

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

LAF LIN & LAF LIN, aka)	
LAF LIN DATE GARDENS,)	
)	
Respondent,)	Case No. 77-CE-52-C
)	
and)	
)	
UNITED FARM WORKERS)	12 ALRB No. 6
OF AMERICA, AFL-CIO)	(4 ALRB No. 28)
)	
Charging Party.)	
)	

SUPPLEMENTAL DECISION AND MODIFIED ORDER

Pursuant to the provisions of Labor Code section 114.6,^{1/} the Agricultural Labor Relations Board (Board) has delegated its authority in this matter to a three-member panel.^{2/}

In accordance with the remand order of the Court of Appeal of the State of California, Fourth Appellate District, Division Two, in Laflin & Laflin (1985) 212 Cal.Rptr. 415, we have reviewed and reconsidered our remedial Order in Laflin & Laflin, aka Laflin Dace Gardens, et al. (1978) 4 ALRB No. 28 and hereby modify our original Order as set forth below.

The regulations of the Board provide that upon service of a Notice of Intention to Organize by a prospective bargaining

^{1/} All section references are to the California Labor Code unless otherwise indicated.

^{2/} The signatures of Board members in all Board decisions appear with the signature of the chairperson first, if participating, followed by the signatures of the participating Board members in order of their seniority. Member Carrillo took no part in the consideration of this matter.

representative, an employer has five days in which to file with the Board's Regional Director a list of eligible voters and their addresses. (Cal. Admin. Code, tit. 8, § 20910(c); Excelsior Underwear, Inc. (1966) 156 NLRB 1236 [61 LRRM 1217].) Section 1157.3 imposes upon employers a continuing obligation to maintain accurate and current name and address lists for all their agricultural employees and to make such lists available to the Board upon request. The statutory reference to "addresses" has been interpreted by the Board to denote the address where the employee is residing while in the employer's employ. (Mapes Produce Co. (1976) 2 ALRB No. 54.) Name and address lists are made available to all parties by the Regional Director in order to facilitate home contact with bargaining unit members prior to the election.

In Laflin & Laflin, supra, 4 ALRB No. 28, the Board found that Respondent Laflin had violated section 1153(a) by failing to adequately comply with the address requirement as described above. As Respondent was served with a Notice of Intention to Organize on March 29, 1977, within five days the Company was required to compile and submit the requisite list for all agricultural employees employed during the payroll period immediately preceding the filing of the Notice. Respondent partially complied with the regulation on April 5, 1977, by submitting the names of 77 employees but with proper street addresses for only 45 employees, postal box addresses for 30 employees, and nonlocal addresses for the two remaining employees. A Board agent promptly advised Respondent that the list was facially defective. Nearly one month passed before Respondent submitted a new list, one which was comprised of 69 employee names,

20 street addresses, 48 postal box addresses and no address whatsoever for one employee. Respondent indicated during the unfair labor practice proceeding that the two lists were drawn from different payroll periods. Therefore, one of the lists, most likely that which was submitted on May 3, 1977, would have been comprised in whole or in part of the names of employees who were not employed during the pre-Notice payroll period as required by the applicable regulation.

Upon review of the Board's Decision and Order in 4. ALRB No. 28, the Court of Appeal found merit in the Board's prepetition name and address requirement and upheld our finding that Respondent's failure to fully comply with the regulation constituted an unfair labor practice. The court affirmed the Order of the Board except certain of its present remedial provisions primarily on the basis of its finding that Respondent had partially complied with the regulation, concluding that the cumulative effect of the various provisions of the Board's Order go beyond the unlawful conduct in issue and thus the Order as a whole is punitive rather than remedial. We have reviewed anew each of the provisions which the court specifically directed us to reconsider.

The first task we face is the application to particular circumstances of that portion of paragraph 1(b) of the Order which requires Respondent to cease and desist from ". . . in any other manner interfering with, restraining or coercing its employees in the exercise of their [section 1152] rights. . . ." As the court correctly observed, under current Board practice, the nature of the violation in this case would not merit the phrase "in any other

manner" as quoted immediately above. In 1979, the National Labor Relations Board (NLRB) held that the phrase "in any other manner," when used in conjunction with a cease and desist provision, constitutes a broad prohibition against a repetition of unlawful conduct and is appropriate only where the Board has determined that a respondent has engaged in misconduct which indicates a general disregard for employees' fundamental statutory rights. (Hickmott Foods, Inc. (1979) 242 NLRB 1357 [101 LRRM 1342].) Hickmott established a limitation which this Board adopted on March 12, 1980, subsequent to the issuance of 4 ALRB No. 28. (M. Caratan, Inc. (1980) 6 ALRB No. 14.) Accordingly, we hereby modify paragraph 1(b) of the Order by substituting the phrase "in any other manner" with the phrase "in any like or related manner."

Second, addressing the paragraph 2(e) proviso that Respondent provide the Regional Director with a correct name and address list upon issuance of the Board's Decision in this matter, the court found a conflict between that requirement and the regulation which mandates the submission of such a list only in response to the filing of a Notice of Intent to Organize. In the absence of a presently viable Notice, we agree that section 2(e) would serve no legal or practical purpose and therefore we delete in its entirety that portion of the remedy.

Next, relying on the scope of section 2(d) of the Order, which provides for the reading of the Notice to Respondent's employees followed by a question-and-answer period, the court found the present draft of the proviso both uncertain and overbroad in two particular respects. First, the court noted that the reading

requirement appears to include all employees, irrespective of whether they are temporary or permanent employees or members of the bargaining unit. Second, as the court explained, there is nothing in the Order to limit either the number of readings or the question and answer periods as such matters appear to be left to the sole and unfettered discretion of the Regional Director.

With respect for the court's expressed concern, the Board is satisfied that section 1156.2 demonstrates the legislative intent that all units subject to our jurisdiction be comprised of "all the agricultural employees of an employer" and that no distinction be drawn between seasonal and nonseasonal employees. We will, however, augment the present proviso in order to clarify our intent that such notices be read to the "agricultural" employees of Respondent. Although the Board presumes that Regional Directors contemplate that no employee be entitled to more than one notice reading, we hereby limit the Order accordingly.

Lastly, the court disagreed with the expanded access provisions of sections 2(h) and 2(i) on the grounds of over-inclusiveness inasmuch as they appear to relate to all employees, whether permanent or temporary, and whether or not in the bargaining unit. We trust that our discussion with respect to section 2(d), above, answers and alleviates the court's concern as to those matters. However, insofar as the remaining provisions of section 2(i) are concerned, the Board is now of the opinion that it does not further the policies of the Act to remedy a denial of home communication privileges resulting from a defective address roster by granting the petitioning union(s) work site access on company

time. We hereby strike the whole of section 2 (i) and rely on the other provisions of the Order , as modified herein, to remedy Respondent's violation of the Act .

ORDER

By authority of Labor Code section 1160.3 , the Agricultural Labor Relations Board (Board) hereby orders that Respondent Laflin & Laflin, aka Laflin Date Gardens, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Failing or refusing to provide the Board with an employee list as required by Title 8, California Administrative Code, section 20910(c) .

(b) In any like or related manner interfering with, restraining, or coercing any agricultural employee in the exercise of the rights guaranteed by section 1152 of the Agricultural Labor Relations Act (Act) .

2. Take the following affirmative actions which are deemed necessary to effectuate the policies of the 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) 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.

(c) 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 between March 29, 1977 and March 29, 1978.

(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) Allow United Farms Workers of America, AFL-CIO (UFW) representatives, during the next period in which the UFW files a Notice of Intent to Take Access, to organize among Respondent's employees during the hours specified in Title 8, California Administrative Code, section 20900(e)(3), and permit the UFW, in addition to the number of organizers already permitted under section 20900(e)(4)(A), one organizer for each 15 employees.

(f) Grant to the UFW, upon its filing a written Notice of Intent to Take Access pursuant to section 20900(e)(1)(3), one access period during the relevant calendar year in addition to the four periods provided for in section 20900(e)(1)(A).

(g) 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: March 21, 1986

JYRL JAMES-MASSINGALE, Chairperson

JOHN P. McCARTHY, Member

MEMBER HENNING, Dissenting in Part:

In Carian v. ALRB (1984.) 36 Cal. 3d 654, the California Supreme Court reviewed the Board's Decision at 4. ALRB No. 28 as it affected employees of Harry Carian and Richard Peters Farms. The Court resoundingly approved virtually the same remedial provisions for the same kind of unfair labor practices as those present herein. Nonetheless, we have modified our remedial Order pursuant to the remand order of the Court of Appeal. (Laflin v. Laflin (1985) 212 Cal.Rptr. 415.) I agree with all the modifications except for the deletion of the expanded access provision of section 2 (i) . Contrary to the majority, I believe the work site access provision is a proper remedy for Respondent's violation of the Act.

The majority construes the violation we previously found Respondent to have committed too narrowly. By providing a defective pre-petition list of its employees' names and addresses Respondent engaged in conduct that tends to interfere with and

restrain agricultural employees in the exercise of the rights guaranteed in section 1152 of the Act. This interference and restraint goes beyond a simple "denial of home communication privileges." As the Supreme Court noted in Carian v. ALRB, supra, 36 Cal.3d 654, 667, our pre-petition list requirement furthers the Board's goal of maximizing employee access to information and contributes to the prompt and orderly resolution of election proceedings which are the prerequisite of the collective bargaining process at the heart of the Act. As such, Respondent's violation constitutes more than a denial of home communication to the union: it constitutes interference and restraint with the right of employees to receive information.^{1/} I believe the one-hour access provision in our Order is proper and necessary to remedy Respondent's interference.

Dated: March 21, 1986

PATRICK W. HENNING, Member

^{1/} While I view home visitation and work site access as mutually exclusive rights of agricultural employees which cannot substitute or replace each other, I believe an employer's interference with section 1152 rights, as in this case, can only be effectively remedied by access at the employer's premises.

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed, the General Counsel of the Agricultural Labor Relations Board (Board) issued a complaint which alleged that we, Laflin & Laflin, 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. 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 refuse to provide the Agricultural Labor Relations Board with a current list of employees when the United Farm Workers of America, AFL-CIO, or any union has filed its "Intention to Organize" the employees at this ranch.

Dated

LAFLIN & LAFLIN, aka
LAFLIN DATE GARDENS

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 319 Waterman Avenue, El Centro, California, 922-43. The telephone number is (619) 353-2130.

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

LAFLIN & LAFLIN, aka
LAFLIN DATE GARDENS
(UFW)

12 ALRB Mo. 6
(4. ALRB No. 28)
Case No. 77-CE-52-C

BACKGROUND

On May 19, 1978, the Board found that Respondent Laflin & Laflin had interfered with its employees' organizational rights in violation of Labor Code section 1153(a) by failing to adequately comply with the Board's requirement that employers who are served with a Notice of Intent to Organize timely submit a current and accurate name and address list of all their agricultural employees. The Regional Director makes such lists available to all parties in order to facilitate home visitation with employees prior to a representation election. Upon appeal, the court affirmed the Board's finding that Respondent had violated the Act but rejected as excessive the cumulative effect of the various remedial provisions.

BOARD DECISION UPON REMAND

The Board preserved initial provisions in which it granted the United Farm Workers of America, AFL-CIO expanded work site access upon its next filing of a Notice of Intent to Organize; specifically, the Union will be entitled to twice the number of organizers normally provided under the Board's regulations as well as one additional 30-day access period during the calendar year in which it next files such notice. However, the Board struck as inappropriate work site access on company paid time as a remedy for interference with the Union's home visitation rights. In several other respects, the Board conformed the remedial Order to comport with current practice.

Member Henning dissented to the deletion of the provision requiring work site access on company time. He views Respondent's action in providing a defective prepetition list as conduct that interferes and restrains the right of agricultural employees to receive information. He believes the one-hour access provision is proper and necessary to remedy that interference and restraint.

* * *

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

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