

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

K. K. ITO FARMS,)	
)	
Employer,)	
)	
and)	
)	
UNITED FARM WORKERS OF AMERICA,)	No. 75-RC-6-M
AFL-CIO,)	
)	
Petitioner,)	2 ALRB No. 51
)	
and)	
)	
WESTERN CONFERENCE OF TEAMSTERS,)	
AND AFFILIATED LOCALS,)	
)	
Intervenor.)	
)	

Following an election held on September 11, 1975, in which the United Farm Workers of America, AFL-CIO ("UFW") received a majority of votes cast,^{1/} the employer filed objections to the election. The issues set for hearing were (1) whether UFW organizers entered upon the employer's property in violation of state trespass laws, (California Penal Code, Section 602) between August 11, 1975 and August 29, 1975, the effective date of

^{1/}The Tally of Ballots showed the following: UFW - 55; Western Conference of Teamsters - 1; No Labor Organization - 43; and Challenged Ballots - 7. The challenged ballots are not sufficient in number to be determinative of the outcome of the election.

Board's "access" regulation,^{2/} and, if so, whether such action constitutes misconduct warranting the setting aside of the election; and (2) whether, between August 29, 1975 and September 11, 1975, UFW organizers entered the employer's property at times and in numbers beyond that provided for in the "access" regulation, and, if so, whether such "excess access" constitutes misconduct warranting the setting aside of the election.

^{2/} The access regulation, 8 California Administrative Code Section 20900(5), provides as follows:

Accordingly, the Board will consider the rights of employees under Labor Code Section 1152 to include the right of access by union organizers to the premises of an agricultural employer for the purpose of organizing, subject to the following limitations:

(a) Organizers may enter the property of an employer for a total period of 60 minutes before the start of work and 60 minutes after the completion of work to meet and talk with employees in areas in which employees congregate before and after working.

(b) In addition, organizers may enter the employer's property for a total period of one hour during the working day for the purpose of meeting and talking with employees during their lunch period, at such location or locations as the employees eat their lunch. If there is an established lunch break, the one-hour period shall include such lunch break. If there is no established lunch break, the one-hour period may be at any time during the working day.

(c) Access shall be limited to two organizers for each crew on the property, provided that if there are more than 30 workers in a crew, there may be one additional organizer for every 15 additional workers.

(d) Upon request, organizers shall identify themselves by name and labor organization to the employer or his agent. Organizers shall also wear a badge or other designation of affiliation.

(e) The right of access shall not include conduct disruptive of the employer's property or agricultural operations, including injury to crops or machinery. Speech by itself shall not be considered disruptive conduct. Disruptive conduct by particular organizers shall not be grounds for expelling organizers not engaged in such conduct, nor for preventing future access.

Access Prior to August 29

Whether entry onto an employer's property by a labor organization prior to the effective date of the Board's access regulation constitutes violation of state trespass laws is not a question which may properly be entertained by this Board. Notwithstanding the jurisdictional limitation, however, it is appropriate for this Board to review such incidents of alleged access to determine whether the conduct warrants the setting aside of the election because it involved coercion or intimidation of workers which interfered with their free choice of a collective bargaining representative. The uncontroverted evidence with respect to pre-August 29 access is that on each of 10 days prior to August 29, the UPW organizers came onto the employer's premises during the workday^{3/} to solicit employee support. On one occasion, a mobile news unit from a Los Angeles television station arrived, seemingly accompanied by UFW representatives. This is the only incident for which there is direct evidence that field work was disrupted. Mr. Kenji Ito, testified that he arrived after the newsman had begun filming and that some employees had ceased working in order to observe this activity while another group of employees appeared to have been posed by the cameraman. The group of outsiders left shortly after requested to do so by Mr. Ito. There is no evidence that the organizational activities were anything but peaceful and nondisruptive.

We conclude that the record does not support a finding of pre-regulation access which was coercive or intimidating of

^{3/}Several UFW witnesses testified that organizers only entered the fields during lunch or break times, not while employees were working.

or interfered with their exercise of free choice. Samuel S. Vener Co., 2 ALRB No. 10 (1975). Accordingly, the objection is dismissed.
Access after August 28, 1976

The evidence with respect to all the alleged incidents of access by UFW organizers to the employer's property at times and in numbers beyond that permitted by the access regulation comes almost solely from one employer witness, Kenji Ito. Mr. Ito's testimony regarding UFW organizers' access to the employer's property between the adoption of the access regulation on August 29 and the election on September 11 can be summarized as follows^{4/} (access is to one crew of approximately 30 workers unless otherwise noted):

- 8/29 - none
- 8/30 - 2 organizers - at about noon
- 8/31 - none
- 9/1 - none (initially testified 2 organizers at noon then changed testimony)
- 9/2 - 2 organizers - sometime between 1:00 and 2:00 p.m.
- 9/3 - 2 organizers at the Vacca ranch - at about noon and sometime in the morning but he doesn't remember when
 - 2 organizers at the Home ranch - sometime during the afternoon but he doesn't remember when
- 9/4 - 2 organizers - sometime between 11:00 and 1:00 (he does not allege that organizers were present for more than one hour, simply that they took access sometime during the specified two hour period)
- 9/5 - 2 or 4 organizers, doesn't know how many - sometime between 11:00 and 1:00
- 9/6 - none
- 9/7 - 2 or 4 organizers, doesn't know how many - sometime between 10:00 and 11:00
- 9/8 - 4 organizers - sometime between 11:30 and 12:45
- 9/9 - 2 or 3 organizers, doesn't know how many - at Vacca about 11:00 (but then says he is not sure of the time) and at Home about noon - Home had both a field crew and on-farm packing shed crew
- 9/10 - 4 or 5 organizers - at the Home ranch - somewhere between 11:30 and 1:00

^{4/}Mr. Ito testified that neither he, nor to his knowledge, anyone else, kept any record of the times, dates, and numbers of organizers alleged to have entered the employer's property between August 11 and September 11. Consequently, all Mr. Ito's testimony is solely from memory. He testified, with respect to each date, how many UFW organizers came onto the property and at what time or the day. This testimony was given on December 4, some two to three months after the alleged incidents occurred, and was vague and uncertain in numerous places.

Mr. Ito also testified with respect to whether there is an established lunch break but his testimony is unclear. On cross-examination, he testified that on the average most employees take their half-hour lunch break between 12:00 and 12:30 p.m., but some employees take their lunches on various days at different times, ranging from 11:00 a.m. to 1:30 p.m. On redirect examination, Mr. Ito was asked when the regularly scheduled lunch period was and he replied "about 12:00 noon to 12:30 p.m."

Given the uncertainty of all the time specifications, coupled with the uncertainty in the record with regard to the time of the employees' lunch break, we cannot say that Mr. Ito's testimony supports a finding of any substantial access outside the time limits of the access regulation except for two occasions,^{5/} September 8 and 10, on which it appears that there were more than the permitted number of organizers present. Four UFW witnesses, however, testified without citing details of the specific instances that UFW organizers came onto the property of the employer during morning or afternoon breaks, if not during the lunch break. Mr. Ito testified that employees got a 10-minute break each morning and afternoon, the exact timing of which was left to each foreman, but generally occurring between 9:30 and 10:00 a.m. and between 3:00 and 3:30 p.m.

^{5/}Mr. Kaijo Ito, brother of Kenji Ito and co-owner of the employer partnership, testified also that on September 10, four UFW organizers entered the Vacca ranch property of the employer during working hours just as he was throwing Teamster organizers off the property and that the UFW organizers protested to him that he had allowed Teamster organizers to be present during working hours. Ito then testified that after speaking with him, the UFW organizers went into the fields and talked with the workers, apparently without any effort by him to stop them.

The testimony offered by the UFW indicates that the UFW interpreted the mid-day provision of the access rule to allow one hour's access at any time during the day that employees had a break, rather than limited to the hour surrounding the time that employees ate their lunches. We conclude that that interpretation of the rule is incorrect.

Subsection 5(b) of the access rule, quoted in footnote 2, provides that organizers may enter the employer's property for one hour during the working day "for the purpose of meeting and talking with employees during their lunch period" (emphasis added). The rule then goes on to provide that if there is an established lunch break, the one-hour period shall include such lunch break, but if there is no established lunch break, "the one-hour period may be at any time during the working day" (emphasis added). Since the mid-day access provision has as its focus access to employees to talk with them while they are taking their lunch break, we interpret Subsection 5(b) to grant access during a one-hour period which encompasses the established lunch time, or if there is none, the time when employees are actually taking their lunch break, whenever that occurs during the day.

Thus, we conclude that there is evidence in this case that UFW organizers took access to the employer's property at times beyond those permitted by the access regulation. There remains the question of whether such "excess access" warrants the setting aside of the election.

While the access regulation is stated in terms of defining rights of employees under Labor Code Section 1152 and therefore acts as a limitation on employer conduct, we think that the clear import of its specification of times for access and numbers of organizers is that it is a limitation on union conduct as well. We do not find, however, that any interference by an employer with the fullest exercise of the right of access granted by the regulation nor any access taken by a labor organization which exceeds the limitations of the access regulation per se constitutes misconduct affecting the results of the election and thus warranting the setting aside of the election. Instead, allegations of violation of the access regulation by either an employer or a labor organization will be assessed in each case to determine whether it is of such character as to affect the employees' free choice of a collective bargaining representative.^{6/}

We recognize of course that violations of the access rule by employers and labor organizations are not strictly comparable in terms of their effect on the fair conduct of an election. The purpose of the access rule is to insure that workers have access to information necessary to make an informed

^{6/}See John V. Borchard Farms, 2 ALRB No. 16 (1976) in which we held that a "minimal and insubstantial encroachment" upon the employer's premises beyond the scope to the rule was not grounds for setting aside the election. See also Toste Farms, Inc., 1 ALRB No. 16 (1975). Similarly, see Certified Eggs, Inc., 1 ALRB No. 5 (1975) in which we held that a single isolated denial of access to a union after several days in which access was permitted is not conduct warranting the setting aside of the election.

choice about collective bargaining representation. Violations of the access regulation by an employer may involve depriving employees of information which would aid them in deciding whether they wish to be represented by a union in collective bargaining and, if so, by what union. Violations by a union in the taking of "excess access" may mean simply that employees are exposed to more information from which to make their electoral choice than they would have been exposed to if the access regulation were complied with.

In this case we are faced with a situation in which, due apparently to a misinterpretation of the limitations of the access regulation, the UFW entered the employer's property and spoke with employees at times other than the one hour surrounding the lunch period. This is not a case in which it appears that the opposing union was disadvantaged by such "excess access" since the record indicates that Teamster union organizers not only had access to the property but appear also to have exceeded the bounds of the access regulation on more than one occasion.^{7/} Furthermore, there is nothing in the record to indicate that the "excess access" was of such character as to have had an intimidating or coercive impact on employees or in any other way affected the outcome of the election.

By the foregoing, we do not mean to condone the action of union organizers who enter an employer's property at times and in numbers beyond that permitted by the access regulation.

^{7/}Although there was testimony in the record on access to the employer's property taken by the Teamsters union, "excess access" by Teamster organizers was not alleged as an objection to the election and thus was not fully litigated at the hearing. We, therefore, make no finding on this point.

On the other hand, we are statutorily bound to certify elections unless there are sufficient grounds to deny certification, that is, unless the election was tainted by misconduct affecting the outcome of the election. However much we condemn the failure of a party to abide by the access regulation in good faith, we cannot say, on the facts of this case, that the results of the election were affected by the misconduct. It is entirely inappropriate for this Board to refuse to certify a collective bargaining representative chosen by employees in a fair and free election based upon misconduct which we do not conclude affected the employees' free choice. Accordingly, this objection is dismissed.

The United Farm Workers of America, AFL-CIO, is certified as the collective bargaining representative of all agricultural employees of K.K. Ito Farms in Ventura County.

Dated: October 29, 1976

Gerald A. Brown, Chairman

Richard Johnsen, Jr., Member

Roger M. Mahony, Member

Robert B. Hutchinson, Member

Ronald L. Ruiz, Member