

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

FRED MEYER STORES, INC.

and

ALLIED EMPLOYERS

and

UNITED FOOD AND COMMERCIAL WORKERS
LOCAL 367, AFFILIATED WITH UNITED FOOD
AND COMMERCIAL WORKERS
INTERNATIONAL UNION

Cases 19-CA-32908
19-CA-33052

**COUNSEL FOR THE ACTING GENERAL COUNSEL'S
REPLY TO RESPONDENTS' ANSWERING BRIEFS REGARDING
EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION**

Counsel for Acting General Counsel ("General Counsel"), pursuant to Section 102.46(h), respectfully submits this Reply to Respondents' Answering Briefs Regarding Exceptions to the Administrative Law Judge's Decision.

I. INTRODUCTION

The General Counsel filed Exceptions in the instant matter, seeking to have the National Labor Relations Board ("Board") find that Fred Meyer Stores, Inc. ("Respondent Fred Meyer") and Allied Employers ("Respondent Allied") (collectively, "Respondents"), violated Section 8(a)(5) of the Act by effectively removing the nutrition and Playland employees from their respective units represented by the United Food and Commercial Workers Local 367, affiliated with United Food and Commercial Workers International Union ("Union"), and by failing to provide the nutrition and Playland employees with the contract terms afforded to the rest of their fellow unit members. These terms include the ratification bonus, across the board wage increases, the Union's health and welfare plan, and the Union's pension plan. Finally, General Counsel seeks a Board finding that Respondent

Fred Meyer violated Section 8(a)(1) by posting notices that blamed the Union for the delay in distributing lump sum ratification bonuses.

In their Answering Briefs to the General Counsel's Exceptions, Respondents set forth their arguments for why the Act was not violated. All positions have been fully addressed in previous filings with the Board.¹ The General Counsel files this Reply Brief to address the contention that the definition of what constitutes "general terms" of the collective bargaining agreements is unclear and the contention that no remedy can apply to Respondent Allied.

II. ARGUMENT

A. **General Terms of the Collective Bargaining Agreements are Terms that Apply to all Unit members**

The nutrition and Playland employees are in the Union-represented units; they were included prior to the application of the Local 21/81 agreements to the units. A failure to apply the same general terms of the collective bargaining agreements to them as those applied to the rest of the units' employees rewards Respondent Fred Meyer for its persistent refusal to acknowledge their inclusion in the units for almost an entire 3 year contract cycle, despite both the Board and the Ninth Circuit having told them to do so.

Respondents essentially contend that the General Counsel's view is erroneous; that "general terms" to the collective bargaining agreements do not really exist apart from those specific to each job classification. Respondents make this argument despite the fact that both Union and Respondent Allied witnesses testified that all employees in both units, except the nutrition and Playland employees: received the ratification bonuses; received wage increases set forth in the Local 21/81 agreements; are covered by the Union's

¹ This Brief does not address the underlying facts in this case at length because the relevant facts have been described in General Counsel's previously filed Brief In Support of Exceptions to the Administrative Law Judge's Decision.

pension plan; are covered by the Union's health and welfare plans; and are covered by all the terms of the collective bargaining agreements prior to the Appendices which set forth provisions unique to classifications. (184:1-25; 185: 1-25; 186: 1-25; 364: 11-25; 365:1-25; 366: 1-25; 369: 4-25).

As a result of Respondents' alleged violations of the Act, the General Counsel contends that the ALJ failed to order the appropriate remedy in this matter - Respondent Fred Meyer applying the general terms (*i.e.* terms that apply to all the other unit members) of the grocery contract to the involved nutrition employees and the CCK contract to the involved Playland employees, while also requiring bargaining over the "unique" matters (*i.e.* terms in appendices that are unique to classifications covered by those appendices). See General Counsel's Brief in Support of Exceptions to the Administrative Law Judge's Decision.

B. Respondent Allied is Liable for Employees' Non-Inclusion

Respondent Allied represents Respondent Fred Meyer and other grocer employers (such as Safeway and Albertsons) in multi-employer bargaining with the Union and with its sister UFCW locals that have jurisdiction over adjacent geographical areas (*e.g.*, King County). (140:22-25; 141:1-15; J Exh.10; J Exh. 17:J 1). Beyond negotiating collective bargaining agreements, Respondent Allied enters into health and welfare agreements, welfare trusts, and pension trusts with the Union, and sister UFCW locals, on behalf of the grocer employers it represents. (141:17-25; 142: 1-25; 143:1-5; GC Exhs. 17, 18, 19).

Respondent Allied attempts to argue that it is an agent in this matter and does not employ the impacted unit members; therefore, it has no liability. The mere fact that a multi-employer association does not employ the impacted employees does not, by itself, preclude a finding against the multi-employer association. See *Dews Construction Corp.*, 231 NLRB 182, n. 4 (1977) (one employer may violate the Act when it unlawfully affects the working

conditions of another employer's employees); *Georgia-Pacific Corp.*, 221 NLRB 982, 986 (1975); *Fabric Services, Inc.*, 190 NLRB 540, 541 (1971). In certain circumstances, a multi-employer association may share liability for Section 8(a)(5) bargaining violations of its member-employers as principals. See, e.g., *Southern Florida Hotel and Motel Assoc., et al.*, 245 NLRB 561 (1979), *enfd.*, 751 F.2d 1571 (11th Cir. 1985).

Here, Respondent Allied negotiated and entered into the 2010 me-too agreement on behalf of employer grocers, including Respondent Fred Meyer. Respondent Allied informed the Union of the terms of the contract agreement resulting from the Local 21/81 negotiations. The parties involved in the arbitration were Respondent Allied and the Union and the arbitrator ordered Respondent Allied to distribute the ratification bonuses. In sum, Respondent Allied played an integral role in attempting to alter the scope of the nutrition and Playland employees' units. Accordingly, Respondent Allied, in addition to Respondent Fred Meyer, violated Section 8(a)(5) of the Act by unilaterally excluding nutrition and Playland classifications from the grocery and CCK bargaining units and by failing to provide them the contract terms afforded to the rest of the unit members.

III. CONCLUSION

General Counsel respectfully submits that the evidence in the record and relevant case law establish that Respondents violated Sections 8(a)(1) and (5) of the Act as alleged in the Complaint and as argued in its Brief In Support of Exceptions to the Administrative Law Judge's Decision. The Board is requested to adopt the findings of violations, and amend the ALJ's Decision and Order consistent with General Counsel's Exceptions.

DATED at Seattle, Washington, this 23rd day of January, 2013.

A handwritten signature in black ink that reads "Ann Marie Skov". The signature is written in a cursive style with a large initial "A".

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UNITED FOOD AND COMMERCIAL
WORKERS INTERNATIONAL UNION**

**Cases 19-CA-032908
19-CA-033052**

**AFFIDAVIT OF SERVICE OF *COUNSEL FOR THE ACTING GENERAL COUNSEL'S
REPLY TO RESPONDENTS' ANSWERING BRIEFS REGARDING EXCEPTIONS TO THE
ADMINISTRATIVE LAW JUDGE'S DECISION.***

I, the undersigned employee of the National Labor Relations Board, state under oath that on January 23, 2013, I served the above-entitled document(s) by *E-FILE, E-MAIL* and *post-paid regular mail* upon the following persons, addressed to them at the following addresses:

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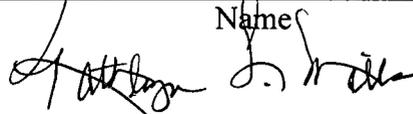
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Date

/s/ DENNIS SNOOK

Dennis Snook, Designated Agent of NLRB

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