

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

JOHN F. ADAM, JR. and)	
RICHARD E. ADAM, dba)	
ADAM FARMS,)	Case No. 78-CE-55-M
)	
Respondent,)	
)	4 ALRB NO. 76
and)	
)	
UNITED FARM WORKERS)	
OF AMERICA, AFL-CIO,)	
)	
Charging Party.)	
_____)	

DECISION AND ORDER

Pursuant to the provisions of Labor Code Section 1146,^{1/} the Agricultural Labor Relations Board (the Board) has delegated its authority in this matter to a three-member panel.

On July 28, 1978, the Board received a stipulation and statement of facts, entered into by all parties to this matter, including the General Counsel, Respondent (John F. Adam, Jr. and Richard E. Adam, dba Adam Farms), and the Charging Party (United Farm Workers of America, AFL-CIO, hereinafter UFW), wherein the parties agreed to a transfer of this matter to the Board for findings of fact, conclusions of law, and order, pursuant to 8 Cal. Admin. Code Section 20260. In their stipulation, the parties agreed, inter alia: that the entire record in John F. Adam, Jr. and Richard E. Adam, dba Adam Farms, 4 ALRB No. 12 (1978) may be considered by the Board as part of

^{1/} Unless otherwise indicated, all section references herein are to the Labor Code.

the record herein;^{2/} that all parties waive their right to present testimony and their right to a hearing; and that Respondent has refused to bargain with the UFW from March 21, 1978 through May 23, 1978.

The sole issue for decision is whether Respondent's obligation to bargain with the certified representative of its employees was tolled during the period from March 21, 1978, through May 23, 1978, because of the pendency of Respondent's appeal of this Board's Decision in Adam Farms, 4 ALRB No. 12 (1978). Briefs on this issue were filed by Respondent, the Charging Party and the General Counsel.

Pursuant to 8 Cal. Admin. Code Section 20260, this matter is hereby transferred to the Board. Upon the basis of the entire record^{3/} in this case, the Board makes the following:

FINDINGS OF PACT

1. At all times material herein, Respondent, a partnership, has been engaged in agriculture in Santa Barbara County and has been an agricultural employer within the meaning of Section 1140.4(c). At all times material herein, John F. Adam, Jr. and Richard E. Adam have been agents of Respondent acting on its behalf within the meaning of Section 1165.4.

^{2/}As the record in the instant matter is entirely adequate for resolving the issues presented herein, we decline to include the record in Adam Farms, 4 ALRB No. 12 (1978) as a part of this record.

^{3/}We deem the record in this matter to consist of the charge, complaint, answer, the stipulation and statement of facts executed by the parties, with the exhibits attached thereto, and the briefs submitted by the parties. See 8 Cal. Admin. Code Section 20280(b) (1978).

2. At all times material herein, the UFW has been a labor organization within the meaning of Section 1140.4(f).

3. On March 16, 1978, the Board issued its Decision in John F. Adam, Jr. and Richard E. Adam, dba Adam Farms, 4 ALRB No. 12 (1978), in which it certified the UFW as the exclusive collective bargaining representative of Respondent's agricultural employees, concluded that Respondent violated Sections 1154.6 and 1153 (a) by willfully hiring high school students for the primary purpose of voting in the election, and sustained the UFW's challenges to the ballots of the said high school students under 8 Cal. Admin. Code Section 20355(a) (4) (1975).

4. On March 21, 1978, Cesar Chavez, President of the UFW, sent a letter to Respondent requesting negotiations and information necessary for collective bargaining.

5. On March 28, 1978, UFW negotiator Peter Cohen telephoned John F. Adam, Jr., to confirm that Respondent had received the UFW¹'s request to commence bargaining and its request for information necessary for collective bargaining. John F. Adam, Jr., replied that Respondent, upon advice of its attorney, refused to bargain with the UFW pending Respondent's appeal of the Board's Decision certifying the UFW.

6. On March 29, 1978, after being told by Respondent's attorney to contact Respondent directly, Peter Cohen again telephoned John F. Adam, Jr., and requested meeting dates for collective bargaining. Cohen was told to call Respondent's attorney.

7. On March 30, 1978, Peter Cohen sent John F. Adam,

Jr., a letter requesting Respondent to commence collective bargaining and suggesting dates for such meetings.

8. On April 5, 1978, Respondent's counsel Cal B. Watkins, Jr., sent a letter to Peter Cohen stating Respondent's position that its bargaining obligation was tolled pending the appeal process and that Respondent therefore refused to furnish the information.

9. On April 10, 1978, the UFW served Respondent with the charge in the instant Case No. 78-CE-55-M in which it alleged that Respondent's refusal to bargain with the UFW is a violation of Section 1153(e) and (a), which charge was duly filed with the ALRB on April 13, 1978.

10. On May 1, 1978, Respondent's counsel Cal B. Watkins, Jr., sent a letter to ALRB agent Angel Melendez, setting forth Respondent's position that its duty to bargain with the UFW was tolled pending resolution of its appeal.

11. On May 19, 1978, the Salinas Regional Director of the ALRB issued the complaint in the instant Case No. 78-CE-55-M in which it is alleged that Respondent violated Section 1153(e) and (a) of the Act.

12. On May 30, 1978, Respondent filed and served its answer to the complaint in this matter.

13. On April 11, 1978, Respondent filed a notice of petition for writ of review and request for temporary stay of certification in Case No. 2 Civil 53427 in the Court of Appeal for the Second Appellate District of the State of California.

14. On May 1, 1978, the Executive Secretary for the

Board filed a return to writ of review and memorandum of documents in Case No. 2 Civil 53427.

15. On May 2, 1978, the Board filed its preliminary opposition to petition for writ of review in Case No. 2 Civil 53427.

16. On May 4, 1978, the Court of Appeal for the Second Appellate District of the State of California issued its order denying Respondent's petition on the ground that it did not state facts sufficient to justify the issuance of a writ of review.

17. On May 9, 1978 UFW counsel W. Daniel Boone sent a letter to Respondent's counsel Cal B. Watkins, Jr., requesting that collective bargaining negotiations begin and that Respondent furnish the information necessary for bargaining.

18. On May 23, 1978, Respondent sent a letter to the UFW indicating its willingness to commence collective bargaining and provide the requested information.

CONCLUSIONS OF LAW

Respondent contends that its duty to bargain with the UFW was tolled pending consideration, by the Second District Court of Appeal, of its petition for writ of review and request for temporary stay of certification. The basis for Respondent's argument is that the validity of the Board's certification was contingent upon the court's upholding the Board's conclusion that Respondent violated Section 1154.6 by willfully arranging for persons to become employees for the primary purpose of voting in the election.

Although the issue herein has not previously been considered by this Board, the National Labor Relations Board has held that the duty to bargain is not tolled pending the outcome of an appeal of an unfair labor practice case, even though the validity of the certification may turn on the resolution of the unfair labor practice charge. See East Coast Equipment Corporation, 229 NLRB No. 130, 95 LRRM 1166 (1977). As Section 1148 requires us to follow this clearly applicable precedent of the NLRA, we conclude that Respondent violated Section 1153(e) and (a) of the Act by failing and refusing to provide relevant collective bargaining information to the UFW and by failing and refusing to meet and bargain collectively in good faith with the UFW during the period from March 21, 1978 to May 23, 1978. Moreover, in accordance with our holding in Perry Farms, 4 ALRB No. 25 (1978), we shall require that Respondent, rather than its employees, bear the costs of delay resulting from its refusal to bargain in violation of the Act, by making its employees whole for losses of pay and other economic losses suffered by them from March 21, 1978 through May 23, 1978, the period during which Respondent refused to meet and bargain with the UFW or to furnish requested information relevant to collective bargaining. ^{4/}

^{4/} The complaint in this matter included a prayer that attorney's fees and litigation costs of the General Counsel and the UFW be paid by Respondent. As the issue presented in this matter has not previously been resolved by this Board, we do not consider Respondent's litigation posture to be frivolous. Accordingly, the General Counsel's prayer for fees and costs is hereby denied.

The Regional Director is hereby directed to determine the amount of the award herein based in general upon the criteria set forth in Perry Farms, supra, and Adam Dairy, 4 ALRB No. 24 (1978).

ORDER

Pursuant to Section 1160.3, Respondent, John F. Adam, Jr. and Richard E. Adam, dba Adam Farms, its officers, successors, and assigns is hereby ordered to:

1. Cease and desist from:

(a) Failing or refusing to meet and bargain collectively in good faith, as defined in Labor Code Section 1155.2 (a), with the United Farm Workers of America, AFL-CIO (UFW) as the certified collective bargaining representative of Respondent's agricultural employees.

(b) Failing or refusing to provide all information relevant to collective bargaining requested by the UFW to enable it to fulfill its obligation as exclusive collective bargaining representative of Respondent's agricultural employees.

(c) In any other manner interfering with, restraining or coercing agricultural employees in the exercise of the rights guaranteed to them by Labor Code Section 1152.

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

(a) Upon request, meet and bargain collectively in good faith with the UFW as the exclusive collective bargaining representative of its agricultural employees and, if an agreement is reached, embody its terms in a signed agreement.

(b) Provide all relevant information requested by the UFW to enable it to fulfill its obligation as the exclusive collective bargaining representative of Respondent's agricultural employees.

(c) Make its agricultural employees whole for all losses of pay and other economic losses sustained by them as the result of Respondent's refusal to bargain for the period from March 21, 1978, through May 23, 1978.

(d) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all records relevant and necessary to a determination of the amounts due its employees under the terms of this Order.

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

(f) Post copies of the attached Notice in all appropriate languages, for 90 consecutive days, at conspicuous locations, on its premises, to be determined by the Regional Director. Respondent shall exercise due care to replace any copy or copies of the Notice which may be altered, defaced, covered or removed.

(g) Provide a copy of the attached Notice in the appropriate language to each employee hired by Respondent during the 12-month period following the issuance of this Decision.

(h) Mail a copy of the attached Notice, in the appropriate language, within 30 days from receipt of this Order,

to each employee deemed an eligible voter in the representation election conducted on October 23, 1975, and to each employee employed by Respondent during the period from March 21, 1978 through May 23, 1978.

(i) Arrange for a representative of Respondent or a Board Agent to distribute and read the attached Notice in appropriate languages to the assembled employees of Respondent on company time. The reading or readings 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 Respondent to all nonhourly wage employees to compensate them for time lost at this reading and the question-and-answer period.

(j) Notify the Regional Director in writing, within 30 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, Respondent shall notify him or her periodically thereafter in writing what further steps have been taken in compliance with this Order.

IT IS FURTHER ORDERED that the certification of the United Farm Workers of America, AFL-CIO, as the exclusive collective bargaining representative of Respondent's

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agricultural employees be, and it hereby is, extended for a period of one year from May 23, 1978.

Dated: October 20, 1978

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

JOHN P. McCarthy, Member

NOTICE TO EMPLOYEES

After a hearing in which all parties presented evidence, the Agricultural Labor Relations Board has found that we have violated the Agricultural Labor Relations Act, and has ordered us to notify our employees that we will respect their rights under the Act in the future. Therefore, we are now telling each of you:

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

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

Because this is true we promise that:

(1) Because the UFW was selected by a majority vote of our employees as their exclusive representative for purposes of collective bargaining, we will, on request, meet with the UFW at reasonable times and bargain in good faith about wages, hours, working conditions and other terms and conditions of employment of our agricultural employees.

(2) We will provide all relevant information requested by the union to enable it to fulfill its obligation as our employees' exclusive collective bargaining representative.

(3) We will reimburse those of you who were employed by us during the period from March 21, 1978 through May 23, 1978 for any losses of pay or other economic losses which resulted from our refusal to bargain in good faith with the UFW during that period.

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 (UFW)

78-CE-55-M
4 ALRB No. 76

BOARD DECISION

In John F. Adam, Jr. and Richard E. Adam, dba Adam Farms, 4 ALRB No. 12 (1978), the Board concluded that Respondent had violated Section 1154.6 of the Act by hiring high school students for the purpose of having them vote in a representation election, sustained the UFW's challenges to the ballots cast by those students, and certified the UFW as the bargaining agent for Respondent's employees. Thereafter, Respondent refused to bargain or to provide the UFW with information relevant to collective bargaining, contending that the pendency of its appeal of the prior Board's unfair labor practice decision, in order to test the validity of the certification, justified such a refusal.

When the appellate court denied Respondent's appeal, Respondent agreed to commence bargaining. The parties thereafter entered into a stipulation of facts and the refusal to bargain charge was transferred to the Board without a hearing. The sole issue for decision was whether Respondent's obligation to bargain was tolled during the pendency of the appeal.

The Board found that under applicable NLRA precedent the duty to bargain is not tolled pending the outcome of an appeal of an unfair labor practice case, even though the validity of a certification may turn on the resolution of the unfair labor practice charges. Respondent was therefore in violation of Section 1153 (e) and (a) by failing and refusing to provide relevant collective bargaining information to the UFW and by failing and refusing to meet and bargain collectively in good faith with the UFW from March 21, 1978 to May 23, 1978.

REMEDIAL ORDER

In accordance with the holding in Perry Farms, 4 ALRB No. 25 (1978), Respondent was ordered to make its employees whole for losses of pay and other economic losses suffered by them during the period that Respondent refused to bargain, to meet and bargain in good faith with the UFW, to provide relevant information to the UFW, and to post, distribute and read appropriate notices to employees.

* * *

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