

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

TRIPLE E PRODUCE CORP . , a)	
Delaware Corporation,)	
)	Case No. 97-PM-1-VI
Employer,)	
)	
and)	
)	23 ALRB No. 6
UNITED FARM WORKERS OF)	(May 5, 1997)
AMERICA, AFL-CIO,)	
)	
Labor Organization,)	
)	
and)	
)	
DOLORES HUERTA, RUDY MEDINA,)	
GILBERTO RODRIGUEZ, REYNALDO)	
PONCE, ZEFERINA GARCIA-PEREZ,)	
JOSE GONZALEZ, LUIS RIVERA,)	
DELIA GARZA, PATRICIA GUSMAN,)	
GUILLERMO MOLINA, LUIS ALEJO,)	
CYNTHIA ESTRADA AND MANUEL)	
BARAJAS ,)	
)	
UFW Organizers .)	
)	

DECISION AND ORDER

This case is before the Agricultural Labor Relations Board (ALRB or Board) on a Petition to Bar the United Farm Workers of America, AFL-CIO (UFW) and Named Individuals From Taking Access filed by Triple E Produce Corp., a Delaware Corporation (Triple E or Employer) on March 25, 1997. The UFW filed a response on April 11, 1997.¹

¹ On April 16, 1997, Triple E filed a "reply" to the UFW's response to the petition. As no such reply is authorized under the procedure set out in *Dutra Farms* (1996) 22 ALRB No. 5 for the filing of motions to deny organizational access, and no other Board procedure authorizes such a reply, we have not considered the reply in our decision herein.

In *United Farm Workers of America, AFL-CIO (Triple E Produce Corp.)* (1997) 23 ALRB No. 4, General Counsel filed a complaint alleging that the UFW, pursuant to an agreement with the Employer concerning the taking of post-certification access to the worksite,² had engaged in conduct which restrained and coerced employees of Triple E in violation of Labor Code section 1153(a).³ The Administrative Law Judge (ALJ) found that UFW organizers had, on certain occasions, entered Triple E's fields in excessive numbers, entered with persons who were not authorized union representatives, engaged in unauthorized videotaping of employees, and refused to cease using bullhorns to address employees when so requested by the Employer. The ALJ concluded nonetheless that none of the UFW's conduct rose to a level of restraint and coercion sufficient to constitute an unfair labor practice. The ALJ therefore recommended that the complaint be dismissed. In its decision, the Board affirmed the ALJ's ruling that the UFW's conduct did not amount to unfair labor practices which unlawfully restrained or coerced employees

² In the absence of regulations governing post-certification access, the Board has encouraged certified representatives to seek the permission of the employer and/or an agreement with the employer regarding such access. (*O.P. Murphy Produce Company, Inc.* (1978) 4 ALRB No. 106.) In this instance, the UFW and Triple E entered into an agreement governing the time and manner in which the Union would take access, borrowing from the guidelines developed by the Board for pre-election organizational access. (Cal. Code Regs., Tit. 8, §20900.)

³ Unless otherwise indicated herein, all section references are to the California Labor Code, section 1140 et seq.

in the exercise of their rights under the Agricultural Labor Relations Act (ALRA). The Board therefore affirmed the ALJ's dismissal of the complaint in its entirety.

Triple E's petition herein seeks an order from the Board denying access by the UFW and certain named individuals for one year commencing with the start of the 1997 tomato harvest which normally occurs in early July. The petition seeks to bar access on grounds that the conduct of the UFW and named organizers in taking post-certification access during the incidents litigated in *Triple E, supra*, 23 ALRB No. 4, was inappropriate, disrespectful and unlawful under the Board's regulations, Title 8, California Code of Regulations, section 20900(e) (5) (A).

Discussion

The Board determined in *O.P. Murphy Produce Co., Inc., dba O.P. Murphy & Sons* (1978) 4 ALRB No. 106 that a certified representative of agricultural employees is conditionally entitled to enter the employer's premises to discuss contract negotiations and to investigate working conditions. (See also *F & P Growers Assn. v. Agricultural Labor Relations Bd.* (1985) 172 Cal.App.3d 1127 [218 Cal.Rptr. 736].) However, the Board has not adopted any regulations establishing an enforcement mechanism to govern the conduct of union organizers in taking post-certification access. Since the Board has no regulations governing post-certification access, the parties must depend on

existing case law precedents. Those cases may not be read to grant certified representatives an absolute right of access. Rather, an employer who denies such access does so only at the risk of potentially violating the Act. According to *O.P. Murphy Produce Co., Inc., dba O.P. Murphy & Sons, supra*, 4 ALRB No. 106, cited with approval in *F & P Growers Assn. v. Agricultural Labor Relations Bd., supra*, 172 Cal.App.3d 1127, an employer's denial of a certified representative's request for post-certification access can only be used as evidence of bad faith in the context of an unfair labor practice proceeding based on an alleged failure of the overall duty to negotiate with regards to a comprehensive collective bargaining agreement, in violation of section 1153 (e) . In *F & P Growers, supra*, the court held that denial of post-certification access may also constitute interference with employees' section 1152 rights, an independent violation of Labor Code section 1153(a), if the employer fails to demonstrate the availability of alternative means by which the certified representative may communicate with unit employees. (*Sunnyside Nursery, Inc.* (1980) 6 ALRB No. 52.)

Section 20900 of the regulations (Cal. Code Regs., tit. 8, §20900) governs only "organizational" or prepetition access, and therefore its provisions for remedying violations of that regulation are not applicable in a case involving post-certification access. (*L & C Harvesting, Inc.* (1993) 19 ALRB No. 19; *D'Arrigo Brothers*, Admin. Order No. 91-7; *The Herb Farm*,

Admin. Order No. 91-5.)⁴ Since section 20900 does not provide a mechanism for filing a motion to bar unions or organizers from taking post-certification access, we will dismiss Triple E's petition as raising no legally cognizable issue.⁵

ORDER

It is hereby ordered that the Employer's petition to Bar the UFW and Named Individuals From Taking Access be, and it hereby is, dismissed.

DATED: May 5, 1997

MICHAEL B. STOKER, Chairman

IVONNE RAMOS RICHARDSON, Member

LINDA A. FRICK, Member

TRICE J. HARVEY, Member

⁴ In such circumstances, an employer may instead pursue contractual or civil remedies. (Lab. Code §1165(a).)

⁵ We do not decide any of the other issues raised by the UFW as grounds to dismiss the petition, as it is unnecessary to do so.

CASE SUMMARY

Triple E Produce Corp.
(United Farm Workers of America,
AFL-CIO)

Case No. 97-PM-1-VI
23 ALRB No. 6

In *United Farm Workers of America, AFL-CIO (Triple E Produce Corp.)* (1997) 23 ALRB No. 4, an unfair labor practice case, the Board determined that in taking post-certification access to the Employer's fields, the UFW had entered the fields in excessive numbers, entered with persons who were not authorized union representatives, engaged in unauthorized videotaping of employees, and refused to cease using bullhorns on the Employer's request. However, concluding that none of the UFW's conduct rose to a level of restraint and coercion sufficient to constitute an unfair labor practice, the Board dismissed the complaint in its entirety.

In the present matter, the Employer filed a petition to bar access by the UFW and certain named individuals for a period of one year on grounds that in taking post-certification access during the incidents litigated in 23 ALRB No. 4, the Union and organizers had violated section 20900(e) (5) (A) of the Board's regulations. The Board concluded that section 20900 governs only "organizational" or prepetition access, not post-certification access (citing *L & C Harvesting-, Inc.* (1993) 19 ALRB No. 19; *D'Arrigo Brothers*, Admin. Order No. 91-7; *The Herb Farm*, Admin. Order No. 91-5), and that there were no other regulations governing the conduct of union organizers in taking post-certification access. Finding that the provisions in section 20900 for remedying violations of that regulation were not applicable in a case involving post-certification access, the Board dismissed the petition as raising no legally cognizable issue.

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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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