

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

Fresh & Easy Neighborhood Market, Inc.,)	
)	
and)	
)	
United Food and Commercial Workers International Union,)	Case No. 28-CA-22520, et al.
)	
and)	
)	
<u>Deane Kenton, and individual.</u>)	

RESPONDENT’S OPPOSITION TO MOTION FOR RECONSIDERATION

Respondent, Fresh & Easy Neighborhood Markets, Inc., by its attorneys Seyfarth Shaw LLP, hereby files its opposition to the Charging Party’s Motion for Reconsideration in the above-captioned case.

Charging Party’s Motion essentially seeks to have the National Labor Relations Board (the “Board”) expand upon its original Order and to require that all required remedial actions be conducted on a company wide basis. Charging Party’s Motion should be denied for two (2) separate and distinct reasons. First, the Motion is procedurally deficient. Second, it lacks any legal merit.

I. PROCEDURAL DEFICIENCY

Charging Party’s Motion is procedurally deficient because it relies on “facts” not contained in the record. Charging Party requests that the Board amend the language in paragraph 1 of its Order that requires that, if Respondent goes out of business or closes “any of the stores involved in these proceedings,” it must mail a copy of the Notice directly to the affected employees. Charging Party argues that the language should be changed so that this requirement would apply to any store closing company wide and not just the stores involved in this

proceeding because it shuttered a number of stores because of poor performance and shrinking sales.” There is nothing in the record, however, which supports that assertion. Therefore, it is procedurally improper for Charging Party to attempt to supplement the record via the instant motion.

II. LACK OF MERIT

A. Based on Board precedent, company wide remedies are appropriate only if there has been a finding that the Respondent is a recidivist. *Beverly Enterprises* 326 NLRB 232, 238 (1998) (“[t]he Board has always recognized that it has the authority to issue employer-wide orders against a recidivist...”). In this case there has been no such finding. Quite to the contrary, the Administrative Law Judge, in finding that a company wide remedy was not appropriate, specifically concluded that “[t]here is no evidence that the Respondent is a recidivist violator of the Act.” The Charging Party filed no exception to this finding and the Board in its decision did not find Respondent to be a recidivist. Therefore there is no legal basis for granting Charging Party’s requests.

Dated: March __, 2011

Respectfully submitted,

Fresh & Easy Neighborhood Market, Inc.

By 
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CERTIFICATE OF SERVICE
(CCP 1013)

I am a citizen of the United States and an employee in the County of Fulton, State of Georgia. I am over the age of eighteen years and not a party to the within action; my business address is 1075 Peachtree Street, NE, Suite 2500, Atlanta, Georgia 30309-3962. On March 3, 2011, I served upon the following parties in this action:

Joel C. Schochet, Esq.
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600 Las Vegas Boulevard South
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Las Vegas, NV 89101-6637

Via Facsimile (702) 388-6248

Executive Secretary
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Washington, DC 20570-0001
Via e-filing

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copies of the document(s) described as:

MOTION FOR RECONSIDERATION

[X] VIA ELECTRONIC FILING

[X] BY FACSIMILE I caused to be transmitted each document listed herein via the fax number listed above or on the attached service list.

[X] BY EMAIL

I certify under penalty of perjury that the above is true and correct. Executed at Atlanta, Georgia, on March 3, 2011.

/s/ Stuart Newman
Stuart Newman