

NOT TO BE INCLUDED
IN BOUND VOLUMES

BPH
Spring Valley, CA

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

FRESH & EASY NEIGHBORHOOD MARKET, INC.

and

Cases 21-CA-38882
21-CA-39100

UNITED FOOD AND COMMERCIAL WORKERS
INTERNATIONAL UNION, REGION 8 – WESTERN

ORDER GRANTING IN PART MOTION FOR RECONSIDERATION

On January 31, 2011, the National Labor Relations Board issued a Decision and Order in this proceeding.¹ The Board found that the Respondent violated Section 8(a)(1) of the Act in several respects and ordered the Respondent to take certain affirmative action, including to post at its Spring Valley, California facility a notice marked “Appendix” for 60 days in conspicuous places, and to distribute the notice electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Additionally, the Board ordered that, in the event that the Respondent has gone out of business or closed its facility during the pendency of these proceedings, the Respondent shall duplicate and mail the notice to “all current employees and former employees employed by the Respondent in the position of mailhandler at its Spring Valley facility since June 11, 2009.” On February 24, 2011, the Charging

¹ 356 NLRB No. 90.

Party filed a motion for reconsideration in this case. On March 3, 2011, the Respondent filed an opposition to the Charging Party's motion. On March 9, 2011, the Acting Regional Counsel filed a request to correct a typographical error in the Decision and Order.

The Board has delegated its authority in this proceeding to a three-member panel.

In its motion, the Charging Party notes that the Order's reference to mailhandlers was incorrect as the employees involved in this case were not mailhandlers. We shall correct this inadvertent error² and conform the Order to the Board's standard remedial language. In its motion, the Charging Party also urges that "the Board should be careful to make it clear that the electronic notice posting is not limited to the Spring Valley store." As the Board made clear in *J. Picini Flooring*, 356 NLRB No. 9, slip op. at 2 (2010), "[a]ny issues as to whether electronic notice and which type of electronic notice is appropriate in a particular case should be resolved in compliance proceedings."

ORDER

The Charging Party's Motion for Reconsideration is granted in part. Accordingly, the Board's Decision and Order is modified as set forth below.

Substitute the following for paragraph 2(a).

"(a) Within 14 days after service by the Region, post at its Spring Valley, California store copies of the attached notice marked

² This is the 'typographical error' the Acting General Counsel requests the Board to correct.

“Appendix.”³ Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent and maintained for 60 days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 11, 2009.”

Dated, Washington, D.C., March 22, 2011.

Craig Becker, Member

Mark Gaston Pearce, Member

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

Brian E. Hayes, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD