

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

PROHOROFF POULTRY FARMS,)	
)	
Respondent,)	Case No. 75-CE-38-R
)	
and)	
)	
UNITED FARM WORKERS OF)	6 ALRB No. 45
AMERICA, AFL-CIO,)	(3 ALRB No. 87)
)	
Charging Party.)	

SUPPLEMENTAL DECISION AND REVISED ORDER

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.

In accordance with the remand order of the Court of Appeal for the Fourth Appellate District, dated June 8, 1980, in Case 4 Civ. 16995, 3 ALRB No. 87 (1977), we have reviewed and reconsidered that portion of our original remedial Order designated for review on remand and hereby make the following modification in that Order.

In paragraph 2(f) of the Order, we directed Respondent to provide the United Farm Workers of America, AFL-CIO (UFW) with access to Respondent's agricultural employees for one hour during regularly scheduled work time, for the purpose of conducting organizational activities. The Order did not specify the number of UFW agents allowed to take access during the organizing period. The Court remanded for redrafting of this paragraph, instructing the Board to specify the number of organizers allowed.

In our original Decision in this matter, we concluded that Respondent in this case committed numerous violations of the Act during the course of an intense anti-union campaign prior to a representation election. Granting the UFW access to the employees for a one-hour period on company time is an appropriate remedy to counteract the effects of Respondent's illegal conduct. However, we shall limit the number of organizers allowed to take access during this hour to two organizers for every fifteen employees in each work crew.^{1/} We believe that this ratio will adequately insure the opportunity for effective personal communication between organizers and employees and eliminate the possibility of an uncontrolled situation which could result if an unlimited number of organizers were granted access to Respondent's premises.

We hereby modify paragraph 2 (f) of our original Order to read as follows:

During the UFW's next organizational period, Respondent shall provide the UFW with access to its employees for one hour during regularly scheduled work time, for the purpose of conducting organizational activities. Access may be taken by two UFW organizers for every fifteen employees in each of Respondent's work crews. The UFW shall present to the Regional Director its plans for utilizing the hour herein provided. After conferring with both the UFW and

^{1/}We have previously found this number of organizers to be appropriate, in granting expanded access to union organizers pursuant to the provisions of the access regulation, 8 Cal. Admin. Code Section 20900(e)(3). Jack Pandol and Sons, Inc. (Jan. 11, 1980) 6 ALRB No. 1, enf'd by Ct. App., 5th Dist. Mar. 17, 1980.

Respondent, the Regional Director shall determine the manner and most suitable times for the special access in conformity with 8 Cal. Admin. Code Section 20901(a)(2) (1976). During the one-hour organizing period, no employee shall be allowed to engage in work-related activities, but no employee shall be required to be involved in the organizational activities. All employees shall receive their regular pay for the time away from work. The Regional Director shall determine an equitable payment to be made to nonhourly wage earners for their lost productivity.

Dated: August 20, 1980

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

MEMBER McCARTHY, Dissenting in part:

I disagree with that portion of the Supplemental Decision and Revised Order which sets the allowable number of organizers at two for every 15 employees in each work crew during the special one-hour period of access on company time. I find this to be an excessive number of organizers under the circumstances, and I would instead set the number of organizers at one for every 15 employees in each work crew during the special access period.

The remedy adopted by the majority doubles the number of organizers that is permitted by our regulations for the usual access periods, those periods being the hour before the start of work, the hour encompassing the employees' lunch break, and the hour after completion of work. See 8 Cal. Admin. Code Section 20900(e)(3). We have in the past doubled the number of organizers for the usual access periods in order to help overcome the organizing setbacks suffered by a union as the result of illegal pre-election conduct by an employer. However, I find permitting

more than the ordinary number of organizers for special access periods during company time to be unwarranted.

For the most part, workers being addressed on company time are not so subject to inattentiveness as they would be during the ordinary access periods. With regard to those periods, it is evident that workers may well be engaged in other conversations during the hour before work, involved in eating their lunches during the midday break, and anxious to leave for home during the hour immediately after work. Such distractions are much less likely to exist during an hour of paid company time when the employees would otherwise be working. The union should have little or no trouble conveying its message under the circumstances that would exist during a one-hour nonwork period on company time.

In formulating our access regulation, the Board made a careful assessment of the task faced by union organizers seeking to communicate with workers on the employer's premises. To ensure adequate communication, the Board decided to allow the union to have two organizers for each crew of 30 (in effect one organizer per 15 crew members) and one organizer for each increment of 15 workers in the crew. Before deviating from this standard for remedial purposes, the Board should demonstrate adequate justification. I believe the majority has failed to do so in this case.

Dated: August 20, 1980

JOHN P. McCARTHY, Member

CASE SUMMARY

Prohoroff Poultry Farms (UFW)

6 ALRB No. 45

(3 ALRB No. 87)

Case No. 75-CE-38-R

On remand by the appellate court to redraft a provision in the remedial order to specify the number of organizers allowed on company property during a one-hour organizing period on company time/ the Board limited the number of organizers to two organizers for every fifteen employees, finding this number insures effective communication and eliminates the possibility of an uncontrolled situation which could result from unlimited numbers of organizers.

Member McCarthy dissented, stating that the Order should be limited to one organizer per fifteen employees.

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