

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

GOLDEN FARM BROOKLYN, INC. d/b/a)	
GOLDEN FARM GROCERY)	
Employer)	
and)	Case No. 29-RC-77022
)	
)	
LOCAL 338, RETAIL, WHOLESALE,)	
AND DEPARTMENT STORE UNION,)	
UNITED FOOD AND COMMERCIAL)	
WORKERS)	
Petitioner)	
)	

SUPPLEMENTAL REPORT ON CHALLENGES AND OBJECTIONS

On May 25, 2012, I issued a Report on Challenges and Objections and Notice of Hearing. In that report, I found that the Employer had not presented sufficient evidence to establish that Lucas Sanchez is an agent of the Petitioner.

On June 1, 2012, the Employer filed exceptions to that Report in which it stated that it had provided sufficient proof that Sanchez is an agent for the Petitioner. The Employer cited an employee affidavit submitted with the Employer's offer of proof.

Having reconsidered the matter, I uphold my original finding that the Employer has not established that Sanchez is an agent of the Petitioner. His alleged conduct is therefore properly analyzed as that of a third-party.

According to the affidavit cited by the Employer, the employee testified: "We were approached on the street by two individuals, a man and a woman. The man identified himself as Lucas Sanchez and gave me a piece of paper with some union

information on it; the female said her name was Kelly. I don't remember if she gave me a last name. I have attached a copy of the document I was given to this affidavit." Attached to this affidavit were two original authorization cards (not copies), one in English and one in Spanish, a full page document from NY Communities For Change which included Lucas Sanchez's name and contact information, and two copies of a legal retainer, one copy in English and one copy in Spanish, from an organization called Advocates for Justice. The witness identified by the Employer does not describe the document to which he refers in his affidavit, except that it is a copy of a piece of paper with union information on it, or identify which one of the five documents attached to his affidavit he received from Sanchez.

Significantly, this witness was accompanied by a second employee when Sanchez approached them. The second witness also provided an affidavit in which s/he testified "I believe Mr. Sanchez gave [the employee identified by the Employer] some kind of paper with his identity on it," thus referring to the NY Communities for Change flyer, the only document which identifies Sanchez. The second witness did not indicate that either employee had received an authorization card. The second witness also admitted that s/he did not know if Sanchez was a representative of the Petitioner. In addition, a third employee who provided an affidavit did not indicate that s/he had received an authorization card from Sanchez.¹

The Board has held that an objecting party must provide probative evidence in support of its objections; it is not sufficient to rely on mere allegation or suspicion. See Allen Tyler & Son, Inc., 234 NLRB 212, 212 (1978) ("In the absence of any probative

¹ This third employee testified that Sanchez gave him/her "a card with [Sanchez's] name and phone number on it; I have since thrown it away."

evidence, [the Board] shall not require or insist that the Regional Director conduct a further investigation simply on the basis of a ‘suspicious set of circumstances’”); Audubon Cabinet Company, 119 NLRB 349, 350 (1957) (“Objections, to merit investigation by a Regional Director, must be reasonably specific in alleging facts which prima facie would warrant setting aside an election.”). In this case, the Employer seeks to establish that Sanchez distributed an authorization card to one employee. That employee does not state that Sanchez gave him a card, but instead states he received a single, unidentified document containing union information. The employee who witnessed their exchange states that Sanchez gave the employee a “piece of paper with his identity on it.” The weight of the Employer’s evidence establishes that Sanchez gave the employee the NY Communities for Change flyer bearing Sanchez’s name. The evidence simply does not establish that Sanchez distributed authorization cards for the Petitioner. As stated in my May 25 report, the Employer has not established that Sanchez is an agent of the Petitioner.

Even assuming that this witness meant to refer to one of the authorization cards attached to the affidavit, this allegation alone could not establish agency.² The mere solicitation of authorization cards does not establish general agency. See Corner Furniture Discount Center, Inc., 339 NLRB 1122 (2003). Although the Board has found that “employees who solicit authorization cards should be deemed special agents of the union for the limited purpose of assessing the impact of statements about union fee

² The burden of proving an agency relation is on the party asserting its existence. See Pan-Oston Co., 336 NLRB 305, 306 (2001) (a party asserting agency must establish that an agency relationship exists with regard to the specific conduct alleged to be unlawful).

waivers or other purported union policies that they make in the course of soliciting,”³ this agency would not extend to the conduct alleged here. Davlan Engineering, Inc., 283 NLRB 803, 804 (1987) (emphasis added). The objectionable conduct alleged in this case, offering money in exchange for votes, does not relate to a purported union policy. See HCF Inc., d/b/a Shawnee Manor, 321 NLRB 1320 (1996) (in which the Board found that the special agency status of a card solicitor did not extend to alleged threats of violence made in the course of soliciting cards because such statements could not be construed as “purported union policies.”). The Employer has not alleged or established that Sanchez discussed any purported Union policies with employees.

For all of the reasons stated above, I uphold my finding that the Employer has not established that Sanchez acted as an agent on the Petitioner’s behalf.

RIGHT TO FILE EXCEPTIONS

Pursuant to the provisions of Section 102.69 of the National Labor Relations Board’s Rules and Regulations, Series 8 as amended, you may file exceptions to this Report with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570-0001. Under the provisions of Section 102.69(g) of the Board’s Rules, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in support of its objections or challenges and that are not included in the Report, is not part of the record before the Board unless appended to the exceptions or opposition thereto that the party files with the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional

³ A special agent “is authorized to conduct a single transaction or a series of transactions not involving continuity of service.” Davlan Engineering, Inc., 283 NLRB 803, 804 fnt. 7 (1987).

Director and not included in the Report shall preclude a party from relying on that evidence in any subsequent related unfair labor practice proceeding.

Procedures for Filing Exceptions

Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, exceptions must be received by the Executive Secretary of the Board in Washington, D.C. by close of business on June 19, 2012, at 5 p.m. (ET), unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file exceptions electronically.** If exceptions are filed electronically, the exceptions will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of exceptions filed by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.⁴ A copy of the exceptions must be served on each of the other parties to the proceeding, as well as to the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing exceptions electronically may be accomplished by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, select the E-Gov tab, and then click on the E-filing link on the pull down menu. Click on the

⁴ A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

“File Documents” button under Board/Office of the Executive Secretary and then follow the directions. The responsibility for the receipt of the exceptions rests exclusively with the sender. A failure to timely file the exceptions will not be excused on the basis that the transmission could not be accomplished because the Agency’s website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Dated at Brooklyn, New York, on this 5th day of June, 2012.

A handwritten signature in cursive script that reads "James G. Paulsen". The signature is written in black ink and is positioned above a horizontal line.

James G. Paulsen
Regional Director, Region 29
National Labor Relations Board
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Brooklyn, New York 11201