Bakersfield, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

PIONEER NURSERY/RIVER WEST, INC., Employer, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Petitioner.	)	Case No. 82-RC-1-D 9 ALRB No. 38

DECISION AND ORDER

Following a Petition for Certification filed by the United Farm Workers of America, AFL-CIO (UFW) on April 5, 1982, the Regional Director conducted a representation election on April 12, 1982, among the agricultural employees of Pioneer Nursery (Pioneer). The official tally of ballots showed the following results:

UFW	40
No Union.	16
Challenged Ballots.	17
Total	73

Pioneer thereafter timely filed post-election objections and, based thereon, the Executive Secretary ordered a hearing to resolve the following issues:

> Whether Pioneer Nursery and River West, Inc. are joint employers, and if so, whether the employees of River West, Inc. were improperly disenfranchised by not being included in the election conducted on April 12, 1982, thereby affecting the outcome of the election.

A hearing on the above objection was held on August 18

and 19, 1982, before Investigative Hearing Examiner (IHE) Erasmo Elias, whose initial Decision issued December 9, 1982. The IHE found that Pioneer and River West, Inc. (River West) were not a joint employer or a single integrated employer and recommended that the UFW be certified as the exclusive bargaining representative of the employees of Pioneer Nursery only.

Thereafter Pioneer and River West filed timely exceptions to the IHE's Decision and a brief in support thereof and the UFW filed a response to the exceptions.

Pursuant to Labor Code section 1146[1/] the Agricultural Labor Relations Board (ALRB or Board) 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 briefs and has decided to affirm the IHE's rulings,[2/] findings, and conclusions only to the extent consistent herewith.

In this case, we are called upon to determine whether Pioneer Nursery and River West, Inc. are a single employer for purposes of the Agricultural Labor Relations Act (ALRA or Act). Under section 1156.2, the appropriate unit for collective bargaining "... shall be all the agricultural employees of an

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[1/] All section references herein are to the California Labor Code unless otherwise stated.

[2/] We find that the letter of Pioneer's former attorney (UFW Exhibit No. 2) was properly received into evidence at the hearing, but in the light of the ambiguous language of the letter and the extensive evidence of the close relationship between the companies we do not find it probative.

[agricultural] employer."[3/] Thus, a determination as to the statutory employer controls the scope of the bargaining unit. If the relationship between Pioneer and River West is such that the two companies together must be considered a single employer, River West's employees must be included in the bargaining unit. Because River West had 80 employees during the eligibility period, i.e., the payroll period prior to the filing of the certification petition, and those 80 employees were not permitted to vote, the election will have to be set aside if Pioneer and River West are found to be the single statutory employer of the unit employees.

We have previously considered the issue of whether nominally distinct agricultural entities should be considered one employer for purposes of the Act. In Louis Delfino (1977) 3 ALRB No. 2, we announced that since "the patterns of ownership and management are so varied and fluid," we would not establish a mechanical rule to apply in cases in which it is contended that two or more entities function as a single agricultural employer. Instead, we specified a number of factors that we would consider in making such determinations on a case-by-case basis.

What has emerged thus far from our case-by-case approach are several separate concepts of the arrangements which constitute single employers. In Louis Delfino, supra, 3 ALRB No. 2, four

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[3/] This assumes that the agricultural employees are employed in a single area or in contiguous geographical areas. See our discussion on this issue, infra.

nominally separate ranches with similar operations were found to constitute a single employer. All four ranches were involved solely in the growing of artichokes. We stated that such factors as similarity of operations, interchange of employees, common management, common labor relations policy, and common ownership would be considered in making our determination of single employer-status.

In two later cases, Abatti, Inc. and Abatti Produce, Inc., (1977) 3 ALRB No. 83, and Rivcom Corp. and Riverbend Farms, Inc. (1979) 5 ALRB No. 55, we examined separate operations which were not similar as in Delfino, supra, but which were functionally integrated, and concluded that the integrated operation in each case constituted a single employer. In Abatti, supra, one entity raised the crops while the other performed the harvesting. In Rivcom, supra, one entity was a farming enterprise while the other was a harvesting and packing operation. In Abatti and Rivcom, supra, we approved the use of the National Labor Relations Board's (NLRB) criteria to determine the degree of functional integration of nominally-separate entities. In such functional-integration cases, we focus primarily on the factors of common ownership, common management, interrelation of operations, and common control of labor relations.

The difference between the Delfino analysis and the Abatti/Rivcom analyses lies in the nature of the entities being examined. Delfino involved separate but similar operations while Abatti/Rivcom involved dissimilar, but functionally integrated,

operations. Thus, while each type of analysis accords great weight to the factors of common ownership, common management, and common control of labor relations,[4/] the conclusion in Delfino was based on the similarity of operations and interchange of employees while the conclusions in Abatti/Rivcom were based on the functional interrelation of the operations.

In Signal Produce Company and Brock Research, Inc. (1978) 4 ALRB No. 3, the IHE considered both sets of factors in resolving the single employer issue because the operations at issue, like those herein, fit neither the Delfino nor the Abatti/Rivcom model. In Signal, like the IHE in the instant case, we found two commonly managed but unintegrated and dissimilar operations to constitute statutorily separate employing entities. Although the lack of functional integration and the dissimilarity of the operations played an important part in the separate-employers finding in Signal, the two companies were owned by separate, albeit related, individuals and the common management and control was not as extensive as in the instant case.

As we noted in Delfino, each of these cases must be

[4/] As we noted in Rivcom, supra, 5 ALRB No. 55, pages 6-7, due to the substantial amount of direct control over employees' wages and working conditions exercised by labor contractors in agriculture, the statutory employer may not have direct control over labor relations. "In view of the unique role of the farm labor contractor in agricultural employment, less weight is accorded the factor of direct control over labor relations than in the industrial setting." Even under the NLRA the absence of a common labor relations policy does not preclude a finding of single-employer status. (Canton Carp's, Inc. (1959) 125 NLRB 483, 483-484 [45 LRRM 1147].)

considered in its total factual context, and we do not intend to apply a mechanical formula in determining whether companies are single or separate employers.

In the instant case, common ownership, common management and common control of labor relations are all well established in the record.[5/]

Mr. Kenneth Puryear and Mr. Henry Pruitt Anderson each owns 49 percent of Pioneer Nursery stock and 50 percent of River West stock. The UFW does not dispute that there is common ownership of the two enterprises.

Mr. Anderson, Mr. Puryear, and Mr. Norman Blackwell are the sole officers for both companies. Kurt Anslinger owns two percent of the Pioneer Nursery stock. Mr. Anderson and Mr. Puryear manage and direct both corporations and make all major decisions concerning the agricultural operations of Pioneer Nursery and River West. They frequently visit the worksites of both enterprises. They decide which crops are to be planted at which ranch; they also decide insurance matters and when to employ labor contractors.

The IHE found that the labor relations policy and the

[5/] To find single-employer status, Member Carrillo would require more extensive proof of the exercise of common control over labor relations in cases where commonly-owned and commonly-managed enterprises are not functionally interrelated and involve dissimilar operations. (See Clark Concrete Construction Corporation (1956) 116 NLRB 321 [38 LRRM 1247].) Although the instant record is lacking in direct evidence of the locus of decision-making as it relates to labor relations and policy, the extremely active and personal involvement in the day-to-day operations of both Pioneer and River West by their owner-managers indicates that they retain control over all aspects of both businesses.

day-to-day operations of both Pioneer Nursery and River West are controlled and directed by Anderson and Puryear, and that they establish the wage rates as well as other terms and conditions of employment.[6/] Accordingly, he concluded that there is common control of labor relations policy.

Unlike the artichoke ranches in Delfino, there is very little similarity of operations between Pioneer Nursery and River West; Pioneer Nursery is involved only in the planting and growing of pistachio root stock while River West, a farm management company, manages and/or provides labor for the various agricultural properties owned individually by Mr. Puryear and Mr. Anderson, as well as the pistachio orchards owned by Pioneer. River West also leases and farms 1,700 acres on which it plants wheat and corn.

While Pioneer and River West are not functionally integrated components of a single operation as in Abatti, they are interrelated in several important respects. The two companies are financially interdependent and jointly submit budgets to the bank, thus guaranteeing each other's loans. Even though River West farms a large amount of acreage, it also manages and

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[6/] The fact that Pioneer recently issued an employee handbook to its employees which does not apply to River West employees is not significant evidence of separate control of labor relations. No testimony was elicited to establish who made the decision to issue the handbook and, given the control exercised by owners Anderson and Puryear, the inference is inescapable that they were at least consulted. In addition, we note that certain provisions of the handbook are more appropriate for field workers than for nursery workers, and we question whether the handbook is actually used in the implementation of labor policy at the nursery. See Handbook, Petitioner's Exhibit No. 1, Breakdown Time, page 13.

provides the labor for Pioneer's pistachio orchards. Pioneer owns between 75 to 80 percent of all the equipment used by River West, although Pioneer seldom uses that equipment in its nursery operation. Although River West pays Pioneer a rental fee for use of the equipment, the arrangement is oral and casual and the payments infrequent and erratic. Most of River West's officials and supervisors are paid from Pioneer's payroll account. Both companies share the same office and the clerical work for both companies is done by the same employees. The accountants and bookkeepers are on River West's payroll but perform services for both companies. Pioneer does not pay River West for the labor performed on its orchards. The same labor contractor is used by both entities. Although the companies' controller testified that he assumed different workers were assigned to work at Pioneer and River West when the contractor was hired for operations occurring simultaneously at both locations, employees hired by the labor contractor may have worked at both companies at different times of the year.

Having thoroughly considered the relationship between Pioneer Nursery and River West, Inc., we conclude that they constitute a single employer for purposes of the ALRA.[7/] Since

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[7/] In its response brief, the UFW argues that Pioneer and River West have not met their burden of proving that their operations are in contiguous geographical areas. See section 1156.2. Therefore, the Union argues, even if they are found to be a single employer, the bargaining units should be separate. The issue of whether Pioneer and River West's operations are in contiguous geographical areas was not specifically set for hearing in this case. However the IHE properly raised it. We will generally

(fn. 7 cont. on p. 9.)

River West had 80 employees during the payroll period prior to the filing of the certification petition and those employees were not allowed to vote, the election must be set aside.

ORDER

It is hereby ordered that the election in this matter be, and it hereby is, set aside and that the petition be, and it hereby is, dismissed.

Dated: June 29, 1983

ALFRED H. SONG, Chairman

JORGE CARRILLO, Member

PATRICK W. HENNING, Member

(fn. 7 cont.)

presume that operations in close geographical proximity are in a "single definable agricultural production area." (See John Elmore (1977) 3 ALRB No. 16; Egger & Ghio Company Inc., (1975) 1 ALRB No. 17.) In the instant case, no evidence was presented which would lead us to conclude that the operations were not in such a single production area.

CASE SUMMARY

Pioneer Nursery/River West, Inc.

9 ALRB No. 38
Case No. 82-RC-1-D

IHE Decision

Investigative Hearing Officer (IHE) Erasmo Elias recommended that the election directed among the employees of Pioneer Nursery (Pioneer) be certified and that the objection that River West's approximately 80 employees had been disenfranchised be dismissed. He found that Pioneer and River West were separate employers despite the fact that both companies were commonly owned and managed because of the dissimilarity and lack of integration of operations and minimal interchange of employees and the consequent absence of common work-related interests of the employees. He also overruled Pioneer/River West's objection to the admission into evidence of a letter to the ALRB from Pioneer's attorney, which asserts, for purposes of an unrelated unfair labor practice charge, that Pioneer "does not own or operate any agricultural business in California other than its Delano operation." The IHE considered this letter as evidence that the companies are separate employers.

Board Decision

The Board declined to accept the IHE's recommendation, found Pioneer and River West to be a single statutory employer and set the election aside due to the disenfranchisement of River West's employees. The Board agreed with the IHE that the dissimilarity and lack of functional integration of the operations of Pioneer and River West distinguished it from the Delfino and Abatti-Rivcom cases (Louis Delfino (1977) 3 ALRB No. 2, Abatti, Inc. and Abatti Produce, Inc. (1977) 3 ALRB No. 83, and Rivcom Corp. and Riverbend Farms, Inc. (1979) 5 ALRB No. 55) but found that the Decision in Signal Produce company and Brock Research, Inc. (1978) 4 ALRB No. 3 was not controlling because the owners of Pioneer and River West, unlike the owners of Signal and Brock, were identical and exercised extensive personal control over the operations of both companies. In addition, despite the lack of functional integration of operations, evidence of interrelation included single office, single clerical and accounting staff, financial interdependence, use of the same labor contractor and the fact that Pioneer owned equipment used by River West and both companies had paid employees and officials who worked for River West. Finally, the Board announced a presumption that operations in close geographic proximity are in a "single definable agricultural production area" and therefore "contiguous" for purposes of the bargaining unit.

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

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STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:

PIONEER NURSERY/
RIVER WEST, INC.,

Employer,

and

UNITED FARM WORKERS
OF AMERICA, AFL-CIO,

Petitioner.

Case No. 82-RC-1-D

George Preonas,
Seyfarth, Shaw, Fairweather & Geraldson
for the Employer.

Chris Schneider and Marcos R. Camacho,
for the United Farm Workers of America,
AFL-CIO

DECISION

STATEMENT OF THE CASE

ERASMO E. ELIAS, Investigative Hearing Examiner: This case was heard by me on August 18 and 19, 1982 in Bakersfield, California.

A Petition for Certification was filed on April 5, 1982 by the United Farm Workers of America, AFL-CIO (herein "UFW") to represent the agricultural employees of Pioneer Nursery (herein Pioneer). In its petition, the UFW asserted that the appropriate bargaining unit consisted of approximately 50 employees employed

by Pioneer Nursery on the corner of Garces and Browning Streets in Delano, California and that this unit included all of the Employer's employees in the state of California. It was further asserted that the Employer's only agricultural comodity was nursery trees. On April 7, 1982, the Employer filed the mandatory response to the petition, in which it alleged that the Employers were Pioneer Nursery and River West Inc. (herein "River West"). The Employer further asserted that the appropriate unit consisted of not only the 73[1/] Pioneer Nursery employees who worked in the payroll period immediately preceding the filing of the petition, but also the 80 employees employed by River West, Inc. In a letter that was attached to the Employer's response, also dated April 7, 1982, the Employer's representative asserted that Pioneer and River West were joint employers as the operations of both companies were under common ownership and management.

After conducting an investigation, the Delano Regional Director determined that Pioneer Nursery and River West were not joint employers and decided to conduct the election only among the employees of Pioneer. On April 8, 1982 the Agricultural Labor Relations Board (herein Board) issued a Notice and Direction of Election, to be held on April 12, 1982.

An election was held on April 12, 1982 with the following results:

1/ Sixty-two of those employees were hired through Renteria Farm Services, a labor contractor.

UFW	40
No Union.	16
Challenges.	17
Total	73

On April 16, 1982 the Employer timely filed a Petition to Set Aside the Election on the grounds that Pioneer Nursery and River West Inc. were a single employer and that the bargaining unit should therefore have included all of the agricultural employees of both companies. The Employer argued that because of the Delano Regional Director's determination that Pioneer Nursery and River West were not a single employer, eighty River West employees were improperly excluded from the bargaining unit and thereby disenfranchised.

On June 1, 1982 the Executive Secretary of the Board issued a Notice of Objection set for hearing, and on June 2, 1982 issued a Notice of Investigative Hearing. In both documents the Executive Secretary stated that the issue set for hearing was "Whether Pioneer Nursery and River West Inc. are joint employers, and if so, whether the employees of River West Inc. were improperly disenfranchised by not being included in the election conducted on April 12, 1982, thereby affecting the outcome of the election."

The Employer and the UFW were represented at the hearing and were given full opportunity to participate in the proceedings. Both parties filed post-hearing briefs.

Upon the entire record, including my observation of the demeanor of the witnesses, and after consideration of the

briefs filed by the parties, I make the following findings of fact and conclusions of law.

FINDINGS OF FACT

Pioneer Nursery, which was formed in 1968, owns and operates a 40 acre nursery on the corner of Garces and Browning Streets in Delano, California. The nursery specializes in the growing of pistachio tree root stock for sale. In addition to the nursery operation, Pioneer Nursery also owns:

1. A seventy acre pistachio orchard called the "Road 152 Ranch" in southern Tulare County. This orchard is located approximately two and one-half miles north of the nursery.

2. A forty acre pistachio orchard that is part of the "G.P. Ranch"[2/] in Lost Hills, Kern County. This orchard is located about forty miles southwest of the nursery.

3. A forty acre pistachio orchard called the "Avenue 16" Ranch in Tulare County which is located approximately eight miles northeast of the nursery.

Mr. Kenneth Puryear is the President and Treasurer of Pioneer Nursery while Mr. Henry Pruitt Anderson, III is the Secretary and one of Pioneer Nursery's Vice-Presidents. Mr. Puryear and Mr. Anderson each own forty-nine percent of Pioneer Nursery's common stock. Mr. Kurt Anslinger owns the remaining two percent of the company stock but holds no position with the company. Mr. Norman Blackwell, also a Pioneer Nursery Vice-President, is the only other officer of the company.

2/ "G.P." stands for General Petroleum, a road bordering that ranch.

River West Inc., a farm management company, was formed in 1974 for the purpose of managing the properties belonging to Pioneer Nursery (excluding the nursery), Mr. Kenneth Puryear, and Mr. H. P. Anderson. Mr. Anderson is the President and Treasurer of River West while Mr. Puryear is the Secretary and a River West Vice-President. Mr. Anderson and Mr. Puryear each own fifty percent of River West's common shares. As with Pioneer Nursery, Mr. Norman Blackwell is also a River West Vice-President and the only other officer.

River West does not own title to any land but instead manages and/or provides labor for the various agricultural properties owned by Mr. Ken Puryear and Mr. H. P. Anderson, as well as the pistachio orchards owned by Pioneer Nursery. Specifically, River West employees work on the following land:

1. The "Little Creek Ranch" - a pistachio orchard owned by Mr. Puryear which is about 15 miles south of the nursery.

2. The "River Ranch" in Lost Hills, Kern County, which is half owned by Mr. Anderson and half owned by Mr. Puryear. Title to the property is held separately by Mr. Anderson and Mr. Puryear and their lands are adjacent to one another and referred to as one ranch. It is located about 22 miles west of the nursery.

3. The "G. P. Ranch" in Lost Hills, Kern County which is entirely owned by Mr. Anderson with the exception of a 40 acre orchard owned by Pioneer Nursery. The farm is located about 30 miles southwest of the nursery.

4. The Road 152 Ranch, referred to above, which is a 40 acre pistachio orchard belonging to Pioneer Nursery.

5. The Avenue 16 Ranch, referred to above, which is also a pistachio orchard owned by Pioneer Nursery.

6. The Tulare Ranch or "Cartmill Ranch" which is located thirty-seven miles north of the nursery and owned by Mr. Anderson.

River West also leases, in its own name, approximately 1,000 acres in Lost Hills, close to the G. P. Ranch, from Getty Oil. This land is planted in wheat. River West leases another 700 acres in Lost Hills from Standard Oil which is planted in corn, although part of that land is fallow. River West formerly leased a 3,000 acre tract in Lost Hills called the "Tejon Ranch" until last year. Those 3,000 acres were planted in cotton, grain and other crops.

The two companies share the same office located at 800 N. Chester Avenue, Bakersfield. The office is leased to River West but Pioneer pays part of the rent. Both companies have the same phone number although River West pays the phone bill.

All clerical work for both companies, including payroll accounts, is performed by the same employees under the supervision of Norman Blackwell, the office manager and controller for Pioneer and River West. There is no division of responsibility between the people working on Pioneer or River West accounts. Laurie Schultz prepares the payroll and accounts payable for

both companies while Kevin Blackwell prepares the accounts receivable. Mr. Les DeWitt is the accountant and bookkeeper for both companies. All three individuals, besides Mr. Blackwell, are on the River West payroll.

The two companies use the same insurance broker for worker's compensation, medical and automobile insurance and have single policy numbers for the various insurance policies. They also have the same equipment floater insurance policy. Pioneer and River West maintain separate payroll accounts at the same bank. The budgets for both companies are prepared by Mr. Blackwell and must both be presented to the bank as each company must guarantee the budget of the other. The bank will approve the two budgets as a package.

Mr. Anderson and Mr. Puryear, in addition to being stockholders and officers, are also the general managers and owner/operators of the two companies. However, the day to day management of the field operations of both companies is the responsibility of Mr. Leland Klein, also known as Bucky Klein, who is a Pioneer employee and the general superintendent for both companies.

Anderson, Puryear, Blackwell, and Klein were all formerly on the River West payroll but changed over in 1981 because of the relative financial condition of the two companies. Mr. Blackwell testified that the reason for the changeover was that River West had experienced some bad farming years and was short of cash. They now receive no

compensation from River West although they are responsible for the management and supervision of River West operations.

Pioneer Nursery owns seventy-five to eighty percent of all the equipment needed by River West to conduct its farming operations, including cotton pickers, tractors, cultivators, discs, service equipment, forklifts, tractor-trailors, trucks, vans, cotton vans, caterpillar crawlers, and Steigar tractors.[3/] Mr. Blackwell testified that Pioneer owns most of the equipment because it was the only company with collateral at the time River West was formed. River West owns about three or four small field tractors, a pick-up truck and some pipe trailors.[4/]

There are no written leases concerning the use of Pioneer Nursery equipment by River West employees. The leases are oral and do not provide for a fixed payment, nor is there a set time for payment. However, River West does pay an annual rental fee at least once a year for the equipment it leases, and sometimes makes up to three payments per year.

The two companies share the same mechanic who is on the River West payroll, but responsible for repairing and maintaining the equipment owned or used by both companies.

1. Pioneer Nursery Operations

The 40 acre nursery operation in Delano contains a green house which occupies about one-half an acre. Pioneer Nursery employees work at this location as do workers employed

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3/ See Employer's Exhibit No. 4 for a complete list of the equipment owned by Pioneer Nursery.

4/ See Employer's Exhibit No. 5 for a complete list of the equipment owned by River West.

by Renteria Farm Services, Inc. The nursery is involved only in the planting and growing of pistachio root stock. It is the sole source of pistachio trees planted in orchards belonging to Pioneer Nursery, Mr. Puryear, and Mr. Anderson.

From 1979 to 1982 Pioneer Nursery grew approximately 1,350,000 trees. Of this total number, about 46,000 trees were planted in 1981 on sixty acres belonging to Mr. Anderson in Tulare, and 280 acres at the Little Creek Ranch belonging to Mr. Puryear. There was no charge for these trees. Mr. Anderson testified that the nursery normally sells more than seventy-five percent of its trees to outside growers. However, from 1979 to 1982, that amount was closer to ninety-five percent.

The nursery is a year-round operation employing 73 employees at peak. The nursery grows the pistachio root stock for its root system. A preferable nut-bearing type of pistachio is later grafted onto the rootstock once the plant leaves the nursery and is planted in the orchard. Workers at the nursery start the plant from seed in the hot house, raise the plants there for sixty to ninety days, then transplant them outside to larger containers.

The work at the nursery, which is done exclusively by Pioneer Nursery employees, consists of cleaning the greenhouse, rebuilding tables, spreading starter mix, spreading pots and filling them with seeds, growing and weeding the seedlings, and later placing the plants outside where they are transplanted from small to large containers. Pioneer Nursery employees

will then stake, tie, train, prune, and weed the plants, as well as spray them for insects and weeds. The process usually takes about one year from the time the seeds are planted in January or February until the root stock is ready for shipment in November or December. The trees leave the nursery when they are anywhere from 18 inches to three feet tall.

The nursery sells the root stock to growers but does not get involved in the budding or grafting of the plants. On occassion, Pioneer will refer the buyer to a specialist who does grafting. Pioneer Nursery trucks will sometimes be used to transport the trees. On such occassions, Pioneer Nursery employees will load the trees and River West employees will drive the trucks. The Employer presented no evidence as to how often this practice occurs.

Pioneer Nursery employees work almost exclusively at the nursery. The only other ranch the Pioneer agricultural employees work at is the orchard at the Road 152 ranch that Pioneer owns. In 1980, about twelve to fifteen Pioneer Nursery employees helped in the mechanical harvesting of nuts for consumption purposes at the Road 152 Ranch. That occurred for only a two-week period in September or October of that year. On the average, mechanical harvesting involves three crews of four to five employees each. Mr. Blackwell testified that in 1981, a labor contractor was used to do the harvest.

Aside from the 1980 mechanical harvest, the only other time Pioneer Nursery employees were recently involved in

the harvest of pistachio nuts for consumption was in 1982 when some of the pistachio trees at the Road 152 Ranch were young and had to be shaken by hand as opposed to mechanically shaken. The number of Pioneer Nursery employees involved in this operation was unspecified. Before 1982, the last time Pioneer Nursery employees were involved in shaking pistachio trees by hand for consumption purposes was five years ago.

About eight to ten Pioneer Nursery employees are also involved in the hand harvest of pistachio nuts for propagation purposes at the Road 152 Ranch. This harvest usually lasts about thirty days and occurs in July or August before the time for the mechanical harvest. Pioneer Nursery employees might also do some of the irrigating at the Road 152 Ranch, although River West employees might also sometimes do the irrigating. Such irrigation is done once a month, six times a year. Other than the above-mentioned work at the Road 152 Ranch, Pioneer Nursery employees do not work at any other ranch besides the nursery. An attempt was previously made to use Pioneer employees to prune adult pistachio trees at the Road 152 Ranch, but this attempt was abandoned because the Pioneer Nursery employees did unsatisfactory work. Pioneer employees do not perform any work at the other Pioneer orchards on the Avenue 16 or G. P. Ranches, nor do they perform any type of work whatsoever on lands owned or leased by River West, Mr. Anderson, or Mr. Puryear.

Mr. Bud Knight, or E. W. Knight, is on the Pioneer Nursery payroll and is the nursery manager. His supervisor

is Mr. Bucky Klein. Mr. Knight spends most of his time at the nursery, but he will also sometimes supervise the pruning, cultivation, fertilizing, and harvesting at the Pioneer Nursery orchard on the Road 152 Ranch and will also supervise River West employees working at the Avenue 16 Ranch. He does not supervise any other Pioneer Nursery operation, nor any River West operation with the exception of the River West Employees that might work at the Road 152 or Avenue 16 Ranches.

2. River West Operations

As discussed above, River West is primarily a farm management company, although it does lease and farm about 1,700 acres in its own name. At peak, River West employs about eighty employees, including workers supplied by Renteria Farm Services, a labor contractor also used by Pioneer Nursery. Mr. Blackwell testified that the workers supplied by Renteria Farm Services to River West would be different from those working at Pioneer Nursery. River West employees work on the orchards belonging to Mr. Anderson and Mr. Puryear, as well as the orchards belonging to Pioneer Nursery, but they do not work at the nursery site.

In the orchards, River West employees will plant, stake, shape, and tie the trees that are supplied by the nursery. They will also irrigate, disc, prune, harvest, fertilize, cultivate, and spray the orchards. Delfina Cruz supervises the River West specialty pruning crew that works at the various pistachio and almond orchards.

There are no written agreements between Pioneer Nursery and River West concerning services performed by River West employees on Pioneer Nursery orchards, nor any written agreement describing the financial relationship between the two companies. However, Pioneer Nursery does not pay any fees for services performed by River West on the Pioneer Nursery orchards.

In addition to the orchards referred to above, River West employees also perform various other operations on land owned or leased by Mr. Anderson, Mr. Puryear, or River West itself. In the Lost Hills area, which consists of the "G. P." and "River Ranches", River West Farms about 9,400 acres of fee ground.[5/] The following crops are grown on these lands:

100 acres of pistachios

465 acres of almonds

3,000 acres of cotton

1,600 acres of sugar beets

3,000 acres of grain (barley and wheat)

590 acres of alfalfa

450-500 acres of open land

River West employees also work on the 1,700 acres the company leases from Getty and Standard Oil where it grows wheat and corn.

The work in the cotton farming operations consists of preparing the ground, planting, fertilizing, and spraying herbicides by tractor. An airplane is used to defoliate,

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5/ Of that total, 40 acres consists of a pistachio orchard owned by Pioneer Nursery.

and mechanical cotton pickers are used to harvest the cotton. Most of the equipment used by River West employees at the G. P. and River Ranches, e.g. cotton pickers, is owned by Pioneer Nursery. This equipment is never used at the nursery. In fact, a majority of the equipment used in the Lost Hills operations is never used at the nursery. The only equipment used in Lost Hills that might also be used at the nursery is a pick-up truck, a disc, a honda bike, and a forklift. However, there was testimony that equipment and workers do move back and forth between the Road 152 and G. P. ranches all the time.

In working on the sugar beet fields, River West employees will plant, cultivate, water, and spray. The cultivation is done by tractor, and the planting is done mechanically.

With regard to the rest of the crops in the Lost Hills area, River West employees do extensive tractor work, discing, land planning, leveling of ground, fertilizing, cultivating, and packing.

Mr. Anderson testified that each of the ranches where River West employees work has an on-site foreman, but there is no evidence that any of these River West foremen work at the nursery site.

ANALYSIS

The Employer asserts that Pioneer Nursery and River West, although nominally separate corporations, are comonly owned, controlled and managed to such an extent that neither

entity functions without the aid and assistance of the other, and that in all respects their operations are intertwined in a manner that makes them inseparable.

The UFW, on the one hand, contends that mere co-ownership of various entities does not establish that the units comprise a single bargaining unit. It asserts that the diversity in operations between Pioneer Nursery and River West is so great that the two companies clearly form two separate and distinct units, and that Pioneer is thus a proper unit for certification on its own. Moreover, Pioneer's assertion of joint-employer status is contrary to the position it asserted during the year preceding the election. During the course of an unrelated unfair labor practice investigation that was conducted by the Board's Delano Regional Office, Mr. Carl Borden, an attorney representing Pioneery Nursery, asserted that Pioneer Nursery had no relationship whatsoever to any other agricultural entity in the State of California.[6/]

The Board has previously addressed the issue of joint employer status in a series of cases, and set forth several factors to be considered in resolving this issue. In Louis Delfino Company (January, 1977) 3 ALRB No. 2, the Board recognized that the "patterns of [agricultural] ownership and management are so varied and fluid" that it was reluctant to announce any mechanical rules for determining joint employer status. Id at p. 3. Instead, the Board stated that it would look to such

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6/ See Petitioner's Exhibit No. 2.

factors as similarity of operations, interchange of employees, common management, common labor relations policy, and common ownership. Applying these factors to the Delfino case, the Board determined that the four entities in question were in fact joint employers.

In a later case, Abatti Farms and Abatti Produce (July, 1977) 3 ALRB No. 83, the Board approved the use of slightly different criteria to determine the degree of functional integration of two separate entities. The factors cited by the Administrative Law Officer and approved by the Board in finding joint employer status of the two companies in Abatti were the following:

1. Common ownership;
2. Common management/common control of Labor Relations;
3. Interchange of employees/Interrelation of operations;
4. Similarity of operations; and
5. Common labor relations policy

The Administrative Law Officer (herein "ALO") in Abatti acknowledged that some of the came criteria are used by the NLRB in determining this issue:

> "[The NLRB] early reaffirmed the long-established practice of treating separate concerns which are closely related as being a single employer for the purpose of determining whether to assert jurisdiction. The question in such cases is whether the enterprises are sufficiently integrated to consider the business of both together in applying the jurisdictional standards.
>
> The principal factors which the Board weighs in deciding whether sufficient integration exists include the extent of:

1) Interrelation of operations;
2) Centralized control of labor relations;
3) Common management; and
4) Common ownership as financial control.

NLRB, 21st Annual Report, pp. 14-15."
Abatti, supra, ALOD page 17.

The ALO in Abatti was careful to note that the Board did not intend to substitute the factors recited in Delfino for those relied upon by the NLRB. On page 17, footnote number 12, of his decision, the ALO stated that, "...where the NLRB looks to centralized control of labor policy, Delfino apparently looks to whether there is a common labor relations policy; where the NLRB looks to interrelation of operations Delfino looks to similarity of operations."

In Rivcom Corporation and Riverbend Farms, Inc. (August, 1979) 5 ALRB No. 55,[7/] the Board found that Rivcom and Riverbend were a single employer as there was an integration of two functionally different parts. Again, the factors that the Board used in establishing joint employer status were: 1) interrelation of the operations; 2) common management of business operations; 3) centralized control of labor relations; and 4) common ownership.

In Signal Produce (January, 1978) 4 ALRB No. 3, the Board held the Brock Research and Signal Produce were not

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7/ Rivcom, supra, was remanded to the Board on other grounds by the Court of Appeal, Fifth Appellate District in Rivcom Corporation et al. v. Agricultural Labor Relations Board 5 Civil No. 5121 on October 25, 1982.

joint employers as the two companies were not sufficiently integrated. The Board based this finding on the fact that there was no interchange of employees, no similarity of operations, no common labor relations policy, very little common management, separate labor classifications, and different pay rates. The Board further found that there was no common ownership.

Thus, the applicable criteria for determining joint employer status under ALRB precedent includes the following factors:

1. interrelation or similarity of operations;
2. centralized or common control of labor relations policy;
3. common management;
4. common ownership; and
5. interchange of employees.

COMMON OWNERSHIP

Mr. Puryear and Mr. Anderson each own 49 percent of Pioneer Nursery stock and fifty percent of River West's stock. The UFW does not dispute that there is common ownership of the two enterprises.

COMMON MANAGEMENT

Mr. Anderson, Mr. Puryear, and Mr. Blackwell are the sole officers for both companies. Mr. Anderson and Mr. Puryear are intimately involved in the management and direction of both companies and make all major management decisions concerning the agricultural operations of Pioneer Nursery and River West. They decide what crops are to be planted on a particular piece

of property and also decide insurance matters, pay rates, and when to use labor contractors. Management meetings are held as frequently as once a week, or once a month, to discuss matters relating to Pioneer Nursery or River West. Only high level management personnel like Mr. Anderson, Mr. Puryear, Mr. Blackwell, and Mr. Klein are present at those meetings, as well as Mr. Carl Fanucchi, the former general superintendent, who is presently serving as a consultant to the two companies. Mr. Knight, the nursery manager, may also be present sometimes to discuss matters relating to the nursery operation.

Although Mr. Klein is on the Pioneer payroll and is the general superintendent for both companies, he has virtually no contact with the workers at the nursery. If he has any information or orders to be relayed to the nursery employees, he will speak with Bud Knight who will in turn communicate with Graciela Martinez, the nursery forelady. As discussed above, Mr. Knight spends the major portion of his time overseeing the nursery operation. There is no evidence that the nursery forelady, Graciela Martinez, works at any place other than the nursery.

SIMILARITY AND INTERRELATION OF OPERATIONS

Both Pioneer Nursery and River West share a single office and telephone number; both companies utilize the same office personnel; both companies have the same insurance broker and single insurance policy numbers for various types of insurance, and both companies use equipment owned by Pioneer Nursery.

Pioneer's nursery operation in Delano is primarily engaged in the development of pistachio tree root stock. The root stock produced by the orchard has occassionally been planted in the orchards owned by Pioneer Nursery, Mr. Anderson, and Mr. Puryear, but this represents only a very small percentage of the total number of root stock plants produced from 1979 to 1982. The vast majority of the root stock, over ninety percent, was sold to outside growers or companies that are separate from River West or Pioneer Nursery.

Although Pioneer Nursery owns most of the equipment used by River West employees, River West does pay a yearly rental fee for the use of said equipment.

River West is involved in the farming of pistachio orchards, but this makes up only a small percentage of River West's overall operations. In addition to the total 150 acres of pistachio orchards owned by Pioneer, River West also farms 60 acres of pistachios for Mr. Anderson at the G. P. Ranch, and 260 acres of pistachios for Mr. Puryear at the Tulare Ranch. Pioneer Nursery supplied the trees for these orchards at no cost.

River West is also involved in extensive farming operations at the G. P. and River Ranches in the Lost Hills area of Kern County where it farms over 9,000 acres of wheat, barley, cotton, almonds, sugar beets, corn and alfalfa, and also farms about 1,700 acres of wheat and corn in the Lost Hills acres that it leases in its own name. River West is not involved in any type of hot house operations, nor are any of the crops

farmed by River West grown at the nursery with the exception of pistachio trees. However, whereas the nursery cultivates the pistachio plants for their root system and then sells them to other growers, River West cultivates the trees for nut production. Although both the root stock at Pioneer and the pistachio trees in the orchards need to be pruned and tied, Mr. Anderson testified that the nursery workers did not have the skills necessary to prune the adult trees. The root stock leaves the nursery when it attains a height of eighteen inches to three feet, and will reach a height of ten to fifteen feet when fully grown. Whereas the pruning at the nursery is done by hand on small plants, pruning at the orchards is often done with the aid of a tool called a "lopper", which is a long pole with a "pincher" attached to the end of it. Such loppers are never used at the nursery. In fact, Mr. Anderson testified that pruning at the orchard is different from that performed at the nursery.

The planting in the Lost Hills area is performed by River West employees with the use of tractors, whereas the planting at the nursery is done by hand. In fact, most of the heavy equipment used by River West employees in Lost hills is not used at the nursery. However, the trucks and trailers that are used at the nursery to haul trees are also used by River West employees to haul different types of grains.

The only major overlap is field operations between Pioneer Nursery and River West occurs at the Pioneer Nursery orchards. River West employees exclusively farm those orchards,

with the exception of the Road 152 Ranch where twelve to fifteen Pioneer Nursery employees were involved in the mechanical harvest of pistachio nuts for consumption purposes during a two or three week period in 1980. An unspecified number of Pioneer Nursery employees were also involved in the hand-shaking harvest of young pistachio trees for consumption purposes at the Road 152 Ranch in 1982. As of the time of the instant hearing, the mechanical harvest of pistachio nuts for consumption purposes had not yet occurred. Other than the 1980 harvest, there was no evidence that Pioneer Nursery employees were regularly involved in the mechanical harvesting of nuts at the Road 152 Ranch. Their involvement in the handshaking harvest of young pistachio trees for consumption purposes at the Road 152 Ranch this year was the first time they had engaged in such an operation in five years.

Although seed for root stock is obtained by Pioneer employees from Road 152 Ranch, this operation involves only eight to ten workers for a few weeks per year, and there is no evidence as to the percentage of the nursery's propagation seed obtained in this matter. Pioneer Nursery employees might also be involved in the irrigation of the Road 152 Ranch which is done once a month, six times a year, but they do not perform any other type of work whatsoever at the other two Pioneer Nursery orchards at the G. P. and River Ranches.

Other than the pistachio orchards, Pioneer Nursery has no relationship to any of the other crops grown by River West. Specifically, Pioneer Nursery is not involved in the

planting, cultivating, fertilizing, irrigating, or harvesting of the almond orchard (although it did supply the trees for that orchard at no cost), or the diversified row crops like cotton, wheat, milo, barley, alfalfa, or sugar beets.

In the previous cases where the Board has found joint employer status, there was not only common ownership but also a virtual total overlapping of agricultural operations. In Louis Delfino Co., 3 ALRB No. 2, four nominally separate ranches were exclusively involved in growing artichokes, while Delfino owned a packing shed that exclusively handled only those artichokes from the four ranches. In the Abatti case, 3 ALRB No. 83, Abatti Farms carried out the "planting, cultivating, irrigating, growing and selling of agricultural crops..." while Abatti Produce's primary operations involved the "packing, shipping, and selling" of agricultural crops. Moreover, although the functions performed by Abatti Farm's employees involved different skills, i.e. planting, irrigating, etc., than those skills normally used by the employees of Abatti Produce, its crews did at times also perform some harvesting for Abatti Produce. Similarly in Rivcom Corporation, 5 ALRB No.55, Rivcom performed the farming and pre-harvesting operations while Riverbend harvested and packed the fruit. Riverbend also had an exclusive contract with Rivcom for its fruit. Finally, Riverbend's harvesting employees, who were hired through a labor contractor, Triple M, were carried on Rivcom's payroll.

In contrast to the above-referenced cases, there is very little overlap of operations between Pioneer Nursery and

River West, and very little similarity of operations. More than ninety percent of the total acreage farmed by River West is devoted to a variety of crops other than pistachios. In fact, the only times that Pioneer Nursery's agricultural employees ever work on lands managed by River West is when they might be involved for short periods of time, as previously discussed, in the harvest of pistachio nuts for consumption or propagation purposes at the Road 152 Ranch owned by Pioneer Nursery, or when they may have done some irrigation on that land. Thus, aside from the Road 152 Ranch and the nursery, River West employees exclusively farm over ten thousand acres of land owned or leased by Pioneer Nursery, River West, Mr. Anderson and Mr. Puryear without any aid or assistance from Pioneer Nursery's agricultural employees.

Much of the work done by River West employees involves intensive tractor work or the use of other heavy machinery, whereas most of the work done at the Nursery is done by hand. Furthermore, the skills involved are not the same. Whereas Pioneer Nursery employees work with plants that are grown in containers and reach a maximum height of three feet. River West employees will work on diversified row and flat crops, or else in the orchards where the pistachio trees reach a height of ten to fifteen feet. An attempt to use Pioneer Nursery workers to prune the adult pistachio trees at the Road 152 Ranch failed as the workers did the pruning unsatisfactorily. Mr. Anderson testified that pruning in the orchards was different

from that performed at the nursery. A skilled speciality pruning crew employed by River West now does all the pruning at the various orchards.

Irrigation work in the fields, e.g. Lost Hills, is different from that used at the nursery. Whereas mobile sprinkler pipes and flood irrigation are used in Lost Hills, the nursery has a stationary sprinkler pipe system.

INTERCHANGE OF EMPLOYEES

The Employer asserts that there is interchange of employees between the two companies. As in Abatti Farms, the clerical staff performs work interchangeably for both River West and Pioneer, including work done on their payroll accounts. Although the clerical staff performs work for both enterprises, they are all carried on the River West payroll.

Mr. Klein, the general superintendent, and Mr. Knight, the nursery supervisor, both supervise employees for both River West and Pioneer even though they are both on the Pioneer payroll. In the past, there have been various payroll transfers from River West to Pioneer, but these appear to have been confined to supervisory and office personnel. A review of the record indicates that there is interchange of managers, supervisors, and office personnel, but little or no interchange of agricultural employees.

River West employees perform work at Pioneer's orchards on the G. P., Avenue 16 and Road 152 ranches where they irrigate, prune, fertilize, cultivate, disc, weed, and harvest. The same tractor drivers, all of whom are on the River West payroll, work at the Pioneer orchards.

While a small number of Pioneer Nursery agricultural employees do become involved for a short period of time, as previously discussed, in the harvest of pistachios for consumption as well as propogation purposes, they do not work at either the G. P. or Avenue 16 ranch Pistachio orchards that Pioneer owns. These are farmed by River West employees.[8/] Nor do Pioneer employees work at any of the pistachio orchards owned by Mr. Anderson or Mr. Puryear. These orchards are similarly farmed by River West. Finally, Pioneer Nursery employees are not involved in any other of the agricultural operations in which Mr. Anderson, Mr. Puryear, and River West are involved.

With regard to the hand harvesting of pistachio seeds for propagation purposes at the Road 152 ranch by Pioneer employees, there is no evidence that River West employees similarly hand harvest for propagation purposes, nor is there evidence that River West employees worked alongside Pioneer Nursery employees during the two to three week mechanical harvest of pistachio nuts that took place in 1980 at the Road 152 Ranch, or during the hand-shaking harvest of pistachio nuts at the Road 152 Ranch that took place in 1982.

Workers supplied by Renteria Farm Services, Inc. are used by both companies, but each company pays separately for the workers it uses. As previously discussed, Mr. Blackwell

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8/ Mr Blackwell testified that a Pioneer Nursery employee by the name of Juan Cervantes did formerly drive a tractor at the Little Creek ranch but that he was no longer employed by Pioneer Nursery as of 1981. No evidence was presented as to the length or number of times that Mr. Cervantes drove the tractor at that ranch.

testified that the workers supplied by the labor contractor to the two companies were different.

There was very little showing that any Pioneer Nursery employees worked for River West, or that River West employees worked for Pioneer Nursery at the nursery site. Moreover, there appears to be a contradiction in the record between the testimony of Mr. Anderson who testified that River West employees never worked at the nursery, and the testimony of Mr. Blackwell who testified that on those occasions when Pioneer Nursery trucks are used to transport trees from the nursery to the buyer, Pioneer Nursery employees will load the trucks while River West employees will drive them. In the course of reviewing some payroll records while on the stand, there was also some testimony by Mr. Blackwell concerning two River West employees by the name of Rosaria Aguilar, and Faustino Cervantes who might have worked at the nursery site about two years before the election, but Mr. Blackwell could not verify if in fact these workers were paid by River West or whether they were paid by Pioneer Nursery. Mr. Blackwell also testified that no River West employees working at the Lost Hills operations ever worked at the nursery site. There was no other showing of any River West employees working at the nursery.

Thus, the interchange of employees between the two companies appears to be minimal at best. In contrast to the instant case, the Board in Delfino found that there was interchange of workers among the four ranches as the workers

acted pretty much as one crew "during the relevant payroll period" at either of the ranches.

COMMON LABOR RELATIONS POLICY

Although the NLRB considers common control of labor relations policy "a critical factor in determining whether separate legal entities operate as a single employing enterprise..." Gerace Construction, Inc., 193 NLRB No. 91, p. 45, the Employer asserts that it is not determinative. See also Abatti Farms, 3 ALRB No. 83, ALOD p. 19 wherein the Administrative Law Officer approvingly cites Canton Corps, 125 NLRB No. 55, pp. 483-84 (1959):

> "the presence or absence of a common labor relations policy is not conclusive in determining whether separate legal entities constitute a single employer.... The Board has on several occasions made a finding of a single employer status in the absence of evidence of a common labor relations policy, and has found two corporations to be a single employer even though it was affirmatively shown that each corporation established its own labor relations policy. Thus, to accord less weight... to other evidence establishing close control through common ownership and management is not only contrary to Board policy, but would also ignore the realities of commercial organization. Canton Corps., 125 NLRB No. 55, pp. 483-84."

There is no evidence in the instant case that either entity is, or was, subject to a collective bargaining agreement. The labor relations policy and the day-to-day operations for both Pioneer and River West are controlled and defined by Anderson and Puryear. They establish the employee's wage rates as well as the other terms of employment. However, the record in this case indicates that while there is mutuality of control

and a centralized decision-making process, there is no common labor relations policy.

Pioneer Nursery employees are subject to the rules, conditions, and employment policies set forth in a fourteen-page handbook prepared exclusively for them.[9/] This handbook was made available to Pioneer Nursery employees about one year ago. The handbook does not mention River West employees and was not distributed to them. There is no similar handbook in existence for River West.

Workers applying for work at the nursery must apply to Bud Knight, while workers applying for work at any other of the River West operations must apply to the on-site foreman of each particular ranch.

Mr. Blackwell further testified that Pioneer general labor employees are paid forty cents more an hour than River West employees, but that the tractor drivers earned about the same amount at both companies. The employer presented no further evidence of any common labor relations policy between the two companies.

CONCLUSION

Despite the common ownership and control of the two companies, these criteria alone are not determinative of joint employer status. Pioneer employees perform work completely different from the River West employees who work on a variety of different jobs at a number of other ranches. The River West employees do not work at the nursery. From 1979 to 1982,

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9/ See Petitioner's Exhibit No. 1.

Pioneer Nursery sold more than ninety-five percent of the root stock it produced to growers or buyers not related to either of the two companies. There is no interchange of employees from the nursery to the farms with the exception of the Road 152 orchard. The operations of the two entities differ in significant respects and there is no common labor relations policy. To include the Pioneer employees in the same bargaining unit with the River West employees would group them with employees with whom they have very few work-related interests in common. Moreover, the letter from Pioneer Nursery's former attorney, Mr. Carl Borden, dated October 26, 1981, to Board agent Maria Dolorez Martin, shows that Pioneer Nursery itself has asserted that it had no relationship whatsoever to any other agricultural entity in the state of California, including River West, during the year immediately preceding the election at Pioneer Nursery.[10/]

RECOMMENDATION

Based on the findings of facts, analysis and conclusion herein, I recommend that the Employer's objection be dismissed and that the United Farm Workers of America, AFL-CIO, be certified as the exclusive bargaining representative of all the agricultural employees of the Employer in the State of California.

DATED: December 9, 1982

Respectfull submitted,

Erasmo E. Elias

ERASMO E. ELIAS
Investigative Hearing Examiner

10/ See Petitioner's Exhibit No. 2.