

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Washington, D.C.**

FRESH & EASY NEIGHBORHOOD MARKET,

Respondent,

and

Case Nos. 31-CA-077074
31-CA-080734

**UNITED FOOD AND COMMERCIAL WORKERS
INTERNATIONAL UNION,**

Charging Party.

**COUNSEL FOR THE ACTING GENERAL COUNSEL'S EXCEPTIONS
TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE**

On March 22, 2013, Administrative Law Judge ("ALJ") Gerald A. Wacknov issued his decision in the captioned case. Pursuant to Section 102.46 of the Board's Rules and Regulations, Counsel for the Acting General Counsel files the following exceptions:¹

To the ALJ's findings and conclusions that:

1. The General Counsel and Union argue that because of this lack of specificity the alleged violative language is ambiguous, and should therefore be interpreted to impliedly preclude the release by employees of information concerning their own wages and conditions of employment and the wages and conditions of employment of other employees. I do not agree. (ALJD 4:15-20.)
2. It is not a typical employee handbook that provides information and establishes policies, rules and requirements governing employees' day-to-day activities; and it does not deal with or even mention wages and working conditions. (ALJD 4:21-23.)
3. A reading of the entire Confidentiality and Data Protection section may be fairly understood to prohibit the release of "collected" information. (ALJD 4:24-25.)

¹ References to the Administrative Law Judge's Decision will be cited as "ALJD X:Y," where X is the page number and Y is the line number.

4. Collected information may be reasonably understood to mean information obtained from customers or employees such as, for example, customers' credit information and employees' social security numbers, medical information and other such information which is customarily maintained in employees' personnel files. (ALJD 4:25-29.)
5. Obviously, the Respondent does not need to obtain information from employees regarding their wages and working conditions as this is information that the Respondent generates; and conversely, confidential information that the Respondent may collect and maintain is clearly not germane to the Act's protection of Section 7 rights. (ALJD 4:29-33.)
6. Accordingly, I find that employees reading this language, the context of the booklet's overall purview and the essence of the section of the booklet in which the language appears, would not reasonably interpret it to preclude them from revealing and discussing with coworkers specific information regarding wages and working conditions or sharing such information with outside sources in furtherance of their Section 7 rights. (ALJD 4:33-40.)
7. I recommend that the Complaint be dismissed in its entirety. (ALJD 5:8.)
8. In view of the finding that the language is not violative of the Act, it appears unnecessary to address the General Counsel's contention that the Respondent neither effectively repudiated the original language, nor did it timely or adequately communicate the revision to the employees in accordance with the guidelines enunciated by the Board in *Passavant Memorial Area Hospital*, 237 NLRB 138, 138-139 (1978). (ALJD 5, fn. 3.)
9. The Respondent has not violated the Act as alleged. (ALJD 5:12.)
10. The complaint is dismissed in its entirety. (ALJD 5:17.)

To the ALJ's failure to find and conclude that:

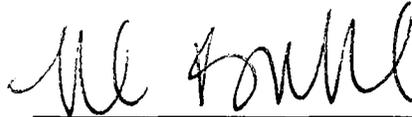
11. When viewed in the overall context of the Code of Business Conduct and the section in which it appears, and, according to a reasonable reading of the following rule, a reasonable employee would understand the rule to restrict employees from disclosing information relating to employees' wages and other terms and conditions of employment to other employees and to non-employees:

Keep customer and employee information secure. Information must be used fairly, lawfully and only for the purpose for which it was obtained.
12. Respondent's revision of the Rule on October 12, 2012, was insufficient to cure its unfair labor practice under the standards enunciated in *Passavant Memorial Area Hospital*, 237 NLRB 138, 138-39 (1978).

13. By maintaining the aforementioned rule, the Respondent interfered with, restrained, and coerced employees in the exercise of their Section 7 rights in violation of Section 8(a)(1) of the Act.

Dated at Los Angeles, California, this 19th day of April, 2013.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Nicole Buffalano", written over a horizontal line.

Nicole Buffalano, Esq.
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Re: FRESH & EASY NEIGHBORHOOD MARKET
Cases: 31-CA-077074 and 31-CA-080734

CERTIFICATE OF SERVICE

I hereby certify that I served the attached **COUNSEL FOR THE ACTING GENERAL COUNSEL'S EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE** on the parties listed below on the 19th day of April, 2013:

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