

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS
BOARD

WESTERN CONFERENCE OF TEAMSTERS, Agricultural Division, I.B.T., and its Affiliated Locals 1173 and 946,)	
)	
Respondents,)	No. 76-CL-6-F
)	3 ALRB No. 57
and)	
)	
V. B. ZANINOVICH & SONS, INC.,)	
)	
Charging Party.)	
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DECISION AND ORDER

On January 16, 1977, administrative law officer David Nevins (hereafter ALO) issued his decision in this case. The respondent and the general counsel filed timely exceptions.

Having reviewed the ALO's decision, the briefs, exceptions, and the entire record, we adopt the ALO's findings, conclusions and recommendations to the extent consistent with this opinion.^{1/}

There are incidents which did not involve acknowledged union agents or which did not occur in the immediate vicinity of the picket lines for which the ALO found the respondent accountable and which were found to constitute violations of Section 1154(a)(1) of the Act. We accept his conclusion as to these incidents, but

^{1/} The respondent excepts to certain credibility resolutions of the ALO. It is our policy not to overturn such credibility resolutions, the product of the observation of the witnesses, unless a clear preponderance of the relevant evidence shows them to be incorrect. Our review of the complete record discloses no basis for rejecting those resolutions here.

wish to clarify the basis for our action. The distinguishing feature of this case is that not less than fourteen acknowledged union agents, including the respondent's strike-leader, personally engaged in numerous violations of employee rights during the strike. This conduct ran the gamut from threats of violence to workers, to actual violence, including rock and clod throwing, forcing workers' cars off the road, assaulting workers, smashing truck and auto windows and causing at least one fire. In the context of this activity, we agree that the respondent may be held liable because its agents, having once established a pattern of conduct clearly violative of the Act, have made it liable for subsequent striker misconduct in conformity with that pattern, and because of the failure of its agents to act effectively to curb striker misconduct within their knowledge. See, e.g., International Association of Machinists, 183 NLRB 1225, 1230-31, 80 LRRM 2158 (1970); Teamsters Local 115, 157 NLRB 1637, 1642-3, 61 LRRM 1568 (1966); International Union of Electrical Workers, 134 NLRB 1713, 1724, 49 LRRM 1407 (1961).

We also accept the ALO's determination that conduct such as taking down the auto license numbers of non-striking workers, seeking to procure the names and addresses of non-striking workers, following them from work or otherwise creating the impression that these workers were the subjects of surveillance was violative of the Act. We do so only because of the overwhelming evidence that respondent's agents and others following their lead were engaged in a course of conduct which clearly indicated to all observers their intent to coerce by force and violence worker

recognition of the picket line. However, without such clear evidence of coercive intent these activities would not constitute unfair labor practices since unions have the right to exert pressure upon non-members to honor picket lines and to discipline strikebreaking members. Nothing we hold in this case, therefore, should be read as a condemnation of, or a limitation upon, legitimate union attempts to achieve these goals.

We decline to accept the ALO's recommendation that the respondent be held liable for the truck fire which occurred on September 1. His analysis, premised upon the view that a group of nearby pickets "adopted" the fire by failing to put it out and by cheering in its presence, does not properly account for the realities of the forces and tensions on picket lines and is an unwarranted extension of the case law in this area.

In a similar vein, we do not adopt the ALO's extension of the Booster Lodge Case enunciated in footnote 26 of his decision.^{3/}

The Remedy;

The ALO recommended that the respondent be ordered to

^{2/}Booster Lodge No. 405 v. NLRB, 412 U.S. 84, 83 LRRM 2189 {1973).

^{3/}

We have considered the respondent's several exceptions concerning evidentiary issues at trial and find them without merit. In the first of these the respondent challenges the ALO's denial of its motion under § 356 of the Evidence Code and § 20274 of the Regulations [8 Cal. Admin. Code § 20274 (1976)] that it be permitted to view all videotapes made at the strike scene. We believe that videotapes are encompassed by the Code provision, but it has no application to this situation. Here, the general counsel offered portions of the totality of the videotape made

(fn. cont. on p. 4)

pay the litigation costs and fees of both the general counsel and the charging party. The respondent has excepted. We decline to apply this remedy to the instant case. ^{4/}

Our treatment of this remedial request is best begun with an awareness of the general history of this sort of relief in this country. As distinguished from the English practice, the "American Rule" is that attorneys' fees are not ordinarily recoverable by the victorious litigant in the absence of a statute or an enforceable contract which makes provision for such an award. See Fleischmann Distilling Corp. v. Maier Brewing Co., 386 U.S. 714 (1967). This general proposition is the law in California, embodied in Code of Civil Procedure, Section 1021. However, several non-statutory exceptions to the rule have been recognized in this state. The first of these is the so-called "common fund" principle: where a number of persons are entitled in common to a specific fund and an action brought by a plaintiff preserves or creates the fund for the benefit of all, the plaintiff may be awarded attorneys' fees out of the fund to prevent the unjust

(fn.3. cont.)

at the strike scene. The operator of the videocamera testified that the tape shown constituted the entirety of the tape made in connection with the incidents therein depicted. For this reason the respondent's exception is invalid, for as regards the specific incidents at issue, there is no "remainder" or "other portion" of the tape to which it may have access. The second exception points to alleged repeated instances of leading questions posed by the general counsel. Our review of the specific instances cited by respondent and the whole record discloses that on many occasions the respondent made no objection to the question, on others its counsel indicated his awareness of language difficulties with the witnesses, and in at least one instance the response elicited by the question was not relied upon by the ALO. No error was committed.

^{4/}

We deny the respondent's motion for oral argument. The briefs and the exceptions adequately present the issue for decision.

enrichment of the group. See D'Amico v. Board of Medical Examiners, 11 Cal. 3d 1, 26-27, 112 Cal. Rptr. 786, 803 (1974). The second exception is the "substantial benefit rule": where a class action or a stockholder derivative suit confers a substantial benefit upon the defendant, the defendant may be required to yield an attorneys' fee to the plaintiff. Id. at 25, 112 Cal. Rptr. at 804. Finally, it may be argued that California courts may exercise the traditional power of a court of equity and award an appropriate attorneys' fee to a prevailing party where the opponent's defenses may be characterized as in bad faith, vexatious, or interposed for oppressive reasons. Id. at 27, 112 Cal. Rptr. at 804-05. However, there is a split of authority on the point. Compare Santandrea v. Siltec Corp., 56 Cal. App. 3rd 525 (1976) (affirming such an award) with Young v. Redman, 55 Cal. App. 3rd 834 (1976) (reversing such an award).

It is clear that none of these non-statutory exceptions apply to this case. There is no "common fund" here. Moreover, the "substantial benefit" rule cannot apply because any benefit produced by this litigation descends upon the charging party and those similarly situated, not on the respondent. Finally, whatever may be the inherent power of a court of equity to sanction harassing or vexatious litigation behavior, absent some statutory grant of power, we cannot view that power as also residing in an administrative agency, even where, as here, it performs quasi-judicial functions.^{5/}

^{5/} The so-called "private attorney general" theory, left open by the D'Amico court pending the outcome of federal litigation on the

(fn. cont. on p. 6)

There remains for consideration whether the ALRA provides a statutory base for the award of such fees within the express exception of C.C.P., Section 1021. We believe that it does. A comparison of the pertinent portions of Section 1160.3 of the ALRA and Section 10(c) of the NLRA discloses that our statute is at least as expansive in its grant of remedial power to this agency as the NLRA is to the NLRB. The NLRB, with judicial approval, has construed its power under Section 10(c) to authorize the award of attorneys' fees and litigation costs in appropriate cases.^{6/} When the Legislature enacted the ALRA, therefore, it granted to this Board a power to award attorneys' fees at least to the extent that the NLRB has that power.

The question of this Board's power aside, the rationale for the utilization of such an award must be considered. We view the interests of the NLRB and this Board in this connection as identical. Both the NLRB and this Board are mandated to remedy the effects of unfair labor practices, but both are enjoined from engaging in purely punitive impositions unrelated to remedying specific conduct and its effects. Under either the NLRA or the ALRA the ultimate consideration is whether the award in a

(fn. 5 cont.)

issue, now appears of doubtful validity in California following the decision of the Supreme Court of the United States in *Alyeska Pipeline Service Company v. The Wilderness Society, et al.*, 421 U.S. 240 (1975). See *D'Amico, supra*, 11 C. 3d at 27, 112 Cal. Rptr. at 805; *Northington v. Davis*, 64 Cal. App. 3d 643, 134 Cal. Rptr. 610 (1976).

^{6/} See *Heck's Inc.*, 215 NLRB 142, 88 LRRM 1049 (1974); *Tiidee Products, Inc.*, and *I.U.E.*, 194 NLRB 1234, 79 LRRM 1175 (1972).

particular case effectuates the policies of the statute. Under either statutory scheme the implementation of the legislation is dependent in the first instance upon the agency's ability to utilize effectively its resources, unfettered by trial calendars crowded with meritless litigation. In specific cases there arises the need for the agency to fashion remedial orders which conform to the realities of the harm created by the totality of the respondent's conduct, including the effect of its litigation posture and conduct on the other parties. For "[e]ffective redress for a statutory wrong should both compensate the party wronged and withhold from the wrongdoer the 'fruits of the violation'". Montgomery Ward & Co. v. NLRB, 330 F.2d 889, 894, 58 LRRM 2115 (6th Cir. 1965). Against these factors must be balanced the right of a respondent to offer all legitimate defenses and arguments.

Our evaluation of these factors indicates the desirability of our adoption of the NLRB's approach to this question. The NLRB holds the appropriateness of this remedy to be dependent upon a characterization of the respondent's litigation posture as either "frivolous" or "debatable". Where the former is found, the award may be made; in the latter situation, it is not warranted. Neither "frivolous" nor "debatable" are self-explanatory. Their recitation does not account for the important distinctions which may derive from the uniquely public nature of the unfair labor practice process: the general counsel is not a private litigant, but a public officer vindicating important public policy pursuant to statutory directive. However, the terms do provide a framework

for analysis, and as we are progressively enlightened in our case-by-case approach to this question, they will acquire a more definite content. We therefore propose to adopt these categories in this and future cases presenting the question of such awards.

The application of this standard to the case at hand does not disclose support for the ALO's recommendation. Here, the respondent was faced with a complaint containing a multitude of charges of violations of § 1154(a)(1) of the Act growing out of strike activity at and around the charging party's premises. It is the first case of its type to come to this Board's attention. Indeed, at the time of the litigation of the complaint, the Board as presently constituted had yet to issue a decision in an unfair labor practice case. The substance of the conduct charged and litigated at trial consisted of claims of property destruction, arson, assaults and batteries, and other similarly serious conduct. The remedies requested in the complaint were novel and perhaps "extraordinary", certainly as judged by NLRB precedent: decertification, assessment of costs and fees, and compensation of employees for emotional distress and property damage suffered as the result of the respondent's conduct. The outcome of the case was, in significant part, dependent upon the resolution of difficult questions of agency and liability.

In view of the above facts, we cannot conclude that the respondent's litigation posture may be characterized as "frivolous" The application of the remedy recommended here must be carefully

weighed. Its injudicious use threatens substantial harm to the legitimate right of charged parties to force the general counsel to its proof. In the instant case, for example, the ALO did not find the respondent to be liable for several incidents of substantial property damage: the destruction of a large irrigation pump and the cutting of 11-12 acres of vineyard. Nor did he find the decertification remedy to be appropriate. ^{7/}We therefore modify the ALO's remedial recommendation to eliminate the imposition of litigation costs and fees upon the respondent.

We likewise modify the proposed Order in the following respects:

1. Delete from paragraph 1(b) the language "...giving employees the impression that they are under surveillance..." and "...threatening non-members with fines for engaging in protected activity or fining such non-members, . . . " .
2. Rewrite paragraph 2(d) .
3. Strike paragraph 2(f) and renumber accordingly.
4. Substitute the attached Notice to Workers for the Notice recommended by the ALO. We do so to conform the Notice to those utilized in the decisions issued subsequent to the hearing in this case.

Accordingly, pursuant to Labor Code § 1160.3, the Board hereby orders that the respondent Western Conference of Teamsters, Agricultural Division, and its Local 946, and their officers,

^{7/}

We, of course, do not imply that a completely unsuccessful defense is by its nature the equivalent of a "frivolous" defense. Our case-by-case approach to this issue precludes such a holding.

agents, successors, and assigns shall:

1. Cease and desist from:

(a) In any manner restraining or coercing employees of Vincent B. Zaninovich, Inc., (hereinafter VBZ)/ in their exercise of their right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities, except to the extent that such right may be affected by an agreement of the type authorized by § 1153(c) of the Act.

(b) Engaging in conduct in regard to VBZ employees of the following type: threatening violence or committing such violence, threatening property damage or committing such damage, threatening employees with blacklisting or actually blacklisting such employees, or committing any of the foregoing acts in regard to other persons either in the presence of VBZ employees or where it is reasonably certain that such employees will learn of such conduct.

2. Take the following affirmative action:

(a) Post the attached Notice to Workers on bulletin boards in its offices throughout the state where other notices and information are available for its members. Such posting to continue for a period of six consecutive months during the twelve month period following issuance of this decision or its enforcement if necessary. The respondent shall exercise due care to replace any notice which has been altered, defaced, or removed.

(b) Mail the attached Notice to Workers, translated into any languages deemed appropriate by the regional director in addition to Spanish and Tagalog, to all employees of VBZ during the period August 1, 1976 to September 30, 1976 inclusive. Such notices to be mailed to the last known address of such workers.

(c) Provide sufficient copies of the attached Notice to Workers in appropriate languages to VBZ so that, if it consents, a copy may be distributed to its employees hired during the next peak season.

(d) Designate a representative or representatives to read, or be present while a Board agent reads, the attached Notice to Workers in appropriate languages to the assembled employees of VBZ, during the next peak season if the employer consents to such a reading on its property. The respondent to compensate the employer for labor costs incurred by it, if any, by the provision of such an opportunity to address the workers.

(e) Preserve and make available to the Board or its agent, upon request, for examination and copying all membership records or other records necessary to determine whether the respondent has complied with this Decision and Order to the fullest extent possible.

(f) Notify the regional director of the Fresno Regional Office within 20 days from receipt of a copy of this Decision and Order of steps the respondent has taken to comply therewith, and to continue reporting periodically thereafter until full compliance is achieved.

IT IS FURTHER ORDERED that allegations contained in the second amended complaint not specifically found or adopted herein as violations of the Act shall be, and hereby are dismissed.

Dated: July 21, 1977

GERALD A. BROWN, Chairman

RICHARD JOHNSON, JR., Member

RONALD A. RUIZ, Member

HERBERT A. PERRY, Member

NOTICE TO WORKERS OF
V. B. ZANINOVICH & SONS, INC.

After a trial where each side had a chance to present their facts, the Agricultural Labor Relations Board has found that we interfered with the rights of the workers at the company to decide for themselves whether or not to join the strike which we called at the company last August and September. The Board has told us to send out and post this Notice.

We will do what the Board has ordered, and also tell you that:

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

- (1) to organize themselves;
- (2) to form, join, or help unions;
- (3) to bargain as a group and choose whom they want to speak for them;
- (4) to act together with other workers to try to get a contract or to help or protect one another;
- (5) to decide not to do any of these things.

Because this is true we promise that:

WE WILL NOT force you to join any strike we may call by threatening you or damaging your property or doing anything like that. You have the right not to participate in a strike we may call. But if you are a member of our union and work during a strike we may discipline you, as long as it is done according to the law.

Dated-

WESTERN CONFERENCE OF TEAMSTERS,
AGRICULTURAL DIVISION, AND LOCAL 946

By:

(Representative)

(Title)

THIS IS AN OFFICIAL NOTICE OF THE AGRICULTURAL LABOR RELATIONS BOARD, AN AGENCY OF THE STATE OF CALIFORNIA. DO NOT REMOVE OR MUTILATE!

Member HUTCHINSON dissenting in part:

For the reasons expressed in my separate concurring/dissenting opinions in Sam Andrews & Sons, 3 ALRB No. 45, Western Tomato Growers & Shippers (Ernest Perry), 3 ALRB No. 51, and S. L. Douglass, 3 ALRB No. 59, I would adopt the ALO's reasoning and reconunendation concerning the award of litigation costs to the general counsel and charging party.

While the majority adopts the NLRB approach on this issue, they decline to provide the remedy here because the respondent did have legitimate reasons to litigate and successfully defended against several charges and far reaching claims. The majority also places some emphasis on the fact that the presently constituted Board had yet to issue an unfair labor practice decision at the time of the acts committed by respondent.

The majority ignores the fact that respondent's litigation posture was, in large part, infused with vexatious and utterly frivolous tactics. They further overlook the fact that respondent's original misconduct went far beyond mere technical violations of the new law. At that time it required no crystal ball to conclude that endangering human lives, wanton destruction of property, and violent intimidation of workers was a violation of the Act. Most of the conduct charged and proven constituted moral as well as legal wrongdoing.

I do not think the fact that part of the respondent's litigation posture was legitimate should shield it from responsibility for its vexatious and abusive conduct. I would remand the case to the ALO for assessment of litigation costs to the general counsel and the charging party to the extent that those costs were incurred in response to respondent's tactics or the proven flagrant violations of the law.

Dated: July 21, 1977

ROBERT B. HUTCHINSON, Member

STATE OF CALIFORNIA

BEFORE THE

AGRICULTURAL LABOR RELATIONS BOARD



WESTERN CONFERENCE OF TEAMSTERS,)
AGRICULTURAL DIVISION, I. B. T. and its)
Affiliated Locals 1173 and 946)

Respondent)

Case No. 76-CL-6-F

and)

V. B. ZANINOVICH & SONS, INC.)

Charging Party)

Harry J. Delizonna, General Counsel for
himself

James Egar, Ormes, Farrell, Monnoy & Drost, of Los
Angeles, for the Respondent

Kenwood C. Youmans, Seyfarth, Shaw, Fairweather &
Geraldson, of Los Angeles, for the Charging
Party

DECISION

STATEMENT OF THE CASE

DAVID C. NEVINS, Administrative Law Officer: This case was
heard by me on November 4, 5, 8, 9, 30, and December 1, 8, 9, and 10,
1976.^{1/} The original complaint in this matter was issued on August 26,
and was amended on September 2 and October 15. The complaint, as
amended, is based on a charge filed by V. B. Zaninovich & Sons, Inc.
(hereafter "VBZ" or the

^{1/}Unless otherwise specified, all dates herein refer
to 1976.

1 "Employer"); the charge was duly served on the Respondent,
2 Western Conference of Teamsters, Agricultural Division, I.B.T.
3 and its Affiliated Locals 1973 and 9#6, on August 26, as ad-
4 mitted by the Respondent. ^{2/} The complaint alleges that the Res-
5 pondent violated the Agricultural Labor Relations Act (hereafter
6 the "Act").

7 All parties were represented and given a full opportunity to
8 participate in the proceedings. The General Counsel and the Charging
9 Party filed briefs after the close of the hearing, and counsel for the
10 Respondent as well as the General Counsel made closing oral statements.

11 Upon the entire record, including my observation of the
12 demeanor of the witnesses, and after consideration of the arguments and
13 briefs submitted by the parties, I make the following;

14 FINDINGS OF FACT

15 I. Jurisdiction.

16 The Respondent was alleged and admitted to be a labor
17 organization within the meaning of Section 1140.4(f) of the Act, and I so
18 find. Similarly, VBZ was alleged and admitted to be an agricultural
19 employer within the meaning of Section 1140.4(c) of the Act, engaged in
20 agriculture in Tulare County, California, and I so find.

21 II The Alleged Unfair Labor Practices.

22 The General Counsel's amended complaint charges the Respondent
23 with numerous violations of Section 1154(a)(1) of the Act, allegedly
24 occurring as a result of a strike at the Employer's premises, during
25 August and September. The allegations assert that Respondent, through its
26 agents, threatened employees who continued to work during the strike with
27 blacklisting and excessive fines, with the loss of work and violence,
28 and with physical harm; that Respondent attempted to identify those who
continued to work for the purpose of reprisal; that Respondent phy-
sically interfered with and threw objects at employees and their
property; that Respondent physically destroyed the Employer's property;
that Respondent physically harmed employees; and that Respondent engaged
in similar conduct toward the Employer, its agents and representatives,
as well as agents for the

^{2/}The only local affiliate of the Respondent actually involved
in this proceeding is Local 9#6. It appears that at some time prior to the
hearing, Local 1973 was either merged into or its name changed to Local 946.

1 Agricultural Labor Relations Board.

2 In the original complaint Pete Maturino was identified as
3 an agent of and acting in behalf of the Respondent. A similar
4 allegation was made in respect to Efren Gonzales in the first amended
5 complaint. The second amended complaint added to that allegation the
6 names of Daniel Olegario, Jose Sandoval, Imelda Lopez, Consuelo Delgado
7 Gonzales, Art Castro, and Anthony Louie De Carlos.

8 The Respondent, through its answer and amended answer,
9 generally denied it committed any violations of the Act. Respondent,
10 however, admitted in its answer that those persons named in the preceding
11 paragraph were its agents and acting in its behalf, with the one
12 exception of Jose Sandoval.^{3/}

13 I I I . The Facts.

14 A. Background;

15 VBZ grows table grapes in Tulare County. It was a party to a
16 collective bargaining agreement with the Respondent, dated August 9,
17 1973, which agreement was to be effective until April 14, 1977. A
18 representation election was conducted at VBZ in September, 1975, and the
19 Respondent was certified as the collective bargaining representative on
20 December 16, 1975. V. B. Zaninovich & Sons, 1 ALRB No. 22 (1975). An
21 interim agreement was thereafter entered into between Respondent and
22 VBZ which provided that the parties enter into immediate negotiations
23 for a new agreement and that the Respondent "shall have the right to
24 cancel this agreement on 48 hours' written notice and take economic
25 action to enforce its contractual proposals."

26 The Employer and Respondent entered into negotiations in
27 March, 1976. Those negotiations were suspended in April, but resumed in
28 August. In a letter dated August 16, Respondent's

3/At the unfair labor practice hearing the Respondent attempted to amend its answer, desiring to delete its existing admission that its seven-admitted agents had acted in its behalf, The General Counsel opposed the motion as untimely and prejudicial. The Respondent's motion was denied, although a later opportunity was provided for Respondent to renew its motion. At no time, however, has Respondent come forth with an adequate reason for amending its answer in regard to those agents named and admitted to be acting in Respondent's behalf, admissions made by the Respondent's counsel with full knowledge of this proceeding and the violations charged. Nor was any reason given as to why such a significant admission should be amended at the late date sought by Respondent.

1 secretary-treasurer, Pete Baclig, an admitted agent, wrote the Employer,
2 saying "this letter will serve as notice of our intention to cancel the
3 Interim Agreement effective this date, August 16, 1976." Two days
4 later, VBZ's employees left their jobs for the day, returning the following
5 day.

6 The Respondent's strike against the Employer began in earnest
7 on August 24.^{4/} It involved no small effort. Some 400 employees were
8 working for VBZ when the strike began, a number which dwindled to between
9 30 and 100 during the strike.^{5/} One strike participant, Mr. Maturino,
10 estimated the number of pickets at about 150. Other of Respondent's business
11 agents indicated that from 20 to 70 pickets could be found at particular
12 entrances to the VBZ property, though other entrances would have only 10 or
13 15 picketing.

14 Included with those picketing were the many business agents of
15 Respondent called to Delano. Some 15 to 20 business agents came from such
16 places as Salinas, Calexico, Coachella, and LaMont, in addition to the
17 seven business agents assigned to the Respondent's Delano office.

18 Respondent's business agents and pickets were not the only ones
19 at the locus of the strike. VBZ employed an unspecified number of security
20 guards through a company by the name of Triple A. Additionally, a large
21 contingent of deputy sheriffs from the Tulare County Sheriff's Office
22 patrolled the strike scene, numbering between 10 to 12 on some days and 20
23 to 30 on other days. Between August 19 and September 7, Tulare County
24 logged some 1,500 manhours in deputy sheriff work at the Employer's
25 vineyard. Some of this work involved escorting caravans of workers,
26 traveling in their own vehicles, from the VBZ property after work each
27 day.

28 ^{4/}The Respondent and the Employer are at odds over whether the
strike was properly initiated, the Employer claiming that employees were
improperly polled regarding the strike and that the interim agreement was
improperly cancelled. This latter claim, notes the Employer, is the
subject of another, separate unfair labor practice charge. Nonetheless, no
issue is directly raised by the formal pleadings In this proceeding as to
whether the Respondent's strike was properly initiated and, therefore, no
such issue is considered herein.

^{5/}The record does not clearly reflect who comprised the
Employer's labor force during the strike. But, it is fair to say
that many who worked had been employees before the strike.
Others were new employees hired during the strike, and others
were employed by outside companies which purchased some of
VBZ's crops during the strike and harvested them at VBZ's premises.

1 To some extent physical evidence introduced by the General
2 Counsel portrays what it must have been like on the property lines of
3 VBZ during the strike. Thus, photographs were introduced depicting
4 groups milling about. Video tapes were introduced revealing large
5 numbers of people, picketers and police, gathered at certain entrances;
6 noise can be heard from the yelling, sirens, and loudspeakers which
7 occasionally blared forth from the picketing sites.

8 Only two days had elapsed from August 24 when the Employer
9 filed its unfair labor practice charge, a charge resulting in an
10 immediate complaint by the General Counsel. On August 27, the General
11 Counsel then filed a complaint in the Superior Court of the County of
12 Tulare, seeking injunctive relief and a temporary restraining order in
13 respect to certain strike conduct. The temporary restraining order was
14 immediately granted.

15 That same day, August 27, the formal papers and res-
16 training order in the county court action were served on Respon-
17 dent by Fred Lopez, an agent and investigator for the Board.
18 Mr. Lopez first served the papers on Louis Uribe, an admitted
19 business agent of the Respondent, who was at the Respondent's
20 Delano office. Lopez also served the papers that evening on a
21 Mr. Cotner, who Lopez "believed was affiliated with the Western
22 Conference of Teamsters and who was with Pete Baclig at the
23 time."^{6/}

24 The Court's temporary restraining order, signed by Judge
25 Bradley, enjoined the Respondent and its agents from threatening
26 employees with excessive fines and blacklisting, identifying or
27 threatening to identify non-striking employees, threatening employees
28 with bodily harm or damage to their property, inflicting such harm or
29 damage, and threatening employers with such harm or damage, or
30 inflicting the same.

31 Barely a week later, on September 3, the General Counsel
32 filed papers with the Tulare Court, seeking to have the

33 ^{6/}The service of Cotner took place at Delano's prominent motel
34 and bowling alley, the Stardust, where the Respondent and VBZ were to
35 meet in negotiations that night. As detailed infra, Lopez had driven
36 to the location in a state vehicle, marked as such, all four tires of
37 which were "slashed" as it stood in the parking lot. That evening,
38 and again on September 3, VBZ's collective bargaining representative
39 refused to participate in bargaining, asserting Respondent's strike
40 misconduct as the reason for breaking off negotiations.

1 Respondent adjudged in contempt for violating the outstanding temporary
2 restraining order. The Contempt Petition cited the restraining order
3 and alleged numerous violations of that order, supplying some 12
4 affidavits and numerous police reports that cited conduct identical to
5 or similar to that which is in issue in this proceeding. The formal
6 papers in that contempt action were served the same day on two of
7 Respondent's business agents, Max Martinez and Pete Maturino. Insofar
8 as the record indicates, no violence or threats thereof, or other
9 misconduct, took place
10 after September 3.

11 B. The Incidents In Question;

12 1. Introduction

13 The incidents described by the testimony can be organized and
14 discussed within several different formats. I have selected one which
15 conforms most closely with the fact-finder's 11 greatest difficulty in
16 this case--namely, to determine which of those acts described in the
17 testimony can be linked to the Respondent and, hence, found to be the
18 Respondent's responsibility.

19 Much of the evidence introduced against the Respondent
20 was introduced over the Respondent's objections. Primarily, the
21 Respondent opposed such evidence by claiming that the identity of the
22 wrongdoer or perpetrator in many cases was unknown and, accordingly, such
23 evidence should be excluded as irrelevant to the Respondent's culpability.
24 Now, rather than at the hearing, I believe is the appropriate time to
25 determine whether a sufficient nexus exists between any given act of
26 misconduct described in the evidence and the Respondent's actions and
27 responsibility. Thus, the following discussion is oriented toward
28 determining whether, and to what extent, the Respondent must be held
responsible for misconduct surrounding the strike.¹⁷

¹⁷Of course, those of Respondent's business agents who
testified (nine of them) essentially denied any wrongdoing on
their part. Based on their demeanor and on the quality of their
testimony, their denials are not credited by me. Their testi
mony, as cited occasionally in subsequent sections, is largely
discredible from the standpoint of both logic and its conflict
with the contrary and more credible testimony opposing theirs. One brief
example might now suffice: despite notice of the unfair labor practice
charge, despite notice of the temporary restraining order and contempt
action, and despite the presence of numerous deputy sheriffs on VBZ
property, the Respondent's strike leader, Pete Maturino, who controlled
all other business agents during the strike and who was daily on the picket
lines, blandly claimed that he was totally unaware of -- (continued)

1 2. Incidents Involving the Respondent's Admitted Agents

2 A number of incidents cited in the testimony are identified
3 directly with Respondent's admitted business agents. The following is
4 a brief discussion of such incidents, not necessarily in the
5 chronological order in which they occurred. With but few exceptions, the
6 incidents cited in the testimony were not tied to specific dates, but
7 rather were incidents generally placed between August 24 and September 3.

8 Louis Uribe--Louis Uribe, the Respondent's senior
9 business agent in LaMont, took part in Respondent's strike at VBZ.
10 He was identified as involved in several incidents.

11 On or about September 1, Mr. Uribe was heard to proclaim
12 over one of the loudspeakers or megaphones used by business agents,
13 directing his remarks to Jack Pandol, an area grower, the following:
14 Pandol we know where you live, we know where you go, we know your
15 children and your family, we know where you are; remember his face,
16 sometimes he walks downtown by himself. Uribe made his statements
17 while workers were within some 75 to 100 feet, easily within hearing
18 distance from the broadcast announcement. Uribe¹'s statement was described
19 by Mr. Lopez, the Board agent who witnessed the incident, and is docu-
20 mented on the video tape taken by the Tulare County Sheriff's Office.^{8/}
21 Uribe¹'s comments were made after he had addressed the field workers,
22 telling them that they could be disciplined under the Respondent's
23 constitution and by-laws for working behind a sanctioned picket line.

24 On another occasion, Uribe was addressing workers from one of
25 the grape avenues, while they were working in the field. According to
26 the credible testimony of Benjamin Cepriano, a foreman for VBZ, Uribe
27 asked the workers to join in the strike and, when he got no response,
28 he became angry and shouted, "fuck you, you have to get out of the
fields; if you don't come out

29 ^{7/}(continued)--any violence or misconduct occurring during the
30 strike, learning of such activity only through newspaper accounts. Not
31 only was his testimony in conflict with common sense, but it conflicted
32 with both the credible and physical evidence which placed him at the
33 very scene where misconduct was occurring. The testimony of the other
34 business agents suffered from a similar lack of reality.

35 ^{8/}This is one of those incidents which Mr. Maturino denied
36 having known about. Yet, the deputy sheriff who made the video tape, as
37 well as the tape itself, placed Maturino at the scene.

1 we'll see what happens."^{9/}

2 A final incident involving Uribe was described by
3 Mrs. Soledad Barajas Lopez. She and her husband, both workers,
4 were driving home from VBZ property with their three daughters and
5 two nephews, after having gone to VBZ looking for work, when they were
6 followed by a brown and white-striped van. The van began following them
7 at the VBZ property and despite Mr. Lopez's driving followed the Lopez
8 vehicle at speeds up to approaching 90 miles per hour. Mrs. Lopez
9 identified Uribe as a passenger in the van, an identification credibly
10 made immediately upon seeing a photograph of him. Mrs. Lopez also
11 recalled that when the van came close to their vehicle, she saw Uribe
12 raise a rifle in the van window. ^{10/}

13 Louis Uribe did not testify at the hearing.

14 Efren Gonzales--Mr. Gonzales was a business agent
15 assigned to Respondent's Oelano office. He was also implicated in a
16 number of incidents. One day during the strike, when some
17 35 to 50 workers' cars were parked by a field in which the em-
18 ployees were working, Gonzales was observed methodically going to the
19 front of each car, bending down by the license plates,
20 and writing something down on a clipboard he was carrying. As he was
21 doing so the workers could observe him; they were in the
22 immediate area loading grapes on a truck. Gonzales was observed going
23 from car to car by Marty Zaninovich, a supervisor with and
24 one of the owners of VBZ. His testimony was credible, as opposed
25 to Gonzales's cursory denial of the incident.

26 ^{9/} Although from time-to-time statements herein are
27 placed in quotation marks, such statements may not be a verbatim
28 account of the testimony cited. Inasmuch as this Decision is
written without having viewed the stenographic transcript, the quotes
may not be exact. Nonetheless, quotes are used at times
to denote the conversation in issue; at other times, the conver-
sation will be paraphrased.

29 ^{10/} Little doubt exists that Mrs. Lopez believed that she saw
30 Uribe raise a rifle. Nonetheless, it is difficult to accept at face
31 value her belief, for despite her conclusion that, she saw a rifle she
32 was unable to describe what physical characteristics of the raised object
33 led her to believe it was a rifle. This inability on her part is
34 significant because of the limited view she had of the raised object.
35 Accordingly, I do not conclude that the object raised by Uribe was--in
36 fact--a rifle.

1 Another incident involving Gonzales was described by
2 Marlo Gutierrez, a security guard from Triple A. Gutierrez was
3 standing in a roadway perpendicular to the one Gonzales was driving
4 on; Gutierrez was removing a "Tijuana Tack" (a device more fully
5 discussed later), when Gonzales drove his vehicle swerving it off the
6 center of the road toward Gutierrez, stopping it just inches from
7 Gutierrez's knee. Gonzales then accused Gutierrez of having thrown a
8 Tijuana Tack at his car, which Gutierrez denied having done. ^{11/}
9 There were no employees present In the general area where the incident
10 in question occurred.

11 Anthony DeCarlos--Mr. DeCarlos, another admitted agent of
12 the Respondent, was observed by Deputy Sheriff Horn as involved in an
13 incident. On September 2, according to the credible testimony of
14 Horn, a grape truck came slowly out of the VBZ vineyard with two
15 people in its cab, traveling at about five miles per hour, turned on
16 Avenue 24, and was converged upon by some 40 picketers in the area.
17 The truck carried grape boxes. Horn observed DeCarlos standing in the
18 middle of Avenue 24 about six feet from where the truck turned, from
19 which point DeCarlos went to and jumped on the truck's running-
20 board, reached In the window, and slapped the driver. Horn then
21 arrested DeCarlos. ^{12/}

22 ^{11/}Gonzales denied swerving his vehicle towards Gutierrez.
23 However, when reporting the incident to a deputy sheriff, Daryll
24 Yandell, Gonzales told the deputy that he had swerved toward Gutierrez
25 to avoid hitting the Tijuana Tack. Soon after the incident, and
26 before any other vehicles had passed over the same spot, Yandell (who
27 was in position to observe the area of the incident) Investigated
28 and found swerve marks toward where Gutierrez had been, marks which
could be discerned from the dirt roadway. Gonzales also denied in
his testimony being with anyone at the time, but Yandell was told
that not only did Gonzales have a passenger but that Anthony
DeCarlos, another business agent, also claimed to be present when
the incident occurred, following Gonzales's vehicle.

29 ^{12/}DeCarlos did not testify. But, Business Agent Mohamed
30 Abdullah (known as "Tully") testified that DeCarlos jumped on the
31 truck only after the truck had nearly hit DeCarlos. Abdullah
32 claimed that at no time was the truck moving slower than 25 miles per
33 hour. Abdullah's testimony cannot be accepted, not only because it
34 is impossible to believe that the truck was able to turn out of the
35 vineyard at a minimum of 25 miles per hour, but the video depiction
36 of the scene clearly indicates the contrary. Moreover, it is simply
37 incredible that DeCarlos could mount a truck moving at 25 miles per
38 hour and then jump off when it was going 40 to 45 miles per hour,
which Abdullah stated.

1 Ernest Tafalla--Mr. Tafalla was a business agent assigned to
2 Respondent's Delano office; he helped service the past collective
3 bargaining agreement with VBZ. One day after work, Mr. Tafalla was
4 observed by Marty Zaninovich riding as a passenger in a pickup truck which
5 overtook and drove past a car caravan of workers about six miles from the
6 VBZ property. Other vehicles were also passing the caravan. But, in the
7 case of Tafalla he was observed by Zaninovich throwing rocks out his-
8 window, throwing them at the workers' cars. One of the rocks
9 hit a worker's vehicle.

10 Zaninovich was able to identify Tafalla only briefly.
11 Zanfnovich's vehicle followed Tafalla's when passing the cara-
12 van, and as Tafalla's vehicle was turning left after completing the
13 pass. Zaninovich saw Tafalla's face. He was familiar with Tafalla from
14 Tafalla's past work with Respondent's employees. I do not credit
15 Tafalla's cursory denial of the episode.

16 Arturo Castro--Mr. Castro was another business agent assigned
17 to the Delano office and who assisted in servicing the Respondent's past
18 collective bargaining agreement with VBZ. He was involved in two
19 events.

20 The first event was described by Vincent Zaninovich, another
21 part owner of VBZ., Mr. Zaninovich had pulled his vehicle out on one of
22 the roads surrounding VBZ property, after he had observed two vehicles
23 following some workers. After he pulled out, one of the other two
24 vehicles stopped and Mr. Castro got out; Castro, reaching into the back-
25 seat area of his vehicle, began throwing rocks at Zaninovich from about
26 80 feet away. Four or five rocks were thrown. Zaninovich subsequently
27 confronted Castro by accusing him of throwing rocks, when Castro came to
28 VBZ's office days later, and Castro responded by saying he only did
what he was told. The testimony does not establish that any
employees viewed Castro's rock-throwing."

After Castro denied in his testimony the episode described by
Zaninovich or that he threw rocks on any other occasion, a rebuttal
witness, Deputy Sheriff Kliever, described Errs observation of Castro
throwing a rock at Jack Pandol, Jr., who was at VBZ harvesting some
crops. As the workers were in the field working, and as Pandol was
walking down one of the roads, Castro was seen picking up and throwing a
dirt clod, hitting Pandol in the back of the head. Pandol was about
20 to 25 feet from Castro; no other persons were within 10 feet of
Pandol when he was hit.

As a result of his observation, Kliever placed Castro
under arrest. When that incident occurred, Pete Maturino was

1 present. He immediately came up to Kliever's patrol car, telling
2 Castro not to resist the officer.

3 Roy Mendoza and Johnny Macias--Mendoza and Macias were both
4 business agents of the Respondent, Macias being from the Coachella area.
5 Only Macias testified, and he was not questioned about the incident now
6 described.

7 On a day in late August or early September, Manuel
8 Goree, a VBZ worker, was driving a VBZ truck loaded with grapes
9 from the field to the shed. It was about 5:00 p.m. As he was
10 driving he passed five persons leaning against a car in the
11 road; Respondent's picket signs were also leaned against the
12 same car. When Goree and his two companions passed the men the
13 five began throwing rocks at the truck. One of the men was Roy
14 Mendoza, as recognized by Goree (who had seen Mendoza at the
15 hearing and also identified him from a photograph); another was
16 Macias. Both threw rocks at Goree's truck, but Mendoza had also
17 charged toward the truck, heaving a rock at the truck's wind
18 shield, breaking it and spewing glass on Goree's two fellow-
19 workers. Each of those two workers received minor cuts from the
20 shattered glass, one being cut over his right eye and the other
21 cut on his neck.

22 Goree also had an encounter with Mendoza earlier that day.
23 When Goree was at the VBZ shed at about noon in his truck, Mendoza was
24 there, shouting at him to get out of the truck and that he (Goree) was
25 going to get it after work. After those incidents, and after witnessing
26 a fire on the VBZ property, Goree quit his job.

27 In addition to the incidents involving Manuel Goree, Roy
28 Mendoza was also observed one day with a camera. Fred Lopez observed
Mendoza pointing his camera at workers who were working despite the
strike as if Mendoza was taking their pictures, although Lopez was not
certain that Mendoza was actually taking pictures. (At the time in
question, Mendoza worked on the staff of Respondent's newspaper.)

Imelda Lopez--Ms. Lopez is another business agent who
participated in the strike. She did not testify.

Louis Caratan described an incident involving Ms. Lopez.
Caratan worked for his own company which purchased some
of VBZ's crops. Caratan's employees, also represented by the
Respondent, were in the field harvesting the crop.

While work was in progress, Caratan observed Lopez walking
down one of the vineyard roads. Some 50 to 100 people

1 were in that road, including picketers, Respondent's business agents,
2 workers, and police. Maturino was one of those present.

3 There were packing stands by the side of the road, where grape
4 boxes also stood full in stacks.

5 Caratan first noticed Lopez walking by one of the stacks of
6 grape boxes, noticing her swing her hip in an exaggerated fashion against
7 one of the stacks, causing the stack to teeter. She kept on walking. When
8 she came upon another stack some 20 feet away Lopez was observed hiping
9 that stack as well; the stack fell over, the top four boxes spilling
10 their contents and ruining the grapes.

11 Contrary to Caratan who testified that no one was
12 within six feet of Lopez when she knocked over the stack, one of the
13 Respondent's attorneys testified that Ms. Lopez was more or less bumped
14 into the stack of grape boxes. Mr. Horner testified that he was walking
15 behind Lopez when a worker backed into her from her left, and she in turn
16 bumped the grape boxes, knocking over some two or three boxes.^{13/}

17 -

18 Consuelo Delgado Gonzales--Ms. Gonzales was also a
19 business agent of the Respondent. She was involved in numerous
20 incidents.

21 Several of the incidents involving Gonzales are uncontested.
22 inasmuch as she made no appearance as a witness in this proceeding. On
23 August 26, she was observed by Deputy Sheriff Bobby Davis throwing a bottle
24 at a truck carrying employees into the VBZ field. Some five or six
25 vehicles were entering the field; Gonzales was among some 10 or 12 persons
26 standing in the area. The bottle missed the truck and broke on the road.
27 She was then arrested by Davis. ^{14/}

28 _____
^{13/}Despite the conflict in testimony, I conclude that Lopez did not accidentally knock over the grape boxes. First, no doubt exists in my mind that Caratan's recollection was 'in earnest', as he immediately called over one of the deputy sheriffs and placed Lopez under a citizen's arrest. Horner, on the other hand, although present when Lopez was accosted by the deputy, apparently made no effort to explain what he had seen. I do not doubt Homer's veracity, but I question the strength and accuracy of observation. Furthermore, Lopez made no effort to salvage any of the spilled grape boxes she knocked over but walked on, a doubtful response from someone who accidentally knocks over a stack of grape boxes in the vicinity of some 50 to 100 people.

^{14/}The Charging Party in its brief claims that after Gonzales was taken in for booking, she volunteered -- (continued)

1 On August 25, as 10 to 12 cars of workers were driving
2 In caravan fashion on Road 208, which bordered VBZ property, two
3 cars traveling in the opposite direction pulled into the cara-
4 van's driving lane, forcing the first two workers' cars off onto
5 the road's shoulder. Deputy Sheriff Landers observed the inci-
6 dent and arrested Leo Cortez, another of Respondent's business
7 agents, for reckless driving. The second vehicle which followed
8 Cortez into the oncoming caravan was driven by Consuelo Gonzales
9 according to Marty Zaninovich, who observed the incident from a
10 parallel roadway.

11 On August 26, Jerry Ince went to the VBZ property to repair
12 some flat tires; he was employed by a local repair shop. As he was
13 leaving the property, driving from the entrance, he noticed some 15 to
14 20 people scattered by the roadside. One of those, a woman, bent down,
15 made an under-handed throwing motion, and Ince then saw a Tijuana Tack in
16 front of his vehicle. Ince could see the Tack in the road in front of
17 his vehicle and swerved around it ^{15/} As he went around the Tack, the
18 woman who had made the throwing motion looked at him and continued
19 looking at him. Mr. Ince brought Deputy Sheriff Yandell back with him,
20 pointing out the woman. The woman, about five foot three inches tall,
21 around 30 years of age, identified herself as Consuelo Gonzales. Ince's
22 testimony does not establish whether any VBZ employees observed the
23 incident.

24 The General Counsel also charges that Ms. Gonzales committed
25 several other acts, albeit the "victims" could not identify Ms.
26 Gonzales by name. Rather, the General Counsel contends that Ms. Gonzales
27 was commonly known to employees as "La Tigressa" (the tigress) and,
28 under that pseudonym, Ms. Gonzales's identity can be established.

More than a preponderance of proof convinces me that,
despite various denials by Respondent's business agents, Ms.

^{14/}(continued)--to Deputy Sheriff Lutz that she was throwing
at a security guard's vehicle and not at the workers. My notes indicate
that Gonzales's admission to Lutz occurred on September 1, but that the
bottle-throwing incident occurred on August 26. It could be that rather
than constitute two separate incidents, the events described followed one
another on the same day, as the Charging Party claims.

^{15/}A Tijuana Tack, referred to as a "star" by some, is a four
pointed object. No matter how it lands one point is always up. It is
a device that makes simple the flattening of tires.

1 Gonzales was one and the same as La Tigressa. Thus, employees contacted by
2 Board Agent Lopez frequently referred to La Tigressa, and many of them
3 also called her Connie. One even Identified her as Connie Gonzales. Deputy
4 Sheriff Davis heard people on the Respondent's picket lines call Gonzales La
5 Tigressa. Mrs. Galvan, a worker, heard people calling the person she
6 knew as La Tigressa by the name of Connie. And, only one person appearing
7 through the testimony, or known to have taken part in the strike, was named
8 Connie--namely, Consuelo Gonzales. Accordingly, I conclude that La
9 Tigressa was a name by which Consuelo Gonzales was known.^{16/}

10 Consuelo Gonzales, known as La Tigressa, was also involved In
11 two other incidents. First, she was seen by Maria Olvera, a VBZ worker,
12 throwing rocks at" workers' cars which were traveling in a caravan from
13 work. La Tigressa, riding in a pick-up truck, passed the caravan,
14 hurtling rocks at all the cars in the caravan.

15 Second, Mrs. Galvan was the unfortunate victim of Ms
16 Gonzales. In late August, as she and another woman worker were heading
17 home from the VBZ property. La Tigressa, in her red Torino, pulled in
18 front of the Galvan vehicle, and a van pulled behind it. The three cars
19 traveled at high speed, the Torino weaving back and forth in front of
20 Galvan. Attempting to escape, Mrs. Galvan, a short", heavy woman 52
21 years of age, pulled off into a grocery store lot. But, to no avail

22 As Galvan left her car heading for the store the man who had
23 driven the van, dressed in a Teamster jacket, got out and slashed two of
24 Gal van's tires. Not to be outdone, Gonzales got out of her Torino and
25 slashed the other two. At that point Gonzales grabbed Galvan by the hair
26 and attempted to slap her. Galvan was held from behind by the Teamster-
27 dressed man, and others who had arrived in the meantime, also dressed in
28 various Teamster paraphernalia, stood watching the wrestling match
between Galvan, held from behind, and La Tigressa. Eventually, Galvan
got into the store and the fracas ended, but not before those who were
with Gonzales cheered her on to hit the older woman again. Galvan made
a report to the Sheriff's Department; Deputy Mart Inez, who helped her to
make her report, observed the four flattened tires on Galvan's vehicle.

^{16/} In addition, on at least two occasions, Ms. Gonzales
was associated with incidents while driving a red Torino. Testimony
established that Gonzales owned and drove a red or brown Torino.
Finally, the general physical description of Gonzales fits closely with
the one attributed to La Tigressa.

1 Pete Maturino--Mr. Maturino was the senior business agent in
2 the Delano office. He was in overall charge or control of Respondent's
3 strike activity, directing the other business agents as well as issuing
4 whatever equipment was necessary. He was also present at the VBZ property
5 every day during the strike for about six hours a day. Maturino is
6 charged by the General Counsel with personally engaging in misconduct,
7 which Maturino denied.

8 As earlier noted, Mr. and Mrs. Lopez (the wife calling
9 herself Soledad Barajas) sought work at VBZ and were eventually chased
10 from VBZ by Louis Uribe and a companion. Earlier in that same day they
11 also encountered Mr. Maturino. As they were driving in the area of
12 Avenue 2k and Road 208, at about 7:00 a.m., they passed by a group
13 standing with picket signs. One man, standing by the side of the road,
14 wearing a Teamster jacket (one which is blue with the Teamsters' yellow
15 insignia on its front), threw either a rock or dirt-clod at the Lopez
16 vehicle, hitting it in the rear. The man made his throw from about 10
17 feet away. Mrs. Lopez identified him from a photograph as Mr. Pete
18 Maturino.^{17/}

19 Pete Ramirez, Jr., another worker, testified in respect to
20 an incident involving Maturino which occurred on September 2. Ramirez
21 drove one of the Employer's trucks from the vineyard onto Avenue 24,
22 heading for the cold storage area. After his truck was jumped on by
23 someone from among those picketing, he was followed by a Chevy Nova
24 about two to three miles, being passed by the Nova en route. As
25 Ramirez and his two fellow workers then approached the intersection at
26 Road 208, a man from the Nova got out with a board in his hand. Ramirez
27 refused to stop at the stop sign and, as he was passing the man, the man
28 threw the board at the side of the truck. Ramirez identified Pete
Maturino as the man, after looking at a photograph.^{18/}

^{17/}Mr. Lopez was shown the same photograph as his wife and,
although he recognized Maturino, Lopez was unable to identify him as the
one who threw at his car. While it may seem difficult to reconcile the
difference in identification between Mr. and Mrs. Lopez, I have
concluded that Mrs. Lopez's identification should be credited. She
testified in detailed fashion for the most part, demonstrating strong
recollection. Her husband, on the other hand, seemed confused during
his testimony and, at times, uncertain of what he was being asked.

^{18/}Maturino acknowledged throwing a "stick" at the truck,
saying he did so out of anger because the truck almost ran him over. I
do not credit Maturino's version. No explanation was given by Maturino
as to why he had first -- (continued)

1 Maturino was also identified by a VBZ foreman, Benjamin
2 Cepriano, as having come into the field during lunch when some 70
3 workers were eating. Maturino was accompanied by others. Cepriano
4 testified that Maturino told the workers they should join the
5 strike, after which he told them that if they did not they would be
6 fined \$500.00 and blacklisted. Maturino also told them that if they
7 did not join the strike, he would see them in the afternoon, after qui-
8 tting time, and "you will see what will happen." (Cepriano recalled
9 having heard similar statements made by those he considered
10 "organizers" many times.)

11 Two incidents were described which involve Maturino
12 and VBZ representatives. Marty Zaninovich recalled that on one
13 occasion he approached two workers who had been talking with
14 Maturino and Efren Gonzales in the field. When Marty told the
15 workers to start loading grapes, Maturino challenged him to go
16 into the fields and settle things. Marty then called his
17 brother, Vincent, from his truck, and Vincent arrived on the
18 scene very shortly.^{19/}

19 The second occasion involved Andrew Zaninovich, one of the
20 primary owners of VBZ. He drove into the field one day, stopping where
21 Maturino and Efren Gonzales were standing. When Zaninovich attempted
22 to open his door, Maturino swung his elbow toward his face, stopping
23 just short of hitting Zaninovich. Gonzales then grabbed the open door
24 and slammed it shut on Zaninovich, banging it into Zaninovich's knee.
25 Testimony indicates that employees were not present at the time.^{20/}

26 Still another incident occurred between Maturino and

27 ^{18/}(continued)--followed and then passed the truck, driving
28 some three miles, and then got out of the Nova with a stick in his hand
at a place where the truck had to pass. Mischief appears as the reason.

29 ^{19/}Maturino and Gonzales differed among themselves as to what
30 happened between them and Marty Zaninovich. Gonzales claimed that-Tony
31 Zaninovich pulled up to them fast and swore at them, while Marty was
32 just standing there. Maturino claimed that Marty stopped abruptly when
33 someone from the picket lines yelled, getting out of his vehicle,
34 and challenged Maturino to a fight. I credit the version of Marty
35 Zaninovich.

36 ^{20/}Again the testimony of Maturino and Gonzales differs as to
37 this incident. Maturino acknowledged that Gonzales shut Zaninovich's
38 door, while Gonzales denied doing anything other than just holding the
door in an open position. In fact, Maturino acknowledged that he had
heard Zaninovich's knee was hurt.

1 Deputy Sheriff Landers. On September 3, Landers approached Maturino
2 shortly before 6:00 a.m., taking a photograph of the senior business
3 agent. Maturino's response was to raise and clench his fist and stalk
4 toward Landers, stopping only a foot or two away. Landers arrested
5 Maturino for assault.

6 No workers were present at that early morning hour. Two of
7 Maturino's companions at the scene, however, denied that Maturino
8 assaulted Landers, claiming instead that Landers bumped Maturino with
9 his hip, knocking Maturino off balance. Their testimony was refuted not
10 just by Landers but by two other deputy sheriffs who had been standing
11 across the road, all of them describing how Maturino had actually
12 walked some eight to 10 feet toward Landers and gestured as if to strike
13 the officer. I credit the deputies¹ testimony.

14 One final episode directly involves Mr. Maturino. On or
15 about August 30, Deputy Landers received a radio report that a silver El
16 Camino was chasing a blue Ford on VBZ property, and Maturino was
17 identified as the driver. Landers located a blue Ford, belonging to
18 Lupe Trevino, a worker, which was stopped. The back window was broken, a
19 hole was in it and shattered glass spread across the back seat. Trevino
20 was there with her five passengers.

21 According to Trevino¹'s testimony, she had been chased that
22 morning by a grey El Camino with two men in it. She had driven very
23 fast to avoid the follower. At one point she slowed and looked in her
24 rear-view mirror, seeing the EL Camino's passenger with a baseball
25 bat. At that point she heard a loud crash and her back window was broken.
26 The El Camino sped off, Landers, when he investigated, noticed not just
27 that the window was broken but that a small dent by the window existed in
28 Trevino's blue Ford.^{21/}

The report involving Trevino's car damage was broadcast over
the police radio, being picked up by Deputy Davis. At the time he heard
the report, Davis saw a silver El Camino and followed it. The car
eventually stopped on its own, apparently among other vehicles carrying
Respondent's personnel. Various

^{21/} Trevino's testimony cited above was given in the Tulare
County contempt action and was introduced into the record in this
proceeding under Evidence Code Section 1291. The General Counsel was
able to show that all reasonable efforts had been made to obtain Trevino
as a witness for this proceeding, but that her whereabouts were now
unknown. The Respondent, of course, was the Defendant in the contempt
action, and its counsel in that proceeding was afforded the opportunity
to cross-examine Trevino.

1 officers pulled up by the El Camino; Pete Maturino was identi-
2 fied as the driver and Daniel Oligario as the passenger of the
3 El Camino. Oligario was another of Respondent's business agents

4 When they stopped, both Deputy Davis and Deputy
5 Yandell noticed a baseball bat in the El Camino. Yandell re-
6 moved the bat, at which point Maturino indignantly told him to
7 keep his "fucking hands off my property." When Yandell observed
8 the bat, he noticed what appeared to be blue paint on the bat.
9 Landers made a similar observation shortly afterward. Yandell
10 noticed another substance on it that appeared to be glass.

11 Trevino was unable to personally identify Maturino as a
12 participant in the assault on her car. But, she identified
13 the car he was driving as the vehicle which had been following
14 her, carrying the men who had broken her window.

15 Maturino's testimony concerning this Trevino episode
16 is interesting. Although he denied breaking Trevino's window.
17 his main concern seemed to be that no identification was made by
18 her. His testimony certainly did not indicate that he ever
19 manifested any concern over the incident or interest in
20 discovering what had happened.22/

21 Based on the circumstantial evidence, I conclude that
22 Maturino drove that silver El Camino which carried the
23 passenger who reached out the window, striking Lupe Trevino's
24 rear window, shattering it among her five passengers. From the
25 sequence of the events in question, little or no other conclusion
26 is possible from the evidence.

27 3. Incidents Indirectly Identified With the Respondent

28 For a number of incidents cited in the record no
direct link was drawn between the alleged misconduct and personal
identification of the perpetrator. Nonetheless, the General

22/During his testimony, Maturino claimed he made
efforts to see that violence was avoided during the strike. To
support his claim he described another incident where he had
learned that someone's daughter was hit with a rock while tra-
veling in a car on VBZ property. He came up to the father and
asked him if he knew who had thrown the rock, then suggesting to
the father (who was at the time caring for his daughter) that if
he wished to avoid such troubles again he should look for
another job.

1 Counsel argues that sufficient Identifying features exist regarding
2 such acts of misconduct as to establish them as committed by the
3 Respondent. Again, in discussing the alleged misconduct little or no
4 effort is made to specify exact dates; rather, the general period of
5 August 24 to September 3 is the time frame in question.

6 (a) Acts Committed by Those Wearing Teamster
7 Paraphernalia:

8 The record is replete with incidents occurring at the
9 hands of persons, exact Identity unknown, who were wearing so-called
10 "Teamster jackets" or Teamster caps or Teamster buttons. Each of the
11 foregoing symbols was a distinctive marking, either containing the
12 name of the "Teamsters" or the Respondent's emblem. Respondent strongly
13 argues that such insignia, particularly Teamster jackets, were
14 available to the public, and that such paraphernalia were not
15 necessarily worn by Respondent business agents or other agents.

16 Although it may be true that one need not be
17 either a business agent or member of the Respondent to wear
18 something like a Teamster jacket, it is also true that of all
19 those present during the VBZ strike, the Teamster jackets and
20 other insignia were worn only by those participating in the
21 strike. Thus, Teamster jackets, buttons, and caps were seen on
22 recognized business agents or on others standing on picket
23 lines. Not one instance has been cited where a VBZ employee or
24 representative, who worked during the strike, wore such para-
25 phernalia. On the contrary, only those picketing, soliciting
26 support for the strike, and business agents wore Teamster jac
27 kets and other insignia. Incidents involving such persons are
28 briefly discussed below.

(1) On August 26, when he began his investigation,
Fred Lopez of the Board noticed a car with slashed tires at the VBZ
property. Workers were standing by the car. A man, unknown to Lopez
came by, wearing a Teamster jacket and button. When the man was asked
by the workers present why the tires were slashed, he responded, " If
you work during a strike, you have to expect it. "

(2) On the first day of the strike, August 24, Chris
Nacua, a foreman, was getting ready to go into the field to work. In
the VBZ parking lot sat five women workers. Two men in Teamster jackets
approached them, and Nacua could overhear their conversation. Nacua was
just leaving the women, after telling them where they would work that
day. The two Teamster-dressed men told the women that if they crossed
the

1 picket line they were going to get hurt or busted
2 up, The women did not work that day.

3 Shortly after the foregoing conversation,
4 the two men approached Nacua, who was getting his bus ready to drive into
5 the field. One of the men told Nacua that he better not take employees into
6 the field that day or someone was going to get hurt. The man also told
7 Nacua, "I know you."

8 (3) Manuel Galvan, whose wife had an encounter with La
9 Tigressa, was working by himself on August 28, about two miles away from
10 other workers. He was on a tractor when two men approached him, men who were
11 wearing Teamster jackets and' buttons. They asked him what he was doing he
12 said he was working. They told him to stop. After he said that he had been
13 told there was an injunction, the men told him it was not worth anything.
14 The men then told him to quit working or they "would beat the mother out of
15 him" (an English version of what was said in Spanish), which Galvan took
16 as a death threat. The two men approached Galvan, coming within two feet
17 from him, and each pulled a knife.

18 (4) Eliseo Cepriano, a worker and Teamster
19 member, came to work on August 24 not knowing of the strike. He was stopped
20 by two men wearing Teamster jackets, who he had not seen before. They told
21 him of the strike, saying that if he" worked he would be fined \$500.00 and
22 blacklisted from all Teamster contracts. Cepriano netted about \$700.00 per
23 month at the time.

24 (5) As Josephina Morena, another VBZ employee, was
25 beginning work on August 24 her crew of about 40 was approached by some 15
26 persons wearing Teamster jackets. One of them addressed the workers. He not
27 only wore a Teamster jacket, but also wore a button and cap; Morena
28 recognized him as someone she had seen at Respondent's office in Delano.
The man said the workers should not work and that they would be pulled out
anyway they could be. The man who spoke said he (or they) would return and
then the employees would learn who they were, and that they (the workers)
would be sorry if they did not leave. When he was speaking the man clinched
and gestured with his fist.

 One of Morena's fellow workers came up to where they were
standing. The worker was told by one of the Teamster-jacketed people that
she should leave or an ambulance would be brought the next day.

 On a subsequent day, after Morena had arrived home, she
noticed a car circle about her house. The car

1 then pulled up directly in front of her house, about 20 feet from the
2 entrance. One of those in the car was someone Morena recognized from the
3 August 24 encounter; the other three wore Teamster jackets. The car sat
4 for five minutes and one of the men in it exhibited a pencil and paper,
5 making a writing motion. As he did so, he looked directly at Morena's
6 house number, which was visible from where the car was.

7 (6) Maria Olvera one day drove the last car out of a
8 VBZ entrance in a car caravan. Several persons were gathered around the
9 entrance, wearing Teamster buttons. One of the men there wrote something
10 down and said they had her license number. Olvera was not sure who yelled
11 it , but someone shouted they were going to bust up their cars.

12 (b) Conduct Associated with the Picket Line;

13 At nearly, if not every, entrance to the VBZ property groups
14 were gathered, picketing. Sometimes they carried picket signs, other
15 times they did not. Those gathered at the entrances were associated with
16 other conduct cited in the testimony.

17 (1) Fred Lopez, who spent many days at the VBZ
18 property, observed an unknown person, who was picketing and carrying a
19 picket sign, throw a rock at one of the Employer's trucks. The truck
20 was carrying grape boxes. That incident occurred on August 30.

21 On a previous occasion, on August 26, Lopez was
22 confronted as he entered the VBZ property by a person he recognized as a
23 representative for the Respondent at past Board elections. Lopez also
24 recognized him from the photograph of business agents that hung at the
25 Respondent's Delano office. The man told Lopez he better not enter the
26 property unless he wanted his tires flattened. By observation, Lopez
27 could see nails were scattered over the road he was to take.

28 (2) On August 27, after he informed the Respondent
that negotiations would not continue, Joseph Herman, an attorney for the
Respondent, began to leave the motel room where the parties met. As he
left, one from the group standing by the door poked Herman in the ribs,
saying "better watch out Red." Herman had red hair.

(3) During the two-week strike, Foreman Nacua
heard over a loudspeaker someone calling out names of employees, saying
"we know where you live ." Nacua was in the field working with about
100 workers at the time. Evidence establishes that the Respondent used
two loudspeakers and one megaphone during the

1 strike, operated mainly by business agents.

2 On another occasion, Nacua observed two men
3 dressed in Teamster jackets saying similar things--namely, telling
4 employees the men knew who they were and knew their cars. The two men came on the
5 property during a lunch break.

6 (4) Mrs. Galvan also heard people saying that if
7 the workers did not honor the strike they would not be able to
8 work anywhere there was a Teamster contract. The people who said such
9 things came on the property during the strike.

10 (5) Mario Gutierrez, a security guard, was res-
11 ponsible for following those believed to be Respondent agents
12 when they came on the property to talk with employees. One day after he followed
13 two men around, listening to them tell employees about Respondent's
14 activities, one of the men told Gutierrez he did not have to follow
15 them anymore. The man also told Gutierrez, in front of employees, that
16 if they saw him on the road they would broadside him. One of the two men
17 was wearing a Teamster jacket.

18 (6) Marty Zaninovich testified that one day when
19 he was driving on the property with an employee, a person standing among those
20 picketing threw a half-full can of Seven-Up, hitting Zaninovich through
21 the window.

22 (7) Several witnesses testified that those picketing the
23 entrances stood in front of vehicles entering the property, or slapped
24 and kicked at vehicles going onto VBZ property. At times Respondent's
25 business agents were identified at such scenes.

26 (8) On occasion, as noted, Tijuana Tacks were
27 thrown or seen on VBZ property. These Tacks made their appearance
28 several days after the strike began; the first few days
hundreds--if not thousands--of roofing nails were seen in various
VBZ entrances. Neither the Tacks nor the nails were seen before
the strike; nor were they present much after September 3.

Controversy surrounds the identity of those
responsible for placing the Tacks on the many roadways on which they
were found. But, certain facts do emerge, despite the con-
troversy.

On several occasions, persons identified with the
Respondent were seen throwing Tijuana Tacks. Thus, Consuelo Gonzales was
seen throwing one at a vehicle driven by Jerry Ince. Marty Zaninovich
claimed to have seen one of the

1 picketers throw one. Fred Lopez was warned by a recognized Teamster
2 about driving his vehicles over tacks in the road. One of Respondent's
3 business agents, Mohamed Abdullah, admitted seeing strikers throw a
4 "few" tacks. Efren Gonzales admitted the same. And, in one of the
5 video tapes in evidence, we hear Louis Uribe warning Jack Pandol about
6 sitting on tacks as Pandol was about to leave.

7 In addition, on one occasion Security Guard
8 Gutierrez observed several people picking up pieces of paper in a
9 roadway, returning the paper, and kicking dirt around. He viewed them
10 with binoculars. On a subsequent check where "the men had been
11 standing Gutierrez found Trjuana Tacks in the dirt and under paper
12 wrappings, one being found in a milk carton which Gutierrez had
13 observed one of the men pick up and put back in the road. Before he
14 observed the men, Gutierrez checked that same area for tacks or nails
15 and had found none. But, before he subsequently investigated the same
16 spot again and discovered the newly placed Tacks, he lost sight for
17 some minutes of that area where the Tacks were found.23/

18 4. Conduct Where No Perpetrator Was Identified

19 Several incidents noted in the testimony, over Respondent's
20 strong objections, were incidents for which no perpetrator could be
21 singled out or identified. As we will see, some of those incidents
22 were serious.

23 (a) On August 24 Andrew Zaninovich discovered that 11 to 12
24 acres of grape vines had been cut and destroyed. The cuts, he
25 believed made by pruning shears, were at the base of the vines. He
26 was of the opinion that the cuts were made sometime around August 21 or
27 22, it taking some two to three days for the vines to discolor and be
28 discovered. Zaninovich testified that workers had not been in those
fields recently. The estimate of the crop damage was approximately
\$40,000.00. Zaninovich could not identify anyone responsible for the
vine cutting.

(b) As earlier noted, on the evening of August 27 the

23/Gutierrez subsequently spoke with one of the men he had
observed on the roadway. Dressed in his uniform, Gutierrez joked with
the man about being up to their old tricks of planting Tijuana Tacks.
The man, unknown to Gutierrez, just laughed. During their
conversation, the man explained he was from Coalinga and had been
brought to Delano. He said he hoped the strike could be settled so he
could go home.

1 four tires of Fred Lopez's state-marked vehicle were slashed in a motel
2 parking lot. Lopez did not observe who committed the slashing. But,
3 shortly after he discovered the slashing, a man came by the car and said
4 something about the tires. The man bent down, took out a switch-blade
5 knife, and stuck it into one of the inch-long slashes. The man said
6 "ft just fits doesn't it." Although Lopez did not know the man's
7 name, he knew him by sight, and had been told earlier that evening by
8 the man that he was now with the Teamsters.

9
10 (c) Several fires occurred on VBZ property or adjoining
11 property during the strike. Although identification of possible
12 arsonists was not specifically made, in some cases suggestions were put
13 forward.

14
15 One fire involved grape boxes on Avenue 24.
16 Shortly before the fire, Marty Zaninovich noticed a man standing or
17 kneeling within about five feet from the stack of grape boxes; the man
18 wore levies and a tan shirt. Zaninovich was about 150 yards away. The
19 man looked at Zaninovich and left the area, Zaninovich then driving
20 around the vineyard toward the man. Zaninovich drove by the man who got
21 into a gold Dodge and drove away; at one point Zaninovich was 20 feet
22 from the man. About one minute after the man left the boxes a fire burst
23 out, which Zaninovich himself extinguished.

24
25 Zaninovich did not know the man. But, he saw him later
26 driving in a caravan of cars in which Respondent's business agents were
27 driving, saw him subsequently wearing a Teamster jacket on Road 208,
28 and saw him talking to workers during breaks while the strike was in
progress.

29
30 A second fire also involved grape boxes. Deputy Sheriff
31 Landers investigated the fire of unknown origin. This fire also
32 occurred on Avenue 24, on August 28. As part of his investigation
33 Landers spoke with three of Respondent's business agents who were
34 standing some 60 feet from the fire, Bernard Calantis, Fred Rugnao,
35 and Mohamed Abdullah. When first confronted the three business agents
36 all denied being in the immediate area of the fire. Landers then went
37 back to the fire scene; he discovered a shoe print. After returning to
38 the three business agents and telling Calantis that the shoe print
appeared similar to Calantis's, Calantis then said he had been in the
area earlier that day on his way to speak with employees. Landers
discovered no natural cause for the fire.

39
40 A third fire involved an irrigation pump, which
41 had not been used for a week or two before. A fire investigator was
42 called in from the California Fire Service, Jerry Clark.

1 Upon investigation Mr. Clark discovered that a large quantity of
2 newspapers had been stuffed under the pump; he could discern the
3 paper's charred remains. His expert conclusion was that the pump had
4 been set on fire deliberately by using the paper. That fire occurred
5 on September 3.

6 On September 1 another fire had occurred, burning
7 styrofoam boxes on the back of a truck. (This may be the fire " on the
8 Sandrini property, which adjoined VBZ.) The fire is preserved for
9 posterity by the video tapes placed into evidence. No identification
10 of a perpetrator was made. But, some 40 to 60 people were standing in
11 the area, persons who Deputy Yandell recognized as participants in the
12 strike. None of them helped to extinguish the fire, and many of them
13 were yelling, cheering about the fire, shouting "huelga."24/

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C. The Respondent's Strike Supervision:

Three basic means of supervising the strike were brought out through the testimony of Respondent's witnesses. First, each morning of the strike, at about 4:00 or 5:00 a . m . , Respondent's business agents gathered together in the Delano office, receiving instructions from Pete Maturino. According to their testimony, brief as it was on the point, instructions were given that no threats to workers should be made and that no violence should be committed. Mr. Maturino asserted that he gave his instructions not because he was aware of any violence or misconduct at VBZ, but because he had seen violence in past strikes in other locations.

Second, after the temporary restraining order was issued, two of Respondent's attorneys met with Respondent's business agents. The meeting occurred on or about August 30. The attorneys went through the restraining order's provisions or summarized them, and strongly instructed their listeners that the order should be obeyed. No protest, question, or discussion in regard to the restraining order was raised by the business agents present who heard the attorneys' Instructions.

24/Other incidents were also described in the testimony. Dudley Steele, one of those who purchased some of VBZ's crops during the strike, was driving his truck on VBZ property when a missile shot through his rear window, leaving a small hole and a large explosion. Two of VBZ's foremen, Nacua and Padllo, were driving when someone Nacua could not identify threw a rock through Padillo's windshield. Other incidents may also appear in the evidence.

1 Third, Mr. Maturino assigned certain business agents like
2 Tafalla and Castro to specific picketing duty--namely, to take charge of
3 picketing at specific entrances. These business agents in turn instructed
4 the pickets that they should engage in no threats toward the workers or any
5 violent conduct. The picketers were also instructed to retrieve and remove
6 any Tijuana Tacks they observed in the roadways.

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ANALYSIS AND CONCLUSIONS

I. Introduction.

The center-piece of our Act is Section 1152, a broad-ranging guarantee of protection for agricultural employees. That section protects their right to self-organization, "to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities . . . ," as well as protecting their right "to refrain from any or all of such activities" One means of enforcing that broad protection is found in Section 1154(a)(1) of the Act, which prohibits labor organizations from restraining or coercing employees "In the exercise of the rights guaranteed in Section 1152." A similar protection is found in Section 8(b)(1)(A) of the National Labor Relations Act, as amended (29 U.S.C. Sec. 151, et. seq.; hereafter referred to as the "NLRA"), and our Act directs that we follow such precedent as is "applicable" under the NLRA.

When reviewing Section 8(b)(1)(A) of the NLRA, the United States Supreme Court observed that the provision was a grant of power to the NLRB "to proceed against union tactics involving violence, intimidation, and reprisal or threats thereof--conduct involving more than the general pressures upon persons employed by the affected employers implicit in economic strikes." N.L.R.B. v. Local 639, Teamsters Union, 362 U.S. 274, 290 (1960). A similar viewpoint is appropriate under Section 1154(a)(1) of our Act, particularly inasmuch as the California Legislature sought by its enactment of our statute "to ensure peace in the agricultural fields" and "to bring certainty and a sense of fair play to a presently unstable and potentially volatile condition in the state." The Act, Section 1.

Under our sister statute, the NLRA, numerous kinds of labor organization conduct have been found to be unlawful restraint and coercion. Such unlawful conduct, specifically in strike situations, is briefly outlined below.

1. Under the NLRA it has been consistently held that mass picketing and blocking the ingress and egress to an

1 employer's premises are unlawful. Nor, as several of the cited cases
2 indicate, is it necessary that such conduct must actually result in
3 blocking or stopping workers from entering their work place.
4 N.L.R.B. v. United Mine Workers of America, 429 F.2d 141 146 (C.A. 3,
5 1973); N.L.R.B. v. Taxicab Drivers, Local 777, 340 F.2d 905, 907
6 (C.A. 7, 1964); N.L.R.B. v. Local 140, United Furniture Workers, 233
7 F.2d 539 (C.A. 2, 1956); Longshoremen's and Warehousemen's Local 6, 79
8 NLRB 1487 (1948).

9 2. Threats of violence and violence itself directed against
10 employees are forms of unlawful restraint and coercion. New Power Wire &
11 Electric Corp. v. N.L.R.B., 340 F.2d 71 (C.A. 2, 1965);
12 N.L.R.B. v. United Brotherhood of Carpenters, 205 F.2d 515 (C.A.
13 10, 1953); Mid-States Metal Products, Inc., 156 NLRB 872, 898
14 (1966); Teamsters, Local 729, 189 NLRB 696, 697 (1970). Nor is it
15 necessary that such conduct actually succeed in restraining and
16 coercing employees, for the "test is whether the misconduct is such
17 that, under the circumstances existing, it may reasonably tend to
18 coerce or intimidate employees in the exercise of rights protected
19 under the Act." Local 542, Operating Engineers v. N.L.R.B., 328 F.2d
20 850, 852-3 (C.A. 3, 1964), cert, denied, 379 U.S. 826.

21 3. It is likewise unlawful to pursue nonstrikers or
22 menacingly follow them-away from their work site, to give the
23 impression of taking down nonstrikers¹ license numbers (or give the
24 impression of surveilling them), and to damage their property.
25 International Longshoremen's Union, supra, 79 NLRB 1487; Dover Corp.,
26 211 NLRB 955, 958 (1974).

27 4. Threatening employees with the loss of employment for
28 engaging in protected activities is also unlawful. International
Union of Operating Engineers, 205 NLRB No. 146 (1973), affirmed. 500
F.2d 48; Local 40, international Bro. of Boiler-makers, 197 NLRB 738
(1972).^{25/}

5. Finally, to engage in unlawful restraint and

^{25/}The NLRB has held, however, that it will not oversee or control the amount of internal fines levied by a labor organization. As stated by the Supreme Court, the NLRB is correct that Section 8(b)(1)(A) of the NLRA (the equivalent of our Section 1154(a)(1)) "has nothing to say about union fines . . . , whatever their size Issues as to the reasonableness or unreasonableness of such fines must be decided upon the basis of the law of contracts, voluntary associations, or such other principles of law as may be applied in a forum competent to adjudicate the issue." N.L.R.B. v. Boeing Co., et al., _____ U.S. _____, 83 LRRM 2183, 2185-6 (1973).

1 coercion a labor organization need not direct its misconduct only
2 at employees. Misconduct directed towards non-employees, even
3 outside the view of employees, is unlawful if the conduct is
4 reasonably certain to come to the attention of employees. Of
5 course, misconduct directed at others while in the presence of
6 employees (either non-strikers or strikers) is unlawful, since it
7 conveys to the employees what may happen to them if they act
8 contrary to the demands of the labor organization. See N. L. R. B.
9 v. Woodworkers, 243 F.2d 745 (C. A. 5, 1957); Retail Department
10 Store Union, 157 NLRB 615 (1966), enforced, 375 F.2d 745; Retail
11 Department Store Union, 133 NLRB 1555, 1566 (1961); Brooklyn
12 Spring Corp., 113 NLRB 815 (1955), enforced, 233 F.2d 539. And,
13 as one court remarked, " It is well established that '(d)estruction
14 of the employer's property restrains the employees in the exercise
15 of their rights . . . by threatening their jobs and by creating a
16 general atmosphere of fear and violence.'" United
17 Mine Workers, supra, 429 F.2d at 147.

18 II . The Respondent's Unlawful Restraint And Coercion .

19 Putting together those principles described in the next
20 preceding section with the conduct described in earlier portions of
21 this Decision, the conclusion necessarily follows that Respondent
22 engaged in conduct constituting unlawful restraint and coercion
23 within the meaning of Section 1154(a)(1) of the Act. Although in
24 some cases the Respondent cannot be held responsible for the
25 conduct described previously, a sufficient nexus is established
26 between much of the conduct in issue and the Respondent to establish
27 that Respondent pervasively violated its obligations to the
28 employees during Its two-week strike at VBZ.

Not less than 11 business agents of the Respondent were
identified as engaging in misconduct during Respondent's strike at
VBZ, including the Respondent's senior business agent in Delano and
leader of the strike, Pete Maturino. These 11 agents were
identified as committing over 20 unlawful acts, including such
conduct as throwing rocks, dirt-clods, bottles, and boards at
employees or others in the presence of employees, breaking windows
of vehicles driven by workers, slashing tires of workers'
vehicles, throwing Tijuana Tacks in front of automobiles and in
roadways, driving in such a reckless manner as to cause workers to
leave the road for fear of their safety, following workers from
VBZ in what can only be described as a menacing manner, threatening
employees with bodily harm or threatening others with bodily harm
in the presence of employees, actually assaulting one worker,
damaging the Employer's property in front of workers, and
threatening employees with the

1 loss of work and large fines If they did not join in the
2 strike.^{26/}

3 Of all those acts previously identified with the Res-
4 pondent's business agents, only one perhaps does not amount to a
5 violation of the Act. When Pete Maturino and Efren Gonzales
6 threatened Andrew Zaninovich by preventing him from exiting his truck
7 and by slamming the truck door on Zaninovich's knee, no employees were
8 present. The incident took place away from employees, and I have no
9 way of knowing whether it is reasonable to expect that such conduct,
10 directed towards a senior representative of VBZ who may or may not have
11 personal contact with workers would be made known to employees. See
12 International Ass'n of Machinists, 183 NLRB 1225, 1232 (1970). On
13 the other hand, Mr. Maturino's assault on Deputy Landers and Mr.
14 Gonzales's driving assault on Security Guard Gutierrez both occurred
15 either near where strikers were located or were acts likely to be
16 learned of by employees due to the participants involved and the
17 location of conduct. Accordingly, I find that Maturino's and
18 Gonzales's conduct towards Landers and Gutierrez violated the Act.

19 Little dispute can exist that the Respondent is accountable
20 for the conduct engaged in by Respondent's business agents. These
21 agents were brought by the Respondent to the Delano area to engage "in
22 its VBZ strike, were given some responsibility for overseeing the
23 strike action, and were regularly present on the picket lines at VBZ.
24 Indeed, several of them were given specific responsibility for the
25 picket conduct at particular locations. The law is well settled that
26 a labor organization is accountable for the conduct of business agents
27 clothed with authority to act for that labor organization, even if the
28 agents exceed their specific authority. See, N.L.R.B. v. Union
Nacional De Trabajadores, ___ F.2d ___, 92 LRRM 3425, 3430. n. 7
(C.A. 1, 1976); Teamster Local 695 204 NLRB 866, 874(1973); Local
810, Steel, Metals, Alloys & Hardware Fabricators & TWarehousemen, 200
NLRB 575, 585 (1972). In this

26/Had Respondent's agents threatened only its members with
the \$500.00 fines, such threats might not constitute a violation of
the Act, since "excessive" fines (and presumably threats thereof) do
not fall within the conduct prohibited by Section 115Ma) (1), as
noted earlier. The Respondent's threats, however, were not limited
to only its members; rather, such threats were made indiscriminately
in front of workers, and thus presumably made to and in front of those
who were not members of the Respondent. Since a union's fining of
non-members is unlawful under the NLRA, I conclude that threatening non-
members with such fines constituted a violation of our Act. See
Booster Lodge No. 405 v. N.L.R.B., ___ U.S. ___, 83 LRRM 2189
(1973).

1
2 particular case, however, it would be difficult to conclude that
3 Respondent's business agents exceeded any limitations on their
4 authority, as the Respondent's strike-leader, Maturino, led all others
5 in unlawfully restraining and coercing workers who chose not to join in
6 the strike, thus setting a strong example for the others to follow.

7
8 As for the conduct engaged in by those not specifically
9 identified as Respondent's business agents, it might be well to quote
10 from International Ass'n of Machinists, 183 NLRB 1225, 1230-1 (1970):

11
12 It is settled that where, as in this case, a
13 picket line is the scene of repeated acts of
14 misconduct, to the knowledge of the union
15 conducting the picketing, the union has the duty
16 to take steps reasonably calculated effectively
17 to curb the misconduct, and failing this the
18 union may be held responsible for resulting
19 restraint and coercion of employees. (Numerous
20 cites omitted.)

21
22 Furthermore, even as to conduct occurring outside
23 the presence of acknowledged union agents and
24 without the knowledge of the union conducting the
25 picketing, the union may be held responsible for
26 such conduct where it follows a pattern established
27 by acknowledged union agents. * * * *

28
29 Or, as was stated in Int'l Union of Electrical Workers, 134 NLRB 1713,
30 1724 (1961), "As should have been expected, the pickets followed the
31 examples of their leaders and adopted their unlawful tactics as a course of
32 action for themselves both at and away from the picket lines. In these
33 circumstances the Respondents are statutorily responsible for the conduct
34 of the pickets at and away from the picket lines." Accord: Teamsters Local
35 115, 157 NLRB 1637, 1642-3 (1966).

36
37 One further point needs reference. Under the NLRA it has
38 been repeatedly held that where a labor organization is aware of
39 continual, unlawful misconduct occurring during a strike and does
40 nothing to curb that misconduct, the labor organization must be held
41 responsible for that misconduct. See Union Nacional De Trabajadores,
42 supra, 92 LRRM at 3430, n. 7; Teamsters Local 695, supra, 204 NLRB
43 866; Congress De Uniones Industriales, 163 NLRB 448, 452 (1967);
44 Teamsters Local 115, supra, 157 NLRB at 1643. Nor is it sufficient for
45 the labor

1 organization involved merely to issue peaceful directives in regard to
2 known misconduct, as the Respondent allegedly did each morning of the
3 strike, for the labor organization must take steps "reasonably calculated
effectively to stop such acts." Teamsters Local 695, supra, 203 NLRB at
874; United Mine Workers, District 2, 170 NLRB 1581, 1592 (1968).

4
5 Under these foregoing standards, the Respondent herein must be
6 held responsible for a host of other misconduct, not necessarily engaged
7 in by its business agents. Thus, the misconduct noted which occurred on
8 or around the picket lines is conduct for which the Respondent is
9 accountable. Such conduct involved implicit threats of tire slashing,
10 Implicit and overt threats of bodily harm (including the ones made to Mr.
11 Herman and Mr. Gutierrez), threats of blacklisting, and throwing objects
12 at moving vehicles, all of which were directed at or occurred in the
13 presence of employees or strike supporters. In addition, I find that
Respondent violated the Act by engaging in mass picketing, massing up to
14 some 70 pickets at a single entrance to VBZ, and by interfering with the
15 workers¹ ingress and regress through various VBZ entrances by way of
16 standing in front of cars, slapping and kicking at such cars, and by
17 yelling implicit threats to employees who went through the entrances or
18 exits

19 Likewise, I conclude that Respondent must bear the
20 responsibility for the numerous roofing nails and Tijuana Tacks that were
21 thrown throughout the Employer's roadways and entrances. Not only were
22 Respondent's business agents seen throwing such objects, but it was
23 acknowledged that pickets as well threw them. Furthermore, such
24 destructive objects were found neither before nor after the Respondent's
25 strike, indicating their close association with the Respondent's strike
26 activity. The Respondent is further identified with the Tijuana Tacks
27 through warnings or threats made by its agents or pickets to Mr. Lopez of
28 the Board and to Mr. Pandol in regard to such objects. Although the
persons responsible for most of the nail and tack placement were not
identified, there is a sufficient nexus of identification between the
Respondent and the tire-destroying objects to conclude that Respondent was
essentially responsible for their distribution and resulting damage.

Similarly, I conclude that Respondent is responsible for the
conduct engaged in by those who, though not specifically identified,
associated themselves with the Respondent through the dress and
paraphernalia they wore. Such conduct also involved threats of bodily
harm directed at employees, threats of blacklisting from further
employment and indiscriminately threatening substantial fines, and
creating the impression of

1 surveillance regarding those employees who continued working
2 during the strike.

3
4 As earlier noted, the only persons seen wearing Teamster
5 jackets and buttons were either business agents or those actively
6 supporting the strike. Not one instance of an outsider so dressed was
7 cited in the testimony. Nor can any doubt exist that the Respondent
8 was well aware of the kind of misconduct engaged in by those wearing
9 Teamster paraphernalia, yet the Respondent did virtually nothing to
10 prevent that misconduct. In fact, despite the temporary restraining
11 order, service of the unfair labor practice charge and complaint,
12 and despite the presence of numerous deputy sheriffs, the Respondent's
13 business agents and pickets continued to engage in serious misconduct
14 towards the non-strikers. Outside of its brief morning meetings,
15 the Respondent took no overt action reasonably calculated to end its
16 reign of violence and misconduct, and cannot be heard to complain
17 because it must now bear responsibility for misconduct engaged in by
18 those identified with it, who were merely following the examples
19 laid down by Respondent's very own business agents. Under NLRA
20 authority, the Respondent's responsibility for the Teamster-dressed
21 persons engaging in repeated, known misconduct is clear.27/

22 Despite what has been said in foregoing paragraphs, more
23 difficult questions exist concerning the Respondent's responsibility
24 in regard to the remaining misconduct described at the hearing. Thus,
25 as for the pump fire and vine cutting, two serious and purposeful acts,
26 virtually nothing in the record reflects the Respondent's
27 accountability. While we may conjecture and speculate as to who
28 perpetrated those misdeeds, and while we may even think we know,
speculation by this agency should be avoided. As noted by the NLRB,
"Adequate proof of responsibility

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27/Some suggestion was made by the Respondent at the hearing
that striking workers (as opposed to Respondent's business agents)
were angered at the Employer because they were evicted from the
Employer's labor camp, and-thus such strikers may have been responsible
for misconduct. But, no direct link exists between such alleged
anger and any overt act described in the testimony. As noted in interna-
tional Ass 'n of Machinists, supra, 183 NLRB 866, the doctrine of clean
hands is not applicable to these proceedings involving the public
interest, and "the fact that there was some provocative conduct
directed against agents of Respondent does not confer a broad immunity
upon Respondents, or license Respondents to engage either in a broad
program of unfair labor practices unrelated to the particular
provocations or to particular unfair labor practices unwarranted by the
provocation presented."

1 Is necessary, and . . . such proof is lacking (here). " Teamsters Local
2 115 , supra , 157 NLRB at 1638 , n. l; see also , Dover Corp. , supra , 211
3 NLRB at 958. Similarly , It is unwarranted for me to conclude that
4 Respondent was responsible for the projectile that exploded through Mr.
Steele's truck window.

5 On the other hand , several incidents for which no perpetrator
6 is known involve closer links with the Respondent. The grape box fire
7 which Marty Zaninovich observed and extinguished began immediately
8 after an unnamed person was observed near the boxes. That person was
9 later seen by Zaninovich wearing a Teamster jacket and riding in a
10 caravan of Teamster cars. Nonetheless , the record does not reflect any
11 effort by Zaninovich to identify the person or have the ever-present
12 deputy sheriffs identify him. Such a falling on the part of Zaninovich
13 is hard to explain , and when viewed against the direct interest he had in
14 this proceeding due to his position with VBZ , his failure to attempt
15 identification of the " arsonist " makes it difficult to fully credit
16 his account of the fire and the association he drew between the alleged
17 perpetrator and Respondent.

18 More closely associated with the Respondent is the tire-
19 slashing performed on Fred Lopez's state vehicle. While the perpetrator
20 may not be known , an unnamed person who was known to Lopez , and who
21 identified himself with the Respondent , acted in such a way as to almost
22 claim credit for the slashing. Even if that person did not exactly
23 claim credit for the slashing , his conduct (by fitting his own knife
24 into the slash marks) might well be sufficient to constitute an
25 implicit threat to an agent of the Board , warranting a finding against
26 the Respondent. The difficulty is that the only identifying feature
27 linking the unnamed person to the Respondent was his hearsay statement.
28 This Board has indicated that hearsay testimony is admissible in these
proceedings , but " the use of such testimony is limited and cannot alone
support a finding . " Patterson Farms , inc . , 2 ALRB No. 59 , p. 12 (slip
opinion). See also , Taxi-Drivers Union . 174 NLRB 1 , 3 (1969) .
Thus , I feel constrained to avoid the conclusion that the person
confronting Lopez the evening of August : 27 was -- in fact -- an agent for
the Respondent , or that the Respondent must be held accountable for that
person's implicit threat to Lopez.

29 Two other incidents bear closer scrutiny , however. First ,
30 the fire which took place on the back of a truck , on September 1. Within
31 the immediate area of the fire stood some 40 to 60 persons supporting the
32 Respondent's strike and picketing. None of them assisted in
33 extinguishing the fire. On the contrary , they cheered the fire on ,
34 yelling " huelga . " Although it may not be appropriate to conclude that
35 one of those among

1 the picketers started the fire, I do conclude that they essentially made
2 the fire their own by their vocal support for that very visible property
3 destruction. Such strongly voiced support for the fire could not be lost
4 on those employees who were in the area and who helped to end it.
5 Surely, the yelling conveyed to such non-striking employees the
6 Respondent's continued disregard for property and safety, as that
7 disregard had been repeatedly manifested in regard to the workers
8 themselves. The yelling must also have conveyed to workers and strikers
9 alike that Respondent would and could engage in such destruction if
10 called for by its strike. I conclude that Respondent, through its open,
11 vocal support for that fire, engaged in unlawful restraint and coercion
12 toward the employees present in the area.

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Second, another fire took place on August 24, some 60 feet away
from "three business agents of the Respondent. Circumstantial evidence
persuades me that it is more likely than not that this fire was caused by
one or more of those agents. Not only were they proximate to the fire
and, thus, within the area from which they could have gone to set it,
but when the fire was initially investigated by Deputy Sheriff Landers,
Bernard Calantis first denied and then admitted to being within some 10
feet of the fire. In addition, Calantis's testimony at the hearing
suggests to me his responsibility. On two occasions he was asked what he
was wearing that day, to which he repeatedly responded tennis shoes. His
testimonial response is curious and sounded overly prepared in view of
the questions asked, and takes on significance in view of the fact that it
was his tennis shoe print which linked him to the immediate area of the
fire. Based on his testimonial demeanor, his testimonial answers, and
his inconsistent responses to Deputy Sheriff Landers on the day of the
fire, I conclude that Calantis, or one of his fellow business agents,
was responsible for setting the grape boxes on fire.

In sum, the Respondent was responsible for extensive;
pervasive, and numerous acts of misconduct during its strike against VBZ.
Its misconduct involved serious and repeated violations of Section
1154(a)(1) and I so find.

REMEDY

Having found that Respondent has engaged in certain unfair
labor practices within the meaning of Section 1154(a)(1) of the Act, I
shall recommend that it cease and desist therefrom and take certain
affirmative action designed to effectuate the policies of the Act.
Having found that Respondent engaged in serious, repeated, and pervasive
misconduct under the Act, engaging in such misconduct despite an
outstanding temporary

1 restraining order granted under the Act, I think it is appropriate to
2 order the Respondent to cease and desist from restraining and coercing
3 employees of VBZ in any manner as to their rights guaranteed under
4 Section 1152 of the Act. This broad prescription against the
5 Respondent is appropriate under the circumstances of this case. See
6 Teamsters Local 695, supra, 204 NLRB 866; Int'l Ass'n of
7 Machinists, supra, 183 NLRB at 1234.

8 In order to more fully remedy Respondent's unlawful conduct,
9 I also recommend that the Respondent publish and make known to the
10 employees of VBZ that it has been found in violation of the Act and has
11 been ordered not to engage in future violations of the Act. Attached
12 hereto is a Notice To Employees, setting forth the information Respondent
13 must transmit to VBZ employees and others.

14 The available means for publication of the Notice To
15 Employees are many. The ones I have selected as appropriate in view of
16 Respondent's serious misconduct are the following:

17 1. The Notice To Employees, translated into appropriate
18 languages (at least, English, Spanish, and Tagalla), with the approval
19 of the Fresno Regional Director, shall be mailed to all employees of
20 VBZ who were employed between August 1 and September 30, 1976. The
21 Notices are to be mailed to the employees' last known addresses, or
22 more current addresses if made known to Respondent. This publication
23 method finds support in the Board's Decision in Valley Farms and Rose J.
24 Farms, 2 ALRB No. 41 (1976).

25 2. The Respondent must also post the Notice To Employees for
26 a period of six months on its bulletin boards where other notices and
27 information are available for its members. The Respondent should post
28 the Notice on bulletin boards throughout its various offices in
California. This state-wide posting is appropriate inasmuch as agents
of the Respondent from several points in the state engaged in misconduct
at VBZ and because employees engaged in agriculture move from place to
place and may not see the Notice if posted only in the Respondent's
Delano office.

3. Sufficient numbers of the Notice should be provided by
Respondent to VBZ so that employees hired or employed by VBZ during the
next peak season may be given copies of said Notice in their preferred
language. VBZ may either distribute the Notice to employees, or
provide suitable times for a representative of the Respondent to
distribute the Notice, unless VBZ does not agree to such distribution
on its property. Should VBZ approve of this distribution, employees
are to be told that it

1 is important for them to know the contents of the Notice, and the
2 person so distributing the Notice shall offer to read the Notice to
3 employees in their preferred language.

4
5 Also, I believe that a public apology, to VBZ employees is
6 appropriate, to be made by a high-ranking representative of the
7 Respondent. VBZ is to afford the Respondent a suitable time during the
8 next peak season so that one or more representatives' of Respondent may
9 read aloud to them a copy of the Notice in all three languages cited
10 above. This public apology may be given in conjunction with the
11 individual distribution of the Notice discussed above. The foregoing
12 remedies for Respondent's violations of the Act are consistent with
13 the more traditional remedies applied by the NLRB in similar cases,
14 albeit some of the posting requirements and the public apology
15 requirement are somewhat exceptional due to the severity and
16 pervasiveness of Respondent's misconduct.

17 In addition, the General Counsel strongly urges that two
18 other remedies should be granted; (1) that Respondent's certificate
19 to represent VBZ employees, as recently granted by the Board, be revoked,
20 and (2) that Respondent be ordered to reimburse the Board and VBZ for
21 expenses incurred in the investigation, preparation, presentation,
22 and conduct of this case.^{28/} I now turn to the General Counsel's
23 specially requested remedies.

24
25 Relying heavily on *Union Nationale De Trabajadores*, 219 NLRB
26 No. 157, 90 LRRM 1023 (1975), affirmed, _____ F.2d 92 LRRM 3425
27 (C.A. 1, 1976), the General Counsel urges that Respondent be
28 decertified as the bargaining representative of VBZ employees due to
its severe, repeated misconduct. The NLRB in *Union Nationale* revoked
the union's representation certificate due to the union's repeated
demonstration in past NLRB cases of its violence and its rejection of
the NLRB and NLRA; the NLRB concluded, in view of the rather extensive
history of litigation involving the union, that in the case then
before it the union could not engage in constructive bargaining in
behalf of represented employees. The NLRB's decertification action was
apparently the first of its kind.

29
30 _____
31 ^{28/}The General Counsel originally requested that Respondent
32 reimburse or compensate employees for damage done to their property and
33 for emotional distress suffered by them as a result of Respondent's
34 misconduct, as well as compensation to VBZ for property damage. At the
35 hearing, however, the General Counsel deleted these monetary requests,
36 and they will not be considered herein.

1 When the First Circuit Court of Appeals affirmed the NLRB's
2 decision in *Union Nationale*, it stated by way of dicta, "¹. . . we think
3 that a decertification order is an extreme measure and should be entered only
4 when the Board has first demonstrated that there are no equally
5 effective alternative means of promoting the objectives of the Act."
6 92 LRRM at 3434. The Court went on by dicta to enunciate what it viewed
7 as the considerations surrounding decertification as an available
8 remedy; the Court noted that the NLRB should determine whether decerti-
9 fication is necessary to protect the collective bargaining and
10 representational processes, whether an alternative remedy exists, and
11 whether decertification promotes employee interests rather than to serve
12 primarily as a penalty or deterrent for misconduct.

13 The concerns raised by the First Circuit, I believe, are
14 important. Although decertification of the Respondent here might well
15 deter it from future acts of violence, such decertification does not
16 seem to be in the interests of the VBZ employees. The employees are
17 currently represented by the Respondent, and--at least for a time--
18 bargaining went on in their behalf. Were we to now decertify the
19 Respondent another representation election could be held, thus delaying
20 further bargaining and representation in behalf of the employees, or the
21 employees would go unrepresented. Furthermore, the Respondent has
22 represented VBZ employees since 1973, was duly elected as their re-
23 presentative in late 1975, and nothing in the record reflects that it
24 has previously abused its representation role vis-a-vis VBZ employees.
25 Also, despite the seriousness of Respondent's misconduct, it has not
26 shown the utter, repeated and longstanding disregard of the Act as
27 demonstrated by the union in *Union Nationale*.

28 On the other hand, I do not doubt that in an appropriate case
that the Board has authority to revoke a labor organization's
certificate. As repeatedly noted under the NLRA, ". . . the remedial
power of the Board is a 'broad discretionary one subject to limited
judicial review.'" *N.L.R.B. v. J. H. Rutter-Rex Mfg. Co.*, ___ U.S.
_____, 72 LRRM 2881 (1969), quoting with approval from *Fibreboard Corp.*
v. N.L.R.B., 379 U.S. 203, 216 (1964). Or, as was stated in *Golden*
State Bottling Co. v. N.L.R.B., 414 U.S. 168, 176 (1973), "...the
Board's remedial powers under Section 10(c) include broad discretion
to fashion and issue the order . . . to achieve the ends, and effectuate the
policies of the Act." Accord: *N.L.R.B. v. Food Store Employees Union*,
417 U.S. 1, 8 (1974).

 Although the NLRB has not established a remedial practice of
decertifying unions that engage in serious misconduct, I believe that
the authority to do so under its statute as well as

1 under our Act exists.^{29/} Moreover, I do not believe that this Board
2 should give undue respect to the NLRB's remedial practices, since the
3 nature of agricultural employment, the type of employees involved, and
4 the nature of union representation necessarily make our remedial needs
5 different from the general industrial practices overseen by the NLRB.
6 And, as under the NLRA, our Act gives the Board wide discretion "to
7 provide such . . . relief as will effectuate the policies" of the Act, a
8 grant of authority that should be applied within the context of our unique
9 agricultural setting.

10 Nevertheless, for the reasons earlier expressed, I do not
11 believe that decertification is warranted in this case. In addition, our
12 Act is relatively new, and practice under it is yet slight. The potential
13 ramifications of a decertification order are still unclear, particularly in
14 regard to the impact such decertification may have on employee
15 representational rights. We know that strikes, "similar to the one
16 initiated by the Respondent, are probably most effective when initiated
17 during an employer's peak season, at the very same time when there is the
18 greatest desire by agricultural employees to continue working, and earn
19 their income. The interplay between a union's right and need to strike
20 over bargaining demands and the right and need of its represented members
21 and employees to renounce the strike and continue working may well produce
22 substantial conflicts. Were the Board to now order decertification of the
23 Respondent, it might too prematurely dilute the right to strike and its
24 viability as a weapon in collective bargaining.

25 Of course, strikes are supposed to be nonviolent. No one wants
26 to encourage the kind of conduct engaged in by the Respondent in this case.
27 The Respondent and its top business agents acted reprehensibly. Repeated
28 acts of violence and misconduct by the Respondent, as demonstrated in this
29 case, may well be a future cause for decertification. Violence in the
30 agricultural fields cannot be tolerated. But, at this juncture under the
31 Act more than just the policy of deterrence is involved, for

32 ^{29/lt} might be noted that when the NLRB has found that a union
33 engages in invidious racial discrimination, the NLRB has voiced its
34 willingness to decertify or refuse to certify such a union. See *Bekins*
35 *Moving & Storage Co.*, 211 NLRB No. 7, 86 LRRM 1323 (1974); *Local 1,*
36 *Independent Metal Workers Union*, 147 NLRB 1573 (1964). Those cases, like
37 the principle enunciated in *Catalytic Industrial Maintenance Co.*, 209 NLRB
38 641 (1974), indicate that decertification is appropriate when a labor
39 organization acts in a manner contrary to the representation rights of
40 those employees it so represents.

1 we should hesitate before moving too quickly down a path that may dampen
2 the right to strike under our statute, particularly at a time when the
3 means that a labor organization has to effectively communicate with and
4 rally support from its members, members who in many cases are transient
5 to the area in which the strike occurs and foreign to their labor
6 organization's policies and leadership, are not yet sufficiently
7 sophisticated to eliminate the ugly footprints of coercion and muscle
8 in presenting a united front.

9
10 While three strikes at the plate for the Respondent may
11 be far too many, one is not. I do not recommend at this juncture
12 that revocation of the Respondent's certificate be a remedy imposed
13 in this case.

14 The second unusual remedial request made by the General
15 Counsel involves reimbursement by the Respondent of the costs of this
16 litigation.^{30/} Here too, we can look to guidance under the NLRA.
17 Typically, the NLRB has not imposed costs in an unfair labor practice
18 proceeding unless a respondent engages in frivolous litigation by
19 raising frivolous defenses, thus frustrating effective litigation
20 calendars. See Heck's, inc., 215 NLRB No. 142, 88 LRRM 1049 (1974), on
21 remand from 417 U.S. 1. The NLRB, however, noted its lack of intention
22 "to lock in concrete any past precedent" and that it is "a continuing
23 function of this administrative agency to consider on a case-by-case
24 basis, in light of both our experience and the facts of each case, what
25 remedy will best remedy the misconduct found." Heck's, 88 LRRM 1052-3.
26 The Board has indicated that it "has discretion to grant attorneys'
27 fees and costs in appropriate cases" Valley Farms, supra, 2 ALRB
28 No. 41, p. 6 (slip opinion).

For several reasons I conclude that it would be appropriate to
award both the General Counsel and the Charging Party costs and fees in
this proceeding. First, I believe that the Respondent has engaged to a
substantial degree in frivolous litigation. Although Respondent's
witnesses denied engaging in any wrongdoing, a number of its business
agents did not testify and no such denials exist in regard to their
misconduct. Furthermore, while credibility issues in the abstract are
raised by the conflict in testimony, such credibility conflicts are far
more imagined than real. The evidence was overwhelming that Respondent
engaged in many and pervasive violations of the Act, misconduct
necessitating some 1,500 manhours of work from Tulare

—————^{30/}The parties agreed at the hearing should I grant the
General Counsel's requested costs, that I retain jurisdiction to
determine the extent of those costs should the parties be unable to agree
on them.

1 County Deputy Sheriffs. To deny any wrongdoing whatsoever, as the
2 Respondent did, in the face of the violence and destruction taking
3 place between August 24 and September 3 borders on the frivolous,
4 especially in light of the two prior proceedings which took place in the
5 county court. Indeed, when the General Counsel moved to hold the
6 Respondent in contempt of the outstanding restraining order, on
7 September 3, the violence and other misconduct came to a screeching halt.
8 It is simply incredible to deny the Respondent's control over and
9 ability to end the flagrant misconduct at VBZ.

10 Second, although remedial authority under the Act is not
11 designed to penalize a respondent, surely the Board has an obligation to
12 try_as_best it can to deter future misconduct and restore the pre-existing
13 order. This administrative agency should not sit back, merely
14 slapping a serious offender "on the wrist," as described by the
15 General Counsel, for misconduct which should be clearly disapproved and
16 discouraged. One way to discourage flagrant and serious misconduct
17 under the Act is to make it more costly for parties to engage in such
18 wanton disregard of our statute.

19 In this case, the Respondent has compelled both the General
20 Counsel and the Charging Party to engage its resources repeatedly in an
21 effort to end conduct unquestionably violative of the Act. Not once,
22 not twice, but three times the General Counsel has been forced into
23 litigation over the Respondent's misconduct. Furthermore, the
24 investigation and presentation of the charges against the Respondent
25 undoubtedly was made more difficult and costly by the nature of the
26 industry with which we deal. Agricultural employees often move about
27 from place to place, making it difficult to locate them for purposes of
28 investigation and testimony; likewise, many have seemed reluctant
participants in these proceedings. Additionally, it is fair to say
based on my existing experience that the level of education and
understanding of the law on the part of many farm workers is modest, thus
not only making it more difficult to effectively mount a case but
perhaps encouraging parties to violate the law more than they might
otherwise.

29 Third, and in connection with what has been already said,
30 to respond to Respondent's serious misconduct by issuing a mere cease
31 and desist order does not seem warranted. It might well encourage,
32 rather than discourage, further misconduct, all at the expense of
33 precious state financial resources. A firm response to serious acts of
34 misconduct appears appropriate, and one available--though unusual--
35 means of expressing that response is to make it more costly for a party to
36 callously disregard the Act's provisions by contravening policies this
37 State enacted

1 after many years of difficulty in the farm fields, a set of policies
2 which the Legislature hoped would "bring certainty and a sense of fair
3 play" in the farm fields of this State.

4 Finally, the remedy by way of costs and counsel fees would
5 not, unlike decertification, potentially dampen the statutory right to
6 strike. Nor would it disregard the relatively recent expression by the
7 employees involved that the Respondent should represent them in
8 collective bargaining. But, the Respondent and other potential
9 violators of the law would know they cannot act with impunity. And
10 significantly, ordering costs against the Respondent would restore some
11 semblance to the preexisting positions of the General Counsel and
12 Charging Party, who have no other forum to turn to for recovery of
13 their costs as a result of Respondent's misconduct.

14 For all the foregoing reasons, I recommend to the Board that
15 Respondent be ordered to reimburse the General Counsel and the Charging
16 Party for reasonable costs and attorneys¹ fees associated with this
17 proceeding. Such costs are to include expenses incurred in the
18 investigation, preparation, presentation, and conduct of this
19 proceeding, including reasonable counsel fees, witness fees, transcript
20 and record costs, travel expenses and other reasonable costs associated
21 with this proceeding. 31/

22 ORDER

23 Respondent, its officers, agents and representatives
24 shall:

25 1. Cease and desist from:

26 (a) In any manner restraining or coercing employees of
27 Vincent B. Zaninovich, Inc., in their exercise of their right to self-
28 organization, to form, join or assist labor organizations, to bargain
collectively through representatives of their own choosing, and to engage
in other concerted activities for the purpose of collective bargaining or
other mutual aid or protection, or to refrain from any and all such
activities, except to the extent that such right may be affected by an
agreement of the type authorized by Section 1153(c) of the Act.

31/As earlier noted, I have agreed to retain jurisdiction to
resolve any disputes concerning the appropriate costs. Should the Board
accept my recommended remedy as to costs, it may wish to devise an
alternative means for resolving disputes over that portion of the
remedy.

1 (b) Engaging In conduct In regard to VBZ employees of the
2 following type: threatening violence or committing such violence,
3 threatening property damage or committing such damage, giving employees
4 the Impression they are under surveillance, threatening employees with
5 blacklisting or actually black-listing such employees, threatening non-
6 members with fines for engaging in protected activity or fining such
7 non-members, or committing any of the foregoing-acts in regard to other
8 persons either in the presence of VBZ employees or where it is reasonably
9 certain that such employees will learn of such conduct.

10 2. Take the following affirmative action:

11 (a) Post the attached Notice To Employees in the manner
12 described in the preceding section entitled "The Remedy."

13 (b) Distribute the attached Notice To Employees, and
14 provide copies of said Notice to VBZ, all in the manner described in the
15 section entitled "The Remedy."

16 (c) Provide representatives, if VBZ agrees, to
17 distribute the Notice To Employees to employees and read to them the
18 Notice, all in the manner described in the section entitled "The
19 Remedy."

20 (d) Designate a high-ranking representative or
21 representatives to read to employees the Notice To Employees at a time
22 and place acceptable to VBZ, during the next appropriate peak season,
23 in the manner described in the section entitled "The Remedy."

24 (e) Preserve and make available to the Board or its
25 agent, upon request, for examination and copying all membership records
26 or other records necessary to determine whether the Respondent has
27 complied with this Decision and Order to the fullest extent possible.

28 (f) Reimburse the General Counsel and the Charging Party
for the expenses incurred In the Investigation, preparation,
presentation, and conduct of this proceeding, including such things as
reasonable counsel fees, witness fees, transcript and record costs,
travel expenses, and other reasonable costs and expenses.

(g) Notify the Regional Director of the Fresno
Regional Office within 20 days from receipt of a copy of this
Decision and Order of steps the Respondent has taken to comply

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1 therewith, and to continue reporting periodically thereafter until
2 full compliance is achieved.

3 Dated: January 16, 1977.

4 AGRICULTURAL LABOR RELATIONS
5 BOARD

6 By David C. Nevins

7 David C. Nevins,
8 Administrative Law Officer
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NOTICE TO EMPLOYEES

After a hearing in which all parties presented evidence, the Agricultural Labor Relations Board has found that the Western Conference of Teamsters, Agricultural Division, and its Local 946, violated the Agricultural Labor Relations Act. The Teamsters have been ordered to notify you and others that we violated the Act and that we will respect the rights of employees of V. B. Zaninovich & Sons, Inc., in the future. Therefore, in behalf of the Teamsters, I am now telling each of you:

1. We unlawfully threatened employees with property damage and violence, we unlawfully damaged property and engaged in violence, we unlawfully threatened employees with the loss of future work and with substantial fines, we unlawfully gave employees the impression they were being watched and that we would take reprisals against them and we committed similar unlawful acts towards others who were not employees. We committed such unlawful acts because employees would not join our strike against VBZ.

2. We hereby inform you that we will not engage in future unlawful restraint and coercion towards the employees of VBZ, or commit acts similar to those described in the preceding paragraph.

3. We inform you that you are free to exercise your right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of your own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. We want to also inform you that you are free to refrain from any and all such activities. In particular you are free to refuse to join one of our strikes, except that we may discipline our members who refuse to follow lawful Teamster strike action, as long as our discipline conforms to the law.

4. We apologize for the misconduct we engaged in during our strike at V. B. Zaninovich & Sons, Inc., during August and September of 1976. We are sorry for any damage or injury done to any of you and for any damage and injury done to representatives of the company.

Dated: _____

Signed:

For The Teamsters