

STATE OF CALIFORNIA,
AGRICULTURAL LABOR RELATIONS BOARD

LU-ETTE FARMS , INC . ,)	
)	
Respondent,)	No. 75-CE-9-I
)	3 ALRB No. 38
and)	
)	
UNITED FARM WORKERS OF)	
AMERICA, AFL-CIO,)	
)	
Charging Party.)	
<hr/>)	

This decision has been delegated to a three-member panel. Labor Code Section 1146.

On February 15, 1977, Administrative Law Officer Ronald Greenberg issued his decision in this case. The Charging Party filed timely exceptions to the decision of the administrative law officer and the Respondent timely filed an answering brief. We find the issues raised by the exceptions to have been adequately treated in the administrative law officer's decision. Having made a thorough review of the record, we adopt the administrative law officer's findings of facts and conclusions of law. Since the layoff of the three workers was not shown, on the basis of substantial evidence, to be unlawfully motivated, we order that the complaint be dismissed in its entirety. Dated: May 10, 1977

Richard Johnsen, Jr., Member

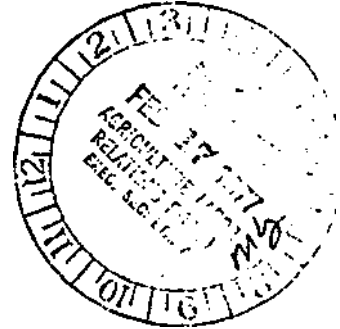
Robert B. Hutchinson, Member

Ronald L. Ruiz, Member

STATE OF CALIFORNIA
BEFORE THE
AGRICULTURAL LABOR RELATIONS BOARD

LU-ETTE FARMS,)
)
 Respondent,)
)
and)
)
UNITED FARM WORKERS)
OF AMERICA, AFL-CIO,)
)
 Charging Party.)
_____)

CASE NO. 75-CE-9-I



Jorge A. Leon,
for the General Counsel

Ivan W. Allen, II
Dressler, Stoll & Jacobs
of El Centro, California for
the Respondent

Tom Dalzell,
of Salinas, California,
for the United Farm Workers
of America, AFL-CIO,
Charging Party

DECISION

STATEMENT OF THE CASE

RONALD GREENBERG, Administrative Law Officer: This case was heard by me on January 18/ 1977,^{1/} in El Centro, California. The complaint,^{2/} dated February 4, 1976, is based on charges filed by the United Farm Workers of America, AFL-CIO (hereafter the "UFW"). The charges and the complaint were

^{1/} All dates herein refer to 1975 unless otherwise specified.

^{2/} General Counsel Exhibit 1(B).

duly served on the Respondent, Lu-Ette Farms. The complaint alleges that the Respondent committed various violations of the Agricultural Labor Relations Act (hereafter referred to as the "Act").

All parties were represented at the hearing and were given a full opportunity to participate in the proceedings. The General Counsel and the Respondent filed briefs after the close of the hearing.

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

FINDINGS OF FACT

I. Jurisdiction

Respondent, Lu-Ette Farms, Inc., is a corporation engaged in agriculture in Imperial County, California, as was admitted by the Respondent in its Answer.^{3/} Accordingly, I find that the Respondent is an agricultural employer within the meaning of Section 1140.4(c) of the Act.

It was also admitted by the parties that the UFW is a labor organization within the meaning of Section 1140.4(f) of the Act, and I so find.

II. The Alleged Unfair Labor Practices

The complaint, as amended at the hearing,^{4/} alleges three violations of Section 1153 (a) and (c) of the Act by discharging the three named employees for their support of

^{3/} General Counsel Exhibit 1(c)

^{4/} General Counsel moved to add the name of Guadalupe Pajardo to paragraph 5a of the complaint. Respondent's attorney

the UFW.

Respondent denies that it violated the Act in any respect. Respondent admits that Jesus Vasquez is a supervisor within the meaning of Section 1140.4 (j) of the Act, and I so find.

III. The Facts

A. Background

Respondent is a grower and shipper of lettuce in the Imperial Valley. Each year in October, Respondent hires a crew of 13 to 15 pipe layers to lay pipe for irrigation. Towards the latter part of October, the lettuce fields are ready for thinning. A crew of approximately 45 workers are hired to thin lettuce. They continue the thinning operation until the end of December. Lupe Estrada is the overall supervisor of the lettuce thinning crew, and Jesus Vasquez is his foreman. Vasquez¹ duties also include some supervising of the pipe laying and driving the company bus.

In 1975, Guadalupe Fajardo began work for Respondent on October 3rd. Fajardo previously had worked for Respondent.

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objected. However, he stated that he would prefer having the hearing be completed on February, 18, 1977, rather than having it continued because of the amendment. I allowed the amendment based on the fact that Respondent's case was not prejudiced by Fajardo's name being added to the complaint. Respondent's attorney stated that he did not intend to call additional witnesses in order to defend the case with the additional alleged discriminatee. Paragraph 5a of the complaint now reads: On or about November 1, 1975, Respondent, by and through JESUS VASQUEZ, at its Imperial County premises, did discharge Respondent's agricultural employees AURORA SANDOVAL, MANUEL BENITEZ and GUADALUPE FAJARDO because of their support of and participation in the UFW, and failed and refused and continues to fail and refuse to reinstate them to their former or substantially equivalent position of employ.

In 1975 he was hired to lay pipe. Approximately one week later he joined the thinning crew.

Manuel Benitez was hired by Respondent on October 15th, to work on the thinning crew. He had worked in the same capacity for Vasquez during the previous three or four seasons.^{5/}

Aurora Sandoval was hired by Respondent on October 21st, to work on the thinning crew. She had also worked for Respondent during the 1974 lettuce season.

In mid-October, both the UFW and the Teamsters^{6/} began an organizational drive at Respondent. Sandoval and Fajardo testified that Teamsters were often in the fields during working hours. More specifically, both witnesses recall that Teamster organizer Manuel Alcantar spent many hours in the fields on one particular day during the campaign. Vasquez also recalled that Alcantar was in the fields during working hours on one day. There was no testimony from any witness as to the specific activities of Mr. Alcantar on that day. All witnesses agreed that the UFW observed the Agricultural Labor Relations Board's Access Rule during the campaign. Estrada and Vasquez testified that the UFW organizers were often seen on the perimeter of the fields during working hours.

Vasquez, as company bus driver, routinely picked up workers at a place called the Big Star in Calexico, California. Two days prior to the October 30th election, Vasquez began picking up workers in front of the Teamster office in Calexico.

^{5/} Manuel Benitez did not testify at the hearing.

^{6/}It is unclear whether the Teamsters had a current collective bargaining agreement with Respondent on October 30, 1975, the day of the election. For purposes of decision, I find it unnecessary to resolve that issue.

During those two mornings, Teamster organizers boarded the bus to talk to workers. The UFW organizers also got on the bus. Vasquez apparently permitted any and all organizers to board the bus. Fajardo testified that the UFW organizers often were interrupted by Teamster organizers.

During the campaign, the UFW was supported enthusiastically by the workers. All witnesses agreed that many of the workers wore UFW buttons and put bumper stickers on their vehicles. Sandoval and Fajardo testified that Vasquez knew that they supported the UFW. However, Fajardo testified that neither he, Benitez nor Sandoval were specifically sought out by the UFW when the organizing campaign began. He stated that organizers approached all employees. Most of the employees spoke favorably of the UFW. The record is devoid of any evidence that would demonstrate that any of the alleged discriminatees were more vocal than any other employees.

Prior to the election, Sandoval and Fajardo testified that Benitez put a UFW bumper sticker on the company bus. Both witnesses stated that Respondent's supervisors knew that Benitez was responsible for that act.

On October 30, the UFW won the election^{8/} at Respondent and was later certified by the Board.

^{7/} Sandoval testified that Vasquez probably knew she supported the UFW in 1974. She has supported the UFW since 1971.' However, 1975 was the first year that the UFW actively organized employees at Respondent.

^{8/} UFW attorney moved that I take administrative notice of 2 ALRB No. 49 for purposes of establishing that the Teamsters petitioned for the election at Respondent-. I take administrative notice of that fact and also the tally of ballots. Out of 114 eligible voters, 56 cast votes. UFW received 39, Teamsters 11, No Union 5, and 1 ballot was void.

B. The Alleged Discriminatory Discharges:

After the election, Vasquez began picking up the employees at the UFW office in Calexico. On November 1st, the second work day after the election, Sandoval and Benitez were thinning lettuce in one field. Fajardo was laying pipe in another.

Vasquez was instructed by Estrada to lay off as many as five employees because the fields were wet. There was contradictory testimony as to whether the fields were in fact wet. Sandoval and Fajardo testified that it was not wet. Estrada and Vasquez stated that the fields were wet. I credit the testimony of Respondent's witnesses. Although the testimony is rather incomplete, Vice President William Daniell testified that the company was attempting to get a proper moisture balance in the soil. Adjustments apparently were being made that necessitated moving some crew members and laying off others.

The company maintained a seniority system. However, because of employee absenteeism, the company did not precisely follow seniority. Of the 45 employees working on the thinning crew on November 1st, 4 employees were hired subsequent to Sandoval, Benitez and Fajardo.

When work was over on November 1st, Vasquez approached Benitez and Sandoval as they were leaving the fields. He told them that there was no more work. He later conveyed this same message to Fajardo. Vasquez testified that he chose Benitez and Sandoval because of their excessive absenteeism. Sandoval

^{9/} Daniel Ramirez was hired October 27th; Maria Louisa De Cruz was hired October 29th; Teresa Badilla was hired on October 30th; Evaristo Losa was hired October 30th; and Miguel Mendosa was hired on November 1st.

testified that she had been absent a lot at that time. Fajardo, on the other hand, testified that Vasquez had complained about Fajardo's work. Vasquez had told him to thin and clean better and to work faster.

After the three were informed of the lay-offs, none of them asked Vasquez for an explanation. Fajardo went to the UFW office in Calexico on Monday, November 3rd. He was told by an organizer to go to Respondent and request his job back. Fajardo testified that he went back to the pick up point and talked to Vasquez. Fajardo told Vasquez that he had gone to the UFW. Vasquez asked him whether anyone else had gone. Fajardo testified that Vasquez told him that he would give him back his job if he did not tell the other employees. Later that day, Vasquez told Fajardo he was mad because Fajardo had gone to the UFW and cried for his job back. Fajardo chose not to return to Respondent after November 3rd.

Vasquez denied the above conversation. I credit Fajardo's¹ version of the conversation. However, I find it impossible to infer a discriminatory motive to the November 1st lay-off with nothing more than this subsequent conversation. Furthermore, Fajardo's¹ conclusion that he had been constructively terminated by Respondent on November 3rd does not logically follow. Fajardo on his own initiative chose to return to Respondent shortly thereafter. He was immediately reinstated. Fajardo presently is working for Respondent. Both Benitez and Sandoval went to the UFW to file a claim. They spoke to UFW attorney Tom Dalzell, who instructed them to go back to Respondent, Sandoval testified that she went back and was told by another employee that she and Benitez could work. It is unclear why

they did not return to work at that time. Sandoval went back to work for Respondent two weeks after the lay-off. She is currently working for Respondent.

The parties stipulated that a new employee, Mendosa, was hired on November 3rd to work on the thinning crew. On November 3rd, there were 43 employees on the payroll who were lettuce thinners. On November 1st, prior to the lay-off, there were 45 employees in that same category.

ANALYSES AND CONCLUSION

Section 1152 of the Act guarantees employees ". . . . the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities...." Section 1153(a) makes it an unfair labor practice "to interfere with, restrain, or coerce agricultural employees in the exercise of the rights guaranteed in Section 1152." Section 1153(c) makes it an unfair labor practice to discriminate "...in regard to the hiring or tenure of employment, or any term or condition of employment, to encourage or discourage membership in any labor organization." In applying the foregoing provisions, the Act directs the Board in Section 1148, to follow applicable precedents of the National Labor Relations Act.

The General Counsel has the burden of establishing the elements which go to prove the discriminatory nature of the discharges. NLRB _v Winter Garden Citrus Products Co-operative,

260 F 2nd 193 (CA5, 1958) 43 LRRM 2112. One of these elements is anti-union motivation. NLRB v O.A. Fuller Supermarket, Inc. 347 F 2nd 197 (CA5, 1967) 64 LRRM 2541: Schwob Manufacturing Co. v NLRB, 297 F 2nd 864 (CA5, 1962) 49 LRRM 2360. Mere suspicion will not do.

In the present case, General Counsel has failed to prove unlawful motivation on the part of Respondent. Although there is contradictory testimony, the evidence as a whole, viewed in a light most favorable to the General Counsel's case, does not lead to a conclusion of discriminatory motivation. There are four areas of controversy not adequately explained . by Respondent that require exploration. Initially, no explanation was ever offered by Respondent as to its decision to pick up workers in front of the Teamsters office two days before the election. Second, five employees were going to be laid off on November 1st, while only three employees subsequently were terminated. Third, a new employee was hired for the thinning crew on November 3rd. Fourth, Vasquez had an angry conversation with Fajardo on November 3rd.

However, an analysis of these problem areas does not aid in establishing unlawful motivation. As for the switch of bus pick-up locations, no evidence was offered to demonstrate that the move had a coercive effect. Organizers from both unions were allowed to board the bus. Neither Sandoval nor Fajardo testified as to disparate treatment by Vasquez toward either union.

Most important, Fajardo testified that neither he, Sandoval nor Benitez were more vocal or active than other UFW supporters who were not laid off. The UFW organizers did not

seek out the alleged discriminatees when the campaign began. Thus, we have nothing to set them apart from the other employees

As for the fact that three employees rather than five were laid off, this circumstance, viewed by itself or with the other events, does not uncover a sinister plot by Respondent to rid itself of union activists. The Respondent's personnel policies seemed inexact at best. Vasquez testified that Benitez and Sandoval had missed a lot of work. Sandoval had testified that she had been absent a lot. Vasquez clearly singled them out because of their absenteeism. Estrada testified that Respondent followed a seniority system, but that it was difficult to regulate because of absenteeism. On the other hand, Pajardo admitted that Vasquez had criticized his work. Thus, when the company decided to lay off employees, these three employees who were close to the bottom in seniority were not surprising choices.

As for the hiring of Mendosa on November 3rd, that fact again is an isolated one that does not change the picture. Vasquez testified that the company has a policy of allowing those workers who arrive at the pick up point to get on the bus and go to work. Apparently employee Mendosa did just that on November 3rd.

Perhaps the strongest argument can be made with regard to the November 3rd conversation between Vasquez and Fajardo. However, the subsequent employment pattern of Fajardo with Respondent diminishes the importance of that encounter. Fajardo returned to work on November 3rd. After he left that day, he returned shortly thereafter. From his testimony and others, it appears that he was able to work on

almost any day he chose. Sandoval also followed a similar pattern. Although she was told of work shortly after the lay-off, she did not return to work at that time. When she returned two weeks later, she was immediately rehired.

These facts lead to only one conclusion. There is not substantial evidence demonstrating unlawful motivation on the part of the Respondent. Not only is there no finding of any other unfair labor practices committed by the Respondent, there is no evidence of union animus. "In the absence of a showing of anti-union motivation, an employer may discharge an employee for a good reason, a bad reason, or for no reason at all." Borin Packing Co., Inc. 208 NLRB 280 (1974). As Judge Bell emphasized in NLRB v Winn-Dixie Stores 71 LRRM 2054 (CA5, 1969), "The Act does not insulate an employee from discharge (or lay-off). It is only when anti-unionism is the motive for the discharge that the Act is violated. The burden of proof is carried only when substantial evidence pointing toward the unlawful motive appears from the record taken as a whole." NLRB v I.V. Sutphin Co. Atlanta, Inc., 64 LRRM 2329 (CA5, 1967). Clearly, the record in the present case does not contain substantial evidence of unlawful motive. Thus, Respondent did not violate Section 1153(a) and (c) of the Act by laying off employees Sandoval, Benitez and Fajardo.

In examining whether the lay-offs merely violated Section 1153(a) the same conclusion must be reached. Clearly these employees were not treated in a manner that conveyed to them that the lay-offs were anything but ordinary lay-offs, NLRB v Vacuum Plating Corporation, 155 NLRB 820 (1965).

ORDER

Having found that the lay-offs of Aurora Sandoval, Manuel Benitez and Guadalupe Fajardo were not unlawfully motivated, it is hereby ordered that the complaint be dismissed in its entirety.

DATED: February 15, 1977

AGRICULTURAL LABOR RELATIONS BOARD

A handwritten signature in dark ink, appearing to read "Ronald Greenberg", written over a horizontal line.

Ronald Greenberg
Administrative Law Officer