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5 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SKAGIT

6 FAMILIAS UNIDAS POR LA JUSTICIA,

7 Plaintiff,

8 v.

9 SAKUMA BROTHERS FARMS, INC.,

10 Defendant.

No. 17-2-01242-7

(~~PROPOSED~~) ORDER GRANTING
PLAINTIFF'S MOTION FOR
PERMAMENT INJUNCTIVE RELIEF

11 This matter came before the Court on Plaintiff's Motion for Injunctive Relief under the Little
12 Norris LaGuardia Act, RCW 49.32.020 ("LNLA"). The parties scheduled an expedited trial on
13 the merits by mutual agreement for September 26 and 27, 2017. On those dates, the Court heard
14 live testimony from witnesses for both parties and admitted 22 exhibits into evidence.

15 Having reviewed the trial brief of the Plaintiff and hearing the testimony and reviewing the
16 evidence admitted at trial, along with oral arguments from counsel, the Court makes the
17 following

18 **FINDINGS OF FACT:**

- 19 1. From 2013 through the 2016 harvest season, members of Familias Unidas por la Justicia
20 (Familias) engaged in strikes, boycott organizing, and picketing activities for the purpose
21 of obtaining a collective bargaining agreement with Defendant Sakuma Brothers Farms,
22 Inc. (Sakuma).

23 **Order Granting Permanent Injunction- 1**

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- 1 2. In 2013 and 2014, this Court issued 4 court orders finding that Sakuma had committed
2 unfair labor practices in violation of the LNLA or that Familias had a well founded fear
3 of invasion of those rights and that Sakuma therefore was restrained from acting in
4 violation of the LNLA.
- 5 3. On August 4, 2017, Familias learned that Sakuma intended to begin having Familias
6 represented blackberry hand pickers to place blackberries into trays containing 144
7 ounces of berries in twelve twelve-ounce clamshells, rather than the 72 ounce blackberry
8 trays of twelve six-ounce clamshells that had been used previously in the blackberry
9 season, and that Sakuma intended to continue to pay the workers at the \$4.25 piece rate
10 per tray – the price of the smaller tray—at least until August 28, the date on which
11 Sakuma proposed to mediate the issue with Familias.
- 12 4. Familias President Ramon Torres sent communications to Sakuma Vice President of
13 Washington Operations Rich Brim on August 5, 2017, offering to meet immediately to
14 attempt to resolve the issue and seeking assurances that Sakuma would not change the
15 price per ounce of berries without first reaching an agreement with the union; Rich Brim
16 never responded to the offer to meet or the request for such assurances.
- 17 5. Fearing that Sakuma’s imminent action of cutting the blackberry price in half would
18 provoke strikes that could endanger the existence of the collective bargaining agreement
19 and the union, the union sought redress in this Court.
- 20 6. On August 7, 2017, this Court issued a temporary restraining order enjoining Sakuma
21 from “Threatening to implement a piece rate that is not consistent with \$4.25 per 72
22 ounces of blackberries harvested pending resolution through the grievance and arbitration
23 process provides in the parties' Collective Bargaining Agreement” and from “Paying any

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1 piece rate that is not consistent with \$4.25 per 72 ounces of blackberries harvested that
2 pending resolution through the grievance and arbitration process provides in the parties'
3 Collective Bargaining Agreement.”

4 7. In that same Order, this Court found that due to indigence, Familias was not required to
5 post a bond, and that in lieu of a bond, Sakuma was ordered to put the disputed amount of
6 wages (\$4.25 for each large tray of blackberries) into an escrow account and ordered
7 Sakuma to notify Familias of the establishment of the account.

8 8. This Court also stated that its “order shall remain in effect through August 21, 2017”.

9 9. On August 10, 2017, Sakuma Vice President Rich Brim notified Familias that Sakuma
10 had set up an escrow account pursuant to the Court’s August 7, 2017 order.

11 10. On August 10, 2017, Rich Brim gathered Familias represented blackberry workers
12 together and gave a speech regarding Sakuma’s decision to begin using the larger trays
13 that contained double the quantity of blackberries.

14 11. In that speech, Rich Brim misrepresented the contents of the court’s order, saying that the
15 court had ordered Sakuma to pay only \$4.25 per tray and that Sakuma was restricted by
16 this Court from paying more, even though it was willing to do so. Mr. Brim stated:

17 The company has offered to discuss the rate of the 12-ounce tray with
18 FUJ. We have asked FUJ to meet with us so that we can negotiate the tray
rate with FUJ ...

19 Instead, FUJ decided to go to court to ask the judge to make us pay more. I
20 am not sure why this happened since the company asked FUJ to meet and
to work together on the 12-ounce tray rate. ...

21 This past Monday the attorneys for the company and FUJ went to court
22 and the judge said the company must follow the labor agreement which
says \$4.25 per tray. ...

23 The company has asked FUJ to meet with us on August 28, and we are
waiting to hear back from them. We hope that FUJ will agree to meet with

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1 us. Until we are able to meet with FUJ and agree on the 12-ounce tray
2 rate, you will be paid \$4.25 for the 12-ounce tray. Even though the
3 company is willing to pay more, we have no choice because the judge
4 ordered us to do so.

5 12. In addition, during this speech, Mr. Brim misrepresented the contents of the court's order
6 by failing to inform workers that an additional \$4.25 per tray was being held in escrow
7 pending arbitration to resolve the dispute about what the parties' collective bargaining
8 agreement required Sakuma to pay for the new, larger trays.

9 13. Mr. Brim's speech to the Familias represented blackberry workers caused dissatisfaction
10 among the workers who contemplated striking the company.

11 14. The morning after Mr. Brim's speech, Familias President Ramon Torres was so
12 concerned about a strike that he visited the farm at 5:00 am to attempt to set the record
13 straight about the court's order and about the union's attempts to meet with Sakuma to
14 discuss the piece rate for the new larger trays before Sakuma implemented its decision to
15 go to the larger trays.

16 15. Rich Brim's actions interfered with the union members' concerted activity by
17 undermining their confidence in their contract that the union's ability to enforce it by:
18 (1) mischaracterizing their union's attempt to meet to negotiate as a refusal to negotiate;
19 (2) falsely stating that the employer wanted to pay more but could not pay more than
20 \$4.25 per larger tray because the worker's union had gone to court and obtained an order
21 that did not allow the company to pay more;
22 (3) falsely stating that it was because of their union's actions that the employer could not
23 pay more for the doubled workload; and

1 (3) misrepresenting this court's order in a way that additionally undermines the
2 effectiveness of this Court's process in adjudicating claims arising under the Little Norris
3 LaGuardia Act.

4 16. Unless Mr. Brim makes an oral rescission of those statements to the gathered members of
5 Familias, the unlawful effect of those statements will not be remedied.

6 17. The collective bargaining agreement between the parties includes a process called "test
7 picking" designed to set the price per pound of blueberries and strawberries.

8 18. The "test pick" involves three workers selected by Familias, called test pickers, picking
9 in a given field for a limited amount of time; the amount of fruit they pick in that time is
10 recorded, and then a set mathematical formula is used to calculate the price per pound
11 based upon the average number of pounds the test pickers harvested and the time it took
12 them to do it.

13 19. Under the CBA, the union is responsible for providing all of the test pickers.

14 20. Sakuma has on ^{at least two} ~~several~~ occasions not based the piece rate on the average of the three
15 union selected test pickers results during the test pick. Familias has filed several
16 grievances over those actions. This Court ordered the parties to engage in expedited
17 arbitration of those grievances. Familias' actions in filing those grievances are the
18 concerted activity of its members who have chosen Familias to act as their agent for
19 collective bargaining purposes.

20 21. Early in the blueberry harvest in 2017, Sakuma began to film the test pickers while they
21 performed their test picks.

22 22. Sakuma's stated reason for filming the test pickers was to document that they were
23 working a slow speed, a conclusion that it came to because of the purported difference

1 between the results of the test pick and the actual results in the field during actual hand
2 picking. ~~The Court discredits this rationale for the filming because the evidence is that~~
3 ~~the disparity between the results of a test pick set at a target wage per hour and the results~~
4 ~~in actual field picking has historically put the field picking wage per hour at a range of~~
5 ~~120% to 140% above the test pick target wage.~~ *Sakuma has an interest in observing the*
6 *Test picks that is protected by the Management rights*
7 *clause of the collective bargaining agreement. The video*
8 *recording of the test picks is an exercise of these rights*
9 ~~23. Celestino Santos has been a test picker all season, and he is intimidated by the filming in~~
10 ~~which management, supervisors, or human resource personnel follow him within three or~~
11 ~~four feet and constantly film his action while is engaging in the test pick. The conduct~~
12 ~~causes Mr. Santos to feel his activities on behalf of his union are "being watched" and~~
13 ~~that makes him feel he is not able to correctly perform his test picking duties.~~

14 ~~24. Celestino Santos has repeatedly told Sakuma management and human resource~~
15 ~~representatives that he does not give permission for them to film him.~~

16 ~~25. Videotaping of test pickers is performed by Sakuma in retaliation for concerted activity~~
17 ~~by the union, including filing grievances about the way in which Sakuma conducted prior~~
18 ~~test picks and about the way Sakuma calculates the piece rate after the test picks.~~

19 ~~26. The effect of Sakuma videotaping test pickers has been to undercut the union's ability to~~
20 ~~obtain workers willing to carry out the responsibility of conducting the test pick on behalf~~
21 ~~of their fellow workers and their union.~~

22 ~~27. Videotaping of test pickers would intimidate any reasonable member of Familia's, and~~
23 ~~that perception in reinforce in this context, given the history of unfair labor practices by~~
24 ~~Sakuma.~~

Based on the above findings of Fact, the court makes the following

CONCLUSIONS OF LAW:

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1 1. Plaintiff Familias Unidas por la Justicia has a clear legal right under Washington's Little
2 Norris-LaGuardia Act, RCW 49.32.020 "to full freedom of association, self-organization,
3 and designation of representatives of [their] choosing, to negotiate the terms and
4 conditions of [their] employment, and [to] be free from interference, restraint, or coercion
5 of employers of labor, or their agents, in the designation of such representatives or in
6 self-organization or in other concerted activities for the purpose of collective bargaining
7 or other mutual aid or protections ...". Those rights include the right to engage in union
8 activities, ~~including test picking~~, to seek to enforce the CBA through the grievance
9 procedure, ~~to carry out duties such as participation in the test pick process~~, and to protect
10 the rights of workers from retaliatory wage cuts through access to this Court to enforce
11 rights arising from the LNLA and access to this Court to redress and prevent future
12 unlawful undermining of the worker's selection of their bargaining agent through false
13 statements designed to make the workers believe that their actions and their unions action
14 are futile.

15 2. Plaintiff Familias Unidas por la Justicia have a well-grounded fear of continuing invasion
16 of those rights by the actions of Sakuma ~~described~~ ^{described} above. *MS*

17 3. Washington courts refer to the National Labor Relations Act case law interpreting
18 Section 7 of that Act to interpret RCW 49.32.020.

19 4. Members of Plaintiff Familias have participated in concerted activity within the meaning
20 of chapter 49.32 RCW, ~~including test picking~~ ^{*MS*} seeking to enforce the CBA through the
21 grievance procedure, and seeking to protect, through access to this Court, the rights of
22 workers from interference and retaliation effectuated by unilateral wage cuts.
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Familias members protected concerted activity

5. ~~Familias members' protected concerted activity was a substantial factor motivating Sakuma's decisions to surveille and film test pickers and to misrepresent the court's Temporary Restraining Oder to blackberry pickers.~~ ^{was a substantial factor in Sakuma's decision to misrepresent the court's Temporary Restraining Order to}

6. Mr. Brim's statements about this Court's order on blackberry prices "interfered with, restrained, or coerced" Familias members in their exercise of concerted activity within the meaning of the LNLA, and interfered with this Court's process in adjudicating rights under the LNLA.

7. Familias Unidas por la Justicia will suffer irreparable injury and damage if Defendant's actions described above are not restrained, because those activities were in retaliation for, and have the effect of interfering with the exercise of rights protected by chapter 49.32 RCW, and because without the ability to exercise those rights, the Plaintiffs are not able to "exercise actual liberty of contract and to protect [their] freedom of labor, and thereby to obtain acceptable terms and conditions of employment ...", as provided in RCW. 49.32.020.

Therefore, the court ORDERS that Plaintiff's Motion for a Permanent Injunction is GRANTED.

Defendant Sakuma is ordered:

1. To post this Court's order in all locations at Sakuma Brothers Farms where Familias bargaining unit members work and all locations in which Sakuma provides housing to Familias bargaining unit members from September 28, 2017 through August 1, 2018.

2. Sakuma is restrained from ~~further actions that intimidate, interfere with, or coerce~~ ^{making further communication with} ~~the court's~~ ^{addresses to the} Familias members that mis represent the Familias bargaining unit members' concerted activity, including participating in test courts orders or that reasonably appear to undermine pickers, filing grievances under the collective bargaining agreement, filing lawsuits ~~Familias status with its members.~~ ^{Familias status with its members.} ~~alleging violations of the LNLA or other laws that concern wages, hours or working~~

1 ~~conditions, and from retaliating against those bargaining unit members for the exercise of~~
2 ~~those rights.~~

3 3. That Sakuma Vice President of Washington Operations Rich Brim hold a meeting with
4 all bargaining unit members in which he states that:

- 5 a. the piece rate Sakuma paid for large trays of twelve 12-ounce clamshells between
6 August 10 and August 21 was \$4.25;
- 7 b. contrary to Mr. Brim's August 10, 2017 statements to blackberry pickers, that
8 price was not required by the court or the union;
- 9 c. the court issued an order on August 7 that required Sakuma to pay \$4.25 for each
10 72 ounces of berries (the quantity of berries in a tray holding twelve 6-ounce
11 clamshells);
- 12 d. Mr. Brim did was not correct when he said the court's order required Sakuma to
13 pay \$4.25 for the large trays of blackberries;
- 14 e. the court's August 7 order also required Sakuma to put an additional \$4.25 per
15 tray in a special account, where the money would be safeguarded until the issue
16 about the price per pound could be resolved through arbitration with Familias; and
17 that
- 18 f. Mr. Brim should have, but did not, inform workers of that escrow requirement of
19 the court's order in his August 10 speech to workers.

20 4. Mr. Brim's statement must be accurately interpreted into Spanish and Mixteco.

21 5. Mr. Brim's statement to the must occur prior to October 1, 2017 and be presented with
22 the President of Familias present.

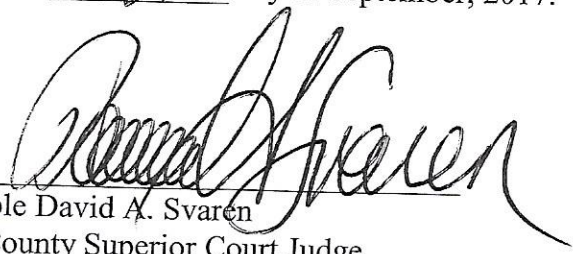
23 6. Sakuma must report to the court that the statement has happened.

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Signed this 27 day of September, 2017.



Honorable David A. Svaren
Skagit County Superior Court Judge

Presented by:

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