UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

FRESH & EASY NEIGHBORHOOD MARKET INC.,	)	
Employer,	)	Case Nos.
and	)	31-CA-29913 31-CA-30012 31-CA-30088
UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION,	)	
Union,	)	

RESPONDENT'S EXCEPTIONS TO
THE ADMINISTRATIVE LAW JUDGE'S
RECOMMENDED DECISION AND ORDER

Pursuant to Section 102.46 of the National Labor Relations Board's Rules and Regulations, Respondent Fresh & Easy Neighborhood Market Inc. submits the following exceptions to the recommended Decision and Order of Administrative Law Judge Lana H. Parke:[1]

EXCEPTIONS

1. Fresh & Easy Neighborhood Market Inc. ("Fresh & Easy," "Respondent," the "Employer," or the "Company") excepts to the ALJ's factual finding that "Artica told Acuna it was none of his business to talk about another employee's discipline if the employee did not want to share the information." (JD 4:3-5.)

[1] Throughout these exceptions and the Company's supporting brief, citations to the record shall be as follows: the ALJ's decision shall be "JD [Page]:[Line]"; the hearing transcript from the portion of the hearing shall be "Tr. [Page]"; the parties' joint exhibits shall be "JTX[Number]"; the General Counsel's exhibits shall be "GCX[Number]"; and Respondent's exhibits shall be "RX [Number]."

2. Fresh & Easy excepts to the ALJ's factual finding that "Artica warned Acuna he would be disciplined if he did not stop." (JD 4:5.)

3. Fresh & Easy excepts to the ALJ's factual finding that Artica "recalled telling several people that individual employees' discipline is their own business." (JD 4 n.5.)

4. Fresh & Easy excepts to the ALJ's finding that Acuna was a reliable witness and the ALJ's acceptance of his testimony. (JD 4 n.5)

5. Fresh & Easy excepts to the ALJ's factual finding that "[w]hen Montiel-Rangel feigned ignorance, Artica said, 'You know the meeting that you guys are having today, you know, your safety meeting.' [¶] Montiel-Rangel again disclaimed knowledge of any meeting." (JD 4:14-17.)

6. Fresh & Easy excepts to the ALJ's determination that "[i]f the questioning meets that test, it may also be found to have created the impression of surveillance." (JD 6:28-29.)

7. Fresh & Easy excepts to the ALJ's determination that determining whether statements constituted an interrogation and/or created an impression of unlawful surveillance "requires an objective test of whether, under the circumstances Artica's conduct was such as would tend to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed under Section 6 of the Act." (JD 6:34-36.)

8. Fresh & Easy excepts to the ALJ's determination that the Company's Eagle Rock Store Manager's May 19 statement to "employees would reasonably and objectively have had a coercive effect." (JD 6:43-44.)

9. Fresh & Easy excepts to the ALJ's finding that "[t]here is no evidence that knowledge of the union safety meeting was commonplace or inconsequential; indeed Montiel-

Rangel's surprised, disclaiming reaction to Artica's questions evinces the contrary." (JD 6:44-46.)

10. Fresh & Easy excepts to the ALJ's determination that "Artica's benign or even constructive purpose in inquiring about the union meeting is irrelevant." (JD 6:46-47.)

11. Fresh & Easy excepts to the ALJ's determination that Artica's "probing must objectively have tended to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights and have thereby violated Section 8(a)(1) of the Act." (JD 6:47-49.)

12. Fresh & Easy excepts to the ALJ's decision that Artica's May 19 conversation with Jose Montiel-Rangel constituted an unlawful interrogation and the creation of an impression of surveillance in violation of Section 8(a)(1) of the National Labor Relations Act (the "Act"). (JD 6:23-49, 10:9-11.) That conclusion is contrary to Board law, and it is also inconsistent with the record evidence, including the ALJ's own factual findings.

13. Fresh & Easy excepts to the ALJ's finding that "the evidence adduced in support of the allegation shows that on July 5, Artica told employee not to talk about other employees' discipline on pain of incurring his own discipline." (JD 7:32-34.)

14. Fresh & Easy excepts to the ALJ's determination that "Artica's all-encompassing embargo on employees talking about other employees' discipline explicitly interferes with [the right of employees to discuss discipline] and violates Section 8(a)(1). (JD 8:7-9.)

15. Fresh & Easy excepts to the ALJ's decision and conclusion of law that Artica promulgated and maintained a rule prohibiting employees from speaking about employee discipline while on duty and thereby violated Section 8(a)(1) of the Act. (JD 8:1-9, 10:12-14.) That conclusion is contrary to Board law, and it is also inconsistent with the record evidence, including the ALJ's own factual findings.

16. Fresh & Easy excepts to the ALJ's conclusion of law that "[t]he Respondent violated Section 8(a)(1) of the Act by the following:

> 1. Creating an impression among its employees that their union activities were under surveillance.
>
> 2. Interrogating an employee regarding the employee's union activities.
>
> 3. Orally promulgating, and thereafter maintaining, a rule prohibit employees from discussing their discipline, a term and condition of employment, with other employees."

(JD 10:8-13.)

17. Fresh & Easy excepts to the ALJ's conclusion of law that "[t]he unfair labor practices set forth above affect commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act." (JD 10:16-17.)

18. Fresh & Easy excepts to the ALJ's remedy that "[h]aving found Respondent has engaged in certain unfair labor practices, I find it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. The Respondent will be ordered to post appropriate notices in the manner set forth hereafter." (JD 10:20-23.)

19. Fresh & Easy excepts to the ALJ's determination that "[g]iven corporate oversight of the labor relations of individuals stores and the repetition of conduct already found unlawful by the Board, I find a broad notice is appropriate." (JD 10:35-37.)

20. Fresh & Easy excepts to the ALJ's order that Respondent shall cease and desist from "in any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act." (JD 11:17-19.)

21. Fresh & Easy excepts to the ALJ's order that Fresh & Easy shall "post at its facilities in Los Angeles, California, copies of the attached notice marked 'Appendix.'" (JD 11:22-23.)

RELIEF REQUESTED

For all the reasons set forth above and in its supporting brief filed herewith, Respondent Fresh & Easy Neighborhood Market Inc. respectfully requests that the Board dismiss the Complaint in its entirety.

RESPECTFULLY SUBMITTED this 6th day of December, 2011.

Respectfully submitted,

Fresh & Easy Neighborhood Market Inc.

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Dated: December 6, 2011

CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2011, I caused copies of the **Respondent's Exceptions To The Administrative Law Judge's Recommended Decision And Order** to be served upon the following by the NLRB's e-filing system:

National Labor Relations Board
1099 14th Street, N.W.
Washington, DC 20570-0001

I hereby certify that on December 6, 2011, I emailed (and faxed where indicated) the foregoing **Respondent's Exceptions To The Administrative Law Judge's Recommended Decision And Order** to the following in accordance with Board Rules & Regulations Rule 102.114(i):

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s/ Stuart Newman

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