Delano, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

JASMINE VINEYARDS, INC.,	)	
Respondent,	)	Case No. 75-CE-64-F
and	)	
UNITED FARM WORKERS OF AMERICA, AFL-CIO,	)	6 ALRB No. 17 (3 ALRB No. 74)
Charging Party.	)	

SUPPLEMENTARY DECISION AND REVISED ORDER

In accordance with the remand order of the Court of Appeal for the Fifth Appellate District, dated December 7, 1979, in Case 5 Civil No. 3670, 3 ALRB No. 74 (1977), we have reviewed and reconsidered the portions of our remedial Order designated for review on remand and hereby make the following findings and modifications in our original remedial Order.

1. In our initial Decision in this proceeding, Jasmine Vineyards, Inc., 3 ALRB No. 74 (1977), we ordered Jasmine Vineyards, Inc. (Respondent) to allow the United Farm Workers of America, AFL-CIO (UFW) access to Respondent's property during the hours specified in 8 Cal. Admin. Code Section 20900 (e) (3), without restriction on the number of organizers, during any period in its next organizational campaign. Citing Pandol & Sons v. Agricultural Labor Relations Board, 98 Cal. App. 3d 580 (1979), the Court remanded this portion of the Order for reconsideration of its appropriateness in light of current and changed circumstances. We have reconsidered the expanded access remedy and concluded that

certain modifications in the Order are warranted.

Expanded access may be an appropriate remedy for an employer's unlawful interference with communication between employees and union organizers or for other unlawful interference with employees' organizational rights. See Nagata Brothers Farms, 5 ALRB No. 39 (1979). It is appropriate in the instant case in view of Respondent's several unfair labor practices, including the enforcement of a discriminatory no-solicitation rule which provided the Teamsters Union with preferential access to employees during an election campaign. The probability that substantial employee turnover has occurred in the intervening years does not convince us to reject expanded access as a remedy. Current employees who were not working at the time of the unfair labor practice may nonetheless be aware of a respondent's past illegal acts through informal communication with other employees. See M. Caratan, Inc., 6 ALRB No. 14 (1980).

Even if none of the current workers were employed at the time of Respondent's unfair labor practice, and have not learned of the violations, expanded access is nonetheless an appropriate remedy here. The Board's remedial Orders are designed to restore, insofar as possible, the conditions which would have existed absent the unfair labor practice. Where Respondent has provided preferential access to Teamsters Union agents, granting expanded access to the UFW will serve to equalize the situation. The rights of the employees as a group are thus preserved and protected, regardless of whether there have been some changes in the composition of the group.

We do not believe, however, that it is necessary or warranted to allow the UFW unrestricted access in order to remedy Respondent's violations. In light of Pandol & Sons v. Agricultural Labor Relations Board, supra, we shall order Respondent to allow the UFW to take access to its property pursuant to the provisions of 8 Cal. Admin. Code Section 20900, except that the UFW may have two organizers for every fifteen employees in each work crew on the property during the 12 months following issuance of our Order.

2. In our prior Decision, we also ordered Respondent to mail the Notice to all employees employed during the payroll periods between August 28, 1975, and September 17, 1975, the period during which Respondent committed the unfair labor practices in this case. The Court remanded this portion of the Order for reconsideration of the payroll periods used for mailing the Notice. After due consideration, we conclude that mailing the Notice to employees employed at the time of the unfair labor practice is an appropriate means to dispel the effects of Respondent's illegal conduct.

The mailing remedy, like the posting and reading remedies, informs employees of the outcome of the unfair labor practice proceeding and of their organizational rights guaranteed by the Agricultural Labor Relations Act. Employees employed at the time of the unfair labor practice are interested in the proceeding and should be notified of the outcome. The NLRB has ordered the Notice to be mailed to former employees as an appropriate means of informing all interested and affected employees of the results of such a proceeding. Lipsey, Inc., 172 NLRB 1535, 68 LRRM 1568

(1968); Family Bargaining Centers, Inc., 160 NLRB 816, 63 LRRM 1063 (1966). Such notification also serves the purposes of the Agricultural Labor Relations Act because it dispels any lingering effects of the employer's unfair labor practices which would tend to inhibit employees in the future exercise of their statutory rights with this employer or other employers. The knowledge that their rights are being protected by this agency may influence and encourage the future exercise of those rights. Valley Farms and Rose J. Farms, 2 ALRB No. 41 (1976).

Mailing is an appropriate means by which to inform employees of the outcome of the unfair labor practice proceeding. First, unlike posting and reading, it gives workers the opportunity for a full and careful reading of the Notice in the privacy of their homes. Tiidee Products, Inc., 194 NLRB 1234, 79 LRRM (1972). Furthermore, it is probable that due to employee turnover prevalent in agriculture, Agricultural Labor Relations Board v. Superior Court, 16 Cal. 3d 392 (1976); Highland Ranch and San Clemente Ranch, Ltd., 5 ALRB No. 54 (1979), workers who were employed at the time of the unfair labor practice or who learned later of the unlawful conduct are no longer employed by the respondent. Mailing is often the only method available for reaching these employees, who are interested in the proceeding. Consequently, we conclude that the mailing remedy we ordered in 3 ALRB No. 74 continues to be an appropriate and necessary part of the remedy. See Tex-Cal Land Management, Inc. v. Agricultural Labor Relations Board, 24 Cal. 3d 335 (1979).

3. We previously ordered Respondent to post the Notice

for 60 days following the issuance of the Order and to provide for a reading of the Notice to the assembled employees, followed by a question-and-answer period on company time. The Court remanded this portion of the Order for reconsideration in light of employee turnover. We have reconsidered the Order and find that, notwithstanding employee turnover, the posting and reading requirements are appropriate remedial measures for Respondent's unfair labor practices.

Reading and posting are standard methods of informing workers of the outcome of unfair labor practice proceedings and of their organizational rights guaranteed by Labor Code Section 1152. The reasons we set forth in M. Caratan, Inc., 6 ALRB No. 14 (1980), which justify reading a Notice to all current employees, including those who were not employed at the time of the unfair labor practice, are equally applicable to the reading and posting remedies in this case. Current employees not employed at the time of the unfair labor practice often learn of an employer's prior illegal conduct from various sources. But even if there had been a complete turnover in Respondent's workforce, the posting and reading of the Notice to all current employees would still be an essential part of an adequate remedy. This is so because the posting and reading are designed to have a preventive as well as a remedial effect. Superior Coach Corp., 175 NLRB 200, 70 LRRM 1514 (1969). In accordance with this Board's obligation to prevent unfair labor practices (Labor Code Section 1160, 1160.3), we place a high priority on ensuring that all current employees be fully informed as to their employer's unfair labor practices, the rights

guaranteed to them by Labor Code Section 1152, and the protection and remedies available to them in the event that any employer or labor organization violates those rights. We thus find no reason to depart from these standard remedies and conclude that the posting and reading provisions of our previous Order remain appropriate.

4. We also ordered Respondent to cease and desist from "in any other manner interfering with, restraining or coercing its employees in the exercise of [their Labor Code Section 1152] rights." The Court remanded this provision of the Order for reconsideration in light of National Labor Relations Board v. Express Pub. Co., 312 U.S. 426 (1941). In M. Caratan, Inc., supra, we announced our intention to follow the National Labor Relations Board's standard for issuing broad cease-and-desist orders. We will issue such orders only when a respondent demonstrates a proclivity to violate the Act or engages in such widespread and egregious misconduct as to demonstrate a general disregard for employees' fundamental statutory rights. Hickmott Foods, Inc., 242 NLRB No. 177, 101 LRRM 1342 (1979). We do not find that Respondent's conduct in this case justifies a broad cease-and-desist order and we will consequently modify and narrow the Order to prohibit Respondent from interfering with, restraining, or coercing employees in the exercise of their organizational rights in any manner like or related to the unfair labor practices committed by Respondent.

REVISED ORDER

By authority of Labor Code Section 1160.3, the

Agricultural Labor Relations Board orders that the Respondent, Jasmine Vineyards, Inc., its officers, agents, successors and assigns, shall:

1. Cease and desist from:

a. Denying access to its premises to organizers engaging in organizational activity in accordance with the Board's access regulations.

b. Threatening employees with a loss of employment because of their protected activities or choice of bargaining representative.

c. Rendering unlawful aid, assistance and support to the Teamsters or any other labor organization by discriminatorily enforcing a no-solicitation rule, and urging and soliciting its employees to sign authorization cards for the Teamsters or any other labor organization.

d. In any like or related manner interfering with, restraining, or coercing employees in the exercise of those rights guaranteed them by Section 1152.

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

a. Upon the UFW's filing of a written Notice of Intention 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 30-day periods within the 12 months following the issuance of this

Decision.

b. During any 30-day period in which the UFW exercises its right to take access, the Respondent shall, for each payroll period, provide the UFW with an updated list of its employees and their current street addresses. No showing of interest shall be necessary to receive this list.

c. 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 60 consecutive days following the issuance of this Order. Copies of the Notice shall be furnished by the Regional Director in appropriate languages. The Respondent shall exercise due care to replace any Notice which has been altered, defaced or removed.

d. 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 including the time period of August 28, 1975, through September 17, 1975.

e. A representative of the Respondent or a Board agent shall 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 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 the Respondent to all nonhourly 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 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 periodically thereafter in writing what further steps have been taken in compliance with this Order.

It is further ORDERED that all allegations contained in the complaint and not found herein are dismissed.

Dated: April 3, 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 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; and

5. To decide not to do any of these things.

Especially:

WE WILL NOT threaten employees with loss of employment in order to discourage union activity.

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 change your working conditions or shorten your lunch hour because of the union.

Dated: JASMINE VINEYARDS, 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

Jasmine Vineyards, Inc. (UFW)	6 ALRB No. 17 (3 ALRB No. 74) Case No. 75-CE-64-F

The Court of Appeal remanded the Board's Decision in Jasmine Vineyards, Inc., 3 ALRB No. 74 (1977) for review and reconsideration of certain portions of the Board's Order.

The Board modified its original Order granting expanded access to the UFW without restriction on the number of organizers, in light of Pandol & Sons v. Agricultural Labor Relations Board, 98 Cal. App. 3d 580 (1979).The Board, noting that an expanded access remedy may be appropriate in cases of unlawful interference with communication between employees and organizers as well as other instances of unlawful interference with organizational rights, found that the remedy was appropriate in the instant case in view of Respondent's unfair labor practices, which included granting preferential access to a rival union. The Board found that substantial employee turnover in the intervening years does not warrant rejection of the remedy, because (1) current employees are often nonetheless aware of respondent's illegal conduct through informal communication with other employees, and (2) even if current employees were not aware of the violations, the Order is appropriate, as it restores conditions which would have existed absent the unfair labor practice. The Board modified its Order to allow the UFW to take access with two organizers for every fifteen employees in the 12 months following issuance of the Order.

The Board affirmed that portion of its Order requiring mailing to the employees employed at the time of the unfair labor practices, finding that former employees are interested parties who should be notified of the results of the unfair labor practice. Such notification serves to protect and encourage employees in the future exercise of their organizational rights with this employer or other employers. The Board found that mailing is an appropriate remedy in that it gives workers the opportunity for a full and careful reading of the Notice. Furthermore, mailing is often the only method available for reaching employees who are no longer employed.

The Board affirmed those provisions in its Order for a 60-day posting and for a reading session on company time, because of the reasons set forth in M. Caratan, Inc., 6 ALRB No. 14 (1980). Even if there had been a complete turnover in the workforce, the Board found that, these remedies are still essential because they were designed to have a preventive as well as remedial effect. The Board stated that it placed a high priority on ensuring that current employees be fully informed as to their employer's unfair labor practices and their own statutory rights.

The Board modified its broad cease-and-desist order to prohibit Respondent from "in any like or related manner" interfering with its employees' organizational rights, for the reasons set forth in M. Caratan, Inc., supra.

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