

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

JACK G. ZANINOVICH, dba)	
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JACK G. ZANINOVICH FARMS,)	
)	
Respondent,)	Case No. 75-CE-41-F
)	
and)	4 ALRB No. 82
)	
UNITED FARM WORKERS OF AMERICA,)	
)	
AFL-CIO,)	
)	
Charging Party.)	
)	

DECISION AND ORDER

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 September 13, 1978, the Board issued the attached Proposed Decision and Order in this proceeding. The parties were informed that the Proposed Decision and Order would become final if timely exceptions were not filed. As no timely exceptions were filed, it is ordered that the attached Proposed Decision and Order be and is hereby made the Board's Decision and Order.

Dated: October 25, 1978

GERALD A. BROWN, Chairman

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

CASE SUMMARY

Jack G. Zaninovich, dba
Jack G. Zaninovich Farms

4 ALRB No. 82
Case No. 75-CE-41-F

PROPOSED BOARD DECISION

On November 28, 1977, due to the unavailability of the Administrative Law Officer (ALO), and pursuant to 8 Cal. Admin. Code Section 20266 (as revised and amended in 1976), this case was transferred to the Board for consideration and issuance of a proposed decision and order pursuant to 1160.3 of the Act. On September 13, 1978, the Board issued its proposed Decision and Order in which it concluded that:

1. A finding that Respondent violated the Act by prohibiting union solicitation on its property by non-employee organizers would not, within the unique historically-limited context of the case, serve the remedial goals of the Act;
2. A campaign speech to employees made by Respondent after work was not an unfair labor practice because of the nature of the speech and the lack of corroboration for the witness who provided testimony about the speech;
3. General Counsel's argument that the Respondent's campaign speech violated Section 1153 (a) because it created an imbalance in organizational communication among the employees does not prevail because there is no evidence that Respondent had any rule concerning employee solicitation at any time during the work day;
4. Supervisor's asking an employee on election day whether he had "signed" did not constitute unlawful interrogation;
5. Respondent violated Section 1153 (b) and (a) of the Act when it denied all access to UFW representatives, while it rendered assistance to the Teamsters by allowing Teamster organizing activity on company property before and after commencement of the work day, by instructing an employee to vote for the Teamsters, and by permitting Teamsters to drive through the vineyard announcing by loudspeaker an upcoming campaign meeting.

PROPOSED REMEDIAL ORDER

As a remedy for the violations noted above, the Board ordered the Employer to cease and desist from such conduct and to comply with the standard remedial provisions with respect to signing, translating, posting, mailing, distributing, and reading an appropriate Notice to Employees.

BOARD DECISION

No timely exceptions having been filed by the parties to the Proposed Decision and Order, it became the final Decision and Order of the Board.

This case summary is furnished for information only and is not an official statement of the Board.

STATE OF CALIFORNIA

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Respondent,)	Case No. 75-CE-41-F
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PROPOSED DECISION AND ORDER

Pursuant to Labor Code Section 1146, the Agricultural Labor Relations Board has delegated its authority in this matter to a three-member panel.^{1/}

This case was heard by Administrative Law Officer (ALO) Michael C. Tobriner on November 20 and 21, 1975, in Porterville, California. All parties were represented and given full opportunity to participate in the proceedings. On November 28, 1977, due to the unavailability of the ALO, and pursuant to 8 Cal. Admin. Code Section 20266 (1976), this matter was transferred to the Board for consideration and issuance of a proposed decision and order.

The General Counsel alleges in his complaint, as amended, that Respondent violated Section 1153 (a) of the Act by: (1) on or

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^{1/}This matter was originally consolidated for hearing with Case No 75-RC-41-F. Upon withdrawal of the petition by Western Conference of Teamsters, that case was ordered closed on November 7, 1977.

about September 5, 1975,^{2/} and thereafter, promulgating and enforcing through its agents an invalid no-solicitation rule which denied UFW organizers access to its property, but permitting access by Teamster organizers; (2) on or about August 28, promulgating a no-solicitation rule which was invalid because it prohibited solicitation at non-work times and places; (3) on or about September 10, less than 24 hours prior to a scheduled ALRB election, delivering an anti-union, anti-UFW speech to its assembled employees under circumstances which denied the UFW an opportunity to respond; (4) on or about September 10, by its agent, interrogating its employees regarding their union membership, activities, and sympathies. The complaint further alleged that by the acts specified in (1) and (3) above, and by the conduct of its agents on September 10 and 11 in instructing its employees to vote for the Teamsters, Respondent rendered unlawful aid, assistance and support to the Teamsters in violation of Section 1153 (b) and (a) of the ALRA.

Based upon our review of the entire record in this case, we make the following findings and conclusions.^{3/}

Jurisdiction

On the basis of Respondent's admission in its answer to the complaint we find that Respondent at all times material herein has been an agricultural employer within the meaning of Labor Code Section 1140.4 (c). We find also that the UFW is a labor

^{2/}Unless otherwise indicated, all dates hereafter are in 1975.

^{3/}If no exceptions are filed within 20 days of the service upon t parties of this proposed 'Decision and Order, it shall become final.

organization within the meaning of the Act.

Respondent also admitted in its answer, and we find, that Andres Corpus and Jack G. Zaninovich were, at the times material herein, supervisors of Respondent within the meaning of Section 1140. 4 (j) of the Act.

The Unfair Labor Practices Alleged

1. The No-Solicitation Rule Issue

The Board's "Access Rule" [8 Cal. Admin. Code Section 20900 (1975)] was enjoined by various courts in California, federal and state, during the period from September 3 to September 18. On the latter date, the California Supreme Court stayed the effect of the state injunctions.

The evidence clearly establishes that at least on and after August 28 (the effective date of the Act), Respondent prohibited union solicitation on its property by non-employee organizers. It is also undisputed that at all times material herein, Respondent was a party to a pre-Act collective bargaining agreement with the Teamsters which granted that union limited rights of access to the property in order to service that agreement,

UFW organizer George Verdugo testified that commencing two or three weeks before the effective date of the ALRA he began visiting the Respondent's premises in order to organize. He visited the property about three times a week, frequently in the company of one or two other organizers. In the period from August 28 to September 11, the day of the election, Verdugo visited Respondent's property 14-15 times before work began, at the lunch hour, and after work. He testified that during this period he

spoke with Respondent on some 9 or 10 occasions, and on each occasion was ordered off the property. At times the order was accompanied by a threat to call the police. On at least one occasion the Sheriff was at Respondent's property when Verdugo arrived at the noon hour; as he had been earlier threatened with arrest, Verdugo did not attempt to enter the property at that time. Verdugo estimated that the average length of each of his visits was 10 minutes or less.

General Counsel concedes in his post-hearing brief that the Access Rule was not in effect from September 3 to September 11, the date of the election. Any right of access which organizer Verdugo had, therefore, would necessarily be based on applicable precedents under the NLRA. Labor Code Section 1148. The basic guidelines under the federal law were set forth by the U. S. Supreme Court in NLRB v. Babcock & Wilcox Co., 351 U.S. 105 (1956): An employer may validly prohibit non-employee union solicitation on its property if by reasonable effort the union can reach the employees through other available channels of communication, and the employer does not discriminatorily allow other non-employees to engage in solicitation. The burden of showing the unavailability or ineffectiveness of alternative channels of communication lies with the General Counsel.

The General Counsel seeks to carry this burden in the present case by arguing that although the Access Rule was enjoined during the pertinent period, the findings of fact upon which the Board determined the necessity for the rule were still valid, and those findings establish the absence of effective alternative

channels of communication. Therefore, according to the General Counsel's argument, Respondent's policy of prohibiting non-employee union solicitation was unlawful.

The proper resolution of this issue must begin with an appreciation of the circumstances surrounding the implementation of the Access Rule. Certainly, during the period from September 3 to September 18, Respondent was entitled to rely upon the court actions enjoining the implementation of the regulation. However, even if the General Counsel were technically correct in his contention, we do not believe that the remedial goals of the Act would be served by our finding a violation in this unique, historically-limited context. We shall therefore dismiss this allegation of the complaint.

Alleged Acts of Interference, Restraint and Coercion

1. The "Captive-Audience" Speech

On September 10, the day before the election, Respondent asked its employees to remain after work to hear a campaign speech by Respondent. According to the General Counsel's witness Zuniga, Respondent told the employees that they should make the right decision in the election, that they all knew what trouble the UFW hiring hall had been, and to remember that Elmco (another employer) had gone Teamsters. Francisca Garcia, another General Counsel witness, testified that Respondent Zaninovich told the assembled workers that in the election they could vote for either the UFW, the Teamsters, or no union; that because of the trouble with the UFW hiring halls, UFW contracts were hard to live with; and that because Respondent had a Teamster contract, their situation was

quiet and free from trouble. Garcia also testified that Zaninovich said, "Just remember that no union produces anything for you. The only thing that produces for you is my check, and the only thing that counts on your check is my signature." The quoted testimony was not corroborated by any other witness in attendance at the meeting.

Because of the nature of the speech made, and the lack of corroboration for the quoted Garcia testimony, we find that the speech itself does not constitute an unfair labor practice. Labor Code Section 1155.

In reliance on a line of cases, including Livingston Shirt Corp., 107 NLRB 400, 33 LRRM 1156 (1953), NLRB v. United Steelworkers Union (Nutone, Inc.), 357 U.S. 357 (1958), and Montgomery Ward & Co., Inc., 145 NLRB 846, 55 LRRM 1063 (1964) enf'd. 339 F.2d 889, 58 LRRM 2115 (6th Cir. 1965), the General Counsel argues that in view of Respondent's no-solicitation rule, his speech violated Section 1153(a) because it created a glaring imbalance in organizational communication among the employees. On the record in this matter, we do not agree.

Assuming arguendo that the speech in question was delivered on company time [See, e.g., Montgomery Ward & Co., Inc., supra, at 848, n.3,] and that the UFW, on the facts of this case, was under no obligation to request an opportunity to reply to the Respondent's speech, the General Counsel's argument would not prevail because there is no evidence that Respondent had any rule at all concerning employee solicitation at any time during the working day. The NLRB has declined to find a violation of

Section 8 (a) (1) of the NLRA under this theory even where it has found unlawful employer restraint of employee solicitation. General Industries Electronics Co., 163 NLRB 38, 64 LRRM 1276 (1967), enf'd. in part, 401 F.2d 297, 69 LRRM 2455 (8th Cir. 1968); Forest Industries Co., 164 NLRB 1092, 65 LRRM 1339 (1967). Of necessity, oft this record, a similar result is required. We shall therefore order that this allegation of the complaint be dismissed.

2. Interrogation

The only evidence relevant to this allegation is the testimony of General Counsel's witness Said Mohammad Shaibi, who testified that on the day of the election Supervisor Corpus asked him whether he had "signed"; if not, he should go do so. The record is clear, and we find, that this witness equates the words "sign" and "vote." We therefore find that this questioning did not constitute unlawful interrogation.

3. Unlawful Assistance to the Teamsters

Based upon the unrebutted testimony of Mr. Mohammad, we find that the Respondent's agent Andres Corpus instructed employees to vote for the Teamsters. According to Mohammad, on September 11, after work began at 7:00 a.m., he was approached by Corpus who was moving from row to row speaking with workers. He testified that Corpus said to him, in English, "The election will be at 8:00 or 8:30 and you go elect or sign with the Teamsters." Mohammad expressly testified that he understood what was said to him.

Corpus was not called to rebut the above testimony, and there is no basis for discrediting Mohammad. The mere fact that he used an interpreter at the hearing in this matter does not

establish or even suggest that Mohammad was unable to comprehend simple statements in English outside the confines of the hearing room. Merzoian Bros. Farm Mgt. Co., Inc., 3 ALRB No. 62 (1977).

The remaining evidence of unlawful assistance arises out of Respondent's access policies.

General Counsel's witness Paul Zunige testified that on September 5, the day he was hired by Respondent, he observed 5 or 6 Teamster representatives in the fields talking with some Filipino employees, but did not hear what they said to the workers. While he observed the Teamsters passing out "papers," he did not get a copy. Nor did he observe workers signing any of the "papers." Zunige testified that he did not see Supervisor Corpus in the area. This was the last day that Zunige saw Teamster organizers on the property before the election. On another occasion, according to Zunige's testimony, Respondent approached him when he was shaking hands with UFW organizer Verdugo at the ranch before work and told him to get to work, which he did. It appears from the record that this incident occurred before the usual time for commencement of work.

General Counsel's witness Francisca Garcia, an employee with six years experience with Respondent, testified that before work on September 4, she observed 3 Teamster organizers in the avenue on Respondent's property with a group of approximately 10 employees. According to Garcia's testimony, she could hear the organizers asking the employees to sign for an election. Supervisor Corpus was standing about 20 to 25 feet away from the group, somewhat farther away than was she. Garcia testified that after

Corpus blew the work whistle the Teamsters stayed with the workers, without interruption, obtaining signatures for approximately 5 more minutes. Garcia also testified that on prior occasions she had observed Teamster representatives in the fields handing out campaign material, that on September 1 she observed Teamster organizers driving a car down an avenue in the fields and announcing over a loudspeaker an election-related meeting on the next day, without interference by company representatives.

Garcia further testified that during the period from August 25 to September 11 (the date of the election) she observed Teamster organizers on Respondent's premises on 3 or 4 occasions. She did not see them after September 4. She saw Teamster organizers at the work site only before or during work hours, not at lunch or during breaks.

On the basis of the above and the entire record, we find the Zunige testimony insufficient to support a finding of unlawful activity by Respondent. Because Zunige could not testify to the contents of any documents being passed out by the Teamsters on September 5, and because there is no evidence that Respondent had knowledge of the incident, this evidence does not overcome the effect of the Teamster's contractual right to service its contract during this period. We find his testimony regarding the handshaking episode to be of no probative value with respect to the unlawful assistance issue.

Garcia's testimony, however, when viewed in the context of the other record evidence regarding the Respondent's access policies, does present evidence of unlawful assistance. Based on

her uncontradicted testimony, we find that on September 4 Respondent's agent Corpus allowed Teamster organizing activity to occur in his presence on company property, both before and after the commencement of the work day. We have found herein that on the day of the election Corpus instructed employee Mohammad to vote for the Teamsters. On the basis of Garcia's uncontroverted testimony, we also find that on or about September 1, the Teamsters were permitted, without interference by Respondent or its agents, to drive a vehicle through the vineyard announcing by loudspeaker an upcoming campaign meeting.

By sharp contrast, the record shows that Respondent had an admitted policy of denying all access to UFW representatives. Thus organizer Verdugo testified that on the 9 or 10 occasions he encountered Respondent, he was ordered off the property and/or threatened with arrest. Verdugo also testified, without contradiction, that on one occasion Supervisor Corpus ordered the crew back to work prior to the end of the lunch period with the apparent intent of preventing UFW agents from communicating with the employees. In making these findings regarding incidents in which Corpus was involved, we have drawn an inference adverse to Respondent's case because of failure to call Corpus as a witness. United Auto Workers (Gyrodyne) v. NLRB, 459 F.2d 1329, 79 LRRM 2332 (D.C. Cir. 1972), supp'd. 203 NLRB 1120 (1973). We therefore conclude that Respondent's actions were in violation of Section 1153(b) and (a) of the Act.

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ORDER

Pursuant to Labor Code Section 1160.3, Respondent Jack G. Zaninovich dba Jack G. Zaninovich Farms, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Rendering unlawful aid, assistance, or support to the Teamsters Union or to any other labor organization by instructing its employees to vote for a particular union, by discriminatorily granting concessions to any such union, or in any other manner.

(b) In any manner interfering with, restraining or coercing its agricultural employees in the exercise of their rights guaranteed under the Act.

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

(a) Sign the Notice to Employees attached hereto. Upon its translation by a Board Agent into appropriate languages, Respondent shall reproduce sufficient copies in each language for the purposes set forth hereafter.

(b) Within 30 days from receipt of this Order, mail a copy of the attached Notice in the appropriate languages to each of the employees on its payroll during the period August 28 to September 11, 1975, and thereafter provide a copy to each of its employees employed during its 1978 peak season.

(c) Post copies of the attached Notice in all appropriate languages for 60 days in conspicuous places on its property, the timing and placement to be determined by the

Regional Director. Respondent shall exercise due care to replace any copy or copies of the Notice which may be altered, defaced, covered, or removed.

(d) Arrange for a representative of Respondent or a Board Agent to distribute and read this Notice in all appropriate languages to its employees assembled on company property, at times and places to be determined by the Regional Director. Following the reading, the Board Agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions the employees may have concerning the Notice or employees' rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all non-hourly wage employees to compensate them for time lost at this reading and the question-and-answer period.

(e) Notify the Regional Director within 30 days from the issuance of this Decision and Order of the steps it has taken to comply herewith, and continue to report periodically thereafter at the Regional Director's request until full compliance is achieved,

Dated:

GERALD A. BROWN, Chairman

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

NOTICE TO EMPLOYEES

After a hearing at which all sides had an opportunity to present evidence and state their positions, the Agricultural Labor Relations Board has found that we have violated the Agricultural Labor Relations Act by giving unlawful aid to the Teamsters Union by telling our employees to vote for the Teamsters and by allowing the Teamsters, but not the UPW, to campaign on our property. The Board has ordered us to post this Notice and to take other action.

We will do what the Board has ordered, and also tell you that:

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 any union;
- (3) to bargain as a group and to choose anyone they want to speak for them;
- (4) to act together with other workers to try to get a contract or to help or protect each other; and
- (5) to decide not to do any of these things. Because this is true, we promise you that:

WE WILL NOT do anything in the future that forces you to do, or stops you from doing, any of the things listed above.

Especially:

WE WILL NOT order you to vote for or support any particular union;

WE WILL NOT give any union unlawful aid and support.

JACK G. ZANINOVICH FARMS

Dated: _____

By: _____
(Representative) (Title)

This is an official notice of the Agricultural Labor Relations Board, an agency of the State of California.

DO NOT REMOVE OR MUTILATE.