



UNITED STATES GOVERNMENT  
**NATIONAL LABOR RELATIONS BOARD**  
OFFICE OF THE GENERAL COUNSEL  
Washington, D.C. 20570

February 6, 2014

[REDACTED]  
201 E WASHINGTON ST STE 1600  
PHOENIX, AZ 85004-2382

Re: United Food & Commercial Workers  
International Union ("UFCW") (Wal-Mart  
Stores, Inc.)  
Case 16-CB-099612

Dear [REDACTED]

This Office has carefully considered your appeal from the Regional Director's refusal to issue complaint. The appeal is denied substantially for the reasons in the Regional Director's letter of November 27, 2013.

With regard to the alleged threats at the Employer's stores in Ennis, Texas and Orlando, Florida, the evidence either failed to corroborate the alleged statements or was too vague or ambiguous to constitute restraint or coercion. As distinguished from those cases cited on appeal, the statements were in a context free of other concurrent physical or coercive conduct.

As to the individual who heard the alleged bomb threat at the Arlington, Texas location, the evidence failed to establish that the alleged threat was directed to an employee. Contrary to your position on appeal, the weight of the evidence did establish that the individual possesses sufficient indicia to be a supervisor under Section 2(11) of the National Labor Relations Act. Therefore, the alleged statement did not violate Section 8(a)(1). To the extent that the supervisor discussed the statement with an employee, given the context under which that employee learned of the threat, there was insufficient evidence that the employee linked the alleged threat to the union or viewed the threat as a restraint with employees' rights. Similarly to above, the cases cited on appeal are markedly different and would not support finding a violation in the instant matter.

Regarding the \$50 gift card offer, this Office agreed that the offer was a legitimate means to support those employees who participated in the anticipated strike. Therefore, it is akin to a

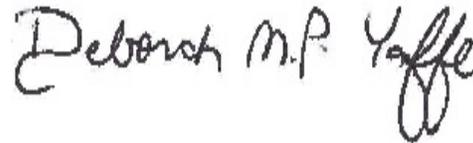
strike benefit rather than a "bribe" or unlawful inducement to have employees support "OUR Walmart" or the Union. The conduct deemed inappropriate in *General Cable Corp.*, 170 NLRB 1682 (1968), which you reference, involved giving gift certificates even to employees who did not participate in the conduct for which it was offered. Here, there was no similar expanded inducement or encouragement.

For these reasons, there is no basis to issue complaint and further proceedings are unwarranted.

Sincerely,

Richard F. Griffin, Jr.  
General Counsel

By:



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Deborah M.P. Yaffe, Director  
Office of Appeals

cc: MARTHA KINARD  
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