

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

In the Matter of

UFCW LOCAL 888,

Petitioner,

CASE NO. CU-6665

-and-

SATUR FARMS,

Employer.

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

**WICKHAM, BRESSLER & GEASA, PC (ERIC J. BRESSLER of counsel), for
Employer**

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by Satur Farms (Satur) to the August 9, 2022 decision of an Administrative Law Judge (ALJ) concerning the appropriateness of certification of UFCW Local 888 (Local 888) as the exclusive negotiating agent of the unit as defined, without an election, pursuant to § 705.1-a of the State Employment Relations Act (SERA).¹ The ALJ dismissed Satur's objections to certification of the unit without holding a hearing, including its assertions that the petition was not properly completed and that employee affidavits submitted by Satur demonstrated that the dues deduction authorization cards were obtained through fraud. The ALJ also denied Satur's motion for "discovery" of the dues deduction authorization cards themselves. The ALJ ruled on these issues in a June 6, 2022 letter decision. In her subsequent

¹ 55 PERB ¶ 4406 (2022).

decision, on August 9, 2022, the ALJ denied Satur's motion to renew/reargue its objections based on fraud and its discovery motion.

EXCEPTIONS

Satur filed six exceptions to the ALJ's decision. Satur asserts that the ALJ erred in failing to grant its motion to renew/reargue and in confirming the ALJ's June 6, 2022 letter ruling.² Satur contends that the ALJ further erred in determining that there was no basis for holding a hearing on Satur's objections to the dues deduction authorization cards based on fraud.³ Finally, Satur claims that the ALJ erred in dismissing its objection as to the necessity for continuity of seasonal employees.⁴

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

For the reasons that follow, we affirm the ALJ's decision. Further, after an examination of the cards submitted, we certify the unit.

FACTS

The facts are taken from Satur's response to the petition and Satur's offer of proof, required by the ALJ.

Satur submitted the affidavit of Samuel Flores with both its response to the petition and its offer of proof. This affidavit was sworn on February 14, 2022. Satur also submitted an affidavit from Marcos Gonzalez Garcia with its offer of proof. Garcia's

² Exceptions Nos 1 and 3.

³ Exceptions Nos 2, 4, and 5.

⁴ Exception No 6. Satur did not file exceptions to the ALJ's ruling on its "discovery" motion or on the adequateness of the petition. Pursuant to our Rules of Procedure governing matters brought pursuant to the SERA, any exceptions not specifically urged are waived. Section 253.48 (c) (4) of PERB's SERA Rules of Procedure.

affidavit was sworn on May 2, 2022. The affidavits, other than the name of the affiant, are identical. Spanish and English versions of the affidavits were filed.⁵ The English versions read as follows:

1. I am an employee of Satur Farms and make this affidavit in connection with the petition of UFCW Local 888 for certification as the representative of Satur Farms farm workers. I have knowledge of the facts stated.
2. I hereby withdraw and revoke any authorization or approval I gave to UFCW Local 888 to represent me in connection with my employment at Satur Farms. I do not wish to be represented by UFCW Local 888 or be a member of UFCW Local 888. I am satisfied with my compensation and work conditions from [sic] Satur Farms.
3. I was advised by a representative of UFCW Local 888 that if I signed a document I would be receiving a pre-loaded debit card which farm workers were entitled to receive. I never received any such debit card. I did not intend to consent to being represented [sic] by a union.
4. I was misled by UFCW Local 888 to sign any document I may have signed. I do not have a copy of any such document. The representatives came to my place of work when the owners of Satur Farms were not present. They came upon the property despite large posted no trespassing signs. I believe that all of the employees of Satur Farms were treated similarly.
5. I am executing this affidavit freely and without any coercion or any promises by Satur Farms. I have worked there for many years and am satisfied with the terms and conditions of my employment.
6. I am making this affidavit so that I will not have to be represented by UFCW Local 888. I am executing this statement under oath knowing that the Board will rely upon it. I am executing this affidavit

⁵ Although these documents are titled "Affidavits," the signers do not actually swear or affirm anything and the documents do not state that they are made under the penalty of perjury.

in both Spanish and in English after it was read to me in Spanish, as Spanish is my principal language.⁶

As part of its motion to renew and/or reargue, Satur filed affidavits from employees Eufemia Guadalupe, Francisa Guadalupe, and Pedro Mejia Guzman.⁷ All three affidavits are sworn on June 22, 2022, filed in Spanish and in English, and are identical to the affidavits of Flores and Garcia in their assertions, except that the second paragraph of these three affidavits reads, as follows:

2. I hereby withdraw and revoke my authorization or approval I gave to UFCW Local 888 to represent me in connection with my employment at Satur Farms. I do not wish to be represented by UFCW Local 888 or be a member of UFCW Local 888. I am satisfied with my compensation and work conditions from [*sic*] Satur Farms (emphasis added).⁸

As concerns the signed dues deduction authorization cards filed by Local 888, many of them are printed with the following statement, in Spanish:

Quiero que la Local 888/UFCW me represente exclusivamente en el trabajo para obtener mejores salarios, beneficios y condiciones laborales. Cuando un contrato es aprobado por los trabajadores y estoy recibiendo los beneficios de tener representación sindical, de acuerdo con la Ley del Estado de Nueva York, autorizo a la empresa a que la deducción de mis cuotas sindicales sea enviada al sindicato. Hasta entonces, no se aceptarán cuotas.

The remaining cards are printed with the following statement, in English:

I want Local 888/UFCW 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 NY State Law, I

⁶ The Spanish translations of the affidavits were provided by Satur and have not been reviewed for accuracy.

⁷ See Employer's Motion to Renew/Reargue, ¶ 11; Ex F, annexed to Employer's Motion to Renew/Reargue.

⁸ Ex F, annexed to Employer's Motion to Renew/Reargue.

authorize the deduction of my union dues by the company to be sent to the union. Until then, no dues will be accepted.

According to the third-party translation service engaged by PERB, the English language statement and the Spanish language statement on the cards are equivalent.

DISCUSSION

We first address Satur's argument that a hearing should have been held to address its claims that the dues deduction authorization cards were obtained through fraudulent conduct.⁹ Section 705 of the SERA provides that "[i]n the event that either party provides to the board, prior to the designation of a representative, clear and convincing evidence that the dues deduction authorizations . . . are fraudulent . . . , the board shall promptly thereafter conduct an election."¹⁰ Satur sought a hearing as to establish the dues authorization cards were fraudulently obtained and/or withdrawn. However, no material issue of disputed fact was shown by Satur as its arguments, if factually supported, would not result in an election.

We read Satur's argument here in the broadest sense possible to assert that the cards were obtained fraudulently either because they were obtained based on a promise of a benefit, the payment of a benefit, or the promise of and then failure to pay the benefit.¹¹ Satur cites no case, and we are aware of none, that holds that any of

⁹ To the extent that Satur's exceptions can be read to argue that the ALJ was obligated to hold a hearing, we reject that argument. Hearings before an ALJ are discretionary, not required by law, and held only where there is a material issue of disputed fact. See *Local 338*, 55 PERB 3401, n 37 (2022); *The Long Island College Hospital*, 34 SLRB 324, 327 (1971).

¹⁰ The statute also says the Board should order an election if the cards are obtained through coercion, but Satur does not assert that any of the dues deduction authorization cards were obtained through coercion.

¹¹ We note that Satur does not argue that the cards are themselves fraudulent.

these possibilities make a dues deduction authorization card “fraudulent.”

Further, it is clear that the statute at issue was to guard against “interference with the free choice of a bargaining representative.”¹² The promise of a benefit alleged here (a pre-paid debit card of undisclosed value) is not of the type which would interfere with the free choice of employees and, in the absence of prior precedent finding such conduct to void an otherwise valid dues deduction authorization card, we decline to do so here.

As our predecessor Board held, “[i]t is within our province at most to determine whether the successful 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.”¹³ We find that, even if the facts alleged by Satur were proven, employees here were not deprived of their freedom of choice.

We further find that the affiants’ statement that they do not wish to be represented by Local 888 and that they relied on misrepresentations in signing the dues deduction authorization cards does not negate the validity of their signed cards. The dues deduction authorization cards were clear on their face and, in the face of such unambiguous language, we cannot find that employees did not know they were signing

¹² *Millard Fillmore Hospital*, 28 SLRB 525, 527 (1965). *Millard Fillmore Hospital* addressed misrepresentations in the context of an election. 28 SLRB 525, 527 (“Not all misrepresentations constitute grounds for vacating an election. The misrepresentation must be such as to constitute an interference with the free choice of a bargaining representative.”). We find that the same principle applies to the solicitation of dues deduction authorization cards.

¹³ *Long Island Coll Hosp*, 34 SLRB No 48, 330 (1971), *revd sub nom Matter of the Long Island Coll Hosp v NYS Labor Relations Bd*, 39 AD2d 913 (2d Dept 1972), *revd* 32 NY2d 314 (1973).

a request to have Local 888 exclusively represent them for collective negotiations pertaining to their employment. In the absence of evidence of fraud or coercion, we will not probe into an employee's subjective state of mind, and an employee's change of mind due to alleged misrepresentations is an insufficient basis to invalidate a timely, signed dues deduction authorization card which is clear on its face.¹⁴

Second, we find that the affidavits of Eufemia Guadalupe, Francisa Guadalupe, and Pedro Mejia Guzman do not establish a *quid pro quo* of a signature on a dues deduction authorization card in exchange for a debit card.¹⁵ The affidavits are entirely in the conditional. The identical affidavits, all executed on the same day, state that the affiant was "misled by [Local 888] to sign *any document I may have signed*."¹⁶ The affiants also stated that they do not have a copy of "any such document."¹⁷ The affiants do not identify any document they signed as a dues deduction authorization card or as any sort of document which authorized Local 888 to represent them. Indeed, the

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 (1949), *enfd as modified* 185 F2d 732 (DC Cir 1950), *cert. denied* 341 US 914 (1951)).

¹⁵ We do not consider the affidavits of Samuel Flores or Marcos Gonzalez Garcia. Flores is a supervisor, and thus not in the unit, and Garcia was not included on the relevant payroll list provided by Satur. It therefore appears that he is no longer an employee and also not in the unit. Like the ALJ, we find no evidence that Flores, Garcia, or any other affiant was empowered to speak for other employees. Their asserted "belief" that other employees were treated similarly is not sufficiently detailed or concrete to raise an issue for hearing.

¹⁶ See, eg, Eufemia Guadalupe's affidavit at ¶ 4, Ex F, annexed to Motion to Renew/Reargue (emphasis added).

¹⁷ *Id.*

affiants do not even affirmatively assert that they actually signed such a document.¹⁸ Moreover, the affidavits are not sworn under penalty of perjury. We do not find that these failures negate the affidavits, but they go to weight accorded them and call into question the context under which they were drawn and signed. The record establishes that the affidavits were signed approximately 8-10 months after dues deduction authorization cards in this matter were signed, and an examination of the payroll records submitted by Satur throughout these proceedings demonstrate that the workforce has dramatically shrunk since the organizing campaign and filing of the petition (going from over 20 employees in 2021 to 8 employees as of June 2022). In sum, we have concerns regarding the voluntary nature of the so-called affidavits, as well as their validity.¹⁹

Because we find that Satur's assertions of fraudulent conduct are insufficient as a matter of law and because the affidavits are insufficient to raise a material issue of disputed fact, we find that the ALJ did not err in declining to hold a hearing on Satur's allegations of fraud in obtaining the dues deduction authorization cards.

The ALJ did not explicitly address Satur's contention that there must be a "continuity" of employment from year to year in order for what it asserts are seasonal

¹⁸ We would not require that the affiant use the "magic words" of a dues deduction authorization card. However, in the absence of *any* identification of the document these employees allegedly signed, the affidavits simply fail to raise a material issue of disputed fact about whether dues deduction authorization cards were actually signed by the affiants.

¹⁹ We point out that the timing, the significant decline in the workforce in the relevant time frame, and the submission by Satur of largely identic purported, albeit unsworn, and not pursuant to penalty of perjury, affidavits in favor of Satur could indicate interference by Satur.

employees to be included in the bargaining unit. Nevertheless, the ALJ correctly implicitly rejected this argument by finding the unit appropriate. We find that the purposes and policies of the SERA would not be advanced by requiring that a certain percentage of employees return each year in order to be eligible for bargaining.

Satur relies on precedent under the Public Employees' Fair Employment Act, better known as the Taylor Law, to claim that year-to-year continuity of at least 60 percent should be required.²⁰ The Taylor Law, however, on this point is inapposite to our analysis of the SERA. It is a different statute, with different underlying purposes and policies. Under the SERA, it is:

hereby declared to be the public policy of the state to encourage the practice and procedure of collective bargaining, and to protect employees in the exercise of full freedom of association, self-organization and designation of representatives of their own choosing for the purposes of collective bargaining, or other mutual aid and protection, free from the interference, restraint or coercion of their employers.

Section 700 also provides that “[a]ll the provisions of this article shall be liberally construed for the accomplishment of this purpose.” This statutory language makes it clear that the SERA favors coverage for employees in the State of New York. The SERA does not include any exemptions from being considered “employees” for seasonal employees in either its general definition or the more specific definition enacted by the Farm Laborers’ Fair Labor Practices Act (FLFLPA). Indeed, FLFLPA expanded the definition of “employee” to include farm laborers and states that “[f]arm laborers shall mean *any* individual engaged or permitted by an employer to work on a

²⁰ See *State of New York*, 5 PERB ¶ 3039 (1972).

farm.”²¹ The legislative history codified by the FLFLPA demonstrates that the Legislature considered the “unique and unpredictable factors including climate and weather, pricing and market requirements, seasonal harvests, immigration, and various federal and state laws, rules and regulations that directly impact farmers”²² These references, particularly to seasonal harvests and immigration, demonstrate that the Legislature was aware of the seasonal, or temporary, nature of certain farm laborers and chose not to exclude them from coverage of the SERA.

As our predecessor Board explained, exemptions and exclusions under the SERA are to be “strictly and narrowly construed.”²³ “All employees working within the State of New York . . . come within the coverage of the [SERA], except those specifically excluded by the Legislature.”²⁴ As the Legislature has not exempted seasonal employees from coverage of the SERA and the FLFLPA, we find that a unit composed solely of seasonal employees is appropriate and properly accorded representation rights.²⁵

Based on the foregoing, we affirm the ALJ’s findings as here discussed. Because we affirm the ALJ’s rulings on the merits, we also find that she did not err in denying

²¹ Section 701.3 (c) of the SERA (emphasis added).

²² L 2019, ch 105, § 3.

²³ *The Long Island College Hospital*, 33 SLRB 161, 166 (1970).

²⁴ *Id.*, at 167.

²⁵ We note that similarly “seasonal” or temporary workers, such as musicians, actors, and construction workers, are accorded the right to organize and bargain under the National Labor Relations Act (NLRA). See *Kansas City Repertory Theatre, Inc.*, 356 NLRB No. 28 (2010); *John Deklewa & Sons*, 282 NLRB 1375 (1987), *enfd sub nom Iron Workers Local 3 v NLRB*, 843 F2d 770 (3d Cir 1988). Although the NLRA is a distinct statute, the history of relationships under the NLRA demonstrates that productive bargaining relationships can exist between employers and temporary employees.

Satur's motion to renew/reargue its objections based on fraud. We find the following unit is appropriate to be certified to Local 888:

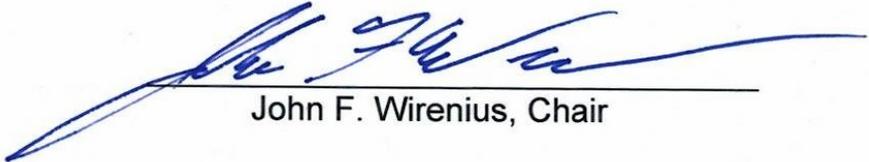
Included: All farm laborers, as defined in Section 701.3 (c) of SERA, employed by Satur Farms.

Excluded: All supervisory employees, including Supervisor of Field Operations, Supervisor of Cooling Operations and Shipping, Supervisor of Harvest, and Supervisor of Equipment and Facility Maintenance.

Local 888 has submitted evidence that it represents a majority of the employees in this unit. Pursuant to § 705.1-a of the SERA, Local 888 has hereby satisfied the requirements for certification without an election, and is hereby certified as the exclusive negotiating agent for the unit.

IT IS, THEREFORE, ORDERED that the Director's findings are affirmed, and that the petitioned-for unit is certified. FURTHER, IT IS ORDERED that Satur shall negotiate collectively with Local 888.

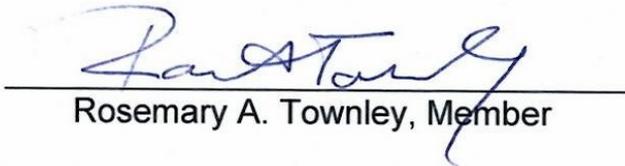
DATED: October 13, 2022
Albany, New York



John F. Wirenius, Chair



Anthony Zumbolo, Member



Rosemary A. Townley, Member