

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

PREMIERE RASPBERRIES, LLC,)
)
 Employer,)
)
 and,)
)
UNITED FARM WORKERS OF)
AMERICA,)
)
)
 Petitioner.)
)
)
_____)

Case No. 2017-RC-004-SAL

43 ALRB No. 2

(October 10, 2017)

DECISION AND ORDER

On August 2, 2017, the United Farm Workers of America (UFW) filed a second petition for certification to represent workers at Premiere Raspberries, LLC (Premiere).¹ The election was held on August 9, 2017, and the tally of the ballots was as follows:

Petitioner (UFW)	269
No Union	236
Void	3
<u>Unresolved Challenged Ballots</u>	<u>12</u>
Total Valid Ballots Cast	517

¹ On July 26, 2017, the UFW filed a petition for certification. On August 1, 2017, the UFW withdrew its first petition, and filed its second petition the next day.

On August 14, 2017, Premiere timely filed four election objections, and submitted a detailed statement of facts and memorandum of law in support of its objections petition. Four declarations by Premiere employees were submitted as exhibits in support of the objections. No other party filed objections.

Board regulation² section 20365, subdivision (c)(2) requires a party objecting to the conduct of the election or to misconduct allegedly affecting the results of the election to provide declarations setting forth “facts which, if uncontroverted or unexplained, would constitute sufficient grounds for the Board to refuse to certify the election.” The California Supreme Court has upheld the Board’s conditioning of a full evidentiary hearing of election objections upon the presentation of objections and factual declarations that establish a *prima facie* case pursuant to section 20365, subdivision (c) of the Board’s regulations. (*George Amaral Farms* (2012) 38 ALRB No. 5, p. 5, citing *Lindeleaf v. ALRB* (1986) 41 Cal.3d 861, 874-875; *J.R. Norton Company, Inc. v. ALRB* (1979) 26 Cal.3d 1, 17.) The burden is on the objecting party to establish a *prima facie* case based on supporting materials filed timely with the objections petition. (*Monterey Mushrooms, Inc.* (1995) 21 ALRB No. 2, pp. 6-7.) Board regulation section 20365, subdivision (c)(2)(B) requires that the facts stated in each attached declaration be within the personal knowledge of the declarant, and that the declaration set forth with particularity the details of each occurrence and the way the occurrence could have affected the outcome of the election. Regulation section 20365, subdivision (d) provides that

² The Board’s regulations are codified at California Code of Regulations, title 8, section 20100 et seq.

the Board shall dismiss any objections that fail to meet the requirements of subdivisions (a), (b), or (c).

Objections One and Two

Objection one alleges that the “UFW engaged in egregious misconduct affecting the outcome of the election by directly and through its agents bribing employees with cash payments to vote in favor of the UFW.”

Premiere submitted declarations from three agricultural employees in support of objection one. One individual stated that on August 2, 2017, he was given \$150 as inducement to vote for the UFW by a co-worker who Premiere alleges was an agent of the UFW. Another individual stated that, on August 7, 2017, at a gathering attended by four other people including UFW organizer Rene Salas, he was given \$150 by a co-worker (a second person alleged to be acting as an agent of the UFW), and was told that if he told his friends to vote for the UFW, his friends would receive \$150 each for voting, and he would receive \$100 for each recruited vote. A third agricultural employee stated that on August 8, 2017, the day before the election, he was given \$150 by an alleged agent of the UFW in the presence of Rene Salas, and was told the money was from the UFW and that 86 other employees had already accepted money to vote for the UFW.

Objection two alleges similar misconduct, specifically that the “UFW engaged in egregious misconduct affecting the outcome of the election by directly and through its agents promising significant monetary and material benefits to workers if the UFW won and/or they voted for the UFW.” Premiere submitted declarations of two agricultural employees in support of this objection.

One employee stated that on July 20, 2017, at a location close to where his crew was working, his cousin (one of the employees alleged to be a UFW agent) introduced him to Rene Salas who allegedly told him that the UFW would help employees pay rent, give them a \$200 card each week to buy food, and \$100 per week for gas. Salas also allegedly told the employee that he would receive \$5,500 if he invented charges against the company because those charges could help the UFW win the election. The same employee stated that a little over a week later, he was approached in the ranch parking lot after work by UFW organizer Nidia Soto. Soto allegedly told him that after the season ended, the UFW would help pay his rent up to \$800 per month. Soto also allegedly told him that he would only need to work three weeks out of the month as the fourth week would be paid as time off. Further, if the UFW won, the union would buy construction materials to build him a home in Mexico and get him a car.

The second declaration was by the employee who attended the gathering on August 7, 2017 where Rene Salas was present. He stated that the co-worker, who was allegedly a UFW agent, told him that if the UFW won, he would get a car and Salas would arrange for a home to be built for the employee in his hometown in Mexico.

On August 8, 2017, Premiere filed unfair labor practice (ULP) Charge No. 2017-CL-008-SAL, which alleged that “on or about August 7, 2017 official agents and union organizers of the United Farmworkers paid and/or offered to pay money to agricultural employees of Premiere Raspberries to induce those employees to vote for the UFW in a representation election scheduled to be held on August 9, 2017.” On September 20, 2017, the Salinas Regional Director issued a letter dismissing Charge No. 2017-CL-008-SAL. The September 20 letter states that “upon investigation, I determined that there is insufficient

evidence to show that the UFW violated the Act.” Premiere did not seek review of the dismissal of the charge. (See Cal. Code Regs., tit. 8, § 20219.)

In this case, election objections one and two mirror the allegations in dismissed ULP Charge No. 2017-CL-008-SAL. Where, as here, evaluation of election objections is dependent on the resolution of issues related to pending unfair labor practice charges, the Board must defer to the exclusive authority of the General Counsel regarding the investigation of charges and issuance of complaints. (See *Mann Packing Company, Inc.* (1989) 15 ALRB No. 11; *Richard’s Grove & Saralee’s Vineyard, Inc.* (2007) 33 ALRB No. 7.) The Board is precluded from addressing election objections based on the same conduct alleged in dismissed unfair labor practice charges if adjudicating the election objections would require factual findings that would inherently resolve the dismissed unfair labor practice charges. (*Gallo Vineyards, Inc.* (2008) 34 ALRB No. 6, p. 21.) Consequently, objections one and two must be dismissed in accordance with *Mann Packing Company, Inc.*

Even if the portion of objection two which alleges the promise of material benefits (gas cards, food cards, cars, building material for houses) as inducement for votes arguably falls outside of the conduct alleged in the ULP charge, we would still dismiss objection two on independent grounds. When evaluating election objections, the Board examines the supporting declarations in order to determine whether the objecting party has presented facts sufficient to support a *prima facie* showing objectionable conduct which, if uncontroverted or unexplained, would establish grounds for setting aside the election. (*Oceanview Produce Co.* (1994) 20 ALRB No. 16, p. 5.) The burden on the objecting party is a heavy one not met by merely alleging misconduct occurred; rather, the objecting party must

demonstrate that such misconduct was “sufficiently material to have impacted the outcome of the election.” (*Id.* at p. 6, citing *Nightingale Oil Co. v. NLRB* (1st Cir. 1990) 905 F.2d 528.) In other words, the party objecting to an election must provide specific allegations demonstrating that the alleged misconduct interfered with the employees’ free choice to such an extent that it affected the results of the election. (*Oceanview Produce Co., supra*, 20 ALRB No. 16, p. 6, citing *Kux Manufacturing Co. v. NLRB* (6th Cir. 1989) 890 F.2d 804; *Gallo Vineyards, Inc., supra*, 34 ALRB No. 6, pp. 11-12; *Mann Packing, supra*, 16 ALRB No. 15, p. 4; *Furukawa Farms, Inc.* (1991) 17 ALRB No. 4, p. 16, fn 9.) In determining whether misconduct could have affected the results of the election, relevant considerations may include, but are not limited to, the pervasiveness of the conduct, the size of the voting unit, the proximity of the conduct to the election, and the closeness of the election results. (*Nash De Camp Co.* (2000) 26 ALRB No. 4, p. 41, citing *Anderson Farms Co.* (1977) 3 ALRB No. 67; *Sam Andrews’ Sons* (1977) 3 ALRB No. 45; *Valley Farms* (1976) 2 ALRB No. 42; see also, *Bon Appetite Management Co.*(2001) 334 NLRB 1042, 1044; *Archer Services* (1990) 298 NLRB 312, 314.)

Here, Premiere has failed to meet its burden. The first declaration in support of objection two describes conversations that occurred 20 and 12 days before the election. The two conversations were addressed only to the declarant. The first conversation was in the presence of his wife, who is not alleged to be a Premiere employee, and while the second was “near where his crew was working,” there is no allegation that any other employees overheard, knew of, or learned of the offers of monetary or material benefits. The employee does not state that he communicated Soto’s or Salas’ offers to other workers. The offer of a house and car made to the second declarant was at a gathering attended by only four other people—including

UFW organizer Salas, and it is not alleged that any of the unidentified individuals who were alleged to be present were Premiere employees. Accordingly, Premiere fails to present allegations tending to show that these isolated conversations, which were not alleged to have been overheard by any other employees, interfered with employee free choice to such an extent that it affected the results of the election, particularly given the large size of the bargaining unit (over 500 voters) and that the margin in favor of union representation was over 30 votes.

Therefore, to the extent the Board is not precluded from addressing objection two in accordance with *Mann Packing Company, Inc., supra*, 15 ALRB No. 11, objection two is dismissed because Premiere did not provide sufficient declaratory support setting forth facts constituting sufficient grounds for the Board to refuse to certify the election as required by Board regulation section 20365, subdivision (c)(2)(B).

Objections Three and Four

Objection three alleges that the “UFW engaged in egregious misconduct affecting the outcome of the election by directly and through its agents threatening employees with calling immigration on them if workers did not vote for the UFW or support the union.” In support of this objection, Premiere submitted three declarations.

The first declaration is the same declaration submitted in support of objection two above, and describes the July 20 and 29, 2017 conversations between the declarant and Salas and Soto. During the July 20 conversation, Salas allegedly told the declarant that if the declarant did not support the UFW and the UFW won, Salas would call the police and give them the license plate number to the declarant’s car. On July 29, Soto allegedly told the declarant that if the UFW won, and found out he did not support them, they would damage his

car and call immigration. As noted previously, there is no allegation that any other employee witnessed, was told about, or was otherwise made aware of this alleged conduct.

The second declaration describes the incident at the gas station on August 2, 2017, when the declarant was given \$150 as inducement to vote for the UFW by a co-worker who Premiere alleges was an agent of the UFW. During the same exchange, the co-worker told the declarant that if he did not vote for the union, they would have immigration sent to his house. Again, there is no allegation that another other employee witnessed, knew about, or was aware of the alleged conduct.

The third declaration alleges that a Premiere employee introduced the declarant to organizer Salas outside of a market on August 8, 2017, offered the declarant money to vote in favor of UFW representation, and stated that if the declarant said anything about Salas and the money, or did not vote for the UFW, declarant would be reported to immigration. Although it is alleged that there was a group of Premiere employees outside the market when the declarant arrived there, it is not alleged that any of these employees were still present when the declarant exited the market and this alleged conversation took place, or that any employees otherwise knew or heard about it.

The fourth election objection alleges that the “UFW engaged in egregious misconduct affecting the outcome of the election by directly and through its agents threatening employees with calling immigration and/or the police on them if workers disclosed to anyone the cash payments or offers of monetary or material benefits made to workers by the UFW and its agents.” Two declarations are submitted in support of objection four.

The first declaration is the same one involving the alleged incident outside a market on August 8, 2017. The second declaration describes the alleged incident on August 7, 2017 where the declarant arrived at a house where four people were present drinking beer and the declarant was given \$150 and told Salas would report him to immigration if he told anyone about the money.³

The Board takes allegations of threats to call immigration in order to coerce potential voters very seriously. As the National Labor Relations Board (NLRB) has explained, deportation-related threats are serious “because they convey the warning that employees risk not just job loss, ‘but also the loss of their homes and possibly even separation from their families by failing to support the union.’” (*Robert Orr-Sysco Food Services, LLC* (2002) 338 NLRB 614, 616, citing *Crown Coach Corp.* (1987) 284 NLRB 1010; *Q.B. Rebuilders, Inc.* (1993) 312 NLRB 1141.) Threats by union agents warrant the setting aside of an election where they “reasonably tend to interfere with the employees’ free and uncoerced choice in the election.” (*Robert Orr-Sysco Food Services, LLC, supra*, 338 NLRB 614, 615, citing *Baja's Place* (1984) 268 NLRB 868; see *Triple E Produce Corp. v. ALRB* (1983) 35 Cal.3d 42, 50.) Even in cases where it is not established the threats were made by union agents, such third-party conduct still may rise to the level of objectionable conduct sufficient to set aside an election where they are “so aggravated as to create a general atmosphere of fear and reprisal rendering a free election impossible.” (*Westwood Horizons Hotel* (1984) 270 NLRB 802, 803.)

³ We note that this statement seemingly contradicts the declarant’s statement a few lines earlier that his co-worker told him to tell all of his friends if they voted for the union they would also receive \$150. Presumably, the co-worker meant that he should not talk to company management.

This test has also been applied by the ALRB. (*Mushroom Farms, Inc.* (2017) 43 ALRB No. 1, pp. 3-4; *T. Ito & Sons Farms* (1985) 11 ALRB No. 36, pp. 10-16.)

Premiere argues that it “should be expected” that the threats to call immigration authorities “were not limited solely” to the declarants here and further that such threats “were disseminated amongst the workforce as a whole.” However, Premiere has not submitted any evidentiary support for this claim. None of the declarants stated that the alleged threats were witnessed by any other Premiere employees, that they spoke to any other workers about the threats, or that they were aware of others receiving similar threats. Premiere also fails to provide declaratory support for its conclusory statements that the two co-workers who told the two employees that Salas would call immigration if they told anyone about the alleged bribes were UFW agents. Board regulation section 20365, subdivision (c)(2) plainly requires that a party objecting to an election on misconduct grounds provide declarations “setting forth facts which, if uncontroverted or unexplained, would constitute sufficient grounds for the Board to refuse to certify the election.” Thus, notwithstanding the seriousness of the threats alleged here, the Board cannot assume the existence of facts not set forth in an objecting party’s supporting declarations.

Premiere cites several cases in support of its contention that the alleged deportation-related threats warrant setting aside the election. We find those cases are distinguishable. In *Cannery, Warehouseman, Food Processors, Drivers and Helpers* (1979) 246 NLRB 758, the NLRB set aside an election where threats of deportation were made by union agents to employees as they handed out union literature at work entrances. There was additional evidence that such threats were disseminated to other employees. (*Ibid.*) In *Crown*

Coach Corp., *supra*, 284 NLRB 1010, pro-union employees “repeatedly and specifically” threatened other employees with deportation if they did not support the union, and the evidence further established such threats “were widely disseminated among the unit employees.” *Robert Orr-Sysco Food Services, LLC.*, *supra*, 338 NLRB 614 involved various threats of violence, property damage, and deportation to several employees, and there was additional evidence of dissemination to other employees. *Triple E Produce Corp.*, *supra*, 35 Cal.3d 42 involved threats by union organizers that employees who did not vote for the union would lose their jobs. (See *id.* at p. 47.) The California Supreme Court noted the threats were “pervasive” and “made to arriving workers at the beginning of the working day and thereafter were discussed by the workers in the field.” (*Id.* at p. 56.) Finally, in *T. Ito & Sons Farms*, *supra*, 11 ALRB No. 36, the Board set aside an election on the basis of numerous incidents in which striking employees threatened large groups of non-striking employees, including threats of physical violence and harm and multiple threats to report replacement workers to Immigration and Naturalization Services (INS). Renewed threats to call in the INS, as well as new threats of job loss if voters failed to support the union, were made to numerous voters on the day of the election. Threats of force were made during the time workers waited in line to vote, all with the purpose of coercing workers to join the strike or, on the day of the election, to vote for the union. (*Id.* at pp. 6-9.)

In sum, the cases cited by Premiere involve much more pervasive and wide-ranging misconduct than that alleged in the declarations. The declarations submitted in support of the objections simply fail to allege that the isolated threats alleged were disseminated amongst the workforce or that other employees otherwise knew or were aware of the threats.

On this record we cannot say — let alone assume — the misconduct alleged was such that an election reflective of the bargaining unit employees’ free choice could not be had, or that it was “so aggravated as to create a general atmosphere of fear and reprisal rendering a free election impossible.” (*Westwood Horizons Hotel, supra*, 270 NLRB 802, 803; see *Jack or Marion Radovich* (1976) 2 ALRB No. 12, pp. 7-8 [threat of job loss to two employees who told no other workers about the threats and where no other workers were present when the threat was made insufficient to warrant setting aside election]; *Triple E Produce Corp., supra*, 35 Cal.3d at p. 51; cf. *Professional Research, Inc. dba Westside Hospital* (1975) 218 NLRB 96, 96-97 [election set aside based on deportation threat directed to employee who acted as a spokesperson for a contingent of Spanish-speaking employees in the bargaining unit, and employee told 5-8 other Spanish-speaking employees about the threat].)

Accordingly, objections three and four are dismissed because Premiere did not provide sufficient declaratory support setting forth facts constituting sufficient grounds for the Board to refuse to certify the election as required by Board regulation section 20365, subdivision (c)(2)(B). In addition, the threats alleged in objection four are tied to the conduct alleged in unfair labor practice ULP Charge No. 2017-CL-008-SAL that the UFW paid and/or offered to pay money to agricultural employees to induce those employees to vote for the UFW, which was dismissed by the General Counsel for lack of evidence. Therefore, the Board is also required to dismiss objection four in accordance with *Mann Packing Company, Inc., supra*, 15 ALRB No. 11.

ORDER

Objections one, two, three and four submitted by Premiere Raspberries, LLC are dismissed.

IT IS ORDERED that the Executive Secretary issue the Certification of Representative.

DATED: October 10, 2017

GENEVIEVE A. SHIROMA, Chairwoman

CATHRYN RIVERA-HERNANDEZ, Member

ISADORE HALL III, Member

CASE SUMMARY

PREMIERE RASPBERRIES, LLC
(Employer)

Case No. 2017-RC-004-SAL

43 ALRB No. 2

United Farm Workers of America
(Petitioner)

On August 2, 2017, The United Farm Workers of America (UFW) filed a petition for certification to represent workers at Premiere Raspberries, LLC (Premiere). An election was held on August 9, 2017, with a tally of UFW, 269; No Union, 236. There were 12 unresolved challenged ballots. Premiere filed four election objections.

Board Decision and Order

The Board dismissed all four objections. Objections 1 and 2 alleged that the UFW and its agents bribed workers with cash and the promise of significant monetary and material benefits if workers voted for the UFW. Premiere also made these allegations in unfair labor practice (ULP) Charge No. 2017-CL-008-SAL. The General Counsel dismissed this charge on September 20, 2017, because she found that there was insufficient evidence to show that the UFW violated the Agricultural Labor Relations Act (Act). Because objections 1 and 2 mirrored the allegations in the dismissed ULP charge, the Board dismissed the objections pursuant to the rule set forth in *Mann Packing Company, Inc.* (1989) 15 ALRB No. 11. To the extent that a portion of objection 2 arguably fell outside of the conduct alleged in the ULP charge, the Board stated it still would dismiss objection 2 based on Premiere's failure to provide specific allegations demonstrating that the alleged misconduct interfered with the employees' free choice to such an extent that it affected the results of the election.

Objections 3 and 4 alleged that the UFW and its agents threatened to call immigration and/or the police if workers did not vote for the UFW, or if workers told anyone about the cash payments or offers of material benefits. The Board dismissed these objections because Premiere failed to provide specific allegations demonstrating that the alleged misconduct interfered with the employees' free choice to such an extent that it affected the results of the election. In addition, the Board found that the threats alleged in objection 4 were tied to the conduct alleged in ULP Charge No. 2017-CL-008-SAL, which was dismissed for lack of evidence. Therefore, the Board also dismissed objection 4 in accordance with *Mann Packing Company, Inc., supra*, 15 ALRB No. 11.

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