

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

MITCH KNEGO,)		
)		
Respondent,)	No.	75-CE-170-M
and)		
)		3 ALRB NO. 32
)		
UNITED FARMWORKERS OF)		
AMERICA, AFL-CIO,)		
)		
Charging Party.)		

DECISION AND ORDER

This decision has been delegated to a three-member panel. Labor Code § 1146.

On January 6, 1977, the administrative law officer, David C. Nevins, issued his decision in the above-entitled proceeding,^{1/} finding that the respondent had not engaged in an unfair labor practice within the meaning of the Agricultural Labor Relations Act and recommending that the complaint be dismissed. Having reviewed the record, we adopt the ALO's findings, conclusions and recommendations to the extent they are consistent with this opinion.

There are six Knego employees. During the picking season they live in a house with the supervisor, Ruben Romero, and his family. The employees share a kitchen and bathroom with the Romeros, but live in separate quarters with a separate

^{1/}The unfair labor practice allegations and the objections were originally consolidated for hearing. For decisional purposes, we now sever the cases and reach a result on the unfair labor practice complaint.

entrance. UFW organizers attempted to speak with workers twice in the orchard and four times at the house. On two of the occasions at the house, Romero engaged in conversation with UFW organizers. On Sunday, October 5, organizers were present at a party given by Romero. Romero told the organizers he did not think it mattered which union the employees supported, that no union would do them any good, and that he thought the employees would remain with the Teamsters. It is not clear whether any of the workers heard the conversation. On the evening of Monday, October 6, organizers joined Knego workers and employees from another ranch while the workers played cards in their quarters. Romero entered the conversation and made the statement that he thought no one supported the UFW and asked workers if any would sign authorization cards. There was no response. Mr. Romero then asked organizers to leave.

The ALO found that the organizing activity on the occasions described above was not protected by the Act or the access rule and Romero's involvement in the employee-organizer discussions did not amount to surveillance or coercion. We agree with the ALO's conclusion that Romero's activities were not sufficient to amount to unfair labor practices, but we do not fully accept his reasoning.

The ALO reasoned that since the workers lived in the house inhabited by Romero, Romero was within his rights to decide who would be permitted to visit the workers. We disagree. Both the California Supreme Court and the Board have held that organizers must be allowed access to employer-owned labor camps. United

Farm Workers of America, AFL-CIO v. Superior Court (Wm. Buak Fruit Co.), 14 Cal. 3rd 902 (1975); Silver Creek Packing Company, 3 ALRB No. 13 (1977).

We have determined that communication at the homes of employees is not only legitimate, but crucial to the proper functioning of the Act. See 8 Cal. Admin. Code §§ 20310(a)(2), 20313, and 20910 (1976); Mapes Produce Co., 2 ALRB No. 54 (1976). An employer may not block such communication. The fact that an employer is also a landlord does not give (him) license to interfere with the flow of discourse between union and worker. Silver Creek Packing Company, supra.

The need for, and the right of, access to workers in their homes are not negated by the fact that employees share their dwelling with an agent of the employer.

Since Mr. Romero's interference in the conversation between workers and organizers occurred in the workers' own room rather than Romero's, the conduct takes on the appearance of an unfair labor practice. However, because the incident took place in a casual atmosphere and only on one occasion, we conclude that it was de minimus and does not warrant the imposition of a remedy. Consequently, we dismiss the unfair labor practice complaint in its entirety.

Dated: April 13, 1977

GERALD A. BROWN, Chairman

RICHARD JOHNSEN, JR., Member

RONALD L. RUIZ, Member

1 STATE OF CALIFORNIA
2 BEFORE THE
3 AGRICULTURAL LABOR RELATIONS BOARD

4 Mitch Knego Ranch,)
5)
6 Respondent)
7 and)
8 United Farm Workers of)
9 America, AFL-CIO,)
10 Charging Party and)
11 Petitioner)
12 _____)

Case Nos. 7S-CE-170-M

75-RO-208-M



13 Anne J. Rosenzweig, for the General Counsel

14 Robert M. Hinrichs
15 Abramson, Church & Stave, of
16 Salinas, California, for the Respondent

17 Susan Berman, for the Charging
18 Party and Petitioner

19 Cecil Almanza, for the Intervenor, Western
20 Conference of Teamsters, Local. 1973

21 DECISION

22 STATEMENT OF THE CASE

23 DAVID C. NEVINS, Administrative Law Officer: This consolidated
24 proceeding was heard on December 16, 1975, in
25 Watsonville, California. The General Counsel and the Respondent were
26 represented at the hearing, as were two intervenors, the United Farm
27 Workers of America, AFL-CIO (hereafter the "UFW") and the Western
28 Conference of Teamsters, Local 1973 (hereafter the "Teamsters"). Briefs
in support of their respective positions

1 were filed after the hearing by the General Counsel and the
2 Respondent, and all parties to the hearing waived oral argument
3 at the hearing's close.

4 The unfair labor practice complaint is based on a charge-filed by
5 the UFW, a copy of which was served on the Respondent on or about October
6 8, 1975.^{1/} Objections in regard to the election in question, which was
7 held on October 17, were filed
8 by the UFW on October 22. On November 28, the Board's Acting Regional
9 Director in Salinas ordered that the unfair labor practice
10 complaint be consolidated with the UFW's election objections for
11 the hearing.

12 Upon the entire record, including my observation of the
13 demeanor of the witnesses, and after consideration of the argu-
14 ments and briefs submitted, I make the following:

15 FINDINGS OF FACT

16 I. Jurisdiction.

17 Respondent, Mitch Knego Ranch, is a sole proprietorship engaged
18 in agriculture in Santa Cruz County, California, and was admitted to be
19 by the Respondent. Accordingly, I find that Respondent is an
20 agricultural employer within the meaning of Section 1140.4 (c) of the
21 Agricultural Labor Relations Act (hereafter referred to as the "Act").

22 Further, it was agreed by the parties that the UFW and the
23 Teamsters are labor organizations representing agricultural
24 employees within the meaning of Section 1140.4(f) of the Act,

25 and I so find.

26 II. The Charging Allegations.

27 The unfair labor practice complaint, as, amended at the hearing,
28 alleges that the Respondent violated Section 1153(a) of the Act by
interfering with, coercing and restraining its employees in the exercise
of their rights as guaranteed them by Section 1152 of the Act, by
conducting unlawful surveillance and by restricting. UFW organizing
efforts. The alleged violations

1/ Unless otherwise stated, all dates herein refer to 1975.
Although Respondent's Answer denies that the charge was served on October
8, as alleged in the Complaint, no question of proper or timely service
was raised at or after the hearing by the Respondent. Furthermore, the
undisputed evidence establishes that the charge was served on the
Respondent on October 8.

1 took place between October 5 and 12. The Respondent generally denies
2 it violated the Act.

3 The Objections Petition filed by the UFW, citing conduct
4 allegedly affecting the election, charges the Respondent with several
5 improper acts: that the Respondent prevented UFW organizers from
6 talking with employees, committed acts of surveillance of UFW
7 activities, intimidated employees by asking an employee about his
8 union preference, and by voicing a preference for the Teamsters. The
9 Respondent denies these allegations.

10 III. The Facts.

11 The Respondent operates an apple orchard. During the times in
12 question six seasonal employees were employed. The orchard is overseen by
13 the ranch foreman, Ruben Romero, an admitted supervisor within the meaning
14 of Section 1140.4 (j 7 of the Act.

15 On October 2, Ms. Devon McFarland, a UFW organizer, went to the
16 Respondent's orchard with another UFW organizer. They spoke to three of
17 Respondent's employees for about fifteen minutes, until the employees
18 finished their noon-time lunch break. The organizers accompanied the
19 employees to a pick-up truck, where I they confronted a Teamster
20 representative speaking to Foreman Romero. At that time, the Teamsters had
21 a collective bargaining agreement with the Respondent. The organizers then
22 left.

23 Saturday, October 4, Ms. McFarland again returned to the
24 Respondent's orchard, at about four o'clock in the afternoon. She and
25 another UFW organizer approached Respondent's employees, who were then
26 working in the field, and spoke and distributed UFW leaflets to the
27 employees. Disagreement exists as to whether' Foreman Romero was present
28 when the organizers arrived, but there is general agreement that he was
aware of the organizers' activity for about fifteen minutes, after which
he suggested that they • leave and let the employees get back to work.
'Each of the organizers had spread out in the orchard, talking to
employees on an individual basis. Ms. McFarland made arrangements with at
least ore of the employees to return the following day.

Ms. McFarland and a different assistant, Juan Sanchez, went to the
Respondent's farm the next day, Sunday. When they arrived, at about noon,
a party was in progress outside of the house where several of the
Respondent's seasonal employees lived. Mr. Romero and his family also
lived in the house; it had been his family's residence for about eighteen
years, and from four to five employees were also allowed to live there
during the work season. The house is located on the Respondent's
property.

1 The two UFW organizers spoke with some of those at the party and
2 accepted refreshments. It is not clear how many of Respondent's employees
3 were at the party when the organizers arrived, for the party included
4 employees from other ranches and relatives

5 After some ten to fifteen minutes, Foreman Romero appeared
6 at the party. He asked the two organizers not to bother the people there
7 about the UFW because it was a day of rest and a party was in progress. He
8 indicated to them that they were welcome to remain at the party so long as
9 they did not discuss union matters. In the course of his conversation with
10 the organizers, Romero voiced his belief that it did not matter which
11 union represented the employees, since both the UFW and Teamsters would
12 seek the same things. Contrary to McFarland's testimony, Romero denied
13 that he said that he thought the employees would, stay with the Teamsters
14 because of the existing Teamsters contract. Romero's conversation was
15 chiefly with Ms. McFarland; it does not appear that any of Respondent's
16 employees participated in it, or whether any of those employees overheard
17 it. As McFarland testified, "I was talking mostly with Mr. Romero that
18 day. It seems that some of the ones who were close were listening. There
19 were a lot of people and there was a lot of activity going back and forth.
20 I really don't remember exactly."

21 Romero told the organizers they should return another day if they
22 wished to speak about the UFW. The party in progress was one which was
23 being hosted by Mr. Romero. After remaining for a few more minutes, the
24 UFW organizers left.

25 The following evening, October 6, at between 8 and 9 o'clock,
26 McFarland and Sanchez returned. They entered the house through a room
27 where some six persons were talking and playing cards, after being invited
28 in by those present. Shortly after their arrival, Mr. Romero entered the
29 room through an interior
30 door in the house.

31 Ms. McFarland and Mr. Sanchez testified in similar fashion regarding
32 their encounter with Romero. Ms. McFarland recalled that Romero came in
33 and mentioned that they (the organizers) were back again. Romero then
34 told them it was too late for them to be there, that they should let the
35 employees sleep. Mr. Sanchez recalled that Romero said that none of the
36 employees was interested in the UFW, and said that the employees do not
37 benefit from the unions, since everyone knew they were "illegals" and
38 never got benefits from either of the unions. Both McFarland and
39 Sanchez testified that during their conversation, Romero said that none
40 of the employees supported the UFW, and turned

1 and asked one of those present whether he wanted to sign a UFW card.
2 Also, both recalled that Romero told them not to return to the house,
3 telling them if they wished to talk with the employees they should meet
4 the employees on the road, which Romero
5 denied saying.

6 During, or at the beginning of, the conversation with
7 Romero, several of those present got up and left. Only two or
8 three persons remained, apparently those who lived in the house. Those
9 leaving the house were employees from other farms in the
10 area, although one outside employee remained.

11 Mr. Romero denied much of the conversation as described by
12 McFarland and Sanchez. He remembered asking the organizers to leave
13 because it was late and to allow the employees to sleep. At the time, an
14 employee had gone to sleep in the next room. He denied telling them
15 never to return to the house, or asking anyone present whether he wished
16 to sign a card for the UFW. Two employees who were present that night,
17 Valdomero Fabian and Servando Partida, also testified that Romero did
18 not ask anyone about signing with the UFW or telling the organizers not
19 to return to the house.

20 On October 8, the UFW served the instant unfair labor practice
21 charge on Mr. Knego, the Respondent's owner. On October 10, a Friday,
22 Ms. McFarland again returned to Mr. Romero's house at about 5 p.m. She
23 visited with about five employees, speaking to them about the UFW and
24 distributing material to them. She recalled that one or more of the
25 employees indicated that they did not wish to have an election and
26 preferred remaining with the Teamsters. Her visit with the employees
27 was unimpeded, although Mr. Romero was home at the time.

28 An election petition was subsequently filed by the Teamsters,
and an election was scheduled for October 17. On the day preceding the
election, McFarland returned to the house, during the noon lunch hour.
She found Mr. Romero, his family, and the employees eating lunch. She
entered the house and talked with those present for some five minutes,
before Romero left. All except one of the employees soon left to follow
Romero back to work, and the one who remained spoke for several more
minutes with McFarland about the upcoming election.

On October 17 the election was held. The Respondent's entire
compliment of workers, six of them, voted for the Teamsters. The
UFW was not on the ballot.

CONCLUSIONS

I. Introduction.

The basic conduct of Respondent called into question in this proceeding is that of its chief supervisor, Ruben Romero, on October 5 and 6. In general, that conduct consists of Mr. Romero's intervention between Respondent's employees and UFW organizers at the party on Sunday and in his house on Monday evening, and his instructions to the organizers to cease their organizing activity on those two occasions.^{2/}

The General Counsel contends that Romero's actions interfered with, restrained and coerced the organizational rights of Respondent's employees in two respects, each independently violating Section 1153 (a) of the Act. First, that Romero interjected himself between, and remained in the presence of, UFW organizers and Respondent's employees so that no conversations could occur without his observation, thus constituting surveillance of the employees' organizing activity. Second, that Romero deliberately attempted to prevent the organizers from speaking with the employees during non-work time and in non-work areas.^{3/}

The Respondent denies it acted unlawfully or otherwise interfered with the subsequent election. The Respondent contends that Mr. Romero acted reasonably and lawfully when restricting the UFW organizers' activity at his party, on October 5, and in his home, on October 6. Respondent emphasizes that the UFW organizers had some four other occasions on which to solicit employees, without impediment (except when, on October 4, Romero cut short the organizers' solicitation because the employees were at work). It was undisputed by its employees, claims the Respondent, that

2/ The conduct complained of in the UFW's election objections is essentially the same conduct claimed as unfair labor practices by the complaint and the UFW's objections will be considered together hereinafter, unless otherwise indicated.

3/ The original complaint also charged that the Respondent had promulgated and enforced an unlawful no-solicitation rule, but that allegation was dropped by the General Counsel when the complaint was amended at the hearing.

1 Romero never attempted to discuss or influence their views
2 toward the UFW.^{4/}

3 II. Foreman Romero's Conduct on October 5 and 6.

4 A. The Undisputed Facts:

5 Foreman Romero conceded that on both October 5 and 6 he
6 interrupted discussions between UFW organizers and some of
7 Respondent's employees, and instructed the organizers to discon-
8 tinue their discussions in regard to the UFW. Thus, even apart
9 from considering the disputed testimony in this proceeding,
10 the basic fact emerges that Respondent's chief supervisor admit-
11 tedly circumscribed UFW organizing activity in connection with
12 Respondent's employees, albeit such conduct took place on Respondent's
13 property. The initial question, then, is whether Romero's admitted
14 conduct violated the Act.

15 As a general matter, under the National Labor Relations Act,
16 as amended (29 U.S.C. Sec. 151, et. seq.; hereafter the
17 "NLRA"), the Act's counterpart in general industry, it has been
18 held that a labor organization's solicitation of support from
19 employees while on an employer's property is not to be equated
20 with the employees' own self-organization rights, and that gen-
21 erally union organizers have no right to enter an employer's property
22 unless other, reasonable channels of communication are not
23 available to the organizers. N.L.R.B. v. Babcock & Wjlcx Co., 51
24 U.S. 105 (1956). Nonetheless, it was recognized in Babcock that
25 the "right of self-organization depends in some
26 measure on the ability of employees to learn of the advantages of
27 self-organization from others."

28 Under our Act, the Board has considered the interplay

29 4/In its brief and at the hearing, Respondent, also
30 challenged the UFW's standing to intervene in or object to the
31 election, inasmuch as the UFW was not a party to the election.
32 Both the Act and the Board's regulations, however, establish the
33 UFW's standing in this case. The Act states, in Section
34 1156.3(c), that "any person" may file a petition objecting to
35 "conduct affecting the results of the election," a statutory
36 expression sufficiently broad enough to encompass the UFW's
37 petition. Also, the Board's Emergency Regulations do not
38 bar the UFW's petition. Indeed, Sections 20365 and 20380
39 provide for hearings based on petitions and for consolidating
40 such a hearing with an unfair labor practice hearing, which the
41 Acting Regional Director did in this proceeding. Finally, it is
42 difficult to conceive just how

(continued)

1 between an employer's property rights and his employees' need to learn of
2 the advantages and disadvantages of organization from others. The Board
3 has promulgated what is commonly known as the "Access Rule," which
4 recognizes: "Alternate channels of effect! communication which have been
5 found adequate in industrial settings do not exist or are insufficient in
6 the context of agricultural labor." ALRB Emergency Regulation, 20900,
7 Chapter 9 (August 29, 1975). The Rule permits union organizers access to
8 the premises of an agricultural employer for purposes of organizing,
9 subject to several conditions. Among those conditions are that the
10 organizers may enter an employer's premises for sixty minutes before and
11 after the work-day "to meet and talk with employees in areas in which
12 employees congregate before and after' working," and may enter the
13 premises for sixty minutes during the work-day "for the purpose of meeting
14 and talking with employees during their lunch period" (subject to certain
15 time requirements). Id. at Section 20900-5.

16 It is, of course, readily apparent that Foreman Ramero's actions
17 did not violate the Access Rule. We have no allegation, nor any fact,
18 which would sustain a finding that the Respondent violated the Rule. On
19 the contrary, when UFW organizers entered the Respondent's property on
20 October 2, 4, 10, and 16 they contacted employees either during lunch
21 time, while in the fields, or shortly after work in their residence, at
22 times and under circumstances which mainly fall within the Rule (except,
23 perhaps for confronting the workers in the field while working), and their
24 organizing activity was unimpeded by the Respondent.

25 Essentially, the Board's Access Rule leaves off where this case
26 begins. Indeed, two significant factors take this case outside the
27 provisions of the Rule. First, the times in question, when the UFW
28 organizers were prevented by Romero from contacting employees—namely,
during a weekend party and during the night-time hours of between 8 and 9
o'clock. Second; the places in question where Romero circumscribed the
organizing efforts—namely, outside of and inside the house in which he
lived.

4/ continued: the UFW could be excluded from this proceeding, since it
was a proper intervenor in the unfair labor practice case, as the
charging party, and that case was consolidated with
the election matter.

1 The foregoing discussion indicates that the UFW organizers had
2 no right under the Access Rule to engage in their employee
3 solicitations at the times and under the circumstances they did, on
4 October 5 and 6. Not only had they entered the Respondent's property,
5 but they had appeared at a party hosted by Foreman Romero outside his
6 home and had appeared in his home during the evening hours when some
7 members of the household were preparing to sleep.

8 It would be difficult--if not impossible--to say Foreman Romero
9 had neither the right to be present during his party or in a room in
10 his own home, nor to regulate the conduct and presence of guests on
11 either occasion. I do not believe the Act goes so far as to protect
12 the UFW organizers' activity, on Respondent's premises, in view of the
13 times and locations involved, or to restrict Foreman Romero's own
14 personal rights associated with his living quarters.^{5/} Indeed,
15 Romero's actions on October 5 and 6 are more akin to those exercised in
16 relation to one's personal life, rather than those akin to one's role
17 as a work supervisor.

18 Having concluded that the type of organizing activity which took
19 place on October 5 and 6 was not protected by either the Act or the Access
20 Rule, one further point warrants reference. No suggestion has been made in
21 this case that the organizers could not; have pursued other means of
22 communicating with Respondent's employees, either by contacting them at
23 other times or in other places; in fact, the evidence shows that such
24 contact was available and used by the UFW. Indeed, even when Romero asked
25 the two organizers to leave his house on October 6, he indicated that they
26 could contact the employees outside on the road. In short, no general bar
27 existed as to the UFW's communication with workers, as has been seen in
28 other instances under the NLPA a, id. which might warrant finding a
violation of the Act. See *Carter & Brother*, 90 NLRB 2020 (1950);
Grossinger's, Inc., 61 LERH 1025, affirmed, 64 LRRM 2295 (C.A. 2, 1967).

Nor do the cases cited by the General Counsel call for a
conclusion that Foreman Romero acted unlawfully. Those cases which
involved unlawful surveillance concerned supervisorial

^{5/} The facts in this case are unique. It could be that in other
circumstances, where employees live on their employer's premises, and not
within the same house as the supervisor those employees may have greater
right to entertain union organizers in a fashion similar to that in this
case. But, whatever rights, such resident employees may have in other
circumstances, in this case these right must also be reconciled with
Foreman Romero's, as well as the Respondent's.

1 conduct which called direct attention to the observation of union
2 activities,6/ while we know that unlawful surveillance does not exist
3 when an employer's representative merely observes employee organizing
4 activity in the normal course of his conduct or his activity. See
5 Shulman's Inc of Norfolk. 208 NLRB No. 117, 85 LRRM 1247 (1974); Peerless
6 of America, Inc.. 198 NLRB No. 138, 81 LRRM 1472 (1972); Textron, Inc.,
7 199 NLRB No. 17, 81 LRRM 1645 (1972). Similarly, those cases cited which
8 deal, with an employer's banning of organizational activity were not
9 'concerned with union organizers making contact with employees on an
10 employer's property, under circumstances similar to those present
11 here.

12 Accordingly, I conclude that Foreman Romero's admitted
13 curtailments of UFW organizing activity on October 5 and 6, under the
14 circumstances present, did not violate the Act. He did not
15 interfere with, coerce, or restrain the employees' Section 1152
16 rights, within the meaning of Section 1153(a).

17 B. The Disputed Facts:

18 Several disputed facts exist, as concerning what Foreman
19 Romero said to the UFW organizers on October 5 and 6.
20 Generally, I credit the testimony of the UFW organizers that
21 Romero, on Sunday, told them that he did not think it mattered
22 which union the employees supported and that he thought the
23 employees would remain with the Teamsters, and that Romero, on
24 Monday night, told the organizers that none of the employees
25 supported the UFW, asked someone present whether he wished to sign a
26 UFW card, and said that neither union would do the employees
27 much good. I credit the testimony of the organizers primarily
28 because of their demeanor, and because their testimony fits more
naturally within the time-table and sequence of events that (book
place on those two occasions.

 Nonetheless, I do not find that Romero's remarks to the
organizers convert his basic actions on October 5 and 6 into violations
of the Act. For one thing, the General Counsel makes no effort to
characterize Romero's remarks as independent violations of Section
1153 (a), but has rightfully treated them as only associated with the
basic charges of surveillance and curtailment of organizing activity.
For another thing, no proof

6/ Scenic Sportswear, 196 NLRB No. 72, 80 LRRM 1212 (1972);
Better Val-U Stores, 174 NLRB No. 32, 70 LRRM 1169 (1969).

1 exists that insofar as Romero's remarks on October 5 are con-
2 cerned that they were overheard by anyone other than Ms. McFarland of
3 the UFW or, if they were overheard, whether they were
4 heard by one of Respondent's employees, as opposed to one of the other
party guests. Also, Romero's remarks on Sunday amounts to little more
than an expression of his views concerning the union situation, and
contained no threats or inducements for employees.

5 Similar conclusions must be reached in regard co remarks on
6 Monday night, October 6. Again, the General Counsel
7 makes no claim that the remarks, even when Romero asked if anyone wanted
8 to sign a UFW card, constitutes an independent violation, And, again no
9 clear proof exists that, even had he asked about signing a UFW card,
10 Romero asked that question of one of Respondent's employees, as others
11 were also in the room et the same time, or so the evidence suggests.

12 Finally, the lack of any other evidence which might suggest that
13 Foreman Romero carried on any overt, serious anti-UFW campaign is
14 noteworthy. I find credible that testimony from one of the Respondent's
15 employees that Romero was basically unconcerned and uninvolved with his
16 employees' union views and activities. In short, Romero's remarks did not
17 so alter his basic conduct as to make it unlawful.7/

18 THE REMEDY

19 Having found that the Respondent did not violate Section 1153(a)
20 of the Act, as charged, I shall recommend that the unfair labor practice
21 complaint, as amended, be dismissed in its entirety.

22 

23 David C. Nevins,
24 Administrative Law Officer

25 -----
26
27 7/ I make no recommendation below concerning the significance of
28 Romero's conduct on the outcome of the election. That determination is
for the Board to make, since Section 1156.3(c)
of the Act appears to require that I "make no recommendations with
respect" to the election's certification.