

JD(ATL)-35-08
Toa Baja, PR
Rio Piedras, PR
Sabana Grande, PR

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
ATLANTA BRANCH OFFICE

PEPSI AMERICAS, INC.

and

CASE 24-CA-10861

UNION DE TRONQUISTAS DE PUERTO
RICO, LOCAL 901, IBT

Ayesha K. Villegas-Estrada, Esq., for the
Government.¹

Alicia Figueroa-Llinas, Esq., for the
Company.²

Jose L. Cortes, Representative, for the
Union.

DECISION

Statement of the Case

WILLIAM N. CATES, Administrative Law Judge. This is a unilateral change of employees' working conditions case. I heard this case in trial in San Juan, Puerto Rico, on July 8, 2008. The case originates from a charge, filed by Union De Tronquistas De Puerto, Local 901, IBT (Union) on February 13, 2008, against Pepsi Americas, Inc., (Company). The prosecution of this case was formalized on May 30, 2008, when the Acting Regional Director for Region 24 of the National Labor Relations Board (Board), acting in the name of the Board's General Counsel, issued a Complaint and Notice of Hearing (Complaint) against the Company.

The Complaint alleges the Company, on or about January 30, 2008, unilaterally changed the existing terms and conditions of employment of its "Ralph Supermarkets" merchandisers by changing their work routes, which changes it is alleged are mandatory subjects for the purposes of collective bargaining. It is also alleged the merchandisers are part of an appropriate exclusive collective-bargaining unit and that the Union has been, and

¹ I shall refer to Counsel for General Counsel as Counsel for the Government or Government.

² I shall refer to Counsel for the Company as Counsel for the Company or Company.

continues to be, the certified exclusive collective bargaining representative of said employees. It is also alleged the Company made the unilateral changes without affording the Union an opportunity to bargain with the Company with respect to this conduct and the effects of this conduct. It is alleged the actions, and/or inactions, of the Company regarding its merchandisers violates Section 8(a)(5) and (1) of the National Labor Relations Act, as amended (Act).

The Company, in a timely filed answer to the Complaint, denied having violated the Act in any manner alleged in the Complaint.

The parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. I carefully observed the demeanor of the witnesses as they testified. I have studied the whole record, the post trial briefs, and the authorities cited therein. Based on more detailed findings and analysis below, I conclude and find the Company violated the Act substantially as alleged in the complaint.

Findings of Fact

I. Jurisdiction, Labor Organization Status, and Supervisor/Agency Status

The Company is a Puerto Rico corporation with an office and place of business in Toa Baja, Rio Piedras, and Sabana Grande, Puerto Rico, where it is, and has been, engaged in the bottling and distribution of soft drinks in Puerto Rico. During the twelve months ending May 30, 2008, a representative period, the Company purchased and received at its Puerto Rico facilities goods valued in excess of \$50,000 directly from points located outside the Commonwealth of Puerto Rico. The evidence establishes, the parties admit, and I find, the Company is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

The parties admit, and I find, the Union is a labor organization within the meaning of Section 2(5) of the Act.

It is admitted that Human Resources Director Adriana Garcia (HR Director Garcia), District Manager "East Area" Mario Santos (District Manager Santos), District Manager "Metro Area" Francisco Paris (District Manager Paris), District Manager of "Ralph Supermarkets" Ramon Rodriguez (District Manager Rodriguez), and General Sales Manager Miguel Alameda (General Sales Manager Alameda) are supervisors and agents of the Company within the meaning of Section 2(11) and (13) of the Act.

II. Alleged Unfair Labor Practices

A. Facts

The following employees of the Company, herein called the Unit, constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time and part-time merchandisers employed by the Company in Toa Baja, Villa Prades and Sabana Grande, Puerto Rico.

5 Excluded: All other employees, including, but not limited to, the employees in production, warehouse, maintenance, quality control, sales delivery and sales, fleet, office and clerical employees, guards and supervisors as defined by the National Labor Relations Act.

10 The Union was certified as the exclusive collective bargaining representative of the Unit on August 18, 2003, and based on Section 9(a) of the Act, has since that time been the exclusive collective-bargaining representative of the Unit. The Company and Union entered into a collective-bargaining agreement effective, by its terms, from June 19, 2004, through June 16, 2007. At the time of the trial herein the parties were in negotiations toward a new
15 collective-bargaining agreement.

The Company is a sales and distribution company for a number of food and beverage products. The Company manufactures some of the products it distributes in Puerto Rico and imports others from the United States. The Company distributes, for example, several well
20 known brands such as Pepsi, 7-Up, Welch, Lipton, Gatorade and SoBe products. General Sales Manager Alameda divided the Sales Department into separate sales and service divisions. Sales is composed of a team of sales representatives while the service division is composed of merchandisers who actually provide services to the clients obtained by the sales force.

25 At the time of the trial herein the Company employed approximately 120 merchandisers, 80 of which are full time. General Sales Manager Alameda described a merchandiser as an employee responsible for providing service for all products contracted to a client. The services include direct contact with client management and keeping the
30 merchandise displayed, promoted and rotated (if perishable) as well as maintaining a good relationship with the client. Merchandiser and Deputy Union Delegate Argenis Carrillo, who is assigned to the Villa Prades area, described his specific, and a merchandiser's general duties, in greater detail than General Sales Manager Alameda. Carrillo said he greeted the client store manager the first thing each visit to the client and then checked the client's
35 advertisements to ascertain which ,if any, items he serviced were on sale. Carrillo then proceeded to the shelf space allocated to the Company's products and resupplied the spaces in an orderly manner including rotating merchandise as needed. Carrillo then insured the aisles in front of the displays, as well as the warehouse storage areas, were clean and orderly. Carrillo also prepares credits for the client for any merchandise no longer sellable.

40 General Sales Manager Alameda explained that merchandisers must be moved around to meet clients' needs. Alameda further explained clients will contract for differing lengths and levels of services as well as providing differing amounts of shelving space for the Company's products. The client's needs dictate how often and for what duration a
45 merchandiser will be needed at a particular client's property. Alameda said, for example, that Ralph's Supermarket in Caguas required 6 to 7 hours of merchandising service per day

because the store utilized more than 10,000 boxes of Pepsi and other Company distributed products per day and provided the Company with 40 linear feet of shelving space. Alameda stated that changes to merchandisers' routes and clients are directly related to business needs, as well as changes and requirements of the clients. Changes for merchandiser's routes and clients are also made in a search for efficiency, client requests for or the removal of a particular merchandiser, employees requesting changes for personal reasons, new routes established for new clients as well as vacancies created by employee resignations, retirements and dismissals.

All merchandisers who testified drive their personal vehicles to their respective work locations. Article 24 of the expired collective-bargaining agreement provided a monthly car allowance of \$325 to full-time merchandisers who drove their personal vehicles. There is no contention that the Company has failed to continue paying this set rate amount. The car allowance is not dependent upon the distance traveled, thus the sufficiency of the allowance for an individual merchandiser would be dependent upon the distance a particular merchandiser had to travel.

The Company divides Puerto Rico into three operational divisions, areas or locations which are Toa Baja, Sabana Grande and Villa Prades. Each division handles sales and merchandiser schemes in a particular manner so as to provide service to the clients located in the towns they service. The changes made to the route and/or client assignments for merchandisers, at issue herein, occurred in the Villa Prades area or location. District Manager Rodriguez is in charge of certain merchandisers in the Villa Prades area. He supervises approximately 15 merchandisers, nine of which are full-time. All nine of the full-time merchandisers under his charge had their routes and/or client assignments changed effective February 11, 2008. Three of those whose routes and/or assignments were changed objected to the changes.

Historically some changes, it appears, were made individually and for various personal reasons with a ripple effect on others, based on seniority. Certain examples follow.

Merchandiser and Deputy Union Delegate Carrillo testified that approximately two years ago he requested a change in route and client assignments for personal reasons. Carrillo desired the change to bring him closer to his home and to where he wished to pursue his education. To bring the change about Carrillo contacted his Union delegate and the two of them spoke with General Sales Manager Alameda who granted the change within two weeks of the request. Carrillo stated that when he made his request the parties' collective-bargaining agreement was in effect. Carrillo did not know of an incident where a supervisor made, at one time, route and/or client assignment changes for all employees under his/her supervision.

Seven year merchandising employee and four year Union Delegate Francisco Vega testified he has been assigned to the Villa Prades area working in Caguas for 5 years. Vega came to be assigned in Caguas as a result of a vacancy resulting from a dismissal or resignation. Vega's then supervisor Julio Rodriguez told him of the vacancy and inquired about Vega's interest. Vega was interested and accepted the assignment. Vega's old position

was then posted as a vacancy. Vega acknowledged clients “change here and there” but added he had always been able to have assignments in Caguas where he lives. Vega stated that since the Union had been the merchandisers’ representative the Union had been involved in changes such as his.

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Union Delegate Vega stated vacancies are posted or provided to the Union Delegates, in this case Vega and Deputy Delegate Carrillo, who in turn inquire of the merchandisers, by seniority, regarding their interest. If interested, merchandisers go by a Company office and apply for the position or assignment. Vega did not know of a time when a supervisor changed the route and client assignments for all employees under his/her supervision at the same time.

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Six year merchandising employee Carlos Javier Lopez Baquero worked assignments for approximately a year in Isla Verda and Condado while living in Cayey, Puerto Rico. A merchandiser position opened in Cayey as a result of a resignation. Baquero applied for the assignment and his supervisor at the time, Rubin Ruiz, gave him the assignment. Baquero worked that assignment for the next 5 years.

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One plus year merchandising employee Hernie Rivera started with the Company in Caguas but requested and was reassigned to Naguabo which is nearer to his home and where he desires to pursue his education. Rivera requested the assignment change through Deputy Union Delegate Carrillo.

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The parties collective-bargaining agreement which expired on June 16, 2007, at Article 11, calls for vacancies and/or new positions to be filled by seniority following specific requirements related to full-time merchandisers of the division in which the vacancy exists then part-time merchandisers in that division followed by full-time and part-time merchandisers of other divisions and thereafter from personnel outside the Unit at the Company’s discretion. Article 11 also calls for a 5 day posting for vacancies in the Unit.

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District Manager Rodriguez testified merchandiser routes and clients have always been changed based on “mostly business decisions.” Rodriguez explained he worked for the Company for a number of years but was away for 5 years returning to the Company in 2007, in his current position. Rodriguez said upon returning to the Company he observed potential business opportunities if he changed the work assignments of the merchandisers under his supervision. Rodriguez took his ideas to his immediate supervisor, General Sales Manager Alameda, who gave his approval for the changes. Rodriguez explained that if merchandisers remained at one place and with one rigid schedule too long they failed to see new opportunities for bettering the business. Rodriguez stated that by sending a different merchandiser into a new assignment the new merchandiser may observe opportunities for additional displays such as “wings” [an additional exhibit outside the assigned shelf or aisle space] or to display the products differently and increase sales. To implement his ideas Rodriguez obtained the names with addresses of all the merchandisers under his supervision and decided on assignments for them based on where they could best serve to meet the expectations he had for his merchandisers. Rodriguez also consulted with the Company

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Human Resources Department to be sure he was not moving anyone too far from their homes. Rodriguez thereafter decided to meet with the merchandisers.

5 On January 23 or 24, 2008, District Manager Rodriguez announced, at a meeting with merchandisers under his supervision, he was going to implement changes in route and/or client assignments covering merchandisers under his supervision effective on or about February 11, 2008. Rodriguez told the employees his reason for the changes and asked that if some did not like the changes to give him three months and they would be back thanking him for the changes. At the meeting Rodriguez also distributed a document regarding the changes
10 to be made on February 11, 2008.

15 After learning of the announcement of the meeting from merchandisers Union Delegate Francisco Vega requested of, and obtained approval from, District Manager Rodriguez to attend the meeting as a Union Delegate. Vega said Rodriguez announced the changes and gave the merchandisers a list of their new assignments. Union Delegate Vega could not recall a supervisor changing the assignments for all his employees at one time before.

20 It is stipulated the Company did not notify or bargain with the Union over the changes in route and/or client assignments prior to District Manger Rodriguez announcing the changes on January 23 or 24, 2008. Nine merchandisers' route and/or client assignments were changed. The nine are Freddy Vega, Gilberto Reyes, Edwin Colon, Carlos Lopez Baquero, Marvin Griffith, Hernie Rivera, Jason Rosarion, Jorge Medina and Sammy Arroyo. Union Delegate Vega testified three of the nine protested or objected to their changed assignments.
25 The three are Freddy Vega, Carlos Javier Lopez Baquero and Hernie Rivers.

30 Merchandiser Baquero said he not only complained to District Manager Rodrigex but also to Union Delegate Francisco Vega. Baquero testified the change required him to travel an hour from his home in Cayey to his new client assignment in Gurabo, Puerto Rico, whereas, before the change it only took fifteen minutes travel time. Baquero also had to pay \$50 more for day care for his son and could no longer go home for lunch. Baquero said his transportation costs are more including a dollar toll road fee daily.

35 Merchandiser Rivera objected to his reassignment from Naguabo to Las Piedra, Puerto Rico because it required greater travel, taking additional time and raising his fuel costs, and took him away from furthering his education.

40 Merchandiser Freddy Vega complained to his Union Delegate that the new assignment took him farther from his home and forced him to pay toll road fees.

45 Following the three merchandiser complaints Union Delegate Francisco Vega and Deputy Union Delegate Carrillo arranged a meeting at a local restaurant with District Manager Rodriguez about the changes in general and specifically about the changes for the three merchandisers that complained. According to Carrillo, Rodriguez was interested in explaining his thoughts about the changes and talking about the deficiencies of certain of the merchandisers. Carrillo said District Manager Rodriguez explained he had obtained

This contention is predicated upon the Company’s other contentions insofar as its “trivial” claim is dependent upon whether the change was “material, substantial, and significant.”

5 The Company’s second contention, similar to the first, is that the change of routes “did not have a material, substantial and significant impact on the merchandiser’s terms and conditions of employment” in that their hours and compensation were unchanged. The Company further argues that the effect of the exchange of routes was de minimus “and could be fairly described as a very minimal inconvenience” that “affected the employees’ private lives rather than their conditions of work.”

10 The Company’s third contention is that the change of routes was made pursuant to past practice and that the Union, having previously acquiesced to route changes, waived its right to bargain.

15 The Company’s fourth contention is that the expired Management Rights Clause was consistent with its past practice and that it was, therefore, privileged to carry out the route exchanges pursuant to that past practice.

20 C. Analysis and Concluding Findings

It is well established that an employer violates Section 8(a)(5) and (1) of the Act if it makes material unilateral changes during the course of a collective-bargaining relationship on matters that are mandatory subjects of bargaining. *NLRB v. Katz* 369 U.S. 736 (1962). It is well established that issues affecting employee schedules constitute mandatory subjects of bargaining. *Meat Cutters, Local 189 v. Jewel Tea Co.*, 381 U.S. 676, 691 (1965). Changing employee route and/or client assignments clearly constitutes changes in employee schedules.

25 The Company, in its brief, acknowledges that the Management Rights Clause did not survive the expiration of the contract, but, citing *Sacramento Union*, 258 NLRB 1074, 1075 (1981), contends that the expired clause was consistent with past practice and that it was, therefore, privileged to revert to that past practice. It is well settled that management rights clauses do not survive the expiration of collective-bargaining agreements. *Clear Channel Outdoor, Inc.*, 346 NLRB 696, 703 (2006). The problem with the Company’s argument is that there is no evidence herein of any past practice of wholesale reassignments by a specific supervisor of all full-time merchandisers working under that supervisor as opposed to individual reassignments. The past practice of the employer was, consistent with Article 11 of the expired collective-bargaining agreement, to post the vacancy for five days and permit employees to bid for the vacancy. The unprecedented wholesale reassignments made by District Manager Ramon Rodriguez of all nine full-time merchandisers that he supervised was not consistent with any past practice. Insofar as the wholesale reassignments were made simultaneously, no vacancies were created and thus none were posted.

35 The Company, citing no case authority, argues that the Union “previously allowed similar route exchanges” and that this constituted a “waiver of its right to bargain.” I disagree. As explained in *King Soopers, Inc.*, 340 NLRB 628, 635 (2003), cited by the Government:

Board precedent makes clear that a “union’s acquiescence in previous unilateral changes does not operate as a waiver of its right to bargain over such changes for all time.” *Owens-Brockway Plastic Products*, 311 NLRB 519, 526 (1993) (quoting *Owens-Corning Fiberglas*, 282 NLRB 609 (1987)).

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The wholesale reassignments made by District Manager Rodriguez caused Merchandiser Carlos Lopez Baquero to have to travel one hour from his home in Cayey to his new assignment in Gurabo, Puerto Rico, instead of 15 minutes, an increase of 45 minutes each way, a total of 90 minutes a day, which resulted in increased day care costs for his son as well as paying a daily one dollar toll road fee. Merchandiser Hernie Rivera, who was reassigned from Nagubo to Los Piedra, Puerto Rico, had further to travel that took additional time and raised his fuel costs. Merchandiser Freddy Vega had to travel farther and pay toll road fees. The Company pointed out that alternate routes not requiring a toll are available, but presented no evidence that the alternate routes were shorter or took less time to drive.

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“An employer is required to bargain over issues ... when those issues have a significant, substantial, and material effect on terms and conditions of employment.” *Success Village Apartments*, 348 NLRB 579, 580 (2006). The Company, citing provisions of the Fair Labor Standards Act that provide that an employer is not obligated to compensate employees for travel time to and from work, claims that the change in the employees’ assignments “affected their private lives rather than their conditions of work.” Although commuting time is not compensable as work time under the Fair Labor Standards Act, Board precedent establishes that, insofar as an action of the employer affects the time it takes for an employee to report to work, commuting time, that action constitutes an issue about which an employer is required to bargain. *United Parcel Service*, 336 NLRB 1134 (2001).

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The violation herein is predicated upon the failure of the employer to honor its bargaining obligation. “[T]he vice involved in [a unilateral change] ... is that the employer has changed the existing conditions of employment. It is this change which is prohibited and which forms the basis of the unfair labor practice charge.” *Daily News of Los Angeles*, 315 NLRB 1236, 1237 (1994), *enfd.* 73 F.3d 406 (D.C. Cir. 1996), *cert. denied* 519 U.S. 1090 (1997) (quoting *NLRB v. Dothan Eagle*, 434 F.2d 93, 98 (5th Cir. 1970)). [Emphasis in the original.]

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The central issue herein, given the undisputed evidence of a unilateral change, is whether that change was substantial and material. If the impact was substantial and material as to even one employee, the Company was obligated to bargain with the Union before instituting the change unilaterally. Whether the change had an impact upon the working conditions of only some of the employees is immaterial. In *Bloomfield Health Care Center*, 352 NLRB No. 39, slip op. at 5 (2008), in which the Board reversed the dismissal by the administrative law judge of an allegation relating to a unilateral change, the Board stated:

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The judge's reasoning that the Company's unilateral change affected only two employees is similarly unpersuasive. The Board rejected such an argument in *Carpenters Local 1031*, 321 NLRB 30, 32 (1996) (Board is not precluded from finding 8(a)(5) violation even if unilateral change affects only one employee).

See also *Georgia Power Co.*, 325 NLRB 420, 420 fn. 5 (1998) (“[I]f a change involves the terms and conditions of employment of unit employees, it is a mandatory subject even if only a relatively few employees are affected.”), *enfd. mem.* 176 F.3d 494 (11th Cir. 1999), *cert. denied* 528 U.S. 1061 (1999).

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In this case, at least three employees, one third of the affected nine employees, were sufficiently affected by the change that they protested to the Union. Although the record does not establish the length of the greater distances that merchandisers Rivera and Vega had to travel or the amount of time that it took them to do so, the greater distances, and in the case of merchandiser Vega the toll that he had to pay, were sufficient to cause them to complain. The record establishes that the time merchandiser Banquero had to travel quadrupled, from 15 minutes to an hour each way, a total of 90 additional minutes a day.

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As observed by the administrative law judge in *Mitchellace, Inc.*, 321 NLRB 191, 193 (1996), “there is no way to categorize them [prior board decisions] so that every unilateral action by an employer can be pegged with any assurance as having material, substantial, and significant effect or a not having such effects.” Despite the absence of a bright line differentiating between what does not constitute a material change, one factor in such analysis is time. The Board, in various cases involving changes in employee parking lots, has consistently held that the amount of additional time that it takes the employee to get to work is a significant factor in determining whether a change is material and substantial. It would appear that a change of five minutes or less is not material. See *Berkshire Nursing Home, LLC*, 345 NLRB 220 (2005). Similarly, if the change requires employees to spend more than 20 additional minutes to get to work, it does constitute a material and substantial change. *United Parcel Service, supra*; *Berkshire Nursing Home, LLC, supra* at 221, fn. 8.

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The change herein, the wholesale reassignment of all full-time merchandisers under the supervisor of one supervisor, was unprecedented. The only past practice established on this record was individual reassignments. The change was not “trivial” as argued by the Company. It affected all nine full-time merchandisers supervised by District Manager Rodriguez. Although the increase in the commuting time of merchandisers Rivera and Vega is not established in the record, the adverse effect of the change upon them was sufficient to cause them, as well as merchandiser Banquero, to complain to the Union. The number of employees affected is immaterial when evaluating whether a change is material and substantial. The unilateral change as it affected merchandiser Banquero, quadrupling his daily commuting time from a half an hour to two hours, a daily total of an hour and a half more than his former commuting time, establishes that the change constituted a material, substantial, and significant change. *United Parcel Service, supra*.

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The Company, by unilaterally changing the routes and/or clients of the merchandisers under the supervision of District Manager Rodriguez, violated Section 8(a)(5) of the Act and I so find.

Conclusions of Law

1. The Company is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees of the Company constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time and part-time merchandisers employed by the Company in Toa Baja, Villa Prades and Sabana Grande, Puerto Rico.

Excluded: All other employees, including, but not limited to, the employees in production, warehouse, maintenance, quality control, sales delivery and sales, fleet, office and clerical employees, guards and supervisors as defined by the National Labor Relations Act.

4. The Union was certified as the exclusive collective-bargaining representative of the employees in the above described unit on August 18, 2003, and has at all times since that date, based on Section 9(a) of the Act, been the exclusive collective-bargaining representative of the unit employees.

5. By implementing changes to the existing terms and conditions of employment for certain of its merchandisers, without notice to the Union and without affording the Union an opportunity to bargain collectively and in good faith regarding the Company's unilaterally changing the merchandisers routes and/or clients and the effects of this conduct the Company violated Section 8(a)(5) and (1) of the Act.

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

Remedy

Having found that the Company has engaged in certain unfair labor practices, I find it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Having found the Company failed to bargain collectively and in good by unilaterally implementing certain working conditions, namely, changing the routes and/or clients of its merchandisers, it is ordered to bargain in good faith with the Union, and on request by the Union rescind its unilateral actions.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended:³

ORDER

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The Company, Pepsi Americas, Inc., its officers, agents, successors, and assigns shall:

1. Cease and desist from:

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(a) Refusing to bargain collectively and in good faith with the Union as the collective-bargaining representative of the employees in the following appropriate unit:

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Included: All full-time and part-time merchandisers employed by the Company in Toa Baja, Villa Prades and Sabana Grande, Puerto Rico.

Excluded: All other employees, including, but not limited to, the employees in production, warehouse, maintenance, quality control, sales delivery and sales, fleet, office and clerical employees, guards and supervisors as defined by the National Labor Relations Act.

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(b) Unilaterally implementing changes to the terms and working conditions of the merchandiser employees by unilaterally changing their routes and/or clients.

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(c) In any like or related manner interfering, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

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(a) Before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative in the following bargaining unit:

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Included: All full-time and part-time merchandisers employed by the Company in Toa Baja, Villa Prades and Sabana Grande, Puerto Rico.

Excluded: All other employees, including, but not limited to, the employees in production, warehouse, maintenance, quality control, sales delivery and sales, fleet, office and clerical employees, guards and supervisors as defined by the National Labor Relations Act.

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(b) On request by the Union, rescind the above mentioned unilateral changes to the merchandisers' routes and/or clients.

³ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(c) Within 14 days after service by the Region, post at its Toa Baja, Rio Piedras, and Sabana Grande, Puerto Rico, locations copies of the attached notice, in English and Spanish, marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 24, after being signed by the Company's authorized representative, shall be posted for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Company to ensure that the notices are not altered, defaced, or covered by any other material. In the event that , during the pendency of these proceedings, the Company has gone out of business or closed the facilities involved in these proceedings, the Company shall duplicate and mail, at its own expense a copy of the notice to all current employees and former employees employed by the Company at any time since February 11, 2008.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Company has taken to comply.

Dated, Washington D.C., September 16, 2008.

William N. Cates
Associate Chief Judge

⁴ If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the Notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

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**Posted by the Order of the
National Labor Relations Board
An Agency of the United States Government**

10 The National Labor Relations Board has found that we violated Federal labor law and
has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

15 Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

20 **WE WILL NOT** refuse to bargain collectively and in good faith with the Union De
Tronquistas De Puerto Rico, Local 901, IBT as the collective-bargaining representative of the
employees in the following appropriate unit:

25 **Included:** All full-time and part-time merchandisers employed by the
Company in Toa Baja, Villa Prades and Sabana Grande, Puerto Rico.

30 **Excluded:** All other employees, including, but not limited to, the employees
in production, warehouse, maintenance, quality control, sales delivery and
sales, fleet, office and clerical employees, guards and supervisors as defined
by the National Labor Relations Act.

WE WILL NOT unilaterally implement changes to the terms and working conditions
of our merchandiser employees by unilaterally changing their routes and/or clients.

35 **WE WILL NOT** in any like or related manner interfere with, restrain, or coerce you
in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request by the Union, rescind the unilaterally implemented changes to
the routes and/or clients of our merchandiser employees.

40 **WE WILL**, before implementing any changes in wages, hours or other terms and
conditions of employment of unit employees, notify and, on request, bargain with the Union
as the exclusive collective-bargaining representative of the employees in the above described
appropriate unit.

PEPSI AMERICAS, INC

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board’s Regional Office set forth below. You may also obtain information from the Board’s website: www.nlr.gov.

525 F. D. Roosevelt Avenue, La Torre de Plaza, Suite 1002, San Juan, PR 00918-1002
(787) 766-5347, Hours: 8:30 a.m. to 5 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above regional office’s

Compliance officer, (787) 766-5377