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STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

KARAHADIAN RANCHES, INC., KARAHADIAN AND SONS, INC., Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party,	)	Case No. 77-CE-8-C 4 ALRB NO. 69

DECISION AND 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,

On March 3, 1977, Administrative Law Officer (ALO) Matthew Goldberg issued the attached Decision in this proceeding, in which he recommended that the complaint be dismissed in its entirety. Thereafter, the General Counsel and the Charging Party each filed exceptions and a supporting brief.[1/]

The Board has considered the record and the attached decision in light of the exceptions and briefs, and has decided to affirm the rulings, findings, and conclusions of the ALO, except as modified herein, and to adopt his recommended order.

[1/]The Charging Parry's motion to consolidate, for purposes of decision, the instant matter with Mel-Pak Ranches, Case No. 77-CE-6-C, is hereby denied.

The only issue for consideration is whether statements contained in a leaflet which was distributed to employees by Respondent constituted threats of reprisal or force, not protected by Labor Code Section 1155,[2/] in violation of Section 1153(a).

We agree with the ALO that the General Counsel failed to submit convincing proof that the statements were significantly stronger in Spanish than in English, that they were made in an atmosphere of fear, or that they take on a more threatening meaning in the agricultural context. We cannot find on the basis of this record, that these statements are violations under the appropriate standard enunciated by the U.S. Supreme Court in NLRB v. Gissel Packing Co., 395 U.S. 575, 71 LRRM 2.481 (1969).

However, we specifically reject any inference which might be drawn from the ALO's reliance on Airporter Inn Hotel, 215 NLRB 824, 88 LRRM 1032 (1974), that a statement which is found to be non-coercive in one context has in effect received Board approval and may safely be utilized in other circumstances without regard to the considerations set forth in Gissel, supra.

[2/] Labor Code Section 1155 reads as follows:

> The expressing of any views, arguments, or opinions, or the dissemination thereof, whether in written. printed, graphic, or visual form, shall not constitute evidence of an unfair labor practice under the provisions of this part, if such expression contains no threat of reprisal or force, or promise of benefit.

Although we share the ALO's concern for the stabilizing effect on labor relations of delineating standards of appropriate speech under the ALRA, we do not consider it warranted to establish a per se rule concerning a particular statement which, in any case, would have to be considered in light of all the circumstances and evidence adduced at the hearing.

ORDER

Pursuant to Section 1160.3 of the Agricultural Labor Relations Act, the Agricultural Labor Relations Board hereby orders that the complaint herein be, and it hereby is, dismissed in its entirety.

DATED: October 10, 1978

GERALD A. BROWN, Chairman

ROBERT B. HUTCHINSON, Member

JOHN P. McCARTHY, Member

CASE SUMMARY

Karahadian Ranches, Inc; (UFW) Case No. 77-CE-8-C
Karahadian & Sons, Inc. 4 ALRB No. 69

ALO DECISION

The complaint in this case, based on a charge filed by the UFW on January 17, 1977, alleged that Respondent violated Section 1153(a) of the Act by distributing to its employees (with their pay checks) a leaflet which contained coercive statements and misrepresentations,

The ALO found that the statements contained in the leaflet did not violate Section 1153(a) and recommended dismissal of the complaint.

The allegedly coercive statements were similar to statements contained in a letter described, and held to be non-coercive, in Airporter Inn Hotel, 215 NLRB 824, 88 LRRM 1032 (1974), and translated into Spanish. The ALO found that the General Counsel failed to prove that the statements were significantly stronger in Spanish than in English, that they were made in an atmosphere of fear, or that they were more threatening in the agricultural than in the industrial context. Citing Airporter Inn, supra, the ALO concluded that the statements were protected by Section 1155 of the Act and that the leaflet did not contain misrepresentations,

BOARD DECISION

The Board decided to affirm the rulings, findings and conclusion of the ALO and to adopt his recommended order dismissing the complaint in its entirety. However, it specifically rejected any inference which might be drawn from the ALO's reliance on the Airporter Inn case that a statement which is held to be non-coercive in one case or context has in effect received Board approval and may safely be utilized in other circumstances without regard to the consideration set forth in NLRB v. Gissel Packing Co., 395 US 575, 71 LRRM 2481 (1969). As Gissel requires that allegedly coercive statements be evaluated in the context of the facts in each case, the Board declined to establish a per se_ rile, that a particular statement found to be non-coercive in a prior case would necessarily be held as non-coercive in a la-car case without regard to the surrounding circumstances.

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This case summary is furnished for information only and is not an official statement of the case, or of she ALRB.

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State of California

Agricultural Labor Relations Board

KARAHADIAN RANCHES, INC. KARAHADIAN & SONS, INC., Respondent and UNITED FARM WORKERS OP AMERICA, AFL-CIO Charging Party,	)	Case No. 77-CE-8-C

Richard Tullis, Esq. and Occavio Aguiiar, Esq., for the General Counsel.

Stacy Shartin, Esq. of Seyfarth, Shaw, Fairweather & Geraldson, for Karahadian Ranches, Inc., and Karahadian & Son, Inc., Respondent.

Douglas Adair, Esq., Teri Zweben, and Nathan Schumacher, Esq., for United Farm workers of America, AFL-CIO, Charging Party.

Before: Matthew Goldberg, Administrative Law Officer

DECISION OP THE ADMINISTRATIVE LAW OFFICER

Statement of the Case

On January 17, 1977, the United Farm Workers of America, AFL-CIO (herinafter referred to as the Union), filed the original charge in Case No. 77-CE-8-C alleging a violation of §1153(a) of "he Agricultural Labor Relations Act. Based on said charge, a complaint was issued by the General Counsel of the Agricultural Labor Relations Board on January 27, 1977.

The Respondent named above has filed an answer to the complaint denying in substance that it has committed the unfair labor practices alleged. 1/

A hearing in the matter was noticed for and held on February 11, 1977. The General Counsel for the Board, the Respondent, and the Union appeared through their respective counsels and all parties were afforded full opportunity to adduce evidence, examine and cross-examine witnesses and submit oral arguments and briefs.

Upon the entire record, from my observations of the demeanor of the witnesses, and having read and considered the briefs submitted to me since the hearing, I make the following:

I. Findings of Pact

A. Jurisdiction of the Board

1. Respondent is and was at all times material an agricultural employer within the meaning of §1140.4(c) of the Act.

2. The Union is and was at all times material herein a labor organization within the meaning of §1140.4(f) of the Act. 2/

1/ Copies of the Charge, the Complaint and the Notice of Hearing in these proceedings have been duly served or, Respondent.

2/ The Jurisdictional facts noted were admitted by Respondent in its answer.

B. The Evidence Presented

The parties stipulated that on January 15, 1977 again on January 27, 1977, the Respondent distributed to its employees a certain leaflet, in English and In Spanish, by attaching copies of same to their paychecks. The English version of the leaflet is attached herin as Appendix A and incorporated fully by reference; the Spanish version is attached as Appendix B and incorporated fully by reference.

At the hearing, the General Counsel produced Margarita Calderone, an expert witness in linguistics, 3/ who testified that the Spanish version of the leaflet had a stronger, harsher connotation than the English one, 4/ The testimony centered on a discussion of the last two sentences of the third paragraph. 5/

3/ Ms.. Calderone, Coordinator for Languages at the College or the Desert, has spoken Spanish since birth. She has a bachelor's degree and a master's degree in linguistics from the University of Taxas at El Paso, and has previously been employed as a translator at the United States Embassy in Mexico City. She has also specifically studied and is familiar with the slang and linguistic peculiarities of Spanish as spoken by agricultural workers throughout the Southwestern United States. I find that she is eminently qualified as an expert witness in linguistic matters involving Spanish and English.

4/ The evidence demonstrated that approximately 75% of Respondent's agricultural employees were Spanish speaking.

5/ Other than the “misrepresentations” allegedly contained in the fourth paragraph and the last sentence of the leaflet (discussed infra), it is not contended or alleged that any additional objectionable or unlawful language appears in the leaflet apart from that contained in the third paragraph

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In the English version, the two sentences read: "Refuse to sign a union card and avoid a lot of unnecessary turmoil. (You will always do better with us without a union, which can't and won't do anything for you except Jeopardize your jobs.)" This language appears in the Spanish version as: "Rehusen de firmar la tarjeta de la union y eviten gran nuniero de trastornos. (A ustedes siempre les saldra mejor con nosotros sin la union, la cual no puede y no va a hacer alguna cosa por ustedes, excepto poner en peligro sus trabajos.)"

Ms. Calderone testified that the word "trastornos" has a significantly stronger meaning than the English word “turmoill.” "Trastorros” can mean a burden, anguish, physical or mental harm, or a barrier in one's immediate surroundings (such as one's job). The word as used in this particular context relates and connotes a threat to one's Job, as the sentence which follows it discusses Jobs.

In addition, Ms, Calderone stated that the word "peligro" in the last sentence of the circular has a stronger meaning than its English counterpart, "Jeopardise." "Peligro" connotes danger, which can be permanent, and does not mean “jeopardize," The tone and implication are somewhat: threatening in Spanish, whereas "Jeopardise" does not carry a similar connotation, 6/ Summarizing her testimony, the expert witness

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6/ Ms. Calderone offered alternatives to the language used in the Spanish pamphiet which carried a milder tone. For the word “trastornos”, she would substitute “molestias” (meaning bother or turmoil); for “peligro” she would utilize “molestar” (temporary discomfort, jeopardy).

noted that a Spanish speaking reader would view the pamphlet as a threat, to the effect that his Job or general welfare would be endangered if he signed a union authorization card. 7/

Roberto de la Cruz was also called as a witness by the General Counsel. Mr. de la Cruz has been employed as an organizer for the Union for the past four years. During that time he has been involved in various organizational activities in the Coachella Valley. Since January of 1977, he has engaged in activities at Respondent's ranch, passing out leaflets and speaking with workers.

De la Cruz testified that there had been a strike at Respondent's ranch in 1973. The Respondent has had a contract with the Teamsters Union from that time through the present. The contract contains a dues check-off provision, pursuant to which ten dollars (510.00) per month are deducted from employee pay checks for union dues.

De la Cruz stated that approximately 80$ of Respondent's work force lives in company-owned labor camps. When he appears at these camps or in the fields to talk to workers, foremen are usually in the vicinity, De la Cruz testified that some workers refuse to talk to him in the presence of foremen, but will talk

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7/ As will be discussed below, the witness' characterization of the language in the leaflet states, in the context of the unfair labor practice alleged, a legal conclusion. The import of such testimony in this respect duly discounted.

with him when the foremen are absent. He also staged that when he asked several workers to testify at the hearing, none of the workers agreed to do so.

De la Cruz has spoken Spanish from birth and is familiar with the idiolect of Spanish speaking agricultural workers in California. When asked on cross-examination to translate from the Spanish version to English the two last sentences in the third paragraph of Respondent's leaflet, de la Cruz offered the following: "Refuse to sign the card and avoid 'grand' numbers of ‘blockings’ or ‘problems.’ You will always make out better with us than the union, the one that won't do anything for you-- only put your jobs in danger," De la Cruz did not state whether, to him, the Spanish version of the pamphlet had a stronger meaning than the English one. If anything, his translation of the above statements in she Spanish version, modified "he conclusion of the expert witness, in that the translation he preferred was roughly equivalent and similar in tone to the statements which actually appeared in the English version.

Given the fact that Mr. de la Cruz speaks and is constantly exposed to the Spanish idiolect of the California agricultural employee on a day-to-day basis, his testimony concerning the meaning of the Spanish version of the pamphlet is accorded greater weighs than "has of the expert witness. Who viewed the leaflet from a more academic perspective. As in English. Several different words can be used in Spanish to express the idea. The mere fact that certain words were utilized by the respondent in the Spanish version of the pamphist,

as opposed to other words which might translate the English with greater exactitude, does not necessarily lead to the conclusion that the Spanish version carries an altogether different connotation than the English one. Accordingly, I conclude that the Spanish and English versions of the Respondent's leaflet are roughly equivalent.

II. Conclusions of Law 8/

A. The Overall Effect of the Leaflet

Section 1155 of the Agricultural Labor Relations Act provides: "The expressing of any views, arguments, or opinions, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute evidence of an unfair labor practice...if such expression contains no threat of reprisal or force, or promise of benefit."

The language of §1155 is taken verbatim from an equivalent passage of the National Labor Relations Act, §8(c) (29 U.S.C.A. §158(c)), as is the language of §1153(a) defining the unfair labor practice alleged here (see 29 U.S.C.A. §158(a) (1)). Under §1148 of the Act, the A.L.R.B. is constrained to follow applicable N.L.R.A. precedent (emphasis supplied).

As a general proposition, the N.L.R.A. counterpart to

8/ As I have determined that the Spanish and English versions of the Respondent's leaflet were substantially similar, the legal conclusions arising from this case apply with, the same force to either or both versions.

Section 1155 was specifically intended to prevent the Board from using unrelated non-coercive expressions of opinion on union matters as evidence of a general course of unfair labor conduct. (Pittsburgh Steamship Company vs. N.L.R.B., 2428 (CA 6, 1950), aff'd, U.S. Sup. Ct, 27 LRRM 2382.) The issue thus presented by this case was whether the circular distributed by the employer herein was a "non-ccerceive expression of opinion," and hence protected under §1155 of the Act, or contained language which could be considered a "threat of reprisal or force or promise of benefit" which interferred with, restrained or coerced employees in the exercise of their rights set forth in §1152 of the Act, thereby violating §1153(a).

In Airporter Inn Hotel, 215 N.L.R.B. No. 156, 88 LRRM 1032 (1974), language identical to that appearing in the third paragraph of Respondent's circular was held by the National Labor Relations Board to fall within the ambit of §3(c) of the N.L.R.A., the "free speech" counterpart of §1155 of our Act, despite the fact that part of that language was couched in the imperative (i.e., "...our advice to you is that you not sign a card. Refuse to sign a union authorization card.. .")

The Board noted that if the imperative phrases stood alone as separate statements, they might well be deemed unlawful instructions or directions. However, the statements did not stand alone: "...they constitute clauses in two sentences whose overall Impact is argumentative in nature . . . such statements, in our view, constitute permissible propaganda--not instructions or directions to employees to refrain from executing authorization.

cards." (88 LRRM 1034). Since the employer in the Airporter Inn case was, under §8(c), "free to non-coercively convince his employees that it was against their interests to execute authorization cards," (88 LRRM 1035), She imperative phrases were held not to constitute unlawful orders or directions violative of the N.L.R.A.

Having deemed the employer's circular in Airporter Inn to be a non-coercive expression of opinion, the National Labor Relations Board then addressed the question of whether the language of the circular was "nevertheless unlawful because [it] contained] threats of reprisal or force or promise of benefit." The Board concluded that It did not, stating:

> As with the entire letter, the thrust of the final paragraph [identical with the third paragraph of Respondent's pamphlet except for an additional sentence] is purely informational in nature. It contains no promises of improved working conditions should the Union be defeated, nor does it threaten any repercussions should the Union be victorious. It merely expresses Respondent's position that the employees will be better served in terms of benefits and Job security by rejecting the Union. Such is precisely the type of campaign propaganda which has become commonplace in our elections and which Section 8(c) was designed to protect, (id.)

Thus, the phrase "You will always do better with us than with a union, which can't and won't do anything for you except Jeopardize your job was specifically held not to constitute a "threat of reprisal" by the National Labor Relations Board, and, therefore, no violation of the N.L.R.A. equivalent to $1153(a) of the A.L.R.A. Could be cased on the wording if the leaflat.

Predictably, both the General Counsel and the Union argue that the Airporter Inn case is distinguishable from the instant situation and hence not "applicable" N.L.R.A. precedent As such, the case should not be determinative of the issues presented here. Both rely on the "differences" between the industrial context of labor organizing in Airporter Inn and the agricultural context of the case at bar. While recognizing that there might exist such differences, I am unable to conclude that these distinctions would necessarily lead to a different interpretation of the language appearing in the circular that that reached in Airporter Inn, particularly in the face of the failure of the General Counsel to adduce stronger and more pointed evidence on this issue.

The Union urges, in addition to ignoring the holding in Airporter Inn, that the Board adhere sore strictly TO the employer "free speech" rules set forth in Gissell Packing 395 U.S. 575, 71 LRRM 2481 (1969). In that case, the Supreme Court noted that:

> Any balancing of [employer and employee rights] must take into account the economic dependence of the employees on their employers, and the necessary tendency of the former, because of that relationship to pick up intended implications of the latter that might be readily dismissed by a mere disinterested ear. (71 LRRM 2497)

Nevertheless, the court held that under 8(c) of the N.L.R.A., an employer was free to communicate his general views on unionization or state specifics regarding his opinions about a particular union, as long as such statements did not contain threats or promises or benefits.

An employer might even make a prediction as to the precise effects he believes unionization will have on his company. However,

> ...the prediction must be carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond his control...If there is any implication that an employer may or may not take action solely on his own initiative for reasons unrelated to economic necessity and known only to him, the statement is no longer a reasonable prediction based on available facts but a threat of retaliation based on misrepresentation and coercion, and as such without the protection of the First Amendment, (id)

Stated in another way, "[t]he law has developed in this area to distinguish between a threat of action which the employer can impose or control and a prediction as to an event over which the employer has no control. The threat is not privileged but the prediction is." (Southwire Company v. N.L.R.B., 65 LRRM 3042 (C.A. 5, 1967))

I specifically find that even under the standard enunciated in the Gissel case, the leaflet in question did not violate §1153(a) of the Act. Despite the fact that "he references to "turmoil" and "jeopardy"' of employment in paragraph three of the leaflet were not surrounded by assertions of "objective fact" and did not refer to specifics, the words by themselves do not necessarily carry the implication of a threat that the Respondent in response to the Union organizational campaign, right or right not take action solely on his own initiative for reasons unrelated to economic necessity." 9/ Nor do they assume in

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9/ "A prophecy that unionization might ultimately lead con't

implication when the leaflet is viewed as a whole, as the statements surrounding the third paragraph support the conclusion that the leaflet is "purely informational in nature." Indeed, given the strike which occurred at Respondent's ranch in 1973, the implication or inference is just as strong that the words "unnecessary turmoil" and "jeopardy" in the pamphlet might well convey, in the circumstances of the instant case, the "employer's belief as to demonstrably probable consequences beyond his control," and constitute "a reasonable prediction based on available facts" (such as the prior strike).

This is not to say that the words in the Respondent's pamphlet might never form the basis for a violation of §1153(a). Although the subjective impressions conveyed by such statements are generally irrelevant in determining whether they were threatening or coercive (B.M.C. Manufacturing Corporation, 36 LRRM 1397 (1955); G. Hess, Inc., 23 LRRM 1581), it is well established that such statements will be viewed in the entire verbal and factual context in which they appear to determine whether or not they in fact constitute a violation of the Act. 10/ (Greensboro Hosiery Mills, 64 LRRM 1164 (1967); Mt. Ida Footwear,

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9/ (con't) to loss of employment is not coercive where there is no threat that the employer will use its economic power to make its prophecy come true." Chicopee Manufacturing Co., 107 N.L.R.B. 106, 33 LRRM 1054 (1953).

10/ Particularly illuminating in this regard is a comparison of the rulings in various cases dealing with the exact same statement made in varying circumstances. Compare Greensboro Hosiery Mills, supra, Darr-Air, supra, and [illegible] Stevens, [illegible] -

217 N.L.R.B. No. 165, 89 LRRM 1169 (1975); Ohmite Manufacturing Company, 217 N.L.R.B. No. 80, 89 LRRM 1530 (1975); N.L.R.B. v. Holly Farms Poultry Industries, 82 LRRM 2110 (C.A. 4, 1972); Serv-Air, Inc. v. N.L.R.B., 295 F2d 557, 67 LRRM 2337 (C.A. 10, 1968); Amalgamated Clothing Workers v. N.L.R.B. 365 F2d 898 62 LRRM 2431 (1966); Dal-Tex Optical Company, 137 N.L.R.B. 1782, 50 LRRM 1489 (1962); Arch Beverage Corp., 140 N.L.R.B. 1385, 52 LRRM 1251 (1963); Oak Manufacturing Company, 141 N.L.R.B. 1323, 52 LRRM 1502 (1963). As stated by the court in the Amalgamated Clothing Workers case, "...the non-coercive character of the notice taken by itself precludes its prohibition unless the Board, endowed with the lens of an expert, provides explanatory findings revealing that the words take on a darker hue when viewed in the perspective of a particular setting." (62 LRRM 2439).

> The line between threats, coercion and restraint on the one hand and mere persuasion on the other is not always easy to draw and cannot by any means always be drawn by reference only to the words used. Words innoccuous in themselves can take on a sinister meaning in the context in which they are uttered. Teamsters Local 901 v. Compton, 291 F2d 793, 48 LRRM 2553 (C.A.1, 1961).

This "sinister meaning" is most often imparted to otherwise lawful statements made in the context of other unfair labor practices, which supply the statements with a

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12/ (cont'd) Infra. (Violations based on statement found with Ohmite Manufacturing Company, supra, Holly Farms Poultry Industries, supra, Supremant Manufacturing Company v. [illegible] and Wellington Mill Division v. N.L.R.B. [illegible] no violations found).

particular coercive connotation. (See e.g., Greensboro Hosiery Mills, supra; J. P. Stevens Co. v. N.L.R.B., 380 F2d, 65 LRRM 2829 (C.A. 2, 1967)).

Both the Union and the General Counsel argue that the pamphlet was distributed in the context of a "climate of fear" existing at Respondent's ranch, and as such, the words therein took on a particularly coercive connotation. However, apart from the self-serving assertions made in this regard by organizer de la Cruz, 11/ no evidence of any sort was offered by the General Counsel in support of this contention. The mere fact that 80% of Respondent's employees live in company-owned labor camps does not, in and of itself, give rise to the inference that a coercive, anti-union, fear-inspiring environment exists at Respondent's ranch. Furthermore, although de la Cruz, by testifying that Respondent's foremen were almost always present when he attempted to speak with workers, sought to create the impression that Respondent's employees were subjected to a form of surveillance, no violation of §1153(a) based on this "surveillance" was alleged. The inference that such a violation was not susceptible of conclusive proof is quite strong, particularly in light of the discussion above to the effect that allegations and proof of additional unfair labor practices may change the non-coercive character of an employer's statement into a coercive one violative of the Act: a violation based on

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11/ Needless to say, such assertions were not considered probative or determinative of any of the issues presented herein.

surveillance herein, if proved, would buttress the General Counsel's position in regard to the leaflet.

In sum, therefore, I find that the leaflet distributed by Respondent to its employees on January 15 and January 27, 1977, was, in the absence of other coercive conduct by the Employer, a permissible expression of the Respondent's views on the U.F.W. organizational drive involving its employees, protected by §1155 of the Act and hence not violative of §1153(a). The "entire letter...is purely informational in nature...and contains no promises of improved working conditions...nor does it threaten any repercussions." (Airporter Inn Hotel, supra p. 1035) 12/

B. The Allegations of Misrepresentation in the Leaflet

The General Counsel alleges in his complaint and argues in his brief that certain "misrepresentations" appearing on the leaflet in question somehow make the leaflet violative of the Act. 13/ Contrary to the contentions of the General Counsel, I find that the leaflet, on its face, does not give rise to any such interpretations which might be deemed a misrepresentation of fact by the Respondent. In addition, the

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12/ In adhering to the holding in the Airporter Inn Hotel case, I am mindful of the point persuasively urged by Respondent in its brief that "application of N.L.R.A. precedents in this case would effectuate the express policies of the A.L.R.A. to guarantee 'stability in labor relations' and 'bring certainty and a sense of fair play to a presently unstable and potentially volatile condition in the State' (A.L.R.A. Section 1) by providing employers with previously adjudicated guidelines for communicating with employees on the subject of union organizational campaigns.

13/ The General Counsel contends that the wording of the last paragraph of the leaflet "creates the impression that [Respondent] has the support of the A.L.R.B. in the [con't]

General Counsel neglected to present any witnesses to testify that they were in fact misled by any of the statements appearing on the leaflet.

No cases are cited by the General Counsel in support of its position that merely because an employer leaflet contains a misrepresentation, that leaflet would thereby be rendered unlawful. Indeed, it is doubtful whether any such authority can be found. Even assuming, arguendo, that the misrepresentations did exist, as the General Counsel has failed to establish that these statements contained a "threat of reprisal or force or promise of benefit," they would still be deemed permissible expressions of "views, arguments or opinions" under §1155 of the Act, and therefore could not be utilized as the basis for a §1153(a) violation. (cf. I.U.E. (NECO Electric Products Corporation) v. N.L.R.B., 289 F2d 757, 46 LRRM 2534 (C.A. D.C., 1960)). 14/

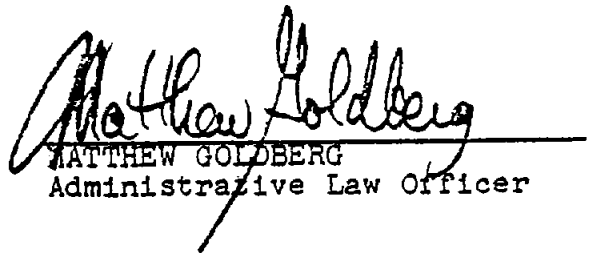
13/ (con't) distribution of the leaflet and that it performs official functions of the A.L.R.B. in the investigation of charges of misconduct by the U.F.W. union..." (G.C. Brief, p. 5). In addition, the General Counsel asserts that the statement appearing on the leaflet ("NOTE! $10.00 WAS DEDUCTED FROM YOUR PAY CHECK FOR UNION DUES") "wrongfully creates the impression in the minds of its employees that there [sic] union dues are being paid to the UFW..." (op.cit., p. 6).

14/ I do not find the Hollywood Ceramics rule (140 N.L.R.B. 2212 (1962)) concerning misrepresentations of material fact made in the context of a Board representation election to have any application to these circumstances. The Union organizational campaign occurring herein was not in connection with a particular election. Furthermore, differing sets of standards are utilized to determine whether statements constitute unfair labor practice violations on the one hand, or, on the other, whether such statements should form the basis for setting a representation election aside (Dal-Tex Optical Company, 137 N.L.R.B. 1782 (1962)). As the Board noted in Dal-Tex Optical, the "free speech

III. Recommended Order

Having found that Respondent's leaflet did not violate §1153(a), I recommend that the complaint herein be dismissed.

Dated: 3/6/77



MATTHEW GOLDBERG
Administrative Law Officer

14/ Section 8 provision of the Act applies solely to unfair labor practice cases, and has no bearing on representation proceedings. As I have stated above, I consider the "free-speech" provision of the A.L.R.A. to be dispositive of the alleged "misrepresentation" issue.

APPENDIX A

KARAHADUN RANCHES INC.

P.O. Box 756

THERMAL, CALIY. 92274

ALL EMPLOYEES:

In the next few weeks you may be visited at home or at work by paid organizers from the United Farm Workers. They will try to persuade you to support their Union and to sign one of their Union cards or petitions.

Under the law, you are not required to talk to the UFW organizers or to let them into your home. You are free to insist that the UFW organizers go away and leave you alone. The some is true if the organizers contact you at work. You have the right under the law to tell them to go away and not bother you.

The organizers will ask you to sign a card petition authorizing the UFW to represent you. You are under no obligation to sing the card. In fact, our advice to you is that you not sign a card. Refuse to sign a Union card and avoid a lot of unnecessary turmoil. (you will always do batter with us without a union, which can’t and won’t do anything for you except jeopadize your jobs.)

It is unlawful for anyone to threnten you if refuse to support a union. We will not tolerate such thrents being made against out employees. If you or anyone in your family or friends is threatened by someone trying to “nell” the union, report it immediately to your foremen or to the ALRB. The ALRB’s telephone number here is 358-0121. If you have any questions, but us know

NOTE: 510.00 WAS DEDCTED TODAY FROM YOUR PAY HECK FOR UNION DUES!

Appendix B

KARAHADIAN RANCHES INC.
P. O. BOX 756
THERMAL, CALIF. 92274

A TODOS LOS EMPLEADOS:

En las próximas semanas ustedes pueden ser visitados in su casa o en su trabajo, por organizadores pagados de la United Farm Workers. Ellos tratarán de persuadir su apoyo a su Union y de que firmen una de sus tarjetas de Union o peticiones.

Bajo la ley, a ustedes no se le requiere que hablen con los organizadores de UFW, o que se les permita a ellos entrar en su casa. Ustedes estan libres de insistir en que los organizadores de UFW se vayan y los dejen a ustedes solos. Lo mismo es cierto, si los organizadores hacen contactos con ustedes en su trabajo. Ustedes tienen el derecho bajo la ley, de decirles a ellos que se vayan y que no les molesten.

Los organizadores les preguntarán a ustedes para que firmen una tarjeta o peticion, autorizando a la UFW a representarlos a ustedes. Ustedes no estan bajo obligacion de firmar la tarjeta. En realidad, nuestro consejo a ustedes es que no firmen la tarjeta. Rehusen de firmar la tarjeta de la union y eviten gran numero de trastornos. (A ustedes siempre les saldra mejor con nosotros sin la union, la cual no puede y no va a hacer alguna cosa por ustedes, excepto poner en peligro sus trabajos.)

Es en contra de la ley, que alguien amenace a ustedes, si ustedes rehusan apoyar la union. Nosotros no toleraremos que tales amenazas sean hechas en contra de nuestros empleados. Si ustedes, o algunos de su familia, o amigos, es amenazado por cualquiera, tratando de "vender" la union, repórtelo inmediatamente a su mayordomo o al ALRB. El número de telefono del ALRB es 398-0121. Si ustedes tienen algunas preguntas que hacer, hagannoslo saber.

ATTENCION: LA SUMA DE $10.00 FUE DESCONTADA DE SU CHEQUE DE PAGO EN EL DIA DE HOY PARA LA CUOTA DE LA UNION!