

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

TREFETHEN VINEYARDS,)	
Respondent,)	Case Nos. 75-CE-35-S
)	76-CE-16-S
and)	
)	
UNITED FARM WORKERS OF AMERICA,)	4 ALRB No. 19
AFL-CIO, and Carlos Ayala,)	
)	
Charging Parties .)	
)	
)	

DECISION AND ORDER

On August 30, 1977, Administrative Law Officer Brian Tom issued the attached Decision in this proceeding. Thereafter the General Counsel filed exceptions and a supporting brief, and Respondent filed an answering brief.

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.

The Board has considered the record and the Administrative Law Officer's Decision in light of the exceptions and briefs and has decided to affirm the Administrative Law Officer's rulings, findings, and conclusions^{1/} and to adopt his recommended Order.

ORDER

Pursuant to Labor Code Section 1160.3 the Agricultural Labor Relations Board adopts as its Order the recommended Order

^{1/}However, we reject the ALO's comments on page 13 of his Decision concerning the criteria for finding violations of Section 1153(a) and (c).

of the Administrative Law Officer and hereby orders that the complaint be, and hereby is, dismissed in its entirety.

DATED: April 13, 1978

Gerald A. Brown, Chairman

Ronald L. Ruiz, Member

Robert B. Hutchinson, Member

CASE SUMMARY

Trefethen Vineyards (UFW)

4 ALRB No. 19

Case No. 75-CE-35-S

76-CE-16-S

ALO DECISION

On August 30, 1977, Administrative Law Officer (ALO) Brian Tom issued his decision dismissing the complaint in this case. The Employer, Trefethen Vineyards, had been charged with violating Section 1153(a) and (c) of the ALRA by harassing, discriminatorily issuing warning notices to and eventually discharging an employee in 1975-76, and Section 1153(a) by engaging in illegal surveillance of its employees who were engaged in union activities on one occasion in 1975.

Citing Tomooka Brothers, 2 ALRB 52 (1976), and Konda Brothers, 2 ALRB 34 (1976), the ALO found that there was no evidence showing that the Employer's presence at a union meeting in the Employer's labor camp was for the purpose of conducting illegal surveillance of its employees' union activities.

The ALO found that the employee in question was not harassed, discriminatorily disciplined or discharged illegally, but that he was discharged for non-cooperation with management, failure to perform his job, and inability to get along with his fellow workers and management.

BOARD DECISION

The Board affirmed the ALO's conclusions in their entirety and adopted his order of dismissal of the complaint.

1 (hereafter the "Act").

2 All the parties were represented at the hearing and were given a full
3 opportunity to participate in the proceedings. The General Counsel,
4 Charging Parties, and the Respondent filed briefs in support of their
5 respective positions after the close of the hearing. Upon the entire
6 record, including my observations of the demeanor of the witnesses, and
7 after consideration of the arguments and briefs submitted by the parties, I
8 make the following:

9 FINDINGS OF FACT

10 I. Jurisdiction

11 Respondent, Trefethen Vineyards, is a partnership engaged in
12 agriculture in Napa County, as was admitted by the Respondent. Accordingly,
13 I find that Respondent is an agricultural employer within the meaning of
14 Section 1140.4(c) of the Act. I further find the union to be a labor
15 organization representing agricultural employees within the meaning of the
16 Section 1140.4(f) of the Act.

17 II. The Alleged Unfair Labor Practice

18 The complaint alleges that the Respondent violated Sections 1153 (a)
19 and (c) of the Act by engaging in a pattern and practice of harassment, by
20 disparately issuing disciplinary warnings, and by the discriminatory
21 discharge of Ayala. The complaint further alleges unlawful interference
22 violative of Section 1153(a) by Respondent with the rights guaranteed by
23 Section 1152 of the Act by surveillance of its employees. Respondent
24 generally denies each and every allegation alleging a violation of the Act.
25 Respondent admits that John Trefethen and Anthony Baldini (hereafter
26 "Trefethen" and "Baldini") were supervisors within the meaning of Section
27 1140.4(J) of the AGO. Respondent denies, however that Concepcion Vasquez
28 (hereafter

1 "Vasquez") was a supervisor.

2 A. Preliminary Facts

3 The Respondent maintains a vineyard and operates a winery at 1160 Oak
4 Knoll Road, in Napa, California. Trefethen is the general manager of
5 Trefethen Vineyards, being responsible for the overall supervision of both
6 the vineyard-and the winery. Baldini is the general foreman of the
7 vineyards.

8 Vasquez has been a field foreman for Respondent since about September
9 10, 1975. During the year, Respondent's total employees will range from 20
10 to 35 employees, depending on the season. There are approximately 20 to 25
11 year round workers.

12 Ayala has been employed by Trefethen Vineyards since September, 1971.
13 In November 1975, he was promoted to assistant field foreman. After
14 approximately six months in this position, he asked Baldini, the vineyard
15 manager, for a raise. When a raise was not forthcoming, he requested that
16 he become a field worker again, a position he held until the time of his
17 discharge on April 13, 1976.

18 B. The Unlawful Surveillance

19 In July or August of 1975, the UPW began an organizational drive among
20 the workers at Trefethen Vineyards. Active among the employee-organizers
21 were Ayala, Vasquez and several others. During this organizational period,
22 a number of meetings were held by the employees to discuss the benefits
23 offered by the union and whether it was desirable to have the union at the
24 Trefethen Vineyards. At the same time, meetings were called by Respondent
25 to discuss company benefits and potential benefits that the company planned
26 to offer the workers without a union at the Respondent's premises.

27 On September 5th, a meeting was held at noontime among the em-
28

1 ployees. It was decided at that time that it was more appropriate to have a
2 meeting at 3:30, after working hours at Respondent's labor camp. This
3 meeting was to be attended by a representative of the union and the purpose
4 of the meeting was to discuss a situation in which the 5 women employees had
5 not signed authorization cards.

6 At 3:30, the meeting began with approximately 20 to 25 male employees
7 present. The 5 women workers did not attend. Shortly after the meeting
8 began, Trefethen and Baldini arrived at the meeting. The union representative
9 at this meeting was a person named Felix Gonzales. Trefethen testified, and
10 this testimony is uncontroverted by witnesses present at the meeting, that
11 he asked Felix Gonzales who had invited him on to the company premises.
12 There was some confusion in the conversation because Felix Gonzales does not
13 speak English and Trefethen does not speak Spanish. Felix Gonzales's ini-
14 tial response to the question, as to who invited him, was that all the
15 workers invited him. Trefethen asked for the name of one person, who
16 invited him, and finally Felix Gonzales replied that Concepcion Vasquez had
17 invited him. Upon the conclusion of that conversation, Trefethen and
18 Baldini left the meeting. This meeting of 3:30, September 5th is the only
19 incident which is the subject of the surveillance charge. According to the
20 credible testimony of Trefethen, the only reason he went out to the labor
21 camp was to determine who invited the UPW organizer there.

22
23 C. Disparate Reprimand of Ayala on October 21,, 1975

24 On October 21, 1975, the workers started a work stoppage because they
25 were not satisfied with the rate per tray that they received in picking the
26 grapes. The problem arose because the grapes were " a little rotten" and
27 would sink to the bottom of the trays,

1 making them hard to fill. It was the consensus of the workers that the
2 rate of pay, then being offered by Trefethen was not enough.

3 Ayala had arrived at work that day around 7:15 AM. At that time
4 the workers were all standing either on the roadway or off to the side
5 of the road and refusing to begin work. Upon seeing this, Ayala
6 decided to stay in his car. He remained in his car for approximately
7 15 minutes.

8 At that time, Vasquez was present as the field foreman. The
9 workers had already told Vasquez that they refused to work because of
10 the condition of the grapes and wanted to see Baldini. Vasquez
11 responded that Baldini could not come and talk to all the workers but
12 that they should sent 2 or 3 of the workers to talk to Baldini. None
13 of the workers wanted to go. Finally Ayala agreed to go speak by
14 Baldini.

15 Baldini told Ayala to tell the workers to try picking for two
16 hours so that a fair price could be determined, based on how much was
17 picked during that period. Ayala went back and reported this to the
18 group, and they decided that this was not satisfactory. A group of 5
19 workers then went to speak to Baldini, including Ayala, Jose Gonzales
20 (hereafter "Gonzales"¹, Isaisas Rodriguez, Garcia, and another
21 person. They told Baldini that the workers still didn't want to pick
22 at the price that was offered, but, Baldini insisted that they do so.
23 They reported back to the workers and they agreed to try it for two
24 hours.

25 After trying it for two hours, the workers again decided that
26 the rate was not fair and they stopped work again. At this point,
27 Baldini suggested another meeting at 2:00 PM with the same 5 workers.

28 ^{1/}Known both as Jose Gonzales and Jose Rodriguez.

1 Hoever, they were 15 minutes late in arriving at the meeting place and
2 the meeting was postponed until 4:00PM.

3 At 4:00 PM, Baldini and Trefethen met with 5 workers. The
4 Respondent agreed to pay the price requested by the workers, namely 90
5 per tray It is apparent from the testimony that Ayala played a very
6 active role in the negotiations for the higher price. However, it is
7 also true that the other workers were quite active in the negotiation
8 as well.

9 The following day, on October 22nd, the workers all returned to
10 work at the new rate. On the 22nd, around 10:30 AM, Isaisas Rodriguez
11 testified that he was reprimanded by Vasquez for putting too many
12 leaves in the trays of grapes. He testified that Baldini had said that
13 he gave the workers a raise on the condition that they not put leaves
14 in the trays. Ruby Vega (here after "Vega") was the checker for Isaisas
15 Rodriguez and made the initial complaint about the excess leaves.

16 At around 1:30 to 2:00, Ayala was reprimanded by Vasquez for
17 picking trays of grapes with too many leaves in them. At that time, the
18 checerk for the grapes that Ayala was picking was Salvador Mar-
19 tinez(hereafter "Martinez"). Martinez had told Ayala not to pick these
20 trays with too many leaves in them. Then he reported this condition to
21 Vasquez. Vasquez told Ayala to pick grapes with less leaves. Ayala
22 responded that he was picking like all the other workers and that he
23 was picking as he always did. He testified that he had previously never
24 recieved any complaints about his picking.

25 Prior to the October 22nd Incident, Vega had complained to Vasquez
26 that Ayala was picking trays of grapes with too many leaves in them.
27 She had told Ayala this, but he continued to pick trays with too many
28 leaves in them. It was her opinion that Ayala was a "dirty picker".

1 At approximately 4:00, when Ayala was leaving work, he was handed
2 a letter of reprimand (General Counsel's exhibit No. 2). In the
3 letter of reprimand, dated October 22nd and signed by Baldini, he
4 indicated that 4 of the 5 checkers had complained about Ayala's
5 picking trays with too many leaves in them. Up to this point in time,
6 according to Ayala's testimony, he had never been given any other
7 verbal reprimands. This is contrary to the testimony of Vega.
8 Following this incident, there were no other complaints about the
9 picking of grapes by Ayala.

10 D. Incident of February 9th and 10th

11 On Saturday, February 7th, Ayala was pruning 5 rows of Johannes-
12 berg vines. He went home at noontime without completing these rows. The
13 workers at this time were working on a contract basis. A contract
14 price is established for the amount of work employees complete, without
15 regard to the amount of hours they work. His departure at noontime on
16 Saturday was in line with his customary practice. On Monday, he
17 returned to work around 7:00AM. He completed pruning the Johannesburg
18 vines around 8:00 AM.

19 It is the practice for workers that are pruning, to begin the
20 next 5 rows directly following those that the last workers in line are
21 pruning. Following this practice it is apparent that the pruners would
22 prune different varieties of grapes on a rotating basis, it being
23 acknowledged that different varieties would be of varying difficulty to
24 prune.

25 Upon completing the Johannesburg vines, Ayala did not go to the
26 next 5 rows; the next 5 rows were Cabernet vines and it was generally
27 agreed that they were more difficult to prune. Rather he went to look
28 for Baldini to tell him that a toilet at his house was in need

1 of repair as a result of a party over the weekend. He was unable
2 to locate Baldini and left the ranch to repair the broken toilet him-
3 self. At no time during February 9th, did Ayala tell Trefethen, Vas-
4 quez or Baldini his toilet was broken and that he would not be pru-
5 ning. It is uncontroverted that had Ayala continued working on Feb-
6 ruary 9th, the next 5 rows that he should, have pruned would have been
7 the Cabernet vines.

8 One Tuesday, February 10th, he returned to work. He had still
9 not completed the repair of his toilet because he lacked certain
10 parts. He went to work and began to do the next 5 rows, next to the
11 last person pruning. These were Merlot vines. Francisco Lopez
12 (hereafter "Lopez"), who was pruning nearby, advised Ayala that he
13 should first do the Cabernet vines that were left over from the day
14 before, instead of proceeding to do the Merlot vines. Ayala respon-
15 ded to Lopez in a "harsh manner" and said it was none of his business.
16 Ayala also told Lopez at this time that the 5 rows weren't really
17 his. Vasquez came over and told Ayala that he had set aside the 5
18 rows of Cabernet that he had passed over the day before and that
19 Ayala should go over and finish those 5 rows of Cabernet. Ayala re-
20 fused and told Vasquez that he wanted to speak to Baldini about what
21 rows he should do. Ayala then left the fields to look for Baldini
22 at the ranch office. He was unable to locate Baldini and returned
23 directly back to his house to repair his toilet. Later that day,
24 Baldini and Vasquez came to Ayala's house to ask him to return and
25 do the Cabernet vines. Ayala explained to Baldini that he would do
26 those rows after fixing the toilet or if someone else came to fix
27 the toilet. After some further discussion, it was decided that Bal-
28 dini would have someone else repair the toilet. Ayala returned to

1 the fields and completed the 5 rows that were the subject of this
2 incident.

3 In an effort to show that no rows are normally "saved" for prun-
4 ners, the General Counsel introduced the testimony of Anacleto Loya
5 (hereafter "Loya"). Loya testified that prior to this incident,
6 Gonzales had begun some rows and did not finish them and that these
7 rows were completed by Loya. Loya mentioned this Incident to Ayala
8 but did not mention it to any other person. Gonzales recalled that
9 he left after a half day's work on one occasion. The reason for
10 that, however, was because he had to go to a doctor's appointment. Loya
11 was not aware of that fact, having no knowledge of where Gonzales went
12 when he left work that day. It was agreed by all the witnesses that
13 the usual practice was not to save any rows for pruners unless they had
14 begun the rows.

15 Trefethen testified that another letter of reprimand had been
16 prepared for Ayala on this pruning incident but that he had concluded
17 that the matter had been resolved, and that there was no need to Issue
18 the reprimand.

19 E. Discharge of April 13, 1976

20 The incident which led to the termination of Ayala's employment
21 with Respondent was precipitated by an event that occurred on April 5,
22 1976. At around 9:00 AM on that date, Ayala, Gonzales, Salvador Mengoza,
23 and Lopez were working on the same crew, drilling holes. The crew members
24 were resting when Vasquez came by and asked that they get back to work
25 and work harder. Lopez and Ayala thought that this Instruction by
26 Vasquez was unwarranted and that Vasquez didn't really have enough
27 experience in this kind of work, and therefore should keep quiet. There
28 was an extended argument between Lopez, Ayala,

1 and Vasquez.

2 After the argument , Baldini came along and the workers
3 explained to Baldini what the situation was. Baldini told the
4 workers that they were doing the job very well and not to worry too
5 much about Vasquez. However, after Baldini left, Lopez and Ayala
6 were still not happy about the situation and decided to call a
7 meeting of the Trefethen ranch workers committee, a committee
8 established by management to handle grievances, for the following
9 day in order to discuss this problem.

10 This meeting was held on April 7th, at around 11:00 AM.
11 Baldini Trefethen, and all the workers, approximately 15 to 18 at that
12 time, were present. Ayala and Lopez both spoke about the incident
13 that took place the previous day. Baldini indicated that the pace
14 at which the crew was working was fine and after a brief discussion,
15 this matter was resolved. Trefethen then took this opportunity
16 to tell the workers about the current status of Respondent's
17 employees' benefits. After Trefethen's statements regarding the
18 employees' benefits, he asked if there were any other questions
19 by any of the workers. Ayala, at this point, raised his hand
20 and asked to speak. Ayala said that he had certain complaints
21 about the way he was being treated. He stated that he was not
22 satisfied with the way the workers' committee had been chosen. The
23 workers committee had been chosen 20 days prior to the meeting and the
24 members were chosen by drawing lots.

25 In addition, Ayala had some grievances about discrimination
26 against him. He felt that if things went wrong around the vineyards,
27 he would get blamed for it. He referred specifically to the picking
28 incident and the pruning incident. Finally, in regard to the latter

1 Incident, he stated that Gonzales was allowed to skip certain rows,
2 and nothing happened to him, but when he skipped rows, he got into
3 a lot of problems with the Respondent.

4 Gonzales got mad at this latter remark by Ayala and he called
5 Ayala "a liar" and stepped 3 steps forward, indicating that he
6 wanted to fight. Ayala responded by calling Gonzales "a woman".
7 Because the discussion had gotten rather heated at that point, Trefethen
8 felt that it was appropriate to terminate the meeting and he
9 did so.

10 The following day, Trefethen met with Ayala, with Vasquez
11 present as well as Ayala's sister-in-law, Yolanda Luna, who acted
12 as a translator.

13 This meeting was held at Trefethen's office. According to the
14 testimony of Ayala, Trefethen told Ayala that on other occasions he
15 had been given a lot of chances; and that he was tired of Ayala,
16 for causing so much trouble at the ranch; the other workers didn't
17 like him; he spoke too much at all the meetings; and he had given a
18 lot of thought to his decision to terminate him. Trefethen told
19 Ayala that the meeting of the previous day was very violent and was
20 representative to what was going on and that he was considering
21 terminating Ayala. Trefethen substantially corroborates this
22 version of the meeting.

23 Ayala requested that Trefethen talk to a number of his fellow
24 employees and Trefethen agreed to do so. Ayala asked to be present
25 at any meeting with the other employees; however, Trefethen said he
26 would not allow this.

27 On the 12th of April, Trefethen had a meeting with a number
28 of workers, including Loya, Felix Baragus, Gonzales, Salvador
Mengoza,

1 Vasquez, and Lopez. According to the credible testimony of
2 Trefether, several of the workers expressed the opinion that Ayala
3 was a problem. Ayala was further criticized by several other workers
4 on the grounds that he "acted like a king" and felt that he was
5 better than the other workers. The issue of whether Ayala had
6 falsely accused Gonzales of not doing rows was not brought up.

7 On April 13th, Trefethen made the decision to terminate
8 Ayala and did so with a letter, which is included in the file as
9 General Counsel's exhibit 3.

10 F. Discussion of the Issues and Conclusions

11 1. Surveillance Charge

12 Paragraph 6a of the complaint alleges that on or about
13 September 5, 1975, the Respondent by and through Trefethen and
14 Baldini engaged in surveillance of its employees' union
15 activities. "The burden is on the party alleging illegal
16 surveillance to present evidence to warrant the conclusion that
17 the Respondent or his supervisors were present when union
18 organizers are attempting to talk to workers for the purpose of
19 surveillance." Tomooka Brothers 2 ALRB 52, Konda Brothers 2 ALRB
20 34.

21 The testimony of Trefethen was that he received information
22 from Baldini immediately prior to the meeting that a union organizer
23 Felix Gonzales, was going to be at the labor camp. Trefethen said
24 to Baldini, "Let's go out and find out who invited him." They in
25 fact went out there to ask that very question. The evidence shows
26 that after a short discussion regarding this question, where Tre-
27 fethen determined who had invited Felix Gonzales, he and Baldini
28 left the meeting.

1 There is no further evidence in the record indicating that
2 Trefethen, or Baldini's presence at the meeting was for the
3 purpose of surveillance.

4 Certainly it appears that no motivation exists for
5 Respondent to engage in surveillance at that meeting. Union
6 meetings were held, both before and after the said meeting at
7 Respondent's winery without any concern or complaint about
8 surveillance.

9 Accordingly, I will recommend that this allegation in the
10 complaint be dismissed.

11 2. Disparate Reprimands of Ayala on October 21, 1975 and
12 February 10, 1976

13 The complaint alleges violations of both Sections 1153 (a)
14 and (c) of the Act in regard to disparate reprimands of Ayala on
15 the above dates. A Section 1153 (c) violation requires (1)
16 employer discrimination as to the hiring or tenure of employment
17 or any term or condition of employment; (2) resulting
18 encouragement or discouragement of membership in an union; and (3)
19 unlawful intent . A Section 1153 (a) violation, on the other
20 hand, only need show that the discriminatory conduct activity for
21 their mutual aid or protection. violation under either Sections
22 requires some discriminatory conduct on the part of the employer.

23 a. Reprimand of October 21, 1975

24 As indicated above, a work stoppage occurred on October
25 21, 1975. The following day the employees resumed work. Ayala
26 was warned by ///

27 /////

28 /////

1 Martinez, a checker and co-worker, that he was "picking
2 dirty"'. The warning by Martinez was not heeded and Martinez
3 reported this to Vasquez. Vasquez also warned Ayala, apparently with
4 no effect. Baldini and Trefethen were notified. A written reprimand
5 signed by Baldini was given to Ayala as he left work that day.

6 In addition to the testimony of Martinez, Respondent also
7 sailed as a witness another checker, Vega. According to her
8 testimony, several weeks prior to the October 22, 1975 reprimand, she
9 was the checker in the crew where Ayala was working. She complained
10 to Ayala several times about the quality of his picking. She also
11 reported him to Vasquez. She requested that Ayala not be assigned to
12 her crew because he was "picking dirty".

13 The General Counsel contends that the checkers complaints were
14 baseless (General Counsel's brief at p. 18) and further that the
15 "real motive behind the reprimand was to harass Ayala because of his
16 part in the strike." (General Counsel's brief at p. 19).

17 I do not agree. The complaints about the quality of Ayala's
18 picking were a problem according to the testimony of Martinez and
19 Vega, whose testimony I credit. Where contradiction appears between
20 their testimony and Ayala's, I do not credit the latter testimony.
21 The contradictions, in any event do not appear that significant, in
22 my view. There is no dispute that the checkers warned Ayala about
23 his "picking dirty". There is no dispute that they had disagreements
24 over that fact. The only dispute is that Ayala felt he picking up to
25 standard and the checkers did not.

26 As a result Ayala made known his disagreement to the
27 checkers, Basques and Baldini, in turn, and a reprimand was issued.
28 That Respondent decided to support the judgment of its checkers does
not

1 appear inappropriate, barring any unlawful motivations.

2 It should be noted that neither Martinez nor Vega are
3 supervisors within the meaning of the Act. Furthermore, there is
4 no showing or attempt to show, that either checker initiated the
5 warnings either at the request of or on instruction from the
6 Respondent. So far as the record reflects, both checkers made
7 warnings to Ayala on their own initiative based on their own
8 judgment as to the quality of Ayala's picking.

9 The reprimand that followed appears to be the result not
10 only of the dirty picking but also Ayala's disagreement with the
11 checkers and Vasquez.

12 While the timing of- the reprimand after a work stoppage in
13 which Ayala played an active role (as well as other employees) may
14 be somewhat suspicious, standing by itself, it is not sufficient
15 to sustain a finding of unfair labor practice.

16 I have also considered the fact that Ayala was given a
17 written reprimand, as opposed to an oral one which is Respondent's
18 normal practice. However, the record indicates that earlier oral
19 warnings did not prove effective and given that fact, a written
20 reprimand does not appear unusual.

21 Because of these factors, I do not find that there was any
22 discriminatory conduct on the part of the employer and accordingly
23 will recommend a dismissal of the allegations of violation of
24 Section 1153(a) and (c) of the Act on October 21, 1975.

25 b. Reprimand of February 10, 1976

26 The General Counsel contends that Respondent issued a
27 disparate reprimand of Ayala by ordering him to prune 5 rows of
28 Cabernet vines February 10, 1976.

1 In support of this contention, the circumstances of an earlier
2 "incident" involving Gonzales and Loya were offered into evidence.
3 According to the testimony of Loya, sometime prior to the February
4 10th reprimand, Gonzales left the fields after working half a day.
5 Loya then went and took the next five rows that Gonzales would have
6 taken had he continued to work that day. However, this "incident"
7 is not analogous to the February 10th incident involving Ayala for
8 two reasons. First, there is no indication that Loya took the next 5
9 rows as a result of any directions from a supervisor. In fact,
10 it appears that he simply went and took the next 5 rows on his own
11 initiative. And secondly, at no time did Loya mention this incident
12 to anyone except Ayala. Thus management was never aware that this
13 "incident" took place.

14 Respondent argues that it was fully justified in asking Ayala to
15 complete the 5 rows of Cabernet, contending that several workers had
16 complained that Ayala was "cayoting" i.e. unfairly avoiding hard
17 work. I agree with Respondent's contention, particularly in light of
18 the fact that the incident appears totally unrelated to any protected
19 activity, union or otherwise.

20 After reviewing the rather extensive testimony regarding the bro-
21 ken toilet and rows, of grapes, I am led to the inescapable conclu-
22 sion that the chain of events which resulted in the reprimand was
23 precipitated by Ayala's personal problems involving the toilet and
24 aggravated by his not advising his supervisors of his sudden depar-
25 ture from the fields on February 9th and 10th. The record lacks
26 sufficient facts which would indicate the reprimand was discrimina-
27 tory conduct on the part of the Respondent.

28 For these reasons, I would recommend that the allegation re-

1 garding the disparate reprimand on February 10, 1976 be dismissed.

2 c. Discharge of April 13, 1976

3 Paragraph 6 (c), 7 and 8 alleges that Ayala was discriminatorily
4 discharged as a result of his union activities and the exercise of his
5 protected rights.

6 It should be noted preliminarily that an employee "may be
7 discharged by the employer for a good reason, or no reason at all,
8 so long as the terms of the statute are not violated." NLRB v.
9 Condenser Corp. CA 3, 1942, 10 LRRM 483. Or, as another court said
10 "... the question is not whether [the discharges] were merited or
11 unmerited, Just or unjust, nor whether as disciplinary measures
12 they were mild or drastic. These are matters to be determined by
13 management." The NLRB's" sole duty, said the court, was to
14 determine whether the discharges were to discourage or encourage
15 union membership or as a reprisal for engaging in protected
16 concerted activities. NLRB v. Montgomery Wards, CA 8, 1946, 19 LRRM
17 2009.

18 The General Counsel's position appears to be that as a result
19 of Ayala's union organizing activities in August and September of
20 1975, he was discharged by Respondent in April of 1976. It is, of
21 course, a well established principle of law that the right to hire
22 and fire for sound business reasons is an managerial perogative, and
23 union activity is in no event, a bar, in itself to the discharge of
24 an employee under the Act.

25 The record indicates that from the time of the election on
26 September 25, 1975 to April 10, 1976, union activity or discussion
27 about the union was not engaged in by anyone at Respondent's place
28 of business. As the General Counsel points out in her brief at page
29 23, "It was also the first time that the union and the failure of

1 the employees to vote for the union was even brought up since
2 the election...."

3 Given this fact, it is difficult for me to see how a
4 violation of Section 1153(c) can be sustained. There is no evidence
5 in the record that any union was active at Respondent's winery or
6 vineyard at the time of the discharge and therefore any discharge
7 would not encourage or discourage union membership.

8 Finally in regard to the alleged violation of Section 1153
9 (a) of the Act, I do not find that Ayala in speaking about how
10 the company was treating him unfairly, engaged in concerted
11 activity. In the first instance, all his remarks were in the
12 nature of a personal gripe as opposed to a group complaint. In
13 fact, it appeared that, in part, his complaint involved the fact
14 that his co-workers did not show greater support of the union
15 during its organizational drive.

16 Secondly, his remarks were not directed to other co-workers
17 for any specific purpose. In fact, according to Ayala, he was
18 addressing his remarks to the employer rather than the employees
19 and thus it is quite apparent that he had no concerted activity in
20 mind at the time he was making his remarks.

21 The Respondent's justification for the discharge is that
22 Ayala did not cooperate with management, that he was not
23 performing his work on an equal basis with his co-worker and that
24 he had disagreements with his co-workers and management. These
25 contentions are amply supported by the record.

26 Accordingly, I find that Ayala was not discriminatorily
27 discharged on April 13, 1976 and will recommend that the
28 allegations so alleging be dismissed.

1 Upon the foregoing findings of facts, conclusions of law, and
2 the entire record, and pursuant to Section 1160.3 of the Act, I
3 hereby issue the following recommended:

4 Order

5 The complaint is dismissed in its entirety.

6 Dated: August 30, 1977

7 Respectfully submitted

8 

9 Brian Tom