



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, D.C. 20570

August 28, 2012

[REDACTED]
WEINBERG ROGER & ROSENFELD
1001 MARINA VILLAGE PKWY STE 200
ALAMEDA, CA 94501-6430

Re: Tesco, plc New Tesco House/Fresh & Easy
Neighborhood Market
Case 31-CA-077074

Dear [REDACTED]:

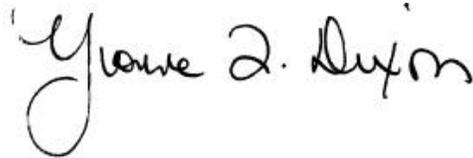
Your appeal from the Regional Director's refusal to issue complaint has been carefully considered. The appeal is denied substantially for the reasons in the Regional Director's letter of July 25, 2012.

More specifically, the Region properly dismissed the allegation against Tesco itself as that entity is a British company not shown to independently conduct business in the United States. The NLRA does not apply where the United States lacks sovereignty or some measure of control in the territory at issue. The Supreme Court has explained, "[e]ven though the NLRA contain[s] broad language that refer[s] by its terms to foreign commerce, § 152(6), this Court refused to find a congressional intent to apply the statute abroad because there was not 'any specific language' in the Act reflecting congressional intent to do so." *EEOC v. Arabian American Oil Co.*, 499 U.S. 244, 248, 251-52 (1991) (citing *McCulloch v. Sociedad Nacional de Marineros de Honduras*, 372 U.S. 10, 19 (1963)). No evidence was presented that Tesco itself is engaged in any commerce in the United States. Compare *State Bank of India v. NLRB*, 808 F.2d 526, 533 (7th Cir. 1986) ("In contrast to the foreign employers of foreign crewmen . . . the record establishes that the State Bank [of India] is doing business in the United States and in fact has made it clear that they intend to expand their market share in this country."). The fact that it is a parent company for Fresh & Easy does not warrant a different conclusion. In this regard, your reliance on *Tesco PLC d/b/a Fresh & Easy Neighborhood Market, Inc.*, 358 NLRB No. 65 (June 25, 2012), was misplaced. In that case, the charge was filed against Tesco doing business as Fresh & Easy, whereas in the instant matter the charge was framed seeking separate liability

against Tesco. Accordingly, further proceedings are unwarranted.

Sincerely,

Lafe E. Solomon
Acting General Counsel

By: 

Yvonne T. Dixon, Director
Office of Appeals

cc: MORI PAM RUBIN, Regional Director
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