

Moorpark, California

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

)	
CHAUFFEURS, TEAMSTERS AND)	
HELPERS OF AMERICA, LOCAL 186,)	
Respondent,)	Case No. 78-CL-7-V
)	
and)	
)	5 ALRB No. 8
JULIUS GOLDMAN'S EGG CITY,)	
)	
Charging Party.)	
<hr/>)	

DECISION AND ORDER

On November 6, 1978, Administrative Law Officer (ALO) Kenneth Cloke issued the attached Decision and Order in this proceeding. Thereafter, Respondent filed timely exceptions with a supporting brief.

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

The Board has considered the record and the ALO's Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions^{1/} of the ALO and to adopt his recommended Order.

Dated: February 2, 1979

RONALD L. RUIZ, Member

ROBERT B. HUTCHINSON, Member

JOHN P. MCCARTHY, Member

^{1/}Respondent excepts to the Administrative Law Officer's finding that it admitted violating the Act. We agree with Respondent.

CASE SUMMARY

Julius Goldman's Egg City

5 ALRB No. 8

Case No. 78-CL-7-V

ALO DECISION

The ALO concluded that Respondent union violated Section 1154 (d) (3) and (h) of the Act by picketing the Employer for recognition when the Board had properly certified another union as the collective bargaining representative. The ALO rejected Respondent's contention that the Board improperly certified the other union. He concluded that Respondent could not raise that issue it had been previously litigated before the Board, and as Respondent neither offered any newly discovered evidence nor claimed extraordinary circumstances.

BOARD DECISION

The Board affirmed the rulings, findings and conclusions of the ALO.

REMEDY

Respondent union is ordered to cease and desist from picketing, or otherwise forcing or requiring, the Employer to recognize it as a representative of the Employer's agricultural employees.

* * *

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:) Case No. 78-CL-7-V
)
CHAUFFEURS, TEAMSTERS, AND) ORDER CORRECTING ADMINISTRATIVE
HELPERS LOCAL 186, AND THE) LAW OFFICER'S DECISION
WESTERN CONFERENCE OF)
TEAMSTERS,)
)
Respondents,)
)
and)
)
JULIUS GOLDMAN'S EGG CITY,)
)
Charging Party.)
_____)

PLEASE TAKE NOTICE that the Administrative Law Officer's decision in the above-captioned matter was in error. Please note the following corrections:

Page 5 - Line 9: should read impermissible instead of unpermissible;

Page 6 - Line 27: should read following, instead of following;
and

Page 7 - Lines 5 and 6: should read (b) Notify the Oxnard Field Office within twenty (20) days following,

DATED: November 13, 1978



RALPH FAUST
Executive Secretary, ALRB

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

PROOF OF SERVICE BY MAIL
(1013a, 2015.5 C.C.P.)

I am a citizen of the United States and a resident of the County of Sacramento. I am over the age of eighteen years and not a party to the within above entitled action. My business address is: 915 Capitol Mall, 3rd Floor, Sacramento, CA 95814.

On November 13, 1978 served the within _____

Order Correcting Administrative Law Officer's Decision

on the parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States post office box, Sacramento, California addressed as follows:

CERTIFIED MAIL

Ormes, Farrell, Monroy
& Drost
3450 Wilshire Boulevard
Suite 810
Los Angeles, CA 90010

Pappy, Kaplon & Vogel 1730
W. Olympic Boulevard
Suite 200
Los Angeles, CA 90015

REGULAR MAIL

Julius Goldman's Egg City
8643 Shakell Road Moorpark,
CA 93021

Chauffeurs Teamsters and Helpers
Union of America, Local 136
6185 Carpinteria
Carpinteria, CA 93013

ALRB Oxnard Field Office
515 South "C" Street
Oxnard, CA 93030

Executed on November 13, 1978 at Sacramento, California. I certify (or declare), under penalty of perjury that the foregoing is true and correct.


SHELLEY HAYES

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:)
 CHAUFFEURS, TEAMSTERS, AND)
 HELPERS LOCAL 186, AND THE)
 WESTERN CONFERENCE OF)
 TEAMSTERS ,)
 Respondents,)
 and)
 JULIUS GOLDMAN'S EGG CITY.)
 Charging Party.)

Case No. 78-CL-7-V



Robert W. Farnsworth
 515 South "C" Street
 Oxnard, California
 for the General Counsel

George A. Pappov
 Pappov, Kaplon & Vogel
 1730 West Olympic Blvd., Suite 200
 Los Angeles, California
 for Chauffeurs, Teamsters & Helpers, Local 186

DECISION

KENNETH CLOKE , Administrative Law Officer:

This case was heard before me in Oxnard, California on
 September 27, 1978.

The Notice of Hearing and Complaint were duly filed and
 served, alleging violations of §§ 1154 (d) (3) & 1154 (h) of the
 Agricultural Labor Relations Act, herein referred to as the
 ALRA, or the Act, by Teamsters, Chauffeurs and Helpers, Local
 186, and the Western Conference of Teamsters, herein referred
 to as Respondents. The Complaint is based on a charge dated

August 2, 1978. These documents were properly served on Respondents, and Local 136 of the Chauffeurs, Teamsters and Helpers, herein referred to as the Teamsters, or Respondent, through its counsel, properly filed and served an Answer admitting the allegations contained in Paragraphs 1 and 2 of the Complaint, and that it picketed the charring party for the purpose of compelling it to bargain with them, and denying the rest.

For a first affirmative defense, Respondent alleged it was the proper collective bargaining representative for the Employees of Julius Goldman's Egg City(herein referred to as Egg City), and for a second affirmative defense, Respondent alleged that the United Farm Workers of America, AFL-CIO, herein referred to as the UFW, should not have been certified by the Agricultural Labor Relations Board as the collective bargaining representative for Charging Party's employees.

The Western Conference of Teamsters entered into a settlement agreement with the General Counsel's office after properly filing and serving an answer admitting the allegations contained in Paragraphs 2 and 3 of the Complaint and denying the rest, before the date of the hearing. A copy of the settlement agreement was admitted into evidence as General Counsel's Exhibit #4. The UFW made no appearance in this case.

All parties were given full opportunity to participate in the hearing, to call and examine witnesses, examine and present documentary evidence, and argue their positions, and following the close thereof, all parties were afforded an opportunity to

submit briefs in support of their respective positions. A brief was received on behalf of Chauffeurs, Teamsters, and Helpers Local 186, and no witnesses were called, since, in hearing, counsel for Respondent Local 186 admitted to having violated the Act, contesting only the legitimacy of an earlier decision by the ALRB certifying the UFW as collective bargaining representative for employees of the Charging Party. The Administrative Law Officer was requested to take judicial notice of the contents of the certification case file in 75-RC-21-M, which I have done.

Upon the entire record, including exhibits, and judicial notice, after careful consideration of the arguments made by the parties, and after independent research and reflection, I make the following findings of fact, conclusions of law, and order.

I. Jurisdiction

Respondent, is a union representing agricultural employees in Oxnard, California, and is a labor organization within the meaning of § 1140.4(f) of the Act. The Charging Party is a company engaged in agriculture in Oxnard, California, and is an agricultural employer within the meaning of § 1140.4(c) of the Act.

II. Unfair Labor Practices

The Teamsters Union alleges that in 1970 it was recognized by the Charging Party as exclusive collective bargaining agent for Egg City employees; that it negotiated a series of collective bargaining agreements covering these employees, each of which contained a "no-strike" clause; that one such agreement was in effect on April 10, 1975, when an employee at Egg City was

discharged, precipitating a strike by employees favoring the UFW. It is further alleged that the employee discharge was arbitrable, making the strike a "wildcat" or "unprotected" activity. The employer discharged all the strikers, and on September 9, 1975, after the Act had come into effect, an election was held in Egg City, in which the Teamsters and the UFW participated. A total of 167 employees cast ballots as strikers, which were challenged, and on September 27, 1977, the Board held, in Julius Goldmans' Egg City, 3 ALRB No. 76, that these employees were economic strikers and under § 1157 of the Act, were permitted to vote. The objections raised here were raised at that time, and the Board, on "careful consideration...determined that they do not invalidate these votes." (Id., at p. 3)

The challenged ballots were then stolen, or disappeared, and a new election was held for the challenged employees, as a result of which, on July 7, 1978, the UFW was certified as the collective bargaining representative for Egg City, and on August 2, 1978, the Teamsters set up a picket line outside Egg City premises for the objects and purposes complained of herein.

Respondent argues the Board erred when it determined that these employees were economic strikers, yet no effort was made at hearing to present evidence with regard to the status of these employees as unfair labor practice strikers, economic strikers, or simply discharged employees. As the Board noted in its earlier opinion, this determination can only be made in an unfair labor practice proceeding. Id. at p. 4, citing Times Square Stores Corp., 79 NLRB 36, 364-55, 22 LRRM 1373(1948). While an earlier unfair

labor practice hearing involved charges brought by the first discharged employee, that case was settled without either findings of fact or conclusions of law. See case number 78-CE-3-V.

It was admitted in hearing that there was no newly discovered or previously unavailable evidence, cf. , Chicago Typographical Union, 138 NLRB 231(1962); Local 1291 Int. Longshoremen, 142 NLRB 1228(1963); Western Electric, 144 NLRB 1318(1963), Bricklayers Local 1 (Shelby Marble), 195 NLRB 123(1972), and without such a claim it is generally unpermissible to relitigate representation issues in an unfair labor practice proceeding. Thus,

"It is the established policy of the Board not to allow a party to relitigate in a complaint proceeding... the legal effect of matters which the party has already litigated and the Board has decided in a prior representation proceeding." Ken Lee, Inc., 137 NLRB 1642(1962). See also, O.K. Van Storage, 127 NLRB 1537, 297 P.2d. 74 (CA 5, 1961); Pittsburgh Plate Glass Co. v. NLRB, 313 U.S. 146(1940) . Also, Elliott y. Dallas General Drivers, 45 LRRM 2628(1959).

In addition, under the NLRB, an Administrative Law Judge is generally bound to follow applicable Board precedent. Prudential Insurance Agents, 119 NLRB 768(1957); Ramco, Inc., 109 NLRB 998, 1009 at fn. 8(1954); Lenz Co., 153 NLRB 1399(1965).

As a result of the foregoing, I do not reach the issue Respondent raises, finding no prima facia invalidity in the Boards' earlier decision, or other "special circumstances" which would justify overturning the certification of the UFW as collective bargaining agent, and therefore find that Respondent violated Section 1154(d)(3) of the Act, in that it engaged in picketing with the object and for the purpose of forcing and

requiring Julius Goldman's Egg City to recognize and bargain with it as the representative of Egg City employees, when it was not certified as the collective-bargaining representative of said employees.

I further find that Respondent violated Section 1154(h) of the Act, in that it picketed, caused to be picketed, and threatened to picket or cause to be picketed Julius Goldman's Egg City, where an object thereof was to force or require the employer to recognize and bargain with it as a representative of Egg City employees, when it was not certified as the collective bargaining representative of said employees.

I further find nothing in the record to justify concluding that the UFW was not the lawful and properly certified collective bargaining agent for Egg City employees.

I therefore issue the following Order.

ORDER

Respondent, Chauffeurs, Teamsters and Helpers, Local 136, its officers, agents and representatives, shall:

1. Cease and desist from:

(a) forcing or requiring Julius Goldman's Egg City to recognize or bargain with it as the representative of Egg City employees;

(b) picketing, causing to be picketed, or threatening to picket or cause to be picketed, Julius Goldman's Egg City, where object thereof is to force said employer to recognize or bargain with it as a representative of Egg City employees.

2. Take the following affirmative actions which are deemed

necessary to effectuate the policies of the Act.

(a) Mail or otherwise distribute the attached Notice to the last-known home address of all 1975 and 1978 peak-season employees of Egg City.

(b) Notify the Regional Director following in the Sacramento Regional Office within twenty (20) days following receipt of a copy of this Decision of the Steps taken to comply therewith, and continue to report periodically thereafter until full compliance is achieved.

DATED: November 6, 1978



KENNETH CLOKE
Administrative Law Officer

NOTICE TO WORKERS

After a hearing in which all parties presented evidence, an Administrative Law Officer representing the Agricultural Labor Relations Board has found that we, Chauffeurs, Teamsters and Helpers Local 136, have engaged in violations of the Agricultural Labor Relations Act, and we have been ordered to notify all employees of Julius Goldman's Egg City that we will remedy these violations, and that we will respect employee rights in the future.

The Agricultural Labor Relations Act is a law that gives all farm workers the right:

- (1) to organize themselves;
- (2) to form, join, or help unions;
- (3) to bargain as a group and choose whoever they wish to speak for them;
- (4) to act together with other workers in getting a contract and helping to protect one another;
- (5) to decide not to do any of these things.

We promise that we will not do anything in the future that forces you or stops you from doing any of these things.

Especially:

(1) We will not force or require Julius Goldman's Egg City to recognize or bargain with us as the representative of Egg City employees.

(2) We will not picket or cause to be picketed, or threaten to picket or cause to be picketed, Julius Goldman's Egg City, with the object of forcing Julius Goldman's Egg City to recognize

or bargain with us as the representative of Egg City employees.

(3) We hereby recognize the United Farm Workers of America, AFL-CIO (UFW), to be the properly certified exclusive collective bargaining representative for Egg City employees.

DATED:

Chauffeurs, Teamsters and Helpers,
Local 186

By: _____

This is an official Notice of the Agricultural Labor Relations Board, an agency of the State of California. DO NOT REMOVE OR MUTILATE