

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

MUSHROOM FARMS, INC.,)	
)	
Respondent,)	Case No. 80-CE-13-SAL
)	
and)	
)	
FLORENTINO JAUREGUI,)	
)	
Charging Party.)	8 ALRB No. 38
)	

DECISION AND ORDER

On February 11, 1981, Administrative Law Officer Ruth Friedman issued the attached Decision in this proceeding. Thereafter, the Respondent, Mushroom Farms, Inc., filed exceptions and a supporting brief.

Pursuant to the provisions of Labor Code section 1146, the Agricultural Labor Relations Board (ALRB) has delegated its 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 brief and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Officer (ALO) and to adopt her recommended Order as modified herein.

The record reveals that on February 25, 1980, four of Respondent's employees, Florentine Jauregui, Catarino Castaneda, Manuel Bolanos, and Pedro Monreal, complained to Respondent's manager, Peter Miroyan, about the problems they were having with their supervisor, Roberto Martinez, concerning working conditions.

At that time, they stated their desire to implement a different method of picking mushrooms in order to eliminate some of the problems. Shortly thereafter, Respondent agreed to implement the system they had recommended, and put the new system in effect on March 5. By March 8 the four employees whose complaints and suggestions had led to the adoption of the new system had been discharged.

In addition to the evidence noted by the ALO in her Decision providing support for her finding that the discharge of the four employees was in violation of section 1153(a) of the Act, the record reveals much evidence indicating that Respondent's asserted reasons for the discharges were pretextual. The record reveals that Respondent employed a grower-consultant, George Carapiet, whose job duties included acting as a liaison between management, its supervisor (Martinez), the employees, and the buyers of Respondent's mushrooms. Carapiet testified that in the days following the implementation of the new system, he paid particular attention to the work performance of only the four employees who had brought to management's attention their dissatisfaction with working conditions. By March 8, 1980, Respondent had discharged the four employees, assertedly for unsatisfactory attitude and job performance.

Despite his admission that he watched the four dischargees during the three days following the implementation of the new picking system, Carapiet could not specify any specific instances of inadequate work performance or attitude on the part of any of the four employees. Rather, he testified that his belief

that the four employees were performing badly during that period was based only on what he heard from their supervisor, Martinez.

In his testimony, supervisor Martinez did not refer to instances of poor work or poor attitude on the part of any of the four employees between March 5 and March 8 when the decision was made to discharge them. Rather, he testified in generalities about the supposed resistance to authority and misconduct by the four employees as a group. He made no specific reference as to any words or actions of any of the four employees in support of his contentions.

The record reveals that Respondent's owner, Vartkes Miroyan, conceded that he knew it would look bad to discharge the four employees who had concertedly complained about Martinez and suggested a new method of picking mushrooms so shortly after the new picking system was started, without first giving the system a chance to work and the employees a chance to adapt to it. Peter Miroyan, the day-to-day manager of the farm, testified that changes were continually made in the new picking system throughout the three-day period following its implementation. Lastly, Respondent admitted that it never warned any of the four employees, collectively or individually, of any short-comings in their work during the three days they worked under the new system.

In light of Vartkes Miroyan's testimony that it was his position that it would be precipitous to act on allegations of work deficiency while the new system was undergoing implementation and continual modification, the discharge of the four employees only three days after they had engaged in concerted activity

undermines Respondent's contention that the discharges were based on the purported work deficiency or poor attitude of the four employees. Rather, the timing and other factors pointing to discriminatory treatment clearly reveal that the four employees were discharged because of their protected concerted activity.

We find Respondent's explanation for its actions is merely pretextual, a finding that is strongly supported by the following facts: the four dischargees were the same employees who had recently acted concertedly in bringing their complaints and suggestions about working conditions to Respondent's attention; the same four employees were singled out for special observation and attention during the changeover to the new system of picking; the same four employees were not found lacking in their work performance by any percipient management witnesses except for supervisor Martinez, whose comments concerning the dischargees' work performance were generalized and not supportive of any specific deficiencies and; the same four employees were discharged after only three days of work under the new picking system, a system that was undergoing continual change, without any warning to them as to any deficiency in their work performance. Accordingly, we conclude that by discharging the four employees Respondent violated section 1153(a) of the Act.

ORDER

Pursuant to California Labor Code section 1160.3, the Agricultural Labor Relations Board (Board) hereby orders that the Respondent, Mushroom Farms, Inc., its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discharging, laying-off or otherwise discriminating against any agricultural employee for engaging in any concerted activity for mutual aid or protection.

(b) In any like or related manner interfering with, restraining, or coercing any agricultural employee(s) in the exercise of the rights guaranteed them by Labor Code section 1152.

2. Take the following affirmative actions which are deemed necessary to effectuate the policies of the Act:

(a) Offer Florentine Jaurequi, Catarino Castaneda, Manuel Bolanos, and Pedro Monreal full and immediate reinstatement to their former or equivalent employment without prejudice to their seniority or other employment rights or privileges.

(b) Make whole the above-named employees for all losses of pay and other economic losses they have suffered as a result of their discharge by Respondent, reimbursement to be made according to the formula stated in J & L Farms (Aug. 12, 1980) 6 ALRB No. 43, plus interest thereon at a rate of seven percent per annum.

(c) Preserve and, upon request, make available to this Board or its agents, for examination, photocopying and otherwise copying, all payroll records, social security payment records, time cards, personnel records and reports, and all other records relevant and necessary to a determination by the Regional Director, of the back-pay period and the amount of back pay due under the terms of this Order.

(d) Sign the Notice to Agricultural Employees

attached hereto and, after its translation by a Board agent into appropriate languages, reproduce sufficient copies in each language for the purposes set forth hereinafter.

(e) Post copies of the attached Notice, in all appropriate languages, for 60 days in conspicuous places on its property, the period and place(s) of posting to be determined by the Regional Director, and exercise due care to replace any copy or copies of the Notice which may be altered, defaced, covered, or removed.

(f) Mail copies of the attached Notice, in all appropriate languages, within 30 days after the date of issuance of this Order, to all employees employed by Respondent at any time during the period beginning March 8, 1980, and ending on the date of the mailing of said Notice.

(g) Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice, in all appropriate languages, to its employees on company time and property at times and places to be determined by the Regional Director. Following the reading, the Board agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions the employees may have concerning the Notice or employees' rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all nonhourly wage employees in order to compensate them for time lost at this reading and during the question-and-answer period.

(h) Notify the Regional Director in writing, within 30 days after the date of issuance of this Order, of the steps

Respondent has taken to comply therewith, and continue to report periodically thereafter, at the Regional Director's request, until full compliance is achieved.

Dated: May 21, 1982

HERBERT A. PERRY, Acting Chairman

JOHN P. McCARTHY, Member

ALFRED H. SONG, Member

NOTICE TO AGRICULTURAL EMPLOYEES

After a hearing in which each side presented evidence, the Agricultural Labor Relations Board has found that we violated the Agricultural Labor Relations Act by discriminating against, interfering with, restraining, and coercing employees in the exercise of the rights guaranteed them by section 1152 of the Agricultural Labor Relations Act. We have been ordered to notify you that we will respect your rights in the future. We are advising each of you that we will do what the Board has ordered, and also tell you that:

The Agricultural Labor Relations Act is a law that gives all farmworkers these rights:

1. To organize themselves;
2. To form, join, or help unions;
3. To vote in a secret ballot election to decide whether you want a union to represent you;
4. To bargain with your employer about your wages and working conditions through a union chosen by a majority of the employees and certified by the Board;
5. To act together with other workers to help and protect one another; and
6. To decide not to do any of these things.

Because this is true, we promise that:

WE WILL NOT do anything in the future that forces you to do, or stops you from doing, any of the things listed above.

Especially:

WE WILL NOT discharge, lay off, or otherwise discriminate against any employee in regard to his or her employment because he or she has joined one or more other employees in order to seek changes in their working conditions, or joined together for mutual aid or protection.

WE WILL OFFER to reinstate Florentine Jaurequi, Catarino Castaneda, Manuel Bolanos, and Pedro Monreal in their previous positions, or in substantially equivalent jobs, without loss of seniority or other rights or privileges, and we will reimburse them for all losses of pay and other losses they incurred because we discharged them, plus interest at seven percent per annum.

Dated:

MUSHROOMS FARMS, INC.

BY: _____
(Representative) (Title)

If you have any questions about your rights as farmworkers or about this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 112 Boronda Road, Salinas, California 93907. The telephone number is (408) 443-3160

This is an official Notice of the Agricultural Labor Relations Board, an Agency of the State of California.

DO NOT REMOVE OR MUTILATE

CASE SUMMARY

Mushroom Farms, Inc.

8 ALRB No. 38

Case No. 80-CE-13-SAL

ALO DECISION

The ALO found that Respondent had discharged four employees for engaging in protected concerted activity in violation of section 1153(a) of the Act and not, as Respondent had contended, for allegedly poor work performance.

The four employees had complained to Respondent's farm manager about certain problems they felt they were experiencing with their immediate supervisor. At the same time, they proposed a different method of picking mushrooms, suggesting that adoption thereof might alleviate some of the aforementioned problems. Respondent agreed to adopt the proposed system and effectuated it on March 5. The four employees were discharged just three days later, allegedly for poor work performance and unsatisfactory attitude.

The timing of the discharges in relation to the employees having made known to Respondent their complaints about their terms and conditions of employment rendered Respondent's subsequent actions suspect. In addition, however, the ALO determined that Respondent's labor consultant, while admitting that he paid particular attention to the work performance of only the four affected employees immediately prior to their discharge, could not testify as to any specific examples of poor work performance. Moreover, the consultant admitted that his perception of the workers' performance was based not on his first hand observations but rather on what he had heard about them from the same supervisor about whom the employees had complained.

The ALO concluded that Respondent's proffered business justification defense for the discharges was pretextual and that Respondent's primary motivation was to retaliate against the employees because they had complained about their working conditions.

BOARD DECISION

The Board affirmed the findings and conclusions of the ALO and adopted her recommended Order that Respondent, inter alia, reinstate the four employees named in the complaint and make them whole for all losses of pay and other economic losses they may have suffered as a result of their wrongful discharge for having engaged in protected concerted activity.



STATE OF CALIFORNIA
BEFORE THE
AGRICULTURAL LABOR RELATIONS BOARD

MUSHROOM FARMS, INC.)
)
 Respondent)
)
 and)
)
 FLORENTINO JAUREGUI)
)
 Charging Party)
)

Case No. 80-CE-13-SAL

APPEARANCES:

Norman K. Sato and Arocoles Aguilar
of Salinas, for the General Counsel

James D. Schwefel, Jr., of
Noland, Hamerly, Etienne & Hoss,
Salinas, for the Respondent

DECISION

STATEMENT OF THE CASE

Ruth Friedman, Administrative Law Officer: This case was heard before me in Salinas, California, on August 26, 27, 28 and September 23 and 24, 1980. The Complaint, issued on April 29, 1980, charged the Respondent with violation of Sections 1153 (a) and 1153(c) of the Act. The charge and complaint were each duly served upon Respondent.

1 All parties were given a full opportunity to participate
2 in the hearing, and after the close of the hearing the General
3 Counsel and Respondent filed post-hearing briefs.

4 Upon the entire record, including my observation of the
5 demeanor of the witnesses, and after consideration of briefs filed
6 by the parties, I make the following:

7 FINDINGS OF FACT

8 I. Jurisdiction

9 Mushroom Farms, Inc., hereinafter called Respondent or the
10 Company, is a corporation engaged in agriculture in Monterey
11 County, California, and is an agricultural employer within the
12 meaning of Labor Code §1140.4(c).

13 II. The Alleged Unfair Labor Practice

14 Respondent is alleged to have violated §51153(a) and 1153
15 (c) of the Act by discharging employees Florentine Jauregui,
16 Catarino Castaneda, Manuel Bolanos and Pedro Monreal because of
17 their participation in protected concerted activities. In its
18 Answer, Respondent denies any violation of the Act.

19 III. Respondent's Operation

20 Respondent grows, packs, and ships fresh mushrooms in
21 Watsonville, California. It also promotes the sale and use of
22 mushroom fertilizer by a related company. The sole shareholders,
23 Vartkes Miroyan and Robert Moore, put the Company in operation in
24 November, 1978. Peter Miroyan, son of one of the owners, is the
25 manager and supervises all day-to-day operations. He is assisted
26 by George Carapiet, a grower consultant with extensive experience

1 in the mushroom business.

2 IV. Events Leading To The Discharge

3 Florentine Jauregui, the Charging Party, worked for the
4 Company as a mushroom picker from June 9, 1979, until his discharge
5 on March 8, 1980, Pedro Monreal began work as a mushroom picker in
6 November or December, 1978; Catarino Castaneda in May, 1979; and
7 Manuel Bolanos in July or August, 1979,^{1/} All worked continually
8 until their discharge on March 8, 1980,

9 The picking crew, which consisted of about 25 employees,
10 was supervised by foreman Ruperto Martinez. The foreman, who was
11 first employed in June, 1979, had been recruited by the owner,
12 Vartkes Miroyan, to replace another foreman who had proved unable
13 to maintain authority and control over the picking crew. The fore-
14 man generally spends all his working time in the growing rooms
15 directly supervising the picking of the mushrooms. At the time of
16 the events charged in the complaint, the crew included the fore-
17 man's two sons, several family friends and, on occasion, his
18 nephews.

19 During the latter part of 1979, members of the picking
20 crew became unhappy with the manner in which the foreman was treat-
21 ing them. They felt that the foreman was abusing them by calling
22 them "animals" and "pigs" and that he showed favoritism to his
23 sons. One day after work, an informal meeting of members of the
24 picking crew, excluding the foreman's sons, was called at a grocery

25 _____
26 ^{1/} There is a conflict in the record on the starting dates
for Bonalos" and Monreal.

1 store at Las Lomas near Watsonville to discuss their grievances
2 against the foreman. At the meeting, one of the employees ex-
3 pressed the sentiment that if the foreman did not treat the workers
4 better, he would rather go back to Mexico than continue. The em-
5 ployees resolved to express their complaints to the manager, Peter
6 Miroyan, but nothing immediately came of this resolution.

7 Subsequently, in perhaps September or October, 1979, the
8 entire crew gathered for a Company-sponsored slide presentation on
9 how to pick mushrooms. Members of the crew used the occasion to
10 raise with the manager their grievances against the foreman. Em-11
11 ployees complained that the foreman scolded them for bad work that 12
12 other employees did, did not allow employees to work on days they 12
13 were only a minute late and showed favoritism to his relatives. 14
14 Pedro Monreal and two other employees proposed a new picking system
15 where employees would pick rows of mushrooms marked with their em-
16 ployee number. The manager urged the employees to attempt to work
17 out their problems with the foreman and if this failed, to cope to
18 his office to discuss the problems with him.

19 On February 25, 1980, at lunch time, employees Castaneda
20 and Monreal asked Pete Miroyan, the manager, to talk to them after
21 work, and he agreed. After work, the manager came to the lunch
22 room where most of the crew was gathered. The manager declined to
23 meet with the whole group as requested; he suggested that he and the
24 two employees meet in his office as he thought that would be more
25 productive. Castaneda and Monreal asked that two others be per-
26 mitted to join the meeting. The manager agreed and Manual Bolanos

1 and Florentine Jauregui joined the group.^{2/}

2 At the February 25 meeting the four employees, through an
3 interpreter, complained that the foreman was not treating the crew
4 fairly in several crucial respects. First, they complained that
5 the foreman's sons were given first opportunity to pick the first
6 breaks, when there are more and larger mushrooms to a tray. Since
7 workers are paid on a piece-work rate by the box, with a minimum
8 guaranteed hourly wage, pickers can nick more boxes in a shorter
9 time, and hence earn more, when the mushrooms are larger and more
10 plentiful. Second, they complained that part-time pickers, who are
11 the foreman's nephews, only work on days where there are a lot of
12 mushrooms and they also are allowed to pick new houses before the
13 rest of the crew. Third, they complained that the foreman regu-
14 larly speaks to them abusively, and fourth, that sometimes piece-
15 work earnings are not calculated accurately? a man picks 20 boxes
16 and gets punched for 19.

17 As a solution to the problem of favoritism and the pro-
18 blem of the whole crew being abused for the poor quality of work of
19 a few, the four proposed that the Company adopt an assigned row
20 system of picking.

21 ^{2/} There is some question as to whether the four workers
22 were appointed by the crew to represent it or whether they
23 appointed themselves. I find that the four were appointed, if in
24 formally, since if the four were not representative, it is doubtful
25 that the entire crew would remain both on February 25 and
26 February 28 to hear the results of the meeting. Since the four
were complaining about conditions that would affect the whole
group, even individual complaints would constitute concerted acti-
vity. *Hugh H. Wilson Corporation v, N.L.R.B.*, 414 F.2d 1345 (3rd
Cir. 1969). Hence the manner in which the four were chosen is
irrelevant.

1 Under the picking system then in effect (the "old
2 system"), employees entered one of the 16 picking rooms and started
3 picking trays in the next available row, as directed by the picking
4 foreman. Each house had 24 rows; two employees worked the trays on
5 each row until the mushrooms had been picked. Employees moved from
6 tray to tray and row to row until the whole room had been picked.
7 Then everyone moved to the next room to begin picking there.

8 Under the system proposed by the four employees (the "new
9 system" or "assigned row system"), each row would be numbered and
10 the employee would be assigned to pick the row corresponding to his
11 employee number. Each time the employee entered a new room, he
12 would start picking his assigned row, which would remain the same
13 for each break (harvest) in the mushrooms. Assuming that the mush'
14 rooms in each house were evenly distributed, each employee would
15 have an equal chance at the highest quality mushrooms and each em-
16 ployee would literally harvest the consequences of his previous
17 work, since he would bear the responsibility of an inferior break
18 caused by "dirty picking" in the previous break. Under an assigned
19 row system, management could check the quality of the picking of
20 each employee by checking his assigned trays.

21 The manager agreed to investigate the complaints that the
22 foreman was unfair and discuss the possibility of instigating the
23 assigned row picking system with his father, the owner.

24 Three days later, on February 28, the manager called a
25 meeting of employees Jauregui, Monreal, Castaneda and Bolanos along
26 with Vartkes Miroyan, the owner, Ruperto Martinez, the picking

1 foreman, an interpreter, and George Carapiet, the grower consultant
2 who oversees and troubleshoots the production process.

3 The major part of the February 28 meeting concerned the
4 employees' request that the Company adopt the assigned row system
5 of picking. The manager favored the system because it provided
6 accountability of the pickers' work. The owner, Vartkes Miroyan,
7 was skeptical and raised questions about the actual operation of
8 the assigned row system. If the system were followed strictly,
9 each employee would have the same number of trays assigned and each
10 would pick the same number of boxes of mushrooms. Faster pickers
11 would finish sooner than slower ones. This arrangement would not
12 be satisfactory because all mushrooms must be picked the day they
13 are ready and one room must be completed before picking begins in the
14 next one so it can be watered and otherwise prepared for the 15
15 next mushroom break. This means that the faster pickers, when they
16 finish their assigned rows, must pick the rows of slower employees
17 and employees who are absent.^{3/} Thus, the assigned row system is
18 said to require the "cooperation" of the faster pickers, who must
19 follow the direction of the foreman to assist slower pickers in fin-
20 ishing their rows, without resorting to "dirty picking" which would
21 jeopardize subsequent breaks. The owner said he was willing to try
22 the new system if it really was desired by all the workers and they
23 agreed to cooperate. The four employees stated that the system was
24 desired by all the workers and they would cooperate. Management did

25 3/Since mushrooms are picked every day and employees
26 work six days a week, one seventh of the employees are absent each
day.

1 not consult the picking foreman prior to the February 28 meeting as
2 to his opinion about instituting a new picking system. At the
3 meeting the picking foreman stated he was opposed to the new sys-
4 tem.^{4/} He said that he did not think that the majority of the em-
5 ployees wanted the assigned row system and he was not inclined to
6 go along with it. Nonetheless, management agreed to institute the
7 new system on a trial basis.

8 According to the Miroyans, the decision was based almost
9 exclusively on the assurances of the four employees that the majo-
10 rity of the workers wanted the new system and would cooperate. The
11 foreman reluctantly agreed after higher management had decided,
12 At the meeting, management dealt briefly with the em-
13 Ployees' complaints about the foreman. Based on his investigation,
14 the manager found the complaints that piece-work were being calcu-
15 lated inaccurately to be unjustified and found that the foreman's
16 sons were not being favored in their opportunity to earn money.^{5/}

17 4/At the time of the hearing, the assigned row system was
18 still in operation and the picking foreman still did not like it,
19 He testified that presently he is having the same problems that
20 he had when the system began, the problems that led to the discharge
21 of these four employees, and he had recently disciplined workers
22 for failing to cooperate with the system. See, infra.

23 5/In new beds of mushrooms, some heads "break" around the
24 borders of the trays before the first, and best break of mushrooms
25 emerges. These border breaks must be picked carefully to prevent
26 contamination of the trays. Since there are few mushrooms on the
borders, and they must be picked carefully, the work of picking the
border breaks is not especially lucrative.

At the time of the events charged in the complaint, the
foreman's sons were exclusively responsible for picking the border
breaks. The discharged employees had no objection to their picking
the border breaks--that work was not desirable--but consistently
charged that the sons were given exclusive rights not -- [continued]

1 However, the foreman was cautioned to be fair and he promised he
2 would be.

3 The meeting ended with feelings of good will all around
4 and assurances of cooperation on all sides. When the meeting was
5 over, the four employees and Pete Miroyan announced the new system
6 to the picking crew who had waited after work to hear the results
7 of the meeting. Each employee received a \$75.00 cash bonus.

8 The new system was instituted on March 5.^{6/} According to
9 the foreman and the manager, immediately following the institution
10 of the assigned row system, the manager of the packing house com-
11 plained that the quality of the picking was too low. George
12 Carapiet, who customarily checked the quality of the work of the
13 pickers as well as all other work relating to the production of the
14

15 5/[continued]--only to the border breaks but also to the
16 first break, in which the mushrooms are largest and most plentiful
17 and hence picking is the most profitable. Up through the hearing,
18 management contends that the foreman's sons were picking border
19 breaks and were never given exclusive rights to the first breaks--
20 that given the large number of lugs of mushrooms nicked during the
21 first breaks, there is no possibility that they could be picked by
22 only a few people in the time before they spawned and were less
23 profitable and even dangerous. All the employees equally vigo-
24 rously insisted that the foreman's sons were favored in their
25 opportunities to pick the best mushrooms.

26 6/Pete Miroyan testified several times that the new sys-
27 tem started on March 5. His testimony is consistent with that of
28 the four alleged discriminatees, and I adopt it. However, Vartkes
29 Miroyan better part of a week," implying that the system was in effect more
30 than three days before the workers were discharged. I believe that
31 Pete is more likely to have the accurate memory on this point since
32 he was in charge of and actively dealing with employee matters
33 during this period. However, my findings of fact relating to the
34 reason for the discharge would be the same if the new system was in
35 effect for a week instead of three days before the four employees were
36 discharged.

1 mushrooms, pointed out trays that were "dirty" to the foreman, who,
2 by checking the assignments, ascertained that the "dirty" trays had
3 been picked by the alleged discriminatees Jauregui, Bolanos,
4 Castaneda and Monreal. Under questioning, the foreman
5 testified that other employees also had "dirty trays" during the early days
6 of the new system; however, when this was pointed out, they cleaned
7 the dirty trays and improved. When the production problems were
8 conveyed to Pete, he instructed the foreman to call a meeting of
9 the crew and counsel them to cooperate. The foreman spoke to the
10 crew but did not single out Jauregui, Bolanos, Castaneda and
11 Monreal.

12 During the first days of the new system, the foreman tes-
13 tified that the four discriminatees abused the system. He says
14 that he told management that when the picking was good, these four
15 would pick fast and refuse to clean up to maximize the picking.
16 When the mushrooms were small, they would stall by picking slowly
17 or spending 15 or 20 minutes at a time in the bathroom, taking ad-
18 vantage of the minimum hourly rate and not getting the work done,
19 The foreman saw this uncooperative behavior, which he testified had
20 been going on about a month, as a challenge to his authority and
21 told Pete Miroyan that "if those four were not willing to work and
22 carry out the orders, that I wasn't very comfortable working and
23 that I would stop working." The foreman said he considered the
24 four to be troublemakers and, as those who "put their complaints
25 at the office," he considered them the leaders in some of the
26 problems at the Company. He said to Jauregui, the Charging Party,

1 "They're complaining about the packing, saying the product is
2 coming out very bad, and that is the fault of all you workers. You
3 are the leader, you are going to fix all the people." Jauregui,
4 according to his testimony, refused, saying that they had asked
5 for the assigned row system specifically so that all would not be
6 scolded for the work of some. However, none of the workers in
7 the crew received individual written or oral warnings about the
8 poor quality of their work under the new system, even though
9 previously, written warnings were issued for work considered
10 unsatisfactory.
11
12

13 On March 8, a Saturday , Pete Miroyan called Jauregui,
14 Bolanos, Castaneda and Monreal into his office. He told the four
15 that they were fired and offered them their paychecks. The employees
16 say Pete told them they were being discharged because some
17 employees complained that they did not like the new system, but
18 they could check in thirty days to see if there was work for them.
19 The four then attempted to contact the remaining employees
20 to ascertain if they had complained to management, but were ejected
21 from company property. When they returned on Monday to attempt to
22 circulate a petition, they were prevented from entering the
23 Company parking lot.
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1 A. The Open Door Policy.

2 The Company contends that it could not have dis-
3 charged employees for complaining because it encourages open dis-
4 cussion, suggestions, and complaints, as proven, in this case, by
5 the fact that it adopted the employees' suggestion that a new pick-
6 ing system be instituted. The grower adviser, Carapiet, solicits
7 employee discussion virtually daily; the manager keeps his door
8 open to employees. The Company is well aware of employees' rights
9 under the ALRA; the manager took a college course on agricultural
10 labor relations law and the fact that the four discharged employees
11 complained made it less likely that they would be fired. The Com-
12 pany's "open door" policy is written into the employee manual which
13 is shown to and read to each employee. It says, "We welcome your
14 suggestions, your requests, and our door is always open to you."

15 B. The Legitimacy Of The Complaints.

16 Each of the General Counsel's employee witnesses tes-
17 tified that during late 1979 and early 1980, the picking foreman
18 favored his sons over the rest of the crew by giving them access to
19 the first break of the mushrooms where the picking was the best be-
20 fore the rest of the crew was allowed to enter the new houses, that
21 he threatened to recommend to management that employees be denied
22 the cash bonuses that all employees received from time
23 to time at the discretion of management, and that on many occasions
24 the foreman refused to bring them dinner, as Company policy re-
25 quires, when they worked past 5:00 p.m. Each of the Company's
26 management witnesses testified that only the foreman's sons picked

1 the border breaks, but the whole crew did pick and was needed to
2 pick the first breaks of the mushrooms, that the foreman did not
3 determine when bonuses would be distributed and he was unlikely to
4 want to discourage them because he and his sons received bonuses as
5 well as the rest of the crew, and Company records show that food
6 was purchased when the crew worked after 5:00. The Company con-
7 tends that since its testimony is true, that the employees made up
8 these complaints^{7/} solely to make the foreman look bad in the eyes
9 of management and make management get rid of him. Thus, according
10 to the Company, the employees' complaints were not motivated by
11 legitimate concerns about their working conditions, and therefore
12 are not protected.

13 C. The Prior Disciplinary Warnings.

14 The employee manual provides that written warning
15 slips be placed in an employee's file if he is not performing his
16 tasks satisfactorily. After three warning slips are placed in an
17 employee's file, the employee is subject to immediate layoff with-
18 out further notice. Each of the four employees had at least three
19 warning slips: Jauregui had four warnings for being absent without
20 notifying his supervisor; Castaneda had seven warnings for being
21 absent without notifying his supervisor; Bolanos had three warnings,
22 one for not picking cleanly, one for dropping mushrooms on the
23 ground, and one, for which he was suspended, for not using a

24 ^{7/}The four discharged employees also complained that the
25 foreman was "not properly crediting them for each of the boxes
26 picked. On this subject, the employees had suspicions rather than
hard evidence, and so the conflict between the management and em-
ployee versions was not as pronounced as in the other three items.

1 stepladder as required; Monreal was warned for leaving mushrooms
2 that should have been picked and was suspended twice for not fill-
3 ing up baskets, and not reporting to work. Therefore, the Company
4 contends it was entitled to terminate them at will.

5 D. The Foreman's Offer To Resign.

6 The Company gives as a business reason for firing the
7 employees that the foreman stated he could not get along with them
8 and offered to resign. The Company was satisfied with the work of
9 the foreman and did not want him to resign. They were especially
10 concerned about maintaining the foreman's authority because the
11 previous foreman had had to be removed when he could no longer con-
12 trol the picking crew. Therefore, according to the Company, the
13 employees were fired so that the foreman could stay.

14 ANALYSIS AND CONCLUSIONS OF LAW

15 Section 1153(c) of the Act prohibits discrimination "to
16 encourage or discourage membership in any labor organization." The
17 General Counsel did not present any substantial evidence that the
18 discharge of the employees was motivated to encourage or discourage
19 membership in any labor organization, and so that charge will be
20 dismissed.

21 Section 1152^{8/} of the Act is designed to guarantee

22 8/Section 1152 states:

23 Employees shall have the right to self-
24 organization, to form, join, or assist labor
25 organizations, to bargain collectively
26 through representatives of their own choos-
ing, and to engage in other concerted acti-
vities for the purpose of collective bar-
gaining or other mutual aid or -- [cont.]

1 employees the fundamental right to present grievances to their em-
2 ployer to secure better terms and conditions of employment. Em-
3 ployees have a legitimate interest in acting concertedly to make
4 their views known to management without being discharged for so
5 acting. Jack Brothers & McBurney, Inc., 6 ALRB No. 12 (1980), re-
6 view den., Ct.App. 4th Dist., Div. 1, November 13, 1980; Hugh H.
7 Wilson Corp. v. N.L.R.B., 414 F.2d 1345, 1347-50 (3rd Cir. 1969),
8 Cert. denied, 397 U.S. 935 (1970).

9 The questions presented for resolution in the present
10 case are: (1) whether Florentine Jauregui, Catarino Castaneda,
11 Manuel Bolanos and Pedro Monreal were involved in protected con-
12 certed activity; and (2) whether their discharges were motivated by
13 their involvement in that activity.

14 I. Concerted Activity

15 There is no question but that the four employees' request
16 to meet with management and their complaints and suggestions at
17 those meetings presented the possibility of concerted activity and,
18 on their face, constituted concerted activity under §1152 of the
19 Act. Jack Brothers & McBurney, supra. This is true regardless of
20 Whether the employees were representing the whole crew, as I find
21 they were, or whether they were just representing themselves.

22 The Employer, in its brief, proposes that the employees

23

24 8/[continued] -- protection, and shall also have
25 the right to refrain from any or all of such
26 activities except to the extent that such
right may be affected by an agreement re-
quiring membership in a labor organization
as a condition of continued employment as
authorized in subdivision (c) of Section 1153,

1 were not really concerned with the working conditions they com-
2 plained of, but were, in effect, making up meritless complaints in
3 an effort to discredit the foreman and have him fired. The Em-
4 ployer correctly notes that the NLRB holds that protests over the
5 appointment or termination of a supervisor are protected only if
6 the identity and capability of the supervisor significantly affect
7 the employee's job interests. Dobbs House, 135 NLRB 885;^{9/}
8 N.L.R.B. v. Guernsey-Muskingum Electric Cooperative, Inc., 285 F.2d
9 8 (6th Cir. 1960); N.L.R.B. v. Phoenix Mutual Life Insurance, 167
10 F.2d 983 (7th Cir. 1948). The Company argues that the complaints
11 were not true and therefore the protests were designed only to get
12 rid of the supervisor and so were not protected.

13 This argument cannot stand. In the first place, it is
14 not the objective validity of the grievances, but rather the em-
15 ployees' perception of their validity that determines whether con-
16 certed activities over grievances are protected. N.L.R.B. v.
17 Guernsey-Muskingum Electric Cooperative, Inc., supra.

18 Based on the demeanor of the employee witnesses, that is,
19 on their sense of conviction, their sincerity and their consis-
20 tency, I believe that all of the employees believed that the fore-
21 man favored his sons in picking assignments, I also believe that

22 ^{9/Dobbs House} was reversed on appeal on the grounds that
23 walking out at the height of the dinner hour was an unreasonable way
24 for waitresses to make known their concern over the discharge of a
25 popular supervisor. Dobbs Houses, Inc. v. N.L.R.B., 325 F.2d 531
26 (5th Cir. 1963). However, only the National Labor Relations Board
decisions, not the court decisions reviewing them, are precedent
for the ALRB. Labor Code §1148. See also Henning & Cheadle y.
N.L.R.B., 522 F.2d 1050 (7th Cir. 1975).

1 the employees heard the foreman threaten to recommend that the fore-
2 man take away their bonuses for misbehavior. The foreman, by his
3 own admission, had to keep after the "boys" to "behave," Since the
4 employees had no way to control when a bonus would be awarded, it
5 is credible that the foreman would try to influence their behavior
6 by threats of withholding a bonus. From the point of view of the
7 employees, it is irrelevant that the foreman himself got a bonus or
8 that he did not himself decide on the distribution of bonuses.

9 On the matter of supplying meals during work after 5:00
10 after more than 11 hours of work, the evidence is inconclusive and
11 the employees may well have been magnifying grievances, but that
12 does not mean that there were no grievances or that the employees
13 were looking to have the foreman fired rather than the problems
14 solved.

15 Therefore, I find that the four employees, Jauregui,
16 Castaneda, Monreal and Bolanos were engaging in concerted activity
17 by complaining to management about certain alleged actions of the
18 foreman and suggesting a new picking system,

19 II. Whether Discharges Were Motivated By Concerted Activity

20 I find that Florentine Jauregui, Catarino Castaneda,
21 Pedro Monreal and Manuel Bolanos were discharged because they com-
22 plained to management about the foreman and suggested a new; picking
23 system, but the connection between their grievances and their dis-
24 charge was indirect. The direct reason for their discharge was
25 that the foreman informed management that he no longer wished to
26 work with those four. But the reason he no longer wished to work

1 with them was his perception that they had challenged his authority by
2 gaining the sincere attention of management to complaints against
3 him and succeeding in having management implement a system he openly
4 opposed, basically without consulting him. Thus, while manage-
5 ment may have had no intention of punishing employees for
6 engaging in concerted activities, the discharge would not have
7 occurred were it not for the concerted activities. The discharge
8 certainly would have the effect of restraining the exercise of
9 protected rights.

10 Had management proved that the employees were fired because
11 of the poor quality of their work and work attitudes under the
12 new picking system, I might have found that the discharges were
13 justified, even if the discharge was also motivated as retaliation
14 for concerted activities. Wright Line and Lamoureaux, 251 NLRB No.
15 150 (1980) ; Mount Healthy City Board of Education v. Doyle,
16 429 U.S. 274 (1977)}^{10/} However, I find that the four employees'
17 work during the period between the beginning of the new system and
18 March 8, when they were discharged, was not the reason for their
19 discharge. In the first place, the trial period under the new
20 system was too short for fair judgment. While it is possible that
21 the new system merely revealed that these employees were
22 performing substandard work all along, that is not the employer's
23 contention. Second, there is no credible evidence that the
24 work of these four was significantly

26 10/ But see S. Kuramura, Inc., 3 ALRB No. 49.

1 different from that of other workers. The crew as a whole was cri-
2 ticized for poor work during the first days of the new system. The
3 discharged employees were not singled out for criticism, although
4 it was Company policy and practice for the foreman to discuss in-
5 ferior work with employees and then place a written grievance in
6 the file.^{11/} In this case, management did not discuss its dis-
7 satisfaction with the work of the employees before they were termi-
8 nated and they were certainly given no opportunity to express them-
9 selves or correct the problem. Third, the foreman testified that
10 at the time of the hearing the assigned row system was still in
11 effect and some employees were refusing to cooperate; they had been
12 warned, but not discharged.

13 Fourth, the complaint that the workers were not picking
14 to the best of their ability (which is the essence of the complaint
15 that they were stalling when the mushrooms were small and nicking
16 was unprofitable) does not apply to all of the discharged workers.
17 Company witness George Carapiet, who is familiar with the capabili-
18 ties of all of the pickers, said that during the first days of the
19 new system, employees other than the four who were discharged had

20 11/The employee manual says, at Page 13:

21 In the event that you are not performing
22 your tasks correctly, or to the satisfac
23 tion of your supervisor, or the management,
24 the matter shall be discussed with you and
25 your supervisor and foreman. You will be
26 given an opportunity to express yourself
and be given assistance to correct the pro-
blems. After all, we want you to succeed.
If you need an interpreter, we will get one
for you.

1 dirty trays and had to repick but "they are not good period, at any
2 given time. I know what these employees are capable of. Only one
3 of these employees here of the four was not a good picker in my es-
4 timation. . . . The other three were capable of picking where I
5 would consider them as good pickers, if and when they want to."
6 This raises the question of why the fourth picker, who was slower
7 and therefore presumably working up to his capacity, was fired. If
8 the quality of the work was the reason for the discharge, it is
9 peculiar that three of the fastest pickers would be discharged be-
10 cause of three days' substandard work, especially when the work was
11 not substandard based on the average picker.

12 when the manager discharged the four employees ,
13 he did not tell them that the problem was the quality of their
14 work but rather told them that other workers did not like the new
15 system that these four had suggested.^{12/} When he discharged them,
16 Pete was extremely vague about the reasons, and did not even engage
17 an interpreter, even though an interpreter was engaged in other
18 meetings with employees. At the time of the discharge, he was
19 vague about whether they were discharged for cause; he held open
20 the possibility of re-employment in a month and later offered to
21 help the four obtain unemployment benefits. At no time before the

22
23 <sup>12/I credit the testimony of Florentine Jauregui on
24 this because of his demeanor, because it was corroborated by other
25 employees, and also because it was indirectly corroborated by Pete
26 Miroyan who testified that he mentioned "something about a threat."
He said that after the four were discharged, he would not let their
into the work areas to talk to other employees about their com-
plaints to management or to solicit support against the dis-
charges.</sup>

1 charge was filed were the employees clearly informed that they
2 were being fired because their work was not satisfactory or because
3 they could not get along with the foreman.^{13/}

4 In short, the General Counsel proved that the employees
5 engaged in concerted activity and were shortly thereafter

6 _____
7 13/Pete Miroyan attempted to make a record of the reasons
8 for the discharges in a memo dated March 8, 1980, the date of the
9 discharges that he ghost wrote to himself from the foreman.
10 Neither the foreman or the employees saw the memos. The memos,
11 which are substantially the same for each of the four employees,
12 state that the Employer and the supervisor changed the prescribed
13 method of picking to accommodate certain employee complaints:

14 The net results of these changes were un-
15 successful in that certain problems created
16 by the new system could not be corrected.
17 These problem areas could only be resolved
18 by employee cooperation and were uncontrol-
19 lable by management and the supervisor ...
20 In short the system did not meet the re-
21 quirements of management nor the satisfac-
22 tion of the employees. . . .

23 In an attempt to accommodate the employees,
24 and also provide regular picking each day,
25 readjustments were made, but were unsuccess-
26 ful. At this time, this employee refused to
perform his duties as then prescribed by the
Employer and became disruptive and insubor-
dinate, causing a breakdown in the teamwork
required

These facts [were] reported to the Employer,
and appeared to be in fact true and severely
eroding the team work and morale of the
picking crew, all to [the] detriment of both
the Employer and employees. For this reason,
this employee was discharged.

It is notable that as of the date of the discharge, the four em-
ployees are indirectly being blamed for the "failure" of the pick-
ing system, and that the supposed disruption and insubordination
is not described or specified. It is also notable that the Em-
ployer's major business justification defense, the threatened re-
signation of the foreman, is not mentioned.

1 discharged. The Company did not prove that the discharge was moti-
2 vated by a legitimate and substantial business justification. I
3 find that Respondent's termination of the four employees violated
4 51153(a) of the Act.

5 THE REMEDY

6 Having found that Respondent engaged in certain unfair
7 labor practices within the meaning of §1153(a) of the Act, I shall
8 recommend that it be ordered to cease and desist therefrom and to
9 take certain affirmative action designed to effectuate the policies
10 of the Act.

11 Having found that Respondent unlawfully discharged
12 Florentine Jauregui, Catarino Castaneda, Manuel Bolanos and Pedro
13 Monreal, I shall recommend that Respondent be ordered to reinstate
14 them and make each whole for any losses incurred as the result of
15 Respondent's unlawful discriminatory action in the manner set forth
16 in Sunnyside Nurseries, Inc., 3 ALRB No, 42 (1977).

17 Upon the basis of the entire record, the findings of
18 fact, the conclusions of law and pursuant to §1160.3 of the Act, I
19 hereby issue the following recommended:

20 ORDER

21 Respondent, its officers, agents, supervisors and repre-
22 sentatives shall:

23 (1) Cease and desist from:

24 (a) Discharging employees for engaging in concerted
25 activities for mutual aid or protection,

26 (b) In any like manner interfering with,

1 restraining or coercing employees in the exercise of rights gua-
2 ranteed employees by §1152 of the Act.

3 (2) Take the following affirmative action which is
4 deemed necessary to effectuate the policies of the Act:

5 (a) Offer Florentino Jauregui, Catarino Castaneda,
6 Manuel Bolanos and Pedro Monreal full and immediate reinstatement to
7 their former or substantially equivalent jobs without prejudice to
8 their seniority or other rights and privileges and to make each of
9 them whole in the manner described above in the section called
10 "Remedy" for any losses suffered as a result of the terminations.

11 (b) Preserve and make available to the Board or its
12 agents, upon request, for examination and copying, all payroll re-
13 cords, social security payment records, time cards, personnel re-
14 cords and reports, and other records necessary to analyze the back
15 pay due to the foregoing named employees.

16 (c) Distribute the following Notice to Employees
17 (to be printed in English and Spanish) to all present employees and
18 all employees hired by Respondent within six months following ini-
19 tial compliance with this Decision and Order and mail a copy of said
20 Notice to all employees employed by Respondent between March 8,
21 1980, and the time such Notice is mailed if they are not employed
22 by Respondent. The Notices are to be mailed to the employees' last
23 known address, or more current addresses if made known to Respon-
24 dent.

25 (d) Post the attached Notice in a prominent place
26 at the Respondent's place of business in an area frequented by

1 employees and where other Notices are posted by Respondent for not
2 less than a six-month period.

3 (e) Have the attached Notice read in English and
4 Spanish on Company time to all employees by a Company representa-
5 tive or by a Board agent and to accord said Board agent the opportu-
6 nity to answer questions which employees may have regarding the
7 Notice and their rights under §1152 of the Act.

8 (f) Notify the Regional Director of the Salinas
9 Sub-Regional Office within 20 days from receipt of a copy of this
10 Decision and Order of steps the Respondent has taken to comply
11 therewith, and to continue reporting periodically thereafter until
12 full compliance is achieved.

13 Copies of the Notice attached hereto shall be furnished
14 Respondent for distribution by the Regional Director for the
15 Salinas Regional Office.

16 Dated: February 11, 1981

17 AGRICULTURAL LABOR RELATIONS BOARD

18 By

Ruth Friedman

19

Ruth Friedman Administrative
20 Law Officer
21
22
23
24
25
26

1 NOTICE TO EMPLOYEES

2 After a hearing in which each side presented evidence, the
3 Agricultural Labor Relations Board has found that we violated the
4 Agricultural Labor Relations Act by interfering with, restraining,
5 and coercing employees in the exercise of the rights guaranteed them
6 by Section 1152 of the Agricultural Labor Relations Act. We have
7 been ordered to notify you that we will respect your rights in the
8 future. We are advising each of you that we will do what the Board
9 has ordered, and also tell you that:

10 The Agricultural Labor Relations Act is a law that gives
11 all farm workers these rights:

- 12 (1) To organize themselves;
13 (2) To form, join or help unions;
14 (3) To bargain as a group and choose whom they want to
15 speak for them;
16 (4) To act together with other workers to try to get a
17 contract or to help or protect one another;
18 (5) To decide not to do any of these things,

19 Because this is true, we promise that:

20 WE WILL NOT do anything in the future that forces you to
21 do, or stops you from doing any of the things listed above.

22 WE WILL NOT discharge, lay off, or otherwise discriminate
23 against employees with respect to their hire or tenure of employ-
24 ment because of their involvement in activities of mutual aid or
25 protection.

26 WE WILL OFFER Florentine Jauregui, Catarino Castaneda,
Manuel Bolanos and Pedro Monreal their old jobs back and we will
pay each of them any money they lost because we discharged them.

Dated:

MUSHROOM FARMS, INC.

By _____
(Representative) (Title)

THIS IS ALL OFFICIAL NOTICE OF THE AGRICULTURAL LABOR RELATIONS
BOARD, AN AGENCY OF THE STATE OF CALIFORNIA.

DO NOT REMOVE OR MUTILATE