

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12**

REPT.
DEC 25 2002
ANS

WAL-MART STORES, INC.

and

Cases 12-CA-21860(-1), 12-CA-21941
and 12-CA-21977(-2)

UNITED FOOD & COMMERCIAL WORKERS
INTERNATIONAL UNION, AFL-CIO, CLC

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

United Food & Commercial Workers International Union, AFL-CIO, CLC, herein called the Charging Party, has charged in Cases 12-CA-21860(-1), 12-CA-21941 and 12-CA-21977(-2), that Wal-Mart Stores, Inc., herein called Respondent, has been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. § 151 et seq., herein called the Act. Based thereon, and in order to avoid unnecessary costs or delay, the General Counsel, by the undersigned, pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board, herein called the Board, ORDERS that these cases are consolidated.

These cases having been consolidated, the General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, issues this Order Consolidating Cases, Consolidated Complaint and Notice of Hearing and alleges as follows:

1.

(a) The original charge in Case 12-CA-21860(-1) was filed by the Charging Party on October 25, 2001, and a copy was served by regular mail on Respondent on October 30, 2001.

(b) An amended charge in Case 12-CA-21860(-1) was filed by the Charging Party on November 21, 2002, and a copy was served by regular mail on Respondent on that same date.

(c) The original charge in Case 12-CA-21941 was filed by the Charging Party on November 29, 2001, and a copy was served by regular mail on Respondent on December 4, 2001.

(d) An amended charge in Case 12-CA-21941 was filed by the Charging Party on February 22, 2002, and a copy was served by regular mail on Respondent on February 27, 2002.

(e) The original charge in Case 12-CA-21977(-2) was filed by the Charging Party on December 20, 2001, and a copy was served by regular mail on Respondent on December 28, 2001.

(f) An amended charge in Case 12-CA-21977(-2) was filed by the Charging Party on April 24, 2002, and a copy was served by regular mail on Respondent on May 1, 2002.

2.

(a) At all material times, Respondent, a Delaware corporation, with offices and places of business located throughout the State of Florida, has been engaged in the business of retail merchandising from supercenters located in various locations in the State of Florida, including a supercenter located at 11250 East Colonial Drive, Orlando, Florida, herein called the Respondent's facility.

(b) During the past 12 months, Respondent, in conducting its business operations described above in paragraph 2(a), derived gross revenues in excess of \$500,000.

(c) During the past 12 months, Respondent, in conducting its business operations described above in paragraph 2(a), purchased and received at its facilities located in the State of Florida goods and materials valued in excess of \$50,000 directly from points located outside the State of Florida.

(d) 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.

3.

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

4.

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Dan Erwin – District Manager

William "Dub" Goodroe – Store Manager

Jose Oliveras – Grocery Co-Manager

Eric Teague – Assistant Store Manager

5.

On or about October 22, 2001, Respondent, by Jose Oliveras, at its Orlando, Florida facility:

- (a) Threatened employees with unspecified reprisals if they supported the Union.
- (b) Threatened employees with the loss of benefits if they supported the Union.
- (c) Threatened employees with the denial of transfer requests if they supported the Union.

6.

(a) On or about November 1, 2001, Respondent, by Eric Teague, at its Orlando, Florida facility, denied the request of its employee Sheri Gewart for an employee representative during an investigatory interview.

(b) Respondent's employee Sheri Gewart had reasonable cause to believe that the interview described above in paragraph 6(a) would result in disciplinary action being taken against her.

(c) On or about November 1, 2001, Respondent, by Eric Teague and Jose Oliveras, at its Orlando, Florida facility, conducted the interview described above in paragraph 6(a) with its employee Sheri Gewart, even though Respondent had denied the employee's request for representation described above in paragraph 6(a).

7.

(a) On or about November 16, 2001, Respondent, by William "Dub" Goodroe and Jose Oliveras, at its Orlando, Florida facility, denied the request of its employee Michael Naviello for an employee representative during an investigatory interview.

(b) Respondent's employee Michael Naviello had reasonable cause to believe that the interview described above in paragraph 7(a) would result in disciplinary action being taken against him.

(c) On about November 16, 2001, Respondent, by William "Dub" Goodroe and Jose Oliveras, at its Orlando, Florida facility, conducted the interview described above in paragraph 7(a) with its employee Michael Naviello, even though Respondent had denied the employee's request for representation described above in paragraph 7(a).

(d) On or about November 16, 2001, Respondent, by William "Dub" Goodroe, at its Orlando, Florida facility, threatened its employees with discharge for requesting representation during investigatory interviews.

8.

On or about November 19, 2001, Respondent, by Dan Erwin, at its Orlando, Florida facility:

(a) Created an impression among its employees that their union and other protected, concerted activities were under surveillance by Respondent.

(b) Solicited employee complaints and grievances and impliedly promised to remedy them if they refrained from engaging in further union organizational activity.

(c) Instructed employees to inform management if a representative of the Union approached them or otherwise solicited their support.

9.

On or about November 21, 2001, Respondent, by Jose Oliveras, at its Orlando, Florida facility, engaged in surveillance of employees, and ejected an employee from its store, in order to discourage employees' union or other protected, concerted activities.

10.

On or about November 30, 2001, Respondent, by William "Dub" Goodroe, at its Orlando, Florida facility:

- (a) By oral announcement, promulgated and since then has maintained an overly broad rule that prohibits employees from distributing union literature anywhere on company property.
- (b) Threatened employees with discharge if they engaged in union activities.

11.

- (a) On or about November 1, 2001, Respondent disciplined its employee Sheri Gewart.
- (b) Respondent engaged in the conduct described above in paragraph 11(a) because the named employee of Respondent assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

12.

- (a) On or about November 16, 2001, Respondent disciplined its employee Michael Naviello.
- (b) Respondent engaged in the conduct described above in paragraph 12(a) because the named employee of Respondent assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

13.

By the conduct described above in paragraphs 6(c), 7(c), 7(d), 8(a) through 8(c), 9, 10(a) and 10(b), 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.

14.

By the conduct described above in paragraphs 11(a), 11(b), 12(a) and 12(b), Respondent has been discriminating in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, in violation of Section 8(a)(3) and (1) of the Act.

15.

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

PLEASE TAKE NOTICE that on June 23, 2003 at 10:00 a.m., at a place in Orlando, Florida, to be later designated, a hearing will be conducted before a duly designated administrative law judge of the Board on the allegations in this consolidated complaint, at which time and place any party within the meaning of Section 102.8 of the Board's Rules and Regulations will have the right to appear and present testimony.

Respondent is further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, Respondent shall file with the undersigned an original and four (4) copies of an answer to this consolidated complaint on or before January 2, 2003, and that, unless Respondent does so, all of the allegations in the consolidated complaint shall be considered to be admitted to be true and shall be so found by the Board. Respondent is also notified that pursuant to the Board's Rules and Regulations, Respondent shall serve a copy of its answer on each of the other parties.

Form NLRB 4338, Notice, and Form NLRB 4668, Summary of Standard Procedures in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practice Proceedings Pursuant to Section 10 of the National Labor Relations Act, are attached.

DATED at Tampa, Florida, this 19th day of December, 2002.



Rochelle Kentov, Regional Director
National Labor Relations Board, Region 12
South Trust Bank Building
201 East Kennedy Boulevard, Suite 530
Tampa, FL 33602-5824

FORM NLRB-4338
(2-90)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

NOTICE

Cases 12-CA-21860, 21941, 21977-2

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 thereafter 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.

Wal-Mart Stores, Inc.
Attn: William Goodroe, Store Mgr.
11250 E. Colonial Drive
Orlando, FL 32817

United Food and Commercial Workers
International Union, AFL-CIO, CLC
Attn: Christine L. Neff, A.G.C.
1775 K Street, NW
Washington, D.C. 20006

Johnston, Barton, Proctor & Powell, LLP
Attention: Charles Powell, Esq.
2900 AmSouth/Harbert Plaza
1901 Sixth Avenue North
Birmingham, AL 35203

**SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD
BEFORE THE NATIONAL LABOR RELATIONS BOARD
IN UNFAIR LABOR PRACTICE PROCEEDINGS PURSUANT TO
SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT**

The hearing will be conducted by an administrative law judge of the National Labor Relations Board who will preside at the hearing as an independent, impartial finder of the facts and applicable law whose decision in due time will be served on the parties. The offices of the administrative law judges are located in Arlington, VA; San Francisco, California; New York, N.Y.; and Atlanta, Georgia.

At the date, hour, and place for which the hearing is set, the administrative law judge, upon the joint request of the parties, will conduct a "prehearing" conference, prior to or shortly after the opening of the hearing, to ensure that the issues are sharp and clearcut; or the administrative law judge may independently conduct such a conference. The administrative law judge will preside at such conference, but may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record, for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the administrative law judge conducting the prehearing conference will be the one who will conduct the hearing; and it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference. No prejudice will result to any party unwilling to participate in or make stipulations or concessions during any prehearing conference.

(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues.)

Parties may be represented by an attorney or other representative and present evidence relevant to the issues. All parties appearing before this hearing who have or whose witnesses have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.603, should notify the Regional Director as soon as possible and request the necessary assistance.

An official 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 administrative law judge for approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the administrative law judge specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the administrative law judge and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The administrative law judge will allow an automatic exception to all adverse rulings and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies of exhibits should be supplied to the administrative law judge and other parties at the time the exhibits are offered in evidence. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the administrative law judge before the close of hearing. In the event such copy is not submitted, and the filing has not been waived by the administrative law judge, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be 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. In the absence of a request, the administrative law judge 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.

Any party shall be entitled, on request made before the close of the hearing, to file a brief or proposed findings and conclusions, or both, with the administrative law judge who will fix the time for such filing. Any such filing submitted shall be double-spaced on 8½ by 11 inch paper.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's Rules and Regulations, with respect to the procedure to be followed before the proceeding is transferred to the Board:

No request for an extension of time within which to submit briefs or proposed findings to the administrative law judge will be considered unless received by the Chief Administrative Law Judge in Arlington, VA. (or, in cases under the San Francisco, California branch office, the Deputy Chief Administrative Law Judge; or in cases under the branch offices in New York, New York, and Atlanta, Georgia, the Associate Chief Administrative Law Judge) at least 3 days prior to the expiration of time fixed for the submission of such documents. Notice of request for such extension of time must be served simultaneously on all other parties, and proof of such service furnished to the Chief Administrative Law Judge, Deputy Chief Administrative Law Judge, or the Associate Chief Administrative Law Judge, as the case may be. A quicker response is assured if the moving party secures the positions of the other parties and includes such in the request. All briefs or proposed findings filed with the administrative law judge must be submitted in triplicate, and may be printed or otherwise legibly duplicated with service on the other parties.

In due course the administrative law judge will prepare and file with the Board a decision in this proceeding, and will cause a copy thereof to be served on each of the parties. Upon filing of this decision, the Board will enter an order transferring this case to itself, and will serve copies of that order, setting forth the date of such transfer, on all parties. At that point, the administrative law judge's official connection with the case will cease.

The procedure to be followed before the Board from that point forward, with respect to the filing of exceptions to the administrative law judge's decision, the submission of supporting 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 served on the parties together with the order transferring the case to the Board.

Adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations. If adjustment appears possible, the administrative law judge may suggest discussions between the parties or, on request, will afford reasonable opportunity during the hearing for such discussions.