

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

CALIFORNIA REDI-DATE, INC., ¹)	
Employer ,)	Case No. 94-RC-3-EC
)	
and)	20 ALRB No. 11
)	
UNITED FARM WORKERS OF)	(July 27, 1994)
AMERICA, AFL-CIO,)	
Petitioner.)	

DECISION AFFIRMING DISMISSAL OF ELECTION OBJECTION5 AND CERTIFICATION OF REPRESENTATIVE

On June 3, 1994,² Petitioner United Farm Workers of America, AFL-CIO (UFW or Union) filed a petition for certification seeking to represent all agricultural employees of California Redi-Date, Inc. (Employer). An election was conducted on June 10. The tally of ballots showed 25 votes for the UFW, 9 votes for No Union, and 1 Challenged Ballot.

The Employer timely filed six election objections alleging that misconduct by union supporters and agents of the Agricultural Labor Relations Board (ALRB or Board) had made voter free choice in the election impossible. On June 24, the Board's Executive Secretary dismissed the Employer's objections for failure to provide sufficient declaratory support to establish a

¹Although the Employer is referred to as "California Redi-Date Company" in some of the documents on file herein, it appears from documents filed by the Employer's attorneys that the correct designation is "California Redi-Date, Inc."

²All dates refer to 1994 unless otherwise stated.

prima facie case which, if true, would warrant setting aside the election.

On June 28, the Employer's attorney telephoned the Board to request an extension of time for filing a request for review of the Executive Secretary's dismissal. The Acting Executive Secretary granted an extension until July 8 for the request for review to be received by the Board, and the Employer's attorney sent a confirming letter. The Employer's request for review was received by FAX at the Board's offices on July 8. The FAX was initiated at 4:04 p.m. and was completed at 4:17 p.m.

Timeliness Issue

The Acting Executive Secretary's extension of time was specifically conditioned upon the Board receiving the Employer's request for review by July 8. The Employer's attorney did not indicate any intention of filing the request by FAX, nor was he given permission to file by FAX.

The Board's regulations permit the filing of documents by FAX only under certain conditions, including:

- (1) Through no fault of the sending party, there is insufficient time for filing and service as provided in sections 20164 and 230166. . . . and
- (5) For a document to be considered received on the day in question, transmission must have begun prior to 4:00 p.m. on that date. . . . (Cal. Code Regs., tit. 8, §20168.)

³On July 1, the UFW's attorney filed a request to shorten the time for the Employer to file its request for review. The Executive Secretary denied the Union's request on the same date.

Since the extension of time granted herein did not authorize the Employer to file its request for review by FAX, and since, in any case, the Employer did not strictly comply with the regulatory requirements for filing by FAX, we find it appropriate to dismiss the request for review as untimely filed. However, as discussed below, we find that the Employer's stated grounds for seeking review are without merit, and we will therefore affirm the Executive Secretary's dismissal of the election objections on substantive grounds, as well.

Objection No.1;⁴ Alleged Intimidation of Voters by Employees Who Had Already Voted.

The Executive Secretary dismissed this objection for lack of evidence that a group of people near the polling area engaged in intimidating or coercive behavior. The Employer asserts that certain female employees felt intimidated or threatened by the presence of certain male workers.

Under both National Labor Relations Board (NLRB) and ALRB precedent, the test applied in determining whether nonparty conduct is coercive is an objective, not a subjective, test. (Agri-Sun Nursery (1987) 13 ALRB No. 19.) Several of the declarants herein stated that they felt nervous and scared at having to walk by a group of men on their way to the polls because they believed the men to have been involved in a loud argument about the Union on an occasion two weeks prior to the election.

⁴The Employer requested review regarding only the first five of its six objections.

None of the declarants describe conduct in the polling area which can objectively be considered intimidating or coercive. The declarants' subjective feelings of fear or nervousness are not relevant, and moreover do not appear to have any reasonable basis in fact. Therefore, this objection was properly dismissed by the Executive Secretary.

Objection No. 2: Employees Opposed to the UFW Were Intimidated, Coerced and Physically Threatened.

The Employer argues that certain employees were intimidated because of their fear of violence if they opposed unionization. The supporting declarations state that two weeks before the election, the declarants overheard an argument among several employees who were 30 yards away. One of the employees was telling two or three others that he did not want a union. The declarants describe the argument as loud and angry, and state their belief that the pro-union employee would have hit the anti-union employee if the argument had continued.

Nothing in the declarants' statements demonstrates any reasonable belief that the pro-union employees were close to assaulting the individual with whom they were arguing. There is no indication that threats or threatening gestures were made. Since the declarants' subjective fear of violence is not supported by the described facts, the objection was appropriately dismissed by the Executive Secretary.

Objections Nos. 3 and 5; Board Agents Permitted Campaigning in the Polling Area and the Photographing of Voters by the UFW.

The Employer argues that there was excessive campaigning by UFW supporters in the polling area, and that a photographer, who was taking pictures of employees who were about to vote, created the impression that the Union was trying to determine which employees were present and which were not.

As the Executive Secretary points out in his dismissal of these two objections, it is not clear that any of the alleged campaigning took place within the quarantine area. Further, there is no indication that there were any threats or other coercive conduct that could have affected the integrity of the election. The alleged campaigning activity was brief and noncoercive, and ended quickly after a Board agent's request.

Further, there was no evidence that the photographing of voters interfered with free choice. Contrary to the Employer's assertion, the photography would not tend to create any impression among employees that the UFW would be able to determine how they voted. The cases cited by the Employer in support of its argument are inapposite, as they involved surveillance by union agents of employees engaged in anti-union campaign activity. (Mike Yurosek & Son, Inc. (1989) 292 NLRB 1074; Pepsi Cola Bottling Company of Los Angeles (1988) 289 NLRB 736.)

Therefore, Objections Nos. 3 and 5 were properly dismissed by the Executive Secretary.

Objection No. 4: Employees Acting as Agents of the UFW Paid Money in Return for Employee Support and Votes for the UFW.

The Executive Secretary dismissed this objection on the ground that the supporting declaration was not signed under penalty of perjury. The Employer argues that the declarant was unavailable because he was out of the country, and that the signed declaration of a woman who spoke to the declarant by telephone should be sufficient to bring the matter to hearing.

The Board's regulations provide that any party objecting to an election on grounds that misconduct occurred affecting the results of the election must submit supporting declarations containing facts within the declarants' personal knowledge, and that such declarations must be signed under penalty of perjury. (Cal. Code Regs., tit. 8, §20365(c)(2) and §20365(c)(4).) The objections and supporting documents must be filed within five days after the election, and no extensions of time are permitted. (Cal. Code Regs., tit. 8, §20365(a) and (b).)

The Board has interpreted these regulatory requirements very strictly because of the need to resolve election matters expeditiously. (See, e.g., Silver Terrace Nurseries, Inc. (1993) 19 ALRB No. 5.) Here, the submitted transcription of what an employee purportedly told the transcriber over the telephone does not comply with the Board's regulations. The Employer's argument that such hearsay evidence would be admissible during the hearing is irrelevant. Since the document is not signed under penalty of perjury by the declarant, it cannot be considered a validly

submitted declaration under section 20365 of the Board's regulations. (Cal. Code Regs., tit. 8, §20365(c) (4) .)

Therefore, the Executive Secretary properly dismissed Objection No. 4.

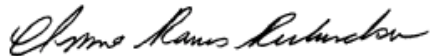
CERTIFICATION

We affirm the Executive Secretary's dismissal of the Employer's Election Objections Petition in its entirety. We therefore order that the results of the election conducted on June 10, 1994, be upheld and that the United Farm Workers of America, AFL-CIO, be certified as the exclusive collective bargaining representative of all of California Redi-Date, Inc.'s agricultural employees in the State of California.

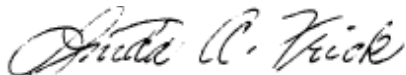
DATED: July 27, 1994



BRUCE JANIGIAN, Chairman



IVONNE RAMOS RICHARDSON, Member



LINDA A. FRICK, Member

CASE SUMMARY

CALIFORNIA REDI-DATE, INC.
(United Farm Workers of America,
AFL-CIO)

20 ALRB No. 11
Case No. 94-RC-3-EC

Background

On June 3, 1994, a petition for certification was filed by the United Farm Workers of America, AFL-CIO (UFW) seeking to represent the agricultural employees of California Redi-Date, Inc. (Employer). An election was conducted on June 10, 1994, with the results showing 25 votes for the UFW, 9 votes for No Union, and 1 Challenged Ballot. The Employer filed six election objections alleging misconduct by union supporters and agents of the Agricultural Labor Relations Board (Board). On June 24, 1994, the Board's Executive Secretary dismissed the objections for failure to provide sufficient declaratory support to establish a prima facie case. At the Employer's request, the Acting Executive Secretary granted an extension of time until July 8, 1994, for the Employer's request for review to be received by the Board. The Board received the request by FAX on that date. The FAX was initiated at 4:04 p.m. and was completed at 4:17 p.m.

Board Decision

In its decision, the Board noted that its regulations permit the filing of documents by FAX only when, through no fault of the sending party, there is insufficient time for filing by the usual means. For a document to be considered received on the day in question, the transmission must have begun prior to 4:00 p.m. The Board found that the Employer had not strictly complied with the regulatory requirements for filing by FAX, and that it would be appropriate to dismiss the request for review as untimely filed. However, the Board affirmed the dismissal of the election objections on substantive grounds, as well.

The Board found that the Executive Secretary had properly dismissed the objection alleging intimidation of voters, because none of the described conduct could objectively be considered intimidating or coercive. The Board found that the objection alleging physical threats to employees opposed to the Union was not supported by the described facts. Objections relating to campaigning in the polling area and the photographing of voters were properly dismissed, the Board held, because it was not clear that the alleged campaigning took place within the quarantine area, the activity was brief and noncoercive, and it ended quickly after a Board agent's request. Further, there was no evidence that the photographing of voters interfered with free choice. Finally, the Board affirmed the dismissal of an objection alleging that Union agents paid money for employee support and votes, because the objection was not supported by a declaration signed under penalty of perjury.

Having concluded that the Executive Secretary had correctly dismissed all of the Employer's election objections, the Board upheld the results of the election and certified the UFW as the exclusive collective bargaining representative of the Employer's agricultural employees in the State of California.

State of California AGRICULTURAL
LABOR RELATIONS BOARD
Estado de California
CONSEJO DE RELACIONES DE TRABAJADORES AGRICOLAS

CALIFORNIA REDI-DATE, INC.,
Employer,
and
UNITED FARM WORKERS OF AMERICA, AFL-CIO,
Petitioner.



CERTIFICATION OF REPRESENTATIVE
CERTIFICACION DEL REPRESENTANT

An election having been conducted in the above matter under the supervision of the Agricultural Labor Relations Board in accordance with the Rules and Regulations of the Board; and it appearing from the Tally of Ballots that a collective bargaining representative has been selected; and no petition filed pursuant to Section 1156.3(c) remaining outstanding;

Habiendose conducido una election en el asunto arriba citado bajo la supervision del Consejo de Relaciones de Trabajadores Agricolas de acuerdo con las Reg/as y Regulaciones del Consejo; y apareciendo por la Cuenta de Votos que se ha seleccionado un representante de negociacion colectiva; y que no se ha registrado (archivado) una peticion de acuerdo con la Seccion 1156.3(c) que queda pendiente;

Pursuant to the authority vested in the undersigned by the Agricultural Labor Relations Board, IT IS HEREBY CERTIFIED that a majority of the valid ballots have been cast for

De acuerdo con la autoridad establecida en el suscribiente por el Consejo de Relaciones de Trabajadores Agricolas, por LA PRESENTE SE CERTIFICA que la may or fa de las balotas validas han si do depositadas en favor de

UNITED FARM WORKERS OF AMERICA, AFL-CIO

and that, pursuant to Section 1156 of the Agricultural Labor Relations Act, the said labor organization is the exclusive representative of all the employees in the unit set forth below, found to be appropriate for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

Y que, de acuerdo con la Seccion 1156 del Acto de Relaciones de Trabajadores Agricolas, dicha organization de trabajadores es el representante exclusivo de todos los trabajadores en la unidad aqui implicada, y se ha determinado que es apropiada con el fin de tlevar a cabo negociacion colectiva con respecto al salario, las horas de trabajo, y otras condiciones de empleo.

UNIT: All the agricultural employees of the employer in the State of California.

UNIDAD:

Signed at Sacramento, California

On the 27th day of July 19 94

Firmado en _____

En el dia de _____ 10

On behalf of

AGRICULTURAL LABOR RELATIONS BOARD

De parte del

CONSEJO DE RELACIONES DE TRABAJADORES AGRICOLAS