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J. Antonio Barbosa
Executive Secretary
Agricultural Labor Relations Board
1325 J Street, Suite 1900
Sacramento, CA 95814-2944

Re: Comment in Support of Proposed Educational Worksite Access Regulation

Dear Mr. Barbosa:

Please accept this comment on behalf of the United Farm Workers of America ("UFW"). The UFW supports the Agricultural Labor Relations Board's ("ALRB") plan to promulgate an Educational Worksite Access regulation pursuant to the Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act of 1975 (CA Lab Code §§ 1140-1166.3) ("ALRA").

This comment discusses three rationales in support of the proposed Educational Worksite Access regulation. First, worksite education is sound public policy. Second, the ALRB has legal authority to promulgate the Educational Worksite Access regulation. Third, an Educational Worksite Access regulation would pass rational basis review - the appropriate standard.

Promotion of collective bargaining rights is ineffective if the vast majority of farmworkers are unaware of their rights under the law. The ALRA has been in effect for 40 years and many farmworkers are still in the dark about the protections they enjoy under the law. The Educational Worksite Access regulations can be a positive step in promoting collective bargaining rights.

1. Educational Worksite Access Is Sound Public Policy.

a. Current educational resources are under-effective. In order to deliver meaningful information about worker rights under the ALRA, workers need face to face communication in their native language with the opportunity for dialogue. The training needs to be free from employer oversight and should take place at the worksite.

The ALRB currently has free educational materials that explain the protections farmworkers enjoy under the ALRA, but these materials have been largely ineffective in educating farmworkers. These materials include two videos, both in English or Spanish, with subtitles in one hundred and one languages. In addition to educational videos, there is an abundance of written information on the ALRB's website, as well as in the ALRB's field offices. In addition, the ALRB maintains a toll free phone number that workers can call for more information about the ALRA, a mailing address for each ALRB office, and the email address for several staff and board members.

Despite the large volume of educational resources available, many farmworkers are still unaware of their rights under the ALRA. The disconnect between educational materials and worker knowledge is caused by three factors.

First, most workers lack access to the Internet and cannot utilize the materials on the ALRB's website. Several worker advocates, organizers, and farmworkers gave testimony that farmworkers do not own home computers and most farmworkers cannot afford a smartphone with a data plan. For the worker who does not have access to the Internet, most of the educational resources posted to the ALRB's website have limited value.

Second, even if workers have access to the Internet and know how to find the ALRB's educational materials, the information is difficult to understand. Many farmworkers are illiterate in their native language and many indigenous workers speak languages that do not exist in written form and, as of October 2015, there are no video or audio educational materials available in indigenous Mexican languages. For illiterate workers, or workers who speak a language that has no written form - posters, pamphlets, letters, flyers, and booklets have no educational value.

Moreover, farmworkers from various backgrounds who can read in their native written language, or English, may struggle to understand the materials because of complicated legal terminology like "concerted activity" or "retaliation." For example, the word "retaliation" is not analogous under Mexican labor law and American labor law.[1] A mere translation of the word "retaliation" does not help a farmworker understand the meaning of this phrase. In person communication and dialogue will allow workers to ask questions about legal concepts they are unfamiliar with and will increase understanding of rights under the ALRA.

Third, there are only four regional offices for the entire state of California. Many agricultural laborers cannot access the field offices because the office is closed when laborers are off from work, or the worker cannot travel to the office due to lack of transportation or lack of time.

The ALRB's past attempts at indirect education have been inefficient. It is appropriate now for the ALRB to provide direct education by bringing information and explanations to the

[1] Mexican Federal Labor Laws presume a termination without just cause is a wrongful termination. "Just cause" under Mexican labor law is statutorily defined and employers bear the burden of proving the termination was for just cause. Retaliation would constitute termination without just cause. *See,* Mexico's Federal Labor Law, art. 50; Baker and Mackenzie, *Overview of Labor and Employment Law in Latin America*, 90-93 (2008) *available at* http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1047&context=lawfirms (last visited October 7, 2015).

worker at their worksite. UFW supports ALRB worksite access as a means to provide educational trainings in a worker's native language, to provide the opportunity for workers to ask questions, and to ensure the education occurs without the presence of employers.

2. An Educational Worksite Access Regulation Will Be Legally Valid Under The Plain Language Of The ALRA And Precedential Case Law.

a. *The plain language of the ALRA allows for educational worksite access.*

As amended in 2012, California's policy under the ALRA is to "*encourage and protect"* the rights of agricultural employees. Cal. Lab Code § 1140.2. In furtherance of protecting agricultural worker's rights, Chapter 6 of the ALRA grants the Board powers to "***prevent*** any person from engaging in any unfair labor practice […]." Cal. Lab Code § 1160. Pursuant to its prevention and remedial powers, the ALRB has the right to "free access to all places of labor." Cal. Lab Code § 1151(a).

The plain language of the ALRA creates access power, vested in the ALRB, at agricultural worksites for activity that (1) encourages worker rights, (2) protects worker rights, or (3) prevents the violation of worker rights.

b. Precedential case law established the ALRB's right to take educational worksite access.

In *San Diego Nursery v. ALRB*, the Fourth District Court of Appeals held that Labor Code sections1140.2, 1160, and 1151(a) grant the ALRB power to take "unconsented but specifically limited entry upon a grower's work premises," so long as the Board promulgates a regulation in accordance with the Administrative Procedure Act and takes access to effectuate obligations imposed by the ALRA, holding that worksite access is a reasonable method to fulfill the Board's obligation to "encourage and protect" worker rights and to "prevent [...] unfair labor practices." *San Diego Nursery v. ALRB* (1979) 100 Cal.App.3d 128, 135.

3. An Educational Worksite Access Regulation Is Rationally Related To A Legitimate Government Interest And Will Survive Constitutional Review.

The court in *San Diego Nursery* gave a clear determination that an Educational Worksite Access regulation would not violate state or federal constitutional rights. "A duly promulgated administrative regulation authorizing an unconsented but specifically limited entry upon a grower's work premises by an agent of the ALRB in performance of duties imposed by the Act ***would transgress no constitutional command."*** *San Diego Nursery*, 100 Cal.App.3d at 135 (emphasis added**).** Additionally, an Educational Worksite Access regulation would supersede any general trespass statute. See *Agricultural Labor Relations Board v. Superior Court* 16 Cal 3d 392 (1976), app. dismissed, *Kubo v. Agricultural Labor Relations Board* 429 US 802 (1976).

If the proposed regulation was challenged based on due process or equal protections claims under the U.S. Constitution, the regulation would survive rational basis review. Rational basis is the appropriate test for Constitutional claims brought by agricultural employers because a law that affects non-fundamental rights need only satisfy the rational basis test. The proposed regulation does not affect any fundamental rights and certainly does not rise to the level of a

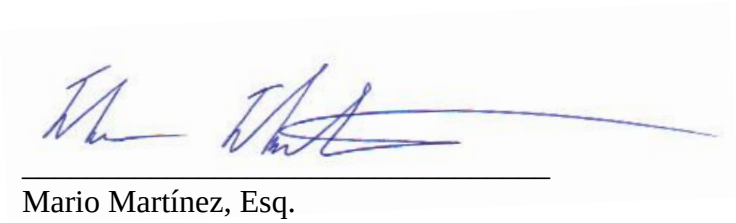
government taking of private property.[2] The Educational Worksite Access regulation will be constitutionally valid so long as it is rationally related to a legitimate government interest.

Employers and private property owners are non-suspect classes under the Equal Protection clause of the 14th amendment. A law which impacts a non-suspect class will be upheld as constitutionally valid if it is rationally related to a legitimate government interest.

Conclusion

After decades of attempting to educate workers through indirect resources and third party educators, it is clear the ALRB must take access at agricultural work sites in order to provide meaningful outreach and education. With support from the plain language of the ALRA and a definitive holding from the Fourth District Court of Appeals, the ALRB has ample legal authority to support its proposed Educational Worksite Access regulation. We believe taking access to conduct educational trainings for farmworkers will further the legislative intent of the ALRA and will bring the law out of the books and into the fields.

Respectfully Submitted,



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[2] In relationship to property rights, due process violations occur only when there is a final deprivation of a person's property interest. *Parratt v. Taylor*, 451 U.S. 527, 540 (1981). *See also, Hodel v. Va. Surface Mining & Reclamation Ass'n.*, 452 U.S. 264, 296 (1981) "A statute regulating the uses that can be made of property effects a taking if it 'denies an owner economically viable use of his land.'" citing to *Agins* v. *Tiburon*, 447 U.S. 255, 260 (1980).