Richgrove, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

VINCENT B. ZANINOVICH & SONS, INC., a California Corporation, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	Case Nos. 97-CE-34-VI 97-CE-12-VI 25 ALRB No. 4 (September 9, 1999)

DECISION AND ORDER

On May 18, 1999, Administrative Law Judge (ALJ) Douglas Gallop issued a decision in the above-referenced case, finding that Vincent B. Zaninovich & Sons, Inc. (Employer or VBZ) violated section 1153(a) of the Agricultural Labor Relations Act (ALRA or Act). Specifically, the ALJ found that Vincent J. Zaninovich, Vice President of VBZ, implicitly threatened employees with discharge if they again sought assistance from a union. The ALJ dismissed an allegation that the Employer unlawfully laid off and refused to rehire a crew because of its central role in a union organizing campaign. The ALJ concluded that an element of the prima facie case, employer knowledge of the employees' protected activity, was not proven.

Both the Employer and the Charging Party, United Farm Workers of America, AFL-CIO (UFW), timely filed exceptions to the ALJ's decision.

The Agricultural Labor Relations Board (Board) has considered the record and the ALJ's decision in light of the exceptions and briefs submitted by the parties and affirms the ALJ's findings of fact and conclusions of law, and adopts his recommended decision[1] and order.[2]

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[1]Member Barrios: The ALJ indicated a concern that three of the General Counsel's witnesses may have been jointly interviewed (fn. 1) and that no explanation was offered for the General Counsel's failure to call a witness even though he was on the witness list (p. 10). Because I find the record to be insufficient to conclude whether either instance constitutes any impropriety or other irregularity, I decline to join in the ALJ's observations in those matters.

[2] VBZ argues in its exceptions that an appropriate remedy for its violation would consist of nothing more than a posting of a notice to employees. We disagree. There should be no dispute that the Board has wide discretion when determining the particular means by which the effects of an unfair labor practice are to be expunged. (See, e.g., *Nish Noroian Farms* v. *ALRB* (1984) 35 Cal.3d 726, 745 [211 Cal.Rptr. 1]; *Fibreboard Corp.* v. *National Labor Relations Board* (1964) 379 U.S. 203 [85 S.Ct. 398].) Moreover, the determination of remedies is within the domain of policy and therefore peculiarly a matter for the administrative body. *(Pandol & Sons* v. *ALRB* (1979) 98 Cal.App.3d 580, 588 [159 Cal.Rptr. 584].) As this Board's adherence to standard remedies has served to further the purposes and policies of the Act, it is incumbent upon respondents to demonstrate compelling reasons for departing from such remedies. (See *Butte View Farms* v. *ALRB* (1979) 95 Cal.App.3d 961, 967 [157 Cal.Rptr. 476].) Here, VBZ has failed to make such a showing. In particular, VBZ has failed to show that the violation was so "isolated" or "technical" as to warrant departure from standard remedies. *(Nish Noroian, supra,* 35 Cal.3d at p. 747.) We have, however, modified the ALJ's proposed order to reflect the Board's policy of requiring mailing only to those employees who were employed during the one year period beginning with the date of the unfair labor practice.

ORDER

Pursuant to Labor Code section 1160.3, Respondent Vincent B. Zaninovich & Sons, Inc., its officers, agents, labor contractors, successors and assigns shall:

1. Cease and desist from:

(a) Implicitly threatening to discharge employees for seeking assistance from the United Farm Workers of America, AFL-CIO in resolving work-related issues.

(b) In any like or related manner interfering with, restraining or coercing any agricultural employee in the exercise of the rights guaranteed by section 1152 of the Act.

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

(a) Upon request of the Regional Director, sign the attached Notice to Employees embodying the remedies ordered. After its translation by a Board agent into all appropriate languages, as determined by the Regional Director, Respondent shall reproduce sufficient copies of the Notice in each language for all purposes set forth in the remedial order.

(b) Mail copies of the Notice, in all appropriate languages, within 30 days after the date of issuance of a final remedial order, to all agricultural employees employed by Respondent at any time from August 21, 1997 to August 20, 1998.

(c) Post copies of the Notice, in all appropriate

languages, in conspicuous places on Respondent's property for 60 days, the period(s) and place(s) of posting to be determined by the Regional Director, and exercise due care to replace any Notice which may be altered, defaced, covered or removed.

(d) Arrange for a Board agent to distribute and read the 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 non-hourly wage employees in order to compensate them for lost time at this reading and during the question-and-answer period.

(e) Provide a copy of the Notice to each agricultural employee hired to work for Respondent for one year following the issuance of a final order in this matter.

(f) 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.

IT IS FURTHER ORDERED that the remaining allegations contained in the Second Amended Complaint are hereby DISMISSED.

DATED: September 9, 1999

GENEVIEVE A. SHIROMA, Chair

IVONNE RAMOS RICHARDSON, Member

MICHAEL B. STOKER, Member

GLORIA A. BARRIOS, Member

HERBERT 0. MASON, Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Visalia Regional Office of the Agricultural Labor Relations Board (ALRB), the General Counsel of the ALRB issued a complaint that alleged that we, Vincent B. Zaninovich & Sons, Inc., had violated the law. After a hearing at which all parties had an opportunity to present evidence, the Board found that we did violate the law by implicitly threatening to discharge employees for seeking assistance from the United Farm Workers of America, AFL-CIO.

The ALRB has told us to post and publish this Notice. We will do what the ALRB has ordered us to do.

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 a labor organization or bargaining representative;
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.

WE WILL NOT do anything in the future which forces you to do, or stops you from doing, any of the things listed above.

WE WILL NOT implicitly threaten employees with discharge for seeking assistance from the United Farm Workers of America, AFL-CIO in resolving work-related issues.

DATED: VINCENT B. ZANINOVICH & SONS, INC.

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 711 North Court Street, Suite H, Visalia, CA 93291. The telephone number is (559) 627-0995.

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

VINCENT B. ZANINOVICH & SONS, INC., a California Corporation (UFW)

Case Nos. 97-CE-34-VI
98-CE-12-VI
25 ALRB No. 4

Background

On May 18, 1999, Administrative Law Judge (ALJ) Douglas Gallop issued a decision in the above-referenced case, finding that Vincent B. Zaninovich & Sons, Inc. (Employer or VBZ) violated section 1153(a) of the Agricultural Labor Relations Act (ALRA or Act). Specifically, the ALJ found that Vincent J. Zaninovich, Vice President of VBZ, implicitly threatened employees with discharge if they again sought assistance from a union when he told them "well, if the Union is so powerful, then let them give you a job." The ALJ dismissed an allegation that the Employer unlawfully laid off and refused to rehire a crew because of its central role in a union organizing campaign. The ALJ concluded that an element of the prima facie case, employer knowledge of the employees' protected activity, was not proven. The ALJ found that any knowledge of protected activity held by supervisors was not communicated to those who made the decision to lay off and not rehire the crew. Therefore, such knowledge need not be imputed to the Employer. Both the Employer and the Charging Party, United Farm Workers of America, AFL-CIO (UFW), timely filed exceptions to the ALJ's decision.

Board Decision

The Board summarily affirmed the ALJ's decision. In response to VBZ's claim that the Board's standard non-economic remedies would be excessive in this case, the Board stated that such remedies have served to further the purposes of the Act and that it is incumbent upon respondents to demonstrate compelling reasons for departing from such remedies. Here, VBZ failed to show that the violation was so "isolated" or "technical" as to warrant such departure.

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STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:	)	
	)	Case Nos. 97-CE-34-VI
VINCENT B. ZANINOVICH & SONS, INC., a California Corporation,	)	98-CE-12-VI
	)	
Respondent,	)	
	)	
and	)	
	)	
UNITED FARM WORKERS OF AMERICA, AFL-CIO,	)	
	)	
Charging Party	)	

Appearances:

Howard A. Sagasar
Sagaser, Franson, Jamison & Jones
Fresno, California
for Respondent

Thomas P. Lynch
MARCOS CAMACHO, A LAW CORPORATION
Keene, California
for Charging Party

Stephanie Bullock
Visalia ALRB Regional Office
for General Counsel

DECISION OF THE ADMINISTRATIVE LAW JUDGE

Douglas Gallop: This case was heard by me on February 23-26 and March 1-2, 1999, in Delano and Visalia, California. It is based on charges filed by the United Farm Workers of America, AFL-CIO (UFW or Union), alleging that Vincent B. Zaninovich & Sons, Inc. (Respondent) violated sections 1153(a) and (c) of the Agricultural Labor Relations Act (Act). The General Counsel of the Agricultural Labor Relations Board (ALRB or Board) issued a complaint, which has been amended two times (complaint) alleging that Respondent engaged in acts of retaliation against employees and interfered with their rights under §1152. Respondent filed answers denying the commission of unfair labor practices, and asserting affirmative defenses, some of which were dismissed at the prehearing conference, on January 26, 1999. The Union has intervened in these proceedings. The parties filed post-hearing briefs, which have been duly considered. Based on the testimony of the witnesses, the documentary evidence received at the hearing, and the oral and written arguments made by the parties, the following findings of fact and conclusions of law are made:

FINDINGS OF FACT

I. Jurisdiction

Respondent, a California corporation with an office and principal place of business in Richgrove, California, is engaged in the cultivation of grapes, and is an agricultural employer within the meaning of section 1140.4(a) and (c) of the Act. The Union is, and has at all material times herein been a labor organization within the meaning of section 1140.4 (f). Respondent

admits that the 60 individuals named in paragraph 8 of the complaint were agricultural employees under section 1140.4(b). Respondent either admitted in its answer, or stipulated that the individuals named in complaint paragraph 6 have been statutory supervisors as defined by section 1140.4(j).

II. The Statement by Vincent John Zaninovich

Employees Prospero Gonzalez, Maria Carmen Gonzalez and Jose Bernabe testified for General Counsel concerning this allegation.[1] On or about August 21, 1997, Respondent's "juice" crew was ordered to attend a meeting conducted by the foreman, Miguel Munoz. Munoz told the crew they were required to use their knives to remove bunches of grapes, could no longer use sacks to carry boxes of grapes, and needed to fill the gondolas more completely before they left the picking areas. The employees, who were at least in part paid a piecerate, were upset by the prohibition on using the sacks, because this would slow them down. They stated that if the sacks could not be used, they wanted to speak with Vincent John Zaninovich about a higher piecerate. Respondent apparently considered this a work stoppage.

Zaninovich arrived at the field and briefly spoke with Munoz. It was apparent to the employees he was very angry. Rumors spread that Zaninovich had ordered the crew discharged, which were reinforced when he left without speaking with any crew

[1]Respondent's witnesses' versions of the facts reveal few, if any, critical differences as to what took place on or about August 21. Nevertheless, the undersigned was, and is alarmed by testimony that the employee witnesses were jointly interviewed, and declarations were taken in each other's presence.

member, and Munoz then shut down the tractors and left the area. The crew members decided to go to the Union's office in Delano for assistance.[2]

Jose Luis Herrera, who was in charge of the Union's organizing campaign for Respondent, attempted to resolve the problem by calling Respondent's office. He apparently reached Richard Wildham, Respondent's office manager. Herrera was unable to resolve the issue, and suggested the employees go to Respondent's office to speak with Zaninovich.[3]

In addition to the employees, Zaninovich, one of his sons, John, and payroll clerk, Socorro Marin Flores testified as to what took place thereafter at Respondent's office. Of the witnesses, Flores was the most straightforward and comprehensible, probably because she did not speak through an interpreter, and was less biased than Vincent J. Zaninovich and the employees. Accordingly, Flores' version of these events, which actually differs more from Vincent J. Zaninovich's testimony than the

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[2]Inasmuch as Zaninovich did not dispute this account in his testimony, and Munoz was not called as a witness, there is no reason not to believe the employees' testimony.

[3]The employees testified Herrera told them Respondent was refusing to negotiate anything, and they were fired. Although General Counsel called Herrera as a witness, he was not asked what Wildham told him during this conversation, or what he told the employees. Respondent, for its part, did not call Wildham as a witness. Zaninovich testified to what he recalled hearing of the conversation, which did not include Wildham telling Herrera the workers were discharged. Given this state of the record, no determination will be made as to whether Herrera or the employees were told they were discharged.

employees', is credited where conflicts exist.[4]

When the entire crew entered the office, Zaninovich agreed to speak with a few of them, and the above-named employees were selected by the crew. Flores acted as interpreter for the employees and Zaninovich. The employees told him they were upset by the directives Munoz had given them that morning. Zaninovich told the employees he was upset because they were refusing to use their knives, and was concerned about injuries to their fingers and wrists. The employees stated they wanted to use their hands to pick grapes when the bunches were very small, and Zaninovich agreed to this. He also agreed to permit them to continue using their sacks. With respect to the gondola, the employees claimed they did fill it, but the grapes settled when it was moved. It was agreed the employees would return to work the next day.

As the meeting ended, Prospero Gonzalez said the only time Zaninovich listened to the employees was when they went to the Union, and told Flores to translate this for him. In response, Zaninovich told the employees it was not necessary to go to the Union. If they had a problem, they could come speak with him, and if he were away from the office, someone would call him on the radio. Zaninovich then stated, and Flores translated,

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[4]John Zaninovich testified he recalled little of what was said at the meeting. Vincent J. Zaninovich appeared more determined to establish there had been a work stoppage, than to relate what was actually said.

"Well, if the Union is so powerful, then let them give you a job."[5]

III. The Discharge of and Refusal to Recall Crew 15

General Counsel contends that the 60 members of Crew 15, and their foreman Cecilio Cena (a stipulated supervisor), were discharged on October 16, 1997,[6] and Respondent thereafter refused to recall them, in retaliation for their activities in support of the Union. Respondent contends it had no knowledge of the employees' Union activity and, at any rate, the crew was sent home and never recalled because it picked and packed bad grapes for three days, seriously placing Respondent's reputation in jeopardy, and resulting in the expenditure of a large amount of money to correct the problem. The testimony establishes that John Zaninovich made the decision to send the workers home on October 16, and that he and his brother, Ryan Douglas Zaninovich, with advice from their uncle, Marty Zaninovich, a former "field boss," decided not to recall the workers for pruning work in early December.

At the peak of the harvest season, Respondent employs 1600 to 1700 agricultural employees, including about 25 crews of

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[5]Flores and one of the employees testified Zaninovich was smiling when he made this statement, while the other witnesses, including Zaninovich, either stated he was serious, or did not testify as to his demeanor. Based on the state of the record, no determination is made as to his facial expression. Counsel elicited conflicting, and what the undersigned considers irrelevant, subjective reactions by the employees to the meeting.

[6]All dates hereinafter refer to 1997 unless otherwise indicated.

pickers, packers and swampers. The crews harvest a number of fields located in the Richgrove area, and off the Lerdo[7] Highway, some 15 miles to the southwest. Each crew has a foreman, and above the foremen are the supervisors, who generally number five. Each supervisor normally oversees four or five crews, and the crews they supervise rotate as the crews move from field to field. Above the supervisors in authority is the head crew supervisor, and overall authority over the crews is exercised by John, Ryan and their uncle, Mark Zaninovich. During the days up to, and including October 16, John Zaninovich was filling in for his uncle as overall supervisor of the crews working off the Lerdo Highway, which included Crew 15, because Mark Zaninovich was on vacation.

There was some testimony that the Union began organizing Respondent's employees in 1995, or even earlier. Most of the testimony, however, related to Union activity in 1996 and 1997. As noted above, Jose Luis Herrera was the Union representative in charge of this organizing campaign. Herrera would assign an employee representative for each crew being organized, who would be given authorization cards to distribute. Herrera indicated that the Union considers cards signed more than six months to a year in the past to be invalid to support a showing of interest, so employees may be asked to sign cards in succeeding years.

The employee representative for Crew 15 was Jesus Ochoa

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[7]Lerdo is incorrectly referred to as "Lairdo" in the transcript. Apparently, the transcriber misunderstood the undersigned's spelling of the name, and the transcript is hereby corrected in this respect.

Guerra, Sr. (Ochoa, Sr.). His sons, Raul and Jorge, along with Jesus Sanchez and Victor Martinez were also actively supporting the Union. They obtained signatures on Union authorization cards in 1996 and 1997. In addition, at the Union's request, Ochoa, Sr. attempted to find out the names the employees were listed under in Respondent's records. He did this by carrying a grape box lid in the fields, and asking the crew members what name they worked under. He would then write the names on the box lid.

The testimony concerning the extent of this activity appears exaggerated, particularly on the part of Ochoa, Sr., who claimed he tried to solicit card signers "almost every day" during the 1997 harvest season, and would collect one or two signatures "every day." The authorization cards, when finally produced pursuant to the undersigned's request, showed a total of 48 employees who signed one or more cards which were turned in by Ochoa, Sr.[8] Of these, 15 do not appear in the complaint as having been on Crew 15 as of October 16. Fourteen of the cards are dated in 1996, mostly in January. Only two are dated in 1997, and the rest are undated. Some of the employees who signed the undated cards testified they signed in 1997, and the parties stipulated that additional employees would also testify that they signed in 1997.

The Union conducted monthly organizing meetings in 1997, commencing in March or April. Only about 40-60 employees would

[8]This does not mean Ochoa, Sr. obtained all of these cards. Other employees testified they obtained cards, and then turned them over to Ochoa, Sr.

attend, but perhaps two-thirds of these would be from Crew 15.[9] On the other hand, employees on Crew 15 were clearly not the only ones soliciting and signing authorization cards, since Herrera testified that as of October 16, he had about 400 signed cards, which he felt were current enough to submit to the ALRB for an election.

The employee witnesses testified that they did their best to conceal their card soliciting and name collecting from supervisors, even posting lookouts. For some reason, this concern purportedly did not extend to wearing Union buttons, which four crew members testified they openly did in 1997. Of these, it appears three wore them at work sporadically and/or over a brief time period. Raul Ochoa testified he wore a button two or three days per week throughout the 1997 harvest.

Raul Ochoa testified that Crew 15 foreman, Cecilio Cena saw him wearing the button, and told him if "the Company" saw him, he would be fired. Other employees, including Ochoa Sr., testified that Cena told them he knew they were organizing for the Union, and he thought the Union was good. Cena allegedly warned them that if the company found out they were signing cards, or organizing, they would be discharged. Ochoa Sr.'s prehearing declaration says nothing about Cena warning crew members that they might be discharged. Raul Ochoa testified that Cena told him if

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[9]Some of these employees passed out flyers announcing the meetings at stores in shopping centers. Employees were also informed of the meeting by telephone. No evidence was presented that supervisory employees were aware of these activities in 1997.

Respondent's supervisors saw them organizing, "they're going to tell you something," casting further doubt on the allegation.

Although appearing on General Counsel's witness list, Cena was not called as a witness to corroborate this and other critical testimony, and no explanation was given for the failure. In addition, General Counsel does not allege these statements purportedly made by Cena to the crew members, as unfair labor practices.

With respect to observations of the Union button by supervisors, Raul Ochoa initially testified they would just pass by and would not even approach him. On somewhat leading examination, he contended that supervisor Dominador Angeles would check his grapes twice daily at times he was wearing the button. Angeles, in his testimony, denied ever seeing any buttons worn by Crew 15 employees and, in fact, denied knowledge of any Union activity in that crew.

Although they attempted to hide their card-related activities, some employee witnesses contend that Ochoa, Sr. was caught carrying cards and the box lid by two supervisors, Angeles and Antonio Mendez Castro (Mendez), on separate occasions in 1997. Ochoa, Sr. admits he tried to conceal the cards, and turned the box lid so the names were not visible, but claimed he was too late. Victor Martinez testified that Ochoa, Sr., in fact, hid the box lid as soon as he saw Mendez in the area. Both Mendez and Angeles purportedly questioned Ochoa, Sr. as to what he was doing and appeared angry. Ochoa, Sr. testified that Mendez got on his

radio, after questioning him, and spoke with someone. In his pre-hearing declaration, however, Ochoa, Sr. attributed the radio call to Angeles, and not Mendez. Jorge Ochoa also claimed Mendez spoke on the radio, but Jose Antonio Cisneros, Raul Ochoa and Victor Martinez did not, the latter being specifically asked if Mendez did anything before he left the area.

Angeles allegedly told Ochoa, Sr. he believed he was organizing something, and then became embroiled in an argument with Cena, who is Angeles' "compadre." Angeles then "peeled off" in his vehicle. According to Ochoa, Sr., Cena later told him Angeles knew he was leading the organizing drive which, as noted above, was not corroborated by Cena. Mendez and Angeles deny these incidents took place, or any knowledge of Ochoa, Sr. carrying around authorization cards or a grape box lid.

General Counsel and the Union presented additional evidence concerning Respondent's knowledge of the Union campaign in general. The most damaging of this testimony came from former forelady, Otelia Herrera, who admitted she was aware of Union activity among Crew 15 members, since they had solicited her support. For example, Crew 15 employees, in 1996 (the year is based on the circumstances described by Herrera), gave her a Union flyer concerning a meeting at 40 Acres, which is the Union's office in Delano, California. Herrera told Ryan Zaninovich about the flyer, but did not tell him who had given it to her, or who was conducting the meeting. Zaninovich did not directly deny this incident, but testified that someone, perhaps a supervisor, had

given him a flyer put out by the Union. Respondent produced the flyer he believes he received, which was apparently distributed in February 1996, and called for Respondent's employees to join in a protest against another employer.

According to Herrera, Ryan Zaninovich told the foremen, at a supervisors' meeting in 1997, to look for employees who were causing problems, like organizing for the Union. If they saw employees doing this, they should report it to him, so he could get rid of them. Again, Cena, who normally would have been present at such a meeting, was not called to corroborate Herrera's testimony, and Ryan Zaninovich, Angeles and Mendez all denied such a statement was ever made. Respondent also contends Herrera is biased, because she resigned after being demoted, and then filed a gender discrimination charge against Respondent, which was dismissed. Although Herrera appeared to be an honest witness and, if anything, seemed hesitant to testify against her former employer, it is somewhat difficult to credit this testimony under the circumstances set forth above. Nevertheless, for the purposes of this Decision, her testimony will be assumed truthful.

Herrera further testified that months later, they were discussing the employee unrest taking place, which Herrera believes resulted in a wage increase.[10] Angeles stated, "Leave them (alone). Let them do what they want. The year next, they're

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[10]Herrera was far from clear as to exactly what was said prior to Angeles' comment. She testified the employees were rebelling and organizing for the Union, but did not state that the word, "Union," was said during this incident.

going to see what is going to happen." Angeles denied making this statement. Assuming Herrera should again be credited, it is unclear what employee conduct Angeles was referring to, or what he meant concerning the following year.

The Union is affiliated with a radio station, known as "Radio Campesina," which can be received in Respondent's fields. Many employees listen to this station while working, and the broadcasts are in Spanish. According to Ochoa, Sr., Union meetings were announced over the station "all day" in 1997. Jose Luis Herrera testified that several announcements of the meetings were made, without specifying the frequency. Witnesses testified that other references were made on the station to Respondent and some of its supervisors.

The evidence shows that Angeles, who speaks and understands Spanish as a second language, is regularly in the fields, checking from crew to crew. John Zaninovich, who understands some Spanish, and Ryan Zaninovich, who understands little Spanish, spend less time in the fields. Both use interpreters when engaging in extended conversations with employees. Ryan Zaninovich acknowledged that supervisors had advised him Respondent had been mentioned on Radio Campesina, and he unsuccessfully monitored the station to see if he could hear this for himself. John Zaninovich testified he has listened to Radio Campesina and has heard Respondent's name, but could not understand what else was said. He also testified he has seen Radio Campesina bumper stickers on employees' vehicles for several

years, but does not identify this with pro-Union sentiment. John Zaninovich denied hearing announcements of Union meetings over the radio.

In an effort to impeach the latter's testimony, the Union called Enrique Hernandez Briseno (Hernandez), who initially testified that both John and Mark Zaninovich were present at pre-work supervisors' meetings during which the radio was on, and Radio Campesina made announcements concerning Respondent. The comments were purportedly translated or explained to them by the bilingual supervisors. Hernandez's testimony was generally vague as to the specifics of these announcements and notably, twice during his testimony, he stated he was not certain if both John and Mark were present during one or both of the broadcasts. According to Hernandez, the broadcasts occurred in October 1996 and January 1997. The most specific information provided concerning the October 1996 broadcast was that something was said about organizing Respondent's employees to obtain a contract. Hernandez claimed the January 1997 broadcast announced a meeting of Respondent's workers, which is curious, since Jose Luis Herrera testified Union meetings did not begin in 1997 until March or April.

Several witnesses were called by General Counsel to testify concerning a statement purportedly made by employee Ignacio Garibay. Most notably, although the Union called Garibay on an unrelated matter as a rebuttal witness, he was not called as part of General Counsel's case in chief, to establish he made the

statement. The gist of the allegation is that Garibay was suspended and moved to another grew by John Zaninovich for challenging Cena to a fight. Mark Zaninovich and Angeles were also present, along with most of Crew 15. According to Ochoa, Sr. and two of his sons, after John Zaninovich questioned Garibay concerning his conduct (through an interpreter), and informed him of his suspension, Garibay purportedly told the crew, with the supervisors still at close range, that this showed the employees needed to bring in the Union.

John Zaninovich and Angeles denied hearing this statement, while Mark Zaninovich was not called as a witness. One of General Counsel's witnesses, Jose Antonio Cisneros, was present during the incident, but did not corroborate the making of the statement and, as noted above, Garibay was not asked his version of what occurred.

John and Ryan Zaninovich denied any knowledge of Union activity in Crew 15. Respondent, without explanation, failed to call Marty Zaninovich, concerning his knowledge of Union activity. The brothers acknowledged awareness of the juice crew incident in 1997, including the crew's seeking assistance from the Union. They also admitted Respondent, along with other area growers, was concerned about Union organizing in 1996, and for this reason included a lesson on access regulations in its supervisor training class that year. They testified that on rare occasions, they had seen employees wearing Union buttons, but could not place them with any member of Crew 15.

The evidence, even with the shortcomings noted above, demonstrates that Herrera and Cena, both statutory supervisors as of October 1997,[11] were aware of the crew's Union activity. Given Angeles' proximity and frequent contact with the crew, the substantial, albeit flawed evidence concerning his knowledge or suspicions of these activities and his own flaws as a witness, it is found that, contrary to his denials, Angeles believed that at least Ochoa, Sr. was helping to organize for the Union.[12] Mendez, on the other hand, generally appeared to be a more credible witness than Ochoa, Sr., and his supporting witnesses. Given the conflicts in the witnesses' testimony and Ochoa Sr.'s declaration, noted above, it would clearly be wrong to find the evidence shows that Mendez spoke with anyone over the radio concerning the incident attributed to him, assuming it took place at all. Even crediting the testimony that Mendez questioned Ochoa, Sr. as to what he was doing, it is admitted that Ochoa, Sr. was actively trying to conceal both the cards and the names

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[11]Although Herrera is not listed in the complaint as a supervisor, and Respondent was not asked to stipulate as to her status, it is clear she possessed and exercised the same authority as Cena. The finding of knowledge by Cena does not also constitute a finding that he warned crew members they would be discharged if Respondent's managers learned of their protected activities.

[12]Angeles conveniently admitted observing Union activity, such as authorization cards being signed, on other crews, but not Crew 15. Although not discussed in detail herein, Angeles' testimony concerning his conduct on October 16 conflicts not only with that of several employee witnesses, but with John Zaninovich's testimony as well. Finally, Angeles was not truthful on the collateral issue of a conversation he engaged in with Raul Ochoa prior to testifying.

written on the box lid. Therefore, the most that has been shown is that Mendez believed Ochoa, Sr. was engaging in some type of prohibited activity, not necessarily related to the Union.[13]

The critical issue, however, is whether John, Ryan or Marty Zaninovich were aware of organizational support or activity in Crew 15, since they made the adverse decisions. John and Ryan Zaninovich have denied such knowledge, while Marty Zaninovich did not testify. At the outset, it is noted that while most of this proceeding has been devoted to Crew 15, Respondent is a large employer, and supervision by these individuals extended to as many as 1,700 employees in about 25 crews. Thus, Crew 15 constituted a small portion of the workforce, and in the absence of evidence to the contrary, would have normally occupied a small amount of their attention.

The only evidence suggesting direct knowledge of Crew 15 Union activity by John or Ryan Zaninovich is that one or both may have been in the fields when one or more crew members were wearing Union buttons, and John Zaninovich's presence when Garibay allegedly made the statement concerning organizing. Given the sporadic frequency which the buttons were worn, the relatively brief time John and Ryan Zaninovich spent in the fields, and the size of the workforce, their testimony denying any specific recall regarding button-wearing in Crew 15 is neither surprising nor

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[13]The evidence is unclear whether the Mendez incident took place during lunch, a break, or during work time. General Counsel does not contend the entire crew was discharged and not recalled based solely on Ochoa, Sr.'s protected activities.

patently false. Testimony regarding the wearing of Union buttons in other crews logically supports an inability to focus on such sporadic activity by a few members of Crew 15. Furthermore, as Respondent points out, the observance of Union buttons worn by a few crew members would not reasonably create an impression of Union support by the crew as a whole.

The prima-facie evidence regarding the Garibay incident is suspect, in that neither Garibay nor Cisneros testified that Garibay made the statement. Furthermore, the alleged statement was in Spanish and directed to the crew. Given the tendency of Ochoa, Sr. and some of the other employee witnesses to exaggerate, the testimony concerning the proximity of the Zaninoviches to Garibay should not be taken at face value. Finally, even if the statement was made, the Zaninoviches may not have understood it, and it was a call to organize, not an alert that organizing had been taking place. Such a call, by an angry employee being removed from the crew, would not necessarily establish knowledge of Union activity by Crew 15, even if the Zaninoviches heard and understood what Garibay said. Given this scenario, the denials of John and Ryan Zaninovich as to direct knowledge of Union activity in Crew 15 will be credited.

It must also be determined whether knowledge of Union activity was acquired indirectly. It has been established that forepersons Herrera and Cena, and supervisor Angeles were aware of Union activity in Crew 15. It will also be assumed that, contrary to his denial, Ryan Zaninovich did instruct the foremen and

supervisors to report organizational activity to him, so he could get rid of the employees. While demonstrating animus, such a statement does not per se establish knowledge. Herrera credibly testified she did not identify anyone from Crew 15 to Ryan Zaninovich. Cena, given his warnings to the crew members and pro-Union sentiment, would have hardly been the one to report them to management.

Although Angeles' credibility is suspect, there are good reasons to believe he did not report any Union activity in Crew 15 to his superiors. First of all, the evidence primarily establishes his awareness of one Union activist, Ochoa, Sr., and possibly the occasional wearing of Union buttons by a few others. Secondly, why would Angeles want to risk the position of his "compadre," Cena, and potentially disrupt, or lose the entire crew, which had been performing satisfactorily? Indeed, the testimony concerning Angeles' argument with Cena, assuming this occurred, indicates his desire to resolve the issue directly with him, and not to bring it to the attention of higher management. With respect to Mendez, the evidence is inconclusive as to what he observed, if anything, and fails to establish that he reported any Union activity to higher management.

The remainder of the evidence regarding knowledge of Union activity primarily relates to the organizing campaign in general, and not Crew 15. Other than establishing a background under which management might begin looking for activists, such evidence does not directly support the prima facie case, but might

collaterally affect the credibility of witnesses. At the outset, the most open Union activity in 1997 was engaged in by another crew, during the Vincent J. Zaninovich incident. In addition, given the number of current authorization cards in the possession of the Union, if supervisors were reporting card solicitation to Respondent's managers, they probably would have been hearing about other crews as well.

With respect to the radio announcements, both John and Ryan Zaninovich admitted some knowledge that Respondent was the subject of comment. The evidence regarding knowledge, from those announcements, of organizing and Union meetings was simply too vague and conflicting upon which to make a finding in General Counsel's favor. Inasmuch as the meetings were only conducted on a monthly basis, and the announcements were in Spanish, it is entirely possible that none of the decision-makers heard about them directly, and there is insufficient evidence to show any of them were informed by others of such announcements.

Otelia Herrera's testimony regarding distribution of flyers in 1996 is insufficient to establish knowledge of Union activity in 1997. In any event, she did not connect Crew 15 members with the flyers when she spoke with Ryan Zaninovich. Similarly, the instruction of supervisors and foremen concerning access tends to show some anticipation of Union organizing activity in 1996, which Respondent's witnesses admitted, but does not necessarily show a continued anticipation in 1997.

Given all the factors presented in this case, the best

that can be said for General Counsel's evidence is that John and/or Ryan Zaninovich, contrary to their denials, might have learned of the 1997 organizing activities in Crew 15. While the undersigned does not consider their credibility wholly reliable, at least under the assumed facts,[14] there was nothing in their demeanor to suggest dishonesty on this issue and, to their credit, they admitted certain facts which they reasonably knew were against Respondent's interest. Set against the largely inferential nature of General Counsel's evidence, and the many flaws therein, there is enough direct and circumstantial corroboration to credit their denials.

ANALYSIS AND CONCLUSIONS OF LAW

Section 1152 of the Act guarantees agricultural employees the right, inter-alia, to form, join and assist labor organizations. Statements which reasonably tend to interfere with, restrain or coerce employees in the exercise of their rights under §1152 violate section 1153(a). The National Labor Relations Board has held that by suggesting employees find employment from other sources, in response to their protected activities, an employer implicitly threatens their discharge, should they

[14]By way of example, since it is being assumed Otelia Herrera's testimony was truthful, Ryan Zaninovich's denial of what was attributed to him must be considered untruthful. Assuming he was untruthful on that point, this does not necessarily mean all of his testimony should be discounted, and the record as a whole supports his denial of knowing the covert activities in Crew 15. John Zaninovich's testimony concerning the condition of the grapes packed by Crew 15 prior to their discharge appeared exaggerated, particularly when he claimed the crew packed "tons" of rotten grapes. Again, a lack of candor on one issue does not automatically result in disbelieving all of a witness' testimony.

continue to exercise their statutory rights. Thus, statements similar to that made to the juice crew representatives by Vincent J. Zaninovich have been found unlawful. Jenny-0 Foods. Inc. (1991) 301 NLRB 305, at pages 332-333 [137 LRRM 1180]; Edy's Grand Ice Cream (1997) 323 NLRB 683, at pages 695-697 [157 LRRM 1211]; Mack's Supermarkets. Inc. (1988) 288 NLRB 1083, at page 1091 [130 LRRM 1439]; Howard and Roberta Feldman Corporation d/b/a L.A. Baker Electric (1983) 265 NLRB 1579 [112 LRRM 1328].

Zaninovich's reference to the employees seeking work from the Union came directly after he had advised them to come to him with their problems, rather than to the Union. Although it has not been established that Wildham told Jose Luis Herrera, by telephone, the employees had been discharged, the credited facts from the events of that morning establish that the employees reasonably believed they had lost their jobs. Under these circumstances, the statement unlawfully coerced employees to avoid dealing with the Union. Said conduct is not, as Respondent contends, so trivial as to warrant no remedy. Therefore, Respondent violated section 1153(a).

It is unlawful for an agricultural employer to retaliate against employees for engaging in Union activities. In order to establish a prima facie case, General Counsel must establish that the employee(s) engaged in such activities, Respondent knew or believed the employees were so engaged and the adverse action was motivated, at least in part, by the protected conduct. Where the alleged retaliation is a refusal to rehire, General Counsel is

required to show the employee(s) applied for reinstatement at an appropriate time, unless the circumstances relieve the employee(s) of that obligation. E.W. Merritt Farms (1988) 14 ALRB No. 5.

General Counsel has established that members of Crew 15 engaged in Union activities in 1996 and 1997, such as attending Union meetings, wearing Union buttons, and circulating and signing Union authorization cards. The evidence further establishes that three supervisory employees, Otelia Herrera, Cena and Angeles, were aware of at least some of these activities.

Knowledge of protected activity by a supervisor is imputed to the employer, as an entity, unless it is shown that the decision-maker(s) of the adverse action were unaware of the activity at the time the decision was made. George Lucas & Sons (1985) 11 ALRB No. 11, (1987) 13 ALRB No. 4; Arco Seed Co. (1985) 11 ALRB No. 1; William Warmerdam, Individually, and doing business as Warmerdam Packing Co. (1998) 24 ALRB No. 2, at footnote 3; E.W. Merritt Farms, supra, at ALJD, pages 59-70; Woodline Motor Freight. Inc.. et al. (1986) 278 NLRB 1141 [122 LRRM 1355]; Emery Worldwide, a Division of Consolidated Freight Corp. (1992) 306 NLRB 318 [140 LRRM 1152]; Cardinal Hayes Home for Children (1994) 315 NLRB 583 [74 LRRM 1241],[15] John Zaninovich made the decision

[15]The Court of Appeals, Fifth Circuit, has held that the National Labor Relations Board is not permitted to mechanically impute the knowledge of a supervisor to the decision-maker(s). Rather, it must be shown, through direct or circumstantial evidence, that the supervisor communicated his knowledge to the decision-maker (s). NLRB v. McCullough Environmental Services. Inc. (CA 5, 1993) 5 F.3d 923 [144 LRRM 2626]. Respondent contends this is the Board's position as well, citing, inter-alia, Warmerdam Packing Co.. supra, which, in fact, expressly follows

to send the employees home for the harvest season on October 16, 1997. He has been credited in his denial of knowledge as to Union activity by Crew 15.

John, Ryan and Marty Zaninovich made the decision not to recall the crew, and foreman Cena. Ryan Zaninovich has also been credited in his denial of knowledge,[16] but Marty Zaninovich was not called as a witness. Although Respondent should have called Marty Zaninovich to support its contentions, the evidence shows that John and Ryan held the actual positions of authority to make the decision, and called in their uncle for advice, rather than by necessity. There is no evidence establishing knowledge of Crew 15's protected activity by Marty Zaninovich. Under these circumstances, Respondent's failure to directly rebut any required inference of knowledge for that one individual will not result in a finding of employer knowledge.

Since Respondent has shown that its decision-makers did not have knowledge of the employees' Union activities, the

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the National Labor Relations Board's policy, requiring the employer to rebut the implication that knowledge of union activity by foremen is passed on to higher management. Respondent also contends the Ninth Circuit is in accord with the Fifth Circuit's position, citing *a* 30-year old case, Santa Fe Drilling Co. v. NLRB (CA 9, 1969) 416 F.2d 725, at pages 731-732. The undersigned is unpersuaded that the cited text establishes this posture by the Ninth Circuit.

[16]As noted above, even assuming Ryan Zaninovich instructed foremen to report Union activity to him so he could get rid of the employees, this does not establish knowledge of Crew 15's Union activity, or necessarily require discrediting his denial of such knowledge. The evidence establishes that none of the supervisors alleged to have known about these activities reported them to Ryan or John Zaninovich.

allegations regarding their discharge and refusal to reinstate, along with the allegations concerning foreman Cena, shall be dismissed. Since the prima facie case has not been established, no final conclusions are reached concerning Respondent's other defenses, or whether foreman Cena would have otherwise been entitled to be protected under the Act.[17]

REMEDY

Having found that Respondent violated §1153(a) of the Act by implicitly threatening to discharge employees for seeking the Union's assistance, I shall recommend that it cease and desist therefrom and take affirmative action designed to effectuate the policies of the Act.

In fashioning the affirmative relief delineated in the following order, I have taken into account the entire record of these proceedings, the character of the violations found, the nature of Respondent's operations, and the conditions among farm workers and in the agricultural industry at large, as set forth in Tex-Cal Land Management, Inc. (1977) 3 ALRB No. 14.

On the basis of the entire record, the findings of fact and conclusions of law, and pursuant to section 1160.3 of the Act, I hereby issue the following recommended:

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[17]Although no conclusion is reached as to whether Respondent's evidence was legally sufficient to rebut a prima facie case, had one been established, it is undisputed that a substantial amount of substandard grapes were picked and packed by Crew 15. Under these circumstances, Respondent's defense cannot be considered so specious as to require discrediting the testimony concerning lack of knowledge.

ORDER

Pursuant to Labor Code §1160.3, Respondent Vincent B. Zaninovich & Sons, Inc., its officers, agents, labor contractors, successors and assigns shall:

1. Cease and desist from:

(a) Implicitly threatening to discharge employees for seeking assistance from the United Farm Workers of America, AFL-CIO in resolving work-related issues.

(b) In any like or related manner interfering with, restraining or coercing any agricultural employee in the exercise of the rights guaranteed by section 1152 of the Act.

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

(a) Upon request of the Regional Director, sign the attached Notice to Employees embodying the remedies ordered. After its translations by a Board agent into all appropriate languages, as determined by the Regional Director, Respondent shall reproduce sufficient copies of the Notice in each language for all purposes set forth in the remedial order.

(b) Mail copies of the Notice, in all appropriate languages, within 30 days after the date of issuance of a final remedial order, to all agricultural employees employed by Respondent at any time from August 21, 1997 until the date of the mailing of the notice.

(c) Post copies of the Notice, in all appropriate languages, in conspicuous places on Respondent's property for 60

days, the period (s) and place (s) of posting to be determined by the Regional Director, and exercise due care to replace any Notice which may be altered, defaced, covered or removed.

(d) Arrange for a Board agent to distribute and read the 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 non-hourly wage employees in order to compensate them for lost time at this reading and during the question-and-answer period.

(e) Provide a copy of the Notice to each agricultural employee hired to work for Respondent for one year following the issuance of a final order in this manner.

(f) 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.

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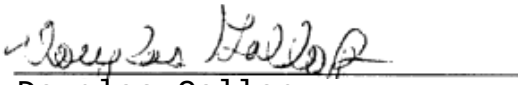
IT IS FURTHER ORDERED that the remaining allegations contained in the Second Amended Complaint are hereby DISMISSED.

Dated: May 18, 1999



Douglas Gallop,
Administrative Law Judge

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Visalia Regional Office of the Agricultural Labor Relations Board (ALRB), the General Counsel of the ALRB issued a complaint that alleged that we, Vincent B. Zaninovich & Sons, Inc., had violated the law. After a hearing at which all parties had an opportunity to present evidence, the Board found that we did violate the law by implicitly threatening to discharge employees for seeking assistance from the United Farm Workers of America, AFL-CIO.

The ALRB has told us to post and publish this Notice. We will do what the ALRB has ordered us to do.

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 a labor organization or bargaining representative;
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.

WE WILL NOT do anything in the future which forces you to do, or stops you from doing, any of the things listed above.

WE WILL NOT implicitly threaten employees with discharge for seeking assistance from the United Farmworkers of America, AFL-CIO in resolving work-related issues.

DATED: VINCENT B. ZANINOVICH & SONS, INC.

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 711 North Court Street, Suite H, Visalia, CA 93291. The telephone number is (209) 627-0995.

This is an official notice of the Agricultural Labor Relations Board, an agency of the State of California.

DO NOT REMOVE OR MUTILATE