Wasco, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

JACKSON & PERKINS ROSE CO., Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case No. 76-CE-70-F 5 ALRB No. 20

DECISION AND ORDER

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

On February 8, 1979, the Board issued the attached Proposed Decision in this proceeding. The parties were informed that the Proposed Decision would become final if timely exceptions were not filed. As no exceptions have been filed, it is hereby ordered that the attached Proposed Decision in this proceeding be, and it hereby is, made the Board's Decision and that the complaint herein be, and it hereby is, dismissed in its entirety.

Dated: March 19, 1979

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

JOHN P. McCARTHY, Member

CASE SUMMARY

Jackson & Perkins Rose Co. (UFW) Case No. 76-CE-70-F
5 ALRB No. 20

BOARD DECISION

The ALO failed to issue a decision in this case.

Respondent, a major producer of rose bushes, was charged with having violated Section 1153 (c) and (a) of the Act by discharging its employee Luis Soto because of his union activity. Respondent contended that Soto was discharged because there was insufficient work in its irrigating operation and because Soto's work was unsatisfactory.

At the time of the discharge, Soto was engaged in some union activity away from Respondent's premises and he displayed a "Yes on 14" bumper sticker on the car he drove to and from work. Respondent had contributed $6,000 to the campaign to defeat Proposition 14.

The Board found that there was insufficient evidence to establish that Respondent had knowledge of Soto's union activity away from work or that it knew about his bumper sticker. The Board held that, even if Respondent had the requisite knowledge and display of a "Yes on 14" sticker could be considered a form of union activity or other protected concerted activity, there was insufficient evidence of a causal connection between Soto's display of the bumper sticker and his subsequent termination. The Board noted that Respondent did not campaign against Proposition 14 among its employees, or ask anyone to demonstrate opposition to the measure, or attempt to ascertain the identity of those employees who favored the measure. Although Respondent engaged in unlawful denial of access during a prior union organizing campaign at its premises, it had not engaged in discriminatory conduct toward its employees. Animus or hostility on the part of Respondent toward union activity by its employees cannot be inferred solely from Respondent's opposition to Proposition 14.

ORDER

As the Board found that there was insufficient evidence to establish that Soto's termination was based, wholly or partially, on any union activity or protected concerted activity, it dismissed the complaint in its entirety.

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Wasco, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

JACKSON & PERKINS ROSE CO., Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case No. 76-CE-70-F

PROPOSED DECISION

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.

A hearing in this matter was held on March 2, 3, and 4, 1977, in Delano, California, before Administrative Law Officer (ALO) Victor Palacios, upon a complaint alleging that Jackson & Perkins Rose Co. (Respondent) violated Section 1153 (c) and (a) of the Agricultural Labor Relations Act (the Act) . The complaint was based upon a charge filed on October 18, 1976, by the United Farm Workers of America, AFL-CIO (UFW) . The charge and the complaint were duly served upon Respondent.

All parties were given full opportunity to participate in the hearing, after which the General Counsel and Respondent each submitted a brief in support of its position.

As the ALO has failed to issue a decision in this matter, the Executive Secretary transferred the matter to the Board on May 12, 1978, pursuant to 8 Cal. Admin. Code 20266.

Having reviewed the entire record in this case and the post-hearing briefs of the parties, we make the following proposed findings of fact and conclusions of law.

Findings of Fact

I. Jurisdiction

Respondent is an agricultural employer within the meaning of Section 1140.4(c) of the Act. The UFW is a labor organization within the meaning of Section 1140.4(f) of the Act.

II. The Alleged Unfair Labor Practices

The complaint alleges that on or about September 3, 1976, Respondent discharged its employee Luis Soto because of his membership in and activities on behalf of the UFW, and that Respondent thereby violated Section 1153(c) and (a) of the Act.

Over Respondent's objection, the complaint was amended at the hearing to add an allegation that Respondent discriminatorily refused to rehire Luis Soto on September 28, 1976, in violation of Section 1153(c) and (a) of the Act. As insufficient evidence was adduced at the hearing in support of this allegation, it will be dismissed.

Respondent denies that its discharge of Luis Soto was unlawfully motivated, and affirmatively states that it rehired him on or about October 13, 1976.

III. Admissions and Stipulations

Respondent admits in its answer that at times material herein the following persons were supervisors within the meaning of Section 1140.4(j) of the Act: Pete Casarotto, Pete Alvarado, and Jesus Vega.

During the hearing, the parties stipulated that Respondent had contributed $6,000 to the campaign to defeat Proposition 14, which was scheduled to be on the ballot during the November 1976 general election in California. Soto testified without contradiction that a sticker bearing the legend "Yes on 14" was displayed on the bumper of his car during the period of his employment as an irrigator and prior to his discharge on September 3, 1976.

IV. The Discharge of Luis Soto

Respondent is a major producer of rose bushes, with a steady work force of somewhat less than 200 and a seasonal force approaching 1,000. A UFW organizing campaign had taken place among Respondent's employees during December, 1975. Respondent was found to have committed an unfair labor practice by denying access to UFW agents during the course of that campaign.

Jackson & Perkins Company, 3 ALRB No. 36 (1977).

Luis Soto worked seasonally for Respondent and other rose growers in various field jobs over the past 15 years. In July of 1976, Soto was rehired by Respondent as an irrigator, a job he had briefly performed for Respondent some years before. His usual and preferred work was budding, a more complex and better-paying job than irrigating. Soto claims he was hired as a steady employee, but Respondent's seniority policy and records indicate that he was hired as *a* temporary worker.

On September 3, 1976, Soto was terminated by Respondent on the grounds that there was insufficient work in the irrigating department and that Soto's work was unsatisfactory. Although not

considered eligible for rehire in the irrigation department, Soto's status after termination was such that he was eligible for other jobs with Respondent.

During the period in 1976 when he was working as an irrigator for Respondent, Soto was involved in union activities. These activities were primarily carried out through the union-sponsored school which Soto's children attended. At Respondent's work-site, however, Soto's only manifestation of partisan activity was the "Yes on 14" sticker which he had affixed to the bumper of his car. He testified that he did not speak in support of the proposition at work. Soto did not work for Respondent during the previous season and therefore was not present during the UFW's campaign to organize Respondent's employees in December, 1975.

The General Counsel offered to produce a witness, not present at the hearing, who would testify that Soto was the only employee of the Respondent whose car bore a "Yes on 14" bumper sticker during the month of July, 1976. Respondent's counsel stipulated that the witness in question would so testify. A witness for Respondent testified that during the month of November, 1976, which was after Soto's discharge, he observed about 12 cars with "Yes on 14" bumper stickers at Respondent's premises.

Although Respondent had made a substantial monetary contribution to the "No on 14" campaign, its supervisory personnel were not asked to display "No on 14" stickers or to otherwise support the campaign. Neither were they asked to take

note of those who displayed "Yes on 14" stickers. According to their unrefuted testimony, none of the supervisors knew whether Soto had a bumper sticker on his car.

Considerable testimony was taken as to the quality of Soto's work and whether there was a diminishing workload in the irrigation department at the time Soto was discharged. In view of the following conclusions, it is unnecessary to consider that testimony or to resolve those issues.

V. Analysis and Conclusions

To establish a prima facie case of discriminatory discharge in violation of Section 1153(c) and (a) of the Act, the General Counsel is obliged to prove by a preponderance of the evidence that the employee was engaged in union activity, that Respondent had knowledge of the employee's union activity, and that there was some connection or causal relationship between the union activity and the discharge.

There is no record evidence that Respondent had any knowledge of the union activities in which Soto was engaged while away from Respondent's premises. There is evidence in the record of only one form of partisan activity engaged in by Soto at the work-site: that he displayed a "Yes on 14" bumper sticker on his car prior to his discharge. Display of such a bumper sticker arguably may be considered protected or union activity, J. G. Boswell Company, 4 ALRB No. 13 (1978), or it may be considered partisan political activity in support of a ballot-proposition to be presented to the general electorate. We need not resolve this issue, as there is insufficient evidence that Respondent

had knowledge of this minimal activity. Soto was part of a large work force and it was not established that any of Respondent's supervisory personnel observed Soto's bumper sticker or even knew which car was his. Of the six supervisors and foremen who testified, none remembered having seen the sticker. As one of these witnesses was related to Soto by marriage and had social contacts with him, he was in a good position to have noticed any sticker on Soto's car.

Even assuming that Respondent's knowledge of Soto's bumper sticker may be inferred from the circumstances and that his display of a "Yes on 14" bumper sticker is a form of union activity or other protected concerted activity, we find insufficient evidence of a causal connection between Soto's display of the bumper sticker and his subsequent termination.

It is true that one of the key provisions of the Proposition 14 initiative would have codified this Board's access rule, thereby making it more difficult to change, and that Respondent had previously violated the access rule in the 1975 union campaign at its premises and contributed a substantial sum to the defeat of Proposition 14 during 1976. However, there is no evidence that Respondent did any campaigning against the measure among its employees or supervisory personnel, that it asked anyone to demonstrate opposition to the measure, or that it attempted to ascertain the identity of those employees who favored the measure. Moreover, other employees apparently displayed "Yes on 14" stickers on their cars at some point after Soto did, but there is no evidence that any of them were

laid off or terminated for that reason.

During the union organizing effort in 1975, no charges of discriminatory conduct were filed against Respondent, and the record reveals no evidence of animus or hostility on the part of Respondent toward union activity by its employees. Moreover, we cannot infer such animus or hostility solely from Respondent's opposition to Proposition 14. J. G. Boswell Company, supra. In sum, as we find that there is insufficient evidence to establish that Soto's termination as an irrigator was based, wholly or partially, on any union activity or protected concerted activity, we conclude that Respondent did not violate the Act by its discharge of Luis Soto.

On the basis of the above, and the entire record herein, we conclude that Respondent did not violate the Act by its discharge of employee Luis Soto, and that dismissal of the complaint in its entirety is warranted.

Dated: February 8, 1979

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

JOHN P. McCARTHY, Member