

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

RANCH NO . 1, INC.,)	
)	
Employer,)	Case No. 77-RC-13-D
)	
and)	
)	
UNITED FARM WORKERS)	5 ALRB No. 1
OF AMERICA, AFL-CIO,)	
)	
Petitioner and)	
Respondent.)	

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.

Following a Petition for Certification filed by the United Farm Workers of America, AFL-CIO (UFW) on August 9, 1977, a representation election was held on August 13, 1977, among the agricultural employees of Ranch No. 1, Inc., the Employer herein. The tally of ballots showed the following results:

UFW	203
No Union	24
Challenged Ballots . . .	<u>18</u>
Total	245

After the Employer timely filed post-election objections, the Executive Secretary issued an Order of Partial Dismissal of Employer's Objections to Election and Notice of Allegation to be

Set for Hearing. On May 10, 11, and 12, 1978, an evidentiary hearing was held on the following issue: Whether the United Farm Workers of America, AFL-CIO, violated the access rule in several instances among employees working for Spudco and for Ranch No. 1, and whether this conduct affected the outcome of the election.

On July 12, 1978, Investigative Hearing Examiner (IHE) Carlo Jo Dakin issued her initial Decision in which she recommended that the objection be dismissed and that the UFW be certified as collective bargaining representative of the Employer's agricultural employees.

The Employer timely filed exceptions to the IHE's Decision and a brief in support of the exceptions. The UFW filed cross-exceptions and a brief in opposition to the Employer's exceptions.

The Board has considered the record and the IHE's Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the IHE, as modified herein, and to adopt her recommendation to dismiss the objections and to certify the UFW.

The Employer excepts to the IHE's failure to find that UFW organizer Lupe Murgia's three visits to the Employer's fields during the onion harvest, in violation of the access rule, constituted disruption of the work of the onion crews. The UFW has cross-excepted to the IHE's finding that Murgia was in violation of the access rule on those occasions. The testimony showed that workers in the onion fields were paid on a piece-rate basis and had no fixed lunch breaks, i.e., the employees took lunch breaks if and when th

chose. Under these circumstances the access rule^{1/} as clarified in K. K. Ito, 2 ALRB No. 51 (1976) and George Arakelian Farms, Inc., 4 ALRB No. 6 (1978) provides that where there is no established lunch time, the lunch time access period of one hour encompasses the time when employees actually take their lunch break.

The IHE found Murgia violated the access rule on three occasions, when he entered the onion fields during work hours at times he thought employees were taking a lunch break and when he spoke to and distributed literature to employees who were working as well as to those who were resting. Murgia testified that Bob Konjoyan, a Ranch No. 1 supervisor, told him that during the onion harvest, when there was no established lunch hour because of the piece rate pay, he (Murgia) could go into the onion fields at any time during the day as long as he did not take more than one hour. Konjoyan did not testify at the hearing and Murgia's testimony was uncontradicted. On the basis of Murgia's testimony, the IHE's inference that Murgia spoke to employees who were working while locating those who were eating, 8 Cal. Admin. Code 20900(e)(2)^{2/} regarding voluntary agreements on access, and noting that there was no credited testimony indicating Murgia was asked to leave

^{1/}8 Cal. Admin. Code 2099(e)(3)(B) regarding the lunch time access states in pertinent part: "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."

^{2/}8 Cal. Admin. Code 20900(e)(2) regarding voluntary agreements on access states in pertinent part: "This regulation establishes the terms upon which a labor organization may take access. However, it does not preclude agreements by the parties to permit access on terms other than set forth in this part"

the fields, we find that Murgia's actions on these three occasions did not constitute access violations. However, we affirm the IHE's finding that an access violation occurred when Murgia entered the Employer's onion fields and stayed between one and a half and two hours. ^{3/}We also agree with the Employer's contention that such activity was disruptive. Although the employees were not being paid during the time they spoke with the UFW organizer, we find that the presence of the organizer was nonetheless disruptive of the Employer's harvesting operations to the extent that it exceeded the one-hour access period.

The UFW excepts to the IHE's finding that Murgia's one-to-five minute visit to the company shop on July 28, 1977, constituted an access violation. We affirm the IHE's finding. Although this was a minimal violation, it was an unwarranted presence by the organizer on the Employer's property outside the permitted access times.

The Employer excepts to the IHE's failure to find that the UFW had an excessive number of organizers present with Manuel Ornelas' grape crew on August 4, 1977. The IHE found that six or seven unidentified organizers were talking to 15-20 members of Ornelas' crew about five minutes after the start of work. In arguing that there was an excessive number

^{3/}The UFW argues that the IHE's finding is inconsistent with her crediting Murgia's testimony as to the length of time he was in the onion fields. The IHE also credited the testimony of Salvador Rios, an Employer witness, that a UFW organizer talked to workers between one and a half and two hours. The finding of the IHE that Murgia was present one and a half to two hours on one occasion indicates that, as to this particular incident, she credited Rios' testimony over that of Murgia.

of organizers, the Employer relies on John Vallat's testimony. Vallat, who was supervising the grape harvest estimated that there were approximately 70 employees in Ornelas' crew. Salvador Rios, who worked in Ornelas' crew and testified as an Employer witness, stated there were 100 workers in the crew. In light of this discrepancy and absent any conclusive record testimony regarding the size of Ornelas' crew, we find that the Employer has not met its burden of proof in establishing there was an excessive number of organizers present on this occasion.^{4/}

The Employer also excepts to the IHE's failure to find that there was an excessive number of organizers with Pichardo's crew on August 5, 1977. The IHE found that on August 5, four unidentified organizers were present with Pichardo's crew and that there were about 25 employees in the crew. On the basis of these facts we agree with the Employer and find that on this occasion the UFW had two more organizers than permitted by the access rule.^{5/}

Other exceptions filed by the Employer relate to the IHE's failure to find that work was disrupted on the occasions when UFW organizers were present on the Employer's property in violation of the access rule. To the extent that the organizers' presence prevented employees from working and interrupted the Employer's harvest operations, these violations do constitute work

^{4/8} Cal. Admin. Code 20900(e)(4)(A) states: "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.

^{5/} See footnote 4, supra.

disruptions, and we so find.

In cases of excess access by a labor organization, we have refused to set aside elections where there was minimal or insubstantial encroachment upon the employer's premises beyond the scope of the access rule, John V. Borchard Farms, 2 ALRB No. 16 (1976). While we have found specific violations of the access rule occurred at the Employer's premises, we find the facts of this case indicate they were minimal. The organizers were present on the Employer's property outside the limits of the access rule on six occasions. No evidence was presented to indicate that these violations were of such a character as to create an intimidating or coercive impact on the employees' free choice of a collective bargaining representative. Where employees have participated in a free and fair election of a collective bargaining representative, we will not deprive them of their right to collective bargaining by refusing to certify an election because of misconduct which we cannot fairly conclude affected the results of this election. K. K. Ito Farms, 2 ALRB No. 51 (1976), Dessert Seed Company, Inc., 2 ALRB No. 53 (1976). Accordingly, we hereby dismiss the Employer's objection and uphold the election.

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 Section 1156, the exclusive bargaining representative of all the agricultural employees of Ranch No. 1, Inc., in the State of California, for the purpose of collective bargaining as

defined in Labor Code Section 1155.2(a), concerning employees' wages, working hours, and other terms and conditions of employment.

Dated: January 3, 1979

GERALD A. BROWN, Chairman

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

CASE SUMMARY

Ranch. No. 1, Inc.

5 ALRB No. 1

Case No. 77-RC-13-D

IHE DECISION

After an election won by the UFW, a hearing was held on the Employer's objection that the UFW violated the access rule in several instances among employees working for Spudco and for Ranch No. 1 and that this conduct affected the outcome of the election. During July and August, 1977, when the alleged access violations occurred, two crews worked in the onion harvest and at least five crews worked in the grape harvest.

The IHE found that UFW organizer Lupe Murgia entered the onion fields on three occasions during work hours at times when he thought employees were taking a lunch break, that he spoke and distributed literature to people who were resting and also to people who were working. The IHE found that on one occasion he stayed between one and a half and two hours and that on another occasion he spoke with employees before work began. The IHE found that on July 28, 1977, Murgia violated the access rule when he entered the Employer's property during working hours and spoke to three employees in the shop for five minutes or less.

As to the onion-harvest employees, who were paid on a piece-rate basis and had no established lunch break, the IHE concluded that the organizer's conduct in visiting crew members eating lunch in the middle of their work day was not violative of the access rule. However, to the extent the organizer made use of some employees' mealtime to communicate with others who continued working, the IHE concluded that the organizer violated the access rule on two occasions.

The IHE found that UFW access during work time among the grape harvest crews consisted of: six or seven unidentified organizers being present twenty minutes after work began on August 4; four unidentified organizers being present after work began in Pichardo's crew on August 5; Murgia, Vasquez, and one or more unidentified organizers being present ten to twenty-five minutes after work began August 6; and Hector Felix being present eight minutes after work began August 10. The August 4 incident, wherein Vallat told the organizers to leave five minutes after the start of work, constituted a violation of the access rule. The IHE found the August 5 incident appeared to be a deliberate violation by the UFW because the organizers came into the field after work had already started. The August 6 incident in Nool's crew, although not in deliberate disregard of the rule, also constituted an access violation. Finally, the August 10 incident, wherein Hector Felix remained eight minutes after work started, constituted a violation of the access rule.

The IHE found that most of the seven access violations were brief, involving organizers who remained several minutes after work was supposed to begin. Only one incident showed a deliberate disregard for the limits of the rule. On none of the occasions was there any indication of any organizer causing a disruption or

otherwise interfering with the Employer's agricultural operations. The IHE found that these were insubstantial occurrences which do not rise to the level of conduct which would interfere with employees' free choice of a collective bargaining representative. The IHE recommended the Employer's objection to the election be dismissed and that the Board certify the results of the election.

BOARD DECISION

The Board found that Murgia's presence in the onion fields, on three occasions when he spoke to employees who were working as well as those who were resting, did not constitute access violations, in view of: 8 Cal. Admin. Code 20900(e)(2) regarding voluntary agreements on access; Murgia's testimony that a supervisor told him that during the onion harvest he could go into the onion fields at anytime during the day as long as he did not take more than one hour; and the lack of credited testimony that Murgia was asked to leave the fields. The Board found that Murgia's presence in the onion fields on one occasion for one and a half to two hours did constitute an access violation.

The Board found that there was not an excessive number of UFW organizers in Manuel Ornelas' grape crew on August 4, 1977, but that there was an excessive number of organizers in Pichardo's crew on August 5, 1977, when four organizers were present to contact a crew of 25 workers.

The Board also found that to the extent the union organizers' presence outside the limits of the access rule prevented employees from working and interrupted the Employer's harvest operations the union's violations of the access rule constituted work disruptions. The Board concluded that although UFW organizers were present on the Employer's property outside the limits of the access rule six times, there was no evidence that these violations were of such a character as to cause an intimidating or coercive impact on the employees' free choice of a collective bargaining representative.

The Board upheld the IHE in dismissing the Employer's objection and certified the UFW as the collective bargaining representative of all the Employer's agricultural employees.

This Case Summary is issued for information purposes only. It is not an official statement of the case, or of the Agricultural Labor Relations Board.

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:

RANCH NO. I, INC.

Employer,

Case No. 77-RC-13-D

and

UNITED FARM WORKERS OF
AMERICA, AFL-CIO,

Petitioner.

Peter Jacobs, Dressler, Stoll
& Jacobs, for the employer.

Linton Joaquin for the United
Farm Workers of America, AFL-CIO,

DECISION

I. Statement of the Case

CARLA JO DAKIN, Investigative Hearing Examiner: This case was heard by me on May 10, 11, and 12, 1978, in Bakersfield, California, pursuant to a Notice of Investigative Hearing dated February 24, 1978.

The United Farm Workers of America, AFL-CIO (UFW), filed a Petition for Certification on August 9, 1977. The Board conducted an election among the agricultural employees of the employer on August 13, 1977. The UFW received a majority of the votes. The Tally of Ballots shows the following votes cast:

UFW	203
No Union	24
Unresolved Challenged Ballots	18
Total	245
Names on List	584

The employer thereafter filed a timely petition pursuant to Cal. Lab. Code §1156.3(c) objecting to the certification of the election.

Evidence taken at the hearing was limited to the issue set out by the Executive Secretary in the Order of Partial Dismissal and Notice of Allegations to be Set for Hearing of November 8, 1977:

Whether the United Farm Workers of America, AFL-CIO, violated the access rule in several instances among employees working for Spudco and for Ranch No. I, and whether this conduct affected the outcome of the election.

Ranch No. I and Spudco, a custom harvester employed by Ranch No. I, each filed motions to deny access to the UFW and certain organizers based on alleged access violations during the election campaign at Ranch No. I. The Board set for hearing Ranch No. I's motion, 77-PM-1-F, and dismissed that filed by Spudco, 77-PM-2-F. Pursuant to the Board's order for a consolidated hearing on the motion and the election objections, I am issuing two separate decisions. This decision is limited to the representation case.

Both parties were represented at the hearing and were given full opportunity to participate in the proceedings. Both parties filed post-hearing briefs.

Upon the entire record, including my observation of the demeanor of the witnesses, and after consideration of the briefs filed by the parties, I make the following findings of fact and conclusions of law.

II. Background

Ranch No. I is located near Arvin, California. In July and August 1977 it was harvesting onions and then grapes. Spudco was employed by Ranch No. I to harvest its onions. Two crews worked in the onion harvest, and at least five worked in the grape harvest.

III. Alleged Violations of the Access Rule

A. Onion Harvest Crews

1. First Day

Employer's witness Matthew Weston, a tractor driver and irrigator at Ranch No. I, was working lifting onions with a tractor. He testified that on July 27 he saw a UFW organizer in the onion fields talking to employees topping onions. He later learned he was Lupe Murgia. Although Weston was not wearing a watch, he thought the time was 9:30 a.m. Work had begun at 5:30. He left the field to inform ranch manager Robert Konjoyan of the organizer's presence. After he returned, he saw Murgia approach Konjoyan's car. He did not hear what they said. Weston did not ask Murgia to leave the property on that day or any time.

Weston thought Murgia did not leave until work ended at 1:30 because he saw his car. However, he did not know Murgia's whereabouts at the end of the workday.

Murgia testified that on his first visit to the onion field he was alone and arrived about 10:00 a.m. He did not remember the date precisely. He was looking for Angel Garza, an employee, and found him eating lunch with his family. They talked approximately a half an hour about Garza's assisting with the union organizing. No one asked Murgia to leave Ranch No. I property. Murgia did not remember being present at the end of the day because after his talk with Garza he left and drove to another employer's ranch and then returned to his office.

Murgia testified he spoke to Konjoyan on one occasion as he was getting into his car to leave. Konjoyan told him it was all

right for Murgia to be present in the onions during the day when people were eating lunch, but for no longer than an hour. He said there was no established lunch hour because of the piece rate pay. He implied that the vineyard crews had an established lunch break and access would be limited to the hour surrounding the break.^{1/}

Garza testified for the UFW that the first time he saw Murgia in the onions was when he and his family were eating lunch, around 10:00 or 10:30 a.m. on a day in late July. He estimated the visit lasted ten to fifteen minutes. Murgia was the only UFW organizer he ever saw in the onions.

2. Second Day

Weston testified he saw Murgia on the following day, July 28, about 7:00 a.m. Murgia went from group to group of employees with cards in his hand. Weston saw people signing the cards. Murgia left about 11:00 a.m., four hours later.

Murgia testified that he was present a second time at the onion fields on the day following his first visit, between 5:00 and 5:30 a.m. The crews were just arriving when he got there. He left before 6:00 and did not go inside the field. He testified that he left when an hour was up, although he did not remember the time. He knew that he left after an hour because he looked at his watch. It was his practice when going into a field to check his watch upon entering and leaving.

When the people started work, some told him to come back later at about 10:00, which he did at about 11:00. He spoke to

^{1/} The UFW contends that the conversation between Murgia and Konjoyan constituted an access agreement between employer and union. I do not reach the question whether an agreement existed in this case because even if one did exist, there is no indication that it expanded the union's right of access under the ALRB access rule.

people who were leaving and to others inside the field who were eating. He was present in the field less than an hour. No one asked him to leave.

Garza testified he saw Murgia the day following his first visit about noon, or lunch time. Murgia gave him flyers to distribute and also distributed some to the crew. He was present between 45 minutes and an hour.

3. Third Day

Weston testified he saw Murgia on July 29, from 8:30 to 1:30, five hours. Murgia went from group to group; workers would stop and listen to him.

Murgia testified he went a third consecutive day at about 10:00, remaining about an hour. No one asked him to leave. This was his last visit to the onion crews because he concentrated his efforts on an election at another company.

Garza testified he saw Murgia a third time. He did not know the date. It was in the morning and the organizer was on Towerline Road, bordering the onion fields on the west, distributing leaflets and authorization cards. Murgia did not enter the fields.

4. Other Testimony

Salvador Rios, a member of Ornelas' crew, testified credibly he saw an organizer on two occasions in the onions, but did not identify him. Once the organizer spoke to him while he was taking a break. He remained talking to workers between one and half and two hours. The next day, the organizer was passing out cards to employees while some were working and others were not.

Employer witness Clarence Anfield, a supervisor, testified he saw Murgia talking to employees in the onion fields. The date was either the 28th or 29th of July. Anfield spent about twenty minutes

in the field and left about 10:00. Murgia was passing out cards. People were signing them. Some employees stopped work when Murgia handed them a card.

The work day in onions was irregular in length since pay was by piece rate. It generally lasted from 5:30 a.m. to 1:30 p.m. Garza testified that workers decided for themselves when to begin and end. According to Weston, employees ate if and when they wanted to do so and could leave whenever their work was finished.

Murgia testified that he has been a UFW organizer since 1967 and has been thoroughly instructed about the access rule. On cross examination, he demonstrated his knowledge of its provisions. When there was no established lunch hour, it was his practice to speak to people who had stopped work to eat lunch.

5. Credibility Resolution

It is difficult to resolve the inconsistencies between Weston, the chief employer witness, and Murgia and Garza, the main union witnesses, as to the length of time Murgia spent on Ranch No. 1 property in the onion fields. Weston was not definite as to time and did not wear a watch. Moreover, he apparently did not observe Murgia throughout the times he was allegedly present in the onions. Weston was not always on the tractor from which presumably he had a view of the fields and crews; he had other responsibilities. Although he said Murgia was present at the end of the day on the 27th, he did not know where and he did not see him. Weston thought he saw Murgia's car, but there was no evidence of how he was able to identify it.

Of the other employer witnesses, Anfield observed the organizer for a total of 20 minutes on one occasion. Rios could not identify the organizer he saw.

Murgia's testimony concerning his first two trips to the onion field is corroborated by Garza. As to the third trip, it is not clear that Garza's testimony related to the onion crews; he did testify that Murgia did not go into the field on that occasion.

I credit Murgia's testimony as to length of time he was in the onion fields, at the same time cognizant of his interest in the outcome of the hearing. He was a straightforward witness who spoke calmly and earnestly, without nervousness or edginess.

Weston's testimony was cautious and lacked detail. He remembered that the organizer was present for four hours on two days and five hours on a third day, and the approximate times each day. However, on cross examination, he could not amplify his statements and became testy in response to reasonable questioning. Other than time, he did not recall specific facts about the organizer's visits, such as what the organizer did other than pass out cards, or where he was located, or to whom he spoke. He testified he was not always in a position to observe the organizer. The testimony as to the long visits is incomplete and therefore doubtful. For these reasons I do not credit Weston's testimony completely.

I do credit the three employer witnesses' testimony that the organizer spoke to people who were working as well as those who were not. It is reasonable to infer from all the testimony that he passed by people who were working while locating those eating, and that he spoke to them.

I find that Murgia entered the onion fields on three occasions during work hours at times when he thought employees were taking a lunch break, that he spoke and distributed literature to people who were resting and also to people who were working. On one occasion he stayed between one and an half and two hours. I also find that

Murgia spoke with employees before work began on July 28.

B. Ranch No. I Shop

Employer witnesses Weston, Anfield, and Ramiro Cuevas testified that on July 28 at 2:30 p.m., Murgia came into the Ranch No. I shop where they were working. He remained long enough to hand out literature, and to tell them about a UFW meeting that night. The witnesses' estimates of the time he was present ranged from one to five minutes. Cuevas said one to two, Anfield said four to five, and Weston said about five.

Murgia said he did not go into the shop but stopped at the door. Cuevas, who drew a diagram of the shop (Board Ex. 20), testified that Murgia entered the shop through the center door facing Towerline Road (marked A on Board Ex. 20).

I credit the employer witnesses, in particular Ramiro Cuevas. He was a forthright witness and described the shop area in detail.

Although I do not credit Murgia's testimony that he did not enter the covered shop area, I do not find this to be a serious deficiency in his testimony although much was made at the hearing of whether he actually stepped through the door. Even if he merely stopped at the door, I find he came on the employer's property on this occasion. From all the testimony, it appears this was a momentary stop. Murgia was heading to another destination and stopped long enough to make an announcement. I find that Murgia entered the employer's property during work hours and spoke to employees, remaining no longer than five minutes.

C. Grape Harvest Crews

1. Block 1

Employer witness John Vallat, supervisor of the grape harvest, testified that before work on August 4, he noticed six or seven UFW organizers at the east end of Block 1 (Employer's Ex. 1, point "A", in black). They were talking to 15-20 members of Ornelas' crew. Vallat read one name tag, that of Lupe Murgia. At 6:05 he told the group to leave since work had begun at 6:00. The organizers left the field, walking north on a path along the field's east edge, passing beyond voice range about 6:20. Vallat said the organizers interfered with the work because 15-20 people did not begin work at 6:00 and they were being paid from 6:00.

Murgia testified that on the morning of August 4 he went from the labor camp with Nool's crew to vineyards between Blocks 4 and 5, and that Vallat was present. Thus he in effect denies that he was present in Ornelas' crew.^{2/} Murgia was not specifically questioned about a visit to Ornelas' crew in the fields which occurred prior to Nool's crew.^{3/} Since Vallat was unable to identify the other organizers on this occasion, his opportunity to see name tags must have been less than ideal. Because Murgia denied being present, because he testified Vallat only asked him once to leave during the harvest (Nool's crew), and because subsequent encounters with Murgia

2/ There are discrepancies concerning dates throughout all the testimony of all the witnesses pertaining to the presence of organizers during the grape harvest. There was nothing in Vallat's testimony to indicate that he was fabricating this incident, regardless of his memory of all details. He placed the Nool crew incident on August 9.

3/ See discussion regarding visit to Nool's crew, p.13.

may have clouded Vallat's memory of this encounter, I find that the employer has failed to establish that Murgia was present on this occasion. I find that six or seven unidentified organizers were talking to 15-20 members of Ornelas' crew in the field about five minutes after the start of work at 6:00 a.m.

2. Blocks 4 and 5

Clarence Anfield testified he saw Murgia about 6:25 a.m. on August 4. Murgia, the only organizer Anfield saw, was in a field where people were working about 150 yards from Bear Mountain Blvd., a public road (Employer's Ex. 1, Point B, in red). Anfield also saw Vallat and Konjoyan near Murgia. From a distance of 20 feet, he heard Vallat tell Murgia that he did not have the right to talk with workers during worktime. The organizer continued talking to workers and left after ten to fifteen minutes.

Vallat did not corroborate Anfield's testimony. When asked on cross examination whether he had seen organizers on August 4 other than at the start of work, Vallat's only response was that he had also seen them before work, not later, as Anfield alleges. In addition, Anfield was unusually nervous throughout his testimony. For this reason, I do not credit Anfield's testimony as to the occurrence of this incident.

3. Four Organizers, Four Locations

Anfield testified on August 5, he followed two men and two women organizers, whom he could not identify, to four crews. This was part of his assigned task of observing organizers.

He first saw the two women in the southeast corner of Block 2 (Employer Ex. 1, Point "C", marked red) talking to members of Valles' crew. The time was 5:59 or 6:00 a.m. He went to find Vallat, and when he returned at 6:05 he saw the organizers had moved to another

location, the corner of Blocks 7 and 1 (Employer's Ex. 1, Point "D", red) where Ornelas' crew was working.

At Ornelas' crew about 6:10 the organizers handed pamphlets and authorization cards to two workers who came out to the end of the row. Then the two women met up with the two men who were apparently waiting for them under a tree.

The organizers next went to the edge of Blocks 7 and 8 (Employer's Ex. 1, Point "F", red) where Pichardo's crew was working, remaining five to ten minutes.

Vallat corroborated Anfield's testimony in part.^{5/} He drove to Pichardo's crew and saw four or five organizers. They were wearing identification badges. Vallat could not name them although he recognized two people from the previous day. Vallat did not testify whether they were male or female. Murgia was not among them. The organizers were along a ranch road, two to three feet inside the rows. They were talking to seven to ten people and handing out pieces of paper for about ten minutes. Some workers had stopped working; others were both working and listening. There were about 25 people in Pichardo's crew. Vallat said he asked the organizers to leave twice. After the second time about 6:25, they left, walking to their car parked on the avenue between Blocks 2 and 8.

The organizers, according to Anfield, next went towards the southeast end of Block 7 (Employer's Ex. 1, point "E", red). About twenty minutes later (he estimated 7:30 a.m.), Anfield saw the two women again in Block 16, near the ranch's west end (Employer's Ex. 1,

4/ This crew leader's name was given as both "Pichardo" and "Picardo" By different witnesses.

5/ However, this corroboration is inconsistent with regard to the name of the crew leader. Anfield said he told him the organizers were in Valles' crew.

point "G", red). Garcia, the crew boss, came out of the vineyard and talked to them for a few minutes. When the women saw Anfield they left.

None of the UFW witnesses saw any women organizers at all at Ranch No. I during the organizing campaign. Garza testified credibly that only two organizers came to Ornelas' crew, in which he worked, while they were harvesting grapes. These were Murgia and Hector Felix. They did not remain after work began. He said he saw Murgia no more than five times. Mathilde Monarez also of Ornelas' crew, testified that she saw only Murgia. However, her testimony is not conclusive since she testified that out of the six day workweek she usually worked four days due to a physical problem. Two sisters-in-law who worked in Pichardo's crew, Clementina Garcia and Rosa Garcia, testified that they worked every day of the harvest and saw only one male organizer in their crew. Neither witness remembered his name; he was present once before work and remained about five minutes.

There is a conflict in testimony between Anfield and Garza, in particular, as to the presence of female UFW organizers, at Ranch No. I.

Anfield's credibility is undermined by other testimony found to be unreliable. Garza was believable. His testimony was internally consistent. Only one of the four incidents Anfield described is corroborated by Vallat, whom I have found to have given other straightforward credible testimony. I resolve this conflict by finding that four unidentified organizers were present in one crew, the Pichardo crew, on August 5,

Anfield said he also saw Murgia on August 5. However, I do not credit this testimony. In a declaration dated August 17, 1977, the

witness stated he saw Murgia every day from August 4 until August 10 in the fields between 5:45 and 8:00 or 9:00. When cross-examined concerning the declaration the witness was evasive and contradicted himself. He first testified he saw Murgia every day and then said he did not. He asserted he saw Murgia on the 10th and then decided it was on the 5th. The witness saw Murgia all morning sitting in his car, although he himself was driving around the ranch property in a truck. Because the witness was not always present, and because there is no corroboration of this contradictory testimony, I do not find it credible. I find that Murgia was not present at Ranch No. 1 on August 5.

4. Nool's crew

Vallat testified that on August 6^{6/} he came to the labor camp to talk to crew boss Tony Nool about the avenue his crew was to work on that day. Nool believed they were to work in an adjacent field, but Vallat instructed him to move one block east.

During their conversation, Vallat and Nool observed UFW organizers present in the labor camp parking lot.

At about 6:10, Vallat and Nool walked to the new location and Vallat showed the crew boss what grapes the crew should pick. By 6:15 a majority of the crew had walked or driven to the new site. Four or five organizers were also present, including Murgia. Vallat told Murgia to leave because he was attempting to instruct people and

^{6/} The witnesses were in conflict as to the date of this incident. Regardless of the date, the two principal participants, Vallat and Murgia, both stated they were present at Nool's crew the day Vallat changed the crew's work site. Without resolving the inconsistency as to date, I will consider what occurred and whether there was a violation of the access regulation.

the organizers were interfering; he was in violation of the access rule because work had begun. Murgia did not respond. Fifteen or twenty people stayed at the end of the row to hear Murgia. Vallat told them they could listen to "this asshole" if they wanted but that work had started. Murgia then said that the reason they needed a union was because of this type of person. Vallat again told Murgia he was in violation of the rule and should leave immediately. At about 6:40 Murgia and the other organizers left the fields.

Nool and his assistant, Angel de los Santos, corroborated much of Vallat's testimony. Some employees were still signing cards at 6:15 when work began, remaining with the organizers for about 10 minutes.

Nool could not identify any of the organizers. He thought they were organizers because they were wearing buttons and he did not recognize them as members of his crew. He said there were five or more. De los Santos also could not identify any of the organizers nor could he describe them.

Nool did not tell any crew member to get to work. De los Santos tried to tell some crew members, whom he did not identify when asked. He got no response.

Nool testified there were more than 50 people in his crew.

Murgia did not deny that he accompanied members of Nool's crew to a new location, or that Nool was talking to crew members about work. Nor did he deny that Vallat asked him to leave. Murgia was accompanied by two other organizers. The workers were located about three rows into the vineyard, preparing to go to work. Murgia testified

he was on Ranch No. 1 property about 10 minutes at this location. From there he went up on to Bear Mountain Blvd. where he spoke to people coming into work.

Murgia did not believe that people were being paid to listen to instructions because not all of the crew had arrived yet, and in his experience as a grape picker, he had not been paid for instruction time. However, he did not know what Ranch No. 1's pay policy was with regard to picking instructions.

Terry Vasquez corroborated Murgia's testimony concerning the visit to Nool's crew and the conversations with employees who did not appear to be working. She and Murgia talked to people arriving for work in Tony's crew. The crew was waiting for others. The foreman gathered people together and asked the organizers their names. Murgia asked the foreman his name. Vasquez did not hear what was said between them except she heard the foreman speak derogatorily of Murgia because he raised his voice when he did so.

I find that UFW organizers Murgia and Vasquez and at least one other unidentified organizer in visiting Nool's crew, were present between 10-25 minutes after work began during picking instructions.

5. Block 5, August 10

Anfield saw Hector Felix, Angel Garza (a Ranch No. 1 employee), and a third man in Block 5 about August 10. He identified the third man as an employee of Ranch No. 1, but did not know whether he was employed at that time. He knew Felix personally, and Felix was wearing a UFW identification badge.

Anfield left to pick up materials for the day's work. When he returned he saw the three men about halfway through the line of people

picking, heading north, toward Bear Mountain Blvd. He asked them to leave because work had begun. Felix and Anfield disagreed as to the time. Thereafter Felix Garza and the other man continued toward the public road. As they walked through the picking line they handed out a leaflet (Employer's Ex. 4). By 6:08, according to Anfield's watch they had left the property. Murgia picked up Felix on the road and they left the ranch.

Murgia did not remember being at Ranch No. 1 on August 10. In any case there is no evidence he came on the property.

Only one of these men, Hector Felix, was not an employee. As to him, the evidence indicates that he was present 8 minutes after work had begun. The UFW put on no evidence to contradict this testimony. I find that the UFW organizer was there 8 minutes after work began.

In summary, I find that access during work time among the grape crews, consisted of the following occasions: 6 or 7 unidentified organizers were present 20 minutes after work began August 4; four unidentified organizers were present after work began in Pichardo's crew August 5; Murgia, Vasquez, and one or more unidentified organizers were present 10-25 minutes after work began August 6; and, Hector Felix was present 8 minutes after work began August 10.

IV. Analysis

A. The Access Rule

The access regulation, 8 Cal. Admin. Code §20900, provides labor organizations a limited right of access to an employer's property for the purpose of communicating with employees about their rights to organize. The basis for the regulation is that statutory and constitutional principles require a reasonable and just accommodation

between the right of unions to access and the legitimate property and business interests of the employer. 8 Cal. Admin. Code §20900(b).

Access to employees on an employer's property is limited to one hour before the start of work and one hour after the completion of work. 8 Cal. Admin. Code §20900(e)(3)(A); Martori Bros. Distributing, 4 ALRB No. 5 (1978); Gourmet Harvesting & Packing, 4 ALRB No. 6 (1978). Lunchtime access is limited to a single one-hour period during the work day. If there is an established lunch break, the one-hour period encompasses that break. If there is no established lunch time, the one-hour period encompasses the time when employees actually take their lunch break, whenever that occurs during the day. 8 Cal. Admin. Code §20900(e)(3)(B), K.K. Ito, 2 ALRB No. 51 (1976); George Arakelian Farms, Inc., 4 ALRB No. 6 (1978).

The number of organizers is limited to two per 30 workers in a crew. If there are more than 30 workers, there may be an additional organizer for every 15 workers. 8 Cal. Admin. Code §20900(e)(4)(B).

The right of access does not include conduct disruptive of the employer's property or agricultural operations. Speech alone is not considered disruptive conduct. 8 Cal. Admin. Code §20900(e)(4)(C). The right of access includes the right to pass out literature. Tex-Cal Land Management, Inc., 3 ALRB No. 14 (1977).

The Board has consistently refused to set aside an election on the basis of access violations unless they are substantial enough to affect the free choice of employees in selecting a collective bargaining representative. K. K. Ito Farms, 2 ALRB No. 51 (1976); Dessert Seed Company, Inc., 2 ALRB No. 53 (1976), George Arakelian Farm

4 ALRB No. 6 (1978); Triple E Produce Co., 4 ALRB No. 20 (1978). Thus it has held that violations of the access rule are not per se conduct affecting the election.

B. Access to Onion Fields

The timing and manner of lunchtime access when there is no established lunchbreak has not been thoroughly addressed by the Board. In its decision in K. K. Ito Farms, 2 ALRB No. 51 (1976), the Board held that the union misinterpreted the access rule in coming on the property during morning and afternoon 10-minute breaks when there was no clearly established lunchbreak. Since the provision focuses on access to employees to talk with them while they are taking their lunchbreak, the Board held that access encompasses the time when employees are actually eating lunch whenever it occurs during the day, if there is no established lunchtime. This interpretation of the access regulation has since been included in the regulations, §20900(e)(3)(B).

In the onion harvest, there was no established lunchbreak. Some employees did not take any; others decided for themselves when to eat. Apparently there were people stopping at different times for lunch. Murgia came on the property at 10:00 each day. I note that hour was more than half way through the usual 8 hour day which began at 5:30.

The Board has not considered this situation where some workers are eating and others choose not to. A reasonable interpretation of the access regulation is that a labor organization's right of lunchtime access to employees taking a lunchbreak during a full workday is not cut off by the fact that other employees choose not to.

Thus, I conclude that the organizer's conduct in visiting crew members eating lunch in the middle of their workday at about 10:00 was not violative of the access regulation.

Additionally, the right of access at lunch time does not include the right to engage in conversation with employees who choose to continue to work. The organizer talked with and handed literature to some employees who were working in the field on two occasions. There is no indication that this conduct was disruptive. To the extent he made use of some employees' mealtime to communicate with others who continued working, the organizer violated the time limitation of the access rule on two occasions.

C. Access to Shop and Vineyards

The brief visit to the shop at 2:30 p.m. during the work day constitutes a violation of the access regulation with regard to time. The employees were preparing to leave the shop and there is no evidence that the organizer delayed them.

The four unidentified organizers on August 5 were involved in violating the access rule by visiting the Pichardo crew after work began. They spent 10 minutes there and had to be asked twice to leave the property. This appears to be a deliberate violation because they came into the field after work was underway.

The group of organizers whom Vallat told to leave 5 minutes after the start of work on August 4 also violated the access rule.

The fact that some workers did not begin to work precisely at 6:00 because they were talking with organizers does not lead me to conclude automatically that the organizers interfered with the employer's operations. Workers who on their own volition delay in reporting to

work at the start of the day are responsible for their own actions. There is no evidence that the employer's supervisors instructed the employees to begin work on this occasion. The employer cannot shift to an organizer the task of supervising its employees.

The presence of Murgia and Vasquez at Nool's crew also constitutes a violation of the access rule as to time, since they were present 10 to 25 minutes after work had begun. Although Murgia assumed, based on his own experience, that work did not begin with the picking instructions, this mistaken assumption does not excuse the violation of the regulation. There is no evidence that he made any effort to determine the wage practices of this employer. The evidence is convincing that there was confusion in this crew on this occasion; workers were straggling in and it was not clear exactly when work began. There is no evidence of a deliberate disregard of the access regulation.

Finally, the presence of Hector Felix on August 10, eight minutes after work began, constitutes a violation of the access regulation as to time.

These last three incidents above indicate that it is not realistic to assume that work begins at the 6:00 reporting time. The access rule allows organizers to be present one hour before work begins. The employer has an obligation to clarify when work begins by calling people to work, telling organizers work has begun, and that it is time to leave. Moreover, the employer shares with the organizing union the burden to resolve potential areas of misunderstanding regarding access such as the time work begins.

V. Conclusion

The organizers were on the employer's property outside the time limits of the access regulation a total of seven times.

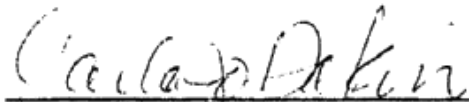
Most of these occurrences were brief, and consisted of the organizers remaining several minutes too long after 6:00 a.m. when work was supposed to begin. In only one of these incidents was there any indication of a deliberate disregard for the limits of the rule, that of the four unidentified organizers on August 5. In none of the occurrences is there any indication of any organizer causing a disruption of or otherwise interfering with the employer's agricultural operations.

Such insubstantial occurrences as these do not rise to the level of conduct which would interfere with employees' free choice of a collective bargaining representative. K. K. Ito, 2 ALRB No. 51 (1976); Dessert Seed Company, Inc., 2 ALRB No. 53 (1976).

For this reason I conclude that the employer's objection to the election should be dismissed. I recommend the Board certify the results of the election.

DATED: July 12, 1978

Respectfully submitted,



CARLA JO DAKIN
Investigative Hearing Examiner