

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

GEORGE LUCAS & SONS,	)	Case Nos	82-CE-76-D
	)		82-CE-103-D
Respondent,	)		82-CE-157-D
	)		82-CE-182-D
and	)		82-CE-192-D
	)		82-CE-195-D
UNITED FARM WORKERS OF	)	13 ALRB No. 4	
AMERICA, AFL-CIO,	)	(11 ALRB No. 11)	
	)		
Charging Party.	)		
	)		

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SUPPLEMENTAL DECISION

On November 14, 1986, in an unpublished decision, the California Court of Appeal for the Fifth Appellate District annulled and remanded portions of our Decision and Order in George Lucas & Sons (1986) 11 ALRB No. 11. (George Lucas & Sons (Nov. 14, 1986) 5 Civ. F005685.)

The Court directed that we reconsider that portion of our previously issued Decision wherein we concluded that Respondent George Lucas & Sons had violated section 1153 (a) <sup>1/</sup> of the Agricultural Labor Relations Act (ALRA or Act) when it discharged supervisor Ernie Popoy because he refused to commit an unfair labor practice.<sup>2/</sup> We had concluded that Respondent's proffered business reasons for the discharge (inter alia, quality problems in the Popoy crew harvesting pack) were pretextual in that they

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<sup>1/</sup>All section references herein refer to the California Labor Code unless otherwise specified.

<sup>2/</sup>The Court upheld our conclusion that a prima facie case of unlawful conduct by Respondent had been established.

were not a motivating factor in the decision to discharge Ernie Popoy. Rather, these problems were offered as an after-the-fact justification for an otherwise unlawful termination. The Court found that our analysis was not supported by substantial evidence and remanded with directions that we balance the lawful and unlawful motives for the discharge to determine whether Popoy would have been discharged even if he had not refused to commit an unfair labor practice. We must determine, therefore, the factual issue of causation in this dual motive situation. (Martori Brothers Distributors v. Agricultural Labor Relations Bd . (1982) 29 Cal.3d 721; N.L.R.B. v. Transportation Management Corp. (1983) 462 U.S. 393; Wright Line, A Div. of Wright Line, Inc. (1980) 251 NLRB 1083, 1089. )

We have determined that, under the court-ordered balancing test, Respondent has adequately demonstrated that it would have discharged Ernie Popoy even in the absence of unlawful motivation. The problems with the Popoy crew harvesting pack were real and uncontroverted, were costly to Respondent and transcended Ernie Popoy 's refusal to discipline a crew member because of her union activities. We accordingly reverse the Administrative Law Judge's decision on this issue and dismiss the complaint insofar as it alleges Respondent violated the Act when it discharged Ernie Popoy.

We have previously found that Yolanda Popoy 's case stands or falls with that of her husband, Ernie Popoy. (George Lucas &

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Sons, supra, 11 ALRB No. 11, p. 6 . ) As we find Ernie Popoy was not terminated unlawfully, we similarly find Yolanda Popoy's termination not to be a violation of the Act. Dated: March 16 , 1987

JOHN P. MCCARTHY, Member<sup>3/</sup>

PATRICK W. HENNING, Member

GREGORY L. GONOT, Member

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<sup>3/</sup> Chairman Ben Davidian and Member Ivonne Ramos Richardson did not participate in the consideration of this case.

CASE SUMMARY

George Lucas & Sons  
(UFW)

13 ALRB No. 4  
Case No. 82-CE-76-D, et al.  
(11 ALRB No. 11)

Prior Board Decision

In the previous Board decision, the Board concluded that supervisor Ernie Popoy had been discharged because he refused to discipline a member of his grape harvesting crew. The Board found that the employer was seeking to discipline the crew member because she was a union activist and was therefore ordering Popoy to commit an unfair labor practice.

Court Decision

The Court found that the Employer relied at least partially on the Popoys' failure to control their crew in making the discharge decision. The Court annulled the Board's decision and remanded for consideration of these competing motivations.

Board Decision

The Board noted that it had previously found the quality of the Popoy crew harvest work to have been offered as a pretext to justify unlawful conduct. However, accepting the court's remand instructions, the Board balanced the lawful justification for the discharge with the unlawful one and concluded that Popoy would have been discharged even absent the unlawful rationale. As the case of Yolanda Popoy was inextricably tied with that of her husband Ernie Popoy, the Board dismissed the complaint as to the Popoys.

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

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