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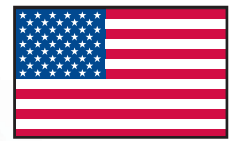
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Tesco's employment practices in the USA

A UNI Global Union
Country Report

June 2009

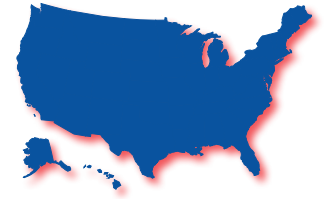




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Foreword



Philip Jennings
UNI General Secretary

Tesco, the world's third-largest retailer, entered the USA in 2007 in one of its boldest international ventures, Fresh & Easy. No other British supermarket group has been successful in the USA, but Tesco has committed several hundred million US dollars to launching and growing a neighbourhood convenience store subsidiary, with an ambition of 1,000 stores¹.

Retail employees and unions in the USA looked forward expectantly to Tesco's arrival, having learned of the company's high standards of employment, underpinned by its own global policies on employment and human rights and evidenced by the ground-breaking partnership agreement between Tesco and the UK's retail union, Usdaw.

Since labour laws are weak in the USA, employees rely on union-employer collective agreements to provide them with decent pay rates and a living wage, pensions and affordable health insurance, job security and protection against unfair dismissal. Without such collective agreements employees can be fired at an employer's whim, regardless of their length of service.

In the three years that Tesco has been planning, and then rolling out its stores on the West Coast of the United States, the company has shown that its policies and principles do not travel well across the Atlantic. Instead of applying its British high standards in America, Tesco appears to have traded down to those of Wal-Mart, which is notorious for its anti-union approach.

UNI Global Union² commissioned this research in response to concerns raised by employees and the UFCW³ union in the USA. Its aim was to investigate employee allegations and to provide an objective assessment of the true situation in Tesco Fresh & Easy. UNI is publishing this report in Britain to provide a voice for Tesco's US workers, who deserve to be heard by the public and shareholders in Tesco's home country.

By bringing the cause of Tesco's employees in the USA to British public attention, it is hoped that the company will modify its approach, take swift and decisive action to address the issues identified, and begin to engage with community and employee representatives.

¹ "Tesco opens its first 6 US Fresh & Easy California stores" *Food Week Online*, November 9, 2007

² UNI is the global union representing 20 million workers, who themselves are members of more than 900 trades unions

³ The United Food and Commercial Workers' Union represents 1.3 million workers in North America, primarily in retailing and food processing

UNI also seeks assurances from Tesco's senior management that the policies which they state apply to all of their international subsidiaries are implemented, including the right to freedom of association, so that employees in the United States and elsewhere can, if they choose, come together to form or join a trades union to represent their collective interests, as they can in the UK, with Tesco's explicit support and encouragement.

UNI wishes Tesco success in the USA, but that success should be achieved in partnership with employees and those they wish to represent them. Workers ask for no more than for Tesco to put into effect the policies, terms and conditions to which it is already publicly committed. We also believe that this is the right thing for Tesco.

Establishing an entirely new supermarket chain in a country with a well-developed retail market, especially one in which no British company has previously succeeded, is a financial and reputational gamble for Tesco. To attempt to do so with a new, untried convenience store format, with an approach of non-engagement or hostility to community and union representatives, and with political opposition that reaches as far up as President Obama, appears unnecessarily risky.

We sincerely hope that Tesco will think again about how it is operating in the USA.



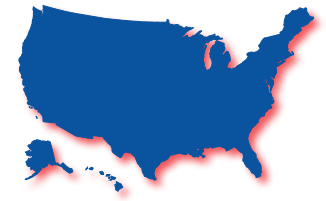
Philip Jennings
General Secretary
UNI Global Union

About this study

This study, compiled by Professor John Logan, of UC Berkeley, was commissioned by UNI Global Union following complaints from employees and the United Food and Commercial Workers' Union in the USA about the manner in which they were being treated by Tesco.

Individual, in-depth interviews were conducted by the author with Fresh & Easy employees and union members in May and June 2009. Workers were informed in advance and again at the time of the interview that the information gathered would be used in a public report.

Executive summary



Tesco Fresh & Easy in the USA is Tesco's newest and most ambitious international enterprise. Yet it is fraught with problems, which has concerned analysts and investors alike, since it opened its first store in November 2007. Fresh & Easy's poor financial performance mirrors its poor performance as an employer.

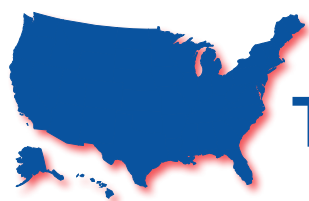
This report assesses Tesco's employment performance in the USA during the past three years, and compares its practices against its stated policies and principles. It finds that the UK's leading retailer falls well short of the standards it sets for itself. The report provides examples of how pay and benefits do not match up to the company's rhetoric and how the company appears, deliberately and systematically, to have worked to block all attempts by employees to seek union recognition and the USA's largest private-sector union to engage with it.

Among the main findings of the report are:

- Tesco's **policy of part-time work, combined with relatively low pay**, makes it impossible for employees to earn a living wage
- The strict conditions that Tesco places on qualification for pension contributions means that **most Fresh & Easy employees will never receive the company's "match" funding**
- **Tesco's health insurance scheme precludes some employees**, who do not work sufficient hours to qualify, and is in any event more expensive with lower benefits than schemes operated by competitor companies
- Tesco **has refused to respond positively and even to meet the USA's retail union** to discuss possible union organising and recognition
- The legitimate **request by employees in one store for union representation for collective bargaining was flatly rejected by Tesco's corporate management**
- Tesco is **carrying out a co-ordinated and systematic information campaign against trades union membership, organisation and recognition.**

The employment practices of Fresh & Easy in the United States are in stark contrast with Tesco's stated policies on human rights, and its approach in the UK, where Tesco has been unionised since 1969. Indeed, while Tesco refuses even to meet the UFCW in the USA, it actively encourages its employees to join the Usdaw retail union in the UK, with which the company has a much-praised partnership agreement.

We hope that by exposing Tesco's approach and its practices in the USA, its British shareholders, the British public and opinion formers might bring pressure to bear on the company to change its attitude and begin to address the legitimate concerns set out in this report.



Tesco in the USA

Tesco entered the USA in 2007, with Fresh & Easy Neighborhood Market, a new convenience store subsidiary based on the US West Coast, in California, Arizona and Nevada. Tesco committed to investing up to £250 million a year to support the new venture.

On announcing the new enterprise, Tesco's CEO, Sir Terry Leahy, said:

*"This is a tremendously exciting move for Tesco which will add a new leg to our international expansion. The United States is the largest economy in the world, with strong forecast growth and a sophisticated retail market. It is a market we have researched extensively for many years and over the last year we have committed serious resources to developing a format that we believe will be really popular with American consumers."*⁴

Structure

Although the company announced a long-term goal of opening 1,000 stores, and planned to have 200 open by the end of 2008⁵, at the start of June 2009 it had only 120 stores open. These 120 stores are served by a company distribution centre said to have capacity to serve up to 500 stores.⁶ During its first 18 months of operation, Tesco has already implemented a three-month freeze in new store openings and has since slowed its expansion plans in the face both of an unexpectedly poor Fresh & Easy performance and a weak US economy.

For the fiscal year that ended on 28 February 2009, year-on-year losses increased from \$91 million to \$208.5 million. Sales were \$305.4 million⁷ – up from \$23.5 million a year ago, when there were only 53 US stores.

The Fresh & Easy stores are similar to the Tesco Express convenience stores in the UK. They are characterised by their small format and extensive offering of private-label items, including prepared meals and organic products. Unlike Tesco Express, all Fresh & Easy stores are also exclusively self-check-out.

Fresh & Easy currently has more than 2,500 employees⁸ – around 20 per store – the vast majority of whom work part-time. Tesco also has a large food processing and distribution centre in Riverside, California.

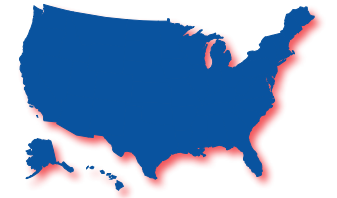
⁴ "Tesco to make US debut on west coast", *DSN Retailing Today*, February 27, 2006

⁵ "California dreamin': Tesco thinks big as it takes on US rivals with plans to open 1,000 stores", *The Guardian*, December 3, 2007

⁶ Tesco begins its American dream by seeking gold in California", *The Times*, December 3, 2007

^{7,8} Tesco Annual Report and Financial Statements 2009

Pay



Tesco principles and policies

“We will pay a fair wage reflecting the local markets and conditions.”⁹

“We offer a highly competitive package of pay and benefits to all our staff.”¹⁰

Tesco practices

Basic pay

Tesco Fresh & Easy employees have complained repeatedly about sub-standard wages, primarily because they cannot work enough hours to make a living wage. Starting pay in California and Nevada is \$10 per hour and in Arizona it is \$9 per hour. While this is well above the national minimum hourly wage, since most Fresh & Easy employees work only 20-25 hours per week this does not provide them with a living wage in these western states. As a result, many Fresh & Easy employees have to take second jobs in order to make up the shortfall in income.

Tesco Fresh & Easy claims that it pays competitive wages¹¹, but it opposes “living wage ordinances”. These ordinances require firms that do business in an area to pay their employees a wage that enables them to subsist above official poverty levels. Such living wage ordinances now exist in hundreds of US cities and localities. In fact, Tesco has even declined to open a store in northern California, where it would have been forced to pay employees a living wage¹².

Overtime

Unlike their Tesco counterparts in the UK, Fresh & Easy employees are not entitled to overtime pay for working on public holidays or outside their normal hours.

⁹ Tesco Human Rights Policy

¹⁰ http://www.tescopl.com/plc/corporate_responsibility/good_jobs/rewards_benefits/

¹¹ *About Fresh & Easy*, Fresh & Easy factsheet <http://www.freshandeasy.com/images/pressKit/FreshEasyFactSheet.pdf>

¹² “West Oakland Still Shopping for a Grocer.” *Alameda Times-Star*, 29.04.08 www.insidebayarea.com/timesstar/ci_9101792

Pensions

Fresh & Easy offers employees a “401(k)” defined contribution retirement pension plan “with company match”. Defined contribution pension schemes are considerably inferior and less generous than defined benefit plans, such as those that Tesco offers to its UK employees.

According to Tesco Fresh & Easy's employee benefits handbook, the company commitment is limited to “match 50% of the first 6% you contribute each year up to an annual maximum”¹³. This is actually a paltry sum. A starter employee on \$10 an hour, working 20 hours a week, will earn \$10,000 a year. If he or she pays 10% into the retirement plan, Tesco Fresh & Easy will match 50% of the first 6% – ie just \$300.

The employee benefits handbook also states that employees must work for Tesco Fresh & Easy for at least three years, or 3,000 hours of service, before they can receive this match, and any employee leaving before this threshold leaves with nothing.

Based on industry labour turnover averages, Tesco Fresh & Easy will turn over almost all of its employees in a three-year period. According to the US Food Marketing Institute, the median labour turnover rate among part-time retail workers was 61.1%¹⁴. On this basis, very few Tesco Fresh & Easy employees will achieve three years' service and qualify for the Tesco pension contribution.

In addition, Tesco Fresh & Easy's pension plan explicitly discriminates against union members. Clause 8 of Fresh & Easy's “Notice to Interested Parties” regarding the 401(k) plan states:

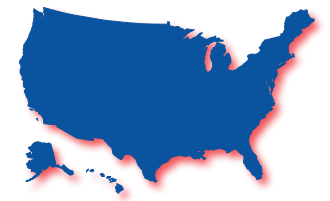
“The employees eligible to participate under this plan are all employees who have completed 90 days of service except union members.”¹⁵

Our belief is that this clause intends to discourage employees from exercising their right to form a union. Even if this is not the intention, it will certainly have that effect.

¹³ Tesco Fresh & Easy Employee Handbook

¹⁴ *The Food Retailing Industry Speaks 2008*, Food Marketing Institute

¹⁵ Clause 8 of Tesco Fresh and Easy's Notice to Interested Parties regarding the Fresh and Easy 401(k) pension plan



Sick pay

Tesco Fresh & Easy employees receive no sick pay, and must either take unpaid leave or use some of their few days of paid holiday entitlement if they are ill.

Healthcare benefits

In the United States, where there is no free and universal healthcare system, it is essential to have medical insurance. The overwhelming majority of people who have such health insurance – unless they are very old or very poor – receive it through their employer. Fresh & Easy makes bold claims about the healthcare benefits that it provides to employees:

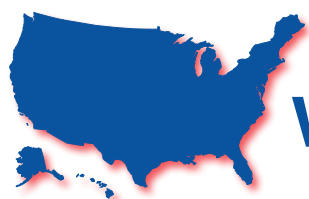
“In the U.S. ... everyone is eligible for medical, prescription drug, dental and vision coverage after 90 days of employment. Tesco Fresh & Easy pays at least 75% of the cost.”¹⁶

In reality, the health insurance provided by Fresh & Easy is unaffordable for many of its employees, and it is not as generous as the healthcare coverage provided to workers in unionised grocery companies elsewhere in the USA.

Contributions for employees working 20 hours per week can range from \$18 per month to almost \$169 per month.

Moreover, the “75% of the cost” which Tesco claims to cover relates only to the monthly premium, and not to the costs of any actual healthcare. In addition to the monthly charges, employees have to pay a further fee whenever they use their healthcare insurance, including \$15 or \$25 for each general practitioner visit and \$25 or \$35 for each consultant visit. For those employees earning as little as \$9 per hour, these costs often mean that basic healthcare coverage is unaffordable.

¹⁶ Tesco, 2008 *Corporate Responsibility Review*



Working hours

Tesco principles and policies

“Working hours shall not be excessive. They shall comply with industry guidelines and national standards where they exist.”

“Employment must be freely chosen. Overtime shall be voluntary. We will not employ illegal child labour, forced or bonded labour or condone illegal child labour, forced or unpaid overtime.”

“All staff are entitled to reasonable rest breaks, access to toilets, rest facilities and potable water at their place of work, and holiday leave in accordance with the legislation of the country where they work.”¹⁷

Tesco practices

Basic hours

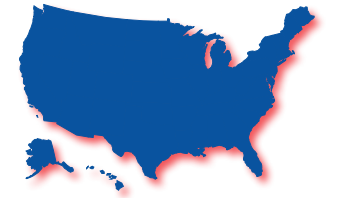
Tesco tries to ensure that employees can work “at least 20 hours” per week. But even for employees on 20 hours of employment, the levels of pay mean that they cannot earn a living wage.

Holidays

Fresh & Easy employees have only 60 hours of paid time off a year, and this must be used to cover both holidays and other contingencies, including sick leave, family and other emergencies. Many Fresh & Easy employees are therefore reluctant to take time off when they or their family members are sick, because they must either take this as unpaid time – which most employees cannot afford – or lose their few days of paid holiday.

¹⁷ All extracts from Tesco Human Rights Policy

Job security



Tesco principles and policies

“All staff will have a written contract of employment, with agreed terms and conditions, including notice periods on both sides.”¹⁸

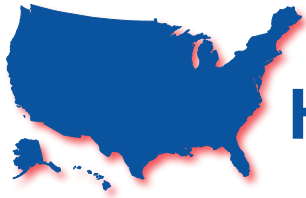
Tesco practices

Despite Tesco's clear policy on employment contracts, Tesco Fresh & Easy employees have no written contract of employment. In most cases, employers in the US are not required by law to provide employment contracts – unlike in the UK – and Tesco has evidently chosen to dumb down its practice in the US to the local legal minimum, rather than to uphold its own principles and policies.

Without an employment contract, Fresh & Easy workers enjoy virtually no job security and can be sacked for any reason – with the exception of certain protections for dismissal on the basis of race, age, gender and pregnancy – or even for no reason at all, regardless of length of service.

Workers at unionised workplaces who are covered by a collective agreement between the company and the union, in contrast, have access to due process and cannot be sacked without just cause.

¹⁸ Tesco Human Rights Policy



Health and safety

Tesco principles and policies

“We provide a safe working environment for our employees by minimising foreseeable risks in the workplace. All employees receive regular health and safety training. We provide proper governance for health and safety.”¹⁹

“We take training and development seriously and promise our people ‘an opportunity to get on’. Developing our people means we have a workforce which can serve customers better and managers who thoroughly understand the business and the Tesco culture.”²⁰

“All employees are provided with appropriate job skills training.”²¹

Tesco practices

In 2008, Cal/OSHA (the state agency that enforces occupational safety and health laws) found Fresh & Easy to be in violation, in at least one store, of a California law that mandates the establishment and implementation of an effective injury and illness prevention programme. Cal/OSHA found Fresh & Easy deficient in several key aspects of the programme, including failing to “include procedures for identifying and evaluating work place hazards...to identify unsafe conditions and work practices”.²²

An effective injury and illness prevention programme, such as the type of programme required by law in California, can prevent the work-related injuries that have been documented in some Fresh & Easy stores, including a fractured back in the goods receiving area, which left one employee unable to work for six months.

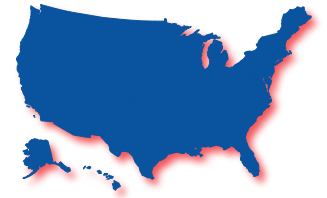
¹⁹ Tesco Human Rights Policy

²⁰ http://www.tescopl.com/plc/corporate_responsibility/good_jobs/training_development/

²¹ Tesco Human Rights Policy

²² California Division of Occupational Safety and Health, Inspection No. 309910586

Workers' and union rights



Tesco principles and policies

“Tesco is committed to upholding basic Human Rights and supports in full the United Nations Universal Declaration of Human Rights and the International Labour Organisation Core Conventions. We are committed to the following:

- **We will treat all employees fairly and honestly regardless of where they work.**
- **Employees have the right to freedom of association and collective bargaining. We recognise the right of our staff anywhere in Tesco around the world to join a recognised trade union and bargain collectively where this is allowed within national law.**
- **Tesco shall abide by the non-discrimination laws of every country where it operates. It does not discriminate unfairly on any basis.**
- **We will not use, or condone the use of corporal punishment, mental or physical coercion or verbal abuse. Tesco has disciplinary procedures for any member of staff whose conduct or performance falls below the required standard.**
- **We have formal grievance procedures through which staff can raise personal and work-related issues.”²³**

“Employees are free to join unions in the countries in which we operate”²⁴

“Our People Promises sum up our commitment to provide fulfilling employment:

- **to be treated with respect;**
- **to have an opportunity to get on;**
- **to have a manager who helps me; and**
- **to have an interesting job.”²⁵**

Tesco practices

Refusal to engage with unions

Since Tesco was first rumoured to be planning an entry into the USA in 2005, the United Food and Commercial Workers' Union (UFCW) – America's largest private-sector trades union – has been trying to meet the company to discuss the potential for union recruitment and recognition in its stores. The UFCW, an affiliate of UNI Global Union, had hoped to enter into the same sort of co-operative partnership with Tesco in the USA as the British retail union Usdaw has achieved in the UK, with its ground-breaking partnership agreement.

²³ Tesco Human Rights Policy

²⁴ <http://www.tescoreports.com/crreview08/people-progress4.html>

²⁵ http://www.tescopl.com/plc/corporate_responsibility/good_jobs/

In the past four years Tesco has repeatedly demonstrated an unwillingness to engage with the union, or with local community, environmental and consumer groups where it has opened its stores. According to the UFCW, Tesco's stance has evolved from an initially-friendly evasiveness with promises of future meetings, to explicit refusal to engage and finally to hostility. During these four years, the UFCW's only request to the company was to have a meeting.

The union and the various community groups who have approached Tesco have had some major supporters. Hillary Clinton and Barack Obama both wrote to the company in 2007 about the need for positive community and union engagement while they were running for the Democratic nomination for the Presidency. Barack Obama even wrote a second time – directly to Tesco's CEO Sir Terry Leahy – as the Democratic Nominee in June 2008, saying:

"I am aware of Tesco's reputation in Britain as a partner to unions. I would hope that you would bring those values to your work in America."

*"I again urge you to reconsider your policy of non-engagement in the United States and advise your executives at Fresh & Easy to meet with the UFCW."*²⁶

All such approaches have been rebuffed or ignored.

Anti-union approach

In our view, Tesco's approach in the USA is deliberately anti-union. Not only does the company refuse to meet with the retail workers union, but it is pro-actively and aggressively fighting the efforts of its employees to join the UFCW.

Its anti-union approach first came to public notice in 2006, when Tesco advertised for an Employee Relations Director. The advertisement was spotted and reported by the Financial Times and stated:

*"The incumbent has primary responsibility for management of employee relations; maintaining non-union status and union avoidance activities."*²⁷

Union avoidance activities are commonplace in US labour relations. But it is unusual for a company – especially one which has such strongly positive public policies on union membership – to announce its anti-union approach so publicly. Tesco claimed, after having twice published the advertisement, that it was a mistake. Our belief is that the publication of the advertisement was clearly a mistake, but that the intentions behind the advertisement were quite deliberate.

Tesco also recruited, as its chief legal adviser, the former legal adviser to a rival retailer which, while she was its General Counsel, locked out 19,000 employees and illegally rehired 1,000 under assumed identities and false social security numbers. In December 2005 this company, Ralphs, was issued with a 53-count indictment by the US Government for engaging in a company-wide course of criminal conduct. Following a plea agreement with the Government, Ralphs paid a \$20 million criminal fine and \$50 million into a restitution fund for workers.²⁸ In our opinion, Tesco recruited a chief legal officer with such anti-union experience in order to help it keep unions out of Fresh & Easy.

²⁶ Senator Barack Obama, letter to Sir Terry Leahy, Chief Executive, Tesco plc, June 23, 2008

²⁷ "Tesco Job Ads Follow Non-union Line," *Financial Times*, May 6, 2006

²⁸ Judgment in Ralphs Grocery Lockout, NLRB, San Francisco Branch Office, 14.6.07 www.nlr.gov/shared_files/ALJ%20Decisions/2007/JD-SF-20-07.pdf

Anti-union propaganda

A tactic that US employers often use to remain union-free is to engage in an anti-union information campaign. Companies often distribute anti-union literature and misrepresent the union and the process of collective bargaining to their employees during mandatory workplace meetings. The aim is to make employees fearful about the consequences of union representation.

Employers typically allege that unions are interested only in employees' membership subscriptions, and that the union will take employees out on strike without their consent, putting their jobs at risk, and that collective bargaining may result in workers losing their existing wages and benefits.

Hostile comments from managers about unions, and company materials that portray the union negatively, are often successful in preventing unionisation. Most US workers have little experience of unions, and while management has unlimited access to employees during work time, and can force them to attend anti-union meetings, unions have no right of access to company property without the company's permission. Furthermore, when managers say that they believe that unionisation is a bad idea, US employees understand that this is not just opinion, but that they are being implicitly warned that they may suffer adverse consequences, individually and collectively, if they choose to form a union.

Employees and the UFCW report that Fresh & Easy uses methods and arguments such as these to discourage employee involvement in unions in its stores, and that these are co-ordinated throughout the company, suggesting that managers have been specifically trained by Fresh & Easy's head office in how best to prevent unionisation in their stores.

For instance, according to employees, Fresh & Easy managers in California, where unemployment is currently more than ten per cent, have suggested that a union in the store during the current economic difficulties might lead to job losses, as the corporation would be less competitive and perhaps less committed to maintaining and expanding its US operations.

Also, at the first sign of union activity in a store, employees say that the store is inundated with "trainee managers" and human resource specialists, pro-union employees are isolated from their co-workers, and management attempts to persuade the other employees that their concerns can be dealt with without "third party" (ie union) intervention.

Fresh & Easy management has also co-ordinated anti-union activities through the daily "huddle" at each store. This takes place at the start of each shift and allows store managers to convey new information to employees on a variety of issues, including unionisation and collective bargaining. The process is managed at a high level and has proved effective at disseminating the same anti-union message among all Fresh & Easy employees.

A senior UFCW organiser has reported that this pattern has been followed at Fresh & Easy stores in Huntington Beach, Las Vegas and elsewhere. Several employees have reported that store managers and human resource managers had regular huddles with employees where they told them, among other things, that the union would strip them of any decision-making powers and undermine their ability to deal directly with management, would take them out on strike, even if they opposed it, and would make them pay union subscriptions when they signed a union authorisation card (in reality workers do not pay subscriptions until they are covered by a union contract).

Fresh & Easy has also distributed flyers warning employees that if they sign a union card, they could be “signing over your right to speak for yourself on all matters concerning your employment to the union.”²⁹ The same managers reassured workers of the open door policy and promised that they could handle any work problems without going through a third party. And Fresh & Easy has distributed anti-union literature stating:

“We do believe that having a direct relationship is the best way for us to operate as a business.”³⁰

By contrast with Tesco Fresh & Easy, employers genuinely committed to an amicable and co-operative relationship with workers and their representatives enter into “neutrality agreements” with unions, which involve both sides refraining from making negative comments about the other, thereby allowing employees to decide on unionisation in an environment that is free from employer intimidation and coercion.

Many large US corporations – including AT&T, Kaiser Permanente and Harley Davidson – have adopted such agreements with unions. Tesco has apparently opted not to take this path, but instead to follow instead a “low road” competitive strategy, based on determined resistance to unionisation and collective bargaining modelled on Wal-Mart.

^{29,30} *Did You Know..? Fresh & Easy*

Rejection of request for union recognition

In response to challenges from the floor at Tesco's Annual General Meeting in 2008, the CEO, Sir Terry Leahy, told shareholders that employees in the USA were free to join a union if they wished to, but that the evidence was that employees did not want to.

The UFCW decided to put this freedom to the test. Employees at Fresh & Easy's Huntington Beach store, in California, expressed a desire to unionise, and in September 2008 a letter was delivered to the company on behalf of the majority of them asking the company to recognise the UFCW union. The employees stated that they looked forward to:

*"engaging in a constructive process so that our voice may be heard within Tesco Fresh and Easy."*³¹

Two employees from the Huntington Beach store went to Tesco's US headquarters in El Segundo, California, to deliver the letter to Fresh & Easy's CEO Tim Mason. The employees were denied a meeting with Mr Mason, instead meeting a human resource manager who told them:

"There are different laws in this country, and we're willing to do it that way. It's unfair of us to apply British law here."

In a subsequent letter, Tesco Fresh & Easy's Chief Human Resources Officer, Hugh Cousins, wrote to employees:

*"Important choices such as this are best made in Government-supervised secret ballot elections. Consequently, we suggest that you follow that approach."*³²

The "Government-supervised secret ballot" is a well-documented tactic by anti-union companies to block union organising. Indeed, the Financial Times reported that this tactic:

*"has been successfully used to block union organising efforts by Wal-Mart and other anti-union US companies."*³³

To those unfamiliar with US union recognition elections, Fresh & Easy's desire to seek a Government-supervised election may appear reasonable. Whether or not Tesco Fresh & Easy's actions are deliberate, anyone familiar with US industrial relations knows that such tactics have the effect of undermining employees' desire for independent representation.

Although employees can secure a union through an election with the US National Labor Relations Board (NLRB), nothing prevents an employer from recognising the union without a formal election. NLRB elections are widely viewed as employer-dominated elections. US employers skilled in the practice of union avoidance know that a labour board union election is a lengthy process that heavily favours the employer over the union, because there are virtually no penalties for intimidating, lying to, threatening or even firing employees who support the union during the period of time leading up to the vote.

³¹ James Satler, On Behalf of the Organizing Committee, Tesco Fresh and Easy, Huntington Beach Store, letter to Tim Mason, CEO, September 16, 2008

³² Hugh Cousins, Human Resource Director, Fresh & Easy, letter to James Satler, Fresh & Easy Huntington Beach employee, September 18, 2008

³³ *Tesco Faces US Union Challenge*, Financial Times, September 18, 2008

And without violating the law, anti-union employers can and do take actions to undermine employee free choice. A report from Cornell University shows that 63% of employers interrogate workers about support for the union in mandatory one-to-one meetings with their supervisors; 54% of employers threaten workers in such meetings; 57% of employers threaten to close the worksite; 47% of employers threaten to cut wages and benefits; and 34% of employers fire workers.³⁴ Even less aggressive forms of anti-union behaviour on the part of employers, such as negative comments or flyers about the union, can significantly influence workers in the weeks leading up to a government-supervised election.

At Fresh & Easy, on the day after the Huntington Beach employees delivered the letter to corporate headquarters, the pro-union workers received personal letters from the company stating that Fresh & Easy was denying their request for union representation because they did not represent an "informed majority."³⁵ Tesco appears to have set an education or employment relations comprehension test for union representation, having failed to win the test of numbers. This, too, is language commonly used by other anti-union employers.

Tesco's refusal to recognise the UFCW union in its Huntington Beach store when the majority of employees requested it contradicts the company's stated policy of supporting freedom of association. But it also shows that even when employees pass the CEO's test of demonstrating that they want union representation, Tesco still refuses to uphold its own policies, principles and commitments.

³⁴ *No Holds Barred: The Intensification of Employer Opposition to Organizing*, Kate Bronfenbrenner, Economic Policy Institute Briefing Paper, May 2009

³⁵ Hugh Cousins, Chief Human Resources Officer, letter to James Satler, September 18, 2008

Blocking union access to employees

In the US, unions may only recruit members and distribute literature on company premises with the company's permission. Many companies, which take a neutral stance to union organisation, allow this. Tesco does not.

In Fresh & Easy, union representatives and employees who support the union are not allowed to talk about the union during work hours. In fact, on 18 May 2009 Fresh & Easy announced a new "non-solicitation" policy, which we believe is designed to allow management to keep all union activity well away from company property. The policy prohibits the "solicitation of employees by employees" and the "distribution of literature" on company premises. In effect, pro-union employees are not allowed to talk to their co-workers about union issues or distribute union literature on company premises.³⁶

Because of this sweeping policy, union representatives wishing to talk with Fresh & Easy employees can only visit them at home. In March 2009, UFCW representatives made house calls to Tesco employees in the Las Vegas area, to talk about the benefits of membership. During the first day of calls, employees responded positively to the approach. Calls on subsequent days received a markedly different reception: union representatives were warned by employees to leave their property, and threatened that the police would be called if they did not do so within 30 seconds. Doorstep responses were unexpectedly similar in their wording and content. In our view, this suggests that Tesco actively influenced employees against involvement with the UFCW, to the point of scripting a response for them.

The UFCW later received a number of letters from employees requesting the union not to visit them at home. All but one of these letters came with postmarks from the location of the Fresh & Easy headquarters, El Segundo, California, several hundred miles from the employees' home addresses in Las Vegas. We believe that employees were actively encouraged by Tesco management to write these letters, and that Tesco Fresh & Easy collected them together and posted them from the same location.

One Fresh & Easy employee in Las Vegas reported to the UFCW that she was asked by a manager to sign a letter to the union stating that they had come to her house and harassed her. She refused.

³⁶ *This week's corporate messages*, May 18, 2009

Intimidation and discrimination

According to employees and the UFCW, Fresh & Easy management has also engaged in overt and aggressive forms of anti-union behaviour, including discrimination and illegal dismissals of pro-union activists. After employees at the Huntington Beach store presented their petition for recognition, for instance, they reported uncomfortable working conditions and intimidation for their support of the union.

At a large meeting of employees and managers from several Fresh & Easy stores in the Los Angeles area, a human resources manager stated that the union had manipulated workers at the Huntington Beach store and that half of the employees who had supported the union had since quit their positions. One of the employees who had delivered the petition and who openly supported the union said that he felt fearful at that meeting, wondering if he was going to be confronted by management about his pro-union views.

The employee's concerns were not unfounded. When another Fresh & Easy employee was transferred to the Huntington Beach store and was on track for a promotion, she was allegedly instructed by management to "keep an eye on" this employee. He reported that he and other pro-union workers were isolated from their colleagues and, in January 2009, Fresh & Easy management fired him. While the official justification given for his termination was poor timekeeping and other minor issues, he and other employees believed that his conduct was no different from that of most other employees and that he was singled out for his pro-union views.

This view gained further credibility when other employees reported that the fired employee's name was subsequently invoked by district managers at other Fresh & Easy stores as a cautionary tale or indirect warning to employees who might be considering similar action.

A Fresh & Easy worker in Las Vegas hosted a union meeting in her home with ten workers and was transferred to a different store the very next week and was told by a senior HR representative and the regional manager for the Las Vegas area that she couldn't advocate on behalf of staff. Another worker from Las Vegas described how she was directly quizzed by HR about her pro-union views, and that co-workers had told her that they were not permitted to speak to her.

Discriminatory firings of pro-union activists are often very difficult to prove under US law and illegal firings are commonplace among anti-union companies, because they are effective deterrents to union organising drives.³⁷

An employee at another store reports that she organised an employee petition to alert Fresh & Easy's corporate office to a manager who the employee believed to be the manager's nephew to work and paid him from the store's petty cash. Instead of action being taken against the manager a human resources manager came to the store the next day and asked the employee who spearheaded the petition, and who had also recently shown interest in the union, if she was "afraid of getting fired". This, in our view, is clear evidence of intimidation.

³⁷ *Dropping the Ax: Illegal Firings During Union Election Campaigns*, Schmitt, John, and Ben Zipperer, Center for Economic and Policy Research, January 2009

A closed-door policy

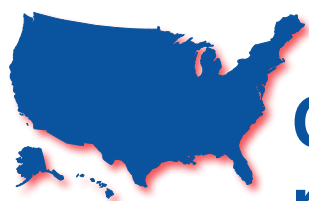
Tesco claims that it wants to hear employee views, and Fresh & Easy's CEO, Tim Mason, speaks of an open-door policy. And yet, employees say that when they attempt to get their problems addressed by management they find that it does not want to listen and that the door is closed.

At the Huntington Beach Fresh & Easy store, for example, staff members say that they have faced chronic understaffing and overwork. According to one shop assistant, the store has never had enough people to do all the work that needs to be done in a shift – unloading pallets, rotating products, keeping shelves clean and getting old produce out in order to make room for new deliveries.

Eventually, according to one employee, a trainee district manager suggested to workers that they “cut corners.” The employee recalled:

“We had to do this because we couldn't finish all the work. If we were trying to do it by the book, the store would open in the morning with work that wasn't done from the night before.”

The employee said that he brought this issue up repeatedly in staff meetings, but that local management was unresponsive.



Conclusions and recommendations

This report shows that in the USA, Tesco has taken a minimalist approach to pay and conditions and a strongly anti-union approach to union rights, in contrast to its many stated policies and principles. While we do not suggest that US employees should be treated the same as employees in the UK, or any other country in which Tesco operates, we do believe that Fresh & Easy's employees have a right to be treated fairly and that Tesco should abide by its own international policies on employment.

As Tesco's newest international venture Fresh & Easy is very high profile for the company, and its importance is reflected in its appointment of a Tesco main board director, Tim Mason, as its CEO. Given the fact that the UFCW has frequently attempted to engage with Mr Mason and has been rebuffed on every occasion, we can fairly conclude that Fresh & Easy's anti-union policy is not merely the effect of local managers' independent actions, but that it is known and presumably endorsed by Fresh & Easy's most senior management. Through Mr Mason's membership of Tesco's board, we also suggest that the policy – even if not the practices on the ground – is known to the parent company's leadership.

In order to remedy the issues raised in this report, we make the following recommendations:

- 1. We recommend that the “match” contribution to the pension fund by Fresh & Easy is vested for employees on completion of a fair probationary period, not after three years' service.**
- 2. We recommend that employees are given a contract of employment, in line with Tesco's stated policy, in order to provide them with fair job security.**
- 3. We recommend that Tesco issues an immediate statement of support for the freedom of association in Fresh & Easy in the USA and pledges not to disrupt or negatively influence attempts among employees in the future to form or join a trades union or to discriminate against union members.**
- 4. We recommend that Tesco's management agrees to meet the leadership of the United Food and Commercial Workers' Union, to discuss the possibility of organising and representation.**
- 5. We recommend that Tesco's US subsidiary business reports annually to Tesco plc on employment conditions and employee rights, against Tesco's stated policies, and that this report is made publicly available.**



UNI Global Union provides a voice and a platform for workers at an international level in jobs ranging from the night janitor in your office block to the big-time Hollywood director of your favourite movie. With 20 million workers in 900 unions worldwide UNI fosters international solidarity and provides a voice at the international level for all its members.

UNI is focusing on Global Agreements to achieve power and parity for workers at multinational corporations. In the age of globalisation this is more important than ever. The global economy is in crisis and workers are bearing a disproportionate part of the burden. The solution to the crisis must include a global employment strategy that creates sustainable well-paying employment with bargaining rights.

As part of its Organise and Recognise campaign, UNI works with its member unions to ensure that union organising and bargaining rights are enshrined in law. In countries where these laws do not exist, UNI is joining the fight to get them on the books. Where these laws do exist, UNI works with unions, the International Labour Organisation and other groups to sure that they are enforced. UNI also works in developing countries to build trade unions where there are none and to offer training and capacity building to its members.