2 Sisters Food Group, Inc. and Fresh & Easy Neighborhood Market, Inc. *and* United Food and Commercial Workers International Union, Local 1167. Cases 21–CA–038915 and 21–CA–038932

December 16, 2014

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA AND SCHIFFER

On July 16, 2013, in a Supplemental Decision and Order reported at 359 NLRB 1527, the Board found that Respondent Fresh & Easy Neighborhood Market, Inc. (Fresh & Easy) is a successor to 2 Sisters Food Group, Inc. (2 Sisters) under *Golden State Bottling Co. v NLRB*, 414 U.S. 168 (1973), and is liable to remedy 2 Sisters' unfair labor practices found by the Board in *2 Sisters Food Group*, 357 NLRB 1816 (2011) (finding that 2 Sisters violated Sec. 8(a)(1) by maintaining certain work rules and Sec. 8(a)(3) and (1) by discharging employee Xonia Trespalacios). The Supplemental Decision also rejected the Charging Party's request for additional remedies. On July 31, 2013, the Charging Party filed a motion for reconsideration of the Board's rejection of its request for additional remedies. That motion remains pending.[1]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Before we address the Charging Party's motion for reconsideration, we must first address the status of the Supplemental Decision and Order reported at 359 NLRB 1527. At the time of the Supplemental Decision and Order, the composition of the Board included two persons whose appointments had been challenged as constitutionally infirm. On June 26, 2014, the United States Supreme Court issued its decision in *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014), holding that the challenged appointments to the Board were not valid. In view of that decision, we vacate the Supplemental Decision and Order reported at 359 NLRB 1527.

We have considered de novo the entire record in this case, Administrative Law Judge Eleanor Laws' November 21, 2012 supplemental decision, and the parties' exceptions and briefs.[2] Having done so, we affirm the judge's rulings, findings, and conclusions in this compliance proceeding only to the extent consistent with this Supplemental Decision.

The parties stipulated, and the judge found, that Fresh & Easy is a successor to 2 Sisters under *Golden State Bottling Co.*, supra, and as such is liable to remedy 2 Sisters' unfair labor practices. Fresh & Easy excepted to this finding, contending that the Region's failure to allege Fresh & Easy as a respondent in the unfair labor practice proceeding denied it due process of law. The judge rejected Fresh & Easy's due process argument, and we find her reasoning persuasive. Thus, for the reasons stated by the judge, we find Fresh & Easy's exceptions without merit, and we adopt her finding and conclusion that Fresh & Easy is jointly and severally liable to remedy 2 Sisters' unfair labor practices.

The judge also entertained the Charging Party Union's request for additional remedies and a broad cease-and-desist order. She granted the Union's request for a notice-mailing remedy, denied the remainder of the requested additional remedies, and denied the request for a broad order. The judge then issued a revised Order that differed in some respects from the Board's Order in 357 NLRB 1816. However, the only issue properly before the judge in this compliance proceeding was Fresh & Easy's claim that, notwithstanding its status as 2 Sisters' *Golden State* successor, it was not liable to remedy 2 Sisters' unfair labor practices. As we have found, the judge correctly rejected that claim. Because it was raised at the compliance stage of this proceeding, however, the Charging Party's request for additional remedies—which sought to expand the Board's underlying Order—was untimely. See *Wellstream Corp.*, 321 NLRB 455, 455 fn. 2 (1996). Accordingly, the Order the Board issued in 357 NLRB 1816 remains binding on 2 Sisters and is binding on Fresh & Easy as 2 Sisters' *Golden State* successor.

We turn now to the Charging Party's motion for reconsideration. The Charging Party again requests additional remedies against Fresh & Easy. We deny the request for the reasons stated above. The Charging Party also contends that Fresh & Easy "is guilty of separate additional conduct." If that is so, the proper recourse would have been to file an unfair labor practice charge. The Charging Party has not identified any material error or demonstrated extraordinary circumstances warranting reconsideration under Section 102.48(d)(1) of the Board's Rules and Regulations. Accordingly, its motion is denied.

[1] The Charging Party's motion mistakenly refers to 2 Sisters as the successor to Fresh & Easy. We address its request for additional remedies as if the motion had named Fresh & Easy as the successor.

[2] Fresh & Easy has requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

ORDER

The National Labor Relations Board orders that Respondent 2 Sisters Food Group, Inc., Riverside, California, and its successor, Respondent Fresh & Easy Neighborhood Market, Inc., Riverside, California, their officers, agents, successors, and assigns, shall take the action set forth in the Board's Order in 357 NLRB 1816, 1823–1824.