

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:)	
)	
SUN PACIFIC COOPERATIVE)	
INCORPORATED,)	Case No. 2008-PM-002
)	
Employer,)	34 ALRB No. 5
and)	
)	(October 29, 2008)
UNITED FARM WORKERS)	
OF AMERICA,)	
)	
Labor Organization.)	
_____)	

DECISION AND ORDER

On October 21, 2008, Sun Pacific Cooperative Incorporated (Employer or Sun Pacific) filed a motion pursuant to section 20900(e)(5)(A) of the Agricultural Labor Relations Board’s (ALRB or Board) regulations¹ to deny access by the United Farm Workers of America (UFW) and its agents at the Employer’s locations within the area covered by the Visalia Regional Office of the ALRB for a period of at least 60 days. The Employer alleges that a UFW organizer, during the period of on or about September 15 to September 17, 2008, violated the Board’s access regulations by entering the property and disrupting

¹ The Board’s regulations are codified at California Code of Regulations, Title 8, section 20100 et seq.

work prior to scheduled meal breaks and by remaining on the property and speaking with employees after the appropriate period for access, either prior to work or during a meal break, had concluded.²

The Board's access regulation gives union representatives, upon the filing of a Notice of Intent to Take Access, a limited right to take access to an employer's property in order to meet with agricultural employees and seek their support. Section 20900, subdivisions (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 during the lunch period.

Section 20900, subdivision (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, subdivision (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.

² The Employer filed a motion to deny access on July 25, 2008 that resulted in a decision by the Board (*Sun Pacific Cooperative Incorporated, Inc.* (2008) 34 ALRB No. 4) setting some of the allegations for hearing. However, prior to hearing the parties entered into a settlement agreement and the Employer's subsequent motion to withdraw its motion to deny access was granted.

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

DISCUSSION

The declarations submitted in support of the motion, which are deemed true for the purpose of determining whether the allegations establish a prima facie violation warranting an evidentiary hearing, reflect the following. Several declarants provide similar descriptions of a UFW organizer in the work area outside the allowable periods of access. The organizer is described as 5' 5" to 5' 8", with black hair and dark skin and a mustache. One declarant recognized him as one of the organizers who had been on the property in July 2008. Another declaration reflects that Oscar Mejia, who was identified as one of the organizers who was one of the subjects of the previous Motion to Deny Access, served the Notice of Intent to Take Access on September 3, 2008. It is suggested in the motion that Mr. Mejia is the individual referred to in all the declarations.

The declarations consistently reflect that the organizer was on the property on one or more days during the period of September 15-17, 2008 within a few feet of the crews for 5 to 15 minutes prior to the regular lunch break scheduled at 11:00 a.m. While some declarants state that the organizer waited until the lunch

break was announced before engaging the employees, one declarant indicates that the organizer appeared to speak with employees briefly prior to the announcement as he was walking through the area, while another reflects that the organizer merely inquired about the crew number, crew boss, and break time. The declarations also indicate that the organizer on one occasion continued to talk with employees after the work day began and later that day continued to talk to them after the lunch break concluded. In both cases, no more than six minutes had elapsed since the permissible access period had concluded, though the organizer did not leave until a crew boss told him his time was up.

The Board has held that briefly exceeding the proper access periods does not constitute “significant disruption” of agricultural operations. Moreover, section 20900, subdivision (e)(4)(C) of the Board’s access regulation states that speech by itself shall not be considered disruptive conduct. In *Gargiulo, Inc.*, *supra*, 22 ALRB No. 9, at page 9, the Board concluded that an entry into the fields lasting seven minutes did not constitute significant disruption. In contrast, the Board held that forty minutes was significant. (*Id.* at p. 11.) In *Ranch No. 1*, *supra*, 5 ALRB No. 36, at pages 4-5, the Board found that an organizer who stayed in the fields for 1 ½-2 hours had by definition significantly disrupted operations and had shown reckless disregard for the access rules. Moreover, though the Investigative Hearing Officer in that case found that on another occasion the organizer remained in the fields for 10-25 minutes beyond the proper

access period the Board made no mention of that finding in granting the motion to deny access.

In this case, the declarations reflect that the organizer spoke with employees before or after the proper access period for no more than six minutes and there is no indication in the declarations that his waiting near the crew for 5-15 minutes prior to the meal break caused any disruption of work. In light of the above authorities, we cannot conclude that the brief overstay in the present case of five or six minutes in and of itself constituted a significant disruption of work. Nor is there any indication of intentional harassment of the employees or employer. This leaves the question of whether the alleged conduct constituted intentional or reckless disregard for the access rules. Indeed, this is the manner in which the Employer asserts the access regulation was violated.

Each of the alleged technical violations of the access regulation when viewed in isolation is de minimis and does not reflect an intentional or reckless disregard for the access rules warranting the granting of a motion to deny access. However, a pattern of consistently beginning access prior to the appropriate starting time or continuing to talk to employees for several minutes after the access period ends may well warrant the granting of such a motion.³ While the declarants indicate that the organizer arrived in the work area five-fifteen minutes prior to the meal break on at least two days, they reflect only one

³ Because the prior access dispute was settled without any admission of wrongdoing, the earlier allegations against Mr. Mejia may not be considered in determining if there was a pattern to his behavior.

day in which he actually engaged the employees outside the proper access period by twice continuing to speak with employees for several minutes after the access period ended. Further, he ceased as soon as it was pointed out to him that the access period had expired. From these limited circumstances, we cannot conclude that the organizer had an established pattern of committing de minimis violations of the access rules that reflects an intentional or reckless disregard for the access rules.

ORDER

For the reasons set forth above, the motion to deny access is DENIED for failure to show that denial of access is warranted under the standards set forth in *Ranch No. 1* (1979) 5 ALRB No. 36.

Dated: October 29, 2008

GUADALUPE G. ALMARAZ, Chair

GENEVIEVE A. SHIROMA, Member

CATHRYN RIVERA-HERNANDEZ, Member

CASE SUMMARY

**SUN PACIFIC COOPERATIVE,
INC.**

**Case No. 2008-PM-002
34 ALRB No. 5**

Background

On October 21, 2008, Sun Pacific Cooperative Incorporated (Employer) filed a motion pursuant to section 20900(e)(5)(A) of the Agricultural Labor Relations Board's (ALRB or Board) regulations to deny access by the United Farm Workers of America (UFW) and its agents at the Employer's locations within the area covered by the Visalia Regional Office of the ALRB for a period of at least 60 days. The Employer alleged that a UFW organizer, during the period of on or about September 15 to September 17, 2008, violated the Board's access regulations by entering the property and disrupting work prior to scheduled meal breaks and by remaining on the property and speaking with employees after the appropriate period for access, either prior to work or during a meal break, had concluded. 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.

Board Decision

The declarations accompanying the motion reflected that twice on the same day the organizer spoke with employees after the proper access period for no more than six minutes and that he arrived early on at least two occasions and waited near the crew for 5-15 minutes prior to the meal break, though there was no indication that his early arrival caused any disruption of work. Citing prior cases holding that briefly exceeding the proper access periods does not constitute "significant disruption" of agricultural operations, the Board concluded that the brief overstay in the present case of five or six minutes did not constitute a significant disruption of work. Nor was there any indication of intentional harassment of the employees or employer. Lastly, the Board concluded that the limited number of incidents recounted in the declarations did not establish a pattern of de minimis violations of the access rules that reflects an intentional or reckless disregard for the access rules. Therefore, the Board denied the motion to deny access.

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