

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

RANCH NO. 1, INC.,)	
)	
Employer,)	Case No. 77-PM-1-F
)	
and)	
)	
UNITED FARM WORKERS OF)	
AMERICA, AFL-CIO,)	
)	
Petitioner.)	
)	
)	
and)	
)	
SPUDCO,)	
)	
)	
Employer,)	Case No. 77-PM-2-F
)	
and)	
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)	
UNITED FARM WORKERS OF)	5 ALRB No. 36
AMERICA, AFL-CIO,)	
)	
Petitioner.)	
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DECISION AND ORDER

On August 9, 1977, a representation election was held pursuant to Section 1156 of the Agricultural Labor Relations Act (Act) among agricultural employees of Ranch No. 1, Inc., one of the Employers herein. Ranch No. 1, Inc., filed post-election objections and a Motion to Deny Access dated August 15, 1977, alleging violations of the access rule (8 Cal. Admin. Code 20900) as the basis for setting aside the election and denying, pursuant to 8 Cal. Admin. Code 20900 (e) (5) (A), the United Farm Workers of America, AFL-CIO (UFW) the access provided in 8 Cal. Admin. Code 20900 (e) (1). Spudco, a custom harvester working at Ranch No. 1,

Inc., also filed a Motion to Deny Access dated August 15, 1977, alleging the same violations as were alleged in Ranch No. 1, Inc.'s Motion. A consolidated hearing was conducted by Investigative Hearing Examiner (IHE) Carla Jo Dakin in May 1978. On July 12, 1978, the IHE issued her initial decision in the representation case, which the Agricultural Labor Relations Board (Board) affirmed in Ranch No. 1, Inc., 5 ALRB No. 1, (1979). On July 12, 1978, the IHE also issued her initial decision on the Motions to Deny Access.^{1/} Thereafter Ranch No. 1, Inc., filed timely exceptions with a supporting brief, and the UFW timely filed cross-exceptions and a supporting brief.

The Board has considered the record and the IHE's decision in the light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the IHE as modified herein.

In Ranch No. 1, Inc., supra, this Board upheld the results of the election conducted at the Employer's operation on August 13, 1977, and certified the UFW as the exclusive collective bargaining representative of the Employer's agricultural employees. In that case we reviewed the alleged violations of the access rule which are now before us as the grounds on which Ranch No. 1,

^{1/}The IHE issued one decision covering the separate Motions to Deny Access filed by Ranch No. 1, Inc., and Spudco. In view of the facts that: 1) both motions alleged the identical violations and requested the same remedy, 2) a single hearing was held on both motions, 3) both moving parties were represented by the same counsel, and 4) the IHE decision was timely served on both moving parties, we deem the IHE's failure to issue separate decisions non-prejudicial and we therefore dismiss Ranch No. 1, Inc.'s exception on this point.

Inc., and Spudco seek an order of the Board barring the UFW from taking access to employees on agricultural premises in the San Joaquin Valley for a period of one year. We decided that the violations which were proven were minimal in the context of the election campaign, as these violations were not "of such a character as to create an intimidating or coercive impact on the employees' free choice of a collective bargaining representative." Ranch No. 1, Inc., supra, at p. 6.

Under 8 Cal. Admin. Code 20900(e)(5)(B), violation of the access rule by a labor organization may constitute an unfair labor practice under Labor Code Section 1154(a)(1) if it independently constitutes restraint or coercion of employees in the exercise of their rights guaranteed by Labor Code Section 1152, and such violation may constitute grounds for setting aside an election where the Board determines that such conduct has affected the results of the election. Standards different from those set forth in the above regulation section apply to motions to deny access based on violation of the rule. A party submitting a motion to deny access is not required to show that violation of the access rule either resulted in the infringement of employees' statutory rights or affected the results of an election. A motion to deny access will be granted where the moving party demonstrates violation of our access rule involving either (1) significant disruption of agricultural operations, (2) intentional harassment of an employer or employees, or (3) intentional or reckless disregard of the rule.

The California Supreme Court has upheld the

constitutionality of 8 Cal. Admin. Code 20900, rejecting arguments that the access it provides to employees on their employers' premises is violative of basic private property rights. ALRB v. Superior Court, 16 Cal. 3d 392 (1976). In approving the balance struck in the access rule between the property rights of employers and the need of employees for information regarding their legal rights, the Court quoted from the decision of the U. S. Supreme Court in Labor Board v. Babcock & Wilcox Co. (1956) 351 U.S. 105 (at 112) :

Accommodation between the two must be obtained with as little destruction of one as is consistent with the maintenance of the other.... But ... the right to exclude from property has been required to yield to the extent needed to permit communication of information on the right to organize.

The integrity of the balance in the access rule between these two interests will be preserved, we believe, by the standards set forth above for motions to deny access. Those standards make explicit the major limitations or qualifications that attach to the "limited right to approach employees on the property of the employer." 8 Cal. Admin. Code 20900(b). The manner in which employees are to be approached must involve no significant disruption of the employer's agricultural operations, must not harass either employer or employees, and must observe the time, place, and number requirements of the rule.

When evaluated by the above standards, the violations of the rule committed by the UFW, and in particular one violation committed by its organizer Lupe Murgia, do not appear insignificant. On the occasion when Murgia stayed in the onion fields between

one-and-a-half and two hours in violation of both the access rule and the voluntary agreement on access which he had reached with Robert Konjoyan, a supervisor for Ranch No. 1, Inc., he disrupted agricultural operations and displayed a degree of unconcern about access limitations which this Board does not condone.^{2/}We find that Murgia acted with reckless or intentional disregard of the access rule.

This is the first decision in which this Board has had occasion to state its standards for evaluating motions to deny access or to grant such a motion. The violations proved are clear. Therefore, we believe an appropriate remedy will be an order pursuant to 8 Cal. Admin. Code 20900 (e) (5) (A) barring organizer Lupe Murgia from exercising the right of access provided in 8 Cal. Admin. Code 20900 anywhere in the area covered by our Fresno Regional Office for a total of 60 days on which the UFW is entitled to exercise such right of access, commencing on the day the UFW next files a Notice of Intent to Take Access for the purpose of taking access to the property of any agricultural employer located in that area.

ORDER

The Agricultural Labor Relations Board hereby orders that, for a total of 60 days on which the United Farm Workers of America, AFL-CIO (UFW) shall be entitled to exercise the right of access provided by 8 Cal. Admin. Code 20900 on the property of any agricultural employer located in Fresno, Kern, Kings,

^{2/} See Ranch No. 1, Inc., supra, at pp. 3 and 5 f.

Madera, Merced, Mono, Riverside, or Tulare County, commencing on the day the UFW next files a Notice of Intent to Take Access pursuant to 8 Cal. Admin. Code 20900 (e) (1) (B) for the purpose of taking access in any of the said counties, Lupe Murgia shall not exercise such right of access in said counties.

Dated: May 16, 1979

GERALD A. BROWN, Chairman

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

JOHN P. McCARTHY, Member

CASE SUMMARY

Ranch No. 1, Inc.,
and Spudco (UFW)

5 ALRB No. 36
Case No. 77-PM-1-F
Case No. 77-PM-2-F

IHE DECISION

Motions to Deny Access filed after an election won by the UFW by Ranch No. 1, Inc., and Spudco, a custom harvester engaged by Ranch No. 1, Inc., were denied by the IHE on the grounds that the violations of the access rule, 8 Cal. Admin. Code 20900, which she found to have been committed by the UFW during the pre-election campaign did not meet the standards for imposition of that sanction. [The Board in Ranch No. 1, Inc., 5 ALRB No. 1 (1979), modified the rulings of the IHE in the representation case with which this matter was consolidated as to the violations of the access rule committed by the UFW, but upheld her conclusion that those violations did not warrant the setting aside of the election pursuant to 8 Cal. Admin. Code 20900 (e) (5)(a).]

BOARD DECISION

The Board stated that a motion to deny access will be granted when the moving party establishes violations of the access rule involving either significant disruption of agricultural operations, intentional harassment of an employer or employees, or intentional or reckless disregard of the time, place, or number limitations of the access rule.

The Board found that Lupe Murgia's violation of the access rule on the occasion when he stayed in the onion fields for one-and-a-half to two hours not only disrupted agricultural operations but displayed deliberate or reckless disregard of the rule.

BOARD ORDER

On the basis of its determination that Murgia's violation of the access rule resulted in disruption of agricultural operations and displayed intentional or reckless disregard of the rule, the Board ordered that for a period of 60 days beginning on the day the UFW next files a Notice of Intent to Take Access pursuant to 8 Cal. Admin. Code 20900 (e)(1) (B) in order to take access to the property of any agricultural employer in the area covered by the Board's Fresno Regional Office, Murgia may not exercise the rights of access provided by the rule anywhere in that area.

This Case Summary is furnished for information only and is not an official statement of the case, or of the ALRB.

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:

RANCH NO. I, INC.,

Employer,
Moving Party,

Case No. 77-PM-1-F

and

UNITED FARM WORKERS OF
AMERICA, AFL-CIO,

Respondent.

Peter Jacobs, of Dressler,
Stoll & Jacobs, for the
Employer.

Linton Joaguin, 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 in which the UFW received a majority of the votes.

The employer, Ranch No. I, filed a motion to deny access on August 15, 1977, alleging numerous violations of 8 Cal. Admin. Code §20900. The employer sought the remedy of barring access to the UFW and a particular organizer, pursuant to 8 Cal. Admin. Code §20900(e)(5)(A).

The Board set for hearing the following issues:

1. Whether UFW organizers took access outside times permitted by the access rule,
2. Whether UFW organizers engaged in conduct disruptive of the employer's agricultural operations,
3. Whether UFW organizers were present in numbers in excess of those permitted by the access regulation.

The employer also filed a timely petition pursuant to Cal. Lab. Code §1156.3(c) objecting to certification of the election. The issue set for hearing was limited to whether UFW organizers violated the Board's access rule and whether such conduct affected the election outcome.

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 Ranch No. I's motion to deny access.

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 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 DFW that the first time he saw Murgia in the onions was when he and his family were eating lunch, around 10 or 10:30 a.m. on a day in late July. He estimated the visit lasted 10 to 15 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

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.

before 6:00 and did not go inside the field. He testified that he left when an hour was up, although 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 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 a 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 20 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. I 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 tile 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 a 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

^{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.

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 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 10-15 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

^{3/} See discussion regarding visit to Nool's crew, p.14.

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^{4/} 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

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.

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 20 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, 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 Murgia was not present at Ranch No. I 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 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.

^{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.

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 5 or more. De los Santos also could not identify any of the organizers nor could he describe them.

Nool did not tell any crew members 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. I employee), and a third man in Block 5 about August 10. He identified the third man as an employee of Ranch No. I, 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. I 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 eight minutes after work had begun. The UFW put on no evidence to contradict

this testimony. I find that the UFW organizer was there eight minutes after work began.

In summary, I find that access during work time among the grape crews, consisted of the following occasions: six or seven 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 eight minutes after work began August 10.

IV. Analysis

The ALRB access regulation, 8 Cal. Admin. Code §20900, provides organizers a limited right of access to an employer's property to contact employees about their rights to organize and bargain collectively under the Act.^{1/} The basis for the access rule is not only statutory but constitutional. Some dislocation of an employer's property rights may be necessary to safeguard the right to collective bargaining.^{2/} Where circumstances of employment "place the employees

1/ Cal. Lab. Code §1152 sets forth the rights of agricultural employees:

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of continued employment as authorized in subdivision (c) of Section 1153.

2/ Republic Aviation v. N.L.R.B., 324 U.S. 793, 802 (1945) cited in Agricultural Labor Relations Board v. Superior Court, 16 Cal. 3d 392, 405 (1976).

beyond the reach of reasonable union efforts to communicate with them, the employer must allow the union to approach his employees on his property.^{3/} In upholding the access rule, the Supreme Court cited the Board's finding that unions seeking to organize employees in agriculture generally do not have available alternative channels for effective communication other than the worksite. Agricultural Labor Relations Board v. Superior Court, 16 Cal. 3d 392 (1976).

The right of access is a limited right. It is available only to unions which have given advance notice to the employer and the ALRB,^{4/} and includes restrictions as to times,^{5/} numbers of organizers,^{6/} and certain conduct.^{7/}

Invoking the sanction of barring access, 8 Cal. Admin. Code §20900(e) (5) (A), would serve to deter organizers' violations of the access rule. The motion to deny access is one of three different

3/ National Labor Relations Board v. Babcock & Wilcox, 351 U.S. 105, 113 (1956), quoted in Agricultural Labor Relations Board v. Superior Court, 16 Cal. 3d 392, 409 (1976).

4/ The union must serve on the employer, and file with the ALRB, a written notice of intention to take access onto the property of the employer. 8 Cal. Admin. Code §20900 (3) (1) (B).

5/ 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).

6/ 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).

7/ 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).

procedures for remedying varying types of access violations by unions.^{8/} An organizer (or union) commits an unfair labor practice if the access violation involves conduct which independently constitutes restraint or coercion of employees exercising their rights under Cal. Lab. Code §1152. 8 Cal. Admin. Code §20900 (e)(5)(B). Access violations are also grounds for setting aside an election where such conduct is found to have affected the results of the election. Id. Barring access under 8 Cal. Admin. Code §20900 (e)(5)(A) may be an appropriate sanction when the conduct neither amounts to restraint or coercion so as to constitute an unfair labor practice, nor prejudices the outcome of an election so as to require setting it aside.

In deciding whether to grant a motion to deny access, several factors may be considered. These include conduct which is disruptive of an employer's agricultural operations and conduct which constitutes harassment of the employer.^{9/} A component of harassment may be whether the organizer comes on the property to contact employees or merely to confront or antagonize the employer. Disruptive conduct excludes speech when in the context of access taken within the parameters of the rule. Injury to crops or machinery or interfering with the process of boarding buses constitutes disruptive conduct under the rule. 8 Cal. Admin. Code §20900(e)(4)(C). A third factor which may be considered is the totality of insignificant "technical" violations which are so numerous as to demonstrate a flagrant disregard for the access rule.

8/The conduct of an employer which interferes with the right of access may be either grounds for an unfair labor practice or grounds for setting aside an election. 8 Cal. Admin. Code §20900(e)(5)(C).

9/ Cf. Dessert Seed Co., Inc., 2 ALRB No. 53 (1976) , Member Hutchinson concurring.

These considerations constitute an undeniably flexible standard. The accommodation of unions' organizational rights and employers' property rights embodied in the access rule requires a degree of flexibility. 8 Cal. Admin. Code §20900(b). The underlying policy of the ALRA is to "encourage and protect" the right of employees to full freedom of association, self-organization and designation of representatives of their own choosing. Cal. Lab. Code §1140.2. In keeping with this policy, the standard should not be so rigid as to discourage the legitimate exercise of the right of access.

The organizer named in the instant case to whom the employer seeks to bar access is Lupe Murgia. I have found that he violated the access rule on four occasions in July and August 1977 at Ranch No. I. Twice in the onion fields he spoke to people who were working, remaining over an hour on one of these days. A third time he stopped at the employer's shop during worktime... A fourth time he remained on the property talking with members of Nool's crew 10-25 minutes after work began.

The organizer violated the rule by speaking to employees at work in the onions when his right of access encompassed only those who were eating their lunch. He also violated the rule by his presence longer than an hour on one occasion. There is no indication that his conduct was disruptive. While I view these violations as serious, I do not consider them to amount to harassment of the employer, particularly since no one asked him to leave on these occasions.

The shop incident I view as too insignificant in terms of a time violation to warrant invoking any sanction.

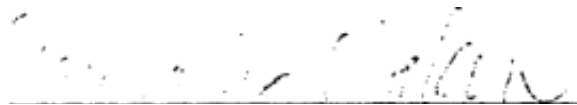
The incident in Nools' crew constitutes a time violation. Evidence of confusion that morning concerning proper work location and evidence that not all workers had arrived at the time the employer said work began indicates uncertainty as to starting time. While the organizer seems to have intended to remain until work began, he did not appear to have deliberately violated the rule.

Considering these incidents in their totality, I do not see a pattern of conduct indicating that the organizer harassed the employer, interfered with its agricultural operations, or otherwise flagrantly disregarded the access rule's limits.

V. Conclusion

I conclude that the employer has not established sufficient grounds for denying access to the UFW and/or its agent, pursuant to 8 Cal. Admin. Code §20900(e)(5)(A). I recommend that the motion to deny access be denied by the Board. DATED: July 12, 1978

Respectfully submitted,



CARLA JO DAKIN
Investigative Hearing Examiner