

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Washington, D.C.**

HIGH FLYING FOODS

and

Case 21-CA-135596

UNITE HERE! LOCAL 30

**COUNSEL FOR THE GENERAL COUNSEL'S
MOTION TO WITHDRAW EXCEPTIONS AND RECOMMENDATION
THAT THE BOARD ADOPT THE ALJD**

I. PROCEDURAL HISTORY

After a Complaint and Notice of Hearing issued against High Flying Foods (“Respondent”), an unfair labor practice hearing was held from January 12 to January 16, 2015, before Administrative Law Judge Charles J. Muhl (“ALJ”).

On May 19, 2015, the ALJ issued his decision and recommended order (“ALJD”). The ALJ found that Respondent violated Section 8(a)(1), (3), and (5) of the Act as alleged in the Complaint. However, the ALJ did not find, under the holding in *Alan Ritchey*, 359 NLRB 396 (2012), that Respondent violated Section 8(a)(1) and (5) by failing to provide notice and an opportunity to bargain before imposing discipline and termination on employees who were represented by Unite Here! Local 30 (“Union”), but not yet covered by a collective-bargaining agreement.

On June 15, 2015, the Counsel for the General Counsel (“General Counsel”) filed exceptions to the ALJD solely on the *Alan Ritchey* issue. Respondent did not file exceptions to the ALJD. And the Union also did not file exceptions to the ALJD.

II. GENERAL COUNSEL MOVES TO WITHDRAW THE EXCEPTIONS

In *Total Security Management, Inc.*, 364 NLRB No. 106 (August 26, 2016), the Board reaffirmed the holding of its decision in *Alan Ritchey*, but held that the relevant bargaining obligation described in that decision only applies to cases prospectively, and will not be required retroactively. Since the case in the instant matter arose prior to the Board’s decision in *Total Security Management*, Respondent had no obligation to bargain with the Union prior to imposing discipline and termination on employees not yet covered by a collective-bargaining agreement.

Accordingly, the General Counsel moves to withdraw its exceptions. As there are no exceptions pending in this case from any other party, the General Counsel also recommends that the Board adopt the ALJD.

Respectfully submitted,



Lisa E. McNeill
Counsel for the General Counsel
National Labor Relations Board
Region 21

Dated at Los Angeles, California, this 28th day of September, 2016.

STATEMENT OF SERVICE

I hereby certify that a copy of the **COUNSEL FOR THE GENERAL COUNSEL'S MOTION TO WITHDRAW EXCEPTIONS AND RECOMMENDATION THAT THE BOARD ADOPT THE ALJD** has been submitted by E-filing to the Executive Secretary of the NLRB, and that each party named below was served with a copy of the same document by e-mail on September 28, 2016.

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Dated at Los Angeles, California, this 28th day of September, 2016.