Watsonville, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

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| MEHL BERRY FARMS, | ) | |
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| Employer, | ) | Case No. 97-PM-l-SAL |
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| and | ) | |
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| UNITED FARM WORKERS OF AMERICA, AFL-CIO, (September 25, 1997) | ) | 23 ALRB No. 9 |
| | ) | |
| Labor Organization. | ) | |

DECISION AND ORDER SETTING MATTER FOR HEARING[1]

Pursuant to the provisions of Title 8, California Code of Regulations , section 20900[2], and the procedures set forth in *Dutra Farms* (1996) 22 ALRB No. 5, Mehl Berry Farms (Employer) has filed a motion to deny access, seeking to bar the United Farm Workers of America, AFL-CIO (UFW) from taking access to all of the Employer's ranches for one year. The UFW filed a response opposing the motion. [3] [4]

[1]All decisions of the Agricultural Labor Relations Board, in their entirety, are issued as precedent for future cases. (Gov. Code § 11425.60.)

[2]A11 section references axe to this regulation, unless otherwise specified.

[3]The procedures set forth in *Dutra Farms* are based on the procedures utilized for evaluating election objections. However, in *Dutra Farms* the Board provided for a response from the opposing party even though there is no provision for an opposing party to file a response to election objections. In hindsight, we believe this was in error. Declarations in support of a motion to deny access, like those filed in support of election objections alleging misconduct, are presumed to be true for the purpose of evaluating whether to set the matter for hearing. Consequently, responses from the opposing party at that stage of the proceedings, in

(continued...)

As we explained in *Navarro Farms* (1996) 22 ALRB No. 10, the Agricultural Labor Relations Board (ALRB or Board) promulgated the access regulation to permit union organizers to take pre-election access to the worksite in order to communicate with employees about unionization. Such access is permitted only under strict procedural and time and manner limitations. In addition, the regulation authorizes the Board to bar labor organizations as well as individual organizers who violate the regulation from taking access for a specified period of time after due notice and hearing. (Cal. Code Regs. §20900(e)(5)(A).)

In *Dutra Farms, supra,* the Board held that an evidentiary hearing will be set upon the filing of a motion to deny access which is accompanied by sworn declarations reflecting facts which, if uncontroverted or unexplained, would establish a prima facie

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[3] (...continued)
particular, declarations depicting a differing version of disputed facts, are irrelevant to the determination at hand and simply delay ultimate resolution of the dispute. Therefore, though the Board will continue to explore additional ways of more expeditiously resolving access disputes, the Board finds it appropriate at this time to modify the procedures set forth in *Dutra Farms* to eliminate any response to a motion to deny access at the stage, as in the present case, at which die Board is merely evaluating whether to set me matter for hearing.

[4]Member Ramos Richardson agrees that under the criteria established in Dutra Farms (1996) 22 ALRB No. 5 for evaluation of regulations, this matter should be set for hearing. However, she does not agree that the procedure established in Dutra should be changed at this time, and thus would not modify the procedure permitting the labor organization to respond to the employer's motion.

Since the issuance of Dutra, it has become apparent that the procedure established in that case has not adequately speeded up the process of resolving access disputes arising under our Act. Since a majority of the Board has voted to conduct public hearings pursuant to the mandated "sunset" review of all regulations, she would, for the time being, leave in place the procedures set forth in Dutra concerning Board review of motions to deny access. She believes it would be more appropriate to consider any possible changes in the procedure after the Board has had the opportunity to hear from parties and their representatives who practice before it.

violation of the access regulation which warrants the denial of access for some specified period. In *Ranch No. 1* (1979) 5 ALRB No. 36, the Board explained that a motion to deny access would be granted where there is a violation of the access rule involving: (1) significant disruption of agricultural operations, (2) intentional harassment of die employer or employees, or (3) intentional or reckless disregard of the rule. For the reasons set forth below, with regard to one of the allegations, the Board finds that Mehl Berry Farms has met the standard set forth in *Dutra Farms.*

According to the supporting declarations, on July 25, 1997, at shortly before noon, four UFW organizers came to the entrance of Cluff Ranch and announced that they were there to take access on behalf of the UFW. Declarant Salvador Romero, supervisor of the Employer's strawberry harvesting crew, asked diem for papers giving them the right of access. The four UFW representatives replied that they had the proper papers but refused to produce them. After being reminded that they could not take access without die proper documentation, two of the four stated loudly and aggressively: "No importa" ("It does not matter"). Romero then called his employer, Ed Mehl, who advised him that he had received no notice that a notice of intent to take access (NA) had been filed with the ALRB. Romero so advised the four UFW people, who, after conferring with one another, announced that they did not care and would take access anyway. They then entered the fields and approached the workers. One of the organizers, speaking hi a loud and angry voice, told the workers that they would be fired by Mehl once they turned fifty years of age and that if they did not sign up now with the UFW they would not have jobs because die union shortly would be owning die fields. Within a short time, a deputy sheriff, who had been called by Mehl, arrived. Several minutes later, the UFW

organizers left. The declaration of Jose Alberto Romero, a harvesting crew foreman, is consistent with that of Salvador Romero.

Declarant Ed Mehl did not witness the above events, though his version of his conversation with Salvador Romero is consistent with Romero's account. According to Mehl, he spoke on the phone with the sheriffs deputy and related to him his understanding that access is not available until the proper notice is filed with the ALRB and that he had no knowledge of that having happened. Mehl states that the deputy told him that the UFW organizers told him die proper papers had been filed but they were unwilling or unable to provide any documentation.(5) Mehl also states that his attorneys told him that an employee of the regional office of die ALRB had confirmed that no notice of intent to take access was filed until July 31, 1997.(6)

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[5]Since the requirements for a prima facie case set forth in *Dutra Farms* include declarations within the personal knowledge of the declarant, the sheriffs report has not been considered in determining whether to set this matter for hearing.

[6]We take administrative notice that the NA retained in official Board files contains a date stamp showing that it was filed on July 31, 1997.

## DISCUSSION

### Taking Access Prior to Filing of NA

Regulation 20900, subdivision (e)(l)(B), states that each thirty-day access period shall commence when the labor organization files the NA in the appropriate regional office, with proof of service on the employer.[7] It appears from the declarations that the UFW may have served the NA on the employer, but neglected to file it with the regional office prior to taking access. Further, the declarations (which are considered to be true at this stage of [he proceeding) support the conclusion that the UFW agents exhibited a callous disregard as to whether the necessary filing had been accomplished. Consequently, the Board finds a prima facie case of intentional or reckless disregard for the access rule and will set this allegation for hearing.

### Disruption of Operations

Though it is asserted in the motion to deny access that the alleged conduct of the access takers disrupted operations, the declarations contain no facts supporting such disruption. Therefore, this allegation will not be set for hearing.

### Intentional Harassment

In *Gargiulo, Inc.* (1996) 22 ALRB No. 9, the Board held that, in light of the provision of die access regulation stating that speech itself shall not be considered disruptive conduct, threats hi and of themselves, though deplorable, do not violate the access rule.

[7]The standard practice hi the Board's regional offices is to immediately notify employers by telephone when an NA if filed, though the Board's regulations do not require such notification for die NA to be valid.

Instead, intentional harassment is established where the facts reflect that the union agents took access not with the intent to communicate with employees and gather their support, but with an ulterior motive to harass. Further, the Board explained that the election objection and unfair labor practice processes are better suited to deal with allegations of threats and other unprotected speech.

In *Gargiulo, Inc.,* the Board declined to set for hearing an allegation of threats of job loss similar to those alleged here because there were no facts alleged which indicated that the union agents entered with the intent to harass rather than to communicate (however ineffectively) with employees. There is nothing to distinguish this case; therefore, the allegations of threats will not be set for hearing. This result does not reflect any insensitivity on the part of the Board with regard to the seriousness of such allegations. Rather, it simply reflects the Board's view that such allegations are more appropriately and effectively dealt with hi the context of election objections or unfair labor practices.

## ORDER

The following question shall be set for hearing:

> On July 25, 1997, at Cluff Ranch, did agents of the UFW show intentional or reckless disregard for the Board's access regulation by taking access without regard to whether lawful access had yet been triggered by the filing of the Notice of Intent to Take Access with the appropriate regional office of the ALRB?

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

Thereafter, the Investigative Hearing Examiner will issue a recommended decision to which any party may file exceptions with the Board.

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

DATED: September 25, 1997[8]

MICHAEL B. STOKER, Chairman

IVONNE RAMOS RICHARDSON, Member

LINDA A. FRICK, Member

TRICE J. HARVEY, Member

[8]Member Daniel did not participate in this Decision.

# CASE SUMMARY

Mehl Berry Farms (UFW)

Case No. 97-PM-l-SAL
23 ALRB No. 9

## Background

Mehl Berry Farms (Employer) filed a motion to deny access seeking to bar the United Farm Workers of America, AFL-CIO (UFW) from taking access to all of the Employer's ranches for one year. The UFW filed a response opposing the motion. The Employer alleges that, on July 25, 1997, four UFW organizers arrived at the entrance to Cluff Ranch and announced that they were there to take access, even though no Notice of Intent to Take Access (NA) had been filed with an ALRB regional office, as required by regulation. According to the declarations filed with the motion, the UFW organizers responded "no importa" ("it does not matter") and proceeded to take access after being told that they could not take access without proof of the necessary filing. Also included in the accompanying declarations are allegations that one of the organizers told the workers that the Employer would fire them once they reached fifty years of age and that they would lose their jobs if they did not sign up with the UFW.

## Board Decision

After taking administrative notice that the NA was not filed until July 31, 1997, the Board found the Employer's declarations (which are taken as true at this stage of the proceeding) sufficient to establish a prima facie case that the UFW organizers showed an intentional or reckless disregard for the Board's access regulation by taking access without regard to whether
lawful access had yet been triggered by the filing of the NA with the appropriate regional office.

The Board declined to set for hearing the allegation that the organizers disrupted the Employer's operations, because the declarations contained no facts supporting this allegation. The Board also declined to set for hearing the allegations concerning threats made by the organizers, finding that, in light of the provision of the access regulation stating that speech itself shall not be considered disruptive conduct, threats in and of themselves, though deplorable, do not violate the access rule. The Board explained that the election objection and unfair labor practice processes are better suited to deal with allegations of threats and other unprotected speech.

In addition, the Board announced that it would modify the procedures governing the filing of motions to deny access to eliminate responses from the opposing party at the initial stage of the proceeding. The Board explained that such responses are not allowed with regard to election objections, on which the motion to deny access procedures are based and, hi light of the fact that the moving party' s declarations must be presumed to be true for the purpose of determining whether a hearing is warranted, responses at this stage of the proceeding are irrelevant and simply delay resolution of the dispute.

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