

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

UNITED FARM WORKERS OF	)	Case No. 2024-RM-002
AMERICA,)	
)	
Petitioner Labor)	
Organization,)	
)	
and,	)	ORDER DENYING WITHOUT
	)	PREJUDICE PETITIONER LABOR
	)	ORGANIZATION UNITED FARM
WONDERFUL NURSERIES,	)	WORKERS OF AMERICA’S
LLC,	)	MOTION FOR ORDER
	)	REQUIRING EMPLOYER TO
Employer.	)	PRODUCE DECLARATIONS
)	
	)	Administrative Order No. 2024-06
	)	(March 22, 2024)
)	
_____)	

Following a determination of majority support for petitioner labor organization United Farm Workers of America (UFW) and the issuance of a certification by the executive secretary of the Agricultural Labor Relations Board (ALRB or Board), employer Wonderful Nurseries, LLC (Wonderful) timely filed objections to the certification pursuant to subdivision (f)(1) of Labor Code section 1156.37. Among other things, Wonderful objected to the UFW’s certification on grounds the UFW engaged in improper conduct in procuring authorization cards from Wonderful’s agricultural employees, including allegations UFW organizers misrepresented to employees the purpose of the cards they were signing. In support of these allegations, Wonderful filed with the Board declarations from 148 agricultural employees. The identities of the

employee declarants, as well as other referenced agricultural employees, are redacted in the filed declarations, but Wonderful filed a separate “key” identifying the employee declarants. Wonderful did not serve the declarations on the UFW, citing concerns over protecting the employees’ confidentiality. The Board set a number of Wonderful’s objections for hearing, including its objection alleging improper conduct by the UFW. (*Wonderful Nurseries, LLC* (Mar. 18, 2024) ALRB Admin. Order No. 2024-04.)¹

While Wonderful’s objections were pending before the Board, the UFW filed a motion to dismiss the objections based on Wonderful’s failure to serve the employee declarations on it. The Board denied that motion.²

On March 20, 2024, the UFW filed a motion with the Board seeking an order directing Wonderful to produce to it the redacted employee declarations.³ For the following reasons, we DENY WITHOUT PREJUDICE the UFW’s motion.⁴

¹ The procedural history of this matter is more fully set forth in Administrative Order No. 2024-04.

² The day after the Board issued its order setting objections for hearing, the UFW filed with the Board a request the Board issue an “actual decision” regarding its motion to dismiss the objections. The Board denies that motion in *Wonderful Nurseries, LLC* (Mar. 22, 2024) ALRB Admin. Order No. 2024-05.

³ The UFW’s motion was filed electronically after 5:00 p.m. on March 19, and pursuant to Board regulation 20169, subdivision (a)(2) is deemed filed effective March 20. (The Board’s regulations are codified at California Code of Regulations, title 8, section 20100 et seq.)

⁴ Neither our precedent nor regulations require service of declarations filed in support of objections on the other parties, provided the objecting party provides a statement in lieu of the declarations describing the facts and conduct alleged in the declarations or otherwise includes such information in its objections filings. (*Interharvest, Inc.* (1975) 1 ALRB No. 2, p. 3, fn. 1; see Board reg. 20365, subd. (c).)

As stated in Administrative Order No. 2024-05, which we also issue today, this matter no longer is before the Board after issuance of our prior order disposing Wonderful's objections. The matter has been assigned to an investigative hearing examiner (IHE) to conduct a hearing pursuant to Board regulation 20370 on those objections set for hearing by the Board. Issues concerning pre-hearing discovery or other evidentiary disputes properly are directed to the IHE. Thus, the UFW's argument that it is entitled to the disclosure of the redacted declarations is not properly directed to the Board.

The conduct of the objections hearing is governed by Board regulation 20370, which includes comprehensive provisions describing the procedures applicable to the hearing. Subdivision (m) incorporates the provisions of Board regulation 20250 regarding the use of subpoenas. Parties to the hearing are entitled to call, examine, and cross-examine witnesses and introduce evidence into the record. (Board reg. 20370, subd. (b).)

Wonderful, as the objecting party, bears the burden of proof regarding its objections, including its objection the UFW engaged in improper conduct that affected the result of the majority support petition process. (*Wonderful Nurseries, LLC, supra*, ALRB Admin. Order No. 2024-04, p. 10.) As we stated in Administrative Order No. 2024-04, at footnote 8 on page 14, to carry this burden Wonderful must call witnesses who will testify regarding its allegations. (*D. Papagni Fruit Co. (1985) 11 ALRB No. 38*, p. 13 [employer "failed to meet its burden of proof at the representation hearing by refusing to submit testimonial evidence in support of" objections set for hearing].) To be

clear, reliance on redacted or anonymous declarations will not suffice. (*Gerawan Farming, Inc.* (May 18, 2017) ALRB Admin. Order No. 2017-03, p. 17 [disregarding anonymous declaration because it lacked indicia of reliability and trustworthiness].) In fact, absent a cognizable exception to the hearsay rule, the employee declarations by themselves -- even if unredacted -- cannot be used by the IHE to support any findings of fact. (Board reg. 20370, subd. (d) [“Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but shall not be sufficient to support a finding unless it would be admissible in civil actions”]; *Scott S. v. Superior Court* (2012) 204 Cal.App.4th 326, 342 [“Any statement not made by a witness testifying in court before the fact finder constitutes hearsay evidence when offered for its truth”], quoting *Kulshrestha v. First Union Commercial Corp.* (2004) 33 Cal.4th 601, 608-609.) The appellate court in *Scott S.*, *supra*, 204 Cal.App.4th at page 342, found the trial court committed reversible error by relying on a declaration offered into evidence, concluding the declaration was inadmissible and describing it as “classic hearsay.” (*Kulshrestha*, *supra*, 33 Cal.4th at p. 608 [“Largely because the declarant is absent and unavailable for cross-examination under oath, hearsay evidence is less reliable than live testimony”].)

Board regulation 20370, subdivision (p) adopts as applicable in representation matters the Board’s general rules regarding the disclosure of witness statements, including those by non-supervisory agricultural employees. Under these rules, pre-hearing discovery of written statements by non-supervisory agricultural employees is not allowed. (Board reg. 20236, subd. (a).) A party is entitled to the written statements of an agricultural employee only after the direct examination of that employee as a witness

at hearing. (Board reg. 20274, subd. (a).)⁵ The reasons for these rules are long-settled, and the Board strictly adheres to them. (*Giumarra Vineyards Corp.* (1977) 3 ALRB No. 21, pp. 2-3; see *P & M Vanderpoel Dairy* (2014) 40 ALRB No. 8, pp. 23-24, enfd. (Oct. 9, 2015, F070149) [nonpub. opn.] [2015 Cal. App. Unpub. LEXIS 7251, *32 (“the rule serves to prevent witness intimidation of vulnerable agricultural employees by either employers or unions”)]; see also *NLRB v. Robbins Tire & Rubber Co.* (1978) 437 U.S. 214, 239; *NLRB v. Vapor Blast Manufacturing Co.* (7th Cir. 1961) 287 F.2d 402, 407.)

Notwithstanding these rules, we acknowledge there exist a number of potential issues surrounding the employee declarations filed by Wonderful, including the manner of Wonderful’s procurement of the declarations, its filing of the declarations directly with the Board purportedly on behalf of the workers, and any disclosure of the declarations to third parties. Inquiry into these questions may bear on the application of these rules concerning disclosure of the declarations.

In sum, the UFW’s demand for production of the employee declarations is not properly directed to the Board, but may be made in accordance with the applicable provisions of Board regulation 20370.

⁵ Subdivision (b) of Board regulation 20274 provides: “A statement includes a written declaration by the witness, signed or otherwise adopted or approved by the witness, or a recording or transcription of a recording which is a verbatim recital of an oral statement that was recorded at the time the statement was made.”

ORDER

For the foregoing reasons, petitioner labor organization United Farm Workers of America's motion for an order requiring the production of employee declarations is DENIED WITHOUT PREJUDICE.

IT IS SO ORDERED.

DATED: March 22, 2024

Victoria Hassid, Chair

Isadore Hall, III, Member

Barry Broad, Member

Ralph Lightstone, Member

Cinthia N. Flores, Member