

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

M. B. ZANINOVICH, INC.,	)	
	)	
Respondent,	)	Case No. 76-CE-48-F
	)	
and	)	6 ALRB No. 23
	)	(4 ALRB No. 70)
UNITED FARM WORKERS	)	
OF AMERICA, AFL-CIO,	)	
	)	
Charging Party.	)	
	)	
	)	

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SUPPLEMENTAL DECISION AND REVISED ORDER

In accordance with the remand order of the Court of Appeal for the Fifth Appellate District, dated February 29, 1980, in Case 5 Civil No. 4472, 4 ALRB No. 70 (1978), and the clarification of that order, dated March 25, 1980, 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. The Court remanded for "review and determination of whether paragraphs 2(e) and 2(g) of the ordered remedies, requiring a reading and mailing of notice to employees, are overbroad insofar as they encompass employees who were not aware of or otherwise suffered any harmful effects from the unfair labor practice at issue."

After due consideration of this portion of the Board's Order, we find that the reading of the Notice to all agricultural employees of the Respondent who are employed at the time of the reading is an appropriate remedy. Our reasoning in this regard

is set forth in Part 2 of the Supplementary Decision and Revised Order for M. Caratan, Inc., 6 ALRB No. 14 (1980) (4 ALRB No. 83 (1978)), and Part 3 of the Supplementary Decision and Revised Order for Jasmine Vineyards, Inc., 6 ALRB No. 17 (1980) (3 ALRB No. 74 (1977)). We also find that mailing of the Notice is essential in conveying the remedial information to employees who were in Respondent's employ at or about the time the unfair labor practice occurred but who may not be employed by Respondent at the time the Decision of the Board issues. This means of notification is particularly important in agriculture because of the high employee turnover which characterizes that industry. See Part 2 of the Supplementary Decision and Revised Order for Jasmine Vineyards, supra. However, we find it unnecessary to mail a Notice to all of the employees who appeared on Respondent's payroll for the 1976 harvest season, as previously ordered in paragraph 2(e). Since this case involves an isolated unfair labor practice,<sup>1/</sup> we find that mailing a Notice only to those employees whose names were on Respondent's payroll during the month of August 1976 will provide sufficient notice to workers employed at or about the time the unfair labor practice occurred. Therefore, we hereby modify paragraph 2(e) of the Order to read as follows:

(e) Within 30 days from receipt of this Order, mail a copy of the attached Notice in appropriate

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<sup>1/</sup>The three discriminatees, who had not worked for Respondent for approximately one year and who had reinstatement rights pursuant to an ALRB settlement agreement, were denied reemployment when all three applied at Respondent's offices shortly after the harvest season had begun. The discriminatees were unaware of their reinstatement rights at the time.

languages to each of the employees on its payroll

during the month of August, 1976.

2. The Court remanded for review and reconsideration of the breadth of that part of paragraph 1(b) of the cease-and-desist Order which reads: "... in any other manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed by Section 1152 of the Act."

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 issue a broad cease-and-desist order only where 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 have decided to follow this standard. See *M. Caratan, Inc.*, *supra*. 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.

3. Paragraph 2(a) of our original Order provided that the reinstatement offer to three employees remain in effect until the end of the 1979 harvest season. As the case is still on appeal and the 1979 harvest season has passed, we have amended that paragraph to delete reference to the 1979 season.

REVISED ORDER

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

1. Cease and desist from:

(a) Failing or refusing to rehire or reinstat former employees because of their efforts to redress union-related grievances through the processes of the ALRB

(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 action designed to effectuate the policies of the Act:

(a) Offer Mohamed M. Aldafari, Abdo M, Aldafari and Abdo Mosleh reinstatement to their former or substantially equivalent jobs without prejudice to their seniority or other rights and privileges.

(b) Reimburse Mohamed M. Aldafari, Abdo M. Aldafari and Abdo Mosleh for any loss of earnings and other economic losses

they may have suffered as a result of Respondent's refusal to rehire them in August, 1976, from the date of such refusal to rehire to the date on which they are offered reinstatement, together with interest thereon at the rate of seven percent per annum, computed in accordance with the formula set forth in Sunnyside Nurseries, Inc., 3 ALRB No. 42 (1977).

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, time cards, personnel records and reports, and all other records necessary to analyze the amount of back pay due and the right of reinstatement under the terms of this Order.

(d) Sign the Notice to Employees attached hereto and, after the said Notice is translated by the Regional Director into Yemeni and other appropriate languages, provide sufficient numbers of the said Notice in each language for the purposes set forth hereinafter.

(e) Within 30 days from receipt of this Order, mail a copy of the attached Notice in appropriate languages to each of the employees on its payroll during the month of August, 1976.

(f) Post copies of the attached Notice in all appropriate languages in conspicuous places on its property, including Respondent's offices at Earlimart, California, and places where notices to employees are usually posted, for a 90-day period to be determined by the Regional Director. Respondent shall exercise due care to replace any copy or copies of the Notice which may be altered, defaced, covered or removed.

(g) 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. 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 nonhourly-wage employees to compensate them for time lost at this reading and the question-and-answer period.

(h) 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 Regional Director, Respondent shall notify him or her periodically thereafter in writing what further steps Respondent has taken in order to comply with this Order.

Dated: May 9, 1980

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

JOHN P. McCARTHY, Member

NOTICE TO EMPLOYEES

After a trial in which each side had a chance to present its side of the story, the Agricultural Labor Relations Board has found that we interfered with the rights of our employees to act together to try to get a contract or to help one another as a group. 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 to choose whom they want to speak for them;
- (4) To act together with other employees to try to get a contract or to help and 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 do anything which penalizes you for getting help from the Agricultural Labor Relations Board in protecting your legal rights.

WE WILL offer Mohamed M. Aldafari, Abdo M. Aldafari and Abdo Mosleh their old jobs back, and we will pay them any money they lost because we refused to rehire them in August 1976.

Dated:

M. B. ZANINOVICH, 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. B. Zaninovich, Inc. (UFW)

6 ALRB No. 23

(4 ALRB No. 70)

Case No. 78-CE-48-F

BOARD DECISION

Pursuant to a court remand, the Board was required to reexamine its Order in M. B. Zaninovich, 4 ALRB No. 70 (1978). The court wanted the Board to determine whether certain of the ordered remedies, requiring a reading and mailing of the Notice to Employees, are overbroad insofar as they encompass employees who were not aware of or otherwise suffered any harmful effects from the unfair labor practice at issue. The court also called into question the breadth of the cease-and-desist order which the Board imposed.

Based on the reasoning in M. Caratan, Inc., 6 ALRB No. 14 (1980) and Jasmine Vineyards, Inc., 6 ALRB No. 17 (1980), the Board determined that the reading of the Notice to all agricultural employees of the Respondent who are employed at the time of the reading is an appropriate remedy and is essential in conveying the remedial information to employees who were in Respondent's employ at or about the time the unfair labor practice occurred but who may not be employed by Respondent at the time the Decision of the Board issues. However, as the case involved an isolated unfair labor practice, the Board found it unnecessary to mail the Notice to all of the employees who appeared on Respondent's payroll for the 1976 harvest season. The mailing requirement was therefore modified to include only those employees whose names were on Respondent's payroll during the month of August, 1976.

Following the new NLRB rule that a broad cease-and-desist order is appropriate 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, the Board found that Respondent's conduct was not such as would warrant the imposition of a broad cease-and-desist order. The Board adopted a narrower cease-and-desist order which directed Respondent not to discourage use of and resort to the Board's processes or, in any other like or related manner, to interfere with, restrain, or coerce its employees in the exercise of their Section 1152 rights.

Finally, the Board sua sponte deleted the reference to the 1979 harvest season in its reinstatement order, thereby leaving the reinstatement period open. The Board noted that the case was still on appeal and the 1979 harvest season has passed.

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