Delano, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

M. CARATAN, INC., Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	Case No. 75-CE-54-F 6 ALRB No. 14 (4 ALRB No. 83)

SUPPLEMENTARY DECISION AND REVISED ORDER

In accordance with the remand order of the Court of Appeal for the Fifth Appellate District, dated January 17, 1980, in Case 5 Civil No. 4494, 4 ALRB No. 83 (1978), we have reviewed and reconsidered the portions of our remedial Order designated for review on remand and hereby make the following findings and modification in our original remedial Order.

1. The Court remanded for a determination of whether the goals of paragraph 2(f) of the Order, requiring a reading of a remedial Notice to Employees followed by a question-and-answer period on company time with pay, may be accomplished by some reasonable and feasible alternative(s), such as reading the Notice immediately before or after regular working hours or during the luncheon break at the sites where individual crews are working.

After careful review and reconsideration of this remedy, we find that the method of reading the Notice, as set forth in our Order, is an appropriate and effective means by which to dispel the effects of Respondent's unfair labor practices. The high

degree of illiteracy or semi-literacy among agricultural employees and the physical setting in agriculture make it difficult to communicate adequately with employees by merely posting a Notice. A reading of the Notice followed by *a* question-and-answer period serves the important functions of informing workers of the outcome of the unfair labor practice proceedings and of answering their questions about the Notice and the rights guaranteed to them by the Act. Tex-Cal Land Management, Inc., 3 ALRB No. 14 (1977), enf'd. as modified, sub nom., Tex-Cal Land Management, Inc. v. Agricultural Labor Relations Board, 24 Cal. 3d 335 (1979).

Reading the Notice to employees on paid company time, rather than on nonwork time, is necessary to ensure the widest possible dissemination of the Order and full participation in the reading session by the workers. We find that the effectiveness of the reading remedy would be significantly and impermissibly reduced if the readings were not held on company time. Unlike the industrial setting, the agricultural setting makes communication with employees during nonwork time difficult. Agricultural workers generally do not assemble at a common place and time before or after the work day. Workers usually do not arrive at the fields until it is time to start work. They often travel by private car or by bus from pickup points to their respective work sites shortly before work commences. Unlike many industrial workers, agricultural employees do not pass through a gate or gather at a fixed area when they arrive at or leave work. Often they work in scattered groups over many acres of fields. In addition, agricultural employees generally do not stop and start work all at the

same time; the time when work begins and ends for the various crews depends upon a number of factors, including weather, crop and market conditions, and the pace of the work.

Assembling and communicating with the employees during their lunch times is also difficult. Farm workers do not customarily eat lunch at a common gathering place. Instead, they eat their lunches in their cars or in buses at the edge of the field or, in some instances, in the fields at their respective places of work. Furthermore, lunch breaks are often taken at staggered intervals rather than at a prescribed time, particularly when the employees are paid on a piece-rate basis. This situation compounds the difficulties of assembling and speaking with the employees. See Agricultural Labor Relations Board v. Superior Court, 16 Cal. 3d 392, 128 Cal. Rptr. 183, 198-200, 546 P.2d 687 (1976).

In addition to problems in communication inherent in the agricultural setting, there are other factors which reduce the effectiveness of reading the Notice on nonwork time. Reading before or after working hours does not take into account outside pressures, such as family responsibilities or transportation arrangements, which prevent workers, who would otherwise wish to listen, from attending the session. Reading during the lunch break unfairly penalizes employees who thereby lose part of this break and, especially for those paid on a piece-rate basis, lose earnings.

The fact that reading the Notice may involve certain monetary costs to Respondent does not render the remedy inappropriate. Where the NLRB has found that a respondent has

committed unfair labor practices and the burden of a remedy must necessarily be placed either upon the wrongdoing respondent or upon the wronged employees, the Supreme Court has held that the wrongdoer must bear the burden. See NLRB v. J. H. Rutter-Rex Mfg. Co., 396 U.S. 258, 72 LRRM 2831 (1969). Requiring employees to use their nonwork time to receive information about the results of an unfair labor practice proceeding and about their related statutory rights places an unwarranted burden on the employees. This is particularly true since the employer's illegal conduct, which this information is intended to remedy, arose in the context of the employment relationship. The reading, like other remedial provisions of the Order, serves to remove, insofar as possible, the consequences of Respondent's violations of the Act. Therefore, it is appropriate that Respondent bear the incidental costs of the remedy as part of its obligation to restore the status quo.

This Board has broad discretion in fashioning remedies which will effectuate the purposes of the Act. Virginia Electric & Power Co. v. NLRB, 319 U.S. 533, 540, 12 LRRM 739 (1943); Labor Code § 1160.3. One of the purposes of the Act is to encourage and protect the right of agricultural employees to be free from interference, restraint, or coercion of employers in the exercise of their self-organizational rights. Labor Code § 1140.2. We find that the reading of the Notice on company time, a remedy which has been approved by the California Supreme Court in Tex-Cal Land Management, Inc. v. Agricultural Labor Relations Board, supra, is an effective and efficient means of removing the consequences of Respondent's unlawful conduct. Reading on nonwork time does not

present a reasonable and feasible alternative by which to accomplish the goals of this remedy. For all the above reasons, we affirm this portion of the Order.

2. The Court remanded for a determination of whether, in light of the passage of time, paragraph 2(f) of the Order, requiring a reading of the Notice, should include persons who were not employees of Respondent during the time period specified in paragraph 2(e) of the Order. This latter paragraph required mailing of the Notice to all employees employed during the payroll periods which include the dates of September 8, 1975, and September 22, 1975. These dates encompass the period in which the unfair labor practices occurred.

After due consideration of this portion of the Order, we find that the reading of the Notice to all agricultural employees of the Respondent employed at the time of the reading is an appropriate remedy. It is probable that, due to employee turnover, a certain percentage of workers employed by an agricultural employer at the time of a reading were not employed when the unfair labor practices took place. However, the fact that these workers were not employed at that time does not mean that they have no knowledge of the employer's misconduct. Agricultural employees generally speak to each other about their employment conditions and incidents which occur at their ranches and neighboring ranches. There is little doubt that workers will learn of an employer's illegal actions, particularly at their own place of employment, through informal communication with the other employees. Because the current workers who were not employed at the time of the misconduct

are often aware of the employer's unfair labor practices, we believe it is necessary to have them present at the reading so as to dispel, as fully as possible, the effects of the respondent's misconduct.

We also believe that unwarranted difficulties would result from reading a remedial Notice only to employees employed at the time of the unfair labor practices. Indeed, such a restricted reading could cause substantial problems in communicating the Order to the employees. A reading directed at only one group of employees would result in confusion and misinformation among the workers, who would wonder why only certain employees were to receive an explanation of the Act. Furthermore, dividing the employees into the two groups is an unwarranted burden on Board personnel who would be required to oversee the determination of which employees were employed at the time of the unfair labor practices and then to separate these workers from the rest of the crews and assemble them for the reading.

In sum, we find that no purpose is served by distinguishing between employees who were employed at the time of the unlawful conduct and those who were not. This remedy of reading the Notice to all currently employed employees was approved in Tex-Cal Land Management, Inc. v. Agricultural Labor Relations Board, supra, where the California Supreme Court modified the remedy to require reading the Notice to all employees employed during the 1979 harvest season. The original Board Order included only workers employed during the 1977 harvest season, but the Court modified the Order to reflect the passage of time during the course of the

litigation.

For all the above reasons, we affirm this provision of the Order.

3. The Court also remanded for consideration that portion of paragraph 1(b) of the Order, which required Respondent to cease and desist from " . . . in any other manner interfering with, restraining or coercing its employees in the exercise of their [Section 1152] rights . . . ."

After consideration of this remedy and in light of NLRB v. Express Publishing Co., 312 U.S. 426, 8 LRRM 415 (1941), we find that this broad cease-and-desist order is inappropriate in the circumstances of this case. In Hickmott Foods, Inc., 242 NLRB No. 177, 101 LRRM 1342 (1979), the NLRB announced that it would not issue a broad cease-and-desist order except when a respondent is shown to have a proclivity to violate the Act, or has engaged in such egregious and widespread misconduct as to demonstrate a general disregard for employees' fundamental statutory rights. We shall henceforth follow this standard. In the instant case, we find that Respondent's conduct was not such as to warrant the imposition of a broad cease-and-desist order. Therefore, we hereby modify paragraph 1(b) of the Order to read that Respondent shall cease and desist from:

> (b) Discouraging use of and resort to the Board's processes by employees, or in any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights guaranteed by Section 1152 of the Agricultural Labor Relations Act.

REVISED ORDER

By authority of Labor Code Section 1160.3, the Agricultural Labor Relations Board orders that the Respondent, M. Caratan, Inc., its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership of employees in the UFW or any other labor organization by unlawfully discharging employees, or in any other manner discriminating against employees in regard to their hire, tenure of employment or any term or condition of employment, except as authorized by Labor Code Section 1153(c).

(b) Discouraging use of and resort to the Board's processes by employees or in any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights guaranteed by Section 1152 of the Agricultural Labor Relations Act.

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

(a) Offer Rafael Martinez and Ernesto Orosco, during the next period when these employees would normally work, reinstatement to their former jobs without prejudice to their seniority or other rights and privileges, and make them whole for any losses they may have suffered as a result of their termination.

(b) Preserve and upon request make available to the Board or its agents, for examination and copying, all payroll records and other records necessary to analyze the amount of back pay due and the rights of reinstatement under the terms of this

Order.

(c) Execute the Notice to Employees attached hereto. Upon its translation by a Board agent into appropriate languages, Respondent shall reproduce sufficient copies in each language for the purposes set forth hereafter.

(d) Post copies of the attached Notice at times and places to be determined by the Regional Director. The Notices shall remain posted for a period of 12 months. The Respondent shall exercise due care to replace any Notices which have been altered, defaced, covered or removed.

(e) Mail copies of the attached Notice in all appropriate languages, within 20 days from receipt of this Order, to all employees employed during the payroll periods which include the following dates: September 8, 1975, and September 22, 1975.

(f) Arrange for a representative of the Respondent or a Board agent to distribute copies of, and read, the attached Notice in appropriate languages to the assembled employees of the Respondent on company time. The reading or readings shall be at such time(s) and place(s) 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 workers are to be compensated at their hourly rate for time lost at this reading and the question-and-answer period. The Regional Director is also to determine any additional amounts due workers under Respondent's incentive system as well as rate of compensation for any nonhourly

employees.

(g) Hand a copy of the attached Notice to each employee hired during the next 12 months.

(h) 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 with it. Upon request of the Regional Director, the Respondent shall notify him/her periodically thereafter in writing what further steps have been taken in compliance with this Order.

(i) It is further ORDERED that all allegations contained in the complaint and not found herein to be violations of the Act are hereby dismissed.

Dated: March 12, 1980

GERALD A. BROWN, Chairman

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

JOHN P. McCARTHY, Member

RALPH FAUST, Member

NOTICE TO EMPLOYEES

After a hearing where each side had a chance to present its facts, the Agricultural Labor Relations Board has found that we have violated the Agricultural Labor Relations Act. The Board has told us to send out and post this Notice.

We will do what the Board has ordered, and we 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; and
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 fire employees because of their support for the UFW or any other union.

WE WILL MOT discourage employees from filing charges with the Board.

WE WILL offer the following employees their old jobs back, if they want them, and will give them back pay for the time they were out of work: Rafael Martinez and Ernesto Orosco.

Dated:

M. CARATAN, 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

M. Caratan, Inc. (UFW) 6 ALRB No. 14
(4 ALRB No. 83)
Case No. 75-CE-54-F

BOARD DECISION

The Court of Appeal remanded the Board's Decision in M. Caratan, Inc., 4 ALRB No. 83 (1977) for review and reconsideration of certain portions of the Board's Order.

The Board affirmed that portion of its Order requiring a reading of the Notice to employees on paid company time, rather than on nonwork time. The Board found the reading necessary because the high degree of illiteracy among farm workers and the physical setting of agriculture make posting alone an inadequate remedy. The Board held that reading the Notice on company time is necessary to ensure the widest possible dissemination of its remedy, listing several factors which make communication with agricultural employees on nonwork time particularly difficult. The Board also found that the burden and expense of a remedy should be on the wrongdoing respondent rather than on the wronged employees and that requiring employees to use nonwork time to receive information about their rights was an unwarranted burden on the employees and that, because the reading was intended to neutralize the consequences of the Respondent's violations, the Respondent should bear the costs of the remedy.

The Board affirmed that portion of its Order requiring that the Notice be read to all present agricultural employees of Respondent rather than merely to those employees who were employed at the time of the unfair labor practices. Acknowledging that employee turnover probably had occurred in the interim, the Board found that present employees who were not employed at the time of the illegal conduct could nonetheless have learned of these actions through informal communication with Respondent's other employees. Therefore, the presence of all current employees at the reading is necessary so as to counteract the effects of the employer's illegal conduct. The Board further found that unwarranted difficulties could occur in reading the Notice to only one group of employees, and that the task of separating the two groups was an unwarranted burden on Board personnel. The Board noted the California Supreme Court's approval of the notice-reading remedy in Tex-Cal Land Management, Inc. v. Agricultural Labor Relations Board, 24 Cal.3d 335(1979).

The Board modified its broad cease-and-desist order to prohibit Respondent from "in any like or related manner" interfering with its employees' Section 1152 rights, in light of NLRB v. Express Publishing Co., 312 U.S. 426, 8 LRRM 415 (1941). The Board announced that it will follow the standard enunciated by the NLRB in Hickmott Foods, Inc., 242 NLRB No. 177, 101 LRRM 1342 (1979), and provide a broad order only when a respondent is shown to have a proclivity to violate the Act, or has engaged in such egregious and widespread misconduct as to demonstrate a general disregard for employees' fundamental statutory rights.

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