

**Harkness-Colgate-Bartell, Inc., d/b/a United Packing Co. and Blanca Ybarra. Case 32-CA-4923**

13 August 1984

**DECISION AND ORDER**

**BY CHAIRMAN DOTSON AND MEMBERS  
ZIMMERMAN AND HUNTER**

On 16 January 1984 Administrative Law Judge Roger B. Holmes issued the attached decision. The General Counsel filed exceptions and a supporting brief, and the Respondent filed an answering brief to the General Counsel's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.

The judge dismissed the complaint allegation that the Respondent violated Section 8(a)(1) of the Act by discharging Blanca Ybarra on 29 September 1982. We agree with the General Counsel that Ybarra's discharge violated Section 8(a)(1).

The record shows that Ybarra worked as a fruit packer for 12 years in the Respondent's fruit packing and shipping business. She worked along a conveyor belt where she would pick up fruit released onto the belt by automatic dumpsters and pack it into boxes. Graders working on the main line have the initial responsibility of removing damaged fruit from the line. Inspectors positioned at the end of the line make random inspections of packed boxes. Those boxes containing more than three bad pieces of fruit are returned to the original packer for repacking.

On 10 August 1982 Ybarra and six other employees formed a committee because of their dissatisfaction with the working conditions at the Respondent's packing facility. Ybarra was the spokeswoman for the committee that complained to Packing Supervisor Louis Salazar and Plant Supervisor George Borello that senior employees were not getting enough hours and that the floorladies were mistreating some packers. At a meeting in late August Ybarra questioned the Respondent's president, Bill Colgate, about the disparate treatment of two employees who walked off the job.

The undisputed evidence shows that on 28 September there were more problems than usual on the packing line because a great deal of soft fruit and fruit containing brown rot was being dumped. Head floorlady Katherine Quindt testified that she put extra graders along the line because the fruit

was in such poor condition. Quindt also testified that approximately 15--20 boxes were returned to employees for repacking on 28 September and that she walked up and down the line between four and six times warning the employees that the fruit was bad.<sup>1</sup>

Upon leaving work that same day, Ybarra met Salazar and inquired as to the status of another employee's complaint of mistreatment by one of the floorladies. Salazar answered that the employee had met with Borello and that Salazar "washed his hands" of the affair because Borello did not want to listen. Ybarra responded, "Well maybe we need a Union here."

Ybarra was called into Borello's office the next day. Borello started the conversation by saying that he thought Ybarra was unhappy working for the Respondent. Ybarra and Borello testified to somewhat different versions of the remainder of the conversation.<sup>2</sup> The conversation ended with Borello discharging Ybarra after she rejected his suggestion that she quit.

In analyzing this case, the judge found and we agree that the General Counsel made a prima facie case under *Wright Line*.<sup>3</sup> Thus he found the discharge of long-time (12 years) employee Ybarra occurred in the middle of the workweek close to the end of the packing season and shortly after Ybarra's active participation in meetings regarding employee dissatisfaction with the current working conditions at the Respondent's packing facility.<sup>4</sup>

Having found that the General Counsel met his burden under *Wright Line*, the judge turned to whether the Respondent sustained its burden "that the same action would have taken place even in the absence of protected activity." In finding that the Respondent had met its burden, the judge relied on testimony that Ybarra's work deteriorated during the 2 months prior to her discharge and that Ybarra packed at least four boxes of peaches that were rejected by inspectors the day preceding her discharge. A careful review of the record evidence convinces us that the Respondent failed to satisfy its burden under *Wright Line*.

As to Ybarra's alleged deteriorating work, the judge relied solely on the testimony of Supervisor Quindt. Quindt's testimony on this matter was limited to her remark on direct examination that Ybar-

<sup>1</sup> Quindt testified that Ybarra had five boxes returned for repacking. However, Quindt stated that she did not write down the first rejection as she did with the other four. Ybarra testified to having only four boxes rejected.

<sup>2</sup> See judge's decision item 9; the events of 29 September.

<sup>3</sup> 251 NLRB 1083 (1980).

<sup>4</sup> Chairman Dotson notes that no exceptions were filed to the judge's finding of a prima facie case. See *NLRB v. Cast-A-Stone Products*, 479 F.2d 396 (4th Cir. 1973).