

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

L & C HARVESTING, INC.,)	Case No. 93-PM-1-SAL
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Employer,)	
and)	
)	
UNITED FARM WORKERS OF)	19 ALRB No. 19
AMERICA, AFL-CIO,)	December 17, 1993
)	
Union.)	
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DECISION AND ORDER

This case is before the Board on the Motion to Deny Access filed by L & C Harvesting, Inc. (L & C or Employer). The motion seeks to deny the United Farmworkers of America, AFL-CIO, (UFW or Union) from taking access to L & C's employees because UFW agents took access to its employees without having complied with the Board's access regulations. The UFW filed a response on October 15, 1993.

Facts

L & C harvests produce in the Santa Maria area. Like many other vegetable growers and harvesters in the Santa Maria area, its employees work in large fields that are divided into small plots, which may be leased to many different growers. The same small plot may be leased by different growers in the course of a year.

In September 1993, the UFW filed and served Notices of Intent to Take Access (NA) at several growers and harvesters in the Santa Maria area. The UFW filed an NA for Rancho Harvesting,

which had been working in the same field in a nearby plot. The UFW served no notice of intent to take access at L & C.

On September 23, 1993, UFW agents Eric Chavez and Zenon Cruz Baltazar and three other unidentified persons with them entered a field belonging to JOB Farms. An L & C crew was working in plot number 10 in that field. Chavez states without contradiction that the UFW had taken access to Rancho Harvesting employees in the same field the day before.

L & C crew boss Edmundo Calderon told the UFW access takers that they had no authorization to be in the field. Calderon states that they replied they had every authority to enter the field. The Employer does not contradict Chavez' statement that the UFW agents asked L & C's crew bosses what company the employees worked for, and that the crew bosses refused to give the Employer's name. Chavez states that the crew bosses said they had radioed a supervisor and the owner, who were both on their way.

The UFW organizers took access to the crew, which was then, according to Chavez, on its lunch break. The UFW access takers spoke to the L & C employees for about 15 minutes.

As the UFW organizers started to leave, an unnamed L & C supervisor arrived in a pickup truck and encountered Chavez and Baltazar on a road within the field. The supervisor stopped his truck, blocking the road, and told Chavez and Baltazar they had no right to be there. The supervisor declined to give the Employer's name.

A short time later, L & C owner Mary Jorge arrived. Jorge asked the two UFW representatives for identification, stating that she wanted the information so that she could file a motion to deny access with the ALRB. They pointed to UFW badges with names printed on them, and showed photographic identification. According to Jorge, when she asked them what they were doing, they replied they were trying to leave, but that their exit was blocked by the supervisor's truck. Jorge states that she said that the road they were on was blocked in only one direction, and they could exit by heading in the opposite direction.

Jorge asked if the UFW had filed an NA as to L & C or to JOB Farms, which owned the field they were in. Chavez and Baltazar replied that they thought they were on property belonging to San Ysidro Farms, and that they had not seen a sign indicating JOB Farms was the owner of the field.

Chavez and Baltazar told Jorge that the crew boss had refused to tell them the name of the crew's employer. Chavez and Baltazar further stated that they had thought the employees worked for Rancho Harvest, and that the UFW had taken access to Rancho Harvest employees in the same field the day before pursuant to an NA naming Rancho Harvest. Jorge told Chavez and Baltazar that Rancho Harvest had a crew working in the same field further down the road, and directed them not to return to L & C unless they complied with the legal requirements for taking access. Chavez states that the UFW access takers apologized for

mistakenly visiting the L & C crew.

L & C does not complain that the number of access takers was excessive for the number of employees working, nor does it claim that work was disrupted during the access taking.

Parties' Positions

The Employer seeks an order barring Chavez and Baltazar from taking any access in the Salinas ALRB Region for a month, and barring the UFW from taking any access to its employees for six months. The UFW argues that the failure to comply with the access regulations was unintentional and the interruption of L & C's operations, minimal. It further argues that the Board's regulations allow a denial of access only after notice and hearing.

Discussion

The access at issue here is "organizational" or prepetition access, regulated by the Board's regulations at Title 8, California Code of Regulations, section 20900, et seq. It therefore is subject to Board proceedings on motions to deny access, unlike post certification access and strike access, which the Board has determined it had no jurisdiction to regulate outside the context of an unfair labor practice or representation proceeding. (D'Arrigo Brothers. Admin. Order No. 91-7; The Herb Farm. Admin. Order No. 91-5.)

The Board's regulation governing denial of organizing access (8 Cal.Code of Regs. sec. 20900(e)(5)(A)) provides that labor organizations may be barred from taking access under the

regulations for an appropriate period if they repeatedly violate the access regulation. Individual organizers may be barred from taking access without the showing of repeated violations. Section 20900(e) (4) (C) provides that the right of access shall not include conduct disrupting the employer's property or agricultural operations, including the destruction of crops or machinery or preventing the boarding of busses.

In dealing with motions under the access regulations as distinguished from allegations that the taking of access involved unfair labor practices or objectionable conduct interfering with an election, the Board has held that access could be denied even where the misconduct did not constitute restraint or coercion or grounds for setting aside an election. (Ranch No. 1 (1979) 5 ALRB No. 36.) We held that access will be denied as a sanction for failure to comply with the Board's regulations if there is a significant disruption of agricultural operations, the access takers intentionally harass the employees, or there is an intentional or reckless disregard of the access regulations. (Id., at p. 3.)

Here, the Employer's evidence is insufficient to establish that the failure to comply with the access regulations was other than unintentional. As noted above, at least in the Santa Maria area, large vegetable fields are divided into small plots. The same small plot may be farmed by different farmers within a few weeks of each other. The Employer's declarations do not establish that the UFW access takers deliberately disregarded

a clear and unambiguous indication that the employees could not be a Rancho Harvesting crew. The L & C crew bosses declined to tell the Union the name of the Employer, leaving contact with the employees as the only means to determine if this was a crew that the Union had a right to take access to under its NA. Moreover, the declarations provide no indication of harassment of employees, nor of disruption of work.

While the Union had a duty to take access only where it had given notice, there is no indication that it deliberately or recklessly disregarded any clear notice that the employees worked for an employer for which no NA had been filed. The supporting declarations show that the access takers left as soon as it was disclosed to them that the crew's employer was not one it had filed an NA. Absent a pattern of repeated "accidental" visits to this employer or to other employers for which no NA had been filed, or other evidence of deliberate disregard for the Board's access regulations, the Ranch No. 1 criteria are not met.

Accordingly, we will dismiss the Motion to Deny Access because the Employer's declaratory support failed to establish a prima facie case under the standards set forth in Ranch No. 1, supra.¹

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¹ Moreover, had the Employer succeeded in making a prima facie showing under Ranch No. 1, supra, access may be denied only after notice and hearing. (8 Cal.Code of Regs., sec. 20900(e)(5)(A).)

ORDER

It is hereby ordered that the Employer's Motion to Deny
Access is dismissed.

DATED: December 17, 1993

BRUCE J. JANIGIAN, Chairman

IVONNE RAMOS RICHARDSON, Member

LINDA A. FRICK, Member

CASE SUMMARY

L & C Harvesting, Inc. (United
Farm Workers of America, AFL-CIO)

Case No. 93-PM-1-SAL
19 ALRB No. 19

Background

The Employer (L & C) is a harvester of vegetables in the Santa Maria area. It works in fields that are divided into small plots and leased to growers. On September 23, 1993, United Farm Worker (UFW) access takers visited an L & C crew in a field belonging to JOB Farms. No Notice of Intent to Take Access (NA) had been filed naming L & C or JOB Farms. The UFW had filed NAs for Rancho Harvesting, another employer working in the same field. By its motion to deny access, L & C sought to bar all access by the UFW in the Board's Salinas Region for one month, and by the individual access takers to its employees for six months.

The Employer's supervisors told the access takers that they had no right to take access but declined to tell the access takers their employer's name. The access takers proceeded to talk to the crew for about 15 minutes before leaving. No evidence that any ongoing work was disrupted was presented, and the UFW's assertions that the crew was on its lunch break were uncontradicted. No evidence that the access takers harassed the employees or of what was said by the access takers was presented. When higher levels of L & C supervisors arrived, the UFW asserted that it had taken access to a different employer's crew in the same field the day before, and that the access takers had not seen signs indicating that the land belonged to JOB Farms. The UFW access takers showed photographic identification upon request, and left after a brief conversation with one of the Employer's owners.

Board Decision

The Board found that the motion's declaratory support failed to establish grounds for a finding of improper taking of access sufficient to warrant the sanctions requested in the motion. The Board's standard for imposing a sanction for improper access, set forth in Ranch No. 1 (1979) 5 ALRB No. 36, require a showing of deliberate disregard for the access regulations, disruption of work or harassment of employees. Here, the access takers did not appear to have deliberately disregarded the access regulations, and no indication of harassment or disruption of work was shown by the declarations. The Board therefore denied the Motion.

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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.