

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

SUNNY SLOPE FARMS,	)	
	)	
Respondent,	)	Case No. 77-CE-131-D
	)	
and	)	
	)	
UNITED FARM WORKERS	)	4 ALRB No. 74
OF AMERICA, AFL-CIO,	)	
	)	
Charging Party.	)	

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DECISION AND ORDER

On June 5, 1978, Administrative Law Officer (ALO) Robert Le Prohn issued the attached Decision in this proceeding. Thereafter, General Counsel filed timely exceptions with 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 attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings <sup>1/</sup> and conclusions of the ALO and to adopt his recommendation that the complaint be dismissed in its entirety.

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<sup>1/</sup> Notwithstanding some uncertainties in the ALO's Decision regarding the date, time and location of events, we agree with the ALO that the General Counsel did not establish by a preponderance of the evidence that Respondent discharged or refused to rehire Hernandez or Caquias because of their union activity or any other protected concerted activity.

ORDER

Pursuant to Section 1160.3 of the Agricultural Labor Relations Act, the Agricultural Labor Relations Board hereby orders that the complaint herein be, and it hereby is, dismissed in its entirety.

Dated: October 19, 1978

RONALD L. RUIZ, Member

ROBERT B. HUTCHINSON, Member

JOHN P. McCARTHY, Member

CASE SUMMARY

Sunny Slope Farms

4 ALRB No. 74

Case No. 77-CE-131-D

ALO DECISION

The ALO found that the evidence did not support an inference that Respondent had knowledge of the union activities of employees Maria Socorro Hernandez and Maria Caquias. The ALO thus concluded that the discharge of Hernandez and Caquias on July 19, 1977, was not discriminatorily motivated but rather was the result of the continued poor work performance by Hernandez and Caquias, despite several warnings by their crew supervisor. Accordingly, the ALO concluded that the subsequent refusal by Respondent to rehire Hernandez and Caquias was not violative of Section 1153 (c).

BOARD DECISION

The Board affirmed the rulings, findings and conclusions of the ALO and adopted his recommendation that the complaint be dismissed in its entirety.

BOARD ORDER

Complaint dismissed.

This Case Summary is furnished for information only and is not an official statement of the case, or of the ALRB.

1 STATE OF CALIFORNIA  
2 BEFORE THE  
3 AGRICULTURAL LABOR RELATIONS BOARD  
4

5 SUNNY SLOPE FARMS )

6 Respondent )

7 and )

Case No. 77-CE-131-D

8 UNITED FARM WORKERS OF AMERICA )  
9 (AFL-CIO) )

10 Charging Party, )  
11 \_\_\_\_\_

12 Jane Rasmussen, Esquire, 1685  
13 "E" Street, Fresno,  
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14 Sidney P. Chapin, Esquire, of  
15 Werdal & Chapin, 5544 California Avenue,  
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16 the Respondent

17 Glen Rothner, Esquire, of  
Bakersfield, California, for the  
18 Charging Party

19  
20 DECISION

21  
22 STATEMENT OF CASE

23 Robert LeProhn, Administrative Law Officer: This case  
24 was heard before me in Bakersfield, California', on March 6, 7, 8  
and 9, 1978. Complaint issued November 10, 1977, charging Respon-  
25 dent Sunny Slope Farms with violating §§1153 (a) and (c) of the  
Agricultural Labor Relations Act (Act) by terminating Maria Socorro  
26 Hernandez and Maria Caquias on July 19, 1977, and by refusing to  
rehire them on August 25, 1977. Respondent filed a timely general

1 denial in answer to the complaint. The complaint and the unfair  
2 labor practice charges were duly served upon Respondent.

3 Subsequent to the commencement of the hearing the United  
4 Farm Workers of America (AFL-CIO), as Charging Party, moved to  
5 intervene in the proceedings. The motion was granted.

6 All parties were given a full opportunity to participate  
7 in the hearing. After the close of the hearing the General Counsel and  
8 the Respondent filed post-hearing briefs.

9 Upon the entire record, including my observation of the  
10 demeanor of the witnesses, and after consideration of the briefs filed  
11 by the parties, I make the following:

#### 12 FINDINGS OF FACT

##### 13 1. Jurisdiction

14 Respondent, a California corporation engaged in agricul-  
15 ture in Kern County, California, admits being an agricultural employer  
16 within the meaning of Labor Code §1140.4(c).

17 The United Farm Workers of America (UFW) is an organiza-  
18 tion in which agricultural employees participate. It represents  
19 those employees for purposes of collective bargaining, and it deaj.  
20 with agricultural employers concerning grievances, wages, hours of  
21 employment and conditions of work for agricultural employees. The  
22 UFW is a labor organization within the meaning of Labor Code  
23 §1140.4 (b)

##### 24 2. The Employer's Operation

25 During the relevant period in 1977 Respondent was en-  
26 gaged in growing and harvesting table grapes. In July Respondent's  
employees were engaged in harvesting two blocks of cardinal grapes.  
The blocks contained 66 rows of vines with 88 to 90 vines in each  
row. The rows are located 12 feet apart, with the vines spaced at  
seven-foot intervals.

The two blocks in question are separated by what the  
parties designated as a central avenue. Each block is customarily  
picked by halves. The practice is to commence picking in a row at  
a white center post and to work along the row to the edge of the  
block.

In 1977 the blocks were each picked three times. The  
first picking commenced on July 9 at the north side of the east  
half of the east block. The picking proceeded south through the  
rows until the south edge of the cardinals was reached. On  
July 11 the first picking commenced on each half of the east and

1 west blocks bordering on the central avenue. The first picking  
2 concluded on July 13. On July 14 the DeJesus crew started the  
3 second picking at the south edge of the cardinals on either side of the  
4 central avenue and worked toward the north. The crew met the  
5 Benevides crew which was working south on July 18. About 11:30  
6 a.m. on July 19 the DeJesus crew began the third picking on the  
7 vines adjacent to the central avenue at the south edge of the car  
8 dinals.

9 Chris Beagle, Respondent's president, was in overall  
10 charge of harvesting operations. Directly responsible to Beagle  
11 was Pedro Ramos. Ramos supervised the three crew bosses who super-  
12 vised the field workers. Respondent admitted that Beagle, Ramos  
13 and crew boss DeJesus were at all times material supervisors within  
14 the meaning of Labor Code §1140.4(j). At the time of their dis-  
15 charges Caquias and Hernandez were working in the DeJesus crew.

### 16 3. The Events Of July 19, 1977

17 On July 19 the DeJesus crew started the day on the second  
18 picking of the west half of the west block. <sup>1/</sup> They began at the  
19 south edge of the block working north. <sup>2/</sup> The crew continued work-  
20 ing in this area until sometime between 11:00 and 11:30 in the  
21 morning when they met the crew which had started at the north edge  
22 of the block working south. When the crews met, Ramos moved the  
23 DeJesus crew to the south edge of the cardinals to start the third  
24 picking of the east half of the west block and the west half of the  
25 east block, that is the block halves adjacent to the central" ave-  
26 nue.

Ramos spoke to the DeJesus crew before it started to  
work. He gave them instructions and a demonstration regarding how  
he wanted the grapes picked. The entire crew, including Caquias and  
Hernandez, was present. <sup>3/</sup> At the time the crew was moved to

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<sup>1/</sup>The first picking of the west half of the west block  
had been completed several days earlier.

<sup>2/</sup> This finding is based upon the testimony of Catherine  
Alaniz, Pedro Ramos and Junior DeJesus. Maria Socorro Hernandez  
testified that the crew began work on the 19th in the rows adjacent  
to the central avenue toward the north. She also testified that it  
was the second picking. It seems apparent that she confused the  
18th and the 19th. The DeJesus crew was in the area described by  
Hernandez on the 18th. I do not credit her testimony that the crew  
began work there on the 19th.

<sup>3/</sup>This finding is based upon credited testimony of  
Alaniz, Ramos and DeJesus. I do not credit Hernandez's testimony  
that Ramos did not speak to the crew before work. Alaniz, a field  
worker unrelated to any person involved in the -- [continued]

1 start the third picking on the southern most rows adjacent to the  
2 avenue, Ramos again gave them instructions about how to pick, teli-  
3 ing them to pick all bunches of two or more grapes and to put the  
4 bunches with two to four grapes into plastic bags and to put  
5 bunches with more than four grapes into the box. <sup>4/</sup>

6 Around 9:00 a.m. Ramos accompanied by DeJesus inspected  
7 the rows being picked by the DeJesus crew. In the row being  
8 picked by Caquias and Hernandez, he found bunches of "good" grapes  
9 lying on the ground about every two or three vines. Ramos spoke  
10 to the "ladies" and asked them not to cast on the ground bunches of  
11 good grapes. He told them the grapes should be cleaned and put  
12 into the box. Neither Caquias nor Hernandez responded. <sup>5/</sup> During  
13 the course of that inspection their row was the only row in which  
14 Ramos found grapes thrown on the ground.

15 Ramos again inspected the DeJesus crew about 10:30. They  
16 were still working in the west half of the west block. Once again  
17 Ramos found many bunches of grapes on the ground in the row being  
18 picked by Caquias and Hernandez, and once again he told the "ladies"  
19 to put the grapes in the box and not throw them on the ground.  
20 Neither responded. <sup>6/</sup> Shortly thereafter DeJesus, while checking  
21 the packers, found dirty grapes in boxes which had been picked by  
22 Caquias and Hernandez. Their packer, Hector Caquias, told DeJesus  
23 that he would speak to them about cleaning the grapes. <sup>7/</sup> Ramos was

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24 <sup>3/</sup> [continued]—proceeding, testified that Ramos always spoke to  
25 the crew before work. Ramos testified it was his customary practice to do  
26 so and that he did so on the 19th. No evidence was adduced by the General  
27 Counsel suggesting any reason why Ramos may not have addressed the crew on  
28 the 19th. I credit DeJesus' testimony that Hernandez and Caquias were  
29 present.

30 <sup>4/</sup> These findings are based upon credited testimony of Ramos  
31 and Alaniz.

32 <sup>5/</sup> Neither Caquias nor Hernandez admitted to this inci-  
33 dent. In view of other inaccuracies in their testimony of the  
34 day's events, I do not credit their denial of having seen Ramos  
35 until shortly before their discharge. I credit Ramos' testimony  
36 regarding the events.

37 <sup>6/</sup> Neither Caquias nor Hernandez admitted to this inci-  
38 dent. For the reasons set forth in Footnote 5, I credit Ramos'  
39 testimony and find that for a second time Ramos told them not to  
40 put grapes on the ground.

41 <sup>7/</sup> Caquias and Hernandez are sisters. Hector is the  
42 husband of Maria Caquias.

1 present during this exchange and told DeJesus to tell Hector that the  
2 "ladies" had been twice warned. <sup>8/</sup>

3 Prior, to moving the crew, Ramos and DeJesus walked the  
4 rows on which they were to work. He saw no grapes on the ground in  
5 any of the rows. No other crew worked in the area to which the  
6 DeJesus crew was moved after Ramos walked the rows. The area had  
7 last been picked five days earlier.

8 Around noon Ramos told Beagle what he had found on his  
9 two inspections. Beagle asked whether he had talked to the two  
10 ladies about the problem; Ramos said he had; and Beagle instructed  
11 him to terminate them if he found a recurrence of the situation.  
12 Beagle told Ramos he would be gone for a period and not to wait for  
13 his return if it became necessary to discharge the women.

14 About 1:00 p.m. DeJesus inspected the rows being picked  
15 by his crew. Ramos was not with him. Caquias and Hernandez were  
16 again spilling a lot of grapes on the ground. He pointed out to  
17 them that they had been told that morning not to spill the grapes  
18 and that they should not be doing it. According to DeJesus,  
19 neither responded. <sup>9/</sup> Hernandez testified she told DeJesus that on  
20 the day before the crew boss (Junior's brother) had placed two  
21 workers in the row to help them because quitting time was near and  
22 that the other workers had picked the row and spilled the grapes.  
23 Assuming Hernandez said this, it could not have been true because  
24 the crew was in a different area on the 19th from where it had been  
25 at the close of work on the 18th. An additional reason for not  
26 crediting the Hernandez version of this conversation is her incon-  
sistency regarding it as between direct and cross-examination.

About 2:30 p.m. Ramos conducted an inspection of the  
DeJesus crew. It was his first inspection since the crew had been  
moved. He found grapes on the ground in one of the rows and called  
DeJesus to ascertain who picked the row. Ramos testified the  
grapes on the ground -appeared to be freshly picked. It had been  
five or six days since that row had previously been picked. <sup>10/</sup>

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<sup>8/</sup> Based upon credited testimony of DeJesus and Ramos.

<sup>9/</sup> Hernandez testified to a conversation with DeJesus  
about 11:00 a.m. Since the crew at that time was still in the west  
half of the west block and since her version of the conversation  
could only make sense if it occurred in the west half of the east I  
block, I find her recollection of the time to be incorrect. I  
credit DeJesus' version of the conversation and the finding is  
based upon that testimony.

<sup>10/</sup> Ramos testified the women had finished picking the row j when  
he made his afternoon inspection. Both women testified they 26 were  
still picking the row when Ramos came by. There -- [continued]

1                   When Ramos learned who picked the row, he took DeJesus  
2 and Hector to the row so that they could see why he was going to  
3 terminate the "ladies." DeJesus called them from the row in which  
4 they were then working to tell them they were fired because they  
5 had destroyed grapes. DeJesus told them they were being dismissed  
6 because they had destroyed grapes and that the matter had been  
7 I called to their attention that morning and that they had been  
8 Warned <sup>11/</sup> Ramos said nothing to them. Hernandez testified that  
9 DeJesus told Ramos that other workers were responsible for the  
10 thrown grapes. I credit Ramos' denial that DeJesus made such a  
11 statement. The lack of evidence of anti-union animus convinces me that  
12 had DeJesus made the attributed statement, the ladies would  
13 not have been terminated, notwithstanding their earlier admonish-  
14 ment.

#### 8           4.    Refusal To Rehire

9                   On August 25, 1977, Hector Caquias spoke to Chris Beagle  
10 about getting work. When Beagle told him there was work, Hector  
11 asked whether he would hire the sisters. Beagle asked whether they  
12 were the persons fired by Ramos. When he learned they were, he  
13 told Hector there was work for him but not for them because they  
14 had been fired. Sunny Slope has a policy of not rehiring any I  
15 people who have been terminated.

#### 13           Employer Animus

14                   On September 7, 1977, Jose Rivera, the putative spouse  
15 of Hernandez, asked Ramos whether he could hire the Sisters and  
16 Hector. At this time Ramos was a supervisor for Marco Zaninovich  
17 and Rivera was working a checker for the same company. Rivera I  
18 testified that Ramos said no because they were Union members and  
19 spoke about the Union.

17                   Ramos testified that Rivera asked about work for his wife  
18 at Sunny Slope and that his response was probably, but that he  
19 would have to talk to the boss. No one else was present during the  
20 course of this conversation.

#### 20           6.    Union Activity

21                   In April or May, 1976, Maria Socorro Hernandez distri-  
22 buted a UFW leaflet at the home of Pedro Ramos. She knocked on the  
23 door and Ms. Ramos came outside to speak to her. Ramos was sitting  
24 inside the house watching TV. He turned and saw Hernandez as his

23                   \_\_\_\_\_  
24                   <sup>10/</sup>[continued]--is no dispute that there were grapes on  
25 the ground. It is unnecessary to resolve this conflict. The tes-  
26 timony of DeJesus is consistent with that of Ramos.

26                   <sup>11/</sup>Credited testimony of Junior DeJesus.

1 wife came to the door. Hernandez did not speak to Ramos, nor did she know  
2 whether he ever saw the leaflet. Hernandez met Ramos  
when she worked for him at Roberts Farms in 1973 or 1974.

3 Hernandez's initial employment at Sunny Slope was from  
4 September, 1976, until October 29, 1976. She was again employed  
in April, 1977.

5 On one occasion in May, 1977, during the course of the  
6 work day, Hernandez told her fellow female workers that they should  
7 bring in the Union and have an election because Ramos did not give  
8 them restrooms. Evelyn Velasquez, another worker present, said the  
entire group should get together so there could be an election.  
9 No supervisor or crew boss was in the area when the discussion  
10 occurred. The women spoke among themselves on several occasions  
11 thereafter about the failure to provide bathrooms.

12 Hernandez testified that between 1:30 and 2:00 p.m. on  
13 the day she and her sister were discharged, they had a brief con-  
14 versation in the row while picking grapes. Speaking loudly be-  
15 cause her sister is hard of hearing, she asked about the money  
their father was to receive because he had been laid off at another  
grower. Hernandez also said that they should go to the Union be-  
cause Ramos would not bring them restrooms, that he only took them  
to Benevides' crew. Hernandez saw Ramos on the north side of the  
second row north of them and heard him coming through the vines  
toward their row. He stopped in the row next to theirs to examine  
it and then came into their row. They finished their conversation  
before Ramos got to their row.

16 Ramos testified that the sisters were working west of the  
17 avenue when he inspected the row they had picked on the east side.  
18 He learned they had picked the row by asking DeJesus. Hector  
19 Caquias testified that Ramos asked him who had picked the row.  
20 This testimony, especially that of Hector Caquias, casts doubt on  
21 Hernandez's testimony. If Ramos had seen them in the row as she  
22 claims, there would have been no need for Ramos' inquiry regarding  
who picked the row. Since the conversation between the sisters,  
if it occurred, was admittedly out of the presence of Ramos, cre-  
diting Hernandez and Caquias would not establish Employer knowledge  
of their Union activity. However, Hector's testimony, generally  
corroborating that of Ramos regarding the latter's question about  
who picked the row, leads me to find that the encounter with Ramos  
described by Hernandez and Caquias did not occur.

#### 23 DISCUSSION AND ANALYSIS

24 The complaint charges Respondent with violating §§1153  
25 (a) and (c) of the Act by discharging and refusing to rehire  
26 Maria Socorro Hernandez and Maria Caquias because of their support  
for and activities on behalf of the UFW.

1           The Supreme Court set forth the National Labor Relations j  
2 Act precedent for determining whether a discharge violates the '  
3 NLRA §8 (a) (1) in the following terms:

4           Over and again the Board has ruled that §8(a)  
5 (1) is violated if an employee is discharged  
6 for misconduct arising out of protected acti-  
7 vity, despite the employer's good faith, when  
8 it is shown that the misconduct never occurred.  
9 [Cases cited.] In sum, §8 (a) (1) is violated if it  
is shown that the discharged employee was at the time  
engaged in a protected activity, that the employer  
knew it was such, that the basis of the discharge was  
an alleged act of misconduct in the course of that  
activity, and that the employee was not, in fact,  
guilty of that misconduct. <sup>12/</sup>

10 This precedent is appropriately followed in the present case to  
11 determine whether the discharges violated §1153 (a) of the Act.

12 To prove a violation of §1153 (c) of the Act, the General  
13 Counsel must prove by a preponderance of the evidence each of the  
14 following elements of the offense: (1) the existence of anti-union  
15 animus; (2) Employer knowledge that Caquias and Hernandez were en-  
16 gaged in union activities; and (3) that Respondent's discharge and  
17 refusal to rehire them were discriminatorily motivated, i.e., moti-  
18 vated by a desire to discourage UFW membership. <sup>13/</sup>

19 Preliminarily it must be noted-that the only violations  
20 of the statute alleged in the complaint are those involving the  
21 two alleged discriminates. No independent violations of §1153(a)  
22 are alleged; thus, the record contains no evidence extrinsic to  
23 the events of the discharge to assist in drawing inferences of  
Employer motive in effecting the discharges. When considerations  
are evenly balanced in determining whether a termination was dis-  
crimination or for a lawful reason, the National Labor Relations  
Board and the courts look to the employer's other conduct manifest-  
ing an anti-union attitude in reaching a decision on the propriety  
of the questioned discharge. When employer hostility independent  
of the discharge is present, it has often been the determinant in  
concluding that a discharge violated the law. The absence herein  
of any evidence of Respondent's hostility toward the UFW must be  
considered in assessing the bona fides of the Respondent's conten-  
tion that the discharges were for cause and that the refusal of

24 <sup>12/</sup> Labor Board v. Burnup and Sims, Inc., 379 U.S. 21, 23  
(1964) .

25 <sup>13/</sup> John Van Wingerden, et al, 3 ALRB No. 80, p. 27  
26 (1977) .

1 rehire was indeed due to its policy of not rehiring employees who  
2 had been discharged. <sup>14/</sup>

3 1. The §1153 (c) Violation

4 In seeking to establish employer knowledge of the Union  
5 activities of Hernandez and Caquias, the General Counsel presented  
6 evidence that Hernandez distributed a UFW leaflet at Ramos' house  
7 in 1976, that she said in a conversation with other workers that  
8 they should get a union because Ramos would not give them toilets;  
9 and that she had a conversation with her sister about their  
10 father's back pay award and about restrooms. With respect to  
11 Caquias, the General Counsel's theory is that she was fired be-  
12 cause of her sister's activities.

13 The leaflet distribution was obviously Union activity,  
14 and the evidence supports the conclusion of Ramos' knowledge of  
15 the activity. There is no other direct evidence of employer know-  
16 ledge of Hernandez's union activities. In the absence of evidence  
17 manifesting a pattern of hostility toward the UFW, the leaflet in-  
18 cident occurring more than a year before her discharge is too re-  
19 mote to warrant an inference that her discharge was discrimina-  
20 torily motivated, particularly when one considers that Hernandez  
21 was twice hired by Respondent subsequent to the leaflet distribu-  
22 tion. The total absence of evidence of hostility toward the UFW  
23 or of the UFWs interest in organizing Respondent's employees esta-  
24 blishes an environment in which inferences of illicit conduct  
25 cannot readily be drawn.

26 The General Counsel, recognizing that employer knowledge  
of the two conversations was not proved by direct evidence, urges  
that the "small plant" doctrine be applied as the basis for esta-  
blishing knowledge.

In *S. Kuramura, Inc.*, 3 ALRB No. 49 (1977), the Board  
recognized the appropriateness of the "small plant" doctrine to  
prove employer knowledge, stating:

Respondent employed a relatively small number  
of employees, a third of which were related to  
owners of the nursery. Mrs. Kuramura was in  
daily contact with the employees, was con-  
stantly supervising them in confined quarters,  
and could hear everything that was said in the  
greenhouse where they worked. [The discrimi-  
natee] engaged in many of his union activities  
on respondent's premises and [his wife]

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<sup>14/</sup> Valencia Service Co., 103 NLRB 1190 (1953) .

1 participated in discussions with other employees  
2 about the union. [Slip Opinion, p,  
14.]

3 Beyond the fact that Respondent herein employed a rela-  
4 tively small number of employees, the facts distinguish Kuramura.  
5 Moreover, unlike the present case, there was substantial independ-  
6 ent §1153 (a) conduct in Kuramura. The record here does not sup-  
7 port the application of the small plant doctrine for the purpose  
8 of establishing employer knowledge of the activities of Hernandez.

9 Having decided that the evidence does not support the  
10 inference that Respondent knew of Hernandez's union activities, it  
11 is unnecessary to examine the validity of the business reason  
12 offered for the discharge. It is the burden of the General Counsel  
13 to establish an illicit motive. N.L.R.B. v. Klaue, '523 F.2d 410,  
14 414 (9th Cir. 1975). However, the failure of Hernandez and Caquias  
15 to heed the warnings and follow the instructions they received  
16 earlier in the day certainly establishes a plausible reason for  
17 their terminations as well as the refusal to rehire them. I shall  
18 recommend dismissal of the §1153 (c) allegations.

## 19 2. The §1153 (a) Violation <sup>15/</sup>

20 The stated reason for the discharges was the throwing of  
21 good grapes on the ground after having been twice warned that same  
22 day not to engage in such practice. In terms of the Burnup & Sims  
23 analysis, Hernandez's and Caquias' -discharges were not for miscon-  
24 duct arising out of protected activity. The wasting of good grapes  
25 did not arise out of the conversation which the two ladies were  
26 having immediately preceding their discharge. Moreover, even if  
one assumes that Caquias and Hernandez were engaged in protected  
activity when engaged in the brief conversation immediately preced-  
ing their discharge, the General Counsel has failed to prove by a  
preponderance of the evidence that Ramos heard the conversation  
and thus could have known the ladies were engaged in protected  
activity.

Finally, the General Counsel has failed to prove that the  
alleged discriminates were not guilty of throwing good grapes on  
the ground. Ramos testified it was his custom to inspect each crew  
several times during the course of a day. His testimony that he  
inspected the Munoz crew twice and the Benevides crew once during  
the course of the morning was not rebutted. His testimony that he  
inspected the DeJesus crew twice during the morning was

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15/The General Counsel's brief makes no argument in  
support of its allegation of an §1153 (a) violation. Since it is  
not clear whether abandonment of this position was intended, I  
have explicated my reasons for recommending dismissal of the  
§1153 (a) allegations.

1 contradicted only by the ladies' testimony that they did not see  
2 him prior to the crew movement at 11:30. No evidence was presented  
3 to explain why Ramos would not have followed his customary pattern  
4 on the 19th. There is no basis for concluding that Ramos did not  
5 make his customary inspections. I find he did so. I do not credit  
6 the testimony of Hernandez and Caquias that they did not speak to  
7 Ramos that morning. Their denials are unpersuasive in the face of  
8 Ramos testimony regarding what he discovered on the occasion of  
9 each inspection. If his testimony were given in a context in which  
10 he and other supervisors of the Respondent had been engaged in a  
11 program of interfering with, restraining or coercing employees in  
12 the exercise of §1152 rights, there might be some reason to take  
13 his testimony with a grain of salt, but such is not the case. Not  
14 only is the record devoid of such independent §1153 (a) activity,  
15 it is devoid of any evidence there was any union activity or orga-  
16 nizational campaign operative at the time of the discharges. <sup>16/</sup>

9 For the reasons set forth, I conclude the General Counsel  
10 has not proved a violation of §1153 (a) with respect to the dis-  
11 charges. Having reached this conclusion, it follows that the re-  
12 fusal to rehire Caquias or Hernandez did not violate that section.  
13 Beagle's testimony that Respondent has a policy of not rehiring  
14 persons discharged for cause was uncontroverted. Since it does not  
15 appear from the record whether there was ever any previous need to  
16 implement the policy, Beagle's testimony, were there a pattern of  
17 union hostility by Respondent, might be suspect; but this record  
18 does not warrant such suspicions. <sup>17/</sup>

#### 15 CONCLUSION

16 For the reasons set forth above, I shall recommend that  
17 the complaint be dismissed in its entirety.

18 Dated: June 5, 1978.

19 AGRICULTURAL LABOR RELATIONS BOARD

20 By \_\_\_\_\_  
21 Robert LeProhn  
22 Administrative Law Officer

23 <sup>16/</sup> The absence of any organizational campaign perhaps  
24 explains the" absence of any independent §1153 (a) conduct.

25 <sup>17/</sup> Ramos testified that Caquias and Hernandez were the  
26 first persons ever fired by Respondent for poor work. It is not  
apparent from the record how long Ramos has worked for Respon-  
dent .