

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

In the matter of

**K-VA-T FOOD STORES, INC.
D/B/A FOOD CITY**

and

**RETAIL, WHOLESALE & DEPARTMENT
STORE UNION, UFCW, CLC**

**Case 9-CA-46125
9-CA-46126
9-CA-46127
9-CA-46152
9-CA-46153**

**K-VA-T FOOD STORES, INC. D/B/A FOOD CITY'S EXCEPTIONS TO THE
DECISION OF THE ADMINISTRATIVE LAW JUDGE**

Pursuant to 102.46 of the National Labor Relations Board's Rules and Regulations, Respondent, K-VA-T Food Stores, Inc. D/B/A Food City, submits the following Brief in Support of its Exceptions to the Decision and Recommendation of the Administrative Law Judge Paul Bogas ("ALJ"), dated July 11, 2011 ("Recommendation").

EXCEPTION 1: Respondent excepts to the ALJ's finding that the Respondent's maintenance of an email from Glenda Burton's husband in her personnel file at the time of the alleged violations is evidence that the Respondent suspected, or had reason to suspect, Burton's support for unionization. (Recommendation p. 2, ll 46-51). The ALJ's finding is irrelevant to any questions of fact or law at issue in this case.

EXCEPTION 2: Respondent excepts to the ALJ's finding that Adam Baldrige "was concerned enough about Burton's union discussion with her co-workers that he required Burton to meet with him in his office." (Recommendation, p. 3, ll 3-4). The basis of this exception is the ALJ's erroneous recitation of and reliance on alleged facts that are not supported by the record and this finding of fact is contrary to the evidence.

EXCEPTION 3: Respondent excepts to the ALJ's finding that "Baldrige told Burton that he heard she had been talking about a union. He warned Burton that the presence of a union would mean he could no longer 'do anything for' employees, and she would 'have to go through a union rep...to do anything.'" (Recommendation, p. 3, ll 4-6). The basis of this exception is the ALJ's erroneous recitation of and reliance on alleged facts that are not supported by the record and this finding of fact is contrary to the evidence, and barred on inadmissible hear say.

EXCEPTION 4: Respondent excepts to the ALJ's finding that Burton's testimony was more credible than Baldrige and another manager (Cheryl Gowen) that Baldrige never mentioned unions, but only asked whether Burton was happy with her job. (Recommendation, p. 3, l 17). The basis of this exception is the ALJ's erroneous recitation of and reliance on alleged facts that are not supported by the record; and erroneous determinations of credibility.

EXCEPTION 5: Respondent excepts to the ALJ's finding that "Respondent disseminated an anti-union note to employees along with their paychecks." (Recommendation, p. 5, ll 26-27). The basis of this exception is the ALJ's erroneous recitation of and reliance on alleged facts that are not supported by the record and this finding of fact is contrary to the evidence.

EXCEPTION 6: Respondent excepts to the ALJ's finding that "Baldrige attempted to explain this apparent discrepancy by stating that Smith was the only employee who failed to attend without being excused by him." (Recommendation, p. 8, ll 9-10). The basis of this exception is the ALJ's erroneous recitation of and reliance on alleged facts that are not supported by the record and this finding of fact is contrary to the evidence.

EXCEPTION 7: Respondent excepts to the ALJ's finding that Respondent "dramatically" increased the presence of its direct supervisors at the Louisa store. (Recommendation, p. 9, ll 16). The basis of this exception is the ALJ's erroneous recitation of and reliance on alleged facts that are not supported by the record and this finding of fact is contrary to the evidence.

EXCEPTION 8: Respondent excepts to the ALJ's finding wherein he "infer[red] that the union organizing campaign was the reason that the Respondent dramatically increased the presence of direct supervisors at the Louisa store starting in September 2010. I base this on the totality of the evidence regarding the increase, and in particular on the fact that the increase in supervision coincided with the Respondent's discovery of the union campaign and the lack of another plausible explanation for that timing." (Recommendation, p. 10, ll 16). The basis of this exception is the ALJ's erroneous recitation of and reliance on alleged facts that are not supported by the record; and erroneous determinations of credibility.

EXCEPTION 9: Respondent excepts to the ALJ's finding that the "evidence establishes, however, that prior to the union campaign, the Respondent did not enforce this policy to preclude employees from making brief on-the-clock visits to the break room or the restroom." (Recommendation, p. 10, ll 27-28). The basis of this exception is the ALJ's erroneous recitation of and reliance on alleged facts that are not supported by the record; and erroneous determinations of credibility.

EXCEPTION 10: Respondent excepts to the ALJ's finding that "[e]mployees made such visits in the presence of management personnel, including Baldrige, but prior to the union campaign the managers did not make an issue of the behavior." (Recommendation, p. 10, ll 31-32). The basis of this exception is the ALJ's erroneous recitation of and reliance on alleged facts that are not supported by the record; and erroneous determinations of credibility.

EXCEPTION 11: Respondent excepts to the ALJ's rejection of Kevin Garrett's testimony. (Recommendation, p. 11, l 31). The basis of this exception is the ALJ's erroneous recitation of

and reliance on alleged facts that are not supported by the record; and erroneous determinations of credibility.

EXCEPTION 12: Respondent excepts to the ALJ's finding that "prior to October 23, Baldrige and other managers had frequently been present when employees paused in the break room without clocking out, but management had not discouraged that conduct." (Recommendation, p. 11, ll 37-40). The basis of this exception is the ALJ's erroneous recitation of and reliance on alleged facts that are not supported by the record and this finding of fact is contrary to the evidence.

EXCEPTION 13: Respondent excepts to the ALJ's finding that, according to Burton's testimony, she only made one visit to the break room that day. (Recommendation, p. 11, l 45). The basis of this exception is the ALJ's erroneous recitation of and reliance on alleged facts that are not supported by the record and this finding of fact is contrary to the evidence.

EXCEPTION 14: Respondent excepts to the ALJ's finding that "[t]o the extent that Baldrige's testimony can be seen as denying that he knew that, prior to October 23, employees visited the break room while on the clock I find that testimony implausible." (Recommendation, p. 11, ll 49-51). The basis of this exception is the ALJ's erroneous recitation of and reliance on alleged facts that are not supported by the record; and erroneous determinations of credibility.

EXCEPTION 15: Respondent excepts to the ALJ's finding that "Baldrige was so intent on providing testimony favorable to the Respondent on this score, that he even claimed that he never saw any employees come into the break room when they were *off* the clock." (Recommendation, p. 11-12, ll 51-53, 1-2). The basis of this exception is the ALJ's erroneous recitation of and reliance on alleged facts that are not supported by the record; and erroneous determinations of credibility.

EXCEPTION 16: Respondent excepts to the ALJ's determination that Jamie Vaughn's testimony concerning the pies and cakes is implausible. (Recommendation, p. 13, ll 39-44). The basis of this exception is the ALJ's erroneous recitation of and reliance on alleged facts that are not supported by the record; and erroneous determinations of credibility.

EXCEPTION 17: Respondent excepts to the ALJ's finding that "Vaughn and Baldrige gave inconsistent explanations for their selection of Burton for the pies and cakes assignment." (Recommendation, p. 14, ll 26-27). The basis of this exception is the ALJ's erroneous recitation of and reliance on alleged facts that are not supported by the record; and erroneous determinations of credibility.

EXCEPTION 18: Respondent excepts to the ALJ's finding that "Baldrige and Garrett witnessed the departure from the stated policy of keeping the door closed, but they did not discourage it." (Recommendation, p. 17, ll 20-21). The basis of this exception is the ALJ's erroneous recitation of and reliance on alleged facts that are not supported by the record; and erroneous determinations of credibility.

EXCEPTION 19: Respondent excepts to the ALJ's finding that the supervisory personnel had "dramatically increased starting in September 2010." (Recommendation, p. 17, l 25). The basis of this exception is the ALJ's erroneous recitation of and reliance on alleged facts that are not supported by the record and this finding of fact is contrary to the evidence.

EXCEPTION 20: Respondent excepts to the ALJ's finding that employees frequently made on-the-clock visits to the break room, and this was routinely permitted. The basis of this exception is the ALJ's erroneous recitation of and reliance on alleged facts that are not supported by the record; and erroneous determinations of credibility.

EXCEPTION 21: Respondent excepts to the ALJ's finding that the General Counsel met the second element of its initial burden. (Recommendation, p. 22, ll 42-43). The basis of this exception is the ALJ's misapplication of law, erroneous recitation of and reliance on alleged facts that are not supported by the record, disregard for key evidence and credible testimony; and erroneous determinations of credibility.

EXCEPTION 22: Respondent excepts to the ALJ's finding that the record establishes that the Respondent was aware of Burton's protected activity regarding unionization. (Recommendation, p. 22, ll 43-45). The basis of this exception is the ALJ's misapplication of law, erroneous recitation of and reliance on alleged facts that are not supported by the record, disregard for key evidence and credible testimony; and erroneous determinations of credibility.

EXCEPTION 23: Respondent excepts to the ALJ's finding that Baldrige met with Burton to argue against unionization. (Recommendation, p. 22, ll 49-50). The basis of this exception is the ALJ's erroneous recitation of and reliance on alleged facts that are not supported by the record and this finding of fact is contrary to the evidence; and erroneous determination of credibility.

EXCEPTION 24: Respondent excepts to the ALJ's finding concerning the weight of Baldrige's testimony concerning a meeting with Burton in 2009. The ALJ wrongly drew the following conclusion, "Baldrige testified about receiving that information in 2009, meaning that when the union campaign was reaching its peak, and during the time period when the alleged discrimination took place, he still remembered that Burton had discussed unionization in 2009." From there, the ALJ wrongly concluded that this evidence satisfies the second element of the General Counsel's initial burden. (Respondent, p. 22, ll 39-42). The basis of this exception is the ALJ's misapplication of law, erroneous recitation of and reliance on alleged facts that are not supported by the record, disregard for key evidence and credible testimony; and erroneous determinations of credibility.

EXCEPTION 25: Respondent excepts to the ALJ's finding that the "record as a whole supports an inference that when the Union campaign was fully underway, the Respondent concluded that Burton was an active union supporter." (Recommendation, p. 22, ll 43-45). The basis of this exception is the ALJ's erroneous recitation of and reliance on alleged facts that are not supported by the record; and erroneous determinations of credibility.

EXCEPTION 26: Respondent excepts to the ALJ placing any weight on a document in Burton's personnel file that "memorialized the pro-union statements of her spouse." (Recommendation, p. 22, l 47). The basis of this exception is the ALJ's erroneous recitation of and reliance on alleged facts that are not supported by the record and this finding of fact is contrary to the evidence.

EXCEPTION 27: Respondent excepts to the ALJ's inference that Burton was "sufficiently associated with employees' interest in unionization" that when another employee wanted to find out about union activity, he asked her. (Recommendation, p. 22, ll 48-50). The basis of this exception is the ALJ's erroneous recitation of and reliance on alleged facts that are not supported by the record and this finding of fact is contrary to the evidence.

EXCEPTION 28: Respondent excepts to the ALJ's finding that the General Counsel met the third element of its initial burden. (Recommendation, p. 23, ll 25-28). The basis of this exception is the ALJ's misapplication of law, erroneous recitation of and reliance on alleged facts that are not supported by the record, disregard for key evidence and credible testimony; and erroneous determinations of credibility.

EXCEPTION 29: Respondent excepts to the ALJ's finding that Respondent's animosity to unionization is well-documented by the record. (Recommendation, p. 23, ll 3-4). The basis of this exception is the ALJ's misapplication of law, and in particular, failure to accord 8(c) rights; erroneous recitation of and reliance on alleged facts that are not supported by the record, disregard for key evidence and credible testimony; and erroneous determinations of credibility.

EXCEPTION 30: Respondent excepts to the ALJ's finding that Baldrige met with Burton in an "effort to discourage her from supporting the idea of a union at the store." (Recommendation, p. 23, l 6). The basis of this exception is the ALJ's erroneous recitation of and reliance on alleged facts that are not supported by the record; and erroneous determinations of credibility.

EXCEPTION 31: Respondent excepts to the ALJ's finding that the Respondent's response to the union campaign is evidence of antiunion animosity. (Recommendation, p. 23, ll 3-4). The basis of this exception is the ALJ's misapplication of law, erroneous recitation of and reliance on alleged facts that are not supported by the record, disregard for key evidence and credible testimony; and erroneous determinations of credibility.

EXCEPTION 32: Respondent excepts to the ALJ's finding that the literature provided to employees concerning the union is evidence of antiunion animus. (Recommendation, p. 23, ll 8-9). The basis of this exception is the ALJ's misapplication of law, erroneous recitation of and reliance on alleged facts that are not supported by the record, disregard for key evidence and credible testimony; and erroneous determinations of credibility.

EXCEPTION 33: Respondent excepts to the ALJ's finding that statements in its handbook are evidence of antiunion animus. (Recommendation, p. 23, ll 11-13). The basis of this exception is the ALJ's misapplication of law, erroneous recitation of and reliance on alleged

facts that are not supported by the record, disregard for key evidence and credible testimony; and erroneous determinations of credibility.

EXCEPTION 34: Respondent excepts to the ALJ's finding that an old email exchange between Burton's husband and Donnie Meadows wherein Burton's husband expressed support for the union being retained in Burton's personnel file is evidence of antiunion animus, and further that Respondent would be required to offer an explanation for retaining this document. (Recommendation, p. 23, ll 21-24). The basis of this exception is the ALJ's misapplication of law, erroneous recitation of and reliance on alleged facts that are not supported by the record, disregard for key evidence and credible testimony; and erroneous determinations of credibility; the basis of this exception is the ALJ's erroneous recitation of and reliance on alleged facts that are not supported by the record and this finding of fact is contrary to the evidence.

EXCEPTION 35: Respondent excepts to the ALJ's finding that it had not demonstrated that the union's efforts were abandoned by October and November 2010. (Recommendation, p. 23, ll 39-42). The basis of this exception is the ALJ's erroneous recitation of and reliance on alleged facts that are not supported by the record and this finding of fact is contrary to the evidence.

EXCEPTION 36: Respondent excepts to the ALJ's finding that "based on the record as a whole" he determined that Respondent's antiunion animus was connected to its decision to discipline Burton on October 23. (Recommendation, p. 23, ll 30-31). The basis of this exception is the ALJ's misapplication of law, erroneous recitation of and reliance on alleged facts that are not supported by the record, disregard for key evidence and credible testimony; and erroneous determinations of credibility.

EXCEPTION 37: Respondent excepts to the ALJ's finding that before disciplining Burton, the Respondent had no written rule concerning being on the clock while on break. (Recommendation, p. 23, ll 34-35). The basis of this exception is the ALJ's erroneous recitation of and reliance on alleged facts that are not supported by the record and this finding of fact is contrary to the evidence.

EXCEPTION 38: Respondent excepts to the ALJ's finding that "Respondent's eagerness to seize upon the previously tolerated conduct to discipline Burton is evidence that the Respondent was motivated by the union campaign and the Respondent's knowledge of Burton's support for unionization. (Recommendation, p. 23-24, l 35, ll 1-2). The basis of this exception is the ALJ's misapplication of law, erroneous recitation of and reliance on alleged facts that are not supported by the record, disregard for key evidence and credible testimony; and erroneous determinations of credibility.

EXCEPTION 39: Respondent excepts to the ALJ's finding that Respondent "no longer allowed employees to have even brief conversations in the break room since those conversations might be used to support the Union, especially when one of the speakers was a know union sympathizer like Burton." (Recommendation, p. 24, ll 3-5). The basis of this exception is the ALJ's erroneous recitation of and reliance on alleged facts that are not supported by the record; and erroneous determinations of credibility.

EXCEPTION 40: Respondent excepts to the ALJ's conclusion that the union activists were disproportionately disciplined. (Recommendation, p. 24, ll 17-19). The basis of this exception is the ALJ's erroneous recitation of and reliance on alleged facts that are not supported by the record and this finding of fact is contrary to the evidence.

EXCEPTION 41: Respondent excepts to the ALJ's conclusion that Respondent did not demonstrate that it would have taken the same action absent the protected conduct. (Recommendation, p. 24, ll 26-28). The basis of this exception is the ALJ's misapplication of law, erroneous recitation of and reliance on alleged facts that are not supported by the record, disregard for key evidence and credible testimony; and erroneous determinations of credibility.

EXCEPTION 42: Respondent excepts to the ALJ's conclusion that Respondent violated Section 8(a)(3) of the Act by discrimination against Burton on the basis of union activity when it issued a verbal warning to her on October 23, 2010. (Recommendation, p. 25, ll 2-4). The basis of this exception is the ALJ's misapplication of law, erroneous recitation of and reliance on alleged facts that are not supported by the record, disregard for key evidence and credible testimony; and erroneous determinations of credibility.

EXCEPTION 43: Respondent excepts to the ALJ's finding that it violated Section 8(a)(3) on October 24, 2010, when it issued verbal warnings to Branham and Sweeney. (Recommendation, p. 25, ll 27-28). The basis of this exception is the ALJ's misapplication of law, erroneous recitation of and reliance on alleged facts that are not supported by the record, disregard for key evidence and credible testimony; and erroneous determinations of credibility.

EXCEPTION 44: Respondent excepts to the ALJ's finding that the time clock rule was an attempt to interfere with and discourage union activity. (Recommendation, p. 25, ll 42-43). The basis of this exception is the ALJ's misapplication of law, erroneous recitation of and reliance on alleged facts that are not supported by the record, disregard for key evidence and credible testimony; and erroneous determinations of credibility.

EXCEPTION 45: Respondent excepts to the ALJ's finding that the posting of an existing work rule interfered with, restrained, and coerced employees' exercise of their Section 7 rights in violation of Section 8(a)(1) of the Act, on October 23, 2010, it promulgated a new rule, and on October 25, when it posted the written policy. (Recommendation, p. 26, ll 1-5). The basis of this exception is the ALJ's misapplication of law, erroneous recitation of and reliance on alleged facts that are not supported by the record, disregard for key evidence and credible testimony; and erroneous determinations of credibility.

EXCEPTION 46: Respondent excepts to the ALJ's finding that the Respondent's antiunion animus is connected to its decision to assign the pies and cakes duties to Burton. (Recommendation, p. 26, ll 26-28). The basis of this exception is the ALJ's misapplication of law, erroneous recitation of and reliance on alleged facts that are not supported by the record, disregard for key evidence and credible testimony; and erroneous determinations of credibility.

EXCEPTION 47: Respondent excepts to the ALJ's finding that it failed to meet its responsive burden of showing that it would have assigned the more onerous duties to Burton on

November 3 even if she had not engaged in union activity. (Recommendation, p. 26, ll 39-41). The basis of this exception is the ALJ's misapplication of law, erroneous recitation of and reliance on alleged facts that are not supported by the record, disregard for key evidence and credible testimony; and erroneous determinations of credibility.

EXCEPTION 48: Respondent excepts to the ALJ's finding that Respondent "has failed to show that it would have reassigned the work from Baldrige to anybody else if not for the discriminatory motive." (Recommendation, p. 26, ll 41-42). The basis of this exception is the ALJ's misapplication of law, erroneous recitation of and reliance on alleged facts that are not supported by the record, disregard for key evidence and credible testimony; and erroneous determinations of credibility.

EXCEPTION 49: Respondent excepts to the ALJ's finding that "[e]ven if the Respondent had proven that it had a lawful reason for relieving Baldrige and Garrett of the assignment, it would still fail to meet its burden because it has not shown a legitimate reason for choosing Burton as the employee to whom the work was transferred." (Recommendation, p. 26-27, ll 46, ll 1-3). The basis of this exception is the ALJ's misapplication of law, erroneous recitation of and reliance on alleged facts that are not supported by the record, disregard for key evidence and credible testimony; and erroneous determinations of credibility.

EXCEPTION 50: Respondent excepts to the ALJ's finding that the Respondent discriminated in violation of Section 8(a)(3) by assigning additional and more onerous duties to Burton because of her protected union activity. (Recommendation, p. 27, ll 15-17). The basis of this exception is the ALJ's misapplication of law, erroneous recitation of and reliance on alleged facts that are not supported by the record, disregard for key evidence and credible testimony; and erroneous determinations of credibility.

EXCEPTION 51: Respondent excepts to the ALJ's finding that Respondent was targeting Burton because of her union activity. (Recommendation, p. 27, ll 23-24). The basis of this exception is the ALJ's misapplication of law, erroneous recitation of and reliance on alleged facts that are not supported by the record, disregard for key evidence and credible testimony; and erroneous determinations of credibility.

EXCEPTION 52: Respondent excepts to the ALJ's finding that Respondent failed to show that Burton would have received formal discipline for her tardiness on November 4 even in the absence of protected activity. (Recommendation, p. 27, ll 25-27). The basis of this exception is the ALJ's misapplication of law, erroneous recitation of and reliance on alleged facts that are not supported by the record, disregard for key evidence and credible testimony; and erroneous determinations of credibility.

EXCEPTION 53: Respondent excepts to the ALJ's finding that "concerns about the appearance of 'fairness' played a part in the Respondent's decision to finally stop tolerating Branham's tardiness just 3 days after it disciplined Burton for tardiness." (Recommendation, p. 27, ll 42-44). The basis of this exception is the ALJ's erroneous recitation of and reliance on alleged facts that are not supported by the record; and erroneous determinations of credibility.

EXCEPTION 54: Respondent excepts to the ALJ's finding that on November 4, 2010, Respondent discriminated in violation of Section 8(a)(3) when it disciplined Burton for tardiness. (Recommendation, p. 27, ll 46-47). The basis of this exception is the ALJ's misapplication of law, erroneous recitation of and reliance on alleged facts that are not supported by the record, disregard for key evidence and credible testimony; and erroneous determinations of credibility.

EXCEPTION 55: Respondent excepts to the ALJ's finding that Respondent failed to establish that the reasons it provided for Burton's termination caused it to discharge Burton absent discriminatory motive. (Recommendation, p. 29, ll 3-5). The basis of this exception is the ALJ's misapplication of law, erroneous recitation of and reliance on alleged facts that are not supported by the record, disregard for key evidence and credible testimony; and erroneous determinations of credibility.

EXCEPTION 56: Respondent excepts to the ALJ's finding that "absent the Respondent's unlawful motivation, it would have dismissed Burton for bringing a bag of her own Tupperware in through the receiving door." (Recommendation, p. 29, ll 7-9). The basis of this exception is the ALJ's misapplication of law, erroneous recitation of and reliance on alleged facts that are not supported by the record, disregard for key evidence and credible testimony; and erroneous determinations of credibility.

EXCEPTION 57: Respondent excepts to the ALJ's finding that there was "credible testimony that there was no policy against employees using that door to bring in personal items for their own use." (Recommendation, p. 29 ll 12-13). The basis of this exception is the ALJ's erroneous recitation of and reliance on alleged facts that are not supported by the record; and erroneous determinations of credibility.

EXCEPTION 58: Respondent excepts to the ALJ's finding that Respondent must prove that bringing a bag of personal items into the store through the receiving door meaningfully compromised security or created an increased risk of 'shrink' or other problems at the store." (Recommendation, p. 29, ll 18-20). The basis of this exception is the ALJ's misapplication of law, erroneous recitation of and reliance on alleged facts that are not supported by the record, disregard for key evidence and credible testimony; and erroneous determinations of credibility.

EXCEPTION 59: Respondent excepts to the ALJ's finding that Respondent has failed to show that Burton would have been discharged for leaving the back door open and unsecured for 7 to 8 minutes. (Recommendation, p. 29, ll 22-23). The basis of this exception is the ALJ's erroneous recitation of and reliance on alleged facts that are not supported by the record; and erroneous determinations of credibility.

EXCEPTION 60: Respondent excepts to the ALJ's finding that Respondent has not shown the existence of a nondiscriminatory explanation for its decision to depart from its practice of allowing employees to leave the door open, to strictly enforce its back door policies. (Recommendation, p. 29, ll 25-27). The basis of this exception is the ALJ's misapplication of law, erroneous recitation of and reliance on alleged facts that are not supported by the record, disregard for key evidence and credible testimony; and erroneous determinations of credibility.

EXCEPTION 61: Respondent excepts to the ALJ's determination that the back door was not left unguarded by Burton. (Recommendation, p. 29, ll 29-31 and 38-40). The basis of this exception is the ALJ's erroneous recitation of and reliance on alleged facts that are not supported by the record and this finding of fact is contrary to the evidence.

EXCEPTION 62: Respondent excepts to the ALJ's finding that it would have discharged Burton for failing to properly complete aspects of the pies and cakes assignment. (Recommendation, p. 29, ll 42-43). The basis of this exception is the ALJ's erroneous recitation of and reliance on alleged facts that are not supported by the record; and erroneous determinations of credibility.

EXCEPTION 63: Respondent excepts to the ALJ's finding that Respondent was "purposely setting Burton up for failure by assigning her additional work that it had previously determined was too burdensome to complete along with her existing duties." (Recommendation, p. 30, ll 5-6). The basis of this exception is the ALJ's erroneous recitation of and reliance on alleged facts that are not supported by the record; and erroneous determinations of credibility.

EXCEPTION 64: Respondent excepts to the ALJ's finding that "Respondent's supposed concern about keeping the vendor's representative waiting for 1 to 2 minutes seems disingenuous given that the Respondent had recently assigned Burton the pies and cakes work, which necessarily meant that Burton would often not be available in the receiving area when vendors arrived." (Recommendation, p. 30, ll 22-26). The basis of this exception is the ALJ's erroneous recitation of and reliance on alleged facts that are not supported by the record; and erroneous determinations of credibility.

EXCEPTION 65: Respondent excepts to the ALJ's finding that the Respondent violated Section 8(a)(3) on November 19, 2010, when it discriminatorily discharged her because of her protected union activity. (Recommendation, p. 30, ll 28-31). The basis of this exception is the ALJ's misapplication of law, erroneous recitation of and reliance on alleged facts that are not supported by the record, disregard for key evidence and credible testimony; and erroneous determinations of credibility.

EXCEPTION 66: Respondent excepts to the ALJ's finding that the General Counsel met the second element of its initial burden by demonstrating that the Respondent was aware of Martha Smith's comments to Cecil regarding the "superior wages at a unionized competitor and the connection between the Respondent's decision to increase supervision and its opposition to the union campaign." (Recommendation, p. 31, ll 20-22). The basis of this exception is the ALJ's misapplication of law, erroneous recitation of and reliance on alleged facts that are not supported by the record, disregard for key evidence and credible testimony; and erroneous determinations of credibility.

EXCEPTION 67: Respondent further excepts to the ALJ's finding that "Smith's comments to Cecil were tantamount to a declaration of support for the union campaign and were, I have no doubt, understood by Cecil as such." (Recommendation, p. 31, ll 22-24). The basis of this exception is the ALJ's erroneous recitation of and reliance on alleged facts that are not supported by the record and this finding of fact is contrary to the evidence.

EXCEPTION 68: Respondent excepts to the ALJ's finding the Respondent failed to show that it would have issued a written correction to Smith for missing the October 5 meeting if not for its antiunion motivation. (Recommendation, p. 31, ll 28-29). The basis of this exception is the ALJ's erroneous recitation of and reliance on alleged facts that are not supported by the record; and erroneous determinations of credibility.

EXCEPTION 69: Respondent excepts to the ALJ's finding that "Baldrige's claim that the difference in treatment is explained by the fact that he had excused all of the other employees in advance is not only unsupported by evidence other Baldrige's own self-serving testimony, but is contradicted by the evidence showing that at least some of the other employees who missed the mandatory meetings were not excused by Baldrige in advance." (Recommendation, p. 31, ll 32-36). The basis of this exception is the ALJ's erroneous recitation of and reliance on alleged facts that are not supported by the record; and erroneous determinations of credibility.

EXCEPTION 70: Respondent excepts to the ALJ's finding that the Respondent violated Section 8(a)(3) of the Act on October 6, 2011, when it issued a written correction to Smith. (Recommendation, p. 31, ll 46-47). The basis of this exception is the ALJ's misapplication of law, erroneous recitation of and reliance on alleged facts that are not supported by the record, disregard for key evidence and credible testimony; and erroneous determinations of credibility.

EXCEPTION 71: Respondent excepts to the ALJ's finding that Respondent violated Section 8(a)(3) when it discharged Smith on November 22 based on her actions on November 19. (Recommendation, p. 31, ll 49-50). The basis of this exception is the ALJ's misapplication of law, erroneous recitation of and reliance on alleged facts that are not supported by the record, disregard for key evidence and credible testimony; and erroneous determinations of credibility.

EXCEPTION 72: Respondent excepts to the ALJ's finding that Respondent's claim that it would have discharged Smith for "stealing time" is 'unpersuasive.'" (Recommendation, p. 32). Respondent excepts to the ALJ's finding that the numbers "are difficult to attribute to mere coincidence." (Recommendation, p. 32, ll 31-32). The basis of this exception is the ALJ's erroneous recitation of and reliance on alleged facts that are not supported by the record; and erroneous determinations of credibility.

EXCEPTION 73: Respondent excepts to the ALJ's finding that Respondent violated Section 8(a)(3) by discharging Smith on November 22, 2010, because she supported the Union. (Recommendation, p. 32, ll 35-36). The basis of this exception is the ALJ's misapplication of law, erroneous recitation of and reliance on alleged facts that are not supported by the record, disregard for key evidence and credible testimony; and erroneous determinations of credibility.

EXCEPTION 74: Respondent excepts to the ALJ's finding that the General Counsel met its burden to demonstrate the second element of its initial burden. (Recommendation, p. 32). The basis of this exception is the ALJ's misapplication of law, erroneous recitation of and reliance on alleged facts that are not supported by the record, disregard for key evidence and credible testimony; and erroneous determinations of credibility.

EXCEPTION 75: Respondent excepts to the ALJ's inference of knowledge on behalf of the Respondent concerning Kirk's alleged union activities. (Recommendation, p. 33, ll 5-8). The basis of this exception is the ALJ's misapplication of law, erroneous recitation of and reliance on alleged facts that are not supported by the record, disregard for key evidence and credible testimony; and erroneous determinations of credibility.

EXCEPTION 76: Respondent excepts to the ALJ's finding that "Respondent's decision to terminate Kirk on October 23 was not, on this record, consistent with the understanding regarding the temporary nature of her position." (Recommendation, p. 33, ll 46-47). The basis of this exception is the ALJ's erroneous recitation of and reliance on alleged facts that are not supported by the record and this finding of fact is contrary to the evidence.

EXCEPTION 77: Respondent excepts to the ALJ's finding that the Respondent failed to show that the timing of Kirk's termination was the result of Smith's request for additional help. (Recommendation, p. 33, ll 49-50). The basis of this exception is the ALJ's erroneous recitation of and reliance on alleged facts that are not supported by the record and this finding of fact is contrary to the evidence.

EXCEPTION 78: Respondent excepts to the ALJ's action in discrediting Baldrige's testimony on the number of employee hours he has to use each week, and claiming that this limitation precluded him from continuing to employ Kirk while also assigning a new full-time assistant scanning deputy. (Recommendation, p. 34, ll 3-6). The basis of this exception is the ALJ's erroneous recitation of and reliance on alleged facts that are not supported by the record; and erroneous determinations of credibility.

EXCEPTION 79: Respondent excepts to the ALJ's finding that Respondent discriminated in violation of Section 8(a)(3) by discharging Kirk on October 16, 2010, because of her support for the Union. (Recommendation, p. 34, ll 23-24). The basis of this exception is the ALJ's misapplication of law, erroneous recitation of and reliance on alleged facts that are not supported by the record, disregard for key evidence and credible testimony; and erroneous determinations of credibility.

EXCEPTION 80: Respondent excepts to the ALJ's conclusion that Respondent interfered with, restrained, and coerced employees in violation of Section 8(a)(1) of the Act on October 23, 2010, when, because of employees' union activities, it promulgated a new policy requiring employees to clock-out before entering the break room, and on October 25, 2010, when it posted a written policy to that effect. (Recommendation, p. 34, ll 35-38). The basis of this exception is the ALJ's misapplication of law, erroneous recitation of and reliance on alleged facts that are not supported by the record, disregard for key evidence and credible testimony; and erroneous determinations of credibility.

EXCEPTION 81: Respondent excepts to the ALJ's conclusion that Respondent violated Section 8(a)(3) on October 24, 2010, when it disciplined Branham and Sweeney for violating the unlawfully promulgated policy regarding employees' use of the break room. (Recommendation, p. 34, ll 40-43). The basis of this exception is the ALJ's misapplication of law, erroneous

recitation of and reliance on alleged facts that are not supported by the record, disregard for key evidence and credible testimony; and erroneous determinations of credibility.

EXCEPTION 82: Respondent excepts to the ALJ's conclusion that Respondent violated Section 8(a)(3) of the Act when it took the following disciplinary actions against employees because those employees engaged in protected union activities: on October 23, 2010, when it issued a verbal correction to Burton; on November 4, 2010, when it issued a verbal connection to Burton; on November 19, 2010, when it discharged Burton; on October 6, 2010, when it issued a written correction to Smith; on November 22, 2010, when it discharged Smith; and on October 16, 2010, when it discharged Kirk. (Recommendation, p. 34, ll 44-49). The basis of this exception is the ALJ's misapplication of law, erroneous recitation of and reliance on alleged facts that are not supported by the record, disregard for key evidence and credible testimony; and erroneous determinations of credibility.

EXCEPTION 83: Respondent excepts to the ALJ's conclusion that Respondent discriminated against Burton in violation of Section 8(a)(3) of the Act on November 3, 2010, by assigning her additional duties because she engaged in protected union activities. (Recommendation, p. 35, ll 1-3). The basis of this exception is the ALJ's misapplication of law, erroneous recitation of and reliance on alleged facts that are not supported by the record, disregard for key evidence and credible testimony; and erroneous determinations of credibility.

EXCEPTION 84: Respondent excepts to the ALJ's conclusion that the record does not establish that the Respondent discriminated against Burton in violation of Section 8(a)(3) of the Act on November 12, 2010, when it issued a written warning to her. (Recommendation, p. 35, ll 5-7). The basis of this exception is the ALJ's misapplication of law, erroneous recitation of and reliance on alleged facts that are not supported by the record, disregard for key evidence and credible testimony; and erroneous determinations of credibility.

Respectfully submitted,

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**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

In the matter of

**K-VA-T FOOD STORES, INC.
D/B/A FOOD CITY**

and

**RETAIL, WHOLESALE & DEPARTMENT
STORE UNION, UFCW, CLC**

**Case 9-CA-46125
9-CA-46126
9-CA-46127
9-CA-46152
9-CA-46153**

CERTIFICATE OF SERVICE

I, Ashley C. Pack, counsel for K-VA-T Food Stores, Inc. d/b/a Food City, do hereby certify that the foregoing **K-VA-T Food Stores, Inc. d/b/a Food City Exceptions to the Decision of the Administrative Law Judge** was filed via the National Labor Relations Board's electronic filing system on the following this 24th day of August, 2011:

Lester A. Heltzer, Executive Secretary
Board's Office of the Executive Secretary
1099 14th Street N.W.
Washington, DC 20570

and that true and exact copies of the same were served on the following via electronic mail this the 24th day of August, 2011:

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