

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

UNITED FARM WORKERS OF	)	
AMERICA, AFL-CIO,	)	
	)	
and	)	Case Nos. 80-CE-6-SD
	)	80-CL-3-SD
SUN HARVEST, INC. ,	)	
	)	
Respondents,	)	
	)	
and	)	
	)	
GEORGE MOSES, MICHAEL MOSES,	)	
RONALD MOSES, GUADALUPE	)	
BELTRAN, and CECILIA SALINAS,	)	13 ALRB No. 24
	)	(9 ALRB No. 40)
Charging Parties.	)	
_____	)	
	)	
RE: PARTICIPATION OF ADOLFO	)	
RODRIGUEZ	)	
_____	)	

DECISION AND ORDER

On April 6, 1987, the Agricultural Labor Relations Board (ALRB or Board) directed, inter alia, the submission of briefs regarding the request by the United Farm Workers of America, AFL-CIO (UFW or Union) for a ruling that former ALRB employee Adolfo Rodriguez violated section 20800 of the Board's regulations (Title 8, California Administrative Code, Section 20800<sup>1/</sup>). Timely briefs were submitted by the General Counsel, the law firm

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<sup>1/</sup>The UFW initially filed a Motion for Sanctions against the law firm of Littler, Mendelsohn, Fastiff and Tichy, but later withdrew "that form of requested relief. Additional requests for sanctions, particularly against Rodriguez, were previously rejected by the Board. For purposes of our Order herein, the Board construes the UFW's Request for Sanctions as a request to bar further participation by Mr. Rodriguez in 9 ALRB No. 40.

of Littler, Mendelsohn, Fastiff, and Tichy on behalf of the Charging Parties and Adolfo Rodriguez, and by the UFW.

The Board has considered the submissions of the parties, the Report of the Regional Director dated February 20, 1987, and the relevant authorities on this issue and has decided to issue the attached cease and desist order with respect to Mr. Rodriguez.

The Regional Director's investigation disclosed that Mr. Rodriguez was employed at the ALRB during the time that the Sun Harvest case (9 ALRB No. 40) was pending in the El Centro Regional Office, but that Mr. Rodriguez did not have any responsibility for the investigation or processing of this matter. After leaving the employ of the ALRB, Mr. Rodriguez became involved in this matter by serving as a translator in the preparation of certain declarations provided by various Charging Parties and, further, participated at a hearing representing Charging Party Guadalupe Beltran in association with counsel from the law firm representing all the Charging Parties.

Section 20800 of the Board's regulations provides:

No person who has been an employee of the Board shall engage in practice before the Board or its agents in any respect or in any capacity in connection with any case or proceeding which was pending during the time of his or her employment with the Board. (Emphasis added.)

This regulation is modeled after section 102.120 of the National Labor Relations Board (NLRB) Rules and Regulations. The relevant NLRB case authority is clear in not limiting the scope of the rule to cases in which an NLRB employee actually participated in the case while it was pending before the NLRB. For example, in

Beverly Enterprises d/b/a Hillview Convalescent Center (1983) 266 NLRB 758 [113 LRRM 1034]), charging party's attorney had worked previously as an attorney in the NLRB Washington office. During the time he was with the NLRB, the charge in the case in question was filed and handled exclusively in the regional office, and there was no evidence that the attorney had any knowledge of the case until after he left the NLRB. Although the charging party's attorney had withdrawn from further participation in the case, respondent filed a motion to dismiss the complaint on the grounds that the attorney violated section 102.120 of the NLRB Rules and Regulations. In the alternative, respondent moved for disqualification of the law firm. The NLRB declined to dismiss the complaint or disqualify the law firm as there was no showing of prejudice to the parties.

The NLRB, nonetheless, held that "... it is undisputed that [the attorney's] participation in this case violated section 102.120 of the Rules and Regulations...." (Id. at p. 759.) The NLRB noted it had:

...without exception strictly applied the provisions of section 102.120 so that an employee in the [NLRB's] Washington Office who leaves the [NLRB] is precluded from participation at any time in any case pending anywhere in the Agency prior to the employee's departure. (Id. at p. 759.)

In Alumbaugh Coal Corporation (1980) 247 NLRB 895 [103 LRRM 1210] enf'd sub nom Alumbaugh Coal Corp. v. National Labor Relations Board (9th Cir. 1980) 635 F.2d 1380 [106 LRRM 2001], the employer unsuccessfully sought dismissal of election objections and an unfair labor practice complaint on the

grounds that those matters were pending while an NLRB attorney, who subsequently joined the Charging Party's law firm, had been employed in the pertinent regional office of the NLRB.

There was no evidence that the individual participated in the regional office's investigation of the charge or in the interrogation of the witnesses while he was an NLRB agent. However, while subsequently representing the charging party, he spoke to two employees to discuss the facts of the case and wrote a letter to the NLRB regional office withdrawing some objections. He did not participate in the hearing in the case before the Administrative Law Judge (ALJ). The Employer argued that the former NLRB attorney violated NLRB Rules and Regulations, but, significantly, did not seek to enjoin him from further participation in the case. The NLRB declined to dismiss the complaint because of the former agent's involvement. It did not discuss whether this involvement violated section 102.119, but simply refused to grant respondent its request that the complaint be dismissed. In declining to dismiss the complaint, the NLRB stated that the former agent's participation was minimal and that there was no showing that his conduct prejudiced respondent's rights.

Mr. Rodriguez' involvement in the instant case occurred after he left the ALRB and exceeds the minimal involvement of the former NLRB employee in Alumbaugh Coal Corporation, supra, 247 NLRB 895, but is akin to the involvement of the former NLRB attorney in Beverly Enterprises d/b/a/ Hillview Convalescent Center, supra, 266 NLRB 758. The fact that Mr. Rodriguez had no involvement in the matter while it was pending before the ALRB is

identical to the situation in the two above-cited cases.

Here, the Union has not sought dismissal of the proceedings against it, but rather, has brought to the Board's attention a clear-cut, albeit technical, violation of Board regulations. Mr. Rodriguez knew he was proscribed from participating in the Board's proceeding (see, Mario Saikhon, Inc. (1984) 10 ALRB No. 46), but there is no showing that his participation prejudiced the moving party. (See Alumbaugh Coal Corp. v. National Labor Relations Board, supra, 635 F.2d 1380.)

We, like the NLRB, are concerned about eliminating the appearance of bias in the processing of investigations by employees of the ALRB. Our regulation was duly promulgated by this Board and is within our authority under the provisions of the Agricultural Labor Relations Act (ALRA or Act). In the absence of either modification of the regulation or judicial action against either the NLRB or ALRB practice, we will continue to enforce our rules and regulations, and do so in accordance with applicable NLRB or ALRB precedent.<sup>2/</sup>

Charging Parties are in no way precluded from putting on their case with the assistance of investigators other than Mr. Rodriguez. Nor is Mr. Rodriguez forbidden to market the skills and knowledge he may have acquired during his employment at the ALRB in cases that were not pending during his tenure with the

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<sup>2/</sup> While recognizing that the regulation as it now stands must be deemed controlling as to the matter here in dispute, Chairman Davidian and Member Gonot are concerned about possible overbreadth of the regulation and for that reason would be receptive to reexamining the underlying rationale for the regulation, but in the context of a formal Board hearing on regulations.

Board. In the instant case, the Charging Parties are merely precluded from utilizing the services of Adolfo Rodriguez in proceedings involving 9 ALRB No. 40.

As the parties admit that Adolfo Rodriguez is a former employee of the El Centro Regional Office of the ALRB, that he participated in the proceedings regarding 9 ALRB No. 40 on behalf of certain of the Charging Parties, and that the matter was pending before the ALRB when Mr. Rodriguez was employed by the ALRB, we hereby issue the attached Order.

ORDER

By authority of Labor Code section 1144, the Agricultural Labor Relations Board (Board) hereby orders that Adolfo Rodriguez, shall:

Cease and desist from aiding any charging party, their agents, successors/ or assigns in determining the backpay liability or interviewing discriminatees or in any other manner

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engaging in practice before the Board or any of its agents or in any capacity in connection with the proceedings involving UFW/Sun Harvest, Inc. (Moses et al.) (1983) 9 ALRB No. 40.

Dated: December 14, 1987

BEN DAVIDIAN, Chairman<sup>3/</sup>

JOHN P. MCCARTHY, Member

PATRICK W. HENNING, Member

GREGORY L. GONOT, Member

IVONNE RAMOS RICHARDSON, Member

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<sup>3/</sup>The signatures of Board Members in all Board Decisions appear with the signature of the Chairman first, if participating, followed by the signatures of the participating Board Members in order of their seniority.

CASE SUMMARY

UFW/Sun Harvest (Rodriguez)

13 ALRB No. 24  
Case Nos. 80-CE-6-SD  
80-CL-3-SD

BOARD DECISION

The Board has prohibited participation by a former ALRB employee, after he left the Board, in a case which had been pending during his employment with the Board. Although there was no evidence that the particular employee had any involvement in the case while in the Board's employ, the Board's ruling was predicated on a strict construction of its long-standing regulation controlling such questions.

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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.

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