UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
REGION 1
10 CAUSEWAY ST
6TH FLOOR
BOSTON, MA 02222-1001

Agency Website: www.nlrb.gov
Telephone: (617)565-6700
Fax: (617)565-6725

November 29, 2011

[redacted]
PYLE ROME EHRENBERG PC
18 TREMONT ST., STE. 500
BOSTON, MA 02108-2305

RE: TD BARTON FOOD LLC D/B/A C-TOWN SUPERMARKET
CASE 01-CA-061241

Dear [redacted]

We have carefully investigated and considered your charge that TD BARTON FOOD LLC D/B/A C-TOWN SUPERMARKETS has violated the National Labor Relations Act.

Decision to Partially Dismiss: Based on that investigation, I have decided to dismiss the the June 24, 2011 information request for financial information for 2011 and 2010, i.e., Budgets, payroll records, bank statements (including cancelled checks), bank reconciliations, financial statements, detail of expenditures vs. budget, cash disbursement journals, tax returns, audit reports portion of the charge because the comments made by [redacted] regarding his "financial difficulties" and inability to find a buyer for his business due to the presence of the union are really more similar to general statements about the state of the business than an assertion that he could not afford the union's wages and benefits, which is needed to trigger an obligation on the part of the Employer to produce this detailed financial information to the Union. See *AMF Trucking & Warehousing*, 342 NLRB No. 116, slip op. at 2 (2004), where the Board, in considering the totality of the circumstances and by strictly construing what it means to claim an inability to pay, determined that the employer's statements constituted only a difficulty to pay, because it did not state that it had insufficient assets and would go out of business if the union's demands were met.

Moreover, the Union asked for this information to ascertain the Employer's actual financial status to help it determine whether [redacted] was truthful in his claim of financial difficulty and to help him decide how to approach bargaining over the next contract's terms. It appears it was premature to do so since bargaining had not yet commenced. See *Pine Industrial Relations Committee, Inc.*, 118 NLRB 1055 (1957), enfd. 263 F.2d 483 (D.C. Cir. 1959). (A union is <u>not</u> entitled to financial information from an employer in advance of negotiations to assist it in formulating contract demands.)

Based upon this analysis, the Region concluded that the Employer did not have a duty to provide this financial information to the Union and I am dismissing this portion of the charge.

All other portions of the charge remain outstanding.

Your Right to Appeal: You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals. If you appeal, you may use the enclosed Appeal Form, which is also available at www.nlrb.gov. However, you are encouraged to also submit a complete statement of the facts and reasons why you believe my decision to dismiss your charge was incorrect.

Means of Filing: An appeal may be filed electronically, by mail, or by delivery service. Filing an appeal electronically is preferred but not required. The appeal MAY NOT be filed by fax. To file an appeal electronically, go to the Agency's website at www.nlrb.gov, click on **File Case Documents,** enter the NLRB Case Number, and follow the detailed instructions. To file an appeal by mail or delivery service, address the appeal to the General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1099 14th Street, N.W., Washington D.C. 20570-0001. Unless filed electronically, a copy of the appeal should also be sent to me.

Appeal Due Date: The appeal is due on December 13, 2011. If you file the appeal electronically, we will consider it timely filed if you send the appeal together with any other documents you want us to consider through the Agency's website so the transmission is completed by **no later than 11:59 p.m. Eastern Time** on the due date. If you mail the appeal or send it by a delivery service, it must be received by the Office of Appeals in Washington, D.C. by the close of business at **5:00 p.m. Eastern Time** or be postmarked or given to the delivery service no later than December 12, 2011.

Extension of Time to File Appeal: Upon good cause shown, the General Counsel may grant you an extension of time to file the appeal. A request for an extension of time may be filed electronically, by fax, by mail, or by delivery service. To file electronically, go to www.nlrb.gov, click on **File Case Documents**, enter the NLRB Case Number and follow the detailed instructions. The fax number is (202)273-4283. A request for an extension of time to file an appeal **must be received on or before** December 13, 2011**.** A request for an extension of time that is mailed or given to the delivery service and is postmarked or delivered to the service before the appeal due date but received after the appeal due date will be rejected as untimely. Unless filed electronically, a copy of any request for extension of time should be sent to me.

Confidentiality: We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,

/s/ Rosemary Pye

Rosemary Pye
Regional Director

Enclosure

cc GENERAL COUNSEL
OFFICE OF APPEALS
FRANKLIN COURT BUILDING
NATIONAL LABOR RELATIONS BOARD
1099 14TH STREET, NW
WASHINGTON, DC 20570

[redacted]
TD BARTON FOOD LLC D/B/A C-TOWN SUPERMARKETS
300 BARTON ST.
PAWTUCKET, RI 02860-2918

[redacted]
191 SOCIAL ST
STE 280
WOONSOCKET, RI 02895-3213

[redacted]
UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION
1775 K STREET NW
WASHINGTON, DC 20006-1228

[redacted]
UNITED FOOD AND COMMERCIAL WORKERS INT'L UNION, AFL-CIO, CLC
219 PATERSON AVENUE
LITTLE FALLS, NJ 07424-1657

Form NLRB–4767

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

APPEAL FORM

To: General Counsel
Attn: Office of Appeals
National Labor Relations Board
Room 8820, 1099 - 14th Street, N.W.
Washington, DC 20570-0001

Date:

Please be advised that an appeal is hereby taken to the General Counsel of the National Labor Relations Board from the action of the Regional Director in refusing to issue a complaint on the charge in

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Case Name(s).

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Case No(s). *(If more than one case number, include all case numbers in which appeal is taken.)*

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(Signature)