STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

VINCENT B. ZANINOVICH & SONS, A CALIFORNIA CORPORATION, Respondent, and UNITED FARM WORKERS OF AMERICA, Charging Party.	)	Case Nos. 06-CE-62-VI, 06-CE-63-VI, 06-CE-65-VI, 06-CE-66-VI, 06-CE-67-VI, 06-CE-68-VI, 06-CE-69-VI, 06-CE-70-VI, 06-CE-71-VI 34 ALRB No. 3 (June 30, 2008)

DECISION AND ORDER

This case is before the Agricultural Labor Relations Board (ALRB or Board) on exceptions to the attached decision issued December 27, 2007 by Administrative Law Judge (ALJ) Douglas Gallop. The complaint, as amended, alleged that Vincent B. Zaninovich & Sons (Employer) violated section 1153(a) of the Agricultural Labor Relations Act (ALRA) by threatening and coercing employees during the course of an election campaign[1] and by constructively discharging two employees.

Based in large part on credibility determinations, the ALJ found several violations based on threats of discharge and bankruptcy, as well as other threats of job

[1]The results of the election were as follows: 425 votes for the United Farm Workers of America (UFW), 773 votes for No Union, and 91 Unresolved Challenged Ballots. No election objections were filed.

loss. The ALJ also found that the Employer unlawfully told employees to remove UFW buttons. Other allegations of unlawful threats and interrogations were dismissed. The constructive discharge allegations were dismissed, based on a finding that the harassment, threats, and other misconduct suffered by the targeted employee did not meet the legal threshold for constructive discharge. This finding made it unnecessary to address his wife's derivative constructive discharge claim. The harassment of the employee, however, was found to be sufficiently serious to constitute a violation of section 1153(a). The Employer timely filed exceptions to the ALJ's decision, arguing that the Board should overturn all findings of violations. The UFW filed exceptions arguing that the ALJ erred in not finding merit in the constructive discharge allegation.

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

DISCUSSION

Credibility Determinations

All of the Employer's exceptions, except for the objection to the scope of remedies as punitive, center on the claim that the ALJ's credibility determinations should be disregarded because they are merely conclusory and not based on any examination of corroborating or contradictory evidence. The Employer admits that the case by its nature depends on an evaluation of conflicting testimony and, thus, must largely be based on credibility resolutions. However, the Employer argues that the credibility resolutions in this case are so deficient that they do not warrant the deference normally afforded to such

determinations.[2] In making this argument, the Employer relies heavily on the Board's decision in *S. Kuramura, Inc.* (1977) 3 ALRB No. 49, where the Board disregarded the ALJ's findings, including his credibility resolutions. The Board did so because the ALJ's decision consisted of nothing more than a list of conclusory findings without any evaluation of the evidence. His credibility resolutions consisted merely of a statement that, after considering the demeanor of the witnesses and the manner and character of their testimony, the testimony of the General Counsel's witnesses was not credible.

The present case bears no resemblance to *S. Kuramura, Inc.* Here, the ALJ evaluated the testimony in light of the evidentiary record as a whole, discussed the consistency and plausibility of the testimony in light of uncontested or admitted facts, and made individualized observations concerning each witness's demeanor.[3] Therefore, there is no basis for deviating from the normal standards of deference afforded to

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[2] The Board will not disturb credibility resolutions based on demeanor unless the clear preponderance of the evidence demonstrates that they are in error. (*P.H. Ranch* (1996) 22 ALRB No. 1; *Standard Drywall Products* (1950) 91 NLRB 544.) In instances where credibility determinations are based on things other than demeanor, such as reasonable inferences, consistency of witness testimony, or the presence or absence of corroboration, the Board will not overrule the ALJ's credibility determinations unless they conflict with well-supported inferences from the record considered as a whole. (*S & S Ranch, Inc.* (1996) 22 ALRB No. 7.)

[3] In a related argument, the Employer asserts that, because in its view the ALJ did not properly resolve conflicts in testimony, the state of the record is simply diametrically opposed testimony. As a result, the Employer argues, the General Counsel has failed to carry its burden of proof. It is true that in a circumstance where there is no reasonable basis for determining the relative credibility of testimony that is in direct opposition, the burden of proof would not be carried. But that is a rare circumstance not present here. In this case, the ALJ did find a reasonable and sufficient basis for resolving conflicts in the testimony via well-supported credibility determinations. Therefore, the burden of proof was carried.

credibility determinations, nor any basis in light of those standards for disturbing those determinations. Accordingly, we affirm the findings and conclusions excepted to by the Employer.

Constructive Discharge and Harassment of Valentin Gonzalez and Constructive Discharge of Margarita Gonzalez

The UFW's exceptions center on the argument that the verbal abuse and unwarranted physical contact inflicted on Valentin Gonzalez by supervisors were enough to support a conclusion that Mr. Gonzalez had been constructively discharged. The ALJ found that the General Counsel established that Valentin Gonzalez, who had worked for the Zaninovich operation for three years, was subjected to disrespectful conduct because of his protected Union activities and that those protected activities were known to Respondent. However, the ALJ concluded that the evidence failed to establish that Valentin Gonzalez' working conditions were rendered intolerable or that he was forced to quit, finding that the verbal harassment was not enough to establish a constructive discharge. The ALJ did conclude that the verbal abuse, unwelcome physical contact, and threats that bad grapes would be "found" in boxes of grapes picked and packed by Mr. Gonzalez and his wife did constitute unlawful harassment of Mr. Gonzalez in violation of section 1153(a). The ALJ did not directly address Margarita Gonzalez's derivative claim of constructive discharge in which she claimed that, by constructively discharging Mr. Gonzalez, she, too, had been constructively discharged since she relied on Mr. Gonzalez for transportation to and from work.

We affirm the ALJ's findings of fact and conclusions of law dismissing the constructive discharge claim and concluding that Mr. Gonzalez had been unlawfully harassed under section 1153(a), and we dismiss Mrs. Gonzalez's derivative constructive discharge claim as well. It is clear that the harassment and threats directed at Mr. Gonzalez were due to his union involvement and may have been intended to cause him to quit. The only issue is whether Mr. Gonzalez's working conditions had become so difficult or unpleasant such that a reasonable person would have been justified in resigning.

The ALRB has consistently applied the "reasonable person" standard in constructive discharge claims. (See generally *M. Caratan, Inc*. (1978) 4 ALRB No. 4 (holding that it was "reasonable and foreseeable" that employees would quit rather than perform work which injured their hands and which they were assigned to do because of their union activity).) Mr. Gonzalez's situation did not present a "Hobson's Choice" constructive discharge, as he was never given an explicit or implied choice between his involvement in concerted, protected activity and continued employment. (*Intercon I (Zercom) and Int'l Brotherhood of Electrical Workers* (2001) 333 NLRB 223, n.3.) Nor was his actual job made substantially more oppressive such that a reasonable person would have felt compelled to leave employment. (See, e.g., *L.E. Cooke Co*. (1982) 8 ALRB No. 56 (assignment of employee to tree tying work known to be physically taxing, due to her union activities, constituted constructive discharge).) It is important to note, however, that had Mr. Gonzalez remained on the job and continued to be harassed, physically touched in an unwelcome manner, or, particularly, had the threats to make

union supporters want to leave work and to "find" bad grapes in the boxes of union supporters progressed further from words to actions, a different conclusion may well have been warranted. In light of the strict standard outlined above, we are compelled to conclude that at the time Mr. Gonzalez left work the adverse conditions he faced had not yet reached the legal threshold for constructive discharge.

Remedy

The ALJ determined in the present case that the common array of notice remedies were appropriate to ameliorate the effects of the Employer's unfair labor practices. Thus, in addition to a cease and desist order, the remedy includes mailing a copy of the Notice to Employees to all agricultural employees, posting the Notice for 60 days, providing a copy of the Notice to all agricultural employees hired for one year following the issuance of the Order, and arranging for a Board agent to distribute and read the Notice, in all appropriate languages, to employees on (paid) company time, with an opportunity for questions outside the presence of supervisors and management.

The Employer excepts to these remedies, arguing that they are overbroad and burdensome and, thus, punitive rather than remedial. The Employer suggests that an appropriate remedy would consist solely of the requirement that the Notice be posted for 60 days. The Employer relies primarily on *M.B. Zaninovich, Inc.* v. *ALRB* (1981) 114 Cal.App.3d 665, where the court held that the same remedies, in the context of that case, were overbroad and punitive. In *M.B. Zaninovich, Inc.*, the employer was found to have committed a violation when it failed to rehire three employees who were covered by a settlement agreement. The employer unreasonably and erroneously assumed, without

further inquiry, that the three workers had long before received offers of reinstatement and had failed to act on them.

The court in *M.B. Zaninovich, Inc.* relied heavily on the fact that directly after the commission of the unfair labor practice the three affected employees went elsewhere to look for work and did not talk with any of their former co-workers about the refusal to rehire. The key passage from the court's opinion is the following:

> In the typical case, where the employer's illegal conduct is visible to others or is so flagrant in nature that it reasonably may be presumed that knowledge of the incident will spread among other employees (both present and future), the Board's remedies will be upheld by the reviewing court. What we say only is that in the context of the particular facts of this case such a remedy exceeds the board's statutory authority because it bears no rational, convincing relationship to the unfair labor practice.

(*Id.*, at pp. 689-690.)

In *Nish Noroian Farms* v. *ALRB* (1984) 35 Cal.3d 726, the California Supreme Court approved the Board's notice remedies after finding that the violations were neither "isolated" nor "technical." Further, the court noted that the mailing requirement was properly designed to reach both past and present employees who might have learned of the employer's conduct and that the Board may assume from experience that a reading requirement was necessary to dispel the effects of conduct among illiterate workers.

In the present case, the Employer attempts to analogize to the situation in *M.B. Zaninovich, Inc.* by pointing to the fact that the unlawful conduct found in this case was directed at only four of thirty-two crews that the Employer utilized during the harvest season. However, the analogy is not convincing. *M.B. Zaninovich, Inc.* involved

peculiar facts reflecting that word of the unlawful conduct would not have spread to other employees. The passage from that case cited above, as well as the California Supreme Court's later pronouncements in *Nish Noroian Farms*, *supra*, 35 Cal.3d 726, illustrates the narrowness of the holding in *M.B. Zaninovich, Inc*.

The present case stands in stark contrast. While the evidence introduced involved unlawful conduct directed at four crews, these are the types of circumstances recognized by the court in *M.B. Zaninovich, Inc.* where it would be reasonable to presume that word of the conduct would be spread among other employees. This is particularly true because the unlawful conduct occurred in the midst of an ongoing union organizing campaign. Moreover, the evidence showed a pattern of conduct, particularly by Ryan and John Zaninovich, rather than an isolated occurrence. In sum, the instant case does not involve an "isolated or technical" violation and, thus, the remedies proposed by the ALJ are appropriate.

In this case we have found that several supervisors made numerous unlawful threats and harassed union supporters. We find the harassment of Valentin Gonzalez, while not sufficient to constitute a constructive discharge, to be particularly serious. Accordingly, in addition to the notice remedies proposed by the ALJ, in this instance we find it appropriate to require that a separate notice reading be conducted among the Employer's current supervisors. The Board has broad discretion in fashioning remedies that will effectuate the purposes of the ALRA, (*Jasmine Vineyards, Inc. v. ALRB* (1980) 113 Cal. App. 3d 968, 982), as long as they are not beyond the authority given the Board by section 1160.3 (*United Farm Workers v. ALRB* (1995) 41 Cal.App.4th

303, 322) and bear a rational, convincing relationship to an unfair labor practice. (See generally *M.B. Zaninovich v. ALRB*, *supra*, 114 Cal. App.3d 665, 689.)

We find that a cease and desist order coupled with a notice reading to the employees would be insufficient to put the Employer's supervisors on notice of the unlawful behavior. For this reason, and to ensure that the supervisors have the necessary knowledge to avoid engaging in similar unlawful conduct in the future, we order that a separate notice reading be conducted among the current supervisors of the Employer on company (paid) time, with a question-and-answer period out of the presence of other employees and upper level management personnel. For the purposes of this notice, "supervisors" shall include current farm labor contractors, foremen, assistant foremen, and any other personnel directly hired or provided by farm labor contractors who hold equivalent positions.

ORDER

Pursuant to section 1160.3 of the Agricultural Labor Relations Act (Act; Lab. Code § 1140, et seq.), the Agricultural Labor Relations Board (Board) hereby ORDERS that Respondent, Vincent B. Zaninovich and Sons, A California Corporation, its officers, agents, labor contractors, successors and assigns shall:

1. Cease and desist from:

(a) Threatening its agricultural employees with discharge or other loss of employment, if they join, support or assist a union to be their collective bargaining representative;

(b) Directing agricultural employees to remove union buttons or other insignia, without a valid business justification for doing so;

(c) Threatening to impose more onerous working conditions on union supporters, or otherwise harassing them in retaliation for their union activities; or

(d) 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 that are deemed necessary to effectuate the policies of the Act:

(a) Upon request of the Regional Director, sign the attached Notice to Agricultural Employees and, after its translation by a Board agent into all appropriate languages, reproduce sufficient copies in each language for the purposes set forth below;

(b) Post copies of the attached Notice to Agricultural Employees, in all appropriate languages, in conspicuous places on its premises, for 60 days, the period(s) and place(s) to be determined by the Regional Director, and exercise due care to replace any Notice which has been altered, defaced, covered or removed. Pursuant to the authority granted under section 1151, subdivision (a) of the Act, give agents of the Board access to its premises to confirm the proper posting of the Notice;

(c) Upon request of the Regional Director, provide the Regional Director with the dates of its next peak season. Should the peak season have already begun at the time the Regional Director requests peak season dates, inform the Regional Director of when the present peak season began and when it is anticipated to end, in

addition to informing the Regional Director of the anticipated dates of the next peak season;

(d) Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice to Agricultural Employees, in all appropriate languages, to all agricultural employees of Respondent, on company time and premises, at time(s) and place(s) to be determined by the Regional Director. Following the reading, the Board agents shall be given the opportunity, outside the presence of supervisors and management, to answer any questions the employees may have concerning the Notice or their rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all non- hourly wage employees in the bargaining unit in order to compensate them for time lost during the reading of the Notice and the question-and-answer period;

(e) Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice to Supervisors, in all appropriate languages, to all supervisors of Respondent, on company time and premises, at time(s) and place(s) to be determined by the Regional Director. "Supervisors" shall be defined as set forth in the accompanying Decision. Following the reading, the Board agents shall be given the opportunity, outside the presence of other employees and upper level management personnel, to answer any questions the supervisors may have concerning the Notice or employee rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all non-hourly wage supervisors in order to

compensate them for time lost during the reading of the Notice and the question-and-answer period;

(f) Mail copies of the attached Notice to Agricultural Employees, in all appropriate languages, within 30 days after the date this Order becomes final or when directed by the Regional Director, to all agricultural employees employed by Respondent at any time during the period August 15, 2006 to August 14, 2007 at their last known addresses;

(g) Provide a copy of the Notice to Agricultural Employees, in all appropriate languages, to each agricultural employee hired to work for Respondent during the twelve-month period following the date this Order becomes final;

(h) Provide a copy of the Notice to Supervisors, in all appropriate languages, to each supervisor, as defined in the accompanying Decision, hired to work for Respondent during the twelve-month period following the date this Order becomes final; and

(i) Notify the Regional Director in writing, within thirty days after the date this Order becomes final, of the steps Respondent has taken to comply with its terms. Upon request of the Regional Director, Respondent shall notify the Regional Director periodically thereafter in writing of further actions taken to comply with the

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terms of this Order. Upon the request of the Regional Director, provide any records necessary to verify compliance with the terms of this Order.

3. It is further ordered that all other allegations in the complaint, as amended, are hereby Dismissed.

DATED: June 30, 2008

GUADALUPE G. ALMARAZ, Chair

GENEVIEVE A. SHIROMA, Member

CATHRYN RIVERA-HERNANDEZ, Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed at the Visalia Regional Office of the Agricultural Labor Relations Board (ALRB), the General Counsel of the ALRB issued a complaint alleging that we had violated the law. After a hearing at which all parties had an opportunity to present evidence, the ALRB found that we had violated the Agricultural Labor Relations Act (Act) by interfering with, restraining and coercing employees in the exercise of their rights under the Act.

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 the following 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 ALRB;
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 you have these rights, we promise that:

WE WILL NOT threaten agricultural employees with discharge or other loss of employment if they join, support or assist a union to be their collective bargaining representative.

WE WILL NOT direct agricultural employees to remove union buttons or other insignia without a valid business justification for doing so.

WE WILL NOT threaten to impose more onerous working conditions on union supporters, or otherwise harass them, in retaliation for their union activities.

WE WILL NOT, in any like or related manner, interfere with, restrain or coerce employees from exercising their rights under the Act.

DATED: _____ VINCENT 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 ALRB. One office is located at 1642 W. Walnut Avenue, Visalia, California. 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

NOTICE TO SUPERVISORS

After investigating charges that were filed at the Visalia Regional Office of the Agricultural Labor Relations Board (ALRB), the General Counsel of the ALRB issued a complaint alleging that we had violated the law. After a hearing at which all parties had an opportunity to present evidence, the ALRB found that we had violated the Agricultural Labor Relations Act (Act) by interfering with, restraining and coercing employees in the exercise of their rights under the Act. Under the law, we are responsible for the actions of our agents and supervisors, who include those such as farm labor contractors, foremen, and assistant foremen.

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 farm workers in California the following rights:

1. To organize themselves;
2. To form, join or help a labor organization or bargaining representative;
3. To vote in a secret ballot election to decide whether they want a union to represent them;
4. To bargain with their employer about their wages and working conditions through a union chosen by a majority of the employees and certified by the ALRB;
5. To act together with other workers to help and protect one another; and
6. To decide not to do any of these things.

Supervisors do not have these rights under the law; however, supervisors may not be disciplined for refusing to interfere with or deny these rights.

Because agricultural employees have the rights listed above, we promise that:

WE WILL NOT threaten agricultural employees with discharge or other loss of employment if they join, support or assist a union to be their collective bargaining representative.

WE WILL NOT direct agricultural employees to remove union buttons or other insignia, without a valid business justification for doing so.

WE WILL NOT threaten to impose more onerous working conditions on union supporters, or otherwise harass them, in retaliation for their union activities.

WE WILL NOT, in any like or related manner, interfere with, restrain or coerce employees from exercising their rights under the Act.

DATED: _____ VINCENT B. ZANINOVICH & SONS

By: _____
(Representative) (Title)

If you have any questions about the rights of farm workers or about this Notice, you may contact any office of the ALRB. One office is located at 1642 W. Walnut Avenue, Visalia, California. 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
(United Farm Workers of America)

34 ALRB No. 3
Case No. 06-CE-62-VI, et al.

Background

On December 27, 2007, Administrative Law Judge (ALJ) Douglas Gallop issued a decision in which he found that Vincent B. Zaninovich & Sons (Employer) violated section 1153(a) of the Agricultural Labor Relations Act (ALRA) by making threats of discharge and bankruptcy, as well as other threats of job loss, during the course of an election campaign. The ALJ dismissed an allegation of constructive discharge, finding that the harassment, threats, and other misconduct suffered by the targeted employee did not meet the legal threshold for constructive discharge. The Employer filed exceptions to the ALJ's decision, arguing that the Board should overturn all findings of violations. The United Farm Workers of America (UFW) filed exceptions arguing that the ALJ erred in not finding merit in the constructive discharge allegation.

The results of the election were as follows: 425 votes for the UFW, 773 votes for No Union, and 91 Unresolved Challenged Ballots. No election objections were filed, therefore the validity of the election was not at issue.

Board Decision

The Board affirmed the ALJ's findings and conclusions. The Employer's exceptions largely were dependent on the claim that the ALJ's credibility determinations were merely conclusory and not based on any examination of corroborating or contradictory evidence. The Board rejected that argument, finding that the ALJ evaluated the testimony in light of the evidentiary record as a whole, discussing the consistency and plausibility of the testimony in light of uncontested or admitted facts, and made individualized observations concerning each witness's demeanor. Therefore, the Board found no basis for disturbing the credibility determinations. With regard to the allegation of constructive discharge, the Board found that the harassment and threats directed at Valentin Gonzalez were due to his union involvement and may have been intended to cause him to quit. However, in light of the strict standard for such claims, the Board concluded that at the time Mr. Gonzalez left work the adverse conditions he faced had not yet reached the legal threshold for constructive discharge. In light of the findings that supervisors made numerous unlawful threats and harassed union supporters, the Board found it appropriate, in addition to the notice remedies proposed by the ALJ, to require that a separate notice reading be conducted among the Employer's current supervisors and that notices be given to supervisors hired during the ensuing year.

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STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:	)	
	)	**Case Nos.** 06-CE-62-VI
VINCENT B. ZANINOVICH & SONS,	)	06-CE-63-VI
a CALIFORNIA CORPORATION,	)	06-CE-65-VI
	)	06-CE-66-VI
	)	06-CE-67-VI
Respondent,	)	06-CE-68-VI
	)	06-CE-69-VI
	)	06-CE-70-VI
and	)	06-CE-71-VI
	)	
	)	
UNITED FARM WORKERS**,**	)	
	)	
	)	
Charging Party.	)	

Appearances:

Francisco T. Aceron, Jr. and Joseph M. Mendoza
Visalia ALRB Regional Office
For General Counsel

Howard A. Sagasar and Joshua S. Alipaz
Sagasar, Jones & Helsley
Fresno, California
For Respondent

Mario Martinez
Marcos Camacho, A Law Corporation
Bakersfield, California
For the Charging Party

DECISION OF THE ADMINISTRATIVE LAW JUDGE

DOUGLAS GALLOP: I heard this unfair labor practice case at Visalia, California on September 24, 25 and 26, and October 1, and 2, 2007.

The Charging Party (or Union), United Farm Workers, filed charges alleging that Vincent B. Zaninovich and Sons, a California Corporation (hereinafter Respondent) violated section 1153(a) and (c) of the Agricultural Labor Relations Act (hereinafter Act) by threatening, restraining and coercing agricultural employees in the exercise of their statutory rights, and by constructively discharging Valentin (spelled Valentine in the transcript) and Margarita Gonzalez Ordonez (Gonzalez) in retaliation for their Union and other protected concerted activities. The General Counsel of the Agricultural Labor Relations Board (ALRB or Board) issued a complaint alleging said violations.[1] Respondent filed an answer denying the commission of unfair labor practices, and setting forth affirmative defenses. The Charging Party has intervened in this proceeding. After the hearing, the parties submitted post-hearing briefs, which have been duly considered.

Upon the entire record in this case, including the testimony of the witnesses, the documentary evidence received at the hearing, the parties' briefs and other arguments made by counsel, I make the following findings of fact and conclusions of law.

[1] At the hearing, General Counsel moved to amend the complaint to allege several additional allegations of unlawful restraint and coercion. Some of the motions to amend were granted, while others were denied. General Counsel also withdrew paragraphs 25-28 of the complaint. In its' brief, the Charging Party contends that many additional unfair labor practices should be found, based on the evidence. None of these additional violations was alleged by General Counsel in the complaint or at the hearing. Furthermore, the Charging Party had ample opportunity to give its' input on this issue, prior to General Counsel's amendments. Inasmuch as General Counsel controls the prosecution of these cases, the additional alleged violations will not be considered herein.

FINDINGS OF FACT

Jurisdiction

Respondent admits the filing and service of the charges, its' status as an agricultural employer within the meaning of section 1140.4(c) of the Act, the labor organization status of the Charging Party under section 1140.4(f), and that Valentin and Margarita Gonzalez were at all material times agricultural employees under section 1140.4(b). Respondent admits the supervisory status of the individuals so alleged in the complaint under section 1140.4(j), with the exception of Concepcion Meza and Rosa Mendez. The allegations involving Meza have been withdrawn.

Background

Respondent produces table grapes, and during the peak harvest season has over 2,000 workers in its' fields. Respondent uses its' own employees, and those of labor contractors, including Chester T. Longboy and Hector Nunez. The undersigned takes judicial notice that the Union filed a Notice of Intent to Take Access to Respondent's fields on August 8, 2006.[2] Judicial notice is also taken that the Union filed a Petition for Representation on September 19, in Case No. 06-RC-2-VI, which was withdrawn, and shortly thereafter refiled, in Case No. 06-RC-3-VI. An election was conducted on September 29, which the Union lost. No objections were filed as to the conduct of the election.

Ryan Zaninovich, Respondent's General Labor Manager, testified that he spoke with most of the crews on two occasions between the time the Charging Party's

[2] All dates hereinafter refer to 2006 unless otherwise indicated.

representatives began meeting with employees, pursuant to the Notice of Intent to Take Access, and the filing of the representation petitions. He did this because he was concerned that workers were voicing complaints about their jobs, and he believed the organizing campaign was gaining in momentum. Zaninovich admittedly encouraged employees not to sign Union authorization cards at these meetings. Zaninovich testified he also wanted to counter the Union's "lies," although he did not specify what he meant by this. He met with most of the crews again shortly before the election.

John Zaninovich, Respondent's Sales Manager, testified that he met with many of the crews before the petitions were filed, but did not discuss Union-related matters with the workers. At the time, he wanted the employees to become familiar with him, since his job duties involved little contact with field workers. After the petitions were filed, he spoke with somewhere between six and 15 crews on one or more occasions, in order to encourage them to vote against the Union. Respondent also hired labor relations consultants, who conducted meetings with the workers prior to the election.

The Alleged Coercive Statements

Manuel Antonio Cruz is employed by Respondent as a picker/packer. He testified that Ryan Zaninovich spoke with his crew in early August.[3] Zaninovich initially used then-foreman, Robert Gomez, as an interpreter. When Gomez was unable to perform this function, employees Vicky and then Magnolia translated what Zaninovich said. According to Cruz, Zaninovich told the crews that if the Union came in, Respondent

[3] Some of General Counsel's witnesses had difficulty distinguishing between the Zaninovich brothers, because they did not know them. The evidence as a whole, in most cases, clearly establishes which of the brothers was speaking. Contrary to Respondent's contention, the undersigned does not consider this highly significant in determining the witnesses' credibility.

would declare bankruptcy, or change crops by removing the grape vines and planting almond trees. Cruz and his brother, Alfredo Cruz Alvarenga (spelled Albaronga in the transcript), testified that their belief is that fewer workers are needed to produce almonds than grapes.

Alfredo Cruz Alvarenga was also employed on Gomez's crew, and is still employed by Respondent. Although he recalled Ryan Zaninovich speaking to the crew in mid to late August, it is apparent the brothers were testifying concerning the same meeting. Alvarenga also testified that Zaninovich told the crew that if the Union came in, Respondent would declare bankruptcy or cut down the grape vines and plant almond trees.

Ryan Zaninovich denied ever telling employees that Respondent would declare bankruptcy or replace the grape vines with almond trees if the Union came in. On cross-examination, Zaninovich testified he did inform employees, at some unidentified time or times, that a grower, Nash de Camp, had gone out of business. He also testified that at one point, when workers asked him why their wages had not been increased, he told them Respondent was not making any money, and the only growers showing a profit were almond growers. Roberto Ruiz Elias (Ruiz), then a crew member, but later the crew's foreman, also denied the statements attributed to Zaninovich by General Counsel's witnesses, as did Gomez/Ruiz crew employees, Vicky Velasco and Magnolia B. Sanchez. Gomez, who no longer works for Respondent, did not testify.

It is well established that the testimony of current employees which contradicts statements by their supervisors is likely to be particularly reliable. *Flexsteel Industries,*

Inc. (1995) 316 NLRB 745, at footnote 1 [149 LRRM 1174]. On the other hand, both the California and United States Supreme Courts have stated:

> [E]mployees are more like than not, many months after a card drive and in response to questions by company counsel, to give testimony damaging to the union, particularly when company officials have previously threatened reprisals for union activity.[4]

Applying these general considerations to the instant case, both Cruz and Alvarenga were very impressive witnesses from the standpoint of their demeanor, testifying in a clear and serious manner. Ryan Zaninovich inspired less confidence, and appeared to be concealing the facts. Notably, on direct examination, he gave virtually no details of the meetings he conducted, and additional facts had to be pried out on cross-examination. In this regard, the undersigned does not believe that counsel simply refreshed his recollection. Ruiz, whose alleged unfair labor practices, once he became foreman, will be discussed below, also did not impress from the standpoint of his demeanor. Furthermore, Ruiz denied that John Zaninovich even encouraged employees not to vote for the Union during his meetings with employees, a fact admitted by Zaninovich. Similarly, employees Velasco and Sanchez, aside from their almost non-existent recall of the meetings, were clearly slanting their testimony, in effect denying that Ryan Zaninovich said anything about the Union organizing campaign during his meeting with their crew.

Respondent also points to a flyer it distributed to some employees a few days before the election as supporting its' position. The flyer states, "VOTE NO," and is followed by a photograph of one of Respondent's workers. The flyer states that the

[4] *Harry Carian Sales v. ALRB* (1985) 39 Cal. 3d 209, at page 235, footnote 22, [216 Cal.Rptr. 688] citing *NLRB v. Gissel Packing Company,* et al. (1969) 395 U.S. 575 [89 Sup.Ct. 1918].

employee worked for Nash de Camp, and that company went out of business after the Union came in. The flyer cites a one-paragraph quotation from a voluminous Union document, which acknowledges that 24 of 29 companies where the Charging Party has been certified are no longer in business, for various reasons. The Spanish-language translation on the reverse incorrectly lists bankruptcy as one of the reasons given. The flyer then states that Respondent intends to stay in business with or without a Union, and again asks employees to vote no, because they already have jobs with Respondent.

Ryan Zaninovich testified he found the quotation on a Union website, and decided to have it disseminated to show that the Charging Party is not a successful organization. Contrary to this testimony, even with the disclaimer, it is clear that the purpose of this document was to create concerns among employees that they might lose their jobs if the Union represented them. In any event, the flyer was distributed substantially after the pre-petition meetings. Accordingly, Cruz and Alvarenga are credited in their testimony.

Manuel Nunez was a Chester T. Longboy contractor employee working in Respondent's fields during the election campaign. Macario Santa Maria was Longboy's supervisor, and oversaw the work of five crews. Nunez's foreman was Nemecio Moreno, and the assistant foreperson was Rosa Mendez. Nunez testified that a person identified to him as Ryan spoke to the crew the day before the election.[5] Terry Ann Valencia, who works for Respondent as a safety assistant, interpreted for Ryan Zaninovich. According to Nunez, Zaninovich told the employees that if the Union won, he would lose a little

[5] Nunez identifies John Zaninovich as the speaker in his declaration. Based on the testimony of all the witnesses, the undersigned is satisfied that this meeting was conducted by Ryan Zaninovich.

power because he would not be able to contract with those he wanted to. Nunez further testified that Zaninovich talked about Nash de Camp and four other companies that had gone bankrupt when the Union came in, and then stated if the Union represented Respondent's employees, he would also have to declare bankruptcy. Patricia Silva Martinez, a co-worker at the time, corroborated this testimony.

As noted above, Zaninovich said nothing about any of this on direct examination, and denied stating he would declare bankruptcy. Zaninovich also denied that the companies, other than Nash de Camp, had declared bankruptcy. On cross-examination, Zaninovich testified he told workers that the Union was telling Respondent's employees that if they did not vote for the Union, Respondent would only use contractor employees, while at the same time telling the contractor employees that the opposite would result. According to Zaninovich (on-cross-examination), all he said to the workers was that it was important for him to have the right to use whoever he wanted.

Terry Ann Valencia testified that she interpreted for Ryan Zaninovich for 10 or more crews during the election campaign. Although she heard rumors that Respondent would declare bankruptcy, pull out the grape vines and plant almonds, Ryan Zaninovich never said this, and she never interpreted such statements. On the other hand, Valencia professed that she recalled very little of what was said at these meetings, even though she translated on many occasions. Zaninovich did state he was not going to be able to hire whoever he wanted, if the Union was voted in, because he would have to consult with the Union before taking on contractors.

Norma Angelica Zamora is employed by Longboy, and was on Nemecio Moreno's crew during the election campaign. Zamora testified that Zaninovich made none of the statements attributed to him by General Counsel's witnesses. Rosa Mendez, the assistant foreperson, also denied that Zaninovich made these statements.

Nunez and Martinez were generally very credible witnesses from the standpoint of their demeanor while, as noted above, Ryan Zaninovich's demeanor did not inspire confidence. It has been found that Ryan Zaninovich had previously made similar statements about Respondent declaring bankruptcy and pulling out the grape vines. Irrespective of the one-line disclaimer in Respondent's flyer, the undersigned believes that Zaninovich's message to the employees was that Respondent would go out of business or change its' operations if the Union represented them. Accordingly, it is found that Zaninovich again made these statements. It is clear that Zaninovich said something about contractor employees during his presentation. The evidence, however, is not sufficiently clear to show that he stated, or reasonably implied, that Respondent would cease or substantially reduce using labor contractors if the Union came in.[6]

Manuel Antonio Cruz testified that shortly before the election, John Zaninovich spoke with his crew, using Socorro M. Flores as his interpreter. According to Cruz, Zaninovich told the crew that if the Union came in, Respondent would have to file for bankruptcy or would have to change crops by removing the grape vines and replacing them with almond trees. Cruz and his brother, Alfredo Cruz Alvarenga, testified that

[6] Nunez taped this meeting, but testified the tape has been misplaced. Respondent contends that this severely undercuts General Counsel's case. The failure to produce the tape does cause some concern, but Nunez and Martinez were still credible witnesses, and it has been found that Ryan Zaninovich made similar statements on other occasions.

Roberto Ruiz, now the crew's foreman, and an admitted supervisor, told the crew, at their pre-work "school" after the meeting with John Zaninovich, to remember what "the boss" had said about Respondent going bankrupt if the Union came in. Ruiz went on to tell the crew that the same thing had happened to the Caratan company.

John Zaninovich, on direct examination, testified that he only recalled telling the crew he wanted things to be just between Respondent and the employees, that the subject of the poor quality of the grapes that season sometimes came up and that he discussed the "situation." Zaninovich denied telling any of the crews Respondent would go bankrupt, or pull out the grape vines and replace them with almond trees. In addition, he and Ruiz testified that there are two Caratan companies, and neither has declared bankruptcy. On cross-examination, however, Zaninovich admitted he read a portion of Respondent's flyer about companies that had gone out of business after the Union was certified to the crews, and then admitted he discussed this with the employees.

Socorro Flores initially denied that John Zaninovich said anything about declaring bankruptcy, or removing the grape vines and planting almond trees. On cross-examination, she claimed that Zaninovich told the employees that when Respondent changes varieties of grapes, the employees do not get as much work, because it has to knock down the vines and plant new ones. Zaninovich then told the employees he would not want the workers to be without a job. Flores testified that Zaninovich may have referred to Respondent's flyer about companies going out of business, and did tell them that some of the companies with the Union had gone bankrupt. According to Flores, he told the employees that if they voted, "no union," there would always be work for them,

and that there would always be work as long as everything was "normal, like it is now." Flores also testified that Zaninovich told the employees there would be less work for them because of the Union. Ruiz, and employees, Vicky Velasco and Magnolia B. Sanchez denied that John Zaninovich or Ruiz said anything to the crew about Respondent declaring bankruptcy or pulling out the grape vines and replacing them with almond trees.

As noted above, Cruz and Alvarenga, as current employees, would be unlikely to fabricate testimony contrary to Respondent's interests, and were impressive from the standpoint of their demeanor. As also noted above, Ruiz, Velasco and Sanchez were not credible as witnesses. The demeanor of John Zaninovich was not impressive. He appeared to be concealing what he really recalled about the meetings, and what potentially damaging facts he would disclose had to be elicited on cross-examination. The testimony of Socorro Flores, most of which had to be elicited on cross-examination, essentially corroborates that of General Counsel's witnesses, although in less direct form. Taking all of the testimony into consideration, it is found that John Zaninovich, at least implicitly, threatened Ruiz crew employees with the loss of their jobs if they selected the Union as their representative. Certainly, foreman Ruiz made this interpretation, and it is also found that he threatened employees with the loss of their jobs if they selected the Union, by reminding them of what Zaninovich had said.

Fortunata Valdez was employed by contractor Hector Nunez, and worked in Respondent's fields on the crew of foreman, Juan Servin. Nunez and Servin are admitted supervisors. Valdez testified that one of the Zaninovich brothers spoke to Servin's crew before the election through a female interpreter, whose name she does not know. During

the meeting, Zaninovich told the crew that if the Union won the election, Respondent would declare bankruptcy. Valdez also testified that he told her crew that if the Union won, Respondent would not want any more contractor crews.

Nunez did not testify concerning this meeting, and Servin was not called as a witness. Valdez was a credible witness from the standpoint of her demeanor, and it has been found that Ryan and John Zaninovich made similar statements regarding bankruptcy on other occasions. Therefore, her testimony on this point is credited. As noted above, the undersigned found the testimony of the witnesses regarding what the Zaninovich brothers said concerning the use of contractor crews to be unclear. Valdez's testimony, that Respondent, rather than the Union, would not want contractor crews, conflicts with the testimony of General Counsel's other witnesses, that the Union would not want Respondent to use such crews. Given all of the testimony on this subject, it is found that Valdez's testimony, in the context of the other accounts, does not establish a threat that employees would lose their jobs based on the discontinuance of contractor crews.

Fortunata Valdez further testified that on her first day of work, Servin approached her and asked if she was aware of the Union campaign. When Valdez said she was not, Servin told her, "We don't want any troublemakers around here." Servin did not testify, and Valdez's testimony is credited.

Fortunata Valdez and her sister, Maria Guadalupe Valdez, also on Servin's crew, testified that Hector Nunez brought food and beverage to the crew on the day before the election. With about 15 crew members present, Nunez asked the employees not to vote for the Union. Nunez said he was going to find out who had voted for the Union,

implying he would learn this from employees on the crew. Nunez then stated he would fire those who had voted for the Union.

Maria Guadalupe Valdez testified that Nunez approached her about two weeks after she began working in Respondent's fields. Nunez told her that if she went over to the Union, he would fire her. Valdez responded that he should go ahead and do this, because she was going to leave work soon anyway. About three weeks later, Nunez approached a group of four or five workers, including herself, and began making anti-Union statements. Nunez then told the employees that he would fire whoever went to listen to the Union representatives.

Nunez denied the allegations concerning his conduct. Nunez testified that he always brings food and beverages for his crews at the end of the season. He testified that he also did this for Servin's crew before the election, which was also before the harvest ended, but failed to explain why he did so. Nunez appeared nervous and deceptive as a witness. The undersigned found the Valdez sisters to be more credible than Nunez from the standpoint of their demeanor, and their testimony is credited.

With respect to contractor Chester T. Longboy, Respondent admits that supervisor Marcario Santa Maria and foreman Nemecio Moreno were statutory supervisors. Moreno's assistant foreperson was Rosa Mendez. The evidence shows that Mendez did not perform any picking or packing work, but instead directed the work of the crew, inspected and counted their boxes of grapes, and reported the count to Santa Maria, for payroll purposes. She frequently told crew members they were not producing enough boxes and threatened to issue written warnings to them if they did not produce more,

although she did not actually do this. When there were openings on the crew, she would ask Santa Maria if she could hire new workers. Once Santa Maria agreed to this, she independently contacted and hired employees, who went to work without meeting with Santa Maria or Moreno. Based on the foregoing, it is concluded that Mendez was a supervisor within the meaning of section 1140.4(j) of the Act at the time of the events herein.

Manuel Nunez testified that on one occasion, in mid-August, he was soliciting employees to sign Union authorization cards, and Nemecio Moreno approached them. Moreno told the employees that their crew and another were going to be "stopped,"[7] because the Union was coming in. One of the workers asked why, since they were good workers. Nunez replied, because it was not "convenient," "good" or "feasible" to "the boss" for the Union to come in. According to Nunez, Moreno also told crew members that if the Union came in, "the boss" would no longer use contractors. Some of the workers had their children working in the crew during their summer vacations. Nunez testified that Moreno told crew members that if the Union came in, the contractor would not be able to use their children as workers anymore.

Nunez testified that he wore a Union button at work, and Moreno told him the boss did not want workers to do this. Nunez observed Moreno tell a female worker to remove her button, but she refused to do so. On one occasion, Moreno told Nunez that he and the others who were rebelling by signing Union authorization cards were going to be out of a job the following year. On another occasion, Moreno told Nunez that if the Union won,

[7] The undersigned is using the translations of the official interpreter.

he would go to work directly for Respondent, but others could not, because they were undocumented. Moreno also told Nunez that if the Union came in, employees could no longer obtain unemployment insurance benefits under the names of others. Former employee, Patricia Silva Martinez corroborated most of Nunez's testimony. Martinez further testified that she observed Moreno tell another female employee to remove her Union button, and the employee did so.

Moreno denied making any of these statements. In fact, Moreno initially claimed he told employees he did not care if the Union came in, but later retracted this. Santa Maria, Mendez and employee, Norma Zamora denied observing Moreno engaging in any of the conduct attributed to him, and Zamora testified that in fact, Moreno told employees to vote for whomever they wanted.

Nunez and Martinez were credible witnesses from the standpoint of their demeanor, and it is unlikely they have made all of this up. Moreno was not as credible from the standpoint of his demeanor, and it is questionable that Respondent's other witnesses were present when Moreno made most of the remarks attributed to him. Accordingly, the testimony of Nunez and Martinez is credited.

Patricia Martinez testified that in mid-August, she observed Macario Santa Maria tell Nemecio Moreno to fire employees who signed Union authorization cards. Manuel Nunez testified that in mid-August, he observed Santa Maria tell Mendez to discharge (or send home)[8] employees who signed Union authorization cards. Santa Maria, Moreno and

[8] The interpreter alternately translated the phrase, "correrlos," to mean discharge and send home. The witness also used both words.

Mendez denied that this took place. Respondent's witnesses further contended that Mendez did not have the authority to discharge employees, and in fact, no Longboy employee working in Respondent's fields was discharged.[9]

Santa Maria was a particularly unimpressive witness from the standpoint of his demeanor. His glib posturing as being almost totally oblivious of the election campaign and the role of specified workers therein, more fully detailed below, was clearly deceptive. Similarly, Moreno professed very little knowledge of these events. Rosa Mendez appeared to downplay Respondent's anti-Union position, particularly when describing Ryan Zaninovich's speech to her crew. The fact that Moreno and Mendez did not actually discharge anyone does not necessarily mean the instruction was not given, and it is found that Santa Maria, in fact, issued the directives.[10]

Patricia Martinez testified that on the Saturday before the election, Rosa Mendez, for the first time, asked the crew members to sign a list. At first she said signing was voluntary, but later said it was mandatory. A couple who supported the Union asked Mendez why they wanted them to sign the list. Mendez replied she did not know, but she thought it was because "the company" wanted to compare their signatures to the ones on the cards from the Union. Martinez told Mendez that could not be correct, because the company did not have access to the cards. When the couple refused to sign the list, Mendez told them they could go home, because they would not get paid. The couple left

[9] The complaint contains other allegations of unlawful statements by Santa Maria, but General Counsel presented no evidence in support thereof.

[10] In its' brief, the Union urges that it be found that Santa Maria told Moreno *or* Mendez to discharge card signers, in effect, asking the undersigned to discredit one of General Counsel's witnesses. In accord with General Counsel, the undersigned does not consider it unlikely that Santa Maria would have directed both of the crew's supervisors to engage in this conduct.

and did not return.[11] Martinez asked Macario Santa Maria about the list that day, and he told her it was for attendance purposes. Although he said they would have to sign such lists in the future, they were never asked to do so again. Manuel Nunez, in abbreviated form, corroborated Martinez's testimony.

Santa Maria testified that the document was actually a check register, and was used to compare the signatures of those picking up the checks with those on file with his company. Mendez testified that Santa Maria gave her the list and asked her to have the employees sign it, without telling her what it was for. Mendez told the employees she did not know what the list was for, but denied she said it was to compare signatures with Union cards.[12]

The Constructive Discharge of Valentin and Margarita Gonzalez

Valentin and Margarita Gonzalez worked for contractor Longboy, and were on the crew of foreman, Amorsolo Uclaray, known to the crew as Amorsol. The assistant foreman was Gil R. Necer. The Gonzalez's picked and packed grapes as a team. Valentin Gonzalez appeared in a Union flyer featuring photos of many employees, including seven from his crew.[13] He testified that shortly after the flyer was distributed, about 10 days before the election, Santa Maria approached him and said he had told "the boss" that his crew did not support the Union. Now that this flyer had come out, what

[11] General Counsel does not allege this as an unfair labor practice.
[12] The complaint alleges that Mendez also told employees that those who signed Union authorization cards would not be hired the following year, but no evidence was presented in support of this allegation.
[13] Gonzalez testified that another flyer was distributed, showing only the photograph of the seven employees in his crew. That flyer was not produced at the hearing.

was he going to tell him? Santa Maria appeared very upset, and did not speak to Gonzalez again. Previously Santa Maria had been friendly with Gonzalez.

Gonzalez testified that foreman Uclaray approached him and said that the photograph meant nothing, and if Gonzalez wanted a photograph, he could take one. Uclaray had his wife take a photograph of the crew a few days later. Gonzalez testified that Uclaray stopped calling him by his name, and just called him, "Union." Gonzalez also testified that about four days before the election, Uclaray called him a "Union snitch."

Gonzalez began wearing a Union button one to two weeks before the election. He testified that two days before the election, while he was wearing a button, Uclaray and Gil Necer were saying he was the Union leader. Then, Necer grabbed him and turned him around to face Uclaray. Necer said, "Look at him. He must be the leader."

Gonzalez was one of the Union's observers at the election, in the morning. He challenged Necer's vote on the ground he was a supervisor, and also a new worker who had worked with Uclaray and Necer in Alaska. When he challenged that worker, other new hires from the Alaska crew left the voting line. Gonzalez returned to work at about 9:00 a.m.

Gonzalez testified that while he and his wife were working, Uclaray was saying he did not want any "Unions" in his crew. He was not going to fire them, but would make them leave work. If the Union won the election, Uclaray would quit.

According to Gonzalez, Uclaray approached him at about 3:00 p.m. He told Gonzalez he must think he would be a very important person if the Union won the

election. In front of other crew members, Uclaray said he would be like a dog, and Gonzalez would be the cat. Uclaray then ducked in and out of the grape vines, like a cat hiding from a dog, prompting laughter from some of the workers.

Shortly before the end of the workday, one of Respondent's inspectors looked at the Gonzalez's boxes of grapes, and said that three were "wrong." Gonzalez did not deny that three of his boxes contained rotten grapes. After the inspector left, Uclaray approached him and acted really upset about the boxes, even though it is fairly common for workers to occasionally pack overripe grapes. Uclaray told Gonzalez that from now on, all of the "Unions" were going to have bad grapes, which Gonzalez interpreted as meaning Uclaray would always find fault in his work. At the end of the workday, Gonzalez turned in his tools, and told Necer he and his wife were not returning, because of the pressure on him. The Gonzalez's lived about 40 miles from the fields, and Margarita Gonzalez depended on Valentin to drive her to work.

As noted above, Macario Santa Maria denied telling Moreno and Mendez to discharge workers who signed Union authorization cards. He initially denied seeing the Union flyer with employee photographs until after the election, but later admitted seeing it beforehand. Santa Maria then denied knowing who was pictured in the flyer, because he did not have his eyeglasses with him. Santa Maria denied saying anything to Valentin Gonzalez about the flyer, and claimed that his behavior toward Gonzalez never changed, because he only speaks with the foremen. He further denied ever seeing Gonzalez wearing a Union button, or knowing anything about his Union activity until he was informed Gonzalez would be an observer on the day of the election. In addition, Santa

Maria denied any awareness that John or Ryan Zaninovich had spoken with any of his crews about the Union campaign, and denied meeting with Respondent's attorneys prior to testifying.[14] Santa Maria contradicted Ryan Zaninovich's testimony, that Zaninovich conducted a meeting with his and the contractor's supervisors during the Union campaign, to discuss how management should conduct itself toward the employees. Santa Maria denied knowledge of any harassment by Uclaray or Necer to Gonzalez.

Uclaray acknowledged seeing Gonzalez wearing a Union button, and the Union flyer but denied saying anything to him about them. Uclaray testified that he did refer to Gonzalez as, "Mr. Union," but he only did this once, as a joke. Uclaray admitted, but later denied calling Gonzalez a "Union snitch." Uclaray denied that the incidents involving Necer turning Gonzalez around, and his talking about dogs and cats, took place. He also denied saying he did not want "Unions" on his crew, that he would make Union supporters quit, or that he would quit if the Union won the election. Uclaray denied any knowledge that Respondent or his company opposed unionization, a highly unlikely contention.

Uclaray denied telling Gonzalez that Union supporters would always have bad grapes, and agreed that it is a common occurrence for employees to occasionally pack bad grapes. According to Uclaray, all he said to Gonzalez was to fix his boxes. Respondent has a progressive disciplinary system of written warnings, and the incident involving Valentin and Margarita Gonzalez did not constitute discipline. Uclaray did

[14] All of Respondent's other witnesses who were asked admitted meeting with Respondent's attorneys before testifying.

acknowledge that Necer told him that Valentin Gonzalez said he was not returning to work, because of the pressure on him.

Necer denied harassing Gonzalez, or seeing anyone else do this. Necer first denied, and then testified that he did not recall turning Gonzalez around. Necer initially denied any knowledge that Gonzalez was a Union observer, but then acknowledged this when reminded that Gonzalez had challenged his vote. Necer denied ever talking to any employee about the Union, and denied seeing any supervisor doing this. Necer's brother, Catalino Necer, worked on the crew and denied seeing any harassment of Gonzalez. Catalino Necer acknowledged that he frequently could not see Gonzalez working, and would not have heard conversations in Gonzalez's work area. Necer denied seeing Gonzalez wearing a Union button.

The undersigned does not believe that Valentin Gonzalez has made up all of these incidents, or that he would have quit a job he held for several years just because Uclaray, on one occasion, called him "Mr. Union" and, on a later date, told him to repack three boxes of grapes. On the other hand, it is disturbing that General Counsel failed to call any witnesses to corroborate Gonzalez's testimony, in particular, his wife. Gonzalez did show the ability to exaggerate when pressed.

It is found that the incidents involving Necer turning Gonzalez around, Uclaray pantomiming a cat, and telling Gonzalez Union supporters would always have bad grapes, did take place. It is also found that Uclaray probably called Gonzalez, "Mr. Union," or "Unions" on more than one occasion, and called him a "Union snitch" on another. Finally, it is found that on the day of the election, Uclaray became highly upset,

said he would quit if the Union won, stated he would make Union supporters quit, and implied that he would find fault with the work of Valentin Gonzalez and other Union supporters in the future.

ANALYSIS AND CONCLUSIONS OF LAW

The Coercive Statements

Section 1152 of the Act gives agricultural employees the right, inter alia, to form, join and assist unions. Under section 1140.4(c), the employer engaging a farm labor contractor is deemed the employer of the contractor's agricultural employees. 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 their rights under section 1152.

When an employer representative states or implies that the employer will shut down its' operation if employees choose to unionize, the employer violates section 1153(a), in the absence of providing them with facts showing that this would be an economic necessity. *Steak-Mate, Inc.* (1983) 9 ALRB No. 11; *Paul M. Bertuccio and Bertuccio Farms* (1979) 5 ALRB No. 5, at ALJD, page 29; *Abatti Farms, Inc. v. ALRB* (1980) 107 Cal.App.3d 317 [165 Cal.Rptr. 887]. It has been found that Ryan and John Zaninovich, and foreman Roberto Ruiz told and/or implied to employees that Respondent would declare bankruptcy if the Union came in, without providing any economic basis for the statements. While declaring bankruptcy, in itself, does not necessarily mean the business will cease operating, the reasonable and intended effect of the statements, in the

context of a union campaign, was to make employees believe they would lose their jobs. Therefore, the statements violated section 1153(a).

An agricultural employer's unexplained threat to change to a less labor-intensive crop if employees decide to unionize violates section 1153(a). *Paul W. Bertuccio,* supra; *Arnaudo Bros., Inc.* (1977) 3 ALRB No. 78, at ALJD, page 18; *Jasmine Vineyards* (1977) 3 ALRB No. 74. It has been found that Respondent's representatives told employees that if the Union came in, Respondent would tear down its' grape vines and plant almond trees. At least some employees understood this to mean that fewer workers would be needed. Respondent gave no economic facts showing why this would be necessary. Accordingly, Respondent violated section 1153(a) by making the statements.

Threats to discharge employees for engaging in union activities, or directives to supervisors to discharge such employees, when heard by nonsupervisory agricultural workers, even if not carried out, interfere with, restrain and coerce employees in the exercise of their statutory rights. *Karahadian Ranches, Inc.* (1979) 5 ALRB No. 71; *Maggio-Tostadio, Inc.* (1977) 3 ALRB No. 33; *Anderson Farms Company* (1977) 3 ALRB No. 67. It has been found that supervisors Juan Servin, Nemecio Moreno and Hector Nunez threatened to discharge employees and/or made related threats of job loss if employees supported the Union.[15] It has also been found that supervisor, Macario Santa Maria instructed Nemecio Moreno and Rosa Mendez to discharge employees who signed Union authorization cards, and this was heard by employees. Assuming one employee

[15] While the evidence concerning John and/or Ryan Zaninovich's statements regarding the use of labor contractors if the Union came in has been found not sufficiently clear to establish a violation, the threat by Moreno, that Respondent would cease using contractors, was clear and unequivocal.

was not actually intimidated by the threat to discharge her, the test is whether the threat reasonably tends to interfere with statutory rights, a test satisfied herein. *J.R. Norton v. ALRB* (1987) 192 Cal.App.3d 874 [238 Cal.Rptr. 87]. Therefore, Respondent violated section 1153(a) by these statements.

The National Labor Relations Board (NLRB) considers the wearing of union buttons to be protected activity under its' governing legislation, and this status clearly applies to the rights of agricultural employees under section 1152 of the Act. The NLRB finds it unlawful for an employer to prohibit the wearing of union buttons, absent proof by the employer that there are "special circumstances" justifying the rule, such as obscene content or demonstrated disruption of its' operations. *Raley's, Inc.* (1993) 311 NLRB 1244 [143 LRRM 1377]. Certainly, the curtailment of union activity is not a valid justification for such a rule, and the mere potential of upset caused to anti-union employees and supervisors will not outweigh the right of employees to manifest their support for labor organizations.

It is particularly noteworthy that Respondent's agricultural employees do not normally interface with the general public. In any event, Respondent presented no evidence showing a business justification for telling employees to remove their buttons. The fact that one of the employees did not remove her button does not mean that the order did not reasonably tend to coerce employees in the exercise of their rights. Therefore, Respondent violated section 1153(a) by said conduct. On the other hand, by telling Manuel Nunez, Patricia and other employees that "the boss" did not want

employees wearing Union buttons, Nemecio Moreno did not prohibit them the wearing of them, and it is concluded that said statement was not, in itself, coercive.

The evidence shows that Rosa Mendez speculated that Macario Santa Maria might be requiring employees to sign a list to compare their signatures with those on Union authorization cards. An employee, in the presence of the others, questioned this on the basis that Respondent would not have access to such cards. On the same day, the employees learned that the list was an attendance sheet (or a check register), used to ensure that the workers, and not others, were picking up their paychecks. Under the circumstances presented, it is concluded that this incident did not constitute an unlawful interrogation, or otherwise reasonably tend to interfere with employee rights.

The credited evidence also shows that Nemecio Moreno told employees that if the Union came in, the children of workers would no longer be able to work for the contractor. It is entirely possible that at least some of those children had work permits or were otherwise lawfully employed. Inasmuch as Respondent did not cite any legitimate business considerations for making this statement, it thereby violated section 1153(a). On the other hand, by telling employees that those collecting unemployment insurance benefits under the names of others could no longer do so if the Union came in, and by stating that undocumented workers could not work for Respondent, Moreno was clearly referring to unlawful conduct. This raises complex issues of competing policy considerations, which the courts have tended to balance against prohibiting unfair labor practices, and in favor of enforcing other legislation. Since Respondent has been found to have similarly violated the Act by its' other conduct, the undersigned believes that these

additional potential violations would be cumulative, and it is unnecessary to decide them herein.

The Constructive Discharge of Valentin and Margarita Gonzalez

In order to establish a constructive discharge in violation of section 1153(a) and (c) of the Act, under the theory urged by General Counsel, it must be shown that the employee's working conditions, because of his union or other protected concerted activities, were made so intolerable as to force him to quit. The evidence shows that Valentin Gonzalez's Union activities were known to Respondent, and that he was subjected to disrespectful conduct because of those protected activities.

Although General Counsel has satisfied these prerequisites, it is the undersigned's opinion that the evidence fails to establish that Gonzalez's working conditions were rendered intolerable, or that he was forced to quit. In this regard, the Board has held that normally, verbal statements, including employment-related threats, do not establish a constructive discharge. *Sierra Citrus Association* (1979) 5 ALRB No. 12. Although Gonzalez was grabbed and turned around by assistant foreman Necer, in the presence of foreman Moreno, Gonzalez reasonably understood that this was not a physical assault, but a means of mocking his role in the Union campaign.[16] In *Gourmet Harvesting and Packing, Inc, and Gourmet Farms* (1988) 14 ALRB No. 9, at pages 39-45, the Board held that verbal abuse far more serious than established herein constituted employer free speech.

[16] To the extent that Gonzalez's testimony could be construed to mean he feared for his physical well-being, it is not credited. In any event, said reaction would be unreasonable under the circumstances.

Gonzalez does not dispute the allegation that he and/or his wife packed rotten grapes on their last day of work, which led to the culminating incident. Although Moreno implied that Gonzalez and other Union supporters would be subject to closer scrutiny and discipline in the future, intended to cause them to quit, the Gonzalez's were not disciplined for their conduct. Under these circumstances, it is concluded that the events leading to their resignations do not establish unlawful constructive discharges, and these allegations will be dismissed.

On the other hand, even if some of the verbal abuse is considered employer free speech, the physical contact by Necer, not responded to by Moreno, and Moreno's implied threats discipline and to force Union supporters to quit, in the context of the other verbal abuse, constitutes unlawful harassment of Gonzalez, in violation of section 1153(a).[17]

THE REMEDY

Having found that Respondent violated section 1153(a) of the Act, I shall recommend that it cease and desist there from and take affirmative action designed to effectuate the purposes 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.

[17] The evidence, however, does not establish that Respondent interrogated Gonzalez regarding his Union activities or engaged in unlawful surveillance, as alleged by General Counsel.

Respondent argues that the remedies involving the distribution of the Notice to Employees, set forth below, should be limited to the crews directly affected by the unfair labor practices herein, due to the size of its' workforce.[18] The remedies herein have been part of the Board's policies for many years, and if Respondent seeks a change in those policies, the undersigned believes that this is a decision to be made by the Board itself. Furthermore, in *M. B. Zaninovich, Inc.* (1981) 114 Cal.App.3d 665 [171 Cal.Rptr 55], cited by Respondent, the Court of Appeal denied enforcement of the Board's order that a notice be read and mailed to employees, and a representative meet with them to discuss the case, on the grounds that the violation was isolated, not conducted in the presence of other employees and unlikely to have been known by anyone other than the discriminates. Similarly, in *Laflin & Laflin v. ALRB* (1985) 166 Cal.App.3d 368 [212 Cal.Rptr. 415], the Court denied enforcement of the Board's remedial provisions, because the unfair labor practice involved the employer's failure to provide the union with an adequate employee list, rather than coercive conduct directed against employees. On remand, the Board substituted a narrow cease and desist order for the original broad order, but retained the full notice publication requirements. *Laflin & Laflin* (1986) 12 ALRB No. 6.

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:

[18] In its' brief, the Union "urges" that the testimony of Respondent's attorney concerning the appropriate remedy be stricken, on the ground that the undersigned violated settlement confidentiality rules when explaining, in part, why objections to the testimony were being overruled. The undersigned did not conduct a settlement conference, but did conduct a prehearing conference in this matter. Irrespective of any comments made regarding the Union's *position* on the appropriate remedy, made during the prehearing conference, and not during confidential settlement discussions, Respondent made it clear that it intended to seek limited remedies in this case should General Counsel prevail. Therefore, the testimony was relevant, regardless of the Union's position. To the extent that the Union is moving to strike the testimony, the motion is denied.

ORDER

Pursuant to Labor Code section 1160.3, Respondent, Vincent B. Zaninovich and Sons, A California Corporation, its' officers, agents, labor contractors, successors and assigns shall:

1. Cease and desist from:

   (a) Threatening its' agricultural employees with discharge or other loss of employment, if they join, support or assist the United Farm Workers (Union) to be their collective bargaining representative.

   (b) Directing agricultural employees to remove Union buttons or other insignia, without a valid business justification for doing so.

   (c) Threatening to impose more onerous working conditions on Union supporters, or otherwise harassing them in retaliation for their Union activities.

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

(c) Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice, in all appropriate languages, to all employees then employed in the bargaining unit, 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 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 the bargaining unit in order to compensate them for time lost during the reading of the Notice and the question-and-answer period.

(d) Mail copies of the attached Notice, in all appropriate languages, within 30 days after the issuance of this Order, to all agricultural employees employed by Respondents at any time during the period August 15, 2006 to August 14, 2007 at their last known addresses.

(e) Provide a copy of the Notice to each agricultural employee hired to work for Respondent during the twelve-month period following the issuance of a final order in this matter.

(f) Notify the Regional Director in writing, within thirty days after the date of issuance of this Order, of the steps Respondent has taken to comply with its terms. Upon request of the Regional Director, Respondent shall notify the Regional Director periodically in writing of further actions taken to comply with the terms of this Order.

3. It is further ordered that all other allegations in the complaint, as amended, are hereby dismissed.

Dated: December 27, 2007

_____

Douglas Gallop
Administrative Law Judge

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed at the Visalia Regional Office of the Agricultural Labor Relations Board (ALRB), the General Counsel of the ALRB issued a complaint alleging that we had violated the law. After a hearing at which all parties had an opportunity to present evidence, the ALRB found that we had violated the Agricultural Labor Relations Act (Act) by interfering with, restraining and coercing employees in the exercise of their rights under the Act.

The ALRB has told us to post and publish this Notice.

The Agricultural Labor Relations Act is a law that gives you and all other farm workers in California the following 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 ALRB;
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 you have these rights, we promise that:

WE WILL NOT threaten agricultural employees with discharge or other loss of employment if they join, support or assist the United Farm Workers (Union) to be their collective bargaining representative.

WE WILL NOT direct agricultural employees to remove Union buttons or other insignia, without a valid business justification for doing so.

WE WILL NOT threaten to impose more onerous working conditions on Union supporters, or otherwise harass them, in retaliation for their Union activities.

WE WILL NOT, in any like or related manner, interfere with, restrain or coerce employees from exercising their rights under the Act.

DATED: _____ VINCENT 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 ALRB. One office is located at 1642 W. Walnut Avenue, Visalia, California. 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