



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 21  
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LOS ANGELES, CA 90017-5449

Agency Website: [www.nlr.gov](http://www.nlr.gov)  
Telephone: (213)894-5204  
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February 14, 2013

[REDACTED]  
WEINBERG, ROGER & ROSENFELD  
1001 MARINA VILLAGE PKWY STE 200  
ALAMEDA, CA 94501-6430

Re: Fresh & Easy  
Case 21-CA-085615

Dear [REDACTED]:

We have carefully investigated and considered your charge that FRESH & EASY NEIGHBORHOOD MARKET has violated the National Labor Relations Act.

**Decision to Dismiss:** Based on that investigation, I have concluded that further proceedings are not warranted and I am dismissing your charge for the following reasons:

Your charge alleges that the Employer violated Section 8(a)(1) of the Act by maintaining an unlawful rule in its handbook which prohibits employees from forming a union and negotiating a collective-bargaining agreement because it restricts the right of employees to eliminate the "at will" provision in the employee handbook. The handbook rule allows employees to change their "at will" status through an agreement executed by the individual employee and an Employer executive. The investigation failed to uncover sufficient evidence that maintenance of this rule violates the Act because employees would not reasonably construe it to cover protected concerted activity. This handbook rule does not require employees to refrain from seeking to change their at-will status or to agree that their at-will status cannot be changed in any way. Compare, American Red Cross Arizona Blood Services Region, Case 28-CA-23443, JD(SF)-04-12, 2012 WL 311334(2/1/12). And the provision does not foreclose the possibility of modifying the at-will relationship in the future through a collective-bargaining agreement between an Employer executive and a bargaining representative acting as the employees' agent.

**Your Right to Appeal:** You may appeal my decision to the Acting 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.nlr.gov](http://www.nlr.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.nlr.gov](http://www.nlr.gov), click on E-

**File 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 Acting 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 **February 28, 2013**. 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 February 27, 2013.

**Extension of Time to File Appeal:** Upon good cause shown, the Acting 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.nlr.gov](http://www.nlr.gov), click on **E-File 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 February 28, 2013**. 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,



OLIVIA GARCIA  
Regional Director

Enclosure

cc: (See next page.)

cc: ACTING GENERAL COUNSEL  
OFFICE OF APPEALS  
FRANKLIN COURT BUILDING  
NATIONAL LABOR RELATIONS BOARD  
1099 14<sup>TH</sup> STREET, NW  
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