STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

JACKSON & PERKINS COMPANY, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case No. 75-CE-143-F 3 ALRB No. 36

MODIFICATION OF ORDER

Pursuant, to Labor Code Section 1160.3, the Agricultural Labor Relations Board hereby modifies its Order, heretofore issued in this matter, by:

1) Substituting the following sentence for the first sentence in the first complete paragraph on page 4;

> In order to compensate for the long period of time in which organizers were denied any chance to approach and talk to employees at work, the UFW will be allowed, during any period within the next 12 months in which it files a valid notice of intent to take access, to have one organizer, in addition to the number of organizers permitted under 3 Cal. Admin. Code Section 20900 (e) (4) (A), as amended in 1976, take access to Respondent's property.

2) Substituting the following sentence for the first sentence of paragraph 2(d) on pages 9 - 10;

> d) Respondent shall allow the UFW, during any period within the next 12 months in which it files a valid notice of intent to take access, to have one organizer take access to Respondent's

property in addition to the number of organizers permitted during the three one-hour periods specified in §20900(e)(3) of 8 Cal. Admin. Code and during any established breaks.

Dated: April 20, 1978

GERALD A. BROWN, Chairman

RONALD L. RUIZ, Member

ROBERT B. HUTCHINSON, Member

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

JACKSON & PERKINS COMPANY, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	No. 75-CE-143-F 3 ALRB No. 36

DECISION AND ORDER

On December 30, 1976, Administrative Law Officer George E. Marshall, Jr., issued his decision in this case. The respondent, charging party and general counsel filed timely exceptions.

Having reviewed the record, we adopt the law officer's decision and recommendations except as modified herein.

The respondent admitted that from November 1, 1975, to January 12, 1976, a period which encompassed its peak season, its agents and individuals acting under express direction and control of the respondent engaged in an active and systematic policy of denying access to union organizers who were acting in full compliance with the access rule, 8 Cal. Admin. Code § 20900 (1975).[1/] The respondent's actions included; (1) directing sheriffs to detain organizers when they appeared at lunch time and

[1/] The access rule has since been amended. 8 Cal. Admin. Code §§ 20900 and 20901 (1976).

only release them when the lunch period was over;[2/] (2) using trucks and farm machinery to prevent organizers from entering the property; (3) posting security and supervisory personnel at entrances to the fields and the parking lot adjacent to its packing shed; and (4) on numerous occasions stationing personnel in radio-equipped vehicles from one to two miles away from its property along routes ordinarily used by union organizers coming to talk to employees in order to give warning to security and supervisory personnel that union organizers were approaching. The law officer found and we agree that this conduct violates the employees' rights under California Labor Code § 1152[3/] and constitutes an unfair labor practice within the meaning of § 1153(a).

The respondent, in its exception to the hearing officer's order of extra organizers for each crew, claimed that because the California Supreme Court was then deciding the constitutionality of the access regulation,[4/] it acted in good faith in denying access. We note that the NLRB does not inquire into the motives of the respondent in assessing whether or not an act is violative of § 8(a)(1) of the NLRA American Freightways Company, 124 NLRB

[2/]The access rule allows organizers to enter the employer ' s property for "one hour during the working day for the purpose of meeting and talking with employees during their lunch period". 8 Cal. Admin. Code § 20900 (5)(b) 1975.

[3/]All references, unless otherwise indicated, are to the California Labor Code.

[4/]The California Supreme Court upheld the validity of the access rule in ALRB V. The Superior Court of Tulare County, 16 Cal. 3d 392 (1976).; appeal dismissed _U.S. ___ (1976).

No. 1 (1958) and that the courts have subsequently supported this position. NLRB v. Burnup and Sims, Inc., 379 U.S. 21 (1964). We also note that the respondent's claim of acting in good faith does not reflect the reality of its pervasive and willful violation of a duly promulgated regulation which acquired the force of law upon adoption by this Board.

In addition to ordering the respondent to cease and desist, the law officer ordered that the respondent grant extra access to the charging party in the form of two extra organizers per crew;[5/] give notice of the results of this decision to all current and new employees through the 1977 harvest season; and file periodic reports on its compliance. We find that these remedies are inadequate.

The respondent, in completely denying access to over 800 employees, succeeded in disrupting the union's organizational efforts and preventing it from garnering the showing of interest necessary to trigger a representation election among these employees. Its conduct effectively denied to its employees for a period of two years the opportunity to "designat[e] representatives of their own choosing" and engage in "collective bargaining or other mutual aid or protection". Section 1140.2. The respondent's deliberate interference in the union's organizational campaign caused its employees and the union to expend much

[5/] Gal. Admin. Code § 20900(e) (4) (A) as amended in 1976 provides that, "Access shall be limited to two organizers for each work crew on the property, provided that if there are more than 30 workers in a crew, there may be one additional organizer for every 15 additional workers."

time and energy in a fruitless organizational campaign. The remedies set out below are designed to facilitate the union's contacts with employees in a future organizational campaign in order to overcome the effects of the employer's prior unfair labor practices.

In order to compensate for the long period of time in which organizers were denied any chance to approach and talk to employees at work, we will, during the time that the union has filed a valid notice of intent to take access in the next 12 months, remove any restrictions on the number of organizers allowed to come on to the respondent's property under 8 Cal. Admin. Code S 20900 (e) (4) (A) as amended in 1976. In addition to the three hour time periods permitted under § 20900 (e) (3), supra, access to employees on the respondent's property shall also be available under the above terms during any established breaks, or if there are no established breaks, during any time employees are not working.

As the respondent's conduct directly interferred with the union's efforts to get a showing of interest during the 1975-1976 peak, we order that the union be given employee lists under § 20910, supra, without the necessary showing of interest as required by § 20910(c), supra. In addition, such lists must be updated bi-weekly by the respondent during the periods the union has on file a valid notice of intent to take access. These changes in the requirements for obtaining employee lists and the number of employee lists required to be given to the union shall be in effect for 12 months from the date of this opinion.

Further, in order to redress the imbalance created by the respondent's deliberate and complete cutting off of its employees' right to receive information under the access rule, we shall require the respondent to provide the employees with two hours of regular working time during which the union can disseminate information to and conduct organizational activities with the respondent's employees. The union shall inform the regional director of its plans for utilizing this time. After conferring with both parties concerning the implementation of the union's plans for use of this time, the regional director shall determine the most suitable times and manner for such contact. Although no employee shall be forced to be involved in the activities, no employee will be allowed to work during the activities. The regional director will insure that employees receive their regular pay for the time spent not working. He or she shall also determine an equitable payment to be made to non-hourly wage earners for their lost productivity.

It is not without an awareness of the NLRB's difficulties that we approach the problem of fashioning remedies for unfair labor practices in the agricultural context. Before us is the history of the NLKB's often futile attempts to design effective remedial answers to the conduct of parties who have decided that it is economically more advantageous to disobey the law. The respondent cut off all access to its employees in disregard of our access regulations. The remedy of granting union organizers company time to disseminate information is designed to remedy the imbalance in organizational opportunities created by the respondent's actions. The dissent misconceives the nature of remedies when it implies that

such a remedy is punitive because it involves monetary cost to the respondent. We find that such organizational activites on company time, beyond that normally given to the union, are necessary to restore in small part the time which workers were entitled to spend with organizers in 1975 and to dispel lingering doubts regarding the effectiveness of the law. That costs are incurred by the respondent as a result of this order does not make it punitive, no more so than when we order an employer to pay back wages to a discriminatee. The emphasis by the dissent on punitive versus remedial is misplaced: the true issue is whether or not the remedy restores the workers to the position they would have been in if no violations of the law had occurred in 1975.

The effectiveness of a remedy is the key consideration before us when we are confronted with the application of NLRB precedent to the design and implementation of our remedies. As our dissenting colleague points out, several NLRB cases have issued similar orders granting the union meetings on company time. He feels, however, that the differences between the NLRB cases and the situation here preclude us from utilizing such a remedy in this case. But his analysis stops short of recognizing the differences between agricultural and industrial settings. These differences make it necessary for us to fashion remedies based not on what the NLRB has done in somewhat parallel situations, but on what is necessary to remedy the effects of an unfair labor practice in this particular agricultural setting.

We have found, unlike the NLRB, that access by organizers to employees on company property is vital to protecting and encour-

aging the rights of agricultural workers under our Act. See 8 Cal. Admin. Code § 20900, as amended in 1976. Consequently, the complete cutting off of access is a serious undermining of the rights guaranteed employees under our Act. Where employees' rights to discuss the pros and cons of unionization have been so systematically frustrated, we find it both appropriate and necessary, as has the NLRB in the cases cited by our dissenting colleague, to allow the union the opportunity to disseminate information and organize on the jobsite, during working hours, with employees who are free from the worry of losing pay or being individually harassed for talking to or coming into contact with union organizers.

The ALO did not include as part of the remedy the mailing, posting and reading of the NOTICE TO EMPLOYEES. We have previously decided that these remedies are necessary and warranted in the agricultural setting. Tex-Cal Land Management, Inc., 3 ALRB No. 14 (1977). Pinkham Properties, 3 ALRB No. 15 (1977). Accordingly, we find in this case that the mailing, reading and posting of a public notice shall be part of the remedy as detailed below.

We modify the law officer's order that respondent make periodic reports on its compliance every 60 days after its first report to the requirement that the respondent must file such reports when requested to do so by the regional director in the Fresno regional office.

Accordingly, IT IS HEREBY ORDERED that the respondent, Jackson and Perkins Company, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Denying access to respondent's premises to

organizers engaging in organizational activity in accordance with the Board's access regulations. 8 Cal. Admin. Code §§ 20900 and 20901 (1976).

(b) Interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in § 1152 of the Act.

(2) Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) The respondent shall immediately notify the regional director of the Fresno regional office of the expected time periods in 1977 in which it will be at 50 percent or more of peak employment, and of all the properties on which its employees will work in 1977. The regional director shall review the list of properties provided by the respondent and designate the locations where the attached NOTICE TO WORKERS shall be posted by the respondent. Such locations shall include, but not be limited to, each bathroom wherever located on the properties, utility poles, buses used to transport employees, and other prominent objects within the view of the usual work places of employees. Copies of the notice shall be furnished by the regional director in Spanish, English and other appropriate languages. The respondent shall post the notices when directed by the regional director. The notices shall remain posted throughout the respondent's 1977-78 harvest period or for 90 days, whichever period is greater. The respondent shall exercise due care to replace any notice which has been altered, defaced or removed.

(b) A representative of the respondent or a Board *agent shall read the* attached NOTICE TO WORKERS to the assembled

employees in English, Spanish, and any other language in which notices are supplied. The reading shall be given on company time to each crew of respondent's employees employed at respondent's peak of employment during the 1977-78 harvest season. The regional director shall determine a reasonable rate of compensation to be paid by the respondent to all non-hourly wage employees to compensate them for time lost at this reading and question and answer period. The time, place and manner for the readings shall be designated by the regional director after consultation by a Board agent with respondent. The reading shall be on a day in which the normal number of employees shall be working on the crew. A Board agent shall have the right to be present for each reading. Immediately following each reading, the Board agent shall indicate to the employees present his of her willingness to answer any questions regarding the substance or administration of the Agricultural Labor Relations Act, and shall answer any such questions. The Board agent shall direct that only employees are present during the question and answer period.

(c) Respondent shall hand out the attached NOTICE TO WORKERS (to be printed in English, Spanish and other languages as directed by the regional director) to all present employees, and to all hired in 1977, and mail a copy of the notice to all of the employees listed on its master payroll for the payroll period immediately preceding the filing of the petition for certification in October, 1975.

(d) During any period within the next 12 months in which the UFW has filed a valid notice of intent to take access,

the respondent shall allow any and all UFW organizers to organize among its employees during the three one-hour time periods specified in § 20900 (e) (3) of 8 Cal. Admin. Code and during any established breaks. If there are no established breaks, then the UFW organizers shall be allowed to organize among its employees during any time in which the employees are not working. Such right to access during the working day beyond that normally available under § 20900(e) (3), supra, can be terminated or modified, if in the view of the regional director it is used in such a way that it becomes unduly disruptive. The mere presence of organizers on the respondent's property shall not be considered disruptive.

(e) The respondent shall, during the time that the UFW has on file a valid notice of intent to take access within the next 12 months, provide the UFW once every two weeks with an updated employee list as defined in § 20310 (a) (2), supra.

(f) The respondent shall provide that the UFW have access to its employees during regularly scheduled work hours for two hours, during which time the UFW can disseminate information to and conduct organizational activities with the respondent's employees. The UFW shall present to the regional director its plans for utilizing this time. After conferring with both the union and the respondent concerning the union's plans, the regional director shall determine the most suitable times and manner for such contact between organizers and respondent's employees. During the time of such contact, no employee will be allowed to engage in work related activities. No employee shall be forced to be involved in the organizational activities. All employees will receive their regular

pay for the two hours away from work. The regional director shall determine an equitable payment to be made to non-hourly wage earners for their lost productivity.

(g) The respondent shall notify the regional director, in writing, within 20 days from the date of the receipt of this Order, what steps have been taken to comply herewith. Upon request of the regional director, the respondent shall notify him periodically thereafter, in writing, what further steps have been taken to comply herewith.

IT IS FURTHER ORDERED that allegations contained in the complaint not specifically found herein as violations of the Act shall be, and hereby are, dismissed.

Dated: April 26, 1977

GERALD A. BROWN, Chairman

RONALD L. RUIZ, Member

ROBERT B. HUTCHINSON, Member

MEMBER JOHNSEN, Concurring in Part and Dissenting in Part:

I agree with the majority's conclusion that an unfair labor practice occurred and that it was of an aggravated nature.[1/] The employer's conduct warrants stringent remedies, but I cannot agree with the majority's imposition of what I consider a punitive remedy, unwarranted under applicable NLRB precedent, calling for two hours of UFW union organizing during working time. This remedy, in addition to being too severe, is fraught with legal and practical difficulties.

In only a few situations has such a remedy been utilized by the NLRB -- and those situations are substantially

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[1/] However, the record in no way substantiates the majority's claim that the employer's conduct resulted in two peak seasons passing in which the workers were denied a right to designate representatives of their own choosing. There is nothing to indicate that a denial of access occurred during the second peak season or that the reopening of the regional offices in December, 1976, did not occur in time for the filing of a petition for certification.

different from the facts presented here.[2/] Cases in which the NLRB has imposed a special access remedy have involved at least two, and as many as four, specific and distinct types of improper conduct, including a broad and unlawful no-solicitation rule [similar to the denial of access present here], coercive anti-union speeches by the employer on company time, actual and threatened loss of jobs and other conduct which interfered with the employees' right to organize.[3/] These additional instances and types of wrongful conduct are not present here. Moreover, the need for a union meeting on company time is further diminished by the fact that agricultural employees may be solicited in work

[2/] See Montgomery Ward v. NLRB, 339 P. 2d 889, 58 LRRM 2115 (6th Cir. 1965); Crystal Lakes Broom Works, 159 NLRB No. 30 (1966); NLRB v. Elson Bottling Co., 379 F. 2d 223, 65 LRRM 2673 (6th Cir. 1967) I.U.E. v. NLRB (Scott's Inc.), 383 F. 2d 232, 66 LRRM 2081. (D.C. Cir. 1967); United Products Co. and I. A.M., 162 NLRB No. 23, 64 LRRM 1189 (1967); The Loray Corporation, 184 NLRB No. 57, 74 LRRM 1513 (1970); NLRB v. Crown Laundry & Dry Cleaners, 437 F. 2d 290, 76 LRRM 2336 (5th Cir. 1971).

[3/] In Montgomery Ward, supra, the employer had a broad, unlawful no-solicitation rule and had used company time and premises to make anti-union speeches . In Elson, supra , the employer had made a series of coercive speeches to employees and had conducted unlawful interviews with workers. In I.U.E. v. NLRB, supra, the employer had interrogated employees, coerced employees in a number of other ways, including threatening loss of jobs and other contractual benefits, and had promised benefits in return for the rejection by employees of the union. In The Loray Corporation, supra, the employer made numerous coercive statements and speeches and committed other acts of interference with the organizational process including the unlawful discharge of some employees. In Crystal Lakes Broom Works, supra, the employer made speeches stating that a strike, violence and a loss of jobs would result from selection of a union, interrogated employees and threatened to shut the plant if the union won. In United Products, supra, the employer interrogated employees , forced some employees to inform on the union activities of their fellow workers and discharged employees for union activity. In Crown Laundry, supra , the employer had threatened and interrogated employees in connection with two different elections, the second time in civil contempt of a NLRB order.

areas at regular times pursuant to our regulations,[4/] whereas such solicitation is only rarely allowed under the NLRA. The majority has failed to show that the purposes and policies of the ALRA cannot be met here within the framework of the significant opportunities for work-area access that already exist.

It is of course important to enhance the flow of information to the employees to the extent that it was attenuated by the employer's improper denial of access. This is more than adequately accomplished by the combination of suspending the restriction on numbers of organizers during regular access periods and requiring the production of updated employee lists.[5/] Both of these remedies were adopted by the majority and their stringency is commensurate with the aggravated nature of the denial of access which occurred in this case.

Giving union organizers two hours of paid working time to conduct organizational activities with the Respondent's employees, is, in view of the availability of other adequate remedies, more punitive than remedial. The two hours of special access [hereinafter referred to as the "special access remedy"] would presumably be taken by the union during the employer's peak season, at which time the record shows there are some 850 employees at work. Arbitrarily assigning these employees a conservative wage of between $2.50 and $3.00 per hour, we find that the Respondent would be forced to pay upward of $5,000 in wages for two nonproductive hours. Productivity is further

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[4/] 8 Cal. Admin. Code, Section 20900 et Seg.

[5/] The increased number of organizers would permit the dissemination of more information to more employees in a shorter period of time.

decreased by the time spent by workers in convening for the meeting and returning to their jobs afterwards. Since the special access remedy allows the union to accomplish little that could not be accomplished by means of the other remedies, its imposition amounts to assessing a fine against the employer, and quite a substantial one at that.

The hidden costs of the special access remedy can also be significant. Instead of addressing all 850 or so employees at one time, the union plan may call for organizers to spend two hours with each crew or perhaps even to insist upon two hours with each individual employee. The majority opinion provides no guidelines for implementation of the special access remedy, leaving the development of a plan in the hands of the union and its approval entirely within the discretion of the regional director. The smaller the group that the union addresses the greater will be the number of hours that organizers will be on the employer's premises during regular working time. A disruptive effect on work operations is virtually inevitable in the event of multiple union meetings, and keeping track of which employees had received the two hours of information could prove to be an administrative nightmare.

The special access remedy also has great potential for generating unfair labor practice charges, particularly claims of employer surveillance. If, for example, the special access remedy is being administered on a crew-by-crew basis, supervisors who are directing working employees may find themselves in close proximity to workers who are or are about to be addressed by union organizers. Charges will be made the employer's agents

are engaging in surveillance of organizing activities and taking note of the participants. The potential for such situations was undoubtedly one reason why access under our regulations was restricted to nonworking hours. If, as is the case here, the effects of denial of access can be overcome without infringing upon working hours, it is pointless to go beyond the basic time limitations of the access rule.

The majority has also expanded access during nonworking hours by allowing organizing to take place during regular or informal work breaks other than at lunch times. Since breaks are of relatively short duration and are taken at different times by different employees, the majority is again inviting chaotic conditions that will lead to disruption of work and the filing of unfair labor practice charges.

Given the foregoing considerations,[6/] I cannot subscribe to the majority's imposition of remedies which involve special periods of access.

Dated: April 26, 1977

Richard Johnsen, Jr., Member

[6/] These same considerations apply to the majority's granting of access during regular or informal work breaks other than at lunch times.

NOTICE TO WORKERS

After a trial where each side had a chance to present their facts, the Agricultural Labor Relations Board has found that we interfered with the right of our workers to freely decide if they want a union. The Board has told us to send out and post this Notice.

We will do what the Board has ordered, and also tell you that:

The Agricultural Labor Relations Act is a law that gives all farm workers these rights:

(1) to organize themselves;

(2) to form, join, or help unions;

(3) to bargain as a group and choose whom they want to speak for them;

(4) to act together with other workers to try to get a contract or to help or protect one another;

(5) to decide not to do any of these things.

Because this is true we promise that:

WE WILL NOT do anything in the future that forces you to do, or stops you from doing any of the things listed above.

Especially:

WE WILL NOT ask you whether or not you belong to any union, or do anything for any union, or how you feel about any union;

WE WILL NOT threaten you with being fired, laid off, or getting less work because of your feelings about, actions for, or membership in any union.

WE WILL NOT fire or do anything against you because of the union;

WE WILL NOT prevent union organizers from coming onto our land to tell you about the union when the law allows it;

WE WILL NOT interfere with your rights to get and keep union papers and pamphlets.

JACKSON & PERKINS COMPANY

By: _____
(Representative) (Title)

This is an official Notice of the Agricultural Labor Relations Board, an agency of the State of California. DO NOT REMOVE OR MUTILATE.

STATE OF CALIFORNIA

BEFORE THE AGRICULTURAL LABOR RELATIONS BOARD

JACKSON & PERKIS COMPANY Respondent and UNITED FARMWORKERS OF AMERICA Charging Party	Case No. 75-CE-143-F

DECISION AND RECOMMENDATIONS

I

Statement of the Case

On or about November 12, 1975 and continuing intermittently through November 30, 1975, the United Farm Workers (UFW) sought access to the Kern County premises of Jackson and Perkins Company (J & P or Respondent) for organizational purposes in accordance with Section 20900 of the Board's Regulations.

J & P supervisors, assisted by security officers and public law enforcement officers from the Kern County Sheriff's Office denied UFW organizers access to the premises and caused several UFU organizers to be arrested during the period commencing on or about November 12, 1975 and ending on or about November 26, 1975.

UFW filed an unfair labor practice charge with the ALRB Regional Director foe the Fresco Region on November 18, 1975 alleging that J & P was engaging in unfair labor practices within the meaning of Section 1153 (a) of the Agricultural Labor Relations Act. ("ACT")

On November 24, 1975, the General Counsel, on behalf of the

Agricultural Labor Relations Board (ALRB or Board), through the Fresno Regional Director issued a complaint alleging the J & F had interfered with, restrained and coerced its employees in the exercise of rights guaranteed in Section 1152 of the Act by a) denial to UFW organizers of access to J & P's Kern County premises by its supervisors, security guards and other agents; and b) by causing the arrest of UFW organizers engaged in organizational activities with respect to J & P employees in accordance with the "access rule" provisions of Section 20900 of the ALRB Regulations.

A hearing was held in Bakers field, California before Administrative Law Officer George E. Marshall, Jr. on January 12, 13, and 14, 1976, at which time the parties were given ample opportunity to submit testimonial and documentary evidence and argument pertaining to the allegations and issued raised by the Complaint and Respondent's answer.

Respondent, the General Counsel and the Charging Party who made one exception which is noted in the official transcript of these proceedings (TR. 140:14) entered an oral Stipulation which was accepted and approved on behalf of the ALRB pursuant to Section 20262 (h) of the ALRB Regulations.

In accordance with the Stipulation, signed declarations were received in evidence from Respondent in lieu of testimony from Walter M. Mertz, R. Stewart Baird and Frederick A. Morgan subject to objections to be filed at a subsequent date by the General Counsel and Charging party. Objections were received from the General Counsel.

Post-hearing briefs were received from Respondent and the General Counsel.

II

Discussion and Findings

Subsequent to the hearing, objections were received from the General Counsel relative to the declarations of Murtz, Bird and Morgan

dated November 12, 1976 which requires a ruling before discussing the evidence, the stipulation of the parties and the findings.

The General Counsel objected to the Baird and Morgan declarations on the basis that they involve offers of settlement which are inadmissible under Section 1152 of the California Evidence Code. The objection is overruled. Section 1152 is not applicable in the this instance when evidence of settlement or compromise is relevant for a purpose other than as a hearsay statement admitting facts of fault. statements are relevant in Reference to the remedy to show an absence of bad afaith on the part of Respondent in its refusal to grant total access to the UFW.

Objections were made to paragraphs 2,3,4,4A,5 and 6 of the Walter M. Mertz declaration on grounds of relevance. The objection is sustained.

The hearsay objection as to paragraph 2 of the Mertz declaration is also sustained.

The opinion and hearsay objections of paragraph 7 of the Mertz declaration are overruled for the opinion is based on apparent first hand knowledge and is relevant to the question of the remedy.

In view of the parties Stipulation the facts are virtually undisputed and the only question open for discussion is the question of surveillance. Under NLRB decisions company surveillance of employees' organizing activities or union nee tings has been held to constitute election interference, as well as an unfair labor practice. It is also clear that the Here presence of a company official or agent at a place where union meetings are being conducted, however, is not objectionable in the absence of evidence shoving an improper purpose.

It is the contention of J & P that Walter Mertz and other Company supervisory personnel who were present in the parking lot in close proximity to the employees at the tine union organizers sought access, were present for legitimate purposes i.e. the protection of Company property, and not to spy on the employees during the organizing activities.

On the other hand, the General Counsel contends that because Walter Hertz and supervisor George Eusak normally work in an office building approximately one (1) mile from the parking lot and were no less than 20 feet away from Respondent's employees during the pre-work hours and lunch periods that the UFW organizers sought access, that they were present for the sole purpose of surveillance since they left the parking lot immediately after the aforementioned periods.

The presence of Mertz and Eusak is capable of both alegitimate and an Illegitimate inference being drawn and the Administrative taw Office (ALO) finds insufficient evidence in the record to indicate their presence was for other than a legitimate purpose.

It would appear that some discussion is necessary relative to the admissions and stipulations of Respondent concerning its denial of access to UFW organizers in view of Respondent's claim of good faith belief that the access rule was invalid.

Respondent contends that to grant access to its fields during the lunch hour would create control problems, damage to its roses and be disruptive to its business operations. There were alternative means of access available to UFW such as home visits, use of hand speakers, etc., and Respondent felt those means should be used. The Stipulation between the parties included a paragraph that indicated Respondent did not physically interfere with organizers who remained outside of its premises and leafleted.

Nevertheless the conduct of Respondent in denying access Co its premises is somewhat contrary to its expressed willingness, through counsel, to grant partial access and inconsistent with a showing of good faith to otherwise fulfill the obligations imposed by the Ace and the Board's regulations upon agricultural employers for the benefit of their employees.

It is somewhat questionable that a finding of good faith on Respondent's part can be bade notwithstanding the fact that the Act requires the Board to follow established precedents of the National Labor

Relations Act. There is no counterpart to the access rule in the federal law. In any event, the Administrative Law Officer concludes that their is insufficient evidence in the record to establish a showing of good faith or bad faith on the part of Respondent but there is sufficient evidence indicating violations of the access rule to constitute unfair labor practices.

Upon the basis of the Stipulation previously alluded to and the entire record in the proceeding, the ALO makes the following:

Findings of Fact

1. Respondent admits, and the ALO finds that it is corporation organized under and by virtue of the laws of the State of Delaware, is engaged in agriculture in Kern County California, and is now and at all times material herein an agricultural employer within the meaning of Section 1140.4C of the Agricultural tabor Relations Act.

2. The United Farm Workers of America is now and has been at all times material herein a labor organization within the meaning of the Act.

3. Respondent stipulates and the ALO finds that agents of the respondent arrested for trespass union organizers for entering the property of the Respondent, which said organizers were on the employer's premises in full compliance with Section 20900 of the Board's regulations, hereafter refered to as the access rule, and that all persons arresting said organizers were agents of the Respondent acting within the scope of their agency and authority.

4. Respondent admits and the ALO finds that from November 1st, 1975 to January 12, 1976 its agents and individuals acting under express direction and control of the Respondent denied access to union organizers to the field, packing sheds and parking lots adjacent to said packing sheds in violation of the access rule.

That all attests at access made by union organizers was during non-working hours.

6. That the normal complement of Respondent’s agricultural

employees, as defined in Section 1140.4b of the Labor Code, for year round operations is 175 to I8O employees.

7. That peak employment as defined in Section 1156.3al of the Labor Code ran from approximately the last week of October of 1975 to approximately the second week of January of 1976 and that the agricultural employees as defined in the Labor Code during said peak period was approximately 850.

8. That of said employees referred to hereinabove in paragraph 7 approximately one half ft) of them are employed in the packing shed and approximately one half (%) are employed in the field.

9. That approximately 400 employees worked in the fields and they worked in crews consisting of approximately 25 people, each crew having a single supervisor.

10. That Respondent has approximately 975 acres under cultivation for the purpose of producing roses.

CONCLUSIONS

Based upon the above findings of fact, the Stipulation between the parties and the entire record the ALO concludes as follows:

a) Denial of access to UFW organizers to Respondents Kern County premises by Respondent, its agents and individuals acting under Respondent's express direction and control constitutes an unfair labor practice within the meaning of Section I153(a) of the Act.

b) There was no unlawful surveillance as alleged in the First Amended Complaint for the reasons -herein indicated above under Discussions and Findings.

DECISION

Upon the basis of the above findings of Tact, the Stimulation and the entire record in the proceeding Administrative Law Officer hereby decides that:

The surveillance allegations of the complaint are dismissed.

The Respondent, Jackson and Perkins Company, its officers, agents successors and assigns, shall:

1. Cease and desist frost:

a) interfering with restraining end coercing its employees in the exercise of the rights guaranteed in Section 1152 of the Act.

b) Denying access upon Respondent's premises to UFW organizers engaging in organizational activity in accordance with the access rule of 20900 of the Board's regulations.

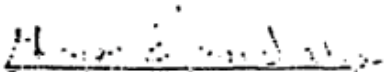
2. Take the following affirmative action which the Administrative Law Officer finds on behalf of the ALRB will effectuate the policies of the Agricultural Labor Relations Act:

a) Expanded access to UFW organizers in addition to their rights under the access rule as amended commencing with Respondent's peak season and ending either with the holding of a representation election or the termination of Respondent's peak season. Such expanded access to include two additional organizers from each work crew OR the property.

b) Notice from Respondent in English and Spanish to all current employees and to each new employee hired reflecting the disposition of this proceeding along with a promise to comply with this decision or the appropriate Board order. Such notices are to be given through the 1977 harvest season.

c) Periodic reports by Respondent to the Regional Director in the Fresno Regional Office indicating compliance with the Board's order. The first such report to be given within 20 days after the date of the Board's order and each sixty days thereafter.

Dated this 30th day of December 1976 at Los Angeles, California.



George E. Marshall, JR.
Administrative Law Officer

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

JACKSON & PERKINS COMPANY, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO Charging Party.	)	Case No. 75-CE-143-F 3 ALRB No. 36

MODIFICATION OF ORDER

Pursuant to Labor Code Section 1160.3, the Agricultural Labor Relations Board hereby modifies its Order, heretofore issued in this matter, by:

1) Substituting the following sentence for the first sentence in the first complete paragraph on page 4;

> In order to compensate for the long period of time in which organizers were denied any chance to approach and talk to employees at work, the UFW will be allowed, during any period within the next 12 months in which it files a valid notice of intent to take access, to have one organizer, in addition to the number of organizers permitted under 8 Cal. Admin. Code Section 20900 (e) (4) (A), as amended in 1976, take access to Respondent's property.

2) Substituting the following sentence for the first sentence of paragraph 2 (d) on pages 9-10;

> d) Respondent shall allow the UFW, during any period within the next 12 months in which it files a valid notice of intent to take access, to have one organizer take access to Respondent's

property in addition to the number of organizers permitted during the three one-hour periods specified in §20900(e)(3) of 8 Cal. Admin. Code and during any established breaks.

Dated: April 20, 1978

GERALD A. BROWN, Chairman

RONALD L. RUIZ, Member

ROBERT B. HUTCHINSON, Member