

**United States Court of Appeals**  
**FOR THE DISTRICT OF COLUMBIA CIRCUIT**

---

**No. 11-1053**

**September Term, 2011**

FILED ON: MARCH 13, 2012

FRESH & EASY NEIGHBORHOOD MARKET INC.,  
PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD,  
RESPONDENT

UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION,  
INTERVENOR

---

Consolidated with 11-1097

---

On Petition for Review and Cross-Application for  
Enforcement of an Order of the National Labor Relations Board

---

Before: GARLAND, *Circuit Judge*, and WILLIAMS and RANDOLPH, *Senior Circuit Judges*.

**J U D G M E N T**

This petition for review and cross-application for enforcement were considered on the record and briefs of the parties. Although the issues present no need for a published opinion, they have been accorded full consideration by the Court. See Fed. R. App. P. 36; D.C. Cir. R. 36(d). For the reasons that follow, it is

**ORDERED** and **ADJUDGED** that the petition for review be denied and the cross-application for enforcement be granted.

We conclude that the Board's decision that Fresh & Easy Neighborhood Market Inc. unlawfully encouraged an employee to quit in response to protected activity and promulgated two unlawful oral rules, one prohibiting an employee from discussing

disciplinary matters during working hours and the other prohibiting employees from discussing union matters during working hours, is supported by substantial evidence and is not arbitrary.

Pursuant to Rule 36 of this Court, this disposition will not be published. The clerk is directed to withhold issuance of the mandate herein until seven days after the disposition of any timely petition for rehearing or petition for rehearing *en banc*. See FED. R. APP. P. 41(b); D.C. CIR. R. 41.

**FOR THE COURT:**

Mark J. Langer, Clerk

BY: /s/

Jennifer M. Clark

Deputy Clerk