

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

LASSEN CANYON NURSERY,)	
)	
Respondent,)	Case No. 77-CE-2-S
)	
and)	
)	
UNITED FARM WORKERS)	4 ALRB No. 21
OF AMERICA, AFL-CIO,)	
)	
Charging Party.)	
)	

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 October 28, 1977, Administrative Law Officer (ALO) David C. Nevins issued the attached Decision in this matter. Thereafter, the General Counsel filed timely exceptions and Respondent and the General Counsel each submitted a brief in support of its position. The UFW filed no exceptions and submitted no briefs.

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 as modified herein, and to adopt his recommended Order.

We expressly decline to affirm the ALO's reliance in the attached Decision upon American Mfg. Co., Inc., 196 NLRB 248 (1972), as that case is inapposite to the case at bar. Moreover, we wish to dispel the proposition inferable from the ALO's

Decision at page 9 that the Board will apply a more stringent standard for showing anti-union motivation where a discharge occurs a substantial period of time after a large union victory.

The ALO has cited NLRB v. Colvert Dairy Products, Co., (10th Cir. 1963) 317 F.2d 44, 53 LRRM 2151 in the attached Decision. The court in that case reversed a NLRB finding that pre-election employer anti-union statements, protected under Section 8(c) of the NLRA, are admissible as background evidence of employer anti-union animus in an unfair labor practice proceeding. There is a split of authority among the Circuit Courts on this issue, see e.g., Darlington Mfg. Co. v. NLRB, (4th Cir. 1968) 397 F.2d 760, 68 LRRM 2363 cert. denied, 89 S.Ct. 632, 393 U.S. 1023, 21 L.Ed. 567, Hendrix Manufacturing Co. v. NLRB, (5th Cir. 1963) 321 F.2d 100, 53 LRRM 2831, but compare Indiana Metal Products v. NLRB, (7th Cir. 1953) 202 F.2d 613, 31 LRRM 2490, Pittsburgh S.S. Co. v. NLRB, (6th Cir. 1950) 180 F.2d 731, 25 LRRM 2428, Aff'd 340 U.S. 498, 71 S.Ct. 453, 95 L.Ed. 479, NLRB v. Rockwell Mfg. Co., (3rd Cir. 1954) 271 F.2d 109, 44 LRRM 3004; the view espoused in Colvert Dairy is contrary to the position adhered to by the NLRB. We do not express any opinion in this Decision concerning which view this Board will follow because we find, as did the ALO, sufficient independent grounds for decision.

ORDER

Pursuant to Section 1160.3 of the Agricultural Labor Relations Act, the Agricultural Labor Relations Board hereby

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orders that the complaint herein be, and it hereby is, dismissed in its entirety.

Dated: April 20, 1978

ROBERT B. HUTCHINSON, Member

HERBERT A. PERRY, Member

RONALD L. RUIZ, Member

CASE SUMMARY

Lassen Canyon Nursery

4 ALRB No. 21

Case No. 77-CE-2-S

ALO DECISION

An election was held among the agricultural employees of Lassen Canyon Nursery on January 12, 1976. On October 28 of the same year, an employee, Khurshed Gorski, was discharged by Respondent's supervisor on the grounds that the employee maintained inadequate quality control in her daily work and created a substantial disturbance among the other employees during a routine quality inspection. The General Counsel alleged that Respondent's reasons for the termination were pretextual and that the discharge was motivated, in fact, by the Employer's union antipathy. The ALO found insufficient evidence to support the General Counsel's allegations, finding instead that Respondent's decision to discharge Gorski was justified by business reasons.

BOARD DECISION

The Board found substantial evidence in support of the ALO's Decision and, accordingly, dismissed the complaint. The Board declined to express an opinion concerning the admissibility of pre-election employer anti-union statements, protected under Section 1155 of the Act, as background evidence of employer anti-union animus in a subsequent unfair labor practice proceeding.

This summary is for information only, and is not an official statement of the Board.

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STATE OF CALIFORNIA
BEFORE THE
AGRICULTURAL LABOR RELATIONS BOARD



Case No. 77-CE-2-S

LAS SEN CANYON NURSERY)
)
 Respondent)
)
 and)
)
 UNITED FARM WORKERS OF AMERICA,)
)
 AFL-CIO)
)
 Charging Party)

Daniel G. Stone, appearing for the
General Counsel

William S. Marrs, of Berkeley, California,
appearing for the Respondent

Curt Ullman, of Stockton, California,
appearing for the Charging Party

DECISION

STATEMENT OF THE CASE

David C. Nevins, Administrative Law Officer: This case was heard by me on September 7 and 8, 1977, in Yuba City, California. The complaint alleges that Respondent, Lassen Canyon Nursery, violated Sections 1153(a) and (c) of the Agricultural Labor Relations Act (hereafter called the "Act"). The complaint is based on a charge filed by the United Farm Workers of America, AFL-CIO (hereafter referred to as the "Union"), a copy of which was served on the Respondent on April 5, 1977, as admitted by the Respondent.

At the close of the hearing, counsel for both the Respondent and General Counsel made oral summations. Briefs in support of their two respective positions were also submitted.

1 Upon the entire record, including my observation of the
2 demeanor of the witnesses, and after consideration of the argu-
ments and briefs submitted by the parties, I make the following:

3 FINDINGS OF FACT

4 I. Jurisdiction.

5 As was admitted in the pleadings, the Respondent is an
6 agricultural employer and the Union is a labor organization with-
7 in the meaning of those terms, as they are used respectively in
Sections 1140.4(c) and 1140.4(f) of the Act. Accordingly, I find
that this dispute is within the jurisdiction of the Act

8 II. The Alleged Unfair Labor Practice.

9 The complaint, dated June 24, 1977, alleges that Res-
10 pondent violated Sections 1153(a) and (c) of the Act by dis-
charging Khurshed Gorski. The Respondent denies it violated
the Act.

11 III. The Facts.

12 A. Background

13 The Respondent operates a work facility in
14 Yuba City where strawberry plants are brought in,
15 trimmed, and their roots packaged for sale. Workers employed
in the facility are responsible for discarding poor
16 quality plants and trimming the remaining ones back to
their roots for packaging and sale. The Respondent has
17 two seasons: one is in December and January and the other is
in October of each year; each season lasts about three to
four weeks.

18 A key feature in Respondent's operations is to maintain
19 an accurate count of the plants trimmed by each worker. Accuracy
in counting the plants is necessary not only to ensure that the
20 requisite number of plants are packaged for sale, but to ensure
that workers receive the correct amount of incentive (piece-rate)
21 pay for their work. Thus, the Respondent maintains a rather ela-
borate system to verify the number of plants trimmed.

22 Normally, trimmed roots are packaged in boxes of 1,500,
23 500 roots from each of three workers. From time-to-time, how-
ever, one of the Respondent's packers or checkers (who are
24 assigned to specific work tables, as are the trimmers) will se-
gregate a worker's roots, place them separately in a box, mark the
worker's number on the box, and have the box taken to the
25 counting table to verify that 500 roots have been trimmed by that
worker. If the count is short, the worker is responsible for
26 satisfying the deficiency. If the shortage exceeds 50 roots,
the worker is subsequently rechecked or consulted about the
27 shortage. Other than an occasional, random count, these
"500 counts" are normally taken when a checker or packer
believes the trimmer's

28 //

1 count looks inaccurate or if her plants look inferior.1/

2 Khurshed Gorski was employed by the Respondent as a
3 trimmer for some three seasons or years. When the Union began
4 its organizational campaign among Respondent's workers, in
5 January, 1976, Gorski became an active supporter.2/ She assisted
6 the Union's chief organizer, Liz Sullivan, in speaking with
7 workers, passing out Union authorization cards, and pointing out
8 to Sullivan which workers had not yet signed up with the Union.
9 Ms. Gorski's sister-in-law, Shehnaz Gorski, was also active in the
10 Union's campaign, serving Sullivan as her chief Punjabi trans-
11 lator, attending the pre-election conference, and acting as the
12 Union's election observer. Unlike Shehnaz, Khurshed Gorski under-
13 stood only a little English and primarily spoke only Punjabi.

14 Most of the Union's organizational activity was en-
15 gaged in during lunch breaks, when Ms. Sullivan and her supporters
16 talked about the Union with workers. While those discussions took
17 place, and while Union cards were being passed out, two of
18 Respondent's supervisors were frequently in the area. Both Nirmala
19 Chanan and Gurmita Hayer, Punjabi speakers, were generally present
20 during lunch, at times being only some 10 feet away from the
21 organizational activity.3/

22 On one occasion, shortly before an election was con-
23 ducted by the Board on January 12, Nirmala Chanan approached a
24 group of workers conversing with Khurshed Gorski and Liz
25 Sullivan. Chanan spoke to the employees in Punjabi, after which
26 one of the workers returned an unsigned Union card to Sullivan.
27 That worker told Sullivan that Chanan had said that those who,
28 signed Union cards would lose their jobs, a comment heard ¹⁰
directly in Punjabi by Ms. Gorski. Sullivan responded by telling
the employees they could not lose their jobs for signing Union
cards and by telling Chanan that she had broken the law by
threatening workers that they could lose their jobs.4/

1/During the work day, a checker may also verify
counts of 50 or 100 plants to see that a worker is not shorting
his or her production. These counts are made at the work table
before the roots are boxed. There are some 21 or 22 trimmers at
each of the eight work tables in the trimming shed.

2/Unless otherwise specified, all dates mentioned
herein refer to 1976.

3/The Respondent admitted that both Chanan and Hayer
were supervisors within the meaning of Section 1140.4(j) of the
Act.

4/Chanan's conduct that day was reported to agents of
the Board, who later met with Respondent's representatives con-
cerning Chanan's remarks. The Respondent assured those present
that supervisors would be told they could not make such remarks.
Although the testimony does not indicate precisely what Respondent
's officials subsequently told supervisors as a result of
the meeting, no further charge was filed or allegation -- [cont.]

1 Also during the pre-election campaign, one of Respon-
2 dent's owners, Bob Parker, spoke to employees concerning the
3 election. Parker read a speech from a prepared text, one which
4 was sent to the Respondent from an organization it belonged to
5 The speech essentially informed employees that Respondent was
6 not in favor of the Union and that it hoped employees would vote
7 against it. The speech pointed out such things as Union dues,
8 the possibility of a strike and Union fines, and that the Union
9 was not needed to get higher wages, as factors to be considered
10 by employees when voting in the election. When Parker began his
11 speech he announced that those employees not wanting to hear it
12 could leave the work shed, and after the speech he permitted em-
13 ployee questions. Gurmita Hayer and her husband translated the
14 speech for Punjabi- speaking employees. Hayer was given a copy
15 of Parker 's speech from which she and her husband translated to
16 the Punjabi-speaking employees .5/

9 Khurshed Gorski worked for the remainder of the
10 January season, some three to five days following the election.
11 She was rehired in early October for the second 1976 season.
12 She worked continuously through the latter season until October
13 28, the last day of the season, when she was discharged.

12 B. The Circumstances Preceding Gorski's Discharge

13 The facts which led to Ms. Gorski 's discharge, on
14 October 28, are disputed among the various witnesses. In large
15 part, the dispute is not crucial to resolution of the central
16 issue. Nonetheless, the version credited by me is as follows:

16 On October 27, at the end of the day, Gurmita Hayer,
17 one of the head checkers, was assisting the packer at Gorski 's
18 table; she decided to check Gorski' s last 500 roots, thinking

18 4/[continued]--made that Respondent's supervisors
19 threatened any other workers. Nor is there any allegation in
20 the instant complaint regarding an unlawful threat or other act
21 of restraint or coercion on the Respondent's part, other than
22 that relating to the Gorski discharge.

21 5/The complaint does not assert that anything said
22 in the speech violated the Act. Yet, despite the complaint and
23 contrary to those witnesses called by the Respondent, Khurshed
24 Gorski testified that Parker, during his speech, told the
25 workers that if they voted for the Union they would lose their
26 jobs and that the nursery would be moved. Gorski also testified
27 that the Hayers did not merely translate the speech but spoke
28 in their own right. But, Gorski heard not only what the Hayers
translated from Mr. Parker, but also listened to her sister-in-
law, who apparently was attempting to translate the speech to a
group of Punjabi- speaking workers. Whatever Shehnaz Gorski may
have told the workers, the credible testimony seems clear that
Parker did not threaten workers with a loss of jobs or
relocation of the plant; nor did the Hayers speak independently
of Parker.

1 them either deficient in number or quality.^{6/} Hayer asked Gorski
2 whether there were 500 plants and Gorski replied affirmatively.
3 Bob Maley recalled that a box bearing employee number 39 (Gorski's
4 number) was left for counting at the end of October 27, as he
5 sealed the box that afternoon for keeping overnight.

6 Hayer recalled participating in the count of Gorski's
7 plants early on October 28, beginning before the workers
8 arrived. The count was 134 short, of which she informed Maley. Maley
9 then asked that Gorski be brought back to the counting
10 table. 7/

11 Gorski came to the counting table, where Maley, Hayer,
12 Chanan, and several others were. Hayer explained to Gorski that
13 her count was 134 short, but Gorski denied the shortage, claiming
14 that they were not her plants.^{8/} According to Hayer, Gorski

15 6/Gorski's immediate supervisor at the work table, Vera
16 Korn, claimed that it was she who determined to count Gorski's last
17 500 trimmings on October 27 and that Hayer only assisted her in
18 boxing them. Korn also claimed that she and the Respondent's
19 manager, Bob Maley, waited while Gorski's plants were counted that
20 night and learned the count was short. She remembered telling Gorski
21 the following morning that Gorski was short, after which Korn again
22 checked Gorski's next 500 count. Neither Maley nor Hayer agreed with
23 Korn's version of the events. Nor, for that matter, did Khurshed
24 Gorski, who recalled that Hayer collected her last trimmings on
25 October 27, and that she was told the following morning not by Korn
26 but by a person named Ann (who, it appears, was Agnes Shatswell)
27 that her previous day's count was 50 short. Korn's demeanor and
28 testimony indicate inconsistencies and serious confusion. I do not
credit Korn's testimony. Both her testimony and her demeanor
suggest that she was confused about several different counts that
were done on Gorski's plants between October 26 and 28, either 500
counts or lesser counts that Korn herself made at Gorski's work
table. It is noteworthy that not even Gorski recalled having an
independent count made by Korn early on October 28, as Korn
claimed.

7/Maley claimed he did not know initially that it was
Gorski who was 134 short, but only that Employee 39 was short on her
count. "When he asked Nirmala Chanan to fetch the employee whose
number was 39, Chanan purportedly refused because it was Gorski.
Maley then sent both Chanan and Hayer to get Gorski. Hayer did not
recall whether she fetched Ms. Gorski.

8/Gorski's testimony on this shortage is somewhat con-
fusing. She testified that Supervisor Hayer had intermingled her
plants on October 27 with those of two other employees and, at
another point, indicated that she may not have known whether they
were intermingled. Also, Gorski claimed to have been counted some
three to five times on October 27, but Respondent's counting record
indicates that Gorski was counted only once on October 27,
and her 500 count was then found accurate. The counting record also
indicates that Gorski had one 500 count done on October 26, which,
indicated-a-shortage and apparently led to -- [cont.]

1 accused her of lying and began yelling that they were not her
2 plants. During the 10 to 20-minute discussion Gorski became louder
3 and louder in her denials; the disturbance created by Gorski
4 caused the other workers in the shed to stop working and they
5 began watching the dispute.

6 During the commotion, Kornis told Maley that she had
7 been having trouble all year with Gorski, an allegation supported
8 by the testimony of Hayer. Maley then told Hayer to inform Gorski
9 she was discharged, which Hayer did. According to Maley he had no
10 choice but to fire Gorski: she was seriously short on her count
11 and she created such a disturbance in the work shed that work
12 came to a halt.^{9/}

13 After her discharge, and after leaving the work shed,
14 Khurshed Gorski contacted Liz Sullivan of the Union. An after
15 noon meeting took place that day between Gorski, members of her
16 family, Liz Sullivan, and Bob Maley. According to Gorski, Maley
17 admitted during that meeting that he fired her because of her
18 Union affiliation. Gorski's testimony, however, was credibly de-
19 nied by Maley.^{10/}

20 ANALYSIS AND CONCLUSIONS

21 I. Introduction.

22 Section 1153(c) of the Act makes it an unfair labor
23 Practice to discriminate". . . in regard to the hiring or tenure
24 of employment, or any term or condition of employment, to en-
25 courage or discourage membership in any labor organization." As
26 one court has remarked,

27 ^{8/}[continued]--another 500 count on October 27 (the
28 accurate one), and two 500 counts done on October 28, the latter
one taken after she was discharged for pay purposes and the first
one concerning her last production from the previous day which
led to Gorski's discharge.

^{9/}When Gorski's final paycheck was brought to her at
her work table, she continued to loudly deny that they were her
plants that were counted. Work in the shed again stopped.

^{10/}Maley denied he told those present that he fired
Gorski because of her Union affiliation. Liz Sullivan corroborated
Maley's denial. According to Sullivan, a credible witness, she
informed Maley that, the Union wanted to start their relationship
with the Respondent with a clean slate, and that she thought it
was unfair to discharge Ms. Gorski. Sullivan repeatedly accused
the Respondent of unlawfully discharging Gorski due to her support
for the Union, but admitted that Maley responded by saying,
"Yeah, sure," after which he walked away. Sullivan acknowledged
that Maley was simply trying to end the conversation about
Gorski's termination and was not admitting that he discharged
Gorski for her support for the Union.

1 Certainly, an employer may hire and discharge
2 at will, so long as his action is not based
3 on opposition to union activities. [Cita
4 tions omitted.] Furthermore, an employer's
5 general hostility to unions, without more,
6 does not supply an unlawful motive as to a
7 specific discharge. [Citations omitted.]
8 An inference that a discharge of an employee
9 was motivated by his union activity must be
10 based upon evidence, direct or circumstan-
11 tial, not upon mere suspicion. [Citations
12 omitted.]11/

13 And, as often recognized under the National Labor Relations Act, as
14 amended (29 U.S.C. §151, et. seq., herein referred to as the
15 "NLRA"), a finding in regard to an employer's discriminatory in-
16 tent when discharging an employee is "normally supportable only by
17 the circumstances and circumstantial evidence. Amalgamated 10
18 Clothing Workers v. N.L.R.B., 302 F.2d 186, 190 (C.A.D.C. 1962),
19 citing N.L.R.B. v. Link-Belt Co., 311 U.S. 584, 597, 602 (1941).

20 In this case, as in many others, an array of circum-
21 stantial facts are raised by the General Counsel in support of the
22 contention that Khurshed Gorski was unlawfully discharged by the
23 Respondent. Indeed, it is fair to say that in some respects, the
24 circumstantial facts put forth in this proceeding make for a
25 textbook question as to whether Khurshed Gorski's discharge violated
26 Section 1153(c) of the Act.12/

27 _____
28 11/N.L.R.B. v. South Rambler Company, 324 F.2d 447,
449-450 (C.A. 8, 1963). A similar enunciation of principle can be
found in Lu-Ette Farms, Inc., 3 ALRB No. 38 (Slip Opinion,
PP. 8-9).

12/The only "direct" evidence as to Respondent's unlaw-
ful motive in discharging Ms. Gorski comes from her own assertion
that Plant Manager Maley admitted discharging her for her Union
support, during their post-discharge meeting, an assertion that I
have not credited (see Note 10, supra). Nor do I credit Ms.
Gorski's testimony in general. Her testimony at times was confusing
and unclear, and was contradicted in numerous respects. For
example, she exaggeratedly claimed that she was initially harassed
because of her Union support by a Filipino supervisor when she
first began work during the October season, but later conceded that
the supervisor merely checked her work and, after an explanation by
her concerning the work in question, he accepted her explanation
and left her alone. In addition, Gorski's confusing but apparent
claim that she had no trouble with her work during October, at
least until the time of her discharge, is contradicted by both
Vera Kornis and the credible testimony of Ms. Hayer, both of whom
described frequent reprimands concerning the sloppiness of Gorski's
work. Finally, at nearly every opportunity Ms. Gorski sought to
portray the Respondent's supervisors and officials as repeatedly
threatening workers with discharge or closure of the plant due to
the Union, assertions that not only conflict with my conclusions
regarding -- [cont.]

1 II. The Circumstantial Facts Concerning Khurshed Gorski's
2 Discharge.

3 A. The Respondent's Knowledge Of Ms. Gorski's Union
4 Activity

5 A preliminary and key ingredient in finding that an em-
6 ployer has discharged an employee for union activity or support
7 is the finding that the employer knew of or had reason to suspect
8 that the employee in question was a union supporter or activist.
9 N L R.B. v. Whittin Machine Works, 204 F.2d 883, 32 LRRM 2201, 2202-3
10 (C.A. 1, 1953). In this case, the Respondent's knowledge
11 of Ms. Gorski's support for the Union is hotly contested.

12 The record establishes that Ms. Gorski openly supported and
13 worked in behalf of the Union prior to the January 12 election. Her
14 support and activity were manifested during lunch breaks when at least
15 two supervisors, Nirmala Chanan and Gurmita Hayer, were sometimes
16 present.^{13/}

17 Although it can be inferred from Ms. Gorski's and Ms.
18 Sullivan's testimony that the Respondent, through Nirmala Chanan,
19 had knowledge of Ms. Gorski's Union activity, it is not a particularly
20 convincing inference. The testimony strongly suggests that Respondent's
21 supervisors essentially were unconcerned about the Union's
22 organizational drive and who among the employees supported the Union.
23 Furthermore, Bob Malay, the person directly responsible for Ms. Gorski's
24 discharge, was not employed by the Respondent during the time of the
25 Union's campaign and while he was frequently at the work shed during
26 the campaign, he denies being informed as to which employees supported
27 the Union.

28 Whether or not the Respondent can be charged with know-
ledge of Khurshed Gorski's Union activity and support when dis-
charging her is a difficult question. It might well be, as
argued by the General Counsel, that Respondent can be charged with
such knowledge solely due to Supervisor Chanan's apparent
observation of Gorski's open support for the Union. ^{14/} If my

12/ [continued] -- the severity and nature of Respondent's
conduct but which were wholly uncorroborated by any other first-hand
observer.

13/While Ms. Chanan did not testify, Ms. Hayer did, denying
that she had any recollection that Ms. Gorski worked in behalf of the
Union. Generally, I credit Ms. Hayer's testimony. She no longer worked
for the Respondent when testifying and demonstrated no apparent bias
against Ms. Gorski or the Union. Her demeanor was impressive, and she
made no undue effort to justify her actions or exaggerate facts
surrounding the Gorski discharge.

14/The National Labor Relations Board, however, has
indicated recently that one supervisor's knowledge of an employee's
union activity might not be chargeable to another supervisor who
directly participates in the discharge decision. See American Mfg.
Co., Inc., 196 NLRB 248 (1972). -- [cont.]

1 conclusions regarding the other circumstantial facts surrounding
2 Ms. Gorski's discharge were contrary to what they are, I might
3 also be persuaded that Respondent's manager, Mr. Maley, had rea-
4 son to believe that Gorski actively supported the Union when
5 discharging her; but, in view of my conclusions which follow,
6 I am unconvinced that Maley--in fact--knew of Gorski's
7 involvement with the Union when abruptly discharging her on
8 October 28.

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11 B. The Timing Of Khurshed Gorski's Discharge

12 Both the General Counsel and the Respondent find sup-
13 port for their respective positions in regard to the timing of
14 Ms. Gorski's discharge. The General Counsel points out that, due
15 to the nature of Respondent's seasonal operations, Ms. Gorski's
16 discharge came but some 22 work days following the Union's elec-
17 tion victory, helped in part by Ms. Gorski's active support. On
18 the other hand, the Respondent notes that Gorski was not dis-
19 charged until over nine months had passed from the Union's
20 election victory, a victory supported by a 3-to-1 margin.

21 Insofar as the record shows, Ms. Gorski manifested no
22 open support for the Union following the January 12 election
23 victory, was rehired in the October season, and worked until the
24 last day of that October season. Nor is there any evidentiary
25 indication that at the time of her discharge any strategic rea-
26 son existed for the Respondent to eliminate her because of her
27 past support for the Union, especially since the Union's victory
28 was exceedingly large.

Although the Board has indicated that a short passage
of time between an employee's union activity and his discharge
does not warrant the conclusion that an employer would forget
his prior union support, 15/ in the instant case some nine to 10
months had passed since Gorski manifested any support for the
Union. While this long passage of time after her manifested
support for the Union does not, by itself, establish that her
subsequent discharge was lawful, it surely does not support a
finding that her discharge was for anti-Union reasons. In
short, I do not find that the timing of Ms. Gorski's discharge
creates support for an unfair labor practice finding.

21 C. The Respondent's Anti-Union Attitude

22 The General Counsel points to several features of the
23 Respondent's conduct that manifest antipathy toward the Union,
24 all of which took place around the employee election some nine
25 months before Ms. Gorski's discharge. First, the General Counsel
26 notes that prior to the election one of Respondent's
27 supervisors,

28
14/[continued]--Nonetheless, it is my view that each
case must be examined on its own facts to determine whether an
employer knows of an employee's union support or activity when
terminating his employment.

15/See Resetar Farms, 3 ALRB No. 18 (Slip Opinion, p
3, n. 2).

1 | Nirmala Chanan, threatened workers with termination if they sup-
2 | ported the Union. Second, the General Counsel points to Mr.
3 | Barker's pre-election speech in which he urged workers to vote
4 | against the Union. The testimony also suggests that Respondent
5 | had several pre-election posters hanging in the work shed which
6 | urged workers to vote against the Union. Finally, the General
7 | Counsel asserts that various supervisors either threatened or
8 | otherwise attempted to coerce Ms. Gorski's sister-in-law, Shehnaz
9 | Gorski, from supporting the Union. 16/

6 | Inasmuch as the Respondent's motive for discharging
7 | Ms. Gorski is the chief issue in this proceeding, it is crucial
8 | to carefully examine any evidence into Respondent's animus
9 | toward the Union. Of course, evidence that the Respondent
10 | generally opposed the Union, without more, does not establish
11 | that Respondent unlawfully fired Ms. Gorski. Metal Processors'
12 | Local 16 v. N.L.R.B., 56 LRRM 2494 (C.A.D.C. 1964). Indeed, even
13 | "if an employee is discharged for cause, the fact that the
14 | employer harbors an antipathy toward the employee grounded in
15 | anti-unionism does not make the discharge unlawful." Frosty Morn
16 | Meats, Inc. v. N.L.R.B., 296 F.2d 617, 49 LRRM 2159, 2162 (C.A.
17 | 5, 1961).

12 | The conduct of Respondent that suggests animus
13 | toward the Union does not reveal an abiding hostility to the
14 | Union or a propensity to violate the Act in order to defeat the
15 | Union. Thus, the speech given to employees by Mr. Parker, and
16 | heavily relied on by the General Counsel, is chiefly
17 | characterized by its degree of restraint. Clearly, nothing said
18 | during that speech violated the Act. Indeed, the speech, as
19 | well as the Respondent's election posters, fall well within
20 | the protection given to employer rhetoric by Section 1155 of the
21 | Act. I should note in this connection that under the NLRA it
22 | has been held that the expressing of views against a union
23 | during an organizational drive, when falling within the so-
24 | called "free speech" protection of that act, cannot be relied on
25 | as "damaging background evidence when considering a separate
26 | violation of that act. N.L.R.B. v. Colvert Dairy Products Co.,
27 | 317 F.2d 44, 53 LRRM 2151, 2153 (C.A. 10, 1963).

20 | In the context of this case, it is difficult to
21 | place serious reliance on Mr. Barker's speech as evidencing
22 | anything

22 | 16/ The only witness testifying about Respondent's
23 | purported efforts to coerce Shehnaz Gorski away from supporting
24 | the Union was Khurshed Gorski. Frankly, from Khurshed Gorski's
25 | testimony I am not sure whether she directly observed the
26 | supervisors' coercion of her sister-in-law or was told of such
27 | conduct by Shehnaz. If it was the latter case, it would be
28 | obvious hearsay testimony and impermissible to rely on it. Due
29 | to the lack of clarity in her testimony on this issue regarding
30 | her sister-in-law, the absence of corroboration, and my
31 | unwillingness to fully credit her testimony, I do not rely on
32 | Khurshed Gorski's testimony and, thus, am not convinced that
33 | Respondent's supervisors actually coerced Shehnaz Gorski in
34 | respect to her support for the Union.

1 other than lawful opposition to the Union in the context of a
2 pre-election campaign. Even were I to conclude it permissible to
3 rely on that speech for a showing of animus, I am not impressed
4 that the speech demonstrates such serious hostility toward the
5 Union from which I might infer that Khurshed Gorski's discharge
6 flowed. Apart from the Parker speech, and Supervisor Chanan's
7 remark as discussed below, the Respondent manifested no direct
8 antipathy toward Gorski regarding her own support for the Union.

9 On the other hand, Gorski's unrebutted testimony (corro-
10 borated by Ms. Sullivan) shows that approximately a week before
11 the election, Nirmala Chanan, a supervisor, threatened employees
12 with discharge if they supported the Union. Such a threat mani-
13 fests animus against the Union, but the significance of that
14 threat is substantially diluted in the context of this case by
15 the Respondent's timely willingness to meet with both the Union
16 and Board agents regarding Chanan's threat and its willingness to
17 see that such threats no longer were forthcoming from its
18 supervisory ranks. As far as the record shows, other than the one
19 offensive comment made to a handful of employees by Chanan,
20 Respondent's supervisors scarcely entered into the election cam-
21 paign. And, as earlier noted, the Union handily won the election
22 by a 3-to-1 margin in a bargaining unit of over 160 employees.

23 III. Summary Of Findings.

24 In sum, I am not persuaded that the evidence of Respon-
25 dent's animus against the Union supports a finding that Khurshed
26 Gorski was discharged for her support of the Union. Nor am I per-
27 suaded that either the timing of her discharge or the extent of
28 Respondent's knowledge concerning her support for the Union leads
to the conclusion that her discharge violated Section 1153(c) of
the Act. Thus, in considering the three chief ingredients of the
General Counsel's case in chief, I am not persuaded that
Respondent's motive for discharging Gorski was violative of the
Act.

On the contrary, I am persuaded by both Mr. Maley's and
Ms. Hayer's testimony that Ms. Gorski was discharged because she
was glaringly deficient in her last trimming count on
October 27, her refusal the following day to admit any error on
her part, and her consequent disruption of work operations in the
work shed on October 28. 17/ The facts immediately

17/Although it may be true, as argued by the General
Counsel, that Gorski in good faith denied responsibility for being
134 plants short, that good faith belief on her part was met by
the equally strong belief on the part of both Maley and Hayer
that Gorski was responsible for the large shortage. In short,
Gorski's position was at loggerheads with Maley and Hayer over the
shortage which, in view of her temperamental outcry, led the
conversation with Maley to an absolute standstill. Gorski's
heated outcry and the ensuing disruption in shed operations set
her case far apart from those of other employees, cited by the
General Counsel, who were similarly short on their counts of
trimmed plants. It was the disruption in operations caused by
Gorski, I believe, that pushed her conceived shortage in count
over into discharge.

1 surrounding and leading up to Gorski's discharge, on the last day of
2 October's season, present too many idiosyncrasies for me to conclude
3 either that Respondent was seeking to rid itself of a known Union
4 supporter or that it seized on the occasion to so eliminate one. And, in
5 comparison with those factors cited by the Respondent as leading to Ms.
6 Gorski's discharge, those factors cited by the General Counsel for
7 supporting an unfair labor practice finding pale further from their
8 initial lack of vividness and become wholly unpersuasive.

9 IV. Conclusion.

10 I do not find that the evidence supports a conclusion that
11 Khurshed Gorski was discharged in violation of Sections 1153 (c) and/or
12 (a) of the Act. Accordingly, I recommend that the complaint be dismissed
13 in its entirety.

14 Dated: October 28, 1977.

15 AGRICULTURAL LABOR RELATIONS BOARD

16 By David C. Nevins
17 David C. Nevins
18 Administrative Law Officer
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