

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31**

**FRESH & EASY NEIGHBORHOOD
MARKET, INC.**

and

**Cases: 31-CA-077074
31-CA-080734**

**UNITED FOOD AND COMMERCIAL
WORKERS INTERNATIONAL UNION**

MOTION TO DISMISS REVISED CONSOLIDATED COMPLAINT

Pursuant to Section 102.24 of the Rules and Regulations of the National Labor Relations Board (“NLRB”), Respondent Fresh & Easy Neighborhood Market, Inc. (“Fresh & Easy”) moves to dismiss the Order Consolidating Cases, Consolidated Complaint and Notice of Hearing (“Revised Consolidated Complaint”) issued by the Regional Director of Region 31 of the National Labor Relations Board (“Region”) in its entirety.

As demonstrated below, the Revised Consolidated Complaint should be dismissed due to the Region’s failure to properly serve Fresh & Easy’s counsel of record with the Revised Consolidated Complaint, and various other pleadings and correspondence regarding the status and merits of the underlying unfair labor practice (“ULP”) charges. As a result of these repeated failures in effecting proper service, the Revised Consolidated Complaint should be dismissed in its entirety.

The Revised Consolidated Complaint also should be dismissed because its bare and conclusory allegations fail to comply with basic notice pleading requirements and with fundamental principles of due process. As discussed more fully below, the underlying charges allege two mutually exclusive theories as to how Fresh & Easy violated the National Labor Relations Act (“Act”). The Revised Consolidated Complaint fails to provide the employer with

notice of which of these two theories the Region intends to pursue at the hearing. Because Fresh & Easy has not received adequate notice as to the allegations it must defend against at the hearing, the Revised Consolidated Complaint deprives Fresh & Easy of its Constitutional right to due process and should be dismissed.

Finally, dismissal is appropriate because the Revised Consolidated Complaint fails to state a claim upon which relief can be granted. Indeed, the Region neglected to plead any facts that suggest that the policy at issue was published or disseminated to employees, or that any employees were aware of the policy. Absent these indispensable factual allegations, the Region cannot establish a violation of Section 8(a)(1) of the Act.

I. BACKGROUND OF THE ULP CHARGES AND ISSUANCE OF THE REVISED CONSOLIDATED COMPLAINT

A. The Conflicting and Inconsistent ULP Allegations

On March 15, 2012,¹ the charging party United Food and Commercial Workers International Union (“Union”) filed an ULP charge against Tesco, PLC (“Tesco”) and Fresh & Easy in Case No. 31-CA-077074. The charge alleges that Tesco and Fresh & Easy “maintained unlawful rules in their ‘Code of Business Conduct’ which interfered with rights guaranteed by Section 7 of the Act.” (Exhibit A.) On April 19, the Region sent a letter to the undersigned counsel seeking information in Case No. 31-CA-077074. (Exhibit B.) The letter asserted that the Union’s evidence suggested a *prima facie* case that Fresh & Easy, a wholly owned subsidiary of Tesco, maintained unlawful rules in its Code of Business Conduct, which is available on Tesco’s website. *Id.* Fresh & Easy responded to these allegations on April 26, noting that the Union’s charge related only to a policy of Tesco, a company headquartered in the United

¹ All dates in this motion occurred in 2012, unless otherwise noted.

Kingdom that has no operations in the United States. Fresh & Easy explained that it was aware of no evidence that Tesco's policy applied to Fresh & Easy's employees. (Exhibit C.)

In what appeared to be an attempt to create a violation where none existed, on May 1, the Region responded by asserting an entirely new theory as to how Fresh & Easy allegedly violated the Act. Specifically, the Region alleged that the violation was based on the fact that "Fresh and Easy maintains its own Code of Conduct" and that "the language of these provisions is identical to that found in Tesco's Code of Business Conduct." (Exhibit D.) In other words, the alleged violation arising out of Tesco's policy had nothing to do with the application of Tesco's policy. Rather, Fresh & Easy violated the Act merely by having a policy that was the same as Tesco's policy, even while the Region was not challenging Fresh & Easy's own policy.

Fresh & Easy responded to the Region's shifting theory of the case on May 3, noting that the new allegations rested on the same flawed foundation as the original charge. (Exhibit E.) Fresh & Easy noted that, although the charge alleged that Tesco's policy "somehow constitutes a violation by Fresh & Easy[.]" it appeared that the Region was suggesting "that the violation is based on Fresh & Easy's policy, even though there is no charge to that affect." *Id.* Fresh & Easy noted that "absent a clear charge . . . asking [Fresh & Easy] to address these mutually exclusive theories . . . raise[s] some serious and fundamental due process issues." *Id.*

The Region responded by noting only that the charge alleged that both Tesco and Fresh & Easy "maintained unlawful rules in their Code of Business Conduct[.]" but did not address the obvious flaw in the charge. (Exhibit F.) Apparently recognizing the deficiencies in the charge in Case No. 31-CA-077074, the Union filed a new charge against Fresh & Easy in Case No. 31-CA-080734 on May 9. The new charge conflicted directly with the earlier charge, claiming that it was Fresh & Easy's own Code of Business Conduct policy "which interfered with rights

guaranteed by Section 7 of the Act.” (Exhibit G.) Thus, depending on which charge one looked, the Region was alleging that Fresh & Easy had violated that Act either by applying the Tesco policy, the Fresh & Easy policy, or both.

On July 25, the Region recognized that its attempt to impose liability on Tesco violated the prohibitions on extraterritorial application of the Act. On that date, the Acting Regional Director issued a determination in Case No. 31-CA-077074 dismissing the allegations against Tesco on the grounds that the investigation failed to establish that Tesco is an employer engaged in commerce within the meaning of the Act. (Exhibit H.) The Union appealed the Regional Director’s dismissal to the Acting General Counsel. On August 28, 2012, the Acting General Counsel denied the Union’s appeal citing the reasons set forth in the Acting Regional Director’s July 25 dismissal letter. (Exhibit I.) On September 4, the Union sent a letter to the Acting General Counsel moving for reconsideration of the Region’s decision to dismiss the charge against Tesco. By letter dated September 21, the Acting General Counsel responded to the Union’s letter and request for reconsideration by denying the request and affirming the Region’s prior decision dismissing the allegations. (Exhibit J.)

Ultimately, on October 22, the Region issued a Consolidated Complaint and Notice of Hearing (“Original Complaint”) in Case Nos. 31-CA-077074 and 31-CA-080734. The following day, on October 23, the Region issued the Revised Consolidated Complaint due to the fact that the Original Complaint contained “various formatting errors.” (Exhibit K.) The Revised Consolidated Complaint preserves the two conflicting charges against Fresh & Easy, one relating to Tesco’s policy and the other to Fresh & Easy’s policy. The Revised Consolidated Complaint draws no specific distinctions between the policies nor does it include any allegations as to how Fresh & Easy violated the Act with respect to both policies. Instead, it broadly alleges that Fresh

& Easy violated the Act by maintaining a rule requiring employees to “[k]eep customer and employee information secure. Information must be used fairly, lawfully, and only for the purpose for which it was obtained.” *See* Consolidated Complaint at ¶¶ 5 and 6.

B. The Region’s Repeated and Inexcusable Failures to Serve Respondent

Throughout the investigation of the above-referenced ULP charges, the Region has neglected to serve Fresh & Easy’s counsel of record with correspondence and pleadings related to the Union’s allegations. For example, the Region neglected to serve the July 25 determination in Case No. 31-CA-077074 upon Fresh & Easy’s counsel of record, and counsel was not aware that a determination had been issued. *Id.*

Similarly, Fresh & Easy’s counsel of record was not served with the Union’s appeal or request for reconsideration of the determination, or the Acting General Counsel’s decisions denying the Union’s appeal and request for reconsideration. As a result, Fresh & Easy was not aware of these correspondence.

On October 4, Fresh & Easy’s Director of Employee Relations forwarded the September 21 letter from the Acting General Counsel denying the Union’s request for reconsideration to the undersigned counsel. That same day, counsel contacted Field Examiner Miguel Manriquez via telephone to inquire as to why Fresh & Easy’s counsel of record had not received the determination, appeal, letter requesting reconsideration, and other correspondence related to the charge. Mr. Manriquez stated that its failure to serve was an inadvertent error and assured counsel that it would be properly served with future correspondence related to these cases.

Despite these assurances, the Region’s failure to properly serve counsel continued. Indeed, the Region failed to serve counsel of record with the Original Complaint, and Fresh & Easy was not even aware that it had been issued. Fresh & Easy has yet to receive a copy of this

pleading. Further, despite the fact that the Revised Consolidated Complaint was issued on October 23, Fresh & Easy's counsel of record did not receive a copy of the Revised Consolidated Complaint until November 1 when it received a copy through regular mail, just five (5) calendar days before Fresh & Easy's Answer was due.

II. ARGUMENT

A. The Revised Consolidated Complaint should be Dismissed as a Sanction for the Region's Repeated Failure to Properly Serve Fresh & Easy

The Region's repeated failure to properly serve Fresh & Easy's counsel of record is grounds for dismissal of the Revised Consolidated Complaint. As discussed above, the undersigned counsel filed notices of appearance in the above-captioned matters shortly after the underlying ULP charges were filed, and the Region has been aware of this representation at all times. Nonetheless, the Region inexplicably neglected to serve counsel with correspondence and pleadings concerning the status and merits of the charges. Most egregiously, the Region failed to serve the undersigned counsel with the Original Complaint, and counsel of record did not receive a copy of the Revised Consolidated Complaint until November 1, 2012, over a week after the Revised Consolidated Complaint was issued, and only five (5) calendar days before Fresh & Easy's answer is due.²

The Region's failure to effect proper and timely service of the Original and Revised Consolidated Complaints is particularly troubling because, as discussed above, Fresh & Easy's counsel had previously notified the Region that it had not received various correspondence related to the Region's decision to dismiss Case No. 31-CA-077074 as to Tesco, and the Region had provided assurances that it would correct these deficiencies.

² Notably, the Revised Consolidated Complaint was served via regular mail, and the Region did not send a courtesy copy via email despite the fact that the Region and Fresh & Easy's counsel of record had regularly communicated through email.

The Region's continued failure to abide by the Board's established service rules has prejudiced Fresh & Easy because it has reduced the amount of time that Fresh & Easy has to respond to the Revised Consolidated Complaint to a mere five (5) days. Accordingly, dismissal of the Revised Consolidated Complaint is warranted. *See Hard Rock Café v. Lee*, 2011 WL 1304598, at *5 (S. Ct. V.I. Mar. 4, 2011) (dismissing complaint due to agency's misconduct that resulted in prejudice to defendant's rights).

B. The Region's Issuance of a Complaint Alleging Mutually Exclusive Theories Violates Fresh & Easy's Constitutional Right of Due Process

Fundamental principles of due process also require dismissal, as the Revised Consolidated Complaint fails to provide fair notice to Fresh & Easy of the allegations it must defend at the hearing. As a general rule, notice and an opportunity for a hearing are essential to due process in proceedings of an administrative character affecting a person's liberty or property, where the agency performs adjudicatory functions, acts in a judicial or quasi-judicial capacity, or takes action on the basis of adjudicative facts. *See, e.g., Kwong Hai Chew v. Colding*, 344 U.S. 590 (1953); *Gonzales v. U.S.*, 348 U.S. 407 (1955). The notice must be adequate and reasonably calculated to inform the parties of administrative proceedings which may directly and adversely affect their legally protected interests, the claims of opposing parties, and the issues in controversy. *See, e.g., Huntley v. North Carolina State Bd. of Ed.*, 493 F.2d 1016 (4th Cir. 1974); *Intercontinental Industries, Inc. v. American Stock Exchange*, 452 F.2d 935 (5th Cir. 1971).

"Fundamental to our legal system is the requirement that, before a judgment or enforceable order is entered against a person, some form of pleading, giving notice of the charges, must be served upon that person. Unfair labor practice proceedings are no exception to that rule." *NLRB v. H.P. Townsend Mfg. Co.*, 101 F.3d 292, 294 (2nd Cir. 1996). "Due process

requires that persons charged with unlawful conduct be given prior notice of the charges and an opportunity to be heard in defense before the government can take enforcement action.” *Soule Glass & Glazing Co. v. NLRB*, 652 F.2d 1055, 1073 (1st Cir. 1981), abrogated on other grounds, *NLRB v. Curtin Matheson Scientific Inc.*, 494 U.S. 775, 786 n.7 (1990).

It is absolutely critical for the Complaint in an unfair labor practice case to provide fair “notice of the charges and of a hearing to determine them.” *H.P. Townsend Mfg. Co.*, 101 F.3d at 294 (citations omitted). That notice “must inform the respondent of the acts forming the basis of the complaint.” *Id.* (quoting *Pergament United Sales, Inc. v. NLRB*, 920 F.2d 130, 135 (2d Cir. 1990)). Further, the Administrative Procedure Act provides that “(p)ersons entitled to notice of an agency hearing shall be timely informed of . . . the matters of fact and law asserted.” 5 U.S.C. § 554(b)(3).

A NLRB complaint, “much like a pleading in a proceeding before a court, is designed to notify the adverse party of the claims that are to be adjudicated so that he may prepare his case, and to set a standard of relevance which shall govern the proceedings at the hearing.” *H.P. Townsend Mfg. Co.*, 101 F.3d at 295 (quoting *Douds v. Int’l Longshoremen’s Ass’n*, 241 F.2d 278, 283 (2nd Cir. 1957)). The “(f)ailure to clearly define the issues and advise an employer charged with a violation . . . of the specific complaint he must meet and provide a full hearing upon the issue presented is . . . to deny procedural due process of law.” *Soule Glass & Glazing Co.*, 652 F.2d at 1074 (quoting *J.C. Penney Co. v. NLRB*, 384 F.2d 479, 483 (10th Cir. 1967)).

In the instant matter, the ULP charges underlying the Revised Consolidated Complaint allege two mutually exclusive theories of a violation. The charge in Case No. 31-CA-077074 appears to allege that Fresh & Easy’s application of Tesco’s Code of Business Conduct violates the Act. That allegation, however, is contradicted directly by the charge in Case No. 31-CA-

080734, which alleges that it is Fresh & Easy's own Code of Business Conduct that violates the Act. Clearly, these two allegations are mutually exclusive, as both policies cannot apply. If the General Counsel, who is the "master of the complaint and controls the theory of the case", *Fineberg Packing Co.*, 349 N.L.R.B. 294, 296 (2007), cannot determine which of the two conflicting theories applies, Fresh & Easy obviously could not have fair notice of the allegations it must defend against.

Notably, the ambiguous remedy sought by the Region in the Revised Consolidated Complaint highlights the due process concerns raised by the Region's failure to identify the theory it intends to argue at trial. The Revised Consolidated Complaint seeks an Order requiring Fresh & Easy to rescind the allegedly unlawful policy, yet it fails to identify whether it is Tesco's policy or Fresh & Easy's policy that is at issue. As a result, it is unclear whether the Region is seeking an order requiring Tesco to rescind its policy, an order requiring Fresh & Easy to rescind Tesco's policy, or an order requiring Fresh & Easy to rescind its own policy.

The substantial confusion created by the proposed remedy illustrates the significance of the due process issues presented here. If the Tesco policy is at issue, Fresh & Easy, the only respondent in this case, has no power to rescind or otherwise address that policy. Such a complaint would be subject to immediate dismissal because any order would be an impermissible extra-territorial application of the Act. Indeed, it was for this very reason that the Region dismissed the underlying charge against Tesco, noting that "[n]o evidence was presented that Tesco itself is engaged in any commerce in the United States." (*See Exhibit K.*)

If it is the Fresh & Easy policy that is at issue, then the request for recession is pointless. As the Region well knows, yet failed to include in its Revised Consolidated Complaint, Fresh & Easy already has rescinded its version of the policy at issue in Case No. 31-CA-080734. .

In sum, by issuing the Revised Consolidated Complaint without providing a single, coherent theory of a violation, the Region has acted in a manner that fails to satisfy minimal due process guarantees. Under such circumstances, the Board should dismiss the Revised Consolidated Complaint in full. *See, e.g., Pure Chem. Corp.*, 192 N.L.R.B. 681, 682 (1971).

C. The Revised Consolidated Complaint Fails to State a Claim Upon Which Relief Can be Granted

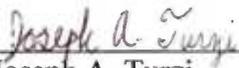
Dismissal also is appropriate because the allegations in the Revised Consolidated Complaint themselves are substantively deficient. The Revised Consolidated Complaint alleges that Fresh & Easy has maintained a rule requiring employees to “[k]eep customer and employee information secure” and use such information “fairly, lawfully and only for the purpose for which it was obtained[.]” *See* Revised Consolidated Complaint at ¶ 5. The Revised Consolidated Complaint also alleges that this policy interferes with employees’ Section 7 rights. *See id.* at ¶ 6.

Conspicuously absent from the Revised Consolidated Complaint, however, is any allegation that Fresh & Easy disseminated or otherwise published this policy to its employees, or that any employees are even aware of this policy. Without pleading these essential facts, the allegations in the Revised Consolidated Complaint do not establish a violation of Section 8(a)(1). *See Loparex, LLC*, 353 N.L.R.B. 1224, 1227, 1233 fn. 13 (2009) (complaint allegation that employer’s work rule violated Section 8(a)(1) dismissed because evidence did not show that rule was published to employees); *St. Francis Hotel*, 260 N.L.R.B. 1259, 1260-61 (1982) (same). As a result of the Region’s failure to plead necessary and indispensable facts, the Revised Consolidated Complaint should be dismissed.

III. CONCLUSION

For the foregoing reasons, the Revised Consolidated Complaint should be dismissed in its entirety.

Respectfully Submitted,

 ^{NRH}

Joseph A. Turzi

Jamie Konn

DLA Piper LLP (US)

500 8th Street, NW

Washington, DC 20004

Counsel for Fresh & Easy Neighborhood Market, Inc.

CERTIFICATE OF SERVICE

I hereby certify that, on this 7th day of November 2012, a copy of the foregoing Motion to Dismiss Consolidated Complaint was filed electronically and sent via overnight delivery to the following:

Brian Gee, Acting Regional Director
National Labor Relations Board
Region 31
11150 W. Olympic Boulevard, Suite 700
Los Angeles, CA 90064

David A. Rosenfeld,
Weinberg Roger & Rosenfeld PC
1001 Marina Village Parkway, Ste. 200
Alameda, CA 94501-1092

Nicholas R. Hankins
An Employee of DLA Piper LLP (US)

Date: Nov. 7, 2012

Exhibit A



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
REGION 31
11150 W OLYMPIC BLVD
STE 700
LOS ANGELES, CA 90064-1825

Agency Website: www.nlr.gov
Telephone: (310)235-7351
Fax: (310)235-7420

March 27, 2012

PHILLIP MASON
FRESH & EASY NEIGHBORHOOD MARKET
2120 PARK PL, STE 200
EL SEGUNDO, CA 90245-4741

PHILIP CLARKE
TESCO, PLC
NEW TESCO HOUSE,
DELAMARE ROAD
CHESHNUT, HERTFORDSHIRE
ENLAND EN8 9SL
UNITED KINGDOM

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

Dear Mr. Mason and Mr. Clarke:

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Attorney JOHN A. RUBIN whose telephone number is (310)235-7632. If this Board agent is not available, you may contact Supervisory Field Attorney JOANNA SILVERMAN whose telephone number is (310)235-7459.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, www.nlr.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts

and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board agent. Sending us your written account of the facts and a statement of your position is not enough to be considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor any request to place limitations on our use of position statements or evidence beyond those prescribed by the Freedom of Information Act and the Federal Records Act. Thus, we will not honor any claim of confidentiality except as provided by Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4), and any material you submit may be introduced as evidence at any hearing before an administrative law judge. We are also required by the Federal Records Act to keep copies of documents gathered in our investigation for some years after a case closes. Further, the Freedom of Information Act may require that we disclose such records in closed cases upon request, unless there is an applicable exemption. Examples of those exemptions are those that protect confidential financial information or personal privacy interests.

Procedures: We strongly urge everyone to submit all documents and other materials (except unfair labor practice charges and representation petitions) by E-Filing (not e-mailing) through our website, www.nlr.gov. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlr.gov or from an NLRB office upon your request. NLRB Form 4541 offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

Mori Pam Rubin

Mori Pam Rubin
Acting Regional Director

Enclosures:

1. Copy of Charge
2. Commerce Questionnaire

INTERNET
FORM NLRB-501
(2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

FORM EXEMPT UNDER 44 U.S.C. 3052

DO NOT WRITE IN THIS SPACE	
Case 31-CA-077074	Date Filed 3-15-12

INSTRUCTIONS:

File an original with NLRB Regional Director for the Region in which the alleged unfair labor practice occurred or is occurring

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT		
a. Name of Employer SEE ATTACHMENT.		b. Tel. No. SEE ATTACHMENT
		c. Cell No.
		f. Fax No. SEE ATTACHMENT
d. Address (Street, city, state, and ZIP code) SEE ATTACHMENT	e. Employer Representative SEE ATTACHMENT	g. e-Mail
Type of Establishment (factory, mine, wholesaler, etc.) Retail Grocery		h. Number of workers employed 2,000,000+
i. Identify principal product or service Groceries		
The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) through (5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.		
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) Within the last six months the above named employers have maintained unlawful rules in their "Code of Business Conduct" which interfered with rights guaranteed by Section 7 of the Act.		
3. Full name of party filing charge (if labor organization, give full name, including local name and number) United Food and Commercial Workers International Union		
4a. Address (Street and number, city, state, and ZIP code) 3200 Inland Empire Blvd., Ste. 160 Ontario, CA 91764		4b. Tel. No. (909) 476-7600
		4c. Cell No.
		4d. Fax No. (909) 476-7625
		4e. e-Mail
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)		
6. DECLARATION		Tel. No. (510) 337-1001
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.		Office, if any, Cell No
By <u>David A. Rosenfeld</u> <small>(Signature of representative or person making charge)</small>	David A. Rosenfeld, Attorney <small>(Print type name and title or office, if any)</small>	Fax No. (510) 337-1023
Address: 1001 Marina Village Parkway, Suite 200 Alameda, CA 94501		e-Mail
		3/15/12 <small>(Date)</small>

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74842-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes. 1/659802

ATTACHMENT TO UNFAIR LABOR PRACTICE CHARGE

a. Employer: **TESCO, plc
New Tesco House,
Delamare Road
Cheshnut, Hertfordshire
England EN8 9SL
United Kingdom**

b. Telephone Number: **+ 44-1992-632222**

c. Employer Representative: **Philip Clarke**

a. Employer: **Fresh & Easy Neighborhood Market
2120 Park Place, Suite 200
El Segundo, CA 90245**

b. Telephone Number: **(310) 341-1200**

f. Fax Number: **(310) 341-1501**

c. Employer Representative: **Phillip Mason**

1/659806

RECEIVED
NLRB REGION 32
2012 MAR 15 PM 3:24
OAKLAND, CA.

QUESTIONNAIRE ON COMMERCE INFORMATION

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

CASE NAME Tesco, plc New Tesco House/Fresh & Easy Neighborhood Market	CASE NUMBER 31-CA-077074
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1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)

2. TYPE OF ENTITY

CORPORATION LLC LLP PARTNERSHIP SOLE PROPRIETORSHIP OTHER (Specify)

3. IF A CORPORATION OR LLC:

A. STATE OF INCORPORATION OR FORMATION	B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES
---	---

4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS

5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR

6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS (Products handled or manufactured, or nature of services performed)

7. A. PRINCIPAL LOCATION: B. BRANCH LOCATIONS:

8. NUMBER OF PEOPLE PRESENTLY EMPLOYED

A. Total: B. At the address involved in this matter:

9. DURING THE MOST RECENT (Check appropriate box): CALENDAR YR 12 MONTHS OF FISCAL YR (FY dates:)

	YES	NO
A. Did you provide services valued in excess of \$50,000 directly to customers outside your State? If no, indicate actual value. \$		
B. If you answered no to 9A, did you provide services valued in excess of \$50,000 to customers in your State who purchased goods valued in excess of \$50,000 from directly outside your State? If no, indicate the value of any such services you provided. \$		
C. If you answered no to 9A and 9B, did you provide services valued in excess of \$50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than \$50,000, indicate amount. \$		
D. Did you sell goods valued in excess of \$50,000 directly to customers located outside your State? If less than \$50,000, indicate amount. \$		
E. If you answered no to 9D, did you sell goods valued in excess of \$50,000 directly to customers located inside your State who purchased other goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$		
F. Did you purchase and receive goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$		
G. Did you purchase and receive goods valued in excess of \$50,000 from enterprises who received the goods directly from points outside your State? If less than \$50,000, indicate amount. \$		
H. Gross Revenues from all sales or performance (Check the largest amount): <input type="checkbox"/> \$100,000 <input type="checkbox"/> \$250,000 <input type="checkbox"/> \$500,000 <input type="checkbox"/> \$1,000,000 or more If less than \$100,000, indicate amount.		
I. Did you begin operations within the last 12 months? If yes, specify date: _____		

10. ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?

YES NO (If yes, name and address of association or group).

11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS

NAME	TITLE	E-MAIL ADDRESS	TEL. NUMBER

12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE

NAME AND TITLE (Type or Print)	SIGNATURE	E-MAIL ADDRESS	DATE

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further a representation or unfair labor practice case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

Exhibit B



United States Government
NATIONAL LABOR RELATIONS BOARD
Region 31
11150 W. Olympic Blvd., Suite 700
Los Angeles, CA 90064-1824

Telephone: (310) 235-7351
Facsimile: (310) 235-7420

April 19, 2012

VIA EMAIL

EMAIL: joe.turzi@dlapiper.com

Joe Turzi
DLA Piper LLP
500 8th Street NW
Washington, DC 20004

Re: *Tesco, plc New Tesco House/Fresh & Easy Neighborhood Market*
Cases: 31-CA-77074

Dear Mr. Turzi:

As you know, the above-referenced charge filed by United Food and Commercial Workers International Union ("Charging Party" or the "Union") has been assigned to me for investigation. Based on our conversation, I understand that you represent only Fresh and Easy Neighborhood Market in this matter, and not Tesco, plc New Tesco House. The purpose of this letter is to afford Fresh and Easy Neighborhood Market ("Employer" or "Fresh and Easy") an opportunity to fully cooperate with the Region in the investigation of the above-captioned charge. "Full cooperation" includes 1) making individuals available to me so that I can take sworn affidavits, 2) presenting copies of documentation pertinent to the allegations, 3) providing a detailed position statement, including citations to relevant Board law, and 4) providing anything additional, which you believe will assist the Region in making a decision on the charges.

The Charging Party's evidence suggests a *prima facie* case.

1. Allegation: The Union alleges that the Employer has maintained unlawful rules in its Code of Business Conduct, which is available from Tesco's website at http://www.tescopl.com/media/126222/code_of_business_conduct.pdf. The Union asserts that Tesco is a multi-national British Corporation which operates a wholly-owned subsidiary known as Fresh and Easy Neighborhood Market which operates in the United States. The Charging Party asserts the following provisions of the Code of Business Conduct are unlawful:

- a. (Page 17): With regard to the IT rule, the Union alleges that it is unlawfully overbroad because it prohibits use of “company resources,” including “telephone, email and internet access for personal activities.”
- b. (Page 18): With regard to the rule that states “keep customer and employee information secure. Information must be used fairly, lawfully and only for the purpose for which it was obtained,” the Union asserts that to the extent that this rule states that “employee information” must be held “secure” and used “only for purposes for it was obtained,” it is unlawfully overbroad.
- c. (Page 21): With regard to the Unacceptable behavior rule, insofar as it prohibits spreading “malicious rumors,” is alleged to be unlawfully overbroad.

Requested Evidence:

Please address the following items and provide evidence regarding them, *in addition to all other evidence you wish to present in connection with the above allegation.*

1. A copy of the Code of Business Conduct.
2. Whether the Code of Business Conduct has been disseminated, maintained, distributed, accessed and/or enforced among any Fresh and Easy Neighborhood Market employees, and/or whether any Fresh and Easy Neighborhood employees have ever been directed to the Code of Business Conduct.
3. The relationship between Tesco and Fresh and Easy Neighborhood Market, including regarding control of labor relations.
4. Whether the Code of Business Conduct applies to employees of Fresh and Easy Neighborhood Market.

Board Affidavits: In connection with the foregoing, I am requesting, by this letter, to take an affidavit from any witnesses that you might wish to make available and who have knowledge of the allegations raised by the above-noted charges. ***Please contact me immediately to schedule your witnesses.*** With respect to any witnesses that you wish to submit for affidavits, please provide me with their names and the times that they are available to testify no later than **Monday, April 23, 2012**. If you choose not to fully cooperate by making witnesses available to me for affidavits, you should provide me with sworn declarations establishing any facts you assert in your statement of position.

Date for Submitting Evidence: In order to resolve this matter as expeditiously as possible, you must present all of your evidence in this matter by **Thursday, April 26, 2012**. If I have not received all your evidence by that time, a recommendation as to the merits of the case may be made in this matter based upon the evidence in the files.

Please contact me by telephone at (310) 235-7632 or e-mail at john.rubin@nrlb.gov if you have further questions, concerns or wish to discuss these matters further. Thank you for your anticipated cooperation.

Very truly yours,

/s/ John Rubin

John Rubin
Field Attorney

Exhibit C

From: Turzi, Joseph [<mailto:Joe.Turzi@dlapiper.com>]
Sent: Thursday, April 26, 2012 3:44 PM
To: Rubin, John A.
Subject: RE: Tesco, plc New Tesco House/Fresh & Easy Market, Case 31-CA-07704

Dear Mr. Rubin:

I have reviewed your letter relating to the above referenced charge.

As I understand the UFCW's charge, the charge relates to a policy of Tesco PLC, a UK company that does not operate in the United States. As best I can tell from your letter, no evidence has been produced by the UFCW that the policy applies outside of Tesco or the UK.

Although the UFCW has not even alleged that the Tesco policy applies to my client, Fresh & Easy, you have requested extensive information from my client regarding various issues. Quite frankly, I fail to see the purpose of imposing such a burden on my client. Even the allegations fail to come close to establishing any possible violation of the Act.

Given that no violation or even potential violation of the Act has been alleged, I do not see the need to provide any evidence or argument.

Best Regards,

Joe Turzi

From: Rubin, John A. [<mailto:John.Rubin@nrlb.gov>]
Sent: Thursday, April 19, 2012 3:51 PM
To: Turzi, Joseph
Subject: Tesco, plc New Tesco House/Fresh & Easy Market, Case 31-CA-07704

John Rubin
Field Attorney
National Labor Relations Board
11150 West Olympic Boulevard, Suite 700
Los Angeles, CA 90064
Main Line: (310) 235-7351
Direct Dial: (310) 235-7632
Fax: (310) 235-7420, attn: John Rubin

Exhibit D

From: Rubin, John A. [mailto:John.Rubin@nlrb.gov]
Sent: Tuesday, May 01, 2012 8:49 PM
To: Turzi, Joseph
Subject: RE: Tesco, plc New Tesco House/Fresh & Easy Market, Case 31-CA-07704

Mr. Turzi:

Thanks for your response. I'd like to point out that Fresh and Easy maintains its own Code of Conduct, which can be accessed at the following link: freshandeasy.com/Content/pdfs/CodeConduct_082010.pdf. This Code of Conduct contains identical provisions as that which I described in my April 19 letter to you. I have quoted them below, using Fresh and Easy's Code of Conduct page references. As you will note, the language of these provisions is identical to that found in Tesco's Code of Business Conduct.

Malicious Rumors (Page 19)

Spread malicious rumors or use company resources to transmit communications that might be considered derogatory, defamatory, harassing, pornographic or otherwise offensive

Employee Information (Page 16)

Keep customer and employee information secure. Information must be used fairly, lawfully and only for the purpose for which it was obtained

Company Resources (Page 15)

Misuse company resources, including telephone, email and Internet access, for personal activities

Although you have declined to provide a position statement and evidence in this case, I would like to offer you another opportunity to do so, in order that this investigation be informed by the benefit of your input. Accordingly, please provide a position statement and evidence requested in my **April 19 letter by the close of business Friday, May 4.**

I would also like you to explain why the language in Fresh and Easy's Code of Conduct in the above respects is identical to that of Tesco's Code of Conduct. Is this a coincidence?

Please also address the issue of whether and to what extent Fresh and Easy and Tesco share common control of labor relations and human resources.

From: Turzi, Joseph [<mailto:Joe.Turzi@dlapiper.com>]
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Exhibit E

From: Turzi, Joseph [mailto:Joe.Turzi@dlapiper.com]
Sent: Thursday, May 03, 2012 4:50 PM
To: Rubin, John A.
Subject: RE: Tesco, plc New Tesco House/Fresh & Easy Market, Case 31-CA-07704

Dear Mr. Rubin:

Thank you for this additional information.

Unfortunately, I no longer understand what issues it is that you seek to address. The charge, as I understand it, alleges that Tesco's policy somehow constitutes a violation by Fresh & Easy. In the e-mail below, you appear to suggest that the violation is based on Fresh & Easy's policy, even though there is no charge to that affect. Clearly, the two allegations are mutually exclusive, both policies cannot apply.

Absent a clear charge, I fear that there is nothing to which my client can respond. In fact, asking my client to address these mutually exclusive theories appears to raise some serious and fundamental due process issues.

Finally, it appears to me that the charging party was aware of the Fresh & Easy policy, but nonetheless alleged that the Tesco policy applied. I am curious as to why the original charge does not constitute a willful, false statement subject to sanctions under 18 U.S.C. Section 1001.

Best regards,

Joe Turzi

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Please also address the issue of whether and to what extent Fresh and Easy and Tesco share common control of labor relations and human resources.

From: Turzi, Joseph [<mailto:Joe.Turzi@dlapiper.com>]

Sent: Thursday, April 26, 2012 3:44 PM

To: Rubin, John A.

Subject: RE: Tesco, plc New Tesco House/Fresh & Easy Market, Case 31-CA-07704

Dear Mr. Rubin:

I have reviewed your letter relating to the above referenced charge.

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Given that no violation or even potential violation of the Act has been alleged, I do not see the need to provide any evidence or argument.

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Sent: Thursday, April 19, 2012 3:51 PM
To: Turzi, Joseph
Subject: Tesco, plc New Tesco House/Fresh & Easy Market, Case 31-CA-07704

John Rubin
Field Attorney
National Labor Relations Board
11150 West Olympic Boulevard, Suite 700
Los Angeles, CA 90064
Main Line: (310) 235-7351
Direct Dial: (310) 235-7632
Fax: (310) 235-7420, attn: John Rubin

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Exhibit F

From: Rubin, John A. [mailto:John.Rubin@nlrb.gov]
Sent: Thursday, May 03, 2012 8:00 PM
To: Turzi, Joseph
Subject: RE: Tesco, plc New Tesco House/Fresh & Easy Market, Case 31-CA-07704

Mr. Turzi:

The charge names both "Fresh & Easy Neighborhood Market" and "TESCO, plc" as Charged Parties in the above-captioned case. (Please see that Attachment to the Charge.) Further, the charge alleges, "within the last six months, the above-named *employers* have maintained unlawful rules in their "Code of Business Conduct" which interfered with rights guaranteed by Section 7 of the Act." (emphasis added).

Again, I am requesting that you provide a response so the investigation may be informed by the benefit of your input. Thank you.

From: Turzi, Joseph [mailto:Joe.Turzi@dlapiper.com]
Sent: Thursday, May 03, 2012 4:50 PM
To: Rubin, John A.
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To: Rubin, John A.

Subject: RE: Tesco, plc New Tesco House/Fresh & Easy Market, Case 31-CA-07704

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Sent: Thursday, April 19, 2012 3:51 PM

To: Turzi, Joseph

Subject: Tesco, plc New Tesco House/Fresh & Easy Market, Case 31-CA-07704

John Rubin

Field Attorney

National Labor Relations Board

11150 West Olympic Boulevard, Suite 700

Los Angeles, CA 90064

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Exhibit G



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 31
11150 W OLYMPIC BLVD
STE 700
LOS ANGELES, CA 90064-1825

Agency Website: www.nlr.gov
Telephone: (310)235-7351
Fax: (310)235-7420

May 11, 2012

FRESH & EASY NEIGHBORHOOD MARKET
ATTN: PHILLIP MASON,
EMPLOYER REPRESENTATIVE
2120 PARK PL., STE 200
EL SEGUNDO, CA 90245-4741

Re: Fresh & Easy Neighborhood Market
Case 31-CA-080734

Dear Mr. Mason:

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Attorney MIGUEL A. MANRIQUEZ whose telephone number is (310)235-7350. If this Board agent is not available, you may contact Supervisory Field Attorney JOANNA SILVERMAN whose telephone number is (310)235-7459.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, www.nlr.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

May 11, 2012

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board agent. Sending us your written account of the facts and a statement of your position is not enough to be considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor any request to place limitations on our use of position statements or evidence beyond those prescribed by the Freedom of Information Act and the Federal Records Act. Thus, we will not honor any claim of confidentiality except as provided by Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4), and any material you submit may be introduced as evidence at any hearing before an administrative law judge. We are also required by the Federal Records Act to keep copies of documents gathered in our investigation for some years after a case closes. Further, the Freedom of Information Act may require that we disclose such records in closed cases upon request, unless there is an applicable exemption. Examples of those exemptions are those that protect confidential financial information or personal privacy interests.

Procedures: We strongly urge everyone to submit all documents and other materials (except unfair labor practice charges and representation petitions) by E-Filing (not e-mailing) through our website, www.nlr.gov. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlr.gov or from an NLRB office upon your request. NLRB Form 4541 offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

Mori Pam Rubin

Mori Pam Rubin
Acting Regional Director

Enclosures:

1. Copy of Charge
2. Commerce Questionnaire

FORM EXEMPT UNDER 44 U.S.C. 3612

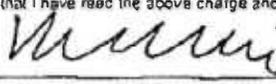
INTERNET
FORM NLRB-501
(2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case 31-CA-080734	Date Filed 5/9/12

INSTRUCTIONS:

File an original with NLRB Regional Director for the Region in which the alleged unfair labor practice occurred or is occurring

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT		
a. Name of Employer Fresh & Easy Neighborhood Market		b. Tel. No. (310) 341-1200
		c. Cell No.
		f. Fax No. (310) 341-1501
d. Address (Street, city, state, and ZIP code) 2120 Park Place, Suite 200 El Segundo, CA 90245	e. Employer Representative Phillip Mason	g. e-Mail
		h. Number of workers employed 2,000,000+
i. Type of Establishment (factory, mine, wholesaler, etc.) Retail Grocery	j. Identify principal product or service Groceries	
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) subsections of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.		
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) Within the last six months the above named employers have maintained unlawful rules in their "Code of Business Conduct" which interfered with rights guaranteed by Section 7 of the Act.		
3. Full name of party filing charge (if labor organization, give full name, including local name and number) United Food and Commercial Workers International Union		
4a. Address (Street and number, city, state, and ZIP code) 3200 Inland Empire Blvd., Ste. 160 Ontario, CA 91764		4b. Tel No (909) 476-7600
		4c. Cell No.
		4d. Fax No. (909) 476-7625
		4e. e-Mail
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)		
6. DECLARATION		Tel. No (510) 337-1001
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.		Office, if any, Cell No
By  (signature of representative or person making charge)	David A. Rosenfeld, Attorney (Print/Type name and title or office, if any)	Fax No. (510) 337-1023
Address 1001 Marina Village Parkway, Suite 200 Alameda, CA 94501		e-Mail
		May 8, 2012 (date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

1/667460

Collection of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74842-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

QUESTIONNAIRE ON COMMERCE INFORMATION

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

CASE NAME Fresh & Easy Neighborhood Market	CASE NUMBER 31-CA-080734
---	-----------------------------

1. EXACT LEGAL TYPE OF ENTITY (As filed with State and/or stated in legal documents forming entity)

2. TYPE OF ENTITY

 CORPORATION LLC LLP PARTNERSHIP SOLE PROPRIETORSHIP OTHER (Specify)

3. IF A CORPORATION OR LLC

A. STATE OF INCORPORATION OR FORMATION	B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES
--	--

4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS

5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR

6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS (Products handled or manufactured, or nature of services performed)

7. A. PRINCIPAL LOCATION B. BRANCH LOCATIONS

8. NUMBER OF PEOPLE PRESENTLY EMPLOYED

A. Total:	B. At the address involved in this matter:
-----------	--

9. DURING THE MOST RECENT (Check appropriate box) CALENDAR YEAR or 12 MONTHS or FISCAL YR (if date)

	YES	NO
A. Did you provide services valued in excess of \$50,000 directly to customers outside your State? If no, indicate actual value. \$		
B. If you answered no to 9A, did you provide services valued in excess of \$50,000 to customers in your State who purchased goods valued in excess of \$50,000 from directly outside your State? If no, indicate the value of any such services you provided. \$		
C. If you answered no to 9A and 9B, did you provide services valued in excess of \$50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than \$50,000, indicate amount. \$		
D. Did you sell goods valued in excess of \$50,000 directly to customers located outside your State? If less than \$50,000, indicate amount. \$		
E. If you answered no to 9D, did you sell goods valued in excess of \$50,000 directly to customers located inside your State who purchased other goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$		
F. Did you purchase and receive goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$		
G. Did you purchase and receive goods valued in excess of \$50,000 from enterprises who received the goods directly from points outside your State? If less than \$50,000, indicate amount. \$		
H. Gross Revenues from all sales or performance of services (Check the largest amount): <input type="checkbox"/> \$100,000 <input type="checkbox"/> \$250,000 <input type="checkbox"/> \$500,000 <input type="checkbox"/> \$1,000,000 or more If less than \$100,000, indicate amount.		
I. Did you begin operations within the last 12 months? If yes, specify date: _____		

10. ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?

 YES NO (If yes, name and address of association or group).

11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS

NAME	TITLE	E-MAIL ADDRESS	TEL. NUMBER

12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE

NAME AND TITLE (Type or Print)	SIGNATURE	E-MAIL ADDRESS	DATE

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further a representation or unfair labor practice case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

Exhibit H



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
REGION 31
11150 W. OLYMPIC BLVD
STE 700
LOS ANGELES, CA 90064-1825

Agency Website: www.nlr.gov
Telephone: (310) 235-7351
Fax: (310) 235-7420

July 25, 2012

DAVID A. ROSENFELD, ATTORNEY AT LAW
WEINBERG, ROGER & ROSENFELD, P.C.
1001 MARINA VILLAGE PARKWAY, SUITE 200
ALAMEDA, CA 94501

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

Dear Mr. Rosenfeld:

We have carefully investigated and considered your charge that FRESH & EASY NEIGHBORHOOD MARKET ("Fresh & Easy") and TESCO, PLC, NEW TESCO HOUSE ("Tesco") have violated the National Labor Relations Act.

Decision to Partially Dismiss: Based on the investigation, I have decided to dismiss the above-referenced charge with respect to Tesco, plc New Tesco House. Your charge alleges that Tesco, plc New Tesco House ("Tesco") violated Section 8(a)(1) of the Act by maintaining unlawful rules in its "Code of Conduct" which interfered with rights guaranteed by Section 7 of the Act. The investigation failed to establish that Tesco is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act. For this reason, I have decided to dismiss this portion of your charge because of the Board's lack of jurisdiction over Tesco. All other portions of the charge remain outstanding.

Your Right to Appeal: You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals. If you appeal, you may use the enclosed Appeal Form, which is also available at www.nlr.gov. However, you are encouraged to also submit a complete statement of the facts and reasons why you believe my decision to dismiss your charge was incorrect.

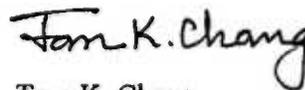
Means of Filing: An appeal may be filed electronically, by mail, or by delivery service. Filing an appeal electronically is preferred but not required. The appeal MAY NOT be filed by fax. To file an appeal electronically, go to the Agency's website at www.nlr.gov, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. To file an appeal by mail or delivery service, address the appeal to the General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1099 14th Street, N.W., Washington D.C. 20570-0001. Unless filed electronically, a copy of the appeal should also be sent to me.

Appeal Due Date: The appeal is due on **August 8, 2012**. If you file the appeal electronically, we will consider it timely filed if you send the appeal together with any other documents you want us to consider through the Agency's website so the transmission is completed by **no later than 11:59 p.m. Eastern Time** on the due date. If you mail the appeal or send it by a delivery service, it must be received by the Office of Appeals in Washington, D.C. by the close of business at **5:00 p.m. Eastern Time** or be postmarked or given to the delivery service no later than **August 7, 2012**.

Extension of Time to File Appeal: Upon good cause shown, the General Counsel may grant you an extension of time to file the appeal. A request for an extension of time may be filed electronically, by fax, by mail, or by delivery service. To file electronically, go to www.nlr.gov, click on **File Case Documents**, enter the NLRB Case Number and follow the detailed instructions. The fax number is (202)273-4283. A request for an extension of time to file an appeal **must be received on or before August 8, 2012**. A request for an extension of time that is mailed or given to the delivery service and is postmarked or delivered to the service before the appeal due date but received after the appeal due date will be rejected as untimely. Unless filed electronically, a copy of any request for extension of time should be sent to me.

Confidentiality: We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,



Tom K. Chang
Acting Regional Director

Enclosure

cc GENERAL COUNSEL
OFFICE OF APPEALS
FRANKLIN COURT BUILDING
NATIONAL LABOR RELATIONS BOARD
1099 14TH STREET, NW
WASHINGTON, DC 20570

PHILLIP MASON
FRESH & EASY NEIGHBORHOOD MARKET
2120 PARK PL, STE 200
EL SEGUNDO, CA 90245-4741

PHILIP CLARKE
TESCO, PLC, NEW TESCO HOUSE
DELAMARE ROAD
CHESHNUT, HERTFORDSHIRE
ENGLAND EN8 9SL
UNITED KINGDOM

UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION
3200 INLAND EMPIRE BLVD, STE 160
ONTARIO, CA 91764-5575

JOSEPH TURZI
DLA PIPER LLP
500 8TH STREET, NW
WASHINGTON, DC 20004

Exhibit I



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

August 28, 2012

DAVID A. ROSENFELD, ATTORNEY AT LAW
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 Mr. Rosenfeld:

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

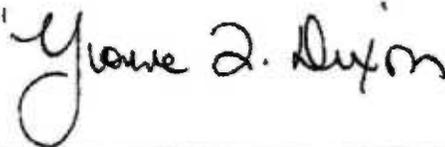
Tesco, plc New Tesco House/Fresh & Easy
Neighborhood Market
Case 31-CA-077074

-2

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
NATIONAL LABOR RELATIONS
BOARD
11150 W OLYMPIC BLVD
STE 700
LOS ANGELES, CA 90064-1825

TESCO, PLC, NEW TESCO HOUSE
DELAMARE ROAD
CHESHNUT, HERTFORDSHIRE
ENLAND EN8 9SL, CA 90064

PHILLIP MASON
FRESH & EASY NEIGHBORHOOD
MARKET
2120 PARK PL STE 200
EL SEGUNDO, CA 90245-4741

UNITED FOOD & COMMERCIAL
WORKERS INTERNATIONAL
UNION
3200 INLAND EMPIRE BLVD STE 160
ONTARIO, CA 91764-5575

mab

Exhibit J



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

Mary

10/4/12

September 21, 2012

DAVID A. ROSENFELD, ESQ.
WEINBERG ROGER & ROSENFELD
1001 MARINA VILLAGE PKWY
STE 200
ALAMEDA, CA 94501-6430

cc: Hugh C.
Nahel Y.
fyi.
M.M.K.

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

Dear Mr. Rosenfeld:

This is in reply to your letter of September 4, 2012. To the extent you argue that Tesco employees are working in this country and therefore this Agency has jurisdiction over Tesco, your argument is without merit. No probative evidence has been shown that such employees are engaged independently on behalf of Tesco rather than such performance is in Tesco's capacity as the parent company of Fresh & Easy Neighborhood Market. Absent a showing that Tesco itself is engaged in commerce in this country, there is no basis for a departure from our prior decision. Accordingly, your motion is denied and this case remains closed.

Sincerely,

Lafe E. Solomon
Acting General Counsel

By:

Deborah Yaffe

Deborah Yaffe, Acting Director
Office of Appeals

cc: MORI PAM RUBIN
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS
BOARD
11150 W OLYMPIC BLVD STE 700
LOS ANGELES, CA 90064-1825

PHILLIP MASON
FRESH & EASY NEIGHBORHOOD
MARKET
2120 PARK PL STE 200
EL SEGUNDO, CA 90245-4741

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

-2

TESCO, PLC, NEW TESCO HOUSE
DELAMARE ROAD
CHESHNUT, HERTFORDSHIRE
ENLAND EN8 9SL, CA 90064

UNITED FOOD & COMMERCIAL
WORKERS INTERNATIONAL
UNION
3200 INLAND EMPIRE BLVD STE 160
ONTARIO, CA 91764-5575

mjb

Exhibit K



United States Government

NATIONAL LABOR RELATIONS BOARD

Region 31

11150 W. Olympic Blvd., Suite 700

Los Angeles, CA 90064

Telephone: (310) 235-7350

Facsimile: (310) 235-7420

www.nlr.gov

October 23, 2012

Sent via Regular Mail

Re: *Fresh & Easy Neighborhood
Market* (United Food and
Commercial Workers International
Union)
Case Nos. 31-CA-077074 and 31-
CA-080734

Dear Mr. Turzi and Mr. Rosenfeld:

The Consolidated Complaint and Notice of Hearing concerning the above-referenced cases, which issued on October 22, 2012, contains various formatting errors. Please disregard that complaint and see the attached corrected Order Consolidating Cases, Consolidated Complaint and Notice of Hearing.

Very truly yours,

Brian D. Gee
Acting Regional Director

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31**

FRESH & EASY NEIGHBORHOOD MARKET

and

**UNITED FOOD AND COMMERCIAL WORKERS
INTERNATIONAL UNION**

**Cases 31-CA-077074 and
31-CA-080734**

**ORDER CONSOLIDATING CASES, CONSOLIDATED
COMPLAINT AND NOTICE OF HEARING**

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board) and to avoid unnecessary costs or delay, IT IS ORDERED THAT Case 31-CA-077074 and Case 31-CA-080734, which are based on charges filed by United Food and Commercial Workers International Union (Union) against Fresh & Easy Neighborhood Market (Respondent) are consolidated.

This Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act, 29 U.S.C. § 151 et seq. (the Act) and Section 102.15 of the Board's Rules and Regulations, and alleges Respondent has violated the Act as described below:

1. The charges in the above cases were filed by the Union, as set forth in the following table, and served upon the Respondent on the dates indicated:

<u>Case No.</u>	<u>Date Filed</u>	<u>Date Served</u>
31-CA-077074	Mar. 15, 2012	Mar. 27, 2012
31-CA-080734	May 9, 2012	May 11, 2012

2. (a) At all material times, Respondent, has been a Delaware corporation, and a subsidiary of Tesco PLC, with an office and place of business located at 2120 Park Place, Suite 200, El Segundo, California, and with facilities located at various locations throughout Southern California, and has been operating retail grocery stores.

(b) In conducting its operations during the calendar year ending December 31, 2011, Respondent derived gross revenues in excess of \$500,000.

(c) During the period of time described above in paragraph 2(b), Respondent purchased and received at its Southern California grocery stores products, goods, and materials valued in excess of \$5,000 directly from points outside the State of California.

3. At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

4. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

5. At all material times, Respondent has maintained the following rule:

Keep customer and employee information secure. Information must be used fairly, lawfully and only for the purpose for which it was obtained.

6. By the conduct described above in paragraph 5, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

7. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

As part of the remedy for the unfair labor practice alleged above in paragraphs 5 and 6, the General Counsel seeks an Order requiring that Respondent rescind the rule described above

in paragraph 5, notify all of its employees, electronically, that this has been done, and post the remedial notice on its internet site.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the consolidated complaint. The answer must be received by this office on or before **November 6, 2012, or postmarked on or before November 5, 2012.** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

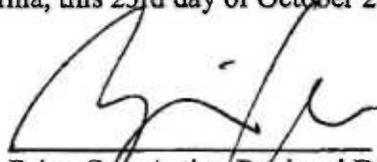
An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by

traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the consolidated complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on **January 7, 2013, 1:00 p.m.** at the National Labor Relations Board, Region 31, 11150 W. Olympic Blvd., Suite 700, Los Angeles, California, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this consolidated complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Los Angeles, California, this 23rd day of October 2012



Brian Gre, Acting Regional Director
National Labor Relations Board, Region 31
11150 W. Olympic Boulevard, Suite 700
Los Angeles, CA 90064