

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

PATTERSON FARMS, INC.,)	
Employer,)	No. 75-RC-28-S
)	
and)	2 ALRB No. 59
)	
UNITED FARM WORKERS OF)	
AMERICA, AFL-CIO,)	
)	
Petitioner.)	
_____)	

FACTS

On September 26, 1975, a Petition for Certification was filed by the United Farm Workers of America, AFL-CIO ("UFW") seeking to represent all agricultural employees of the employer, Patterson Farms, Inc. Subsequently, an election was held on October 4, 1975. Of approximately 110 eligible voters, 55 cast votes for the UFW; 39 voted for no union, and 5 votes were challenged.

On October 8, 1975, the employer timely filed an Objection Petition pursuant to Section 1156. 3 (c) of the Labor Code, alleging that certain conduct on the part of the UFW affected the results of the election. On November 3, 1975, the Board issued a Notice of Hearing and Order of Partial Dismissal of Petition on said objections. A hearing was conducted on December 8 and 16, 1975, in Patterson, California, before Hearing Officer Robert C. Tronvig, Jr. Pursuant to our authority under Labor Code Section 1146, the decision in this matter has been delegated to a three-member panel.

The employer's objections contained in his petition and which were not dismissed made the following allegations;

1. That employees of Patterson Farms were intimidated by UFW representatives as evidenced by the fact that on or about October 2, 1975, during the employees' lunch break, Alfredo Segoviano, an employee, made statements threatening?
 - (a) The economic livelihood of employees by loss of jobs if the union won and the individual had not joined forces with the employees?
 - (b) To sabotage the employer's tomato harvesting equipment so that employees operating that equipment would be without jobs in the event the union lost the election.
2. That on the eve of the election, October 3, 1975, at a meeting of Patterson Farms employees, the local UFW representative, Jan Peterson, stated to a group of the employees that mechanics, welders, truck drivers and supervisors on the ranch would not be allowed to vote, and
3. That on the evening of the election day, October 4, 1975, three bullets were shot into the pickup truck of crew foreman of the employer, Pablo Segoviano.
4. That the above-mentioned allegations constituted a "pattern" of economic intimidation by the UFW, having a material effect on the outcome of the election.

Shortly after the start of the hearing, the employer sought to introduce evidence of incidents other than those specifically delineated in its objection petition claiming they helped establish a "pattern" of economic intimidation. These additional incidents involved two company employees and a union organizer and were limited to the 48 hour period immediately preceding the election. The UFW objected on the grounds of

lack of notice and that the employer was deliberately attempting to circumvent the procedures we established for the screening of objection cases in our Interharvest decision.^{1/}The hearing officer admitted the testimony over the objections of the UFW. Because we hold that the incidents objected to were insufficient themselves, or when considered in connection with the other alleged incidents of union misconduct to set aside the election, we find it unnecessary to rule on the question of the admissibility of this evidence.

^{1/}In Interharvest, Inc., 1 ALRB No. 2, n.1 (1975), we said:

"Section 29365(a) of the Emergency Regulations promulgated by the Board states as follows:

A party filing a petition under section 1156.3 (c) of the Labor Code objecting to the conduct of the election or conduct affecting the results of the election shall file with the petition declarations or other evidence establishing a prima facie case in support of the allegations of said petition. The failure to supply such evidence in support of the petition at the time of the filing of the petition shall result in the immediate dismissal of the petition or any part thereof which is not supported by such evidence. A party filing such a petition shall immediately serve a copy of the petition on all other parties."

This regulation serves a dual purpose. First, it allows the Board to screen objections to determine if there is a factual basis for them, so that certification of a bargaining representative will not be unduly delayed by the filing of objections which cannot be substantiated by the objecting party. This screening is appropriate due to the seasonal nature of agriculture, which makes especially significant the prompt determination of election results.

Second, the declarations serve the purpose of informing the other party of the specific conduct which will be considered in a full evidentiary hearing, so that the opposing party can adequately prepare its case. It is necessary that the initial papers provide this notice since objections are not subject to detailed, prehearing discovery.

THE STATEMENTS OF ALFREDO SEGOVIANO

Alfredo Segoviano was an employee of Patterson Farms who immediately before the election worked as a tractor driver hauling tomatoes from the harvesting machines to the trucks at the edge of the road. Although he acted as an observer for the UFW at the Patterson Farms election, he was not a union organizer, had never been paid by the union, nor performed any volunteer work for the union. The threats directly attributable to Alfredo Segoviano involving economic intimidation were (1) that the employees would lose their jobs if the union won the election, and (2) that there would be death by starvation or death without work. The thrust of the employer's accusations against Alfredo Segoviano involve a lunch time confrontation between Segoviano and Lupe Ramirez, a forelady who also acted as an observer for the employer, some two days before the election on October 2, 1975.

On that occasion, Alfredo Segoviano was standing alongside some cars in a common parking area talking to his relatives and friends. Other employees were within hearing range and totalled 10 to 15 in number. Mr. Segoviano was talking loud enough for Ms. Ramirez to hear him and, according to her, was looking directly at her when he said that if the union won everyone had to join or lose their jobs; this caused her to leave her car and go up to Segoviano and confront him. What precisely Mr. Segoviano said that provoked Ms. Ramirez differs among several witnesses but at the very least he was complaining about the employer's failure to give proper notice regarding the upcoming election. The two argued, became loud and shouted at each other and at one point during the argument

Segoviano said "death by starvation"; at another point Segoviano clenched and raised and shook his fists above his head.

Ramona Saldivar, whom Ms. Ramirez described as being pro-employer, witnessed the argument. She heard Segoviano say "that if you do not vote for Chavez, you were going to stay out of work, and then you were going to die of hunger." She described Segoviano immediately before their argument as "shouting loud and kind of smiling, like he was always making fun of people." She testified that before their argument he was always saying "death by starvation," that he used it like a curse, sort of like "go to hell." Most of the UFW witnesses either did not recall or flatly denied that Alfredo Segoviano had ever made such statements. One witness however, Ismael Betancourt, a friend and relative of Alfredo Segoviano by marriage, testified that he had previously heard Alfredo say "death by starvation" but that it was always in a teasing, playful manner while they were working and never in anger and never causing him to become frightened.

Pete Rodriguez, a company supervisor, and Urbano Garza and Paul Ordeniez, tractor drivers, were witnesses called by the employer regarding the incidents that fell outside those specifically set forth in the employer's petition to set aside the election. Of the three, only Urbano Garza's testimony dealt totally with the conduct of Alfredo Segoviano. His testimony lacks credibility. The record discloses several inconsistencies in his testimony. At one point the hearing officer remarked that Mr. Garza's testimony was making no sense at all.

According to Pete Rodriguez, Alfredo Segoviano had, like two union organizers who had come to his house, told him

that if the union won the election and he did not join the union he would have no work.

No evidence was presented indicating that Alfredo Segoviano's statements, dissuaded workers from exercising their voting right. As a matter of fact the voter turnout was large; of 110 eligible voters, 99 cast ballots. Nor was any evidence presented indicating that these statements directly influenced the voters' selection.

When threats or other coercive conduct are alleged to have been made during the period prior to a representation election, the issue that arises is whether or not the alleged misconduct created "an atmosphere in which employees were unable to freely choose a collective bargaining representative." Harden Farms of California, Inc., 2 ALRB No. 30 (1976).

In Jack or Marion Radovich, 2 ALRB No. 12 (1976), we have previously dealt with statements regarding the loss of jobs for failure to support the union. In Radovich, an employee and his wife were approached during a lunch break two days prior to an election by four women wearing UFW buttons and soliciting UFW authorization cards. The women told the employees that if they did not sign authorization cards, the employees would be out of work if the UFW won the election. There, we held that that conduct did not merit setting aside the election because even if the statements could be attributed to the UFW, only two employees knew of the conversation and no evidence was produced to show that the election was conducted in an atmosphere of fear. We also suggested that such a statement might well not be considered a threat, pointing out that the statement was subject to the interpretation

that, if the union won, it would attempt to negotiate a union security clause in its contract with the employer. Such clauses are valid under Section 1153 (c) of the Labor Code.^{2/} The statements attributed to Alfredo Segoviano more readily lend themselves to an interpretation that they refer to a union security clause than did those made in Radovich. Moreover, the statement that if a union wins an election, and a worker does not thereafter join the union, he will lose his job does not threaten the worker for his failure to support or vote for the union, rather it states that after the election, regardless how he voted or whom he ostensibly supported, he must join the union or lose his job. Therefore we find that Alfredo Segoviano's statements regarding his fellow employees' loss of work were not threats and did not contribute to a "pattern" of economic intimidation.

Alfredo Segoviano's statements of death by starvation raise a different question. The National Labor Relations Board has repeatedly held that where pre-election conduct has created a general atmosphere among the employees of confusion and fear of reprisal for failing to vote for or to support a union which renders a free expression of choice of representatives impossible, an election will be set aside. Steak House Meat Co., Inc./ 206 NLRB No. 3, 84 LRRM 1200 (1973); Diamond State Poultry

^{2/}

Section 1153(c) provides in part: "Nothing in this part, or in any other statute of this state, shall preclude an agricultural employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this section as an unfair labor practice) to require as a condition of employment, membership therein on or after the fifth day following the beginning of such employment, or the effective date of such agreement whichever is later, if such labor organization is the representative of the agricultural employees as provided in Section 1156 in the appropriate collective-bargaining unit covered by such agreement."

Co., Inc., 107 NLRB 3, 33 LRRM 1043 (1953); Poinsett Lumber and Manufacturing Company, 116 NLRB 1732, 39 LRRM 1083 (1956). Under this rule elections will still be set aside even though the conduct is not attributable to the union. The only consideration the NLRB gives to conduct not attributable to either party to an election when such an atmosphere is created, is that such conduct will be accorded less weight than that given to the conduct of the parties. Cross Baking Company, Inc., 191 NLRB 27, 77 LRRM 1753 (1971); Sonoco Inc., 210 NLRB 72, 86 LRRM 1122 (1974); Steak House Meat Co., supra. The NLRB has found that atmosphere of fear and confusion present where 16 union members and officials threatened 14 employees with loss of jobs, threatened bodily harm and made actual assaults on those employees, Stern Brothers, 87 NLRB 10, 25 LRRM 1061 (1949); and where prior to an election, five strangers (one of whom was wielding a knife) to a company circulated through the areas of the plant where the majority of employees worked, telling employees "to vote the right way or it would not be good for them" and "to vote CIO or something would happen to them," Diamond State Poultry Co., Inc., supra. It found that atmosphere present also in a situation where the week before an election several active union members threatened loss of jobs and physical violence towards at least three employees who opposed the union and where most of the employees in the plant heard about the threat and were sufficiently frightened to call the police for protection, Poinsett Lumber and Manufacturing Co., supra; and also where one employee, who was not shown to be a union agent, on several occasions

threatened a 16-year old employee with violence, at least once brandishing a knife, if the youth did not vote for the union; and because of his resulting fear that employee, who was one of eight eligible voters, did not vote in an election that ultimately ended in a 4 to 3 tally in favor of the union.

In upholding elections, the NLRB has held that the question whether such an atmosphere of fear existed does not turn on the election results but rather upon an analysis of the character and circumstances of the alleged objectionable conduct, Central Photocolor Co., Inc., 195 NLRB 153, 79 LRRM 1568 (1972). In Central, threats allegedly made to two female employees and rumors spread that employees voting against the union would lose their jobs if they did not join the union were deemed not to create an atmosphere of fear sufficient to vacate the election. In Bancroft Manufacturing Co., Inc., 210 NLRB 90, 86 LRRM 1376 (1974), the union did not interfere with the election even though its representatives allegedly told employees that they would be laid off if they did not vote for the union. The Board held that the employees were able to evaluate these threats as mere campaign propaganda and also that the alleged economic reprisals were not within the union's power to carry out. See also Rio de Pro Uranium Mines, Inc., 120 NLRB No. 14 (1958). The elections in Tunica Manufacturing Co., 182 NLRB 111, 76 LRRM 1535 (1970); and Movsovitz and Son, Inc., 194 NLRB 68, 78 LRRM 1656 (1971), were upheld despite alleged threats of physical violence (in one instance a bomb threat) by employee union adherents to fellow employees if they did not vote for the union because

although the remarks were "potentially offensive," they were found by the Board to be made in the context of "idle banter," "jocular bantering" or "teasing" rather than as intended threats. In upholding elections where threats were "heated statements" made in clashes of personalities during campaigns involving "vigorous displays of emotional involvement among individuals of differing views," the Board has concluded in such cases that the employees had become accustomed to "partisan puffing" and knew how to react to overzealous supporters. The lack of actual physical violence is held to indicate the absence of an atmosphere of fear in some situations. Owens-Corning Fiberglass Co., 179 NLRB 219, 72 LRRM 1289 (1969); American Wholesalers, Inc., 218 NLRB 50, 89 LRRM 1352 (1975).

In evaluating Alfredo Segoviano's threats of death by starvation, the following facts are relevant. Alfredo was an employee not a union organizer; his conduct was not directly attributable to the UFW and therefore should be given less weight than that accorded to the conduct of an agent of one of the parties. The total number of persons that heard his threats appear to be some 17 of whom several were his family and friends; given the 110 eligible voters, the number of prospective voters who might have been intimidated or frightened is relatively small. Most of the workers who heard the threat of death by starvation heard it while witnessing an argument which evolved into a shouting match between two persons of apparently differing views on the subject of unionization. The record does not support the conclusion that Alfredo Segoviano's statements created a general atmosphere of

confusion and fear of reprisal. We find that Alfredo Segoviano's alleged threats of death by starvation did not create an atmosphere on the Patterson Farms prior to the election which rendered the free expression of choice of representatives impossible. Further, even if we were to find that Alfredo Segoviano's statements concerning losses of jobs for failure to join the union were threats and not legitimate references to a union security clause, we would still hold that those statements, whether considered alone or in connection with the death by starvation remarks, also did not create the proscribed general atmosphere.

THE STATEMENTS OF UNION ORGANIZER JOSE ZUNIGA

According to tractor driver Paul Ordenies, two days before the election at a lunch gathering he asked UFW organizer Jose Zuniga before some six other workers what would happen if a person didn't join the union. Zuniga answered that if the union won the election and if Ordeniez hadn't signed up after the election he would lose his job. Considered as a reference to a union security clause, the fact that they were uttered by a union organizer does not warrant the setting aside of this election. Jack or Marion Radovich, supra. Considered as a threat, it did not create the requisite general atmosphere of confusion and fear, as discussed above, sufficient to set aside the election.

BURNING OF EQUIPMENT - HEARSAY STATEMENTS

Lupe Ramirez and Ramona Saldivar testified that they had been involved in or had heard discussions to the effect that if the union lost the election, the tomato harvesting machines would be burned and there would be no more work. Ms. Ramirez

and Saldivar were joined in these discussions by Margarita Delgado and two other women identified only as Julia and Eleanor. All five women were pro-employer sympathizers. Margarita Delgado reportedly heard Alfredo Segoviano make the statement regarding the burning of the machines, but she did not testify. None of the other women heard him make that statement.

The NLRB has held that while it may consider hearsay evidence and give it its rational probative value, mere uncorroborated hearsay evidence does not constitute substantial evidence to support a finding of the Board. NLRB v. Service Wood Heel Co., 9 NLRB 422, 8 LRRM 183 (1941); NLRB v. Imparto Stevedoring Corp., 41 NLRB 2165, 38 LRRM 1352 (1957). The California courts have held that while hearsay evidence is admissible in an administrative proceeding, the use of such testimony is limited and cannot alone support a finding. Sunseri v. Board of Medical Examiners, 224 Cal App. 2d 309 (1964); Benedetti v. Department of Alcoholic Beverage Control, 187 Cal App. 2d 213 (1961).

We cannot find, based on the uncorroborated hearsay testimony presented, that the statements regarding the burning of the machines were made by Alfredo Segoviano, or by anyone else. Accordingly, they are not grounds for setting aside the election.

VOTER CHALLENGES

On the evening of October 3, the night before the election, the UFW held its second meeting for the farm workers of Patterson Farms at the Wesley School. Some 30 to 40 workers attended. After the meeting UFW organizer Jan Peterson met with

Lupe Ramirez and Merced Duarte, observers for the employer and Pablo and Alfredo Segoviano, observers for the union. Most of the other workers had left, but apparently a few remained. The employer contends that Ms. Peterson told the group that mechanics, welders, truck drivers and supervisors would not be allowed to vote. While there is some conflict, the overwhelming preponderance of the evidence is that Ms. Peterson actually said that these employees would be permitted to vote but their votes would be challenged. At the election site the votes of these employees were challenged, but none were prevented from casting their votes.

We overrule this objection. Section 20350 of the Emergency Regulations specifically establishes a procedure for the challenge of ballots and the statements of Ms. Peterson fall well within the language of that provision.—

POST-ELECTION INCIDENT

In its objections the employer contended that the employees of Patterson Farms were intimidated by representatives of the UFW by the fact that on election night, October 4, 1975,

^{3/} Emergency Regulation 20350 (b) provides in part: "Any party or the Board agent may challenge, for good cause shown, the eligibility of any person to cast a ballot. The ballots of such challenged persons shall be impounded. Good cause shown shall consist of a statement of the grounds for challenge accompanied by the presentation of substantial evidence, which may include but need not be limited to, declarations and other documentary evidence. The challenge must be asserted prior to the time that the prospective voter receives a ballot, and be limited to one or more of the following grounds:

(1) the prospective voter is a supervisor as defined in Sec. 1140.4(f) of the Labor Code;

* * *

(4) the prospective voter is not an agricultural employee of the employer as defined in Labor Code Sec. 1140.4(b). "

three bullets were fired into the pickup truck of Pablo Segoviano, a crew foreman, who had been asked by both the union and the employer to act as an observer for each but who ultimately chose to be an observer for the union. The evidence revealed that the shots occurred some eight hours after the polls were closed as Pablo Segoviano arrived at his home in his truck some 15 miles from the farm. The perpetrators were never identified. The employer now contends that the shooting incident was presented to show that "an atmosphere of fear existed" and that the source of the conduct is irrelevant.

In considering objections to an election the NLRB refuses to consider conduct occurring after the time the election is held, holding that those incidents could have no impact on the votes cast by the employees and cannot show an effect on the election atmosphere. Head Ski Co., Inc., 192 NLRB No. 57, 77 LRRM 1717 (1971) . Goodyear Tire and Rubber Co., 138 NLRB No. 59, 51 LRRM 1070 (1962) . We overrule this objection.

CONCLUSION

The employer contends that all of his allegations when taken together constitute a "pattern" of economic intimidation by the UFW, which had a material effect on the outcome of the election. In Harden Farms, supra, we agreed that the allegations of misconduct affecting the outcome of the election must be considered as a whole as well as separately. We have so considered them here. We conclude however, that when taken together all the alleged misconduct did not create a general atmosphere among the employees of confusion and fear of reprisal for failing to vote

for or support a union and which rendered the free expression of choice of representatives here impossible.

The United Farm Workers of America, AFL-CIO, is certified as the bargaining representative for all agricultural employees of Patterson Farms in Stanislaus County.

Dated: December 1, 1976

Gerald A. Brown, Chairman

Robert B. Hutchinson, Member

Ronald L. Ruiz, Member