

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

DESERT SPRING GROWERS, ARZ, INC.))	
dba SUN CITY GROWERS,))	
Employer,))	Case No. 02-RC-3-EC (R)
and))	
UNITED FARM WORKERS OF))	28 ALRB No. 9
AMERICA, AFL-CIO,))	(December 13, 2002)
Petitioner.))	
_____))	

DECISION AFFIRMING DISMISSAL OF ELECTION OBJECTIONS
AND CERTIFICATION OF REPRESENTATIVE

An election was held at Desert Spring Growers, Arz, dba Sun City Growers (Employer) on November 1, 2002. The amended tally of ballots issued on November 4, 2002 reflects that 29 votes were cast for the United Farm Workers of America, AFL-CIO (UFW), 26 votes were cast for "No Union," and there were two unresolved challenged ballots. The Employer timely filed election objections, which were dismissed in their entirety by the attached order of the Executive Secretary dated November 13, 2002. The Executive Secretary dismissed the objections because the Employer did not, as required by Regulation 20365, subdivision (c)(2),¹ attach declarations setting forth facts that, if uncontroverted or

¹ The Board's regulations are codified at Title 8, California Code of Regulations, section 20100, et seq.

unexplained, would warrant setting aside the election. Further, the Executive Secretary noted that subdivision (b) of Regulation 20365 specifically provides that no extensions of time to file objections shall be permitted. In accordance with the due date specified in the Executive Secretary's order, the Employer timely filed exceptions to the dismissal of its election objections.

DISCUSSION

Regulation 20365, subdivision (c)(2) requires that the objecting party include with its objections "declarations setting forth facts which, if uncontroverted or unexplained, would constitute sufficient grounds for the Board to refuse to certify the election."

Subdivision (b) states "no extension of time for filing objections shall be permitted, and no amendments to objections petitions shall be permitted for any reason after the five-day period has elapsed." In this case, the Employer filed an objections petition unaccompanied by declarations. Rather, the objections petition consisted solely of bare allegations. In its request for review, the Employer has submitted the exact same text, with an added sentence at the bottom stating "I affirm that I have made this declaration and if called to testify, I would attest to the above under oath as being true to my own knowledge and belief."

The Board's regulations unequivocally require that adequate declarations be timely filed with the objections petition. The regulations further prohibit any exceptions to this rule, and there is no precedent for these requirements being excused by the Board.²

² Even had declarations been timely filed with the objections petition, we note that the attestation added to the allegations in the request for review is insufficient to meet the requirements of Regulation 20365, subdivision (c)(2)(D)(4), which requires that the declaration be made under penalty of perjury. In addition, it is unclear if the conduct described in the document is within the personal knowledge of the declarant, as required by subdivision (c)(2)(B) of Regulation 20365.

Therefore, the dismissal of the election objections shall be affirmed and a certification of representative shall issue.

ORDER AND CERTIFICATION OF REPRESENTATIVE

The dismissal of the election objections filed by the Employer is hereby AFFIRMED. Accordingly, United Farm Workers of America, AFL-CIO is hereby certified as the exclusive collective bargaining representative of all of the agricultural employees of Desert Spring Growers, Arz, dba Sun City Growers in the State of California.

Dated: December 13, 2002

GENEVIEVE A. SHIROMA, Chairwoman

GLORIA A. BARRIOS, Member

CATHRYN RIVERA, Member

State of California
AGRICULTURAL LABOR RELATIONS BOARD

Estado de California
CONSEJO DE RELACIONES DEL TRABAJO AGRICOLA

In The Matter of:

DESERT SPRING GROWERS, ARZ, INC.,
dba SUN CITY GROWERS,

Employer,

and

UNITED FARM WORKERS of AMERICA,
AFL-CIO,

Petitioner.

Case No. **02-RC-3-EC(R)**

Caso Núm.

**CERTIFICATION OF REPRESENTATIVE
CERTIFICACION DEL REPRESENTANTE**

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;

Habiéndose conducido una elección en el asunto arriba citado bajo la supervisión del Consejo de Relaciones de Trabajadores Agrícolas de acuerdo con las Reglas y Regulaciones del Consejo; y apareciendo por la Cuenta de Votos que se ha seleccionado un representante de negociación colectiva; y que no se ha registrado (archivado) una petición de acuerdo con la Sección 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 Agrícolas, por LA PRESENTE SE CERTIFICA que la mayoría de las balotas válidas han sido 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 Sección 1156 del Acto de Relaciones de Trabajadores Agrícolas, dicha organización de trabajadores es el representante exclusivo de todos los trabajadores en la unidad aquí implicada, y se ha determinado que es apropiada con el fin de llevar a cabo negociación colectiva con respecto al salario, las horas de trabajo, y otras condiciones de empleo.

UNIT: All of the Agricultural Employees of the Employer in the State of California.

UNIDAD:

Signed at Sacramento, California

On the 13th day of December, 2002

Firmado en Sacramento, California

En el día 13 de Diciembre, 2002

On behalf of

AGRICULTURAL LABOR RELATIONS BOARD

De parte del

CONSEJO DE RELACIONES DEL TRABAJO AGRICOLA

CASE SUMMARY

DESERT SPRING GROWERS, ARZ, INC.
dba SUN CITY GROWERS
UFW)

28 ALRB No. 9
Case No. 02-RC-3-EC(R)

Background

An election was held at Desert Spring Growers, Arz, dba Sun City Growers (Employer) on November 1, 2002. The amended tally of ballots issued on November 4, 2002 reflected that 29 votes were cast for the United Farm Workers of America, AFL-CIO (UFW), 26 votes were cast for "No Union," and there were two unresolved challenged ballots. The Employer timely filed election objections, which were dismissed in their entirety by an order of the Executive Secretary dated November 13, 2002. The Executive Secretary dismissed the objections because the Employer did not, as required by Regulation 20365, subdivision (c)(2), attach declarations setting forth facts that, if uncontroverted or unexplained, would warrant setting aside the election. Further, the Executive Secretary noted that subdivision (b) of Regulation 20365 specifically provides that no extensions of time to file objections shall be permitted. In this case, the Employer filed an objections petition unaccompanied by any declarations. The Employer timely filed exceptions to the dismissal of its election objections. In its request for review, the Employer submitted text identical to its objections petition, with an added sentence at the bottom stating "I affirm that I have made this declaration and if called to testify, I would attest to the above under oath as being true to my own knowledge and belief."

Board Decision

The Board affirmed the dismissal of the election objections. The Board observed that its regulations unequivocally require that adequate declarations be timely filed with the objections petition. The Board further observed that its regulations prohibit any exceptions to this rule, and that there is no precedent for these requirements being excused by the Board.

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

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

DESERT SPRING GROWERS, ARZ, INC.))	Case No. 02-RC-3-EC(R)
dba SUN CITY GROWERS,)	
Employer,)	NOTICE OF DISMISSAL OF
)	OBJECTIONS; NOTICE OF
UNITED FARM WORKERS OF AMERICA,)	OPPORTUNITY TO FILE
AFL-CIO,)	REQUEST FOR REVIEW
)	
Petitioner.)	
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PLEASE TAKE NOTICE that, pursuant to Labor Code section 1156.3(c) and California Code of Regulations, Title 8, section 20365(c), the objections to the election filed by Desert Springs Growers, Arz, Inc., dba Sun City Growers, dated November 8, 2002, in the above-captioned matter are hereby DISMISSED.

On November 8, 2002, the Employer timely filed two objections to the representation election held on November 1, 2002. The Employer's Objection No. 1 alleges that "the Union interfered with the Laboratory Conditions of the election". There are eight sub-allegations, six of which allege misconduct by Hector Rochin, who is described as "Manager of Administration" and "Chief Engineer" with "the authority to hire and fire." Objection No. 1 also alleges that Mr. Rochin and the United Farm Workers (Union) conspired to destroy the "Laboratory Conditions" of the election and to interfere with employee free choice. Objection No. 2, filed by the Employer, alleges that six employees "were accosted coerced by either Union representatives or Agricultural Labor Relations Board representatives and told

they may not vote- that said employees were discouraged from voting by officials of the Union or officials from the ALRB." The Employer did not attach any declarations in support of its objections.

The Executive Secretary has carefully considered the Employer's election objection petition and hereby dismisses it in its entirety for the following reasons. Regulation 20365(c)(2) provides that a party filing election objections alleging, inter alia, misconduct affecting the outcome of the election "shall attach to the original and each copy of the petition a declaration or declarations setting forth facts which, if uncontroverted or unexplained, would constitute sufficient grounds for the Board to refuse to certify the election." Regulation 20365(b) provides that no extensions of time for filing declarations shall be permitted.

In this case the Employer's objections to the election are based on alleged misconduct affecting the outcome of the election but are not accompanied by supporting declarations as required by the Board's regulations and long-established law. (Cardinal Distributing Co. (1977) 3 ALRB NO. 23; Jack or Marion Radovich(1976) 2 ALRB No. 12. See also Interharvest, Inc. (1975)1 ALRB No.2.) Accordingly, the Employer's objections do not present prima facie evidence warranting overturning the election and are dismissed without a hearing. (D.Papagni Fruit Co., (1984) 10 ALRB No.31; Gonzales Packing Co. (1976) 2 ALRB No.48.)

PLEASE TAKE FURTHER NOTICE that pursuant to California Code of Regulations, Title 8, section 20393, subdivision (a), the

Employer may file a request for review of this Order with the Board within five(5) days of service of the Order. The five-day filing period for filing a request for review is calculated in accordance with Regulation section 20170. Accordingly, the request for review, if any, is due on November 25, 2002.

DATED: November 13, 2002

J. ANTONIO BARBOSA
Executive Secretary, ALRB