

**STATE OF CALIFORNIA**

**AGRICULTURAL LABOR RELATIONS BOARD**

In the Matter of:	)	
	)	
SUN PACIFIC COOPERATIVE	)	
INCORPORATED,	)	Case No. 2008-PM-001
	)	
Employer	)	34 ALRB No. 4
and	)	
	)	(August 1, 2008)
UNITED FARM WORKERS	)	
OF AMERICA,	)	
	)	
Union,	)	
_____	)	

DECISION AND ORDER SETTING MATTER FOR HEARING

On July 25, 2008, Sun Pacific Cooperative Incorporated (Employer or Sun Pacific) filed a motion pursuant to section 20900(e)(5)(A) of the Board’s regulations to deny access by the United Farm Workers of America (UFW or Union) and by specified UFW organizers. The motion alleges that the UFW and its agents violated the Board’s regulations pertaining to access and is accompanied by a number of supporting declarations.

Specifically, the Employer alleges that on July 10, 2008 at approximately 8:00 a.m., during work hours, two UFW agents entered the property at Sun Pacific’s Dulce Ranch without having first filed a Notice of Intent to Take Access, and disrupted the work of Sun Pacific employees by handing out

flyers about an upcoming meeting of the UFW.<sup>1</sup> The Employer alleges that the UFW's representatives were told to leave the property by Sun Pacific Supervisors, but they did not do so, and "continued to harass" employees by yelling at them about the meeting. The Employer further alleges that when one of the organizers left the property in her vehicle, she did so in a fast and dangerous manner, endangering employees and the ranch property.

The Employer is seeking an order from the Board denying access to the UFW and the specific UFW agents involved in this matter for a period of at least sixty (60) days.

In support of its motion, the Employer submitted a number of declarations from workers in two crews who were engaged in packing grapes on Sun Pacific's ranch on July 10, as well as declarations from two crew bosses. The employees describe seeing at least two UFW representatives handing out flyers to employees. One of Sun Pacific's human resources administrators who witnessed one of the UFW representatives leaving the ranch in her vehicle and who spoke to the two representatives on the side of the road outside the ranch property also submitted a declaration.

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<sup>1</sup> The Employer submitted a copy of the flyer with its motion as an exhibit. It is in Spanish and gives notice of a "junta emergencica para todo campesino" (emergency meeting for farmworkers) on July 10 and 11, 2008 in Delano and Lamont. The subject of the meetings is stated to be the recent heat related deaths of several farmworkers, and urges that "es tiempo de unirnos para protegernos" (it is time to unite to protect ourselves). The flyer has the UFW's black eagle symbol printed prominently at the top of the page and indicates that interested parties should call the UFW for more information.

## DISCUSSION

The Board's regulations give union representatives a limited right to take access to an employer's property in order to meet with agricultural employees and seek their support. Such access is permitted under procedural, time and manner restrictions set forth in the regulations. (*Navarro Farms* (1996) 22 ALRB No. 10, *Mehl Berry Farms* (1997) 23 ALRB No. 9.)<sup>2</sup>

Board regulation section 20900(e)(5)(A) authorizes the Board to bar labor organizations as well as individual organizers who violate the access regulations from taking access for a period of time to be determined by the Board following due notice and a hearing. The Board set forth the procedure for filing motions to deny access under section 20900(e)(5)(A) in *Dutra Farms* (1996) 22 ALRB No. 5. In *Dutra Farms* the Board held that an evidentiary hearing will be set upon the filing of a motion to deny access accompanied by supporting declarations reflecting facts which, if uncontroverted or unexplained would establish a prima facie violation of the access regulations.

A motion to deny access will be granted where there is a violation of the access regulations involving: 1) significant disruption of agricultural operations, 2) intentional harassment of the employer or employees, or 3) intentional or reckless disregard for the access rules. (*Ranch No. 1* (1979) 5 ALRB

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<sup>2</sup> The Board's access regulations are found at California Code of Regulations, Title 8 section 20900 et seq.

No. 36, *Gargiulo, Inc.* (1996) 22 ALRB No. 9, *Navarro Farms* (1996) 22 ALRB No. 10, *Mehl Berry Farms* (1997) 23 ALRB No. 9.)

Alleged Taking of Access Prior to the Filing of a Notice of Intent to take Access

The Employer alleges that there was no Notice of Intent to Take Access served on the Employer and filed with the ALRB's Visalia Regional Office prior to the UFW representatives coming on to Employer's property. Several declarations support this allegation. Guadalupe Soto<sup>3</sup>, a crew boss stated in her declaration that when she saw one of the UFW representatives speaking with her crew, she called a supervisor, Art Macias, who told her that the UFW representatives did not have the right to access. Ms. Soto stated that she asked the female UFW representative to leave, but that she ignored her and continued handing out flyers to the workers at the grape tables for an additional 10 minutes.

Similarly, Crew Boss Liborio Guerrero stated that both he and a supervisor named "Norma" asked the male UFW representative who had approached his crew to leave, but the representative ignored him and continued to pass out flyers for an additional five minutes.

Ana Lopez, a human resources administrator, stated in her declaration that Mr. Macias told her the representatives did not have authorization to be on the property. When Ms. Lopez spoke to the UFW representatives as they were parked on the side of the highway outside the ranch, she told the

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<sup>3</sup> In the declaration of the translator who translated Guadalupe Soto's declaration, Soto is first referred to as "she" and then as "he." We will assume the second pronoun is in error.

representatives that they did not currently have the right to access. One of the representatives replied to Ms. Lopez that she was “on the phone trying to get access at that very moment.” Ms. Lopez further stated in her declaration that as far as she was aware the UFW had not filed a Notice of Intent to Take Access at Sun Pacific in 2008.

The declarations (which are presumed to be true at this stage of the proceeding for the purpose of determining whether to set the matter for hearing) support the conclusion that at least two UFW representatives entered Sun Pacific’s property without first filing a Notice of Intent to Take Access and did not leave when asked by company supervisors. The Board has found that this constitutes a prima facie case of intentional or reckless disregard for the Board’s access rule. (*Mehl Berry Farms, supra* 23 ALRB No. 9.) Therefore, this allegation will be set for hearing.

Alleged Violation as to Time of Access

Even if a Notice to Take Access had been filed, the declarations also support the allegation that the UFW representatives entered the property at a time during the workday not permitted under the access regulations. Section 20900 (e)(3)(A) and (B) set forth the time and place organizers may take access. Specifically, union representatives may take access for one hour before the work day begins or one hour after the workday ends. Union representatives may also take access for one hour during the lunch period.

Crew Boss Guadalupe Soto's declaration indicates that she saw the UFW's vehicle enter the ranch property at approximately 8:00 a.m. when her crew was already engaged in packing grapes at tables. The declarations from workers in two Sun Pacific crews consistently state that a UFW representative was seen handing out flyers sometime between 8:00 a.m. and 8:40 a.m. Two workers, Juana Hernandez and Froylan Silva, state that their morning break is normally taken at 9:00 a.m. and that the UFW representatives were on the property about twenty minutes before break time.

Even if a Notice of Intent to Take Access had been filed, the declarations stating facts about the time of day UFW representatives were on the property establish a prima facie violation of the access regulations, and therefore this allegation will also be set for hearing.

#### Alleged Harassment of Sun Pacific Employees

Employer alleges that the two UFW representatives intentionally harassed Sun Pacific employees by yelling at them in a manner meant to intimidate and scare them. We find that the declarations submitted do not support this allegation.

Although the declarants consistently stated that they heard the male and female UFW representatives yelling or shouting that there had been a recent heat-related death of a farmworker and that the UFW was conducting a meeting about that issue, none of the declarations indicate that workers felt harassed or intimidated. Some workers described personally receiving the UFW's flyer, but

there was no indication that this exchange was intimidating in any way. Several of the declarants stated that the female UFW representative shouted that workers should take care of themselves and drink water, but there was no indication that workers felt frightened or alarmed.

The Board has stated that intentional harassment is established where the facts reflect that organizers or union agent took access not with the intent to communicate with employees or gather their support, but with an ulterior motive to harass. (*Gargiulo, Inc.*, supra, 22 ALRB No. 9; *Mehl Berry Farms*, supra, 22 ALRB No. 9.) Although the UFW's agents were not, strictly speaking, engaged in organizing and soliciting support prior to an election, it is apparent from the declarations that they were trying to communicate with workers about working conditions, and this is consistent with the purposes of the access regulation.

Because the declarations submitted do not support a prima facie case of intentional harassment of Sun Pacific employees, this allegation will not be set for hearing.

#### Alleged Disruption of Agricultural Operations

Employer alleges that the presence of the UFW representatives caused a significant disruption of Sun Pacific's agricultural operations. The declarations submitted do not support this allegation.

Several of the declarations indicate that the UFW representatives were on the property distributing flyers among the workers at the grape tables for

only a brief time-- between five and fifteen minutes. Crew Boss Soto stated that the female UFW representative was on the property about 10 minutes. Several declarations state that once the representatives were asked to leave they stayed just a “few minutes” and then left. The declarations indicate that if there were no workers at a grape table, the UFW agents left the flyers on the table and moved on. There is no indication that workers stopped packing grapes for any amount of time longer than it took to receive a flyer from the UFW agents.

The Board has held that brief disruptions are not “significant” within the meaning of the access regulations. (*Gargiulo, Inc., supra*, 22 ALRB No. 9.) Moreover, section 20900(e)(4)(C) of the Board’s regulations states that speech by itself shall not be considered disruptive conduct.

The Employer also alleges that the female UFW agent drove off the property in a fast and dangerous manner, but does not describe how this constituted a significant disruption of its operations in violation of the access regulations. Ana Lopez stated in her declaration that as she was following the UFW representative’s car on the road leading off the ranch, the UFW agent was going approximately 25 miles per hour which was 10 miles per hour over the posted speed limit on the ranch. However, there is no indication in the declarations that the UFW agent drove in a manner that endangered workers in the field, nor is there any indication that ranch property was damaged.



Because the declarations submitted do not support a prima facie case of significant disruption of Sun Pacific's agricultural operations, this allegation will not be set for hearing.

ORDER

The following questions shall be set for hearing:

On July 10, 2008 did agents of the UFW show intentional or reckless disregard for the Board's access regulations by taking access at Sun Pacific's Dulce Ranch without regard to whether lawful access had been triggered by the filing of a Notice of Intent to Take Access with the appropriate regional office?

Even if a Notice of Intent to Take Access had been properly filed and served, did agents of the UFW show intentional disregard for the Board's access regulations prescribing the time and place of access by taking access during the workday at a time other than during the times specifically permitted by the access regulations?

The Employer shall have the burden of proving that the Union and/or its agents engaged in 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. Following the hearing the Investigative Hearing Examiner (IHE) will issue a recommended decision to which any party may file exceptions with the Board.

The Executive Secretary shall issue a Notice of Hearing setting the date, place and time of the hearing. Prior to the hearing, the Board directs the parties to participate in a telephonic settlement conference with the IHE for the purpose of exploring voluntary settlement of this matter as encouraged by

regulation section 20900 (e)(2).<sup>4</sup> The Board recognizes the necessity for expeditious resolution of disputes over access, therefore the Board requests that the Executive Secretary treat this as a priority matter and schedule the telephonic settlement conference and the hearing on the soonest available dates.

Dated: August 1, 2008

GUADALUPE G. ALMARAZ, Chair

GENEVIEVE A. SHIROMA, Member

CATHRYN RIVERA-HERNANDEZ, Member

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<sup>4</sup> On July 29, 2008, the UFW filed a Request for an Expedited Telephonic Settlement Conference, Or in the Alternative, Permission to Submit a Proposed Settlement to the Board. The Board declines to grant the UFW's request or impose the conditions suggested by the UFW on the settlement conference. However, the Board believes that the above order will achieve the desire expressed by the UFW to expedite the resolution of this dispute. The Board also encourages the parties to attempt to reach a voluntary settlement of this matter on their own prior to the settlement conference call or the hearing should a hearing become necessary.

## CASE SUMMARY

**SUN PACIFIC COOPERATIVE,  
INC.**

**Case No. 2008-PM-001  
34 ALRB No. 4**

On July 25, 2008, Employer, Sun Pacific Cooperative, Inc. (Employer) filed a motion to deny access by the United Farm Workers of America (UFW). Employer alleged in its motion that two UFW agents entered Employer's property during work hours without first filing a Notice of Intent to Take Access (NA) with the appropriate ALRB regional office. The motion alleged that the two individuals disrupted employees' work when they handed out flyers about an upcoming UFW meeting about the recent heat-related deaths of several farmworkers. The motion also alleged that the UFW agents yelled at and harassed employees, and that one of the agents drove off the property in a reckless manner, endangering the Employer's property and employees. The Employer requested that the Board deny access to the UFW and the named representatives for 60 days. The Employer submitted a number of declarations in support of its motion as required by *Dutra Farms* (1996) 22 ALRB No. 5.

### **Board Decision**

The Board found that declarations submitted by the Employer along with its motion supported allegations that UFW agents came on the property without first filing an NA, which constituted a prima facie case of intentional or reckless disregard for the Board's access rule. The Board therefore set that allegation for hearing. The Board also set for hearing the allegation that the UFW agents came on the property during work hours in violation of the Board's access rule.

The Board found that Employer's declarations did not support a prima facie case that the UFW representatives had harassed employees, significantly disrupted Employer's agricultural operations or endangered Employer's property or employees; therefore, the Board did not set these allegations for hearing.

The Board also ordered that the parties participate in a telephonic settlement conference prior to the hearing for the purpose of exploring voluntary settlement of the matter as encouraged by Board regulation section 20900 (e)(2).

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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