UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE

FRESH & GREEN'S OF WASHINGTON, D.C., LLC

and **Case No. 5-CA-65595**

UNITED FOOD & COMMERCIAL WORKERS, LOCAL 400

Gregory Beatty, Esq., Counsel for the General Counsel.
Carey Butsavage, Esq., Butsavage & Associates, Counsel for the Charging Party.
John Ferrer, Esq. and *Amanda Dupree, Esq., Morgan, Lewis & Bockius, LLP*, Counsel for the Respondent.

DECISION

Statement of the Case

Joel P. Biblowitz, Administrative Law Judge: This case was heard by me on February 27 and 28, 2012 in Washington, D.C. The Complaint herein, which issued on December 30, 2011[1] and was based upon an unfair labor practice charge that was filed on September 28 by United Food & Commercial Workers, Local 400, herein called the Union, alleges that Fresh & Green's of Washington, D.C., LLC, herein called the Respondent, discharged employees Maria Yliquin and Esam Amireh on September 6 because they assisted the Union and engaged in concerted activities, in violation of Section 8(a)(1)(3) of the Act.

I. Jurisdiction and Labor Organization Status

Respondent admits, and I find, that it has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act, and that the Union has been a labor organization within the meaning of Section 2(5) of the Act.

II. The Facts

Prior to 2011, A & P operated numerous supermarkets in the Washington, D.C. and Maryland area under the name "Super Fresh." Certain of its employees were represented by local unions affiliated with the United Food & Commercial Workers union; at the store involved herein, the only one located in Washington, D.C., the employees were represented by the Union. Matthew Williams, the President and CEO of the Respondent, testified about the circumstances of the Respondent assuming the operation of eight of the A&P stores[2]. The Respondent participated in a bankruptcy auction of twenty three stores operated by A&P in the area, and the Respondent was the successful bidder on eight of these stores, including the store involved herein ("the facility"). Williams testified that after acquiring these eight stores through an asset purchase, the company decided to staff the stores with the same employees who had previously been employed by A&P at the stores, and met and bargained with the unions who had previously represented these employees. At the conclusion of these

[1] Unless indicated otherwise, all dates referred to herein relate to the year 2011.
[2] Shortly prior to the hearing herein, the Respondent sold two of the eight stores.

negotiations, on July 8, the Respondent, the Charging Party and the union representing the employees in the seven Maryland stores entered into collective bargaining agreements[3] covering these eight stores and the Respondent offered employment to the employees previously employed at these stores, except that the manager of each store had the authority to refuse to rehire A&P employees of their choosing. In addition, apparently because the Respondent's pay rate was lower than A&P's, some employees elected not to work for the Respondent. Respondent became the owner of the store involved herein on July 8 and the rest of the stores on about the first week of July; they reopened for business on July 13.

Williams testified that, unfortunately, the stores sales "were far below our expectations." The first week's sales were 70% behind the prior year and the first month's sales were in excess of 50% below the prior year, and the Respondent decided that a reduction in force was necessary at all of these stores. It was further decided that the decision on the precise number of reductions at each store, and the employees to be "RIFd," would be determined by each store manager in consultation with Alan Thompson, Respondent's regional director, and Bill Snyder, its regional manager. Although Williams was not involved in the selection of the employees affected, the "guidance" that he gave was to determine which employees should be terminated "based on their overall job performance," and which employees they wanted to retain "going forward…for their business in the future. I then relied on Alan and Bill and each of the eight store managers to determine which of the team they wanted to keep and which wouldn't be continuing with us…" The RIFs were announced on about September 6. Of the eight area stores, the number of employees employed at each store prior to the terminations ranged from seventy three to thirty, and the number of employees terminated ranged from three to ten. The facility previously had fifty six employees and six, including Yliquin, a shop steward at the facility, and Amireh were told on September 6 that they were being terminated. Store Manager Mary Huffman, in consultation with Thompson and Snyder, made the decision to terminate these six employees. After the termination, Williams was informed that Yliquin had been one of the shop stewards at the store. In addition, two employees at one the Maryland stores, who were shop stewards, were also RIFd. He testified that none of these employees were selected because of their union activity.

On July 8 there was a demonstration in front of the facility attended by about twenty five to thirty of the store's former employees, including Yliquin and Amireh. Yliquin arrived at about 8 a.m. and left at about 5:00. At the time, Huffman and about fifteen employees were present in the store accepting deliveries and stocking the shelves. It was very hot that day, and Huffman brought water to the individuals outside the store and told them that they could come into the store to use the bathrooms. That night, Yliquin received a telephone call from Richard Wildt, union representative for the Union, telling her that the Respondent wanted the employees to come to work the following day, and he asked her to call other employees. She and most of the former employees began working for the Respondent on the following day. Amireh also arrived at the demonstration at the store at about 8 a.m., but only stayed for about two to three hours. That evening he received a call from either Wildt or Yliquin, telling him to report for work the following day, which he did. The employees voted on July 13 to ratify the contract agreed to by the parties; the vote took place in the basement of the facility.

Wildt testified that, in addition to Yliquin and Amireh, four other employees at the facility were terminated on September 6; Sally Crabb, the other shop steward at the facility was not part of the RIF. The Union filed a grievance on behalf of the six employees and the Respondent defended that they were terminated pursuant to the ninety day probationary clause in the

[3] The agreements contain a ninety day probationary period for all employees.

contract. Wildt testified that the grievance is still pending.

Huffman testified about the reasons that she chose Yliquin and Amireh (as well as four other employees at the facility) to be RIFd. She was initially questioned by Counsel for the General Counsel as a Section 611(c) witness, and then was called by counsel for the Respondent as his witness. Initially, in answer to questions from Counsel for the General Counsel, she testified that she chose Yliquin because she had "issues" and "improper relations with the vendors," and she was rude and disrespectful toward management: "It just did not make for a proper workplace type of behavior." In addition, she had some "issues" with associates in the store, in that some employees told her, "that they felt threatened…they were upset…they didn't like what was being said to them." Some were actually "scared," although the employees never told her what Yliquin said that caused that reaction. She testified about a situation that occurred at the store shortly after Respondent took over when approximately seventeen employees, including Yliquin, received incorrect paychecks. Huffman recognized the problem, called the Respondent's main office, and was told that the situation would be corrected on the next pay cycle, and she informed the affected employees that the mistake would be corrected. Yliquin came to her office to complain that her paycheck was short, and when Huffman tried to explain to her that it was being corrected, Yliquin became upset and didn't want to listen to her. Yliquin demanded the telephone number of the Respondent's payroll department, and she gave it to her: "Her demeanor and attitude towards me was very disrespectful." After the Respondent took over the operation of the store, the employees' health insurance benefits were supposed to continue uninterrupted. However, there was a short time frame where none of the employees had health insurance benefits and a number of them asked her to look into it, which she did, although she does not recollect Yliquin asking her about this. There was also a problem with the weekly work schedule. Yliquin, and a number of other employees, told her that the schedule should be listed in order of the employees' seniority. Huffman told them that the computer couldn't print it out that way, so, in order to correct the situation, they wrote out the schedule by seniority, and laminated it for the employees to see.

She also testified that Yliquin also had issues with vendors. In one instance, Yliquin complained that a vendor was not doing what she had asked. Huffman spoke to the vendor, heard his side of the story, and told him that he had to deliver the products the way she requested, "or else he could leave." On another occasion a driver told her that he wouldn't deliver to the store if he had to deal with Yliquin. Crabb, the other shop steward is the full-time receiver, and she has not had "issues" with vendors. She testified that she also had complaints from other employees who were "very upset" with her, or "in tears" from comments that she allegedly made to them, but they were not willing "to go on the record" about it and Huffman did not name any of these employees, or testify about any specifics of these alleged incidents.

On August 19, Huffman sent an email to Thompson and Snyder stating:

> Store 118 presently has 55 associates, including myself and my Co. 33 staffers were hired prior to 2004. We have terminated 9 staffers who were pre 2004. I plan to replace my produce mgr and seafood mgr. I also have 3 pt staffers hired prior to 2004 that I am going to terminate. One being the shop steward.

She testified that this email represented her thoughts at that time, and the final decision on whom to terminate was not made until shortly before September 6. When she met with Yliquin on September 6, she told her that pursuant to the 90 day probationary clause in the contract, her services were no longer required by the Respondent. Yliquin asked why she was being terminated, and she repeated that it was because of the 90 day probationary clause. She also told Amireh on September 6 that pursuant to the 90 day probationary clause in the contract, his

services were no longer required by the Respondent.

The termination forms given to Yliquin and Amireh state that they were terminated on September 6 for the reason: "under 90 days probation," and under "Recommended for rehire," Yes is checked for each of them. Huffman testified that in October and November she hired about four employees, a service deli employee to replace one who left, a grocery employee and two cashiers/grocery employees because she only had one grocery employee remaining. Neither Yliquin nor Amireh were considered for either of these positions.

Huffman testified that Amireh was one of those chosen to be terminated because of "scheduling conflicts." Amireh works as a school bus driver during the school year from about early September through the end of May. While employed by A&P, he had both Fridays and Saturdays off regularly. She discussed the situation with him shortly after Respondent took over the operation of the store, and he said that he would like to be off every Friday and Saturday. She told him that Fridays and Saturdays were busy days and that they could not promise him both days off, but that she would attempt to alternate working him Friday or Saturday, "but I couldn't guarantee that he would have every one of them." Amireh said that he would try to work with that. In addition to the Friday-Saturday issue, Amireh occasionally had a problem arriving at work on time during the week. He drove a school bus during the day, and had a long commute, although that was not a reason that he was terminated on September 6 and he was never written up for being late.

Yliquin began working at the facility in 1996, and has been one of two shop stewards at the facility since about 2008. She began as a cashier, and has worked in customer service, receiving, scanning, health and beauty care and stocking; she worked an average of thirty hours a week. A&P awarded "Gold Stars" to deserving employees, and she received four Gold Stars in about 2006. A&P also had Employee of the Month awards, and she was chosen on at least two occasions for this award, the last time by Huffman in 2010, and was given a $150 gift card as an award. Yliquin testified that she has discussed her work complaints, as well as other employees' complaints, with Huffman both as manager for A&P and the Respondent. This includes complaints about the schedule not being listed in order of seniority, health insurance coverage, and other issues relevant to the employees. When the store changed over from A&P to the Respondent, she gave Union authorization cards to about ten to fifteen employees in the employee break room. A few weeks after the changeover, she realized that her health insurance had not yet taken affect, and when a customer heard of it, he spoke to Williams (who was at the store at the time) about the problem, and he also told Williams that she was the best employee in the store. At about the same time, about six employees told her that they had not been paid for thirty minutes of lunch; Yliquin also had not received this pay, and she told Huffman about the problem. She testified that Huffman answered "in a nasty way" and said that employees who were missing hours should bring their problem to her. Wildt testified that shortly after the Respondent took over the operation of the store, Huffman told him that Yliquin was a troublemaker: "That she was stirring up issues with the employees. Getting them riled up, I believe was the term she used…" One of the issues involved Yliquin's complaint that the work schedule was not listed in seniority order, as it should have been.

Amireh began working for A&P in 1975 and has worked in a number of their stores since that time. He began working at the facility in about 2009 as a cashier, in the dairy department, stocking shelves and scanning. He averaged about twenty six hours a week. In about September 2009, as he was getting ready to leave the store, Huffman said that she wanted to do a "spot check" on him to check to see what he had in his bags. Amireh said that he didn't object to a spot check, but asked if she could do it elsewhere, rather than being done in front of customers and other employees, but she refused. She checked his bags and did not find

anything improper in them. On November 5, 2009, the Union filed an "official protest" of this spot check and there was a meeting with him, Huffman and a Union representative in January 2010. Amireh repeated that he didn't object to being search, but objected to being searched in front of fellow employees and customers; Huffman responded that she had the right to search anyone anywhere and anytime. The Union subsequently dropped the case.

Janet Lim, a customer at the store for about ten years, wrote an email to the Respondent on September 8, after learning that Yliquin had been terminated, stating that the Respondent "should be honored to employ…" her, that she is "…diligent, smart, extremely service minded, respectful and highly energetic" and, "there is no employee more dedicated than…" her. She stated further that many customers purposely waited on Yliquin's line, "just to receive her very excellent service." She expressed her disbelief of learning that Yliquin had been terminated, rather than being promoted. Alan Thompson, another long time customer at the facility, also testified that Yliquin was an excellent, friendly, and helpful employee.

Yliquin testified that Huffman never complained to her about her work, never told her that other employees were complaining about her, and never told her that she had improper interactions with vendors. She testified further that she did not have a good relationship with Huffman because, "…It's impossible to talk to her…she always doing her way." On September 6, Huffman called her into the office and told her, "By 90 days of probation, we don't need you no more." Yliquin responded that employees who transferred from A&P are not covered by the 90 day probationary period and Huffman said that she wasn't going to discuss it, "Ask your Union rep." When Yliquin asked why she was fired, Huffman again told her to speak to her Union representative.

Amireh testified that while employed by A&P, he had Fridays and Saturdays off. When he began working for Respondent in July, he told Huffman that he would like to continue having Friday and Saturday off, and she said, "I'll probably have to work you one day or the other" and he said, "Okay." In August, Alex Noguera, the assistant manager at the store, approached him and said that she was going to prepare the work schedule and asked what days he would like to have off and he said Friday and Saturday. She told him that he couldn't have those days off, and he told her that Huffman had told him that as school was about to begin, he should tell her which day he preferred to be off, Friday or Saturday. Nogera got angry and told him that he had to be available both days. A few minutes later he was called upstairs by Huffman, who told him that she knew that he had another job, and "…this job may not be right for you, so you have to be available the two days, Fridays and Saturdays…otherwise, you have to go." Amireh told her that she had told him the week before that he could choose either day, and she said, "No, you have to be available Friday and Saturday." She again said that if he couldn't work both days, maybe this job wasn't right for him, and he said that he was going to stay, but he would appreciate it if he could get one of the days off. He never told her that he would not work either day. When he arrived at work on September 6, he was told to go upstairs to see Huffman, who told him that his services were no longer needed. He asked, "Does that mean I'm being fired?" and she said yes. He asked for what reason, and she said that because he was under the 90 day probationary period, but no other reason was given. Wildt testified that when he saw Amireh at the facility, Amireh told him that he was having a scheduling conflict with Huffman, who wanted him to work Fridays and Saturdays, and that he would prefer having one of those days off. Wildt asked Huffman about it, and she said that the Respondent would no longer be honoring the same availability as A&P, and that all employees had to be available to work on the weekends.

III. Analysis

A number of facts herein are undisputed. The Respondent purchased eight of the A&P Super Fresh stores, including the facility in Washington, D.C., the only one involved herein, at a bankruptcy auction and began converting these stores to its Fresh & Green's facilities on about July 8 and offered to hire, and in fact did hire, a vast majority of the employees who had previously been employed by A&P. At the same time, the Respondent recognized, and negotiated a collective bargaining agreement with, the Union covering these employees; this agreement contained a ninety day probationary period for all the employees. Over the next four to six weeks, sales at each of the stores, including the facility, were down substantially from the prior year's sales, and the sales that the Respondent had anticipated, and the Respondent decided that some employees at each of these stores would have to be terminated. The number of employees, and the selection of the employees to be terminated, was left to the discretion of the store managers, in consultation with Thompson and Snyder. Huffman selected Yliquin and Amireh, along with four other employees at the facility, to be terminated on September 6. The sole issue herein is whether Yliquin and Amireh were selected "at random" based upon their overall job performance, or were they, or either one of them, selected because of their Union or other concerted activities at the facility.

It is initially necessary to make credibility determinations. Of Respondent's principal witnesses, as clear, concise and credible as Williams was, Huffman's testimony was confusing, at times, contradictory, and incredible. She initially testified that she chose Yliquin to be terminated because she had issues and problems with vendors while acting as a receiver, was rude and disrespectful to management, and had issues with fellow employees, who felt threatened, scared and upset by her. There was absolutely no evidence to support the latter allegation and in Huffman's testimony about her issues with vendors, she seemed to side with Yliquin. The remaining allegation, that she was rude and disrespectful to management, appears to refer to Yliquin's actions in attempting to correct payroll problems when the employees were not paid properly, or where they weren't provided with the proper health insurance coverage, or where the work schedule was not properly listed by seniority. What Huffman refers to as rude and disrespectful, was Yliquin's insistence that the employees receive the pay and health insurance that they were legally entitled to and that the contract be enforced; in other words, she was engaging in protected concerted activities and Union activities as a shop steward at the facility. Where there is a conflict, I therefore credit the testimony of Yliquin and Amireh over that of Huffman.

The facts herein are judged by *Wright Line*, 251 NLRB 1081, 1089 (1980). The initial issue is whether Counsel for the General Counsel has made a *prima facie* showing sufficient to support the inference that protected conduct was a "motivating factor" in the Respondent's decision to terminate Yliquin and Amireh. If that has been established, the burden then falls to the Respondent to demonstrate that it would have terminated them even in the absence of the protected conduct. These determinations depend solely upon the motivation of Huffman, as the evidence establishes that the choice of employees to be terminated at the facility was ultimately hers.

It is clear that Yliquin was an aggressive shop steward, complaining to Huffman whenever her rights or benefits, or those of the other employees, were affected. After the Respondent began operating the store there were, apparently, some payroll and scheduling problems in the turnover, including the failure to provide health insurance coverage for the employees, the failure to pay them for thirty minutes for lunch, and the failure to post the work schedule by seniority, and Yliquin was active in trying to correct these problems for all the

employees, not just for herself. It is also clear that Huffman did not like Yliquin's aggressive attitude as a shop steward, and she sometimes responded to Yliquin's complaints in a dismissive way.[4] In addition, when Yliquin repeatedly asked Huffman on September 6 why she was being terminated, Huffman responded brusquely, stating, "Ask your Union rep." More directly, however, Huffman complained to Wildt that Yliquin was a troublemaker, and was getting the employees "riled up." The Respondent defends that Yliquin was one of two shop stewards, and that it did not terminate the other shop steward, Crabb, however may not have been as aggressive in that position as Yliquin, and Huffman never complained to Wildt about Crabb's attitude. I therefore find that Counsel for the General Counsel has satisfied his initial burden in establishing that Yliquin's protected conduct was a motivating factor in Huffman choosing her as one of the employees to be terminated. I further find that the Respondent has not presented any convincing evidence that it would have terminated Yliquin even absent her protected conduct as a shop steward. She was an excellent employee as shown by the awards that she won while employed by A&P and by the testimony of Lim and Thompson. Her only fault was, apparently, being too aggressive as a shop steward for Huffman. I therefore find that the Respondent has not satisfied its burden, and that by terminating Yliquin on June 6, the Respondent violated Section 8(a)(1)(3) of the Act.[5]

I find that Counsel for the General Counsel has failed to carry his initial burden that Amireh's protected conduct was a motivating factor in Huffman's decision to terminate him along with the other employees on September 6. Amireh worked for A&P and the Respondent for about thirty six years at five of the stores, including the facility. He was neither a shop steward, nor was he an active Union member. The only Union or protected activity that he engaged in was his participation in the July 8 rally (with almost all of the other employees). Counsel for the General Counsel, in his brief, argues that Amireh's complaints about the "spot check" that Huffman performed on him about two years earlier contributed to Huffman's decision to terminate him, as did his work day complaints to Wildt, who discussed them with Huffman. However, unlike the situation involving Yliquin, there is no evidence that Huffman resented Amireh's actions, and retaliated against him because of it. In addition, his complaints about the spot check and his work day schedules were purely personal complaints, whereas Yliquin's complaints about lost pay, the work schedule and health insurance coverage was for the protection of herself and some of the unit employees. Although I have credited Amireh's testimony that he did not refuse to work the requested days, and Huffman never explained why she hired four employees in October and November and did not consider rehiring Amireh, I find the evidence insufficient to establish that he was chosen for termination because of his Union or protected activities. I therefore recommend that this allegation be dismissed.

Conclusions of Law

1. The Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

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[4] I note that there is no evidence that Yliquin's actions ever crossed the line from protected to non-protected under *Atlantic Steel Co.*, 245 NLRB 814, (1979); *Air Contact Transport, Inc.*, 340 NLRB 688, 690 (2003).

[5] As Counsel for the General Counsel argues in his brief, when the trier of facts finds that the stated motive for discharge is false, as I have found, he/she can infer that there is another motive, and that it is an unlawful one, as long as the facts reinforce that inference, which they do herein. *Tidewater Construction Corp.*, 341 NLRB 456, 458 (2004).

2. The Union has been a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(a)(1) and (3) of the Act by discharging Maria Yliquin on September 6, 2011.

4. The Respondent did not violate the Act as further alleged in the Complaint.

The Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. The Respondent having discriminatorily discharged Maria Yliquin, it must offer her reinstatement and make her whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), enf. denied on other grounds sub.nom., *Jackson Hospital Corp. v. NLRB*, 647 F.3d 1137 (D.C. Cir. 2011).

Upon the foregoing findings of fact, conclusions of law and on the entire record, I hereby issue the following recommended[6]

ORDER

The Respondent, Fresh & Green's of Washington, D.C., LLC, its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Discharging, or otherwise discriminating against its employees, because of their activities on behalf of United Food and Commercial Workers, Local 400 ("the Union") or any other labor organization.

(b) In any like or related manner interfering with, restraining or coercing its employees in the exercise of their rights as guaranteed them by Section 7 of the Act.

Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Offer Maria Yliquin immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed, and make her whole for any loss of earnings and other benefits suffered as a result of the discrimination against her in the manner set forth in the remedy section of this decision.

[6] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful discharge, and within 3 days thereafter notify the employee in writing that this has been done and that the discharge will not be used against her in any way.

(c) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its facility in Washington, D.C., copies of the attached notice marked "Appendix."[7] Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. 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 facility 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 September 6, 2011.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

(f) **IT IS FURTHER ORDERED** that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. May 8, 2012

Joel P. Biblowitz
Administrative Law Judge

[7] 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."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT discharge, or otherwise discriminate against you in retaliation for your activities on behalf of United Food and Commercial Workers, Local 400 ("the Union"), or any other labor organization and **WE WILL NOT** in any like or related manner, interfere with, restrain or coerce you in the exercise of the rights guaranteed to you by Section 7 of the Act.

WE WILL offer Maria Yliquin immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position without prejudice to her seniority or other rights or privileges previously enjoyed, and **WE WILL** make her whole for any loss of earnings and other benefits resulting from her discharge, together with interest.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful discharge of Yliquin, and **WE WILL**, within 3 days thereafter, notify her in writing that this has been done and that the discharge will not be used against her in any way.

FRESH & GREEN'S OF WASHINGTON, D.C., LLC
(Employer)

Dated_____ By_____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

103 South Gay Street, The Appraisers Store Building, 8th Floor
Baltimore, MD 21202-4061
Hours: 8:15 a.m. to 4:45 p.m.
410-962-2822.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 410-962-3113.