

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:)	
)	
APOLLO FARMS,)	No. 75-RC-127-M
)	
Employer,)	
)	
and)	2 ALRB No. 39
)	
UNITED FARM WORKERS)	
OF AMERICA, AFL-CIO,)	
)	
Petitioner,)	
)	
and)	
)	
WESTERN CONFERENCE OF)	
TEAMSTERS, AGRICULTURAL)	
DIVISION, IBT, AND ITS)	
AFFILIATED LOCAL UNIONS)	
166, 186, 274, 542, 630,)	
865, 890, 898, and 1973,)	
)	
Intervenor.)	
)	

In this case, we confront a question of the admissibility of a declaration in the absence of the declarant at a post-election objections hearing and the admissibility and weight to be accorded hearsay evidence therein.

An election was held on September 25, 1975 among the employees of Apollo Farms, on a petition for certification filed by the United Farm Workers of America, AFL-CIO (" UFW "). The Western Conference of Teamsters ("Teamsters") intervened and received a majority of the votes cast.^{1/} Thereafter, the UFW filed objections to the election, alleging that the employer had threatened workers that they would not be rehired the following year if they voted for the UFW and that the employer

^{1/}The tally was Teamsters - 14; UFW - 7; void ballots - 1.

told workers they would be better off under a Teamsters contract.^{2/}

In support of the allegations, a UFW organizer, Javier Sandoval, testified over the employer's objections as follows: on the day before the election, a UFW observer predicted that the UFW would win, and that he hadn't heard of any threats by the employer or the Teamsters. However, on the morning of the election, the observer said that he had noticed a complete change among the workers -- although he did not know the cause -- and he now thought there was just a chance that the UFW would be victorious. Additionally, when the election results were announced, showing a Teamster victory, a worker named Rogelio Zamora pointed at Sylvio Bernardi, a managing partner in Apollo Farms, and shouted, "Mr. Bernardi threatened the illegals." Zamora explained that the previous night, another worker, Salvador Ramos, had told him that Bernardi had threatened him and other workers that if they voted for the UFW, the following year they would not be rehired, and that they had to vote for the union they already had, i . e . , the Teamsters. Throughout the conversation between Zamora and Sandoval, the other assembled workers were nervous and angry, and Bernardi kept trying to get them to return to work.

^{2/}Other UFW objections, challenging the acceptance of Teamsters dues deduction cards obtained under a pre-Act collective bargaining agreement to determine showing of interest, were dismissed on the ground that matters relating to the sufficiency of employee support are not reviewable in a post-election objections proceeding. 8 Cal. Admin. Code, §20315(c). The UFW filed a request for review of those dismissals, relying in part on the pendency before the California Supreme Court of a case testing the legality of certain pre-Act Teamster-employer collective bargaining agreements. *Bradley v. Church*, S.F. 23278. Since the filing of the request for review, the Supreme Court has vacated its previous order granting the UFW's petition for hearing in that case, and remanded *Bradley* to the Court of Appeal. We reaffirm the dismissals and deny the request for review on the ground previously stated.

Later in the day, when Sandoval returned to the ranch seeking more information about the alleged threats, an unidentified worker came up to him screaming that the election "wasn't fair" because workers who were illegals had been threatened. As the worker said this, he pointed at Bernardi. Bernardi was within hearing distance of the employee but did not respond and appeared nervous. Sometime thereafter, Sandoval attempted to obtain a declaration about the threats from Ramos, but Ramos said he was afraid of being deported and refused.

The only other UFW evidence was a declaration by Rogelio Zamora, admitted over the employer's objection after a UFW legal assistant testified that Zamora had left for Mexico 15 days before the hearing. The Zamora declaration stated that the night before the election, when a group of Apollo Farms employees met to talk about the election, Salvador said not to vote for the UFW because Delfino Bernardi had told him that if the workers voted for the UFW, he would not hire them the following year. Salvador's last name was not given.

Two employer witnesses denied that any threats had been made or that the employer had expressed a preference for the Teamsters. Jose Camacho, an Apollo Farms employee who supported the Teamsters and had served as a company observer at the election, testified that he had spoken to a number of Apollo workers individually and at a meeting the evening before the election, and that he had heard no mention of a threat by Bernardi then or any other time. He introduced a copy of a leaflet distributed by Bernardi to all Apollo workers. The flier stated that workers were free to sign or not to sign an authorization card, that they

could vote regardless of whether they had signed a card, and that they could vote by secret ballot "for the union of your choice" or for "no union if that is your choice." It contained neither threats nor a preference between the competing unions. Camacho testified he had never heard Bernardi tell the workers that they would be better off under a Teamster contract, although Camacho himself had urged workers to vote Teamster.

Sylvio Bernardi testified as follows: he never told Ramos or anyone else that they would not be rehired if they voted for the UFW; he had no way of knowing whether any of his workers were illegals; he had no preference as to how his employees voted; and his only communication with his workers on the subject was to tell them that they were free to vote as they pleased, which he stated both orally and in the leaflet. After the announcement of the election results, he saw that Zamora and other workers were upset, and he decided to let them relax for half an hour before returning to work. He saw Zamora was gesturing, but he did not see him point. He could not hear what Zamora or other workers were saying because of noise from a nearby tractor.

As the preceding recital demonstrates, the UFW's evidence suffered from two defects. First, its entire case rested on hearsay. Second, admission of the Zamora declaration when the declarant was absent from the hearing and was thus unavailable for cross-examination violated Section 20390 (a) of the Board's regulations (8 Cal. Admin. Code, §20390 (a)), which provides in part: "All witnesses [at post-election objections hearings] shall be examined orally and under oath." (Emphasis added.)^{3/}

^{3/}That regulation is patterned closely on Section 102.66 of the NLRB's Rules and Regulations, which provides in pertinent part, "Witnesses shall be examined orally under oath."

Because of that regulation, we hold that it was error to admit the Zamora declaration. As to the hearsay character of Sandoval's testimony, we find no error in the admission of such evidence since the same regulation provides that in objections hearings, "Strict rules of evidence shall not apply." 8 Cal. Admin. Code, §20390 (a). The purpose of that provision is to provide necessary flexibility in an investigative proceeding, free from the compulsion of technical evidentiary rules.

However, the weight to be accorded such hearsay evidence is another matter. The obvious difficulty posed by hearsay testimony is that the opposing party has no opportunity to cross-examine the person with the first-hand knowledge -- here, Salvador Ramos -- in order to test his veracity, perception or memory. The impact of that deprivation is well illustrated here. Although Sandoval testified that Zamora informed him that the threats were made by Sylvio Bernardi, Zamora's own declaration, written the day of the election, states that he was told the threats came from Delfino Bernardi. It is undisputed that no Delfino Bernardi is associated with Apollo Farms.^{4/} Thus, without cross-examination of Ramos, there is no way to determine with any certainty the source of the alleged threats^{5/} which, if

^{4/}To add to the confusion, the UFW's objections petition attributed the threats to "Dino Bernardi." Sylvio Bernardi's father, the other managing partner of Apollo Farms, is named Dino Bernardi, a name much closer in sound to "Delfino". However, Sylvio testified that his father never communicated with the employees because his larynx was removed in 1963 and his only language was Italian. Dino was present at the hearing. When he was pointed out to Sandoval, Sandoval said he was not the person who made the threats.

^{5/}Sandoval testified that some Apollo workers called Sylvio Bernardi by the name "Delfino". The employer contended that Ramos may have been referring to a wholly different employer, Louis Delfino.

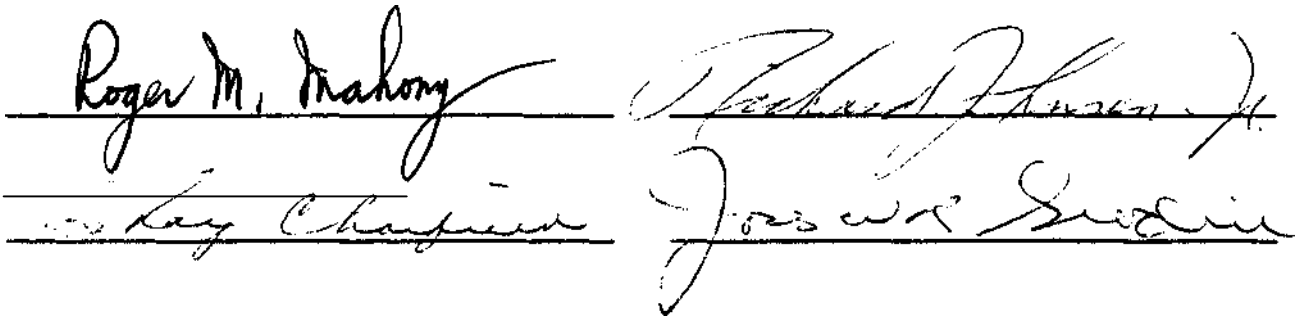
proven, might well have been grounds for setting aside the election. See Royal Packing Company, 2 ALRB No. 29 (1976).

In view of the seriousness of the conduct charged, the absence of any nonhearsay evidence in support of the allegations, and the credible denials by the employer's witnesses, we decline to set aside the election on the basis of such hearsay testimony.^{6/}

The Western Conference of Teamsters, Agricultural Division, IBT, and its affiliated local unions 166, 186, 274, 542, 630, 865, 890, 898, and 1973, is certified as the exclusive bargaining agent of all agricultural employees of the employer.

Certification issued.

Dated: February 27, 1976

The image shows three handwritten signatures on horizontal lines. The first signature on the left is 'Roger M. Mahony'. The second signature on the right is 'Robert J. Hansen Jr.'. The third signature on the left is 'Joseph W. Sullivan'.

^{6/}In view of the failure of the UFW to prove the conduct alleged, we need not now decide whether and under what circumstances the bargaining order which it requested in this case may be available under the ALRA as a remedy for employer misconduct.