

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

G H & G ZYSLING DAIRY,	)	
	)	
Employer,	)	Case No. 93-RC-3-VI
	)	
and	)	
	)	
TEAMSTERS UNION, LOCAL 517	)	19 ALRB No. 17
CREAMERY EMPLOYEES & DRIVERS,	)	(November 19, 1993)
	)	
Petitioner.	)	
	)	

---

DECISION AFFIRMING DISMISSAL OF ELECTION OBJECTIONS

On April 21, 1993,<sup>1</sup> an election was held among the agricultural employees of G H & G Zysling Dairy (Zysling or Employer). The tally of ballots showed seven votes for the Teamsters Union, Local 517 Creamery Employees & Drivers (Teamsters or Union), two votes for No Union, and two unresolved challenged ballots.

The Employer timely filed fourteen election objections alleging that agents of the Agricultural Labor Relations Board (ALRB or Board) improperly designated the scope of the bargaining unit for voting, disenfranchised an outcome-determinative number of employees, permitted unlawful campaigning and coercive conduct in the polling area, failed to conduct the election in accordance with the agreed-upon schedule and times, and engaged in coercive interrogation of employees in the polling area. The Employer also alleged that the Union interfered with the election process

---

<sup>1</sup> All dates herein refer to 1993 unless otherwise specified.

by intimidating and coercing eligible employees to vote for the Union.

In a Notice issued October 19, the Board's Executive Secretary set some of the objections for hearing, dismissed some of the objections, and partially dismissed others. This matter is now before the Board on the Employer's request for review of the Executive Secretary's dismissal of certain objections.

### Discussion

#### Joint Employer Issue (Objections 3 and 4)

The Employer requests review of the Executive Secretary's dismissal of objections suggesting that Zysling may be a joint employer with Valley Farm Service (Valley) of Valley employees who come onto Zysling's property to perform maintenance work. A declaration filed by Gary Zysling, one of the Employer's partners, states that he supervises Valley employees when they are on the dairy's property, and that the dairy's milker employees work alongside Valley's maintenance people as assistants.

The Executive Secretary dismissed the joint employer issue because he found that the Employer had failed to submit facts which would warrant further investigation of the issue. He noted that the Employer had not claimed that Zysling and Valley share control over the hiring, firing and supervision of the employees, or share the responsibility for determining their hours, wages, or other terms and conditions of employment.

A joint employer relationship involves two independent business entities that have chosen to control jointly the labor relations of a given group of workers. For such a relationship to be proven, it must be shown that the two employers share or co-determine those matters governing essential terms and conditions of employment. (NLRB v. Brownina-Ferris Industries (3d Cir. 1982) 691 F.2d 1117 [111 LRRM 2748].) In Brownina-Ferris, a refuse-hauling company was found to be a joint employer with trucking brokers who furnished tractors and drivers to haul the refuse company's trailers. Factors relied upon to establish the relationship included: the two companies shared the right to hire and fire the drivers; the hauling company established the drivers' work hours and provided them with the same uniforms it provided its own employees; the hauling company and the brokers together determined the drivers' compensation and shared in their day-to-day supervision; and the hauling company shared with the brokers the power to approve drivers, and devised the rules under which the drivers were to operate at the hauling company's sites. (111 LRRM at 2753-2754.)

The declaration of Gary Zysling does not suggest that Zysling and Valley share in determining the essential terms and conditions of employment of the Valley employees who come onto Zysling's property to perform maintenance work. Although the declaration states that Zysling supervises Valley's employees while they are performing work on the premises, it does not claim that Zysling shares in determining the hours, wages or other

working conditions of the employees or shares the right to hire and fire them. We find that Zysling has failed to present a prima facie case that Zysling and Valley are joint employers of these employees, and we therefore affirm the Executive Secretary's dismissal of Objections Nos. 3 and 4 insofar as they claim a joint employer relationship.

Cumulative Effect of Alleged Misconduct

The Employer concedes that Objections Nos. 5 through 10, relating to alleged misconduct by Board agents and alleged coercive conduct by Board agents and Union representatives, may not be sufficient individually to state a prima facie case. Nevertheless, the Employer argues, the cumulative effect of the conduct alleged in the objections should be considered at hearing.

We find that the Executive Secretary properly concluded that Objections Nos. 5 through 10 did not individually present a prima facie case of misconduct or coercive conduct. The Employer made no showing that any voters were disenfranchised by the late opening or early closing of the polls, since the record indicated that every employee listed on the eligibility list apparently voted in the election. The Employer made no showing that Board agents coercively interrogated employees who were attempting to vote but whose names did not appear on the eligibility list. Under the Board's challenged ballot procedure, employees may be questioned by Board agents concerning whether they worked during the eligibility period, whether they engaged in agricultural

tasks, and in what location and for what supervisor they worked. By failing to specify either the nature of the questions the Board agents asked the two challenged voters or their answers, the Employer failed to present a prima facie case of coercion of the challenged voters or other potential voters. The Employer also failed to present adequate declaratory support for its contention that Union representatives engaged in coercive campaigning in the polling area.<sup>2</sup>

The Employer's argument that the possible cumulative effect of the incidents described in Objections Nos. 5 through 10 should be considered even if the incidents are not coercive or unlawful by themselves is contrary to established precedent of the National Labor Relations Board (NLRB). As the court of appeals held in NLRB v. Monark Boat Co. (8th Cir. 1986) 800 F.2d 191 [123 LRRM 2502], a finding that none of an employer's election objections was proven to be well taken individually compels the conclusion that, taken collectively, the objections fail to satisfy the employer's burden of proof.

We therefore affirm the Executive Secretary's dismissal of Objections Nos. 5 through 10.

The Hearsay Issue (Objections 13 and 14)

The Employer argues that the Executive Secretary erred in refusing to consider the facts alleged in the declaration of Jose Ybarra because they were based on hearsay. In stating his

---

<sup>2</sup> See discussion of the Executive Secretary's declination to consider matters alleged in the declaration of Jose Ybarra, infra.

declination to consider Ybarra's declaration, the Executive Secretary cited the Board's regulations, California Code of Regulations, title 8, sections 20365 (c) (2) (B) and (d) . Those regulations provide that a party objecting to the conduct of an election shall submit supporting declarations and that the facts stated in each declaration shall be within the personal knowledge of the declarant. The regulations also state that the Executive Secretary shall dismiss any objections petition or portion thereof which does not satisfy the stated requirements.

Ybarra's declaration is based on his alleged conversation with someone who had an alleged conversation with some employees who allegedly heard union supporters tell other employees they would be fired if they didn't vote for the Union. No part of Ybarra's declaration is based on facts within his personal knowledge, and we therefore find that the Executive Secretary properly declined to consider the declaration in evaluating Objections Nos. 13 and 14.<sup>3</sup>

We therefore affirm the Executive Secretary's dismissal of Objections Nos. 13 and 14.

We conclude that the Employer has failed to demonstrate that the Executive Secretary erred in dismissing Objections Nos.

---

<sup>3</sup> The three other declarations filed in support of Objection No.14 also fail to present any facts supporting the allegation that the Union or its supporters intercepted voters on their way to vote and coerced them to vote for the Union. The declarations state only that several employees were gathered outside the mechanic's shop and one or two other employees spoke to them forcefully. Since neither the contents of the discussion nor the identity of the speakers was provided by the declarations, they do not support the allegations in Objection No. 14.

5 through 10, 13 and 14, and partially dismissing Objections Nos. 3 and 4. We therefore affirm the Executive Secretary's decision to set for hearing only those objections so delineated in his Notice of October 19.

DATED: November 19, 1993

BRUCE J. JANIGIAN, Chairman

IVONNE RAMOS RICHARDSON, Member

LINDA A. FRICK, Member

## CASE SUMMARY

G H & G Zysling Dairy  
(Teamsters)

19 ALRB No. 17  
Case No. 93-RC-3-VI

### Background

Following an election in which the Teamsters Union, Local 517 (Union), was selected as the exclusive representative of the agricultural employees of G H & G Zysling Dairy (Zysling or Employer), the Employer filed fourteen election objections. In a ruling issued October 19, 1993, the Board's Executive Secretary set some of the objections for hearing and partially dismissed others.

The Employer requested review of the Executive Secretary's dismissal of the issues of whether Valley Farm Service was a joint employer with Respondent and whether Board agent misconduct or coercive conduct by Union representatives affected the results of the election.

### Board Decision

The Board affirmed the Executive Secretary's dismissal of the joint employer issue. Although the Employer's declaration stated that Zysling supervised Valley Farm Service's maintenance employees when they were working on the Employer's property, the Board affirmed the Executive Secretary's finding that the Employer failed to show that the two employers shared or co-determined those matters governing essential terms and conditions of employment, and thus failed to present a prima facie case on the joint employer issue.

The Board also affirmed the Executive Secretary's finding that the Employer failed to present adequate declaratory support for its allegations of voter disenfranchisement, improper electioneering and coercive conduct. Citing court precedent, the Board dismissed the Employer's argument that the cumulative effect of the alleged misconduct should be considered even if the incidents were not individually coercive or unlawful.

The Board affirmed the Executive Secretary's declination to consider facts alleged in a declaration which was based entirely on hearsay. The Board affirmed the Executive Secretary's ruling that Board regulations provide that objections must be supported by declarations stating facts within the personal knowledge of the declarant, and require dismissal of objections not so supported.

\* \* \*

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