

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

GEORGE ARAKELIAN FARMS, INC.,)	
)	
Employer,)	Case No. 76-RC-24-E
)	
and)	4 ALRB No. 6
)	
UNITED FARM WORKERS OF AMERICA,)	
AFL-CIO,)	
)	
Petitioner)	
)	

DECISION AND
CERTIFICATION OF REPRESENTATIVE

Pursuant to the provisions of Labor Code Section 1146, the Agricultural Labor Relations Board has delegated its authority in this matter to a three-member panel.

On December 15, 1976, following a petition for certification filed by the United Farm Workers of America, AFL-CIO (UFW), an election was conducted among the agricultural employees of the Employer. The Tally of Ballots showed the following results: ^{1/}

UFW	139
No Union	12
Unresolved Challenged Ballots .	17
Total Valid Votes	168

The Employer filed timely objections, one of which was set for hearing.

Subsequent to the hearing, Investigative Hearing Examiner (IHE) Suzanne Vaupel issued her initial decision in this matter,

^{1/} We note the IHE stated there were 169 valid ballots. Because there was one void ballot, we correct that tally to show 168 valid ballots.

recommending that the objection be dismissed and that the UFW be certified as the exclusive collective bargaining representative of the Employer's agricultural employees in the State of California. The Employer filed timely exceptions and a supporting brief.

The Board has considered the objection, the record, and the IHE's Decision in light of the exceptions and brief,^{2/} and has decided to affirm the rulings, findings, and conclusions of the IHE and to adopt her recommendation. Accordingly, the Employer's objection is hereby dismissed, the election is upheld, and certification is granted.

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that the United Farm Workers of America, AFL-CIO, having received a majority of the valid votes cast among the agricultural employees of the Employer is, pursuant to Labor Code § 1156, the exclusive representative of all of the agricultural employees of George Arakelian Farms , Inc. , in the States of California, for the purpose of collective bargaining as defined in Labor Code § 115 5.2 (a) , concerning employees' wages, working hours, and other terms and conditions of employment.

DATED : February 2, 1978

GERALD A. BROWN, Chairman

ROBERT B. HUTCHINSON, Member

HERBERT A. PERRY, Member

^{2/} In its post-hearing brief the Employer requested that further evidence be allowed on the objections dismissed by the Executive Secretary. We note that the Employer's request for review pursuant to 3 Cal. Admin<, Code § 20343 was dismissed on the grounds that it was not timely filed. We deny the Employer's current request that further evidence be allowed on these issues.

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:

GEORGE ARAKELIAN FARMS, INC.,

Employer,

Case No. 7S-RC-24-E

and

UNITED FARM WORKERS OF
AMERICA, AFL-CIO,

Petitioner.

William F. Macklin, Byrd, Sturdevant,
Nassif & Pinhey, for Employer.

Tom Dalzell, for the United Farm
Workers of America, AFL-CIO.

DECISION

Statement of the Case

SUZANNE VAUPEL, Investigative Hearing Examiner: This case was heard by me on August 11, 1977 in El Centro, California pursuant to a Notice of Investigative Hearing by the Executive Secretary of July 8, 1977. At the hearing, the parties submitted a "Stipulation of Facts," Joint Exhibit #1. It was agreed by both parties that this stipulation, along with the Board exhibits, ^{1/} and the post hearing briefs would constitute the complete record

^{1/} #1 Petition for Certification; #2. Tally of "Ballots; #3. Petition for Hearing on Certification of Election; #4. Order of Partial Dismissal and Notice of Allegations to be Set for Hearing; #5. Notice of Investigative Hearing.

for this case.

A representation election was held at George Arakelian Farms, Inc., on December 15, 1976. The Tally of Ballots showed the following results:

UFW	139
No Union	12
Unresolved Challenged	
Ballots	17
Total Valid Votes	169

The employer filed timely objections to the election pursuant to Labor Code 11156.3(c). On May 11, 1977, the Executive Secretary set one objection for hearing and dismissed the remaining objections. The employer filed a Request for Review of the Dismissed Objections which was denied by the Board on July 1, 1977.^{2/}

The issue set for hearing was whether the United Farm Workers of America, AFL-CIO, (UFW) violated the access rule and whether such violations, if any, affected the outcome of the election,

FINDINGS OF FACT

I. Jurisdiction

Neither the employer nor the UFW challenged the Board's jurisdiction in this matter. Accordingly, I find that the employer is an agricultural employer within the meaning of Labor Code 51140.4(c), that the UFW is a labor organization within the meaning of Labor Code §1140.4(f), and that a representation election was conducted within the meaning of Labor Code §1156.3.

II. Alleged Misconduct

The stipulated facts (copy attached) upon which this

^{2/} In the post-hearing brief, the employer requests that further-" evidence be allowed on these issues. The proper procedure for such request is set out in 8 Cal. Admin. Code §20393(c) (1976). This request will not be considered here, since the question is not properly before me.

decision is based describe fifteen incidents of access taken by UFW organizers. The employer alleges that these incidents include numerous occasions of access taken at unauthorized times.^{3/} The union contends that any excess access which occurred was de minimis and that there was no disruption of work.

The fifteen incidents include nine instances of access taken before work began, four instances of midday access and two incidents of access taken at or near the end of the working day.

A. Pre-work Access

The instances of pre-work access are most numerous, although two of the nine instances pose no violation of the access rule since organizers stayed with the workers for one hour only.^{4/} The seven remaining instances indicate that organizers stayed with workers from 1-1-1/2 to 2 hours while they were waiting for the frost to melt ^{5/} so that work could begin.

The exact location of the organizers in relation to the employer's fields is unclear. The individual instances described in

^{3/} The employer does not contend that the numbers of organizers present violated the access rule nor does the evidence make such findings possible.

^{4/} Organizers may enter the property of an employer for a total period of one hour before the start of work and one hour after the completion of work to meet and talk with employees. 3 Cal. Admin. Code §20900 (e) (3) (A) (1976).

^{5/} Paragraph 4 of the stipulations explains that harvest employees would arrive at company fields between 6:00 and 7:00 a.m. The starting time for work varied depending on the conditions of the fields. Workers were required to wait until the frost in the fields had completely melted before beginning work.

the stipulations state only that the organizers "stayed with the crews." The only indication of where the crews were located while waiting for work to begin is given in paragraph 4 of the stipulations. "Workers built fires at the edge of the fields, warmed food, played dice, or slept in their cars until it was time for work to begin." This same paragraph indicates that harvest employees parked their cars on the shoulder of public roads bordering company fields, along unposted canal roads, and along the company's private roads.

The employer argues that this paragraph places organizers with workers on the employer's property unless we are to believe that workers were building fires, warming food or playing dice in a public roadway or that organizers were talking to people that were asleep in their cars. The GFW contends that the location of the organizers is 'unclear, since they could have been on the shoulders of public roads, along canal roads, or on company roads.

I find that the choices are not so clear-cut as the employer argues. The phrase "at the edge of the fields" could indicate that workers were on the shoulder of a public or a canal road at the edge of the field rather than inside the field. The stipulated facts are simply too ambiguous to support a finding either way. While this record is not clear enough to support a finding that organizers were on the employer's property during some or all of the pre-work access incidents, this case can be decided without resting on this point.

B. Midday Access

Four instances of midday access are stipulated, three of

which occurred around lunchtime.^{6/} The length of access taken at lunchtime was one hour on one occasion and one hour and fifteen minutes on two occasions. On each day, union organizers waited at the edge of the field and talked to workers who took a lunchbreak.^{7/} The fourth incident of midday access occurred on November 26, 1976,^{8/} when organizers remained near the edge of a company field from 1:30 until 3:15 p.m.. As trios finished their rows, some stopped briefly to talk with organizers at the edge of the field. While this stipulation does not indicate clearly whether the organizers were in the company field or not, it does indicate that workers briefly interrupted their work to talk to organizers.

C. Post-work Access

Two incidents of access at or near the end of the workday are alleged.^{9/} In one instance UFW representatives

^{6/} Organizers may enter the employer's property for a single period not to exceed 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 encompass such break. If there is no established lunch break, the one-hour period shall encompass the time when employees are actually taking their lunch break, whenever that occurs during the day. 8 Cal, Admin. Code §20900(e)(3)(B)(1976).

^{7/} Paragraph 8 of the stipulations indicates that there was no actual lunch break since employees worked on a piece rate basis. The trios which stopped to eat would stop briefly as they finished rows near the edge of the field.

^{8/} Paragraph 9 of the stipulations.

^{9/} Organizers may enter the property of an employer for a total period of one hour before the start of work and one hour after the completion of work to meet and talk with employees. 8 Cal. Admin. Code §20900(e)(3)(A)(1976).

accompanied workers back to their cars as they finished their rows. In the other instance, organizers went to the field at 3:00 p.m. believing work would be finished. The organizers waited until work was completed, then transported workers to the pre-election conference.

Analysis and Conclusions

Various remedies for violations of the Board's "access rule" have been set out in the regulations.^{10/} Each of these accomplishes different purposes, though in some cases more than one of the remedies might be appropriate and in other circumstances none of them may be appropriate.

Violations by a labor organization may be grounds for barring an organizer or a labor organization from exercising the right of access, may constitute an unfair labor practice in violation of Labor Code §1154(a)(1) if it independently constitutes restraint and coercion of employees in the exercise of their rights, or may constitute grounds for setting aside an election where such conduct affected the results of the election.^{11/}

In election cases, where violations of the access rule have been established, the Board has refused to apply a per se rule either to violations by an employer or by a labor organization.^{12/}

^{10/} 8 Cal. Admin. Code §20900(e)(5)(A) and (B)(1976).

^{11/} Id.

^{12/} Dessert Seed Company, Inc., 2 ALRB No. 53 (1976); K.K. Ito farms, 2 ALRB No. 51 (1976)

Instead, allegations of violation of the access rule by any party 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.^{13/} In cases of "excess access" by a labor organization, the Board has refused to set aside elections where there was a "minimal and insubstantial encroachment" upon the employer's premises beyond the scope of the access rule,^{14/} where no opposing union was disadvantaged and the "excess access" was not of such character to have had an intimidating or coercive impact on employees or in any other way affected the outcome of the election,^{15/} or when employees have participated in a free and fair election and it cannot be fairly concluded that the misconduct affected the results of the election.^{16/}

In order to set aside an election on the basis of "excess access", therefore, it must first be established that the violations took place and then that this misconduct affected the results of the election. In the case at hand, there is clear evidence of several instances of excess access. These instances include two days of lunchtime access during which organizers stayed on the employer's property for fifteen minutes beyond the hour limitation and one day in which UFW organizers talked to some workers from 1:30 until

^{13/} K.K. Ito Farms, 2 ALRB No. 51 (1976).

^{14/} John V. Borchard Farms, 2 ALRB No. 16 (1976).

^{15/} K.K. Ito Farms., 2 ALRB No. 51 (1976).

^{16/} Dessert Seed Company, Inc./ 2 ALRB No. 53 (1976).

about 3:15 as they finished a row at the edge of the field. If these three incidents constituted the totality of the case, I would dismiss them as de minimis violations of the access rule^{17/}

There remain, however, the instances of pre-work access during which organizers talked to workers for more than one hour while they were waiting for work to begin. It would be possible to find that the employer has not carried his burden of proof in establishing that the organizers were actually on his property for more than one hour during these incidents. Such an approach, however, would lead to extended arguments, in this and similar cases, on property lines, easements, and the extent of the right-of-way along public roads and canal roads. Without indulging in such speculation and analysis, this case can be decided on the basis of Board policy which looks to the effect of "excess access" on the election process. On the facts presented, there is no indication of any work disruption, coercion, or intimidation caused by the union organizers during the pre-work visits. As in K.K.Ito and Dessert Seed, this is also not a case where an opposing union was disadvantaged by such "excess access."

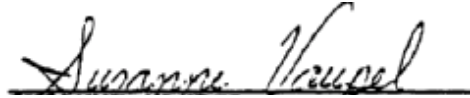
Since it cannot be said that the misconduct in this case was of such character as to affect the employees' free choice of a collective bargaining representative, the employer's objection to the election should be dismissed.

^{17/} John V. Borehard Farms, 2 ALRB No. 16 (1976).

RECOMMENDATION

Based on *the* findings of fact, analysis, and conclusions, I recommend that the employer's objection be dismissed and that the United Farm Workers of America, AFL-CIO, be certified as the exclusive bargaining representative of all the agricultural employees of the employer in the State of California. DATED: November 4, 1977

Respectfully submitted,

A handwritten signature in cursive script, reading "Suzanne Vaupel", is written over a horizontal line.

SUZANNE VAUPEL
Investigative Hearing Examiner.

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:

GEORGE ARAKELIAN FARMS, INC.,

EMPLOYER,

and

UNITED FARMWORKERS OF AMERICA,
APL-CIO,

Petitioner.

Case No. 76-RC-24-E

STIPULATION OF FACTS

EXHIBIT: *Exhibit #1*
IDENTIFIED: *(Fr. & UFW)*
ADMITTED:

GEORGE ARAKELIAN PARKS, ETC., through its representative WILLIUM MACKLIN, and the UNITED FARM WORKERS OF AMERICA, AFL-CIO, through its representative TOM DALZELL, stipulate that the testimony adduced at an investigative hearing in the above-cautioned matter Would be as follows:

1. George Arakelian Farms, Inc., (hereinafter referred to as "the company") began harvesting lettuce in the Blythe area on November 18, 1976

2. Organizers from the United Farm Workers of America, APL-CIO (hereinafter referred to as the "UFW") began Visiting Arakelian fields on November 23, 1976. All alleged access violations occurred among the company's harvest employees.

3. The Company aired all harvest employees through a labor contractor, Gomez Brothers. All harvest employees commuted to Blythe daily from Calexico and Hezicali, approximately 90 miles away. The turn-over rate among the harvest employees, as is the case with most labor contractor crews, was fairly

1 high. All harvest workers worked on a piece rate basis.

2 4. On days on which lettuce was harvested, harvest employees
3 would leave Calexico at approximately 3:30 - 4:00 a.m. and would
4 arrive at company fields near Blythe between 5:00 and 7:00 a.m. All
5 harvest employees drove from the Imperial Valley in private cars,
6 and would park at the edge of company fields. In some instances
7 they parked on the shoulder of public roads, bordering company
8 fields, in some instances along unposted canal roads, and in some
9 instances along the company's private roads. 'The
10 start time for working varied depending on the condition of the
11 fields. "Workers were required to wait until the frost in the
12 fields had completely melted before beginning work, "Workers
13 were not paid for this time, which varied from one (1) to
14 three and a half ($3\frac{1}{2}$) hours. "Workers built fires at the edge of
15 the fields, warmed food, played dice, or slept in their cars
16 until it was time for work to begin.

17 5. The UFW organizing campaign at Arakelian was divided into
18 three three phases. From November 23 through November 30, the
19 UFW surveyed various Blythe ranches, including Arakelian,
20 familiarizing itself with the crews, foremen, contractors,
21 field locations, lunch hours, and local issues of importance
22 to Blythe workers. From December 1 through December 7 the UFW
23 gathered authorization cards, and from December 8 through
24 December 15 focussed on getting out the vote for the election
25 held on December 15.

26 6. The basic unit of a lettuce harvest crew is a "trio"
27 or "line", consisting of two cutters and one packer, who packs
28 24 heads of cut lettuce into cardboard cartons stitched in the

1 field. The cartons are closed by a closer and loaded onto trucks
2 by loaders. Trios work at their own pace, some faster than
3 others.

4 7. On November 23, 1976, four (4) representatives of the
5 UFW went to a company field approximately twenty (20) minutes
6 before the end of work. Two (2) representatives walked to the
7 south end of the field being harvested, while the other two (2)
8 remained at the north end of the field. One (1) of the two (2)
9 at the north end, Maria Buisa Pacheco, identified herself to
10 company supervisor Clsudell Smith. They discussed the company
11 operation in general terms, and Mr. Smith informed Ms. Pacheco
12 that the company had a lunch break at 11:00 a.m. As the trios
13 finished their rows at the south end of the field, the two (2)
14 UFW representatives accompanied them back to their cars at the
15 north end of the field, a quarter (1/4) of a mile away.

16 8. On November 24, 1975, three (3) UFW organizers went to
17 a company field at approximately 11:30 am. Because all workers
18 were paid on a piece rate basis, there was no actual lunch breaks,
19 but those trios which stopped to eat would instead stop briefly
20 as they finished rows near the edge of the field. The UFW
21 representatives met those trios that took short breaks near
22 their cars, which were parked along a road bordering the
23 company field and an irrigation district canal. They remained
24 approximately one hour.

25 9. On November 26, 1976, three (3) UFW organizers were
26 present at company fields from approximately 1:30 p.m. until
27 work finished at approximately 3:15 p.m. For this hour
28 and 45 minutes the UFW organizers remained near the edge

1 of a company field. As trios finished their rows, some
2 stopped briefly to talk with the organizers at the edge of
3 the field

4 10. On November 27, 1976, UFW; organizers stayed with
5 the crews for approximately one (1) hour, waiting for the
6 frost to melt.

7 11. On November 30, 1976, three (3) UFW organizers
8 stayed with the crews for approximately two (2) hours, waiting
9 for the frost to melt.

10 12. On December 1, 1976, UFW organizers stayed with the
11 crews for approximately two (2) hours, waiting for
12 the frost to melt.

13 13. On December 2, 1976, UFW organizers stayed with the
14 crews for approximately two (2) hours, waiting for the frost
15 to melt.

16 14. On December 3, 1975, UFW organizers stayed with the crews for
17 approximately two (2) hours, waiting for "he frost to melt.

18 15. On December 6, 1977, six (6) UFW organizers stayed with
19 the crews for at least two (2) hours, waiting for the frost
20 to melt. UFW organizers returned at approximately 11:15 a.m.
21 and until 12:30 p.m. waited at the edge of the field, talking
22 with those trios who chose to eat brief lunches. All three (3)
23 Arakelian crews were working in the same field this day.

24 16. On December 7, 1976, three (3) UFW organizers stayed
25 with the crews for at least two (2) hours, waiting for the frost
26 to melt.

27 17. On December 13, 1976, six (6) UFW organizers stayed
28

1 with the three (3) crews for approximately one (1) hour waiting
2 for the frost to melt. Hires (3) organizers returned to the
3 field at 3:00 p.m., approximately an hour before work finished.
4 The organizers believed that work would be finished at 3:00 p.m.
5 The organizers waited until work was completed and then trans
6 ported Arakelian workers to the pre-election conference in Blythe.

7 18. On December 14, 1976. three (3) UFW organizers stayed
8 with the crews for approximately one-and-a-half (1?) hours
9 until work began. They returned at approximately 11:15 a.m.
10 and until 12:30 p.m. waited at the edge of the field, talking
11 with any trios that stopped for lunch. The 'JT- was, on
12 December 13th and 14th, attempting to ascertain how many
13 eligible voters had left Arakelian's employ and had to be located
14 elsewhere before the election en December 15th.

15 19. It was the position of the Company that during this
16 period of union organizing, November 23, 1976 to December
17 14, 1976, that union organizers were not to be on company property
18 at any time other than those delineated by "he ALRB'S access
19 rule. This position was conveyed to the union organizers.
20

21 Dated: August _____, 1977

Dated: August _____, 1977

23 _____
24 Tom Dalzell
25 UNITED FORM WORKERS OF AMERICA,
26 AFL-CIO

William. F. Macklin
GEORGE ARAKELIAN FARMS, INC.