeding the number of employees present in the camp at the time access is taken.

Dissenting Opinion

Member Waldie dissented. He found the majority's restrictions to interfere with the rights of persons to have visitors in their homes. And, by limiting this Decision to only the one labor camp at issue in this case, the majority has discriminated against those farm workers, who by chance or misfortune must live at this camp, by affording them less protection than is afforded every other farm worker in this state.

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