

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

VENUS RANCHES,	)	
Respondent,	)	No. 76-CE-28-R
	)	
and	)	
	)	3 ALRB No. 55
UNITED FARM WORKERS OF AMERICA,	)	
AFL-CIO,	)	
	)	
Charging Party.	)	

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DECISION AND ORDER

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

On March 1, 1977, administrative law officer Matthew Goldberg issued his decision in this case. He found that an unlawful denial of access had been committed. Because no exceptions were filed to the law officer's findings of fact and conclusions of law, his decision is final and we adopt it. The General Counsel filed a timely exception to the recommended remedy and we find that this exception has merit.

Two UFW organizers were arrested in respondent's orchard while engaged in a conversation about unionization with several workers. The arrest was carried out by a deputy sheriff in the presence of the entire crew. As the organizers were led from the orchard, they saw that tangerine bins had been placed around their car to prevent them from leaving the premises. When the organizers returned to the ranch a week or two later, respondent's foreman told them they had no right

to be there talking to the workers. It is unclear whether this statement was made in the presence of other employees. In contrast to their first visit, however, the organizers did not attempt to solicit authorization cards upon their return to the orchard. This was because of the difficulty they experienced in talking to respondent's employees, who turned away and avoided them. In fact, one of the workers told an organizer that because of the arrest it was not legal for the organizer to be there.

The ALO denied the general counsel's request for expanded access because the organizers were not prevented from gaining physical access to the premises and did speak to the workers prior to the arrest. Certainly, respondent's conduct in the present case was inherently destructive of the rights guaranteed workers by section 1152 of the Act and tended to have a chilling effect on future organizational activity. The purpose of the access rule is to insure that workers have the opportunity to communicate with and receive information from labor organizations about the merits of self-organization. This exchange of ideas is to be conducted in an atmosphere free from coercion, restraint and interference. While the effect of the rule is to permit organizers to have access to an employer's private property, its purpose is to effectuate employees' Section 1152 rights. It is this purpose by which we guide our formulation of remedies for conduct which interferes with those rights. The fact that organizers were allowed to talk to the workers prior to their arrest in no way

diminishes the impact of the arrest. Rather, it is clear from the record that the arrest created the impression that it was illegal for workers to talk to organizers on respondent's premises. Accordingly, we find the ALO's remedy inadequate to dispel the effects of the arrest and grant expanded access and additional notice remedies as follows:

1. 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 Sections 20900 (e) (3) and 20900(e) (4) without restriction as to the number of organizers. This right of access shall encompass four 30-day periods within the 12 months following the issuance of this decision.

2. During any 30-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 should be provided without requiring the UFW to make any showing of interest.

3. To the ALO's requirement of posting and reading of the notice, we add that a copy of the attached notice, in both English and Spanish, be mailed to all employees listed on respondent's master payroll on January 29, 1976, in accordance with established Board practice.

4. The ALO recommended that respondent inform its supervisors and employees of the access rule. No exceptions were taken to this recommendation, which would effectuate the purposes of the Act and therefore we adopt it. With respect to

respondent's nonsupervisory employees, however, notification of the nature of the access rule shall be carried out in accordance with our Order specifying posting, reading, and mailing of the notice to workers.

Accordingly, pursuant to Labor Code Section 1160.3, IT IS HEREBY ORDERED that the respondent Venus Ranch, 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 necessary to effectuate the policies of the Act.

(a) Issue the following NOTICE TO WORKERS (to be printed in English and Spanish) in writing to all present employees, wherever geographically located, and to all new employees and employees rehired, and mail a copy of said Notice to all employees listed on its master payrolls for the payroll period including the date of the denial of access, i.e., January 29, 1976, and post such notice at the commencement of the next peak season for a period of not less than 60 days at appropriate locations proximate to employee work areas, including places where notices to employees are customarily

posted, such locations to be determined by the regional director.

(b) Have the attached notice read in English and Spanish at the commencement of the next peak citrus season on company time, to all those then employed, by a company representative or by a Board agent and accord said Board agent the opportunity to answer questions which employees may have regarding the notice and their rights under Section 1152 of the Act. The regional director is to determine a reasonable rate of compensation to be paid by respondent to its piece-rate employees to compensate for time lost at this reading.

(c) Inform all of its supervisors of the right of access set forth in 8 Cal. Admin. Code Section 20900.

(d) 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 Sections 20900(e) (3) and 20900 (e) (4) without restriction as to the number of organizers. This right of access shall encompass four 30-day periods within the 12 months following the issuance of this decision.

(e) During any 30-day period in which the UFW exercises its rights 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.

(f) Notify the regional director, in writing within 20 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. Respondent shall also inform the Board in writing within two weeks prior to the next commencement of the peak citrus season of the exact dates and duration of such season.

Dated: July 19, 1977

RICHARD JOHNSEN, JR., Member

RONALD L. RUIZ, Member

ROBERT B. HUTCHINSON, Member

NOTICE TO WORKERS

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 employees, or threaten with arrest or actually arrest such organizers.

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 representatives 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.

VENUS RANCHES  
Employer

Dated \_\_\_\_\_ By \_\_\_\_\_  
Representative Title

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

Any questions concerning this notice or compliance with its provisions may be directed to the Board's office.

STATE OF CALIFORNIA

BEFORE THE AGRICULTURAL LABOR RELATIONS BOARD

VENUS RANCHES, Respondent )  
 )  
 and )  
 )  
 UNITED FARM WORKERS OF AMERICA, )  
 AFL-CIO, Charging Party )  
 \_\_\_\_\_ )

Case No. 76-CE-28-R

Richard Tullis, Esq. and  
Octavio Aguilar, Esq., for the  
General Counsel.

David E. Smith, Esq. for  
Venus Ranches, Respondent.

Douglas Adair, Esq. and  
Tom Dalzell, Esq.,  
for United Farm Workers of America,  
AFL-CIO, Charging Party.

Before: Matthew Goldberg, Administrative Law Officer

DECISION OF THE ADMINISTRATIVE LAW OFFICER

Statement of the Case

On February 6, 1976, the United Farm Workers of America, AFL-CIO (hereinafter referred to as the Union) filed the original charge in Case No. 76-CE-28-R alleging certain violations of Section 1153 of the Agricultural Labor Relations Act. Based on said charge, a complaint was issued by the General Counsel of the Agricultural Labor Relations Board on January 27, 1977.

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The Respondent named above has filed an answer denying in substance that it committed the unfair labor practices alleged.<sup>1/</sup>

A hearing in the matter was noticed for and held on February 9, 1977. Respondent Venus Ranches, the Charging Party, and General Counsel for the Board appeared through their respective Counsels. All parties were afforded full opportunity to adduce evidence, examine and cross-examine witnesses, and submit oral arguments and briefs.

Upon the entire record, from my observations of the demeanor of the witnesses and having read and considered the briefs submitted to me since the hearing, I make the following:

#### Findings of Fact

##### I. Jurisdiction of the Board

1. Respondent Venus Ranches is and was at all times material an agricultural employer within the meaning of §1140.4(c) of the Act.

2. The Union is and was at all times material a labor organization within the meaning of §1140.4(f) of the Act.

##### II. The Alleged Unfair Labor Practices:

###### Statement of Facts

On January 29, 1976, at approximately 11:00 A.M., David Bacon and Andres Mares, organizers for the Union, appeared

<sup>1/</sup> Copies of the Charge, the Complaint and the Notice of Hearing have been duly served on the Respondent.

at a citrus orchard owned by Respondent Venus Ranches. Upon their arrival at the orchard, they were confronted by a Caucasian individual in a pick-up truck later identified as Ken Moore.<sup>2/</sup> Moore was employed as a mechanic for the Respondent. It is undisputed that he had no authority to hire, fire, or discipline workers, nor to direct work or adjust their grievances.

Moore asked the organizers whether they were looking for work. Bacon and Mares responded by identifying themselves as UFW organizers and stated that they were there to speak to the workers. Moore asked them to leave the premises; Bacon and Mares refused. Moore did not physically prevent Bacon and Mares from gaining access to the orchard or from actually speaking with the workers present therein.

Bacon and Mares spoke with workers that day for approximately thirty or forty minutes while these workers were on breaks from their duties.<sup>3/</sup> During this period, Moore apparently contacted the county sheriff's office and requested that a deputy be sent out to the farm.

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<sup>2/</sup> The identification of Mr. Moore, and the facts subsequently adduced concerning his position with Venus Ranches were substantially based on hearsay evidence. Under Labor Code §1160.2 and Board Regulation §20272, unfair labor practice hearings "shall, so far as practicable, be conducted in accordance with the Evidence Code." (Emphasis supplied) While strictly speaking, the hearsay evidence concerning Mr. Moore might be considered Inadmissible, I find that this evidence, for reasons of practicality, is of probative value: significantly, Respondent produced no witnesses or testimony rebutting the contentions raised by this evidence, and thus the preponderance of testimony in this aspect of the case is in favor of the position of the General Counsel.

<sup>3/</sup> Citrus workers are employed on a piece rate basis and have no regularly scheduled lunch hour.

When the deputy arrived, he asked Moore if the latter wished that the organizers be arrested for trespassing. Moore responded affirmatively, and in the presence of the workers, the organizers were escorted off the premises by the deputy, who thereupon wrote them citations for trespassing.<sup>4/</sup>

Shortly after the incident occurred, Brad Nussbaum, President and General Manager of the Respondent, was apprised of the incident outlined above. <sup>5/</sup> No evidence was presented on behalf of the Respondent that it did anything to disavow Moore's actions, or to somehow mitigate the impact of the arrest.

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<sup>4/</sup> The evidence is conflicting in regard to how Moore derived the authority to call the sheriff. As noted above, Moore did not have the authority to hire, fire or discipline workers and therefore cannot be considered a supervisor within the meaning of §1140(j) of the Act. The investigative notes of Board Field Examiner Ben Romo were admitted as Respondent's Exhibits 1, 2, and 3. According to these notes, it is undisputed that on January 29, 1976, Brad Nussbaum, the General Manager and President of Respondent, was absent from the premises. Romo interviewed a W.B. Patterson, who was a maintenance superintendent and Moore's supervisor (Respondent's Exhibit 3). The notes reveal that Patterson remembered that Moore called him that day concerning the presence of the organizers, and that Patterson told Moore to have the deputy arrest them. The notes of Moore's interview (Respondent's Exhibit 1), however, contain no mention of Moore calling Patterson. Rather, they state that Moore "figured he had the power to tell the organizers to leave because they were trespassing." Organizer Bacon testified that on that day Moore "said he called Patterson and got the OK for the arrest." Much of the evidence itself on this issue consists of hearsay. In the absence of stronger proof to the contrary, I must conclude that the General Counsel has failed to sustain his burden of showing that a supervisor or manager of the Respondent directly ordered that the organizers be arrested or was responsible for the arrests.

<sup>5/</sup> Romo's notes cited above state that Nussbaum was informed of the arrests either "the next morning" (Respondent's Exhibit 2) or "the first time [Moore] saw Nussbaum (Respondent's Exhibit 1).

## Conclusions of Law

Under the "access rule" in effect at the time of the acts alleged (A.L.R.B. Emergency Regulation §20900), "the rights of employees under Labor Code §1152...include the right of access by union organizers to the premises of an agricultural employer for the purposes of organizing..." (Regulation §20900(5)). This right of access must be exercised in an atmosphere free of restraint, coercion or interference. Although the facts in this case indicate that union organizers were able to gain physical access to Respondent's premises on January 29, 1976, this access was not unmolested, as it should be. The arrest of union organizers, lawfully exercising their right of access, unduly interferes with and restrains this right. It naturally follows that such acts and conduct constitute a violation of §1153(a) of the Labor Code, if it can be shown that an agricultural employer or one of his agents is liable in some manner for the interference with access rights.

The central issue presented here thus becomes, can the Respondent be held liable for the independent acts of one of its employees who was neither a supervisor nor a manager of the Respondent?

<sup>6/</sup> Under applicable National Labor Relations Board precedent, <sup>7/</sup> in order for an employer to be liable for an individual's acts, that individual must be shown in some manner

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<sup>6/</sup> As discussed in Footnote 4, supra, the conflicting evidence points to the conclusion that Moore acted on his own initiative in seeing to it that the organizers were arrested.

<sup>7/</sup> Pursuant to Agricultural Labor Relations Act §1148, the Board is instructed to follow National Labor Relations Board precedent.

to be an "agent" of the employer. See N.L.R.B. v. Russell Manufacturing Company, 27 LRRM 2311 (C.A. 5, 1951). "Agency" has been loosely defined as acting under an employer's direction or control. "Agency" has also been established where an employer has ratified, condoned, acquiesced in, or approved of the anti-union acts of an individual or group directed against his employees. Ratification or approval need not be express, and may be implied (Newton Brothers Lumber Company, 1557 (1953), enf'd 39 LRRM 2452 (C.A. 5, 1954); Jewell, . Inc., 30 LRRM, 1033 (1952)). By remaining silent and failing to disavow acts constituting unfair labor practices, or by neglecting to reprimand the employees who committed them, employers have been deemed to have acquiesced in, condoned or approved of such conduct and have been held responsible for the unfair labor practices committed. (See N.L.R.B. v. American Thread Co., 28 LRRM 1249 (1951), enf'd 204 F. 2d 169 (1953); Brewton Fashions, Inc., 54 LRRM 1329 (1963), enf'd 62 LRRM 2169 (C.A. 5, 1964).

Particularly analogous to the present case are those situations in which an employer has been held directly liable for constructive discharges under §8(a)(3) of the N.L.R.A. where that employer has done nothing to prevent a group of his rank-and-file employees from "evicting" other employees from the employer's premises who were pro-union or rival union adherents, or where the employer has neglected to discipline or reprimand the evicting employees. (Newton Brothers Lumber Company, supra; Brewton Fashions, Inc., supra) As the Board stated in the Newton Brothers case: . . . .

...the Act imposes upon an employer the affirmative duty to insure that its right of discharge is not surrendered to any union or anti-union group. Moreover, an employer cannot avoid the responsibilities imposed by the Act on the ground that it had no knowledge of the exclusion of employees until after the event occurred, for as the Board has stated, 'an employer's responsibility for such exclusion is not dependent upon knowledge in advance of the exclusion, but arises if the employer, as in this case, is immediately advised of the exclusion and does nothing to prevent its continuance.'

Likewise, in the case at bar, where a rank-and-file employee has sought to exclude or "evict" union organizers from the Respondents premises, contrary to the access rule, the Respondent must "insure that its right of [permitting entry to its premises] is not surrendered to any union or anti-union group." Furthermore, although the Respondent herein "had no knowledge of the exclusion of [organizers] until after the event occurred," its responsibility for the violation of the access rule arose when it, through Brad Nussbaum, was "immediately advised of the exclusion and [did] nothing to prevent its continuance."

Thus, in the instant situation, it can be seen that the Respondent acquiesced in the commission of an unfair labor practice by failing to reprimand employee Moore, and by failing to have a responsible individual of the Respondent issue an appropriate statement to the effect that Moore acted outside his authority in ordering the arrest of the union organizers, that he should not have so dealt with the situation, and that the Respondent has no objection to the exercise of access rights by

union organizers. In essence, agricultural employers have an affirmative duty to prevent the commission of unfair labor practices on premises or by individuals under their direction and control, or to at least mitigate the effects of such acts, should these acts take place at a time when responsible officials of an agricultural employer are absent or otherwise unavailable. This duty subsumes the obligation of an agricultural employer to inform individuals under its control of the rights of employees under Labor Code §1152, including the right of access by union organizers. By its silence and failure to disclaim responsibility for the arrest of union organizers lawfully on its premises, it is determined that Respondent has violated §1152(a) of the Act.<sup>8/</sup>

#### Recommended Order

Having found that Respondent has engaged in an unfair labor practice violative of §1153(a) of the Act, and upon the basis of the foregoing findings of fact and conclusions of law,

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<sup>8/</sup> Respondent raises the contention in its brief that the complaint herein was improperly issued since no declarations in support of the original charge were made available to the Respondent pursuant to a "request for discovery," and that none had in fact been filed by the charging party. At the outset, it should be noted that the statement or declaration of a witness in the possession of the General Counsel "shall be held confidential" (Regulation §20212), and is only subject to production "at the time [when such] witness is called in a hearing..." (Regulation §20274(a)). Furthermore, the propriety of the issuance of a complaint is solely within the discretion of the General Counsel (A.L.R.A. §1160.2; Regulation §20220), and cannot be questioned at this point in the proceedings.

and the entire record of this proceeding, pursuant to §1160.3 of the Act, I hereby issue the following recommended order: <sup>9/</sup>

Venus Ranches, its officers, agents, successors and assigns shall:

(1) Cease and desist from interfering with, restraining or coercing agricultural employees in the exercise of their rights of self-organization and/or their rights to refrain from such activities by

(a) threatening with arrest, or actually arresting, union organizers lawfully on its premises pursuant to the access rule, A.L.R.B. Emergency Regulation §20900;

(b) in any other manner interfering with, restraining or coercing any employee in the exercise of right guaranteed by §1152 of the Agricultural Labor Relations Act.

(2) Take the following affirmative actions which I find will effectuate the policies of the Act:

(a) Post in conspicuous places in Respondent's place of business in or near Mecca, California, including all places where notices to employees are

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<sup>9/</sup> In the prayer of its complaint and in its brief to the Hearing Officer, the General Counsel requested a remedy providing for "expanded" access rights for organizers beyond that required by Regulation §20900. I specifically find and recommend that such a remedy is unwarranted by the circumstances herein. The record is devoid of any evidence that organizers at any time were prevented by Respondent from gaining physical access to Respondent's premises or from speaking with workers there. On the day that the organizers were arrested they actually had the opportunity to speak with workers on the premises for thirty or forty minutes. Additional evidence established that several weeks after the arrests, when organizers reappeared at Respondent's ranch, their right of access was exercised without any interference by the Respondent.



customarily posted, copies of the attached notice marked "Appendix." Copies of the said notice in Spanish and English are to be furnished by the A.L.R.B. and shall, after being duly signed by a managing agent of Respondent, be posted in such conspicuous places and maintained by it during the entire peak citrus season in 1977-1978. Reasonable steps shall be taken by Respondent to insure that said notice is not covered, altered or defaced by any other material.

(b) Inform the Board in writing within two weeks prior to the commencement of the peak citrus season of the exact dates and duration of such season.

(c) Read the aforementioned notice aloud once a week during peak season 1977-1978 to all agricultural employees employed by the Respondent.

(d) Inform all of its supervisors and employees of the right of access set forth in Board Regulation §20900.

(e) Inform the Board of the steps Respondent has taken to comply with this decision twenty days after the commencement of the 1977-1978 peak season.

Dated:3/1/77

  
Matthew Goldberg  
Administrative Law Officer

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the  
Agricultural Labor Relations Board  
An Agency of the State of California

After a hearing at which all sides had an opportunity to present evidence and state their positions, the Agricultural Labor Relations Board has found that we have violated the Agricultural Labor Relations Act by permitting the arrest of union organizers on our premises on January 29, 1976, and has ordered us to post this notice.

The Act gives employees the following rights:

To engage in self-organization;

To form, Join or assist any union;

To bargain collectively through representatives of their own choosing;

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection;

To refrain from the exercise of any such activities.

WE WILL NOT interfere with, restrain, or coerce any employee in the exercise of any of the above rights.

WE WILL NOT prevent union organizers from gaining access, for the purpose of organizing the workers thereon, to agricultural fields owned or operated by Venus Ranches, or threaten with arrest or actually arrest such organizers on our fields during such times as these organizers are permitted by law to be present on our premises.

WE WILL comply in all respects with the Board's Order.

Dated \_\_\_\_\_

\_\_\_\_\_  
Venus Ranches

By \_\_\_\_\_  
Managing Agent

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

This notice must remain posted throughout the peak citrus season and must not be altered, defaced or covered by any other material. Any questions concerning this notice may be directed to the Board's Office, 915 Capitol Mall, Sacramento, California

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

VENUS RANCHES,	)	
Respondent,	)	Case No. 76-CE-28-R
	)	
and	)	
	)	
UNITED FARM WORKERS OF	)	3 ALRB No. 55
AMERICA, AFL-CIO,	)	
	)	
Charging Party.	)	

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MODIFICATION OF ORDER

In light of the Court of Appeal (Fifth Appellate District) Decision in Pandol & Sons, 5 Civ. 3446 (1978), the Board modifies its Order as follows.

A. The Board strikes paragraph one on page 3 of its Decision and Order granting the UFW access without restriction on the number of organizers and inserts the following:

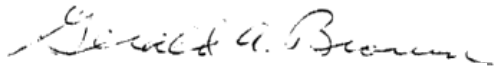
1. In order to compensate the employees for the denial of an opportunity to communicate with and receive from labor organizations information regarding self-organization, we hereby order that during the next period in which the UFW has filed a Notice of Intent to Take Access, the UFW shall be allowed one additional organizer per 15 employees. This organizer is in addition to the number of organizers already permitted under Section 20900 (e) (4) (A).

B. The Board strikes paragraph 2(d) of its Order and inserts the following:

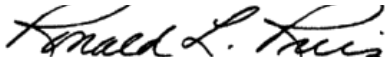
(d) Upon the UFW's filing of a written notice of

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 Sections 20900 (e) (3} and 20900 (e) (4), except that they shall be allowed one additional organizer per 15 employees. This right of access shall encompass four 30-day periods within the 12 months following the issuance of this Decision.

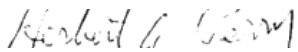
Dated: March 23, 1978



GERALD A. BROWN, Chairman



ROLAND L. LUIZ, Member



HERBERT A. PERRY, Member