

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

NAVARRO FARMS,)	
)	
Employer,)	Case No. 96-PM-3-SAL
)	
and)	
)	
UNITED FARM WORKERS)	22 ALRB NO. 10
OF AMERICA, AFL-CIO,)	(September 4, 1996
)	
Labor Organization,)	
)	
and)	
)	
DAVID JETT, MARIA A.)	
CARAVANTES,)	
)	
_____ UFW Organizers. _____)	

DECISION AND ORDER SETTING MATTER FOR HEARING

The Agricultural Labor Relations Board (ALRB or Board) addresses herein a motion to deny access filed by Narvarro Farms (Navarro or Employer) , which seeks to deny the United Farm Workers of America, AFL-CIO (UFW or Union) access to Navarro' s operations for one year, and to deny access to the named organizers for one year in the Board's Salinas region.

The regulations of the Board grant union representatives a qualified right of preelection organizational access to the employer's property in order to meet with agricultural employees at their work site under strict procedural, time and manner limitations. (Title 8, California Code of Regulations, section 20900 et seq.¹; Agricultural Labor Relations Board v. Superior

¹Unless otherwise indicated, all section references herein are to the California Code of Regulations, Title 8.

Court (1976) 16 Cal.3d 392.) The regulations also provide that the right of access "shall not include conduct disruptive of the employer's property or agricultural operations, including injury to crops or machinery or interference with the process of boarding buses." (Cal. Code Regs., tit. 8, § 20900(e) (4) (C).) The Board, pursuant to a properly filed motion to deny access and upon due notice and hearing, may bar labor organizations and/or their individual organizers who violate the rule from taking access to any agricultural operation for a period of time to be specified by the Board. (Cal. Code Regs., tit. 8, § 20900 (e) (5) (A).)²

In Ranch No. 1, Inc. (1979) 5 ALRB No. 36, at page 3, the Board set forth the substantive requirements for a successful motion to deny access:

A party submitting a motion to deny access is not required to show that violation of the access rule either resulted in the infringement of employees' statutory rights or affected the results of an election. A motion to deny access will be granted where the moving party demonstrates violation of our access rule involving (1) significant disruption of agricultural operations, (2) intentional harassment of an employer or employees, or (3) intentional or reckless disregard of the rule.

²Violations of the rule may also constitute grounds for setting aside an election if the Board determines, by an objective standard, that the conduct complained of was such that it would tend to interfere with employee free choice and affect the results of the election. (Cal. Code Regs., tit. 8, § 20900(e) (5) (B) .) Infractions of the rule could also rise to the level of an unfair labor practice in violation of section 1154 (a) (1) of the Agricultural Labor Relations Act (ALRA or Act) if the conduct independently establishes interference or restraint of employees in the exercise of their rights within the meaning of ALRA section 1152. (Cal. Code Regs., tit. 8, § 20900(e) (5) (B).)

The Board in Ranch. No. 1 barred a union organizer for 60 days after finding that he significantly disrupted operations and displayed a lack of concern for access limitations when he remained in the fields for one and a half to two hours.³

Recently, in Dutra Farms (1996) 22 ALRB No. 5, the Board clarified the procedures to be utilized in the filing and evaluation of motions to deny access. We held in that case that, in order to warrant a hearing, a motion to deny access must be accompanied by supporting declarations, under penalty of perjury, which allege facts within the personal knowledge of the declarants that, if uncontroverted or unexplained, demonstrate a prima facie violation of the access regulation and support the granting of the motion. In other words, the approach established by Board precedent is that a hearing will not be set unless the supporting declarations allege facts which, if proven, would warrant the denial of access for some period of time.

DISCUSSION

In the present case, the Employer alleges that two UFW organizers took access to its operations at Casserly Ranch on July 25, 1996, but rather than using the time to solicit support for the UFW, the organizers conducted an inspection of Navarro's toilets and drinking water and, in talking with employees, posed

³The 60-day ban was to commence on the day the union next filed a Notice of Intent to Take Access for the purpose of taking access to the property of any agricultural employer located in the area covered by the then existing Fresno Regional Office.

as inspectors from the California Occupational Safety and Health Administration (CAL-OSHA).

The supporting declarations⁴ reflect that the vice President of Navarro Farms, Peter Navarro, witnessed two individuals drive onto the Employer's property at about 12:00 noon and proceed to the area where the Employer's toilets were located, which was about 150 yards from the employees had gathered to eat their lunches. When confronted by Mr. Navarro, the two individuals identified themselves as UFW organizers David Jett and Maria A. Caravantes. When told that they were not acting in accordance with the (access) rules and asked why they were not over speaking to the employees, they responded that they were instructed by their supervisor to inspect the bathrooms, hand washing facilities, and drinking water. Navarro was given the phone number of the supervisor. When he called the number, the person who answered identified the office as that of the UFW in Watsonville.

The declarations also reflect that the two organizers then went over to talk to the crew members and, when asked if they were from the UFW, responded that, no, they were from the "Health Division." Upon hearing this response, the crew then responded to

⁴The UFW, in its response to the motion, asserts that Navarro did not comply with the requirement set forth in Dutra Farms, in that it was not served with the declarations nor, in the alternative, with a detailed statement of facts. However, the motion itself contains a statement of facts which is very detailed and, in fact, both identifies the declarants and includes all of the facts appearing in the declarations. We find that this satisfies the requirements of Dutra Farms.

the questions posed by Jett and Caravantes, which, included inquiries concerning drinking water, timely payment of wages, and sexual harassment. At about 12:35 p.m., upon finishing their conversation with the crew, Jett and Caravantes allegedly then went back over to where Peter Navarro was standing and presented him with what is purported to be a citation from CAL-OSHA.⁵

The limited access that is afforded by the Board's regulations is for the express purpose of "meeting and talking with employees and soliciting their support." (Cal. Code Regs., tit. 8, § 20900 (e).) There can be no dispute that asking employees for their view of various working conditions is consistent with the communicative purposes of access. However, inspection of the property and posing as representatives of a governmental health and safety agency clearly is not consistent with a limited right of a labor organization to communicate with and seek the support of the employees. Further, the requirement of Title 8, California Code of Regulations, section 20900(e)(4) (B) that organizers wear badges clearly identifying themselves and the labor organization which they represent by necessary implication prohibits the type of subterfuge alleged here. In our view, the conduct alleged, and supported by declarations, reflects an

⁵ A copy of the form was provided as an exhibit to the motion. As is apparent from reading the complete form, it is to be used by any individual in making a complaint to CAL-OSHA about claimed workplace hazards, and it is not an official citation or complaint from CAL-OSHA. In addition, the form asks the complainant whether the perceived problems have been brought to the attention of the employer. Therefore, the declarations fail to show that the organizers engaged in a fraudulent use of the form when they presented it to Peter Navarro.

intentional or reckless disregard for the Board's access regulations. Therefore, under the standards set forth in Ranch No. 1 and Dutra Farms, an evidentiary hearing on the motion is warranted. Moreover, the facts alleged reflect that the organizers were acting upon orders from the Union, the allegations are sufficient to establish responsibility of the Union, as well as its organizers.⁶

ORDER

The following question shall be set for hearing:

On July 25, 1996, at Navarro Farms' operations at Casserly Ranch, did two UFW organizers, acting on instructions from the organization, show an intentional and reckless disregard for the Board's access regulations by using access time not to communicate with and solicit support from employees, but to conduct safety inspections and pose as representatives of a governmental health and safety agency?

The Employer shall have the burden of proving that Union and/or its agents engaged in conduct which warrants the granting of the motion to deny access. The Union will have full party status, including the opportunity to call, examine and cross examine witnesses. Thereafter, the Investigative Hearing Examiner

⁶The UFW asserts that the motion is inadequate in that it does not allege repeated violations of the access rules. We disagree. As we stated in Dutra Farms and L & C Harvesting- (1993) 19 ALRB No. 19, individual organizers may be barred without a showing of repeated violations. Title 8, California Code of Regulations, section 20900(e)(5)(A) provides that a union whose organizers repeatedly violate the regulation may be barred from taking access for a specified period in any of the Board's geographical regions. We do not believe that this language, which refers to the most severe sanctions available, prevents a lesser sanction against a union for a single violation which, due to its nature, warrants a remedy against the organization as well as the organizers.

will issue a recommended decision to which any party may file exceptions with the Board.

The Executive Secretary of the Board shall issue a formal Notice of Hearing setting forth the date, place, and time of said hearing.

DATED: September 4, 1996

MICHAEL B. STOKER, Chairman

IVONNE RAMOS RICHARDSON, Member

LINDA A. PRICK, Member

CASE SUMMARY

Navarro Farms
UFW)

Case No. 96-PM-3-SAL
22 ALRB No. 10

Background

Navarro Farms filed a motion to deny access, seeking to have the United Farm Workers of America AFL-CIO (UFW) barred from taking access to Navarro's operations for one year and two named organizers barred for one year in the ALRB's Salinas region. Navarro alleges that two UFW organizers took access to Navarro's operations at Casserly Ranch on July 25, 1996, but rather than using the time to solicit support for the UFW, the organizers conducted an inspection of Navarro's toilets and drinking water and, in talking with employees, posed as inspectors from the California Occupational Safety and Health Administration (CAL-OSHA).

Board Decision

Applying the standards set forth in Ranch No. 1, Inc. (1979) 5 ALRB No. 36 and Dutra Farms (1996) 22 ALRB No. 5, the Board set the motion for hearing, finding that the supporting declarations contain sufficient facts to reflect a prima facie case that the UFW and its organizers exhibited an intentional or reckless disregard of the access rules. The Board stated that the alleged inspection of the property and posing as representatives of a governmental health and safety agency are not consistent with a limited right of a labor organization to communicate with and seek the support of the employees.

* * *

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