STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

V. B. ZANINOVICH & SONS,	)	
	)	
Respondent,	)	Case Nos. 81-CE-177-D
	)	81-CE-195-D
and	)	81-CE-196-D
	)	
ANTI-RACIST FARMWORKERS UNION,	)	
	)	
Charging Party.	)	9 ALRB No. 54
	)	

DECISION AND ORDER

On March 15, 1982, Administrative Law Judge (ALJ)[1/] William A. Resneck issued the attached Decision in this proceeding. Thereafter, Respondent and the General Counsel each timely filed exceptions with a supporting brief, and Respondent filed a brief in response to the exceptions of the General Counsel.

Pursuant to the provisions of Labor Code section 1146,[2/] the Agricultural Labor Relations Board (ALRB or Board) has delegated its authority in this matter to a three-member panel.

The Board has considered the record and the attached

[1/] At the time of the issuance of the ALJ's Decision, all ALJ's were referred to as Administrative Law Officers. (See Cal. Admin. Code, tit. 8, § 20125, amended eff. Jan. 30, 1983.)

[2/] All code citations, unless otherwise noted, refer to the California Labor Code.

Decision in light of the exceptions and briefs[3/] and has decided to affirm the rulings, findings, and conclusions of the ALJ, as modified herein, and to adopt his recommended Order, with modifications.

The Unfair Labor Practices

Respondent excepted to the ALJ's finding that Renato Talactac acted as its agent in circulating a petition against the Union in violation of Labor Code section 1153(a). We find that exception to be without merit.

On August 3 and 24, 1981, respectively, the Anti-Racist Farmworkers Union (Union) served Respondent with a Notice of Intent to Take Access and a Notice of Intent to Organize, pursuant to California Administrative Code, title 8, (Regulations) sections 20900(e)(1)(B) and 20910(a). The latter notice was filed in the Board's Delano Regional Office along with 82 authorization cards signed by unit employees, a number

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[3/] Respondent has moved to strike General Counsel's exceptions to the ALJ's Decision on the grounds that the exceptions failed to comport with section 20282(a)(2) of the Board's Rules and Regulations. (Cal. Admin. Code, tit. 8, § 20282 et seq.) Specifically, Respondent contends that the exceptions brief is deficient in that General Counsel, by incorporating its post-hearing brief with its exceptions, thereby submitted a brief in excess of 20 pages without including a table of contents and authorities as required by section 20282(a)(2). We do not interpret that Regulation as requiring that an incorporated post-hearing brief contain a table of contents and a table of authorities cited. Furthermore, no prejudice has been shown. The exceptions brief was only four pages with no cases cited. As Respondent had been originally served with General Counsel's post-hearing brief three months prior to the date set for the exceptions, it was not unfairly presented with new legal arguments or case authorities to which it had inadequate time to respond. (Foster Poultry Farms (1980) 6 ALRB No. 15; Nash-De Camp (1982) 8 ALRB No. 5.)

sufficient to require Respondent to submit to the Regional Director a complete list of its employees' names and current home addresses, which the Regional Director would, in turn, make available to the petitioning union. (Cal. Admin. Code, tit. 8, § 20910(c).)

Respondent's refusal to comply with the regulations in that regard was the subject of an unfair labor practice proceeding and Decision in V. B. Zaninovich (1982) 8 ALRB No. 71. In that case, we rejected Respondent's defense that it was not obligated to submit a names-and-address list on the grounds that service of the petition was technically deficient. We found that Respondent had a duty to submit such a list and concluded that its failure to do so constituted interference with its employees' section 1152 rights in violation of section 1153(a).

On or about August 26 or 27, 1981, after Respondent had been served with the Notice of Intent to Organize, employee Renato Talactac[4/] requested and obtained "some paper" from supervisor Chris Nacua for the declared purpose of circulating among unit employees a petition in opposition to the disclosure to the Union of employees' names and addresses. Nacua, in the presence of some unit employees, supplied Talactac with paper torn from a tablet he was carrying. Talactac then began soliciting employees to sign a petition. Talactac eventually gave the petition accompanied by employee signatures back to Nacua and requested that the supervisor deliver the petition

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[4/] The parties stipulated at hearing that Talactac was not a supervisor within the meaning of section 1140.4(j) of the Act.

to the ALRB office, as the employees lacked transportation. Nacua took the petition and later gave it to supervisor Frank Martin. Martin did not testify and there is no record evidence as to what use, if any, was made of the petition thereafter.[5/]

In concluding that Talactac circulated the petition on behalf of Respondent, we are guided by the principles of agency set forth in the California Supreme Court's Decision in Vista Verde Farms v. ALRB (1981) 29 Cal.3d 307 [172 Cal.Rptr. 720]. In that case, the court expressly relied on "general principles of employer responsibility" gleaned from U.S. Supreme Court cases interpreting the Wagner Act. (See IAM v. Labor Board (1940) 311 U.S. 72, 61 S.Ct. 83 [7 LRRM 282] and H.J. Heinz Co. v. Labor Board (1941) 311 U.S. 514, 61 S.Ct. 320 [7 LRRM 291].) The California Court noted that the state legislature adopted the expansive pre-Taft Hartley definition of "employer," suggesting that an agency doctrine even more liberal than that of the NLRA was intended to be applied to agricultural employers.[6/]

[5/] The petition which was circulated by Talactac was not admitted into evidence. However, at the request of the ALJ, Respondent attached a copy of the petition to its post-hearing brief. Approximately 90 signatures, purportedly of Respondent's employees, appear under a heading which reads as follows: "We do not want to be bothered by (IMCAR) or other union organizers at work, also we do not want you to give our names and addresses to any union. Because we do not want to be bothered at home."

[6/] The Agricultural Labor Relations Act (ALRA or Act) definition of "employer," identical to that of the Wagner Act, includes:

> Any person acting directly or indirectly in the interest of an employer in relation to an [agricultural] employee.

(fn. 6 cont. on p. 5)

Although the two-part test set forth in Vista Verde applies specifically to the type of factual situation present in that case, the "general principles of employer responsibility," i.e., whether employees could reasonably have believed the individual was acting on behalf of the employer, are equally appropriate for "lead" men such as Talactac, (IAM v. Labor Board, supra, 311 U.S. 72, and Knogo Corp. (1982) 265 NLRB No. 130 [112 LRRM 1228]).

Member McCarthy suggests in his dissent in M. Caratan, Inc. (1983) 9 ALRB No. 33 that this Board's use of the "subjective" Vista Verde agency test for anti-union conduct by members of the bargaining unit could effectively preclude the filing of any decertification petition. In fact, however, his fears are entirely unfounded. As we noted in our Decision in Nish Noroian Farms (1982) 8 ALRB No. 25, mere anti-union animus

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(fn. 6 cont.)

The California Legislature also added the instruction that the term be "construe[d] liberally." (Section 1140.4(c).)

The post-1947 (Taft Hartley) definition in the federal act was somewhat tightened to include only:

> Any person acting as an agent of an employer directly or indirectly.
> (29 U.S.C. § 152(2).)

However, as the Vista Verde court noted, while Congress eliminated the more expansive "employer" language in 1947, it simultaneously adopted the provision that "the question of whether specific acts performed were actually authorized or subsequently ratified shall not be controlling." (29 U.S.C. § 152(13).) The California legislature adopted an identical provision in the ALRA. (See section 1165.4.) By seeking to apply the Montgomery Ward agency standard (see infra footnote 7) to all but labor contractors and supervisors, Member McCarthy would effectively repeal this clear statutory mandate.

will not suffice to identify a decertification petitioner as an agent of the employer under the Vista Verde/IAM v. Labor Board test. More than evidence of the employees' subjective belief of complicity or assistance is required; objective circumstances must be established which make the employees' belief reasonable.[7/]

In the instant case, a number of circumstances combined to make it reasonable for Respondent's employees to believe that Talactac was operating on Respondent's behalf in circulating the petition. Whether or not Talactac was a statutory supervisor within the meaning of section 1140.4(j), he was clearly possessed of a special status. He was known as a second foreman by the workers in the crew. He communicated management's work orders to the employees, provided them with boxes, checked their work product, and notified them of poor quality work. On one occasion,

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[7/] As noted by Member McCarthy in his dissent, in some circumstances the national board will not find reasonable belief of employer complicity from passive acquiescence and will require evidence of affirmative participation by the employer. These cases involve conduct of supervisors who are union members and whom the union had expressly consented to include in the bargaining unit. (Montgomery Ward & Co. (1956) 115 NLRB 645 [37 LRRM 1370], enforced (2d Cir. 1957) 242 F.2d 497 [39 LRRM 2685] cert. den. (1957) 355 U.S. 829 [40 LRRM 2680] and Connecticut Distributors v. NLRB (2d Cir. 1982) 681 F.2d 127 [110 LRRM 2789].) The fact that the union had agreed -- albeit improperly, given their supervisorial status -- to include them in the union was the controlling factor in both cases because it showed that "the employees obviously regard him as one of themselves." (Montgomery Ward Corp., supra, 115 NLRB at 647.) In the instant case there was no bargaining unit because there had been no election; thus, the union could not have agreed to include Talactac in the unit. Nor is there any other indication that the employees regarded Talactac as "one of their own." The General Counsel's stipulation that Talactac was not a supervisor does not bind the union or this Board.

he disciplined an entire crew by giving each crew member a ticket because the work was done incorrectly. In addition, the employees observed him obtain paper from foreman Nacua, and heard him state the purpose of the petition. They also observed him soliciting signatures during paid working hours in full view of Respondent's acquiescing supervisors. Unlike the cases cited by Member McCarthy in his dissent, the record in this case clearly establishes both the employees' knowledge of the employer's acquiescence and tacit support and the employer's awareness of Talactac's activity. Respondent herein had every opportunity to disavow conduct which it could so easily foresee would be attributed to it, and its silence could only increase the impression of complicity in the eyes of the employees.[8/] Therefore, we affirm the ALJ's conclusion that Respondent, through the acts of its agent, Renato Talactac, interfered with, restrained, and coerced employees in the exercise of their statutory rights, in violation of 1153(a) of the Act.

We find no merit in Respondent's exception to the ALJ's conclusion that its supervisor, Joe Nagera, unlawfully threatened reprisals against a particular employee and the employees in general during a question-and-answer period conducted by Board agents following a discussion of employee rights under the Act.

The essential facts are not in dispute. Respondent

[8/] While we do not require a Respondent to reprimand or publicly rebuke a nonsupervisory employee engaged in anti-union conduct, where the employees would reasonably infer employer sponsorship, the employer can publicly disavow the effort of anti-union employees without interfering with their 1152 rights.

agreed to permit Board agents to meet with its employees and to explain the employees' rights guaranteed under the Act, provided that one of its supervisors accompany the Board agents at all times. The supervisor was to direct the agents to the various crews and to make certain that the subject matter of the discussion was limited as agreed upon. Board agents met with nearly 600 employees over a two-day period. The sessions were without incident except for one occasion during a meeting with the crew which included Marcial Gonzalez, secretary-treasurer of ARFWU. Pursuant to the established procedure and previous agreement, the Board agent read the ALRB official notice to the gathered employees and asked if there were any questions regarding their rights under the Act. After some questions and further discussion, Marcial Gonzalez, while prefacing a question, began explaining an incident whereby he had been disciplined by Respondent for his union activity. Nagera, believing that Gonzalez had breached the agreement to limit the topics under discussion, ran forward, pointed to Gonzalez and angrily ordered him to cease speaking, adding that otherwise he would be issued a disciplinary ticket and then be fired. As the two men began arguing, the Board agent interceded to settle the matter. Nagera then turned to the 40 assembled workers and shouted at them, "Who of you want Marcial and this Union to visit you in your homes?" The Board agent stopped the interchange and the meeting concluded shortly thereafter.

We affirm the ALJ's finding that, in this context, Nagera's conduct was inherently intimidating and reasonably tended

to interfere with the rights guaranteed under section 1152. At that time, the employees had not been informed of any rules involving limitations on their speech at the meeting. Gonzalez' comments about his personal experience in attempting to exercise the rights just explained by the Board agent were reasonably germane to the prior discussion. Nagera's reaction contained a direct threat to Gonzalez and a direct interrogation regarding the other employees' willingness to participate in protected union activities, which reasonably tended to interfere with employee rights protected by section 1152 of the Act. We therefore affirm the ALJ's finding that those statements constituted violations of section 1153(a) of the Act.

The Subpoena Duces Tecum

On December 4, 1981, the General Counsel served upon Respondent a subpoena duces tecum requesting the production of "all petitions, leaflets, and other written material prepared and circulated by Respondent during August and September 1981, concerning the Anti-Racist Farm Workers Union." Respondent did not file a Motion to Quash the subpoena within five days after service as required by section 20250(b) of our Regulations. The General Counsel moved the ALJ to order enforcement of the subpoena. At the prehearing conference on December 14, 1981, Respondent stated that it had no documents in its possession as described by the subpoena. During the course of the hearing, the uncontradicted testimony of supervisor Nacua indicated that Talactac returned the signed petition to him and that he in turn gave it to supervisor Frank Martin. At the close of the hearing,

General Counsel again sought production of the petition and sanctions for Respondent's earlier noncompliance. Respondent's attorney informed the ALJ that a copy of the petition which was the subject of the hearing was delivered to Respondent's offices, but that it did not fit within the terms of the subpoena, as it was a petition prepared and circulated by employees, not by Respondent. The ALJ ordered Respondent to produce the document and asked all parties to address the issue of subpoena compliance and sanctions in their briefs. A copy of the petition was attached to Respondent's post-hearing brief. The ALJ, in his decision, found that Respondent failed to comply with the subpoena. We affirm that finding. Respondent's argument that producing the document would have been inconsistent with its defense that Talactac was not its agent is not sound. Talactac was alleged to be an agent and a substantial portion of the hearing was devoted to evidence bearing on that allegation. Respondent's production of the document would not have constituted an admission of anything except that the document was in its possession. While we abhor the wilful concealment of this document until after the hearing was closed, we believe that the most appropriate remedy for noncompliance with subpoenas is established by Regulation section 20250(k), which provides that we seek enforcement of subpoenas and contempt for

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noncompliance in superior court before the hearing is closed.[9/] As this request was not timely received by us, we shall order no sanctions.

ORDER

By authority of section 1160.3 of the Agricultural Labor Relations Act (Act), the Agricultural Labor Relations Board (Board) hereby orders that Respondent, V. B. Zaninovich & Sons, its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Aiding or assisting any agricultural employee(s) in the preparation or circulation of any anti-union or pro-union petition(s), or in any other protected concerted activity.

(b) Interrogating any agricultural employee(s) about his/her/their willingness to meet with or support any labor organization.

(c) Threatening any agricultural employee(s) with reprisals for discussing with Board agents his/her/their organizational rights as set forth in Labor Code section 1152.

(d) In any like or related manner interfering

[9/] In certain circumstances, concealment of subpoenaed evidence, especially after denying its possession and thereby avoiding General Counsel's enforcement request, may result in our drawing adverse inferences or striking or precluding testimony or other evidence relating to the issue. (See Bannon Mills (1964) 146 NLRB 611 [55 LRRM 1370]; Hedison Manufacturing Company v. NLRB (1st Cir. 1981) 643 F.2d 32 [106 LRRM 2897], and Gyrodyne Company of America v. NLRB (D.C. Cir. 1972) 459 F.2d 1329 [79 LRRM 2332].) In the instant case, however, given the inartful construction of the subpoena request, such an approach would be inappropriate.

with, restraining, or coercing any agricultural employee(s) in the exercise of the rights guaranteed them by Labor Code section 1152.

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

(a) Sign the Notice to Agricultural Employees attached hereto and, after its translation by a Board agent into all appropriate languages, reproduce sufficient copies in each language for the purposes set forth hereinafter.

(b) Mail copies of the attached Notice, in all appropriate languages, within 30 days after the date of issuance of this Order, to all employees employed by Respondent at any time during the period from August 26, 1981 until August 25, 1982.

(c) Post copies of the attached Notice, in all appropriate languages, for 60 days, in conspicuous places on its premises, the period(s) and place(s) of posting to be determined by the Regional Director, and exercise due care to replace any copy or copies of the Notice which may be altered, defaced, covered, or removed.

(d) Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice, in all appropriate languages, to all of its agricultural employees on company time and property at time(s) and place(s) to be determined 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 the employees may have concerning the Notice and/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 in order to reimburse them for time lost at this reading and during the question-and-answer period.

(e) Notify the Regional Director in writing, within 30 days after the date of issuance of this Order, of the steps Respondent has taken to comply with its terms, and continue to report periodically thereafter, at the Regional Director's request, until full compliance is achieved.

Dated: September 21, 1983

JEROME R. WALDIE, Member

JORGE CARRILLO, Member

MEMBER McCARTHY, Dissenting in Part:

I dissent from the majority's conclusion that Respondent may be held responsible for the antiunion conduct of a rank-and-file employee in spite of an absence of evidence that Respondent participated in similar conduct at times pertinent herein.

It is, of course, a recognized general proposition that an employer who enlists the assistance of employees in opposing a union or supporting the employer violates the Act. (Peerless of America, Inc. (1972) 198 NLRB 982 [81 LRRM 1472]. Here, however, there is no record evidence which would suggest that Respondent had a part in the preparation, sponsorship, or circulation of the antiunion petition which is in issue in this proceeding. (Superior Co., Inc. (1951) 94 NLRB 586 [28 LRRM 1088].) Nor is there any evidence, direct or circumstantial, that employees would have just cause to believe that the antiunion petitioner was speaking and acting for management or that his actions were reflective of Company policy at the time of the relevant events.

(Vista Verde Farms (1981) 29 Cal.3d 307 [172 Cal.Rptr. 720].)

Respondent's supervisor, Chris Nacua, merely complied with a request for "some paper" from employee Renato Talactac who explained to him at the time that some of the workers had decided to sign a petition signifying their opposition to home or field contact by union organizers.[1/] Since the employees were engaged in the lawful exercise of rights granted to them by Labor Code section 1152, neither Nacua's furnishing of the requested blank paper nor his failure to investigate the circumstances surrounding the petition or to interfere with its circulation constitutes a violation of the Act. Indeed, "[s]uch an investigation, in and of itself, might well have been the basis for an unfair labor practice charge." (Connecticut Distributors v. NLRB (2d Cir. 1982) 681 F.2d 127 [110 LRRM 2788].)

I am persuaded that the instant matter is controlled by a long line of decisions by the National Labor Relations Board (NLRB) and federal circuit courts governing situations which are uniquely similar on their facts. For example, in Harrison Steel Castings Co. (1982) 262 NLRB No. 59 [110 LRRM 1424], the employer's secretary-receptionist invited employees to attend an antiunion rally and maintained a roster of those so solicited, ultimately giving respondent's office manager a list of the employees who did not attend the rally. The NLRB affirmed the finding of its Administrative Law Judge (ALJ) who observed that the employee was

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[1/] Implicit in Talactac's statement to Nacua is the suggestion that employees had already decided to initiate a petition and perhaps even that they had designated Talactac their agent for the purpose of implementing that decision.

merely a rank-and-file member of Respondent's office staff who was antiunion and who endeavored to enlist the support of her co-workers in an antiunion demonstration. He concluded that the employee was neither a supervisor nor an agent whose conduct could be attributable to her employer since the antiunion demonstration was not shown to have been inspired or initiated by Respondent.

In Southeast Ohio Egg Producers (1956) 116 NLRB 1076 [38 LRRM 1406], an employee requested and received from the employer information as to the procedures to be followed in obtaining and filing a decertification petition. Such a petition ultimately was typed in the employer's office by a supervisor. The NLRB found that while the employer gave some limited assistance to the employee in filing the petition, "such assistance was given only in response to the petitioner's request" and concluded that the employer had not, as alleged, instigated the petition. In the analogous case of Curtiss Way Corp. (1953) 105 NLRB 642 [32 LRRM 1338], the NLRB held that absent substantial evidence that the employer inspired or fostered a decertification petition, its knowledge that such a petition had been circulated among its employees during working hours is not grounds for dismissing the petition. As the board explained, in Tennessee Coach Co. (1949) 84 NLRB 703 [24 LRRM 1337], such solicitations by an ordinary employee cannot reasonably be construed as having a coercive effect upon fellow employees. Similarly, in Morgantown Full Fashioned Hosiery Co. (1953) 102 NLRB 134 [31 LRRM 1228], the board held that by itself an employer's knowledge of an antiunion petition circulated by its employees is insufficient to establish employer responsibility therefor.

In NLRB V. River Togs, Inc. (2d Cir. 1967) 382 F.2d 198 [65 LRRM 2987], two employees asked the employer's office worker for paper in order to prepare and circulate a petition in opposition to unionization and then enlisted the office worker's assistance in the actual preparation of the petition. They subsequently solicited other employees to sign the petition, during work time and in the presence of two supervisors, and ultimately submitted the signed petition to one of those supervisors in the employer's office. Since the NLRB had not found that the employer had instigated or actively encouraged the preparation and circulation of the petition, the court concluded that the evidence, "... does not fairly support a conclusion that the supervisor's action or inaction created an impression that the petition was company sponsored ...." (NLRB v. River Togs, Inc., supra, at p. 198, 202.)

Apparently rejecting clearly applicable federal precedents, my colleagues contend that although Talactac was not a supervisor, as that term is defined in Labor Code section 1140.4(j), his actions are imputable to his employer because, at all times material herein, employees could reasonably believe that he was acting as Respondent's agent.[2/] However, employee perception

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[2/] The parties' stipulation that Talactac was not a supervisor within the meaning of Labor Code section 1140.4(j) constitutes a conclusion of law not binding upon the Board. I have nevertheless reviewed the entire record and find that it does not support a contrary finding. Talactac's duties, which included giving minor orders or directives, were routine in nature and required no exercise of independent judgment. (Doctor's Hospital of Modesto, Inc. v. NLRB (1973) 489 F.2d 772 [85 LRRM 2228].) Even on the occasion when he issued a disciplinary notice to the crew, he was, as a crew member recognized, doing so not on his own initiative but rather on "orders possibly of [supervisor] Chris Nacua." The ALJ's startling finding that Talatac "had close ties with management" simply is without record support.

must be measured not by the subjective standard my colleague's have chosen to follow in this instance, but rather by "an objective test of affirmative company participation ...." (Connecticut Distributors Inc. v. NLRB (2d Cir. 1982) 681 F.2d 127 [110 LRRM 2789].) In that case, the issue was whether the company could be held responsible, inter alia, for promises of benefits extended by a union member to unit employees in exchange for their signing a decertification petition. The court held that "even if the petitioner was a supervisor, the company was not responsible for his actions, in which it did not participate ...." (Id. at p. 128) As the court explained:

> The cases of Montgomery Ward & Co. [citations]3/ and Nazareth Regional High School v. NLRB [citations]4/ hold that when a supervisor is a member of the union the company is responsible for his circulation of antiunion petitions only if it encouraged, authorized, or ratified -- in other words affirmatively participated in -- the supervisor's activities. (Connecticut Distributors v. NLRB, supra, 681 F/2d 127, 129; emphasis added.)5/

3/ Montgomery Ward & Co. (1956) 115 NLRB 645, 647 [37 LRRM 1370], enforced (2d Cir. 1957) 242 F.2d 497 [39 LRRM 2685] cert. den. (1957) 355 U.S. 829 [40 LRRM 2680].

4/ Nazareth Regional High School v. NLRB (2d Cir. 1977) 549 F.2d 873, 883 [94 LRRM 2897].

5/ In the NLRB's Decision in Connecticut Distributors, Inc., (1981) 255 NLRB 1255 [107 LRRM 1229], the national Board had held the employer responsible for the antiunion activities of a supervisor, also a bargaining unit member, because he had indicated to employees that he was circulating a decertification petition on behalf of management and therefore employees could reasonably believe that he was acting as an agent of the employer in that regard. In reversing the NLRB on that issue, the Court of Appeals ruled that employee perception is meaningless unless based on objective considerations which, in turn, must be founded on actual antiunion conduct by the employer. (Connecticut Distributors, Inc., supra, 681 F.2d 127.)

In the present matter, it is undenied that Respondent refused to submit to the Regional Director a list of its employees' names and home addresses on August 29, the five-day due date for such a list following the August 24 filing of the Notice of Intent to Organize by the Anti-Racist Farmworker's Union (ARFU). But, the relevant unfair labor practice charge, which was filed on August 27, alleged that the Talactac petition had been circulated on or about August 22, 24, and 25, four to seven days before Respondent first indicated any resistance to the Union's organizational notice. In V. B. Zaninovich and Sons (1982) 8 ALRB No. 71, we held that Respondent's failure to comply with the Notice of Intent to Organize constituted unlawful interference with its employees' Labor Code section 1152 rights. Neither in V. B. Zaninovich, supra, 8 ALRB No. 71, nor in the instant proceeding, is there any evidence that Respondent engaged in similar antiunion conduct before or contemporaneously with Talactac's circulation of the disputed petition. Thus, even under the majority's application of Viste Verde Farms, (1981) 29 Cal.3d 307 [172 Cal.Rptr. 720],[6/] there is no basis for finding that Respondent engaged in conduct parallel to that of Talactac's so as to lead employees reasonably to believe that the actions of the petitioner

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[6/] In M. Caratan, Inc. (1983) 9 ALRB No. 33, I fully set forth my views as to why I believe Viste Verde Farms, supra, 29 Cal.3d 307, on its facts, has meaning where it is shown that employers are in a position to prevent or remedy unfair labor practices engaged in by persons hired and placed by them in positions of authority over employees, that is, by labor contractors or supervisors who are not rank and file employees subject to the protections enumerated in Labor Code section 1152.

mirrored antiunion manifestations of management at the time he circulated the petition.

Dated: September 21, 1983

JOHN P. McCARTHY, Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Delano Office, the General Counsel of the Agricultural Labor Relations Board (Board) issued a complaint that alleged that we, V. B. Zaninovich & Sons, had violated the law. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the law by condoning and assisting the circulation of an antiunion petition by one of our employees in August 1981, and by interrogating and threatening to discipline employees who spoke up during a meeting with Board agents concerning their rights under the Act. The Board has told us to post and publish this Notice. We will do what the Board has ordered us to do.

We also want to tell you that the Agricultural Labor Relations Act is a law that gives you and all other farm workers in California these rights:

1. To organize yourselves;
2. To form, join, or help unions;
3. To vote in a secret ballot election to decide whether you want a union to represent you;
4. To bargain with your employer about your wages and working conditions through a union chosen by a majority of the employees and certified by the Board;
5. To act together with other workers to help and protect one another; and
6. To decide not to do any of these things.

Because it is true that you have these rights, 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.

WE WILL NOT hereafter coerce or interrogate our employees by instigating, encouraging, assisting, or condoning the circulation of antiunion petitions.

WE WILL NOT hereafter interfere with our employees' rights, free from Company restraint, to freely discuss with Board agents their rights under the Agricultural Labor Relations Act (Act).

WE WILL NOT threaten to discharge, lay off, or otherwise discriminate against any agricultural employees with respect to his or her job because he or she belongs to or supports the Anti-Racist Farmworkers Union or any other union.

Dated:

V. B. ZANINOVICH & SONS

By: _____
(Representative) (Title)

If you have any questions about your rights as farm workers or about this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 627 Main Street, Delano, California 93215. The telephone number is (805) 725-5770.

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

V. B. ZANINOVICH & SONS

9 ALRB No. 54
Case Nos. 81-CE-177-D
81-CE-195-D
81-CE-196-D

ALJ DECISION

The ALJ found that Renato Talactac, stipulated by the parties not to be a supervisor within the meaning of section 1140.4(j), served as Respondent's agent for the purpose of circulating a petition in opposition to the employer's disclosure to the Union of employees' names and addresses. He concluded that Respondent thereby interrogated employees and coerced them in violation of section 1153(a). In addition the ALJ found that, during a worker education assembly conducted by ALRB agents on Respondent's premises, supervisor Joe Nagera threatened to discharge or take other action against workers who indicated support for the Anti-Racist Farmworkers Union and specifically threatened to discharge Marcial Gonzalez because of his concerted opposition to Respondent's employment policies. The ALJ also found that Respondent had intentionally refused to comply with a subpoena duces tecum by failing to produce the petition but declined to order sanctions since only the Board is vested with the power to compel compliance with subpoenas.

BOARD DECISION

The Board adopted the ALJ's decision regarding circulation of the petition with modifications in the agency analysis, applying the general principles of employer responsibility of IAM v. Labor Board (1940) 311 U.S. 72 [61 S.Ct. 83], rather than the two-part test enunciated in Viste Verde Farms v. ALRB (1981) 29 Cal.3d 307 [172 Cal.Rptr. 720]. The Board also found Nagera's comment at the worker education meeting to constitute a direct threat to Gonzalez and an interrogation of the other employees. Finally, the Board declined to order sanctions for nonproduction of the subpoenaed petition, finding that the most appropriate remedy for noncompliance with subpoenas is established by Regulation section 20250(k), providing for the Board's seeking enforcement of subpoenas and contempt for noncompliance in superior court before the hearing is closed.

DISSENTING OPINION

In dissenting from the majority's conclusion that Talactac circulated the antiunion petition in his capacity as Respondent's agent, Member McCarthy found no evidence, direct or circumstantial, which would establish that Respondent had a part in the sponsorship, preparation, or circulation of the document or that Respondent had engaged in similar conduct so as to lead employees reasonably to believe that Talactac was acting on its behalf. Member McCarthy noted that Talactac, a nonsupervisory employee, was entitled to Labor Code section 1152 rights to engage

in antiunion as well as prounion activity.

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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.

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Agricultural Labor Relations Board
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STATE OF CALIFORNIA

BEFORE THE

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of V. B. ZANINOVICH & SONS, Respondent, v. ANTI-RACIST FARM WORKERS UNION, Charging Party.	)	Case Nos. 81-CE-177-D 81-CE-195-D 81-CE-196-D

APPEARANCES

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On Behalf of Respondent

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On Behalf of General Counsel

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On behalf of Charging Party

DECISION

WILLIAM A. RESNECK
Administrative Law Officer:

STATEMENT OF THE CASE

This case was heard before me in Delano, California, on December 14 and 15, 1981. It involves three unfair labor practice charges filed in August and September, 1981. The First Amended Complaint (hereinafter referred to as "the Complaint") issued on January 26, 1982, incorporating amendments made during the hearing alleges three separate violations of Sections 1152 and 1153 (a) of the Agricultural Labor Relations Act (hereinafter referred to as "the Act"). The charges were filed by the Anti-Racist Farm Workers Union (hereinafter referred to as "the Union") against V. B. Zaninovich & Sons (hereinafter referred to as "VBZ", "Respondent", "Company", or "the Employer").

The unlawful conduct alleged is as follows:

(1) On August 26, 1981, Respondent through Chris Nacua and Renato Talactac, interrogated employees by soliciting employees to sign a petition in opposition to the Union;

(2) On September 3, 1981, Respondent, through Joe Najera, threatened to discharge Marcial Gonzalez because of his concerted opposition to Respondent's employment policies during a presentation by Agricultural Labor Relations Board agents; and,

(3) On September 3, 1981, Respondent through Joe Najera threatened to discharge or take other reprisals against workers who indicated support for the Union.

Respondent, in its Answer and in stipulations made during the hearing, admitted the jurisdictional allegations of the Complaint and the allegations as to the supervisory status of Vincent Zaninovich, Chris Nacua and Joe Najera. Respondent denied that Renato Talactac was an agent acting on its behalf and denied committing any unfair labor practices.

All parties were given a full opportunity to participate, and General Counsel, Employer, and Charging Party were all represented at the hearing. After the close of the hearing, General Counsel and the Employer filed briefs.

Based upon the entire record, including my observations of the demeanor of the witnesses, and after full consideration of the briefs filed by the parties, I make the following:

FINDINGS OF FACT

I. JURISDICTION

The Employer stipulated that it is an agricultural employer within Section 1140.4(c) of the Act, and that the Anti-Racist Farm Workers Union is a labor organization within the meaning of Section 1140.4(f), and I so find.

II. BACKGROUND

The Anti-Racist Farm Workers Union was formed after a group of approximately 50 farm workers assembled in Visalia, California, in August of 1980. On August 14, 1981, the Union filed a "Notice of Intent to Take Access" (G.C. Ex.4). On August 24[1/] the Union sub-

1/ All dates refer to 1981, unless otherwise stated.

mitted 82 signed authorization cards and a "Notice of Intent to Organize" (G.C. Ex. 5).

Union organizers subsequently entered Respondent's property, distributing union literature and speaking to employees. The presence of Union organizers sparked controversies and confrontations with Employer's supervisors. In an effort to defuse the situation, Ricardo Ornelas, ALRB Acting Regional Field Examiner, contacted Respondent's office manager, Rick Widhalm, suggesting that the ALRB conduct worker information sessions on Respondent's property to inform workers of their rights under the Act.

Although Widhalm initially refused, after discussion with other Company representatives, he changed his mind and agreed to Ornelas' proposal. However, he established certain ground rules: namely, that Respondent's representatives accompany the Board agents during the presentations, and that comments or questions be restricted to the matters discussed in the official information bulletin regarding workers' rights under the Act (G.C. Ex. 6). Ornelas responded that it was unusual for representatives of an employer to be present during his presentation, but agreed to the conditions established by Respondent.

Two of the alleged unfair labor practices occurred on September 3 during the presentation by ALRB agents to a group of approximately 40 workers. The third alleged unfair labor practice occurred approximately a week earlier when Respondent's agents allegedly circulated an anti-Union petition.

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III. THE UNFAIR LABOR PRACTICES

A. The Events of September 3

Four percipient witnesses testified as to the events of September 3: Marcial Gonzalez, Secretary-Treasurer of the Union and chief organizer; Joe Najera, Respondent's field supervisor; Ricardo Ornelas, ALRB Acting Regional Field Examiner; and, Salvador Zapien, one of the workers who attended the meeting. The incident basically involved an angry confrontation between Gonzalez and Najera, culminating in Najera's alleged threat to discharge Gonzalez and an alleged interrogation by Najera of the workers present inquiring who supported Gonzalez and the Union. Although all four witnesses emphasized different aspects of the confrontation, their versions are essentially corroborative.

ALRB Board agents and Company supervisors met with the different crews over a two-day period. During the presentation before Gonzalez' crew, Board agent Ricardo Ornelas read the statement concerning workers' rights in English, and Board agent Bea Espinoza read the same notice in Spanish. Ornelas then asked the assembled workers if they had any questions or comments.

Although a dispute exists as to how many workers made questions or comments before Gonzalez spoke, essentially the session went on uneventfully until Gonzalez began to make his comments. Gonzalez essentially stated that if the workers had the right to speak to Union organizers as the notice stated, why did Najera issue him a disciplinary ticket for attempting to exercise that right on a prior occasion. Gonzalez had only been speaking

for approximately 15 to 30 seconds when Joe Najera ran toward him with his right arm outstretched, finger pointing at his face and screaming for him to shut up or he would issue him a disciplinary slip that would cause him to be fired. At Najera's request, Ornelas instructed Gonzalez to limit his remarks to any questions or comments concerning what was read in the notice and motioned for Najera to step back away from Gonzalez. Najera then asked Gonzalez if he would limit his comments as instructed, and Gonzalez' response was a request to be allowed to speak. Najera kept shouting at Gonzalez, seeking assent to the ground rules while Gonzalez attempted to speak.

At some point Gonzalez was able to ask a question whether the Union was supposed to receive a list of all Company employees if they procured 10% of the signatures of the workers on a petition. One of the Board agents responded that the matter was still in litigation. The question apparently infuriated Najera even further, and he turned, arms outstretched, to the assembled workers and asked how many of them wanted to give their name, address, and phone number to Marcial and his Union. Najera was immediately reprimanded by a Board agent for what was considered improper conduct. The meeting thereafter concluded uneventfully.

B. <u>The Circulation of An Anti-Union Petition.</u>

In late August of 1981, supervisor Chris Nacua gave blank sheets of paper to Renato Talactac, who collected signatures on an essentially anti-Union petition. When these signatures were collected, Talactac turned the paper back in to Nacua, who in turn

gave it to Frank Martin, another supervisor. At the hearing General Counsel moved for an order requiring compliance with its Subpoena Duces Tecum requesting Respondent to produce "all petitions, leaflets, and other written material prepared and circulated by Respondent during August and September, 1981 concerning the Anti-Racist Farm Workers Union" (G.C. Ex. 1-F). Respondent stated it had no materials to produce since it had not prepared nor circulated any such documents. During the testimony of Renato Talactac, the identity of this petition and its custody by Respondent's supervisor Frank Martin was disclosed. Accordingly, I requested that Respondent attach copies of that petition to its brief. Respondent complied, and the petition is attached to Respondent's brief as Appendix A and as Exhibit 1 to this Opinion.

General Counsel has moved for sanctions for non-compliance with its Subpoena Duces Tecum, alleging that Respondent wilfully failed to produce documents properly subpoenaed. Respondent contends that the document attached as Exhibit 1 to this Decision was not covered by the Subpoena, and that in any event the Administrative Law Officer has no power to enforce sanctions for non-compliance with the subpoena.

ANALYSIS OF ISSUES AND CONCLUSIONS OF LAW

1. Whether Respondent threatened to discharge Gonzalez because of his concerted opposition to Respondent's employment policies in violation of §1153 (a) of the Act;

2. Whether Respondent threatened to discharge or take other reprisals against workers who indicated support for the Union in violation of §1153 (a) of the Act; and,

3. Whether Respondent interrogated its employees by soliciting employees to sign a petition opposing the Union in violation of §1153 (a) of the Act.

I conclude that Respondent is guilty of all three unfair labor practices charged.

I. The Confrontation on September 3.

Section 1152 of the Act guarantees employees the right, among other things, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection. Section 1153 (a) makes it an unfair labor practice for an agricultural employer to interfere with, restrain, or coerce agricultural employees in the exercise of rights guaranteed in §1152. To establish a §1152 violation General Counsel must prove by a preponderance of the evidence that the Employer engaged in conduct which can reasonably be said to have interfered with the free exercise of employee rights. Nagata Brothers Farm (1979) 5 ALRB No. 39.

The physical interruption by Najera of Gonzalez' comments and his threat to issue a disiplinary ticket and discharge Gonzalez are inherently intimidating acts that have a reasonable tendency to interfere with §1152 rights. General Counsel points out that Gonzalez was merely commenting on rights guaranteed to workers as stated during the ALRB agents' presentation, when Najera

interrupted him in a belligerent and angry manner. Gonzalez was an active Union representative, and Respondent's message was calculated not only to deter Gonzalez but also all other employees in attendance. Moreover, Najera's angry challenge to other workers to indicate their support for the Union made it unmistakably clear that all Union supporters would be subject to the same disciplinary action and threat of dismissal as Gonzalez.

Respondent contends that Gonzalez improperly tried to engage in political campaigning during the ALRB agents' presentation, and that an employer has a legitimate right to restrict employees from engaging in solicitation activities during working time. Respondent contends that Gonzalez went beyond the ground rules of the meeting as established between the ALRB agent and the Employer by referring to alleged illegal actions on the part of Employer rather than asking questions about the Board agents' presentation. Respondent further contends that this general inquiry to the rest of the people in attendance as to how many wished to give their names, addresses, and phone numbers to Marcial and his Union, was not a threatening or coercive statement and that an employer is entitled to express his personal opinion regarding the union.

The evidence here demonstrates that Respondent was guilty of an unfair labor practice. Preliminarily, there is no showing that Gonzalez was aware of the ground rules established between Rick Widhalm, Respondent's office manager, and the Board agents concerning the limitation on questions and comments after

the Board agents' presentation. Moreover, Gonzalez' questions and comments did directly relate to the Board agents' presentation. Ricardo Ornelas, the Board agent involved in the presentation, stated that Gonzalez was not campaigning or making a speech; he felt that his comments were directed to the presentation about the workers' rights to organize. Ornelas testified that when Gonzalez mentioned the incident with the Company that he was referring to the right that workers have to speak to organizers from any union, to sign authorization cards for the union, and to allow workers to be free from questioning by the employer with regard to their union activities (I:112). 2/

Further, Nacua himself admitted that he acted improperly by his statement to the other assembled employees as to whether they wanted to disclose their names, addresses, and phone numbers to Gonzalez (II:42-43).. Nacua admitted in part that he believed he had acted improperly because the ALRB agent immediately told him that he had. However, I also found him to be a candid witness who honestly realized that such conduct was improper.

Respondent cites Arnaudo Bros., Inc. (1977) 3 ALRB No. 78 for the proposition that the confrontation between Najera and Gonzalez did not in itself prove that Respondent threatened the entire crew. However, the context of the situation involves Najera first threatening to discharge Gonzalez and then turning to

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2/ References to the transcript of the proceedings will contain a Roman numeral, either I or II, indicating the transcript volume, followed by the page number of that volume.

the entire crew assembled to see who of them wished to be identified with Gonzalez and his union. Implicit in such conduct was the threat against not only Gonzalez, but anyone else who chose to side with him. Thus, the threat by Najera against Gonzalez and the subsequent reference to the assembled workers occurred contemporaneously, unlike the situation described in Arnaudo Bros.

Respondent also cites Gorman Machine Corp. (1981) 257 NLRB No. 10, where the NLRB failed to find any violation when a foreman referred to union adherents as "bozos" and "illiterates". There the context was that an employee overheard the foreman make the statement to another employee. On such evidence it was concluded that this was merely an expression of the foreman's personal convictions.

Our present case involved a formal meeting with a captive audience of all the workers in one crew. Moreover, in Gorman the denigrating statements were not preceded by an angry shouting confrontation between a known union adherent and the foreman, as was the case here. Therefore, the context of the derogatory reference in our present case is much different from that contained in Gorman.

II. The Circulation of the Anti-Union Petition

There is no dispute that an anti-Union petition was circulated among some of Respondent's employees. The dispute arises as to Respondent's responsibility for the circulation of such petition.

Under the National Labor Relations Act, upon which our

Act is modeled, the circulation of the Petition is not a per se violation. Blue Flash Express Co. (1954) 109 NLRB 591, 34 LRRM 1384; NLRB v. Historic Smithville Inn (3rd Cir. 1969) 414 F.2d 1358, 71 LRRM 2972. However, the polling by employees, absent unusual circumstances, has been found to be a violation of §8 (a)(1) 3/ unless:

> 1. The purpose of the poll is to determine the truth of a union's claim of a majority,
> 2. This purpose is communicated to the employees,
> 3. Assurances against reprisals are given,
> 4. The employees are polled by secret ballot, and
> 5. The employer has not engaged in unfair labor practices or otherwise created a coercive atmosphere.
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> Struksnes Construction Co., Inc. (1967) 165 NLRB No. 102, 65 LRRM 1385, 1386.

None of the criteria which would excuse such activities as stated above has been satisfied by Respondent. Instead, Respondent has engaged in exactly that type of conduct found unlawful by this Board in Tenneco West (1977) 3 ALRB No. 92.

There, an employee found to be an agent of respondent and acting on instructions from his supervisor approached workers and asked them either for their home addresses if they desired a visit from UFW representatives or a written refusal based on their desire not to be so visited. The ALRB, adopting the ALO's findings, held this conduct to be clearly coercive in that employees were in effect being asked to disclose whether they were for or against the union. 3 ALRB No. 92, p.5.

3/ §1153 (a) is modeled after §8 (a)(1).

Here I find the petition is designed to disclose any anti-Union bias. Thus, failure to sign the petition clearly indicates the employee's attitude towards the Union. See also Mel-Pak Ranches (1978) 4 ALRB No. 78.

Respondent further contends that none of its supervisors prepared or circulated the petition, and thus it is excused from liability. Three individuals testified about the circulation of the petition: Rafael Hernandez, a grape picker and not a member of the Union; Salvador Zapien, a grape picker and a member of the Union; and Chris Nacua, a supervisor who gave blank pieces of paper to Renato Talactac so that the workers could use them for a petition. Hernandez testified that he saw Nacua drive up to Talactac and give him a pad and paper, and that Talactac then spoke to him and other workers and asked them to sign if they did not want a union. Hernandez stated that he signed so that he would not be bothered by his foreman. He recalled this paper being circulated at the time when Marcial was going around to organize for his union.

Salvador Zapien corroborated this testimony and stated that he believed he overheard Nacua speak to a group of fellow workers, requesting them to sign a pad that he was carrying in opposition to the Union.

Finally, Nacua denied obtaining the signatures himself but did admit to giving paper to Talactac so that the workers could sign the petition so that they would not be bothered by the Union. He also admitted that the paper was returned to him with signatures on it. He testified that the petition was returned to him since

the employees did not have transportation to deliver it to the ALRB office. He stated that he gave these papers to Frank Martin, another supervisor.

Respondent contends that he has no liability for the circulation of the petition since it was stipulated that Renato Talactac was not a supervisor and that there was nothing in the record to support that Respondent transferred to Talactac the authority to act as agent on its behalf to circulate the anti-Union petition. However, the standard here in judging whether Talactac was an agent on Respondent's behalf is that adopted by NLRB in deciding §8(a)(1) violations: (1) did the employee have close ties with management; (2) did the employee customarily deliver to other employees management's work instructions; and (3) did the company acquiesce in the employees' anti-union efforts. NLRB v. Dayton Motels, Inc. (6th Cir.1973) 474 F.2d 328, 82 LRRM 2651, 2652.

The evidence here discloses that Talactac is an agent as judged by the above criteria. Hernandez testified that Renato is known as the second foreman by the workers in the crew. He gives the workers orders, he provides them boxes when they need them, he checks their grapes and tells workers to do better work if he observes them to be of poor quality. Further, on one occasion he gave the entire crew a ticket because the work was being done wrong (I:119). Clearly, then, Talactac had close ties with management, customarily delivered to other employees management's work instructions, and there is obvious acquiescence by Respondent in Talactac's anti-union efforts.

Respondent cites Morganton Full Fashioned Hosiery Co. (1954) 107 NLRB 1534, where an employer furnished to a group of employees a mailing list used to circulate anti-union statements. The NLRB concluded that the employer was not responsible for the content of the employees' anti-union communications, nor was it under any duty to disavow its employees' protected activities to voice anti-union sentiments.

However, the employer's act there was the mere furnishing of the addresses: the mailings and all other communications took place away from the company's premises and not during work time. Here, the Employer was much more actively involved. Renato Talactac, an employee from whom workers were used to receiving instructions and supervision, actively questioned them on Company time about whether they would sign the anti-Union statement. Thus, our situation is distinguishable from that cited by Employer.

Further, Respondent's reliance on the Administrative Law Officer's decision in Ernest J. Homen (1978) 4 ALRB No. 27 is also misplaced. The appropriate analysis is that recently set forth by the California Supreme Court in Vista Verde Farms v. ALRB (1981) 29 Cal. 3d 307, 322:

> Accordingly, even when an employer has not directed, authorized or ratified improperly coercive actions directed against its employees, under the ALRA an employer may be held responsible for unfair labor practice purposes (1) if the workers could reasonably believe that the coercing individual was acting on behalf of the employer or (2) if the employer has gained an illicit benefit from the misconduct and realistically has the ability either to prevent the repetition of such misconduct in the future or to

> alleviate the deleterious effect of such misconduct on the employees' statutory rights.

In our present case the workers here reasonably could believe that Talactac was acting on behalf of the Employer, and the Employer did gain an illicit benefit from this conduct in determining which workers were anti-Union. Moreover, Employer realistically had the ability to prevent such misconduct. Accordingly, I find the Respondent guilty of the unfair labor practice charged here.

III. Sanctions for Non-Compliance with the Subpoena Duces Tecum

Based on the above discussion I find that Respondent intentionally refused to comply with the Subpoena Duces Tecum by failing to produce the petition which is attached as Exhibit 1 to this Decision. Respondent's purported justification that it had neither prepared nor circulated such a list, and that to admit otherwise would be to contradict its defenses in this hearing, is not persuasive. Such document, which is obviously relevant to the issues in this proceeding, should have been produced with the appropriate disclaimer by Respondent that it contended that it neither prepared nor circulated such a document. But the facts of this case where the petition both originated and ended up in the custody of Respondent's supervisors clearly require Respondent to disclose the existence of such a document in response to that Subpoena.

General Counsel correctly points out that it was prejudiced by the failure of Respondent to produce the document since

it could easily have used the names there to elicit percipient witnesses concerning the circulation and collection of the signatures. In fact, Respondent points out in its brief that General Counsel failed to produce employee witnesses to testify that they were approached by Nacua to sign a petition. Respondent failed to disclose, however, that its own failure to produce evidence which would have led to the discovery of such witnesses was adequate justification for General Counsel's failure to produce them in this hearing.

General Counsel urges that I have the power to cite Respondent for contempt, pointing to Section 20270, which provides that an Administrative Law Officer has the power to cite for contempt any person engaging in disruptive or abusive conduct.[4/]

However, Respondent correctly points out that the Administrative Law Officer's power concerning subpoenas is specifically spelled out in Section 20262, giving the ALO power to grant applications for subpoenas [§20262 (b)]; to rule upon petitions to revoke subpoenas [§20262 (c)]; and to request that the Board seek a

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4/ Section 20270 states:

> Contempt - The administrative law officer shall have the power to cite for contempt or exclude from the hearing any person engaging in disruptive or abusive conduct and, when citing for contempt, shall refer the matter to the Board for decision on the finding of contempt and on appropriate sanctions. Aggravated misconduct, when engaged in my an attorney or other representative of a party, shall be subject to the remedies set forth in section 20820.

court order to compel compliance with the subpoena [§20262 (1)].[5/]

Accordingly, I find that the General Counsel must address its request for sanctions to the Board, which is vested with the power to compel compliance with subpoenas. However, I specifically find that Respondent has failed to comply with the Subpoena Duces Tecum.

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5/ The text of Section 20262 is as follows:

> Administrative Law Officer; Powers - The hearing shall be conducted by an administrative law officer designated by the Board, unless the Board or any member of the Board presides. The duty of the administrative law officer is to inquire fully into the facts as to whether the respondent has engaged in or is engaging in an unfair labor practice as set forth in the complaint or amended complaint. Between the time he or she is designated and the time the case is transferred to the Board the administrative law officer shall have authority, with respect to cases assigned to him or her:
>
> (a) To administer oaths and affirmations;
>
> (b) To grant applications or subpoenas;
>
> (c) To rule upon petitions to revoke subpoenas;
>
> (d)* To rule upon offers of proof and receive evidence pursuant to section 20272;
>
> (e) To regulate the course of the hearing, including the power to exclude any person who is disruptive of the hearing and to cite for contempt pursuant to section 20270;
>
> (f) To hold conferences for the settlement or simplification of the issues by consent of the parties;
>
> (g) To dispose of procedural requests, motions or similar matters, and to dismiss complaints or portions thereof, and to order hearings reopened;
>
> (h) To approve a stipulation voluntarily entered into by the parties;

* Amended effective April 13, 1978.

(i) To make and file decisions in conformity with the Act and the regulations of the Board;

(j) To call, examine, and cross-examine witnesses and to introduce into the record documentary or other evidence;

(k)* To request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof either orally or in writing;

(l) To request that the Board seek a court order to compel compliance with a subpoena; and

(m) To take any other action necessary under the foregoing subsection and authorized by the regulations of the Board.

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* Amended effective April 13, 1978.

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CONCLUSIONS OF LAW

Based on the foregoing, I make the following conclusions of law:

1. V. B. ZANINOVICH & SONS is a California corporation engaged in agriculture, and is an agricultural employer within the meaning of §1140.4 (c) of the Act.

2. ANTI-RACIST FARM WORKERS' UNION, is a labor organization within the meaning of §1140 (f) of the Act.

3. The employer engaged in unfair labor practices within the meaning of §1153 (a) of the Act.

4. The unfair labor practices affected agriculture within the meaning of §1140.4 (a) of the Act.

On the basis of the entire record and on the Findings of Fact and Conclusions of Law, and pursuant to §1160.3 of the Act, I hereby issue the following recommended:

O R D E R

Respondent, its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) Threatening to discharge or take other reprisals, interrogations, or otherwise discriminating against, any agricultural employee in regard to hire or tenure of employment or any term or condition of employment because he or she has engaged in any union activity or other concerted activity protected by Sec-

tion 1152 of the Act.

(b) In any like or related manner interfering with, restraining, or coercing any agricultural employee(s) in the exercise of the rights guaranteed them by Labor Code Section 1152.

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

(a) Sign the Notice to Agricultural Employees attached hereto and, after its translation by a Board agent into appropriate languages, reproduce sufficient copies in each language for the purposes set forth hereinafter.

(b) Mail copies of the attached Notice, in all appropriate languages, within 30 days after the date of issuance of this Order, to all employees employed by Respondent at any time during the period from August 1981 until the date on which the said Notice is mailed.

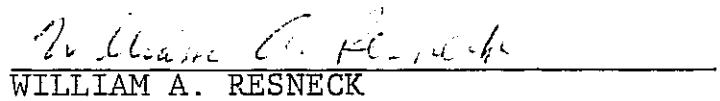
(c) Post copies of the attached Notice, in all appropriate languages, for one year in conspicuous places on its premises, the time(s) and place(s) of posting to be determined by the Regional Director, and exercise due care to replace any copy or copies of the Notice which may be altered, defaced, covered, or removed.

(d) Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice, in all appropriate languages, to its employees on company time and property at time(s) and place(s) to be determined by the Regional Director. Following the reading, the Board agent shall be given the oppor-

tunity, outside the presence of supervisors and management, to answer any questions the employees may have concerning the Notice or employees' rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all non-hourly wage employees in order to reimburse them for time lost at this reading and during the question-and-answer period.

(e) Notify the Regional Director in writing, within 30 days after the issuance of this Order, of the steps Respondent has taken to comply therewith, and continue to report periodically thereafter, at the Regional Director's request, until full compliance is achieved.

Dated: March 15, 1982.



WILLIAM A. RESNECK
Administrative Law Officer.

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Delano Office, the General Counsel of the Agricultural Labor Relations Board issued a complaint that alleged that we had violated the law. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the law by threatening to discharge or take other reprisals against our employees and by interrogating them as to their union sentiments during August and September, 1981. The Board has told us to post and publish this Notice. We will do what the Board has ordered us to do. We also want to tell you that:

The Agricultural Labor Relations Act is a law that gives you and all farm workers these rights:

1. To organize yourselves;
2. To form, join or help unions;
3. To vote in a secret ballot election to decide whether you want a union to represent you;
4. To bargain with your employer to obtain a contract covering your wages and working conditions through a union chosen by a majority of the employees and certified by the Board;
5. To act together with other workers to help or protect one another; and
6. To decide not to do any of these things.

WE WILL NOT interfere with, or restrain or coerce you in the exercise of your right to act together with other workers to help and protect one another.

SPECIFICALLY, the Board found that it was unlawful for us to threaten to discharge Marcial Gonzalez, to interrogate other workers in his crew, and to circulate an anti-union petition. WE WILL NOT hereafter harass, threaten or interrogate any employee concerning union activities.

DATED: _____ V. B. ZANINOVICH & SONS

By: _____
Representative Title

This is an official Notice of the Agricultural Labor Relations Board, an agency of the State of California. If you have a question about your rights as farm workers or about this Notice, you may contact any office of the Agricultural Labor Relations Board.