

BEFORE THE
NATIONAL LABOR RELATIONS BOARD

In the Matter of:

RITE AID OF NEW YORK, INC.,
RITE OF NEW JERSEY, INC.,
ECKERD CORPORATION, GENOVESE
DRUG STORES, INC. AND THRIFT
DRUG, INC., A SINGLE EMPLOYER,

Respondent,

And

1199 SEIU UNITED HEALTHCARE
WORKERS EAST,

Charging Party.

Case No. 02-CA-182713
02-CA-189661

The above-entitled matter came on for hearing pursuant to Notice, before THE HONORABLE BENJAMIN GREEN, Administrative Law Judge, at 26 Federal Plaza, New York, New York, on Wednesday, September 13, 2017, at 9:30 a.m.

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1
2I N D E X

| 3 | <u>WITNESS</u> | <u>DIRECT</u> | <u>CROSS</u> | <u>REDIRECT</u> | <u>RECROSS</u> | <u>VOIR DIRE</u> |
|---|--------------------|---------------|--------------|-----------------|----------------|----------------------|
| 4 | Allyson L. Belovin | 329 | 403 | -- | -- | 372 |

| | <u>EXHIBIT NUMBER</u> | <u>IDENTIFIED</u> | <u>RECEIVED</u> |
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1 DIRECT EXAMINATION

2 BY MS. OLIVER:

3 Q Good morning, Ms. Belovin.

4 A Good morning.

5 Q Ms. Belovin, who is your employer?

6 A Levy Ratner, P.C..

7 Q And what is your job title?

8 A I'm a partner at the firm.

9 Q How long have you held that position?

10 A I've been a partner since 2006 and I was an associate at
11 the firm for six years before that, since 2000.

12 Q And what are your job responsibilities?

13 A I represent unions and individual employees in host of
14 labor and employment related matters. With respect to my
15 representation of union clients, I do collective bargaining,
16 arbitration proceedings, NLRB cases, litigation, advice and
17 counsel on anything labor and employment related.

18 Q Are you familiar with Rite Aid of New York, Incorporated
19 and Rite Aid of New Jersey, Incorporated?

20 A I am.

21 Q I'm going to refer to them as Rite Aid. How are you
22 familiar with Rite Aid?

23 A I represent 1199 SEIU and who has had a collective
24 bargaining relationship with Rite Aid for a number of years.
25 And I have been the primary attorney representing 1199 in

1 connection with Rite Aid since 2007.

2 Q 1199 SEIU, is that 1199 SEIU United Healthcare Workers
3 East?

4 A Yes.

5 Q I'll also refer to them as either 1199 or the Union.

6 A Okay.

7 Q In your capacity as the primary attorney for 1199 in its
8 dealings with Rite Aid, have you been involved in negotiating
9 collective bargaining agreements?

10 A Yes.

11 Q When did the most recent round of negotiations for a
12 collective bargaining agreement begin?

13 A In March of 2015.

14 Q And when was the last bargaining session held?

15 A The last time the parties met for bargaining was September
16 6th 2016.

17 Q And was that bargaining for a first CBA?

18 A No, it was bargaining for a successor contract.

19 Q When was the most recent full collective bargaining
20 agreement between Rite Aid and 1199 effective?

21 A The most recent full contract was effective from 1998 to
22 2002.

23 Q And in the 1998 collective bargaining agreement is there a
24 unit description?

25 A Yes.

1 Q Can you recall the article number?

2 A It's article two, recognition.

3 Q And if you can recall, what was the unit description in
4 the 1998 CBA?

5 A It was a wall to wall union. It defined the Union as
6 representing all professional and non-professional employees in
7 certain -- at all Rite Aid stores, in certain cities and
8 counties within the states of New York and New Jersey, with one
9 exception, which is that in New Jersey pharmacists were not
10 part of the bargaining unit.

11 Q Only in New Jersey?

12 A Only in New Jersey, correct.

13 Q What about interns?

14 A I'm not -- I'm actually not sure whether interns were in
15 the unit in New Jersey. They certainly were in New York. Both
16 pharmacists and interns have been in the bargaining unit in New
17 York for as long as I have been involved and many years prior
18 to that.

19 Q Okay. So upon the expiration of this 1998 collective
20 bargaining agreement, what happened?

21 A There were several successive memoranda of agreement that
22 extended the terms of the 1998 to 2000 contract, with certain
23 modifications.

24 Q And can you recall when that first memorandum extending
25 the 1998 contract was effective?

1 A Yeah. It was effective from 2002 to 2006.

2 Q And did this 2002 memorandum change the unit description?

3 A No.

4 Q Was there any memorandum of agreement after the 2002
5 memorandum?

6 A Yes, the next memorandum of agreement was effective from
7 2006 to 2010.

8 Q Okay. And did the 2006 to 2010 memorandum change the unit
9 description?

10 A No, I don't believe so.

11 Q After this 2006 to 2010 memorandum was there any furthers?

12 A Yeah, the parties re-opened negotiations early and reached
13 a new memorandum of agreement that was effective from 2009
14 through 2015.

15 Q Okay. And did the unit description change in this
16 bargaining agreement?

17 A Yes. The parties, prior to the 2009 negotiations, had
18 reached an agreement to exclude from the bargaining unit
19 pharmacy managers. And that agreement was reflected in the
20 2009 to 2015 memorandum of agreement.

21 Q Were any other positions removed from the bargaining unit?

22 A No.

23 Q Was the 2009 to 2015 memorandum the last extension of the
24 1998 agreement?

25 A Shortly after the parties began negotiations in March of

1 2015, they agreed to an extension agreement, just extending the
2 terms of the 2009 to 2015 MOA, while the parties were
3 bargaining.

4 Q And did the 2015 extension agreement modify the unit
5 description at all?

6 A No.

7 Q Was there a grievance and arbitration provision?

8 A In what?

9 Q In the extension agreement.

10 A Well, the extension agreement extended the 2009 to 2015
11 MOA, which extended prior agreements, all of which included a
12 grievance and arbitration procedure. Yes.

13 Q Did the Union and Rite Aid meet continually to bargain
14 from March 2015 to September 2016?

15 A There was a break in negotiation from around March of 2016
16 until June of 2016.

17 Q Why?

18 A There was another unfair labor practice proceeding that
19 was going on before ALJ Steven Davis. The hearing in that case
20 occurred in May and June of 2016 and there was a break, you
21 know, concurrently with that, while that process was going on.

22 Q What parties were involved in this litigation?

23 A 1199 and Rite Aid.

24 Q And did the ALJ make a written decision?

25 A Yes, the issue in that case was whether Rite Aid violated

1 the Act by insisting, as a condition of reaching an overall
2 agreement, on changing the scope of the bargaining unit to
3 remove newly hired pharmacists and pharmacy interns from the
4 unit. And the ALJ issued a decision, I believe in November of
5 2016, finding that they had in fact violated the Act in that
6 regard.

7 MS. OLIVER: And I would like to show the witness what I'm
8 making as GC -- I have no idea what I'm up to.

9 UNIDENTIFIED SPEAKER: 15

10 MS. OLIVER: 15.

11 MR. SILVESTRI: I think you're up to 15.

12 MS. OLIVER: Thank you.

13 MR. SILVESTRI: Thank you. Here you go.

14 THE WITNESS: Thank you.

15 BY MS. OLIVER:

16 Q Do you recognize this document?

17 A I do. This is --

18 Q What is it?

19 A This is the decision issued by ALJ Steven Davis in the
20 case I was just referring to.

21 (General Counsel's GC-15 identified)

22 MS. OLIVER: Okay. I'd like to move GC-15 into evidence.

23 JUDGE GREEN: Any objection?

24 MR. SILVESTRI: I would say that the case is still under
25 appeal. So I would want that noted for the record. And with

1 that notation I have no objection.

2 JUDGE GREEN: Okay. So I'm going to take administrative
3 notice, absent any objection, that the case is still under
4 appeal and --

5 MS. OLIVER: That's --

6 JUDGE GREEN: -- accept --

7 MS. OLIVER: That's fine.

8 JUDGE GREEN: -- GC-15 into evidence.

9 (General Counsel's GC-15 received in evidence)

10 MR. SILVESTRI: I'm also going to reserve my right to put
11 the record in, in that case.

12 JUDGE GREEN: Okay.

13 BY MS. OLIVER:

14 Q Okay. Do you recall when bargaining resumed, after this
15 ULP hearing that you discussed?

16 A I believe we had a bargaining session on June 13th 2016.

17 Q Okay. And who was present at the June 13th meeting on
18 behalf of the Union?

19 A Myself, Laurie Vallone, who is the 1199 executive vice
20 president responsible for the Union's pharmacy division. Berta
21 Silva, who is a vice president in the Union's pharmacy
22 division. There was a staff of union organizers, who service
23 the members employed at Rite Aid. And a group of rank and file
24 workers who are employed at Rite Aid.

25 Q And was this the same from June 2016 until September 2016?

1 MR. SILVESTRI: Objection. When you say this is the same,
2 you mean the same people?

3 MS. OLIVER: The same people, yes.

4 MR. SILVESTRI: Withdrawn.

5 THE WITNESS: Laurie Vallone and I were at every
6 bargaining session, during that period of time. Berta Silva
7 was at most, but not all of the sessions. I don't remember
8 specifically which ones she was at and not. The -- there was
9 always a group of organizers. I can't say that every organizer
10 was at every session, but most of them were at most of the
11 sessions. And there was always a group of rank and file
12 members employed by Rite Aid, but who those members were
13 changed from session to session.

14 BY MS. OLIVER:

15 Q And at the June 13th 2016 meeting who was present on
16 behalf of Rite Aid?

17 A Gordon Hinkle, who is a Rite Aid executive in labor
18 relations, David Gonzales (ph), who was at the time a Rite Aid
19 human resources manager. I believe he's not longer employed at
20 Rite Aid. And a group of Rite Aid managers whose names I don't
21 know.

22 Q And was it the same people for Rite Aid at every meeting
23 from June 2016 to September 2016?

24 A It was always Gordon Hinkle and David Gonzales. As far as
25 whether every single manager that was there at that June 13th

1 session was there at every other session, I don't know, but
2 there was always a group of managers.

3 Q And did Rite Aid present any new proposals at the June
4 13th bargaining session?

5 A No. Rite Aid informed us that their proposals remained
6 the same at that session.

7 Q Can you recall if there were any main unresolved proposals
8 that Rite Aid had made prior to this date?

9 A The issue of Rite Aid's proposal to remove pharmacists
10 from the bargaining unit and pharmacy interns from the
11 bargaining unit was still part of Rite Aid's proposal,
12 notwithstanding the fact that the Union had consistently
13 rejected it at every -- virtually every session. The issue of
14 health insurance was still open and unresolved. The issue of
15 proposed changes to the discharge and layoff provision was
16 still open.

17 Drug testing language was still open. There were proposed
18 changes to the grievance and arbitration procedure that were
19 still unresolved. So there were a number of things that
20 remained unresolved at that session. There may have been
21 others.

22 Q Okay. You mentioned healthcare. What were the parties'
23 positions on healthcare?

24 A The Union's proposal was that Rite Aid continue to
25 participate in the 1199 national benefit funds, which provided

1 -- had provided health insurance and other benefits to Rite Aid
2 workers for many, many years. And Rite Aid's position was that
3 they were willing to do that if the Union was willing to agree
4 to what it termed its business initiatives. And the Union was
5 willing to agree to certain cost offsets, with respect to the
6 NBF.

7 Q And if you can recall, what were those business
8 initiatives?

9 A Earlier in the negotiations Rite Aid had articulated three
10 business initiatives that it wanted the Union to agree to. One
11 of them was something called Central Fill, which was a proposal
12 from Rite Aid that the Union agree that when prescriptions came
13 into a Rite Aid store they could be sent out to some other
14 central location. So rather than being filled by the Union
15 pharmacist at the Union Rite Aid store, the prescriptions would
16 be sent to some other location somewhere else, and some other
17 pharmacist not represented by the Union would do the work of
18 filling the prescription. That was one proposal that Rite Aid
19 deemed a business initiative.

20 Another proposal Rite Aid deemed a business initiative was
21 for something called RediClinics, which was Rite Aid wanted the
22 Union to agree that it could open basically a little concession
23 within the Rite Aid store that it would call a RediClinic for
24 the provision of some basic healthcare services. And wanted
25 the Union to agree they could do that and that the workers

1 employed within those RediClinic concessions would not be part
2 of the 1199 bargaining unit. And then the third thing that
3 Rite Aid identified as a business initiative was its proposal
4 that newly hired pharmacists and pharmacy interns not be
5 included in the 1199 bargaining unit.

6 Q Did Rite Aid every present the Union with a written
7 proposal of their business initiative?

8 A Yes.

9 Q When?

10 A Those -- each of those business initiatives was included
11 in Rite Aid's initial bargaining proposal that it presented to
12 the Union on the first day of negotiations in March of 2015.

13 MS. OLIVER: Okay. I'd like to show the witness what I'm
14 marking as GC-16.

15 BY MS. OLIVER:

16 Q Is this document familiar to you, Ms. Belovin?

17 A Yes.

18 Q What is it?

19 A This is the company's initial bargaining proposal that it
20 presented to the Union in March of 2015.

21 (General Counsel's GC-16 identified)

22 MS. OLIVER: I'd like to move GC-16 into the record.

23 JUDGE GREEN: Any objection?

24 MR. SILVESTRI: Hold on, Your Honor. Bear with me for a
25 minute.

1 MS. OLIVER: Sure.

2 MR. SILVESTRI: Okay. My understanding is that this isn't
3 the only document that was handed out as proposals in March of
4 2015. No, this was 2015. Right?

5 MS. OLIVER: Yes. Yes, this is --

6 MR. SILVESTRI: 2015 --

7 MS. OLIVER: -- March 2015.

8 MR. SILVESTRI: -- right? Okay. So I guess we'll
9 supplement, but my objection is this isn't a complete set of --

10 THE WITNESS: Well --

11 MR. SILVESTRI: -- proposals.

12 THE WITNESS: -- I mean I can answer that. It looks to be
13 that at the back of this document there's a second document, if
14 you look at what's Bates stamped Rite Aid 212 through 216.

15 JUDGE GREEN: Do you -- are you --

16 THE WITNESS: So I believe it is complete --

17 MR. SILVESTRI: Yeah.

18 THE WITNESS: -- with those two documents.

19 MR. SILVESTRI: Okay.

20 JUDGE GREEN: Are you saying that the -- that multiple
21 documents --

22 MR. SILVESTRI: Yeah.

23 JUDGE GREEN: -- were provided or that there -- this is
24 just a -- an incomplete document?

25 MR. SILVESTRI: I'm saying that multiple documents were

1 provided. This wasn't a complete proposal. There were
2 proposals that there were separate documents that were handed
3 across the table, but I can handle that in cross examination.
4 I just want it noted that this isn't the only document that was
5 part of the proposal package that was presented in March of
6 2015.

7 JUDGE GREEN: Okay. So I'm --

8 MR. SILVESTRI: Okay?

9 JUDGE GREEN: -- going to admit GC-16 into evidence and
10 anticipate the introduction of --

11 MR. SILVESTRI: Okay.

12 JUDGE GREEN: -- additional documents reflecting the full
13 proposals.

14 (General Counsel's GC-16 received in evidence)

15 MR. SILVESTRI: Yeah. We would -- yeah, we're going to
16 have a -- we'll have an objection that this is characterized as
17 the proposal and this isn't the proposal.

18 JUDGE GREEN: I understand that and I'm going to overrule
19 that objection, but, you know, you have your witness Mr. Hinkle
20 who can --

21 MR. SILVESTRI: Right.

22 JUDGE GREEN: Or whoever who can --

23 MR. SILVESTRI: Yeah, we're going to put on evidence.

24 JUDGE GREEN: -- characterize it.

25 MR. SILVESTRI: I just want it noted that I don't -- by

1 saying that I am -- well, I'm just going to object for the
2 record and you can overruled it.

3 JUDGE GREEN: Right.

4 MR. SILVESTRI: So at least I can preserve my objections.

5 MS. OLIVER: Can I actually just make a statement? I'm
6 not -- if there is more proposals that should be attached to
7 this --

8 JUDGE GREEN: Uh-huh.

9 MS. OLIVER: -- I'm not opposed to adding them. I was
10 given these documents pursuant to subpoenas. You can see with
11 the Rite Aid Bates stamp.

12 With the way that it was given to me was in a PDF with no
13 separations between documents. So I had to guess, based on the
14 knowledge that I had, of what when together and what did not.
15 So if there were other documents that weren't provided to me,
16 they should have been. And if there are other documents that
17 belong with this, that I was provided, I have absolutely no
18 objection to even discussing on a break what should have been
19 included.

20 JUDGE GREEN: Okay. That's what I was going to say. So
21 maybe we'll end up with 16(a) through whatever, but --

22 MS. OLIVER: Yeah. That's --

23 MR. SILVESTRI: Yeah. We'll --

24 MS. OLIVER: -- fine.

25 MR. SILVESTRI: -- address that situate -- I don't believe

1 that there's been any documents withheld. We'll figure --

2 MS. OLIVER: I'm not accusing --

3 MR. SILVESTRI: -- it out. We'll figure out at a break
4 whether this document is the complete document.

5 JUDGE GREEN: Okay.

6 MS. OLIVER: That's fine. Okay.

7 CONTINUED DIRECT EXAMINATION

8 BY MS. OLIVER:

9 Q Ms. Belovin, can you tell us where in this March 2015
10 proposal is the proposal to remove future pharmacists and
11 future pharmacy interns from the bargaining unit?

12 A Yeah. It's actually in two places in the document that
13 you gave me. The first is article two, recognition, which is
14 on page four of 73. It's Rite Aid Bates stamp 129.

15 Q Okay.

16 A In the section there that's marked 2.1, the strikethroughs
17 and the add-ins are Rite Aid's proposals. And you can see Rite
18 Aid proposals eliminating the language that provides the Union
19 is the bargaining representative of all the professional and
20 non-professional employees and proposes replacing it with
21 language that defines the bargaining unit by specific
22 classifications that are included and excluded. And provides
23 that pharmacists and pharmacy interns hired after the date of
24 this agreement would be excluded.

25 Q And you said there was a second location?

1 A Yes. There -- this document that's Joint (*sic*) exhibit 16
2 is actually two separate documents. The first one goes from
3 Rite Aid -- what's Bates stamped Rite Aid 126 through Rite Aid
4 211. And then starting at Rite Aid 212, it was a second
5 document that was provided to the Union at the March 31st 2015
6 bargaining session, which was described to us at that session
7 as sort of a summary of Rite Aid's proposals.

8 And on the first page of that document, which is Bates
9 stamped Rite Aid 212, item number one is article two,
10 recognition. And it provides that Rite Aid is proposing to
11 change the recognition clause to indicate the positions that
12 are specifically included in the bargaining unit and to
13 eliminate interns from the bargaining unit and staff
14 pharmacists who are employed after the date of the agreement.

15 Q Thank you. And can you tell us where in this document
16 reflects Rite Aid's proposal regarding RediClinics?

17 A Yes. In article 15 of the big document, which is page 42
18 of 73, it's Rite Aid -- it's Bates stamped Rite Aid 167, that
19 article is entitled concession and RediClinics was described to
20 us as a kind of concession. And so the prior language had been
21 -- had stated that Rite Aid was not permitted to open any
22 concessions within its stores without the Union's consent.
23 Rite Aid proposed eliminating that language and replacing it
24 with language that said that the employer could open
25 concessions, as long as it gave the Union written notice. And

1 that it didn't have the obligation to bargain over the
2 decision.

3 Q And where in this --

4 A And one other thing. It also provided, in what's marked
5 15.3, that no 1199 member would be required or permitted to
6 work in that concession.

7 Q Okay. And where in the proposal is Rite Aid -- where in
8 this document reflects Rite Aid's proposal regarding Central
9 Fill?

10 MR. SILVESTRI: So I'll note that I'll have a continuing
11 objection of the characterization that this is a proposal, but
12 --

13 JUDGE GREEN: When -- I understand. So when somebody
14 refers to this as a proposal, I am interpreting it as alleged
15 proposal essentially or the -- or their interpret -- their
16 understanding of the --

17 MR. SILVESTRI: Thank you.

18 JUDGE GREEN: -- proposal.

19 MR. SILVESTRI: Appreciate it.

20 THE WITNESS: Your question was where does this document
21 show Rite Aid's proposal for the Central Fill?

22 BY MS. OLIVER:

23 Q Central Fill, yes.

24 A In that same article, article 15, section 15.4 provides --
25 Rite Aid proposed adding language that would allow it to fill

1 prescriptions, other than at the store, including through a
2 Central Fill process. And also on that second document, both
3 the RediClinic and the Central Fill proposals are reflected
4 there, if you look at the page that's Bates stamped Rite Aid
5 214.

6 MS. PIERSON-SCHEINBERG: Allyson, what document are you
7 referring to? Sorry.

8 THE WITNESS: I'm looking at GC exhibit 16.

9 MS. PIERSON-SCHEINBERG: Okay.

10 THE WITNESS: There's a page that's Bates stamped Rite Aid
11 214.

12 MR. SILVESTRI: Oh.

13 THE WITNESS: And I'm looking at item number 12 there that
14 says article 15, concessions. That again reflects both the
15 RediClinic and the Central Fill proposals that Rite Aid made
16 starting on March 15th -- March 31st 2015.

17 BY MS. OLIVER:

18 Q Okay. When you return to the June 13th bargaining
19 session, do you recall if Rite Aid stated why there were
20 proposing to remove staff pharmacists and interns from the
21 unit?

22 A Yes. Gordon Hinkle stated at that session that Rite Aid
23 needed pharmacists to be managers and that it was a financial
24 cost issue that the proposal that the Union was making,
25 particularly to continue with national benefit fund was very

1 expensive and they needed all three business initiatives,
2 including their proposal to remove pharmacists and interns from
3 the bargaining unit -- newly hired pharmacists and interns from
4 the bargaining unit, they needed that to deal with those costs.

5 Q And did you respond?

6 A We had some discussion about the fact that the Union had
7 already at this point tentatively agreed to two of the three
8 business initiatives proposed by Rite Aid at prior sessions.
9 We had tentatively agreed to allow the Central Fill process to
10 occur and we had also agreed to allow Rite Aid to establish
11 RediClinics in the union stores. And that no job
12 classifications that haven't historically been represented by
13 the Union in those stores would be part of the 1199 bargaining
14 unit. We'd agreed to both of those things already. I stated
15 that we had agreed to other things that Rite Aid had identified
16 as important to it, but that we were not going to agree to
17 change the scope of the bargaining unit to remove pharmacists
18 and pharmacy interns, even newly hired ones.

19 Q Was that the first time that you'd stated your position on
20 removing newly hired pharmacists and interns from the unit to
21 Rite Aid?

22 A Absolutely not. The Union stated that position at the
23 very first bargaining session back in March of 2015 and at
24 virtually every bargaining session thereafter. This was a big
25 item in negotiations. We talked about it, if not at every

1 single session, at almost every single session. And the Union
2 consistently and repeatedly told Rite Aid not only that we
3 wouldn't agree to it, but we didn't feel we had an obligation
4 to bargain over it.

5 Q Did the Union make any proposals for a health insurance
6 plan at the June 13th bargaining session?

7 A We told Rite Aid that our proposal that it continue to
8 participate in the national benefit fund remained the same.

9 Q And did Rite Aid respond?

10 A Yes. Rite Aid accused the Union of failing to make any
11 movement in bargaining. And there was some back and forth
12 between Gordon Hinkle and myself about, you know, whose turn it
13 was to make movement and whose court the proverbial ball was
14 in. And we had some discussion about that.

15 Q Aside from these business initiatives -- or I should say
16 were the business initiatives the only proposals that Rite Aid
17 ever made to offset the cost of the NBF?

18 A No. Rite Aid made some -- a couple of specific proposals
19 specifically with respect to the NBF itself, to -- in an effort
20 to try to reduce the cost to it of NBF contributions.
21 Specifically, Rite Aid proposed that the Union agree to waive
22 any retroactive contributions that it owed to the NBF. And it
23 also proposed that the Union agree to -- that -- agree to allow
24 Rite Aid not to make contributions based on overtime earnings.

25 Q And did the Union agree to either of those proposals to

1 offset the cost of the NBF?

2 A No. We told Rite Aid that we couldn't have agreed to
3 either of those proposals even if we wanted to, because they
4 were not within our control. With respect to their proposal
5 that retroactive owed contributions be waived, we told Rite Aid
6 -- and this -- these were at earlier bargaining sessions. We
7 told Rite Aid that it wasn't our money to waive.

8 That this was delinquency owed to the national benefit
9 fund. That the Union didn't have the ability to waive
10 retroactive contributions. Only the benefit fund could do
11 that. And so we were not able to do that.

12 And with respect to the overtime, you know, the fund has
13 certain rules and we told Rite Aid that we didn't -- you know,
14 the rules are you contribute to the fund a percentage of gross
15 payroll and overtime earnings are part of gross payroll. And
16 we didn't have the authority to accept -- to make an exception
17 for overtime earnings for Rite Aid. That was part one of the
18 rules of the fund, one of the conditions of participation in
19 the fund. And, you know, even if we had wanted to, we were not
20 able to do that.

21 Q Did you take notes at the June 13th bargaining session?

22 A I did.

23 MS. OLIVER: I'd like to show the witness what is in
24 evidence as Joint -- what is the Union's bargaining -- Joint
25 exhibit 6(a), I believe.

1 THE WITNESS: Thank you.

2 MR. SILVESTRI: Hold on. I need to get these out.

3 MS. OLIVER: That's fine.

4 MR. SILVESTRI: Give me a minute. Get myself organized.

5 MS. OLIVER: It's Bates stamped CP-1 to 22.

6 MR. SILVESTRI: 1 to 22?

7 MS. OLIVER: Yep.

8 JUDGE GREEN: Joint exhibit 6 is Bates stamped?

9 MS. OLIVER: On the bottom.

10 MR. SILVESTRI: Bottom left hand corner, Your Honor.

11 JUDGE GREEN: Oh, okay.

12 MS. OLIVER: Yeah. Okay.

13 BY MS. OLIVER:

14 Q Is this document familiar to you?

15 A Yes, these are my notes from the June 13th 2016 bargaining
16 session.

17 Q And did you take these notes while bargaining?

18 A Yes.

19 Q Okay. That's all for that document. When did the parties
20 next meet for bargaining?

21 A Our next session was on July 11th 2016.

22 Q And were any proposals presented by Rite Aid to the Union
23 at the July 11th meeting?

24 A Yes. Rite Aid presented the Union with three proposals at
25 that meeting. Two of them were in writing and one of them was

1 verbal.

2 Q Okay. So let's talk about the written proposals first.
3 What were they?

4 A The first written proposal was a proposal that Rite Aid
5 withdraw from the national benefit funds and instead provide
6 health benefits to its employees through a Rite Aid sponsored
7 health benefits plan. The second written proposal was a
8 proposal to allow Rite Aid to implement its Central Fill
9 proposal immediately, rather than waiting until the parties had
10 reached an overall collective bargaining agreement.

11 MS. OLIVER: Okay. Can we show the witness what has been
12 entered into evidence as Joint exhibit 2? Are you okay?

13 UNIDENTIFIED SPEAKER: You know it's starting.

14 MS. OLIVER: On a break I can get you hot water. That
15 might be better.

16 THE WITNESS: I have it.

17 BY MS. OLIVER:

18 Q Yes. Do you recognize this document?

19 A Yes. This is the proposal that Rite Aid presented to the
20 Union on July 11th 2016, with respect to health insurance
21 benefits.

22 Q And was this the only document provided to you on July
23 11th regarding health insurance benefits?

24 A I believe so.

25 MS. OLIVER: And I would like to show the witness what I'm

1 marking as GC-17.

2 MR. SILVESTRI: GC-17. Thank you.

3 THE WITNESS: Thank you.

4 MR. SILVESTRI: No Bates stamp on this.

5 MS. OLIVER: No, it wasn't provided in response to the
6 subpoena sent to you and we didn't send one to Charging Party.
7 So this was just the only copy that we had, based on our
8 investigation.

9 MR. SILVESTRI: Uh-huh. Okay, great. Thank you.

10 THE WITNESS: I have it in front of me.

11 BY MS. OLIVER:

12 Q Okay. Do you recognize this document?

13 A Yes, this was the proposal that Rite Aid presented to the
14 Union at the July 11th 2016 bargaining session regarding its
15 proposal that the Union allow it to immediately implement the
16 Central Fill proposal.

17 (General Counsel's GC-17 identified)

18 MS. OLIVER: Okay. I would like to move GC-17 into
19 evidence.

20 MR. SILVESTRI: A minute, Your Honor. We'll address our
21 issues on cross and direct, Your Honor. No objection.

22 JUDGE GREEN: Okay. So GC-17 is entered into evidence.

23 (General Counsel's GC-17 received in evidence)

24 BY MS. OLIVER:

25 Q And I believe that you said that at the July 13th (*sic*)

1 meeting --

2 A July 11th --

3 Q July 11th, I'm sorry.

4 A That's okay.

5 Q That there was a verbal proposal as well?

6 A Yes. Rite Aid made a verbal proposal regarding pension
7 benefits at that session. Historically, Rite Aid employees had
8 received pension benefits through the 1199 SEIU pension fund,
9 which is a defined benefit pension plan. Rite Aid proposed
10 that newly -- all newly hired employees not participate in the
11 1199 pension fund and instead would be eligible to participate
12 in the Rite Aid 401K plan.

13 Q Did they give you any details of the 401K plan?

14 A They did. They told us, in contrast to the 1199 pension
15 fund, which is, as I said, a defined benefit plan that required
16 at that time employers to contribute about 10% of gross
17 payroll. I think it was 10.76% at that time was the pension
18 fund contribution rate.

19 The Rite Aid 401K plan instead was a defined contribution
20 plan and was an entirely matching benefit. So Rite Aid would
21 contribute only if employees themselves contributed and that
22 Rite Aid would contribute -- would match 100% of the first 2%
23 that employees contributed and 50% of the next 2% that
24 employees contributed, for a maximum contribution from Rite Aid
25 of up to 3%. But again, only -- Rite Aid wasn't going to

1 contribute a penny unless the employees themselves put money
2 in.

3 Q Did Rite Aid give the Union a deadline to respond to any
4 of these proposals?

5 A Yes. Rite Aid told us that if we didn't reach an
6 agreement on its health insurance proposal by that Friday,
7 which was July 15th I believe, that it was going to go ahead
8 and implement that proposal.

9 Q Did they explain why they gave you such a short deadline?

10 A They did. They said that they had received notification
11 from the NBF that their delinquency had reached an amount that
12 was going to make termination of benefits imminent and that
13 they needed to do this so that their employees didn't go
14 without health insurance.

15 Q Were you aware that Rite Aid was so close to delinquency
16 that benefit termination was possible?

17 A By the July 11th bargaining session I was made aware of
18 that, yes.

19 Q How were you made aware?

20 A My partner Suzie Hepner told me. Not about the existence
21 of the delinquency. I had known that before, but about the
22 possibility of benefit termination.

23 Q At the July 11th bargaining session, what if any questions
24 did you ask Rite Aid about Rite Aid sponsored health plan
25 proposal?

1 A I asked a lot of questions, because it was the first time
2 that we were seeing a proposal from Rite Aid about anything
3 other than the NBF, when it came to health insurance. So I
4 asked for details about the benefits under the Rite Aid plan.
5 I asked for a copy of the summary plan description.

6 I asked for information about the insurance companies that
7 the plans were going to provide benefits through. I asked
8 about the network of providers and how it compared to the
9 network of providers under the NBF. I asked about the
10 prescription drug formularies and how that compared to the
11 formulary under the NBF. I asked -- and I asked about what the
12 cost of the Rite Aid plan was going to be to Rite Aid.

13 Q And did Rite Aid respond to any of these questions?

14 A The response that we got was that they didn't have any of
15 that information, because they were just creating this plan.
16 So they were asking us to agree to a plan that they didn't --
17 hadn't even created yet and were not able, at that point, to
18 give us any details on.

19 Q Did anyone else besides you ask Rite Aid questions about
20 the health plan proposal?

21 A I recall Laurie Vallone asking whether the Rite Aid health
22 plan included retiree health benefits, because the NBF does.
23 And Mr. Hinkle said that that was not part of that plan, but if
24 the Union wanted to make that proposal he would listen to it.

25 Q And how did this meeting end?

1 A We said, you know, we really couldn't bargain about this
2 plan until we got the information about the plan. So we agreed
3 to meet again in a couple of days.

4 Q Okay. And did you take notes at this bargaining session?

5 A I did.

6 MS. OLIVER: I would just like to show the witness Joint
7 exhibit 6(b).

8 JUDGE GREEN: Sorry.

9 MS. OLIVER: It's bound to happen.

10 THE WITNESS: Everyone's got to take their turn.

11 MR. SILVESTRI: Everybody else's phone --

12 THE WITNESS: Right --

13 MR. SILVESTRI: No one is immune.

14 MS. OLIVER: I'm sure I remembered to bring mine, mine
15 would too. So --

16 JUDGE GREEN: Go ahead.

17 MS. OLIVER: He's getting the document.

18 THE WITNESS: Thank you. I have that document.

19 BY MS. OLIVER:

20 Q Do you recognize it?

21 A Yes, these are my notes from the July 11th 2016 bargaining
22 session.

23 Q And did you take these notes while you were bargaining?

24 A Yes.

25 Q Okay. So that document is done. Did the Union and Rite

1 Aid meet a couple days later, as you stated?

2 A We did on June -- July 13th 2016.

3 Q Okay. And did you discuss Rite Aid's July 11th health
4 plan proposal at this meeting?

5 A We did, yes.

6 Q What did you say?

7 A We said that -- I don't think she wants you to give this
8 to me just yet. We said that -- I'm sorry, can you ask your
9 question again?

10 Q Okay. Did you discuss the Rite Aid's health plan proposal
11 at this bargaining session?

12 A Yes.

13 Q And what did you say?

14 A By the July 13th bargaining session we had learned that
15 the cancellation of NBF benefits was not as imminent as we had
16 thought. And I knew that that had also been communicated to
17 Rite Aid. And so at that meeting I said, you know, now that
18 benefit termination is not as imminent as originally thought,
19 we have some more time.

20 I wanted them to take the July 15th deadline off the
21 table. Benefits weren't going to terminate at least until the
22 middle of September. So we had a couple of months to bargain
23 and I wanted the deadline off the table.

24 Q Did Rite Aid respond to your request to remove the
25 deadline?

1 A Gordon responded by saying that he might give us another
2 week, but that they felt that time was still of the essence and
3 they were going to move forward with this very quickly.

4 Q Did you respond?

5 A I did. I said, you know, you don't need to do that and
6 also you can pay a portion of the contributions that you owe to
7 the fund to forestall benefit termination as well. And that we
8 don't need to be bargaining under such a tight timeline.

9 Q Did Rite Aid tell you what would happen if you didn't
10 reach agreement by the deadline?

11 A They were going to go ahead and implement the Rite Aid
12 sponsored health plan. They were going to start enrolling
13 members in the plan.

14 Q And had Rite Aid provided all of the information to you,
15 regarding its health plan proposal, by this bargaining session?

16 A No, they provided some information, but they certainly had
17 not provided information regarding the cost of the plan to Rite
18 Aid --

19 Q And why did you need --

20 A -- by that time.

21 Q I'm sorry. Finish. Go ahead.

22 A Yeah, by the July 13th session they had not provided the
23 cost information.

24 Q And why did you need the cost information?

25 A Well, health insurance is part of an overall economic

1 package. We were bargaining about a lot of different
2 economics. And it's a big part of an overall economic package.
3 And in order for us to consider the economics of the contract,
4 we needed to understand what the cost of this benefit -- these
5 benefits were to Rite Aid.

6 Q And did you discuss any of Rite Aid's other proposals that
7 were not related -- that were not health care proposals at this
8 bargaining session?

9 MR. SILVESTRI: In this session. Okay.

10 THE WITNESS: At the June 13th (*sic*) bargaining --

11 BY MS. OLIVER:

12 Q At the July 13th --

13 A July 13th --

14 Q -- bargaining session.

15 A -- bargaining session. There may -- there probably was
16 some discussion about the proposal to remove pharmacists and
17 interns from the unit, because we discussed that virtually
18 every session, but I don't recall specifically.

19 Q Did anyone else speak at this meeting besides you and Mr.
20 Hinkle? I'm sorry, besides you and Rite Aid representatives I
21 should say. I'm sorry. I don't know if you said Mr. Hinkle --

22 A Yes. I mean I believe this -- at this meeting -- at this
23 bargaining session a number of workers spoke. And they spoke
24 about both their desire to maintain the national benefit fund
25 for their health benefits and how they did not want the Rite

1 Aid plan. And they also spoke about Rite Aid's proposal to
2 remove newly hired pharmacists and interns from the bargaining
3 unit and stated --

4 MR. SILVESTRI: Objection, hearsay. If she's describing
5 what they spoke about, that's not hearsay, but once she starts
6 going they said this, they said that, that's hearsay.

7 JUDGE GREEN: Okay. So what would the response be?

8 MS. OLIVER: You know what? It's in the notes, but we're
9 not -- well, it's not admitted for the truth of the matter
10 asserted.

11 JUDGE GREEN: Right. Okay. So I'm going to overrule it.

12 THE WITNESS: So the members also said that they were not
13 going to agree to change the bargaining unit to eliminate newly
14 hired pharmacists and pharmacy interns.

15 BY MS. OLIVER:

16 Q And did Rite Aid respond to these statements?

17 A Mr. Hinkle responded generally about the state -- about
18 both kinds of statements. With respect to the workers'
19 statements about the national benefit fund, Mr. Hinkle's
20 response was that it's not our fault that benefits are being
21 cancelled. It's the Union's fault. The Union is the one who
22 is doing this.

23 With respect to the statements about the changing of the
24 bargaining unit, Mr. Hinkle's response was that we need
25 pharmacists to be managers and it's -- that it's a matter of

1 cost.

2 Q And did you take notes at the July 13th bargaining
3 session?

4 A I did.

5 MS. OLIVER: I would like to show the witness Joint
6 exhibit 6(c).

7 THE WITNESS: Thank you. Yes, I have it in front of me.

8 BY MS. OLIVER:

9 Q Do you recognize this document?

10 A Yes, these are my notes from the July 13th 2016 bargaining
11 session.

12 Q And did you take these notes while bargaining?

13 A Yes.

14 Q And can you just -- did you take notes while the employees
15 were speaking as well?

16 A Yes, I would have.

17 Q If you can just point to where? Just because it's
18 handwritten and I --

19 A Yeah. I'm trying to find it. If you look at the page
20 that's Bates stamped CP-42.

21 Q Bates stamp CP-42?

22 A Yeah, at the bottom. It says -- where it says L-V, that's
23 Laurie Vallone. And she says some workers want to speak. And
24 then on the next page I just note workers speak, stand up,
25 clap. And then what Gordon Hinkle says in response.

1 Q Okay. And did the parties state -- you can give that
2 document back. Thanks. Did the parties set another date for
3 bargaining?

4 A I don't remember whether we set the date at the July 13th
5 session or we exchanged emails subsequent to that setting the
6 date, but we did meet again on July 20th.

7 Q Okay. And on July 20th did you discuss the Rite Aid
8 health plan proposal?

9 A Yes.

10 Q What did you say?

11 A We -- the Union told Rite Aid that we were rejecting Rite
12 Aid's health proposal and that our proposal continued to be
13 continued participation in the national benefit fund.

14 Q And did you discuss the benefit termination?

15 A We did. At that meeting I again urged Rite Aid to pay a
16 portion of what it owed to the benefit fund, so that benefits
17 wouldn't terminate. I explained that they didn't need to pay
18 the full delinquency. They could just pay an increment of
19 that, so that they wouldn't be at the critical point of
20 delinquency where benefits -- where the NBF needed to terminate
21 the benefits. And I also explained that if they did that -- at
22 -- by this point, Rite Aid had filed a motion in District Court
23 for the Southern District of New York to vacate arbitrator
24 Viani's award requiring them to pay the flat rate contributions
25 to the funds and the delinquency that they owed. And I said

1 that if Rite Aid were to win that and the award were to be
2 vacated, that any overpayments it would have made to the fund
3 as a result would be credited to future contributions, so that
4 it wouldn't be out the money.

5 Q So let's talk about the paying just a portion of the
6 delinquency.

7 A Uh-huh.

8 Q Was this the first time that Rite Aid was presented with
9 the option to pay only a portion of the delinquency?

10 A No.

11 MS. OLIVER: I'd like to show the witness what I'm marking
12 as GC-18.

13 MR. SILVESTRI: Thank you.

14 THE WITNESS: Thank you.

15 BY MS. OLIVER:

16 Q Do you recognize this document?

17 A Yes, this is a email exchange between me and Traci Burch
18 at Rite Aid on July 7th and July 8th of 2016.

19 (General Counsel's GC-18 identified)

20 Q And what's the subject of the email? Not the subject
21 heading, the actual --

22 A It's about potential NBF termination.

23 Q Does this letter discuss way that Rite Aid could avoid
24 termination?

25 MR. SILVESTRI: Speaks for itself.

1 JUDGE GREEN: I'm going to allow both parties a certain
2 amount of leeway to summarize --

3 MR. SILVESTRI: Thank you, Your Honor.

4 JUDGE GREEN: -- documents.

5 THE WITNESS: Yeah. Yes. In my email to Ms. Burch on
6 July 8th I indicate --

7 BY MS. OLIVER:

8 Q You could just say yes or no. I don't want you to read
9 from a document not in evidence.

10 A Okay. Then yes, it does.

11 MS. OLIVER: So I'd like to move GC-18 into evidence.

12 MR. SILVESTRI: No objection.

13 JUDGE GREEN: GC-18 is entered into evidence.

14 (General Counsel's GC-18 received in evidence)

15 MS. OLIVER: Okay.

16 BY MS. OLIVER:

17 Q And you can point out what you were about to, if you still
18 want to.

19 A Yeah. I mean I'm just going to point to the part of my
20 email to Ms. Burch, in which I say, in referring to benefit
21 termination letters, that the fund was indicating it was going
22 to have to send out, that Rite Aid could avoid having the
23 letter sent out by paying in increments of one month's
24 contribution. So not the full delinquency, not even a full
25 month's contribution, but some portion of a month's

1 contribution would be enough to forestall benefit termination,
2 at least for a little while.

3 Q And if you could look at the beginning part of that? Just
4 read it to yourself briefly.

5 A Of?

6 Q Of that.

7 A Of what?

8 Q Of your portion of the email, yeah.

9 A Yes.

10 Q Is this an accurate recitation of your understanding of
11 the NBF delinquency policy?

12 A Yes.

13 Q Okay. So did Rite Aid respond on July 20th to your
14 request that they pay a portion of the delinquency?

15 A Yes, they rejected that request.

16 Q Did they state why?

17 A Mr. Hinkle said they don't believe they owe any money to
18 the fund and they're not going to pay if they don't believe
19 they owe it.

20 Q Did you discuss implementation of the Rite Aid plan?

21 A Yes. I said that it would be unlawful if they moved
22 forward with implementing their plan. That we are not at an
23 impasse in bargaining and that they can't go ahead and
24 implement their plan.

25 Q On July 20th did Rite Aid state whether they were

1 proposing this new Rite Aid plan for the life of the contract
2 or for --

3 A They said their proposal was that employees be moved into
4 the Rite Aid plan and that they remain there for the life of
5 the next contract.

6 Q Okay. Did anyone else speak on behalf of the Union
7 besides you, regarding healthcare?

8 A My recollection is that Laurie Vallone again asked about
9 retiree health benefits, and pointed out that the proposal Rite
10 Aid made didn't include retiree health benefits and asked
11 whether that was the case. Mr. Hinkle responded by saying, you
12 know, that they're not proposing retiree health benefits and
13 asked whether the Union was making such a proposal. And I
14 stated that the Union is not making proposals, with respect to
15 the Rite Aid health plan, that our proposal continues to be
16 continued participation in the NBF.

17 Q And did you discuss the deadline for agreement again at
18 this --

19 A On July --

20 Q -- bargaining session?

21 A -- 20th we're talking about now?

22 Q Yes.

23 A Yes. I mean I again said, you know, we don't need such a
24 fast deadline here. I wanted them to take any deadline off the
25 table and let the parties bargain, you know, without a gun to

1 our head. And that was rejected.

2 Q Okay. And what were the parties' positions regarding
3 impasse at this July 20th meeting?

4 A Mr. Hinkle asked whether the Union agree that the parties
5 were at impasse and I responded by saying absolutely not. As a
6 first matter, there were a number of open items still
7 unresolved to be bargained about. And number two, as I said,
8 there were unfair labor practices that Rite Aid had committed
9 and that they couldn't be at impasse, with the pending unfair
10 labor practices that had been unremedied. Specifically, Rite
11 Aid's continued instance on changing the scope of the
12 bargaining unit to exclude pharmacists and interns -- newly
13 hired pharmacists and interns, as a condition of reaching an
14 overall agreement.

15 Q Did Rite Aid respond?

16 A Mr. Hinkle said he agreed that there were still open
17 issues. He asked whether I thought we were at impasse over
18 health insurance and I said no. Couldn't be at impasse over a
19 single topic. We were still bargaining for an overall contact.
20 And there were unfair labor practices and there were still open
21 issues. And Mr. Hinkle said I was right and that since we
22 still had open issues to discuss, we should set another
23 bargaining date.

24 Q Okay. And did you take notes at this bargaining session?

25 A Yes.

1 MS. OLIVER: I'd just like to show the witness Joint
2 exhibit 6(d).

3 THE WITNESS: Yes.

4 BY MS. OLIVER:

5 Q And did you take these notes while you were bargaining?

6 A I did.

7 Q That's all for that document.

8 MR. SILVESTRI: Let me just get a --

9 MS. OLIVER: Sure. And this document -- that does it.
10 Did Rite Aid communicate with the Union any further, regarding
11 implementation of the Rite Aid sponsored health plan, before
12 the next bargaining session?

13 THE WITNESS: Yes.

14 BY MS. OLIVER:

15 Q And how did you receive those communications?

16 A I believe there was an email and then subsequently a
17 letter.

18 Q Okay. Do you recall around when the email came?

19 A It was a couple of days after the July 20th bargaining
20 session, if I recall correctly.

21 MS. OLIVER: I'd like to show the witness what I am
22 marking as GC-19.

23 BY MS. OLIVER:

24 Q Do you recognize this document?

25 A Yes. This is an email I received from Gordon Hinkle on

1 July 22nd.

2 (General Counsel's GC-19 identified)

3 MS. OLIVER: I'd like to move GC-19 into evidence.

4 MR. SILVESTRI: No objection.

5 JUDGE GREEN: GC-19 is entered into evidence.

6 (General Counsel's GC-19 received in evidence)

7 BY MS. OLIVER:

8 Q Ms. Belovin, can you look at the last sentence of the
9 first paragraph in this email?

10 A Yes. Okay.

11 Q Did the Union make a decision on whether or not to wait
12 for the Federal Court?

13 A It wasn't the Union's decision to make. It was the fund
14 who was deciding what to do about benefits and whether it will
15 have to terminate them. So no, the Union didn't make a
16 decision, because it wasn't our decision.

17 Q Did the Union have any way to force the NBF to agree to
18 wait for the Federal Court to make a decision, before
19 terminating benefits?

20 A No.

21 Q So was that agreement suggested by Rite Aid possible?

22 A No, the Union didn't have the ability to make such
23 agreement. We couldn't tie the hands of the fund, in that
24 regard.

25 Q Okay. You can hand that back. Thank you. And I believe

1 you stated that there was a letter as well?

2 A Yeah. I believe there was letter several days later from
3 Rite Aid.

4 Q I'm sorry, can you say that again?

5 A Yes. I said I believe there was a letter several days
6 later from Rite Aid.

7 MS. OLIVER: Just give me one moment. So I'd like to show
8 the witness what I'm marking as GC-20.

9 BY MS. OLIVER:

10 Q Do you recognize this document?

11 A Yes, this is a letter from Traci Burch at Rite Aid to
12 Laurie Vallone. I'm copied on the letter and I received it.

13 (General Counsel's GC-20 identified)

14 Q And what's the subject matter of this letter?

15 A Rite Aid is notifying the Union that it's terminating the
16 extension agreement that the parties entered into shortly after
17 the commencement of bargaining in 2015. And that it is
18 implementing its own benefit plan.

19 MS. OLIVER: I'd like to move GC-20 into evidence.

20 MR. SILVESTRI: No objection.

21 JUDGE GREEN: GC-20 is entered into evidence.

22 (General Counsel's GC-20 received in evidence)

23 BY MS. OLIVER:

24 Q Did the Union respond to either of these communications?

25 A Yes.

1 Q When?

2 A Right around the time that we received the July 27th
3 notification of the extension agreement being terminated and
4 the benefit -- the Rite Aid benefit plan being implemented.

5 MS. OLIVER: Okay. I'd like to show the witness what I'm
6 marking as GC-21.

7 THE WITNESS: Thank you.

8 BY MS. OLIVER:

9 Q Do you recognize this document?

10 A Yes, this is the July 27th letter to Gordon Hinkle from
11 Laurie Vallone, in response to the two communications that the
12 Union received from Rite Aid, both terminating the extension
13 agreement and indicating that it was implementing the Rite Aid
14 sponsored health benefits plan.

15 (General Counsel's GC-21 identified)

16 MS. OLIVER: I'd like to enter GC-21 into evidence.

17 MR. SILVESTRI: No objection.

18 JUDGE GREEN: GC-21 is entered into evidence.

19 (General Counsel's GC-21 received in evidence)

20 BY MS. OLIVER:

21 Q Did Rite Aid respond to this July 27th letter?

22 A Yes. Yes, a week or so later I believe.

23 Q How did they respond?

24 A I think in a letter of their own.

25 MS. OLIVER: I'd like to show the witness what I'm marking

1 as GC-22.

2 THE WITNESS: Thank you.

3 BY MS. OLIVER:

4 Q Do you recognize this document?

5 A Yes, this is the response that the Union received from
6 Gordon Hinkle at Rite Aid. It's not dated, but I'm copied on
7 this letter and I recall receiving it shortly after --

8 (General Counsel's GC-22 identified)

9 Q Is there anything on the document --

10 A -- the Union's July 27th --

11 Q Is there anything on the document itself that indicates
12 the time period in which this was sent?

13 A Yes. I mean it's -- the first sentence says it's
14 responding to Ms. Vallone's July 27th 2016 letter. And then
15 towards the end of the letter it says that we're looking
16 forward to bargaining on August 17th and 18th. So it's
17 sometime between July 27th and August 17th.

18 MS. OLIVER: Okay. I'd like to move GC-22 into evidence.

19 MR. SILVESTRI: Couple of voir dire questions.

20 JUDGE GREEN: Okay.

21 VOIR DIRE EXAMINATION

22 BY MR. SILVESTRI:

23 Q Ms. Belovin --

24 A Yes.

25 Q -- did this letter come by email, do you recollect?

1 A I don't recall how I received it.

2 Q You don't recall receiving an email, which would have set
3 the date specifically?

4 A I don't recall how I received it.

5 MR. SILVESTRI: Okay. I'll note for the record it's not
6 complete, because it came through email, which we'll have to
7 figure out how to get in, as part of an exhibit.

8 JUDGE GREEN: Okay. So --

9 MR. SILVESTRI: Because the date is not on here and we're
10 only guessing on -- the witness can only guess on the date. We
11 know that it's be -- it's after July 27th --

12 THE WITNESS: And before August 17th.

13 MR. SILVESTRI: And before August 17th, because those are
14 the parameters that are in the --

15 THE WITNESS: Right.

16 MR. SILVESTRI: Okay.

17 JUDGE GREEN: Do you have the email?

18 MR. SILVESTRI: I'm sure we do.

19 JUDGE GREEN: Okay. We can attach that as --

20 MS. OLIVER: Yeah. If I have it, I can try to find it.

21 MR. SILVESTRI: My belief is that it was just a simple
22 enclosure email. Here's a letter.

23 JUDGE GREEN: Okay. Well, we should have it --

24 MR. SILVESTRI: Yeah.

25 MS. OLIVER: Yeah. I'm not sure how I received it. So I

1 can check.

2 JUDGE GREEN: All right. So pending the attach --

3 MR. SILVESTRI: Bear with me --

4 JUDGE GREEN: Okay.

5 MR. SILVESTRI: -- one minute, Your Honor.

6 MS. OLIVER: Is this the attachment?

7 MR. SILVESTRI: No, that's the email.

8 MS. OLIVER: Yeah, the email that --

9 MR. SILVESTRI: Then we have that email.

10 MS. OLIVER: Right. The email that attaches the July 29th
11 -- I'll bring it up.

12 MR. SILVESTRI: Yeah.

13 MS. OLIVER: I'm just going to add this to GC-22 --

14 MR. SILVESTRI: Okay. Just put --

15 JUDGE GREEN: Okay. So GC-22 is entered into evidence.

16 (General Counsel's GC-22 received in evidence)

17 MR. SILVESTRI: Thank you. No objection.

18 MS. OLIVER: Thank you for finding that.

19 UNIDENTIFIED SPEAKER: What is the date?

20 MR. SILVESTRI: July 29th.

21 MS. OLIVER: July 29th, yes. Okay.

22 CONTINUED DIRECT EXAMINATION

23 BY MS. OLIVER:

24 Q Ms. Belovin --

25 A Yes.

1 Q -- see if we can get back on track here. When was the
2 next bargaining session after July 20th?

3 A August 17th 2016.

4 Q And how did the August 17th bargaining session start?

5 A It started with a separate meeting that Laurie Vallone and
6 I had with just Gordon Hinkle and David Gonzales from Rite Aid.

7 Q And what happened in this meeting?

8 A The Union requested the meeting and we asked Rite Aid to
9 number one, pay enough of what it owed to the NBF to prevent
10 the termination of benefits. We proposed that both sides agree
11 to abide by whatever the results of the District Court's
12 proceeding was, in our cross motions to vacate and confirm the
13 arbitrator Viani award. And I again said in this meeting that
14 if Rite Aid won that Federal Court proceeding and it turned out
15 that they didn't have to pay what we said they had to pay, that
16 that money would be credited toward future payments, future
17 contributions to the NBF.

18 Q What did the Union plan to do if Rite Aid paid the
19 delinquency, but then won in Federal Court?

20 A The Union indicated that contribute -- it's not what the
21 Union planned to do. The fund had said that any contributions
22 that Rite Aid made, that it turned out didn't owe under the
23 Federal Court decision, would be credited towards future
24 contributions.

25 Q And did Rite Aid respond?

1 A Yes. They responded by saying they were not going to
2 agree to do any of those things. They were not going to pay
3 any amount of money to the NBF. They were not going to agree
4 to abide by the District Court's decision. And they were going
5 to present a last, best and final proposal.

6 Q So did they eventually present that proposal?

7 A Yes. After our separate meeting we met with the full
8 bargaining committee and at that time Rite Aid presented what
9 it called its last, best and final proposal.

10 MS. OLIVER: I'd like to show the witness Joint exhibit
11 3(a) through (d).

12 THE WITNESS: Thank you. Okay. I have it in front of me.

13 BY MS. OLIVER:

14 Q Which documents in 3(a) through (d) were handed to you at
15 the August 17th bargaining session?

16 A 3(a) was. These don't seem to be marked as (a), (b), (c),
17 (d), but --

18 Q I can give you the Bates stamps.

19 A Okay. So what's marked as 3(a), which is Rite Aid 272,
20 was presented.

21 Q Okay. And then the next document goes through Rite Aid
22 352.

23 A 273 to 352? Yes, that document was also presented.

24 Q And then the next one I don't actually have the Bates
25 stamp.

1 A Well, it looks like it starts at Rite Aid 353 and goes to
2 372. And that document was presented. And there's another
3 document that goes from Rite Aid 373 to 375. And that document
4 was also presented. So all of these documents were presented
5 at the August 17th 2016 bargaining session.

6 Q Are there any new proposals contained in these four
7 documents that Rite Aid presented to you on August 17th?

8 A Yes. There was a new wage proposal, which is reflected in
9 Rite Aid Bates stamp 373 to 375. There was a revised pension
10 proposal. Rite Aid had revised its pension proposal to state
11 that not only would all new hires be excluded from the 1199
12 pension fund and instead be eligible for the Rite Aid 401K
13 plan, but all employees hired after one year before
14 ratification.

15 So this was August of 2016. If the contract was ratified
16 then, it would be anyone hired after August of 2015 would
17 instead of being in the 1199 pension fund, go be eligible for
18 the Rite Aid 401K plan. That's all I see here as new
19 proposals, although I do recall that there may have been some
20 minor tweaks to the health insurance proposal. Still, the
21 right -- a Rite Aid sponsored plan, but with some slight
22 changes from the original proposal on the Rite Aid sponsored
23 health benefits plan that it made in July.

24 Q And did you discuss these new proposals with Rite Aid
25 during --

1 A We did.

2 Q -- the August 17th session?

3 A Yes, we did.

4 Q And did you discuss with Rite Aid any of the proposals
5 that they had previously made that were contained in the August
6 17th documents given to you?

7 A Yes, we specifically discussed Rite Aid's proposal to
8 change the recognition provision of the contract, article two.
9 Mr. Hinkle read from one of the documents here. It was either
10 the document that's been described as a strike through
11 document, which is right -- Bates stamped Rite Aid 274 or the
12 document that's been described as a proposal by Mr. Hinkle,
13 which is -- which starts at Bates stamp Rite Aid 353, but the -
14 - regardless of which of those documents he was reading from,
15 the language appears exactly the same in both of those
16 documents.

17 Q Okay. And can you recall what Rite Aid -- besides reading
18 from it, if Rite Aid said anything about this article two
19 proposal?

20 A Yeah. Mr. Hinkle said -- he described it as a transfer of
21 work proposal and said that the proposal remains the same as it
22 was from the beginning of bargaining and hasn't changed.

23 Q Did Rite Aid give the Union any deadlines?

24 A Yes. Rite Aid said that if the Union didn't ratify this
25 proposal by September 2nd it was going to implement it.

1 Q And did Rite Aid state what would happen if you did not --
2 I'm sorry, you just answered that. What exactly did Rite Aid
3 want the Union to present to the members?

4 A This --

5 Q What did they want to ratify?

6 A This proposal.

7 Q And did anyone from Rite Aid tell the Union that the
8 proposals they handed to you on August 17th may be incomplete?

9 A No.

10 Q Did anyone from Rite Aid tell you that the proposals they
11 handed to you on August 17th may contain accurate -- inaccurate
12 information?

13 A No.

14 Q Did anyone from Rite Aid use the words work in process or
15 anything like that, to describe the proposals handed to you on
16 August 17th?

17 A No.

18 Q Was David Gonzales present at this bargaining session?

19 A Yes.

20 Q How did this meeting end?

21 A We said, you know, we would need some time to review this.
22 The parties had already agreed to meet the following day. So
23 we said we would see them tomorrow.

24 Q And did you take notes at the August 17th bargaining
25 session?

1 A I did.

2 MS. OLIVER: I would like to show the witness Joint
3 exhibit 6(e).

4 THE WITNESS: Thank you.

5 BY MS. OLIVER:

6 Q Do you recognize this document?

7 A Yes, these are my notes from the August 17th 2016
8 bargaining session.

9 Q And did you take these notes while you were bargaining?

10 A I did.

11 Q That's all for that document.

12 JUDGE GREEN: Let me just ask you, who's David Gonzales?

13 THE WITNESS: He's a Rite Aid human resources manager.

14 JUDGE GREEN: Oh.

15 THE WITNESS: That may not be his exact title, but he's in
16 -- he was in human resources at Rite Aid. I don't believe he's
17 employed there any longer.

18 MS. OLIVER: So you testified that the parties had already
19 agreed to meet on August 18th. Did you?

20 THE WITNESS: We did.

21 BY MS. OLIVER:

22 Q And at this August 18th bargaining session did you respond
23 to Rite Aid's proposals given to you on August 17th?

24 A We -- I said that the proposal continues to be unlawful,
25 because it contains -- because Rite Aid was continuing to

1 insist on changing the bargaining unit to exclude newly hired
2 pharmacists and interns. Yeah.

3 Q Did Rite Aid correct you, in your interpretation of what
4 this proposal meant?

5 A Mr. Hinkle -- I don't recall whether I was specifically
6 corrected. I know at some point in the session Mr. Hinkle
7 described the proposal as a transfer of work, but acknowledged
8 it was the same proposal that had been made since March of
9 2015.

10 Q Did you present any counterproposals?

11 A We didn't present any counterproposals at that session.
12 We told Rite Aid that we would like to consider crafting some
13 counterproposals. That we had just -- you know, we had less
14 than 24 hours between the end of our session on the 17th and
15 the beginning of our session on the 18th, and hadn't had time
16 to think that through, but that we wanted some time to consider
17 doing that. And asked them to lift the September 2nd
18 artificially imposed deadline.

19 Q Did you discuss the health plan proposal at this August
20 18th bargaining session?

21 A We did. You know, I believe I indicated again that their
22 implementation of that proposal -- of their -- of a Rite Aid
23 sponsored health plan was unlawful. I again implored them to
24 pay enough to the benefit fund so that benefits wouldn't be
25 terminated and so that the parties would have the opportunity

1 to engage in some meaningful bargaining, without that gun to
2 our heads.

3 It was a huge issue for our members to be facing losing
4 these benefits. And it made bargaining very difficult, under
5 those circumstances. And I urged Rite Aid to -- you know, to
6 remove that from the situation, so that we could really engage
7 in bargaining.

8 Q How did this meeting end?

9 A We said we needed more time. We asked them again to lift
10 the deadline. Rite Aid said we're not changing the deadline
11 and we're not changing our proposals. This is our last, best
12 and final offer.

13 MS. OLIVER: I'd just like to show the witness Joint
14 exhibit 6(f).

15 BY MS. OLIVER:

16 Q Do you recognize this document?

17 A Yes, these are my notes from the August 18th 2016
18 bargaining session.

19 Q And did you take these notes while bargaining?

20 A I did.

21 Q So you just testified that Rite Aid said that the deadline
22 wasn't changing and neither was their proposal?

23 A Yes.

24 Q So Rite Aid's proposal remained the same --

25 A No, in fact --

1 Q -- until --

2 A -- it changed.

3 Q When?

4 A On August 30th I received a revised last, best and final
5 proposal from Rite Aid.

6 Q And do you recall how you received it?

7 A I believe it was by email.

8 MS. OLIVER: Okay. I would like to show the witness Joint
9 exhibit 4(a) through (f).

10 MR. SILVESTRI: Hang on. Let me get that out.

11 MS. OLIVER: Sure.

12 MR. SILVESTRI: Okay, I have it.

13 BY MS. OLIVER:

14 Q Do you recognize this set of documents?

15 A Yes.

16 Q What is it?

17 A This is a letter and attached documents that I received
18 from Rite Aid on August 30th 2016, which was a revised last,
19 best and final offer.

20 Q Okay. And in this revision, what's the unit description
21 that Rite Aid presented to you?

22 A It was -- it looked to be the same proposal that they had
23 made in the August 17th last, best and final proposal and had
24 been making since March of 2015, with two exceptions. One is
25 they were no longer seeking the removal of interns from the

1 bargaining and the other is they added some language that
2 stated that staff pharmacists hired after the date of
3 ratification would be required to perform managerial and
4 supervisory job functions, required for the operation of Rite
5 Aid pharmacies. And shall have the authority and
6 responsibility to hire, discharge, discipline and train Rite
7 Aid associates, in order to effectively operate Rite Aid
8 pharmacies. Staff pharmacists hired after the date of the --
9 of ratification of this agreement will be obligated to exercise
10 these responsibilities on behalf of the company.

11 Q Okay. And did anything in that letter, Joint exhibit
12 4(a), state that the attached proposal was incomplete?

13 A No.

14 Q Did it refer to the attached proposals as a work in
15 progress?

16 A No.

17 Q After receipt of this document and before your next
18 bargaining session, did anyone from Rite Aid call to tell you
19 that these documents were incomplete?

20 A No.

21 Q Did anyone from Rite Aid call to tell you that these
22 documents were a work in progress?

23 A No.

24 Q Was Rite Aid still requesting that you -- never mind,
25 withdrawn. When did the parties next meet?

1 A September 6th.

2 Q And did you discuss -- you can give that back. Did you
3 discuss the August 30th revisions to the August 17th last, best
4 and final offer?

5 A We did.

6 Q And what did you discuss?

7 A I had a number of questions about the language they were
8 proposing adding about giving supervisory and managerial duties
9 to pharmacists. So I asked a lot of questions about that.

10 Q Can you recall any of the specific questions that you
11 asked?

12 A Yes. I asked about the hiring process and what role Rite
13 Aid was proposing the pharmacists have in the hiring process,
14 the interviewing process, the decision making process, in terms
15 of how people get hired, which job classifications the
16 pharmacists would be involved in hiring. I asked questions
17 about the disciplinary process and what role Rite Aid was
18 proposing pharmacists have in the disciplinary process.
19 Whether they would be involved. At which stages of progressive
20 discipline would they be involved in.

21 Whether they had to -- whether they were able to make
22 those decisions on their own. Whether they were -- needed to
23 consult with other people and get approval from HR for example,
24 before making disciplinary decisions.

25 I asked about the evaluation process and what the

1 pharmacists' role in the evaluation process would be under Rite
2 Aid's proposal. I asked about scheduling, and work assignments
3 and what Rite Aid proposed pharmacists would do, with respect
4 to those functions. A lot of -- I had a lot of questions.

5 Q And did Rite Aid respond to your questions?

6 A Initially, Mr. Hinkle responded to some of the questions I
7 was asking. He gave me some information about the hiring
8 process, and interview process and some information about the
9 disciplinary process. And at some point he became aggravated
10 and didn't want to answer the questions any more.

11 He insisted that under their proposal pharmacists would do
12 whatever managerial functions Rite Aid deemed appropriate for
13 them to do, in sort of a vague manner. And when I continued to
14 press for answers on the questions, he responded by saying that
15 the Union didn't need to know the answers to these questions.
16 I said well, it seemed to us that Rite Aid was proposing to add
17 a lot of potentially supervisory functions to the jobs of
18 individuals in our bargaining unit and we had the right, in
19 fact the obligation to find out about that proposal. And Mr.
20 Hinkle responded by saying that that was not the case, because
21 Rite Aid was continuing to propose that the pharmacists not --
22 newly hired pharmacists not be included in the bargaining unit
23 and that none of the people doing these supervisory or
24 managerial -- so-called supervisory or managerial functions
25 would be union members.

1 Q And did you respond to that?

2 A Well, I was surprised and I guess clearly confused by what
3 the proposal was. And so I asked for clarification and I asked
4 whether, to be clear, Rite Aid is continuing to propose
5 removing newly hired pharmacists from the bargaining unit. Mr.
6 Hinkle said yes.

7 I asked him what if anything then is different about this
8 revised last, best and final proposal than all of Rite Aid's
9 earlier proposals, with respect to recognition. Mr. Hinkle
10 responded by saying our proposal no longer seeks to remove
11 interns from the bargaining unit. And to be clear I asked is
12 that the only change in your proposal? And Mr. Hinkle
13 responded yes.

14 Q During this bargaining session, did Mr. Hinkle tell you
15 that -- suggest that this was a work in progress?

16 A No.

17 Q Did he tell you that the proposals were incomplete?

18 A No.

19 Q Did you discuss anything at this bargaining session, other
20 than the last, best and final proposal as modified?

21 A Yes. We discussed -- prior to this session, the District
22 Court had issued a decision in the litigation on our cross
23 motions to vacate and confirm the Viani award and had found --
24 and had confirmed the award. So we asked Rite Aid whether they
25 intended to comply with the District Court's order, confirming

1 the Viani award. Mr. Hinkle said he could not commit that Rite
2 Aid was not going to further appeal that decision.

3 Q And did you respond?

4 A I did. I said something to the effect of how
5 disappointing it was that Rite Aid was choosing to spend its
6 money on these legal battles, rather than on a collective
7 bargaining agreement. I again urged Rite Aid to pay a portion
8 of what it owed to the fund, so that benefits would not be
9 terminated and we could try to bargain in good faith. I said -
10 - Mr. Hinkle asked whether we were going to make any
11 counterproposals and I said, you know, it's impossible for us
12 to make counterproposals, and to bargain in this situation
13 where there are repeated unfair labor practices that have sort
14 of shifted the baseline of our bargaining and are basically
15 forcing us to bargain against ourselves. That we're not going
16 to do that.

17 I suggested that Rite Aid make another proposal that
18 doesn't include unfair labor practices. And then, you know, we
19 were more than willing to bargain. We wanted to reach a
20 contract. We wanted to bargain, but under these circumstances
21 we couldn't do it.

22 Q And did you take notes at this bargaining session?

23 A I did.

24 MS. OLIVER: I'd like to show the witness Joint exhibit
25 6(g), please.

1 THE WITNESS: Thank you. Yes.

2 BY MS. OLIVER:

3 Q And do you recognize this document?

4 A Yes, these are my notes from the September 6th 2016
5 bargaining session.

6 Q And did you take these notes while you were bargaining?

7 A Yes.

8 Q You can give that back. Did the parties engage in any
9 further communication regarding negotiations after September
10 6th?

11 JUDGE GREEN: You know what? Let me just ask one question
12 --

13 MS. OLIVER: Sure.

14 JUDGE GREEN: -- before we move on. At this bargaining
15 session, you were asking Mr. Hinkle about supervisory authority
16 that the pharmacists would have?

17 THE WITNESS: That they were proposing the newly hired
18 pharmacists would have, yes.

19 JUDGE GREEN: Was there any discussion about non-
20 supervisory responsibilities that the pharmacists would
21 continue to retain, even if they were removed?

22 THE WITNESS: Yeah. What had been described to us at
23 prior sessions, I'm not sure whether at this particular
24 session, but was that the newly hired pharmacists would
25 continue to do all of the work that pharmacists had done and

1 these supervisory functions. On September 6th was the first
2 time that they specifically proposed adding certain supervisory
3 functions to that.

4 JUDGE GREEN: Okay.

5 MS. OLIVER: Okay. So what was my question? Did the
6 parties engage in any further communication regarding
7 negotiations after the September 6th 2016 bargaining session?

8 THE WITNESS: Yes.

9 BY MS. OLIVER:

10 Q Can you recall what those communications were?

11 A There was some correspondence, letters I believe.

12 Q Can you recall when you received -- who sent the first
13 letter?

14 A Rite Aid sent -- I believe there were three different
15 letters we received from Rite Aid.

16 Q And when was the first one received?

17 A September 7th I believe.

18 Q And do you recall when the second one was received?

19 A September 10th.

20 Q And the third one?

21 A September 14th.

22 MS. OLIVER: Can we show the witness Joint exhibits 7, 8
23 and 9, please?

24 MR. SILVESTRI: Hold on. Let me get them out.

25 MS. OLIVER: Sure.

1 THE WITNESS: Thank you.

2 MR. SILVESTRI: Okay, I have them.

3 THE WITNESS: I have them as well.

4 BY MS. OLIVER:

5 Q Do you recognize these documents?

6 A Yes.

7 Q What are they?

8 A These are the correspondence that the Union received from
9 Rite Aid that I just referred to.

10 Q And do any of these letters state that Rite Aid -- in any
11 of these letters does Rite Aid tell you that they're
12 implementing any of their proposals?

13 A In the September 14th 2016 letter, which Joint exhibit 9,
14 Rite Aid states this letter serves as notice that Rite Aid is
15 implementing its last, best and final offer to the Union.

16 Q Okay. And did the Union respond to any of these letters?

17 A We responded I believe on September 21st.

18 Q And how did you respond?

19 A In a letter.

20 MS. OLIVER: Okay. I'd to show the witness what I'm
21 making as GC-23.

22 THE WITNESS: Thank you.

23 BY MS. OLIVER:

24 Q Do you recognize this document?

25 A Yes, this is a letter I sent to Mr. Hinkle dated September

1 21st 2016, responding to the September 7th, 10th and 14
2 letters.

3 (General Counsel's GC-23 identified)

4 MS. OLIVER: I would like to move GC-23 into evidence.

5 MR. SILVESTRI: No objection.

6 JUDGE GREEN: GC-23 is entered into evidence.

7 (General Counsel's GC-23 received in evidence)

8 BY MS. OLIVER:

9 Q At any time during the parties' bargaining, did the Union
10 agree to remove future New York staff pharmacists from the
11 bargaining unit?

12 A Never, no.

13 Q Did the Union ever agree that Rite Aid could withdraw from
14 the national benefit fund?

15 A Never, no.

16 Q Did the Union ever agree that Rite Aid could implement its
17 own health insurance plan?

18 A No, we never agreed to that.

19 Q Did the Union ever agree that Rite Aid could implement any
20 of its proposals --

21 A No.

22 Q -- entitled last, best and final?

23 A No, we never agreed to that.

24 Q Did the Union ever tell Rite Aid that they would not make
25 a counterproposal regarding health insurance?

1 A No.

2 Q Did the Union ever tell Rite Aid that they would not agree
3 to a collective bargaining agreement that did not include Rite
4 Aid's participation in the benefit fund?

5 A We never said that, no.

6 Q Was the Union willing to agree to a collective bargaining
7 agreement without -- that did not include the benefit fund?

8 A Under the right circumstances we may have, yes.

9 Q Since September 14th 2016 has the job duties of incumbent
10 union staff pharmacists in New York changed?

11 A Not to my knowledge.

12 Q Between -- during bargaining, did Rite Aid ever propose
13 creating a new supervisory pharmacist job title?

14 A No.

15 Q If an incumbent unit -- bargaining unit pharmacist is
16 working in a Rite Aid store, is a newly hired staff pharmacist
17 also working to supervise them at the same time?

18 A My understanding is that in almost all Rite Aid stores
19 there's only one pharmacist on duty at a time, whether that's a
20 bargaining unit pharmacist or a non-bargaining unit supervisory
21 pharmacist. So that when a unit -- a bargaining unit
22 pharmacist is working in a store on almost all occasions he or
23 she is the only pharmacist on duty. So there's not also
24 another supervising pharmacist on duty at the same time.

25 Q What if anything -- I'm going to turn to the NBF

1 litigation for a moment.

2 A Okay.

3 Q What if anything did Rite Aid ask the Union to do when
4 they first heard about potential benefit termination?

5 A Rite Aid asked the Union to intervene and use its
6 influence with the fund to try to get them to not terminate
7 benefits.

8 Q And can you recall when they asked you to do that?

9 A Mr. Hinkle asked us to do that at a bargaining session in
10 July. It was either the session of the 11th or the 13th of
11 July. And I believe Ms. Burch wrote to me and asked me to do
12 that, or wrote to Ms. Vallone and asked us to do that.

13 Q Can you recall when Ms. Burch wrote to you or Laurie
14 Vallone?

15 A I believe it was also sometime in July.

16 Q Could anything refresh your memory?

17 A If you showed me a letter or an email from Ms. Burch I'm
18 sure it would.

19 MS. OLIVER: Can we show the witness GC-18, please?

20 MR. SILVESTRI: GC-18?

21 MS. OLIVER: Yes.

22 MR. SILVESTRI: Okay. Go ahead. I think I know where it
23 is. I got it.

24 THE WITNESS: Yes. So I was right. It was sometime in
25 July. Specifically it was on July 7th Ms. Burch sent me an

1 email in which she asked whether the Union was going to
2 intervene to use its influence to stop the cancellation of
3 benefits.

4 BY MS. OLIVER:

5 Q Does the Union have influence to stop the cancellation of
6 benefits?

7 A No.

8 Q Did the Union ever ask the NBF to terminate benefits?

9 A Did we ask the NBF to terminate?

10 Q Correct.

11 A No, no. We never -- no, we would never have done that.

12 Q Did the Union ever ask the NBF to threaten to terminate
13 benefits?

14 A No, we would never have done that either.

15 Q Why not?

16 A Because our members would, to use a legal term, freak out.
17 I mean -- and that's exactly what happened when members did
18 receive termination notices, was they were very upset at the
19 possibility of losing their NBF benefits. Members loved these
20 benefits. And the idea that the Union would somehow
21 strategically engineer to have the members receive threats that
22 their benefits would terminate makes no sense at all. It would
23 have created, you know, a lot of upset amongst our members that
24 we had no interest in creating.

25 Q Did the Union ever ask the NBF to consider continuing

1 benefits?

2 A Yes.

3 Q And did you personally ever make that request?

4 A Yes.

5 Q Were your requests formal or informal?

6 A There was both a formal and an informal request made.

7 Q So let's talk about the informal request.

8 A Uh-huh.

9 Q How many informal requests did you make?

10 A I mean I don't remember exactly how many, but I had
11 several conversations with Suzie Hepner, who's counsel to the
12 fund, in which I tried to explore whether there were any
13 alternatives to terminating benefits.

14 Q And how did Ms. Hepner respond?

15 A Her response to me was always the fund has a delinquency
16 policy. The fund follows its delinquency policy. Sorry.

17 Q And how many formal requests did you make?

18 A Well, my partner Dan Ratner, who is general counsel of
19 1199, made a formal request in writing to the NBF collections
20 committee that they forbear on terminating benefits, pending
21 the outcome of the Union's request to the Board for 10(j)
22 relief. And that letter was followed by a meeting of the
23 collections committee, at which I was present and, you know,
24 presented to the collections committee, based on Mr. Ratner's
25 written request.

1 Q And how did the collections committee respond?

2 A They declined to forbear on terminating benefits. The
3 decision was that they had a fiduciary obligation and they were
4 concerned that -- they were concerned about the possibility
5 that they would be providing benefits for which they would
6 never be paid. And they felt that they were not able to do
7 that, under the delinquency policy.

8 MS. OLIVER: Can I just have a few minutes off the record?

9 JUDGE GREEN: Yes. Off the record.

10 (Whereupon, a brief recess was taken)

11 JUDGE GREEN: Back on the record.

12 BY MS. OLIVER:

13 Q Okay. Just a few more questions for you, Ms. Belovin.
14 Do you know if Rite Aid implemented any of the proposals
15 contained in its August 30th last, best, final offer?

16 A My understanding is that they implemented all of the
17 proposals.

18 Q Are newly hired staff pharmacists in the bargaining unit
19 in New York?

20 A My understanding is that newly hired staff pharmacists are
21 not, are no longer included in the bargaining unit.

22 Q And can you give any examples of other specific proposals
23 that have been implemented since September 2016?

24 A If I can look at the --

25 Q Sure.

1 A -- proposal, I can --

2 MS. OLIVER: Can we show Ms. Belovin Joint exhibit 4(a)
3 through (f)?

4 JUDGE GREEN: What exhibit is that?

5 MS. OLIVER: 4(a) through (f). Joint 4(a) through (f).

6 THE WITNESS: Well, the NBF has been replaced with a Rite
7 Aid sponsored health plan.

8 BY MS. OLIVER:

9 Q Do you know when that occurred?

10 A We learned later that enrollment -- Rite Aid began
11 enrolling members in that plan in late August. So that
12 happened. New hires and employees with less than one year of
13 seniority are no longer participating in the 1199 pension fund.

14 Q When you say less than one year of seniority, what do you
15 mean?

16 A I mean Rite Aid implemented their last, best and final
17 proposal I believe on September 15th of 2016. So that anyone
18 hired after September of 2015 would not be a participant in the
19 1199 pension fund, under Rite Aid's implemented proposals and
20 instead I guess would be eligible for the Rite Aid 401K plan.
21 I believe Rite Aid implemented its proposed changes to article
22 10, the layoff and discharge provision. Its proposed changes
23 to article 15 on the concessions. My understanding is Rite Aid
24 implemented all of the terms that it included in its last, best
25 and final offer dated August 30th.

1 Q And how do you know that Rite Aid implemented these
2 proposals?

3 A They told us on September 14th that that's what they were
4 doing. And I believe that they've said so in -- they've
5 admitted as much in court papers and other places.

6 Q Okay. And turning back to the NBF for a moment --

7 A Yes.

8 Q -- did the fund send -- did the fund ever send letters to
9 the members notifying that benefits would or had been
10 terminated?

11 A Yes.

12 Q And do you know when those letters were sent or if there
13 was more than one?

14 A There were multiple letters sent to members, first
15 notifying them that benefits could terminate in the absence of
16 payment. And then notifying them that benefits would terminate
17 because there hadn't been payment.

18 Q And do recall when that was?

19 A Between July of 2016 and October of 2016. There were
20 several letters in that period.

21 Q And how do you know that these letters were sent?

22 A I know that Suzie Hepner would have informed me when they
23 were being sent that they were being sent. And I've seen
24 copies of them. I don't remember how I first came to see
25 copies of them, but I've seen copies of them.

1 Q Did these letters have any impact on bargaining?

2 A Yes. I mean drastic impact on bargaining. The fact that
3 benefits were -- you know, the workers were getting benefits
4 through the NBF and then they weren't. And that drastic
5 change, in a very important term of employment, very
6 dramatically affected our bargaining position, our bargaining
7 strength, everything. I mean it changed the whole complexion
8 of negotiations.

9 Q Did Rite Aid ever tell the Union -- let's start -- I'll
10 break it down. Before enrolling members in the Rite Aid
11 sponsored health care plan, did Rite Aid provide the Union with
12 the requested cost information?

13 A No.

14 Q After enrolling members in the Rite Aid sponsored health
15 care plan, did Rite Aid provide the Union with the request cost
16 information?

17 A No.

18 MS. OLIVER: No further questions.

19 JUDGE GREEN: Okay. Thank you. Do we have any questions
20 from the Union?

21 MS. APTER: No.

22 JUDGE GREEN: Okay. So we're going to break before cross.

23 2:10?

24 MR. SILVESTRI: 2:10 is fine.

25 JUDGE GREEN: Okay. Just with regard to breaks, just

1 going forward, if we take a brief break and you think you're
2 going to be significantly longer, just -- or if we break to a
3 certain time and you think you're going to need longer, just
4 come in and ask for more time.

5 MS. OLIVER: Sorry, I lose track so quickly.

6 JUDGE GREEN: That's okay. So just so the rest of us know
7 --

8 MS. OLIVER: Absolutely. I understand.

9 JUDGE GREEN: -- when we can wander around the building if
10 we desire. Okay. So with that we'll go off the record.
11 (Whereupon, at 12:07 p.m. a luncheon recess was taken to
12 reconvene at 2:10 p.m.)

A F T E R N O O N S E S S I O N

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(2:31 P.M.)

JUDGE GREEN: Back on the record.

MR. SILVESTRI: Thank you, Your Honor. I have your ruling which you sent. And I skimmed it and I must admit to you I didn't study it.

JUDGE GREEN: Okay.

MR. SILVESTRI: There are certain matters that we're going to be going into, in terms of communications from Ms. Belovin to Ms. Hepner, that were brought out or at least referred to in direct examination. And my position would be that the door is open for me to cross examine, with respect to those communications --

JUDGE GREEN: You are.

MR. SILVESTRI: So --

JUDGE GREEN: Listen, I understand that to a certain extent I've created something of an awkward dynamic here in the sense that I haven't ordered production of subpoenaed records, but I've allowed cross examination.

MR. SILVESTRI: Yeah.

JUDGE GREEN: And that put the General Counsel in a bit of a pickle, because then they kind of have to address what's being put forward by the Respondent. But certainly in this particular instance, when it was raised on direct, then --

MR. SILVESTRI: Right.

1 JUDGE GREEN: -- you're entitled to go into it --

2 MR. SILVESTRI: And the pickle --

3 JUDGE GREEN: -- on cross.

4 MR. SILVESTRI: -- jar, I would say, is not just including
5 counsel for the General Counsel. The pickle jar includes the
6 Respondent, because --

7 JUDGE GREEN: Correct.

8 MR. SILVESTRI: -- without the documents it's very hard to
9 --

10 JUDGE GREEN: I understand --

11 MR. SILVESTRI: -- anticipate what you're going to say on
12 cross, what you're going to cross examine on. The other point
13 I want to make, obviously is in light of Your Honor's ruling,
14 we're probably going to have to determine what we're going to
15 do about this. We'll probably make some kind of proffer at
16 some point of what we think the evidence would show --

17 JUDGE GREEN: Yes.

18 MR. SILVESTRI: -- and what we would be willing to go
19 into, probably in our case in chief, at some point in our case
20 in chief. We don't need to delay today for that.

21 JUDGE GREEN: Okay.

22 MR. SILVESTRI: Okay? Good. And with that I'm ready.

23 JUDGE GREEN: Go ahead.

24 CROSS EXAMINATION

25 BY MR. SILVESTRI:

1 Q Ms. Belovin, could you get Joint exhibit 4 in front of
2 you? And that's the August 30th package that you were
3 referring to in your testimony.

4 A Yes, I have it in front of me.

5 Q Okay. So the package, which is everything after the first
6 page, came by hand on September 6th, correct?

7 A I believe it came by email on August 30th.

8 Q Okay. So the --

9 A And --

10 Q -- entire package came by August -- by email?

11 A If you let me finish, what I was about to --

12 Q Sorry.

13 A -- say -- that's okay. I believe -- yes, I believe all of
14 the documents that comprise exhibit 4 came by email on August
15 30th.

16 Q On August 30th?

17 A Yes.

18 Q Okay.

19 A And also were distributed at the September 6th bargaining
20 session.

21 Q They were distributed at -- they were distributed by hand
22 as well?

23 A That's my recollection --

24 Q Including the August 30th letter?

25 A I'm not sure if the letter itself was distributed at the

1 September 6th bargaining session, but the documents attached to
2 it I believe were.

3 Q Right. And I notice that even though the letter was
4 addressed to Ms. Vallone, you were copied on the letter?

5 A Yes.

6 Q So you received it at the same time that the Union
7 received it?

8 A I don't know when the Union received it. I know I
9 received it on or about August 30th.

10 Q Okay. So looking at paragraph number one, the paragraph
11 that is outline number one, is it true that this paragraph --
12 just looking at this paragraph in the letter, is it true that
13 this paragraph differs from the proposal or proposals that Rite
14 Aid was giving, with respect to article two, at all times
15 previous to this in collective bargaining negotiations?

16 A Can you ask the question again --

17 Q Okay.

18 A -- now that I've read it?

19 Q So let me see if I can --

20 A Uh-huh.

21 Q -- go about it another -- so prior to getting August 30th,
22 the company position in negotiations was that it wanted to
23 change the language article two, scope of the bargaining unit,
24 during negotiations, correct?

25 A The company proposed chain -- yes, the company proposed --

1 Q Okay.

2 A -- changing the scope of the bargaining unit to remove
3 newly hired pharmacists and pharmacy interns.

4 Q Did more than that. In addition to removing interns and
5 newly hired pharmacists, it proposed to change to put
6 inclusions in, rather than a wall to wall unit, correct?

7 A Yes.

8 Q Okay. And this proposal is completely different than
9 those proposals, in the sense that one, it withdrew its
10 proposal on recognition. So the first line here says Rite Aid
11 withdraws its written proposal to change article two
12 recognition of the 1998 collective bargaining agreement. See
13 that?

14 A I see it.

15 Q That is different than any proposal, with respect to
16 article two, the company had previously made in these
17 negotiations, correct?

18 A I'm hesitating because when I refer to the document that
19 Rite Aid sent along with it to interpret what that withdrawal
20 meant, it continued to include the deletion of the language
21 that made it a wall to wall unit and the inclusion of language
22 that specified -- that defined the unit by particular
23 classifications and added additional language.

24 Q Okay. Maybe I didn't make myself clear. If you just look
25 at this letter alone -- I think I said that earlier. It may

1 not have been to each question. But if you just looked at this
2 letter alone, and you analyzed this letter in reference to all
3 the previous proposals, is it true that this letter changes all
4 of those previous proposals on article two, if you look at just
5 this letter alone? And I understand you look at more than
6 that, but I'm asking you right now if you looked at this letter
7 alone --

8 A I don't know how to answer that question, because I didn't
9 look at this letter alone. I looked at this letter along with
10 the accompanying documents. I'm not sure what I would have
11 made of this letter, if I had read it alone. It would have
12 raised questions certainly --

13 Q I'll ask --

14 A -- about --

15 Q -- it more directly. Does this letter -- though does this
16 letter withdraw the company's previous article two proposals?

17 MS. OLIVER: Objection. I feel like she has to speculate
18 as to what the company meant. Or are you --

19 JUDGE GREEN: Sustained.

20 MS. OLIVER: -- asking what she meant?

21 BY MR. SILVESTRI:

22 Q Does the letter say Rite Aid withdraws its written
23 proposal to change article two, recognition, of the 1998
24 collective bargaining agreement?

25 A Yes, that's what the letter says.

1 Q So your contention -- the Union's contention is of course
2 that Rite Aid included, along with these attachments, a strike
3 through that in effect preserved its prior language in article
4 two -- prior proposed language, right?

5 A It included both a strike through document and another
6 document that Mr. Hinkle described as a proposal or a summary
7 of a proposal. And both of those documents included the
8 proposal, as it had existed. You know, the deletion of the all
9 professional and non-professional employees language and the
10 listing of certain classifications as being included and
11 excluded. And then this proposal added new language.

12 Q Prior to the time that you met with the Union -- with the
13 company September 6th, did you have any question about what the
14 meaning of article -- of paragraph number one was, in light of
15 the fact that the company included proposal that it had
16 previously made unchanged on article two?

17 A Yeah. We -- I had questions about specifically what the
18 company's proposal was.

19 Q Right. And the questions were based upon, among other
20 things, the fact that this language appeared to be different
21 than what was in the strike through and the proposal that was
22 included in the package?

23 A Yeah, the fact that there was new language added.

24 Q Okay. And so prior to September 6th 2016, did you attempt
25 to contact the company, Mr. Hinkle or anybody else from the

1 company, to ask for an explanation in the discrepancy?

2 A No, I intended to ask for an explanation of the proposal
3 at the September 6th bargaining session.

4 Q At the September 6th bargaining session is it true that
5 you did not mention the discrepancy across the table?

6 A I don't know that I interpreted it as a discrepancy. I
7 asked questions about the proposal and sought clarification as
8 to the meaning of the proposal. And Mr. Hinkle clarified it
9 for me by saying that the company continued to propose that
10 newly hired staff pharmacists not be included in the bargaining
11 unit. And I asked specifically whether there were any other
12 changes to the proposal from the proposal that Rite Aid had
13 made since March of 2015. And Mr. Hinkle indicated that the
14 only change was to -- that the company was no longer seeking to
15 exclude interns.

16 Q I understand that, but you didn't draw the company's
17 attention to, during this session, the difference between what
18 was written here in number one that I read to you and what was
19 in the proposals attached, isn't that true?

20 A I don't know that I would describe it as a difference or a
21 discrepancy. It was I had questions about what in particular -
22 - what exactly the company was proposing. I asked questions
23 about it and I got a clarification from Mr. Hinkle.

24 Q Okay. So the proposals that were attached to this, and
25 they're in this exhibit, don't say in any space -- in any place

1 or form, none of the proposals attached to this exhibit say the
2 company is withdrawing its article two proposal? None of them
3 say what's said in this letter; Rite Aid withdraws its written
4 proposal to change article two recognition. None of them say
5 that, correct?

6 A No, that's correct, none of them say those words.

7 Q And written proposal to change article two, recognition,
8 that was what was in the company's proposals on article two
9 previous to that, correct? Let me say --

10 A Ask the question again. I don't understand it.

11 Q There's reference to a written proposal to change article
12 two?

13 A Uh-huh.

14 Q That meant the company's previous proposals on article
15 two, didn't it?

16 A I don't know what the company meant when it said that. I
17 know I can tell you -- all I can tell you is how I understood
18 it.

19 Q You didn't ask the company for a clarification of that
20 sentence, did you?

21 A Of that sentence being Rite Aid --

22 Q That sentence. The first sentence. Number one, yes.

23 A -- withdraws it's written proposal?

24 Q Yes.

25 A No, I asked the company for a clarification --

1 Q I'll take --

2 A -- of its --

3 Q -- the no.

4 A -- proposal.

5 Q You say you did not --

6 MS. OLIVER: Objection, she -- asked and answered.

7 MR. SILVESTRI: The question --

8 JUDGE GREEN: It's all right.

9 MR. SILVESTRI: -- calls for a yes or no answer.

10 JUDGE GREEN: Overruled.

11 MR. SILVESTRI: So I take it that your testimony is that

12 you were aware, at the time you received this proposal, this

13 package on August 30th, that there was -- that the company had

14 not made any changes to its strike out language? You were

15 aware of that?

16 THE WITNESS: That the -- I don't know what strike out

17 language you're referring to.

18 BY MR. SILVESTRI:

19 Q In article two. You were aware that the company had not

20 changed the language in article two that it had previously

21 struck out and changed in previous proposals.

22 A Well, they did change it, because they were no longer --

23 the interns, as an exclusion -- the interns as an inclusion --

24 let me phrase it differently.

25 Q Uh-huh.

1 A The company was no longer proposing excluding interns. So
2 that was changed.

3 Q Right, but the language -- and I'm looking R-A 384.

4 A Okay.

5 Q You were aware that -- when you read this, you were aware
6 that the company had not changed the strike out language from
7 its previous proposals? You were aware that this proposal did
8 not change that strike out language, correct?

9 A If by that strike out language you mean the language says
10 of the professional and non-professional associates? Is that
11 what you're talking about?

12 Q Yeah. I mean there's only one -- there's only six lines
13 that are struck out over here on this page, right? Page --

14 A Yes.

15 Q -- 384?

16 A Yes.

17 Q Okay. The question is you were aware that this hadn't
18 changed, at the time you got it in October --

19 A That's correct.

20 Q -- on August 30th?

21 A Yes.

22 Q Okay.

23 A That's right.

24 Q Now, after the company made its original proposal to
25 change the recognition clause in article two back in 2015, was

1 there any reference by name to article two in any of the sets
2 of negotiations after that?

3 A I know I referenced the recognition clause. I don't know
4 -- I don't recall whether I specifically said article two.

5 Q If you did your notes would reflect that, is that correct?

6 A My notes?

7 Q Yeah.

8 A They may reflect that. They may not. You know, I'm
9 taking notes as I'm negotiating. I often use shorthand. It's
10 possible that I would have said article two without -- and
11 wrote something like recognition as a denoting that, but I may
12 or may not have specifically said article two.

13 Q So your --

14 A I don't recall.

15 Q When -- so I take it by that answer that you made judgment
16 calls, as you were taking your notes contemporaneously about
17 what to put down and what not to put down, correct? And I'm
18 not asking for specific judgment calls, but generally as you're
19 taking notes, you're -- in negotiations, you're not copying
20 down every word.

21 A I am not copying down ever word. That's correct.

22 Q Okay. But you would agree with me that your notes contain
23 the important parts of the exchanges that were at least
24 critical to the Union to preserve as notes, correct?

25 A For the most part, correct, yes. It is possible that

1 there was an occasion where I didn't write down something, but
2 because I'm the one mostly doing the speaking at the table, so
3 it's not always easy to write down everything you're saying as
4 you're saying it. But I tried to get the important stuff, yes.

5 Q Got it. And is it true that the subject of pharmacists
6 performing supervisory work was not a new subject of discussion
7 between the parties in this set of negotiations?

8 MS. OLIVER: Objection, relevance. And what set of
9 negotiations?

10 JUDGE GREEN: Well, okay. Can you ask the question again?

11 MR. SILVESTRI: Sure. Is it true that the subject of
12 supervise -- of pharmacists doing supervisory was not a new
13 subject of discussion at these negotiations? And I can ask it
14 a different way if you want.

15 JUDGE GREEN: From what?

16 MR. SILVESTRI: Huh?

17 JUDGE GREEN: From what? Different from?

18 MR. SILVESTRI: The past. Different than past
19 negotiations.

20 MS. OLIVER: Just --

21 JUDGE GREEN: Overruled.

22 MS. OLIVER: -- for clarification, are we talking about in
23 2015 starting or are we talking about June --

24 MR. SILVESTRI: I'm --

25 MS. OLIVER: -- 2016?

1 MR. SILVESTRI: -- talking about ever. Ever. So let me -
2 -

3 MS. OLIVER: No, but these negotiations. Is it --

4 MR. SILVESTRI: -- ask it a different --

5 MS. OLIVER: These start in 2015 or 2016? That's all I
6 need.

7 MR. SILVESTRI: Let me ask it differently. Is it true
8 that prior to these negotiations, the Union and the company had
9 had discussions -- I'm talking about negotiations. Had
10 discussions about pharmacists doing supervisory work?

11 THE WITNESS: I don't recall specific discussions about
12 pharmacists doing specific supervisory work, but I do recall
13 discussions about whether pharmacists should be included or
14 excluded in the unit as supervisors.

15 CONTINUED CROSS EXAMINATION

16 BY MR. SILVESTRI:

17 Q And so your testimony is that at no point in time prior to
18 March of 2015, did the company speak to your or the Union, to
19 your knowledge, about having pharmacists perform supervisory
20 work? At no time.

21 A My testimony is that I don't recall conversations in which
22 there were discussions about specific supervisory work that
23 company talked to us about assigning to pharmacists. I do
24 recall conversations about pharmacists as supervisors
25 generally. And I recall that.

1 Q The fact is that the Union has known that the company has
2 desired to have its pharmacists perform supervisory work, much
3 as they do in New Jersey, is that correct?

4 A No, I wouldn't say that's correct.

5 Q Okay. Isn't it true that the company took positions with
6 the Union in prior sets of negotiations that many pharmacists
7 were performing supervisory work?

8 A It is true that the company made that assertion. The
9 Union always disputed that.

10 Q And isn't it true that the company demanded and the Union
11 agreed to a provision, in I think article two, that would allow
12 the company to file a UC petition to remove pharmacists from
13 the bargaining unit for performing supervisory work?

14 A No, I think actually to the contrary. I think what we
15 agreed upon was a provision that prevented the company from
16 filing a UC petition.

17 Q Oh, I'm sorry. Prevented it, right. Right, I'm sorry. I
18 got it opposite. I apologize. And the discussions here in the
19 2015 and 2016 negotiations about the pharmacists were mainly
20 about the work that they would perform?

21 A No, I don't agree with that characterization.

22 Q Would you agree with the characterization that the company
23 attempted to have discussions with the Union in 2015 and 2016,
24 during negotiations, about the supervisory duties of
25 pharmacists, about the need to have pharmacists perform

1 supervisory work?

2 A No, I don't agree with that either.

3 Q So your testimony is that the first time the company
4 mentioned pharmacists performing supervisory was on the August
5 30th letter and September --

6 A No, that's not my testimony either.

7 Q Okay. So there's going to be a place in the middle there.

8 A Right.

9 Q So when was it that the company discussed in negotiations
10 supervisors performing -- excuse me, pharmacists performing
11 supervisory work?

12 A The company mentioned, from the very beginning, from March
13 of 2015, stated that it wanted pharmacists to be supervisors or
14 managers. There was never a discussion or a proposal about the
15 supervisory duties or managerial duties that the company was
16 proposing pharmacists to perform. The presentation of that
17 proposal always from the beginning, from March of 2015, was
18 couched in, you know, sort of vague terms of the company wants
19 pharmacists to be supervisors and managers and was always
20 accompanied by a discussion of the financial burden that the
21 national benefit fund and the Union's other economic proposals
22 was placing on Rite Aid. And that the exclusion of newly hired
23 pharmacists and pharmacy interns was something that the company
24 wanted to offset those costs.

25 Q Okay. Got you. Turning back to Joint exhibit 4, the

1 first page. Would you agree with me that the function of
2 hiring -- the responsibility of hiring is a supervisory
3 function under The National Labor Relations Act?

4 MS. OLIVER: Objection.

5 JUDGE GREEN: I'll allow it.

6 THE WITNESS: I would agree that true hiring
7 responsibility is an indicia of supervisory authority under The
8 National Labor Relations --

9 BY MR. SILVESTRI:

10 Q Well, this letter doesn't say they'd have false
11 responsibility. It just says responsibility to hire. Doesn't
12 it?

13 MS. OLIVER: Objection.

14 THE WITNESS: Where are you referring to in the letter? I
15 mean the letter says what is says --

16 BY MR. SILVESTRI:

17 Q Fourth line down.

18 JUDGE GREEN: Overruled.

19 MR. SILVESTRI: See it says --

20 THE WITNESS: Fourth line down.

21 BY MR. SILVESTRI:

22 Q -- shall have the authority and responsibility to hire?
23 That's a 2(11) supervisory function.

24 A I'm sorry. I'm not seeing where you're looking.

25 Q Fourth line down, second paragraph under number one.

1 A Second paragraph, fourth line down. Yes, that's what it
2 says.

3 Q Right. And that's a 2(11) function, is it not?

4 A The responsibility to hire is a 2(11) function, yes.

5 Q The responsibility to discharge is a 2(11) function, is
6 it?

7 A Yes.

8 Q Is that correct?

9 A Yes.

10 Q The responsibility to discipline is a 2(11) function.

11 A Yes.

12 Q Responsibility to train is a 2(11) function, is it not?

13 A I don't believe so.

14 Q You don't think it is.

15 A I'm not sure. I don't -- I actually don't --

16 Q Okay.

17 MS. OLIVER: Renew my objection. Just state the reasons.
18 That it's a Board determination whether someone is or is not a
19 supervisor under section 2(11) of the Act.

20 JUDGE GREEN: Understood, but --

21 MR. SILVESTRI: And as a --

22 MS. OLIVER: I just want it noted for the record.

23 JUDGE GREEN: All right.

24 MS. OLIVER: I understand you already --

25 MR. SILVESTRI: And as a supervisory function, the company

1 would control the parameters of that function, would it not
2 under the Act?

3 THE WITNESS: I don't understand that question.

4 BY MR. SILVESTRI:

5 Q As a supervisory function, the company gets to determine
6 what exactly that function entails. How much hiring, who they
7 hire, those are all management prerogatives, is that correct?

8 A It's -- perhaps, except to the extent that that -- those
9 prerogatives are circumscribed by a collective bargaining
10 agreement and whether or not those functions rise to the level
11 of true hiring, discipline, training authority to make someone
12 doing this functions a supervisor is a factual determination.

13 Q Has the Union ever agreed that bargaining unit pharmacists
14 could perform supervisory functions?

15 A The -- I'm sorry, ask the question again.

16 Q Has the Union ever agreed in any set of negotiations that
17 pharmacists in the unit could perform supervisory functions?

18 A Until August 30th Rite Aid never made any such proposal.
19 So we -- there was never a proposal of that nature for us to
20 agree to.

21 Q Okay.

22 A I'm not even certain that that's what the August 30th
23 proposal was, but --

24 Q I like that --

25 A -- that's neither here nor there.

1 Q You're not certain that that's what the proposal was? I
2 thought you said you were clear that the company's proposal was
3 to remove the pharmacists from the bargaining unit?

4 A Yeah. I'm clear that that's --

5 Q Okay.

6 A -- what the proposal was.

7 Q But then you -- your testimony is you weren't clear what
8 this proposal was on the first page of Joint exhibit 4?

9 A No, that was not my testimony.

10 Q Well, we'll keep comment the way it is.

11 A Okay.

12 Q During the course of bargaining in 2015 and 2016, is it
13 true that the Union never changed its position that Rite Aid
14 contribute at the full flat rate to the NBF?

15 A Yes, that's true. The Union did not change its proposal,
16 with respect to the NBF throughout that period of time.

17 Q And it's true that the Union never changed its response to
18 the company's proposal, with respect to pharmacists, regardless
19 of whether it was the proposal to transfer work or a proposal
20 to move them out of the bargaining unit? It refused to do
21 either one of them, correct?

22 A We didn't see it as an either/or or two separate
23 proposals, but it is true that the Union never changed its
24 response that it would not agree to remove future pharmacists
25 or interns from the bargaining unit.

1 Q You indicated, in your direct examination, that there was
2 a break in negotiations sometime in 2016 where the parties did
3 not meet, is that correct?

4 A Yes, that's correct.

5 Q Is it correct that during -- and this was a three month
6 period as I recall you describe it. Something like that?

7 A I think that we -- there was a bargaining session sometime
8 in late March of 2016 and we didn't resume again until the
9 middle of June of 2016.

10 Q And your explanation for this break was that the parties
11 were litigating an unfair labor practice claim, is that
12 correct?

13 A That's -- yes, that's correct.

14 Q The trial during that unfair labor practice claim was
15 three days, is that correct?

16 A That -- give or take one day, yes.

17 Q Is it true that the company offered dates during that
18 period of time to meet to negotiate?

19 A I don't recall.

20 Q And your testimony was that you were present for all the
21 bargaining sessions for this -- in this -- in 2015 and 2016?

22 A No, that wasn't my testimony. I was present for all the
23 bargaining sessions between June 13th of 2016 and September 6th
24 2016. There were some earlier sessions that I was not present
25 for that one of my partners represented 1199 at.

1 Q Okay. You testified that the company made a change in its
2 proposal with respect to pension, relatively late in
3 negotiations and it included or excluded bargaining unit
4 associates who were hired for a 12 month period back from a
5 particular date. I can't recall the exact date. Is that --

6 A Yeah.

7 Q -- your testimony?

8 A Yes, that's correct.

9 Q And the Union response to that was that it wouldn't agree
10 to that, is that correct?

11 A Yes, that's correct. The Union rejected that proposal.

12 Q You -- the company also changed its wage proposal on or
13 around that date, is that correct?

14 A Yes, that's correct.

15 Q And the company's explanation for those changes was that
16 the State of New York and the State of New Jersey had
17 implemented legislation or had passed legislation increasing
18 the minimum wage, is that correct?

19 A That's correct that that was the company's explanation for
20 the change, yes.

21 Q Got it. And the company explained to you in negotiations
22 that the effect of the increase of minimum wage would also
23 increase the amount it owed under the national benefit fund, is
24 that correct?

25 A Yes. Although the company knew about the increases of

1 minimum -- of the minimum wage, long before they made these
2 changed proposals.

3 Q When the Union received that -- those proposals, it went
4 to the NLRB and filed an unfair labor practice charge.

5 MS. OLIVER: Objection, relevance.

6 THE WITNESS: I don't understand the question.

7 MR. SILVESTRI: The Union filed --

8 MS. OLIVER: Objection and the form of the question.

9 JUDGE GREEN: So restate the question.

10 MR. SILVESTRI: When the -- after the Union received those
11 changes in proposals, it filed a regressive bargaining charge
12 with The National Labor Relations Board, didn't it.

13 JUDGE GREEN: Is there an objection or not?

14 MS. OLIVER: Objection to relevance.

15 JUDGE GREEN: Okay. I'm going to overrule that.

16 THE WITNESS: Yes, among the allegations in the charge
17 that the Union filed was an allegation of regressive
18 bargaining.

19 BY MR. SILVESTRI:

20 Q And that charge was withdrawn after the Region indicated
21 that it wasn't going to proceed to complaint, isn't that
22 correct?

23 A Yes.

24 MS. OLIVER: Objection. That's --

25 JUDGE GREEN: Overruled.

1 MS. OLIVER: -- conversations between the Region and the
2 Union that may or not have happened.

3 BY MR. SILVESTRI:

4 Q Now, you indicated in your testimony that you were aware
5 that the Union -- Mr. Ratner had sent a letter to the trustees
6 -- to the national benefit fund collections committee, asking
7 them to forbear termination of benefits, is that correct?

8 A Yes.

9 Q And I think that letter is Respondent's exhibit 1. If you
10 could get that in front of you, Ms. Belovin, that would be
11 great.

12 A I don't have it in front of me. I'll let you know when I
13 do.

14 Q It's a one page letter. Actually, a two page letter
15 stapled.

16 MR. SILVESTRI: I think I only have one copy, Your Honor.

17 MS. PIERSON-SCHEINBERG: We might have it in our binders -
18 -

19 MS. OLIVER: It might have gotten mixed up with the GC
20 exhibits, because I think we moved it into the record during --

21 MS. PIERSON-SCHEINBERG: I have a copy here.

22 MS. OLIVER: -- my redirect.

23 MR. SILVESTRI: Oh, you do? Okay. We have one.

24 THE WITNESS: Thank you.

25 MR. SILVESTRI: Okay. And I think it was your testimony

1 that you were aware of one formal request for forbearance. And
2 you made informal requests, correct?

3 THE WITNESS: Yes, that was my testimony.

4 BY MR. SILVESTRI:

5 Q This is the formal request, is it not

6 A Yes.

7 Q And this comes roughly three and a half months after the
8 first indication by the NBF to Rite Aid that benefits may be
9 terminated, correct?

10 A Approximately three months after.

11 Q And --

12 A Yes.

13 Q -- I think it was your testimony, correct me if I'm wrong,
14 that the reason why the Union was making the formal request is
15 because it had filed an unfair labor practice charge with the
16 Board and it had requested the Board to initiate 10(j)
17 proceedings, with respect to the termination of benefits.

18 A That was not my testimony. My testimony was not that
19 that's why we were making the request. My testimony was that
20 we made that request and off -- and asserted that the pending
21 10(j) request would have been the basis for the fund to
22 forbear.

23 Q Okay. And was this letter requested by the Region, in
24 connection with the 10(j) proceeding?

25 MS. OLIVER: Can you rephrase that?

1 MR. SILVESTRI: Yeah. Did the Region ask you to go to the
2 fund to seek forbearance?

3 MS. OLIVER: Objection.

4 JUDGE GREEN: So what's the objection?

5 MS. OLIVER: What does what we do in our investigation
6 have to do with anything --

7 MR. SILVESTRI: Oh, it goes to the motivation in getting
8 this letter done. Your Honor, there was testimony on direct
9 that the Union was so concerned about these benefits that they
10 made formal requests and informal requests. And I'm entitled o
11 go through the motivations of that, including what's in this
12 letter.

13 JUDGE GREEN: Okay. You know, I mean are you -- I'm going
14 to allow it.

15 MR. SILVESTRI: It's my only question on this.

16 JUDGE GREEN: Okay.

17 MR. SILVESTRI: All I want to know is whether or not this
18 letter was generated, as a result of a request by the Region?

19 THE WITNESS: No.

20 BY MR. SILVESTRI:

21 Q Okay. Now, Mr. McIver is an employer trustee to the
22 national benefit fund, correct?

23 A Yes.

24 Q And Ms. Castaneda is a union designated trustee to the
25 national benefit fund --

1 A Yes.

2 Q -- is that correct? And you were -- you testified that
3 you were there at the meeting and you presented. I think I
4 heard you say --

5 A What meeting --

6 Q -- you presented at the meeting.

7 A -- are you referring to?

8 Q The meeting that we're referring to in connection with
9 this letter. You testified that there was a meeting, did you
10 not?

11 A There was a meeting of the collections committee, yes.

12 Q There was a meeting of Mr. McIver and Ms. Castaneda. They
13 are the collections committee.

14 A That's my understanding, yes.

15 Q That's your understanding because you knew that. It's not
16 your understanding because you figured it out, right? And you
17 knew at the time that the only people on the collections
18 committee were McIver and Castaneda.

19 A I don't know that I knew that at the time; that they were
20 the only members of the collections committee.

21 Q So you went there and you made a presentation. Was the
22 presentation in written form or PowerPoint? Was --

23 A No.

24 Q -- there any document exchange besides this letter?

25 A No.

1 Q What was the substance of the presentation?

2 A Essentially what's in the letter. I explained where
3 things were in the NLRB process. I explained that we were
4 hopeful -- at that time we were hopeful that we would have a
5 decision from the General Counsel about whether to seek 10(j)
6 relief very shortly. And that we had hoped that that would be
7 a basis for the trustees to agree not to move forward with
8 benefit termination.

9 Q Did you have any discussions with Ms. Hepner, prior to
10 this meeting, with respect to the presentation?

11 A Not with respect to the presentation, no.

12 Q Well, did you have any discussions with her with respect
13 to the meeting?

14 A We discussed that there was going to be a meeting and that
15 I was going to be there.

16 Q How did it happen that you were invited to the meeting?
17 How did you learn of the invitation?

18 A Dan Ratner asked me to go to it in his place.

19 Q How did it happen that Mr. Ratner was invited to the
20 meeting?

21 A I don't know.

22 Q Was there a vote at the meeting?

23 A No. Not in my -- no.

24 Q Did the trustees make a decision in your presence?

25 A My recollection is that Ms. McIver, who was there with

1 counsel for the employer trustees, expressed their reluctance
2 to do it. And I think that we -- they -- I don't know that
3 they gave us a formal decision at that meeting. I think that
4 might have been conveyed subsequent to the meeting. Not to me
5 directly, but they certainly -- Mr. McIver and his counsel
6 certainly expressed a reluctance to agree to what we were
7 asking.

8 Q So you're leaving out Ms. Castaneda. So are you telling
9 me Ms. Castaneda did not express an opinion, with respect to
10 the request?

11 A I'm not telling you that, no.

12 Q So why don't you tell me what Ms. Castaneda opinion was?

13 A She also -- she -- her opinion was that we should forbear.
14 The fund should forbear.

15 Q Oh, really? So she had a disagreement with Mr. McIver?
16 Mr. McIver was saying that there should be no forbearance and
17 Ms. Castaneda was saying there should be.

18 A Correct.

19 Q Do you know what happens in a 302 fund where the trustees
20 -- the Union and the employer trustees disagree as to an
21 action?

22 MS. OLIVER: Can we just explain what a 302 fund is?

23 MR. SILVESTRI: Well, okay. Do you know what a 302 fund
24 is?

25 THE WITNESS: I do.

1 BY MR. SILVESTRI:

2 Q Okay. 302 fund is -- the national benefit fund is a
3 section -- Taft-Hartley section 302 fund, is that correct?

4 A Yes.

5 Q And in a Taft-Hartley section 302 fund, half of the
6 trustees are appointed by management and half of the trustees
7 are appointed by a union, correct?

8 A Yes.

9 MR. SILVESTRI: And this is all for Ms. Oliver's
10 edification.

11 BY MR. SILVESTRI:

12 Q And in a --

13 MS. OLIVER: For the record --

14 MR. SILVESTRI: -- 302 fund --

15 MS. OLIVER: -- not for me.

16 MR. SILVESTRI: -- the statute specifically provides that
17 if there's a disagreement to -- as to the trustees, with
18 respect to any action that has fiduciary implications, there is
19 an arbitration provision that is invoked. You -- do you know
20 that?

21 THE WITNESS: I don't know that that's what 302 says. I'm
22 not an ERISA or a Taft-Hartley expert. I do know that there is
23 a process, with respect to the end, in particular for the
24 resolution of a deadlock through arbitration.

25 BY MR. SILVESTRI:

1 Q Right. Was there -- that process invoked in this case at
2 all?

3 A No.

4 Q Do you know why?

5 A I don't.

6 Q Now, your testimony this morning was that there was a
7 concern about whether Rite Aid would be good -- would make good
8 on any amounts due and only if the benefits continued. And I'm
9 using my words. I'm sorry.

10 A Yeah, I didn't --

11 Q It may not have been your words, but --

12 A -- testify that.

13 Q You didn't testify to that?

14 A Not those words.

15 Q Okay. Well, then why don't you tell me what words were
16 used at the meeting?

17 MS. OLIVER: Which meeting?

18 MR. SILVESTRI: We've only been talking about one meeting
19 here. You know the meeting we're talking about?

20 THE WITNESS: We're talking about the collections
21 committee meeting?

22 BY MR. SILVESTRI:

23 Q Yes, yes.

24 A Which words were used by whom?

25 Q Which words were used by those people who were concerned

1 about Rite Aid's ability to pay? Because you indicated that
2 there was a concern expressed the meeting about Rite Aid's
3 ability to pay if benefits were extended.

4 A I don't think there was a concern expressed about the
5 ability to pay, but there was a concern expressed about whether
6 there would be payment. There was a concern expressed that if
7 the fund were to agree to continue providing benefits, for
8 which they ultimately were not paid. And there wasn't a
9 discussion about ability to pay, but just a concern that if
10 benefits were provided, for which they ultimately were not
11 paid, that that could be a problem for the trustees as
12 fiduciaries.

13 Q Okay. So trustees were concerned about whether or not
14 they were -- Rite Aid could be held legally responsible for
15 continuation of those benefits?

16 MS. OLIVER: Objection.

17 THE WITNESS: That's not what I said.

18 JUDGE GREEN: Well, is the -- what's the objection?

19 MS. OLIVER: He's mischaracterizing what she's saying.

20 MR. SILVESTRI: I'll go about it another way. I'll go
21 about it another way.

22 BY MR. SILVESTRI:

23 Q So when you say whether Rite Aid would pay, do you mean
24 that whether right -- whether the fund could collect from Rite
25 Aid on its decision to continue benefits, given that Rite Aid

1 had terminated the contract?

2 A I don't know what was meant when that was said. I'm just
3 telling you what was said.

4 Q Got it. All right. Can you get GC-19 in front of you,
5 please? Before we look at exhibit 19, I want to explore the
6 informal requests that you made to Ms. Hepner for forbearance.
7 You indicated that you had several conversations with her about
8 forbearance. How many requests did you make for forbearance?

9 A I don't remember exactly how many requests --

10 Q Can you give me an estimate?

11 A More than three, but less than 10 is the best estimate I
12 can give you.

13 Q Is there any reason why these requests were not put in
14 writing on behalf of the Union?

15 A No particular reason, no.

16 Q Yeah. But you will agree that none of them were in
17 writing, is that correct? When I say writing I mean there
18 wasn't even an email that you -- that passed between you and
19 Miss --

20 A There was no --

21 Q Let me finish the question --

22 A Yes.

23 Q -- please. There wasn't even an email that passed between
24 you and Ms. Hepner, where you said something to the effect of
25 can you guys forbear? Could you guys delay this?

1 A I don't believe that there was anything in writing between
2 -- from me to Ms. Hepner, specifically requesting forbearance,
3 no.

4 Q And was it your understanding that Ms. Hepner could -- had
5 the power to grant that forbearance?

6 A No.

7 Q Okay. So was your understanding that Ms. Hepner did not
8 have the power to grant that forbearance? She couldn't say --

9 A Ms. Hepner --

10 Q -- Allyson, you've got another month.

11 MS. OLIVER: Objection.

12 THE WITNESS: Ms. Hepner is the --

13 JUDGE GREEN: What's the objection?

14 MS. OLIVER: Never mind. He rephrased that --

15 THE WITNESS: Ms. Hepner is counsel for the fund. So she
16 doesn't -- much like you don't make decisions for your client,
17 she doesn't make decisions for hers. She communicates her
18 client's position.

19 BY MR. SILVESTRI:

20 Q So your answer is no? You know -- you knew that Miss --

21 A Miss --

22 Q -- Hepner did not have the authority to grant your
23 request?

24 A Correct.

25 Q Other than the request for forbearance that you've

1 testified to on direct and that I've questioned you about now,
2 did you, on behalf of the Union, make any other requests for
3 forbearance?

4 A Other than my conversations with Ms. Hepner?

5 Q Yeah. Other than what you've talked about on your direct
6 and what we've talked about here now, my question is did you
7 make any other requests for forbearance on behalf of the Union?

8 A No.

9 Q All right. Now we can get to 19. I'm sorry, the wrong
10 exhibit. Hold on a minute. We'll take care of that in a
11 minute. It's 18, not 19. I apologize.

12 A Thank you. Okay, I have it in front of me.

13 Q So this is -- this document is a two part email, right?
14 It's a exchange of emails.

15 A It's an email from Traci Burch to me and then a responsive
16 email from me back to Ms. Burch.

17 Q Right. And prior to -- is it true that prior to receiving
18 this email from Ms. Burch on July 7th 2016 at 8:07 p.m., you
19 were aware that the national benefit fund had indicated to Rite
20 Aid that it had the possibility of terminating the benefits
21 payments, the benefits to the associates?

22 A I believe so, but it would have been just prior to this
23 time.

24 Q And when you say just prior to this time, can you recall
25 the exact date and time that you got that notice?

1 A It would have probably been earlier that day.

2 Q And the notice would have come to you orally or in
3 writing?

4 A Orally.

5 Q And is there any reason why you didn't pick up the phone
6 and call Rite Aid when you knew?

7 MS. OLIVER: Objection, relevance.

8 JUDGE GREEN: Overruled.

9 THE WITNESS: My understanding was that counsel for the
10 NBF had already picked up the phone and called counsel for Rite
11 Aid. And so there was no reason for me to also do that,
12 because my understanding was that Rite Aid already was
13 informed.

14 BY MR. SILVESTRI:

15 Q At this time were you the chief negotiator for the Union?

16 A Yes.

17 Q And was Mr. Hinkle the chief negotiator for the company?

18 A Mr. Hinkle and Ms. Burch were --

19 Q Okay.

20 A -- both chief negotiators for the company.

21 Q And you had access to their telephone numbers?

22 A Yes.

23 Q Now, did it occur to you, at the time you got the notice,
24 that Rite Aid would be suspicious about the timing of the
25 notice, given the fact that there was a negotiation session

1 upcoming?

2 A It did not occur to me at that time, no.

3 Q You never thought that Rite Aid would ever been suspicious

4 --

5 MS. OLIVER: Asked and answered.

6 MR. SILVESTRI: -- the --

7 MS. OLIVER: Objection.

8 MR. SILVESTRI: Okay, I'll withdraw.

9 BY MR. SILVESTRI:

10 Q So your -- I'm going back to your email now. I
11 communicated -- the first line says "I communicated with NBF
12 counsel Suzy Hepner on this issue." What was that
13 communication?

14 A Mr. Hepner had spoken with me, I believe, earlier the
15 prior day on the 7th and we may have had additional
16 conversation on the 8th about the fact that she had -- that Ms.
17 Hepner had contacted counsel for Rite Aid, Laura Pierson-
18 Scheinberg, and about her conversation with Ms. Pierson-
19 Scheinberg.

20 Q Okay. Was the communication that you're referring to here
21 in writing?

22 A No, I spoke with Suzy.

23 Q You say Suzy contacted Laura yesterday as a courtesy to
24 let her know that benefit terminations would be going out to
25 1199 members at Rite Aid next week. That was your

1 understanding of the state of the situation as of July 8th
2 2016, correct?

3 A Yes.

4 Q And when you say as a courtesy, do you mean that she
5 wasn't really required to contact Ms. Pierson-Scheinberg?

6 A Yes.

7 Q Was the Union required to contact the company about this?

8 A Required?

9 Q Yeah. Did you feel -- and I'm using that in a very broad
10 sense, Ms. Belovin. Did you feel, as a chief negotiator for
11 the Union, that the Union should be informing the company of
12 this kind of important information?

13 MS. OLIVER: Objection, there's a difference between
14 required and what you think the best practice would have been.

15 JUDGE GREEN: All right.

16 MS. OLIVER: And I think you just conflated the two.

17 MR. SILVESTRI: Well, that's suggesting an answer and --

18 JUDGE GREEN: I --

19 MR. SILVESTRI: -- I already defined the word required in
20 my question deliberately.

21 JUDGE GREEN: It's overruled. And I believe that Ms.
22 Belovin can clarify.

23 THE WITNESS: I think that the company should know that
24 this is happening and I knew that the company did know that it
25 was happening.

1 BY MR. SILVESTRI:

2 Q Under the collective bargaining agreement that was in
3 existence at the time that this notice was announced to have --
4 to be going out, isn't it true that the company would have been
5 required to supply the benefits to the associates, in the event
6 that the national benefit fund terminated benefits?

7 MS. OLIVER: Objection. Required by what?

8 MR. SILVESTRI: Pretty easy question. I said under the
9 collective bargaining agreement.

10 MS. OLIVER: Sorry, I didn't hear that.

11 JUDGE GREEN: Over --

12 MS. OLIVER: Withdrawn, withdrawn.

13 THE WITNESS: It is true that the collective bargaining
14 agreement contains a provision that requires Rite Aid, in the
15 event that benefits are terminated because of a failure to pay,
16 to provide alternative benefits to the workers.

17 BY MR. SILVESTRI:

18 Q And that was what the NBF was notifying the company of
19 here. That they had failed to pay the amount due and owing,
20 correct?

21 A That they had failed to pay the amount due and owing.
22 That that resulted in a delinquency of a certain amount that
23 triggered the provisions of the fund delinquency policy to
24 advise the employees that benefits could be terminated.

25 Q The Union's position was never -- after this notice

1 happened in July 1, the Union's position was never that the
2 requirements in the collective bargaining agreement that Rite
3 Aid supply the benefits didn't apply, was it?

4 A I'm not -- I don't understand your question.

5 Q You never took the position here that oh, if NBF cancels
6 the benefits then you guys are off the hook. You don't have to
7 supply the benefits. You never took that position in
8 negotiations --

9 A No.

10 Q -- right?

11 A Nope.

12 Q Okay. So as far as the Union was concerned, Rite Aid had
13 two choices. It either could pay the small amount, as you
14 would define it, to continue the benefits for a month or agree
15 to pay the amount that were due and owing to continue the
16 benefits indefinitely or it could face termination of the
17 benefits and have to supply them under its own means. Those
18 are the -- those were --

19 A Those were three choices I think.

20 Q Well --

21 A Pay a smaller amount, pay --

22 Q Okay, three choices.

23 A -- the whole amount or --

24 Q Two of them are pay --

25 A -- have benefits terminate and provide alternative plans.

1 They're -- and actually, the contract provision provides that
2 if benefits are terminated, and Rite Aid has to provide
3 alternative benefits and Rite Aid still has to pay the amount
4 to the fund. So those were the options, as I saw them at the
5 time, yes.

6 Q Right. So those are the, I'll call them three options.
7 Two of them were to pay in one shape or form and the other was
8 to provide benefits, right?

9 A Provide benefits and still pay.

10 Q And still --

11 A I mean not paying was never an option, under any of those
12 scenarios. But if Rite Aid chose to not pay and that non-
13 payment resulted in the termination of benefits, the contract
14 obligated Rite Aid to provide alternative comparable benefits.

15 Q Do you know anything about forming an insurance or a
16 medical plan for employees?

17 A I know some things about it, but I certainly am not an
18 expert in the creation of health benefit plans.

19 Q You will agree with me that the creation of medical
20 benefit plans to supply benefits --

21 MS. OLIVER: Objection. This is questions that Rite Aid
22 could be answering. She already said that she doesn't --

23 JUDGE GREEN: Overruled.

24 MR. SILVESTRI: No, she said --

25 MS. OLIVER: We have a ruling. Okay.

1 MR. SILVESTRI: If we listen, she said she knows
2 something about it. So I am entitled to ask her what she
3 knows.

4 MS. OLIVER: He overruled it. Okay.

5 MR. SILVESTRI: Right. Okay. I believe that that's
6 settled. So you know that the creation of those plans doesn't
7 happen overnight, is that correct?

8 THE WITNESS: I don't know that there's not a circumstance
9 in which a plan could be created quickly ever.

10 BY MR. SILVESTRI:

11 Q You know that there is some process to creation of a plan
12 that provides the same benefits as the NBF, do you not?

13 A Some process, yes.

14 Q And that process involves collection of information about
15 the benefits that are paid, the terms of the plan, the
16 enrollment numbers. Information that's relevant to putting
17 that plan together, correct?

18 A I don't know what information is necessary for the purpose
19 of creation of a new plan. I don't know that.

20 Q So therefore you don't know, in this situation, how much
21 time it would take to put that plan together, is that correct?

22 A I don't know.

23 Q Okay. Is it true that Rite Aid, as of July 8th I think it
24 was, asked for information that would help it put a plan
25 together, in the event that the national benefit fund

1 terminated benefits?

2 A I don't recall when Rite Aid first asked for that
3 information.

4 Q Well, they didn't ask for it before July 7th, right?

5 A I don't believe so.

6 Q Well, wait a minute. Before July 7th there was no
7 discussion whatsoever in negotiations about Rite Aid providing
8 its own plan --

9 A That's correct.

10 Q -- right?

11 A Yes.

12 Q And before July 7th there was no notification from the
13 national benefit fund that benefits might terminate, correct?

14 A That's correct.

15 Q And on the next bargaining session, which happened to be
16 two days later, Rite Aid came in and say okay, we're proposing
17 now, since we've gotten this notice, that Rite Aid would supply
18 the benefits?

19 A The next bargaining session was July 11th, which was --

20 Q Three days after July 8th.

21 A -- more than three days later. And that was the first
22 time that Rite Aid proposed a Rite Aid sponsored health
23 benefits plan.

24 Q And did they not indicate in this bargaining session that
25 they needed certain information from the Union and the national

1 benefit fund, in connection with getting that plan together?

2 A At the July 11th bargaining session?

3 Q Yes, ma'am.

4 A Yes, they did.

5 Q So the first bargaining session when -- after they
6 received the notice, they asked for information. Rite Aid did,
7 correct?

8 A At the first bargaining session after receiving notice of
9 the possibility that benefits would terminate, they asked for
10 information. That's correct.

11 Q And were the requests in writing?

12 A I believe there was a follow up written request, yes.

13 Q And you testified this morning that the Union asked for
14 information, in connection with Rite Aid's proposal to supply
15 benefits that they made in July, on July 11th of 2016, correct?

16 A Yes. That's right.

17 Q And I think you testified, if I'm not mistaken, that Rite
18 Aid did not supply information to the Union?

19 A Not on the 11th. Not at the bargaining session on the
20 11th, they did not.

21 Q Really?

22 A Not to my recollection.

23 Q What about -- when did Rite Aid supply the information?

24 A Some information was supplied between the bargaining
25 sessions on July 11th and July 13th.

1 MR. SILVESTRI: I'm not sure I've marked the transcript
2 yesterday as Respondent's 2. I think I did.

3 JUDGE GREEN: You did.

4 MR. SILVESTRI: Okay.

5 MS. OLIVER: Is this Respondent 3?

6 MR. SILVESTRI: Yes.

7 MS. OLIVER: Oh, do you have one more for the Union?

8 MR. SILVESTRI: I don't. I have five.

9 MS. OLIVER: Well, I'll put it -- we'll share for now.

10 BY MR. SILVESTRI:

11 Q So I'm handing you what's been marked as Respondent 3.

12 A Yes.

13 Q That's an email you received on July 11th 2016, the day of
14 the bargaining session?

15 A Yeah, it was after the bargaining session. So it was in
16 between our bargaining session on July 11th and our bargaining
17 session on July 13th.

18 (Respondent's R-3 identified)

19 Q This is a near immediate response by Rite Aid to provide
20 this particular information, is that correct?

21 A This was later that day, yes.

22 Q Same day?

23 A The same day, yes, July 11th. The same day.

24 Q That would be prompt, would it not be --

25 MS. OLIVER: Objection.

1 MR. SILVESTRI: -- in the Union's opinion?

2 MS. OLIVER: Asked and answered --

3 JUDGE GREEN: Sustained.

4 MS. OLIVER: -- and badgering.

5 MR. SILVESTRI: Okay. Respondent's 4.

6 BY MR. SILVESTRI:

7 Q You testified this morning that the Union sought cost
8 information from Rite Aid, because it thought the cost of the
9 benefits was important to considering Rite Aid's proposal, is
10 that correct?

11 A Yes.

12 Q And this is Rite Aid response to the Union's request for
13 cost information, is it not?

14 A If you'll give me a moment to read it, I can answer your
15 question. It purports to be a response to the question, but it
16 doesn't answer the question.

17 (Respondent's R-4 identified)

18 Q This is the response that you received, right?

19 A I received this, yes.

20 Q Yeah. So do you know enough about plan creation to know
21 whether or not it's possible to have cost information on a plan
22 that hasn't paid any benefits yet?

23 A No.

24 Q And the date of this email was July 13th. So that's two
25 days after the Union request, correct?

1 A Yes.

2 MR. SILVESTRI: Respondent's 5.

3 BY MR. SILVESTRI:

4 Q I hand you what's been marked as Respondent's exhibit 5.

5 This is the formal response to a request for information you

6 received from -- you, meaning the Union, received from the

7 company, correct?

8 A This is a response to a July 22nd request for information

9 from the company, yes.

10 (Respondent's R-5 identified)

11 Q Right. And in this response -- in response to Rite Aid's

12 request number one, the Union indicated it was not in the

13 possession of the information, right?

14 A That's what it says.

15 Q In response to request number two, the Union indicated it

16 was not in possession of information responsive to that

17 request, is that right?

18 A That's what it says.

19 Q In response to request number three, the Union indicated

20 that it was not in possession of the requested information, is

21 that right?

22 A That's what it says.

23 Q In response to request number five, the Union indicated

24 that it was unclear of the meaning the question. And to that

25 extent that Rite Aid seeks how the cost of retiree benefits are

1 calculated, the Union is not possession of the information,
2 correct?

3 A I mean are you asking me if that's what this letter says?

4 Q Yeah, that's what I'm asking you.

5 A Yes, that's what the letter says.

6 Q Right. In response to request number seven, the Union
7 indicated it was not in possession of the information, correct?

8 A That's what the letter says.

9 Q In response to request number eight, the Union answered
10 that it wasn't in possession of the information, correct?

11 A That's what the letter says.

12 Q In response to request number nine, the Union indicated it
13 was not in possession of the information, correct?

14 A That's what the letter says.

15 Q In fact, the majority of these requests, that was what the
16 Union's response was, correct?

17 A Correct.

18 Q Now, I don't see here -- maybe I missed it. I don't see
19 here where the Union gave the company information as to where
20 it could get the answers to those questions.

21 A In some of the responses the Union does indicate where it
22 can get the answers to those requests.

23 Q Isn't it true that --

24 A Tells you --

25 Q Isn't it -- I'm sorry --

1 A If I can finish my answer?

2 Q I thought were finished.

3 A I was not.

4 Q Okay.

5 A It does indicate where the company can go to find the
6 information. Additionally, in bargaining across the table,
7 when the company made some of these same requests, I indicated
8 that the information the company was seeking, the majority of
9 it was not in the Union's possession, but was in the -- was
10 information that, if it was maintained at all, was maintained
11 by the national benefit fund.

12 Q Did the Union have any communications with the national
13 benefit fund on these requests for information that Rite Aid
14 made?

15 A I --

16 Q Let me ask it a different way. Did you, as chief
17 negotiator and counsel to the Union, have any communications
18 with anyone from the national benefit fund on these requests
19 for information?

20 A I'm trying to remember. I don't recall.

21 Q Did you, as counsel to the Union and chief negotiator,
22 advocate in any point in time, to the national benefit fund
23 that it should supply this information as soon as possible to
24 Rite Aid?

25 MS. OLIVER: Objection, she just answered that she doesn't

1 remember if she even spoke them about it.

2 JUDGE GREEN: Overruled.

3 THE WITNESS: I actually -- I -- yes, the answer is I do
4 remember I did speak with someone at the fund, and I did
5 advocate for them to provide this information and to do it
6 quickly.

7 BY MR. SILVESTRI:

8 Q Was the communication in writing?

9 A No.

10 Q Who did you speak to?

11 A I don't remember the name of the person that I spoke to at
12 the fund.

13 Q You will agree with me that Rite Aid needed this
14 information, in order to formulate and create a plan?

15 A I do not agree with you.

16 Q Don't agree?

17 A No.

18 Q Did you take the position, in this letter at all, in
19 response to any request that information was not relevant or
20 not necessary to Rite Aid?

21 A No, I don't know whether it was relevant or necessary.

22 Q Oh, okay. But you don't agree that it was necessary? I
23 thought I heard you just say that.

24 A I don't --

25 MS. OLIVER: Objection.

1 MR. SILVESTRI: I'll let the record stand on those
2 answers.

3 MS. OLIVER: Can we have five minutes off the record?

4 JUDGE GREEN: Off the record.

5 (Whereupon, a brief recess was taken)

6 JUDGE GREEN: On the record.

7 MR. SILVESTRI: All right. We were in Respondent's 6 I
8 think.

9 MS. APTER: Yes.

10 UNIDENTIFIED SPEAKER: Yes.

11 BY MR. SILVESTRI:

12 Q Okay. I'm handing you what's been --

13 MR. SILVESTRI: Are we on the record?

14 JUDGE GREEN: Yes.

15 MR. SILVESTRI: Okay. I'm handing you what's been marked
16 as Respondent --

17 UNIDENTIFIED SPEAKER: Is there another copy of 6?

18 MS. OLIVER: Oh, here. That's fine.

19 MR. SILVESTRI: Here. I'm handing you what's been marked
20 as Respondent's exhibit 6. That was an email exchange between
21 Mr. Hinkle and Ms. Vallone on July 12th 2016, correct?

22 THE WITNESS: Yes.

23 (Respondent's R-6 identified)

24 BY MR. SILVESTRI:

25 Q That was Rite Aid providing information on its

1 prescription benefit plan formula, which was requested by the
2 Union, in light of Rite Aid's proposal to have a Rite Aid plan,
3 on July 11th, the previous day, correct?

4 A Yes.

5 MR. SILVESTRI: All right. I am at a point now where I
6 can move on to another subject.

7 JUDGE GREEN: Okay.

8 MR. SILVESTRI: All right.

9 JUDGE GREEN: So we'll go off the record for the day.
10 (Whereupon, at 3:50 p.m. the hearing in the above-entitled
11 matter was adjourned, to reconvene on September 14, 2017)

C E R T I F I C A T E

This is to certify that the attached proceedings done before
the NATIONAL LABOR RELATIONS BOARD REGION TWO

In the Matter of:

RITE AID OF NEW YORK, INC., RITE OF NEW JERSEY, INC.,
ECKERD CORPORATION, GENOVESE DRUG STORES, INC. AND THRIFT
DRUG, INC., A SINGLE EMPLOYER,

Respondent,

And

1199 SEIU UNITED HEALTHCARE WORKERS EAST,

Charging Party.

Case No.: 02-CA-182713 & 02-CA-189661

Date: September 13, 2017

Place: New York, NY

Were held as therein appears, and that this is the original
transcript thereof for the files of the Board

Official Reporter

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