

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

KUSUMOTO FARMS,)	
)	
Employer,)	
)	Case No. 96-PM-4-SAL
and)	
)	23 ALRB NO. 2
UNITED FARM WORKERS OF)	(March 11, 1997)
AMERICA, AFL-CIO,)	
)	
Labor Organization.)	
)	
and)	
)	
FOUR UNNAMED INDIVIDUALS,)	
)	
UFW Organizers .)	
)	

DECISION AND ORDER

Kusumoto Farms (Employer) filed a motion with the Agricultural Labor Relations Board (ALRB or Board) seeking to deny the United Farm Workers of America, AFL-CIO (UFW or Union) further access to employees while they are working in its strawberry field operations on the grounds that four of the Union' s organizers had misused the Board's access rule on July 23, 1996.¹ In Ramirez Farms (1996) 22 ALRB No. 12, the Agricultural Labor Relations Board (ALRB or Board) ruled that a showing that union organizers

¹Union organizers may take worksite access in order to communicate with employees and solicit their support for an ALRB 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].) In order to prevent and remedy abuses of the rule, the regulations also provide that the Board may bar labor organizations and/or their agents 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, section 20900(e) (5) (a) .)

took access under the guise of the Board's access rule for the primary purpose of inspecting toilet and water facilities which employers provide for employees "reflects a misuse of access and, thus, an intentional or reckless disregard for the access regulation." (Ramirez, supra, sl. op. at p. 4.)

Accordingly, as the Board found that the declarations submitted by the Employer in support of its motion established a prima facie case of violations of the access rule within the meaning of Ramirez, supra, it directed that a full evidentiary hearing be held before an Investigative Hearing Examiner (IHE).

On December 9, 1996, following the hearing in which all parties participated, and the filing of post-hearing briefs, IHE Douglas Gallop issued his recommended decision in which he found that the UFW had violated the access rule when two of its representatives, acting on directions from the Union and without permission of the Employer, utilized the time granted under the Board's access rule to inspect toilet facilities and to give a supervisor a "Cal-OSHA"² complaint form listing purported improprieties regarding the posting of mandatory employee notices.

Thereafter, both the Employer and the Union filed exceptions to the IHE's Decision and the Union filed a brief in 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

²The form carried the heading of the California Occupational Safety and Health Administration.

the parties and has decided to affirm the rulings, findings, and conclusions of the IHE and to adopt his proposed remedy, as modified herein. (See Navarro Farms (1997) 23 ALRB No. 1.)

ORDER

Having found that the Union 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 employer-provided facilities and advising employers when and how they believe the same employers are engaging in 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 Kusumoto Farms for a period of 30 days commencing June 1, 1997.

DATED:

MICHAEL B. STOKER, CHAIRMAN

IVONNE RAMOS RICHARDSON, MEMBER

LINDA A. FRICK, MEMBER

TRICE J. HARVEY, MEMBER

CASE SUMMARY

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

Case No. 96-PM-4-SAL
23 ALRB No. 2

Background

As in Navarro Farms (1997) 23 ALRB No. 1, strawberry grower Kusumoto Farms (Employer) filed a motion with the Agricultural Labor Relations Board (ALRB or Board) to deny access to the United Farm Workers of America, AFL-CIO (UFW or Union), as well as individual Union organizers, on the grounds the Board's access rule was utilized for purposes other than for which the rule was intended.

Based on the motion and supporting documents, the Board found that the Employer had made a showing sufficient to warrant a hearing on the question whether the organizers took worksite access for the primary purpose of inspecting certain facilities the Employer provides for employees (namely portable toilets and water).

Decision of the Investigative -Hearing Examiner

Following a full evidentiary hearing before an Investigative Hearing Examiner (IHE) in which all parties participated, the IHE found that the UFW had instructed two organizers to utilize the Board's access rule for the primary purpose of inspecting the portable toilets and giving a supervisor a "complaint" form under the printed heading of California Occupational Safety and Health Administration (Cal-OSHA) on which they had noted what they believed were infractions of Cal-OSHA regulations.

Decision of the Board

Following the filing of exceptions to the IHE's recommended decision by all parties, the Board decided to affirm his decision and to order the UFW to cease and desist from using the Board's access rule for purposes other than the primary purpose of communicating with employees and further directed that the UFW may not take access to Kusumoto's strawberry operations for 30 days commencing June 1, 1997.

* * *

This case summary is furnished for information only and is not intended to be an official statement of the case or of the ALRB.

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:)	Case No. 96-PM-5-SAL
)	
RAMIREZ FARMS,)	
)	RULING ON MOTION TO
Employer,)	DENY ACCESS
)	
and)	
)	
UNITED FARM WORKERS OF)	
AMERICA, AFL-CIO, AND DOES I)	
THROUGH 10, INCLUSIVE,)	
)	
Labor Organization.)	
_____)	

Pursuant to the Decision of the Agricultural Labor Relations Board (ALR3 or Board) in Ramirez Farms (1996) 22 ALRB No.12, a hearing was conducted before the undersigned on October 24,1996, at Monterey, California, in order to determine whether the United Farm Worker 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 one notice of intent to organize and three notices of intent to take access during the period June to August 1996,¹ and the access visit in question herein was pursuant to one of the access notices.

¹All dates hereinafter refer to 1996 unless otherwise noted.

On July 26, organizers Rachel Anne Alarid and Cesar Sanchez took access to the Employer's Zabala field during the noon break. According to foreman Juan Nava Floran (Nava), Sanchez proceeded to speak with the employees, but Alarid began inspecting the portable toilets, which were attached to his pickup, and the hand-washing facilities. Nava asked why Alarid was doing this, and she replied she had to make sure everything was clean, for the workers' benefit. Nava told Alarid she had no right to do this, unless she was from the County. Alarid, who wore a Union identification tag, stated she was not from the County, and ceased the inspection. Instead of going to speak to the employees, according to Nava, Alarid remained by the facilities.

Alarid, in her testimony, admitted she conducted the inspection, and was "authorized" to do so by the Union. Alarid contended she inspected the washing facilities after speaking with employees, and at their request. Alarid appeared nervous and defensive as a witness, and this portion of her testimony is viewed as an ex-post facto justification which is not credited.

Alarid did not substantially dispute the contents of her conversation with Nava, as related in his testimony. She did, however, contend that after briefly inspecting the facilities, she resumed her discussion with the employees, for the remainder of the access visit. In this respect, Alarid's testimony is credited over Nava's, to the extent that she participated in discussions with employees after conducting the inspection. The Board, in its Decision herein, noted that Nava, in his prehearing declaration,

stated Alarid did return to speak with the employees, and the Employer's General Manager, John Manuel Ramirez, testified that when he later arrived at the scene, Alarid was with the employees, although it appeared that Sanchez was the one actually speaking with them. It also appears likely that had Alarid not left the area, there would have been additional conflict between Alarid and Nava.

Ramirez, who was aware of similar conduct by Union organizers at other farms in the area, went to the scene when Supervisor Romualdo Juarez, after speaking with Nava, reported Alarid's conduct to him. Ramirez waited for the access period to end, and then approached Alarid and Sanchez. Alarid met him and attempted to give him a form citing alleged violations concerning the hand-washing facilities and failure to provide gloves to workers, which Ramirez refused to accept. Alarid stated she intended to complain to CAL-OSHA regarding the alleged violations, but apparently never did so.

Ramirez testified that when he disputed the Union's right to conduct facilities inspections, Alarid responded she was doing this to help the employees, and to help this Employer stay in compliance with State and County health laws. Ramirez stated that the representatives could speak to employees, but were not authorized to inspect the property. Sanchez joined them and said they were present to help the Employer stay in compliance and to ensure that working conditions were proper. Alarid attempted to verbally inform Ramirez of the alleged infractions, but Ramirez

cut her off, informing Alarid and Sanchez that the access period was over, and it was time to leave. Although Ramirez addressed Alarid in English, she responded in Spanish, which the Employer contends was designed to incite the employees by grandstanding the Union's willingness to confront the Employer's representatives.

Alarid testified that her purpose for taking access was to organize the employees, but did not deny Ramirez's account of the substance of her conversation with him, which is credited. The form Alarid attempted to hand him was a list of the purported violations written on the Union's letterhead. Alarid had written similar notices on CAL-OSKA complaint forms at other farms, but was instructed not to use the forms anymore due to protests by other growers to OSKA regarding this practice.

RULING

The evidence sustains the Employer's contention that the Union's representative, without its consent, inspected the facilities,² and then attempted to hand its representative a written complaint regarding working conditions, and to engage him in a conversation concerning alleged deficiencies. The evidence further shows that the Union authorized this tactic.

The Union argues that, assuming the Board 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 intentionally violative, or in

²The Union's contention, that Alarid looked into, but did not enter the portable toilet, may somewhat mitigate, but does not expunge the overall conduct she engaged in.

reckless disregard of the access rules. The Union denies said conduct was intended to harass the Employer or employees, but instead, was a legitimate organizing tool. 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.

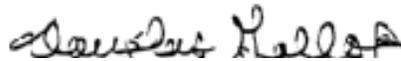
While the Board Order in Kusumoto Farms (1996) 22 ALR3 No. 11 does refer to the Union's "primary purpose" in conducting an access visit, the Order herein, under similar proposed circumstances, found this type of conduct would violate the access regulations, even if the organizers also lawfully met with employees during the visit. Furthermore, Alarid's conduct in first inspecting the facilities, the statements by Alarid and Sanchez concerning the purpose of their visit and Alarid's persistence in attempting to protest alleged violations cast doubt as to whether said actions were merely incidental reasons for this particular access visit.

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, and the conduct was not intended to harass the employer or employees. Ranch No. 1, Inc. (1979) 5 ALR3 No. 36. The Board, in setting this matter for hearing, stated it would consider the Union's conduct to be an intentional violation of the

access rule, under essentially the same set of facts. 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 written or oral 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 Beard decision, the Union in this case, although chargeable with a duty to reasonably interpret its access rights, did not 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

³It is concluded that the Union's conduct was not motivated by a desire to simply 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.