Watsonville, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

NAVARRO FARMS, Employer, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Labor Organization, and DAVID JETT, MARIA A. CARAVANTES, UFW Organizers.	Case No. 96-PM-3-SAL 23 ALRB No. 1 (March 3, 1997)

DECISION AND ORDER

On September 4, 1996, the Agricultural Labor Relations Board (ALRB or Board) found that Navarro Farms (Employer) had established a prima facie showing sufficient to warrant a formal hearing to take evidence on its motion to deny worksite access to Navarro's strawberry harvest operations by the United Farm Workers of America, AFL-CIO (UFW or Union), as well as by two named UFW organizers, for one year.[1] (Navarro Farms (1996) 22 ALRB No. 10.)

[1]The Board's regulations grant union organizers worksite access in order to communicate with agricultural employees in an effort to win their support for a Board conducted representation election under strict time and manner limitations. (Title 8, California Code of Regulations, section 20900 et seq. ; Agricultural Labor Relations Board v. Superior Court (1976) 16 Cal.3d 392 [128 Cal.Rptr. 183].) The motion herein was filed pursuant to section 20900 (e) (5) (A) of the regulations which provides that the Board may bar labor organizations and/or their individual organizers who violate the access rule from taking access to any agricultural operation for a period of time to be specified by the Board.

Accordingly, in Navarro, supra, the Board directed an evidentiary hearing to be held before an Investigative Hearing Examiner (IHE) to decide the following question:

> 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?

On December 9, 1996, following the hearing and the filing of post-hearing briefs by all parties, IHE Douglas Gallop issued his recommended decision in which he found that Maria Caravantes and David Jett, wearing UFW identification badges and acting under direction of the Union, took lunch-time access on one occasion and proceeded immediately to examine certain facilities the Employer provides for its employees, namely portable toilets and drinking water. Jett then handed Peter Navarro, the Employer's vice president, what would appear to be a notice of specified infractions of health and safety requirements of the California Occupational Safety and Health Administration (Cal-OSHA).[2] The IHE concluded that the two organizers who engaged in

[2]The two pages of written matter carried a printed heading stating: "State of California, Department of Industrial Relations, Division of Occupational Safety and Health." There is a secondary heading which reads: "Hazard Description. Describe briefly the hazard(s) which you believe exist. Include the approximate number of employees exposed to or threatened by each hazard." In his own hand, and above his signature, Jett wrote: "Two men's toilets for about 60 men. Water from hand washing seems to run onto ground near crops. Only women use gloves to pick on a regular basis ."

the conduct in dispute herein, as well as their sponsoring labor organization, violated the access rule. Accordingly, in order to prevent a recurrence of similar conduct, he recommended to the Board that the UFW, as well as its officers, agents, organizers and representatives, be prohibited from conducting unconsented-to facilities inspections.

Thereafter, both the Employer and the Union timely filed exceptions to the IHE's decision and the Union subsequently filed a response to the Employer's exceptions.

The Board has reviewed the attached recommended decision of the IHE in light of the record and the exceptions and briefs of the parties and has decided to affirm the rulings, findings, and conclusions of the IHE, and to adopt his proposed remedy, as modified herein.

The Employer excepted only to the scope of the IHE's remedial order, contending that, at a minimum, the two named organizers should be prohibited from taking any access whatsoever to Navarro Farms during the whole of the 1977 strawberry harvest season and, in addition, the Union, or any other agents thereof, should be barred from taking access for no less than one month during the same season.[3]

While the Union acknowledges that the purpose of the Board's access rule is to permit potential labor representatives

[3]In finding a violation of the rule, the IHE relied on this Board's pronouncement in Ramirez Farms (1996) 22 ALRB No. 12 that virtually identical conduct as that in issue herein would be violative.

to effectively communicate with employees about unionization, the Union also defends its "inspections" as necessary in order to explain to employees whether the Union may be able to help them improve certain working conditions. For this reason, the Union excepts to the whole of the IHE's analysis and, in particular, his recommended remedial provision.

Consequently, the issue before the Board is whether the ALRB's access rule should be construed to allow union organizers to take access to private property for purposes of inspecting facilities required under a different statutory scheme. The Board need not be required to, and indeed cannot, assess whether the organizers had either the grounds or the authority on which to issue the Cal-OSHA "complaints." The Board need only determine whether its access rule is broad enough to endorse the specific conduct at issue herein.[4]

The substantive requirements for a successful motion to deny access were established in Ranch No. 1. Inc. (1979) 5 ALRB No. 36, wherein the Board held, in pertinent part, that:

> ...the motion 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 agricultural employer or employees, or (3) intentional or reckless disregard of the rule.

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[4]We hasten to note that there is no allegation that at any time, including the visit which is the subject of this proceeding, did the Union violate the time or manner limitations of the access rule. The sole question is whether the rule may be read to permit the actions of Caravantes and Jett. In addition, no evidence was submitted at hearing to support the allegations that the organizers posed as representatives of CAL-OSHA.

Reading the several factors outlined in Ranch No. 1, Inc. in the disjunctive, we find that UFW agents Caravantes and Jett demonstrated an intentional and/or reckless disregard of the rule.[5]

We have discovered no substantial reason why organizers should be permitted to act under the authority of the ALRB's access rule for the purpose of inspecting facilities or serving employers with notices of "alleged" infractions of a different statutory scheme. In reaching this conclusion, we do not judge the particular organizing tactics, nor do we pretend to have the authority to circumscribe it.[6] We do, however, reserve the right to examine conduct which is carried out under the umbrella of our access rule and to sanction conduct we believe is not covered by the rule.

Remedy

Having found that the access rule was violated, we are

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[5]As it would only be cumulative for purposes of remedy were we also to find that the conduct constituted harassment of the Employer, we need not reach that question.

[6]In the interim, the parties as well as the Board have expended considerable time and resources. Under the facts of these cases, an unfair labor practice charge against the Union, coupled with a request that the General Counsel seek immediate injunctive relief, would not be actionable. The basis of the charge would have to be alleged restraint or coercion of employees, whereas the offending conduct here was directed at the Employer. Although the Board has previously attempted to develop a more informal and presumably more expeditious process by delegating to Regional Directors the authority to curb misuse of the access rule, an aggrieved party could appeal the Regional Director's action to the Board, giving rise to a process not necessarily any less abbreviated than the one here.

compelled to fashion an appropriate remedy. In our view, however, the most appropriate remedy would be a timely one which prohibits a repetition of the violation during the season in which it initially occurred. Regrettably, such a remedy will often not be obtainable under the Board's present procedures. (In the instant case, as example, six months have elapsed since the filing of the motion and the matter coming before the Board for final adjudication.)

Absent a more expeditious procedure for review, the Board's only remedy to deter such wrongful conduct is to bar access in a significant part of the season due to commence when the Board finally issues its Order. To do otherwise would encourage intentional violations of the Agricultural Labor Relations Act.

The present unavailability of an early remedy for conduct such as that in question here is especially troublesome when it is recognized that the access rule was created, not by the Legislature through statutory directive, but by the Board through its rulemaking procedures.[7] Therefore the Board has the

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[7]Chairman Stoker notes that the National Labor Relations Act (NLRA) does not provide unions with the right to automatic worksite access, something the ALRB should consider in future rulemaking. Significantly, federal law only gives the union a right to access where the union has no reasonable alternative means to communicate with employees. As the United States Supreme Court held in National Labor Relations Board v. Babcock and Wilcox Company (1956) 351 U.S.105, 113, "[a]n employer may validly post his property against nonemployee distribution of union literature if reasonable efforts by the union through other available channels of communication will enable it to reach employees..." The court goes on to define 'reasonable alternative means' as,

responsibility to assure an appropriate remedy when the rule is violated. Consequently, for the reasons already stated, the Board should devise a process which provides for expeditious relief for aggrieved parties who suffer from abuses of the rule.

ORDER

Having found that the Union has demonstrated an intentional and/or reckless disregard for the Board's access rule, it is appropriate to issue the standard order directing that the United Farm Workers of America, AFL-CIO, cease and desist from utilizing the ALRB's access rule for the primary purpose of inspecting certain employer-provided facilities and advising employers when and how they believe the same employers have

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including, but not limited to, ". . .personal contacts on streets or at home, telephones, letters or advertised meetings to get in touch with the employees..." (351 U.S. at 113.)

Although the Agricultural Labor Relations Act (ALRA) is silent on the subject of access, the ALRB created the access privilege solely through its rule-making authority. However, California Labor Code section 1148 requires that the ALRB follow applicable precedents of the National Labor Relations Board (NLRB) which are predicated on the NLRA. Consequently, one must question the propriety of the California access rule if 'reasonable alternative means' to communicate with farm workers exist. A review of Babcock would suggest that such a condition only exists where farmworkers reside on the farm itself. The Babcock Court, in affirming the denial of access, stated, "Consequently, if the location of a plant and the living quarters of the employees place the employees beyond the reach of reasonable union efforts to communicate with them, the employer must allow the union to approach his employees on his property. No such conditions are shown in these records." (Babcock at 114.)

Given the lack of an expeditious remedy to respond to access violations, the Board may wish to consider the rule followed by the NLRB which requires the union to show no alternative means to communicate with employees exist. Such a rule would indeed be consistent with the section 1148 mandate that the ALRB look to practices under the national act.

committed infractions of regulations governed by a different State agency.

In addition, in order to discourage conduct violative of the access rule, we hereby prohibit the United Farm Workers of America, AFL-CIO, as well as any of its agents, from taking access to Navarro Farms for a period of 30 days commencing June l, 1997.

DATED: March 3, 1997

MICHAEL B. STOKER, CHAIRMAN

IVONNE RAMOS RICHARDSON, MEMBER

LINDA A. FRICK, MEMBER

TRICE J. HARVEY, MEMBER

CASE SUMMARY

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

23 ALRB No. 1
Case No. 96-PM-3-SAL

Background

The Agricultural Labor Relations Board (ALRB or Board) developed a regulation under which labor organizations may take pre-election access to agricultural employees at their worksite in order to solicit their support for an ALRB conducted election at which employees choose whether or not they wish to be represented for purpose of collective bargaining. Access may be taken under strict time and manner limitations.

In order to provide for a remedy for alleged violations of the rule, the Board permits an employer to file a motion to deny access. Such a motion was filed by Navarro Farms (Employer) in which it was alleged that organizers for the United Farm Workers of America, AFL-CIO (UFW or Union) had taken access in order to inspect certain facilities the Employer provides for employees (namely portable toilets and drinking water), rather than for the primary purpose of communicating with employees.

Determining that the Employer had established a sufficient showing to warrant further investigation, the Board set the matter for hearing.

Decision of the Investigative Hearing Examiner.

Following a full evidentiary hearing before an Investigative Hearing Examiner (IHE) in which all parties participated, and the submission of post-hearing briefs, the IHE found that, as alleged, the organizers, acting under direction of the Union, did examine portable toilets and then handed the Employer a form under the heading of the California Occupational Safety and Health Administration (OSHA). The organizers had written on the form what would appear to be a notice of infractions of OSHA regulations. He concluded that the conduct was violative of the access rule.

Decision of the Board

Following the filing of exceptions to the IHE's decision by the Employer and the Union, the Board decided to affirm the IHE's decision and to order the UFW to cease and desist from utilizing the ALRB's access rule for the primary purpose of inspecting facilities employers provide their employees and then advising employers when and how they believe the employer have failed to comply with regulations issued by a different State agency.

The Board also directed that the UFW may not take access to Navarro's operations for a period of 30 days during the 1997 strawberry harvest season.

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STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of: NAVARRO FARMS, Employer, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, AND DOES I THROUGH 10, INCLUSIVE, Labor Organization.	)	Case No. 96-PM-3-SAL RULING ON MOTION TO DENY ACCESS

Pursuant to the Decision of the Agricultural Labor Relations Board (ALR3 or Beard; in Navarro Farms (1996) 22 ALR3 No. 10, a hearing was conducted, before the undersigned on September 24, 199S, at Salinas, California, in order to determine whether the United Farm Workers of America, AFL-CIO (Union) or any of its agents should be denied access rights granted under the Board's Regulations, or whether those rights should be limited. Based on the testimony of the witnesses, the documents received into evidence and upon consideration of the parties' briefs, the following findings of fact, and ruling on the Employer's motion to deny access are made:

FINDINGS OF FACT

The Union properly filed and served notices of intent to organize and notices of intent to take access between May and September 1996,[1] including a notice of intent to take access filed on July 19. Peter Navarro, the Employer's Vice-President,

[1]All dates hereinafter refer to 199S unless otherwise noted.

estimated the Union, took access 12 to 15 times during this period.

Navarro's uncontradicted, credible testimony establishes that on July 25, at about noon, David Jett and Maria Elena Carravantes, student summer AFL-CIO interns assigned to the Union, took access to the Employer's Casserly Ranch. When they arrived, the two proceeded to the Employer's portable toilets, instead of to the employees, most of whom were located a considerable distance away. Jett opened the door of a toilet and was looking inside when Navarro approached him and told Jett he was not authorized to inspect the facilities, since he was not from CAL-OSKA. Jett and Carravantes wore Union identification tags and identified themselves as Union representatives.

Jett asked if Navarro was refusing permission to inspect the toilets, stating his supervisors had directed him to do this. Navarro said he was refusing permission, and the inspection ceased. After a brief exchange, in which Navarro told Jett and Carravantes he had also attended college, the representatives went to speak with the employees. Navarro admitted the inspection did not disrupt the Employer's operations.

Foreman Victor Valencia testified that Jett and Carravantes approached him, and Carravantes stated she had some forms she needed to have filled cut. Valencia asked her if she was from the Union and she said no, she was just doing some homework for school. Valencia responded he did not want any problems with the Union or the Employer, and if she wanted to speak with the workers, they were there. The employees present refused to speak

with Carravantes or Jett.

Valencia also testified that the representatives wore tags or buttons, but denied knowing what the Union's eagle insignia means. In fact, Valencia denied any knowledge that the Union had been taking access to the fields, or that it was attempting to organize the employees that summer. This is particularly strange, in light of his testimony, that he asked Carravantes and Jett if they were from the Union.

Carravantes testified that she is, in fact, a college student who worked on the Union's organizing campaign during the summer. She and Jett wore identification tags and identified themselves as Union representatives.[2] Carravantes did not specifically recall speaking with the foreman, but did tell employees she was a student "at" or "of" the Union. This is consistent with Navarro's testimony.

Carravantes did bring worker surveys with her, which ask questions related to compliance with various employment standards. Carravantes denied she told anyone these were school assignments. After some employees refused to speak with them, two employees agreed to answer the survey questions .

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[2]Carravantes denied she or Jett identified themselves as being from the health department, as alleged in a declaration by former employee Max Sanchez. The Board set this allegation for hearing, but the .Employer was unable to produce Sanchez as a witness. The Employer's motion to admit Sanchez's declaration into evidence was denied, because it is hearsay, and the Union would be unfairly prejudiced if denied the opportunity to cross-examine this critical allegation. Valencia's testimony was received, without objection, although it is noted the Employer did not allege these purported statements as grounds for its Motion".

Carravantes' testimony is credited, over- Valencia's. Valencia appeared unsure of himself and, if taken at his word, was not at all perceptive as to the organizing campaign, although that testimony, itself, is suspect. At best, Valencia became confused when Carravantes stated she was also a student, and assumed the surveys were school assignments.

Navarro's unrebutted testimony establishes that after speaking with the employees, Jett handed him a CAL-OSHA complaint form, alleging there were only two toilets for about 50 male workers, the water from the hand washing facilities appeared to be running near the crops, and only the female employees were regularly using gloves to pick crops.

RULING

The unrebutted evidence sustains the Employer's contention that the Union's representatives, without its consent, inspected the toilet facilities and gave Navarro a CAL-OSHA complaint form, and that said conduce was directed by the Union. The credited evidence fails to show that the representatives misstated their identities.

The Union argues that, assuming the Hoard now prohibits such inspections, its conduct, at the time, was neither prohibited by the Regulations, nor the subject of a Board decision. Therefore, the conduct can not be considered intentional or in reckless disregard of the access rules. The Union further argues that the representatives' primary purposes were to organize employees and to discuss working conditions with them, and not to inspect

facilities. As such, the purported transgressions were only incidental to an otherwise lawful access, and the motion should, therefore, be denied. See Kusumoto Farms (1995) 22 ALRB No. 11.

The fact that Jett, in addition to inspecting the toilet, stated he was directed by his supervisors to do so, and then handed Navarro a complaint casts doubt as to whether, in fact, the inspection and delivery of the CAL-OSHA complaint fern were merely incidental reasons for this particular access visit. In addition, the survey could be viewed as an attempt to solicit complaints, so that a confrontation with the Employer representatives could take place. At any rate, under similar proposed circumstances, the Board has decided that this conduct violates its access rules," even if the organizers also meet with employees. Ramirez Farms (1995) 22 ALR3 No. 12.

A union or its organizers may be prohibited from taking access for intentionally violating the access rules, or acting in reckless disregard thereof, even if the conduct does not disrupt operations, or if the conduct is not intended to harass the employer or employees. Ranch No. l, Inc. (1979) 5 ALR3 No. 36. As noted above, the Board, in Ramirez Farms, supra, held that this type of conduct would violate the access rules. It is, therefore, appropriate to grant the Employer's Motion, and issue an order prohibiting the Union, its officers, agents organizers and representatives from conducting unconsented-to facilities inspections and filing complaints with employer representatives

during organizational access periods.[3]

The Employer's request for additional sanctions is denied. Although a single intentional or reckless access violation may be grounds for such sanctions, the violation of the time limitation for taking access in Ranch No. 1, Inc., supra, was much more clear than the Union's conduct herein. Without finding that in order to impose sanctions, the violation must be spelled out in the Regulations or a Board decision, the Union in this case, although chargeable with a duty to reasonably interpret its access rights, did net act in clear contravention of any established rule. Accordingly it is appropriate, at this juncture, to limit the relief requested.

DATED: December 9, 1996

DOUGLAS GALLOP
Investigative Hearing Examiner

[3]The Board, in Ramirez Farms, supra, and Kusumoto Farms, supra, also set for hearing the issue, whether similar conduct by the Union violated the access rule, because it was motivated by a desire to harass the employers . Assuming this issue should also be discussed herein, it is concluded that the Union's conduct was not motivated by a desire to simply to harass the Employer's representatives, although they were clearly upset by its actions. Rather, the Union appears to have been motivated by an organizing tactic which the Board considers prohibited by the access regulations.