UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 16
819 Taylor Street, Room 8A24
Fort Worth, TX 76102-6107

Agency Website: www.nlrb.gov
Telephone: (817)978-2921
Fax: (817)978-2928

November 27, 2013

[redacted]
STEPTOE & JOHNSON, L.L.P.
201 EAST WASHINGTON STREET,
SUITE 1600
PHOENIX, AZ 85004-2382

Re: United Food & Commercial Workers
International Union ("UFCW")
(Wal-Mart Stores, Inc.)
Case No. 16-CB-099612

[redacted]

We have carefully investigated and considered your charge that **UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION ("UFCW")** has violated the National Labor Relations Act.

Decision to Dismiss: The charge alleges the Union restrained and coerced employees by: 1) threats and other coercive statements to employees at the Employer's stores located in Ennis and Arlington, Texas, and Orlando, Florida, and 2) offering a $50 gift card for participating in a 2012 Black Friday job action.

With regard to the alleged threats and coercive statements at the Ennis, Texas facility, the investigation disclosed that the statements were too ambiguous to constitute restraint and coercion. In connection with the alleged bomb threat at the Arlington, Texas facility, the evidence established that: 1) the individual to whom the statement was made was a statutory supervisor within the meaning of Section 2(11) of the Act; 2) no statutory employees heard the alleged threat; and 3) the only statutory employee to whom the bomb threat was conveyed by the 2(11) supervisor was unaware that it was made by the Union or any other labor organization. Accordingly, the Section 7 rights of employees were not implicated. As for the alleged coercive statements and threats at the Orlando, Florida facility, the investigation not only disclosed they were too ambiguous to constitute coercion and that no statutory employees heard the threats but, even assuming they were, the individuals who made the threats were not agents of the Union. In the latter regard, the evidence established that the non-profit organization Jobs With Justice planned, coordinated and conducted the demonstration at the Orlando facility without the Union's assistance, knowledge, or presence. Thus, the Union may not be held liable for them.

With regard to the alleged unlawful $50 payment to participate in a 2012 Black Friday job action, the investigation disclosed that it was: 1) the equivalent of a strike benefit; 2) not excessive; and 3) not disbursed in a discriminatory manner. There was no evidence that the payment was conditioned on union membership or offered only to union members, and there was

no evidence to indicate the payment was designed to purchase union support, or that the payments would continue indefinitely.

In the foregoing circumstances, insofar as the alleged unlawful statements were either too ambiguous to constitute coercion, were not heard by employees, and/or were not attributable to the Union, and to the extent that the $50 gift card was a lawful strike benefit that was not discriminatorily disbursed, the evidence failed to establish that employees were restrained or coerced in the exercise of their Section 7 rights to participate, or refrain from participating, in union activities. I am, therefore, refusing to issue complaint in this matter.

Your Right to Appeal: You may appeal my decision to the 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.nlrb.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.nlrb.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 **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 **December 11, 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 December 10, 2013.

Extension of Time to File Appeal: Upon good cause shown, the 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.nlrb.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 December 11, 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,

MARTHA KINARD
REGIONAL DIRECTOR

Enclosure

cc GENERAL COUNSEL
OFFICE OF APPEALS
FRANKLIN COURT BUILDING
NATIONAL LABOR RELATIONS BOARD
1099 14TH STREET, NW
WASHINGTON, DC 20570

UNITED FOOD & COMMERCIAL WORKERS
INTERNATIONAL UNION ("UFCW")
LEGAL DEPARTMENT
1775 K STREET, NW
WASHINGTON, DC 20006-1502

WAL-MART STORES, INC.
702 SW 8TH STREET
BENTONVILLE, AR 72716-6209

Form NLRB–4767

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

APPEAL FORM

To: General Counsel
Attn: Office of Appeals
National Labor Relations Board
1099 - 14th Street, N.W., Room 8820
Washington, DC 20570-0001

Date:

Please be advised that an appeal is hereby taken to the General Counsel of the National Labor Relations Board from the action of the Regional Director in refusing to issue a complaint on the charge in

United Food & Commercial Workers International Union ("UFCW")
(Wal-Mart Stores, Inc.)

Case Name(s).

Case No. 16-CB-099612

Case No(s). *(If more than one case number, include all case numbers in which appeal is taken.)*

(Signature)