

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

D. PAPAGNI FRUIT CO.)	
and D. P. FARMS CO.,)	
)	Case No. 83-RC-21-F
Employer,)	
and)	
)	
)	
UNITED FARM WORKERS)	10 ALRB No. 31
OF AMERICA, AFL-CIO,)	
)	
Petitioner.)	
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DECISION AND CERTIFICATION OF REPRESENTATIVE

Following a Petition for Certification filed by the United Farm Workers of America, AFL-CIO (UFW or Union) on September 19, 1983, a representation election was conducted among the agricultural employees of D. Papagni Fruit Co. and D. P. Farms Co. (Employer or Company) on September 24, 1983. The Tally of Ballots showed the following results:

UFW.	230
No Union	187
Unresolved Challenged Ballots.	20
Void	<u>2</u>
Total.	439

The Employer filed 62 election objections, three of which were ultimately set for hearing. The remaining objections were dismissed.

A hearing was commenced before Investigative Hearing Examiner (IHE) James Wolpman. At the opening of the hearing the

Employer moved to expand the scope of the issues to include consideration of all of the dismissed objections. In the alternative, it moved that the hearing on those objections which had been set be deferred until final resolution of the dismissed objections. The IHE denied both motions as beyond his jurisdiction. The IHE also refused to admit into evidence documents proffered by the Employer in support of its objections.^{1/}

The IHE then requested that the Employer proceed with the presentation of evidence on the three objections, but the Employer refused to do so, taking the position that a fair hearing could not occur unless all of its objections were heard. The IHE explained that the failure to present evidence on the objections set would constitute a waiver of the right to a hearing on them, but the Employer nevertheless declined to proceed. The hearing was then adjourned.

The IHE thereafter issued the attached Decision recommending that the Agricultural Labor Relations Board (ALRB or Board) dismiss the Employer's objections and certify the UFW as the collective bargaining representative of the Employer's agricultural employees. The Employer timely filed exceptions to the IHE's Decision and a supporting brief, and the UFW filed a brief in response thereto.

Pursuant to the provisions of Labor Code section 1146,

^{1/} The IHE ruled that documents submitted in support of dismissed objections were irrelevant to the instant proceeding, and those concerned with the objections set for hearing amounted to uncorroborated hearsay whose admission would deprive the petitioner of its right of confrontation and cross-examination.

the Board has delegated its authority in this matter to a three-member panel.

The Board has considered the record and the IHE's Decision in light of the exceptions and briefs and has decided to affirm his rulings, findings and conclusions and to certify the United Farm Workers of America, AFL-CIO, as the exclusive collective bargaining representative of the agricultural employees of D. Papagni Fruit Co. and D. P. Farms Co.^{2/}

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid votes has 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 D. Papagni Fruit Co. and D. P. Farms Co. for purposes of collective bargaining as defined in section 1155.2(a) concerning employees' wages, hours and working conditions.

Dated: June 27, 1984

JOHN P. MCCARTHY, . Acting Chairman

JEROME R. WALDIE, Member

JORGE CARRILLO, Member

^{2/} As the objecting party, the Employer bore the burden of proof in seeking to set aside the election. (Patterson Farms (1982) 8 ALRB No. 57.) By refusing to litigate the objections set for hearing, the Employer has failed to meet its burden.

CASE SUMMARY

D. Papagni Fruit Co.
D. P. Farms Co.
(UFW)

10 ALRB No. 31
Case No. 83-RC-21-F

The Employer filed 62 election objections, three of which were ultimately set for hearing. The remaining objections were dismissed.

THE DECISION

At the hearing, the Employer refused to proceed with the presentation of evidence on the three objections, taking the position that a fair hearing could not occur unless all of its objections were heard. The IHE explained that the failure to present evidence would constitute a waiver of the right to a hearing on the objections. After the Employer still declined to proceed, the hearing was adjourned. The IHE thereafter issued a decision recommending that the Board dismiss the Employer's objections and certify the UFW as the collective bargaining representative of the Employer's agricultural employees.

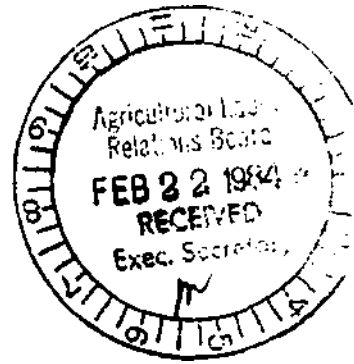
BOARD DECISION

The Board affirmed the IHE's decision and certified the UFW as the exclusive collective bargaining representative of the agricultural employees of D. Papagni Fruit Co. and D. P. Farms Co.

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

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STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATION BOARD

In the Matter of:) Case No. 83-RC-21-F
)
D. PAPAGNI FRUIT CO. and)
D.P. FARMS CO.,)
)
Employer,)
)
and)
)
UNITED FARM WORKERS)
OF AMERICA, AFL-CIO,)
)
Petitioner.)

Appearances:

Thomas M. Giovacchini
Campagne and Giovacchnini
Fresno, California
for the Employer

Marcos Camacho
Keene, California
for the Petitioner

Before: James Wolpman
Investigative Hearing Examiner

DECISION OF THE INVESTIGATIVE HEARING EXAMINER

STATEMENT OF THE CASE

JAMES WOLPMAN, Investigative Hearing Examiner:

This case was heard by me on February 6, 1984, in Fresno, California. Both the employer and the petitioner were represented in the proceedings and their representatives fully participated in the hearing.

A petition for certification was filed by the United Farm Workers of America, AFL-CIO (UFW) on September 19, 1983, seeking to represent all of the agricultural employees of the single enterprise made up of D. Papagni Fruit Co. and D. P. Farms Co. (Board Exhibit 1.) The Agricultural Labor Relations Board conducted an election on September 24, 1983. (Board Ex. 3, 5, 7.) A total of 439 workers voted out of the 490 who were eligible. The results were as follows:

UFW	230
No Union	187
Unresolved Challenged Ballots	20
Void	2

(Board Ex. 7.)

The employer subsequently filed 62 objections to the election. (Board Ex. 9.) The Executive Secretary set two of them for hearing and requested additional declarations from the Delano Regional Director to determine whether a third objection should be set. (Board Ex. 10.) The employer sought review of the Executive Secretary's dismissal of the remaining objections (Board Ex. 11) and, shortly thereafter, filed a supplemental request for reconsideration asserting another objection to the conduct of the

election. (Board Ex. 16.) The supplemental request was denied. (Board Ex. 18.) The original request for review was partially granted, and one additional" objection was set for hearing. (Board Ex. 22.) The employer again requested reconsideration of the denial of its request to have the remaining objections heard (Employer Ex. 25), but its request was again denied. (Board Ex. 21.) That left the following three objections to be heard:

1. Whether Union organizers misrepresented to employees that company busses would take them to the immigration authorities rather than to the polls, and if so, whether such misrepresentation tended to affect the outcome of the election.

2. Whether the polls opened late at the Madera voting site and, if so, whether the late opening disenfranchised a sufficient number of voters to have affected the outcome of the election.

3. Whether Petitioner threatened employees with loss of employment if they failed to vote for the union and/or threatened employees with physical violence if they failed to support the union, and, if so, whether such conduct affected the outcome of the election.

THE EMPLOYER'S POSITION AT HEARING

At the opening of the hearing the employer moved to expand the scope of the issues to include consideration of all of the dismissed objections. (Tr. 4.) In the alternative, it moved that the hearing on those objections which had been set be deferred until final resolution of the dismissed objections. In support of its motions the employer sought the introduction of declarations, letters and other documents concerned with each of its 63

objections. (Tr. 5-9.)

I denied the motion to expand the scope of the hearing as beyond my province as Investigative Hearing Examiner (Tr. 16); I also denied the motion to defer consideration of the objections scheduled to be heard as likewise beyond my power (Tr. 18); and I refused to admit into evidence the documents submitted on the basis that those concerned with dismissed objections were irrelevant to the instant proceeding (J.R. Norton (1977) 3 ALRB No. 66) and those concerned with the objections set for hearing amounted to uncorroborated hearsay whose admission would deprive the petitioner of its right of confrontation and cross-examination (Tr. 17).^{1/}

The employer was thereupon requested to proceed with the presentation of evidence on the three objections, but declined to do so. (Tr. 18.) It took the position that it was unfair to compel it to proceed piecemeal with its objections and that only by hearing the three as a part of all of its objections could a fair hearing occur. I explained that the failure to present evidence on the objections set would constitute a waiver of the right to a hearing on them and again instructed the employer to proceed, but counsel again declined. (Tr. 18-19.) I then indicated that I had no alternative but to dismiss the three objections, and the hearing was adjourned. (Tr. 19.)

1. At the employer's request, all rejected exhibits were placed in a rejected evidence file. One of those exhibits (No. 15) concerns a personnel matter and was therefore ordered sealed. Two Employer Exhibits (Nos. 24 and 25) belonged among the official exhibits and so were admitted into evidence. One Board Exhibit (No. 17) included declarations which did not properly belong among the official exhibits; it was rejected on the same basis as the employer declarations. (Tr. 17-18.)

FINDINGS AND CONCLUSIONS

Jurisdiction. Neither of the parties challenged the Board's jurisdiction. (Board Ex. 2.) Accordingly, I find that D. Papagni Fruit Co. and D. P. Farms Co. is an agricultural employer within the meaning of Labor Code section 1140.4(c) and that the UFW is a labor organization within the meaning of Labor Code section 1140.4(f).


Failure to proceed. Despite being afforded the opportunity to do so, the employer refused to present evidence in support of any of the three objections set for hearing.

Conclusion. In seeking to set aside the election, the employer, as objecting party, bears the burden of proof. (Patterson Farms (1982) 8 ALRB No. 57; TMY Farms (1976) 2 ALRB No. 58.) Here, there has been a complete failure of proof in support of the objections and a waiver of the right to further hearing on them.

RECOMMENDATION

I therefore recommend that the employer's objections be dismissed and that the UFW be certified as the exclusive bargaining representative of all of the agricultural employees of the employer in the State of California.

DATED: February 22, 1984



JAMES H. WOLPMAN
Investigative Hearing Examiner