

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21

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Proskauer Rose LLP

UNITED FOOD AND COMMERCIAL
WORKERS UNION, LOCAL 770,
AFFILIATED WITH THE UFCW
INTERNATIONAL UNION, AFL-CIO

and

Case 21-CB-127092

BODEGA LATINA CORPORATION
d/b/a EL SUPER

COMPLAINT
AND
NOTICE OF HEARING

This Complaint and Notice of Hearing is based on a charge filed by Bodega Latina Corporation, herein correctly designated as Bodega Latina Corporation d/b/a El Super (Employer). It is issued pursuant to Section 10(b) of the National Labor Relations Act, 29 U.S.C. Sec. 151, et seq., (the Act) and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the Board), and alleges that United Food and Commercial Workers Union, Local 770, herein correctly designated as United Food and Commercial Workers Union, Local 770, affiliated with the UFCW International Union, AFL-CIO (Respondent), has violated the Act as described below:

1. The charge in this proceeding was filed by the Employer on April 22, 2014, and a copy was served on Respondent by regular mail on April 23, 2014.

2. (a) At all material times, the Employer, a Delaware corporation, with its headquarters located at 14601-B Lakewood Boulevard, Paramount California, has been engaged in operating retail grocery stores.

(b) During the 12-month period ending March 31, 2014, a representative period, the Employer, in conducting its operations described above in paragraph 2(a), derived gross revenues in excess of \$500,000.

(c) During the 12-month period ending March 31, 2014, a representative period, the Employer, in conducting its operations described above in paragraph 2(a), purchased and received at its California grocery stores goods valued in excess of \$50,000 directly from points outside the State of California.

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

5. At all material times, the following individual held the position set forth opposite his name and has been an agent of Respondent within the meaning of Section 2(13) of the Act):

Ricardo Icaza	President
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6. The following employees of the Employer (the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of the Section 9(b) of the Act:

All full-time and regular part-time bakers, cake decorators, scan coordinators, meat cutters, checkers, produce clerks, night crew employees, grocery clerks, dairy/deli clerks, receiving clerks, bakery clerks, bulk deli clerks, meat clerks, tortilleria clerks, and runners employed by the Employer at its facilities located at 10531 South Carmenita Road, Santa Fe Springs, CA; 9710 Woodman Avenue, Arleta, CA; 1301 East Gage Avenue, Los Angeles, CA; 3321 Century Boulevard, Inglewood, CA; 1100 West Slauson Avenue, Los Angeles, CA; 650 North Euclid Street, Anaheim, CA; and 960 West Arrow Highway, Covina, CA; excluding all other employees, office clerical employees, confidential employees, professional employees, managerial employees, guards and supervisors as defined in the Act.

7. (a) Since about August 26, 2008, and at all material times, the Employer has recognized Respondent as the joint exclusive collective-bargaining representative of the Unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from August 26, 2008, to September 27, 2013.

(b) At all times since at least August 26, 2008, based on Section 9(a) of the Act, Respondent has been the joint exclusive collective-bargaining representative of the Unit.

8. (a) About February 21, 2014, the Employer, requested that Respondent furnish the Employer with information and documents as set forth in the correspondence attached as Appendix A.

(b) The information requested by the Employer, as described above in Appendix A, is necessary for and relevant to the Employer's performance of its collective-bargaining obligations.

(c) Since about February 21, 2014, Respondent has failed and refused to furnish to the Employer the information requested by it as described above in Appendix A.

9. By the conduct described above in paragraph 8(c), Respondent has been failing and refusing to bargain collectively and in good faith with an employer in violation of Section 8(b)(3) of the Act.

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

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 complaint. The answer must be received by this office on or before **July 24, 2014**, or postmarked on or before **July 23, 2014**. 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.

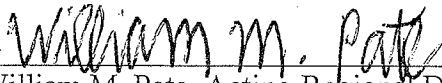
Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT commencing at 1 p.m. PDT on the 12th day of November, 2014, in Hearing Room 902, 888 South Figueroa Street, Ninth Floor, Los Angeles, California, 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

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 10th day of July, 2014.



William M. Pate, Acting Regional Director
National Labor Relations Board, Region 21
888 South Figueroa Street, Ninth Floor
Los Angeles, CA 90017-5449

Attachments

February 21, 2014

VIA PERSONAL DELIVERY

Ms. Kathy Finn
UFCW Local 770
630 Shatto Place
Los Angeles, California 90005-1372

Mark Theodore
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d 310.284.5640
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Re: Information Request

Dear Ms. Finn:

I write to you as a chief spokesperson in the negotiations between El Super and various UFCW locals. A letter from UFCW Local 770 President, Ricardo F. Icaza, dated February 18, 2014 to Carlos Smith was forwarded to me as it concerns terms and conditions of employment.

In order to respond to the claims in the letter we need to certain information. Please treat this as a formal information request under the National Labor Relations Act, as amended, directed at all locals participating in negotiations (collectively referred to as "Union"). When a request refers to the term "document" it shall include any written or recorded or graphic matter however produced or reproduced, including, but not limited to correspondence, notes, minutes of meetings, reports, announcements, newsletters, handbooks, manuals, written policies, pamphlets, brochures, checks, charts, diagrams, contract, agreements, memoranda, diaries, logs, journals, calendars, notes or summaries of telephone or personal conversations, court or administrative agency papers (whether or not they were filed), or any other writings, audio tape recordings, video tape recordings, pictures, photographs, disks and other computer generated and stored information or data bases, including e-mail and other electronic correspondence, or any writings or graphic matter, including the original and every no-identical copy, regardless of the origin or location, which is now or previously has been in the possession of the locals or any agents or proxies. Items in the requests in quotation marks refer to the text of Mr. Icaza's letter. Please provide the following information as soon as possible:

1. Provide all documents related to the "Coalition for a Better El Super," including its governing documents, management structure and funding. Be sure to identify all community partners who "share [] concerns about El Super."
2. Provide us with all documents related to the investigation identified by Mr. Icaza, including but not limited to, documents identifying the reasons for the investigation, all investigation notes, witness statements, interviews and other documents in Union's possession related to the investigation. Provide all drafts and a copy of any final report that was created as part of the investigation.

3. Provide us with the identity of the stores “surveyed” in ‘Los Angeles, Orange, Riverside and San Bernardino Counties.’
4. Identify the all persons who participated in the investigation, including their name, name of their employer, and their title. Provide documents concerning the instructions the investigators were given.
5. Identify any witnesses interviewed as part of the investigation.
6. Provide all facts and circumstances (including, of course, all documents) supporting Mr. Icaza’s assertion that “the violations appear to be systemic in nature.”
7. Provide all facts and circumstances (including, of course, all documents) that support Mr. Icaza’s assertion that there exists a “management policy that poses potential harm to public health [and] the livelihoods of its employees.”
8. Provide all facts and circumstances (including, of course, all documents) that support Mr. Icaza’s assertion that El Super “offer[s] for sale products past their ‘sell by’ or ‘use by’ dates.”
9. Provide all facts and circumstances (including, of course, all documents) that support Mr. Icaza’s assertion that El Super “Repurpos[es] items past the ‘sell by,’ ‘use by,’ or ‘best by’ dates printed on the items, and of returned products in the manufacture of in-store prepared foods and baked goods.”
10. Provide all facts and circumstances (including, of course, all documents) that support Mr. Icaza’s assertion that El Super “Fail[s] to refrigerate food that requires refrigeration for extended periods of time.”
11. Provide all facts and circumstances (including, of course, all documents) that support your assertion that El Super engages in “Unsanitary practices in meat cutting operations.”
12. Provide all documents reflecting the Union’s presentation of the “results” of its investigation to “consumer advocates and community leaders” and identify the advocates and leaders.
13. Provide all facts and circumstances that led to this investigation.
14. Provide all documents reflecting any effort made by the Union to contact El Super about the issues prompted by the investigation before the information was distributed to the public.


Please treat this request as continuing in nature. If for any reason the Union asserts that it cannot provide any of the information, please provide a detailed explanation. This information is necessary to and relevant to evaluate the claims made by the Union, especially as it pertains to

Proskauer»

Ms. Kathy Finn
February 20, 2014
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working conditions in the stores and the claim that the alleged practices “threaten the livelihood” of employees.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Mark Theodore', with a long, sweeping horizontal flourish extending to the right.

Mark Theodore

cc: Ms. Andrea Zinder

Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf.

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at www.nlr.gov, click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement. The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.

- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each exhibit should be supplied to the ALJ and each party when the exhibit is offered in evidence. If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.
- **Transcripts:** An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.
- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.
- **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and will set a deadline for filing, up to 35 days.

III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.
- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.
- **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

Case 21-CB-127092

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements *will not be granted* unless good and sufficient grounds are shown *and* the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in *detail*;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

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