

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:)
PINKHAM PROPERTIES,)
Respondent) No. 75-CE-88-F
)
) 3 ALRB NO. 15
)
and)
)
UNITED FARM WORKERS)
OF AMERICA, AFL-CIO,)
)
Charging Party.)
_____)

DECISION AND ORDER

On January 5, 1976, Administrative Law Officer Rudolf M. Michaels issued his decision in the above-entitled proceeding, finding that the Respondent (employer) had violated Section 20900 of the Regulations (Chapter 9, Title 8, California Administrative Code),^{1/} the so-called "access rule", and in so doing had committed an unfair labor practice within the meaning of Labor Code Section 1153 (a). His recommendation was that the Respondent be ordered to cease and desist from conduct violative of the provisions of Section 20900, supra. Thereafter the Respondent filed exceptions and a supporting brief. The General Counsel then filed its answer to the Respondent's exceptions and a supporting brief, and, concurrent therewith, cross-exceptions to the administrative law officer's decision and a supporting brief. Respondent filed an answering brief to the General Counsel's cross-exceptions. A copy of the administrative law officer's decision is attached.

^{1/}Unless specified to the contrary, all references to the regulations of the Board pertain to the regulations of August 28, 1975.

Having reviewed the administrative law officer's decision, the exceptions and supporting briefs, and the entire record in the case, the Board hereby adopts the findings, conclusions, and recommendations of the administrative law officer and includes, as part of the order, additional notice requirements as specified hereinafter.

The basic facts in this case are not in dispute.

According to a stipulation entered into by the employer, the General Counsel and the UPW [Charging Party and Intervenor], four UFW organizers took access to certain of the employer's agricultural property on September 26, 1975, at a time when the employees at that location were on their lunch break. The organizers, who were wearing UFW insignias, talked to the employees and handed them leaflets containing information about the UFW. The employees were part of one crew of 46 grape pickers and were divided into two groups, each working toward the-other from opposite ends of the field. While talking to some of these employees, two of the four organizers were arrested for trespassing. Although not so stipulated, it is clear from the testimony given at the hearing that the arrests followed a warning and were made as citizen's arrests by a representative of the employer. After the arrests were made the two organizers were taken into custody and jailed by deputies of the county sheriff.

I. RESPONDENT'S EXCEPTIONS

Respondent's exceptions to the administrative law judge's decision stem from two major arguments: first, that the access rule is invalid and, therefore, unenforceable; second, that, even if the access rule were valid, the union organizers failed to

comply with that rule and, hence, had no lawful right to be upon Respondent's property. The brief containing these arguments was filed prior to the California State Supreme Court decision in Agricultural Labor Relations Board v. Superior Court (1976), 16 Cal. 3d 392, 128 Cal. Rptr. 183; appeal dismissed 97 S. Ct. 33. (1976). There it was held that the access rule (8 California Administrative Code Section 20900) is valid from both a constitutional and a statutory standpoint. Consequently the three exceptions (5, 6 and 7) based on the supposed invalidity of the access rule need not detain us.

Respondent's remaining exceptions are as follows:

(1) The administrative law judge failed to find that a total of four union organizers were in the Respondent's field during the incident in question.

(2) The administrative law judge failed to find that the total number of union organizers in the Respondent's field exceeded the number allowed by Section 20900.5 (c) of the ALRB's regulations.

(3) The administrative law judge failed to find that the union organizers distributed literature while on the Respondent's property.

(4) The administrative law judge failed to find that Section 20900, et seq., of the ALRB's regulations does not allow union organizers to distribute literature while on the employer's property.

* * *

(8) The administrative law judge failed to conclude that, even if Section 20900, et seq., of the ALRB's regulations

were valid, the failure of the union organizers to comply therewith, in that they distributed literature and were in numbers greater than those allowed by the regulations,, obviated the Respondent's obligation to comply with Section 20900, et seq.

A review of the transcript shows that the parties had in fact stipulated that there were four organizers involved and that these organizers had distributed leaflets while on the employer's property. Nevertheless, as explained infra, the failure of the administrative law officer to make these findings does not affect the validity of his decision.

A majority of the Board reads Section 20900.5 (c) of the regulations as allowing an additional organizer for each additional 15 workers, or any part thereof.^{2/} See Tex-Cal Land Management, 3 ALRB No. 14 (1977), fn. 3. Therefore, given a single crew of 46 employees, the total number of organizers in the Respondent's field did not exceed the number allowed by Section 20900.5 (c) . Respondent's exception 2 is dismissed.

Exception 4 takes issue with the administrative law officer's refusal to find that Section 20900, et seq., of the regulations does not sanction the distribution of literature that was carried out by the four union organizers who came onto Respondent's property. However, this Board has held that the distribution of literature is an appropriate- form of organizing that is permitted under our regulations. Tex-Cal Land Management, supra. We therefore dismiss Respondent's exception 4.

^{2/}Regulations Section 20900.5 (c) [now Section 20900 (e) (4) (A) of the new regulations] reads as follows:

" c . Access shall be limited to two organizers for each work 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."

Respondent's final exception asserts the failure of the administrative law officer to find that the distribution of literature and the presence of an excess number of organizers serve as affirmative defenses to an unfair labor practice charge based on the denial of access. We have already determined, supra, that the distribution of literature on the employer's premises is permissible under our regulations and that the number of organizers who came onto the employer's property was not in excess of that allowed by the regulations. Thus, neither the number of organizers present nor the fact that literature was being distributed gave Respondent grounds for terminating access.

II. THE REMEDY

The administrative law officer recommended a single cease and desist order as the sole remedy in this case. The General Counsel's exceptions go to the alleged inadequacy of this remedial recommendation.

As we have previously held in Tex-Cal Land Management, Inc., 3 ALRB No. 14 (1977), it is our view that the reading of notices is an appropriate remedial provision in the agricultural labor context in this state. We therefore modify the administrative law officer's remedy to add the additional requirement that the attached notice to workers be read to assembled employees at the commencement of the 1977 harvest season by a company representative or by a Board agent, and that the Board agent be accorded the opportunity to answer questions which workers might have regarding the notice and their rights under the Act. In addition, we require that the notice in English and Spanish, be mailed to those employees on the Respondent's payroll for the week of September 26, 1975, that the notice be posted at the beginning of the 1977 harvest

season for a 60-day period and that the Respondent report to the regional director concerning the progress of the mailing process.

All of the above will best effectuate the policies of the Act.

Accordingly, IT IS HEREBY ORDERED that Respondents, their agents, and representatives shall:

1. Cease and desist from conduct violative of the provisions of Section 20900, Chapter 9, Title 8, California Administrative Code [Regulations of 1976].

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act:

(a) On or before March 31, 1977, mail the attached "Notice" to each employee employed by Respondent at any time during the week of September 26, 1975. Said notice to be translated into the primary languages of the affected employees and mailed to the employee at his or her last known address.

(b) Post the attached "Notice" [to be printed in English and Spanish] at the commencement of the 1977 harvest season for a period of not less than 60 days at appropriate locations proximate to employee work areas, including places where notices to employees are customarily posted.

(c) Have the attached "Notice" read in English and Spanish to assembled employees at the commencement of the 1977 harvest season by a company representative or by a Board agent and accord the Board agent the opportunity to answer questions which employees may have regarding the notice and their rights under Section 1152 of the Act.

(d) Notify the Fresno regional office, within 60 days after receipt of this order, as to what steps have been taken to comply with paragraph (a) above.

IT IS FURTHER ORDERED that allegations contained in the complaint not specifically found herein as violations of the Act shall be, and hereby are dismissed.

Dated: February 17, 1977

Gerald A. Brown, Chairman

Richard Johnsen, Jr., Member

Robert B. Hutchinson, Member

Ronald L. Ruiz, Member

NOTICE TO WORKERS

The Agricultural Labor Relations Board has told us that union organizers may enter our property to speak with you when you are eating your lunch and for an hour before and after work. We will not interfere with organizers who come here, You may talk with them freely.

The Agricultural Labor Relations Act is a law that gives all farm workers these rights:

1. To organize themselves,
2. To form, join, or help unions,
3. To bargain as a group and to choose whom they want to speak for them,
4. To act together with other workers to try to get a

contract or to help and protect one another, and

5. To decide not to do any of these things.

We recognize that the Agricultural Labor Relations Act is the law in California. If you have any questions about your rights under the Act, you can ask an agent of the Board. The nearest Board office is at 1685 E Street, Fresno, and its phone number is (209) 233-7761.

Dated:

By _____

(Name)

(Title)

PINKHAM PROPERTIES

BEFORE THE
AGRICULTURAL LABOR RELATIONS BOARD
STATE OF CALIFORNIA

| | | |
|--------------------------|---|---------------------|
| In the Matter of |) | |
| |) | |
| PINKHAM PROPERTIES, |) | |
| |) | |
| Employer and Respondent, |) | Case No. 75-CE-88-F |
| |) | |
| and |) | OAH No. N-7182 |
| |) | |
| UNITED FARM WORKERS OF |) | |
| AMERICA, AFL-CIO |) | |
| |) | |
| Charging Party and |) | |
| Intervenor |) | |
| |) | |
| _____ |) | |

ADMINISTRATIVE LAW OFFICER'S DECISION

This matter came on for hearing before Rudolf H. Michaels, a duly appointed Administrative Law Officer of the Agricultural Labor Relations Board of the State of California, on October 15, 1975, in Fresno, California.

The Petitioner was represented by Franklin P. Glenn and Leslie Balog, Counsel.

The Employer/Respondant was represented by Seyfarth, Shaw, Fairwaather & Geraldson, Joseph Herman, Esq., and Michael J., Machan, Esq., its attorneys.

The Intervenor was represented by Barry Winograd, Esq., its attorney and by Andres Hares and Gilbert Padilla.

Oral and documentary evidence and a stipulation were received, and the hearing was closed, but the record was held open to permit the filing of briefs.

Petitioner's brief was received on November 17, 1975

and was made part of the record as Exhibit 4.

Employer/Respondent's brief was delivered to the Board on November 13, 1975 but did not reach the Administrative Law Officer until December 12, 1975, at which time it was made part of the record as Exhibit B.

No brief was received from Charging Party/Intervenor.

The record was closed, the matter x-/as submitted, and the Administrative Law Officer makes the following decision:

FINDINGS OF FACT

^

I

On September 30, 1975, United Farm Workers of America filed a formal charge against Pinkham Properties (hereafter referred to as "Pinkham¹¹"), charging a violation of Section 1153, Subsection (a) of the Labor Code. A copy of the charge was duly served on Pinkham Properties on September 30, 1975. An answer was duly filed and served on October 13, 1975.

II

Pursuant to a stipulation entered into by the parties, it is found that Pinkham is engaged in agriculture in Tulare County, California, and at all times material herein was, and now is, an agricultural employer within the meaning of Section 1140. 4 (c) of the Labor Code.

III

United Farm Workers of America, AFL-CIO at all times material herein was, and now is, a labor organization within the meaning of Section 1140. 4(f) of the Labor Code.

IV

Pursuant to uncontradicted evidence and the stipulation mentioned in Finding II, it is further found that

(1) On September 26, 1975, organizers for United Farm Workers visited property owned by Pinkham.

(2) The first of these visits occurred at 9:30 a.m.

on September 26, 1975. The organizers talked to some of the persons employed on the property by Pinkham to pick grapes. The organizers did not, at that time, enter the property but remained on a public road.

(3) At about 1:30 p.m. on September 26, 1975, Filipe Arzola and Andres Mares, both organizers for United Farm Workers of America, while talking to employees on property owned by Pinkham at a time when these employees were on their lunch break, were arrested for trespassing. At the time of his arrest, Filipe Arzola was wearing a United Farm Workers of America union button. A similar button had previously been given to Pinkham Properties' ranch superintendent Don Montgomery.

(4) Present in the field in question at the time of the arrests was one crew of 46 persons employed by Pinkham. This crew was divided into two groups working in the same vicinity, but in different directions and from opposite ends of the field.

V

Filipe Arzola and Andres Mares had entered the property in question, and were talking to the employees for the purpose of disseminating to the employees information concerning United Farm Workers of America, AFL-CIO.

VI

The arrests described in Finding IV were made by David Pinkham, a representative of Pinkham, as citizen's arrests, and following a warning. After making the arrests, Filipe Arzola and Andres Mares were taken into custody by Tulare County Sheriff's deputies and were taken to jail. Two other United Farm Workers organizers also present on the property at the time were not arrested.

CONCLUSIONS

I

Pinkham's conduct described in Findings IV, V and VI was in violation of Section 20900 of Chapter 9, Title 8, California Administrative Code.

II

Pinkham's conduct described in Findings IV, V and VI

and Conclusion I constitutes an unfair labor practice within the meaning of Section 1153(a) of the Labor Code.

REASON FOR DECISION

I

There was no conflict whatever in the evidence. The sole issue is a legal and not a factual one, namely the validity of Section 20900, Chapter 9, Title 8, California Administrative Code, a matter now pending before the courts of this State. This section, commonly known as the "access rule", is clothed with the presumption of validity and is, therefore, regarded as valid and binding unless and until it is set aside or modified by the Agricultural Labor Relations Board itself or by the courts.

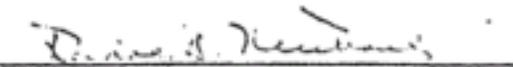
II

There is no evidence that Pinkham does not believe in good faith that the laws of this State governing trespass to land, and not the "access rule", govern in this case. In view of the pending, litigation it is therefore appropriate to require the Respondent/Employer to cease and desist from conduct in violation of that rule without, in this instance, requiring further or additional affirmative action.

WHEREFORE the Administrative Law Officer recommends. the following order:

Respondent/Employer Pinkham Properties is hereby ordered to cease and desist from conduct violative of the provisions of Section 20900, Chapter 9, Title 8, California Administrative Code.

Dated: January 5, 1976.



RUDOLF H. MICHAELS
Administrative Law Officer