

**UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
REGION 28**

**In the Matter of:**

**SHAMROCK FOODS COMPANY**

And

**ANDRES CONTRERAS, an Individual**

and

**THE BAKERY, CONFECTIONERY,  
TOBACCO WORKERS' AND GRAIN  
MILLERS INTERNATIONAL UNION, AFL-  
CIO/CLC**

Case Nos. 28-CA-161831  
28-CA-162851  
28-CA-165951

**RESPONDENT SHAMROCK FOODS COMPANY'S  
LIMITED CROSS EXCEPTIONS TO THE DECISION OF THE  
ADMINISTRATIVE LAW JUDGE**

August 19, 2016

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Shamrock Foods Company*

Pursuant to Section 102.46(e) of the National Labor Relations Board's Rules and Regulations, 29 C.F.R. § 102.46(e), Respondent Shamrock Foods Company files the limited cross exceptions set forth below to Administrative Law Judge Keltner W. Locke's Decision in the above-captioned case, dated June 10, 2016 ("ALJD"). The ALJ's decision was overwhelmingly correct, and the following cross exceptions are filed solely as a cautionary measure. Shamrock respectfully submits that the ALJ's decision should be adopted without modification. In addition, given the brevity of its cross exceptions, Shamrock will set forth the grounds for its cross exceptions herein, in lieu of filing a supporting brief.

Shamrock excepts as follows to the ALJD:

1. To the ALJ's finding that Shamrock first-level supervisor Leland Scott knew that certain employees who wore orange t-shirts to work in early 2015 did so to express their opposition to the Bakery, Confectionery, Tobacco Workers and Grain Millers' International Union (the "Union"). (ALJD at 8:14-15). Scott actually testified that he was not aware of these employees' sentiments regarding the Union:

Q. (*By Counsel for the GC*) They were wearing the shirts to show that they did not support the Union, right?

A. (*By Scott*) My understanding was that they were wearing the shirts not to be harassed. To be left alone. You know, "I don't want to be questioned, or asked, or given anything." You know, "I just want to work and go home."

Q. Harassed by Union's organizers, right?

A. By anybody. You know, they're -- they just want to do their job and go home. That's it.

Q. Well, there was a lot of talk about harassment in the warehouse, but that was in terms of employees getting approach to sign union cards, right?

A. I don't know specifically. All I know is that they just wanted to say hey, I'm here to work and I don't want to be bothered. So whether that was by either side, I don't know.

Q. But those employees didn't support the Union, right?

A. Again, I don't ask anybody. I don't know.

(Tr. 117:17-118:8). General Counsel introduced no evidence to impeach or otherwise contradict Scott's testimony in this regard. Accordingly, to the extent that it becomes relevant following consideration of General Counsel's exceptions (which it should not), this finding should not be adopted.

2. To the absence of a finding by the ALJ that purported discriminatees Benny Saenz and Marvin Woods would have been removed from modified duty even in the absence of their alleged protected activities. The ALJ was correct in all respects in his factual findings concerning Woods and Saenz removal from modified duty. (ALJD at 20:34-29:19). These findings wholly support the conclusion that Shamrock would have treated these individuals in the same manner regardless of their activities on behalf of the Union. Such a finding therefore should be entered.

Respectfully submitted,

**BAKER HOSTETLER LLP**



Todd A. Dawson  
Nancy Inesta

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 19th day of August, 2016, a true copy of the foregoing was filed electronically with the Executive Secretary. Copies were also sent by electronic mail to:

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A handwritten signature in blue ink, appearing to be 'S. Demirok', written over a horizontal line.

One of the Attorneys for  
Shamrock Foods Company