United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
November 3, 2026
Thomas B. Plunkett, III
Clerk

No. 26-60104

National Labor Relations Board,

Petitioner,

versus

Hotel Equities Group, L.L.C.,

Respondent.

Application for Enforcement of an Order of the
National Labor Relations Board
Agency No. 16-CA-363860

Before Duncan, Engelhardt, and Ramirez, *Circuit Judges*.

Per Curiam:[*]

Hotel Equities Group, L.L.C. ("HEG"), owner and operator of a Hyatt hotel, refused to bargain with an allegedly invalid union. The NLRB found the union valid and ordered that HEG bargain with the union. HEG challenges the union's validity. Because we find no reason to part with the NLRB's factual findings, we AFFIRM the Decision and ENFORCE the Order.

[*] This opinion is not designated for publication. *See* 5th Cir. R. 47.5.

I.

HEG owns and operates a 139-room Hyatt hotel in Austin, Texas. On June 5, 2024, UNITE HERE Local 23 (the "Union") petitioned for an election to represent some of the employees in that hotel. HEG and the Union entered into an agreement providing for an NLRB-supervised, secret-ballot election, which was held on July 10, 2024. Of the 34 eligible voters, 24 voted for union representation and 8 voted against it. Two ballots were challenged. These votes were carried out on authorization cards that include the respective employee's name.

On July 17, 2024, HEG filed four objections challenging the way the election was conducted. The only objection at issue here is that the Union allegedly "interfered with employees' freedom of choice in the election by threatening employees by misrepresenting that [HEG] would terminate union supporters if the [Union] did not win the election." This objection was based on three incidents.

The first was when International Representative Joseph Bagby ("Bagby") and organizer Annabelle Capado ("Capado") visited Hyatt employee Rosalinda Martinez ("Martinez") at her home. HEG asserts that during that two-hour discussion, Bagby indicated "that if the Union lost the election, Hyatt would find out who signed the authorization cards and fire them."

The second incident supporting the objection involved Karla Cervantes ("Cervantes"), a front desk clerk. Two employees (one of whom would later serve as a Union election observer) approached Cervantes about supporting the Union. These employees told Cervantes that "if the Union lost the election" HEG would "fire" anyone "who had signed cards."

The third ground came after the election. Hyatt General Manager Hunter Krallman ("Krallman") found out that "the Union, either officials

or employees who were pushing for the Union, was telling employees that" HEG "would terminate any Union supporters, if the Union did not win the election."

An NLRB Hearing Officer conducted a hearing on this objection and recommended that it be overruled. HEG filed exceptions to that report. The NLRB Regional Director overruled those exceptions and certified the Union as the exclusive bargaining representative. HEG filed a Request for Review that was summarily denied on January 27, 2025.

A few months later, in April 2025, the Union filed a charge alleging that HEG had violated Section 8(a)(5) and (1) of the National Labor Relations Act ("NLRA") by refusing to bargain with the Union. On February 10, 2026, the NLRB issued a Decision and Order finding that HEG had violated the NLRA because "[t]he Union continues to be the exclusive collective-bargaining representative of the [Hyatt] employees." It is this Decision and Order, and its reliance on the Union's status as exclusive bargaining representative, that HEG contests.

II.

A.

We have jurisdiction under 29 U.S.C. § 160(f) because this case involves a final NLRB order concerning alleged unfair labor practices that occurred in this Circuit. Moreover, because that final order relies upon an underlying election investigation, we may review that investigation under 29 U.S.C. § 159(d).

B.

We review the NLRB's legal conclusions de novo,[1] and uphold factual findings "only if they are supported by evidence that is substantial when viewed in light of the record as a whole, including whatever in the record fairly detracts from its weight." *Starbucks Corp. v. NLRB*, No. 24-60653, 2026 WL 2618600, at *2 (5th Cir. Sept. 4, 2026) (quoting *NLRB v. AllService Plumbing & Maint., Inc.*, 138 F.4th 889, 900 (5th Cir. 2025)). Substantial evidence means "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Id.* (quoting *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 477 (1951)). Substantial evidence is satisfied by "more than a mere scintilla and less than a preponderance." *LogistiCare Sols., Inc. v. NLRB*, 866 F.3d 715, 719 (5th Cir. 2017) (quoting *Flex Frac Logistics, L.L.C. v. NLRB*, 746 F.3d 205, 207 (5th Cir. 2014)). It does not include "a flawed reading of the record," nor can we accept "an order . . . [that] fails to grapple with countervailing portions of the record." *Starbucks*, 2026 WL 2618600 at *2 (first quoting *Dish Network Corp. v. NLRB*, 953 F.3d 370, 376 (5th Cir. 2020), *as revised* (Mar. 24, 2020); and then quoting *AllService Plumbing*, 138 F.4th at 901). Because the NLRB serves as the primary finder of fact, we "cannot 'displace the [NLRB]'s choice between two fairly conflicting views' of the evidence," "[e]ven if this court could 'justifiably make a different choice had the matter been before it de novo.'" *ExxonMobil Rsch. & Eng'g Co., Inc. v. NLRB*, 132 F.4th 337, 345 (5th Cir. 2025) (quoting *Universal Camera*, 340 U.S. at 488) (citation altered).

[1] HEG argues that under *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), the NLRB's interpretation of the NLRA is no longer afforded deference. However, HEG does not assert any arguments concerning the NLRB's interpretation of the NLRA. Accordingly, *Loper Bright* is irrelevant.

III.

HEG cites five alleged points of error in the record. None suffice, most especially because even if HEG is correct, it cannot show that these would have made a difference in the election.

The first involves Bagby and Capado's visit to Martinez's home. The Hearing Officer found that between Bagby and Martinez, Bagby's testimony was more credible.[2] The NLRB's credibility determinations are upheld "unless they are 'inherently unreasonable or self-contradictory.'" *Cordua Restaurants, Inc. v. NLRB*, 985 F.3d 415, 428 (5th Cir. 2021) (quoting *El Paso Elec. Co. v. NLRB*, 681 F.3d 651, 665 (5th Cir. 2012)). Bagby testified that authorization cards were not discussed, nor was disclosure of Martinez's support threatened. Martinez's testimony on the authorization cards was unclear; she both said that Bagby "didn't exactly talk about the authorization cards," and that Bagby "mentioned that if the Union didn't win . . . the hotel was going to find out who had signed the authorization cards." HEG argues this was error, but at best it makes the case for why the Hearing Officer *could have* believed Martinez over Bagby. HEG makes no argument for why this credibility determination was "inherently unreasonable or self-contradictory," and therefore its challenge fails.

HEG's second point involves the same meeting at Martinez's home. The Hearing Officer and the Regional Director found that neither Bagby nor Capado had the authority to actually carry out the threat. This is important because under NLRB precedent, union agent threats are objectionable when the threatened employee "could . . . reasonably believe that [the union agent] ha[s] the ability to carry out the alleged threat." *Pac. Grain Prods.*, 309 NLRB 690, 691 (1992); *see also Smithfield Packing Co.*, 344 NLRB 1, 11 (2004),

[2] Capado was not called as a witness at the hearing.

enforced, 447 F.3d 821 (D.C. Cir. 2006); *Bonanza Aluminum Corp.*, 300 NLRB 584, 584 (1990). This depends, in part, on whether the union or its agent actually has the ability to make good on the threat. *Pac. Grain Prods.*, 309 NLRB at 691.

HEG agrees that the Union could not carry out this threat, but argues that the threat influenced the election anyway because employees were "not labor lawyers" and "mostly entry level manual laborers such as housekeepers and kitchen staff" that could not know authorization cards would be kept secret. It points to *Brown Steel Company*, in which the NLRB set aside an election because a union organizer told employees that the authorization cards would be disclosed to the company if the union lost the election. 230 NLRB 153 (1977). However, *Brown Steel* involved a union organizer soliciting and distributing authorization cards *himself*, while telling multiple employees that the company would find out who signed if the union did not win. *Id.* Those facts are not present here and make *Brown Steel* distinguishable.

The third point is similar. HEG argues that the employees who threatened Cervantes were acting as the Union's agents, and the NLRB's finding to the contrary is erroneous. To establish agency "in the union election context," it must be shown "that the *union* placed the employee in a position where he appears to act as its representative." *Exela Enter. Sols., Inc. v. NLRB*, 32 F.4th 436, 448 (5th Cir. 2022) (quoting *Con-way Freight, Inc. v. NLRB*, 838 F.3d 534, 538 (5th Cir. 2016)). The agency relationship must also include "the specific conduct that is alleged to be unlawful." *NLRB v. Downtown Bid Servs. Corp.*, 682 F.3d 109, 113 (D.C. Cir. 2012) (quoting *Cornell Forge Co.*, 339 NLRB 733, 733 (2003)). Nothing in the record suggests that any alleged threats were made within an agency relationship. Additionally, while one of the employees (Maria Bustamante) would later serve as an election observer for the Union, Cervantes herself testified that she did not speak with Union representatives and refused to speak with them

at least twice. HEG therefore fails to make a showing that would warrant setting aside the NLRB's Decision.

The fourth alleged error is the NLRB's finding that the Union's threats were not widely disseminated. Even if Martinez and Cervantes were threatened, there is no evidence that they discussed the threat with other employees; Martinez told her supervisor about the meeting at her home, and Cervantes testified that she "kept it to [her]self." Krallman could not indicate who made the threat or when it was made. Even more, in a 34-vote election the Union won by a margin of 16 votes, making this election far from close. Because we are not to choose between two different views of the facts where both are plausible, *ExxonMobil*, 132 F.4th at 345, (and it is not clear that HEG's view is even plausible) HEG's fourth point fails to suffice.

Fifth and finally, HEG argues it was incorrect for the NLRB to find that the Union had not interfered with employees' free and uncoerced choice in the election. For the reasons already discussed, HEG fails to create error on this point. Even if some employees were threatened, HEG did not clearly establish that there was sufficient dissemination to affect free choice, especially in an election where the votes in favor of the Union were *triple* the votes against it.

Accordingly, the NLRB's findings are supported by substantial record evidence.

IV.

Because the NLRB's Decision and Order are supported by substantial record evidence, we AFFIRM the Decision and ENFORCE the Order.