

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

HARKNESS, COLGATE, BARTELL, INC.,)	
dba UNITED PACKING COMPANY,)	
)	
Respondent,)	Case Nos. 80-CE-16-F
)	80-CE-17-F
and)	
)	
HECTOR CHAVEZ and)	8 ALRB No. 18
FRANCISCO GALLARDO,)	
)	
Charging Parties.)	
)	

DECISION AND ORDER

On July 15, 1980, Administrative Law Officer (ALO) Michael K. Schmier issued the attached Decision in this proceeding. General Counsel timely filed exceptions and a supporting brief and Respondent thereafter filed an answering brief.

Pursuant to provisions of Labor Code section 1146, the Agricultural Labor Relations Board has delegated authority in this matter 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 ALO's rulings, findings,^{1/} and conclusions and to adopt his recommended Order.

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^{1/}We find, contrary to the ALO, that employees Chavez and Gallardo did engage in concerted activity and that Respondent had knowledge thereof. However, we agree with the ALO that, given the business justification asserted by Respondent, the General Counsel failed to establish by a preponderance of the evidence that the layoffs were unlawfully motivated.

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: March 3, 1982

HERBERT A. PERRY, Acting Chairman

JEROME R. WALDIE, Member

JOHN P. MCCARTHY, Member

CASE SUMMARY

Harkness, Colgate, Bartell, Inc.
dba United Packing Co.

8 ALRB No. 18
Case Nos. 80-CE-16-F
80-CE-17-F

ALO DECISION

The complaint alleges that two mechanics, Hector Chavez and Francisco Gallardo, were discriminately discharged for engaging in union and other protected concerted activity. The ALO found there was no protected concerted activity or company knowledge thereof. But, even if there had been, according to the ALO, the General Counsel failed to prove that the concerted activity of Chavez and Gallardo was a substantial or motivating factor in their layoff. The ALO credited the business reason presented by Respondent. A heat wave had caused the loss of the Casselman plum crop in 1980. To offset the loss, Respondent made various cost cutting moves, among them laying off the two mechanics as well as canceling orders for two new tractors and two trucks, and postponing the replanting of 60 acres.

BOARD DECISION

The Board upheld the ALO's finding-that there was insufficient proof to find the layoffs were unlawfully motivated. The Board noted, however, that it did find protected concerted activity and company knowledge thereof, contrary to the ALO.

* * *

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

* * *

1
2 STATE OF CALIFORNIA
3 AGRICULTURAL LABOR RELATIONS BOARD^{1/}

4 In the Matter of

5 HARKNESS, COLGATE, BARTELL, INC.
6 DBA UNITED PACKING COMPANY,

Case Nos : 80-CE-16-F
80-CE-17-F

7 Respondent,

8 and

9 HECTOR CHAVEZ and FRANCISCO
10 GALLARDO,

Charging Parties.

11 Carla Jo Dakin, Esq.

12 of Fresno, California for
13 the General Counsel

14 Littler, Mendelson, Fastiff & Tichy
15 by Michael J. Hogan, Esq.
16 of Fresno, California
17 for the Respondent

18 DECISION

19 STATEMENT OF THE CASE

20 MICHAEL K. SCHMIER, Administrative Law Officer: This case was
21 heard before me in April and May, 1980, in Fresno, California; all
22 parties were represented by counsel. A charge was filed by Hector
23 Chavez on August 12, 1980 in Case Number 30-CE-16-F. A charge was filed
24 by Francisco Gallardo on August 15, 1980 in Case Number 80-CE-17-F. The
25 Regional Director consolidated the charges and issued a complaint on
26 April 3, 1981 alleging that Respondent violated Sections 1153(a) and (c)
27 of the Agricultural Labor

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^{1/} Herein called the Beard.

1 Relations Act (herein called the "Act") by discharging Hector Chavez and
2 Francisco Gallardo because of their concerted activities with and on
3 behalf of their fellow employees and because of their support for the
4 United Farm Workers Union. Copies of the charges and complaint were duly
5 served on Respondent. The parties were given the opportunity at the trial
6 to introduce relevant evidence, examine and cross-examine witnesses and
7 argue orally, briefs in support of their respective positions were filed
8 after the hearing by all parties.

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

12 FINDINGS OF FACT

13 United Packing Company is engaged in agricultural operations in
14 Fresno County, California. It employs workers. Accordingly, I find
15 that Respondent is an agricultural employer within the meaning of
16 Section 1140.4(c) of the Act.

17 At all times material to the proceedings, Hector Chavez and
18 Francisco Gallardo were agricultural employees within the meaning of
19 Section 1140.4 (b) of the Act.

21 II. Respondent's Operations

22 Harkness, Colgate and Bartell, Inc., conducts business under the
23 name of United Packing Company. The operations are based in the town of
24 Sanger California. The officers are F.J. Harkness, Mr., President Willam
25 Colgate, Secretary Treasures; and Larson Barwell.

1 Vice-President. United Packing Company (hereafter also alternatively
2 referred to as "UPC" or Respondent handles production f groups of
3 ranches: the "family ranches" and the "investor ranches". In addition,
4 UPC manages other farms for a monthly fee. UPC also packs and markets
5 produce for "outside" growers.

6 There are twelve "family farms": Piedra Ranch, Clothe Rarch,
7 Quality Ranch, Wildwood Ranch, River Ranch, Goodfellow Ranch, Wahtoke
8 Ranch, Campbell Ranch, Lintarn Ranch, McKiniey Ranch, Belmont Ranch and
9 Seven Farms. Seven Farms is located near Visalia. All the others are in
10 the Sanger area.

11 The "investor ranches" include the following: 3lue Ribbon Farms
12 partnership (including Laton Ranch and Clarcksor. Ranch., Kings Creek
13 (including Gong Ranch), Tucker Ranch and others.

14 The family ranches are incorporated under the name
15 "Floyd. J. Harkness, Inc." Some of the officers of Floyd J. Harkness
16 Inc., (hereafter also referred to as "FJH ranches" or "family ranches")
17 are also officers of Harkness, Colgate, Bartell, Inc. Floyd J. Harkness,
18 Jr., (William Colgate's uncle) is President; Harriet Colgate (Colgate's
19 mother) is Vice-President and Colgate is Secretary/Treasurer. Colgate
20 makes all the primary business decision regarding farming operations on
21 the twelve ranches.

22 The family ranches produce three crops --- Peaches, plums and
23 nectoriens on about 1,600 acres, of which only 345 is in full production
24 because of a replanting program that was begun about five or six years
25 ago to replace old peach varieties with more up-to-date varieties of
26 peaches, plums and nectarines. Approximately all of the full bargaining
27 acreage consists of plumps half of which are the Casselman variety.

28 The harvest season runs about six months

1 between May and October."

2 There are between 110 and 130 full time, year round employees
3 working at both F. J. Harkness, Inc. and UPC, about 50 to 60 such such
4 employees at F. J. Harkness, Inc., and about 60 to 70 at UPC. In addition
5 are the large numbers of seasonal workers in both the packing sheds of UPC
6 and the harvesting crews at FJH. There are about five harvest crews of 25
7 persons each at the FJH ranches.

8
9 Abel Martinez, a worker for thirty two years, is a farm supervisor
10 in charge of pruning, discing, irrigation and picking. He has held that
11 position for over ten years. Joe Garcia is also a farm supervisor ("farm
12 manager") and his duties include primary responsibility for spraying
13 insecticides, fertilization and weed control. He also assists Martinez in
14 the harvest. Both men work on the "family ranches", except for the ranch
15 known as Seven Farms. Respondent admitted that these two men were
16 supervisors within the meaning of Section 1140.4(j) of the ALRA.
17

18 The management structure through which Martinez supervises, includes
19 ranch foremen for the larger ranches. These men are Arturo Riojas of the
20 River Ranch, George 'also referred to as "Jorge") Montory, in charge of
21 Piedra Ranch; Genaro Silva, in charge of wildwood Ranch; and Rodrigo Duran,
22 in charge of Campbell, "Wahtoke and Goodfallow Ranches. Other smaller
23 ranches are left to the charge of irrigation and this men are generally
24 known as ranch workers. They include Fable Morales, Domingo Silva, and
25 Richard and Ishumne at Clotho Ranch. There are five harvest crew pushers,
26 each in charge of 25 men during the harvest months.
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1 Abel Martinez supervised the two mechanics at issue,
2 Hector Chavez and Francisco Gallardo. Garcia also assisted Martines in
3 other duties.

4 In the summer of 1980, an extraordinary heat wave struck the San
5 Joaquin Valley, resulting in the almost total destruction of the Casselman
6 plum crop. Because the Colgate family farms grew this variety of plums on
7 35% of their full bearing acreage, they suffered substantial financial
8 losses which William Colgate put at \$150,300, a figure never effectively
9 refuted. The family farms sustained an overall loss for fiscal year 1980,
10 the second year in a row that the family farms and United Packing Company
11 showed overall losses.

12 III. Previous Union Activity at Respondent

13 Respondent had a labor contract with the United Farm workers for a
14 period of three years, ending in 1973. After that the contract expired,
15 there was a short strike, lasting from one day to a few weeks
16 on the various farms. Most of the employees worked during the strike. No
17 employee has ever been dismissed from the family farms because of
18 participation in union activities.

19 IV. The Hiring of Hector Chavez And Francisco Gallardo

20 Hector Chavez was hired by the Respondent in May, 1979 work as a
21 mechanic in its repair shop. In the preceeding ten years, the Company has
22 hired only one full time mechanic, Tony Serrano, who worked for a period of
23 approximately one year. Previously the company are hired and truck driver
24 Mario Garcia, who worked as a part time mechanic in the shop for a period of
25 some eight months. In between Garia and Sarrano, Pete Dillon, an independent
26 contractor, did some of the company's mechanical work for about
27
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1 months. Shortly after Chavez was hired, the Company employed
2 Francisco Gallardo to replace Serrano, who had left the Company.

3 V. The Employee Meetings At The Shop
4

5 Approximately nine months after Chavez and Gallardo were
6 hired, they participated in some informal gatherings of employees at
7 the shop. During these meetings several employees would sit accrued,
8 their working conditions at the ranches. Similar meetings had been
9 before charvez and Gallardo were hired the meeting were not called or
10 promoted; people showed up they wanted to, but no one was asked to come
11 Only few employees attained meeting any one time Charvez and Gallardo
12 participate in some eight to ten meeting during six to nine month period
13 prior to being laid off in August, 1980.

14 Abel Martinez and Joe Garcia were the only management level
15 persons who the evidence indicated were aware that the meetings were
16 taking place. Martinez and Garcia, however, never attended any of the
17 meetings and had very little knowledge about what was being discussed.
18 William Colgate testified that he had no knowledge that the meetings
19 were taking place. No evidence was presented to show-that Martinez or
20 Garcia ever discussed the meetings with Colgate.
21

22 There was no evidence that would indicate that management
23 personnel out the meetings or those attending them under surveillance The
24 only interest that management ever showed in the meetings was short
25 conversation that Martinez and with Eleuterio Gomez, one of the employees
26 who attended some of the meetings. This was the occasion that any
27 employee was ever
28

1 asked about the meetings. It appeared as a casual passing query and was
2 not alleged as a proscribed interrogation. In that conversation, which
3 lasted less than two minutes, Martinez asked Gomez how the meeting had gone
4 the night before. However, Martinez did not ask Gomez who else had been at
5 the meeting. No evidence was presented to indicate that any employee was
6 ever threatened, coerced, or restrained in any way for attending the
7 meetings.
8

9 One of the topics that employees discussed at the meetings was the
10 formation of a ranch committee which would discuss various job-related
11 concerns with Colgate. Hector Chavez testified that two other ranch
12 employees, George Montoya and Domingo Silva, told him that Colgate had said
13 the employees could form a committee. Also, Eleuterio Gomez, the above
14 referenced ranch worker, testified that Colgate had told a group of
15 employees some years earlier that they could form a workers' committee.
16

17 The informal gatherings always took place after work and never
18 interfered with the operations of the farm. No evidence was presented that
19 would indicate that Colgate or any sort of threat disruptive activity.
20

21 IV. Colgate's Relationship with Chavez and Gallardo

22 No evidence was presented that would indicate that had
23 ever acted in a hostile or antagonistic manner toward Chavez Gallardo.
24 To the contrary, in every encounter with Chavez and Gallardo, Colgate
25 displayed a cooperative and positive attitude. For example, over a
26 period of months, Chavez suggested to replace several ways to improve
27 the operations of the shop including: construction of an A-frame for
28 lifting engines out of tractors; the

1 numbering of equipment for identification; the use of a work
2 system to keep a record of repairs done; and the purchase of a
3 larger compressor to make additional types of repairs possible at
4 the shop. Colgate expressed his approval of each of these suggestions
5 and told Chavez to implement them.^{2/}
6

7 Also, in May 1980, just three months before Chavez and Gallardo
8 were laid off, they received wage increases. Both men were dissatisfied
9 with their initial increases of twenty-five cents per hour and so they
10 spoke with Colgate. Chavez asked Colgate, "Where [did you get] the idea
11 that twenty-five cents was going to be enough for my job?" Chavez also
12 asked Colgate if he were happy with his job. Colgate replied that he
13 was very happy with it. Shortly thereafter, Colgate granted Chavez an
14 additional twenty-five cents an hour increase.
15

16 Likewise, Gallardo told Colgate that, his wage increase was
17 not enough because it was a lower percentage of his base pay than
18 that received by other workers. Colgate gave him an additional raise
19 and said that he was sorry that he could not pay him more. In response
20 to Gallardo's question, Colgate told him that he liked his work.
21

22 VII. The Closing Of The Shop By Colgate

23 Shortly after the failure of the 1930 Casselman plus crop
24 Colgate mace several decisions in an effort to offset the losses from the
25 crop failure and to reduce the labor costs for mechanical

26 ^{2/} General counsel contented these instances of approval of Chavez
27 and Gallardo bolster her case in that Colgate was happy with happy the
28 performances of these men and thus their dismissal must have been for
proscribed reasons. This does not follow, unless additional evidence was
not presented, would so indicate.

1 repairs at the ranches. First, on August 1, 1930, Colgate called Sam
2 Pallesi, at Fresno Equipment Company, to confirm cancellation of two John
3 Deere 2640 tractors which he had ordered in the latter part of June. Colgate
4 told Pallesi that he would not be able to take the tractors because the
5 money flow situation was not going to be like he expected.
6

7 Also, during the first part of August, 1980, Colgate called Stan
8 Lovegren, owner-manager of Lovegren Motor Company in Sanger, California, to
9 cancel two pickup trucks that he had ordered in the early part of July.
10 Colgate said he would not be able to take the trucks because of economic
11 reasons.

12 Next, Colgate postponed the replanting of approximately 60 acres
13 of peach trees that had been planned for the winter of 1981. That marked
14 the first time in five or six years that a sizeable portion of the old peach
15 trees had not been replaced on the family farms. The farms were involved in
16 a long term replacing program designed to replace old trees on approximately
17 65% of their acreage.

18 Finally, on August 9, 1980, Colgate told Abel Martinez and Joe
19 Garcia to close the shop and lay off the mechanics. Some three or four
20 weeks earlier, Colgate had told Martinez and Garcia that he was debating the
21 possibility of closing the shop for economic reasons. However, he did not
22 discuss the decision with them or ask their opinion about closing the shop.
23

24 Colgate testified that he closed the shop because he thought it was
25 a fringe benefit, a luxury that could not be justified in light of the
26 serious financial losses that the farms had suffered that summer. In
27 addition he testified that he thought it would be
28

1 cheaper to hire outside mechanics to do the work on an as needed basis,
2 even at a higher hourly wage, than to keep two full time mechanics on
3 the payroll eight to ten hours a day, six days a week. This judgment was
4 borne out by subsequent events, which showed that labor costs for
5 mechanical repairs on the family farms were reduced by 50% by having
6 outside mechanics do the work.

7 During the four months immediately after the mechanics were laid
8 off, the labor costs for mechanical repairs done for the family ranches
9 totalled \$3,362.24. In contrast, during the four months immediately
10 prior to the closing of the shoe, similar labor costs paid to Chavez and
11 Gallardo amounted to 37,148.00.

12 The family ranches were receiving discounts on parts when Chavez
13 was employed as a mechanic at the ranch. However, Chavez testified that
14 the ranches were receiving discounts before he was employed and that they
15 were not receiving them merely because he was there. The General Counsel
16 presented a single invoice for parts purchased for the ranches after
17 Chavez was laid off which apparently shows no discount was given.
18 Colgate testified that his ranches were still receiving discounts.
19 Although discounts could be given without appearing on the invoices, I do
20 not believe resolution of this question to be helpful in the disposition
21 of this case.

22 On August 9, 1980, Martinez and Garcia went to the shop and told
23 Chavez and Gallardo that Colgate wanted to close the shop. Chavez told
24 Martinez that the shop was being closed because he was pro-Union.
25 Martinez denied that charge walked out of the shop. Garcia assured
26 Chavez that he was laid off, not fired, and that he could get
27 unemployment payments.
28

1 VIII. Repair Operations At The Family Ranches

2
3 Since The Closing Of The Shop

4 Abel Martinez, a long-time supervisor at the family ranches,
5 testified that there had been no problems in getting mechanical repairs
6 made after Chavez and Gallardo were laid off. Whenever a tractor broke
7 down, one of the foremen called Frank Sani, a mechanics at Sanger Farm
8 Service, which is a mile or so from the River Ranch. Sani would come as
9 soon as possible, usually within an hour. Sani was called only once or
10 twice a week, depending on the season, because there were not many
11 repairs that needed to be made en equipment when Chavez and Gallardo
12 left.

13
14 The shop is still supplied with various parts and filters, which
15 the tractor drivers use to do routine maintenance en their equipment.
16 The new compressor is being used for general ranch purposes, including
17 the blowing out of filters and the cleaning of tractors and trucks.

18 DISCUSSION AND CONCLUSIONS

19 The complaint in this case alleges that on or about August 9, 1980,
20 Respondent, through its agent Abel Martinez, discharged Hector Chavez and
21 Francisco Gallardo because of their concerted activities with and on behalf
22 of fellow employees and because of their support for the UFW. In order to
23 establish a prima facie case of discriminatory discharge in violation of
24 Section 1153 a and (c) of the Act, the General Counsel must prove by
25 preponderance of the evidence that the employee was engaged in some
26 protected activity, that Respondent knew of the employee's activity, and
27 that there was some connection or causal relationship between one
28

1 protected activity and the Employer's actions. Jackson & Perkins
2 Rose Co. 5 ALRB Mo. 20, 5.

3 The primary issue in the instant case is whether there is some
4 connection or causal relationship between the alleged protected activity
5 and the laying off of Chavez and Gallardo.

6 General Counsel maintains that Respondent's agents, Martinez and
7 Garcia, had knowledge- that the employees were holding meetings in the
8 shop and were aware of some of the things that were being discussed.
9 Also Chavez talked with Martinez and Garcia about several of the
10 workers' concerns, such as the alleged need for brakes on some of the
11 tractors and the alleged need for coveralls for those employees using
12 pesticides.^{3/} On this basis, General Counsel argues that the Employer,
13 through its agents, Martinez and Garcia, had knowledge of the concerted
14 activities of Chavez and Gallardo.

15 Respondent argues that the General Counsel failed to show that
16 Colgate knew that the employees were engaged in protected activities.
17 Respondent contends that Martinez and Garcia never attended any of the
18 employees' meetings and showed no interest, in

19 ^{3/} The General Counsel elicited testimony from Hector Chavez to
20 the effect that some of the tractors on the family farms had brakes,
21 that Company employees did not have adequate protective equipment and
22 clothing for spraying pesticides, and that some workers were denied
23 overtime pay. However, facts show that these allegations were totally
24 unfounded. First, Colgate testified that he was unaware of any unpaid
25 claims for overtime by his employees and had not discussed such claims
26 with any one in the past year. In addition, no complaints regarding
27 overtime have been filed against the Company with the Labor
28 commissioner's office during period in question.

Furthermore, pursuant to a complaint filed by Chavez September
7, 1980, Cal-OSHA inspected, without warning, the family farms on
September 23, 1980, but found no violation regarding tractor breaker or
protective equipment for pesticide sprayers.

1
2 in what was being discussed at the meetings, except for one very short
3 casual and passing conversation with Eleuterio Gomez. Respondent notes
4 that Chavez admitted that he never discussed any topics brought up at the
5 meetings with Colgate and that there is no evidence that any other employee
6 did so.^{4/} Respondent also notes that Colgate denied any knowledge of the
7 employee meetings. No evidence was presented to show that Martinez or
8 Garcia discussed the employee meetings or other alleged concerted
9 activities with Colgate.

10 There is no evidence that Colgate had knowledge of the employee
11 meetings or other concerted activities by Chavez or Gallardo and no
12 testimony was given by anyone, including Chavez and Gallardo, that would
13 indicate such knowledge on the part of Colgate. Colgate's uncontradicted
14 testimony is that he had no knowledge of such concerted, protected
15 activities. Based upon my observation of the demeanor of Colgate as a
16 witness and my feeling as to the general consistency of his testimony, I am
17 not able to discredit Colgate. In any event, however, whether such
18 knowledge is imputable to Colgate through his supervisors does not decide
19 the outcome of the case. Even assuming such knowledge, the key question
20 becomes whether there was a causal connection between the meeting and the
21 layoffs.

22 The complaint alleges that Hector Chavez and Francisco Gallardo
23 were discharged by the Respondent because of their concerted activities
24 with and on behalf of fellow employees and because of their support of the
25 United Farm Workers farm workers union herein called
26

27
28 ² See footnote 3.

1 "UFW.") Where the existence of an alleged discriminatory motive on the part
2 of the employer is the primary issue, as in the instant case, General
3 Counsel has an affirmative burden of proof to make a clear showing that the
4 Employer's anti-union animus was =* motive for the discharge. Kawano Inc.
5 v. A.L.R.B., 106 Cal . Ape. 3d 937, 952. The General Counsel does not meet
6 its burden of proof if it establishes only a suspicion that an employer
7 discharged an employee because of his concerted, protected activity. LU-
8 ETTE Farms, Inc., 3 ALRB No. 38; Robert H. Hickam, 4 ALRB Mo. 48. At the
9 least, it must be established that the employee's protected conduct was a
10 "substantial" or "motivating" factor in the employer's decision to terminate
11 the employee. Wright Line, Inc., 251 NLRB No. 5C, 103 LRHM 1169, 1171
12 (1980).

13 Even if the General Counsel had established that Colgate had some
14 knowledge of the concerted activities of the alleged discriminatees which I
15 do not find, no evidence was presented to show that the protected conduct
16 was a "substantial" or "motivating" factor in his decision to lay off Chavez
17 and Gallardo. Colgate's Lack of anti union animus is demonstrated by the
18 fact that he repeatedly told employees that he was not opposed to their
19 having a ranch committee which would discuss their work-related concerns
20 with him.^{5/}

21
22 ^{5/} conflicting testimony was presented concerning several statements
23 chat Abel Martinez allegedly expressed with regard to the UFW. Whether or
24 not. Martinez actually made such statements, they were clearly his personal
25 opinion and can in no way serve as a cases to infer that Colgate had an
26 anti-union attitude. It was held in Hansen Farms, 3 ALRB No. 43 (1977),
27 that a threat made by a supervisor to fire employees who were union
28 sympathizers could not be attributed to the employer, since the employees
were aware that such a threat was contrary to the employer's policy. Hansen
Farms, supra At.6. In Hansen the supervisor told the employees that (Cont.
next page.

1 In every encounter with the two mechanics, Colgate displayed a cooperative
2 and positive attitude. In addition, there was no evidence of threats,
3 coercion, harassment, or surveillance directed by Colgate or any other
4 management personnel toward those employees who attended the informal
5 meetings.^{6/} Moreover, had Colgate knowledge of these meetings and had he been
6 disposed to engage in proscribed activity, it does not strike me as plausible
7 that he would have waited some six or nine months before acting. The
8 proscribed action would have more likely come instantly before any
9 organizational 'gains, if any, could have been had. The timing of this
10 action does not appear to coincide with an intent to foreclose protected
11 activity.
12

13 ^{5/} (Cont.)

14 It was up to us we would have fired all of you [sympathizers to
15 the Chavez movement]. . .[but] Mr. Hansen said he didn't wane us to fire
16 anybody" (Id. at 5). Since it was clear that the supervisor's statement was
an expression of his own personal feeling and not that of his employer, it
could not be attributed to the employer.

17 In the instant case, no statement alleged to have been made by
18 Martinez is even remotely as harsh arid anti-union as the one made by the
19 supervisor in Hansen: Furthermore, if Martinez made any unfavorable comments
20 about the UFW, he was clearly expressing his personal opinions which are not
21 attributable to Colgate in light of the Hansen ruling, which is squarely on
22 point. Moreover, Martinez and other supervisors including Colgate are not
23 only entitled to their opinions, but are entitled to express them as long as
the expression is not coercive. Negative feelings are not, ipso facto,
coercive. The employees were well aware that no one had ever been fired from
United because of union membership and that Colgate had repeatedly said that
he was not opposed to their forming a workers' committee. In addition, the
unchallenged evidence shows that Colgate was positive and cooperative in
every encounter with Chavez and Gallardo.

24 ^{6/} Isabel Gallardo, one of the employees who attended four of 25: the
25 informal meetings, testified that Abel Martinez showed off a picture of
26 Caesar Chavez and stated that members of the Union were 26 on welfare.
However, Gallardo said that he wasn't afraid to welfare with Martinez and was
not at all threatened by his actions.

27 The General Counsel specifically disclaimed that she was alleging
28 that any of Martinez' actions toward Gallardo incident constituted a
violation of Section 1153 a of Act.

1 The record reveals much convincing evidence that
2 Colgate's decision to close the shop was motivated by legitimate business
3 considerations. First, there is no question that Colgate's family farms
4 suffered substantial losses because of the failure of the Casselman plum
5 crop in 1980. Secondly, it is undisputed that Colgate took a series of
6 steps to reduce expenses for the family ranches.^{7/} Third, the record shows
7 that the mechanic's shop had never been a long-standing part of the farm's
8 operations. Before Chavez and Gallardo, the ranches had employed only two
9 in-house mechanics (one of them only part time), for a total of some year
10 and one-half. Furthermore, Colgate testified that he had considered closing
11 the shop even prior to the crop failure in 1980 because he thought it would
12 be cheaper to have repairs done by outside mechanics, on an as 'needed
13 basis, rather than to keep two full-time mechanics on the payroll.
14 Maintaining a shop on the ranch required the costly stocking of parts and
15 supplies. The shop was net being used a high percentage of time. It was
16 necessary to look for work to keep the mechanics busy. Colgate, under
17 financial pressure, deemed the shop inefficient. This judgment was
18 confirmed by subsequent events, which showed that labor costs for mechanical
19 repairs were reduced by over one-half after the shoe was closed.

21 ^{7/} In August 1980, Colgate also implemented a change in the discing
22 technique used by the tractor drivers in cultivating the orchards on the
23 family farms . This change was a result of an experiment on the family
24 farms in 1979 which showed that one-way discing required less tractor time
25 for weed control than cross discing did However, it did not affect the
26 overall increase in tractor time necessary for the proper cultivation
27 (spraying, picking, at ceters of the maturing orchard. This explanation,
28 of the increase in tractor time was not challenged by the General Counsel.

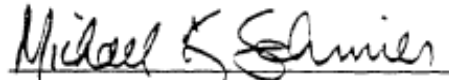
1
2 While it is often necessary to draw an inference of a
3 discriminatory motive on the part of an employer, there must
4 substantial evidence^{8/} on which to base that inference. The record
5 evidence does not persuade me to conclude that the concerted activity of
6 Chavez and Gallardo was a "substantial" or "motivations" factor in
7 Colgate's decision to lay them off consequently the General Counsel has
8 failed to prove that Respondent the general counsel fail to prove that
9 resident has violated the Act.

8 Upon the basis of the entire record and the findings of fact and
9 Pursuant to section 1160.3 of the Act I hereby issue the following
10 recommended:

10 ORDER

11 The complaint shall be, and hereby is, dismissed in its entirety.

12 DATED: July 15, 1930

13 

14 MICHEL K. SCHMIER
15 Administrative Law Officer
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18 ^{8/}Tenneco west, Inc., ALRB No. 12, 31 1981; Lu-Ette Farms Inc., 8 ALRB
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20 "When the complaints relates to discrimination under section 1153, of
21 the ALRB, as it does in this case, the General Counsel has the burden of
22 establishing the elements which no to prove the discretionary nature of
23 the charges. One of these elements is anti-union motivation, and more than
24 a mere suspicion of such motivation must be shown. . . .

25 [I]t must be shown that one anti-union motivation or anti-concerted
26 activity motivation, while not necessary the dominant motive, . . . is the
27 moving cause behind the employer's conduct and that the employee would not
28 have been subscript to the contact 'but for' such activity." Tenence
'West' Inc., supra.