

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

TRIMBLE & SONS, INC.,)	
)	
Respondent,)	Case No. 77-CE-28-F
)	
and)	
)	3 ALRB No. 89
FEDERICO (FRED) ARMIJO,)	
)	
Charging Party.)	
)	
and)	
)	
UNITED FARM WORKERS)	
OF AMERICA, AFL-CIO,)	
)	
Intervenor.)	

DECISION AND ORDER

Pursuant to the provisions of Labor Code Section 1146, the Agricultural Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On June 28, 1977, Administrative Law Officer Barry J. Bennett issued the attached Decision in this matter. Thereafter, Respondent and the General Counsel each filed timely exceptions and a supporting brief.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the ALO only to the extent consistent with this opinion.

We agree with the Administrative Law Officer's finding that Respondent's discharge of Federico Armijo, the Charging Party, was not a violation of Section 1153 (c), but we disagree with his conclusion that the discharge constituted a violation

of Section 1153(a) , as there is insufficient evidence to establish that the discharge was effected in such a way as to interfere with the Section 1152 rights of Respondent's employees.

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: December 7, 1977

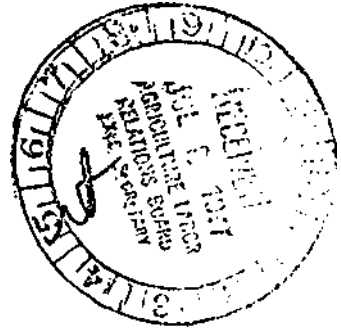
GERALD A. BROWN, Chairman

RONALD L. RUIZ, Member

ROBERT B. HUTCHINSON, Member

BEFORE THE AGRICULTURAL LABOR RELATIONS BOARD

STATE OF CALIFORNIA



_____)
 In the Matter of:)
 TRIMBLE & SONS, INC.,)
 Respondent,)
 and)
 FEDERICO (FRED) ARMIJO,)
 Charging Party,)
 and)
 UNITED FARM WORKERS OF AMERICA,)
 AFL-CIO,)
 Intervenor.)
 _____)

Case No. : 77-CE-28-F

Ricardo Ornelas, and John Moore, Esq. of Fresno, California for the General Counsel

Shepard, Ol son, Turner, Pietrich, Milnes & Glasrud, by James S. Shepard, Esq. of Fresno, California, for the Respondent

Grace Solis of Selma, California, for the Intervenor, United Farm Workers of America, AFL-CIO

DECISION

Statement of the Case

BARRY J. BENNETT, Administrative Law Officer: This case was heard before me in Fresno, California on June 6, 7, and 8, 1977. The complaint in this case was issued by the Regional Director to the Respondent on April 18, 1977. A notice of hearing issued on the same day. The complaint alleged that Trimble & Sons,

Inc. (hereinafter the "Respondent"), through its supervisor Otis Sarta [sic] violated Sections 1153(a) and (c) of the Agricultural Labor Relations Act (hereinafter the "ALRA"). The complaint is based on a charge filed by Federico Armijo ("Armijo") on March 14, 1977. Copies of the charge were duly served on the Respondent.

All parties were given full opportunity to and did produce, examine and cross-examine witnesses and to produce exhibits relevant to these proceedings. At hearing the United Farm Workers of America, AFL-CIO ("UFW") appeared, without objection, as an intervenor in this matter and was accorded full rights of participation. After the close of hearings the General Counsel and Respondent each filed a brief in support of its respective positions.

Upon the testimony given at hearing, the exhibits presented and upon my observations concerning the demeanor and credibility of the witnesses, and after consideration of the briefs filed by the parties, I make the following:

Findings of Fact

I. Jurisdiction

The General Counsel's Complaint alleged, the Respondent did not deny, and the parties at hearing stipulated that the Respondent is engaged in agriculture in Tulare County. I therefore find that the Respondent is an agricultural employer within the meaning of Section 1140.4(c) of the ALRA.

Although it was not alleged in the Complaint, the parties stipulated at hearing that Federico Armijo was an agricultural employee of the Respondent. I therefore find Armijo, at all times relevant hereto, to have been an agricultural employee within the meaning of Section 1140.4(b) of the ALRA.

II. The Alleged Unfair Labor Practices

The Complaint alleges that the Respondent violated Section

1153(a) and (c) of the ALRA by discharging Armijo to prevent Armijo "from forming, soliciting or otherwise assisting in" the foundation of a labor organization at the Respondent's premises.

The Respondent in its Answer admitted that Dennis Trimble and Otis Saxton (misnamed Otis "Sarta" in the Complaint) were supervisors within the meaning of Section 1140. 4(j) of the ALRA. However, the Respondent denied any and all allegations of wrongdoing, and further asserted that the Complaint in this action was malicious, that the Regional Office had deprived the Respondent of an opportunity to participate in the investigation of the charge underlying the Complaint and that employees of the Respondent had been harassed and intimidated by the Regional Office of the Agricultural Labor Relations Board ("ALRB") in its investigation of this matter.1/

A. The Respondent's Operations

The Respondent operates two ranches, one in Goshen and the other known as the "home" ranch, in London. The ranches were about 10 miles apart. The Trimble family, consisting of Howard (President), Stella (Secretary-Treasurer) and Dennis (Vice-President) Trimble, ran the bulk of the operations, with Otis Saxton (hereinafter "Saxton") serving as foreman at the Goshen ranch after his employment began on January 15, 1977. Total acreage consisted of some 2,000 acres, on which the Trimbles raised principally cotton and barley, both of which crops were mechanically harvested. The ranches employed a maximum complement of 8 persons, except for crews who accompanied the harvesters. The employees were supervised, at the Goshen ranch, by Saxton, and at the London ranch by Dennis Trimble.

1/ As this Administrative Law Officer views his duties, Section 20262 of the ALRB Rules and Regulations limits his function to that of inquiring "fully into the facts as to whether the Respondent has engaged in or is engaging in an unfair labor practice as set forth in the Complaint or Amended Complaint." Consideration of the alleged misconduct of the ALRB or its agents would, in my opinion, appear to lie within the province of the ALRB or a reviewing court.

B. Armijo's Employment

Armijo was hired by the Respondent in November, 1975. He worked as a tractor driver and an irrigator until March 11, 1977, when he was discharged. He took orders from Dennis Trimble, Howard Trimble and, later, Saxton. He was paid \$3.00 per hour throughout his employment. Armijo worked at the London ranch at first, and walked there from his home nearby. When he was transferred to work in Goshen, in or about January, 1976, he was furnished with a company pick-up which he was permitted to use to, from and at work.

Various witnesses for the Respondent testified, and Armijo did not deny, that Armijo was less than satisfactory as an employee. Among the problems encountered by the Respondent with Armijo were the following:

1. Although Armijo was told to report to work at 7:00 A.M. and work until 5:30 P.M., he consistently reported at 6:00 A.M. and left at 4:30 P.M. On many cold mornings when he was the only employee at work, he would sit in his tractor, waiting for someone else to come along and help him start the machine, all the while being paid.

2. On numerous occasions when he was irrigating, he would run his ditches too full, and the ditches would break.

3. On several, occasions, he was detected sleeping when he was on duty, and on at least one occasion his somnolence resulted in an irrigation break.

4. On several occasions he refused to help other employees with their work, particularly manual labor, although they had assisted him.

5. After getting a company pick-up, he refused to pick up another employee, Rudy Pasillas, although Pasillas lived on his (Armijo's) way to work.^{2/}

Generally, the Respondent's view of Armijo was that he was not cooperative with other employees and that he was averse to manual labor. Nonetheless, his employment continued from November, 1975 until March, 1977, on a year-round basis,

^{2/} There were other allegations by the Respondent concerning Armijo", Inasmuch as there was some dispute as to these incidents, they will be dealt with separately.

On or about March 2, 1977, Armijo and Pasillas approached Saxton and asked about a raise. On the following day, Saxton told Armijo that there would be no raise and, in the same conversation, arranged a meeting for Armijo with the Trimbles that same evening. Such a meeting did take place, on the evening of the 3rd at the Trimbles' home ranch office. Armijo, the Trimbles and employee Thiesen were present, and Armijo was once again informed that he would not get a raise. On March 4, *after* a consultation with their attorney, the Trimbles presented Armijo with a letter (G.C. Exh. 4) denying him a raise in writing and putting him on probationary status. On March 11, 1977, Saxton informed Armijo that he (Amijo) was being fired because he was suspected of stealing gas from the company truck.

III. Discussion

The above statement of facts comprises those essential facts which appear to be undisputed. They are somewhat bare, however, and much detail that surfaced in the testimony in various forms remains to-be resolved. The incidents of principal interest, and the parties' versions of them, are as follows:

1. Armijo's conversations with Saxton

Armijo testified that employee Pasillas had spoken to him about a raise, and the two of them agreed to speak to Saxton first. On March 2, the two employees spoke to Saxton, as follows:

Saxton: "What's this all about?"

Armijo: We've been talking it over, and we want a pay raise.

Saxton: How big a raise?

Armijo: Other ranches are getting \$3.75 an hour.

Saxton: I don't know. I'll talk to the Trimbles and arrange a meeting with them.

Armijo: Ok, but we won't back down on our demands. If we don't get a raise, we're going to organize.

Saxton: Fine."

On the following day, Armijo recalled, he saw Saxton in the same field, about 5:00 P.M., and the following conversation took place:

Saxton: "I told Rudy there'll be no pay raise. I talked to the Trimbles and that's their answer.

Armijo: We won't back down.

Saxton: I wouldn't blame you if you want another job.

Armijo: That's not the point. We want a raise. We're going to have to organize.

Saxton: What do you mean, organize?

Armijo: A union.

Saxton: There'll be no union around here while I'm foreman. If I see that pick-up going up and down the roads, you'd better hit the road.

Armijo: I want to meet with the Trimbles.

Saxton: If that's what you want, fine."

According to Armijo, Saxton then called the Trimbles, apparently arranged a meeting with the Trimbles, and told Armijo, "Follow me." When Armijo suggested that they go for Rudy (Pasillas), Saxton replied that it would not be necessary, "there'll be someone there."

Saxton's recollection and testimony differed as to detail and content. He recalled that Armijo, with Pasillas present, asked for a raise, and that he (Saxton) said he would talk to the Trimbles and "would see what we could do." He offered no opinion about the raise, and recalled no comment about a "union." Saxton stated that he first learned about a union when he told Armijo there would be no raise, and the following exchange took place:

Armijo: If there's no raise, I'm going to go to the

union, and try to *form* a union.

Saxton: Do it *if* you like, but not on Trimble & Sons' time. Do it on your own time.

Armijo: Fine.

Saxton: Do you want to talk to the Trimbles?

Armijo: Yes. "

Saxton then called on a radio phone and set up an evening meeting for Armijo and the Trimbles.

2. The Meeting at the Trimbles

Armijo described the conversation at the meeting as follows:

Saxton: "Fred feels that he wants a raise, and he says he'll go to the union if he doesn't get one.

Howard T. : We've never had contract labor before. Lee (Thiesen), do you want a union here?

Thiesen: No.

Howard T. : Johnny (Anaya, another employee) doesn't want a union here either.

Saxton: A union won't do much good. I've worked under a union, and as a foreman. It'll take 20 years to make up what we've lost.

Amijo: Explain to your foreman that there's a California law which gives me a right to organize.

Dennis T. : You (Armijo) should have been a lawyer, instead of a farm worker. Do you know why you're not getting a raise?

Armijo: No. Do you have too many bills to pay?

Dennis T. : I got a report that you were sleeping on the job while you were loading cotton. Les Kepler told me.

Armijo: That's not true.

Dennis T.: Do you know Les, or any of the others?

Armijo: I wouldn't know.

Dennis T.: If you want a union, go ahead and get one. Union wages are \$2.50 an hour, and we'll have to cut down to 8 hours. We'll give your pick-up to Jesse Anaya.

Armijo: Fine."

Armijo and Thiesen were then sent out of the room for a few minutes. When Saxton came out, he told Armijo to go back to work the next day "like nothing happened." Saxton said everything was ok.

Several of the Respondent's personnel testified about the meeting at the Trimble office. Saxton, called by the General Counsel, recalled that he began the meeting by announcing that Armijo had said that he wanted a raise, and that he would unionize if he didn't get it. Armijo apparently repeated the remark about going to a union, and one of the Trimbles responded: "If you want to go to the union, go to the union, but you still won't get a raise." Another person (unidentified) told Armijo: "It's fine if you want to go to the union, but do it on your own time, not during working hours or on the ranch." Saxton recalled Howard or Dennis Trimble saying that a truck might possibly be taken away, because it was needed on the other ranch, but it was not clear which truck was meant. Saxton testified that he told Armijo that he (Saxton) had been in a union, had worked as a foreman under a union, that the workers would be better off without a union, and had more benefits than they would under a union contract. Howard Trimble, according to Saxton, told Armijo that, under a union contract, employees could work only 8 hours a day without the employer having to pay overtime. When Armijo stated that it was still his intention to bring on a union, one of the Trimbles told him that he "could form all the unions you want."

Dennis Trimble testified that Saxton opened the meeting by announcing that Armijo wanted a raise, that he (Saxton) had announced the Trimbles' decision that there would be no raise for anyone, and that Armijo had said he would form a union if there were no raise. Dennis responded by saying, "If he wants to form a union, that's his privilege, but I agree with Saxton that he's got to do it on his own." Dennis recalled Saxton asking

Thiesen if he (Thiesen) had gotten or asked for a raise, to which Thiesen replied that he had not. Dennis later added that he was disturbed by Armijo asking for a raise, and had told Armijo that, if he got what he was really worth, it would be the minimum wage, not \$3.00 per hour, since he spent too much time sleeping under a tree. He also testified that both he, Howard Trimble and Saxton had told Armijo that it was his (Armijo's) prerogative to unionize, but that he'd better do it on his own time, and that he (Dennis) could use another pick-up at the home ranch.

Howard Trimble recalled being at the meeting, but did not remember saying anything or mentioning a union, and did not think he said anything to Thiesen. Howard did remember telling Saxton, after the meeting, that if Armijo got out of line again, Saxton would fire him.

Thiesen also testified about the meeting. He recollected that Saxton opened the meeting by describing Armijo's request for a raise and the Trimbles' position that, due to Armijo's past work experience with the Respondent, they did not feel he was entitled to a raise at that time. Armijo then said that he would like to have a union come in, at which the Trimbles appeared "surprised." Howard and Dennis, according to Thiesen, told Armijo that "if he wanted to have a union, go ahead, but he would have to have the support of other employees. Thiesen did not remember anyone speaking to him at the meeting, and denied that he had been asked any questions about a union. He did recall speaking, but did not recall what he had said, or in response to what he spoke.

3. The Notorious Pick-up Truck

Armijo stated that he received the truck in January, 1976, when he was transferred to the Goshen ranch, and was to use it for non-personal travel, principally to and from work. He testified that he had complained about the gas mileage on the truck in November, 1976, and that Dennis and Howard Trimble both said they would have it checked out and repaired. In February, 1977, Armijo complained to Thiesen, who tested the truck and got 6.8 miles per gallon; the truck was "missing," and it had a split muffler. Lee fixed it, and it ran well for a while until it started missing again and backfiring. At that point, Armijo began carrying spare points and plugs with him. In late January, Armijo complained again, but Lee said he couldn't do any major work on the truck without Dennis Trimble's approval. Lee worked on the truck to some extent, and the mileage went up a few days.

Armijo stated that he principally drove to and from Goshcn, drove some in the fields, at about 15 miles per hour, and did not always kill his engine when he made stops in the fields.

On the afternoon of March 11, Saxton remembered, Dennis Trimble called him and told him to pick up Armijo's truck and check the gas mileage on the truck. Saxton did as he was instructed, and drove the truck for 2 hours, during which he got approximately 13-14 miles per gallon. Since Armijo had reportedly gotten 4.8 miles per gallon at his last fill-up, both Saxton concluded that Armijo was stealing gas from the truck, and they decided to fire him, which Saxton did that afternoon. Saxton testified that the truck had been taken in for servicing a week before the incident, at which time a mechanic in Kingsburg had said that it was "impossible" for the truck to be getting only 4 miles per gallon.

The other trucks, Saxton recalled, got about 10 miles per gallon, all of which was attested to by gas and mileage records kept at the electric gas pump at the London ranch. Saxton stated that Armijo had complained about the truck, and its mileage, that Thiesen had had the truck serviced put in points, plugs and a carburetor, in or around February 1, 1977, that the mileage did not improve and that Armijo continued to complain.

Dennis Trimble testified that Armijo began having trouble with his truck in the fall of 1976, and was not getting good gas mileage, so a new engine was installed. After the electric pump was installed in December, 1976, it appeared that the other, automatic trucks were getting 9-11 miles per gallon, while Armijo's 3-speed got closer to 7-8, then 4 miles per gallon. The truck was overhauled (new short block, valves, clutch) in the fall, but Armijo still complained, so the truck was taken back to the garage, where nothing was found amiss. Dennis corroborated his instructions to Saxton to test the mileage on March 11. After Armijo was fired, no special work was done on the truck.

Lee Thiesen, an experienced mechanic, recalled working on Armijo's truck around November-December, 1976, and again around February, 1977. Armijo had complained about the gas mileage during the summer of 1976, but Thiesen had no time to fix it. In the fall, Thiesen found a bad condenser and points in the truck, reset the timing, and the truck worked fine. Armijo still complained about the gas mileage, and in November Thiesen

checked the engine, which was almost new, the points, fuel pump and lines, and exhaust (for color) . Everything was in good condition, he found. Thiesen had put points in several times, but only once in the months since Armijo had been fired, and there had been no gas mileage problems since the discharge.

Thiesen testified that the points in the truck required replacement every 2 months, instead of the usual 8-10 months, and that the muffler had to be replaced, as well as the smog valve and pump. He attributed part of the frequent need for repair and part replacement to Armijo's use of excessive speeds on farm roads. Thiesen said he thought the pick-up should be getting at least 9-10 miles per gallon given the driving done by Armijo, and that 6-7 miles per gallon indicated that something was improper. He also stated that, to test the mileage, he would ordinarily do a series of mileage tests over a week and check the engine simultaneously. He said he was not surprised, though, when Saxton got 13 miles per gallon in the test he ran.

Jesus Anay'a, an employer who was given Armijo's pick-up after Armijo's discharge, testified that he had no problems with it, and that there was no backfiring.

IV. Briefs of the Parties

In its post-hearing brief, the General Counsel took the position that the Respondent was aware of Armijo's union activity, that Armijo's request for a pay raise was protected concerted activity, that the mention of the possibility of shorter hours and taking Armijo's truck away were evidence of anti-union animus, and that the timing of the discharge establishes a circumstantial chain of connection between Armijo's activity and the decision to fire him. If this series of postulates did not establish the discharge as a violation of §1153(c) , the General Counsel contended, the discharge would still constitute a violation of §1153(a) , remediable by an order including reinstatement with back pay. Finally, the General Counsel noted Armijo's long-term "history" of alleged misconduct at work and the fact that the Respondent did not discharge Armijo until after he asked for a raise and threatened to form a union, and attacked alleged discrepancies in testimony about the truck and the suitability of the "test" done by Saxton, alleging that the gas pilferage

accusation was merely a pretext.

The Respondent, in its brief, denies that any evidence of anti-union animus appears save in one quote attributed by Armijo to Saxton: "There will be no union around here." The Respondent notes Armijo's unsatisfactory work record, and also cites the minimal likelihood that firing Armijo would actually inhibit organization, given Armijo's residential proximity to the ranch. The Respondent asserted that Mr. Armijo's mere mention of the word "union" did not immunize him from discipline based on his work record, and alleges that Armijo's unexplained absence from work on March 7, 1977 was a factor in his discharge.^{3/} The Respondent claims that the Trimbles relied in good faith on the results of the gas test, that the discharge was for legitimate business reasons, and that, procedurally, the General Counsel has not met that burden of proof which would compel the Respondent to prove any defense.

Based on all of the foregoing, I make the following:

CONCLUSIONS

1. The 1153(c) Allegation

From its inception, this case appears to be one which falls, in a sense, "between the cracks," the closest parallel to which is the well-known 3rd Circuit decision in *Edward G. Dudd Mfg. Co. v. N.L.R.B.*, 138 F.2d 86 (3rd Cir., 1943). Like Walter Wiegand of case book fame, Armijo, I believe, was fully deserving of summary discharge on numerous occasions. Despite vague denials by Armijo, who was not questioned about the bulk of the misconduct allegations alluded to by the Respondent, I believe that Armijo was a terrible employee, undoubtedly the least efficient of the Trimble workers. Yet, despite ample provocation, the Trimbles did not fire him until March, 1977, shortly after he had asked for a raise and invoked the spectre of a

^{3/} Armijo did not controvert the facts that he was absent on March 7 and that he did not "call in." Although I found no testimony to that effect in my notes, the General Counsel states, at page 24 of its brief, that Armijo spent March 7th at the offices of the UFW and the A.L.R.B.

"union" 4/ if he did not get more money.

The General Counsel, in effect, argues that the timing of Armijo's discharge was fatal. Budd Mfg. Co., supra, would so suggest. Further, the General Counsel suggests that the authority of NLRB v. Burnup & Sims, Inc., 379 U.S. 21 (1964) compels a finding of a violation even if the Respondent mistakenly relied on the questionable gasoline "test" as a basis for discharge. The Respondent counters by noting Armijo's absence without notice on March 7, an apparent "last straw," and notes the Trimble's¹ good faith reliance on the gas mileage findings.

All the above arguments seem wide of the mark. Unlike Budd Mfg. Co., supra, the employee in question here did not engage in any overt union activity nor, if Respondent is to be believed, was the employee discharged for behavior which had previously been excused. Unlike Burnup & Sims, supra, the employee was discharged for work-related allegations, and the Burnup & Sims rule disregarding good faith seems unduly harsh when applied to an employee whose work record was as poor as Armijo's. The General Counsel's recitation of the law of NLRB v. Great Dane Trailers, Inc., 388 U.S. 26 (1967) assumes that the Respondent is relying on a defense of business necessity rather than just cause. The distinction is critical.

The Respondent's reliance on Armijo's absence on March 7 serves it to no avail, as nowhere in the testimony did there appear any reference to that absence as a basis for discharge. Although it may have been such a basis, neither Saxton nor Dennis Trimble ever so informed Armijo, and the raising of such a claim, at the belated stage of a post-hearing brief merely buttresses the notion of pretext. Forest Park Ambulance Service, 206 NLRB 550 (1973); Alamo Express, Inc., 200 NLRB 178 (1972), enforced 487 F.2d 1311 (5th Cir., 1974).

So we are left with a thorny question to resolve, namely: where an employer has had reason to, and has wanted to, fire an inefficient worker for some time, may the employer do so on a flimsy basis, without running afoul of the labor laws, after the employee has mentioned the possibility of organizing the employer in support of a work demand? A long hypothetical to be sure, but I perceive it as my duty to the Board to state the question as I see it.

⁴/It is not at all clear which "union," if any, Armijo referred to. It is my impression, however, that he would have sought, at best, to organize the employees at the Respondent's ranch.

Based on the uncontroverted testimony of Respondent's officials, as mentioned above, I find that Armijo was most worthy of discharge. Based on the evidence of the gas log, which is inconclusive at best, and Thiesen's quasi-expert testimony on what a valid mileage test should have been, I find that the stated basis for discharge was far less convincing, even as a cumulative incident, than any of the prior complaints about Armijo. I also find that Armijo's union "activities" which were known to Respondent were minimal, at best, consisting of a mere conditional reference to a "union" if he did not get a raise.

With great reluctance, then, because of the limited nature of its reviewability by the Board, I find that many conclusions of law regarding the §1153(c) allegations rely in great part on the demeanor of the witnesses and the credibility that I attach thereto. After listening to the testimony of the Trimbles, despite minor inconsistencies which I find unpersuasive, it is my firm belief that their decision to discharge Armijo was not intended "to encourage or discourage activity on behalf of a labor organization." Without discrediting Armijo, I find that there was ample reason for his discharge, and though I believe that the gas shortage accusation levelled at him was hastily assembled, and that basically the Trimbles had decided to discharge him because it had become an annoyance to have him around, I do not believe, find or conclude that the impetus to discharge him derived from union "activity," if Armijo's vague references can indeed be said to be that. As a matter of fact, then, and consequently as a matter of law, I do not find present even that minimal degree of intent implicit in the word "discourage" as it appears in Section 1153(c). See Christensen and Swanoe, "Motive and Interest in the Commission of Unfair Labor Practices; The Supreme Court and the Fictive Formality," 77 Yale L.J. 1269 (1963).

Therefore, I recommend that the allegations of the Complaint regarding a violation of Section 1153(c) be dismissed.

2. The §1153(a) Allegations

As the General Counsel noted in its brief, the discharge of Armijo can be viewed as a possible violation of §1153(a) of the ALRA, and no finding of motivation need be made. See NLRB v. Darlington Mfg. Co., 380 U.S. 263 (1965).

Armijo had spoken to employees Pasillas and Thiesen about a union, and to employee Jesus Anaya about a raise, according to

testimony. There is some question about whether the Respondent was aware of any of these conversations, but such knowledge is not a requisite for a finding that §1153(a) has been violated. While the discharge of Armijo was not calculated, I have found, to chill interest in a labor organization, it may well have had that effect, and I am sufficiently persuaded of that possibility to find that, on balance, a violation of §1153 (a) occurred. Arraijo was known to be a poor worker, and was apparently even resented by his comrades to some degree. Yet it is unescapable that they would tie his dismissal with his demands for a pay increase and, possibly, to his talk of "union." See M.C.C. of Florida, Inc., 224 NLRB No. 201, 93 LRRM 1380 (1976). For their protection, relief is necessary.

The General Counsel contends, however, that that relief should include the reinstatement of Armijo with back pay, and there is ample authority supporting the potential use of such relief. N.L.R.B. v. J. I. Case Co., 198 F.2d 919 (8th Cir., 1952) cert, den. 345 U.S. 917 (1953). I demur to the instant application of such a remedy.

Section 1160.3 of the ALRA, patterned after Section 10(c) of the National Labor Relations Act, authorizes the ALRB to order relief from unfair labor practices "including reinstatement of employees with or without" back pay." However, the Section also includes the proviso that "no order of the board shall require the reinstatement of an individual as an employee... or the payment to him of any back pay, if such individual was... discharged for cause." I believe that this is a case in which the forced reinstatement and /or payment of back pay to Armijo would not be fitting, in view of his record of employment and in view of the extent to which the traditional remedies ordered by the ALRB will presumably remedy the breaches of law committed by the Respondent, especially given certain modifications of NLRB remedies recommended herein.

Based on the above considerations, I conclude that the discharge of Armijo so soon after his demand for a raise and discussions about a union tended to interfere, with, restrain and coerce agricultural employees in connection with the exercise of their rights under §1152 of the ALRA, and was an unfair labor practice within the meaning of §1153(a) of the ALRA.

The Remedy

Having found that the Respondent has engaged in certain unfair labor practices within the meaning of Section 1153(a) of the ALRA, I shall recommend that the Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

The unfair labor practices committed by Respondent is potentially destructive of rights deemed critical by the drafters of the ALRA. It will accordingly be recommended that Respondent cease and desist from infringing in any manner upon the rights guaranteed in Section 1152 of the Act.

With respect to the recommended Order which follows herein, General Counsel requested that it be posted in a conspicuous place on the Respondent's property. I agree, and recommend that the Respondent be directed to post the Order in a conspicuous place on each of its ranch properties for a period of sixty (60) days from the date of said order, as well as for a period of sixty (60) days from the beginning of the next peak employment period. I further recommend that a copy of said Order be handed to each employee employed by the Respondent in 1976, currently, and during said peak employment period. Valley Farms, 2 ALR3 No. 41 (1976). Said Order will be written in both Spanish and English.

The General Counsel further requests that the Respondent be directed to make a public statement to its employees concerning the commission of unfair labor practices. Given the significant degree of illiteracy among farmworkers which the ALRB has previously found to exist, Samuel S. Verner Company, 1 ALRB No. 10 (1975), I hereby recommend that, on one occasion within seven (7) days after the below Order, or such other Order as the ALRB directs, is commanded to be posted, and again within seven (7) days after the commencement of the next peak employment season (should those two events not coincide), that Dennis Trimble read the contents of said Order to the assembled employees of the Respondent, including the permanent and seasonal employees of the Respondent. Bush Hog, Inc., 161 NLRB No. 136, enf'd. 405 F.2d 755 (5th Cir., 1963); Texas Electric Cooperatives, Inc., 160 NLRB 440, enf'd. 398 F.2d 772 (5th Cir., 1968); Marine Welding & Repair Works, 174 NLRB No. 102, enf'd. 439 F.2d 395 (8th Cir., 1971); J. P. Stevens and Co., 163 NLRB No. 24, enf'd. 380 F.2d 292 (2nd Cir., 1967).

Upon the entire record, the findings of fact and conclusions of law, and pursuant to Section 1160.3 of the ALRA, I issue the following recommended:

ORDER

Respondent, its officers, agents, and representatives, will:

1. Cease and desist from:

(a) Discouraging membership of any of its employees in a labor organization by threatening to discharge or discharging them, or in any other manner unlawfully discriminating against individuals in regard to their hire or tenure of employment or any term or condition of employment.

(b) In any other manner interfering with, restraining and coercing employees in the 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 requiring membership in a labor organization as a condition of continued employment as authorized in Section 1153(c) of the Act.

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

(a) Give to each 1976 employee, each permanent employee, and each employee hired up to and including the harvest season in 1977, copies of the notice attached hereto and marked "Appendix." Copies of this notice, including an appropriate Spanish translation, shall be furnished Respondent for distribution by the Regional Director for the Fresno Regional Office. Respondent is required to explain to each employee at the time the notice is given to him that it is important that he

understand its contents, and Respondent is further required to offer to read the notice to each employee if the employee so desires.

(b) Have its agent Dennis Trimble, in the presence of an agent of the ALRB read this Order to the permanent employees, and again to those employees hired during the 1977 peak employment period.

(c) Post, in a conspicuous place on each of the Respondent's properties where agricultural labor is performed, copies of this Order for a period of sixty (60) days following the issuance of this Order, and also for a period of sixty (60) days following the beginning of the 1977 peak employment period.

(d) Notify the Regional Director in the Fresno Regional Office within twenty (20) days from receipt of a copy of this Decision of steps Respondent has taken to comply therewith, and continue to report periodically thereafter until full compliance is achieved.

It is further recommended that the allegations of the Complaint alleging violation by Respondent of Section 1153(c) in the discharge of Federico Armijo be dismissed.

DATED: June 28, 1977.


BARRY J. BENNETT
Administrative Law Officer

APPENDIX

NOTICE TO EMPLOYEES

After a hearing in which all parties presented evidence, an Administrative Law Officer of the Agricultural Labor Relations Board has found that we have engaged in violations of the Agricultural Labor Relations Act, and has ordered us to notify all 1976 employees, permanent employees, and all persons coming to work for us in the next peak employment season that we will remedy those violations and that we will respect the rights of all our employees in the future. Therefore we are now telling each of you:

(1) We will not threaten any employees with loss of employment because of their support for any labor organization or because they are seeking a raise for themselves or others.

(2) All our employees are free to support, become or remain members of any union. We will not discharge or in any other manner interfere with the rights of our employees to engage in these and other activities which are guaranteed them by the Agricultural Labor Relations Act.

Signed:

DATED:

TRIMBLE & SONS, INC.

By _____

(Title)