

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

SAM ANDREWS' SONS,)	
)	
Employer,)	Case No. 77-PM-1-D
)	
Moving Party,)	
)	
and)	5 ALRB No. 38
)	
UNITED FARM WORKERS OF)	
AMERICA, AFL-CIO,)	
)	
Petitioner.)	

DECISION AND ORDER

On July 9, 12, and 13, 1977, a representation election was held pursuant to Section 1156 of the Agricultural Labor Relations Act (Act) among the agricultural employees of Sam Andrews' Sons, the Employer herein. The Employer thereafter filed post-election objections pursuant to Section 1156. 3 (c) of the Act and Motions to Deny Access pursuant to 8 Cal. Admin. Code 20900(e) (5) (A). The Employer's Motions to Deny Access sought an order barring the United Farm Workers of America, AFL-CIO (UFW) from exercising the right of access provided by 8 Cal. Admin. Code 20900 on the property of any agricultural employer in the San Joaquin Valley for a period of one year. As the basis for its Motions to Deny Access the Employer alleged violations of the time and number limitations of 8 Cal. Admin. Code 20900 (e) by the UFW in connection with, its pre-election and post-election activities at the Employer's, premises.

A consolidated hearing was conducted by Investigative

Hearing Examiner (IHE) Elizabeth Miller in March and April, 1978. On May 18, 1978, the IHE issued an initial decision in the representation case, which the Agricultural Labor Relations Board (Board) affirmed in Sam Andrews' Sons, 4 ALRB No. 59 (1978). On June 8, 1978, the IHE issued the attached initial decision on the Employer's Motions to Deny Access. Thereafter the Employer filed timely exceptions with a supporting brief.

Pursuant to the provisions of Section 1146 of the Act, the Board has delegated its authority in this proceeding to a three-member panel,

The Board has considered the record and the IHE's Decision on the Employer's Motions in the light of the exceptions and brief, and has decided to affirm the rulings, findings, and conclusions of the IHE as amplified herein.

In Sam Andrews' Sons, supra, this Board dealt with most of the issues raised by the Employer's exceptions herein. The question there before us was whether the UFW, in its 1977 election campaign, had exceeded the limitations of 8 Cal. Admin. Code 20900 and our remedial expanded-access order in Sam Andrews' Sons, 3 ALRB No. 45 (1977), to such an extent that the results of that election should have been set aside. We determined that the evidence presented by the Employer fell short of establishing that access violations by the UFW created an atmosphere in which it was unlikely that employees could exercise full freedom of choice in the election. Accordingly, we upheld the election and certified the UFW as the employees' collective bargaining representative.

The Employer's Motions to Deny Access are based upon the same access violations which it alleged in its representation case, supplemented by an additional violation alleged to have occurred on July 18, 1917, five days after the election. The Employer's harvest supervisor, Ed Rodriguez, testified that work on July 18, was disrupted for about thirty minutes in one watermelon pitching crew because of an argument between an organizer and crew members. Rodriguez failed to identify the organizer by name in his testimony, and he admitted that he said and did nothing at the time of the incident to put an end to the alleged disruption. No other evidence was introduced by the Employer to corroborate the account of these events offered by Rodriguez, whose credibility the IHE considered unreliable (IHE Decision, p. 5). On the basis of this record, we find that the Employer has not met its burden of proof as to the alleged July 18 access violation. With respect to the violations alleged to have occurred from the beginning of July to July 13, we reaffirm our concurrence with the findings and conclusions of the IHE as discussed in Sam Andrews' Sons, 4 ALRB No. 59 (1978).

We would grant the Employer's Motions and bar the UFW from exercising for an appropriate period the right of access provided by 8 Cal. Admin. Code 20900 if the evidence established that the violations here before us caused significant disruption of the Employer's agricultural operation, or were intended to harass the Employer or employees, or indicated reckless or intentional, disregard of the limitations of time, place, or number which qualify the right of access. Ranch No. 1, Inc.,

and Spudco, 5 ALRB No. 36 (1979). None of these standards, however, has been met here. Work disruption was slight and harassment of either the Employer or its employees virtually or actually nil. The violations were of a technical nature and were not indicative of reckless or intentional disregard of the access rule. In short, the sanction of denial of access would be disproportionate to the minimal legal infractions that have been proven. The Employer's Motions for Denial of Access will therefore be denied.

ORDER

Sam Andrews' Sons' Motions to Deny Access in this matter are hereby denied.

Dated: May 22, 1979

GERALD A. BROWN, Chairman

HERBERT A. PERRY, Member

JOHN P. McCARTHY, Member

CASE SUMMARY

Sam Andrews' Sons

5 ALRB No. 38
Case No. 77-PM-1-D

IHE DECISION

Motions to Deny Access filed by Sam Andrews' Sons after an election won by the UFW were denied by the IHE on the grounds that the violations of 8 Cal. Admin. Code 20900 which she found to have been committed by the UFW during the pre-election campaign did not warrant imposition of that sanction. [The Board in Sam Andrews' Sons, 4 ALRB No. 49 (1978), affirmed 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 and 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 affirmed the IHE's conclusion that the violations of 8 Cal- Admin. Code 20900 by the UFW did not meet the standards for the sanction of denying access in that they did not involve either significant disruption of the Employer's agricultural operation, intentional harassment of Employer or employees, or intentional or reckless disregard of the time, place, or number limitations which qualify the right of access. Accepting the IHE's recommendation, the Board dismissed the Employer's Motions to Deny Access.

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:

SAM ANDREWS' SONS,

Employer,

and

Case No. 77-PM-1-D

UNITED FARM WORKERS OF
AMERICA, AFL-CIO,

Petitioner.

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

Glenn Rothner, for the United Farm
Workers of America, AFL-CIO.

DECISION

STATEMENT OF THE CASE

ELIZABETH MILLER, Investigative Hearing Examiner: This case was heard by me in Bakersfield, California, on March 30 and 31, and April 3, 4, 5, and 6, 1978. On July 5, 1977, the United Farm Workers of America, AFL-CIO (UFW), filed a Notice of Intent to Take Access upon the property of the employer, pursuant to Sam Andrews' Sons, 3 ALRB No. 45 (1977).^{1/} On July 9, 12 and 13, a representation election was held.

On August 19, 1977 and October 31, 1977, the employer filed two Motions to Deny Access, alleging a variety of violations of the Board's access regulation, and requesting remedies available under 8 Cal. Admin. Code §20900(e)(5)(A).

^{1/} In Sam Andrews' Sons, 3 ALRB No. 45 (1977), the Board found that the employer had denied access to the UFW. As a remedy, the Board ordered expanded access to the property of the employer allowing the UFW to enter the property and talk to employees during working hours.

The Board set for hearing the following allegations pursuant to 8 Cal. Admin. Code §20900 (e) (5) (A):

1. The UFW failed to file a Notice of Intent to Take Access before taking access;
2. An organizer in the field failed to identify herself when requested;
3. An excessive number of organizers were present;
4. Organizers disrupted the employer's agricultural operations and caused work stoppages; and
5. Organizers disrupted the employer's attempts to communicate with assembled employees by the use of abusive language and physical force.

The employer also filed objections to the election, and some of these were set for hearing. The Motions to Deny Access and the representation case were consolidated for hearing. Pursuant to the Board's consolidation order, I have issued two separate decisions, the instant decision being limited to the Motions to Deny Access.

The employer and the UFW were represented at the hearing and were given full opportunity to participate in the hearing, including examining witnesses and filing briefs. Upon the entire record, including my observation of the demeanor of the witnesses, and after consideration of the arguments made by the parties, I make the following findings of fact and conclusions of law.

EMPLOYER'S AGRICULTURAL OPERATIONS

Sam Andrews' Sons is a partnership with operations in the Imperial Valley and in Kern County. The company grows and harvests a variety of crops, including alfalfa, carrots, cotton, garlic, lettuce, onions, tomatoes, wheat and a variety of melons. The

organizing activities which were described at the hearing all took place in Kern County.

The crops which were being harvested at the time of the election included watermelons, crenshaws, casabas and cantaloupes. There was extensive, and sometimes conflicting testimony about the harvest operations for the various melons.

Cantaloupes are harvested by two methods. The machine crews walk along behind a Likens machine, which consists of a long conveyor belt stretching across several rows of crops, which dumps the melons into a truck which follows alongside the machine. The machine crews have 15 to 17 people, usually men and women, who pick the melons by hand and place them on the conveyor belt. When the machine gets to the end of the field, its wheels simply turn sideways and it travels to the next set of rows. The truck must turn around. The machine workers are paid hourly.

The cantaloupe sack crews consist of about 15 men who walk along the rows carrying sacks over their shoulders, into which they drop melons which they pick by hand. When his sack is full, the employee walks to the field truck, and up its ramp, and dumps the melons by opening the bottom of his sack. It is easier for members of the sack crews to go at their own pace than for those in the machine crews. These employees are paid at a piece-rate.

Crenshaw melons are picked by a crew of 14. Unlike cantaloupes, these melons must be cut from the vine with a knife. Because the melons are delicate, the cutters place each melon in a furrow. A truck and trailer then comes by, and a loading crew pitches the melons to the vehicle, where they are stacked by a few people who ride on the truck and trailer.

The watermelons are harvested in a similar manner. A cutting crew of eighteen to twenty men select and pick the melons. Pitching crews of seven to eight men then pitch and load the melons into trucks. The work of the pitching crews requires strength and the ability to maintain a rhythm with the other workers. The line of seven or eight men each takes a row, and travels together, picking up melons and pitching them to the next man, and then to the truck's loading crew. Unlike the other crews, which are mostly people of Mexican ancestry, the pitching crews are all Black. These employees also work at piece-rate.

STATEMENT OF FACTS

A. Organizational activities prior to filing the Notice of Intention to Take Access_____

I find that organizers did not enter the employer's fields prior to July 5, when the UFW filed its Notice of Intention to Take Access. Mateo Cerda, an employee witness, testified that he was "as sure as seeing the sun that shines down on us" that he saw four organizers go into the field to talk to sack crew 10 on June 30 and July 1. But Cerda then changed his testimony to say that the organizers did not go into the fields the first day, but only on the second day, but that he could not remember which day that was. Because of his changing testimony, I discredit Cerda's account of access before July 5.

The testimony of other witnesses for the employer, including supervisors Ed Rodrigues, Jose Rea, Salvador Alonso and Angel Avila Vera, gave the first date of access to the fields as July 4 or 5. Since none of these witnesses was certain that organizers had entered the fields on July 4, the employer did not meet its burden of showing that organizers entered the fields before July 5.

B. Access during the election campaign

1. Incident in a casaba crew, July 6

Ed Rodrigues, harvest supervisor for the employer, testified about an incident where five organizers entered a crew and disrupted work by talking to employees who stopped working. Because of the unreliability of his testimony, I cannot find that more than one UFW organizer was present, or that there was more than minimal disruption of work.

Rodrigues named only one organizer, Juliana de Wolf, and provided only a vague description of one other. He testified that de Wolf told him that the organizers could take full-day access, and could have as many organizers present as they wished. But in a declaration executed July 6, 1977, Rodrigues stated only that de Wolf had told him, "They (my supervisors) told us we could be in the fields at any and all times." It appears that Rodrigues fabricated the other statement.

As to the alleged work disruption, Rodrigues admitted that the employees could have been taking a break, and that he did not pay attention to the organizers, and was not close enough to see their faces.

This was only one of many incidents where employer witnesses could not name organizers. Two UFW employee witnesses testified that they and other employees organized on behalf of the UFW. It appears that some of these "organizers" may have been employees.

2. Incidents in cantaloupe machine crews

a. Machine crew 1, foreman Cirilo Alvarado

The employer presented testimony that on several occasions de Wolf and other organizers entered the crew and talked to employees,

causing some members to fall behind the pace of the crew. When they would run to catch up, melons would be left behind. I find that the organizing efforts by de Wolf did cause some workers to slow down, but that the delays were minimal.

The testimony of both of the employer witnesses has problems of credibility. Jose Rea, a supervisor, described an event of July 6, in which two organizers talked to crew members who stayed behind and left melons. Rea could not identify either of the organizers, or any employees. He also confused this incident with another concerning a sack crew when he was cross examined.

Margarita Ibarra, an employee, gave more detailed testimony, but was biased against the UFW and one of the employees she described as slowing down. Ibarra testified that several times de Wolf and other unidentified organizers talked to two employees, Isabelle Alvarado and Juanita Salazar, causing them to slow up and leave ripe melons.

Although Ibarra claimed she had nothing against the union, she admitted she had much against her foreman, who is Isabelle's husband. Ibarra did not like the way he talked to the workers, the way he pushed them, his phone calls to their homes, or his special preference for his wife. Ibarra went to the union to complain, but they said he was okay. Ibarra testified that both Cirilo and Isabelle supported the union.

De Wolf and Arcelia Navarro, an employee, testified that no employees stopped or lagged far behind the machine. De Wolf did admit, however, that she talked to employees while they worked, and that the work required careful examination of the melons. Therefore, it is probable that some melons were left behind, but any disruption was minimal.

Both Ibarra and Rea testified that Rea picked up melons that were left behind due to conversations with organizers. Rea never asked an organizer to stop disrupting work, never told any employee to work more, and never gave any employee a warning. Instead, he testified that he would have the machine slow down, and would pick up melons himself.

b. Machine crews 3 and 4

Jose Rea testified that on July 6, he saw four organizers in crew 3, de Wolf, Rosalinda Aguirre and two Mexican men, and two organizers in crew 4, described only as men. Rea testified that while he watched, he saw each machine come to the end of a row twice and stop 10 to 15 minutes before starting across the field again, while the organizers talked to the employees. Rea also testified that he had seen these crews stop at the end of a row when organizers were not present, and the machines stopped for only two to three minutes.

I find that when the organizers were present, the machines waited at the end of the row a little longer than usual because the employees talked with the organizers. I do not find it credible that the delay was as much as ten or fifteen minutes each time. Aguirre estimated the normal delay time as five minutes. As she had never worked in a machine crew, it can be inferred that her experience was limited to observing crews while she was organizing, and that the organizing did contribute to a slightly longer delay time. On the other hand, Rea's estimates of times did not appear accurate since his testimony was always the same in describing different incidents--the delay time without organizers was always 2 to 3 minutes, and with organizers 10 to 15 minutes.

3. Incidents in the cantaloupe sack crews a.

Sack crew 10, foreman Orozco

Mateo Cerda, an employee witness, testified that organizers once got on a melon truck with employees, and while in transit to a new field asked some of the employees their names. After the truck arrived at the destination, Cerda testified that some of the employees" stayed with the organizers, giving out their names, while the rest of the crew started working.

Cerda could not name any employees or organizers who were involved. The testimony was not credible because as the story was told, the facts kept changing, and the events became extremely improbable. The testimony was originally that the organizers boarded the truck in order to get two or three names they were lacking from the crew of fifteen. The testimony changed at one point to say the organizers needed ten to fifteen names. They spent ten minutes doing this while in transit, and an additional ten minutes after the truck had reached its destination, causing one or two employees to start work five to eight minutes after the rest of the crew. I find that there was no delay since it could not have taken twenty, or even ten minutes to obtain the names.

b. Sack crew 14, foreman Araiza

Jose Rea testified that on July 6, organizers Washburn and Murguia talked to employees in the crew while it worked, and that some employees would stay behind the rest of the crew, and then leave melons as they ran to catch up with the rest of the crew. Rea testified that this activity recurred one half hour later.

Washburn testified that he and Murguia did go to the sack crews that day, but only to find out which crew was which, the crew numbers, the number of employees in each crew and the captain.

Washburn claims he only spent a few minutes in each crew and did not cause the workers to slow down.

I find that there were insubstantial delays caused by the organizers talking with the employees. Rea's confusion about other events in the sack crews that day, infra, makes his testimony less reliable. Washburn's role as supervising organizer lends credibility to his testimony that on July 6, early in the organizing campaign, he was simply trying to find out information about the crews. However, Washburn also testified that the organizers generally did not talk to sack crews while the employees were working because they had to work so fast. It is therefore probable that small delays were caused by the organizers' questions.

c. Sack crew 14 or 16, foreman Alonso

Salvador Alonso, sack crew foreman, testified that his crew was delayed four or five minutes on July 7 or 8, when the melon truck was stopped at the exit of a field because two employees were talking to organizers. These employees were identified only as Dolores and "El Pajaro." Alonso testified that four other employees helped these two to catch up.

No organizers were named by Alonso, nor any other employees. Alonso was also not sure as to the date or the crew number. Alonso testified that he did not give out any warning slip because that was not necessary.

Alonso also testified that he saw organizers paste handbills on a company track and bus on July 6 or 7. He testified that he knew these were organizers because he knew most of the employees. However, he admitted that he did not know the steady employees, such as irrigators and tractor drivers. Francisco Larios, an irrigator,

testified that he had seen employees post bumper stickers on company property.

The last incident recounted by Alonso was that two organizers came, on an unknown date, and talked to some employees who remained in back of the crew for two to five minutes at the most.

d. Unidentified sack crews

Jose Rea testified that four organizers came to a sack crew on July 6 and talked to employees, stopping them from working for three to five minutes. Apart from the lack of detail in this testimony, it cannot be credited because on cross examination Rea said that the incident concerned machine crew 1. In addition, it is not clear whether this is the same incident as was related by Alonso, supra, where employees stopped for two to five minutes.

Angel Avila Vera, a supervisor in the sack, crews, testified that eight to ten organizers spent one to two hours in a field where seven or eight crews were working consecutive rows of eight. Some employees fell behind the pace of their crew and then would hurry to catch, up, leaving unpicked melons. On that day, Vera did not tell any employees or organizers not to disrupt work, and he gave no reprimands.

Vera could not name any employees who stopped work, and he could only describe one organizer as a stocky man of medium height.

4. Incidents in watermelon crews

a. July 6

Ed Rodrigues presented some very confusing and changing testimony about incidents which occurred among the watermelon crews.

Rodrigues testified that two organizers entered a watermelon field, talked to the cutting crew at the edge of the field, and then entered the field, where they were joined by three other organizers. These five then interfered with the work of each pitching crew for fifteen to twenty minutes. On direct examination, Rodrigues testified that two organizers did not identify themselves, but on cross he was able to come up with four names, Washburn, Murguia, Wallach and Saldano, indicating that only one organizer had refused to identify himself. In a declaration dated July 6, Rodrigues described two different incidents. In the first, organizers Washburn and Murguia entered a cutting crew. In the second, Murguia, Felix, Wallach and another organizer went to the pitching crews. Washburn testified that he never went to the watermelon fields until July 13.

Because of the unreliability of Rodrigues' testimony as to this event and the July 6 incident in a casaba crew, and the lack of any corroborating evidence, I cannot make any findings as to this incident.

b. Pitching crews, July 8

Ray Adams, foreman of the pitching crews, testified that six or eight organizers came to the field where five crews were working, and "disruptions" occurred in all crews. As described by Adams, the disruptions lasted approximately fifteen minutes, and consisted of workers arguing among themselves about the merits of the union, and about being stopped from working. He testified that the organizers knew the men wanted to get back to work, and left as soon as possible. The organizers were identified only as Mexicans, mostly male.

c. Pitching crews, July 13

On July 13, the day of the election in the pitching crews, a group of about ten organizers visited the crews while they were working.^{2/} Most of the organizers went to pitching crews, usually by themselves, and told the crews that Mack Lyons, a black, union official, would be coming by to talk to them.^{3/} Mack Lyons then went to each crew and spoke to employees.

Although the organizers who testified all denied that there were any interruptions in the work, I find that while the organizers visited the crews some employees stopped working, or slowed down, causing the crew to stop. There were several different causes for work being stopped. First, the employees argued among themselves about the validity of the union. The union was very controversial among the pitching crews since most of the other employees and organizers were of Mexican ancestry, while the pitchers were Black. Several witnesses described the racial animosity which existed. Second, both employer witnesses and organizers testified that most members of the crew had not been informed earlier that an election was to take place that day. The employees were confused, and some expressed anger at being stopped from working for an election. Third, some crew members were angry that the organizers' presence was preventing them from working.

^{2/} Various witnesses gave different estimates of the number of organizers, ranging from four to twelve. Six organizers were named, and organizer Fred Ross, Jr., who was able to name six, also testified that there were more organizers whose names he did not remember.

^{3/} Rodrigues and Rea testified that the organizers travelled in groups of three or four, while Washburn and Ross testified that each, organizer went alone to the crews. I find the latter version more credible since there were usually about seven pitching crews working, and if about nine organizers (excluding Lyons) divided themselves between the various crews, there would usually be only one organizer in a crew.

The confusion in the pitching crews can also be explained by the nature of the work which was physically demanding and required the crew to work together as a chain, and perhaps the personalities of the men, who were described as easily angered.

Rodrigues testified that two to three tons of watermelons were lost due to organizers trampling on vines and broken melons. However, foreman Adams testified that he saw no melons left in the field. Washburn testified that the organizers were careful not to damage any vines or melons. Rodrigues' only testimony as to how he knew the extent of the damage caused by the organizers was that he walked through the fields later that day. Given the extensive testimony describing the uproar and confusion on that day, and the lack of specificity in Rodrigues' testimony concerning how he measured the damage, I do not find that the organizers damaged the vines or the watermelons.

C. Access after the election

On July 18, after the election, three UFW organizers visited the watermelon fields to tell workers about a meeting with Cesar Chavez. Ed Rodrigues testified that the organizers went into two pitching crews which were working, and disrupted work by arguing with, the employees about the union's policies toward Blacks. None of the organizers were, identified except as being Mexicans. David Valles, an organizer testified that he visited the watermelon fields four or five days after the election, but that he went only to a cutting crew, and spoke with the employees while they were on their break.

I credit Valles' version of the July 18 incident. The election had already taken place and the union had won by a large majority. It is logical that the cutters would be invited to a

union meeting following the victory. It is less believable that a group of organizers would go into the pitching crews, disrupt work, and get into arguments with the employees. My credibility resolution is also dependent upon my earlier findings of unreliability of Rodrigues' testimony.

D. Disruptions of employer's campaign

The employer hired Steven Highfill to campaign for the no union position among the employees. Highfill recruited Jaime Brock, Connie Gonzales, Roberto Suarez and Johnny Macias as his assistants. The representatives spent most of their time in the fields from July 9 to July 13, presumably campaigning. Highfill recounted various incidents in which the employer claimed the UFW organizers interfered with the campaign efforts of these company representatives.

1. Incident at a machine crew, July 9

On July 9, several organizers were in a field where a machine crew was working, including Fred Ross, David Valles, and perhaps Lupe Murguia and/or Hector Felix. The company representatives came to the road alongside the field, and the organizers approached them. The organizers and representatives were about thirty yards from the crew. The testimony concerning the encounter varied, but both sides described some arguing between the two groups, and some name calling. Highfill testified that the organizers blocked the representatives' path to the employees, and that Ross yelled and called him names. After five to ten minutes, Highfill and his assistants left the area. Ross described a "verbal sparring match" between the two sides, and name calling by Sacias and Brock. He testified that he did not call Highfill names.

From the demeanor of the witnesses, I find that an argument erupted between the two groups, in which both yelled insults at the other. Throughout the hearing, Highfill exhibited bias against the union, often interrupting the testimony of union witnesses to make remarks or to laugh. (Highfill was assisting the employer's attorney in presenting the company's case.) Ross admitted that there was a "verbal sparring match" between the sides, and admitted to making certain derisive comments, such as, "You're in the big leagues now."

Highfill also testified that the organizers had blocked the company representatives' access to the workers, but I do not find that this occurred. There was no precise description of what the organizers had done to block the path, and there was no corroborating testimony. The organizers also denied that this had occurred. There was no testimony by any witness describing any physical contact.

2. Incident at Aguilera's machine crew, July 10

On the morning of July 10, the company representative approached the crew of Cesar Aguilera which was working in a field. The only UFW organizer present was Rosalinda Aguirre, who spent most of the campaign with that crew.

Aguilera told the crew to stop working because the representatives were going to talk to them. The representatives had discussed the company's medical plan for about five minutes, when about six UFW organizers drove up and walked to the edge of the field where the representatives were. The employees and Aguirre were about 10 or 15 yards away from this group. The organizers gave credible testimony that they felt they had to be there to protect Aguirre because of the reputations of Highfill's assistants

for violent organizing tactics.

There is a conflict in the testimony over an interaction between company representative Gonzales and organizer Valles, which occurred as the organizers walked up to where the representatives stood. Highfill testified that Valles jabbed Gonzales in the chest with his elbow as he passed her, saying "Get the fuck out of my way." Valles testified that the interchange consisted of Gonzales calling him a fat slob. The other UFW organizers denied having seen any interchange between the two.

It is possible that Highfill was mistaken in thinking that Valles jabbed Gonzales as he passed. Gonzales did not testify, and no explanation was given for her absence. The employer has not presented sufficiently convincing evidence to prove that this encounter happened as Highfill testified. As was noted before, Highfill expressed bias against the UFW, and his perception may have been somewhat altered.

The organizers and representatives proceeded to argue about the merits of the union. Insults were made by each aide about the other. One of the employees asked to hear both sides, and Ross proposed a debate. The representatives rejected the suggestion, and soon left, the whole incident lasting about five minutes. A few minutes later, most of the organizers left.

3. Incident at Cirilo Alvarado's machine crew, July 10

On July 10, shortly after the incident at Aguilera's crew, another confrontation occurred between the representatives and a UFW organizer. Although there are some inconsistencies and conflicts between the testimony of various witnesses, it appears that the crew was eating their breakfast, some inside a bus and some outside in the shade of the bus. The bus was parked near an

irrigation ditch, and the employees outside sat between the bus and the ditch. At one point both Brock and de Wolf had boarded the bus and were arguing. De Wolf was telling the workers about Brock's past, and Brock was encouraging the workers to listen to the company's side. After a few minutes, de Wolf and Brock both left the bus. Several of the employees followed Brock outside, where the company representatives spoke with the employees for 10 to 15 minutes.

There was some testimony that as de Wolf passed Brock, as she either got on or off the bus, she pushed him. At the time Brock was standing on one of the steps by the door of the bus. There was uncontradicted testimony that the passageway was narrow, that Brock was a big man, and that de Wolf was angry during the incident. Thus, it is reasonable to conclude that de Wolf did come into physical contact with Brock as she passed, and perhaps pushed him. However, the testimony of the employer's witnesses is in conflict as to the force of this impact.

Highfill testified that when de Wolf pushed Brock, he fell and a worker broke his fall. But Margarita Ibarra, an employee seated near the front of the bus, repeatedly testified that Brock just stepped to one side. Since Highfill was admittedly outside the bus, and therefore could not observe the incident as well, I do not credit his version.^{4/}

4. Threat to Suarez, July 10

Highfill also testified that on July 10 the representatives and some organizers met in a road, as the representatives were going to talk to a crew. Highfill testified that one of the

^{4/}Brock was described as being over six feet tall and over 200 pounds, while de Wolf was a woman of average size. It is highly unlikely that she would have pushed him very hard.

organizers threatened Suarez, and the representatives left without talking to the crew because of their fears of violence.

I cannot attribute the threat to any of the organizers because of the inconsistencies in Highfill's testimony.

On direct examination, Highfill claimed that Murguia said to Suarez, "You're not coming back to this field tomorrow or to any other field." But on cross examination, Highfill testified that it was Felix who made the threat. Highfill described Felix as having shoulder length hair, but Felix in fact had short hair, and testified that he always had. Murguia was never described as having long hair.

5. Following company representatives

Highfill testified that many times the representatives were followed in their cars by organizers. Felix did admit that he followed the representatives when they went to Aguilera's crew on July 10. The only other specific example recounted by Highfill was when one of the organizers threatened Suarez. Highfill testified that the organizers had been following the representatives, and then stopped and got out of their car after the representatives had.

These two instances of following were not contradicted by the UFW witnesses. Rather, various organizers testified that they knew of the reputations of Highfill's assistants for violence, and at various times took steps to insure that more than one organizer was present when the representatives were there. Therefore, it appears that at times organizers did follow the company representatives. There was no testimony that the following prevented the representatives from campaigning.

CONCLUSIONS OF LAW

In enacting the ALRA, the legislature declared it to be the policy of the State of California to encourage collective bargaining.^{5/} Noting the need for workers to receive information concerning the advantages and disadvantages of unionization, and the general lack of alternative channels of communication open to agricultural employees, the Board enacted an access regulation. See, 8 Cal. Admin. Code §20900(b), (c), and (d).

The access regulation, 8 Cal. Admin. Code §20900, permits limited access by union organizers onto the premises of agricultural employers. In upholding the regulation, the Supreme Court held that the employer's right to exclude organizers was subordinate to the public benefit in encouraging collective bargaining. Agricultural Labor Relations Board v. Superior Court, 16 Cal. 3d 392 (1976).

Access permitted by the regulation is subject to several limitations. Access is available for thirty-day periods commencing upon the filing of a notice of intention to take access. Section 20900 (e) (1) (A) and (B). The right to access continues at least five days following completion of the ballot count.

^{5/} Cal. Lab. Code §1140.2 provides:

It is hereby stated to be the policy of the State of California to encourage and protect the right of agricultural employees to full freedom of association, self-organization, and designation of representatives of their own choosing, to negotiate the terms and conditions of their employment, and to be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. For this purpose this part is adopted to provide for collective-bargaining rights for agricultural employees.

Section 20900(e)(1) (C). Access is permitted only during lunch and before and after work. Section 20900(e) (3). Access is limited to two organizers for each crew on the property, unless the crew has more than thirty members. Section 20900(e)(4)(A). Upon the request of an employer or its agents, organizers must identify themselves by name and labor organization. Organizers must also wear an identifying badge. Section 20900(e)(4)(B). The right to access does not include conduct disruptive of the employer's property or agricultural operations, including injury to crops or machinery. However, speech by itself is not considered disruptive conduct. Section 20900(e)(4)(A).

The thrust of these limitations is to prevent disruption of work and property. Thus, the number of organizers who may enter the property is limited, the organizers may enter only during nonworking hours, and disruptive conduct is not allowed. Similarly, the United States Supreme Court has authorized access where alternative channels of communication are not available, limited to situations which would not involve work disruption. In Labor Board v. Babcock & Wilcox Co., 351 U.S. 105 (1956), the Court limited access to "nonworking areas of the employer's premises." Central Hardware Co. v. NLRB, 407 U.S. 539, 545 (1972). The purpose of that limitation seems to be to prevent disruption of work. Agricultural Labor Relations Board v. Superior Court, supra.

The ALRB access regulation provides that an organizer who violates its provisions may be barred from taking access in any one or more of the regions, and that a labor organization may be similarly barred if its organizers repeatedly violate the provisions. 8 Cal. Admin. Code §20900(e)(5)(A).

Implementation of the sanctions,

CONCLUSIONS OF LAW

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Upon filing a notice of intention to take access, the UFW could have up to two organizers in the fields during working hours for organizational purposes for each crew, and the organizers could talk to the workers and distribute literature. The union could not interfere or disrupt the work, and no more than two organizers at a time could be with a crew, except as provided by §20900 (e) (3) and (4).

I find that the instances of violation of the access rule recounted at the hearing did not constitute more than inadvertent or "technical" violations. The employer failed to prove any harm to its agricultural operations. Work disruptions were minimal, and generally not the fault of the organizers. Since there was no intentional or reckless violation, and no substantial disruption of work, no sanctions should be imposed against the UFW or any of its organizers.

In many of the incidents described by the employer's witnesses, the employer did not meet its burden of showing that the individuals involved were organizers or agents of the UFW. Where names were omitted, the descriptions were generally so vague that it would be impossible to identify a specific individual. In some instances, the witnesses could not give any description at all. No witnesses gave any reason for knowing that these people were organizers, such as the presence of a badge.^{8/} All of these witnesses were asked if they had done anything since the election to determine the identity of these persons, and none had. There

^{8/} There was only one person who allegedly was an organizer but wore no badge and refused to identify himself.

and determination of their severity, are discretionary. In determining how that discretion is to be exercised, certain factors should be considered.

While the access regulation permits use of the employer's property for organizing, it appears that the regulations attempt to avoid conflict between that use and the employer's use, i.e., agricultural production. Where violations of the access rule result in harm to the employer by disruption of its agricultural operations or property, sanctions may be appropriate.

While some violations of the regulation may not result in direct harm to the employer's agricultural production sanctions might also be considered as a deterrent to intentional violations or those involving reckless disregard of the access rule. By imposing sanctions in such cases, "particularly flagrant abuse of the access limitations"^{6/} will not be sanctioned by the Board. It would be inconsistent with the purpose of the access regulation, however, to impose sanctions against inadvertent, or technical violations of the rule which cause no harm to the employer's agricultural operations.^{7/}

Before determining whether any violations of the access rule by union organizers in this case require imposition of sanctions, we must consider the expanded access which had been granted to the UFW as a remedy for unfair labor practices committed during a 1975 election campaign at Sam Andrews' Sons. 3 ALRB No. 45 (1977).

^{6/} Dessert Seed Company, Inc., 2 ALRB No. 53 (1976), Hutchinson concurring.

^{7/} Whether or not sanctions are imposed pursuant to §20900 (e) (5) (A), violations of the regulation may constitute unfair labor practices, §20900(e)(5)(B), or require setting aside an election, §20900(e)(5) (C).

was also uncontradicted testimony from two witnesses that a number of employees had campaigned on behalf of the union among the crews in question. The actions of an employee, even an active union proponent, cannot be attributed to the union. D'Arrigo Bros. of California, 3 ALRB No. 37 (1977). I therefore cannot hold the union responsible for the activities described where only unnamed "organizers" were involved. I also cannot find that the union had too many organizers in the fields based upon the presence of unnamed organizers.

The work disruptions that occurred all consisted of organizers talking to employees as they were working, and the employees slowing down or stopping work for short periods of time. There was no evidence that organizers ever physically interfered with the employees' work. The access regulation leads me to conclude that the organizers' conduct is insufficient to constitute disruption or interference because it consists only of speech. 8 Cal. Admin. Code §20900(e)(4)(C) provides that speech by itself shall not be considered disruptive conduct.

Even if the Board meant to include speech as a basis for finding disruption or interference during organizing which occurs during the work-day,^{9/} such speech would have to be something more than simply campaigning for the election. The Board permitted UFW organizers at the employer's property to enter the fields for organizational purposes during working hours, and to talk to the people. Nothing more than that occurred.

It was the employees themselves who stopped working, of their own volition. Rather than discipline or even reprimand these

^{9/} This refers to the remedy in Sam Andrews' Sons, 3 ALRB No. 45 (1977), discussed supra.

employees, or the organizers, the foremen and supervisors (except for a few comments by Ed Rodrigues) did nothing. One foreman even testified that discipline was not necessary. Another simply picked up some melons himself, and told the machine to slow down. These actions by the company's representatives make clear the insubstantial nature of any disruptions which did occur. There was no evidence that the employer's harvest yield was decreased by the organizer's activities.

The incidents of disruption of the employer's campaign caused minimal interference with the employer's campaign but did not constitute abuse of the union's right to exercise access. The incident on July 9 consisted of company representatives approaching a crew where organizers were already present, and an argument erupting between the two groups. The incident at Alvarado's crew on July 10 also consisted of only an argument between an organizer and a company representative, with the organizer perhaps lightly pushing the representative. The incident at Aguilera's crew on the same day was the only time organizers clearly intruded on a speech by representatives. Even then, the organizers proposed a debate between the two sides. Each of these incidents lasted only about five minutes.

CONCLUSION

The employer's case consisted of a series of minor infractions of the access rule, many of which were poorly documented and blown out of proportion. When we carefully examine the actual evidence we find only that while organizers spoke to employees during work, as was allowed by a Board decision, a few of the employees slowed down or perhaps stopped work for a few minutes.

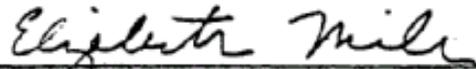
Arguments sometimes erupted between workers, organizers and company representatives, causing short delays in work or employer campaigning. One organizer may have refused to identify himself. The incidents do not show intentional reckless violation of the access rule or disruption of the employer's agricultural operations. Sanctions should not be imposed against the union or its organizers for violation of the access regulation.

RECOMMENDATION

Based on the findings of fact, analysis and conclusions herein, I recommend that the Motions to Deny Access be denied.

DATED: June 8, 1978

Respectfully submitted,



ELIZABETH MILLER
Investigative Hearing Examiner