Thermal, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

MEL-PAK RANCHES, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	Case No. 77-CE-6-C 77-CE-8-C 4 ALRB No. 78

DECISION AND ORDER

On May 27, 1977, Administrative Law Officer (ALO) Ronald Greenberg issued the attached Decision in this proceeding, and on July 5, 1977 issued the attached Supplemental Decision 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, and Respondent filed a brief in opposition to the exceptions.[1/]

Pursuant to the provisions of Labor Code Section 1146,[2/] the Agricultural Labor Relations Board has delegated its authority in this matter to a three-member panel.

The Board has considered the record and the attached Decision and Supplemental Decision in light of the exceptions and briefs, and has decided to affirm the rulings, findings, and

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[1/] The Charging Party's motion to consolidate, for purposes of decision, the instant matter with Karahadian Ranches, Inc., 77-CE-8-C, is hereby denied.

[2/] All references herein are to the Labor Code.

conclusions of the ALO as modified herein, and to adopt his recommended remedial Order with modifications.

We find merit in the General Counsel's and Charging Party's exception to the ALO's recommended dismissal of paragraph four of the complaint, which alleges that Respondent violated Section 1153(a) by the distribution of its January 7th leaflet.[3/] Regardless of whether Respondent intended by this leaflet to guard its employees' privacy, we find that its distribution constituted an unlawful interrogation.

In Tenneco West, Inc., 3 ALRB No. 92 (1977), we found that the Respondent therein unlawfully interrogated its employees by approaching its workers and asking for their home addresses if they desired to be visited by UFW representatives, or a written refusal if they did not wish to be so visited. While the leaflet at issue herein more subtly conveys the same message, our conclusion in Tenneco West, Inc., supra, is equally applicable to the instant case:

[3/] The text of this leaflet, addressed to all employees, is as follows:

"Under the regulations of the Agricultural Labor Relations Board (ALRB), we are required to submit a list of our employees' name and addresses to the ALRB. The ALRB then will make this list available to union organizers, who may attempt to visit you in your homes. We recognize that many of you might not want to give out your street address to us, and we regret having to ask you for it. However, we believe we are required to ask for you street address so that we can comply with the ALRB regulations. Accordingly, if you have not already given us your street address, we are requiring that you write your name and street address at the bottom of this sheet and turn it in to our office. We believe that while we are under the obligation to ask you for your street address there is nothing in the law which requires you to give it to us."

> ...this conduct is clearly coercive interrogation in that the workers were in effect being asked to disclose their attitudes for or against the union by giving or refusing to give their addresses. See NLRB v. Historic Smithville Inn, 71 LRRM 2972 (CA 3 1969).

While the ALO found it significant that Respondent's leaflet does not by its terms require employees to respond, citing Aircraft Hydro-Foaming, Inc., 221 NLRB No. 117 (1975), we do not. The Aircraft leaflet, which, in a neutral manner, merely solicited employees' comments about a union campaign, was largely purged of its otherwise coercive character by the lack of any required response. However, although the employees in Aircraft could conceal any pro-union sympathies by their silence, without diminishing their right to receive communications from labor organizers about the merits of union representation, Respondent's employees in the instant case would have to forego the communication provided under 8 Cal. Admin. Code Sections 20310 and 20910 in order to maintain the privacy of any pro-union sympathies. By exacting this price and requesting an overt expression for or against the UFW, Respondent has coercively interrogated its employees and interfered with their Section 1152 rights, in violation of Section 1153(a) of the Act.

For the reasons set forth in Karahadian Ranches, Inc., 4 ALRB No. 69 (1978), we agree with the ALO that Respondent did not violate Section 1153(a) by its distribution of its January 10th leaflet which is, in pertinent part, virtually identical

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to the leaflet at issue in Karahadian.[4/] In reaching this conclusion, we have applied the standard enunciated in NLRB v. Gissel Packing Co., 395 U.S. 575, 71 LRRM 2481 (1969), and have not relied on the so-called "serious harm" cases discussed at length by the ALO.

ORDER

Pursuant to Labor Code Section 1160.3, Respondent, Mel-Pak Ranches, its officers, agents, successors and assigns is hereby ordered to:

1. Cease and desist from:

(a) Interrogating its employees in any manner, direct or indirect, concerning their union affiliation or sympathy or their participation in protected concerted activities.

(b) In any other manner interfering with, restraining or coercing any agricultural employee(s) in the exercise of the rights guaranteed to them by Labor Code Section 1152.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act:

(a) Sign the Notice to Employees attached hereto. Upon its translation by a Board Agent into appropriate languages, Respondent shall thereafter reproduce sufficient copies in each language for the purposes set forth hereinafter.

(b) Post copies of the attached Notice for 90

[4/] As in Karahadian Ranches, Inc., supra, 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.

consecutive days at times and places to be determined by the Regional Director. Respondent shall exercise due care to replace any Notice which has been altered, defaced, covered or removed.

(c) Provide a copy of the attached Notice to each employee hired by the Respondent during the 12-month period following the issuance of this Decision.

(d) Mail copies of the attached Notice in all appropriate languages, within 30 days from receipt of this Order to all employees employed by Respondent at any time during the period from January 10, 1977, until compliance with this Order.

(e) Arrange for a representative of Respondent or a Board Agent to distribute and read the attached Notice in appropriate languages to the assembled employees of Respondent on company time and company premises. The reading or readings shall be at such times and places as are specified by the Regional Director. Following the reading, the Board Agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions employees may have concerning the Notice or their rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all non-hourly-wage employees to compensate them for time lost at this reading and the question-and-answer period.

(f) Notify the Regional Director in writing, within 30 days from the date of the receipt of this Order what steps have been taken to comply with it. Upon request of the

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Regional Director, Respondent shall notify him or her periodically thereafter in writing what further steps have been taken in compliance with this Order.

DATED: October 23, 1978

GERALD A. BROWN, Chairman

ROBERT B. HUTCHINSON, Member

HERBERT A. PERRY, Member

NOTICE TO EMPLOYEES

After a trial where each side 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 farm workers these rights:

(1) to organize themselves;

(2) to form, join, or help any union;

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

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

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

Because this is true, we promise you 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.

MEL-PAK RANCHES
(Employer)

DATED: _____ 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

CASE SUMMARY

Mel-Pak Ranches (UFW) 4 ALRB No. 78
Case No. 77-CE-6-C
77-CE-8-C

ALO DECISION

Respondent was charged with violating Section 1153(a) of the Act by its distribution of two leaflets, one on January 7, 1977 and another on January 10, 1977. The January 7 leaflet advised Respondent's employees that Respondent was soliciting their names and addresses because it believed it was required by ALRB regulations to do so, that this information would be made available to union organizers who might use it to contact employees in their homes, that Respondent regretted asking its employees for this information, and that Respondent believed that although it was required by Board regulations to solicit this information it did not believe that employees were required by law to provide it to Respondent. The ALO recommended dismissal of the alleged violation premised on the January 7 leaflet, noting that nothing in the leaflet required a response from the employees.

The January 10 leaflet, distributed in English and Spanish, stated in pertinent part: "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 job." The ALO found that this language was protected by Section 1155 of the Act under the NLRB's "serious harm" line of cases and the NLRB decision in Airporter Inn Hotel, 215 NLRB No. 156 (1974).

BOARD DECISION

The Board affirmed the ALO's conclusion as to the January 10 leaflet, without adopting the ALO's reasoning, citing Karahadian Ranches, Inc., 4 ALRB No. 69 (1978), but rejected the ALO's recommendation and reasoning regarding the January 7 leaflet, and concluded that Respondent violated Section 1153(a) by its distribution, finding that the January 7 leaflet constituted an unlawful effective interrogation, more subtle but similar to that in Tenneco West, Inc., 3 ALRB No. 92 (1977).

REMEDY

The Board ordered Respondent to cease and desist from interrogating its employees or, in any other manner, interfering with, restraining or coercing its employees, and further ordered the posting, mailing, distribution and reading of an appropriate Notice to Employees.

BEFORE THE AGRICULTURAL LABOR RELATIONS BOARD

OF THE STATE OF CALIFORNIA

MEL-PAK RANCHES, Respondent and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	CASE NO. 77-CE-6-C

Octavio Aguilar and
Marian Kennedy, for
the General Counsel;

Stacy C. Shartin,
Seyfarth, Shaw, Fairweather
& Geraldson of
Los Angeles, California,
for the Respondent;

Ellen Greenstone for United Farm
Workers of America, AFL-CIO,
the Charging Party.

DECISION

STATEMENT OF THE CASE

RONALD GREENBERG, Administrative Law Officer: This case was heard by me on March 21, April 13, and 14, 1977, in Coachella, California.[1/] The Complaint, dated February 15, is based on charges filed by the United Farm Workers of America, AFL-CIO (hereafter the "UFW"). The charges were duly served on the Respondent, Mel-Pak Ranches. The Complaint alleges that the Respondent committed two violations of the Agricultural Labor Relations Act (hereafter referred to as the "Act").

[1/] Unless otherwise specified, all dates herein refer to 1977.

All parties were represented at the hearing and were given a full opportunity to participate in the proceedings. The General Counsel and the Respondent filed briefs after the close of the hearing.

Upon the entire record, including my observation of the demeanor of the witnesses, and after consideration of the arguments and briefs submitted by the parties, I make the following:

FINDINGS OF FACT

I. Jurisdiction

Respondent, Mel-Pak Ranches, is a partnership engaged in agriculture in Riverside County, California, as was admitted by the Respondent. Accordingly, I find that Respondent is an agricultural employer within the meaning of Section 1140.4(c) of the Act.

It was also admitted by the parties that the UFW is a labor organization within the meaning of Section 1140.4(f) of the Act, and I so find.

II. The Alleged Unfair Labor Practices

The Complaint, as amended at the hearing,[2/] put into

[2/] General Counsel amended paragraph 4 of the Complaint to read: "On or about January 6 or 7, 1977, Respondent distributed to its employees an anti-union leaflet printed in English and Spanish. This leaflet stated that Respondent's employees were under no obligation to give their street addresses to Respondent. This action constitutes an interrogation for purposes of identifying employees inclined to support the union and discourage the employees from providing Respondent with their addresses." General Counsel also amended paragraph 5 of the Complaint to read: "On (fn. 2 cont. on p. 3)

issue two alleged violations of Section 1153(a) of the Act.

The Respondent generally denies it violated the Act in any significant respect. Respondent argues that the two leaflets that were distributed by Respondent were lawful and well within precedent established by the National Labor Relations Board.

III. The Facts

A. Background:

The Respondent grows table grapes on 500 acres of land in Riverside County, California. Respondent employs approximately 45 employees during late fall and winter for purposes of pruning. Respondent also hires an additional 200 employees in late March to do the thinning. At harvest time at the end of May, 250 to 400 workers are employed by Respondent.

The hiring procedure is overseen by the ranch manager, Mr. Herbekian. More specifically, the hiring procedure is done by crew bosses in the fields. Workers entering the employ of the Respondent fill out white cards which contain spaces for their name, social security numbers and addresses. [3/] This procedure has been used for three years. The cards are kept primarily for tax purposes, i.e. preparation of W-2 forms.

(fn. 2 cont.)
or about January 10, 1977, Respondent distributed to its employees an anti-union leaflet printed in English and Spanish. This leaflet contains threats and implied threats against workers who sign authorization cards for the UFW, stating that such actions will lead to "turmoil". The leaflet continues by stating that a union "can't and won't do anything for you except jeopardize your jobs."

[3/] Respondent's Exhibit #3 contains copies of all the white cards of workers employed by Respondent in January 1977.

On December 6, 1976, the UFW filed Notice to Take Access with the Board. Then in January of 1977, the UFW filed its Notice of Intent to Organize.

During January, 1977, approximately 25 to 29 employees lived at the labor camp owned by Respondent.

B. Preparation and Distribution of Leaflets:

During January 1977, apparently upon request of Respondent, two leaflets were composed by Respondent's attorneys, Seyfarth, Shaw, Fairweather & Geraldson. General Counsel's Exhibit #2 is a letter addressed to employees stating the Respondent's position concerning the potential advent of unionization. A very similar leaflet was prepared by the same attorneys and used at two other ranches, Karhadian [4/] and Bagdasarian. Ralph Melikian, partner in Respondent, received the letter from his attorneys.

As alleged in the Complaint, two sentences in that letter violated Section 1153(a) of the Act. The third and fourth sentences of Paragraph 3 state:

> "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."

In addition, General Counsel's Exhibit #3 was prepared in the same manner as General Counsel's Exhibit #2. That exhibit explained to the employees what the

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[4/] Upon request of Respondent, I took administrative notice of the Administrative Law Officer's decision in Karhadian Ranches, Inc., Case No. 77-CE-8-C.

Respondent's obligations were under the ALRA as far as supplying the Board with a current list of employees. The final sentence of that exhibit reads, "We believe that while we may be under a legal obligation to ask you for your street address, there is nothing in the law which requires you to give it to us now." The bottom of the leaflet contains space for the employee to fill in his name and address.

Melikian testified that approximately one half of the employees during pruning season speak Spanish, while the other half speak a Filipino dialect. Neither General Counsel's exhibit #2 nor #3 were printed in a Filipino dialect.

As for the distribution of the leaflets, Milikian asked ranch manager Herbekian to get the materials translated. Melikian then authorized distribution of the leaflets. The witness was questioned as to whether General Counsel's exhibit #3 was filled in by the employees and returned. Melikian stated that Herbekian had been responsible for that part of the operation, and Melikian had no knowledge whether the leaflets were returned. Melikian stated that General Counsel's exhibit #3 was created to gather addresses that were difficult to obtain.

C. The Leaflets, English and Spanish Interpretations:

Initially, David M. Martinez was called as a witness for General Counsel for purposes of translating the leaflets. Martinez is a coordinator of organizers for the UFW. He has been with the UFW for four years. He serves as an organizer as well. He visits workers in the fields and at their homes. Previously he negotiated for the UFW for a nine or ten month period. As a negotiator, he received demands from English speaking farmers. He prepared the negotitating committess and also ratified

contracts. He also served as a contract administrator prior to becoming a negotiator. In his capacity as an administrator, he went to the fields, conducted meetings, participated in meetings with company supervisors and also translated documents. Prior to this experience as an administrator, he worked on the UFW's boycott in Chicago and Michigan, where he used Spanish in writing and speaking. Before coming to work for the UFW, Martinez worked for the Federal Government, which required his meeting with Spanish communities. He also translated government regulations for the Office of Economic Opportunity. As for his formal training, he took three advanced undergraduate courses in Spanish at the University of San Antonio.

Martinez was employed as a farm worker of 15 years, 1952-1966. He also was in charge of the organizing effort at Respondent's ranch during the pruning season of January, 1977.

Martinez was shown General Counsel's exhibit #2 and was asked to translate the third and fourth sentences of the third paragraph. He wrote out translations of the two sentences and then crossed them out and wrote another version of the two sentences. Martinez stated that he had originally translated the clause of the third sentence as conditional and then he decided it was much stronger.[5/]

He initially translated the third sentence of the third paragraph to read, "If you refuse to sign a union card or refuse signing a union card, you will avoid a great deal of unnecessary turmoil."

[5/] General Counsel's exhibit #4 contains all the translations from English to Spanish that Martinez completed.

He then translated the third sentence to read as an order. He corrected himself as to the word turmoil. He explained that the word "trustorno" translates to "extreme mental and physical breakdown."

Martinez went on to explain the corrections he made in his translation of the fourth sentence of that paragraph. He initially stated that the English meaning could be reduced to "except may harm your job." He then clarified that to read, "except to possibly cause you to lose your job." He stated that the words "Poner en peligro" created an impression that the employees jobs would be put in danger.

The witness admitted that the initial translations were literal ones, while the second translations were sense translations. Martinez also stated that he had talked to Ms. Kennedy of the General Counsel's office the day before the hearing. The witness on cross-examination also admitted that he had left out the word "unnecessary" in translating the third sentence into Spanish.

Basically the witness pointed out that the word "trustornos" was a very strong word that was seldom used. He said that the word "molestias", which means bother, is a much milder, more commonly used word. Under cross-examination, the witness was asked a few hypothetical questions and told to supply the word "trustornos" or "molestias" in the appropriate situation. When asked about the situation of hiring halls splitting up families at a particular ranch, the witness stated that this would be a "molestias" or "problema". The witness described "problema" as slightly stronger than "molestias". It would not be described as "trustornos". The witness was given a second example regarding

employees losing their jobs because of economic conditions that forced the rancher to close his farm. Martinez described this situation as a "problema". He said that it was more severe than "molestias", but still it merely was a bother. As for a third example regarding organizers standing around the fields and urging the employees to go out on strike, the witness stated that this would be described as "molestias" or "barullo". He translated "barullo" to mean turmoil.

The witness was further questioned about his use of derivitives of the verb "evitar". He used the verb "evitese" in this first translation of sentence 3, and then he used the tense "evitaran" in the second translation of that sentence. Inconsistant with his initial statement, the witness stated that the verb tense "evitese" was imperative while "evitaran" was not.

When asked about the word "peligro", the witness stated that it meant danger, and admitted that the same word appeared on street signs in Mexico.

At the outset, the witness explained that one word will often have different meanings to different workers in various parts of the state. However, he explained that the words "trustornos", "poner en peligro" and "barullo" had one consistant meaning to farm workers throughout the state.

Martinez was also asked about the word "dirreccion", used in General Counsel's exhibit #3. Martinez stated that the word "domicillios" necessarily means street addresses and would have been a better word for the employer to use. However, he admitted that the word "dirreccion" includes street addresses.

For purposes of translating the same material, Respondent

called UFW organizer Roberto De La Cruz, a long time farm worker and organizer. He has worked as an agricultural employee since the age of 6. Spanish is his native language, and he learned to speak it at home.

The witness defined the word "trustornos" as "problems or obstacles, that something awful is going to happen." The witness stated that the word is seldom used and that it is a very dramatic word. De La Cruz explained that most often the word "molestias" is used. He stated that the word usually means bother. In one sense it is used to mean physically touch.

This witness was asked the hypothetical questions previously posed to witness Martinez. De La Cruz described the example of the hiring hall splitting up families to be a "molestias". As for the example of the Teamsters standing outside the fields trying to get workers to go out on strike, the witness described this as "molestias" also. He said that it was bothersome but nothing happened to the people in the field. He further explained that it would be "trustornos" had the Teamsters physically pulled the workers out of the field.

He was asked to translate into English the third sentence of the third paragraph. He translated it as, "refuse to sign card of the union and avoid grand numbers of problems, obstacle and turmoil." Upon later examination by Respondent, witness De La Cruz stated that he did not know what the word turmoil meant.

Inconsistant with Martinez's interpretation, he stated that the phrase "poner en peligro" has more than one meaning. Yet, he stated that it had only one meaning in the context of this particular leaflet.

De La Cruz's translation of the fourth sentence in the

third paragraph was, "you will always make better with us without a union who and will not do anything for you except put your job in danger." He stated that the sense translation of that sentence was that "you would lose your job". He then offered the sense translation of the third sentence. "If you don't avoid signing, then a lot will happen to your job physically and mentally." He also said that the word "peligro" only means danger, but in the context of the leaflet it means fired. He offered the following sense translation of the fourth sentence of the fourth paragraph: "You're better off without a union, you will put your job on the line, we'll get your ass canned."

ANALYSES AND CONCLUSIONS

I. The January 7 Leaflet (G.C. Exhibit #3)

Section 1153(a) of the Act makes it an unfair labor practice for an agricultural employer to interfere with, restrain, or coerce employees in the exercise of their right "to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing... and... the right to refrain from any or all such activities...." In Section 1148 of the Act, the Board is directed to follow applicable precedents of the National Labor Relations Act, as amended in (29 U.S.C. Section 151, et. sea., hereafter the NLRA).

However, in analyzing alleged unlawful conduct, the Board must balance an employer's free speech rights under the Act. Paralleling 29 U.S.C. Section 158(c), Section 1155 of the

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 under the provisions of this part, if such expression contains no threat of reprisal or force, or promise of benefit.

General Counsel contends that General Counsel's exhibit #3 constitutes an interrogation for the purposes of identifying employees inclined to support the union and discouraging them from providing Respondent with their addresses. Further, General Counsel equates distribution of this leaflet to a secret poll of employees. General Counsel claims that because representatives need be chosen by a Board conducted election under the ALRA, no legitimate purpose can be served in circulating this leaflet.

Over the years, the NLRB has dealt extensively with employer interrogation of employees regarding their union sympathies. In Blue Flash Express, Inc., 109 NLRB 591, 34 LRRM 1384 (1954), the Board establish that "... the test is whether, under all the circumstances, the interrogation reasonably tends to restrain or interfere with the employees in the exercise of rights guaranteed by the Act." The Board in Blue Flash emphasized the fact that its decision did not grant employers the licence to engage in interrogation of their employees as to union affiliation or activity. However, the Board concluded that examination of the record as a whole provided the only solution for determining whether the particular interrogation interfered with the employee rights.

The NLRB has emphasized that the timing of the poll can be a key factor in determining its coersive effect.

"A poll taken while a petition for a Board election is pending does not, in our view, serve any ligitimate interest of the employer that would not be better served by the forthcoming Board election. In accord with long established Board policy therefore such polls will continue to be found violative of Section 81a of the Act."

See NLRB v. My Store, Inc., 345 F2nd 494, 58 LRRM 2775 (CA7, 1965); NLRB v. Lindsay Newspapers, Inc., 315 F2nd 709, 52 LRRM 2780 (CA5, 1963); Mallory, P.R. & Co., Inc., 149 NLRB 1649, 58 LRRM 1014 (1964); Phillips Manufacturing Co., 148 NLRB 1420, 57 LRRM 1173 (1964).

The second circuit court of appeals in Bourne v. NLRB, 332 F2nd 47, 56 LRRM 2241 (CA2, 1964), set out guidelines to determine whether the particular poll violated the Act. The presence of any one of the following circumstances tends to extablish unlawful interrogation.

1. Is there a history of employer hostility and discrimination?
2. Did the interrogator appear to be seeking information on which to base taking action against individual employees? Were the questions specific such as "who are the ringleaders?" rather than general, such as "how is the union doing?"
3. Was the interrogation by officials high in the company hierarchy?
4. Was the employee called from work to the boss's office or otherwise questioned in an atmosphere of "unnatural formality"?
5. Were the employees' replies evasive or untruthful, indicating that the interrogation actually inspired fear?

The instant case does not fit into traditional guidelines. Perhaps closer to the point, the Board in Aircraft Hydro-Foaming Inc., 221 NLRB No. 117, 91 LRRM 1027 (1975), determined that the employer did not coersively interrogate its employees in violation of the Act when it sent a letter to the employees inviting their comments concerning an ongoing

union organizational campaign. The Board pointed out that (1) the letter was not coercive, since it attempted to convey the employer's policy of listening to employees' concerns, including union activities; and (2) nothing in the letter compells a response.

While the General Counsel argues that the leaflet distributed on January 7th had a tendency of identifying those employees supporting the union, nothing in that letter compells a response from the employees. In fact, the last sentence of General Counsel exhibit #3 reads, "We believe that while we may be under a legal obligation to ask you for your street address, there is nothing in the law which requires you to give it to us now." This final line clearly demonstrates that there was no compulsion to respond to the employer's request. This employer inquiry clearly does not violate any of the guidelines set out in Board and court cases discussed above. Thus, the leaflet distributed on January 7, 1977 cannot be said to have interfered with employee rights guaranteed by Section 1152 of the Act.[6/]

Although the employer has relieved his employees from an obligation to respond to this leaflet, the General Counsel argues that the employer's advice adversely affects the union's organizational campaign and violates employee rights.

If these leaflets allegedly were used for collecting the names of union sympathizers, General Counsel presented no

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[6/] Witness Martinez and De La Cruz were questioned about the word "direcciones" appearing in the leaflet. Both agreed that the word "domicilios" was a better translation for a residential street address. However, both stated that the general term "direcciones" necessarily includes residential street addresses.

evidence as to what happended to the questionnaires after they were distributed. None of the company personnel who allegedly distributed the leaflets was called as a witness. Furthermore, no workers appeared to testify as to the routing of the questionnaire. While General Counsel's argument has some logical appeal, it is unsupported by substantial record evidence or case precedents. Therefore, I find that the January 7 leaflet did not violate Section 1153(a) of the Act.

II. The January 10 Leaflet

"An employer's right to communicate his views to employees is firmly established and cannot be infringed by a union or the Board." Thus, Section 8(c) (29 U.S.C. Section 158(c)) merely impliments the first amendment by requiring that the expression of "any views, arguments, or opinion" shall not be evidence of an unfair labor practice, so long as such expression contains "no threat of reprisal or force or promise of benefit" in violation of Section 8(a)(1). NLRB v. Gissel Packing Co., 395 U.S. 575, 71 LRRM 2481, 2497 (1969).

In the present case the employer's free speech rights must be evaluated in light of the third and fourth sentences of paragraph 3 of General Counsel's exhibit #2, which reads:

> "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."

The NLRB considered a similar statement made by a supervisor to a woman employee during an organizational campaign in Lily-Tulip Cup Corporation, 113 NLRB 1267, 36 LRRM 1436 (1955). The Board found that the employer did not violate the NLRA by the remark which emphasized that the union would not financially

benefit women workers, and might conceivably jeopardize work opportunities, since such remark was hypothetical in nature as to the results of unionization, and cannot reasonably be construed as a threat.

There have followed a series of NLRB cases which have dealt with notices containing the words "serious harm". In Aerovox Corporation of Myrtle Beach, 435 F2nd 1208, 76 LRRM 2042 (C.A. 4 1970), a notice was posted during the course of a troubled organizational campaign, where 9 union connected employees were fired or suspended, and there was evidence of verbel threats. The company posted the following notice a few days after the union filed its representation petition.

> This matter is, of course, one of concern to the company. It is also, however, a matter of serious concern to you and our sincere belief is that if this union were to get in here, it would not work to your benefit but, in the long run, would operate to your serious harm.

The court in Aerovox held that "serious harm" statements alone do not amount to a threat of reprisal or force or promise of benefit. In conformity with Gissel, the court held that all such statements and notices must be viewed in the setting in which they are made, thus in effect adopting the "circumstances test." See NLRB v. Gissel Packing Co., supra; NLRB v. Greensborrow Hoisery, Inc. 398 F2nd 414, 417, 68 LRRM 2702 (C.A.4, 1968); Amalgamated Clothing Workers v. NLRB, 420 F2nd 1296, 1299-1300, 71 LRRM 2863, 3184 (D.C. Circuit, 1969); Servi-Air, Inc. v NLRB 395 F2nd 557, 561 67 LRRM 2337 (C.A. 10 1968); J. P. Stevens Co. v. NLRB, 380 F2nd 292, 302-03, 65 LRRM 2829 (C.A. 2, 1967). The

court in Aerovox pointed out that the "serious harm" notice which was posted a few days after the union petitioned for an election and 2 months before the employer sent a coercive letter to its employees was initially done in a setting that was not coercive.

There have been numerous NLRB decisions concerning "serious harm" notices. Routinely, the Board has emphasized that the notices must appear in the context of other unfair labor practices.

> "We have not ordinarily found such notices to be illegal in and of themselves, for the bare words, in the absence of conduct or other circumstances supplying a particular connotation, can be given a noncoercive and nonthreatening meaning. Even the simultaneous existance of other unfair labor practices may not render the notice coercive, unless these practices tend to impart a coercive overtone through the notice. Where we have noticed that other unfair labor practices have been found, our decisions have been bottomed on the premise that there is a direct relationship between the notice and the total context in which it has appeared, including unfair labor practices, which serves to give a "sinister meaning" to what otherwise might be viewed as innocuous or ambiguous words."

Greensbarrow Hoisery Mills, Inc., 162 NLRB 1275, 64 LRRM 1164 (1967), enforced in part 398 F2nd 414, 68 LRRM 2702 (C.A. 4 1968).

In "serious harm" cases, the General Counsel must establish a relationship between the "serious harm" statement and the commission of other unfair labor practices occurring during the organizational campaign. Holly Farms Poultry Industries Inc., 82 LRRM 2110, 2111 (C.A. 4, 1972); See also Ohmite Manufacturing Co., 217 NLRB No. 80, 89 LRRM 1530 (1975); Liberty Mutual Insurance Co., 194 NLRB 1043, 79 LRRM 1297 (1972). Clearly, the present case contains none of these essential elements.

However, the exact wording of the two key sentences in General Counsel's exhibit #2 was extracted from an employer

letter approved by NLRB decision. In Airporter Inn Hotel 215 NLRB No. 156, 88 LRRM 1032, 1034 (1974), the Board found those two particular sentences in the context of the entire letter did not constitute "instructions or directions" in the meaning of Section 8(c). The Board further found that the statements did not contain threats of reprisal or force or promise of benefit.

> As with the entire letter, the thrust of the final paragraph 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. Airporter Inn Hotel, supra., at 1035.7/

Ironically, the Board stated that if the questionable statements stood alone, they may well be deemed to be instructions or directions. However, the dissenting opinion in Airporter, which favors finding a violation, lends less support to the General Counsel's case.

> Whie the last paragraph of the Duffy letter may, arguably, appear as harmless campaign rhetoric when read in isolation, it is highly coercive when read in the context of the entire letter and, by any objective analyses, takes on the appearance of a threat... again we are presented with the same familiar litany of successive events predicted by Respondent... Airporter Inn Hotel, supra., at 1035.7/

7/ See also Tommy's Spanish Foods, 187 NLRB 235, 76 LRRM 1001 (1970), enforced in part, 463 F2nd 116, 80 LRRM 3039 (C.A. 9 1972); Trojan Battery Co., 207 NLRB 425, 84 LRRM 1619 (1973); Desert Laundry, 192 NLRB 1032, 78 LRRM 1111 (1971); Robert Meyer Hotel, Inc., 154 NLRB 521, 59 LRRM 1775, (1965).

In effect, the dissent in Airporter stresses the fact that the employer's lengthy letter contained the usual unsubstantiated prediction of what negative events would likely occur after the union successfully organized the hotel.

In the present case, the two sentences of the third paragraph are the sole basis for the unfair labor practice allegation. The remainder of the text is innocuous. Other than the material contained in the two leaflets, there were no other unfair labor practice allegations. Further, there were no allegations that a coercive atmosphere existed when the leaflets were distributed. Although the ranch manager, Mr. Herbekian, was ill and not able to testify, General Counsel made no attempt to subpoena other crew bosses or people who might have been responsible for distributing the leaflets. No employees testified as to how the leaflets were passed out. Thus, my inquiry must be limited to those two sentences of the third paragraph of General Counsel's exhibit #2.

An examination of both the English and Spanish versions of General Counsel's exhibit #2 leads to the same conclusion. Witness Martinez insisted that the words "trustornos" "poner en peligro" and "barullo" have one consistant meaning to Spanish speaking farm workers throughout the state. He claimed that "trustornos" is a very dramatic word and rarely used. Also the phrase "poner en peligro" used in the context of the leaflet conveyed to the workers that their jobs would be lost if they signed union cards. However, Mr. Martinez contradicted himself. Originally he stated that most Spanish words have different meanings in different parts of the state. In spite of that statement,

however, he contended that "trustornos" and "poner en peligro" had one consistant meaning. It strains credulity to believe that most words have many meanings when these words have only one consistant meaning. Furthermore, Mr. Martinez's credibility suffered when he found it necessary to provide two translations for the two sentences. He conveniently construed the sentences as orders in his second version of the translations. Also, I find that Robert De La Cruz's testimony adds little to the General Counsel's case. He and Martinez testified similarly, except for the fact that De La Cruz stated that "poner en peligro" had more than one meaning. Yet he stated in the context of this leaflet it obviously had only one meaning. I find that neither of these witnesses' testimony demonstrates that the Spanish version of the leaflet is more coercive than the English version.

Furthermore, I find that under establish NLRB precedent the English version of the leaflet does not form the basis of an unfair labor practice violation. In applying the "circumstances test" of Gissel, these leaflets, standing alone, cannot be the sole basis for finding a violation. No causal relationship exists between the analyzed sentences of the leaflets and any other unfair labor practice occurring contemporaneously. Further, these sentences do not consitute "instructions or directions" or threats of reprisal or force or promise of benefit as defined in Airporter. And clearly, the leaflet does not contain the familiar litany of dire predictions as to the effects of unionization.

Based on all the evidence [8] before me, I find the January 10 leaflet not to be violative of Section 1153(a) of the Act.

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[8] The Respondent cites an article published in the Stanford Law Review, "NLRB Regulation of Campaign Tactics: The Behavioral Assumptions on Which the Board Regulates," by Getman, Goldberg and Herman, 27 Stanford Law Review, 1465, as standing for the proposition that threats and promises during election campaigns do not affect behavior at the polls. The authors conclude that some empiracal studies on voting behavior should be made on which the NLRB could base its findings on the affects of threats and promises during election campaigns. In the absence of such empiracal studies, the Board must continue to rely on its "intuition", as it has done in the past.

The NLRB has stated that one of the factors it may consider in determining when an alleged misrepresentation is sufficient to justify a hearing or a rerun election is the "Concurrent degree of sophistication of the voters at a particular time or in a particular area of the country." Modine Manufacturing Co., 203 NLRB No. 77 (1973).

Dean Theodore J. St. Antoine of the University of Michigan Law School has stated, "... in the city of Pittsburg an employer can make a certain kind of speech, using a langauage a lawyer has taken out of a book as being approved in past NLRB elections. He might not cause the least bit of fear in the employees listening to that speech... but there are other places in our country where the identical speech would have a totally different impact." Southwestern Legal Foundation, Proceedings of 11th Annual Institute of Labor Law, 24405 (1965).

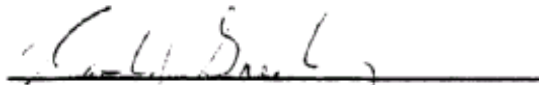
Further, just as ethnic, class, and family influences have been found to be the primary factors in determining a voter's stand on the issues of a political campaign (A. Campbell, P. Converse, W. Miller and D. Stokes the America Voters, 86-87 184-209 (1964)), these same factors must determine to a large extent how any employee will react to statements made by his/her employer during the union election campaign.

Because of the ethnic, class and educational background of California farm workers, NLRB precedent which is based upon general assumption about the character of the particular work force must be carefully scrutinized before being adopted by the ALRB.

ORDER

Having found that Respondent's leaflets do not violate the Act, the Complaint herein is dismissed in its entirety.

AGRICULTURAL LABOR RELATIONS BOARD

BY 

RONALD GREENBERG
Administrative Law officer

DATED: May 27, 1977

BEFORE THE AGRICULTURAL LABOR RELATIONS BOARD

OF THE STATE OF CALIFORNIA

MEL-PAK RANCHES, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case No. 77-CE-6-C

Octavio Aguilar and
Marian Kennedy, for
the General Counsel;

Stacy C. Shartin,
Seyfarth, Shaw, Fairweather
& Geraldson of
Los Angeles, California,
for the Respondent;

Ellen Greenstone for United
Farm Workers of America, AFL-CIO,
the Charging Party.

SUPPLEMENTAL DECISION

RONALD GREENBERG, Administrative Law Officer: This case was heard by me on March 21, April 13, and 14, 1977, in Coachella, California. On May 27, 1977 I issued a decision in the above-captioned matter. At the time of issuance of that decision, I had not received a post-hearing brief from the United Farm Workers. However, on April 25, 1977, Charging Party served by certified mail its brief on me. The United Farm Workers then moved the Board on June 20, 1977 to reopen the record based on my failure to consider the UFW's post-hearing brief. On July 1, 1977, the Board reopened for purposes of my

considering the Charging Party's post-hearing brief and that I issue a supplemental decision.

Having reviewed the post-hearing brief submitted by the United Farm Workers, I conclude that said brief provides no new material that affects my earlier decision. All of the arguments and issues raised by the United Farm Workers were covered by General Counsel and Respondent in their post-hearing briefs.

Based on all the evidence now before me, I reinterate my findings that Respondent did not violate Section 1153(a) of the Act when it distributed the two leaflets on January 7, 1977 and January 10, 1977, respectively.

ORDER

The record is hereby ordered closed in the above captioned matter. Further, the Complaint herein is dismissed in its entirety.

AGRICULTURAL LABOR RELATIONS BOARD

By _____
RONALD GREENBERG
Administrative Law Officer

DATED: July 5, 1977