

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

ROBERT H. HICKAM,)	
)	
Respondent,)	Case No. 76-CE-75-F
)	
and)	4 ALRB No. 48
)	
UNITED FARM WORKERS OF)	
AMERICA, AFL-CIO,)	
)	
Charging Party.)	
_____)	

DECISION AND ORDER

On September 27, 1977, Administrative Law Officer (ALO) Ben Grodsky issued the attached Decision in this proceeding recommending that the complaint be dismissed in its entirety. Thereafter, the General Counsel filed exceptions and a brief, joined by the Charging Party. The Respondent filed an Answering 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 and to adopt his recommended order.

////////////////////
////////////////////

Accordingly, pursuant to Labor Code Section 1160.3, the complaint is hereby dismissed in its entirety.

DATED: July 17, 1978

GERALD A. BROWN, Chairman

ROBERT B. HUTCHINSON, Member

JOHN P. MCCARTHY, Member

HERBERT A. PERRY, Member

RONALD L. RUIZ, Member

CASE SUMMARY

Robert B. Hickam (UFW)

4 ALRB No. 48

Case No. 76-CE-75-F

ALO DECISION

A complaint issued, based on charges filed on November 12, 1976, alleging that Respondent refused to rehire ten named employees in September 1976 because of their union support and activities or their union association.

The ALO found that Respondent did not unlawfully refuse to rehire the alleged discriminatees.

Finding no current evidence of anti-union animus on the Respondent's part, uncontradicted testimony that rehire was sought only after there were no openings, no Respondent policy of recalling employees from previous seasons, the ALO concluded that the refusal to rehire was based purely on business considerations.

BOARD DECISION

The Board decided to affirm the findings, rulings, and conclusions of the ALO and to adopt his recommended order dismissing the complaint in its entirety.

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

STATE OF CALIFORNIA

BEFORE THE AGRICULTURAL LABOR RELATIONS BOARD



In the matter of:)
)
)
 ROBERT H. HICKAM)
)
 Respondent,)
)
 and)
)
 UNITED FARM WORKERS OF)
)
 AMERICA, AFL-CIO,)
)
 Charging Party)
)
 _____)

Case No. 76-CE-75-F

Maurice Jourdane, Esq.,
for the General Counsel

Littler, Mendelson, Fastiff &
Tichy, by Michael J. Hogan, Esq.,
for the Respondent

Stephen Hopcraft, for
the Charging Party

DECISION AND RECOMMENDED ORDER

State of the Case

BEN GRODSKY, Administrative Law Officer: This case was heard before as in Exeter, California, on August 8, 9, 10 and 11, 1977. On a charge filed by United Farm Workers of America, AFL-CIO (hereinafter called the Union) on November 12, 1976, and duly served on Robert H. Hickam, the Respondent herein, a complaint was issued on June 23, 1977, and duly served on all parties alleging that the Respondent had violated Sections 1153 (a) and (c) of the Agricultural Labor Relations Act (hereinafter called the Act).

At the outset of the hearing counsel for the General Counsel (hereinafter called General Counsel) moved to amend the complaint by substituting Rafael Legaspe for Castellano Legaspe as an alleged discriminatee in paragraph 5(a) of the complaint. Over objection of the Respondent the motion was granted. In granting the motion, I stated that if Respondent would need more time to prepare its defence because of the amendment after the General Counsel's case was in, I would consider a request for continuance. No such request was made.

All parties were given full opportunity to participate in the hearing, and the General Counsel and Respondent each filed a brief after the close of the hearing in support of their respective positions.

Upon the entire record, including the hearing transcript, the exhibits, and my observation of the demeanor of the witnesses, and after consideration of the briefs filed by the parties, I make the following:

FINDINGS OF FACT

I. Jurisdiction.

Robert H. Hickam is a sole proprietorship engaged in agriculture in Tulare County, California. In addition to farming his own land, he manages property of other growers. The crops he works include grapes, alfalfa, peaches, plums, nectarines, and Christmas trees. I find that the Respondent is an agricultural employer within the meaning of Section 1140.4(c) of the Act.

The parties stipulated, and I find, that the Union is, and at all times material herein has been, a labor organization

representing agricultural employees and is therefore a labor organization within the meaning of Section 1140.4(f) of the Act.

II. The alleged unfair labor practices.

The complaint alleges that the Respondent refused to rehire ten named employees on or about September 14, 1976, because of their support and activities on behalf of or association with the Union and thereby interfered with, restrained, and coerced the employees in the exercise of their rights to self-organization.

Respondent denies that he refused to rehire the named employees for discriminatory reasons or otherwise violated the Act. Respondent contends that he had no work for the employees at the time they made application for employment and that he later did not hire any employees to perform the work previously performed by these employees. He further contends that the employees were not capable of performing the work assigned to the later hires.

III. The Facts.

A. The 1975 harvest season.

1. Hiring the work crew.

Respondent had hired Hector Rodriguez as a foreman with limited assignments in 1974.^{1/} In 1975, Hector was given additional responsibilities, including the hiring and supervising of a crew for grape picking. Respondent left all hiring to his foremen. Hector's grape picking crew was paid on a piecework basis; the other crew was paid on an hourly basis.

^{1/} Because some of the alleged discriminatees are also named Rodriguez, Hector will hereafter be referred to as Hector for purposes of clarity. Reference will also be made to Juvenal Sanchez and his wife, Aurora. They will be referred to by their Christian names, Juvenal and Aurora, respectively.

Simon Yunoz asked Hector for employment and also told him that a friend, Juvenal, who had previously worked for Hector, was seeking work. Hector sought out Juvenal, hired him, and asked him if he knew of others seeking work. Juvenal recruited 15 workers all of whom were hired by Hector, including Juvenal's wife, Aurora, his father-in-law, Castulo Aceves, four members of the Rodriguez family,^{2/} several members of the Legaspe family including Rafael Legaspe, and Simon and Benita Munoz. Juvenal was employed as a checker recording the number of boxes of grapes cut and picked by each of the grape pickers. The others were employed as grape pickers.

2. The union organizing campaign.

Juvenal testified that some time in September, 1975, Hector asked him to organize a meeting of some of the employees in Juvenal's house in order to bring in the Union. Hector explained to Juvenal that if the Union came in it would benefit Hector. He did not explain how unionization would benefit him, but the evidence disclosed that Hector was paid a percentage of the earnings of each employee he supervised; accordingly, if the Union could increase the employees' earnings, he would be paid proportionately more. Juvenal held two meetings at his home, each attended by about ten employees. Hector did not attend these meetings. Hector denied requesting Juvenal to organize pro-union meetings.

Shortly after these two meetings Union organizers commenced organizational activities among the employees. Union organizer Cardenas, an unpaid volunteer organizer, testified that he and another organizer visited Hector at his home one evening to solicit his

^{2/} Teresa, Micaela, Miguel and Soledad Rodriguez.

cooperation in the union organizing campaign. Hector said he could not help openly but would furnish him with a list of some employees at a later date. He never supplied the list. Hector denied that the organizers visited his home or that he has such conversation.

During the course of the organizing campaign, which lasted from late September or early October until the date of the election, October 21, 1975, union organizers came to the fields to talk to the employees both during working time and before and after work and at lunch times. Hickam directed the organizers to leave and, when they did not heed his request, he effected citizen's arrests. On one occasion he caused to be arrested two organizers who were talking to employees during their lunch period. He defended this action at the hearing stating that they had begun their activity earlier, before the lunch break and when they had no right to be on his property and "bother" his workers. All instances of organizer solicitation testified to at the hearing which resulted in arrests related to a location where Hector and his crew were not working. Hickam instructed Hector that if he saw organizers "bothering" employees he should ask them to leave. He and Hector both testified that this was the only instruction he gave Hector and is the only time he talked to Hector about the Union except for the interrogation described below.

Hickam testified that he had a contract with the Union from 1970 to 1973. He had bad experience with the Union and felt that it had not lived up to its agreement. When the contract expired, he testified, the Union did not contact him or seek negotiations, but instead picketed his fields. He felt they were doing this to harass

him, and that they picketed just long enough to harass him.

Juvenal testified that during the course of the 1975 organizing campaign he heard Hickam say to Hector in a loud and angry tone that he didn't want the fucking Union. Hickam denied saying it and Hector denied hearing it. Cardenas testified that on an occasion when he was distributing leaflets to the employees Hickam asked him for one of the "funny papers", as he characterized the leaflets, and he told Cardenas that he would tear out the vines and raise pigs rather than deal with the Union. Frank Hernandez testified that he worked as a foreman in 1974 but in 1975 he worked for Hickam as a non-supervisory employee. About September 1, 1975 he had a conversation with Hickam in which Hickam told him he had an agreement with the Union once and was not happy with it; and that rather than deal with the Union he would sell the ranch or give it to a contractor. Hernandez left Hickam's employ late in September, 1975. Hickam denied making the statements attributed to him by Cardenas and by Hernandez.

When the Union filed a petition for election in October, 1975, it stated that Respondent had 73 employees. Hickam knew this was inaccurate and that he had 144 employees at that time. He thereupon called a Board Agent, Fred Lopez, and told him that he did not believe the Union made a showing of interest of a majority of his employees. He told Lopez that he intended to have his employees sign a statement, under penalty of perjury, that they had not signed union authorization cards, his thought being that if he secured such a statement from a majority of his employees it would be proof that the Union had not established a showing of interest. Lopez said this would be proof enough.

Hickam thereupon gave Hector a list of the employees under Hector's supervision with instructions to ask each one whether or not

he or she had signed a Union card. If they had, Hector put an "X" next to their name; if not, they were requested to sign and put their social security number by their name. Hector was instructed to tell each employee that his or her answer would not affect their employment status. The General Counsel's witnesses testified that Hector questioned them and asked them to sign the list shortly after the election, asking them whether they had voted for the Union or not. Hickam testified that he retained counsel shortly after Hector queried the employees, that he turned over the list to his counsel in October, 1975, and did not see it again until early 1977.

Juvenal testified that he advised Hector he had voted for the Union, and that he put an "X" next to his name. The list was introduced in evidence (Respondent's Exhibit 2) and there is no mark next to Juvenal's name. He further testified that Hector said to him that he was going to give him a job in the orchards as a checker but would not give him a job any more because of his union involvement. His wife, Aurora, testified that when she told Hector that she had signed a Union card, he asked her if she was going to work. When she answered, yes, he said, then you had better forget about the Union. Hector denied having these conversations with Juvenal and Aurora. He stated that he only asked them, and all others whom he queried, if they had signed Union cards and told them that their answers would not affect their jobs. The Union won the election.

Respondent entered into a proposed settlement agreement several months ago which related to the above discussed conduct. The Board has not as yet acted on the proposed settlement.

Subsequent to the election, all employees continued working until the grape harvest was concluded. On the last day of work, Juvenal testified, Hector told him that he had a job for him in the orchards as a checker on a crew, but because he was a union member he could not offer him a job. Hector testified that after the grape harvest he referred Juvenal to another employer for a job in olives while Hector took a vacation. When returned from vacation he offered Juvenal a job in oranges, Juvenal, Aurora, Aceves, and Simon Munoz continued to work for Hector intermittently after the 1975 grape harvest and before the beginning of the 1976 grape harvest.

On some date during the 1975 grape harvest season, Juvenal overheard a conversation between employee Juan Marques and Hector. Marques asked Hector for a letter from Hickam offering Marques employment which would enable Marques to obtain a "green card" and enable him to work as an alien. Hector said, forget about the Union if you want your papers fixed: how can I give you a letter if the boss is angry. Hector and Marques both testified and each denied such conversation took place.

Respondent filed objections to the election which were overruled. Respondent stated he has recognized the Union and is prepared to enter into a contract with it if the Union would submit contract proposals he could "live with". There is no allegation that Respondent is not engaged in good faith collective bargaining.

B. The 1976 harvest season.

Some time in August, 1976, Hector came to Juvenal's house seeking Roman Cortes. Aurora asked him for work. He said that he

only needed a packer just then but would let her know when he starts picking raisin grapes. About two days later he came by the Sanchez house and told Juvenal that he was commencing picking grapes for raisins the following day at the last ranch they had worked at the previous season. Juvenal replied that he was picking peaches and would not leave the job. Two days later Juvenal and six others went to the ranch Hector had described and found that Hector was not working there. Neither Juvenal nor any of the others tried to contact Hector and tell him what occurred.

Aurora testified that on September 15 or 16, and certainly before September 20, she called Hector about work for herself and the others named in the complaint at Hickam's ranch. She testified that Hector told her that he had a full crew and that he would call her when the Border Patrol came and took all his people. On September 21, the Union's Field Office Director, Thomas J. Nagle, telephoned Hickam requesting that the alleged discriminatees, plus Catellano Legaspe, be recalled to work. He followed this up with a letter dated September 22, demanding their recall, and with a phone call on September 24. Hickam told him that hiring the crews is by the foremen and that he has no hand in it. Rafael Legaspe asked for work in late September and Hector told him that he had a full crew but would call him when he had work for him. Legaspe testified that he spoke to other employees in favor of the Union in September, 1975. Thereafter he left work for a week and was rehired when he returned. Legaspe's name does not appear on the list of employees questioned by Hector in October.

Hector testified that he started picking grapes on September 19, that he was still picking oranges at the same time, and that he had

a crew double the size he needed. He worked the crew half days in oranges and half days in grapes. Simon Munoz called and asked about a job. Hector offered him one working half days on oranges and half days on grapes, but Munoz never showed up for work. When Aurora called him, a date he placed at September 24, he had already been picking grapes about 5 days and did not need any more people. He testified he told her that as soon as he had an opening he would call her. He further testified that at a later date he stopped picking grapes in boxes and the operation was discontinued for a short while, and then he hired men to work with gondolas. Respondent's payrolls show a hiatus between September 28 and October 7.

The gondolas were about $4\frac{1}{2}$ feet high and it was necessary for the pickers to cut the grapes from the vine, place them in baskets which would hold about 30 pounds of grapes, and empty the baskets into the gondolas. He was of the opinion that women could not do the work and he hired only men for the task. At the hearing he agreed that the work could be performed in family groups with the weaker members cutting the grapes from the vines and placing them in baskets and the stronger ones emptying the baskets, but it had not occurred to him to organize the work in this fashion.

Hector hired five men on October 13, three on October 16, six on October 18, and one each on October 19, 20, and 21. Between September 19, and October 13, the only employees hired were box boys and swampers, all performing work other than that of the pickers. Aurora, Teresa Rodriguez, and Legaspe each testified that they had

previously worked picking grapes with gondolas and would have accepted such work if it were offered them. All grape picking on and after October 13, was with gondolas.

Respondent contended that Hector did not recall the employees because he thought the work was unsuitable for them and not for any discriminatory reason. Four employees who had told Hector they had signed Union cards in 1975, were employed by Hector in 1976, including the Union observer at the election. There were fifty-eight names on the list used by Hector. There was an "X" at sixteen of the names.

Witnesses Juvenal, Aurora, Legaspe, and Teresa and Micaela Rodriguez each testified they had spoken in favor of the Union while at work within hearing of Hector. Hector denied hearing any such conversations.

IV. Discussion of the issues and conclusions.

The ultimate issue in the case is whether Respondent failed to rehire the alleged discriminatees during the 1976 grape harvest season for discriminatory reasons.

Hickam was signatory to a labor agreement with the Union from 1970 to 1973. He was dissatisfied with the Union's performance under the agreement and candidly admitted that, if he could, he would rather not deal with the Union again.

During the 1975 Union organizing campaign Hickam effected citizen's arrests on Union organizers, at least one of which arrests

was in violation of the Union's right under the access rule to meet ^{3/}Juan Marguez, Francisco Lopez, Guadalupe Mesa, and Delfino Cisneros.

with and talk to the employees during their lunch period. Various witnesses testified that during the same period Hickam made anti-Union statements. Union organizer Cardenas testified, and Hickam denied, that Hickam said to him that he would tear out the vines and raise pigs rather than deal with the Union. Hernandez testified and Hickam denied, that Hickam told him that he would sell the ranch or turn it over to a contractor rather than deal with the Union. I credit the testimony of Cardenas and Hernandez because the witnesses were direct and straightforward in their testimony and, in the case of Cardenas, he testified adversely to his interests with regard to an incident regarding solicitation of employees in disregard of the employer's property rights. Juvenal heard Hickam tell Hector that he didn't want the fucking Union. While Hickam and Hector both denied the statement, I credit Juvenal's testimony because it is consistent with Hickam's admitted anti-Union feelings.

Juvenal and Aurora each testified about statements made to them by Hector at the time he interrogated them or thereafter as to whether they signed union cards. Juvenal testified that Hector told him on one occasion that he had a job for him as checker of a crew in oranges but he could not offer him the job because he was a Union member and at another time that he would not have a job any more because of his union involvement; and Aurora that he said that if she was going to work she had better forget about the Union. Hector denied leaking these statements. I credit his denials because Hector's actions after he allegedly made the statements are inconsistent with the alleged statements but are consistent with his denials. Thus Hector referred

Juvenal to a job in olives and after he returned from his vacation, Hector rehired Juvenal. Hector also employed Simon Munez, Aceves and Aurora after the end of the 1975 season. Additionally, Hector offered both Juvenal and Aurora jobs in raisins in August or early September, 1976. Moreover, Hector employed the Union's election observer and at least three other known Union adherents for the 1976 grape picking season. Accordingly, I find Hector did not make the statements attributed to him by Juvenal and Aurora. I also find, based upon the denials of Hector and Marques which I credit, that Hector did not say to Marques, as testified to by Juvenal, that Marques should forget about the Union if he wants his papers fixed.

Hickam admittedly directed Hector to poll the employees. There is a conflict as to whether this polling was before the election of October 21, or thereafter. All General Counsel witnesses who testified about the polling placed it at after the election; Hickam and Hector said it was after the filing of the petition for election and before the election. I credit Respondent's testimony because the reason Hickam advanced at the hearing for the polling was persuasive and no such persuasive reason existed for a poll after the Union had won the election. I find, based on the polling, that Respondent was aware of the pro-Union sympathies of alleged discriminatees, Juvenal, Aurora, Simon Munoz, and Miguel, Soledad and Teresa Rodriguez. Benita Munoz, Michaela Rodriguez, Lagaspe and Aceves were not polled. I credit Hector's testimony that he did not hear them talk about the Union and I find that Hector was not aware of their union affiliation or interest.

As noted above, Respondent's 1975 conduct was made the subject of a proposed settlement agreement which, as of the dates of this hearing was before the Board for approval. None of the incidents described above is before me for adjudication as to whether or not it constitutes an unfair labor practice but was introduced in evidence as proof of Respondent's anti-union animus.

Conduct similar to that in which Hickam is found to have engaged as described above has been found to be unlawful, both under the Act and the National Labor Relations Act and hence such conduct establishes that Respondent evinced anti-Union animus.

The denial of access to union organizers, together with the arrest of organizers for seeking to exercise their right of access not only evinced anti-union animus but forcibly brought home to the employees such animus on the part of Respondent. See Gibbs Corporation 129 NLEB 709, enf'd 279 F 2d 649 (CA 5, 1962); Central Hardware Co. 181 NLRB 491; Priced-Less Discount Foods, Inc. 162 NLRB 872. Hickam's statement to employee Hernandez threatening to sell out or give the ranch to a contractor rather than deal with the Union was a clear threat to the employees' job tenure if they favored the Union and were intended to thwart legitimate Union activity, Jasmine Vineyards, .Inc., 3 ALHB No. 74, p. 4; NLRB v. Gissel Packing Co. 395 U.S. 575; Frontier Marketing Cooperative, 229 NLRB No. 162. His statement to union organizer Cardenas was likewise a threat to the employees' job tenure because of unionization. While Cardenas was not an employee, the threat was made to him during the period of his leaflet distribution and was reasonably calculated to come to the attention of the employees.

Hickam's statement to Hector, within Juvenal's hearing, that he did not want the fucking union, while not itself necessarily coercive (See Labor Code, Sec. 1155) takes on a coercive coloration when viewed against the attempt to restrict access and the statements to Cardenas and Hernandez.

Finally the questioning of the employees whether or not they signed union authorization cards constituted an impermissible interference by Respondent with the employees' right to self-organization. See Federal Prescription Service 86 LRRM 2185, 2186 (CA 8, 1974), enf'g 203 NLRB 975; McGraw-Edison Co. v. NLRB 419 F 2d 67, 72 LRRM 2918, 2921 (CA 8, 1969); Astro Container Co. Division 180 NLRB 815 Cf Frontier Marketing Corporation, supra, p. 16.

In sum, it is concluded that Respondent manifested anti-union animus in 1975. The question remains whether this animus resulted in the failure to reemploy the employees in 1976.

It is axiomatic that the failure to hire (or rehire) employees because of union activity is violative of Sections 8 (a) (1) and (3) of the National Labor Relations Act, Phelos Dodge v. NLRB 313 U.S. 177, 186-187; Diocese of Fort Wayne-South Bend. Inc. 230 NLRB No. 38, p. 11.

The General Counsel has the burden of establishing that Respondent has engaged in the unfair labor practice as alleged by a "preponderance of the testimony taken" Calif. Labor Code Section 1160.3. In Frosty Morn Meats. Inc. v. NLRB. 296 F. 2d. 617, 621 (CA 5, 1961) the Court held that the General Counsel must show that in the absence of union activity, the employer would have treated the alleged discriminatees differently than they were treated.

In the present case, there is no evidence of any overt acts reflecting anti-Union animus by Hickam after the 1975 election. There is also no evidence of anti-Union animus by Hector at any time. Indeed, the evidence demonstrates that Hector continued the employment of the employees until the end of the 1975 season; that thereafter he employed Juvenal and others after he returned from his vacation; that he offered Juvenal and others jobs in raisins in late August 1976; and that he employed four known union adherents, including the Union's observer at the election, to work in the 1976 harvest. Since there is no evidence of new unfair labor practices after the conclusion of the 1975 grape harvest season, the question remains whether the earlier unfair labor practices and the animus they demonstrated played a part in Respondent's failure to recall the alleged discriminatees to work in 1976.

At the outset, it should be noted that if it can be established that the employer was in any degree activated in discharging (or refusing to recall) an employee because of an anti-Union animus of the employer, a violation has been established, NLRB v. Whitfield Pickle Co., 374 F. 2d 576, 582 (C.A. 5, 1967) More simply stated, a violation is established if the employee would not have been discharged, or would have been recalled, but for the employer's anti-Union animus. However, the circumstantial evidence used to establish motive "must do more than give rise to suspicion". NLRB v. Shen-Valley Meat Packers, Inc., 211 F 2d 289, 293 (C.A. 4, 1954).

Hickam left all hiring to Hector and his other foremen. Hector retained all employees until the end of the 1975 grape harvest without

regard to their union status. Thereafter, he hired Juvenal and other employees to work with him in the performance of field work on other crops in early 1976. In August 1976, he offered Juvenal work for himself and others picking raisin grapes. At first Juvenal said he was working elsewhere. When Juvenal went out and could not find the ranch where Hector was working, he did not go back and tell Hector that he had not been able to find the field where Hector was working. Instead, neither he nor his wife contacted Hector for several weeks. While the exact date of the later contact is in dispute, all witnesses agree that Hector told Aurora that he already had a full crew and he would call her if he had any openings. There is no evidence to contradict the fact that Aurora called Hector after he had a full crew, and it is so found. Hector did not augment the crew while harvesting table grapes. Thus, by the time the Union's letter dated September 22, demanded recall of the alleged discriminatees arrived, there were no openings for them.

General Counsel contends that Hickam had an admitted policy rehiring employees from previous seasons. However, a policy of rehiring does not necessarily involve recalling the employees but merely rehiring those who present themselves or apply for reemployment when work is available. There is no evidence that Hickam had a policy of recalling employees. Moreover, in this case Hector's last prior contact with Juvenal took place in late August, 1976. At that time Juvenal told him he was working and not interested in changing. It was not incumbent on Hector thereafter to pursue Juvenal or Aurora with job offers. Then he next heard from Aurora he had already assembled

his crew and had no work for them. It is accordingly concluded that Respondent did not refuse to rehire the alleged discriminatees on or about September 20, 1976, for discriminatory reasons.

Grape picking stopped on September 28, and resumed on October 7. All persons hired on and after October 7 were men. When asked why the alleged discriminatees were not recalled, Hector testified that they had only worked in table grapes and the work on and after October 7, was an entirely different operation in that the grapes were put in gondolas. Hector testified that because of the need to put the grapes in large baskets and to take them to gondola he believed the work was so strenuous that he hired men only.

General Counsel contends that Hector did not recall the alleged discriminatees because he knew Hickam was anti-Union and he wanted to be in Hickam's favor to protect his own job. There is no evidence to support such surmise. All available evidence supports Hector's contention that he, independently of Hickam, selected the work force and he made such selection on a non-discriminatory basis. Thus, he offered work to Juvenal and any one he would bring along in late August or early September. Eased upon his practice, if they had accepted such work, they would have been transferred to other work, including Hickam's work, when the raisin work was completed. There is no basis for conjecture that he would have laid them off when he would have his crew working on Hickam's fields. He transferred other known Union adherents to Hickam's fields when his crew worked there. His failure to recall the alleged discriminatees on and after October 7, was due to the fact that he believed that the operation in question—gondola packing of grapes—was inappropriate work for them. Reasonable men may differ with his evaluation, but I am persuaded that Hector's

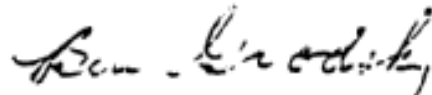
failure to recall the employees was in no way affected by the knowledge that they were Union adherents ^{4/} but was based purely on business considerations.

Upon the basis of the entire record, the findings of fact and conclusions of law, and pursuant to Section 1160.3 of the Act, I hereby issue the following recommended order.

O R D E R

The complaint is hereby dismissed in its entirety.

Dated September 27, 1977



Ben Grodsky
Administrative Law Officer

4/ As noted above, the evidence does not support the contention of General Counsel that Hector was aware of the pro-Union statements and activities of Benita Munoz, Michaela Rodriguez, Legaspe, and Aceves.