STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

JOHN F. ADAM, JR. AND RICHARD E. ADAM, dba ADAM FARMS, Employer and Respondent, and TEAMSTERS LOCAL 865, Petitioner, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Intervenor and Charging Party.	Case Nos. 75-RC-212-M 75-CE-226-M 4 ALRB NO. 12

DECISION, ORDER AND
CERTIFICATION OF REPRESENTATIVE

Following a petition for certification filed by the Western Conference of Teamsters, Local No. 865, an election was conducted on October 23, 1975, among the agricultural employees of Adam Farms. The tally of ballots furnished to the parties at that time showed that there were 24 votes for the Teamsters, 33 votes for the UFW, 1 vote for No Labor Organization, and 29 challenged ballots.[1/]

[1/] In his report on challenged ballots issued on December 28, 1976, the Regional Director recommended that the challenges to the ballots of Pedro Enciso and Jim Adam Jr. be sustained and that the challenge to the ballot of Victor Villapania be overruled. As no exceptions were filed concerning these three challenges, we adopt the Regional Director's recommendation with respect thereto.

On January 6, 1977, the Employer's objection to the election was dismissed and the 26 unresolved challenges were consolidated for hearing with the instant unfair labor practice case, in which it was alleged that the Employer violated Section 1154.6 of the Act by hiring 20 of the challenged voters for the primary purpose of having them vote in the election.

On February 14, 1977, Administrative Law Officer (ALO) Joel Gomberg issued his attached Decision in this case, recommending that 25 challenges be sustained[2/] and concluding that an unfair labor practice had been committed by the Respondent-Employer. Respondent, General Counsel, and Charging Party each filed timely exceptions, a supporting brief and a reply brief.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the ALO's rulings, findings, conclusions and to adopt his recommendations as to the 25 challenges and his recommended order, as modified herein.[3/]

Although we agree with the ALO's conclusion that a violation of Section 1154.6 occurred, we expressly reject his use of a "but for" test in determining that the challenged student employees were hired for the primary purpose of having

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[2/] The ALO left one challenge unresolved; because that challenge is not outcome-determinative, we make no finding as to it.

[3/] With the 25 challenges so disposed, the UFW obtains a clear majority of the valid votes cast. As there are no outstanding objections, certification may issue.

them vote in the election. On the facts of this case, the existence of a violation is ascertainable without resort to any test beyond the plain terms of Section 1154.6. The record evidence herein is sufficient to support the conclusion that Respondent's primary purpose in hiring the students was to have them vote in an election at Adam Farms.

We do not adopt the ALO's recommended bargaining order. Such an order is unnecessary, in this matter, as certification is granted herein and Respondent is thus under an obligation to commence collective bargaining in good faith upon request by the union.

CERTIFICATION

It is hereby certified that a majority of the valid votes have been cast for the United Farm Workers of America, AFL-CIO, and that, pursuant to Labor Code Section 1156, the said labor organization is the exclusive representative of all agricultural employees of John F. Adam, Jr. and Richard E. Adam, dba Adam Farms, for the purposes of collective bargaining, as defined in Labor Code Section 1155.2(a), concerning employees' wages, working hours and other terms and conditions of employment.

ORDER

By authority of Labor Code Section 1160.3, the Agricultural Labor Relations Board hereby orders that the Respondent, John F. Adam, Jr. and Richard E. Adam, dba Adam Farms, its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Willfully hiring employees for the primary purpose of voting in an ALRB representation election.

(b) In any other manner interfering with, restraining or coercing any employee in the exercise of rights guaranteed by Section 1152 of the Act.

2. Take the following affirmative actions which will effectuate the policies of the Act:

(a) Sign the Notice to Employees attached hereto. Upon its translation by a Board Agent into appropriate languages, Respondent shall reproduce sufficient copies in each language for the purposes set forth hereafter.

(b) Post copies of the attached Notice to Employees at times and places to be determined by the Regional Director. The notices shall remain posted for 60 days. Respondent shall exercise due care -to replace any notice which has been altered, defaced, or removed.

(c) Mail copies of the attached Notice in all appropriate languages, within 20 days from receipt of this Order, to all employees employed during the payroll period September 1, 1975 through October 23, 1975.

(d) Have the attached Notice distributed and read in appropriate languages to the assembled employees of the Respondent on company time. The distribution and reading, by a representative of Respondent or a Board Agent, shall be at such times and places as are specified 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 employees may have concerning the Notice or their rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by the Respondent to all nonhourly wage employees to compensate them for time lost at this reading and the question and answer period.

(e) Notify the Regional Director in writing, within 20 days from the date of the receipt of this Order, what steps have been taken to comply with it. Upon request of the Regional Director, the Respondent shall notify him periodically thereafter in writing what further steps have been taken in compliance with this Order.

Dated: March 16, 1978

GERALD A. BROWN, Chairman

ROBERT B. HUTCHINSON, Member

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

NOTICE TO EMPLOYEES

After a hearing at which all sides had an opportunity to present evidence and state their positions, the Agricultural Labor Relations Board has found that we have violated the Agricultural Labor Relations Act by hiring employees for the primary purpose of voting in an ALRB representation election and has ordered us to post this notice.

The Act gives employees the following rights:

(a) To organize themselves;
(b) To form, join or help any union;
(c) To bargain as a group and to choose anyone they want to speak for them;
(d) To act together with other workers to try to get a contract or to help or protect each other; and
(e) To decide not to do any of these things.

Because this is true, we promise you that:

WE WILL NOT do anything in the future that interferes with your rights under the Act, or that forces you to do, or stop doing, any of the things listed above.

Especially: WE WILL NOT hire any person or persons for the primary purpose of having them vote in a union representation election.

Dated:

JOHN F. ADAM, JR. AND
RICHARD E. ADAM, dba
ADAM FARMS

By: _____
(Representative) (Title)

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

John F. Adam, Jr. and Richard E. Adam, dba Adam Farms (Teamsters Local 865/UFW)	4 ALRB No. 12 Case Nos. 75-RC-212-M 75-CE-226-M

ALO DECISION

Following an election in which challenged ballots were outcome-determinative, a hearing was held on an objection to the election and an unfair labor practice charge, both of which were based on the UFW's contention that the employer had violated Section 1154.6 of the Act and interfered with workers' rights by hiring local high school students for the primary purpose of having them vote in the election. Ballots sufficient in number to determine the outcome were challenged on that ground; the remainder of the challenges pertained to questions of supervisory status and employment during the proper payroll period.

The General Counsel's prima facie case in support of the illegal hiring charge was perforce largely circumstantial (Amalgamated Clothing Workers v. NLRB, 302 F. 2d 186, 190 [C.A.D.C., 1962]).It was found to be more than adequate by the ALO, who noted such factors as the unprecedented hiring of a student crew during the particular month in question, the apparent anti-union bias on the part of the employer (citing NLRB v. Brennen's Inc., 366 F. 2d 560 [5 Cir. 1966], NLRB v. Dan River Mills, Inc., 274 F. 2d 381 [5 Cir. 1960]), the small full-time employee equivalent of time put in by the student workers, and the employer's knowledge of the likely voting pattern of the student crew.

The employer asserted various business justifications for the hiring of the student crew. They included heavy rainfall, failure of herbicides, increased broccoli production, increased bean turning, and discontinuance of the use of farm labor contractors. The ALO found these justifications to be unsupported by the evidence and seemingly pretextual.

It was therefore concluded by the ALO that the employer had hired the students in question for the primary purposes of having them vote in the representation election at Adam Farms and that their ballots should not be counted. The ALO also recommended that the remaining challenges be sustained because the affected voters were ineligible due to supervisory status or nonemployment during the appropriate payroll period.

BOARD DECISION

The Board agreed with the ALO's conclusion that a violation of Section 1154.6 and an interference with the workers' Section 1152 rights had occurred. However, the Board expressly rejected the ALO's use of a "but for" test in determining whether the students had been hired for the primary purpose of having them vote in the election. The record evidence was, without the use of such a test, sufficient to determine the employer's primary purpose in hiring the students.

All challenges at issue were sustained, thus giving a clear majority to the UFW. Certification was granted and, because the employer was thus under a duty to commence bargaining in good faith, the Board found the ALO's recommended bargaining order to be unnecessary.

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of: JOHN F. ADAM, JR. AND RICHARD E. ADAM, dba: ADAM FARMS, Employer and Respondent, and TEAMSTERS LOCAL 865, Petitioner, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Intervenor and Charging Party.	Case Nos. 75-RC-212-M 75-CE-226-M DECISION OF ADMINISTRATIVE LAW OFFICER

Susan Winant of Salinas, California, for the General Counsel

Wayne A. Hersh, Dressier, Stoll and Jacobs of Newport Beach, California, for the Respondent

Jeremy D. Fogel and Jose Antonio Estremera of San Jose, California, for the Intervenor and Charging Party

Carol J. Dahle of San Luis Obispo, California, for the Petitioner

STATEMENT OF THE CASES

JOEL GOMBERG, Administrative Law Officer: These cases, consolidated pursuant to Notices of Consolidation of Issues and Cases dated January 6 and 14, 1977, were heard by me on January 24, 25, and 26, 1977, in Santa Maria, California. The hearing

was limited to the following closely related issues, all of which arose out of a representation election held among the agricultural employees of Adam Farms (hereafter "Respondent") on October 23, 1975[1]

1. Whether Respondent committed an unfair labor practice by willfully hiring approximately 20 Santa Maria junior and senior high school students for the primary purpose of voting in the representation election, in violation of Sections 1153(a) and 1154.6 of the Agricultural Labor Relations Act (hereafter the "Act"), as alleged in the Complaint of Unfair Labor Practices in Case No. 75-CE-226-M;

2. Whether Respondent's hiring of the students referred to above constituted misconduct affecting the outcome of the election as alleged in a petition filed by the United Farm Workers of America, AFL-CIO, (hereafter "UFW"), pursuant to Section 1156.3 (c) of the Act (Board l-F);

3. Whether the ballots of twenty-five prospective voters challenged by the UFW identified in paragraphs IV through XXVIII of the Acting Regional Director's Report on Challenged Ballots (Board 1-I) should not be counted because:

   (a) The prospective voters were not employed in the appropriate unit during the applicable payroll period, in violation of Section 1157 of the Act, or

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1. The Amended Tally of Ballots (Board 1-J) showed the following results: For the Teamsters, 24; for the UFW, 33; for No Labor Organization, 1; unresolved challenged ballots, 29.

2. Three of the challenged ballots (paragraphs I through III) were resolved by the Report on Challenged Ballots. The Report recommended that the challenges to the 20 prospective voters identified in paragraphs IX through XXVIII be sustained. The Respondent excepted to this recommendation. The Report recommended that the challenges to the five prospective voters identified in paragraphs IV through VIII be overruled. The UFW excepted to this recommendation. The Acting Regional Director made no recommendation with respect to the ballot of John Coelho (paragraph XXIX) and ordered a hearing to resolve the issue. The Acting Regional Director did not investigate the challenges to 25 prospective voters (paragraphs IV through XXVIII) with respect to whether they were agricultural employees within the meaning of the Act or were employed during the applicable payroll period.

(b) The prospective voters were employed or their employment was willfully arranged for the primary purpose of voting in the representation election in violation of Section 1154.6' of the Act, or

(c) The prospective voters were not agricultural employees of the employer as defined in Section 1140.4(b) of the Act;

4. Whether prospective voter John Coelho, whose ballot was challenged by the UFW, was a supervisor within the meaning of Section 1140.4 (j) of the Act.

All parties were represented at the hearing and were given a full opportunity to participate in the proceedings. The UFW, as charging party in the unfair labor practice case, intervened as a matter of right, pursuant to Section 20266 of the Board's regulations. (All references to the regulations refer to Title 8, California Administrative Code.) The Western Conference of Teamsters and affiliated Local 865 (hereafter "Teamsters") did not intervene in the unfair labor practice cases. The General Counsel was a party to the unfair labor practice case only.

All parties were invited to submit post-hearing briefs pursuant to Section 20278 of the Board's regulations, and all did so, with the exception of the Teamsters.[3]

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

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3. The UFW filed addenda to its Brief beyond the 10-day limit permitted in Section 20278. I am enclosing this document with my decision, but I have neither considered nor relied upon it in reaching my decision.

FINDINGS OF FACT

I. Jurisdiction.

Respondent, in its Answer to the Complaint (Board 1-R), has admitted the allegations in paragraphs 1 through 6 of the Complaint (Board 1-K). I therefore find that Respondent was duly served by the UFT7 with the original charge of unfair labor practices on November 1, 1975, and that the charge was filed on November 3, 1975. I further find that Respondent is an agricultural employer within the meaning of Section 1140.4(c) of the Act, and that the UFW and the Teamsters are labor organizations within the meaning of Section 1140.4(f) of the Act.

II. The Work Force at Adam Farms in 1975.

Respondent operates as a partnership under the management and control of John F. Adam, Jr., and his brother, Richard E. Adam. They have farmed in substantially the same location in the Santa Maria Valley since 1955. Respondent grows a number of crops including broccoli, beans, cauliflower, celery, cucumbers, sugar beets, carrots and potatoes. The primary crops are broccoli, beans, and cauliflower, in that order.

John Adam testified that in the months of September and October, 1975, the following crews were employed at Adam Farms:

1. Approximately ten to eighteen irrigators and tractor drivers under the supervision of foreman Bill Trinidade and his assistant, John Coelho.

2. About a half do zen employees in a crew supervised by Jiin Adam, Jr. Six members of the Jin Adam, Jr. crew are among

the twenty-five prospective voters challenged by the UFW.

3. A crew, supervised by Jose Alvarez, consisting of between 10 and 30 employees. This crew worked primarily in cauliflower, but also thinned broccoli.

4. A crew, supervised by Mr. Kanda, made up of from ten to twenty employees, working largely in broccoli.

5. Family groups, comprising about ten to twenty employees, without a fixed supervisor, who reported directly to the Adam brothers.

6. A crew of about 30 employees, made up of Santa Maria junior and senior high school students. I will discuss the student crew in greater detail later in this Decision. Nineteen members of the student crew were challenged by the UFW.

III. Students in the Adam Farms Work'Force Prior to 1975.

Jack L. Owen, a management employee of Guadalupe Warehouse (hereafter "Guadalupe"), a seed bean contracting firm, testified that the practice of hiring students to work at Adam Farms began in 1972, when a number of agriculture students at Santa Maria High School wanted to earn money to attend a Future Farmers of America Convention in Kansas City. Del Peterson, an agriculture instructor at the high school, referred students to Owen. Guadalupe hired the students to rogue beans planted at Adam Farms. (Roguing consists of removing runners from beans so that the beans will be true to the seeds.) Mr. Peterson sent a bill to Guadalupe, which paid the students and then, in turn, billed the seed company whose beans the students were roguing. The students

generally completed their work for Guadalupe at the end of August. Owen then contacted Respondent, which was free to hire the students directly.

Pursuant to subpoena, Mr. Owen produced check stubs relating to the employment of students from 1972 through 1975. He testified that he was not ordinarily engaged in the business of providing workers and was not a farm labor contractor. These students were the only workers Guadalupe hired. The parties, by stipulation, permitted Mr. Owen to read the check stubs into the record rather than introducing the documents into evidence. The check stubs reveal a pattern of payment for work performed largely in the month of August. One check in 1972 had a July date, but no check is dated later than September 4. In 1972, the checks were made out to the FFA, in 1973 to Mr. Peterson, in 1974 to Tina Tavaras, evidently a student crew leader, and in 1975, to Terrie Sauerwein and to Mark Thompson, again evidently student crew leaders. Mr. Owen testified that the checks were cashed and the money distributed among the student workers by Del Peter-son and the crew leaders. Guadalupe did not employ students once school began, because they were not available for full-time work.

Mr. Owen testified that Adam Farms had no employment relationship to the students working for Guadalupe, because roguing was the sole responsibility of the seed company. Mr. Owen stated that, while the students didn't work regularly, dropping out for a day or two from time to time, the quality of their work was outstanding. Mr. Owen could not produce the names of the students hired by Guadalupe.

Respondent produced cancelled checks for the years 1972 through 1974, purporting to be payments to student employees. Copies of those cancelled checks were admitted as UFW 2 through 4 by stipulation. John Adam testified that he did not keep separate records on student employees and that, as a result, the cancelled checks might not identify all the students who had worked for Respondent. A list of students who worked for Respondent in 1974, compiled by John Adam, was admitted by stipulation as UFW 5. Again, Mr. Adam testified that there might have been as many as a dozen students omitted from the list. UFW 5 contains the names of 16 persons other than those whose surname is Adam. UFW 2 through 4 show, at most, payments to half a dozen students per year. There are a number of checks to Felipe Rivera, who was identified by John Adam as a labor contractor who provided workers at Adam Farms. John Adam testified that Mr. Rivera did not supply student employees to Respondent .

In addition to the documentary evidence, John Adam testified that he kept most of the Guadalupe crew on for part of September in 1974. He testified variously that he could not remember if he had ever hired students in October prior to 1974, that there were more students working in October 1975 than in the three preceding years, and that he kept students as long as there was work.

Three of Respondent's employees, Pedro Enciso, Manuel Astorga and Adolfo Sanchez, testified that they had never observed a

significant number of students working for Respondent after school in the month of September prior to 1975 and that they had never seen any students working in October prior to 1975.

Based on the documentary evidence produced by Respondent in response to the UFW's subpoena, the testimony of John Adam, and the testimony of Respondent's employees, which is largely consistent, I find that Respondent had hired fewer than a dozen students per year to work after school during the month of September 1972, 1973, and 1974, and hired few, if any, students in the month of October in the three years preceding 1975.

IV. The Autumn 1975 Student Crew.

The student employment pattern at Adam Farms in the autumn of 1975 presents a picture strikingly 'different from that of the three preceding years. Forty-seven students worked at one time or another in an all-student crew during the months of September, October, and November of 1975. In addition, at least seven students worked in the Jim Adam, Jr. crew.

Testimony concerning the work of the student crew was given by John Adam, Richard Adam, Terrie Sauerwein, a member of the crew, and employees Pedro Enciso, Manual Astorga, and Adolfo Sanchez. In addition, documentary evidence was admitted in the form of time cards (UFW 1), semi-annual payroll records (UFW 6), and a quarterly payroll journal (Employer 1). A careful examination of the evidence provides a fairly clear picture of the functioning of the student crew.

John Adam testified that there were approximately 30 students in the crew, which was sometimes divided into two groups. The crew was supervised by crew leaders Terrie Sauerwein, Anthony Dalla Costa, Mark Thompson, and Darren De Haas. Mr. Adam's memory was vague as to which of these students were acting as crew leaders in the fall of 1975. Mr. Adam thinks that he may have contacted Del Peterson in August, 1975, to provide students, but was not sure about September and October. He may also have contacted the agricultural teacher at Righetti High School. Mr. Adam at first testified that the students were paid every ten days. When reminded that he had previously stated in a declaration that there was a weekly pay period, he attempted to reconcile a 10-day period as a weekly period. Victor Hieberf and Terrie Sauerwein, as well as the documentary evidence, confirm that the students were generally paid weekly on Wednesdays for work performed during the preceding Wednesday through Tuesday.

UFW 6, produced by Respondent and described as a semi-annual payroll record for the second half of 1975, provides records for 33 students, of whom 26 worked in the student crew. UFW 1 indicates that an additional 21 students worked in the student crew in 1975, beginning on September 16. John Adam testified that the students who had been working during the summer were kept on after school began because there was work to be done, yet UFW 6 indicates that only three students worked before September 16: Paul and Terrie Sauerwein and Pat Yates. Each of these students worked in the payroll period ending September 5, but did not resume work until at least September 16. It is clear that the

[f] Respondent's payroll clerk.

employment of the student crew was not continuous and that no students worked between September 5 and September 16.

The student crew worked only four days in September. Twenty-seven students worked on September 16. This number rose to 33 on September 17, and 34 on September 18, before falling off drastically to seven on September 23.

Employment in the student crew never again approached the peak registered on September 17 and 18. Ten of the students never worked again in 1975. John Adam testified that the students were engaged in weeding beans in September and estimated that the student crew accounted for roughly 75% of the bean weeding at Adam Farms. Terrie Sauerwein testified that the student crew did no bean weeding after early September. In any event, the student crew worked a total of approximately 200 hours in September, 1975, or a little more than one full-time employee in a month.

John Adam testified that the students worked straight through in September except when it rained or when a school event conflicted with work. He later admitted that it was possible that the students had not worked for several weeks in September because there was a lack of work or because they found work elsewhere. Mr. Adam also testified that there was quite a bit of extra work in September and October.

The documentary evidence indicates that the student crew was called back to work on October 8, 1975, the day after the Teamsters filed a petition for certification which was later dismissed (GC l(b)) and the first day of the payroll period immediately

preceding the filing of the petition which resulted in the instant election. The students worked on four days during the payroll period of October 8-14. Only eight and eleven students worked on the 8th and 9th, respectively, while 25 and 19 worked on the 13th and 14th, the last two days to establish eligibility for the election.

Between 11 and 17 students worked each weekday preceding the election, although the composition of the crew changed from day to day. Twenty-seven students worked during the applicable payroll period. Nineteen of the students voted and all were challenged.[4]

After the election the student crew continued to work three or four days a week, two hours a day, until November 18. Approximately 15 students worked each day, although the number ranged from four to 19. However, the composition of the crew changed radically. Of the 19 students whose votes were challenged, four never returned to work after voting (Mark Cardiel, Shirley Harris, John Newton, and Ernie Salinas), while two worked only one day after the election (Wendy Engel and Terrie Sauerwein), and two had extremely spotty work records, with long periods of non-attendance (Patti Pinheiro and Paul Sauerwein). The remaining

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4. The Acting Regional Director's Report on Challenged Ballots groups Max Falkner with the student crew, but his time card and the quarterly payroll journal clearly establish that he was a member of the Jim Adam, Jr. crew, and I so consider him in this Decision. The time cards of Kenny Hamilton and Jim Woodward (UFW 1) indicate that although they did not work during the applicable payroll period, they voted and were not challenged.

eleven students worked fairly steadily, although every student missed work at least a few times. Of the twenty-eight students who were not challenged, only one worked steadily before and after the election (Jimmy Robinson, whose brother was challenged). Three other students worked steadily, but did not begin to work until after the election. Other than the challenged students and Jimmy Robinson, the student crew experienced almost a total turnover after the election, although the number of students remained fairly steady.

In opposition to its own records, Respondent attempted to describe a very different kind of crew through the testimony of the Adam brothers and Terrie Sauerwein.

Of the four students John Adam identified as being leaders of the student crew, only one, Anthony Dalla Costa, worked steadily before and after the election. Terrie Sauerwein worked only one afternoon after the election, while Mark Thompson and Darren De Haas did not work at all in October. John adam testified that he and his brother, and not Bill Trinidade, were responsible for the student crew, Richard Adam contradicted John's testimony, declaring that Trinidade was also responsible. As to supervision, John Adam testified that he personally visited the student crew daily, except on Wednesdays. Terrie Sauerwein, who worked only six days in the fall of 1975» other than election day, testified that John came by two to five times a day almost daily. Richard Adam testified that because the students were inexperienced, he provided more than the usual supervision. Yet, although virtually all of the students worked irregularly, Richard could remember no complaints about their work and took no disciplinary action against any student. John Adam thought that he had fired some students who were under 16. But Terrie Sauerwein, a crew leader, testified that

at least four of the students were in junior high school and presumably under 16. She also testified that she remembered recommending that one student, David Skelton, be fired, and that he was. UFW 1 shows that David Skelton was working in September and October, 1975.

In her testimony, Ms. Sauerwein also disclosed that Mr. Peterson, the high school agriculture instructor, informed the students in September and October when the Adams wanted the students to return to work. When asked why Dalla Costa had been named crew leader, she replied: "Mr. Peterson could depend on him." She further indicated that she got her checks from Peterson or Dalla Costa at school and was paid once a week. According to Ms. Sauerwein, the student crew did nothing but thin broccoli in October.

When asked to give an estimate of what percentage of broccoli the student crew had thinned, John Adam guessed that it was about half, even though the regular broccoli crew (Kanda), with 10 to 20 full-time workers and the Alvarez crew, with 27 employees, were also doing thinning work. The student time cards indicate that the student crew worked about 370 hours in October, or about two employee months. The November work pattern was virtually the same as October's.

Pedro Enciso, Manuel Astorga, and Adolfo Sanchez testified that they had never observed students in the fields in October before, that the students were thinning broccoli, that they did not appear to be supervised, took frequent breaks, played in the fields, and threw rocks.

Even without the testimony of these three employees, the other evidence conclusively demonstrates that an unusually large number of students worked at Adam Farms in the fall of 1975, that the total work of the crew equalled about five employee months, that there was a high transiency rate among the members of the crew, that the Adam brothers were almost totally unfamiliar with the work patterns of a crew to which they claimed they devoted an unusually large amount of supervisorial effort, and that there had been no reduction or reassignment of the crews which ordinarily did bean weeding and broccoli thinning.

V. Respondent's Business Justifications for Hiring an Unusually Large Number of Students

Respondent acknowledges in its closing argument and post-hearing brief that a large student crew was unusual at Adam Farms in the fall. Respondent points to a number of factors which it claims required the students to be hired:

A. Heavy rainfall and cloud cover caused an unusually late harvest

Jack Owen testified that early rain in the fall of 1975 caused excessive growth of bean plants necessitating extra weeding. For 30 or 40 days, according to Mr. Owen, nothing could be done but weed and turn the plants. Mr. Owen believed that about one half inch of rain fell in early September, 1975. John Adam remembered rain in the fall of 1975 which caused difficulties in the harvesting schedule. He did not believe that the broccoli had been affected. Mr. Adam could not recall details of the weather situation, but relied upon and adopted Mr. Owen's testimony.

The UFW introduced official weather records of the National Weather Service, obtained from readings taken at the Santa Maria Public Airport, located about three miles from Adam Farms, for the months of August through October, 1974, July through October, 1975, and August through October, 1976 (UFW 7). The records indicate that only a trace of rain fell in the month of September in 1974 and 1975. Richard Adam, who was qualified as a weather expert, testified that he maintained several rain gauges. He testified that while the National Weather Service reported rainfall of 24" for October 1, 1976, that his gauges recorded between 2.5" and 3". Although UFW 7 was already in evidence when Richard Adam testified, he did not challenge the accuracy of the readings for any other date and did not challenge the 1975 readings in any respect. No evidence as to cloud cover was introduced by any party.

Mr. Owen may have mistakenly referred to September 1976 rainfall in his testimony. Over three inches of rain was recorded in September 1976. I find that there was no unusual rainfall in September 1975.

B. Failure of herbicide caused an increase of weeds.

The only evidence with respect to herbicides was John Adam's flat assertion that there was a problem with herbicides. Pedro Enciso, Manual Astorga, and Adolfo Sanchez all testified that the amount of weeds was about the same in 1975 as in previous years. Terrie Sauerwein said that the student crew finished bean weeding in September. Mr. Adam testified that the students per-

formed 75% of the bean weeding in four afternoons. I cannot find that failure of herbicides has been established as a business justification for the hiring of the students.

C. Increased broccoli freezer contracts necessitated additional work.

John Adam testified that there had been a substantial increase in the amount of broccoli required pursuant to freezer contracts in 1975 over 1974. Richard Adam, who actually negotiated the freezer contracts, flatly contradicted his brother, maintaining that the contracts were the same, "plus or minus 10%." No contracts were introduced. I find that there was no substantial increase in broccoli production at Adam Farms in 1975 over 1974.

D. Additional employee hours required to turn beans.

This justification is related to the rain issue. Jack Owen testified that the rain required the beans to be turned frequently. There is no evidence of early rain, no evidence that the students ever turned beans, and no evidence that the students worked on more than four days in September. All the evidence establishes that the students worked only in broccoli in October.

E. Additional employees needed to fill in for work previously done by farm labor contractors.

John Adam testified that upon the effective date of the Act he discontinued his previous use of farm labor contractors

There was no evidence relating this fact to the hiring of students. There is no evidence as to what work the farm labor contractor crew or crews performed, nor is there any evidence that farm labor contractors were used in the fall. I cannot find that Respondent's discontinuance of the use of farm labor contractors necessitated the hiring of students.

VI. Respondent and the Representation Election.

John Adam testified that union organizing activity began at Adam Farms in the summer of 1975. On October 3, 1975, the UFW filed a petition for certification which was dismissed for failure to establish a sufficient showing of interest. (GC l(b)). On October 7, 1975, the Teamsters filed a petition, which was similarly dismissed. (GC l(a)). Finally, the Teamsters filed the instant petition on October 16, 1975. (Board 1-B). The Teamsters have represented the employees at Adam Farms since 1970. Although the Teamsters called a strike against Respondent, and relations have not always been good, John Adam considers the Teamsters to be a labor union, while the UFW is not and is misleading its organizers and farm workers. Richard Adam testified that he did not consider it to be his function to enforce the collective bargaining agreement with the Teamsters. He stated that he complied with the union security clause only if pushed by the Teamsters. Otherwise, he testified, he did not bother about the contract. Employer 1 indicates that the union security clause, for example, was not enforced rigorously by Respondent or the Teamsters.

Terrie Sauerwein, the only student witness, testified that

the Teamsters had spoken to the student crew about the election at least once, and that the visit occurred during working hours. The UFW did not speak to the students at any tine. Both Adam brothers spoke to the student crew about the election and urged them to vote. In addition, Mr. Peterson reminded the students of the election and passed out Adam Farms identification cards to each of them to be used at the polls. Ms. Sauerwein testified that while she was not hostile to the UFW, she had expressed negative feelings about its president, Cesar Chavez.

Twenty-one students were paid for coming to Adam Farms on election day. Nineteen of these students were challenged by the UFW. Although John Adam testified that he saw about ten students working on election day, Ms. Sauerwein testified that she did not work that day and did not know if any of the other students had worked. Mr. Adam could not recall the names of any of the students he had seen. Each time card is marked "voting" and indicates no starting or stopping time. Each student received two hours' pay. The only time more than 21 students worked on any day in October was October 13. After the election, the turnout of the student crew declined.

VII. The Jim Adam, Jr. Crew.

John Adam testified that Jim Adam, Jr., supervised a crew of about six employees. Very little evidence was submitted with respect to the work of this crew. UFW 1 and Employer 1 indicate that, in addition to Jim Adam, Jr., the following students worked in the crew: Rudy Bondietti, Max Falkner, Robert Gobea, Ronnie

Gobea, Ronnie Rodriguez, Gay Lyn Scares, and Victor Villapania, all of whom were challenged by the UFW.[5]

There is nothing in the record to indicate how this crew was hired. The payroll records do disclose that none of the six challenged students worked more than eight hours in the fall of 1975. Each worked on two days between September 26 and September 30. Four of the students also worked for four hours during the payroll period ending September 23. John Adam testified that the Jim Adam, Jr. crew was paid at least every ten days except on those occasions when the crew was close to finishing work in a field. In those cases, the pay period might be a little longer.

The record establishes that one payroll period ended on September 23. The crew was not paid again until October 9, the payroll period assertedly having ended on October 7. Assuming a ten-day payroll period, the next period would have ended on October 3. 'No member of the crew worked after September 30. Jim Adam, Jr., did not work the same hours as any member of his crew during this period. While the record is skimpy, the preponderance of the evidence indicates that the last payroll period, in which the six challenged members of the Jim Adam, Jr. crew worked ended on October 3, 1975, and I so find.

VIII. The Challenged Ballot of John Coelho.

The Acting Regional Director ordered that a hearing be held to determine whether John Coelho is a supervisor within the

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5. Villapania was challenged on the ground that he was a supervisor. The challenge has been overruled.

meaning of the Act. Both Adam brothers testified that Coelho assisted Bill Trinidade and exercised narrow latitute over the work assignments of employees within certain crews. Both testified that Coelho was on the same level in the management hierarchy as Pedro Enciso and that his powers were roughly equivalent to those of Enciso.

DISCUSSION, ANALYSIS, AND CONCLUSIONS OF LAW

I. The Unfair Labor Practice Allegations and the Challenged Ballots of the Student Crew.

A. Statutory Background

The Complaint of Unfair Labor Practices contains one substantive allegation: That the members of the student crew were willfully hired by Respondent for the primary purpose of voting in the representation election in violation of Sections 1153(a) and 1154.6 of the Act.[6]

The Board has not yet been called upon, to construe Section 1154.6 of the Act, which provides:

> It shall be an unfair labor practice for an employer or labor organization, or their agents, willfully to arrange for persons to become employees for the primary purpose of voting in elections.

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6. The UFW filed timely challenges to the 19 voting members of the student crew and the Jim Adam, Jr. crew pursuant to Section 20355(a) of the Board's regulations on the same ground and, in addition, on the ground that the employees did not work during the applicable payroll period or were not agricultural employees of Respondent within the meaning of the Act. The challenges to the Jim Adam, Jr. crew and the latter grounds for the challenges to the student crew will be discussed infra.

Section 1153(a) declares that it is an unfair labor practice for an agricultural employer "to interfere with, restrain, or coerce agricultural employees in the exercise of the rights guaranteed in Section 1152."

Section 1152 provides in pertinent part that:

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection...

While there is no provision in the National Labor Relations Act (NLRA) which is analogous to Section 1154.6, Sections 1153(a) and 1152 are virtually identical to Sections 8(a)(l) and 7, respectively, of the NLRA.

Because this is a case of first impression, I requested the parties to address the following questions, among others, in their briefs:

(1) Whether a violation of Section 1154.6 constitutes a violation per se of Section 1153(a), and

(2) Whether, on the facts of this case, it would be possible to prove a violation of Section 1153(a) if a violation of Section 1154.6 could not be established.

The National Labor Relations Board (NLRB) has consistently held that "a violation by an employer of any of the four subdivisions of Section 8, other than subdivision one, is also a violation of subdivision one." Morris, The Developing Labor Law, p. 66 (1971), citing 3 NLRB Ann. Rep. 52 (1939). Section 1153(a) of the Act states the broadest employer unfair labor practice. Clearly, the intentional hiring of employees to

subvert other employees' rights to choose freely to join or refrain from joining a labor organization will in every case constitute interference with, restraint and coercion of employees in the exercise of their Section 1152 rights. I therefore conclude that a violation of Section 1154.6 constitutes a violation per se of Section 1153 (a). Because of my disposition of this case, I find it unnecessary to address the second issue.

I also requested the parties to provide me with legal arguments relating to the construction of the terms "willfully" and "primary purpose" as used in Section 1154.6. Interestingly, the UFW favors the Penal Code definition of "willfully," which provides:

> The word "Willfully," when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act, or make the omission referred to. It does not require any intent to violate law, or to injure another, or to acquire any advantage, (Penal Code Section 7(1)).

while the General Counsel urges that, "Suggestions from other parties relating to Penal Code definitions of 'willfully' should be rejected as totally inappropriate." The General Counsel prefers the use of the intentional tort standard, namely that the actor voluntarily intends the result that actually occurs. Respondent expresses no preference for a particular standard other than to assert that it must have been shown to have had knowledge of the manner in which the challenged employees were likely to have voted.

Section 8(a)(3) of the NLRA, although not using the term "willfully," provides some guidance. That section declares

that it is an unfair labor practice for an employer "by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization."[7] The NLRB has consistently held that to establish a violation of Section 8(a)(3) in discharge and lay-off cases the General Counsel must prove that the employer's motive was to encourage or discourage membership in a union. See, Radio Officers' Union v. NLRB, 347 U.S. 17 (1954).

In Section 8(a)(3) cases, the unfair labor practice often involves the intentional discharge or lay-off of employees because of their union affiliation, in order to discourage union membership. Section 1154.6 concerns itself, in a similar manner, with the intentional hiring or "lay-on" of employees, in order to frustrate the other employees' free choice of a bargaining representative. It is reasonable to conclude that the Legislature intended to ensure the integrity of the Act's election process by declaring such conduct to be an unfair labor practice. There is a much greater opportunity to pad the election rolls in a seasonal industry, such as agriculture, than there is in, say, a manufacturing plant. Because the Act mandates speedy elections and apparently gives the Board no discretion to exclude part-time, temporary workers from the bargaining unit, the intent underlying the enactment of Section 1154.6 becomes clear. In this light, Section 1154.6 can be seen, in many respects, as a close relative of Section 1153(c).

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7. Section 1153(c) of the Act is virtually identical to Section 8(a)(3).

After consideration of the arguments of the parties and applicable NLRB precedents, I conclude that the General Counsel has the burden of proving that Respondent's conscious intent was to hire the challenged employees for the primary purpose of voting. It is not a necessary element of a Section 1154.6 violation to establish that Respondent knew that such conduct was unlawful.

The parties appear to agree that "primary purpose" means that purpose which is first in importance, although Respondent argues elsewhere that there must be proof that the students did not have enough work to do. Respondent misperceives the nature of a Section 1154.6 violation. General Counsel need not prove that the students were hired for the sole purpose of voting in the election. But the evidence must establish that the students would not have been hired but for the election.

In determining whether Respondent intended to hire the students to vote in the election, and if so, whether that was the primary purpose for hiring them, the following factors, several of them employed in evaluating the evidence in Section 8(a)(3) cases, appear to be especially germane: (1) The timing of the hiring of the student crew; (2) the unique working pattern of the student crew; (3) the Respondent's animus toward the UFW;(4) the unprecedented presence of a student crew in October;(5) Respondent's asserted business justification for the hiring of the student crew; and (6) Respondent's knowledge of the likely voting pattern of the student crew.

B. The General Counsel's Prima Facie Case.

The General Counsel contends, and the findings of fact demonstrate that, while students had been employed at Adam Farms for several years prior to 1975, the bulk of students stopped working when school began in September, and that no student crew had been employed in the month of October in the previous three years. In 1975, a large group of students worked at Adam Farms for three consecutive days in September. A few worked one day the following week. None of the students returned to work until October 8, a Wednesday, the first day of the payroll period immediately preceding the filing of the petition for certification in this case. Two previous petitions, one each filed by the Teamsters and the UFW, had been dismissed for failure to demonstrate sufficient showing of interest. The bulk of the students who voted in the election did not return to work until October 13, three days before the filing of the petition and only one day before the end of the payroll period. Only seven of the 19 challenged students came to work before October 13.

Prior to the election, both Adam brothers and the Teamsters had discussed the election with the students on working time, but the UFW had no contact with the students, who only worked two hours a day, from 3 to 5 P.M. Respondent furnished identification cards to the students through Del Peterson, an agriculture instructor at Santa Maria High School. Peterson spoke to the students concerning the election, informed them of the time when they were to vote, and told them that they should vote.

To accommodate the students' school schedule, Respondent arranged for two separate voting periods: One in the morning for the regular workers, and one in the afternoon for the students. All of the students who voted received pay for two hours' work, although the evidence indicates that none of the students actually worked on election day. After the election, eleven of the challenged students continued to work fairly steadily until mid-November. Only one other student, the brother of a challenged voter, worked steadily before and after the election. Of course, Respondent was aware of the challenges and the grounds on the day of the election. Other than these twelve individuals, there was almost a complete turnover in the student work force after the election.

Respondent disputes few, if any, of these facts, but argues that none of its conduct was unlawful, which is certainly true, if each act is analyzed separately. But the timing of the hiring of the students, the fact that a student crew in October was unprecedented, the fact that Respondent and the Teamsters, but not the UFW, had the opportunity to discuss the election with the students, and Respondent's extreme eagerness to have the students vote, coupled with Respondent's demonstrated animus toward the UFW, lead irresistibly to the conclusion that Respondent willfully hired the students to vote in the election.

Respondent concedes the Adam brothers' anti-UFW bias, but contends that, pursuant to Section 1155 of the Act, such evidence is inadmissible in an unfair labor practice proceeding.

Section 1155, which is virtually identical to Section 8(c) of the NLRA, provides:

> The expressing of any view, arguments, or opinions, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute evidence of an unfair labor practice under the provisions of this part, if such expression contains no threat of reprisal or force, or promise of benefit.

Section 8 (c), part of the Taft-Hartley amendments to the NLRA, was passed to protect the First Amendment rights of employers to express to employees and the public their opinions concerning unions. However, the NLRB and the courts have uniformly admitted statements of anti-union bias in Section 8(a)(3) cases when relevant to the issue of intent to discourage union membership. In a number of Section 8(a)(3) cases decided subsequent to the passage of Section 8 (c), the courts have held that demonstration of anti-union animus is a highly significant factor for the NLRB to evaluate in determining the employer's motive. NLRB v. Brennan's, Inc., 366 F.2d 560 (5 Cir. 1966), NLRB v. Dan River Mills, Inc., 274 F.2d 381 (5 Cir. 1960). Clearly, Section 1155 was intended to protect out-of-court statements, not testimony as to intent. The statements of the Adam brothers concerning the UFW do not, in themselves, constitute an unfair labor practice, but are relevant to establish the willfulness of the hiring of the students.

Respondent also contends that the General Counsel has introduced no evidence to demonstrate that it had knowledge of how the students were likely to vote. On the contrary, the facts establish that Respondent discussed the election with the students, as did the Teamsters, and went out of its way to ensure that the students voted. The only student who testified, Terrie

Sauerwein, stated that she had negative feelings about Cesar Chavez. Respondent's eagerness to have the students vote does not suggest that it expected them to vote in a manner adverse to its interests. Of course, direct evidence of how the students voted is unavailable because the ballots remain sealed to protect the secrecy of the ballot box, and because voters have a privilege not to disclose the tenor of their votes. Evidence Code Section 1050.

The General Counsel introduced an overwhelming amount of evidence, albeit largely circumstantial, to prove its contention that the student crew was hired for the "primary purpose" of voting in the election. The hiring of a student crew in October was unprecedented. John Adam testified that all of the regular crews were working during October. It is undisputed that the students thinned broccoli exclusively in October, 1975, and that the crews which ordinarily thinned broccoli were also working. The documentary evidence establishes that the student crew worked in October approximately the equivalent of two employees working full-time for the month. Pedro Enciso testified that his crew, which was also thinning broccoli, had 27 employees working full-time, and was not overburdened by work. Further, the students were inexperienced farm workers, worked only three or four days a week for two hours a day, and, according to Richard Adam, required an unusual amount of supervision. It is likely, then, that the student crew's output was substantially less than the equivalent of two employees working full time.

These facts establish a very strong prima facie case that

Respondent willfully hired the student crew for the primary purpose of voting in the election. Respondent concedes that the employment of students in October was out of the ordinary, but asserts a number of business justifications for hiring the crew.

C. Respondent's Business Justifications.

I examined each of Respondent's business justifications in detail in Section V of the Finding of Facts. They included heavy rainfall, failure of herbicides, increased broccoli production, increased bean turning, and discontinuance of the use of farm labor contractors. I found each justification to be unsupported by the evidence. Some have the appearance of desperate fabrication. On the last morning of the hearing, Richard Adam read into the record Article XXVIII of the collective bargaining agreement between Respondent and the Teamsters (UFW 8) which authorizes employers to institute training programs for employees. No evidence was introduced to link the student crew to a training program, but the clause was mentioned in Respondent's closing argument. It does not appear in Respondent's brief, however. This type of last-minute improvisation further damages the credibility of Respondent's testimony. A training program argument would be contrary to the entire thrust of Respondent's argument, namely that the student crew was hardworking, diligent, and productive.

The fact that Respondent's business justifications possess so little credibility is in itself additional evidence of its

intent in hiring the students. In discharge cases arising under Section 8(a)(3) of the NLRA, the courts have held that a false reason for discharge supports an inference that the real cause was for union activity. Sterling Aluminum Co. v. NLRB, 391 F.2d 713 (8 Cir. 1968). Here, the inference must be that the students were hired to vote in the election.

Indeed, were it not for Respondent's repeated and varied assertions of the quality and quantity of work performed by the students (i.e., 50% of the broccoli thinning, and 75% of the bean weeding) the General Counsel's case would not be as strong Coupled with the inherently incredible business justifications for hiring the students, Respondent's entire case seems pre-textual. Even if Respondent's business justifications were supported by the evidence, they could prove too much. The part-time student crew's work was, by any standard, insufficient to have more than a marginal impact on the total work performed at Adam Farms.

Respondent's protest that the General Counsel's case is largely circumstantial is to no avail. Because there is rarely direct evidence of an employer's intent to discriminate, the courts have long recognized in Section 8(a)(3) cases that evidence with respect to intent is "normally supportable only by the circumstances and circumstantial evidence." Amalgamated Clothing Workers v. NLRB," 302 F.2d 186, 190 (C.A.D.C., 1962), citing NLRB v. Link-Belt Co., 311 U.S. 584, 597, 602 (1941). In this case, the circumstantial evidence is overwhelming.

I conclude that Respondent willfully arranged for the

members of the student crew to be hired for the primary purpose of voting in the representation election, in violation of Sections 1153(a) and 1154.6 of the Act, and that the challenges to the ballots of the persons identified in paragraphs IX through XXIV, inclusive, and XXVI through XXVIII, inclusive, of the Acting Regional Director's Report on Challenged-Ballots, should be sustained for the same reason, pursuant to Section 20355(a)(4) of the Board's Regulations.

D. The Remaining Grounds for Challenging the Prospective Voters in the Student Crew.

The UFW has also challenged the 19 prospective voters in the student crew on the grounds that they were not agricultural employees of Respondent within the meaning of the Act (Regulations Section 20355(a)(7)), or that they did not work during the applicable payroll period (Regulations Section 20355(a)(2)).

The UFW concedes that all 19 students worked during the payroll period ending October 14, 1975. The challenges on this ground must be rejected.

The UFW also admits that the members of the student crew were engaged in thinning broccoli, obviously agricultural work, during the applicable payroll period. The thrust of the UFW argument appears to be that if it is found that the students were not hired for the primary purpose of voting in the election, then, given the rather small quantity of work performed by the crew, and the role played by Del Peterson in their hiring, designation of a crew leader, and distribution of pay checks, the students should be viewed as falling outside the boundaries of the appropriate bargaining unit, under the holding in Salinas Greenhouse, 2 ALRB No. 21 (1976).

The UFW does not contend that the students should be excluded from the bargaining unit because they lack a sufficient community of interest with the other employees. Such arguments have been categorically rejected by the Board in Salinas Greenhouse, supra, and other cases, because Section 1156.2 of the Act does not authorize Board discretion on such grounds, defining the bargaining unit as "all the agricultural employees of an employer."

Because there is no evidence that the student crew was employed as part of a training program, as were the foreign students in Salinas Greenhouse, and because the Board has previously noted that one's status as a student has no bearing, without more, upon his or her status as an agricultural employee, Yoder Brothers, 2 ALRB No. 4 (1976), the challenges on this ground must also be rejected.

II. The Challenges to the Prospective Voters in the Jim Adam, Jr. Crew.

The UFW has challenged the ballots of six members of the Jim Adam, Jr. crew on the same three grounds as the challenges to the student crew. Those challenged are identified in paragraphs IV through VIII, inclusive, and XXV of the Acting Regional Director's Report on Challenged Ballots.

A. The "Hired for the Purpose of Voting in the Election" Challenges.

The Acting Regional Director concluded that the Jim Adam, Jr. crew was not hired for the primary purpose of voting in the

election. I agree. No evidence was admitted with respect to the method of hiring of the crew. Other than the fact that Respondent has identified these prospective voters as students,[8] there is nothing to link them to the student crew. The two crews never worked at Adam Farms on the same day. There is no evidence that Respondent or the Teamsters ever discussed the election with the Jim Adam, Jr. crew.

The UFW has failed to establish that these prospective voters were hired for the primary purpose of voting in the election. The challenges on this ground are rejected.

B. The Challenges that the Prospective Voters Were Not Agricultural Employees of the Employer.

The only testimony with respect to the work of the Jim Adam, Jr. crew was given by John Adam. He testified that the crew was engaged in field work. The challenges on this ground must be rejected for the same reasons as those discussed earlier with respect to the student crew.

C. The Challenges on the Ground that the Prospective Voters Did Not Work During the Applicable Payroll Period.

UFW 6 indicates that the Jim Adam, Jr. crew was paid for work during a payroll period ending September 23, 1975. John

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8. Contrary to the Report on Challenged Ballots, which identifies three members of the crew, Victor Villapania (challenged on other grounds), Ronnie Rodriguez, and Gay Lyn Soares, as full-time employees, the employer has included all seven as students (UFW 6).

Adam testified that the crew was paid on the basis of a ten-day payroll period, although the period might be extended for a day or so if the crew was about to finish work in a particular field. Although UPW 6 indicates that the crew was next paid for work during a payroll period ending October 7, 1975, the next ten-day period ended on October 3. Because no member of the crew worked after September 30, there appears to be no logical reason, for declaring the period to hare ended on October 7.

More significantly, California law requires the period to have ended no later than October 3 as a matter of public policy. It is not clear whether the crew was laid off or quit en masse. However, Labor Code Section 201 requires laid-off employees in seasonal occupations to be paid within 72 hours of the layoff and Labor Code Section 202 requires the employer to pay employees within 72 hours of their resignation. In either case, Respondent was under a legal obligation to pay the Jim Adam, Jr. crew no later than October 3.

Having concluded that the challenged employees last worked during the payroll period ending October 3, 1975, I am compelled to conclude that they did not work in the payroll period immediately preceding the filing of the petition for certification. The petition was filed on October 16. The applicable payroll period was October 4 through 13.

The challenges on this ground must be sustained.

III. The Challenged Ballot of John Coelho.

The UFW challenged John Coelho on the ground that he was a supervisor within the meaning of Section 1140.4(j) of the Act. The evidence with respect to John Coelho comes from the testi-

many of the Adam brothers and is uncontradicted. Mr. Coelho assisted Bill Trinidade, Respondent's foreman, and had limited latitute to assign work to employees. Coelho's status was closer to that of Pedro Enciso than that of any other employee.

Pedro Enciso was challenged by Respondent on the ground that Enciso was a supervisor. The Acting Regional Director sustained the challenge and no party excepted. I conclude that if Enciso is a supervisor, then so is Coelho. The challenge to the ballot of John Coelho must be sustained.

IV. The UFW's Petition under Section 1156.3(c) of the Act.

The UFW filed a petition under Section 1156.3(c) of the Act, alleging that Respondent's hiring of the student crew constituted misconduct affecting the outcome of the election. There is no evidence that the hiring of the student crew affected the votes of any other employee. The remedy for such misconduct is to set aside the election. Because I have concluded that the challenges to the student crew must be sustained, the UFW will be certified as the bargaining agent of Respondent's employees. No party referred to the objections petition in closing arguments or briefs. Because of the disposition of this case, I conclude that the petition should be dismissed.

V. Summary of Challenged Ballot Issues.

I have concluded that the UFW's challenges to the prospective voters identified in paragraphs IV through XXIX of the Acting Regional Director's Report on Challenged Ballots should

be sustained. Because the remaining challenged ballot cannot affect the outcome of the election, I recommend that the Board certify the UFW as the exclusive bargaining representative of all of Respondent's agricultural employees.

THE REMEDY IN THE UNFAIR LABOR PRACTICE CASE

NLRB precedents provide very little guidance on the issue of a proper remedy for violation of Section 1154.6 of the Act. Because the NLRA contains no provision analogous to Section 1154.6, I requested the parties to consider the issue of remedies in their briefs. Unfortunately, none of the parties appears to a have devoted much careful attention to this issue.[9]

A violation of Section 1154.6 strikes at the heart of the Act's protections of agricultural employees. It is an attack an the integrity of the Board's election processes and its ability to resolve expeditiously representation issues. In this case, Respondent's conduct has denied a majority of the agricultural employees at Adam Farms the right to be represented by the union of their choice,[10] and can only serve to cast doubts in the minds

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9. The UFW, in its addenda to its brief, addresses the remedies issue, but because the addenda was not timely filed, I have not considered it. The UFW did, however, request a bargaining order as relief in its objections petition under Section 1156.3 (c) of the Act (Board 1-F).

10. If the Board were to reverse my decision on the challenged ballots of the Jim Adam, Jr. crew and John Coelho, and if all seven of these employees and Victor Villapania cast their votes for the Teamsters or No Labor Organization, then the final vote would be UFW 33, and Teamsters plus No Labor Organization 33. Only this combination of events would result in the UFW's not receiving a majority of the votes cast, provided, of course, that the Board affirms that an unfair labor practice has been committed and sustains the challenges to the student crew.

of such employees *as* to whether the Board, can assure that elections are conducted fairly. Of course, certification of the UFW would, in itself, constitute a significant remedy in this case. But a remedial order must be so constructed as to provide for affirmative relief to restore those conditions, insofar as is possible, which would have existed had there not been an unfair labor practice. Otherwise, it may prove difficult for the Board to maintain the integrity of its election processes in future cases.

Section 1160.3 of the Act authorizes the Board, when it finds that an unfair labor practice has committed, to issue a cease and desist order, to require the Respondent to take affirmative action, and to provide "such other relief as will effectuate the policies of . . ." the Act.

Accordingly, I find the following relief to be necessary:

1. An order that Respondent cease and desist from infringing in any manner upon the rights guaranteed to employees by Section 1152 of the Act. The egregious nature of the violation in this case requires a broad cease and desist order.

2. An order that the ballots of the 19 students identified in paragraphs IX through XXIV, inclusive, and XXVI through XXVIII, inclusive, of the Acting Regional Director's Report on Challenged Ballots, not be counted.

3. An order requiring the Respondent to publish and make known to its employees that it has violated the Act and that it has been ordered not to engage in future violations of the Act, as specified in the attached Notice to Employees. The Notice,

in English and Spanish, shall be mailed to all employees of the Respondent between September 1, 1975, and the time of mailing, if they are not then employed by Respondent. See Valley Farms, 2 ALRB No. 41 (1976). For all current employees, and for those hired by Respondent for six months following its initial compliance with this Decision and Order, Respondent, through Richard Adam and/or John Adam, Jr., shall give by hand to such employees the attached Notice and its Spanish translation. Respondent shall inform the employees that it is important to understand the Notice and shall arrange for it to be read to those employees, in their preferred language, who are unable to read. For the same six-month period, Respondent shall post the Notice and its Spanish translation in a prominent place at Adam Farms.

4. Provided that the UFW is certified as the exclusive bargaining agent of Respondent's agricultural employees, Respondent shall, upon request of the UFW, immediately commence bargaining collectively in good faith with the UFW and shall provide the UFW access to a conveniently located bulletin board for the purpose of posting notices.

Although Respondent is not responsible for the recent funding problems which the Board has experienced, it should not be permitted to profit from its own misconduct, which has caused a substantial delay in the certification of the election results. The clear purpose of Respondent's conduct was to avoid having to deal with the UFW as its employees' bargaining representative. The NLRB has ordered employers to bargain, absent

a bargaining request or demonstration of failure to bargain in good faith, if the Board finds that the employer has committed unfair labor practices designed to destroy the union's majority and evade the duty to bargain. HLH Products v. NLRB, 396 F.2d 270 (7 Cir. 1968), cert. den. 393 U.S. 982 (1968); J.C. Penney Co. v. NLRB, 389 F.2d 479 (10 Cir. 1967), enforcing 160 NLRB 279, 62 LRRM 1597 (1966); Western Aluminum of Oregon, Inc., 144 NLRB 1191, 54 LRRM 1217 (1963). This is just such a case. Only by including a bargaining order in its remedy can the Board restore the status quo ante and effectively deter future tampering with elections.

ORDER

Respondent, its officers, agents and representatives shall:

1. Cease and desist from:

(a) Willfully hiring employees for the primary purpose of voting in elections in violation of Sections 1153(a) and 1154.6 of the Act.

(b) In any manner interfering with, restraining or coercing employees in the exercise of their right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities, except to the extent that such right may be affected by an agreement the type of which is authorized by Section 1153(c) of the Act.

2. Take the following affirmative action:

(a) Provided that the UFW is certified as the exclus-

ive bargaining agent of Respondent's agricultural employees, upon request of the UFW, Respondent shall immediately commence bargaining collectively in good faith with the UFW in compliance with Section 1153(e) of the Act.

(b) Distribute to past, present, and future employees the attached Notice to Employees, as well as explain to present and future employees that the contents of the Notice are important to know and offer to read aloud such Notice, all in a manner as set forth in the section entitled "The Remedy in the Unfair Labor Practice Case." In addition, the Respondent shall furnish the Regional Director for the Salinas Regional Office for his or her acceptance copies of the Notice, accurately and appropriately translated, and such proof as requested by the Regional Director, or agent, that the Notice has been distributed and made known in the required manner.

(c) Post the attached Notice to Employees in the prescribed manner, as stated in the section entitled, "The Remedy in the Unfair Labor Practice Case."

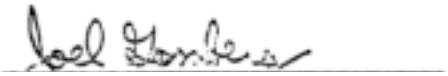
(d) Make available to the UFW sufficient space on a convenient bulletin board for its posting of notices and the like for a period of *six* months from Respondent's beginning compliance with the mandates of this Decision and Order, as set forth in the section entitled, "The Remedy in the Unfair Labor Practice Case."

(e) Notify the Regional Director of the Salinas Regional Office within 20 days from receipt of a copy of this Decision and Order of steps the Respondent has taken to comply therewith,

and to continue reporting periodically thereafter until full compliance is achieved.

DATED: February 14, 1977.

AGRICULTURAL LABOR RELATIONS BOARD



By JOEL GOMBERG
Administrative Law Officer

NOTICE TO EMPLOYEES

After a hearing in which all parties presented evidence, an Administrative Law Officer of the Agricultural Labor Relations Board has decided that the Adam Farms violated the Agricultural Labor Relations Act, and has ordered us to notify you and others that we violated the law and that we will respect the rights of all our employees in the future. Therefore, on behalf of Adam Farms, we were now telling each of you that:

1. We intentionally hired a crew of students in the fall of 1975 for the primary purpose of having them vote in the union representation election in the hope that the UFW would lose the election. Nineteen of the students who voted in the election were challenged and their votes will not be counted.

2. All of our employees are free to support, become, or remain members of the UFW, or any other union, as provided in the Agricultural Labor Relations Act. Our employees can engage in any and all activities in support of the union of their choice without interference, restraint or coercion from us, provided that their activity is not carried out at times or in ways that interfere with their work. We will not discharge, lay off, or in any other manner interfere with the rights of our employees to engage in activities which are guaranteed them by the Agricultural Labor Relations Act.

3. If the UFW is certified by the Agricultural Labor Relations Board as your exclusive bargaining agent, we will, upon request of the UFW, immediately begin to bargain collectively in good faith with the UFW in order to agree upon a contract.

Signed:

_____ _____

JOHN F. ADAM, JR. RICHARD E. ADAM

DATED: