

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

UNITED FARM WORKERS OF)	
AMERICA, AFL-CIO,)	
)	8 ALRB NO. 104
Respondent)	
)	
and)	Case No. 81-CL-1-SAL
)	
MARIA GUADALUPE NAVARRO,)	
)	
Charging Party.)	

DECISION AND ORDER

Pursuant to California Administrative Code, title 8, section 20260, Charging Party Maria Guadalupe Navarro (Ms. Navarro), Respondent United Farm Workers of America, AFL-CIO (UFW), and the General Counsel have submitted this matter to the Agricultural Labor Relations Board (Board) by way of a stipulation of facts and have waived an evidentiary hearing. Each party filed a brief^{1/} on the legal issues, which concern the interpretation and application of the so-called "good standing" provision in Labor Code section 1153 (c) of the Agricultural Labor Relations Act (Act).^{2/}

^{1/} The UFW's motion to strike a large portion of Ms. Navarro's brief is hereby denied, as we find the arguments made therein are germane to the issues raised by the complaint and the answer.

^{2/} Labor Code section 1153(c) states that, "It shall be an unfair labor practice for an agricultural employer":

By discrimination in regard to the hiring or tenure of employment, or any term or condition of employment, to encourage or discourage membership in any labor organization.

The facts stipulated by all parties herein are as follows: the UFW is a labor organization within the meaning of the Act. At all times relevant herein, Ms. Navarro was an agricultural employee within the meaning of the Act, employed by Growers Exchange, Inc. (Growers Exchange). From January 1979 through December 1979, the UFW was on strike against Growers Exchange.

In the month of January 1979, agricultural employees of Growers Exchange who were UFW members drafted and adopted uniform rules of conduct regarding the strike. Ms. Navarro, a member of the UFW, was aware that a strike was in progress against Growers Exchange, and was also aware that the UFW had a rule prohibiting its members from working for the struck employer during the strike.

[fn. 2 cont.]

Nothing in this part, or in any other statute of this state, shall preclude an agricultural employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this section as an unfair labor practice) to require as a condition of employment, membership therein on or after the fifth day following the beginning of such employment, or the effective date of such agreement whichever is later, if such labor organization is the representative of the agricultural employees as provided in Section 1156 in the appropriate collective-bargaining unit covered by such agreement. No employee who has been required to pay dues to a labor organization by virtue of his employment as an agricultural worker during any calendar month, shall be required to pay dues to another labor organization by virtue of similar employment during such month. For purposes of this chapter, membership shall mean the satisfaction of all reasonable terms and conditions uniformly applicable to other members in good standing; provided, that such membership shall not be denied or terminated except in compliance with a constitution or bylaws which afford full and fair rights to speech, assembly, and equal voting and membership privileges for all members, and which contain adequate procedures to assure due process to members and applicants for membership.

Nevertheless, from early July through October 1979, Ms. Navarro crossed UFW picket lines to work at Growers Exchange. On or about December 21, 1979, the UFW and Growers Exchange entered into a collective bargaining agreement which provided, *inter alia*, that employees were required to maintain UFW membership in good standing as a condition of continued employment, and that any member found by the UFW not to be in good standing was to be immediately discharged or suspended by Growers Exchange upon written request from the UFW.

On February 28, 1980, the president of the UFW extended by four months the period within which trials of members who allegedly violated the strike rules at Growers Exchange could be conducted.^{3/} On or about May 28, 1980, the president of the UFW further extended by six months the period during which such trial could be conducted. On or about September 22, 1980, the UFW served Ms. Navarro with a notice of trial date and a charge alleging that she had violated the UFW's constitution by crossing the UFW picket line to work at Growers Exchange during the strike. Ms. Navarro's accuser, Mr. Abel Luna, was aware before October 1979 that Ms. Navarro was crossing the UFW picket line to work at Growers Exchange. On October 1, 1980, the UFW's Growers Exchange ranch community held the trial of Ms. Navarro which she did not attend, found that Ms. Navarro had crossed the picket line as charged, and

^{3/}Article XVIII, of the UFW Constitution sets forth the Union's procedures for disciplining members. Section 8 of the article provides: "All the time periods stated in this article may be extended by the President where, in his judgment, justice will be served by such an extension."

decided to suspend her UFW membership for two years.

On or about October 4, 1980, the UFW served Ms. Navarro with the Notice of Trial Decision and Notice of Appeal. On November 24, 1980, she appealed the UFW ranch community's decision to the UFW's National Executive Board (NEB).^{4/} On November 26, 1980, Growers Exchange informed Ms. Navarro by letter that the UFW had notified it that she had been suspended from membership for two years. Pursuant to the collective bargaining agreement between the UFW and Growers Exchange, Growers Exchange suspended Ms. Navarro from employment for two years.

On December 11, 1980, the UFW informed Ms. Navarro by letter that her appeal to the NEB was not accepted because it was untimely. Ms. Navarro did not file an appeal with the Public Review Board (PRB) or to the UFW's convention.^{5/} She filed an unfair labor practice charge against the UFW alleging that it had

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^{4/}With respect to appeals to the NEB, Article XX, Section 1(b) of the UFW Constitution provides:

Such written appeal must be mailed to the Secretary-Treasurer within 15 days of the date of the trial. The 15-day time limit provided in this Section for filing appeals from the decisions of trial courts may be extended at the discretion of the National Executive Board, for a period not to exceed 30 days, when the Board determines that such extension would serve the interests of justice.

^{5/}Article XX of the UFW Constitution permits an appeal from a decision of the NEB to either the PRB or to the next national convention following the decision of the NEB. Unlike an appeal to the NEB, an appeal to the PRB or the convention does not stay enforcement of a disciplinary penalty upheld by the NEB.

violated section 1154(b) and (a)(1) of the Act;^{6/} the charge was served on the UFW by mail on January 14, 1981, and filed by Ms. Navarro on January 16, 1981.

Ms. Navarro challenges the fairness and the legality of the Union's disciplinary proceedings against her for crossing its picket line and resuming employment with Growers Exchange during the strike. She argues that by failing to bring charges against her until almost a year after her alleged violation of Article XVIII, Section 1(dd) of the UFW's Constitution,^{7/} the Union violated Article XVIII, Section 4 of that Constitution^{8/} and deprived her of a reasonable opportunity to prepare a defense to the accusation on which she was to be tried. Ms. Navarro contends that the Union's subsequent suspension of her membership and its request to Growers Exchange to suspend or terminate her employment, pursuant to the union security provisions of its collective bargaining agreement with the UFW, constituted a violation of

^{6/} Section 1154(b) provides that it shall be an unfair labor practice for a labor organization:

To cause or attempt to cause an agricultural employer to discriminate against an employee in violation of subdivision (c) of Section 1153, or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated for reasons other than failure to satisfy the member-shop requirements specified in subdivision (c) of Section 1153.

^{7/} Article XVIII Section 1(dd) of the UFW Constitution provides that any member may prefer charges against another member for "working without Union authorization during the period of an approved strike for a ranch which is being struck by the Union."

^{8/} Article XVIII, Section 4 of the UFW Constitution provides, in pertinent part: "Charges must be preferred within 60 days of the time the accuser becomes aware of the alleged offense"

Labor Code section 1154(b) and (a)(1) of the Act.

Exhaustion of Internal Union Remedies

In UFW/Sun Harvest and Mann Packing Company (Dec. 30, 1982) 8 ALRB No. 103,^{9/} we stated that we would look to the factors indicated in Clayton v. Automobile Workers (1981) 451 U.S. 679 in cases in which any person alleges that a labor organization has committed an unfair labor practice under the Act by restraining or coercing, or by discriminating against, an agricultural employee. That is, an aggrieved employee will ordinarily be required to exhaust union remedial procedures unless: (1) union officials are so hostile to the employee that he/she could not hope to obtain a fair hearing on his/her claim; (2) the internal procedure would be inadequate to provide the relief sought by the employee; or (3) exhaustion of internal procedures would unreasonably delay resolution of the employee's claim.

In applying section 101(a) of the Labor Management Reporting and Disclosure Act,^{10/} which concerns disputes between

^{9/} In conformance with his dissenting opinion in UFW/Sun Harvest and Mann Packing Company (Dec. 30, 1982) 8 ALRB No. 103, Member McCarthy would find that the disciplinary proceeding against the Charging Party was void ab initio because it sought to enforce an unreasonable term or condition of union membership in violation of Labor Code section 1153(c). He would otherwise concur in the majority's conclusion that procedural deficiencies rendered the proceeding invalid. The remedy ordered in this case would be the same under Member McCarthy's analysis.

^{10/} Section 101(a)(4) of the LMRDA provides:

Protection of the Right to Sue. No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the

[fn. 10 cont. on p. 7]

unions and union members, the federal courts have in certain extreme cases waived the requirement of exhaustion of internal union remedies, even though none of the Clayton factors was presented. The rationale for such a waiver is that a serious violation of a fundamental right rendered union procedures void:

Section 101(a)(4) expressly incorporates the common law principle that a dispute between a union or other private association and one of its members should in general first be submitted to the association's own tribunals. But neither at common law nor under § 101 is this principle absolute, *Destroy v. American Guild of Variety Artists*, 286 F.2d 75, 47 LRRM 2452 (2 Cir.), cert. denied, 366 U.S. 929, 48 LRRM 2205 (1961), and included among the traditional exceptions is the situation in which the action complained of is "void." *Shapiro v. Gehlman*, 244 App.Div. 238, 278 N.Y. Supp. 785 (1935); *Summers, Legal Limitations on Union Discipline*, 64 Harv. L. Rev. 1049, 1089 (1951).

Voidness is an elastic concept. Because it is tied up with the merits of the claim, its indiscriminate application could reduce the exhaustion requirement to the tautology that a plaintiff can find present relief in the courts only if his claim has legal merit. see *Summers, op. cit. supra*, at 1091. That this is a danger, however, does not mean that it is an inevitable result of applying the exception. When conceded or easily determined facts show a serious violation of the plaintiff's rights, the reasons for requiring exhaustion are absent: the commitment of judicial

[fn. 10 cont.]

labor organization or its officers are named as defendants or respondents in such action or proceeding, or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator: Provided, That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof: And provided further, That no interested employer or employer association shall directly or indirectly finance, encourage, or participate in, except as a party, any such action, proceeding, appearance, or petition.

resources is not great; the risk of misconstruing procedures unfamiliar to the court is slight; a sufficient remedy given by the union tribunal would have to approximate that offered by the court. Where, as in this case, conceded facts show a serious violation of a fundamental right, we hold that plaintiffs need not exhaust their union remedies. (Lubutti v. DiBrizzi (2nd Cir. 1964) 337 F.2d 216, 219 [57 LRRM 2307].)

As fully set forth below, we find that the facts as presented in the parties' stipulation show a serious violation of Ms. Navarro's right to due process in the disciplinary proceedings against her. Accordingly, we hold that her failure to exhaust the internal remedies provided by the UFW Constitution does not warrant our deferring consideration of the issues raised by the complaint and answer in this matter.

The Denial of Due Process to Ms. Navarro

Article XVIII, section 4, of the UFW Constitution requires that a charge accusing a member of violating the union constitution "must be preferred within 60 days of the time the accuser becomes aware of the alleged offense or offenses."

Ms. Navarro's accuser, Mr. Abel Luna, became aware before October 1979, that Ms. Navarro was working at Grower's Exchange despite the strike and the picket line; but the UFW did not serve the charges and notice of trial date on Ms. Navarro until September 22, 1980, nearly one year later, and did not conduct the trial until October 1, 1980. Respondent UFW argues that it complied with the Constitution, citing the two occasions on which UFW President Chavez extended the time within which trials of alleged strikebreakers at Growers Exchange could be held.

Article XVIII, section 8 of the UFW Constitution states

that all of the time periods contained in Article XVIII may be extended by the president. However, Article XVIII refers to two different time periods: one for preferring the charge, within 60 days after the accuser becomes aware of the offense (section 4), and another for setting the time of the trial (section 6). There is no evidence that Mr. Chavez ever extended the time for preferring charges, only that he twice extended the time for holding the trials. Under the UFW Constitution, when Mr. Chavez first extended the time for holding trials of strikebreakers on February 28, 1980, that action could affect only members against whom charges had already been preferred within the required 60-day period. Therefore, as no charges had yet been preferred against Ms. Navarro, the extension could not apply to her.

A second argument by the UFW arises from a statement by Union President Chavez in a declaration made part of the record herein together with the stipulation of facts. Mr. Chavez states, "I have historically interpreted that the time requirements for filing these types of charges commence at the conclusion of the strike."

Even assuming for the sake of argument that Mr. Chavez' "interpretation" serves as an implicit "extension" of the sort allowed by Article XVIII, section 8 of the Constitution, the UFW's argument still fails. The strike at Grower's Exchange ended on December 21, 1979. The time limit for filing the charge would have begun on December 22, 1979, and expired 60 days later on February 21, 1980. As no charge was preferred against Ms. Navarro within that period, the constitutional time limitation took effect

and barred later charges. The first explicit extension granted by Mr. Chavez was on February 28, 1980, seven days after expiration of the first putative extension. Therefore, the charge that was preferred against Ms. Navarro on September 22, 1980, simply did not comport with the time limitations provided in Article XVIII, section 4 of the UFW's Constitution. Consequently, we find that the proceedings against Ms. Navarro were void. Therefore, the UFW's suspension of her union membership and its request to Growers Exchange that Ms. Navarro be discharged or suspended from its work force constituted a violation of section 1154(b) and (a)(1) of the Act.

We also reject the Union's argument that its delay in bringing charges should be overlooked because it did not prejudice Ms. Navarro, in that it enabled her to remain employed longer than would have been the case if charges had been brought and proceedings conducted sooner. This result was certainly not intended by the Union, and, even if it were, it could still hardly be said to outweigh the difficulty such a delay was likely to have caused Ms. Navarro in preparing her defense, due to the dimming of memory, the dispersion of witnesses and the loss or destruction of other kinds of evidence, which are all but inevitable when such a long period elapses between an occurrence and notice of an accusation based upon it.

As we find that the procedural deficiency of the UFW's proceedings against her relieved Ms. Navarro of the requirement that she pursue internal union remedies as a precondition to our consideration of her charge, we do not reach issues arising from

her failure to appeal to the PRB or from her appeal to the NEB which was rejected as untimely. We note, however, that questions of elementary fairness are suggested by the disparity between, on the one hand, the generous extensions of time limits the Union was willing to grant itself in bringing Ms. Navarro to trial and, on the other hand, its strict literal enforcement of the time limit for her appeal.

The Remedy

We shall order the UPW to make Ms. Navarro whole for all wage losses and other economic losses she has suffered as a result of the Union's unfair labor practice. We shall also order the UFW to reinstate Ms. Navarro to membership in good standing immediately, and to post and mail notices to employees likely to have known of the suspension of Ms. Navarro's union membership and/or the termination of her employment.

ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board (Board) hereby orders that Respondent United Farm Workers of America, AFL-CIO (UFW), its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Causing or attempting to cause Growers Exchange, Inc., or its legal successor(s) or any other agricultural employer to discriminate against any agricultural employee in violation of section 1153 (c) and (a) of the Agricultural Labor Relations Act (Act), or discriminate against any such employee with respect to whom membership in the UFW has been suspended, terminated, or

denied without the due process rights guaranteed by section 1153(c) of the Act.

(b) In any like or related manner restraining, or coercing any agricultural employee in the exercise of the rights guaranteed by section 1152 of the Act.

2. Take the following affirmative actions which are deemed necessary to effectuate the policies of the Act:

(a) Immediately restore Maria Guadalupe Navarro to membership in good standing in the UFW retroactive to October 1, 1980, without prejudice to her membership rights or privileges as though they had not been suspended on that date.

(b) Immediately notify Growers Exchange, Inc. or its legal successor(s) that Maria Navarro is a member in good standing and is to be deemed as such retroactive to October 1, 1980, and that the UFW requests her reinstatement to her former job or substantially equivalent employment without prejudice to her seniority and other rights or privileges of employment as though she had not been terminated on November 16, 1980.

(c) Make whole Maria Navarro for all losses of pay and other economic losses she has suffered as a result of Respondent UFW¹'s discrimination against her, such amounts to be computed in accordance with established Board precedents, plus interest thereon, computed in accordance with our Decision and Order in Lu-Ette Farms, Inc. (Aug. 18, 1982) 8 ALRB No. 55.

(d) With the cooperation of Growers Exchange, Inc., or its legal successor(s) and upon request, make available to this Board and its agents, for examination, photocopying, and otherwise

copying, all payroll records, social security payment records, time cards, personnel records and reports, and all records relevant and necessary to a determination, by the Regional Director, of the backpay period and the amounts of backpay due under the terms of this Order.

(e) Immediately notify Maria Navarro, by mail addressed to her last known address, of her retroactive restoration to UFW membership in good standing as provided in paragraph 2(a) above, and of the UFW's request for her full reinstatement as communicated to Growers Exchange, Inc., or its legal successor(s), pursuant to paragraph 2(b) above.

(f) Sign the Notice to Agricultural Employees attached hereto and, after its translation by a Board agent into all appropriate languages, reproduce sufficient copies in each language for the purposes set forth hereinafter.

(g) Mail copies of the attached Notice in all appropriate languages, within 30 days after the date of issuance of this Order, to all agricultural employees employed by Growers Exchange, Inc., or its legal successor(s) at any time during the period from October 1, 1980, until the date on which the said Notice is mailed; the UFW shall seek the cooperation of Growers Exchange or its legal successor(s) in obtaining the names and addresses of the employees to whom said Notice shall be mailed.

(h) Post copies of the attached Notice in all appropriate languages, in conspicuous places at all its offices and union halls throughout the State of California for 60 days, the time(s) and place(s) of posting to be determined by the Regional

Director, and exercise due care to replace any Notice which has been altered, defaced, covered or removed.

(i) With the consent of Growers Exchange, Inc., or its legal successor(s), arrange for a representative of the UFW or a Board agent to distribute and read the attached Notice, in all appropriate languages, to all its (their) employees on company time and property, at time(s) and place(s) to be determined by the Regional Director. Following the reading, the Board agent shall be given the opportunity to answer any questions the employees may have concerning the Notice and/or their rights under the Act. The UFW shall reimburse Growers Exchange, Inc., or its legal successor(s), for the employees' wages during this reading and question-and-answer period. The Regional Director shall determine a reasonable rate of compensation to be paid by the UFW to Growers Exchange, Inc., or its legal successor (s) and relayed by it (them) to all nonhourly wage employees in order to compensate them for time lost at this reading and during the question-and-answer period.

(j) Notify the Regional Director in writing, within 30 days after the date of issuance of this Order, of the steps Respondent has taken to comply therewith, and continue to report periodically thereafter, at the Regional Director's request, until full compliance is achieved.

Dated: December 30, 1982

ALFRED H. SONG, Chairman

HERBERT A. PERRY, Member

JEROME R. WALDIE, Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Salinas Regional Office, the General Counsel of the Agricultural Labor Relations Board (Board) issued a complaint which alleged that we, United Farm Workers of America, AFL-CIO (UFW), had violated the law. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the law by suspending the union membership of Maria Guadalupe Navarro and causing her discharge by Growers Exchange, Inc. in November 1980. The Board has told us to post and publish this Notice. We will do what the Board has ordered us to do.

We also want to tell you that the Agricultural Labor Relations Act (Act) is a law that gives you and all other farm workers in California these rights:

1. To organize yourselves;
2. To form, join, or help unions;
3. To vote in a secret ballot election to decide whether you want a union to represent you;
4. To bargain with your employer about your wages and working conditions through a union chosen by a majority of the employees and certified by the Board;
5. To act together with other workers to help and protect one another; and
6. To decide not to do any of these things.

Because it is true that you have these rights, we promise that:

WE WILL NOT do anything, in the future, which restrains or coerces you or any other farm worker to do, or to refrain from doing, any of the things listed above.

WE WILL NOT discriminate against, or suspend or terminate the UFW membership of, any agricultural worker in violation of the Act.

WE WILL NOT cause or attempt to cause any agricultural employer to discharge or otherwise discriminate against any farm worker with respect to his or her employment.

WE WILL restore Maria Guadalupe Navarro to membership in good standing in the UFW retroactive to October 4, 1980, without prejudice to her membership rights or privileges as though she had not been suspended on that date.

WE WILL notify Growers Exchange, Inc. that Maria Guadalupe Navarro is a member in good standing retroactive to October 4, 1980, and we will request her reinstatement to her former or substantially equivalent job without prejudice to her seniority and other rights or privileges of employment as though she had not been terminated in November 1980.

WE WILL make whole Maria Guadalupe Navarro for all losses of pay and other economic losses she has suffered as a result of the UFW's discrimination against her, plus interest.

Dated:

UNITED FARM WORKERS OF AMERICA,
AFL-CIO

By: _____
Representative Title

If you have a question about your rights as farm workers or about this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 112 Boronda Road, Salinas, California, 93907. The telephone number is (809) 443-3161.

This is an official Notice of the Agricultural Labor Relations Board, an agency of the State of California.

DO NOT REMOVE OR MUTILATE.

CASE SUMMARY

United Farm Workers of America,
AFL-CIO
(Mario Guadalupe Navarro)

8 ALRB No. 104
Case No. 81-CL-1-SAL

BOARD DECISION

Based on a stipulated statement of facts submitted by the parties, who waived a hearing before an ALO, the Board decided that the United Farm Workers of America, AFL-CIO (UFW) violated section 1154(b) and (a) (1) by suspending the membership of Maria Guadalupe Navarro on the basis of internal disciplinary proceeding in which she was denied the due process guaranteed by section 1153(c) and by then requesting that her employer, Growers Exchange, Inc., pursuant to a good standing provision in its collective bargaining agreement with the UFW, terminate Ms. Navarro's employment.

REMEDY

The Board ordered the UFW to reinstate Ms. Navarro to membership in good standing retroactively, to notify Growers Exchange, Inc. or its legal successor(s) of her reinstatement and request that Growers Exchange, Inc. restore her to her former position or an equivalent job, with no loss of seniority or other privileges, and to make Ms. Navarro whole for economic losses she suffered as a result of the UFW's unfair labor practice.