

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

DUTRA FARMS,)	
)	
Employer,)	Case No. 96-PM-1-SAL
)	
and)	22 ALRB No. 5
)	(June 19, 1996)
UNITED FARM WORKERS OF)	
AMERICA, AFL-CIO,)	
)	
Union.)	

DECISION AND ORDER

On June 4, 1996¹, Dutra Farms (Dutra or Employer) filed a motion requesting that the Agricultural Labor Relations Board (ALRB or Board) set a hearing for the purpose of denying certain United Farm Workers of America, AFL-CIO (UFW or Union) organizers access to the Employer's property. For the reasons explained below, we deny the motion without prejudice to the Employer's right to refile the motion with supporting declarations.

The form of the motion consisted of a letter from Dutra 's attorney addressed to the Board's Executive Secretary, which represented that the UFW had violated section 20900(e) (4) (C) of the Board's regulations (Cal. Code Regs., tit. 8, § 20900(e) (4) (C)) when on May 30 UFW organizer Efren Barajas drove his car into the Employer's fields to take lunchtime access. The Employer's letter stated that it prohibits motor vehicles from entering its fields at or near the time of harvest because excessive dust could make its blackberry and

¹ All dates herein refer to 1996 unless otherwise specified.

raspberry crops unmarketable. The letter further alleged that the UFW organizer's car in some unspecified manner blocked ingress and egress to the field.

In response to the Employer's letter, the UFW provided the declaration of UFW organizer Efren Barajas. Barajas stated that a number of motor vehicles, including trucks and motorcycles, were in an area half a mile from the edge of the field, the area where the employees took lunch and where he drove his car. Barajas stated that he carefully drove his car on the road inside the field at about five miles per hour, and parked it so as to avoid blocking any road or crushing any plants in the Employer's field.

Board regulations section 20900(e)(5) addresses union violations of the procedures and limitations on access provided in section 20900(e)(4). Section 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. (See L & C Harvesting, Inc. (1993) 19 ALRB No. 19.) Section 20900 (e) (4) (C) prohibits access takers from engaging in conduct disruptive of the employer's property or agricultural operations, including the destruction of crops or machinery or preventing the boarding of buses. Although section 20900(e)(5)(A) states that the duration of any sanctions imposed will be determined by the Board after due notice and hearing, the regulation does not

specify a procedural mechanism for determining what circumstances would justify the scheduling of a hearing.

Under regulations governing post-election objections procedure, the Board has set forth threshold prerequisites that must be met before an objecting party will be entitled to a formal evidentiary hearing.² Among the prerequisites is the provision that when a person alleges that an election was not conducted properly or that misconduct occurred affecting the results of the election, the petition objecting to the election must be accompanied by a declaration or declarations setting forth facts which, if uncontroverted or unexplained, would constitute sufficient grounds for the Board to refuse to certify the election. If the declarations do not establish a prima facie case with respect to some or all of the petition's objections, the regulations direct the Board's Executive Secretary to dismiss the insufficient objections without a hearing.

In *J.R. Norton Co. v. Agricultural Labor Relations Bd.* (1979) 26 Cal.3d 1 [160 Cal.Rptr. 710] (Norton), the California Supreme Court held that despite statutory language which seemingly mandated the Board to hold a hearing on election objections in every case,³ the Board was reasonable in adopting a regulation which conditions a full evidentiary hearing on the

² The Board's post-election objections procedure is set forth in title 8, California Code of Regulations, section 20365.

³ Labor Code section 1156.3 provides that upon receipt of an election objections petition, the Board "shall" conduct a hearing to determine whether the election shall be certified.

presentation of objections and factual declarations that establish a prima facie case that the election was not properly conducted. (Norton, supra, 26 Cal.3d at 14.) It follows that such a process is permissible where, as here, the seeming mandate of Regulation section 20900(e)(5)(A) that a hearing be held is not based on any statutory prescription.

As we have noted, the regulations relied upon in this case, sections 20900(4) (C) and 20900(5) (A), do not specify what conditions will trigger the Board's scheduling of a hearing on alleged access violations. However, unless the moving party makes a prima facie showing that a union representative has violated the regulatory provisions governing the taking of access, we do not believe that a hearing is warranted. That is, a party seeking a hearing should not be permitted to put the other party to that task without at least presenting the statement of a percipient witness under penalty of perjury.

Because of the existing regulations' lack of specificity, the Board takes this opportunity to set forth the procedure to be used henceforth in the filing of motions to deny access under sections 20900(4)(C) and 20900(e)(5)(A).⁴ Any motion filed under those sections shall be accompanied by a detailed statement of the facts and law relied upon, and

⁴ This Board fully supports the Regional Directors encouraging the parties to meet and confer in regards to access disputes. The Board also supports and appreciates the Regional Directors' availability in informally mediating access disputes between the parties who voluntarily utilize the Regional Director for this limited purpose.

declarations within the personal knowledge of the declarants which, if uncontroverted or unexplained, would support the granting of the motion. The motions and accompanying documents shall be filed with the Board pursuant to the provisions set forth in section 20160(a)(2), and served on the parties,⁵ in accordance with the provisions set forth in sections 20166 and 20168. If an employer is seeking to deny access to a particular, named organizer or organizers, the motion and accompanying documents must be served on the party or parties to be limited in or denied access.

A labor organization or organizer may submit a response to the motion within five days of service of the motion or within such other period as the Executive Secretary may direct. Upon consideration of the motion and supporting declarations, and any response thereto, the Board may issue a ruling denying or granting the motion for a hearing. If the motion is granted, the Board will direct that a hearing be conducted in conformity with the provisions set forth in section 20370. When the allegations forming the basis for the motion are also the subject of an unfair labor practice charge pursuant to section 20900 (e) (5) (B),

⁵ At the option of the moving party, a detailed statement of facts may be substituted for the declarations when service is made upon other parties. This detailed statement of facts shall describe the contents of declarations in sufficient detail to allow an opposing party to secure its own witnesses and otherwise prepare itself to counter the motion at an evidentiary hearing. A moving party electing to serve a detailed statement of facts on other parties shall also file the original and six copies of this statement with the Executive Secretary together with the declarations.

the Board may consolidate the proceedings for hearing in conformity with the provisions set forth in section 20224 et seq.

Based on the evidence submitted herein, we find that the Employer has failed to make a prima facie showing sufficient to warrant setting this matter for hearing. The allegations contained in the Employer's letter are not supported by any declaratory support. The allegation that Barajas blocked the road and prevented the trucks from picking up the harvested fruit is raised only in a conclusory fashion and is not supported by the statement of facts provided by Employer's counsel's own unsworn statement. The record does indicate that on or about May 30, Barajas drove his car onto the Employer's property where the employees were located, but there is no prima facie evidence that the crops were damaged. Barajas' declaration indicates that this was a single incident, that he carefully drove his car at a low speed, and that there were other like vehicles, trucks and motorcycles, in the field nearby.

In reaching this decision, the Board recognizes that under appropriate circumstances the Employer's assertion that dust raised by motor vehicles at harvest could constitute serious injury to raspberries and blackberries, the crops involved in this case. The Board also recognizes that an employer could validly restrict vehicle traffic to only that minimally necessary to carry out the harvest, i.e., trucks or freight-carrying vehicles to remove the crops, and that cars and motorcycles driven by employees are more closely related to carrying out

harvest work than cars driven by persons having business with the employees even under a valid right to enter the employer's property to accomplish that business.

However, while recognizing that protection of crops highly susceptible to damage from dust could be a valid reason for restricting vehicular access, the Board finds that the only declaration submitted in this case fails to make a prima facie showing that Barajas injured the Employer's crops by driving in the field on a one-time basis at a speed of five miles per hour.

The Board, of course, always encourages the parties to reach agreement on access issues so as to avoid the possibility of injury to crops and disruption of employers' operations, while still allowing a petitioning union its full access rights under the Board's regulations.

In this case, the record does not indicate whether the parties had reached an agreement on access. The motion states only that other UFW agents on prior visits had complied with the Employer's request to park their cars outside the field and to walk in, but no declaratory support has been provided to show that this constituted an implicit agreement that access takers would not drive their cars into the Employer's field.

For all of the above reasons, we deny the Employer's motion to set a hearing for the purpose of denying UFW organizers access to the Employer's property. Since the Board's regulations do not specify a procedure for the filing of motions to deny access and, in particular, do not put employers on notice that

they should file declarations with their motions that reflect a prima facie basis for a hearing, we will not dismiss the motion outright. Instead, we will dismiss the motion without prejudice to the Employer's right to refile the motion with supporting declarations.

ORDER

It is hereby ordered that the Employer's motion to set a hearing for the purpose of denying certain United Farm Workers of America, AFL-CIO organizers access to the Employer's property is dismissed without prejudice.

DATED: June 19, 1996

MICHAEL B. STOKER, Chairman

IVONNE RAMOS RICHARDSON, Member

LINDA A. FRICK, Member

CASE SUMMARY

Dutra Farms
(United Farm Workers of
America, AFL-CIO)

Case No. 96-PM-1-SAL
22 ALRB No. 5

Background

The Employer filed a motion to bar UFW organizer Efren Barajas from its property for one year with the Executive Secretary. The Employer requested that the Board set a hearing on the motion, which alleged that the UFW had violated the Board's access regulations by driving a car into the Employer's fields which raised dust and damaged the Employer's fruit, and by blocking the Employer's road, thereby preventing the Employer's trucks from picking up the harvested fruit. The Employer's motion was in the form of a letter from the Employer's attorney, and was unsupported by any declaration asserting facts under penalty of perjury. The Union filed a response, including a sworn declaration by Efren Barajas stating that a number of vehicles, including trucks and motorcycles, were in an area half a mile from the edge of the field, the area where the employees took lunch and where he drove his car. Barajas stated that he carefully drove his car on the road inside the field at about five miles an hour, and parked it so as to avoid blocking any road or crushing any plants in the Employer's field.

Board Decision

The Board held that the allegations made in the Employer's letter, unsupported by any sworn declarations, failed to make a prima facie showing sufficient to warrant setting the matter for hearing. The Board therefore denied the Employer's motion for a hearing. The Board noted that its regulations do not specify a procedure for the filing of motions to deny access, and, in particular, have not put employers on notice that they should file declarations with their motions that reflect a prima facie basis for a hearing. Therefore, the Board dismissed the motion without prejudice to the Employer's right to refile the motion with supporting declarations. The Board also set forth a procedure requiring that henceforth all motions to deny access shall be accompanied by a detailed statement of the facts and law relied upon, and declarations within the personal knowledge of the declarants which, if uncontroverted or unexplained, would support the granting of the motion. The procedure requires the moving party to file and serve the motion and accompanying documents in accordance with Board regulation sections 20160(a)(2), 20166 and 20168.

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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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