

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

VESSEY AND COMPANY, INC.,)	
)	
Respondent,)	Case No. 79-CE-99-EC
and)	
)	
UNITED FARM WORKERS OF)	7 ALRB NO. 6
AMERICA, AFL-CIO,)	
)	
Charging Party.)	
_____)	

DECISION AND ORDER

On August 18, 1980, Administrative Law Officer (ALO) William A. Resneck issued the attached Decision in this proceeding. Thereafter, the General Counsel timely filed exceptions and a supporting brief.

The Board has considered the record and the ALO's Decision in light of the exceptions and brief and has decided to affirm the rulings, findings, and conclusions of the ALO only to the extent consistent herewith and to adopt his recommended order.

It is undisputed that Respondent had posted "No Trespassing" signs on a strip of land, between its cultivated fields and an adjacent county roadway, where the United Farm Workers of America (AFL-CIO) was actively engaged in picketing.

General Counsel contended that the posted area was publicly owned or used and thus Respondent wrongfully denied pickets the use of such public property. The ALO concluded that

since General Counsel had failed to establish the allegedly public nature of the disputed property, Respondent could not be held to have violated the Act.

We find it unnecessary to determine whether the property so posted was private or public, as in neither event did General Counsel establish that the posted signs constituted interference with, restraint, or coercion of employees in the exercise of their rights under section 1152 of the Act, including the right to picket.

ORDER

Pursuant to Labor Code section 1160.3, the Agricultural Labor Relations Board hereby orders that the complaint in this matter be, and it hereby is, dismissed in its entirety.

Dated: March 31, 1981

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

JOHN P. McCARTHY, Member

CASE SUMMARY

Vessey and Company, Inc. (UFW)

7 ALRB NO. 6
Case No. 79-CE-99-EC

ALO DECISION

The ALO concluded that General Counsel had failed to establish that Respondent had posted "No Trespassing" signs on a public easement between its cultivated fields and an adjacent county roadway, thereby depriving UFW pickets of the use of such property in violation of employees' section 1152 rights. The ALO recommended that the complaint be dismissed in its entirety.

BOARD DECISION

The Board affirmed the ALO's dismissal of the complaint but for somewhat different reasons than those put forth by either the ALO or the General Counsel. The Board found that while Respondent had in fact posted "No Trespassing" signs during a period in which the UFW was actively engaged in picketing at its premises, the status of the property so posted (i.e., whether private or public) was irrelevant. In the Board's view, General Counsel simply had failed to show that such signs, irrespective of where posted, constituted an interference with employees' section 1152 rights.

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

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STATE OF CALIFORNIA
BEFORE THE
AGRICULTURAL LABOR RELATIONS BOARD



In the Matter of)
)
VESSEY & CO., INC.,) CASE NO. 79-CE-99-EC
)
Respondent,)
)
and)
)
UNITED FARM WORKERS OF AMERICA,)
AFL-CIO,)
)
Charging Party.)
_____)

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Charging Party

DECISION

STATEMENT OF THE CASE

WILLIAM A. RESNECK, Administrative Law Officer: This case was heard before me in El Centro, California, on April 2 and 3, 1980. This case arises out of unfair labor practice charges filed on October 30, 1979 with the Agricultural Labor

Relations Board by the United Farm Workers of America, AFL-CIO; (hereinafter referred to as "UFW" or "the Union")'against Vessey & (Co., Inc. (hereinafter referred to as "the Respondent," "the Company" or "the Employer"). The charge alleges that the Employer through its agents positioned or re-positioned "no trespassing" signs to discourage picketing activity, including placing them on land as public property or public right of way.

A complaint was issued on January 11, 1980 alleging that in mid-October 1979 Respondent placed "no trespassing" signs on public property which caused UFW pickets to have to remain across the street from the field located near Keefer Road and Heber Road.¹ The complaint alleged violations of rights guaranteed by Labor Code §1152, and an unfair labor practice affecting agriculture within the meaning of Labor Code §1153(a).

Respondent in its answer on January 17, 1980, admitted services of the charge; admitted that it was an agricultural employer within the meaning of Labor Code §1140.4(c); and admitted that the UFW was a labor organization within the meaning of Labor Code §1140.4(f). However, it denied committing any unfair labor practices.

During the course of the hearing, the parties stipulated that a strike did commence in January 1979 and that UFW pickets have been present at Respondent's work site off and on since then (1:4).²

All parties were given a full opportunity to participate in the

¹The complaint originally referred to a field located at the intersection of Keefer and Holtville Roads but was amended orally at the hearing to designate the intersection at Keefer and Heber Roads.

²Reference to the Reporter's Transcript will contain a roman numeral either I or II, indicating the transcript volume, followed by the page number of that volume.

hearing, and the General Counsel, the UFW and the Employer were all represented at the hearing. After the close of the hearing, General Counsel and the Employer filed briefs.

Upon the entire record, including my observation of the demeanor of the witnesses, and after full consideration of the briefs filed by the parties, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Employer has stipulated that it is an agricultural employer within the meaning of §1140.4(c) of the Agricultural Labor Relations Act (hereinafter referred to as "the Act") and that the UFW is a labor organization within the meaning of §1140.4(f), and I so find.

II. THE ALLEGED UNFAIR LABOR PRACTICE

The facts of this case are largely undisputed. They basically involve the posting of "no trespass" signs by the Employer along a public road known as Heber Road in Imperial County. Heber Road borders the field known as "Graham Ranch" on the south, which is located near the intersection of Keefer Road and Heber Road. In October 1979 during pre-harvest activities at the Graham Ranch, Respondent placed "no trespassing" signs paralleling the north side of Heber Road. General Counsel contends that the signs along Heber Road were placed on public property and illegal, and that the signs were placed in such a position as to cause the picketers to be placed in dangerous proximity to Heber Road. Respondent denies that the signs placed parallel to Heber Road were on public property or that they interfered with the UFW's picketing activity.

III. SUMMARY OF TESTIMONY

The testimony at the hearing centered around the placement of the "no trespassing" signs and the effect they had on the UFW's picketing activity. Eight witnesses testified at the hearing, including strikers, employees of the Company, and an Imperial County right of way agent. The testimony of these individuals may be summarized as follows:

Richard King: Mr. King is a striker and has been director of the UFW Calexico field office since June of 1979 (1:12). He took pictures of the "no trespassing" signs along Heber Road in October of 1979, and the pictures were introduced into evidence as General Counsel's Exhibits 2, 3, and 4.

Mr. King testified that one of the purposes of picketing is talk to workers to inform them that a strike is in progress (1:13). Other methods of communication are visiting people where they live, but this was not practical since no one furnishes their address (1:14). Pamphlets and leaflets were likewise ineffective since they only reach a percentage of people coming over the border and do not reach the people who live on this side (1:14).

Antonio Osuna: Mr. Osuna was strike coordinator for picketing at Vessey (1:20-21). On the first day of the strike there were 40-50 pickets located between the field and Heber Road. The strikers were able to communicate with the workers (1:22-23).

During the second day there were "no trespassing" signs placed very close to the edge of the road, and the sheriff told them they could not cross the line of the signs (1:24). Thus, the area used

the day before was now precluded by the signs in the field, and they had to picket on the other side of the road (II:25-28). There was no room between the signs and the edge of the roads for the pickets to walk (I:28-29).

Further, they were too far away to communicate with the workers (1:29-30).

Mike Garcia: Mr. Garcia is ranch foreman for Vessey (1:43). Graham Ranch is bordered by Heber Road on the south, Keefer Road on the east, King Road on the north, and no public road on the west side (1:44). There are three blocks or subdivisions of Graham Ranch, each 800 feet in length, running north to south (1:44). The blocks going north to south are 40, 41, and 42, with Heber Road bordered by Block 42 (1:44-45).

The pickets would congregate on the south side of Heber Road and would only cross Heber Road when the workers were close to the south end of the field (1:48-49).

Mr. Garcia instructed Amador, Vessey's night watchman, to place the signs 20 feet from the middle of the road (1:50-51). He was told to estimate the distance (1:51). He used 20 feet as the guide since at a district board meeting he heard that the right of way for the canal was 20 feet from the middle of the canal to the side (1:52). The "no trespassing" signs were placed there because the picketers had trespassed on the field and scattered sprinkler pipes (1:53-54).

Amador Carvajal: Mr. Carvajal worked as night watchman for Vessey in October 1979 (1:57-58). He posted the "no trespassing" signs on the ranch and put the signs 12-15 feet from the road (1:59).

He denied placing them as close as five feet from the road as depicted in General Counsel's Exhibit 3 (1:59-60).

He also saw pickets on both sides of the roads after the signs had been in place (1:61). He understood that the company's property line was about half way between the field and the road (1:62). The signs would be knocked down and sometimes not replaced in the original spot (1:64).

Francisco Villegas: Mr. Villegas is irrigator foreman for Vessey (1:67). He never saw a "no trespassing" sign as close to Heber Road as depicted in General Counsel's Exhibit 3 (1:68). Instead, he saw them about eight to 12 feet from the road (1:71).

Judy Triber : Ms. Triber is a right of way agent for Imperial County's Department of Public Works (11:6). The county has a 25 foot right of way down Heber Road, but she was unable to state whether it ran north or south of Heber (11:9). The county has a prescriptive easement covering the roadway and shoulders in order to maintain Heber Road (11:13-14). The 25 foot right of way could either be included in the prescriptive easement or in addition to it;

She could not tell from General Counsel's Exhibit 3 whether the "no trespassing" sign was on public or private property (11:15). It would take a surveyor with benchmarks to tell where the 25 feet actually started, and thus determine whether the signs were on public or private property (11:12).

Gerardo Gomez : Mr. Gomez was sprinkler man for Vessey in October 1979 (11:17). During Mr. Gomez' testimony it was stipulated

that the only issue was whether the signs were placed on public property or on the Employer's private property. It was agreed that there was no contention that the Employer acted improperly in posting the signs per se (11:19-21).

Felimon Campos: Mr. Campos is a striker for Vessey and has worked as a hay baler, alfafa baler and tractor driver (11:24). He saw the "no trespassing" signs and felt that they were even closer than three feet (11:26). He also believed the signs were placed in hard ground (11:26).

When signs were present, they were unable to picket on that side of the road (11:27).

ANALYSIS OF THE ISSUES AND CONCLUSIONS

The only issue to be decided in this hearing is whether the Employer posted the "no trespassing" signs along Heber Road on public property. There is no dispute that Employer had the authority to post "no trespassing" signs. Instead, the contention is that "no trespassing" signs were posted on public property.

I conclude that General Counsel has failed to establish that the "no trespassing" signs were placed on public property and accordingly will recommend that the complaint be dismissed.

I. APPLICABLE GOVERNING LAW

Section 1160.3 of the Act requires that the "preponderance of the testimony" must establish that an unfair labor practice has been committed. In effect, then, General Counsel must establish in this case by a preponderance of the evidence that Respondent placed "no trespassing" signs on public property. Based on the evidence at

the hearing, I find that General Counsel failed to sustain its burden.

Preliminarily, it should be noted that the testimony at the hearing concerning the placement of the signs varied widely. Thus, Mr. Campos felt that the signs at some point were even as close as three feet from Heber Road, while Mr. Carvajal testified that he put the signs 12-15 feet from the road. Further, Mr. Villegas testified that he never saw a "no trespassing" sign as close as three feet from the road, but instead saw them about 8-12 feet from the road.

However, no witness testified that no matter how close or far the signs were from Heber Road that they were actually placed on public property. This is because no witness testified as to how the public property line extended north of Heber Road where the signs were placed.

The only witness that testified as to the demarcation between the public and private property along Heber Road was Judy Triber, the right of way agent for the Imperial County Department of Public Works. General Counsel contends, based on her testimony, that the county laid claim to the 25 feet of the north side of Heber Road, and, therefore, the signs were placed on public property (General Counsel's brief, page 7).

However, the testimony of Ms. Triber was exactly the opposite. She stated that she specifically could not say whether the 25 feet which belonged to the County was on the north or south side of Heber Road (11:9). In fact, she stated that in order to tell where

public property ended and private property began along Heber Road, it would be necessary to have a surveyor to take benchmarks (11:12) Thus, her testimony did not establish that the Employer placed the signs on public property.

Further, no other witness was able to state where public property ended and private property began along the north side of Heber Road. Thus, there was no testimony to establish that the Employer placed his "no trespassing" signs on public property.

II. CONCLUSIONS OF LAW

Based upon the foregoing, I make the following conclusions of law:

1. Vessey & Company, Inc., is a California corporation engaged in agriculture and is an agricultural employer within the meaning of §1140.4(c) of the Act.

2. United Farm Workers of America, AFL-CIO, is a labor organization within the meaning of §1140.4(f) of the Act.

3. The Employer has not engaged in any unfair labor practices within the meaning of §§1152 and 1153(a) of the Act.

Accordingly, upon the basis of the entire record and the findings of fact and conclusions of law, and pursuant to §1160.3 of the Act, I hereby issue the following recommended:

ORDER.

The complaint issued herein shall be dismissed.

Dated: August 13, 1980.

AGRICULTURAL LABOR RELATIONS BOARD

By _____

William A. Resneck
Administrative Law Officer

B. Make whole Gerardo Hernandez for any loss of pay or economic losses suffered by reason of his discharge, plus interest thereon.

C. Preserve and make available to the Board or its agents, upon request, for examination and copying, all payroll records, social security payment records, time cards, personnel records and reports, and other records necessary to analyse the back pay and reinstatement rights due under the terms of this order.

D. Notify the Regional Director within 30 days after the issuance of this Order of the steps it has taken to comply herewith, and continue to report periodically thereafter, at the Regional Director's request, until full compliance is achieved.

DATED: October 8, 1980



ALEX REISMAN
Administrative Law officer