

**STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD**

In the Matter of

**UNITED FOOD AND COMMERCIAL
WORKERS, LOCAL 888,**

Petitioner,

CASE NO. CU-6850

- and -

KURT WEISS GREENHOUSES, INC.,

Employer.

In the Matter of

GUILLERMO LOPEZ MARTINEZ,

Petitioner,

CASE NO. CU-6858

- and -

**UNITED FOOD AND COMMERCIAL
WORKERS, LOCAL 888**

Union.

**GLADSTEIN, REIF & MEGINNISS, LLP (AMELIA K. TUMINARO of counsel),
for Union**

**BOND, SCHOENECK & KING, PLLC (HILARY L. MOREIRA of counsel),
for Employer**

**BELL LAW GROUP, PLLC (PAUL BARTELS and MARY E. BIANCO of
counsel), for Guillermo Lopez Martinez**

BOARD DECISION AND ORDER

These cases come to us¹ on exceptions filed by Kurt Weiss Greenhouses, Inc.
(KWG) and Guillermo Lopez Martinez (Lopez) to a decision and certification of

¹ Member Barbara C. Deinhardt recused herself from consideration of this case.

representative and order to negotiate issued by a Hearing Officer (HO).² The HO dismissed KWG's objections to certification of a bargaining unit of all full-time Greenhouse Laborers and Shuttle Drivers employed by KWG.³ The petition for certification was filed by the United Food and Commercial Workers, Local 888 (UFCW Local 888). The HO also dismissed a petition for a certification investigation filed, in Spanish, by Lopez, an employee of KWG. Lopez's petition was accompanied by a document containing the signatures of a certain number of employees of KWG, in which these employees "petition[ed] for the revocation and rescission of representation by [UFCW Local 888]."⁴

EXCEPTIONS

KWG filed 13 exceptions to the HO's decision, asserting that the certification of the proposed bargaining unit was inappropriate for a number of reasons. KWG objects to the HO's finding that the allegations in its response and offer of proof, taken as true, do not support a finding of fraud or coercion.⁵ In support of this exception, KWG claims that the ALJ erroneously relied on certain precedent from the National Labor Relations Board⁶ and from our prior decisions in the Farm Laborers' Fair Labor Practices Act (FLFLPA) certification context.⁷ KWG claims that employees were deprived of their freedom of choice⁸ and that the HO should not have found the showing of interest

² 58 PERB ¶ 4405 (2025), attached to this decision as an appendix.

³ Employees of KWG excluded from the unit were Assistant Crew Leaders/Assistant Foreman, Crew Leaders/Foreman, Grower Managers, Greenhouse Maintenance Managers, Seasonal Greenhouse Laborers and Shuttle Drivers, Students on J-1 Visas, and all other employees.

⁴ The language on the petition was printed in both English and Spanish.

⁵ Exception No 1.

⁶ Exception No 2.

⁷ Exception No 3.

⁸ Exception No 4.

submitted by UFCW Local 888 to be sufficient in light of its allegations of fraud and/or coercion and the petition submitted by Lopez.⁹ KWG asserts that the allegations raised by itself and by Lopez warranted further investigation.¹⁰

KWG also contends that the HO erred by finding that dues deduction authorization cards may not be revoked.¹¹ KWG further avers that the HO erred by not holding a hearing to determine disputed facts, particularly on the issues of fraud and coercion raised in its response and offer of proof, and the question of whether UFCW Local 888 had majority support, given the petition filed by Lopez.¹²

KWG next claims that a substantial question of law or policy has been raised and that there is an absence of reported FLFLPA or applicable SERA precedent related to the requirement to conduct an investigation and hold a hearing “when a question or controversy concerning the representation of employees is raised by an employee or employer.”¹³ KWG further asserts that the Lopez petition raises a substantial question where there is an absence of reported precedent on how to handle such “dueling petitions.”¹⁴

Finally, KWG objects to the HO’s failure to hold a hearing pursuant to § 705.3 of the State Employment Relations Act (SERA)¹⁵ and to order an election given KWG’s allegations of fraud and/or coercion and the Lopez petition.¹⁶

⁹ Exception No 5.

¹⁰ Exception No 6.

¹¹ Exception No 7.

¹² Exceptions Nos 8 and 9.

¹³ Exception No 10, at 4.

¹⁴ Exception No 11, at 4.

¹⁵ Exception No 12.

¹⁶ Exception No 13.

Lopez filed 11 exceptions that are, in sum and substance, identical to those filed by KWG. Overall, Lopez asserts that the petition he filed, along with the allegations of fraud and/or coercion raised by KWG, warrant a hearing and/or a secret-ballot election among the proposed bargaining unit.

UFCW Local 888 supports the HO's decision and contends that no basis has been demonstrated for reversal.

For the reasons that follow, we affirm the HO's decision and certification of representative and order to negotiate.

FACTS

The facts are drawn from the HO's decision. She formulated her facts from undisputed assertions and from KWG's response to UFCW Local 888's petition. KWG is an agricultural business that operates greenhouse farms.

Concerning KWG's allegations that UFCW Local 888 engaged in fraud and/or coercion to obtain the dues deduction authorization cards used to demonstrate its showing of interest, KWG claims that employees believed they were signing certain documents to obtain from UFCW Local 888 gift bags and \$600, the latter as a grant from the U.S. Department of Agriculture's (USDA) Farm and Food Worker Relief Grant Program, which these employees were eligible to receive regardless of whether they were represented by a union. In its response to the petition and offer of proof, KWG stated the following:

[A] number of Greenhouse Laborers were told that they had to sign various documents provided by the Union in order to receive the \$600 [grant payment from the U.S. Department of Agriculture]. They later learned and/or believe that some of the documents signed were used by the Union as evidence that they wanted to be represented by the Union as their exclusive bargaining representative, even though they did not understand that by signing such documents, the Union would

represent them at KWG. The Greenhouse Laborers believed that they were only signing documents in order to receive the \$600 USDA grant payment.

Union representatives distributed gift bags to various individuals who would be covered by the scope of the unit. In exchange for the receipt of such gift bags, individuals were given documents from the Union to sign and were told that their signatures were required in order to confirm receipt of the gift bag. Such individuals later learned and/or believe that the document they signed, which they believed had only been necessary to receive a gift bag, were used as evidence that they wanted to be represented by the Union as their exclusive bargaining representative, even though they did not understand that by signing such documents, the Union would represent them at KWG.¹⁷

The dues deduction authorization cards submitted as the UFCW Local 888's showing of interest in support of the petition state that the person signing the card is agreeing to the following:

I want UFCW/Local 888 to exclusively represent me on the job to obtain better wages, benefits, and working conditions. When a contract is approved by the workers and I am receiving the benefits of having union representation, in accordance with the NYS law, I authorize the deduction of my union dues to the company to be sent to the union. Until then, no dues will be accepted.¹⁸

DISCUSSION

Section 263.20 (b) of our Rules provides that we will only grant review of a HO's decision and certification under "compelling circumstances." The Rule further provides that:

a request for review may be granted only upon one or more of the following grounds:

(1) That a substantial question of law or policy is raised because of:

(i) The absence of; or

¹⁷ KWG Response to UFCW Local 888 Petition, at 9.

¹⁸ The dues deduction authorization cards were written either in Spanish or English.

- (ii) An unexplained departure from officially reported FLFLPA or applicable SERA precedent.
- (2) That the hearing officer's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of a party.
- (3) That the conduct of any hearing or any ruling made in connection with the proceeding has resulted in prejudicial error.
- (4) That there are compelling reasons for reconsideration of an important board rule or policy.

KWG and Lopez claim that each of their exceptions meet at least one of our requirements for granting review of the HO's decision. We find that KWG and Lopez's exceptions present compelling circumstances and raise substantial questions of law or policy such that we grant review of KWG's and Lopez's exceptions.

Section 705.1 of SERA provides that if PERB is provided with clear and convincing evidence that the dues deduction authorizations "are fraudulent or were obtained through coercion," the Board "shall promptly thereafter conduct an election." KWG sought a hearing to establish that the dues deduction authorization cards were fraudulent and/or obtained through coercion. The HO found that KWG's allegations, even if taken as true, were insufficient as a matter of law to support a finding that such cards were fraudulent or obtained through coercion. We agree with the HO that the allegations did not warrant a hearing, as discussed below. We make no finding on whether the HO's conclusion, that offering benefits such as the \$600 grant payment or the alleged gift bags would not deprive employees of their freedom of choice, was correct.

To the extent that the offer of proof here was meant to allege that UFCW Local

888 organizers engaged in a *quid pro quo* of a signature on a dues deduction authorization card for a gift bag and/or a \$600 grant payment, we find the allegations lack the requisite specificity to establish that such an exchange took place. The offer of proof does not allege that employees signed dues deduction authorization cards for the gift bag or \$600 grant payment, but only alleges that employees signed “some documents,”¹⁹ with no specificity. The offer of proof also alleges that employees “later learned and/or believe that some of the documents signed were used by [UFCW Local 888] as evidence that they wanted to be represented by [UFCW Local 888]”²⁰ The offer of proof does not state the basis of employees’ knowledge or belief, nor does it thread the needle by showing that whatever documents were signed were connected with the employees’ alleged receipt of a gift bag or payment. Further, even if we assume, as the offer of proof further states, that employees did not understand that by signing “such documents,” UFCW Local 888 would represent them, such a lack of understanding is belied by the language of the cards, which explicitly state “I want UFCW/Local 888 to exclusively represent me on the job”

Because we find that KWG’s assertions of fraudulent conduct are insufficient as a matter of law, we find that the HO did not err in declining to hold a hearing on KWG’s allegations of fraudulent cards and/or coercion in the obtaining of cards.²¹

The petition for a certification investigation filed by Lopez does not change the outcome here. As the HO correctly found, the petition demonstrated nothing more than

¹⁹ KWG Response to UFCW Local 888 Petition, at 9.

²⁰ *Id.*

²¹ See *Satur Farms*, 55 PERB ¶ 3403, 3411 (2022). As we have repeatedly explained, hearings are discretionary and are held only where there are disputed issues of material fact. See *id.*, at 3412, n 9; *Local 338*, 55 PERB ¶ 3401, 3407, n 37 (2022). Because the HO treated the allegations true, no hearing was warranted.

a change of mind by employees. Such a change of mind is “an insufficient basis to invalidate a timely, signed dues deduction authorization card.”²²

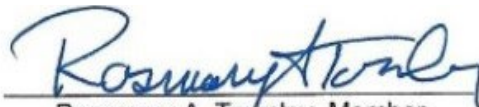
Lastly, we find no error by the HO in declining to order an election. SERA and FLFLPA specifically allow for certification without an election.²³ In the absence of clear and convincing evidence that the dues deduction authorization cards submitted are fraudulent or were obtained through coercion, there is no basis to order an election in the circumstances here.

In sum, we affirm both the HO’s decision and the certification of representative and order to negotiate.

IT IS, THEREFORE, ORDERED that the HO’s findings are affirmed and the certification remains in effect. FURTHER, IT IS ORDERED that KWG shall negotiate collectively with UFCW, Local 888.

DATED: June 26, 2025
Albany, New York



Timothy Connick, Chair


Rosemary A. Townley, Member

²² A&J Kirby, 57 PERB ¶ 3403 (2024), adopting decision of HO, 56 PERB ¶ 4402, 4410 (2023).

²³ See § 705.1 of SERA (“The board shall designate a representative for purposes of collective bargaining when such representative demonstrates a showing of majority interest by employees in the unit”) and § 705.1-a, added by FLFLPA, L. 2019, c. 105 (“If the choice available to the employees in a negotiating unit is limited to selecting or rejecting a single employee organization, that choice shall be ascertained by the board on the basis of dues deduction authorizations instead of by an election”).

APPENDIX

**STATE OF NEW YORK
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**GLADSTEIN, REIF & MEGINNISS, LLP (AMELIA K. TUMINARO of counsel),
for Union**

**BOND, SCHOENECK & KING, PLLC (HILARY L. MOREIRA of counsel),
for Employer**

GUILLERMO LOPEZ MARTINEZ, *pro se*

**DECISION OF HEARING OFFICER AND CERTIFICATION OF
REPRESENTATIVE AND ORDER TO NEGOTIATE**

On February 26, 2025, the United Food and Commercial Workers Local 888 (UFCW Local 888) filed Petition CU-6850 concerning the representation of Greenhouse Laborers and Shuttle Drivers of Kurt Weiss Greenhouses, Inc. (KWG) pursuant to § 705 of the State Employment Relations Act (SERA or Act), as amended by the Farm Laborers' Fair Labor Practices Act (FLFLPA), with the New York State Public Employment Relations Board (PERB).²⁴ The Petition was accompanied by signed dues deduction authorization cards from KWG employees.²⁵

On March 21, 2025, KWG filed its Response, raising several objections to the Petition, including that: (1) the UFCW Local 888 engaged in fraud and/or coercion in order to obtain its showing of interest; (2) part-time employees be excluded from the bargaining unit; and (3) the UFCW Local 888 lacks majority status because KWG employees were petitioning to have PERB investigate that the employees, in fact, did not want to be represented by the UFCW Local 888.²⁶

A conference was held on March 25, 2025, at which the Petition and employer's objections to the Petition were discussed. At that conference, counsel for both parties accepted an opportunity to submit legal arguments regarding KWG's allegations that the UFCW Local 888 did not have majority support and that the UFCW Local 888 had engaged in fraud and/or coercion to obtain dues deduction authorization cards from KWG employees; the UFCW Local 888 also accepted the opportunity to provide legal briefs on whether part-time employees should be included in the bargaining unit.

²⁴ L. 2019, c. 105; L. 2020, c. 58.

²⁵ The language on the dues deduction authorization cards was available in both Spanish and English.

²⁶ KWG argued for the exclusion of various other employees, particularly those they contend are supervisory employees or temporary/seasonal employees on J-1 Visas; however, because the UFCW Local 888 does not seek to represent employees in such titles, this decision does not address them.

On March 26, 2025, Guillermo Lopez Martinez, an agricultural employee of KWG, filed Petition CU-6858, which was accompanied by a document containing the signatures of a certain number of KWG employees, in which these employees “petition[ed] for the revocation and rescission of representation by [the UFCW Local 888].”²⁷ By letter dated April 1, 2025, I informed the parties that these two cases would be consolidated for processing.

FACTS

For the purpose of this decision, below is a summary of relevant facts that are either undisputed or are as alleged by KWG. KWG is an agricultural business that operates greenhouse farms. KWG currently employs no part-time employees in the petitioned-for titles; however, when it did employ part-time employees in the past, KWG avers that, unlike its full-time employees, part-time employees did not receive medical benefits, vacation benefits, or dental coverage.

Concerning KWG’s allegations that the UFCW Local 888 engaged in fraud and/or coercion to obtain the dues deduction authorization cards used to demonstrate its showing of interest, KWG claims that employees believed they were signing certain documents to obtain from the UFCW Local 888 gift bags and \$600, the latter as a grant from the U.S. Department of Agriculture’s (USDA) Farm and Food Worker Relief Grant Program, which these employees were eligible to receive regardless of whether they were represented by a union.²⁸ In its Response to the Petition and Offer of Proof, KWG stated the following:

²⁷ The language on this Petition was available in both Spanish and English.

²⁸ As explained above, for the purpose of this decision, I assume the truth of KWG’s allegations. I note that UFCW Local 888 denies it engaged in the behavior KWG cites

[A] number of Greenhouse Laborers were told that they had to sign various documents provided by the Union in order to receive the \$600 [grant payment from the U.S. Department of Agriculture]. They later learned and/or believe that some of the documents signed were used by the Union as evidence that they wanted to be represented by the Union as their exclusive bargaining representative, even though they did not understand that by signing such documents, the Union would represent them at KWG. The Greenhouse Laborers believed that they were only signing documents in order to receive the \$600 USDA grant payment.

Union representatives distributed gift bags to various individuals who would be covered by the scope of the unit. In exchange for the receipt of such gift bags, individuals were given documents from the Union to sign and were told that their signatures were required in order to confirm receipt of the gift bag. Such individuals later learned and/or believe that the document they signed, which they believed had only been necessary to receive a gift bag, were used as evidence that they wanted to be represented by the Union as their exclusive bargaining representative, even though they did not understand that by signing such documents, the Union would represent them at KWG.²⁹

Finally, the dues deduction authorization cards submitted as the UFCW Local 888's showing of interest in support of the Petition state that the person signing the card is agreeing to the following:

I want UFCW/Local 888 to exclusively represent me on the job to obtain better wages, benefits, and working conditions. When a contract is approved by the workers and I am receiving the benefits of having union representation, in accordance with the NYS law, I authorize the deduction of my union dues to the company to be sent to the union. Until then, no dues will be accepted.

in support of its argument that UFCW Local 888 engaged in fraud and/or coercion, stating that although it "helped agricultural workers, including the Employer's employees, complete applications for the U.S. Department of Agriculture's Farm and Food Workers Relief Grant Program[,] . . . as of late 2023, the Union ceased its activity in connection with the \$600 grant [for employees of] the Employer. Of the dues authorization cards which comprise the Union's showing of interest in this matter, the earliest one was signed on March 7, 2024." UFCW Local 888 Brief, fn 3.

²⁹ KWG Brief, at 9.

DISCUSSION

Section 705.1 of the Act sets forth a standard requiring that if PERB is provided with “clear and convincing evidence that the dues deduction authorizations, and other evidence upon which the board would otherwise rely to ascertain the employees’ choice of representative, are fraudulent or were obtained through coercion, the board shall promptly thereafter conduct an election.”

Even assuming all KWG’s allegations are true, the allegations do not support a finding of fraud or coercion.³⁰ There is no allegation that any employee was forced to sign a card or that any cards were forged. To the extent it is claimed that workers did not know that they were signing to support a petition for union representation, the language stating the purpose of the dues deduction authorization cards, in English and Spanish, is “clear on its face” that this was the explicit purpose of the cards.³¹ As quoted above, the cards in support of CU-6850 state that the signer is agreeing to have the UFCW Local 888 “exclusively represent [them] on the job to obtain better wages, benefits, and working conditions.” While the employees who signed the petition in CU-6858 have stated that they are now seeking to rescind or revoke any previous support for representation by the UFCW Local 888, such evidence does not evince that the dues deduction authorization cards are fraudulent or were obtained through coercion. As the Board has stated, PERB “will not probe into an employee’s subjective state of

³⁰ As the allegations are presumed true, no hearing is required.

³¹ *Satur Farms*, 55 PERB ¶ 3403, 3411 (2022).

mind, and an employee's change of mind due to alleged misrepresentations is an insufficient basis to invalidate" a signature.³²

To the extent that KWG alleges that the UFCW Local 888 may have misrepresented the purpose of the dues deduction authorization cards, the Board has long held that "[i]t is not the role of the Board to censor every sentence or phrase of campaign rhetoric, or to try to fix the precise amount of allowable hyperbole . . . [A]t most [we] determine whether . . . [a] party acted in such an excessive manner under all the circumstances as unfairly to influence the voters and thus deprive them of their freedom of choice."³³ Given the clear language on the dues deduction authorization cards stating that their purpose was to authorize the UFCW Local 888 to act as representative of the signer, I do not find that the allegations would support a finding that the UFCW Local 888 misrepresented the purpose of the cards. As to whether the alleged promises of a benefit would deprive the employees of their freedom to choose whether to authorize representation by the UFCW Local 888, the Board, in two strikingly similar cases, has found that employees would not be deprived of such freedom.³⁴ There, as here, the employers alleged that employees signed dues deduction authorization cards only after having received and/or having been promised benefits such as pre-paid debit cards, gift bags, or the same \$600 grant at issue here, and on such facts, the Board found that the employer did not establish that the union had

³² *Id.*, n 14 ("On this point, we agree with *Levi Strauss & Co.*, 172 NLRB 732, 733 (1968), that 'an employee's thoughts (or afterthoughts) as to why he signed a union card and what he thought that card meant cannot negative [sic] the overt action of having signed a card . . .'" (quoting *Joy Silk Mills, Inc.*, 85 NLRB 1263).

³³ *Long Island Coll Hosp*, 34 SLRB 324, 330 (1971). See also *Millard Fillmore Hosp*, 28 SLRB 525, 527 (1965).

³⁴ *Macari Vineyards & Winery*, 57 PERB ¶ 3401 (2024); *Satur Farms*, 55 PERB ¶ 3403 (2022).

engaged in fraud and/or coercion.³⁵ With this PERB precedent controlling the case before me, and assuming all KWG's allegations to be true, I find the employees were not deprived of their freedom of choice.³⁶

Regarding the question of whether part-time employees should be included in the unit, KWG raises several points that would weigh in favor of further factual investigation before determining whether to include them in the unit. However, because KWG does not now employ any part-time workers, practically speaking, it would be difficult to conduct a factual investigation into a question that is now theoretical. Therefore, the unit will be certified without the inclusion of part-time employees. If, at some future date, KWG begins employing part-time employees in the titles in the unit, a subsequent petition may be filed and the question of the inclusion of part-time employees be fully investigated.

Finally, given that dues authorizations may not be revoked and given also that I have found no fraud and/or coercion here, I find that showing of interest submitted by the UFCW Local 888 with its Petition establishes majority support for the bargaining unit as petitioned for. Therefore, for the reasons explained above, I find that KWG's objections to certification of the unit petitioned for in CU-6850 do not warrant further investigation, and that the Petition in CU-6858 should also be, and hereby is, dismissed.

³⁵ *Macari Vineyards*, 57 PERB ¶ 3401; *Satur Farms*, 55 PERB ¶ 3403.

³⁶ In its brief, KWG cites several cases under the National Labor Relations Act (NLRA) where the Board found that, when unions give pecuniary benefits to employees while campaigning to serve as bargaining representative, such benefits may be coercive and thus interfere with the employees' freedom to choose whether to be represented by the union. See, e.g., *NLRB v. Savair Manufacturing Co*, 414 US 270 (1973); *Flatbush Manor Care Center*, 287 NLRB 457 (1987); *Loubella Extendables, Inc*, 206 NLRB 183 (1973). However, these cases were decided under NLRA precedent, not under the SERA, which governs here. I find that the cases recently issued by PERB in virtually identical factual circumstances, particularly *Macari Vineyards & Winery*, govern here. *Macari Vineyards*, 57 PERB ¶ 3401.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the SERA and the SERA Rules of Procedure, and it appearing that a negotiating representative has been selected;

Pursuant to the authority vested by the SERA;

IT IS HEREBY CERTIFIED that the UFCW Local 888 has been designated and selected by a majority of the employees at Kurt Weiss Greenhouses, Inc. in the unit found to be appropriate and described below, as their exclusive representative for the purpose of collective negotiations and for all purposes authorized by § 705 of the SERA.

Included: All full-time Greenhouse Laborers and Shuttle Drivers.

Excluded: Assistant Crew Leaders/Assistant Foreman, Crew Leaders/Foreman, Grower Managers, Greenhouse Maintenance Managers, Seasonal Greenhouse Laborers and Shuttle Drivers, Students on J-1 Visas, and all other employees.

FURTHER, IT IS ORDERED that Kurt Weiss Greenhouses, Inc. shall negotiate collectively with the UFCW Local 888.

Dated at Albany, New York
this 2nd day of May, 2025

A handwritten signature in black ink, appearing to read 'Mariam Manichaikul', written over a horizontal line.

Mariam Manichaikul