

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

IN THE MATTER OF:

ALBERTSON'S, LLC,

Respondent,

YVONNE MARTINEZ, an Individual,

and

**Case Nos. 28-CA-023387
 28-CA-023538**

**UNITED FOOD AND COMMERCIAL WORKERS
UNION, LOCAL 1564,**

Charging Parties.

**RESPONDENT ALBERTSON'S, LLC'S EXCEPTIONS
TO ADMINISTRATIVE LAW JUDGE'S DECISION**

Respondent Albertson's, LLC ("Albertson's" or "Company"), pursuant to Section 102.46 of the Board's Rules and Regulations, submits the following exceptions to Administrative Law Judge ("ALJ") William L. Schmidt's May 24, 2012 Decision ("Decision") in the above-captioned case.

A. Danny Ma's Alleged Solicitation of Grievances (Complaint ¶ 5(i))

Albertson's takes exception to the ALJ's finding that Danny Ma unlawfully solicited and promised to remedy employee grievances in violation of Section 8(a)(1). (Decision at 16:19-17:11.) The ALJ erred in finding that Ma made a new and unusual effort to resolve employee complaints and in finding that he solicited and impliedly promised to remedy Talie Perea's concerns. Albertson's relies on the following portions of the record: Tr. 789-91, 938, 940, 1626.

B. Alice Andrick's Alleged Threat of Discharge and Implication of Surveillance (Complaint ¶¶ 4, 5(m), 5(n))

Albertson's takes exception to the ALJ's finding that Alice Andrick acted as the Company's apparent agent in creating the impression of surveillance and in threatening Perea with discharge in violation of Section 8(a)(1). (Decision at 7:21-31, 26:14-17, 27:18-37.) The ALJ erred in finding that Perea would reasonably believe Andrick was reflecting company policy and speaking and acting for management when she made the comments at issue. Albertson's relies on the following portions of the record: Tr. 792-96, 913-15.

C. Don Merritt's Alleged Surveillance of Union Activities (Complaint ¶ 5(r))

Albertson's takes exception to the ALJ's finding that the Company conducted unlawful surveillance of Union activities in violation of Section 8(a)(1). (Decision at 26:6-14.) The ALJ erred in relying on lawful reports and observation of Union activity and in finding that improper surveillance occurred without evidence that management actually witnessed protected activities through out-of-the-ordinary monitoring measures. Albertson's relies on the following portions of the record: GC Exs. 24, 25, 26, 30; Resp. Ex. 4; Tr. 358-62, 372, 375-79, 382, 385-92.

D. Suspension and Discharge of Yvonne Martinez (Complaint ¶ 6(a)-(b))

Albertson's takes exception to the ALJ's finding that the Company suspended and discharged Yvonne Martinez because of her Union activities in violation of Section 8(a)(1) and (3). (Decision at 42:10-45:31.) The ALJ erred in finding that the effective decision-maker knew of protected activity by Martinez and in finding that Albertson's failed to show it would have suspended and discharged Martinez absent her protected conduct. Albertson's relies on the

following portions of the record: Resp. Exs. 18-21, 25; Tr. 35, 94-96, 112, 114, 154, 288, 443, 593, 644, 867, 1159, 1326-27, 1518, 1521.

Respectfully submitted,

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

By



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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Respondent Albertson's, LLC's Exceptions to Administrative Law Judge's Decision was served on this 21st day of June, 2012 as follows:

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