

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

TRADER JOE'S EAST INC.

Employer

and

Case 13-RC-339478

TRADER JOE'S UNITED

Petitioner

ORDER

The Employer's request for review of the Regional Director's Decision on Determinative Challenged Ballot and Objections is denied as it raises no substantial issues warranting review.¹

¹ In denying review, we assume, for purposes of this decision, that employee and organizing-committee member Nigel Brown was an agent of the Petitioner. We find, however, that his conduct was unobjectionable under the standard applicable to party agents. Even assuming that Brown warned employees that the Employer would fire LGBTQ+ employees if the Union were to lose the election (a factual allegation supported only by hearsay), it would not be objectionable because it was not a threat that was within the Union's power to carry out. See, e.g., *Rio de Oro Uranium Mines, Inc.*, 120 NLRB 91, 94 (1958) (overruling objections that union agents made threats of job loss to employees where threats contained neither assertions that the employees could not evaluate nor threats within the union's power to carry out). Likewise, we conclude that Brown's outbursts, which appear to have occurred on a single day about 10 days before the election, "at most would tend to embarrass employees who might tend to vote for the [u]nion, but it could not reasonably tend to coerce any employees into voting for it." *Mediplex of Connecticut, Inc.*, 319 NLRB 281, 298 (1995) (finding that brief scuffle between union agents and managers did not merit setting aside election); see also *Cal-West Periodicals*, 330 NLRB 599, 600 (2000) (quoting *Nabisco, Inc. v. NLRB*, 738 F.2d 955, 957 (8th Cir. 1984)) (internal quotations omitted) ("A certain measure of bad feeling and even hostile behavior is probably inevitable in any hotly contested election."); *Firestone Textiles Co.*, 244 NLRB 168, 170-171 (1979) (finding that derogatory remarks shouted by picketers at employees who did not stop to receive literature, some mildly threatening, e.g., "you'll be sorry, bitch," did not merit setting aside election where employees were not threatened with respect to their votes).

We further find that the Hearing Officer did not abuse her discretion by partially quashing the subpoena issued to documentary filmmaker Nadia Shaarawi. Although the Employer speculates that Shaarawi filmed employees waiting to vote, we agree with the Regional Director that the alleged conduct was not objectionable under the standard for evaluating third-party conduct. See *Millard Processing Services, Inc.*, 304 NLRB 770, 771 (1991) (finding that filming by a non-party reporter was not objectionable), *enfd.* 2 F.3d 258 (8th Cir. 1993), cert. denied 501 U.S. 1092 (1994). Further, although the Hearing Officer gave the Employer the opportunity to submit an offer of proof relating to the unenforced subpoena items, the Employer did not explain, nor is it apparent, how the remaining items would produce

JAMES R. MURPHY, CHAIRMAN

DAVID M. PROUTY, MEMBER

Dated, Washington, D.C June 29, 2026

evidence showing that Shaarawi was a union agent. Accordingly, not only is there no evidence that Shaarawi filmed voters without their consent, but also no evidence that such filming, if it even occurred, could be attributed to the Union. Under these circumstances, the Employer's subpoena to review video taken by Shaarawi to determine whether she filmed voters was a fishing expedition, and the Hearing Officer appropriately quashed it.

MEMBER MAYER, CONCURRING

I agree with my colleagues that the Employer's objections should be overruled and that Brandi Hewitt's ballot should be opened and counted. I write separately, however, to address the Regional Director's handling of the subpoena issued to employee Nigel Brown. The Hearing Officer erred by revoking the subpoena, and the Regional Director erred in affirming her.

As the record shows, the subpoena sought documents directly relevant to Brown's alleged status as a union agent—an issue that materially affects the standard for evaluating his conduct. The Hearing Officer and Regional Director characterized the subpoenaed materials as irrelevant or as impermissibly touching upon Section 7-protected activity. It should be obvious why communications between a principal and putative agent are relevant to whether an agency relationship exists between them. Further, the D.C. Circuit's decision in *Ozark Automotive Distributors, Inc. v. NLRB*, 779 F.3d 576 (D.C. Cir. 2015), establishes that Section 7 concerns should be addressed through in camera review and appropriate redaction, not by preemptive revocation.

By extinguishing the Employer's access to potentially probative material and then resolving the agency question against the Employer for lack of evidence, the Region created precisely the due-process problem that the court in *Ozark Automotive* warned against. It is fundamentally unfair—and inconsistent with basic adjudicative norms—to deny a party the very evidence needed to support its theory and then rule against the party for failing to produce sufficient evidence to prove its argument.

Moreover, the subpoena here was not a fishing expedition. The record shows that a union newspaper publicly listed Brown as a member of the organizing committee and as a resource for employees to contact with questions about unionization—facts that, while not

necessarily sufficient to establish agency, provide a concrete and reasonable basis for probing his relationship with the Union. That modest but meaningful foundation entitled the Employer to seek limited discovery designed to clarify whether Brown possessed actual or apparent authority in connection with the specific conduct at issue.

Nevertheless, although the Regional Director's ruling was erroneous, the error was harmless on this record. In this regard, I agree with my colleagues that even accepting the Employer's characterization of Brown as a union agent, Brown's conduct, as alleged, would not rise to the level of objectionable interference with employee free choice. Because the conduct would not warrant setting aside the election even if Brown were acting as a union representative, the quashing of the subpoena, though improper, does not affect the ultimate disposition.

For these reasons, I agree with the outcome but do so on the understanding that the Regional Director's erroneous treatment of the subpoena should not be repeated in future proceedings.