STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

JACK OR MARION RADOVICH, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case Nos. 79-CE-19-D 79-CE-32-D 79-CE-20-D 79-CE-33-D 79-CE-21-D 79-CE-34-D 79-CE-23-D 79-CE-35-D 79-CE-26-D 79-CE-39-D 79-CE-27-D 79-CE-45-D 79-CE-31-D 79-CE-48-D 10 ALRB No. 1 (9 ALRB No. 16)

SUPPLEMENTAL DECISION AND REVISED ORDER

Following our Decision in Jack or Marion Radovich 1983, 9 ALRB No. 45, the Court of Appeals, Fifth Appellate District, has remanded for reconsideration our Decision and Order in Jack or Marion Radovich (1983) 9 ALRB No. 16 (Radovich I). In that Decision a three-member panel of the Agricultural Labor Relations Board (ALRB or Board), Member McCarthy dissenting, found Respondent had violated Labor Code section 1153(a)[1/] by its interrogation of employees regarding their union sympathies and by Jack Radovich's decertification campaign statements impliedly promising his employees improved health insurance benefits if they voted to decertify the United Farm Workers of America, AFL-CIO (UFW or Union). We ordered Respondent to cease and desks' from so violating the Agricultural Labor Relations Act (ALRA or Act).

In Jack or Marion Radovich (1983) 9 ALRB No. 45

[1/] All section references herein are to the California Labor Code unless otherwise specified.

(Radovich II), a majority[2/] of the full Board found that campaign statements similar to those in Radovich I did not constitute an implied promise of benefits in violation of the Act. Subsequent to the issuance of Radovich II, the Board applied to the Court of Appeals for an order remanding Radovich I to the Board for reconsideration, and the Court granted the Board's request. We thereupon requested the parties to submit additional briefs "on the issue of whether, in light of the Decision in Jack or Marion Radovich (1983) 9 ALRB No. 45, Respondent's comparison of benefits in the April 27 speech violated Labor Code section 1153(a)." Only Respondent submitted a brief.

The Board has reconsidered the record in Radovich I in the light of Respondent's brief. Upon reconsideration, we now conclude that the campaign statement made by Jack Radovich in April of 1979, comparing Respondent's health insurance plan before the advent of the Union with the plan provided pursuant to the Union's contract was a "permissible campaign technique[], which fall[s] within the bounds of free speech permitted by section [1155] of the Act." (See Thrift Drug Co. (1975) 217 NLRB 1094. [89 LRRM 1292], cited in Radovich II. See also Viacom Cablevision of Dayton, Inc. (1983) 267 NLRB No. 189 [114 LRRM 1132].)

In Radovich II, Jack Radovich compared the Union's contract benefits with benefits at non-union ranches in the Delano

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[2/] Members Henning and Waldie dissented solely on the issue of whether Jack Radovich's comments constituted objectionable or unlawful disparagement of the union.

area, rather than with Respondent's own pre-union benefits as in Radovich I. In both cases, however, Respondent expressly disclaimed to its employees any intention to make promises. In addition, both benefit comparisons were purportedly made to enable the employees to evaluate the Union's claims that greater benefits would accrue to the employees if the UFW were retained as their exclusive bargaining agent. In neither case, finally were we confronted either with misrepresentations or with extraneous evidence that employees perceived the comments as promises.[3/]

In Radovich II we stated that:

> We shall not set aside an election on the tenuous possibility that a comparison of existing benefits such as the one herein might be perceived by potential voters as an implicit promise to pay them more favorable benefits if they vote against the Union. We find that the employees' interest in full disclosure and maximum information concerning the advantages and disadvantages of unionization outweighs any arguable or possible coercive effect of the statements. (9 ALRB No. 45, slip opinion p. 6.)

These same considerations prompt us now to conclude that the benefit comparison in Radovich I did not in itself constitute an implied promise of benefits. Absent threats of reprisal or force or promises of benefits,

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[3/] In fact, as noted in Respondent's brief, Respondent's bookkeeper testified that, following the April 27 speech, an employee spokesperson questioned her as follows: "well, he asked me why Mr. Radovich - he said the union came out and made them promises, you know. What did Mr. Radovich have to say? Why didn't he come out and make them promises about what he would give them if they didn't vote for the union, and I told him that he was not allowed to do that. The law, you know, said he could not make them any promises." (R.T. XI pp. 57-58.)

> [t]he expression 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.. . . (Section 1155 .)

Accordingly, we hereby vacate that portion of our Decision in 9 ALRB No. 16 which finds an unlawful promise of benefits in the April 27 speech by Jack Radovich, and we dismiss those allegations of the complaint. We also vacate the Order in 9 ALRB No. 16, substituting therefor the following Revised Order:[4/]

REVISED ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board (Board) hereby orders that Respondent Jack or Marion J. Radovich, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating agricultural employees regarding their union sympathies.

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

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

(a) Sign the Notice to Agricultural Employees attached hereto and, after its translation by a Board agent into

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[4/] We have tailored the remedy to fit the single isolated violation found on reconsideration.

all appropriate languages, reproduce sufficient copies in each language for the purposes set forth hereinafter.

(b) 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 in the crew of Daniel and Enedina Casas, employed by Respondent on April 28, 1979.

(c) Post copies of the attached Notice, in all appropriate languages, in conspicuous places on its property for 60 days, the period(s) and places(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.

(d) 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 with its terms, and continue to report periodically thereafter, at the Regional Director's request, until full compliance is achieved.

Dated: January 4, 1984

ALFRED H. SONG, Chairman

JOHN P. McCARTHY, Member

JORGE CARRILLO, Member

MEMBER HENNING, Concurring:

While I agree with the majority that Jack Radovich's speech to employees did not contain an implied promise of benefits, pursuant to precedent of the National Labor Relations Board, the majority's opinion does not express sufficient sensitivity to the special context in which the speech was given, As I pointed out in my dissent in Jack or Marion Radovich (1933) 9 ALRB No. 45 (Radovich II), an employer's communications to employees in the context of a decertification election should be judged by stricter standards than would apply in a certification election context.

Stricter standards must be applied not only because the employer must respect the ongoing duty to negotiate with the employees' representative, but also because in deciding whether or not' to decertify, the employees can rely on what they themselves have learned in the period since electing their representative and have less need for information from the

employer than they might have had when making their initial choice, whether to be represented. Employer speeches in the decertification context are more likely to be intrusive than helpfully informative.

Having applied the strict standard I find appropriate here to Radovich's remarks, I find that they did not implicitly promise rewards for decertifying the union.

Dated: January 4. 1984

PATRICK W. HENNING, Member

MEMBER WALDIE, Dissenting:

I dissent. The majority has failed to acknowledge the direct and immediate power that an employer has over its employees and the necessary tendency of employees, because of their economic dependence, to pick up intended implications of the employer that might be readily dismissed by the disinterested ear. (NLRB v . Gissel Packing Co. (1959) 395 U.S. 575, 617 [71 LRRM 2431].) The speech by Radovich in this case, regardless of any superficial disclaimers, clearly implied that a pre-contract medical plan, which was superior to the contract plan, would be reinstituted, if the union were decertified. That is not information about an existing state of affairs, it is an inducement. Any employee would both understand and desire the benefits offered and understand what had to be done to obtain those benefits. The employer here, as in any promise-of -benefits case, is simply offering to buy the employees' votes with medical benefits.

The majority also errs by judging the instant unfair labor

practice case by the same standard as it would judge an election case. While I do not share the majority's sanguine view of the employer's role in informing the work force about the consequences of unionization, I believe that the apparent preference of employee voters should not be overturned, absent a serious act of coercion. The balance in an election case clearly favors upholding the election.

As to an individual unfair labor practice allegation, however, the balance, in my view, favors protection of the employees' rights under Labor Code section 1152 over the employer's interest in disseminating "information". Radovich II, therefore, does not involve the same considerations as Radovich. I and should not control the outcome.

Dated: January 4, 1984

JEROME R. WALDIE, Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Delano Regional Office the General Counsel of the Agricultural Labor Relations Board issued a complaint which alleged that we, Jack or Marion Radovich, 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 interrogating two employees about their union sympathies. 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 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 premise that:

WE WILL NOT interrogate any agricultural employee about his or her union sympathies.

Dated: JACK OR MARION RADOVICH

By: _____
(Representative) (Title)

If you have questions 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 627 Main Street, Delano, California. The telephone number is (805) 725-5770

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

Jack or Marion Radovich

1C ALRB No. 1
Case Nos. 79-CE-19-D 79-CE-32-D
79-CE-20-D 79-CE-33-D
79-CE-21-D 79-CE-34-D
79-CE-23-D 79-CE-35-D
79-CE-25-D 79-CE-39-D
79-CE-27-D 79-CE-45-D
79-CE-31-D 79-CE-48-D

Board Reconsideration of 9 ALRB No. 16

Pursuant to the Board's own request, the Court of Appeals remanded this case, 9 ALRB No. 16 (Radovich I) to the Board for reconsideration in light of Jack or Marion Radovich (1983) 9 ALRB No. 4.5 (Radovich II). In both cases, Jack Radovich made statements to his employees during decertification campaigns. comparing union with non-union benefits. The Board decided that no meaningful distinction could be drawn between Jack Radovich 's April 1979 comparison of contract and precontract medical plans (Radovich I) and his 1981 comprehensive comparison of wages and benefits under union contract with wages and benefits at non-union. ranches in the area (Radovich II) . The Board found that in both cases the employees' interest in full disclosure and maximum information concerning the advantages and disadvantages of unionization outweighed any arguable or possible coercive effect of the statement. The Board therefore dismissed the allegation in the complaint regarding the implied promise of benefits and issued a revised order tailored to the single isolated interrogation violation.

HENNING CONCURRENCE

Member Henning concurred with the majority's conclusion that under NLRB precedent the Employer's comparison of benefits did not implicitly promise rewards for decertifying the union. However, based on the considerations expressed in his dissenting opinion in Jack or Marion Radovich (1983) 9 ALRB No. 45, he would apply a stricter standard to employer communications made during a decertification campaign than to those made during a certification campaign.

WALDIE DISSENT

Member Waldie would reaffirm the Board's original conclusion that subtle promises of improved benefits by an employer, though couched in terms of a comparison, have special meaning to an employee and tend to interfere with the employee's free

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