

**Diamond Walnut Growers, Inc. and Cannery Workers, Processors, Warehousemen & Helpers Local 601, International Brotherhood of Teamsters, AFL-CIO.** Cases 32-CA-12303, 32-CA-12397, 32-CA-12702-1, and 32-CA-12702-2

September 13, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH

The question presented for Board review in this case is whether the judge correctly found that the Respondent violated Section 8(a)(1) of the Act by filing a state court libel suit against the Union.<sup>1</sup> The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions<sup>2</sup> and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Diamond Walnut Growers, Inc., Stockton, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

<sup>1</sup> On February 24, 1993, Administrative Law Judge Michael D. Stevenson issued the attached decision. The Respondent filed exceptions and a supporting brief.

<sup>2</sup> In the absence of exceptions, we adopt, pro forma, the judge's conclusion that the Respondent violated Sec. 8(a)(5) by failing to provide the Union, in a timely manner, with the names and addresses of strike replacements.

*Barbara D. Davison*, and *Elaine D. Climpson, Esqs.*,<sup>1</sup> for the General Counsel.

*Robert G. Hulteng* and *Edward J. Goddard, Esqs. (Littler, Mendelson, Fastiff & Tichy)*, of San Francisco, California, for the Respondent.

*Kirsten Snow Spalding, Esq. (Beeson, Tayer, Bodine & Livingston)*, of San Francisco, California, for the Charging Party.

DECISION

STATEMENT OF THE CASE

MICHAEL D. STEVENSON, Administrative Law Judge. This case was tried before me at Stockton, California, on July 7-9 and November 18, 1992,<sup>2</sup> pursuant to two consolidated complaints<sup>3</sup> issued by the Regional Director for the National

<sup>1</sup> After 3 days of hearing, Attorney Climpson dropped out of the case due to illness; she was replaced by Attorney Davison who finished the case and prepared the General Counsel's brief.

<sup>2</sup> All dates herein refer to 1991 unless otherwise indicated.

<sup>3</sup> On October 16, 1992, without objection, I granted General Counsel's motion to consolidate consolidated complaints in Cases 32-

Labor Relations Board for Region 32 on March 13, 1992 (32-CA-12303), and April 10, 1992 (32-CA-12397), consolidated by order on April 10, 1992 (G.C. Exh. 1(k)), and September 24, 1992, consolidated complaint (32-CA-12702-1 and 32-CA-12702-2) and which are based on charges filed by Cannery Workers, Processors, Warehousemen & Helpers, Local 601, International Brotherhood of Teamsters, AFL-CIO (the Union) on January 21, 1992 (32-CA-12303), March 6, 1992 (32-CA-12397), August 24, 1992 (32-CA-12702-1 and 32-CA-12702-2). The complaint alleges that Diamond Walnut Growers, Inc. (the Respondent) has engaged in certain violations of Section 8(a)(1) and (5) of the National Labor Relations Act (the Act).

Issues

1 Whether Respondent has failed to supply the Union with certain requested information such as names, addresses, and social security numbers of Respondent's nonstriking employees and, if so, whether Respondent violated the Act in refusing to supply the information; if Respondent did supply the information, was it supplied on a timely basis.

2. Whether Respondent filed in state court a frivolous and retaliatory lawsuit against the Union because the Union engaged in certain activities protected by the Act.

3. Whether Respondent, acting through a supervisor or agent, unlawfully advised one or more employees that they were ineligible for vested health insurance benefits as a result of their participation in a strike;

4. Whether Respondent unilaterally changed certain job prerequisites, without prior notice to the Union and without affording the Union an opportunity to bargain.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and to cross-examine witnesses, to argue orally and to file briefs. Briefs, which have been carefully considered, were filed on behalf of General Counsel and Respondent.

On the entire record of the case, and from my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

I. RESPONDENT'S BUSINESS

Respondent admits that it is a California corporation engaged in the processing, nonretail sale and distribution of walnut products and having an office and place of business located in Stockton, California. It further admits that during the past year, in the course and conduct of its business, it has sold and shipped goods or provided services valued in excess of \$50,000 directly to customers located outside the State of California. Accordingly, it admits, and I find, that it is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Respondent admits, and I find, that Cannery Workers, Processors, Warehousemen & Helpers Local 601, International Brotherhood of Teamsters, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

CA-12303 and 32-CA-12397 with Cases 32-CA-12702-1 and 32-CA-12702-2 (G.C. Exh. 1(m)(m)).

## III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

For a number of years prior to 1991, Respondent and the Union have maintained a collective-bargaining relationship. The last agreement between the parties began on July 18, 1988, and expired on June 30 (Jt. Exh. 1, sec. 2). Subsequently, the parties were unable to reach agreement on a new collective-bargaining agreement. By letter of July 26, Respondent's attorney, Robert Hulteng, advised the Union's attorney, Kenneth Absalom, that, effective immediately, Respondent was implementing "most of the terms of the final offer." (Jt. Exhs. 2, 3). At 10 p.m., on September 4, the Union called a strike at Respondent's facility,<sup>4</sup> which has continued up to and beyond the final day of hearing.

After the strike began Respondent hired permanent replacements for the strikers. These replacements together with those strikers who crossed the picket line to return to work (crossovers) were sufficient to continue Respondent's production during its relatively short 8- to 10-week fall season. During the hearing, the parties placed into issue conduct of the strikers, both on the picket line and away from it, and conduct of the nonstrikers. Some of the disputes over appropriate conduct has spilled over into state court, where various temporary restraining orders, rules to show cause, and injunctions have been issued (Jt. Exhs. 4, 6, 9, and 10). The Union has denied any striker misconduct for which it can be held accountable.

To decide the issue over Respondent's failure to provide information requested by the Union—where striker conduct is directly in issue and the other issues contained in this case—I turn to the record.

B. *Analysis and Conclusions*

## 1. Respondent's failure to furnish requested information

a. *Facts*

Some 5 weeks or so after the strike began, Tony Gamino, secretary/treasurer of the Union, and witness for the General Counsel, wrote a letter to Vince Brown, Respondent's director of human resources and witness for the Respondent. The letter reads as follows (Jt. Exh. 16):

October 11, 1991  
Vince Brown, Director/Human Resources  
P.O. Box 1727  
Stockton, CA 95201

Dear Vince:

At the time the current strike began, your employees were working under wages, hours, terms and conditions of employment which were unilaterally implemented by the company. For reasons that are self-evident, the Union has a direct interest, as representatives of the work force performing bargaining unit work, in verify-

ing the continued application of these terms and conditions in the present circumstances.

We are accordingly requesting the name and addresses and social security numbers of all employees presently performing bargaining unit work. We intend to communicate with these individuals concerning their terms and conditions of employment, and to hold the Company to the commitments it made when the modifications were unilaterally put into effect.

Sincerely,  
TEAMSTERS LOCAL UNION #601  
/s/ Tony S. Gamino  
Tony S. Gamino  
Secretary-Treasurer  
cc: Ken Absalon [sic]

Brown promptly replied (Jt. Exh. 17):

October 17, 1991  
Mr. Tony S. Gamino  
Secretary/Treasurer  
Cannery Workers, Processors,  
Warehousemen and Helpers Union,  
Local No. 601  
745 East Miner Avenue  
Stockton, CA 95202

Dear Tony:

This is in response to your letter of October 1, 1991, requesting the names, addresses and social security numbers of all employees presently performing bargaining unit work at Diamond Walnut. While the Company recognizes the Union's right to communicate with its members regarding terms and conditions of employment, in light of recent events, we are unable to provide this information to you.

Since the strike began, certain cross-over and replacement employees have been subjected to continuing harassment at their homes. This harassment has included guns being fired at private residences, slashing of car tires, throwing of rocks through windows, planting of picket signs in yards and obscene and threatening phone calls. Releasing the information you requested is in direct contradiction to the Company's desire to protect its employees from harassment, trespass, property damage and physical harm by union sympathizers, or any other individuals.

The Company is willing, however, to accommodate the Union's desire to communicate with Diamond employees. To that end, the Company will furnish the names and addresses of all working employees to an independent mailing service. The mailing service will, without disclosing the names and addresses to the Union, mail all information which the Union wishes to communicate. The mailed information will not be revealed to the Company. Arrangements can be made to have the mailing service certify the accuracy of any mailings conducted.

It is the Company's belief that this alternative furthers both the Union's needs while protecting the interests of our working employees as well. If you would like to discuss this in further detail, please let me know.

<sup>4</sup> On September 4, Respondent wrote to the Union, withdrawing its final offer of July 3, declining to request additional negotiations "at this time," and stating that it would assess its position if the Union requested additional negotiations (Jt. Exh. 5). Notwithstanding these representations, the parties had at least six additional bargaining sessions after the strike began (Jt. Exh. 33).

Very truly yours,  
/s/ Vince Brown  
Vince Brown  
Director of Human Resources

Gamino also promptly responded (Jt. Exh. 18):

October 22, 1991  
Vince Brown, Director/Human Resources  
DIAMOND WALNUT GROWERS, INC.  
P.O. Box 1727  
Stockton, CA 95201

Dear Vince:

In response to your letter dated October 17, 1991 in which the Company refuses to provide the Union with the names, addresses and Social Security numbers of all employees presently performing bargaining unit work at Diamond Walnut; it is the Union's contention that this will not suffice.

The Union certainly has the right to know what rates of pay are in effect and also the conditions of employment.

As to the alleged harassment of employees presently working, the Union would like to assure you that it does not condone this kind of behavior. Furthermore, if you can supply us with facts as to the alleged incidents, we would gladly investigate in order to put an end to them. Also, it is not the Union's intention to supply the striking employees with the information which we have requested.

If you do not comply with this request, you leave us no choice but to file charges with the National Labor Relations Board.

Sincerely,  
TEAMSTERS CANNERY WORKERS LOCAL #601  
/s/ Tony S. Gamino  
Tony S. Gamino  
Secretary-Treasurer

cc: Ken Abaslom [sic]

Finally, on November 1, Brown wrote the last letter in this series (Jt. Exh. 22):

November 1, 1991  
Mr. Tony S. Gamino  
Secretary-Treasurer  
Cannery Workers Union  
Local 601  
745 E. Miner Avenue  
Stockton, CA 95202

Dear Tony:

The Company is in complete agreement with the statement in your letter of October 22, 1991, that the Union has the right to know what rates of pay and conditions of employment are currently in effect. You are, however, already in possession of this information. As we have consistently stated, the terms and conditions of employment included in the Company's final proposal of July 3 were implemented on July 26, 1991. These implemented terms and conditions of employment continue to remain in effect. For specific questions regard-

ing rates of pay and conditions of employment, we suggest that you refer to the provisions of the implemented proposal.

In your October 11, 1991 letter, you stated that you desired the names, addresses and social security numbers of all employees presently performing bargaining unit work in order to "communicate with these individuals concerning the terms and conditions of employment[.]" The Company believes that the alternative of using an independent mailing service to communicate with employees satisfactorily accommodates the interests of both the Union and the affected employees. We are, however, more than willing to discuss any other alternatives which you believe are more appropriate under the circumstances. Please forward your alternative proposals to me at your convenience.

Very truly yours,  
/s/ Vince  
Vincent H. Brown, Jr.  
Director of Human Resources

About 9 months after Gamino made his first request for information, the Union's attorney, Absalom, on July 22, 1992, wrote to Hulteng asking for, among other information, the names of all replacement employees (G.C. Exh. 15). With respect to the July 22, 1992 request, the parties stipulated that the Employer was continuing to refuse to provide names and addresses of replacement employees, for the same reasons the Employer had earlier advanced (Tr. 870).

According to Gamino, about 500 to 600 persons went on strike. From this group, about 17 to 18 persons resigned from the Union and returned to work. He testified that he needed the names and addresses of the nonstrikers in order to have face-to-face contact with them. Such contact would provide information to the Union on such subjects as whether Respondent was paying the appropriate rates of pay pursuant to the implemented proposal, whether the other terms and conditions of employment were proper, and who was performing bargaining unit work and with what qualifications.

Respondent, on the other hand, provided witnesses and other evidence to explain why it did not provide the requested information. First, I note Respondent's procedure for any strike-related incidents either at the picket line or away from it. All incidents were to be timely reported by written form either to Brown or to Wendy Heinze, now supervisor of recruiting, compensation and compliance, formerly during the beginning strike months, supervisor of labor relations. Extra security was provided in and around Respondent's premises, and even a bus for a few days to ferry nonstrikers back and forth to places where they could park their car without fear of vandalism.<sup>5</sup> Some of the witnesses called by Respondent to recite their experience also provided declarations to Respondent's attorneys who submitted them to state court in support of requests for injunctions against mass picketing or other improper picket line activity. Unless otherwise identified, all Respondent witnesses whose testimony is

<sup>5</sup> Any damage caused to nonstrikers' real or personal property was repaired or replaced at Respondent's expense as long as it was properly reported to Brown and/or Heinze and as long as they determined the damage was strike-related. Ultimately Respondent spent about \$25,000 for this purpose.

summarized below are or were nonstriking employees working in unit jobs.

Because neither General Counsel nor the Union contend that the events recited by Respondent's witnesses and summarized below failed to occur, I credit that portion of the

witnesses' testimony describing their experience. At the conclusion of the summary, I will make a finding based on Respondent's evidence whether the Union has been shown to be responsible for the strike misconduct.

<i>Name of Witness</i>	<i>What Happened</i>	<i>Where/When</i>	<i>Reported to Respondent or Police</i>	<i>Result</i>
(1) John Gray (Bus driver for Taylor Tours—provided 1-1/2 weeks of bus service for nonstrikers to and from various lots where car parked.	3 times, rocks thrown at bus, bus hit w/picket sign & bus followed almost daily.	At plant as bus entering and leaving.	Employer only.	Witness submitted a declaration in support of Modified Temporary Restraining Order (R. Exh. 4).
(2) Jerry Bahma Respondent vice president and chief financial officer	Window of brother's motor home shot out by BB pellets.	In front of witness' home; Oct. 6; 10 p.m.	Employer & police	No arrests. Unknown who shot windows.
(3) Paul Hallmark (Cross-over employee)	(a) Striker named Mack said he fucked.	In plant, Sept. 10.	Employer	Unknown.
	(b) Pickup truck spray painted w/ words "scab," "prick."	At home, Sept. 11, 4 a.m.	Employer & police	No arrest/unknown vandal—witness expects Company to pay for damage.
	(c) Person following shuttle bus from plant & videotaping nonstrikers exiting to cars.		No report.	Unknown.
(4) Powell Smith	Van followed witness out of plant and harassed and threatened on freeway.	At plant, Oct. 1.	Verbal report to Employer.	Witness recognized driver of van as striker—no arrest & no report to police.
(5) Steve Brodie	(a) Witness followed and tailgated as drove home after midnight (5 or 6 times).	From plant, late October or November.	No official report.	No arrest or ID of assailant.
	(b) Tires slashed on vehicle (total of 4 times).	At home, overnight.	No official report.	
	(c) Sliding glass window broken by thrown patio chair.	At home, over night.	Employer & police	
(6) Scott Gomez	Witness severely beaten at nearby grocery store by 2-3 men who made statements indicating strike-related.	Grocery store/April 1991	Employer only.	Witness offered opportunity to ID assailants by looking at employee badges but refused. No arrests or ID of assailants.
(7) Enrique San Jose	Witness dropped off at parking lot after work and found 3 flat tires on vehicle.	K-Mart parking lot, September 10.	Employer only.	No arrests. Company paid for tire replacements.

<sup>6</sup>Torres was called by General Counsel in rebuttal and denied the misconduct attributed to him. I found his denials lacking in credibility and I do not credit his testimony. I make no finding, however,

express or implied, as to his fitness to return to work as that issue is not presented by this case.

<i>Name of Witness</i>	<i>What Happened</i>	<i>Where/When</i>	<i>Reported to Respondent or Police</i>	<i>Result</i>
(8) Clifford Mello	(a) As witness exiting plant, vehicle blocked by striker Jess Torres <sup>6</sup> who then hit Mello's vehicle with a picket sign; someone threw 3 rocks at Mello's vehicle.	At plant, September 5	Employer only.	No result.
	(b) As witness exiting plant, pickup slowly driving ahead of witness driven by striker Benny Pacheco, "who gave thumbs down" gesture. After Mello passed vehicle, a chase ensued for several minutes.	At plant, September 9	Employer only.	No result.
	(c) Witness found vehicle with all four tires punctured.	In front of home, 9 a.m. on September 21.	Employer only.	Employer paid for new tires \$500.
	(d) Several miscellaneous incidents of following witness with vehicles driven by strikers Dwayne Vanderpool and Jess Torres, confronting him with possible gun barrel in pickup truck, addressing him with vulgar language and using fingers of hand to simulate a gun pointing at witness.	On roads near plant—early to mid-September.	Employer only.	Employer provided security guard to ride in Mello's vehicle with him on three different occasions.
(9) Gene Clark	(a) Wife found picket sign in front yard on two occasions and a rock was thrown at his home.	At home on September 6.	Employer only.	No arrest nor identification of perpetrators.
	(b) Leaving plant, witness followed in a vehicle, driven by striker Lucio Reyes.	At plant, September 7.	Employer only.	
	(c) Witness received report that call made to plant threatening him with violence.	At plant, September 8.		
	(d) On four to six occasions, witness' vehicle had windows broken.	At home during October.	Employer only.	Employer paid for replacement (about \$1000) and assigned security guard at home for 1-1/2 months.
(10) Earl Stutler	Witness' home and car covered by broken eggs.	At home October 1, between midnight and 4 a.m.	Employer only.	No arrest and no ID—Employer paid for repairs.
(11) Anita Cruz	(a) Front windows of home broken with large rocks.	At home, September 28, 1:30 a.m.	Employer only.	No arrest or ID. Employer paid for repairs.
	(b) 2 bullet holes in another window of house.	Mid-October.	No report.	
(12) Kirk Berry	As witness walking to car after work, unknown person drove up and said, "You'll never work for a Union again. We have your license number and all the info we need."	At Costco parking lot on September 17.	Employer only.	No action.
(13) Von Wassin	(a) Garage door painted with witness' name, "No. 1 Scab," "Fuck."	At home, September 12.	Can't recall if reported to employer.	No action.
	(b) 2730 anonymous phone calls: "We know where you live and going to get you—won't have to worry about family if continue to work at Diamond Walnut."	September/October.	Can't recall if reported, didn't take calls too seriously.	

<i>Name of Witness</i>	<i>What Happened</i>	<i>Where/When</i>	<i>Reported to Respondent or Police</i>	<i>Result</i>
(14) Vince Brown	Threatened by picket captain Manuel Arvizu: "Vince Brown I know where you live, I'm coming to your house and I'm going to do things my way. You're going to pay alright, I'll be at your house."	Near picket line on Respondent's property January 28, 1992, 12:50 p.m.	Employer and Stockton police.	Brown sent letter to Tony Gamino complaining of incident (R. Exh. 19); 1 week later, Gamino acknowledged complaint and promised investigation "in the very near future" (G.C. Exh. 14); Gamino made no further responses on grounds that Arvizu had denied incident.
(15) Wendy Heinze	(a) Heard a striker named Mack who was in the plant with permission to retrieve his tools, say to a nonstriker named Rowland, "You're fucked Charles you're fucked." (Mack made a similar comment to Hallmark.)  (b) After leaving job, witness was followed at night about half way to her home by person driving brown truck with shell on back.	In plant on September 10.  Early October.	Employer.	No result.  Following day witness saw same brown truck parked in area where pickets park vehicles; no action taken.

In addition to the witnesses whose testimony is summarized above, Respondent provided numerous incident reports and declarations of witnesses reciting alleged strike-related events (R. Exhs. 23, 24, and 25). The matters contained in these reports are similar to those personally described by Respondent's witnesses noted above. Also as noted above, Respondent offered into evidence certain orders of the state court that name the Union and others as defendants and which orders regulate and control picket conduct (Jt. Exhs. 4, 6, 9, 10).<sup>7</sup>

Notwithstanding Respondent's evidence referred to above, presented in support of its refusal to provide the Union with the names, addresses, and social security numbers of the non-striking employees, the parties stipulated at hearing that on September 28, 1992, Respondent provided to the NLRB Regional Office and to the Union, a document commonly referred to as an *Excelsior* list containing the names and addresses of all unit employees, i.e., all permanent replacements and all crossovers, then working.

b. *Legal principles*

In *New England Telephone Co.*, 309 NLRB 558 (1992), the Board affirmed the decision of the administrative law judge directing the Respondent to provide certain information to the union. At 561, the administrative law judge recites certain relevant principles of law:

Under settled principles of labor law, "an employer is obligated to provide a union with requested information if there is a probability that such data is relevant and will be of use to the union in fulfilling its statutory

<sup>7</sup>I also note one or more complaints in the record by the Union regarding alleged misconduct of nonstrikers. See, e.g., letter of October 1 (Jt. Exh. 11).

duties and responsibilities as the employees' exclusive bargaining representative"; the issue in such a case is "whether the requested information has probable and potential relevance to the union's statutory obligation to represent employees within the contractual units"; and, "whatever the eventual merits of the [union's] claim . . . [it is] entitled to the requested information under the discovery type standard announced in *NLRB v. Acme Industrial Co.*, 385 US 432, 437 (1967), to judge for [itself] whether to press [its] claim in the contractual grievance procedure or before the Board or Courts . . . ." See *Maben Energy Corp.*, 295 NLRB 149 (1989) and cases cited.

In addition, as recently restated in *Safelite Glass*, 283 NLRB 929, 948 fn. 26 (1987):

It is well established that there must be more than a speculative concern on the part of an employer . . . there must be a clear and present danger of harassment and violence . . . to justify a refusal to furnish a union with relevant information . . . [citations omitted].

See also *Browne & Sharpe Manufacturing Co.*, 299 NLRB 586 (1990).

Accordingly, where the issue is whether the Union is entitled to the names and addresses of employees, the general rule under the liberal discovery standard quoted above is the information must be provided. *NLRB v. Associated General Contractors*, 633 F.2d 766, 733 (9th Cir. 1980); *NLRB v. Pearl Bookbinding Co.*, 517 F.2d 1108, 1113 (1st Cir. 1975); *United Aircraft Corp. v. NLRB*, 434 F.2d 1198, 1204 (2d Cir. 1970), cert. denied 401 U.S. 993 (1971). Cf., *NLRB v. Wyman-Gordon*, 394 U.S. 759, 787 (1969).

Where the issue is whether the Union is entitled to the names and addresses of strike replacement employees, the focus of the inquiry changes somewhat, but the Board still finds a strong presumption in favor of production. See *Trumbull Memorial Hospital*, 288 NLRB 1429 (1988); *Chicago Tribune Co.*, 303 NLRB 682 (1991) enf. denied 965 F.2d 244 (7th Cir. 1992). Put differently, unless an employer can prove a clear and present danger to its nonstrikers, the employer must provide the names and addresses to the union as requested. *Georgetown Associates*, 235 NLRB 485, 486 (1978); *Chicago Tribune Co.*, supra.

In *Chicago Tribune Co. v. NLRB*, supra at 246–248, the court discussed with disapproval the origins of the “clear and present danger” doctrine in a labor law context and refused to enforce the Board’s decision. In its opinion, the court noted the description of the Board’s standard by one court as a “settled rule.” *Lear Siegler, Inc. v. NLRB*, 890 F.2d 1573, 1581 (10th Cir. 1989). Numerous other courts of appeals decisions, including a very recent decision of the Seventh Circuit itself have also approved the Board’s standard. See *NLRB v. Illinois American Water Co.*, 933 F.2d 1368, 1377 (7th Cir. 1991).

Not surprisingly, Respondent cites *Chicago Tribune Co. v. NLRB*, with approval in its brief. There at fn. 10, Respondent contends that the “clear and present danger” standard is overly burdensome and inappropriate in an unfair labor practice proceeding. As an administrative law judge for the National Labor Relations Board, I am bound by the Board’s decisions. *Iowa Beef Packers*, 144 NLRB 615, 616 (1963). I therefore reject Respondent’s invitation to reconsider the application of the Board’s standard to unfair labor practice cases, since I have no power or authority to do so.

Applying the “clear and present danger” test to the instant case, I find that Respondent has failed to meet its burden. With respect to the witnesses presented as summarized above, I note that many of the incidents are very serious misconduct. However, in most of the incidents the perpetrator is unknown. When a specific person is named, there is no evidence that said person is a current official or agent of the union. For example, Reyes was a former secretary/treasurer of the Union in 1989 or 1990; Mack was a former shop steward; Arvizu was a current picket captain but this status does not make him an agent of the Union. Moreover, there is no evidence that any named individual had access to union files or computers.

Respondent also directs my attention to the sundry orders of a state court. However, one or more restraining orders issued by a state judge does not necessarily reflect that the union has forsaken a peaceful, legal process. See *Clear Pine Mouldings v. NLRB*, 632 F.2d 721, 730 (9th Cir. 1980), cert. denied 451 U.S. 984 (1981).

The issue in this case is directly governed by the Board’s decision in *Chicago Tribune Co.*, supra, where the names and addresses of the nonstrikers were eventually released by the employer prior to any ruling by the administrative law judge. The administrative law judge noted this disclosure and found that it tended to support his decision that no “clear and present danger” had been proven. Similarly, in the instant case, I find the eventual release on September 28, 1992, of the names and addresses in issue as part of an *Excelsior* list supports my findings and conclusions that no clear and present danger existed.

In conclusion, I consider Respondent’s proposed alternative of releasing the names and addresses in issue to an independent mailing service who could then forward the Union’s mailings to the nonstrikers. I find that Respondent’s proposal was not reasonable because Gamino credibly testified that it was necessary for the Union to have an opportunity for face-to-face contact with the strikers to make its case. Of course, the nonstriker is not required to speak to the Union’s representative and one can speculate as to how many nonstrikers in this case would be inclined to listen. This is not the point, however. Respondent’s alternative simply did not advance the bargaining process.

Because Respondent did not reply to the Union’s two valid requests for information, in a timely manner, I find that Respondent violated Section 8(a)(5) of the Act on September 28, 1992, when it finally furnished the Union with the names and addresses of nonstrikers. *Teamsters Local 921*, 309 NLRB 901 (1992); *NLRB v. John S. Swift Co.*, 277 F.2d 641 (7th Cir. 1960); *EPE Inc.*, 284 NLRB 191, 200 (1987).<sup>8</sup>

## 2. Respondent’s state court civil action for libel

### a. Facts

On October 22, the president of the California School Employees Association (CSEA), a labor organization, sent a letter to See’s Candies, an important customer of Respondent’s. The letter reads as follows (Jt. Exh. 19):

October 22, 1991  
 See’s Candies  
 1 210 El Camino Real  
 San Francisco, CA 94080–9971  
 Dear Sirs:  
 Subject: *Boycott of Diamond Walnut Growers*

The Board of Directors of the California School Employees Association (CSEA) has voted to boycott your company because of your past business relationship with Diamond Walnut Growers, Inc. As you can see from the attached letter, we are boycotting Diamond Walnut Growers and their customers because Diamond refuses to negotiate with the members of the Cannery Workers, Processors, Warehousemen and Helpers, Local No. 601.

We have no animosity toward your company because you seem to have a good relationship with your employees, but it is imperative that we send a clear message to the management of Diamond Walnut Growers to end their strike and settle this matter equitably.

We do not take boycotts lightly. We will act and we will act in large numbers—our 108,000 members throughout California will encourage their friends and families to join our boycott until this matter is settled.

Sincerely,  
 California School Employees Association

<sup>8</sup>Employee social security numbers are not presumptively relevant and thus need not be furnished absent a showing of the numbers’ potential or probable relevance. *Sea-Jet Trucking Corp.*, 304 NLRB 67, 68, and fn. 2 (1991). Because neither General Counsel nor the Union has made any such showing here, I do not fault Respondent for failing to provide nonstrikers’ social security numbers.

/s/ Bill Ellis  
 Bill Ellis  
 State President

On the same date, a second letter was sent by CSEA to Respondent and it reads as follows (R. Exh. 2):

October 22, 1991  
 Bill Cuff, President  
 Diamond Walnut Growers, Inc.  
 P.O. Box 1727  
 Stockton, CA 95201

Dear Mr. Cuff:

The Board of Directors for the California School Employees Association (CSEA) has voted to boycott your company, and all companies that purchase walnuts from you (as listed below), until you reach a contract agreement with the members of the Cannery Workers, Processors, Warehousemen and Helpers, Local No. 601.

We do not take boycotts lightly. We will act and we will act in large numbers—our 108,000 members throughout California will encourage their friends and families to join our boycott of your company and the companies listed below until this matter is settled.

The members of Local 601 took unprecedented pay cuts in 1985 to help you through some difficult financial times. Now, with Diamond Walnuts having posted record sales in 1990, it is time to bring your employees wages to a level comparable with other cannery workers.

We hope that our boycott will be short lived and that you will return to the bargaining table, end the strike and settle this matter equitably.

Sincerely,  
 California School Employees Association

/s/ Bill Ellis  
 Bill Ellis  
 State President

General Mills	Betty Crocker
Friendly Ice Cream	Quaker Oats
Kellogg's	Nestle's
Keebler	Pepperidge Farms
Ralston	Stouffer
Chef Francisco	Dreyer's
Post	Frito Lay
See's Candies	Entenmann's
Nabisco	Weight Watchers
Mother's Cookies	Mc Kee
Yoplait	Sara Lee
Crescent	Pillsbury
Godiva	Wal Netto
9 Proctor & Gamble	General Foods
Pretiago Farms	Haagen Dazs

The companies listed at the bottom of this second letter are all major customers of Respondent's and all or most received letters similar to Joint Exhibit 19.

Respondent presented evidence from two of its officials, Brown and Dan Hagerty, to prove that Respondent believed

that a statement contained in Joint Exhibit 19, "Diamond refuses to negotiate with the members of the Cannery Workers, Processors, Warehousemen and Helpers, Local No. 601," was false. In addition, Respondent believed that dissemination of the allegedly false allegation to its major customers, some of whom were themselves unionized, would hurt Respondent's business. In light of these facts, on October 31, Respondent filed in California state court, a "complaint for Damages For Libel" (No. 238729) (Jt. Exh. 21), against the Union, against CSEA, and against 10 Doe Associations alleging the knowing dissemination of false statements contained in Joint Exhibit 19, recited above (Jt. Exh. 21). According to Brown, the Union was named as a co-defendant because it was the only party that could have benefited from the letter and the only party who knew the identity of Respondent's customers. Moreover, according to Brown, CSEA representatives had been observed doing some picketing on Respondent's premises.

On or about January 6, 1992, the Union and apparently CSEA as well, filed a demurrer in state court to the Employer's libel action (Jt. Exh. 25). On February 6, 1992, the Employer filed a memorandum of points and authorities in opposition (Jt. Exh. 26), and defendants subsequently filed a reply brief (Jt. Exh. 27). On February 24, 1992, the state court judge issued an "Order Sustaining Demurrer Without Leave to Amend, "on the grounds that the alleged defamatory statements are protected statements of opinion . . . and that therefore the Complaint fails to state facts sufficient to constitute a cause of action." (Jt. Exh. 30).

Respondent claims in its brief, page 38, that the state court judge expressed misgivings about his decision to sustain the demurrer.<sup>9</sup> Assuming for the sake of argument only that Respondent's interpretation of the judge's remarks are accurate, I am puzzled by Respondent's failure to appeal from the court's order.

#### b. Legal principles

In *Operating Engineers Local 520 (Alberici Construction Co.)*, 309 NLRB 1199 (1992), the Board had occasion to review the principles of *Bill Johnson's Restaurants v. NLRB*, 461 U.S. 731 (1983), in the context of a state court lawsuit by a union against one of its members for slander and libel. In *Operating Engineers Local 520*, the Board stated, that it has

consistently interpreted *Bill Johnson's Restaurants* to hold that if the plaintiff's lawsuit has been finally adjudicated and the plaintiff has not prevailed, its lawsuit is deemed meritless, and the Board's inquiry for resolving the unfair labor practice issue; proceeds to resolving whether the respondent/plaintiff acted with a retaliatory motive in filing the lawsuit. [Citations omitted.]

<sup>9</sup>As the judge sustained the demurrer without leave to amend, he stated, "I may be wrong. But as I say, I don't think anybody, as a matter of fact, can take this all that seriously. That is anything other than simply an expression of or allegations of hostility and dislike toward—to the employer. It's not a statement of fact." (R. Exh. 1, p. 9.)

In the instant case, Respondent's lawsuit is no longer pending and it did not prevail. Accordingly, I must decide whether the lawsuit was filed for a retaliatory reason.<sup>10</sup>

I begin this segment of the decision by finding that Respondent's state court lawsuit against the Union was entirely baseless. I note Brown's testimony providing reasons for naming the Union as a defendant: because it was the only party that could have benefited from the boycott letter, because it was the only party who knew the identity of Respondent's customers, and because CSEA representatives had been observed on at least one occasion picketing during the strike. By themselves and when considered in their totality, these alleged reasons fall short of establishing a reasonable basis for naming a party as a defendant. Thus CSEA could have undertaken its boycott campaign strictly on its own in the interests of union solidarity.<sup>11</sup> The names of Respondent's customers could have been obtained from a nonagent of the Union who was sympathetic to the goals of the strike. And CSEA's mere presence on the picket line hardly imputes CSEA's alleged misconduct to the Union.

At page 15 of General Counsel's brief, counsel notes the lack of evidence showing any involvement by the Union in CSEA's decision to send the letter. Moreover, the Union was not signatory to any of the letters sent, and there was no evidence that the Union engaged in any conduct which would constitute publication of CSEA's letter. I adopt these arguments and note further that Respondent never called a CSEA representative at hearing or presented other credible evidence to show a concert of action, agency, or some other reasonable basis for naming the Union as a defendant.

Because Respondent's lawsuit against the Union was baseless, I find Respondent's motive was retaliatory. This conclusion is supported by one other factor. Respondent sought \$500,000 in punitive damages (Jt. Exh. 21, p. 4). As the Board noted in *Operating Engineers*, this claim for punitive damages is evidence of a retaliatory motive.

Respondent argues (brief, pp. 39–44) that it cannot be found guilty of violating Section 8(a)(1) of the Act by filing a baseless lawsuit for retaliatory reasons because it did not sue individual employees in state court and only employees may engage in protected concerted activity. I find that Respondent's argument lacks merit. Respondent itself notes the case of *Phoenix Newspapers*, 294 NLRB 47 (1989), in which a plaintiff/respondent filed a libel action against a union and several employees. The filing of the lawsuit was found to be an unfair labor practice by the Board. See also *Dahl Fish Co.*, 279 NLRB 1084, 1105–1106 (1986), enf'd. 813 F.2d 1254 (D.C. Cir. 1987), and *Giant Food Stores*, 295 NLRB 330, 333–334 (1989). The cases show that for the Board to find an unfair labor practice pursuant to a *Bill Johnson's Restaurants* analysis, it is not necessary for the

plaintiff/respondent to sue employees in state court nor to sue a union and employees. It is sufficient to sue a union only as in this case.

In support of this conclusion, I note that the filing and maintaining of a baseless lawsuit for retaliatory motives as recited above, had the direct and reasonably foreseeable effect of draining limited union time and assets in defense of the state court action. This in turn directly impacted on employees who were participating in their Section 7 right to strike. For example, Union Official George reported to members on the existence and progress of various court actions filed against the Union. Thus Respondent's state court lawsuit restrained and coerced employees in the exercise of their rights guaranteed by Section 7 of the Act and thereby violated Section 8(a)(1) of the Act.

### 3. The alleged statement regarding loss of health insurance for strikers

#### A. Facts

According to General Counsel witness and striker Josie Gonzales, an employee with 34 years of employment with Respondent, she had some medical tests performed at a lab in late September. An employee of the lab told her she had no health insurance coverage at the time. On hearing this, Gonzales called Donel Doty, Respondent's then supervisor of benefits and recruiting. Gonzales testified that Doty confirmed that she was without health insurance. Gonzales then complained to Union Official George, a former employee of Respondent then on a leave of absence. George then called Doty herself regarding health insurance. According to George, Doty allegedly confirmed that Gonzales and other strikers lacked health insurance. When George protested that the rule for coverage was that anyone who worked 80 hours or more in a prior month was eligible for health insurance in the current month—Gonzales had worked over 80 hours in August—Doty agreed, but then allegedly added that once employees voluntarily went on strike, that stopped coverage. George concluded the conversation by telling Doty she intended to seek legal advice from union attorneys.

Doty testified for Respondent and recalled both conversations in question. As to the Gonzales conversation, Doty recalled it because she had known about Gonzales' medical condition for which Gonzales had the lab tests. According to Doty, she told Gonzales that she was covered by health insurance during September. Doty specifically denied telling Gonzales or anyone else they lost health insurance because they went on strike. As to the following month, Gonzales would be eligible under the COBRA law to continue her health insurance at her own expense.

This simple message, according to Doty, had been conveyed to close to 100 employees, who had gone on strike on September 4 and called to inquire about their coverage. Part of the confusion was caused by Respondent's implementation as of August 1 of a new health insurance plan called OMNI. As noted above, to be eligible for coverage, an employee had initially to enroll in the plan and had to have worked 80 hours or more in each month before the month for which coverage was claimed. Because all or most strikers who had enrolled in the plan had worked over 80 hours in August, they were covered in September.

<sup>10</sup>The Board's analysis follows the Court's decision in *Bill Johnson's Restaurants*, 461 U.S. at 747, in which the court stated "If judgment goes against the employer in state court, however, or if his suit is withdrawn or is otherwise shown to be without merit, the employer has had its day in court, the interest of the State in providing a forum for its citizens has been vindicated, and the Board may then proceed to adjudicate the . . . unfair labor practice case."

<sup>11</sup>Equally plausible is CSEA's interest in establishing good will or an I.O.U. so a powerful Union might be available to assist CSEA in battling its own continuing labor and political disputes throughout the State of California.

Doty also recalled talking on the telephone to George—about 12 times during the course of the strike with respect to OMNI coverage. Within the first week of the strike, Doty recalled George calling to ask about Gonzales' coverage and two other strikers under the OMNI plan. As was her habit, Doty looked up the records of all three strikers and specifically recalled telling George that Gonzales was covered for September. Again Doty denied telling George that strikers lost health insurance because they went on strike.

It is unnecessary to recite legal principles here as I do not credit the testimony of Gonzales and George. Prior to the strike and in an attempt to explain its new health insurance plan, Respondent distributed to its employees and to the Union, voluminous material. For example, Respondent Exhibit 5 (General OMNI Plan Information), Respondent Exhibit 6 (Most Frequently Asked Questions), Respondent Exhibit 7 (Letter to employees regarding OMNI) and Respondent Exhibit 13 (More Frequently Asked Questions). All of this information makes it as clear as possible to employees that they were covered if they enrolled and worked at least the requisite number of hours in the month before coverage was questioned.

Besides this general information, Respondent also introduced Gonzales' enrollment form in OMNI dated August 8 (R. Exh. 8), Gonzales' authorization for Deduction of Health Benefit Co-Pay, dated August 7 (R. Exh. 9), and Gonzales' September co-payment check for \$11.91 dated October 11, honored by Respondent though almost 2 weeks late (R. Exh. 11).

Since I do not believe Gonzales intentionally lied, I assume that due to the stress and uncertainty of the strike, she misunderstood what Doty was telling her, a misunderstanding perhaps related to the failure of the OMNI plan to cover the particular lab work that Gonzales was having performed.

It is more difficult to explain charitably George's testimony, yet I have no difficulty at all in reaffirming any failure to credit her testimony. To support my discrediting of George, I note the following factors. With hundreds of employees on strike, why would Doty tell only Gonzales she was not covered by health insurance due to her participation in the strike. General Counsel presented no evidence of animus between the two; indeed I find no animus between Doty and either Gonzales or George. I find no motive for Doty to give misinformation regarding insurance coverage to a single employee. I also find that Doty did not mistakenly give out the information in issue as she was fully versed in the OMNI plan and its requirements for coverage.

Other inconsistencies abound in George's testimony. For example, though she doubted the alleged information supplied by Doty so as to immediately consult with legal counsel—at least that's what she told Doty—she nevertheless then supposedly repeated this suspect information to about 100 strikers. I don't believe this either.

Finally, although George had a cordial relationship with Brown as she did with Doty, she never sought to confirm with Brown the information allegedly supplied by Doty—information contrary to much of the documents supplied by Respondent about OMNI and how the plan works.

For all the reasons stated above, I will recommend to the Board that, on credibility grounds, this allegation be dismissed.

#### 4. The alleged unilateral change in terms and conditions of employment

##### a. *Facts*

On July 22, 1992, union counsel wrote to Respondent counsel requesting that Respondent provide a listing of all regular and seasonal positions for the 1992 season "in order to assist [the Union] in evaluating the Company's revised proposal dated July 1, 1992." (G.C. Exh. 15.) In response, Respondent presented to the Union at an August 4, bargaining session a list of seasonal jobs (G.C. Exh. 16). With the list of seasonal jobs, Respondent also provided to the Union, job bids containing job descriptions and prerequisites which were different from job requirements in past years (G.C. Exhs. 17(a)–(z)). More specifically many or most of the new job requirements required testing to qualify for the positions whereas in the past testing was not required. The job bids given to the Union on August 4, 1992, had sometime before that, been posted in the plant by Heinze. Union Representative George who received the information from Respondent on August 4, 1992, did not then notice the change in job requirements and no one gave her notice then or before, that the changes were contained in the job bids. No discussion of the changes occurred on August 4, nor on August 26, 1992, when the parties met for another negotiating session. Allegedly it was sometime after the August 26 negotiating session when George noticed the changes required testing. On discovery, George notified only union counsel, but did not contact Respondent to protest the changes, to request bargaining or for any other purpose.

Respondent never implemented the testing requirements for the 1992 season on the grounds it was too busy. In addition, Respondent prudently decided to await the outcome of this hearing.

##### b. *Legal principles*

An employer's unilateral change of a working condition is a violation of Section 8(a)(5) of the Act because it circumvents the employer's duty to negotiate with the Union in good faith. *NLRB v. Katz*, 369 U.S. 736, 743 (1962). In the instant case, it is undisputed that Respondent unilaterally changed the job requirements of certain positions—by adding a testing requirement. I find that said change in a term and condition of employment is material, substantial, and significant. *Alamo Cement Co.*, 281 NLRB 737, 738 (1986); *Angelica Healthcare Services*, 284 NLRB 844, 853 (1978).

Respondent argues that no violation of the Act occurred because the unilateral changes were never implemented. It is unnecessary to debate over what constitutes implementation. In this case, Respondent developed the changes, posted them in the plant in accord with normal procedures and even announced them to the Union, on August 4, 1992. That employees were never actually required to take the tests is of little moment and no defense.

Respondent also contends that the Union waived the right to bargain by not demanding same once it became aware of the unilateral changes. When an employer has failed to give formal notice to a union of a proposed change in working conditions, the employer is not necessarily in violation of Section 8(a)(5) if the Union (1) receives actual notification of the contemplated change at a time that would allow for

meaningful negotiations on the matter and (2) does not act with due diligence thereafter in requesting bargaining. Absent a request for bargaining by the union, the employer's willingness to bargain has never been tested and, having never been tested, the employer's conduct may not be found violative of the Act. *Armour & Co.*, 280 NLRB 824, 828-829 (1986).

Because it is undisputed in the instant case that the Union failed to request bargaining once it became aware of the unilateral changes, I must ascertain whether it was excused from requesting bargaining on the grounds that said changes were presented as a *fait accompli* indicating any such request would have been futile. *Keystone Consolidated Industries*, 309 NLRB 294 (1992).

For several reasons, I find the Union waived its right to bargain and I will recommend that this allegation be dismissed. To recapitulate the facts, the Union received notice of the job requirement changes on August 4. However, because Respondent failed to give clear notice of the job changes, the Union's duty to act ran from the time George became aware of the job changes. According to George, she became aware of the changes "probably after the 26th of August because I would have brought it up to [union counsel] if it was before" (Tr. 900-901). Because Union Counsel Absalom had requested the information regarding regular and seasonal jobs on July 22 (G.C. Exh. 15), because George was an experienced and assertive union official, and because no reason was given to explain the Union's failure to review the tendered job bids, I cannot credit George's testimony. This conclusion is further supported by the fact that the charge on which this issue is based was filed by the Union on August 24, 1992 (G.C. Exh. 1(h)(h)). I find that the Union became aware of the job bids at least a few days prior to August 26 when the parties met to negotiate. For reasons unknown, the Union failed to request bargaining on that date regarding the new testing requirement. Even if I credited George's testimony, however, I would still find waiver by the Union.

The jobs in question were to be filed at or near the beginning of the walnut season which began in the first week of September (Tr. 912). This was ample time for the Union to request bargaining, particularly in light of the past practice then in effect. After posting of job bids in the past, where job requirements had been changed, George would first call Heinze or Brown to attempt to resolve the matter. Thereafter, if no resolution of the matter occurred, the Union filed a grievance.<sup>12</sup>

I find the Union here did not act with the requisite diligence as George's notifying union counsel does not satisfy the Union's burden when union counsel files a charge with the Board in lieu of requesting bargaining. Moreover, I note the Board's decision in *WPIX, Inc.*, 299 NLRB 525, 525-526 (1990), in which the Board found that the Union's failure to request bargaining with a week's notice of a unilateral change (and certain other factors as well) meant that the Union had waived its rights. In dismissing the complaint in its entirety, the Board rejected the Union's assertion that any request for bargaining would have been futile. I recommend to the Board in this case, the same course of action.

<sup>12</sup>This past practice is still another reason why I cannot believe the Union never reviewed the job bids until sometime after August 26, 1992.

#### CONCLUSIONS OF LAW

1. Respondent Diamond Walnut Growers, Inc. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Cannery Workers, Processors, Warehousemen & Helpers Union, Local 601, International Brotherhood of Teamsters, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. By failing to provide to the Union, in a timely manner, names and addresses of strike replacements, Respondent has violated Section 8(a)(1) and (5) of the Act.

4. By initiating and maintaining a baseless civil action for libel against Cannery Workers, Processors, Warehousemen & Helpers Union, Local 601, International Brotherhood of Teamsters, AFL-CIO in retaliation for protected concerted activity of its members, Respondent has violated Section 8(a)(1) of the Act.

5. Other than specifically found herein, Respondent has committed no other unfair labor practices.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom. I will not recommend that Respondent be ordered to furnish the requested information because the information already has been given the Charging Party. Consequently, a cease-and-desist order will suffice to remedy the violation found.<sup>13</sup>

Having found that the Respondent's filing and pursuit of the lawsuit against the Union violated the Act, I shall also recommend that the Respondent be ordered to reimburse the Union for all legal and other expenses it incurred in defending the Respondent's suit, plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). See *Teamsters Local 776 (Rite Aid Corp.)*, 305 NLRB 832 fn. 20 (1991).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>14</sup>

#### ORDER

The Respondent, Diamond Walnut Growers, Inc., Stockton, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to provide to the Cannery Workers, Processors, Warehousemen & Helpers Union, Local 601, International Brotherhood of Teamsters, AFL-CIO, in a timely manner, names and addresses of nonstrikers which is information relevant for the administration of the collective-bargaining agreement.

(b) Initiating or maintaining a baseless lawsuit against Cannery Workers, Processors, Warehousemen & Helpers Union, Local 601, International Brotherhood of Teamsters, AFL-CIO in retaliation for members' protected concerted activities.

<sup>13</sup>*Interstate Food Processing*, supra, 283 NLRB at 306.

<sup>14</sup>If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Reimburse Cannery Workers, Processors, Warehousemen & Helpers Union, Local 601, International Brotherhood of Teamsters, AFL-CIO for all legal and other expenses incurred in the defense of Respondent's state court lawsuit [No. 238729] in the manner set forth in the remedy section.

(b) Post at its facilities in Stockton, California, copies of the attached notice marked "Appendix."<sup>15</sup> Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

<sup>15</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail to provide to the Cannery Workers, Processors, Warehousemen & Helpers Union, Local 601, International Brotherhood of Teamsters, AFL-CIO, in a timely manner, names and addresses of nonstrikers which is information relevant for the administration of the collective-bargaining agreement.

WE WILL NOT initiate or maintain a baseless lawsuit against the Cannery Workers, Processors, Warehousemen & Helpers, Union, Local 601, International Brotherhood of Teamsters, AFL-CIO in retaliation for members' protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL reimburse the Cannery Workers, Processors, Warehousemen & Helpers Union, Local 601, International Brotherhood of Teamsters, AFL-CIO, for all legal expenses incurred in the defense of our lawsuit (Case No. 238729) plus interest.

DIAMOND WALNUT GROWERS, INC.