Delano, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

ANTON CARATAN & SONS, Respondent, and ESTER CASTILLO, et al., Charging Parties.	)	Case Nos. 80-CE-150-D, 80-CE-151-D, 80-CE-183-D, 81-CE-40-D 9 ALRB No. 37 (8 ALRB No. 83)

SUPPLEMENTAL DECISION AND REVISED ORDER

On November 8, 1982, the Agricultural labor Relations Board (Board) issued its Decision and Order in this matter. Pursuant to a motion from the Board, the Court of Appeal of the State of California in and for the Fifth Appellate District remanded this matter to the Board on March 30, 1983.

On May 17, 1983, the Board notified the parties of its intended modification of the above Decision and Order and allowed the parties an opportunity to file briefs regarding the merits of the proposed modification. The General Counsel and the United Farm Workers of America, AFL-CIO timely filed briefs objecting to the proposed modification.

Pursuant to the provisions of Labor Code section 1146, the Board has delegated its authority in this matter to a three-member panel.

In our earlier Decision, we adopted the findings, rulings

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and conclusions of the Administrative Law Judge (ALJ)[1/] except as to the allegations in the complaint regarding the suspensions of Ester Castillo and Rita Rubio by Respondent Anton Caratan & Sons (Respondent) and Respondent's subsequent refusal to rehire those two employees. In part, we stated:

> To the extent that the [ALJ] relied on the business records of Respondent to determine that the working condition protested did not in fact exist, the [ALJ] was incorrect. The evidence in this matter demonstrates that Castillo and Rubio worked unassisted on September 8, 12, and 13, 1980.
> (Anton Caratan & Sons (1982) 8 ALRB No. 83, p. 3, fn. 3.)

In fact, the ALJ was correct in his reliance on those business records herein and those records establish that the working condition protested by Castillo and Rubio did not in fact exist. (Respondent's Exhibit 6.)

In light of this affirmation of the ALJ's reliance on Respondent's business records, we find that there is insufficient evidence to find that Castillo and Rubio were, in good faith, engaged in a concerted protest against existing terms and conditions of employment at the time of their suspension. (See Venus Ranches (1982) 8 ALRB No. 60, p. 5.)

Accordingly, we hereby modify our prior Decision in this proceeding by adopting all findings, rulings and conclusions of the ALJ and we hereby withdraw and rescind our prior remedial Order in this matter.

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

ORDER

Pursuant to section 1160.3 of the Agricultural Labor Relations Act, the Agricultural Labor Relations Board hereby orders that the complaint herein be, and it hereby is, dismissed in its entirety.

Dated: June 21, 1983

ALFRED H. SONG, Chairman

JOHN P. McCARTHY, Member

JEROME R. WALDIE, Member

CASE SUMMARY

Anton Caratan & Sons
(Ester Castillo, et al.)

9 ALRB No. 37
(8 ALRB No. 83)
Case Nos. 80-CE-150-D, et al.

PRIOR BOARD DECISION

The Board previously determined that, in light of the evidence in this case, when two employees in good faith chose to pursue a grievance over working conditions, their subsequent suspension for this conduct was a violation of section 1153(a) of the ALRA. In all other respects, the Board adopted the decision of the ALJ and dismissed the complaint.

BOARD DECISION

Based on a corrected reading of the evidence in this case, the Board determined that there existed insufficient evidence to determine that the two employees were in fact pursuing in good faith a grievance over working conditions. Therefore, the Board modified its previous opinion to adopt in all respects the decision of the ALJ. The Board therefore, dismissed the complaint in this matter.

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This Case Summary is furnished for information only and is not an official statement of the case, or of the ALRB.

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