

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

SFTC, LLC d/b/a SANTA FE
TORTILLA COMPANY,

and

YOLANDA GALAVIZ, an Individual.

and

COMITÉ DE TRABAJADORES DE
SANTA FE TORTILLA

Case Nos. 28-CA-087842
28-CA-095332

**RESPONDENT SFTC, LLC'S
LIMITED EXCEPTIONS TO THE DECISION
OF THE ADMINISTRATIVE LAW JUDGE**

Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board, Respondent SFTC, LLC d/b/a Santa Fe Tortilla Company (“SFTC” or “Santa Fe Tortilla”) excepts to the decision and order of the Administrative Law Judge (“ALJ”) in the above-captioned matter (JD(SF)-30-13) as follows:

1. To the ALJ's finding that Yolanda Rivera (“Rivera”) and Lillian Lopez (“Lopez”) had been “continuously working on the flour line” prior to their move to the corn line in August 2012. [ALJD at p. 10:4-7]¹

¹ “ALJD p. __, l. __” refers to the specific pages and lines in the Administrative Law Judge’s June 25, 2013 Decision.]

2. To the ALJ's finding that Rivera and Lopez were “transferred to the corn line” rather than merely reassigned to the corn line just as Santa Fe Tortilla regularly moved production employees amongst its two tortilla lines. [ALJD at p. 10:5-6]

3. To the ALJ's finding that the corn tortilla line ran faster than the flour line to the extent that this finding played a role in the ALJ's conclusion that Rivera and Lopez were discriminated or retaliated against in violation of the NLRA. [ALJD at p. 10:9]

4. To the ALJ's conclusion that “because of the differences in the corn and flour tortilla lines and the lack of recent experience that Rivera and Lillian Lopez had working on the corn tortilla line, it was more difficult for them to work on the corn tortilla line.” [ALJD at p. 10:18-21]

5. To the ALJ's decision to discredit the testimony of Arlette De la Mora (“de la Mora”) that working on the corn tortilla line was easier than working on the flour tortilla line. [ALJD at p. 10:24-27]

6. To the ALJ's finding that Santa Fe Tortilla knew about the union and protected concerted activity of Rivera and Lopez to the extent this is the basis for his conclusion that SFTC discriminated or retaliated against them in violation of the NLRA. [ALJD at . 10:32-33]

7. To the ALJ's conclusion that the move of Rivera and Lopez to the corn tortilla line was done for an unlawful reason despite no evidence in the record that the decision-maker, de la Mora, had any knowledge of the union or protected concerted activities of either Rivera or Lopez or that any other SFTC manager or supervisor had

any role in the decision to move Rivera and Lopez to the corn tortilla line. [ALJD at p. 10:1-11:16]

8. To the ALJ's finding that "Santa Fe Tortilla was hostile" to the union or protected concerted activities of Lopez and Rivera "as shown by the fact that it violated the Act as a result of that activity." [ALJD at p. 10:33-25]

9. To the ALJ's reliance on the "timing of the transfers" as evidence of an unlawful motive despite a lack of evidence that de la Mora was aware of the union or protected concerted activity of Lopez and Rivera. [ALJD at p. 10:1-11:16]

10. To the ALJ's decision to discredit the testimony of de la Mora as to the reason for Lopez' move to the corn tortilla line. [ALJD at p. 10:39-50]

11. To the ALJ's finding that Lopez' criticism of de la Mora in CTSFT's August 7, 2012 letter would have impacted de la Mora's decision to move Lopez to the corn tortilla line despite evidence that de la Mora never saw the letter and was not aware of its content. [ALJD at p. 10:46-11:1]

12. To the ALJ's decision to discredit the testimony of de la Mora concerning the decision to move Rivera to the corn line in August 2012. [ALJD at p. 11:1-12]

13. To the ALJ's finding that "[b]y transferring Yolanda Rivera and Lillian Lopez from the flour tortilla production line to the corn tortilla production line because they were involved in union and other protected concerted activities, Santa Fe Tortilla violated Section 8(a)(3) and (1)." [ALJD at p. 11:14-14]

14. To the ALJ's conclusion that workers on the corn tortilla line may have worked fewer hour than workers of the flour tortilla line and his order of a make-whole remedy for Rivera and Lopez. [ALJD at p. 11:15-16]

15. To the ALJ's failure to consider the testimony of Kenny Kalfin ("Kalfin"), managing member of SFTC, that the hours worked by production employees on the tortilla lines fluctuated regularly based on the orders SFTC received in a given week, which he credited elsewhere in the decision, in his conclusion to order a make-whole remedy for Rivera and Lopez. [ALJD at p. 11:15-16, 19-23; 12:3-4]

16. To the ALJ's finding that Kalfin "did not directly link any of the construction work to a reduction, as opposed to a fluctuation, of hours worked by Santa Fe Tortilla employees" to the extent that the finding resulted in his conclusion to order a make-whole remedy for Rivera and Lopez. [ALJD at p. 11:28-30]

17. To the ALJ's finding that SFTC was hostile towards the "union activity" of Luis Juarez (also known as Jesus Saldana) to the extent that this finding played any role in the ALJ's conclusions that SFTC engaged in conduct in violation of the NLRA. [ALJD at p. 13:3-4]

18. To the ALJ's finding that the August 7, 2012 letter from CTSFT was signed by employee Gustavo Abel Lopez. [ALJD at p. 3:21-23]

19. To the ALJ's decision to not credit the testimony of Gustavo Abel Lopez that he did not sign the letter and to his conclusion, unsupported by any evidence in the record, that Gustavo Abel Lopez "obviously had second thoughts about signing the letter afterwards by placing blame on somebody else." [ALJD at p. 14:18-20]

20. To the ALJ's conclusion that "Galaviz credibly denied that she wrote Gustavo Abel Lopez' name on the August 7 letter." [ALJD at p. 14:20-21]

21. To the ALJ's decision not to credit the statements regarding Galaviz' conduct contained in the letters from employees, Edgar Lopez, Orbelina Perez Barco, and Marilyn Pineda. [ALJD at p. 15:10-13]

22. To the ALJ's decision not to credit the testimony of de la Mora regarding the conduct of Delfina Bruno ("Bruno") to the extent that played a role in his decision to find that SFTC did not have a good-faith belief that she engaged in disqualifying conduct. [ALJD at p. 15:14-25]

23. To the ALJ's finding that SFTC's failure to warn or suspend Bruno or Galaviz for their misconduct, or to speak with them regarding "their version of events," was evidence of unlawful conduct, especially in light of the fact that there was no evidence in the record of valid comparators. [AFLD at p. 15:27-35]

24. To the ALJ's failure in the body of his decision to identify which analytical framework he applied to the Acting General Counsel's termination allegations and for his failure to fully provide his analysis of the application of that framework to the terminations of Galaviz and Bruno. [ALJD at p. 15:39-48]

25. To the ALJ's finding that "Kalfin has admitted that Santa Fe Tortilla discharged Galaviz and Bruno because they engaged in union and other concerted activity." [ALJD at p. 15:39-41]

26. To the ALJ's finding that there is "no credible evidence that Galaviz or Bruno engaged in any disqualifying misconduct in the process" of engaging in union or other protected concerted activity. [ALJD at p. 15:41-42]

27. To the ALJ's finding that there is no "evidence that Santa Fe Tortilla even had a good-faith but mistaken belief that the employees had engaged in any disqualifying misconduct" because "it did not even ask [Galaviz or Bruno] their versions of the alleged misconduct." [ALJD at p. 15:42-15]

28. To the ALJ's conclusion that "[b]y discharging Delfina Bruno and Yolanda Galaviz because they were involved in union and other protected concerted activity, Santa Fe Tortilla violation Section 8(a)(3) and (1)." [ALJD at p. 15:45-47]

29. To the ALJ's finding that SFTC was hostile to Rivera's union activity to the extent that this finding played a role in his decision that SFTC violated the NLRA. [ALJD at p. 16:29-31]

DATED: July 23, 2013

JACKSON LEWIS LLP

By /s/ Jeffrey W. Toppel
Danny W. Jarrett
4300 San Mateo Blvd. NE
Suite B-260
Albuquerque, NM 87110

Jeffrey W. Toppel
2398 E. Camelback Rd., Suite 1060
Phoenix, Arizona 85016

Attorneys for SFTC, LLC

I hereby certify that a copy of RESPONDENT, SFTC, LLC'S LIMITED EXCEPTIONS TO THE DECISION OF THE ADMINSTRATIVE LAW JUDGE IN Cases 28-CA-087842 and 28-CA-095332 was served by **E-Gov, E-Filing, E-mail and U.S., Mail on on July 23, 2013 as follows:**

Via E-Gov, E-Filing to:

Gary Shinnors, Executive Secretary
Office of the Executive Secretary
National Labor Relations Board 28
1099 14th Street NW, Room 11602
Washington, DC 20570-0001

Via U.S. Mail to:

Yolanda Galaviz
4650 Airport Road, Apt. 205
Santa Fe, NM 87507-2850

Comite de Trabajadores de Santa Fe Tortilla
2000 Hopewell Street, Apt. 103
Santa Fe, NM 87505-3545

Via Electronic mail to:

Sophia Alonso
Counsel for the Acting General Counsel
National Labor Relations Board, Region 28
421 Gold Avenue, SW, Suite 310
Albuquerque, New Mexico 87103-0567

/s/Debbie Mattatall

4829-9093-0708, v. 1