

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS ACT

JACK PANDOL AND SONS, INC.,)	
)	
Respondent,)	Case Nos. 75-CE-86-F
)	75-CE-89-F
and)	
)	
UNITED FARM WORKERS)	
OF AMERICA, AFL-CIO,)	6 ALRB No. 1
)	(3 ALRB No. 29)
Charging Party.)	

SUPPLEMENTARY DECISION
AND REVISED ORDER

In accordance with the remand order of the Court of Appeal for the Fifth Appellate District, dated November 9, 1979, 5 Civ. No. 3446, 3 ALRB No. 29, we have reconsidered the entire record in this case, including the hearing transcripts, the Administrative Law Officer's decision, and the briefs and exceptions filed by the parties. A Proposed Supplementary Decision and Revised Order were served on the parties in December 1979, and we have considered the exceptions thereto which the parties filed.

We have concluded that the effects of Respondent's unlawful conduct in prohibiting and preventing organizers representing the United Farm Workers of America, AFL-CIO (UFW), from taking access to its employees on its property on September 29 and 30, 1975, can be effectively remedied by permitting the UFW to take access with more organizers than would ordinarily be permitted under 8 Cal. Admin. Code Section 20900 (e) (4) (A). We

will therefore order that the UFW may take access to employees on Respondent's property during each thirty-day period for which the UFW files a Notice of Intent to Take Access pursuant to 8 Cal. Admin. Code Section 20900(e)(1)(B) in the twelve months following issuance of our Order, with two organizers for every fifteen employees in each work crew on the property. In light of the fact that four years have passed since the original violations in this case, we believe that the limited number of extra organizers will enable the UFW to overcome such residual impact of Respondent's misconduct as still affects Respondent's employees in understanding and exercising their rights under the Agricultural Labor Relations Act (Act).

Respondent argues that the actions which we found were in violation of Section 1153(a) of the Act were based on good faith doubts about the law applicable at the time. It is well settled, however, that violations of Section 1153(a) do not turn on the employer's motivation. "The test is whether the employer engaged in conduct which, it may reasonably be said, tends to interfere with the free exercise of employee rights under the Act." Nagata Brothers Farms, 5 ALRB No. 39 (1979); Cooper Thermometer Co., 154 NLRB 502, 503 n. 2, 59 LRRM 1767 (1965); American Freightways Co., 124 NLRB 146, 147, 44 LRRM 1302 (1959). Moreover, the purpose of our orders is to remedy the effects of violations of the Act, not to punish the parties responsible for the violations. Respondent's argument that the violations found in this case were based on good faith doubts about the applicable law has no bearing on the appropriate remedy for a violation of

Section 1153(a). See Jackson and Perkins Co., 3 ALRB No. 36 (1977), 77 Cal. App. 3d 830; Nagata Brothers, supra.

REVISED ORDER

Respondent Jack Pandol and Sons, Inc., 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 Sections 20900 and 20901 (1976).

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

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

(a) Post immediately at its premises copies of the attached Notice to Employees. The Regional Director shall review a list of the properties provided by the Respondent to him and shall designate the locations where the attached Notice to Employees 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 the employees. Copies of the Notice shall be furnished by the Regional Director in Spanish, English, and other appropriate languages. These Notices shall be posted throughout the Respondent's 1980 harvest season 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) Have the attached Notice read in English and in Spanish on company time to all the employees employed at the time the Regional Director determines the Notice shall be read, by a company representative or by a Board Agent at a time the Regional Director determines appropriate. The Regional Director will 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. The Board Agent is to be accorded the opportunity to answer questions which employees might have regarding the Notice and their rights under Labor Code Section 1152.

(c) Mail a copy of the attached Notice, in both English and Spanish to all of the employees listed on its master payroll for the payroll period immediately preceding the filing of the petition on October 2, 1975. These Notices shall be mailed within seven days following the service of this Decision.

(d) Provide the UFW with a list of the names and last known addresses of those employees listed on its master payroll for the payroll period immediately preceding the filing of the petition for certification on October 2, 1975.

(e) Upon the UFW's filing of a written Notice of Intent to Take Access pursuant to 8 Cal. Admin. Code Section 20900 (e) (1) (B), the UFW shall have the right of access as provided by 8 Cal. Admin. Code Section 20900(e)(3), and access may be taken by two organizers for every fifteen employees in each work crew on

the property. This right of access shall encompass four thirty-day periods within the twelve months following the issuance of this Decision.

(f) During any thirty-day period in which the UFW exercises its right to take access, the Respondent shall provide the UFW with an updated list of its current employees and their addresses for each payroll period. Such lists shall be provided without requiring the UFW to make any showing of interest.

(g) Notify the Regional Director, in writing, within 10 days from the date of service 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 the Consolidated Complaint herein is dismissed insofar as it alleges violations of the Act by Respondent through the conduct of Vince Dulcich, at the farm operated by his family, on September 29, 1975.

Dated: January 11, 1980

GERALD A. BROWN, Chairman

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

JOHN P. McCARTHY, Member

NOTICE TO EMPLOYEES

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 prevent or interfere with union organizers 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.

Dated:

JACK PANDOL AND SONS, INC.

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

Jack Pandol and Sons, Inc.

6 ALRB No. 1
(3 ALRB No. 29)
Case Nos. 75-CE-86-F
75-CE-89-F

BOARD DECISION

In its Decision issued April 5, 1977, the Board upheld findings by the ALO Leo Weiss that Respondent committed violations of Section 1153(a) by preventing UFW organizers from taking access to its property according to the provisions of 8 Cal. Admin. Code Section 20900.

REMEDY

The Board ordered the posting, mailing, and reading of a remedial Notice to Employees. It also ordered that upon filing by the UFW of a Notice of Intent to Take Access pursuant to 8 Cal. Admin. Code Section 20900(e)(1)(B) the UFW would have a right of access without restriction as to the number of organizers, and that during any thirty-day period in which the UFW exercises its right of access the Respondent provide it with an updated list of its current employees and their addresses without requiring the UFW to make a showing of interest.

COURT REMAND

On November 9, 1979, the Court of Appeal for the Fifth Appellate District affirmed the Board's Decision and Order but remanded the case to the Board for further action with respect to the expanded access provided in the Board's remedial Order.

SUPPLEMENTARY DECISION AND REVISED ORDER

In its Supplementary Decision and Revised Order the Board stated that such residual impact of Respondent's illegal conduct as still affect its employees could be remedied by permitting the UFW to take access during each thirty-day period for which the Union files a Notice of Intent to Take Access in the twelve months following issuance of the Board's Order with twice the number of organizers ordinarily permitted under 8 Cal. Admin. Code Section 20900(e)(4)(A). The Board's Revised Order therefore provided for access by two organizers for every fifteen employees in each crew on Respondent's property during those periods.

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

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and)	
)	5 ALRB No.
UNITED FARM WORKERS)	(3 ALRB No. 29)
OF AMERICA, AFL-CIO,)	
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PROPOSED SUPPLEMENTARY
DECISION AND REVISED ORDER ^{1/}

In accordance with the remand order of the Court of Appeal for the Fifth Appellate District, dated November 9, 1979, in Case 5 Civ. No. 3446, 3 ALRB No. 29, we have reconsidered the entire record in this case, including the hearing transcripts, the administrative law officer's decision, and the briefs and exceptions filed by the parties. We have concluded that the effects of Respondent's unlawful conduct in prohibiting and preventing organizers representing the United Farm Workers of America, AFL-CIO (UFW), from taking access to its employees on its 'property on September 29 and 30, 1975, can be effectively remedied by permitting the UFW to take access with more organizers than would ordinarily be permitted under 8 Cal. Admin. Code Section 20900(e)(4)(A). We will therefore order that the UFW may

^{1/}If no exceptions are filed within ten days of the service upon the parties of this proposed supplementary Decision and revised Order, they shall become final.

take access to employees on Respondent's property during each thirty-day period for which the UFW files a Notice of Intent to Take Access pursuant to 8 Cal. Admin. Code Section 20900(e) (1) (B) in the twelve months following issuance of our Order, with two organizers for every fifteen employees in each work crew on the property. In light of the fact that four years have passed since the original violations in this case, we believe that the limited number of extra organizers will enable the UFW to overcome such residual impact of Respondent's misconduct as still affects Respondent's employees in understanding and exercising their rights under the Agricultural Labor Relations Act (Act).

Respondent argues that the actions which we found were in violation of Section 1153(a) of the Act were based on good faith doubts about the law applicable at the time. It is well settled, however, that violations of Section 1153(a) do not turn on the employer's motivation. "The test is whether the employer engaged in conduct which, it may reasonably be said, tends to interfere with the free exercise of employee rights under the Act." Nagata Brothers Farms, 5 ALRB No. 39 (1970); Cooper Thermometer Co., 154 NLRB 502, 503 n. 2, 59 LRRM 1767 (1965); American Freightways Co., 124 NLRB 146, 147, 44 LRRM 1302 (1959). Moreover, the purpose of our orders is to remedy the effects of violations of the Act, not to punish the parties responsible for the violations. Therefore in fashioning a remedy we look to objective conduct and the circumstances in which it occurred; the state of mind of the party who violated the Act is not germane to the remedy we impose. Respondent's argument that the violations

found in this case were based on good faith doubts about the applicable law is simply irrelevant to the issue of an appropriate remedy. See Jackson and Perkins Co., 3 ALRB No. 36 (1977), 77 Cal. App. 3d 830; Nagata Brothers, supra.

REVISED ORDER

Respondent Jack Pandol and Sons, Inc., its officers agents, successors, and assigns, shall:

1. Cease and desist from:

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IT IS FURTHER ORDERED that the Consolidated Complaint herein is dismissed insofar as it alleges violations of the Act by Respondent through the conduct of Vince Dulcich, at the farm operated by his family, on September 29, 1975.

Dated:

GERALD A. BROWN, Chairman

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

JOHN P. MCCARTHY, Member

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By: _____
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