

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8**

CASE FARMS PROCESSING, INC.

and

**UNITED FOOD AND COMMERCIAL
WORKERS UNION, LOCAL NO. 880**

**CASES 8-CA-39152
8-CA-39187
8-CA-39257**

**EXCEPTION OF COUNSEL FOR THE ACTING GENERAL COUNSEL
AND BRIEF IN SUPPORT**

Counsel for the Acting General Counsel Melanie Bordelois excepts to the following remedy ordered by Administrative Law Judge Mark Carissimi on pages thirty-six through thirty-nine (36-39) of his Decision and Order issued in this matter on September 16, 2011 (JD-57-11).¹

The ALJ erred by denying Counsel for the Acting General Counsel's request for additional remedies and by finding that the Board's standard remedies were sufficient. Specifically, Counsel for the Acting General Counsel excepts to the ALJ's denial of the Acting General Counsel's request that Respondent be ordered to read the notice to employees in English, Karen and Burmese. (ALJD, pp. 36-39)

BRIEF IN SUPPORT OF EXCEPTION

The ALJ concluded that it was appropriate to order Respondent to post the notice in English, Spanish, Karen and Burmese. (ALJD, p. 36) The ALJ explained that his rationale for ordering the multi-lingual notice posting was so that it is understood by Respondent's ethnically diverse workforce. (ALJD, p. 36) Furthermore, the ALJ ordered that the notice be read to

¹ Hereinafter, Judge Carissimi will be referred to as "ALJ". ALJD, p. __ will indicate the page in the ALJ's Decision, JD-57-11.

Spanish-speaking employees based on evidence in the record that ten to twenty percent (10-20%) of those employees are illiterate. (ALJD, p. 37) In denying the Acting General Counsel's request for the notice to be read in English, Karen and Burmese, the ALJ maintained that there was no evidence in the record that employees speaking those languages are illiterate. (ALJD, p.37) While it is true that there is no record evidence that employees in these language groups are illiterate, a notice reading in all the languages is nevertheless appropriate in this case for the reasons set forth below.

Where there is evidence that some employees are illiterate, the Board has ordered notice readings. *Texas Elec. Coop., Inc.*, enfd. in relevant part by *NLRB v. Texas Elec. Coop., Inc.*, 398 F.2d 722, 726 (5th Cir. 1968) (finding that it was not unreasonable for the Board to require the company to read the notice where employees were illiterate); *Marine Welding and Repair Works, Inc.*, 174 NLRB 661 (1969), enfd. by *Marine Welding and Repair Works, Inc. v. NLRB*, 439 F.2d 395, 400 (8th Cir. 1971) (reasoning that it was proper to have the notice read to employees where some employees lacked the reading skills to comprehend a posted notice). In *Domsey Trading Corp.*, 310 NLRB 777, n. 13 (1993), the Board agreed with the judge's order that the notice be read to employees in English, Spanish, Haitian-Creole and whatever other languages might be spoken by Respondent's employees. The record in *Domsey Trading* tended to show that at least some of the respondent's employees were illiterate. *Id.* at 813. Similar to the employees in *Domsey Trading*, Respondent's employees speak a number of different languages, and the record evidence is that upwards of 20% of the Spanish-speaking employees are illiterate. (Tr. 1038-1039)²

The Karen and Burmese employees at Respondent's facility are refugees from Myanmar (formerly known as Burma) who recently settled in and around Akron, Ohio. (Tr. 974-975;

² Tr. _ refers to the administrative hearing transcript and specific page number(s) therein.

ALJD, p.36) A study published in 2007 by the Center for Applied Linguistics found that most of the Karen and Burmese refugees who have been resettled in the United States came from refugee camps in Thailand. SANDY BARRON ET AL., REFUGEES FROM BURMA, THEIR BACKGROUNDS AND REFUGEE EXPERIENCES 1 (Donald A. Ranard & Sandy Barron eds., 2007).³ One refugee camp in Thailand made up of predominantly ethnic Karens and to a lesser extent Burmans, Tham Hin, is profiled by Barron et al. Id. at 47-49. According to figures compiled in 2005-2006 by the United Nations High Commissioner for Refugees, 32.8% of the refugees in Tham Hin had no formal education, and only 55% had completed primary school. Id. at 48. In the case of recent arrivals to the United States, Barron et al. concluded that ethnic Karen can read and write in Karen, but only “to varying degrees.” (Id. at 67) Counsel for the Acting General counsel argues that the Board should take judicial notice of the generally low educational and literacy levels of Karen and Burmese refugees who have resettled in the United States, and therefore find that a notice reading in those languages is appropriate.

Counsel for the Acting General Counsel further asserts that a notice reading in only one or some of the languages would single out that group or groups to the exclusion of the other(s), and will be perceived as a sign of inequality by employees in the other language group(s). This is particularly problematic in this case since testimony credited and cited by the ALJ demonstrates that Respondent attempted to isolate the various groups as part of its strategy to undermine support for the union. For example, the ALJ noted that Respondent’s human resources manager Abel Acen told an employee that he brought employees from the Miami, Florida area (who were predominantly Cuban) so that he could get rid of the Guatemalans who were the ones supporting the union. (ALJD, pp. 6-7) The ALJ further concluded that Respondent violated Section 8(a)(1) when Acen told another employee that she could not live in

³ Attached as Exhibit A.

certain cities because that is where the union supporters (i.e., Guatemalans) lived. (ALJD, p.8) The ALJD also notes that Acen told new employees, most of whom were Cuban, that they could take their breaks in the small lunchroom, whereas the rest of the employees took their breaks in the large lunchroom. (ALJD, pp. 5, 6) In light of the above, a notice reading in anything less than all four languages spoken at Respondent's facility will reinforce Respondent's efforts to segregate its workforce and will create doubts on the part of the employees as to why only certain groups get singled out for "special treatment."

Accordingly, it is respectfully requested that the Board reverse the ALJ's conclusion that the Board's standard remedies are sufficient and instead find that the additional remedy sought by Counsel for the Acting General Counsel is appropriate. Counsel for the Acting General Counsel requests that the Board revise the ALJ's recommended Order and Notice to conform to the exception set forth above.

Dated at Cleveland, Ohio, this 7th day of October 2011.

Respectfully submitted,

/s/ Melanie R. Bordelois

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