

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 34**

COSTCO WHOLESALE CORPORATION

and

UNITED FOOD AND COMMERCIAL  
WORKERS UNION, LOCAL 371

Case 34-CA-12421

**OPPOSITION TO RESPONDENT'S MOTION TO RE-OPEN THE RECORD  
AND/OR FOR REHEARING**

By Motion dated September 8, 2010, Respondent requested that the Board re-open the record in the above-captioned matter to include evidence of a newly-issued Employee Agreement that post-dates the Employee Agreement found to include certain unlawful provisions by Administrative Law Judge Steven Fish in his Decision dated August 11, 2010. Respondent's motion is based on its claim that the newly-issued Employee Agreement: 1) may obviate the ALJD's findings that the former Employee Agreement contained unlawful provisions; and 2) the ALJ committed material error by failing to set forth language that would remedy the allegedly unlawful language in the former agreement.

Counsel for the Acting General Counsel objects to Respondent's above Motion for the following reasons:

- 1) In light of the ALJD's findings that Respondent's Employee Agreement violated the Act, Respondent should present its claim that the current Employee Agreement cures the former Agreement through the Compliance process, not through another round of

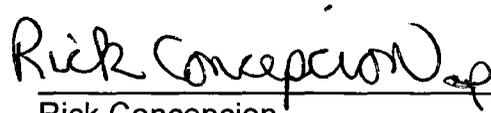
litigation. Respondent's motion is just an elaborate attempt at circumventing the fact that it has been found to have violated the Act;

- 2) Because Respondent does not claim in its Motion that the evidence it seeks to introduce at a re-opening of the hearing is newly discovered or previously unavailable (indeed, Respondent concedes in its Motion that the current Employee Agreement was available at the time of the March 4, 2010 hearing in this matter), there is no mechanism under the Board's Rules and Regulations to re-open the record merely to include evidence of which Respondent was aware, but chose not to introduce;
- 3) Respondent's claim that the ALJ committed material error by failing to set forth lawful language in an employee agreement cannot be recognized as a serious claim inasmuch as neither the ALJ nor the Board are obligated to set forth such language. Rather, it is always up to the employer to implement whatever lawful language it sees fit to maintain in its employee handbook; not language directed via fiat through the Board's processes; and,
- 4) Despite its claim to the contrary, a close examination of Respondent's current Employee Agreement (attached to Respondent's Motion) demonstrates that it has failed to remedy the overly-broad provisions found by the ALJ to violate the Act. In this regard, some of the provisions found by the ALJ to violate the Act

have not been modified at all, while others have been modified, but not in a manner that remedies the violations as found by the ALJ.

Based upon the foregoing, Counsel for the Acting General Counsel requests that Respondent's Motion be denied.

Dated at Hartford, Connecticut this 20<sup>th</sup> day of September, 2010.

A handwritten signature in black ink that reads "Rick Concepcion". The signature is written in a cursive style and is positioned above a horizontal line.

Rick Concepcion  
Counsel for the Acting General Counsel  
National Labor Relations Board  
Region 34

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DATE OF MAILING September 20, 2010

**AFFIDAVIT OF SERVICE OF copies of OPPOSITION TO RESPONDENT'S MOTION TO RE-OPEN THE RECORD AND/OR FOR REHEARING**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by facsimile transmission upon the following persons.

Paul Galligan, Esquire  
Seyfarth Shaw  
620 Eight Avenue  
New York, NY 10018-1405

United Food and Commercial Workers  
Union, Local 371  
290 Post Road West  
Westport, CT 06880

Subscribed and sworn to before me this 20<sup>th</sup> day

DESIGNATED AGENT

Terri L. Gupton

of September, 2010



NATIONAL LABOR RELATIONS BOARD