

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

SAM ANDREWS' SONS,)	Case Nos . 80-CE-143-EC
)	80-CE-232-EC 81-CE-144-D
Respondent, and)	80-CE-250-EC 81-CE-178-D
)	80-CE-251-EC 81-CE-191-D
UNITED FARM WORKERS OF)	80-CE-254-EC 81-CE-59-D
AMERICA, AFL-CIO,)	
)	
Charging Party.)	13 ALRB No. 7
)	(11 ALRB No. 5)

SUPPLEMENTAL DECISION AND MODIFIED ORDER

On September 16, 1986, in an unpublished decision, the Court of Appeal for the Second Appellate District, Division Seven, remanded the present case to the Agricultural Labor Relations Board (Board) to allow Sam Andrews' Sons (Andrews) an opportunity to establish that the post-certification access taken by the United Farm Workers of America, AFL-CIO (UFW or Union), on August 19 and 21, 1981, was excessive under the terms of the preliminary injunction then in effect. (Sam Andrews' Sons v. Agricultural Labor Relations Bd . ., Case No. B012603, Slip Opinion at p. 25.) The Court instructed us to conduct supplemental proceedings for this purpose. On February 9, 1987, we issued an Order to Show Cause (OSC) why such supplemental proceedings should not commence. Only Andrews filed a return to the OSC; neither the General Counsel nor the UFW responded.

In light of the record in this matter, we have decided to delete those paragraphs of our previous Order relating to access (Paragraphs 1(e) and 2(e)). In O. P. Murphy & Sons (1978)

4 ALRB No. 106, we held that agreements on post-certification access are best handled through the collective bargaining process, a process that eventually proved successful in this matter. Because the parties have been able to reach agreement regarding the terms and conditions of labor organization access to the bargaining unit employees, we are unwilling -- in the absence of compelling reasons -- to reopen the hearing on the single issue of six-year old allegations of denials of access. Such an intrusion into a presently harmonious bargaining relationship would serve neither the parties nor the Agricultural Labor Relations Act (ALRA or Act).

We accordingly will delete paragraphs 1(e) and 2(e) from our previously issued Order. We also avail ourselves of the opportunity provided by the Court's remand to correct a typographical error in that previous order and will amend paragraph 2(c) to set the date for the commencement of the makewhole period as December 28, 1979 instead of December 28, 1978.

ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board (Board) hereby orders that the previously issued Order in this case be modified by deleting paragraphs 1(e) and 2(e), that paragraph 1(f) be relabeled 1(e), that paragraphs 2(f)-2(l) respectively be renumbered 2(e)-2(k) respectively and that paragraph 2(c) be corrected by inserting

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December 28, 1979 where it previously stated December 28, 1978 We hereby amend the Notice, attached hereto, to delete all references to any interference with access.

Dated: April 16, 1987

JOHN P. McCARTHY, Member^{1/}

GREGORY L. GONOT, Member

^{1/} 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. Chairman Ben Davidian and Member Ivonne Ramos Richardson did not participate in the consideration of this case.

MEMBER HENNING, Dissenting:

In O. P. Murphy & Sons (1978) 4 ALRB No. 106, we established that the -preferred method of treating post-certification access conflicts was negotiations between the parties, but reserved the authority to review allegations of interference with access. (O. P. Murphy & Sons, supra, 4 ALRB No. 106 at p. 10-11.) Here Sam Andrews' Sons and the United Farm Workers of America, AFL-CIO (UFW or Union) failed to negotiate access and were operating under a court-ordered access provision. Later negotiations establishing guidelines for subsequent access are of no assistance in the resolution of earlier conflicts. Mutual agreement between the parties could have resolved these issues, (see, e.g., Greencastle Mfg. Co. (1978) 234 NLRB 362 [97 LRRM 1249]) but no contemporaneous agreement has been proffered. Belated compliance cannot now retroactively cure earlier misconduct. (Interstate Food

Processing Corp. (1987) 283 NLRB No. 46.) Further, neither the UFW nor the General Counsel oppose convening supplemental proceedings to confirm or deny earlier rulings.

I accordingly would commence supplementary proceedings to permit Andrews the opportunity to establish that it interfered only with access sought in excess of the court-ordered provisions. Dated: April 16, 1987

PATRICK W. HENNING, Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the El Centro Regional Office, the General Counsel of the Agricultural Labor Relations Board (Board) issued a complaint which alleged that we Sam Andrews' Sons/ have 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 unilaterally changing our employees' wages without notifying or offering the United Farm Workers of America, AFL-CIO (UFW) a chance to bargain, by discontinuing our 1980 Imperial Valley cantaloupe operation in retaliation for workers' exercise of rights granted by section 1152 of the Agricultural Labor Relations Act (Act); and by engaging in unlawful surveillance of employees and UFW organizers. 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 (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 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 do anything in the future that forces you to do, or stops you from doing, any of the things listed above.

WE WILL NOT make any change in your wages or working conditions without first notifying the UFW and giving them a chance to bargain on your behalf about the proposed changes.

WE WILL in the future bargain in good faith with the UFW with the intent and purpose of reaching an agreement. In addition, we will reimburse all workers who were employed at any time during the period from December 28, 1979, to the date we began to bargain in good faith for a contract for all losses of pay and other economic losses they have sustained as the result of our refusal to bargain with the UFW plus interest.

WE WILL NOT eliminate the production of any crops except for business reasons, and we will not fail or refuse to bargain with

the UFW regarding the effects of such a decision upon bargaining unit members.

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 319 Waterman Avenue, El Centro, California 92243. The telephone number is (6 1 9) 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

Sam Andrews' Sons
(UFW)

13 ALRB No. 7
Case Nos. 80-CE-143-EC
et al.
(11 ALRB No. 5)

Prior Board Decision

Among other findings, the Board determined that Sam Andrews' Sons had the burden of establishing that access it refused to UFW representatives exceeded that permitted by a court-mandated ratio of organizers to employees. As Andrews had produced no evidence, the Board found a violation.

Court Remand

The Court remanded the access findings of the Board to permit Andrews an opportunity to meet its burden in supplementary hearings. The Court approved the assignment of the burden of proof but ruled Andrews did not receive an opportunity to meet that burden.

Supplemental Board Decision

The Board deleted the portions of its previous order regarding alleged access violations. It found that subsequent collective bargaining had proved successful in resolving the dispute over access. As negotiations were the preferred method of resolving such disputes, the Board was unwilling to intrude into a harmonious bargaining relationship without a compelling reason. Member Henning dissented, noting that only Andrews opposed the supplemental proceeding directed by the Court. He would not, absent some contemporaneous agreement, refuse to consider alleged access interference due to some agreement reached several years later and covering time periods not relevant.

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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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