

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

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

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This decision has been delegated to a three-member panel. Labor Code Section 1146.

On December 29, 1976, the decision of Administrative Law Officer, Leo Weiss, was ordered transferred to the Board. The Respondent, Charging Party, and General Counsel all filed timely exceptions.

Having reviewed the record, we adopt the law officer's findings, conclusions and recommendations to the extent consistent with this opinion.

The testimony of the witnesses presented by both the General Counsel and the Respondent established that on three separate occasions on September 29 and 30, 1975, the Respondent prevented representatives of the United Farm Workers of America, AFL-CIO, from entering its premises for the purpose of engaging in organizational activity among the Respondent's employees by making citizens' arrests of union organizers on his property. The ALO found this to be in violation of 8 Cal. Admin. Code Section 20900,

more commonly known as the "access rule." The ALO further found that the Respondent's violations of 8 Cal. Admin. Code Section 20900 were unfair labor practices within the meaning of Section 1153 (a) of the Act, We agree with these findings.

The Respondent claims that evidence concerning alternative means of access should have been considered. We uphold the ALO. Agricultural Labor Relations Board v. Superior Court (1976) 16 Cal. 3d 392, cert., denied \_\_\_ U.S.\_\_(1976).

The Respondent further excepted to the ALO's finding that the distribution of literature is sufficiently related to the language of the access rule to be reasonably included within it. We have already determined that the distribution of literature is "fully within the sweep of our rule as it furthers the goal of effectively informing agricultural employees about the issues impacting upon the question of unionization." Tex-Cal Land Management, Inc. , 3 ALRB No. 14 at p. 16 (1977).

The Respondent excepted to the ALO's finding that the conduct of the Respondent on its premises on September 29 and 30, 1975 constitutes interference, restraint and coercion of its employees in the exercise of rights guaranteed to them by Section 1152 of the Act, and is therefore an unfair labor practice under Section 1153(a) of the Act. We have already determined that violations of the access rule constitute unfair labor practices under our Act. Tex-Cal Land Management, supra, Pinkham Properties, 3 ALRB No. 16 (1977).

The Charging Party excepted to the ALO's failure to conclude that the events at the Dulcich property on September 29, 1975, constituted an unfair labor practice within the meaning of Section 1153(a) of the Act; to the ALO's conclusion that even if an unfair labor practice had been committed on this occasion it would merely be cumulative and would affect neither the findings, conclusions nor remedies in this matter; and to the ALO's decision to dismiss this allegation of the complaint based on his opinion that it would only be cumulative. We do not agree with the ALO that a finding of an unfair labor practice would necessarily have been cumulative or his conclusion that that is a basis on which to dismiss an allegation of a violation of our Act. Based on our review of the entire record we have determined that the burden of proof that Vince Dulcich was acting either as an agent of or supervisor for Jack Pandol and Sons, Inc., when he made a citizen's arrest of union organizers on his property on September 29, 1975, has not been met. We therefore dismiss the allegation on this basis.

#### The Remedy

We modify the terms of the ALO's recommended remedies in the following respects:

(1) To the ALO's proposal that a notice be posted at its premises for a period of 90 consecutive days to be determined by the regional director, we add the requirement that it also be posted within seven days following the service of this decision until

the results of the election in 75~RC-86-F<sup>1/</sup> are certified. These notices shall be posted at the places specified as appropriate by the regional director after a review of the Respondent's properties.

(2) We order that the Respondent mail a copy of the 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 for Certification on October 2, 1975. These notices shall be mailed within seven days following the service of this decision.

(3) We modify the ALO's proposal regarding the reading of the notice to order that this notice be read 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, and that the Board agent be accorded the opportunity to answer questions which employees might have regarding the notice and their rights under Labor Code Section 1152.

(4) In the event there is a run-off election in Case No. 75-RC-86-F we further order an additional reading in English and in Spanish of the notice prior to the time the runoff election is held. This notice shall be read on company time to all the employees employed at the time the regional director determines the notice shall be ready, by a company representative or by a Board agent, and that the Board agent be accorded the opportunity to answer questions which employees might have regard-

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<sup>1/</sup>In Case No. 75-RC-86-F the challenged ballots are determinative of the results of the election. Because we have not yet issued our decision on challenged ballots in that case it is unclear at this time whether or not a run-off election will be necessary before the results of the election in that case can be certified.

ing the notice and their rights under Labor Code Section 1152.

(5) We order that 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) without restriction as to the number of organizers. This right of access shall encompass four thirty-day periods within the twelve months following the issuance of this decision and shall be effective without regard to the date of certification of the results of the election in Case No. 75-RC-86-F.

(6) We order that 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. We further order that such lists shall be provided without requiring the UFW to make a showing of interest.

(7) We order that the regional director be notified, 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 thereafter, in writing, what further steps have been taken to comply herewith.

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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 WORKERS. 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 WORKERS 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 remain posted until the results of the election in Case No. 75-RC-86-F is certified. Thereafter these notices are again to be posted throughout the Respondent's 1977-78

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 the Respondent to all non-hourly wage employees to compensate them for time lost at this reading and 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) In the event there is a run-off election in Case No. 75-RC-86-F the attached notice shall be read on company time in English and Spanish to all employees employed at the time the regional director determines the notice shall be read, which time must be prior to the run-off election. The regional director will determine a reasonable rate of compensation to be paid by the Respondent to all non-hourly wage employees to compensate them for time lost at this reading and question and answer period. This notice shall be read by a company representative or by a Board agent and the Board agent is to be accorded the opportunity to answer questions the employees may have regarding the notice and their rights under Labor Code Section 1152.

(d) 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.

(e) 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.

(f) 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) without restriction as to the number of organizers.; This right of access shall encompass four- thirty-day periods within the twelve months following the issuance of this decision and shall be effective without regard to the date of certification of the results of the election in Case No. 75-RC-86-F.

(g) 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.

(h) 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 the Respondent through the conduct of Vince Dulcich, at the farm operated by his family, on September 29, 1975.

Dated: April 5, 1977

GERALD A. BROWN, Chairman

RICHARD JOHNSEN, JR., Member

RONALD L. RUIZ, Member

NOTICE TO WORKERS

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 from 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 !!



The Respondent filed an Answer to the Consolidated Complaint, denying its substantive allegations and the commission of unfair labor practices.

Pursuant to the Notice of Hearing, these consolidated cases were tried before me in Bakersfield, California, on October 13, 1975. Upon the entire record made in this proceeding and my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the General Counsel and the Respondent, I make the following:

### Findings of Fact

#### I. The Respondent

The Respondent admits that it is an agricultural employer within the meaning of Section 1140.4(c) of the Act.

#### II. The Union

The record shows that the Union is a membership organization chartered by the AFL-CIO, that it has labor contracts with agricultural employers under which it represents their employees for the purposes of collective bargaining and grievance handling. I find that the Union is a labor organization within the meaning of Section 1140.4(f) of the Act.

#### III. The Alleged Unfair Labor Practices

On August 29, 1975, The Board adopted an emergency regulation entitled "Access to Workers in the Fields by Labor Organizations." This regulation reads, in part, as follows: <sup>1/</sup>

5. ...the Board will consider the rights of employees under Labor Code Sec. 1152 to include the right of access by union organizers to the premises of an agricultural employer for the purpose of organizing, subject to the following limitations:

a. Organizers may enter the property of an employer for a total period of 60 minutes before the start of work and 60 minutes after the completion of work to meet and talk with employees in areas in which employees congregate before and after working.

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<sup>1/</sup> 8 Cal. Adm. Code, Part II, Ch. 9, Sec. 20900(5)a-e.

b. In addition, organizers may enter the employer's property for a total period of one hour during the working day for the purpose of meeting and talking with employees during their lunch period, at such location or locations as the employees eat their lunch. If there is an established lunch break, the one-hour period shall include such lunch break. If there is no established lunch break, the one-hour period may be at any time during the working day.

c. Access shall be limited to two organizers for each work crew on the property, provided that if there are more than 30 workers in a crew, there may be one additional organizer for every 15 additional workers.

d. Upon request, organizers shall identify themselves by name and labor organization to the employer or his agent. Organizers shall also wear a badge or other designation of affiliation.

e. The right of access shall not include conduct disruptive of the employer's property or agricultural operations, including injury to crops or machinery. Speech by itself shall not be considered disruptive conduct. Disruptive conduct by particular organizers shall not be grounds for expelling organizers not engaged in such conduct, nor for preventing future access.

The Consolidated Complaint alleges that the Respondent violated the above-described emergency regulation on September 29 and 30, 1975, when, on three separate occasions, it sought to prevent representatives of the Union from entering its premises for the purpose of engaging in organizational activity among the Respondent's employees, thus "...interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 1152 of the Act."

Section 1152 reads, in part, as follows:

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any and all such activities...

Section 1153(a) of the Act makes it an unfair labor practice for an agricultural employer to interfere with, restrain, or coerce agricultural employees in the exercise of the rights guaranteed in Section 1152.

On September 29, 1975, at noon, Linda Zwick, an organizer for the Union, drove to the Respondent's property with three other Union organizers. There were approximately 80 employees in the Respondent's work crew, but they were not actually working at the time. Some were having lunch, while others, having completed their day's work, were preparing to leave the property. Zwick was wearing a Union identification badge on her outer clothing.

As Zwick began walking toward a group of workers on the property, she was approached by Matt Pandol, a partner in the Respondent's business, who told her to leave the premises. She did not do so, but continued to walk toward the workers. Sheriff's officers then arrived and Matt Pandol made a citizen's arrest of the Union organizers, including Zwick.

At approximately 6:30 a.m. the following morning, September 30, 1975, Zwick returned to the Pandol property with four other Union organizers. The work shift was to begin at 7:00 a.m. and the employees were just beginning to arrive. There were approximately 80 people in the work crew. Some sat in their cars, while others were walking around. Zwick was wearing her Union identification badge. She and the other organizers began talking to the employees when Matt Pandol came by and told them to leave.

As this conversation was going on, Zwick and Pandol noticed a Sheriff's car cruising by on the road. Pandol flagged down the

deputy,

spoke to him, and then accompanied the deputy back into the field. It was at this time that Pandol effectuated a second citizen's arrest of Zwick and the other organizers who accompanied her.

That same morning, September 30th at 6:30 a.m., while Zwick and her group of organizers was talking to one crew of employees, a Union organizer named William Berkowitz and two others were talking to another crew of Pandol & Sons employees in a different field of the same property. Berkowitz was wearing several Union identification badges. The crew he was approaching consisted of at least 60 employees who were preparing to start work. The organizers spoke to the people, distributed leaflets, and attempted to obtain names and addresses so that they could visit employees at their homes.

While engaged in this activity, Berkowitz and the other organizers were approached by Matt Pandol and told, "Get out, get out. You are trespassing. Get out." One of the organizers attempted to explain that they had a legal right to be there to talk to the workers. Another told Pandol that there had been a California Supreme Court decision a few days earlier which permitted Union organizers access to the fields. But Pandol repeated his statement that they were trespassing and should get out.

The organizers did not obey Pandol's orders, but continued their organizing efforts. As they prepared to leave the premises, however, just before 7:00 a.m., Matt Pandol effectuated a citizen's

arrest of Berkowitz, another organizer named Hernandez, and other organizers as well. Pandol testified that he made 12 citizens' arrests on the three occasions described above.

On the previous day, September 29th, at approximately 11:30 a.m., Union Organizer Debra Vollmer and two other organizers appeared at a farm operated by a family named Dulcich, which was approximately two or three miles from the previously described Pandol & Sons property. At noon, she and an organizer named Vera Cruz entered the fields and began talking to the employees who were eating lunch. They also handed out leaflets. As they were doing this, a man named Vince Dulcich drove up to them in a pickup truck and told them, "I want you off my property." They refused to leave, arguing that they had a legal right to be there and "...the people on the inside had a right to listen to what we had to say." He continued to insist that they leave and, when they failed to do so, made a citizen's arrest in the presence of two Sheriff's deputies, who took them into custody.

There is surprisingly little conflict in the evidence concerning the relevant issues herein. Witnesses for both the General Counsel and the Respondent have corroborated each other concerning the events of September 29 and 30, 1975; the locations where they occurred, the time of day, who participated, what was said (to whom and by whom), and the outcome of each incident. For this reason, I have not been required to make credibility resolutions concerning the testimony in order to arrive at a clear picture of what happened.

Matt Pandol, a partner in the Respondent's business and one whose conduct is legally attributable to the Respondent, took it upon himself to eject Union organizers from the Respondent's property when they appeared for the purpose of speaking to employees concerning the possibility of unionization. He did this first by insisting that they leave the property and, when they failed to heed his instructions, by subjecting them to citizen's arrest.

The Respondent generally does not deny engaging in the conduct which has been heretofore described. It does deny, however, that such conduct constitutes a violation of the Act and bases its defense on a number of grounds discussed hereafter.

The first contention of the Respondent is that the Board's previously-quoted emergency regulation -- commonly known as the access rule -- is invalid in that it violates the Constitution of the United States, the Constitution of the State of California, Section 602 of the California Penal Code (the trespass statute), and the Agricultural Labor Relations Act itself.

Next, the Respondent contends that even if the access rule is valid, it was not violated in this case because the Union had available to it other effective means of communicating with the employees, making access to the employer's property unnecessary to effectuate the purposes of the Act or to protect the rights of the employees under Section 1152.

Subsequent to the filing of briefs in this matter by the parties, every single one of these arguments was considered by the California Supreme Court and rejected. <sup>2/</sup> The Court's rulings control here and I, therefore, reject all of the Respondent's contentions described above.

Adoption of the access rule was a valid exercise of the powers delegated to the Board by the Legislature in the course of enacting the statute under which it operates. The fact that, in this particular case, the Union may have had available to it alternate effective means of communicating with the employees is irrelevant. <sup>3/</sup>

During the course of the hearing, and over the strenuous objections of the General Counsel, I permitted the Respondent to introduce evidence concerning alternate means of access available to the Union to reach the employees. In view of the above-cited decision of the California Supreme Court, I find that such evidence should have been excluded. I find that the General Counsel's objections were improperly overruled. The General Counsel having preserved his exceptions to my rulings at the hearing, I now sustain his exceptions and objections. The testimony in the record concerning availability of alternate means of communicating with employees is hereby stricken.

The Respondent further contends that even if the access rule is valid, it allows non-employee organizers to come on an employer's property only to solicit employees, not to distribute literature. According to the Respondent, this is the rule followed by the NLRB (which must also be followed by the ALRB), it conforms to the language of the rule itself, and it fulfills the intentions of the Board as stated in the discussions leading up to adoption of the access rule. Since the organizers herein admitted that they distributed leaflets, the Respondent argues that they did not come within the protection of the access rule and were not legally on the Respondent's property.

As to its NLRB position, the Respondent relies on a line of NLRB decisions which distinguish between the treatment of work areas and non-work areas. <sup>4/</sup> Every single case cited by the Respondent relies on this distinction. It is obvious, too, that the NLRB and the courts, in reviewing this question, picture a typical industrial plant where the distribution of literature may result in work disruptions or fire hazards. Whatever may have been the considerations which convinced the NLRB to adopt such a position, it is clear that the Agricultural Labor Relations Board has not done so.

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<sup>2/</sup> Agricultural Labor Relations Bd. v. Superior Court, 16 C. 3d 392 (3-4-76), cert. den. U.S.TSup. Ct., 10-4-76

<sup>3/</sup> Supra, p. 410 ff.

<sup>4/</sup> Patio Foods v. NLRB, 415 F. 2d 1001 (C.A. 5, 1969); Seng Company, 210 NLRB 129 (1974); Stoddard-Quirk Mfg. Co. 138 NLRB 615 (1962).

Section 5(a) of the access rule states as follows:

Organizers may enter the property of an employer for a total period of 60 minutes before the start of work and 60 minutes after the completion of work to meet and talk with employees in areas in which employees congregate before and after working. ("Emphasis added).

Section 5(b) of the access rule states as follows:

In addition, organizers may enter the employer's property for a total period of one hour during the working day for the purpose of meeting and talking with employees during their lunch period, at such location or locations as the employees eat their lunch (Emphasis added).

These provisions allow non-employee organizers to go where the employees are located at the designated times. If employees congregate at their work places before the shift begins or after it is over, or if they eat their lunches there, union organizers have a legal right to approach them there. It is the time which controls, not the place. Since the ALRB does not consider the distinction between work areas and non-work areas to be a vital one, there appears to be no reason to prohibit the distribution of literature-on the employer's premises, regardless of whether this is done in a work or non-work area.

Nor do I find merit in the Respondent's contention that "...the ALRB is bound to follow" NLRB rulings in this matter. Section 1148 of the Act declares, "The board shall follow applicable precedents of the National Labor Relations Act, as amended." As the ALRB has not found NLRB precedents concerning the distinction between work and non-work areas to be "applicable" to administration of the Act, it is not bound to follow NLRB precedents on the subject. <sup>5/</sup>

I find further that the Respondent's reliance on the language of the rule is likewise misplaced. While it is true that the rule mentions only "to meet and talk," rather than specifying other means of communication such as handing leaflets to the employees, the language must be reasonably construed. I find that the distribution of literature is sufficiently related to the language of the rule as to be reasonably included within it. Only a specific exception, such as the NLRB's distinction between work and non-work areas, could support the Respondent's position. I have already found that this distinction does not apply herein and it, therefore, cannot aid the Respondent's argument.

With the rejection of the distinction between work and non-work areas, the Respondent's argument that the Board did not intend to allow distribution of literature falls as well. Statements of Board Members

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<sup>5/</sup> Supra, p 412 ff.

during discussions leading to adoption of the access rule, which are now cited by the Respondent, all deal with disruptive activities on the employer's premises. Board Members were careful to avoid any inference that adoption of the access rule condoned violence or other disruption of the employer's operation. But unless distribution of leaflets is to be considered inherently disruptive, the Members' statements do not deal with it at all. The NLRB does consider the distribution of literature to be inherently disruptive, but only when done in the work areas of the employer's premises. That view is inapposite here.

Finally, I must reject, as being without evidentiary foundation in the record, the Respondent's argument that a Union leaflet (Respondent's Exhibit 5) was so "...defamatory and potentially inflammatory" as to warrant the Respondent in ejecting the organizers from its property. First of all, there is no evidence in the record that the leaflet was distributed on the Respondent's property on the days in question. There is evidence that it was distributed on the Dulcich property, but that is irrelevant for reasons which will be stated below. In any event, I have examined the leaflet in question and find that its contents are neither so insulting to the Respondent nor so inciting to the employees as to justify barring organizers who distribute it from the Respondent's premises.

Upon all of the foregoing and upon a preponderance of the testimony taken before me in this matter, I find that the conduct of the Respondent at its own premises on September 29 and 30, 1975, constitutes interference, restraint and coercion of its employees in the exercise of the rights guaranteed to them by Section 1152 of the Act and is, therefore, an unfair labor practice under Section 1153 (a) of the Act.

The Consolidated Complaint also alleges that the Respondent violated the Act by virtue of the conduct of Vince Dulcich, at the farm operated by his family, on September 29, 1975, between 11:30 a.m. and noon. Dulcich is not named as a respondent in this case, but as a supervisor or agent of the Respondent herein, Pandol & Sons.

A considerable amount of testimony was presented by the General Counsel and the Union dealing with the interlocking relationships of Dulcich and Pandol. There are family ties, business arrangements, consulting activities, and other types of relationships. It is not clear from the record, however, whether Pandol & Sons is the true owner of the Dulcich business, or whether the two businesses constitute a single employer for purposes of the Act, or whether Vince Dulcich was actually a supervisor or agent for Pandol & Sons. In any event, I find it unnecessary to resolve these issues because, at best, a finding in favor of the General Counsel would merely be cumulative and would affect neither the findings, conclusions, nor remedies in this matter. Accordingly, I will recommend dismissal of this allegation of the Consolidated Complaint.

#### IV. The Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I will recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

In addition, the General Counsel has listed ten items of affirmative relief which he proposes for adoption in this proceeding to remedy the unfair labor practices committed by the Respondent. I shall address these specific requests of the General Counsel.

The General Counsel proposes that the Board's notice in this case be communicated to the employees in three different ways.

- Posting of the notice.
- Mailing of the notice to employees' homes.
- Reading of the notice to employees.

Posting of the notice is a customary remedy and presents no special problems in this case. Mailing and reading of the notice have both previously been used on occasion by the NLRB when it thought that a conventional posting would be inadequate because of the scattered nature of the work force, illiteracy or language problems, or the force of the employer's coercive influence. I find all three elements generally present in the agricultural areas of the state of California and expressly find them present in the instant case.

Use of all three methods of communicating the Board's Notice will make it more likely that each individual employee will be reached in at least one, or perhaps more, of the ways. This is a desirable result. I find, therefore, that these remedies are appropriate in this case because they are necessary to effectuate the policies of the Act. I will, accordingly, recommend that the Board adopt the General Counsel's proposed remedies in these respects. <sup>6/</sup>

<sup>6/</sup> In Valley Farms and Rose J Farms, 2 ALRB No. 41 (1976), the Board denied the General Counsel's request for posting a notice on the ground that there was no central gathering place for employees which would be appropriate for posting. It denied his request for mailing copies of the notice on the ground that the Respondent did not have the home addresses of the employees. And it denied his request for a reading of the notice to a meeting of employees on the ground that reinstatement of an illegally discharged employee, together with payment to him of back pay, would give the employees adequate assurance that the Respondent would not retaliate against them for union activities. Whatever may be the merits of the Board's position in that case, the record in this case does not show the existence of the elements upon which the Board relied there. I find Valley Farms, therefore, not controlling, on these points.

The General Counsel also requests that the Respondent be required to furnish a list of the names and addresses of its employees to the Union. In view of the fact that this has become standard procedure in all ALRB matters upon the filing of an election petition, I see little reason for denying this request herein. I feel it is a particularly appropriate remedy where the Respondent's unfair labor practices, as they did here, interfered with the Union's efforts to compile such a list by directly contacting the employees.

Another request by the General Counsel is that the Respondent 'be required to file periodic reports illustrating compliance with the Board's Order, "...under penalty of perjury." If all he means by that is the type of report usually required by the NLRB, he is entitled to it and I will grant his request. It is my understanding that one is required to tell .the truth when making such reports, but I do not know if it is perjury to fail to do so. Perjury is a very complex subject. If the General Counsel is seeking to transform an unfair labor practice into a criminal offense by use of the term "perjury," he is not on strong ground. The requirement for the filing of periodic compliance reports will not contain the expression "...under penalty of perjury," but this will not weaken the requirement to tell the truth.

The General Counsel further requests that the Respondent's bulletin board be made available to the Union so that it may post notices. I find nothing in the Act which contemplates that a campaigning union shall have such a device available to it for the purpose of recruiting members. The access rule is a detailed grant of a Union's right to campaign on the employer's property and it does not include the use of bulletin boards. I find the General Counsel's request inappropriate.

I must likewise reject the General Counsel's proposal that I recommend "Compensation for such emotional distress as Charging Party may have suffered." Since the Charging Party herein is the United Farm Workers of America, an incorporeal institution which, to the best of my knowledge, is incapable of suffering emotional distress, just as it is incapable of being happy or sad, or crying or laughing, I find this prayer of the General Counsel not to be well-taken.

Another element of the relief prayed for by the General Counsel is "Expansion of the United Farm Workers Union's right to access on employer's property prior and during next peak season." I am not sure what is meant by that, but I find no legal authority to grant "expansion." My recommended Order will contain a provision requiring the Respondent to allow the Union to exercise its rights under the access rule. This is what the Respondent previously denied to the Union and this is what the Union is entitled to. No argument has been made by the General Counsel to show why more than this is appropriate nor has any evidence been presented to support the request. It is, therefore, denied.

The General Counsel also proposes that the Respondent be directed to make "a public apology" to its employees. I find this to be an extraordinary suggestion. I am not aware that such remedies have been available in the United States since the Puritans took down their stocks and pillories and stopped branding adultresses.<sup>7/</sup> Humiliation of violators has no place in the enforcement scheme of this Act. Even the most heinous criminal offenders are not punished by being required to publicly apologize to their victims. Certainly, the violators of a civil statute should not be treated in a more scornful manner. I reject this prayer of the General Counsel.

The last of the General Counsel's ten requests is best described, I think, by quoting it in full.

Reimbursement by the employer to the United Farm Workers Union and to the Board for expenses incurred in the investigation preparation, presentation and conduct of this case, including but not limited to, reasonable counsel fees, salaries, witness fees, transcript and record costs, printing costs, travel expenses and per diem and any other reasonable costs and expenses.

This unusual request is accompanied by neither the strong legal arguments that might make it persuasive, nor by any evidence to show that it might be appropriate. A request of this nature cannot even be considered unless the General Counsel can show extreme bad faith in the Respondent's conduct. That would require evidence of conduct which is so baldly a violation as to make the Respondent's defenses a sham. It is hard enough to prove this in any situation, but at the beginning of the enforcement of a statute like this one, it is virtually impossible.

The Respondent's principal defense in this case was the alleged invalidity of the access rule. Can I say that such a position was taken in bad faith and constituted a mockery of the Board, when the Sheriff of the county in which these incidents occurred, various judges of the Superior Court of the state of California, and three dissenting Justices of the Supreme Court have taken the same position?

I will be willing to face the question of imposing costs on a respondent in an unfair labor practice case when the General Counsel is able to show the bad-faith nature of the violation, the insubstantial nature of the defenses raised, and the consequent compelling of the Board to spend money uselessly for the purpose of processing the case. Nothing like that has been shown in the instant proceeding and, accordingly, I deny the General Counsel's request.

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<sup>7/</sup>See Hawthorne, The Scarlet Letter.

Upon the basis of the foregoing findings of fact and upon the entire record in this case, I hereby make the following:

Conclusions of Law

1. The Respondent is an agricultural employer within the meaning of Section 1140.4(c) of the Act.

2. The Union is a labor organization within the meaning of Section 1140.4(f) of the Act.

3. By preventing Union representatives from having access to its premises for the purpose of organizing the employees, in violation of Section 20900 of the Board's emergency regulations, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 1153(a) of the Act.

4. By interfering with, restraining, and coercing employees in the exercise of rights guaranteed in Section 1152 of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 1153(a) of the Act.

5. Respondent did not engage in unfair labor practices in violation of the Act by virtue of the conduct of Vince Dulcich, at the farm operated by his family, on September 29, 1975.

Upon the foregoing findings of fact and conclusions of law, and upon the entire record in this proceeding, and pursuant to Section 1160.3 of the Act, I hereby issue the following recommended: <sup>8/</sup>

ORDER

Respondent, Pandol & Sons, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Preventing or attempting to prevent Union representatives from having access to its premises for the purposes of organizing the employees, in violation of Section 20900 of emergency regulations, known as the Board's "access rule."

(b) In any like or related manner interfering with, restraining or coercing employees in the exercise of their rights to

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<sup>8/</sup> In the event no exceptions are filed as provided by Section 1160.3 of the Act, the findings, conclusions, and recommended Order herein shall become the findings, conclusions, and Order of the Board and become effective as herein prescribed.

self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from engaging in such activities.

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

(a) Post at its premises copies of the notice marked "Appendix." Copies of said notice, on forms provided by the appropriate Regional Director, after being duly signed by the Respondent, shall be posted by it for a period of 90 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced or covered by any other material. Such notices shall be in both English and Spanish.

(b) Mail a copy of the notice, in both English and Spanish, to each of the employees in the bargaining unit, at his or her last known address, not later than 30 days after the notice is required to be posted on the Respondent's premises.

(c) Read a copy of the notice, in both English and Spanish, to gatherings of its bargaining-unit employees, at a time chosen by the Regional Director for the purpose of giving such notice the widest possible dissemination.

(d) Furnish a list of the names and last known addresses of all its bargaining-unit employees not later than 10 days after the notice herein is required to be posted, to the Regional Director and to the Union.

(e) 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 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 be dismissed insofar as it alleges violations of the Act by the Respondent through the conduct of Vince Dulcich, at the farm operated by his family, on September 29, 1975.

Dated:



Leo weiss  
Administrative Law

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE AGRICULTURAL LABOR RELATIONS BOARD  
An Agency of the State of California

After a trial at which all sides had the opportunity to present their evidence, the Agricultural Labor Relations Board has found that we violated the Agricultural Labor Relations Act, and has ordered us to post this notice and we intend to carry out the order of the Board.

The Act gives all employees these rights:

- To engage in self-organization;
- To form, join or help unions;
- To bargain collectively through a representative of their own choosing;
- To act together for collective bargaining or other mutual aid or protection; and
- To refrain from any and all these things.

WE WILL NOT do anything that interferes with these rights. More specifically,

WE WILL NOT prevent Union representatives from coming on our premises, in accordance with the Board's "access rule," for the purpose of organizing the employees.

WE WILL respect your rights to self-organization, to form, join or assist any labor organization, or to bargain collectively in respect to any term or condition of employment through United Farm Workers of America, AFL-CIO, or any representative of your choice, or to refrain from such activity, and WE WILL NOT interfere with, restrain or coerce our employees in the exercise of these rights.

You, and all our employees are free to become members of any labor organization, or to refrain from doing so.

PANDOL & SONS  
\_\_\_\_\_  
(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 90 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office.