

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of:

FRED MEYER STORES, INC.,

Case No. 36-CA-10555

Employer,

and

UNITED FOOD & COMMERCIAL
WORKERS, LOCAL 555, affiliated with
UNITED FOOD AND COMMERCIAL
WORKERS INTERNATIONAL UNION,

Charging Party.

**RESPONDENT FRED MEYER STORES, INC.'S EXCEPTIONS TO
THE DECISION OF THE ADMINISTRATIVE LAW JUDGE**

Richard J. Alli, Jr.
Jennifer A. Sabovik
Bullard Smith Jernstedt Wilson
1000 SW Broadway, Suite 1900
503-248-1134/Telephone
503-224-8851/Facsimile
Attorneys for Fred Meyer Stores, Inc.

Pursuant to Section 102.46 of the Board's Rules and Regulations, Respondent Fred Meyer Stores, Inc. ("Employer") takes the following exceptions to the Decision of the Administrative Law Judge ("ALJ") Clifford H. Anderson issued in the above-referenced matter on December 8, 2010:

1. The ALJ erred in concluding that on October 15, 2009, the Union, through Jenny Reed and Brad Witt, sought Union visitation of represented employees at the Hillsboro store consistent with the terms of the parties' contract and past practice, and that Home Department Manager James Dostert denied the Union those rights. (Administrative Law Judge's Decision ("ALJD") 33:11-14, 42:15-28, 42:51-43:3.)

2. The ALJ erred in finding that the Employer violated Section 8(a)(1) of the National Labor Relations Act (the "Act") by causing the arrest of Jenny Reed. (ALJD 33:36-38; 42:43-45.)

3. The ALJ erred in finding that the Employer violated Section 8(a)(1) of the Act by causing the arrests of Mike Marshall and Dan Clay. (ALJD 34:15-17; 42:43-45.)

4. The ALJ erred in finding that the Employer violated Section 8(a)(1) of the Act by causing the criminal prosecution of Jenny Reed, Mike Marshall and Dan Clay. (ALJD 42:47-49.)

5. The ALJ erred in ordering the Employer to make the Union or the Union representatives whole for any and all legal, representational and related costs arising from the Reed, Marshall and Clay arrests and subsequent related proceedings, and to notify the appropriate law enforcement and court authorities of the illegality of the arrests and to seek expungement of associated records. (ALJD 43:35-39.)

6. The ALJ erred in finding that the Employer violated Section 8(a)(5) and (1) of the Act by limiting the Union agents' rights to contact represented store employees within its Hillsboro, Oregon facility on October 15, 2009, in a manner inconsistent with the parties' past practice, unilaterally changing the terms and conditions of Union represented employees within the store without notifying the Union, bargaining, with the Union respecting the change, or obtaining the Union's permission. (ALJD 42:51-43:3.)

7. The ALJ erred in finding that Dostert made disparaging remarks about the Union and its agents in the presence of employee Alicia England, and that the Employer thereby violated Section 8(a)(1) of the Act. (ALJD 37:24 – 38:54; 42:15-19, 30-33.)

8. The ALJ erred in finding that the Employer violated Section 8(a)(1) of the Act when Dostert instructed Loss Prevention Officer Mike Kline to contact the police. (ALJD 39:40-46, 42:39-41.)

Fred Meyer files herewith a Brief in Support of Fred Meyer Stores, Inc.'s Exceptions to Administrative Law Judge's Decision of December 8, 2010.

DATED: January 5, 2011.

BULLARD SMITH JERNSTEDT WILSON

By /s/ Richard J. Alli, Jr.

Richard J. Alli, Jr.
Jennifer A. Sabovik
503-248-1134/Telephone
503-224-8851/Facsimile
Attorneys for Fred Meyer Stores, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on January 5, 2011 I served the foregoing RESPONDENT
FRED MEYER STORES, INC.'S EXCEPTIONS TO THE DECISION OF THE
ADMINISTRATIVE LAW JUDGE on:

John Fawley
NLRB, Region 19
2948 Jackson Federal Building
915 Second Avenue
Seattle, WA 98174-1078
(206) 220-6326
john.fawley@nrb.gov

John S. Bishop
McKanna Bishop Joffe & Sullivan
1635 NW Johnson Street
Portland, OR 97209
jbishop@mbjlaw.com

- by **electronic** means through the Court's Case Management/Electronic Case File system, which will send automatic notification of filing to each person listed above.
- by **mailing** a true and correct copy to the last known address of each person listed. It was contained in a sealed envelope, with postage paid, addressed as stated above, and deposited with the U.S. Postal Service in Portland, Oregon.
- by causing a true and correct copy to be **hand-delivered** to the last known address of each person listed. It was contained in a sealed envelope and addressed as stated above.
- by causing a true and correct copy to be delivered **via overnight courier** to the last known address of each person listed. It was contained in a sealed envelope, with courier fees paid, and addressed as stated above.
- by **faxing** a true and correct copy to the last known facsimile number of each person listed, with confirmation of delivery. It was addressed as stated above.
- by **emailing** a true and correct copy to the last known email address of each person listed, with confirmation of delivery.

/s/ Richard J. Alli, Jr.

Richard J. Alli, Jr.

Jennifer A. Sabovik

Attorneys for Fred Meyer Stores, Inc.