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

2 SISTERS FOOD GROUP, INC.

and

Cases 21-CA-38915

21-CA-38932

UNITED FOOD AND COMMERCIAL
WORKERS INTERNATIONAL UNION,
LOCAL 1167

2 SISTERS FOOD GROUP, INC.

Employer

and

Case 21-RC-21137

UNITED FOOD AND COMMERCIAL
WORKERS INTERNATIONAL UNION,
LOCAL 1167

Petitioner

COUNSEL FOR THE ACTING GENERAL COUNSEL'S BRIEF IN SUPPORT OF LIMITED EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION AND ORDER

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I. Issues Presented

A. Should the order include an affirmative requirement that the Respondent rescind and revoke its overbroad work rules and its mandatory arbitration rule that requires employees to waive their right to file charges with the Board?

B. Should the Notice to Employees be posted in Spanish, as well as English?

II. Procedural History

This case was heard before Administrative Law Judge Lana H. Parke pursuant to an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing dated October 28, 2009, and a Report on Challenged Ballots and Objections and Order Consolidating Cases and Notice of Hearing dated December 14, 2009. The Honorable Lana H. Parke (ALJ) issued her Decision on June 10, 2010, and found that Respondent violated Section 8(a)(1) and (3) of the Act by terminating employee Xonia Trespalacios, and violated Section 8(a)(1) of the Act by promulgating and maintaining overbroad work rules, and by promulgating and maintaining a mandatory arbitration rule that requires employees to waive their right to file charges with the Board. The ALJ also found that the Respondent engaged in conduct that warrants setting aside the election in Case 21-RC-21137 that was conducted on July 17, 2009.

III. Facts and Discussion

A. The Recommended Order Should be Modified

The Respondent maintains the following rules in its written Rules of Conduct, and the ALJ found that each of these rules is overbroad, in violation of Section 8(a)(1) of the Act:

Rule 11: Leaving department or the plant during a working shift without a supervisor's permission. (ALJD 10:1-22)

Rule 12: Stopping work before shift ends or taking unauthorized breaks. (ALJD 10:1-22)

Rule 28: Unauthorized soliciting of contributions on Respondent's premises. (ALJD 10:24-36)

Rule 33: Distributing printed matter on Respondent's premises without permission. (ALJD: 10:38-42)

Rule 35: Inability or unwillingness to work harmoniously with other employees. (ALJD 11:1-6)

In addition, the ALJ found that Respondent violated Section 8(a)(1) of the Act by maintaining an arbitration rule that requires employees to waive their right to file charges with the Board. (ALJD: 11: 10-31). However, the ALJ inadvertently failed to order that Respondent take the following affirmative action necessary to effectuate the policies of the Act: rescind and revoke the above-mentioned overbroad work rules and its mandatory arbitration rule that requires employees to waive their right to file charges with the Board. (ALJD 23:26 - 24:15). The recommended Notice to Employees includes a provision stating that the Respondent will rescind the above work rules. Therefore, the ALJ's recommended order should be modified to include an affirmative obligation that Respondent rescind and revoke its overbroad work rules and its mandatory arbitration rule that requires employees to waive their right to file charges with the Board.

B. The Recommended Notice to Employees Should be Posted in Spanish and English.

The ALJ's decision failed to include a requirement that Respondent post copies of the Notice to Employees in English and in Spanish. The record shows that most of Respondent's employees are Spanish-speaking. For example, Respondent prepared a script in English and Spanish for a speech delivered to the majority of employees on

July 13, 2009, concerning the termination of Ms. Trespalacios. (ALJD 7: 27-33). Such script was read to employees in English and in Spanish at the July 13, 2009 meeting. (ALJD 8:11-37). Furthermore, employee statements submitted to the Respondent related to the conduct of Ms. Trespalacios were written in Spanish. (Tr. 6:21-48). In addition, during the hearing most of the witnesses presented by Counsel for the Acting General Counsel and many of the witnesses presented by the Petitioner in Case 21-RC-21137 testified through the use of a certified Spanish-language translator. Caribe Staple Co., 313 NLRB 877, 877 (1994). In Counsel for the Acting General Counsel's Brief to the Administrative Law Judge, at page 48, it was requested that the notice be posted in English and Spanish. Therefore, Counsel for the Acting General Counsel requests that Respondent be ordered to post a copy of the Notice to Employees in both English and Spanish.

IV. Conclusion

Based on the foregoing, the record shows that the recommended order should be modified to accurately reflect the ALJ's findings, and that the Notice to Employees should be posted in English and Spanish.

V. Remedy

It is respectfully submitted that the ALJ's recommended order be amended, as follows:

A. To the recommended order, add the following language to fully reflect the violations found:

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Rescind and revoke its overbroad work rules and its mandatory arbitration rule that requires employees to waive their right to file charges with the Board.[1]

B. To the recommended order, modify the language in paragraph (e) as follows:

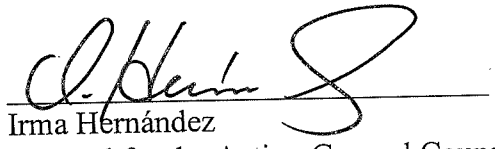
1. The current language in paragraph (e) of the recommended order states:

(e) Within 14 days after service by the Region, post at its facilities in Riverside, California, copies of the attached notice marked "Appendix."

2. Amend the above-quoted language in the order to state:

(e) Within 14 days after service by the Region, post at its facilities in Riverside, California, copies of the attached notice marked "Appendix" in English and Spanish.

Respectfully submitted,



Irma Hernández
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National Labor Relations Board
Region 21

Dated at Los Angeles, California, this 26th day of July, 2010.

[1] The subsequent paragraphs of the recommended order should be re-lettered accordingly.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Counsel for the Acting General Counsel's Brief in Support of Limited Exceptions to the Administrative Law Judge's Decision and Order in Cases 21-CA-38915, 21-CA-38932, and 21-RC-21137 was submitted by E-filing to the Office of the Executive Secretary of the National Labor Relations Board, on July 26, 2010. The following parties were served with a copy of the same document by electronic mail.

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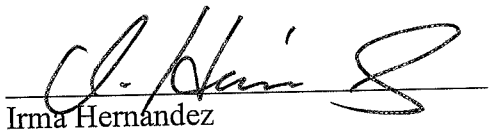

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