UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Fresh & Easy Neighborhood Market Inc.,	)	
	)	
and	)	Case Nos. 31-CA-077074; 31-CA-080734.
	)	361 NLRB No. 8
United Food and Commercial Workers	)	
International Union.	)	

RESPONDENT'S OPPOSITION TO MOTION FOR RECONSIDERATION

Respondent Fresh & Easy Neighborhood Market Inc. opposes Charging Party United Food and Commercial Workers International Union's Motion for Reconsideration. The Motion asks the Board to reverse its decision on the appropriate remedy; and, instead, to issue a broad remedial order. Charging Party's Motion should be denied for two (2) distinct reasons. First, the Motion is procedurally deficient. Second, it lacks merit. Charging Party has not met the extraordinarily high burden of establishing a broad order is warranted.

I. Charging Party's Motion Is Procedurally Deficient.

Charging Party's Motion does not comport with the Board's Rules & Regulations. "A party to a proceeding before the Board may, because of extraordinary circumstances, move for reconsideration . . . after the Board decision or order. A motion for reconsideration . . . shall specify the page of the record relied on." 29 C.F.R. § 102.48(d).

Charging Party baldly asserts that Respondent should be subject to a broad order -- leaving it to the Board to page through its Exceptions, glean alleged "numerous prior cases," and figure out for itself (as no purported analysis of said cases is supplied in relation to the present one) why a broad order ought to issue. Nor does Charging Party specify any portion of the record in this case supposedly supporting its position. As Charging Party's Motion does not remotely satisfy the requirements of the Board's governing Rules & Regulations, it should be denied for this reason alone.

II. Charging Party's Motion Lacks Merit.

In *Hickmott Foods*, the Board made clear that a broad order should issue "only when a respondent is shown to have a proclivity to violate the Act or has engaged in such egregious or widespread misconduct [so] as to demonstrate a general disregard for the employees' fundamental statutory rights." 242 NLRB 1357, 1357 (1979).

In the instant case, the Charging Party already sought a broad order on virtually the identical basis as in this motion -- other than the Board had not issued its decision in 361 NLRB No. 12. *See* Charging Party April 30, 2013 Brief in Support of Cross-Exceptions, pp. 9-12. The Board squarely rejected such a remedy. *See* 361 NLRB No. 8, slip op. at 3 n. 4.

The Board's decision in 361 NLRB No. 12 does not present substantially changed circumstances. First of all, as Charging Party points out, the Board issued 361 NLRB No. 12 only 12 days after 361 NLRB No. 8. Presumably the Board was aware of the other case in deciding each one, and did not find a broad remedy to be warranted in either case. Tellingly, the General Counsel did not request a broad order in either case.

In 361 NLRB No. 12, the violations at issue occurred in <u>2011</u> -- <u>before</u> those in 361 NLRB No. 8, which took place in 2012. They do not involve subsequent violations. Nor do they reflect a pattern of recent, serious, ongoing violations of the Act. In both cases, no hallmark violations were alleged -- they involved Section 8(a)(1) violations related to employee handbook policies. Nor was Respondent contumacious. In 361 NLRB No. 8, it revised the policy in question prior to the complaint issuing, but the Board found that its actions did not satisfy the repudiation standards set forth in *Passavant Memorial Area Hospital*, 237 NLRB 138 (1978). *See* slip op. at 3 n. 3. In 361 NLRB No. 12, apart from not excepting to the ALJ's findings regarding the policies at issue, Respondent had changed them prior to the charge in an attempt to comply with the Act -- although not to the Board's satisfaction. *See* slip op. at 10, 34.

As Charging Party has not shown any new, extraordinary circumstances that warrant reconsideration and support a broad order, its Motion for Reconsideration should be denied.

CONCLUSION

For the foregoing reasons, the Motion for Reconsideration should be denied.

Dated: September 4, 2014

Respectfully submitted,

Fresh & Easy Neighborhood Market, Inc.

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CERTIFICATE OF SERVICE

I certify that I have caused a true and correct copy of the foregoing RESPONDENT'S OPPOSITION TO MOTION FOR RECONSIDERATION to be served upon the following via the NLRB's e-filing system on September 4, 2014:

Gary Shinners
Executive Secretary
National Labor Relations Board
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I further certify that I have caused a true and correct copy of the above-referenced document to be served on the following by electronic mail on September 4, 2014:

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