

20-0731-cv(L), 20-1009-cv(XAP), 20-1028-cv(XAP)

United States Court of Appeals for the Second Circuit

NATIONAL LABOR RELATIONS BOARD,

Petitioner-Cross-Respondent,

– v. –

KEY FOOD STORES CO-OPERATIVE, INC., 1525 ALBANY AVE MEAT LLC,
HB FOOD CORP., PARAMOUNT SUPERMARKETS INC., RIVERDALE
GROCERS LLC, SEVEN SEAS UNION SQUARE, LLC, 100 GREAVES LANE
MEAT LLC, JAR 259 FOOD CORP.,

Respondents-Cross-Petitioners.

ON APPEAL FROM THE NATIONAL LABOR RELATIONS BOARD

DEFERRED JOINT APPENDIX Volume I of VI (Pages A-1 to A-276)

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Riverdale Grocers LLC, Seven Seas Union
Square, LLC, 100 Greaves Lane Meat LLC
and Jar 259 Food Corp.*

Table of Contents

	Page
Certified List of the National Labor Relations Board, Dated April 7, 2020.....	A-1
Excerpts from Transcript of Hearing, Dated February 8, 2017.....	A-8
Excerpts from Transcript of Hearing, Dated February 10, 2017.....	A-27
Excerpts from Transcript of Hearing, Dated February 13, 2017.....	A-60
Excerpts from Transcript of Hearing, Dated February 14, 2017.....	A-83
Excerpts from Transcript of Hearing, Dated February 16, 2017.....	A-124
Excerpts from Transcript of Hearing, Dated February 28, 2017.....	A-140
Excerpts from Transcript of Hearing, Dated March 1, 2017.....	A-152
Excerpts from Transcript of Hearing, Dated March 6, 2017.....	A-154
Excerpts from Transcript of Hearing, Dated March 8, 2017.....	A-227
Excerpts from Transcript of Hearing, Dated March 13, 2017.....	A-232
Excerpts from Transcript of Hearing, Dated March 20, 2017.....	A-244
Excerpts from Transcript of Hearing, Dated March 22, 2017.....	A-249
Excerpts from Transcript of Hearing, Dated March 23, 2017.....	A-279.1
Excerpt from Transcript of Hearing, Dated March 27, 2017.....	A-282
Excerpts from Transcript of Hearing, Dated April 5, 2017.....	A-283

	Page
Excerpts from Transcript of Hearing, Dated April 6, 2017	A-292
Excerpts from Transcript of Hearing, Dated April 17, 2017	A-311
Excerpts from Transcript of Hearing, Dated April 19, 2017	A-328
Excerpts from Transcript of Hearing, Dated April 26, 2017	A-361
General Counsel's Trial Exhibits:	
1 Index and Description of Formal Documents	A-375
9 Notes from Region 1 Meeting with Key Food, Held on July 28, 2015	A-378
13 Key Food Bargaining Notes, Dated October 12, 2015	A-383
15 Key Food Bargaining Notes, Dated October 21, 2015	A-400.1
16 Memorandum of Agreement by and between Key Food Co-Op and UFCW Local 342, Dated October 22, 2015	A-401
17 E-mail from Janel D'Amassa to Douglas P. Catalano, with Attachment, Dated November 2, 2015	A-413
20 E-mail from Sherai Pernell to Lenny Mandell, with Attachment, Dated November 24, 2015	A-426
21 E-mail between Richard Abondolo and Sharon Konzelman and Others, Dated from November 25, 2015 to November 27, 2015	A-436
22 Correspondence Regarding Bargaining Agreement	A-439
24 E-mail between Lisa O'Leary and Sharon Konzelman, Dated from June 28, 2016 to July 6, 2016, and Forwarded to Douglas P. Catalano on July 7, 2016	A-464
25 Key Food Rules and Regulations	A-466

iii

	Page
28	Asset Purchase Agreement between Key Food Stores Co-Operative, Inc. and 1525 Albany Ave. Meat, LLC, Dated November 16, 2015 A-479
31	Asset Purchase Agreement between Key Food Stores Co-Operative, Inc. and 1525 Albany Ave. Meat, LLC, Dated October ___, 2015 A-496
33	Bulletin from UFCW Local 342..... A-513
34	Bulletin from UFCW Local 342..... A-514
60	Confidential Witness Affidavit, Sworn to December 1, 2015 A-515
62	E-mail from Liz Fontanez to Stephen Booras and Margaret Monier, Dated September 6, 2015..... A-521
81	E-mail Exchange between Lisa O’Leary and Sharon Konzelman, Dated October 15, 2015, and Forwarded to Noor I. Alam and Lynda Tooker on April 18, 2017 A-522
Respondents’ Trial Exhibits:	
1	Memorandum of Agreement by and between Key Food Co-Op and UFCW Local 342, Dated October 22, 2015 A-525
2	E-mail Exchange between Lou Loiacono and Pat Conte, with Attachment, Dated from November 8, 2015 to November 9, 2015 A-537
10	Order (i) Approving the Purchase Agreement Among Sellers and Buyer (ii) Authorizing the Sale of Certain of the Debtors’ Assets Free and Clear of Liens, Claims, Interest and Encumbrances, (iii) Authorizing the Assumption and Assignment of Certain Executory Contracts and Leases in Connection Therewith and (iv) Granting Related Relief, with Exhibit, <i>In Re: The Great Atlantic & Pacific Tea Company, Inc.</i> (U.S. Bankruptcy Court, Southern District of New York Case No. 15-23007), Dated October 21, 2015 A-539
13	Notes from Key Food Negotiations Meeting, Held on October 14, 2015 A-633

iv

	Page
24 Memorandum of Agreement by and between Key Food Co-Op and UFCW Local 464A, Dated October 23, 2015	A-638
25 Memorandum of Agreement by and between Key Food Co-Op and UFCW Local 464A, Dated October 23, 2015	A-648
26 Memorandum of Agreement by and between Key Food Co-Op and Local 338, RWDSU/ UFCW, Dated October 20, 2015	A-650
27 Memorandum of Agreement by and between Key Food Co-Op and UFCW Local 1500, Dated October 28, 2015	A-664
29 Memorandum of Agreement by and between Dan's Supreme and United Food and Commercial Workers Union Local 342, Dated December 9, 2015	A-676
39 Project Phoenix — TTM Financials — P3 FY 2015.....	A-686
40 Department Totals for Store 1964.....	A-696
41 Department Totals for Store 1962.....	A-705
46 Letter from Sharon Konzelman to Bruce Both, Vincent DeVito, John T. Niccollai, Richard Abondolo and John R. Durso, Dated September 11, 2015.....	A-719
47 Letter from Sharon Konzelman to Christopher W. McGarry and Matthew Bennett, with Enclosure, Dated September 14, 2015	A-721
50 Department Totals for November 2015	A-726
52 Offers to Purchase A&P Stores, Dated June 25, 2015	A-736

Page

Joint Trial Exhibits:

3	Order (i) Approving the Purchase Agreement Among Sellers and Buyer (ii) Authorizing the Sale of Certain of the Debtors' Assets Free and Clear of Liens, Claims, Interest and Encumbrances, (iii) Authorizing the Assumption and Assignment of Certain Executory Contracts and Leases in Connection Therewith and (iv) Granting Related Relief, with Exhibit, <i>In Re: The Great Atlantic & Pacific Tea Company, Inc.</i> (U.S. Bankruptcy Court, Southern District of New York Case No. 15-23007), Dated October 21, 2015	A-757
4	E-mail from Sharon Konzelman to Samantha Sgarlato and Others, Dated October 25, 2015, and Forwarded to Maria Garvin on October 26, 2015	A-868
6	Stipulation of Fact, Dated March 13, 2017	A-873
8	Payroll Account.....	A-883
9	Assignment and Assumption Agreements	A-893
	Order Further Consolidating Cases, and Amending Consolidated Complaint and Notice of Hearing, Dated September 28, 2016	A-1435
	Respondent Key Food Stores Co-Operative, Inc.'s and Respondent CS2's Exceptions to Part of the Decision of the Administrative Law Judge, Dated April 24, 2018.....	A-1494
	Brief in Support of Respondent Key Food Stores Co-Operative, Inc.'s and Respondent CS2's Exceptions to Part of the Decision of the Administrative Law Judge, Dated July 19, 2018.....	A-1502
	Reply Brief in Support of Respondent Key Food Stores Co-Operative, Inc.'s and Respondent CS2's Exceptions to Part of the Decision of the Administrative Law Judge, Dated July 19, 2018.....	A-1541



United States Government

NATIONAL LABOR RELATIONS BOARD

OFFICE OF THE GENERAL COUNSEL

Washington, D.C. 20570

April 7, 2020

Catherine O'Hagan Wolfe
Clerk of the Court
United States Court of Appeals
for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square, Room 1802
New York, NY 10007

Re: *NLRB v. Key Food Stores Co-operative, Inc.; 1525 Albany Ave Meat LLC; HB Food Corp.; Paramount Supermarkets Inc.; Riverdale Grocers LLC; Seven Seas Union Square, LLC; 100 Greaves Lane Meat LLC; Jar 259 Food Corp.*
2nd Cir Nos. 20-731, 20-1009, 20-1028
Board Case Nos. 29-CA-164058, 29-CA-167245, 29-CA-167319, 29-CA-167327, 29-CA-167400, 29-CA-173762, 29-CA-180296

Dear Ms. Wolfe:

I am transmitting the Certified List of the contents of the Agency Record in the above-captioned case.

/s/ David Habenstreit
David Habenstreit
Assistant General Counsel
NATIONAL LABOR RELATIONS BOARD
1015 Half Street, SE
Washington, DC 20570-0001
(202) 273-0979

Encls.

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

NATIONAL LABOR RELATIONS BOARD)	
)	
Petitioner/Cross-Respondent)	Nos. 20-731
)	20-1009
v.)	20-1028
)	
KEY FOOD STORES CO-OPERATIVE, INC.;)	Board Case Nos.
1525 ALBANY AVENUE MEAT LLC; HB 84)	29-CA-164058, et.al
FOOD CORP.; PARAMOUNT SUPERMARKETS))	
INC.; RIVERDALE GROCERS LLC; SEVEN)	
SEAS UNION SQUARE, LLC; 100 GREAVES)	
LANE MEAT LLC; JAR 259 FOOD CORP.)	
)	
Respondents/Cross-Petitioners)	

CERTIFIED LIST OF THE NATIONAL LABOR RELATIONS BOARD

Pursuant to authority delegated in Section 102.115 of the National Labor Relations Board’s Rules and Regulations, 29 C.F.R. § 102.115, I certify that the list below fully describes all papers and documents, which constitute the record before the Board in Seven Seas Union Square, LLC and Key Food Stores Co-operative, Inc., joint employers; 100 Greaves Lane Meat LLC and Key Food Stores Co-operative, Inc., joint employers; HB 84 Food Corp. and Key Food Stores Co-operative, Inc., joint employers; 1525 Albany Avenue Meat LLC and Key Food Stores Co-operative, Inc., joint employers; Riverdale Grocers LLC and Key Food Stores Co-operative, Inc., joint employers; Jar 259 Food Corp. and Key Food Stores Co-operative, Inc., joint employers; Paramount Supermarkets Inc. and Key Food Stores Co-operative, Inc., joint employers, Board Case Nos. 29-CA-164058, 29-CA-167245, 29-CA-167319, 29-CA-167327, 29-CA-167400, 29-CA-173762, 29-CA-180296

Roxanne L. Rothschild

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Executive Secretary
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April 7, 2020

DOCUMENT INDEX

<u>VOLUME I</u>	- Transcript of Hearing	<u>Pages</u>
	02/08/17, 02/10/17, 02/13/17	1-2893
	02/14/17, 02/16/17, 02/28/17	
	03/01/17, 03/06/17, 03/08/17,	
	03/13/17, 03/20/17, 03/22/17,	
	03/23/17, 03/27/17, 04/05/17,	
	04/06/17, 04/17/17, 04/19/17,	
	04/26/17, 04/27/17	
<u>VOLUME II</u>	- General Counsel's Exhibits ¹	
	1-24	
	25 (In Part)	
	26-43	
	45-83	
	84 (Rejected)	
	Respondents' Exhibits	
	1-53	
	Joint Exhibits ²	
	1-6	
	11-16	

¹General Counsel's exhibits numbers 56, 65, 66, 68 are missing, and we are currently trying to locate them. If the exhibits are found, we will inform the court. Also, General Counsel's exhibits 70,71, and 72 are CD's.

² Joint Exhibits 7, 8, 9 and 10 are CD's

VOLUME III - Pleadings

<u>Date</u>	<u>Documents</u>	<u>Pages</u>
10/11/16	Respondent's Motion to Postpone and Reschedule Hearing	1-3
10/17/16	General Counsel's Opposition to Respondents' Motion to Postpone and Reschedule Hearing	1-4
10/18/16	Administrative Law Judge's Order	1-2 ³
10/19/16	Administrative Law Judge's Corrected Order	1-2
03/01/17	Administrative Law Judge's Order on Respondents' Motion for Reconsideration	1-4
02/09/18	Administrative Law Judge's Decision	1-124
02/09/18	Order Transferring Proceeding to the National Labor Relations Board	1-2
02/23/18	Respondents' Request for Extension of Time to File Exceptions	1-4
02/26/18	Associate Executive Secretary's Letter Granting Respondents' Extension of Time to File Exceptions	1
03/12/18	General Counsel's Post-Decision Motion to Modify the Order in the Administrative Law Judge's February 9, 2018 Decision	1-4
03/28/18	Administrative Law Judge's Supplemental Order on the General Counsel's Post-Decision Motion to Modify the Order	1-3

³ This document is missing, and we are currently trying to locate it. If the document is found, we will forward it to the court.

04/03/18	Respondents' Request for Extension of Time to file Exceptions and a Brief in support	1-3
04/03/18	Associate Executive Secretary's Letter Granting Respondent's Extension of Time to File Exceptions and Brief in Support of Exceptions	1
04/24/18	Respondents' Exceptions and Request for Permission for Oral Argument on Behalf of all Respondents Other than Key Food Stores Co-Operative, Inc and Key Food CS2, LLC (Denied, <i>see 368 NLRB No. 92 at,ln. 2</i>)	1-27
04/24/18	Respondents Key Food Stores Co-operative, Inc.'s And CS2's Exceptions to Part of the Decision of the Administrative Law Judge (with attachments)	1-141
05/03/18	General Counsel's and Charging Party's (United Food and Commercial Workers Union, Local 342) Joint Motion for Extension of Time to File Answering Briefs to Respondents Exceptions and Cross Exceptions to the Administrative Law Judge's Decision	1-5
05/04/18	Associate Executive Secretary's Letter Granting General Counsel and Charging Party a Partial Extension of Time to File Answering Briefs and Cross Exceptions	1
05/11/18	Respondents' Unopposed Joint Motion for Extension of Time to File Answering Briefs	1-4
05/11/18	Associate Executive Secretary's Letter Granting Respondents' Unopposed Joint Motion for Extension of Time to File Answering Briefs	1
07/05/18	General Counsel's Cross Exceptions to the Administrative Law Judge's Decision and Argument in Support	1-15

07/05/18	General Counsel's Brief in Answer to Respondents' Exceptions to the Administrative Law Judge's Decision	1-34
07/19/18	Respondents' Reply Brief in Support of Exceptions on Behalf of all Respondents other than Key Food Stores Co-Operative, Inc and Key Food CS2, LLC	1-13
07/19/18	Respondents' Answering Brief in Opposition to General Counsel's Cross Exceptions on Behalf of all Respondents other than Key Food Stores Co-Operative, Inc and Key Food CS2, LLC	1-9
07/19/18	Respondents' Reply Brief in Support of Key Food Stores Co-Operative, Inc and Key Food CS2, LLC Exceptions to the Administrative Law Judge's Decision	1-14
10/16/19	Decision and Order (368 NLRB No. 92)	1-80

**UNITED STATES COURT OF APPEALS
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SEAS UNION SQUARE, LLC; 100 GREAVES)	
LANE MEAT LLC; JAR 259 FOOD CORP.)	
)	
Respondents/Cross-Petitioners))	

CERTIFICATE OF SERVICE

I hereby certify that on April 07, 2020, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the appellate CM/ECF system. I certify that the foregoing document was served on all parties or their counsel of record through the appellate CM/ECF system.

/s/ David Habenstreit
David Habenstreit
Assistant General Counsel
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1015 Half Street, SE
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Dated at Washington, DC
this 7th day of April, 2020

A P P E A R A N C E S

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27

1 provides for the admissibility of 1 through 4. So I'm going to
2 accept into evidence Joint exhibits 1 through 5. Alright. SO
3 opening statements starting with the General Counsel.

4 (Joint exhibits J-1 through 5 received in evidence)

5 MS. ALAM: Thank you, Your Honor. Your Honor, the United
6 Food and Commercial Workers Local 342 filed the charges in this
7 case against the Key Food Stores Co-Operative and various
8 individual owners who represent themselves as members of the
9 Key Food Co-Op and who, along with the co-op, I collectively
10 refer to as Respondents. The predecessor employer of the
11 supermarkets was The Great Atlantic & Pacific Tea Company, also
12 known as A&P. A&P first filed bankruptcy in 2010 with an
13 intent to restructure its debts and obtained large concessions
14 with the union it had contracts with.

15 Only five years later A&P filed for bankruptcy again
16 amidst rumor of corporate malfeasance, this time looking to
17 sell all facets. Respondent Key Food Stores Co-Operative
18 submitted a stalking-horse bid for certain A&P stores and
19 entered into an asset purchase agreement with A&P in July 2015.
20 The initial terms of the asset purchase agreements required the
21 co-op to recognize affected unions and offer employment to all
22 the active A&P employees at the purchased stores.

23 The Key Food Co-Op in turn purportedly entered into an
24 asset purchase agreement with the remaining Respondents, who
25 were the ultimate owners of the stores. The purchase of the

1 with regard to the 8(a)(3) allegations. As a remedy to the
2 unfair labor practices that will be established here, General
3 Counsel seeks an order required -- requiring that Respondent
4 bargain with the Charging Party Union Local 342 for a successor
5 contract with regard to the stores at issue, make whole the
6 employees it refused to hire or laid off by Respondent, make
7 whole any employees who suffered unilateral changes to their
8 terms and conditions of work and make whole the Unions for all
9 amounts owed to their funds, pursuant to the terms of their
10 expired collective bargaining agreements. Thank you.

11 JUDGE GREEN: Thank you. And would the Respondent like to
12 make an opening statement at this time?

13 MR. CATALANO: Yes, I would.

14 JUDGE GREEN: Okay. Thank you, Mr. Catalano.

15 MR. CATALANO: The stunning lack of fairness of the
16 General Counsel to refer to what the facts are doesn't escape
17 me. In the spring of 2015 A&P indicated to any number of
18 supermarket entities that it would liquidate and/or there would
19 be stores available for sale. Key Food solicited its members.
20 You're hear what a co-op is. And any number of individual
21 store owners suggested that they would be interested.

22 At some juncture a stalking-horse bid, which in the
23 bankruptcy world indicates that there is a group of stores --
24 Stop&Shop did the same thing, Acme did the same thing in New
25 Jersey -- that would be a block of stores that may be purchased

1 were other union representatives. Maybe Liz Fontanez was there
2 one time. And then we would bring secretaries with us who
3 typed the notes.

4 Q But those additional people -- who were the people that
5 actually lead the meeting or who were --

6 A The meetings would have been led by either president
7 Abondolo, myself, or Lou Sollicito or Lou Loiacono.

8 Q Okay. Did Local 342 ever represent employees of a company
9 called The Great Atlantic & Pacific Tea Company also known as
10 A&P?

11 A Yes.

12 Q And what industry were the A&P employees that Local 342
13 represented, what industry were they in?

14 A Retail supermarkets.

15 Q Did any other UFCW Locals represent the employees working
16 for A&P?

17 A Yes.

18 Q About how many other Locals?

19 A There were at one point 19 different Locals that A&P had
20 collective bargaining agreements with.

21 Q And is A&P still operating in the supermarket industry to
22 your knowledge?

23 A They're not operating any stores, no.

24 Q Why not?

25 A They filed for bankruptcy and I believe that by November

1 30th of 2015 the last one of the stores that they operated they
2 closed.

3 Q Had A&P filed for bankruptcy in your knowledge before
4 2015?

5 A Yes.

6 Q When A&P filed for bankruptcy the first time was it trying
7 to sell its assets?

8 A No.

9 Q What was the name of the judge that oversaw the A&P
10 bankruptcy case in 2010?

11 A The first time that they filed was in 2010 of December I
12 believe and it was Judge Drain --

13 Q Do you know which court?

14 A I think the Southern District Bankruptcy Court.

15 Q Did Local 342 have any collective bargaining agreements in
16 effect with A&P?

17 A Yes.

18 Q About how many?

19 A Six.

20 Q As part of your duties as vice president, do you have to
21 be familiar with those contracts?

22 A Yes.

23 Q What would you -- what was your role?

24 A You know, I -- with all of those contracts I participated
25 in successor agreement bargaining, including when we had to

1 secretary/treasurer. His name is Anthony Speelman. Robert
2 Newell, N-E-W-E-L-L, and I believe Paul Santarpia.

3 Q Do you recall who was present on behalf of the Key Food
4 Co-Operative?

5 A Doug Catalano, Sharon Konzelman, Rich -- someone that was
6 introduced to us as Richard Almonte (ph) I believe. And I
7 believe for part of the time Lenny Mandell was there and Pat
8 Conte.

9 Q And just in terms of the notes that were taken, is there a
10 way that the people at that meeting are identified in the
11 notes?

12 A Yes. What she did was sometime she would put down either
13 the Local's number if the -- someone from the Local was
14 speaking. Sometime -- she's got down here TC would be Tom
15 Clark from the International. DC would be Doug Catalano, who
16 did most of the talking.

17 Q So generally she'd use the initials?

18 A She's use initials or she'd use the Local's number.

19 Q Do you recall what took place during this meeting?

20 A Yes. Well, this was the meeting since the bankruptcy had
21 been filed. The bankruptcy was filed I think on the 19th or
22 20th of July. And we also had to bargain with the A&P company
23 over the contracts that were still in effect with the A&P. And
24 the bankruptcy judge supervised some of the bargaining with the
25 A&P company only.

1 needed certain concessions. What was the response of the
2 Locals?

3 A You know, at that meeting we pushed back on that. That's
4 the way I characterize it. The Local Union presidents made a
5 point to let the Key Food folks know that these people who
6 worked in the A&P stores, because they were still working for
7 A&P at that time and showing up every day and getting their
8 check, had already taken lots of concessions in the prior
9 bankruptcy.

10 We made a point to let them know that as a for instance
11 they were making less money than the folks in the other chain
12 stores in the area, because they weren't getting raises for all
13 that time. And that they had less vacation, sick and personal,
14 under the concessionary contract that we had done that ran from
15 October of 2011 to 2016.

16 Q And at this point why were the Locals meeting with the Key
17 Food Co-Op as a group?

18 A The reason we met as a group was because of the time
19 constraints and because just like Stop&Shop actually, because
20 Stop&Shop had said the same thing to Local 342 at a meeting I
21 was at in July, they wanted to get collective bargaining
22 agreements agreed to, prior to actually closing on the sales of
23 the stores. And they told the Unions that if they didn't get
24 that they might not buy the stores at all.

25 Q Okay. So they --

1 A So that's why all the Locals were together was because
2 what -- all 15 -- I'm going to talk about 1500, 338 and 342,
3 because even though I know 464 has Key Food contracts, I'm not
4 as familiar with what goes on in New Jersey. The way the UFCW
5 is structured, it's pretty autonomous. Each Local Union does
6 its own contracts.

7 We don't, as for instance like the Teamsters, bargain
8 master contracts through a district council or anything like
9 that. We have individual bargaining. All of the Local Unions
10 who were present at the Key Food meeting had their own
11 individual contracts with the A&P company. All of those
12 contracts were different.

13 And, you know, Mr. Catalano acknowledged that. He knew
14 that they were all different. So all the Locals were there to
15 see if we could speed things up.

16 Mr. Catalano said that he would like to have -- even
17 though he knew there'd be individual contracts and he expected
18 each of the Locals to sign their own agreement, that it was Key
19 Food's desire to have all of the Locals on the main issues have
20 -- agree to the same thing. He said that he could, you know,
21 look at differences between the contracts here and there and
22 possibly have those be different, but for the money, and the
23 healthcare, and the retirement, things like that, he wanted
24 those to be each Local Union to agree to have those same
25 things, because the way I took that was is because we were

1 under a time constraint.

2 You know, if we were going to get the deal done before
3 they actually closed on the stores, he was suggesting that was
4 the fastest was to get it done. That is the way the Local
5 Unions started out with Stop&Shop and some of the other
6 companies as well, but eventually what happened just like with
7 Key Food is the Local Unions split apart and finished their
8 bargaining with each of the employer, including the Key Food
9 employer, by themselves.

10 Q And do you remember if there was any agreement reached at
11 the end of the July 28th meeting?

12 A No. I probably shouldn't say no, because it may sound
13 like I don't remember, because you asked me if I remember. So
14 the answer --

15 Q Did --

16 A -- is yes, I do remember and no we didn't reach an
17 agreement.

18 MS. ALAM: Okay. I'd like to have General Counsel exhibit
19 10 -- or I'm sorry, I'd like to have this document marked as
20 General Counsel exhibit 10 for identification.

21 MS. TOOKER: 9 has not been received.

22 MS. ALAM: Oh, I'm sorry. I'd also like to move General
23 Counsel exhibit 9 into evidence.

24 MR. CATALANO: A quick voir dire on 9.

25 VOIR DIRE EXAMINATION

1 Local 342?

2 A Yes. My side of the notes. I believe it was myself,
3 president Abondolo -- thank you. Lou Loiacono and Lou
4 Sollicito, Stephen Booras was there, Janel D'Ammassa.

5 Q And was this meeting between only Local 342 and the Key
6 Food Co-Op --

7 A No.

8 Q -- or were there other Locals also present?

9 A Local 338 representatives and Local 1500 representatives
10 were present. At this point in time the New Jersey Locals
11 weren't. They stopped coming after the first two meetings I
12 think and they were doing their own bargaining with Key Food
13 separately. And the International Union wasn't coming any
14 longer.

15 Q And do you know who was there representing Local 338?

16 A President Durso, and Jack Caffey, and Joe Fontana and Neil
17 Gonzales. And for Local 1500 it was Tony Speelman and Rob
18 Newell and Tony Santarpia (*sic*).

19 Q And who was there on behalf of the Key Food Co-Op?

20 A Doug Catalano and Sharon Konzelman.

21 Q Do you recall if there were any other Key Food members or
22 individual owners at this meeting?

23 A Not to my recollection. It's possible someone showed up
24 late in the day, but we had asked where they were and they have
25 different problems about why they didn't come. So it was just

1 Doug and Sharon that I recall.

2 MS. ALAM: I'd like to have this document marked for
3 identification as General Counsel exhibit 11. I'm handing a
4 copy to the Union --

5 BY MS. ALAM:

6 Q Ms. O'Leary, can you identify this document for the
7 record?

8 A Yes, this is a proposal from the Union, a written proposal
9 that addresses the main concepts of what had been discussed at
10 prior meetings.

11 (General Counsel's GC-11 identified)

12 Q And sorry, whose proposal was this?

13 A This is the Union's to Key Food.

14 Q And do you know when -- if this was given to the
15 Respondent?

16 A Yes, that's my handwriting at the top. So that was handed
17 -- that was given on the 26th.

18 Q And this proposal was for which Union? You said the
19 Union. Was it a proposal just from Local 342 or were the other
20 --

21 A No, this is 1500, 342 and 338 on the main topics that Key
22 Food had brought up at prior meetings.

23 Q And this proposal, was this the proposal for terms that
24 would cover completely all three of these Unions?

25 A Well, this is not an exhaustive proposal if you read

1 with Key Food.

2 Q And who was there on October 12th on behalf of Local 342
3 besides yourself?

4 A Lou Sollicito, Steve Booras, Carolina Martinez and then
5 Johnna Bronca (ph), who's a secretary in president Abondolo's
6 office and Lisa Buddas, who's a secretary for -- at the time
7 for Lou Sollicito.

8 Q Do you recall who was there on behalf of the co-op?

9 A That day they had the individual members come with them.
10 So it was Doug Catalano and Sharon Konzelman, Joe Vederosa, the
11 Diaz brothers, Randy Abed, Lenny Mandell. The notes say Ruben
12 Luna, but I don't know if it was Ruben, on Jamie or even if
13 Jamie is Ruben. I'm not really sure.

14 I remember the same guy. You know, but a Luna was there,
15 because I can see his face, I'm just not sure what his first
16 name is. But Randy and Sam Abed were there.

17 Q And who was there I guess on the -- did you mention who
18 was representing the Key Food Co-Op?

19 A Well, Doug Catalano and Sharon Konzelman would speak for
20 the co-op and for all the individual members when they came.
21 Every once in a while an individual member might ask a question
22 or say something, but generally speaking Doug represented them.
23 Once in a great while Sharon Konzelman would, you know, respond
24 to a question, or give information or something like that, but
25 it was mostly Doug.

1 reduced to writing and everyone has to agree to it.

2 So because time was a problem, because now we're into
3 October and the closings on these stores now are starting to be
4 at the end of October and Key Food was still indicating that if
5 they didn't get agreements they might not purchase the stores.
6 And Mr. Catalano had said at different bargaining meetings,
7 including this one, you know, if they don't buy the stores the
8 people aren't going to have jobs. We're really doing the right
9 thing here. The members will be happy to have jobs, even if,
10 you know, the conditions are different, etc, etc.

11 I proposed that they look at the Key Food documents we
12 had, so that we could speed the process up and just take the
13 arbitration language and some of the other language that was
14 already in Key Food contracts. So that we didn't have to have
15 extensive bargaining about those things. You know, Doug was a
16 little cranky that day, but I know him a long time. So, you
17 know, there was a little yelling.

18 But at one point we took a break. He took the Key Food
19 contract and everybody went in the other room. When he came
20 back in he was in a better mood.

21 He said they're not taking the Key Food contract, but he
22 wasn't outright rejecting the concepts that I'd reposed --
23 proposed. For instance, they liked the idea of a part time
24 butcher and some other things. I recall saying to him this
25 isn't going to be a Chinese menu where you only pick the parts

1 out of the contract that you like, but the rest of it doesn't
2 go with it.

3 I continuously told Mr. Catalano, when I was present at
4 bargaining, that we needed to have a whole package. The reason
5 this matters is because in the document that he held up and
6 said this is the document that you have to take, because Local
7 338 and 1500 are agreeing to it, they didn't have a complete
8 and total document. And in the beginning proposals that the
9 Key Food company gave to the Unions and Local 342, it says
10 things like, you know, you would bargain the arbitration clause
11 later after the deal was done or bargain other pieces of the
12 contract.

13 I'm not saying other Local Unions don't have a right to do
14 that if they want to. They can do that. But Local 342 wasn't
15 going to do that and I always made that clear to Ms. Konzelman
16 and to Doug that we needed a complete agreement.

17 That we weren't going to agree on something and have a
18 contract go into effect, but no one knew what the arbitration
19 clause was or there was no written no strike clause or any of
20 that. That the whole contract had to be there, which is why I
21 proposed the Key Food. So we did not -- you want me to stop?
22 We didn't conclude that day.

23 Q Did you reach an agreement that day?

24 A No. No, but Doug said they'd look at it, they'd discuss
25 the other stuff, but he was not going to take the Key Food

1 contract for the guys that were inside of the room that day.
2 He did say that for some Key Food employers, who already had
3 contracts with Local 342, who were purchasing A&P stores, if
4 those guys wanted to, you know, use the Key Food contract, that
5 wasn't up to him. It was up to the individual owners.

6 But for the non-union guys they weren't going to be doing
7 that, because they couldn't afford it. You know, all the other
8 things they always say. So we did not reach agreement that
9 day.

10 MS. ALAM: I'd like to move General Counsel exhibit 14
11 into evidence.

12 JUDGE GREEN: Any objection?

13 MR. CATALANO: No.

14 JUDGE GREEN: GC-14 is admitted into evidence.

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

16 MS. ALAM: I'd like to have this document marked for
17 identification as General Counsel exhibit 15. Handing
18 Respondent counsel a copy and handing a copy to the witness.

19 BY MS. ALAM:

20 Q Ms. O'Leary, can you identify this document for the
21 record?

22 A I can. These are going to be Local 342's -- one of the
23 secretary's typed notes from October 21st 2015.

24 (General Counsel's GC-15 identified)

25 Q And did you attend a meeting with the Key Food Co-

1 might have been there at one point. Even though it doesn't say
2 so on the notes, I seem to recall that she was there at one
3 point. She might not have stayed there long. But Richard
4 Abondolo was of course the chief spokesperson for the Union, as
5 he always is when he shows up, unless he tells me to go in
6 there and tell somebody something, then I tell them.

7 Q And do you recall who attended the meeting on behalf of
8 the Key Food Co-Op? You said people were in and out, but do
9 you recall which people?

10 A I remember Lenny Mandell was there, I remember Steve
11 Dicarlo was there. Steve Dicarlo is from the Dan's Supreme Key
12 Food company. I remember seeing Jamie or Ruben Luna.

13 I remember the Diaz's. I remember Gilbert Almonte, not
14 Richard Almonte. Pat Conte and Joe Vederosa might have been
15 there, but I can't -- some of them had come late and some of
16 them also had to leave early. So at some point I remember
17 seeing all of those fellows, but they may not have stayed for
18 the entire time that we were at the hotel.

19 Q And you said there was a federal mediator at this meeting.
20 Why was there a federal mediator there?

21 A Because Local 342 had asked Key Food if they would agree
22 to allow the mediator to come, because you have to have an
23 employer agree to it. Because we were getting very close to
24 when, you know, stores were going to start closing, and we had
25 -- did not have an agreement and we were concerned about that.

1 the panel if they would take a panel. That's it. But I don't
2 believe we had conclusion on that. So to the best of my
3 recollection we didn't sit there and go through a whole list of
4 things in front of everyone that everyone agreed on. I don't
5 recollect that.

6 Q Why would Local 342 agree to have Mr. Catalano write up
7 what he thought the agreement was?

8 MR. CATALANO: Objection.

9 JUDGE GREEN: Overruled.

10 THE WITNESS: Because he suggested it. What happened was
11 is he looked at Richard Abondolo -- this is my best
12 recollection honestly of what took place. When we all got back
13 into the room, we were scheduled to meet the following day.

14 Mr. Catalano looked at Mr. Abondolo, and across the table
15 with all the people there, he said instead of meeting tomorrow,
16 why don't you let me type of a memorandum of agreement and send
17 it over to you to review? That our time would be better spent
18 if I did that. Meaning Doug did that. So president Abondolo
19 said okay, then do that. That's what I recollect.

20 BY MS. ALAM:

21 Q Did Catalano -- did Mr. Catalano send something back the
22 Union after this meeting?

23 A He did, but not the next day.

24 MS. ALAM: I'd like to have this document marked as
25 exhibit -- GC exhibit 16 for identification.

1 BY MS. ALAM:

2 Q Ms. O'Leary, can you identify this document for the
3 record?

4 A Yes. This is a document that president Abondolo told me
5 he received or one of his secretaries had received from Key
6 Food, but I got that from my own folks. I didn't get anything
7 from Mr. Catalano directly to me. And he said this is what
8 Doug sent back.

9 But what happened was is when we didn't get anything on
10 the 22nd, after a couple days went by president Abondolo
11 actually called me up and said call up Doug and find out where
12 -- you know, we aren't getting a document. Find him.

13 (General Counsel's GC-16 identified)

14 Q And did you?

15 A I didn't get Doug, but then sometime after that then I was
16 told by the president's office that they had gotten a document,
17 but I wasn't -- I guess I wasn't copied on the email or
18 whatever. This document here has my handwriting on it though.
19 So this is what I was writing down when I went through it.

20 Q And what in this document different that what your
21 understanding was of what Local 30 -- 342 had proposed, during
22 negotiations?

23 A So if you look on page two -- well, let's be sure. Okay.
24 So if you look on page two, in section two offer of employment,
25 in the second sentence of the first paragraph it says a minimum

1 suspensions. And like I said we did make movement. We made a
2 concession by telling Key Food representative Mr. Catalano
3 that, you know, if there were certain panelists -- he and
4 Richard had talked about that -- that they didn't want on the
5 panel, then he would do that, but that he wasn't doing triple A
6 for suspensions and terminations.

7 Q And then you also mentioned, you know, that in the past
8 the Local 342 had wanted a complete agreement. I'd just like
9 you to turn to page 10 and look at numbers 11 and 14. Would
10 that have been something that Local 342 had agreed to, that
11 kind of language?

12 A No, no. And we've been clear about that from the
13 beginning. To put in there -- Local 338 and Local 1500, like I
14 said, they apparently left open some parts of the contract and
15 said it was okay to finish whatever they were doing with the
16 Key Food employers and they were going to look at other parts
17 of their contract later. But that was not something 342 does.

18 So -- and I had discussed that with president Abondolo,
19 after I got this also. So why does it say in here that we're
20 doing the terms and conditions and other terms and conditions
21 of employment that aren't in here later? And he said we're not
22 doing that. Told him 100 times we're not going to do that.
23 That was that. So as I went through this agreement, you know,
24 while there were something like maybe the term of the agreement
25 and some of the other stuff, but there were significant parts

1 JUDGE GREEN: Yeah, I tend to agree.

2 MS. ALAM: Uh, Your Honor, Ms. O'Leary --

3 BY MS. ALAM:

4 Q Ms. O'Leary, were you -- were you present during the
5 bankruptcy proceedings?

6 A Uh, yes, I went to some of them; sure.

7 Q Did a -- did you witness any discussion about this
8 particular section?

9 A Not about this document.

10 Q Uh-huh.

11 A But we did speak to the International Union about it,
12 because the International Union was making sure that the global
13 settlement agreement that was introduced yesterday that ran
14 with each of the local unions' collective bargaining agreements
15 -- that that agreement was being kept.

16 So when the International Union saw the asset purchase
17 agreements -- which they may have even gotten from A&P -- but
18 at some point, the International Unions' attorneys -- the
19 bankruptcy labor lawyers that they had -- saw the asset
20 purchase agreements, not just for Key Food but for Stop & Shop
21 and the other Stalking Horse people. They explained that to
22 all the local unions.

23 I was present for one of those meetings, explained what it
24 meant, and what they believed. Because this agreement, this
25 asset purchase agreement, was between the company, and the A&P

1 MS. ALAM: Okay. I'm going to ask that this document be
2 marked as General Counsel Exhibit 18. I'm handing a copy to
3 Respondents' Counsel; I'm handing a copy to the witness.

4 BY MS. ALAM:

5 Q Ms. O'Leary, can you please identify this document for the
6 record?

7 A This is Local 342's bargaining notes from the
8 November 13th, 2015 bargaining with Mr. Catalano.

9 Q And were you at the November 13th meeting?

10 A I was.

11 Q After looking over this document, um, can you, um, state
12 whether it's your recollection that this represents an adequate
13 representation of what took place at that meeting?

14 A Yes. Again, it's not a word-for-word; but, yes.

15 (General Counsel's GC-18 identified.)

16 BY MS. ALAM:

17 Q Uh, and who -- in your recollection -- besides yourself,
18 attended on behalf of Local 342?

19 A You know, I'm going to say Lou Sollecito; and I believe
20 Lisa Boutis was the one that typed the notes. Uh, there were
21 not a lot of people that day like there were on the 21st of --
22 President Abondolo wasn't there.

23 Q And do you recall who attended on behalf of the Key Food
24 Co-op?

25 A Doug Catalano.

1 Q Were there any individual owners at this meeting?

2 A Not that I recall.

3 Q And do you recall what was discussed at this meeting?

4 A Yes. At this point, Local 342 I believe had started
5 picketing some of the stores because the people were getting --
6 not getting offers of employment. Some of them were being
7 terminated within a couple of days of being employed for the
8 different Key Food owners that are part of this case.

9 Uh, so, uh, the company was not happy about that, of
10 course. So, what I was sent to do was, see if we could -- if I
11 could get --if Mr. Catalano and I could get passed some of
12 these items that 342 and the company were not agreeing on --
13 like the arbitration clause, and, uh, making sure the benefits,
14 and the wages, and what was happening with the people that
15 worked in the stores -- if we could come to agreements on
16 those. We didn't reach an agreement; but, uh, we tried.

17 Q Was there any discussion at this meeting about an employee
18 by the name of Nelson Quelis?

19 A Yes.

20 Q Uh, why was he being talked about?

21 A Because Mister -- I knew him as Quillis, although you
22 might be pronouncing it correctly; I don't speak Spanish, and
23 he -- that's a --

24 Q I don't --

25 A -- Latin last name. So, in any -- in any event,

1 Mr. Quelis worked in the store that Gilbert and Frank Almonte
2 bought in Howard Beach, and had been the meat manager there for
3 a long time. He was a -- a long-time union member; he was
4 active; he would go to demonstrations; and come to union
5 activities, et cetera, et cetera whenever Local 340 had him if
6 possibly could do it.

7 So, he worked in a store that was purchased. And at some
8 point, he called his union representative, Liz Fontanez. When
9 the Almonte company got to their closing date on their store --
10 which was in late October -- and they had told him that he had
11 no job there. And so, I was incensed about that. Eventually,
12 I spoke to Mr. Quelis myself about it. I got him on the cell
13 phone, and he spoke to both -- both me and President Abondolo
14 personally. Mr. Quelis had told me that he believed it was
15 because he had gone on behalf of Local 342 --

16 MR. WICH: May I object, on this?

17 JUDGE GREEN: Yeah. I agree.

18 THE WITNESS: Okay.

19 JUDGE GREEN: Try to -- we're -- right now --

20 THE WITNESS: Okay.

21 JUDGE GREEN: -- we're dealing with November 13th, and --

22 THE WITNESS: All right.

23 JUDGE GREEN: -- you were asked what was said --

24 THE WITNESS: I'll stop talking and let her ask me

25 questions --

1 JUDGE GREEN: No, no --

2 THE WITNESS: -- that could be my fault --

3 JUDGE GREEN: -- I mean, she could --

4 THE WITNESS: -- and not hers --

5 JUDGE GREEN: -- ask again. But try to testify to what
6 was discussed --

7 THE WITNESS: Yes, sir.

8 JUDGE GREEN: -- on November 13th --

9 THE WITNESS: Sure.

10 JUDGE GREEN: -- 2015.

11 THE WITNESS: So, on Novem -- on November 13th, I raised
12 again the fact that Mr. Quelis had been left to Doug. It's
13 reflected in the notes. And I said -- I -- I spoke to him
14 about Nelson and about Richard Maffia, another Local 342
15 butcher and member, and represented to him that he promised me
16 that he was going to resolve their terminations, which I
17 believed were unfair labor practice charges.

18 And I brought it up to Mr. Catalano because he had said he
19 was going to work with me on that, and get other Key Food
20 owners to hire those guys, so that Local 342 wouldn't pursue
21 unfair labor practice charges for the Almontes refusing to hire
22 them and terminating them for no reason; and what we believe
23 was in violation of the collective bargaining agreement, and
24 their representation to us and A&P that they were going to
25 offer employment to everyone. At first, Mr. Catalano -- when I

1 brought it up -- said he didn't remember; but then he said,
2 yes, he did remember.

3 BY MS. ALAM:

4 Q And had he been able to secure employment for those
5 employees, for Mr. Quelis and Mr. Maffia?

6 A He called me -- this was a telephone conversation -- and
7 told me that I could send Mr. Quelis over to the store that the
8 Diazs owned. Now, this is not being talked about at this
9 meeting.

10 JUDGE GREEN: Right. So, when was --

11 THE WITNESS: It's what happened before. Uh, like, as
12 soon as I -- as I soon as I complained in October to
13 Mr. Catalano that the -- that Mr. Quelis had been let go, he
14 and I spoke on the phone about this.

15 JUDGE GREEN: Okay.

16 THE WITNESS: It's okay to continue?

17 JUDGE GREEN: Well, why don't you --

18 THE WITNESS: Well --

19 JUDGE GREEN: -- take it from there. Would you like her
20 to --

21 BY MS. ALAM:

22 Q So, then at this meeting -- so, at this meeting, he'd --
23 he'd initially forgotten about your conversations. I guess --
24 let me -- let me back up. So, you'd spoken -- before this
25 meeting -- you'd spoken to Mr. Catalano about Mr. Quelis?

1 A I did.

2 Q And do you recall when you spoke to him?

3 A It was right after they let him go, so it would have been
4 late October; I couldn't tell you the exact day.

5 Q And this was --

6 A But --

7 Q -- in person or on the phone --

8 A It was on the telephone.

9 Q Okay. And what did you speak about in that conversation?

10 A In that conversation, the gist of the conversation was, I
11 called him up. I objected. I said why is he letting people
12 go? I believe that it was an unfair labor practice charge. I
13 told Mr. Catalano all the reasons why I believed it was an
14 unfair labor practice charge; and that, you know, it was for
15 union activity, because the Almontes had seen him at a
16 demonstration.

17 What he said to me was, is not to file the unfair labor
18 practice charge yet; let him investigate it; he needed to talk
19 to his clients. And he said what would you say if Mr. Quelis
20 had a job at a different employer? I said, well, I don't know;
21 it would depend on what we're doing. I just want him to have
22 what he had before. He also -- in that phone conversation --
23 had said to me, why couldn't I find him another job with
24 somebody other than Key Food?

25 So, what ended up happening was, at the end of the day --

1 prior to the November 13th meeting -- Mr. Catalano had let me
2 know by telephone that Mr. Quelis could work at the Diaz store,
3 and that his client, the Almontes, had asked specifically for a
4 342 butcher to replace Nelson in the store in Howard Beach by
5 the name of Richard Maffia.

6 So, 342 -- not me personally -- but a 342 representative
7 sent Nelson to the Diaz store. And Mr. Maffia was told by us
8 to go and apply for a job over with Almonte. And he was hired,
9 Richard Maffia; Almonte hired him. Within 24 hours, neither
10 one of them had a job. They were both let go, which is why I'm
11 bringing this up at the meeting on November 13th.

12 Q Thank you. Okay. So, at that -- now back to the
13 November 13th --

14 A Right.

15 Q -- meeting, at that point, did -- once Mr. Catalano
16 recollected your conversations about Mr. Quelis and Mr. Maffia
17 -- do you -- do you recall at that meeting he had offered
18 either of those employees reinstatement to their positions --

19 A No. He -- first of all, you know, I complained about that
20 and was upset about the two men; particularly, that they were
21 both let go again within 24 hours. And so, I had told Doug at
22 that meeting, I'm -- you know, we're going to -- we'll litigate
23 it. You know, we'll file unfair labor practice charges; it was
24 wrong.

25 And then, you know, Doug had said to me, well do you think

1 Key Food Co-op and Local 342 after this November 13th meeting?

2 A Yes. I believe that, uh, they met on -- representatives.

3 Again, I wasn't at it, but my coworkers let me know, and

4 President Abondolo let me know that they were meeting on the

5 19th of November.

6 And then what happened after that was, because we were on

7 strike at these locations, Mr. Catalano was mad. And he told

8 me that, you know, they weren't going to bargain anymore unless

9 we took the picket lines down; he told me that personally, by

10 phone.

11 JUDGE GREEN: When?

12 THE WITNESS: After the 19th; I can't tell you exactly

13 what day that phone call was. But, you know, after -- after

14 the union and the company met on the 19th, I was instructed by

15 my boss to try and give Doug a call, and that -- and get some

16 bargaining dates, and try and get him to get back to the table.

17 So I did that by telephone.

18 JUDGE GREEN: Okay.

19 BY MS. ALAM:

20 Q I'm sorry. You -- you mentioned that the union engaged in

21 strikes; uh, when you say "strike," what do you mean?

22 A We were -- had an unfair labor practice picket line up,

23 backup the unfair labor practice charges that we had filed.

24 Q But were employees -- were members, uh, that were working

25 at any stores, uh, leaving work during these; were they walking

1 very difficult. Uh.

2 Q Did you ever, um, get notification, um -- I'm just going
3 to run through the people, actually -- did you ever get any
4 notification that an employee named Aylanna Jordan was being
5 laid off after she'd been hired from Key Food; did you get any
6 notification by the Key Food Co-op or any representatives from
7 the individual owners that Aylanna Jordan was going to be laid
8 off?

9 A No.

10 Q Did you get any notification from any of the owners or any
11 representative from the Key Food Co-operative that Michael
12 Fischetti was going to be laid off from the Greaves Lane store?

13 A No.

14 Q Did you get notification that Anthony Vendetti was going
15 to be laid off from the Greaves Lane store?

16 A No.

17 Q Did you get notification that Gina Cammarano was going to
18 be laid off --

19 A No

20 Q -- from the Greaves Lane store? Did you get notification
21 that Debra Abruzzese was going to be laid off from the Greaves
22 Lane store?

23 A No.

24 Q Did you get any notification from either the Key Food
25 Co-op or the individual owners of the Howard Beach store that

1 Khadisha Diaz was going to be laid off?

2 A No.

3 Q That Venus Nepay was going to be laid off?

4 A No.

5 Q That Richard Maffia was going to be laid off?

6 A No.

7 Q That Nelson Quelis was going to be laid off?

8 A No.

9 Q Did you get any prior notification from Key Food Co-op
10 representatives or any individual owners of the Albany Avenue
11 store that Joseph Batiste was going to be laid off?

12 A No.

13 Q That Stephen Fiore was going to be laid off?

14 A No.

15 Q That Kalvin Harris was going to be laid off?

16 A No.

17 Q That Robert Jenzen was going to be laid off?

18 A No.

19 Q Did you get any prior notification from the Key Food
20 Co-operative or the individual owners at the Bayside store that
21 Mario Rosado was going to be laid off?

22 A No.

23 Q Did you, um, did -- do you know if any of the other union
24 officials were given any prior notification about the employees
25 I named?

1 A In Local 342?

2 Q Yes.

3 A Yes. No. I checked; every -- no one had gotten any
4 notice that any of those people were going to be --

5 Q Okay.

6 A -- terminated.

7 MS. ALAM: Okay. I'm going to show the witness what's
8 marked as General Counsel Exhibit 20 --

9 HEARING REPORTER: Yeah.

10 MS. ALAM: -- General Counsel Exhibit 20. Okay. I'm
11 handing a copy to Respondents' Counsel. Did I give you two?

12 MR. WICH: No, just one.

13 MS. ALAM: And I'm handing a copy to the witness.

14 BY MS. ALAM:

15 Q Ms. O'Leary, can you identify this document for the
16 record?

17 A Yes. Uh, so this is a proposal that Local 342, you know,
18 myself, Mr. Abondolo, and others that worked at 342 had put
19 together; again, in an effort to try and get to a contract and
20 resolve the problem.

21 While we agreed to certain concessions that they had asked
22 for, but still put into the document what Local 342 felt was
23 necessary to reach agreement. This was marked, you can see at
24 the top, "11/23/2015." We didn't meet, but it was emailed to
25 the employer.

1 (General Counsel's GC-20 identified.)

2 MS. ALAM: I would like to ask that General Counsel
3 Exhibit 20 be admitted into evidence.

4 JUDGE GREEN: Any objection?

5 MR. WICH: No objection.

6 JUDGE GREEN: GC-20 is entered.

7 (General Counsel's GC-20 received.)

8 MS. ALAM: I'm going to -- um -- I'd like to have this
9 document marked as General Counsel Exhibit 21. I'm handing a
10 copy to Respondents' Counsel; I'm handing a copy to the witness

11 BY MS. ALAM:

12 Q Ms. O'Leary, can you identify this document for the
13 record, please.

14 A Yes. This is an email exchange between Sharon Konzelman
15 of Key Food Co-op and Richard Abondolo. He had sent over on
16 Wednesday, the 25th, to -- if you look -- scroll down right
17 there on the first page, this is the response to President
18 Abondolo's emailed proposal of November 23rd.

19 So now, we're getting a response from the employer by way
20 of Ms. Konzelman as to what would be acceptable in the
21 proposal, and what would not. So, we're still bargaining at
22 this point. And then at the top of the email, is where
23 President Abondolo responds to Ms. Konzelman's comments.

24 (General Counsel's GC-21 identified.)

25 MS. ALAM: Okay. I'd like to ask that General Counsel

1 Exhibit 21 be moved into evidence.

2 JUDGE GREEN: Any objection?

3 MR. WICH: No objection.

4 JUDGE GREEN: GC-21 is admitted.

5 (General Counsel's GC-21 received.)

6 MS. ALAM: I'd like to have this document marked as
7 General Counsel Exhibit 22 for identification. I'm handing a
8 copy to Respondents' Counsel; I'm handing a copy to the
9 witness.

10 BY MS. ALAM:

11 Q Ms. O'Leary, can you identify this packet of documents for
12 the record?

13 A Yes. Uh, this is a letter that I drafted, and then I sent
14 this same letter to each of the Key Food owners, that we didn't
15 have a collective bargaining agreement with.

16 Q And when did you, uh -- well, how did you send the letter?

17 A I sent it via email. I had their email addresses. I
18 think one of them I didn't have an email address for, and I
19 forwarded that one to Ms. Konzelman, and asked her if she could
20 -- since I didn't have the guy's email address -- pass it on,
21 uh.

22 And what it does is, you know, at this point, we could not
23 get Key Food to come to bargaining -- come to the bargaining
24 table and negotiate to try and get the collective bargaining
25 agreement done. Doug said he couldn't -- there were no dates

1 before the holidays.

2 There had been some discussions even that I had had with
3 Doug personally about, could we bargain with individual owners
4 if some of the owners who knew the union would split off from
5 the ones that didn't want to. Doug told me that he represented
6 the co-op and he represented the owners. But I reached out --
7 I drafted the letter, and reached out; hoping that some of the
8 owners would want to get a collective bargaining agreement
9 done.

10 (General Counsel's GC-22 identified.)

11 BY MS. ALAM:

12 Q Did you copy this -- the -- the letters to anybody else --

13 A Uh, to --

14 Q -- besides to the owners --

15 A -- to Ms. Konzelman, and to Doug Catalano. And then on
16 the union side, I've got who I copied it to. And then I sent
17 them to the owners by email.

18 Q Okay. And is it indicated on the individual letters who
19 each letter was sent to?

20 A Yes. Up in the upper, uh, left-hand corner.

21 Q Okay.

22 MS. ALAM: Uh, I'd like to ask that General Counsel
23 Exhibit, uh, 22 be moved into evidence at this time.

24 JUDGE GREEN: Any --

25 MR. WICH: Just have one --

1 JUDGE GREEN: -- objection?

2 MR. WICH: -- one second, Your Honor?

3 JUDGE GREEN: Okay.

4 MR. WICH: No objection.

5 JUDGE GREEN: GC-22 is admitted.

6 (General Counsel's GC-22 received.)

7 BY MS. ALAM:

8 Q Ms. O'Leary, did you receive any response to your letters
9 to the individual owners?

10 A Uh, just from Mr. Catalano. He responded by email, uh,
11 that I had no right to contact the individual owners; that the
12 Key Food Co-op was the representative for the union; and he was
13 the attorney for the Key Food Co-op. And, you know, he told me
14 what I was doing was illegal, and improper, and whatever else.
15 But that was the response I got. I did not receive a response
16 back from any of the individual people I sent the letters to or
17 Ms. Konzelman.

18 MS. ALAM: Okay. I'd like to have this document marked
19 for identification as General Counsel Exhibit 23. I'm handing
20 Respondent a copy; I'm going to hand Ms. O'Leary a copy.

21 BY MS. ALAM:

22 Q Ms. O'Leary, can you identify this document for the
23 record?

24 A Yes. This is an email that I sent to Mr. Catalano and
25 copied Ms. Konzelman; uh, an email letter. And with it is --

1 A In February. When I objected to this release problem and
2 the people being let go, the only response I got from
3 Mr. Catalano was, I'll check into it, or I'll determine -- let
4 me see what I can find out; and then I never heard from him
5 again.

6 So in February, I called him on the phone, in a very short
7 conversation and said, you know, you said that you had no dates
8 for bargaining, when we were at the holidays, until the
9 holidays were over, what about a date for bargaining; what are
10 we doing? And he answered the phone, you know, so he says to
11 me, I don't know, what are we doing?

12 And I -- I said, I'm calling you to find out for -- about
13 dates for bargaining. He said, uh, I thought we had a deal. I
14 said, you know we didn't have a deal; that's why I'm calling
15 you for dates for bargaining. He then wanted to just tell me
16 that, you know, as far as he was concerned, he thought he had a
17 deal with President Abondolo, and you know, that whole story;
18 which wasn't responsive to what I was calling him about.

19 So, it was a very short conversation. I said to him,
20 okay, listen, you know, this is just going in circles. I'm
21 going to get off the phone. You're just going to keep telling
22 me the same things. But I didn't get any dates for bargaining
23 that day.

24 Q Did you have any further action with Mr. Catalano after
25 this February 2000 -- February 2016 phone call --

1 lawyer to call me up and tell me that.

2 She was very nice; she took all the stuff down. And --
3 but she told me that Mr. Janeway was not in the office, and in
4 fact was away until after the Fourth of July. Because this is
5 happening on June 23rd. All right. So that was that.

6 Q Just -- you mentioned earlier, um, that you had, uh --
7 that the union had engaged in strikes. And just to be clear,
8 when you say -- when you use the word "strike," was -- it
9 doesn't this mean that anybody walked off their job, and --

10 A No one -- no, we -- so, the unfair labor practice
11 picketing that we did was not a strike in the traditional
12 sense. We went out front. We encouraged the customers not to
13 shop. Told them the unfair labor practices, and told them our
14 story. But we did not ask the people who still had jobs inside
15 of the Key Foods to come on working time, and walk out, and
16 leave their job. We asked them to stand with us before and
17 after work, and on their lunch hour.

18 Q Did, um -- did the union ever make a -- a written request,
19 um, to bargain with the Key Food Co-op, or the individual
20 owners at this point?

21 A Yes. So --

22 MS. ALAM: Okay. I'd like to --

23 THE WITNESS: -- then, you know, Doug never responded to
24 me after the, uh, June 23rd phone call with, uh -- you know,
25 about my request to bargain, and get me some bargaining dates

1 from anybody. So, I sent an email, uh, asking for bargaining
2 dates to Mr. Catalano.

3 I sent all of these directly to Mr. Catalano because he
4 got so bent out of shape if I tried to talk to anyone else. I
5 did copy Ms. Konzelman. I might of (sic) sent one to
6 Ms. Konzelman, but in any -- I always copied Doug; so it was
7 between the two of them, because they were both in charge.

8 And I sent one, I believe on July 1st; and again, on
9 subsequent dates in July.

10 MS. ALAM: I'd like to have this document marked for
11 identification as General Counsel Exhibit 24. I'm handing a
12 copy to Respondents' Counsel, and I'm handing a copy to the
13 witness.

14 BY MS. ALAM:

15 Q Ms. O'Leary, can you identify this document for the
16 record?

17 A Yes. This is (sic) the emails that I sent requesting
18 bargaining dates. So, if you -- you have to go to the bottom
19 first. So at the bottom of this page, it's me sending
20 Ms. Konzelman, with a copy to Doug Catalano, and my coworker,
21 Lou Sollecito --

22 Q I'm sorry, Ms. O'Leary, uh, just so you know that, uh, the
23 document is two-sided. So, it has --

24 A Okay. Oh, I'm sorry. Okay. So, I start on June 28th, it
25 looks like. But these are my emails; I sent them. I offered

1 bargaining dates. So it goes, uh, you know, a couple days in
2 June and then several days in July request available bargaining
3 dates, and also asking for, uh -- let's see here -- yeah, I
4 gave our position that there was no impasse; that we could
5 still bargain; there wasn't any contract; asked the employer to
6 rethink the position they were taking; and asking to bargain.

7 (General Counsel's GC-24 identified.)

8 BY MS. ALAM:

9 Q Did you ever receive a response from anyone from the Key
10 Food Co-op --

11 A No.

12 Q -- from Mr. Catalano, or?

13 A No

14 Q Okay.

15 MS. ALAM: So, I'd like to ask that General Counsel
16 Exhibit 24 be moved into evidence at this time.

17 MR. WICH: No objection.

18 MS. ALAM: Okay.

19 JUDGE GREEN: GC-24 is admitted.

20 (General Counsel's GC-24 received.)

21 MS. ALAM: Can we just take a -- a short break?

22 JUDGE GREEN: Yes. Um, why don't we take a 10-minute
23 break.

24 MS. ALAM: Okay.

25 JUDGE GREEN: Thank you.

1 A Uh, to the best of my recollection, yes.

2 Q And when he started off talking, he told -- who was -- who
3 was there again, on behalf of 342?

4 A Myself, Richard Abondolo -- I believe Lou Loiacono, and
5 Lou Sollecito.

6 Q So when Mr. Catalano started up, he said to everyone in
7 attendance, that Key Food would not agree to the A&P contract;
8 correct?

9 A Uh, he did say that that day; yep.

10 Q He said that Key Food would not agree to the pension?

11 A What he said was that Key Food would not take the pension
12 -- that was the A&P pension -- although, they would talk about
13 retirement benefits; maybe a 401k, and some other things. But
14 what he was saying was -- is -- we wouldn't pick up the pension
15 that the A&P company had provided previously to the A&P people.

16 Q So, Mr. Catalano said that he would propose a change in
17 the pension; correct, as compared to --

18 A Yeah, he didn't say pension. What he said was -- is -- he
19 made clear that he wouldn't continue to contribute. Local 342,
20 by the way, didn't have a pension that was being contributed
21 to. So it didn't really affect us. But he had told the other
22 locals that if they were -- if A&P was contributing to one of
23 their local union pension funds, then they weren't going to do
24 that. And then he talked about retirement benefits, other
25 alternatives.

1 to that. The closing that we're talking about is not
2 necessarily the store itself closing; right? It's -- it's a
3 real estate closing that we're talking about.

4 Q Correct --

5 A Okay.

6 Q -- correct; yes.

7 A Then, yes; you're correct.

8 Q Did Mr. Catalano also open this meeting by saying that Key
9 Food would not provide healthcare benefits for part-timers
10 under 30 hours a week; correct?

11 A Uh, he brought that up that day.

12 Q He announced at that meeting that Key Foods would not pay
13 the same rates of pay to certain A&P employees; correct?

14 A Yes.

15 Q During that meeting, he said that there would be a
16 proposal for reductions in pay and lump-sum bonuses; correct?

17 A The way I recollect it, is that he said that the unions
18 needed to look at the pay; like he didn't make the specific
19 proposals that came later. So, in other words, amounts
20 necessarily were not spoken about specifically; what he said
21 was that, um, you know, the unions needed to understand that if
22 the company didn't have something they could operate with,
23 which would include changes in pay, possible reductions.

24 But he wasn't really specific that day as to what the
25 reductions would be, or whether all people had to -- you know,

1 it wasn't that specific. Um, but he mentioned that they would
2 want some help. And he said that he was a big fan of lump-sum
3 bonuses, and that they were going to want the unions to look at
4 a lump-sum bonus in place of a raise in some instances; but he
5 wasn't specific.

6 Q He also at this meeting -- again, July 28, 2015 --
7 announced the concept of buyouts for certain employees;
8 correct?

9 A Yes. Except he didn't call them buyouts.

10 Q What -- what term did he use?

11 A He used involuntary buyouts. So, you know, to me, buyout
12 and severance is different than an involuntary buyout; there
13 was a lot of discussion about that as a matter of fact that
14 day. An involuntary buyout is a layoff. And the union said
15 that to him when he brought it up. But he had invented that
16 term instead.

17 Q So when Mr. Catalano said, "involuntary buyout," you
18 interpreted that as --

19 A A layoff.

20 Q -- a separation that --

21 A That's correct.

22 Q -- the employee may not desire; correct?

23 A That an employee may not desire?

24 Q Correct.

25 A I can't tell you that I was thinking about what the

1 A Okay. Yeah.

2 Q Okay. Could you read those lines into the record, please.

3 A Sure.

4 "So their concept -- this is Mister --

5 JUDGE GREEN: And identify who is speaking.

6 THE WITNESS: -- Mr. Catalano speaking.

7 "So their concept was going to be a proposal
8 which had reductions in pay, and that he would throw
9 in some lump-sum bonuses. And then he announced his
10 concept of buying out senior A&P employees, who were
11 at the highest rate of pay. And Key Food was going
12 to give us a proposal for an involuntary buyout
13 because they did not want to make offers of
14 employment, and have no intention of keeping all the
15 full-time senior people that worked in the stores."

16 Q Thank you. Now, if you could continue holding that
17 affidavit. You testified --

18 A Sure.

19 Q -- just a few minutes ago that when you gave that
20 affidavit, you tried to be as honest and complete with your
21 recollection; do you recall that testimony?

22 A Yes.

23 Q And that's an affidavit that you gave a couple months
24 after, uh, the closing of the stores; correct?

25 A Yes.

1 time?

2 A I don't know that.

3 Q Okay. Now, did there ever come a time during the numerous
4 bargaining sessions -- indeed, how many were there?

5 A I don't know.

6 Q Eight, 10?

7 A At least 10.

8 Q At least 10. Okay. Did there ever come a time that
9 Mr. Abondolo said in your presence that he knew that there were
10 too many full-time employees in the A&P stores, and that he
11 understood why Key Food Co-op and its constituent members were
12 desirous of not hiring them all in the form of giving them the
13 buyout?

14 Did he ever say he understood that there were too many
15 employees, full time, in the store to make a go of it? Use
16 whatever words he did use, if he did?

17 A All right. You added in your buyout -- your involuntary
18 buyout concept -- so, is that part of what you're asking me to
19 remember, if he was okay with that?

20 Q No.

21 A Okay.

22 Q Did there ever come a time that he said, I recognize that
23 there are too many full-timers in the A&P stores?

24 A I don't remember him saying it that way. But I do --

25 Q How did he say it --

1 A -- but I do recollect that he said that, he understood
2 that in some of the stores, he -- he would use the term, maybe
3 "heavy." That was a term that he used; right?

4 Q And I --

5 A So -- but some of the stores. He didn't say all of the
6 stores; he said some of the stores may be heavy, and we can
7 discuss it. Um --

8 Q All right. And --

9 A Okay.

10 Q -- by that he meant that, if you know -- because it's his
11 word -- that there were too many full-timers in the store?

12 A Well, saying that there were too many -- what he said was
13 -- is -- he believed that the stores were heavy; that's what I
14 recollect --

15 Q Okay.

16 A -- that's my testimony. And what that means is different
17 than there's too many people in the stores, but.

18 Q Okay. Throughout July through October -- and I think
19 you've testified to this, so pardon me if I'm redundant -- you,
20 personally understood as a representative of Local 342 that the
21 Key Food Co-op and its constituent members would not agree to
22 go forward on the same terms as the A&P contract?

23 A "Agree to going forward on the same terms"?

24 Q The layman's term is assume, but we're not using --

25 A Yeah. No, you made it --

1 you used, and I also assume that that refers to Pickwick,
2 Mandell -- Larry Mandell, Dan --

3 A Their contracts --

4 Q -- Supreme --

5 A -- are similar.

6 Q Yeah. But --

7 A Yeah.

8 Q -- did we say that we're not going forward on those terms?

9 A On October 12th -- and I've testified to this already --

10 Q Yeah.

11 A -- you started out the bargaining saying, you absolutely
12 would not accept any of those Key Food contracts. And then I
13 gave you a Key Food contract, and we took a break. When you
14 came back in, you said there were certain things that might
15 work in there; like, you liked the part-time butcher.

16 Q Yes.

17 A Okay.

18 Q Okay --

19 A So -- so at that point in time, I didn't take it that you
20 were tell -- telling me that you'll never take the Key Food
21 contract. In addition -- and on October 12th, if you recall --
22 you had said to me about the different Key Food contract, that
23 if different Key Food -- different of the Respondents that were
24 in this transaction had this agreement already with Local 342,
25 and they wanted to take that, that was one thing. But --

1 JUDGE GREEN: Okay.

2 BY MR. CATALANO:

3 Q Yesterday, you testified -- the other day -- withdrawn.

4 The other day you testified that on July 28th, Key Food members
5 said they don't want a union; is that -- did I hear that
6 correctly?

7 A Uh, no, I testified that you explained to us that some of
8 the Key Food members really didn't want a union. They had
9 never had a union in there before; that they were skiddish
10 about that. Uh --

11 Q I said that they didn't want a union, but I'm there
12 representing them to enter into an agreement --

13 A Yes. You did say that --

14 Q -- or I said that they weren't used to it?

15 A No. You said that --

16 Q Okay. All right.

17 A Well, you didn't me let finish, but --

18 Q Finish, please go; finish.

19 A Okay, I'm just saying, you -- you said during that meeting
20 -- that I was at on July 28th -- that some of those Key Food
21 members really didn't want a union. And in fact, Ms. Konzelman
22 described, uh, you know -- which she's always very nice, uh, to
23 balance you off -- that, uh, you know, that's why the Key Food
24 Co-op was actually bargaining on behalf of everybody because
25 they were going to buy the stores. And that's why she didn't

1 A No, sir. Let me tell you why. Because it -- it caused me
2 to be confused -- being perfectly honest with you -- it has
3 John Durso's name in the top left-hand corner. And I said to
4 -- and you said, this is the contract that 338 and Local 1500
5 have agreed to, and Local 342 needs to have this contract; this
6 is the one. That's how we started out, you're a little fussy.

7 Q Fussy --

8 A Just a little bit --

9 Q -- I'm happy. No --

10 A No, I know, you're a swell -- listen -- but you're a
11 little -- you said, this is the contract that you guys have to
12 have. And we started out that way. And then, you know, uh, I
13 said to you, are you telling me that Local 338 and Local 1500
14 signed this document?

15 And you said to me, we have an agreement, and I want
16 Local 342 -- you have to take this agreement too. You were
17 insistent on it. And I said, well, we aren't going to agree to
18 that. And I can check with 1500 and 338 myself to find out --

19 Q Okay. What --

20 A -- that kind of stuff.

21 Q -- date was that?

22 A That was on the 12th.

23 Q Okay. And was that document that you're referring to --
24 the one that has been agreed to or I said that we agreed to --

25 A The you held up as -- yeah --

1 start with that; was that a proposal --

2 A I do remember -- I do remember a proposal about part-time
3 severance, and I remember it was discussed.

4 Q And do you remember Key Food saying, fine, we'll give to
5 those part-timers who were not hired from A&P a part-time
6 severance based upon years of service with A&P?

7 A I don't recollect those exact terms. But I do remember
8 you saying that you didn't think that a part-time severance was
9 going to be a problem, and that, uh -- I think you'd said that
10 you had discussed it with 338 and 1500, and that that could be
11 worked -- I do remember saying -- you saying that can be worked
12 out; I don't see that --

13 Q And did it ever come --

14 A -- as an issue.

15 Q -- to your attention, or were you told, that that part-
16 time severance arrangement stemmed from the construct that the
17 bankruptcy court had authorized in the 2012, uh, um conclusion
18 of the first bankruptcy -- that that part-time severance
19 provision, uh, was in the terms sheet for all the unions; do
20 you remember that --

21 A Was there a discussion about that on the 21st?

22 Q Or at any time?

23 A Yeah. I don't recall that at all, no.

24 Q Okay.

25 A I don't recall that it had anything to do with the

1 terms and conditions for the rest of agreement.'" "

2 So, Mr. Abondolo is saying that he says that this MOA is what
3 we had agreed upon, and he would be willing --

4 MS. ALAM: Objection, Your Honor. The document --

5 BY MR. CATALANO:

6 Q Is he saying that --

7 MS. ALAM: -- speaks for itself.

8 MR. CATALANO: Okay --

9 JUDGE GREEN: Sustained.

10 MR. CATALANO: Okay.

11 BY MR. CATALANO:

12 Q Now, did -- on November 2, or thereafter -- Key Food tell
13 you that this was -- this document was "unacceptable" or would
14 not be agreed to?

15 A Yes.

16 Q Okay. And thereafter, were, uh -- was there a subsequent
17 agreement that was forwarded by, uh -- um, 342 to the Key Food
18 entities; do you recall?

19 A I believe so.

20 Q Okay. Now --

21 MR. CATALANO: Noor, for the sake of expedition here, is
22 this in evidence on November 23?

23 MS. ALAM: May I take a look at it? Let me just check,
24 but I think it might be.

25 MR. CATALANO: Okay. Scott says, no; but he's the only

1 November 30th; that's why I'm trying to be accurate. And what
2 I'm saying to you --

3 Q I know.

4 A -- is -- okay.

5 Q And I asked you, was the great majority of the Key Food
6 stores, if you want to use, first purchased the real estate or
7 leased the real estate --

8 A That Key Food owned those stores --

9 Q Leased them.

10 A Or lease (sic) them.

11 Q Yeah.

12 A Whatever it is.

13 Q Was the great majority of the ones that had A&P and 342 in
14 them before, were they operating as supermarkets by
15 November 23; if you know?

16 A Uh, to the best of my recollection, the majority certainly
17 would have been.

18 Q Okay. Now, let's take a look at A, "Offer of Employment."
19 Is there any difference between this document -- uh, well,
20 first of all, was this acceptable? Are you asking -- let's go
21 to the November 23 --

22 MR. CATALANO: Is it GC, what?

23 MS. ALAM: 20 --

24 MS. TOOKER: 20.

25 BY MR. CATALANO:

1 Q -- 20. Okay. So, your proposal, was this agreed to,
2 GC-20 by Key Food?

3 A No.

4 Q Okay. Now, is there any difference between the term --
5 the provision calling for "Offer of Employment" with the
6 November 2 document?

7 MR. E. MILNER: Objection. The documents speak for
8 themselves.

9 MR. CATALANO: Yeah, I know; but I want to get to the
10 intent.

11 THE WITNESS: I need that document back --

12 JUDGE GREEN: Well, sustained as to -- yeah --

13 MR. CATALANO: Okay.

14 JUDGE GREEN: -- sustained as to the question as to --

15 BY MR. CATALANO:

16 Q Take a look at the November 2 --

17 JUDGE GREEN: -- whether there's any difference --

18 BY MR. CATALANO:

19 Q -- and let's compare the offer of employment.

20 JUDGE GREEN: What is that document; what exhibit number?

21 THE WITNESS: It's --

22 MR. CATALANO: GC-17 and GC-20.

23 BY MR. CATALANO:

24 Q Now, as of November 23, 342 is proposing that there could
25 be a buyout of any full-time employee who had previously been

1 BY MS. TOOKER:

2 Q All right, so when you took over the operations of the
3 Union Square store, you kept the store manager Sharon, and
4 correct me if I'm pronouncing her name incorrectly, I believe
5 it's Gowon.

6 A Um-hum.

7 Q Okay. So she was the store manager for -- for Food
8 Emporium before you took over?

9 A Yeah.

10 Q Okay. And you kept her on a store manager?

11 A Yes.

12 Q Okay. And the store manager, she's the highest-ranking
13 manager in the store; is that right?

14 A Correct.

15 Q Okay. And Sharon, as the store manager, could she hire
16 employees?

17 A Yeah.

18 Q And could she discipline employees if they engaged in
19 wrongdoing?

20 A Yes.

21 Q Okay. And could she fire employees if they engaged in
22 wrongdoing?

23 A Yes.

24 Q Okay. And Sharon was responsible for approving employee
25 schedules; is that right?

1 Q Very high wage earners.

2 A Yes.

3 Q Okay. And then at the time you took over the store, you
4 weren't very familiar with the employees, were you?

5 A No.

6 Q No, okay. But Sharon, the store manager, she had worked
7 with them for a number of months; is that right?

8 A I don't know how long she worked with them.

9 Q Okay. But she had worked for them -- with them prior to
10 you coming there?

11 A Sorry?

12 Q She had worked with them prior to you taking over the
13 store?

14 A Yes. But that could have been for a day or a week or a
15 month.

16 Q Okay. So you asked Sharon, though, to decide which of the
17 employees would be hired and who wouldn't; is that correct?

18 A Yeah. Well, what we did ask her is which employees held
19 promise and which seemed to be lackluster in their performance.

20 Q Okay. And so she made a list of you -- for you of these
21 lackluster employees?

22 A She didn't make a list. She told us who she thought would
23 not work out so well probably, and who was an excellent worker.

24 Q Okay. So -- and you relied on her representations?

25 A In most cases.

1 you worked at the Union Square store?

2 A Yes, she was.

3 Q Okay. And about how long was Sharon the store manager?

4 A I want to say probably about seven or eight months, if my
5 memory serves me correctly. Seven to eight months.

6 Q Okay. And were you in a union when you worked for Food
7 Emporium?

8 A Yes, I was.

9 Q Which union were you in?

10 A 342.

11 Q Okay. Which employees did Local 342 represent in the
12 Union Square store?

13 A The whole store. It was wall-to-wall.

14 Q Okay. And were department managers considered part of the
15 union?

16 A Yes, we were.

17 Q Okay. And you said that you were the shop steward for the
18 union?

19 A Yes.

20 Q Okay. And when did you first become the shop steward?

21 A Probably about -- I came to the store like almost 2000. I
22 want to say 2002 I was voted in.

23 Q Okay. And what were your responsibilities as shop
24 steward?

25 A Pretty much I was the person they talked to, dealt with

1 before going to the union. I was the union representation for
2 the store. Just dealing with day-to-day issues, whether it was
3 scheduling, fairness, unfairness, just any problems that arose
4 in the store, with the union members as well as the management.
5 So I was like the middleman for the most part.

6 Q Okay. And were there any other employees at the Union
7 Square store that held a position with the union?

8 A Yes. Well, it was me and we had two other stores that
9 closed, so the shop stewards that were there, they came to our
10 store, working in different departments. But so if I wasn't
11 there, you always had somebody to have union representation.
12 So it was me and two other stewards that were there.

13 Q Okay. What were the name [sic] of those two other
14 stewards?

15 A Dena, I'm not sure her last name, and Jhana. So it was
16 three of us.

17 Q Okay. And so what were the most common issues that came
18 up in the store?

19 A Probably -- probably hours. It was probably the hours.
20 Hours, working Sunday. That was number one probably.

21 Q Okay.

22 A Yeah, that was number one.

23 Q So when you say problems with the hours, what kind of
24 things are you talking about?

25 A Well, you know, you have to be fair with it, you know. I

1 Q And how did you try to resolve the problems?

2 A See what the issue was. Go to the manager so they can put
3 in a report. You go -- I'm sorry; you got to put in a ticket
4 to get anything repaired in the store.

5 Q Sorry; which manager for permission?

6 A Sharon. It has to be Sharon or -- there was a couple
7 managers we had. We had to two co-managers. One name was
8 Rizoc (ph), one name was -- I forgot his name, but anyway, I
9 would go to them, and they would put the ticket in. I was -- a
10 lot of time, that was their task to do. So.

11 Q And how often did you have to talk to management about
12 repairs?

13 A I want to -- I want to say too often because it was just
14 an ongoing issue in certain departments. So at least once a
15 week. Once or twice a week we had issue with that.

16 Q All right. Did you work with an employee named Madeline
17 Gomez at the 14th Street store?

18 A Yes.

19 Q Okay. What department did Madeline work in?

20 A She worked in the deli department.

21 Q Okay. Do you recall ever handling any issues reported by
22 Madeline?

23 A Yes.

24 Q Okay. What sort of issues?

25 A Well, her issues was -- was pretty much her hours and

1 Sunday. Another one -- her hours and Sunday. Not getting her
2 two Sundays for the month, because you know, we had to do a
3 rotation, and a lot of times when it was time to be -- that
4 rotation came to her, she wasn't getting the Sunday she was
5 supposed to get.

6 Q Okay. When you say you have to do a rotation, what does
7 that mean?

8 A You -- you work every other Sunday. I mean, not
9 department head, which is what I was; I worked every Sunday.
10 But people that wasn't department head, who was full-time, they
11 work every other Sunday, so it was a rotation. So if you in a
12 department with five full-timers, this is your Sunday, this is
13 your Sunday, in that order. It can't be one full-timer get
14 three Sundays and the other one get one Sunday; that's not
15 fair. So that was her issue.

16 Q Okay. And is there -- the Sunday policy, is -- does that
17 come from somewhere?

18 A Yes, the contract. The union contract.

19 Q Okay. And how did you resolve or -- withdrawn.

20 What, if anything, did you do to resolve Maddie's issue
21 with Sundays?

22 A Again, I would go to the department head, the deli
23 manager, his name was Orlando, and find out why isn't Maddie
24 getting her -- her Sundays? She said she missing Sundays. And
25 then he would say, you know, it's not him doing the schedule,

1 cut -- go to the store manager. Go to Sharon. And that's what
2 I would do.

3 Q So what happened when you went to Sharon?

4 A Go to Sharon and -- it was always a back and forth cat and
5 mouse game. Well, she's not the one doing the cutting, go to
6 Orlando.

7 Q Um-hum.

8 A And Orlando's the deli manager, so Maddie would miss her
9 Sundays. And then she would be back on track to it, then you
10 would be -- you like a streak going, she got every other
11 Sunday, and then another month later, here we go again. So I
12 would go to Orlando, then take it to Sharon.

13 Q Okay. And do you remember what kind of time period this
14 was happening in? Like when was this happening?

15 A With Maddie?

16 Q Yeah.

17 A Quite often. Often. Some people I just done forget.
18 Quite often.

19 Q Okay.

20 A Yeah.

21 Q Do you remember about how many times you talked to Sharon
22 about Maddie and Sundays?

23 A Often. Often.

24 Q Like a number? Or range?

25 A I want to say probably every other week. Every other

1 week.

2 Q Okay.

3 A Or maybe twice or three times a week. I mean, there's
4 four weeks in a month, so probably the Sunday she's supposed to
5 work.

6 Q Um-hum.

7 A Those Sundays, so every other -- every other week.

8 Q Okay. And just so the record's clear, if we refer to
9 Maddie, does that mean Madeline Gomez?

10 A Madeline, I'm sorry; that's what we call her. Yes,
11 Madeline Gomez.

12 Q All right.

13 A Um-hum.

14 Q Yeah, okay. I think I did it, too.

15 A I'm sorry. Yeah.

16 Q All right. Did you work with an employee by the name of
17 Keesha Fields in the Union Square store?

18 A Yes, I did. Um-hum.

19 Q And what was her position?

20 A Keesha was the bakery manager.

21 Q Okay. And do you recall handling any union issues that
22 were reported by Keesha?

23 A Yes.

24 Q Okay. And what was that issue?

25 A The main issue that I remember, it was probably with the

1 injury that she had with her hand -- her wrist.

2 Q Okay.

3 A She had a injury that she dealt with the pain for a very
4 long time till finally she had to go get surgery.

5 Q Okay.

6 A And she was out of work for a little while, I can't tell
7 you how long she was out of work, but of course the department
8 suffered because of that, but she really was injured. She
9 brought in documentation why she couldn't come to work and how
10 long she was going to be out of work. And of course, by her
11 not being there it was an issue with that.

12 Q Okay. So what was -- so why was there an issue that you
13 needed to deal with as the union?

14 A Because she said she was given a hard time. You know, she
15 was almost like rushed to come back to work.

16 Q By whom?

17 A By the store manager, Sharon.

18 Q Do you remember when this happened?

19 A Oh, man. Okay, we closed in November, probably I want to
20 say maybe three months before we closed.

21 Q Okay.

22 A Yeah. Definitely right before we closed.

23 Q All right. And did you work with an employee by the name
24 of Carlos Colon?

25 A Yes. In the meat department.

1 Q Okay.

2 A Yeah.

3 Q And do you recall handling any issues reported by Carlos?

4 A Carlos' was -- his issues were just he has a situation
5 where his schedule kept getting -- he kept getting split
6 shifts.

7 Q What are split shifts?

8 A Now, he's a -- we are full-timers, we don't get split
9 shifts. You get your regular 7:00 to 4:00, 7:00 to 4:00, and
10 your day off. I think he was scheduled like a 12:00 to 8:00
11 or -- and they had him doing like a 9:00 to 6:00. A split
12 shift is when you have two different schedules. So that
13 happened a lot with him. I think he was getting his Sundays,
14 if my memory serves me certainly, but a lot of times it was
15 split shifts and a couple of things in the department he wasn't
16 happy with.

17 Q Okay.

18 A Yeah.

19 Q And did you -- what did you do to help Carlos with this
20 situation?

21 A Addressed with the meat manager, his name was Dave. Go to
22 Dave, and then of course the next step would be going to
23 Sharon.

24 Q All right. And do you recall working with an employee by
25 the name of Maria Ortega?

1 Q Okay.

2 A Yeah.

3 Q And do you recall handling any issues reported by Carlos?

4 A Carlos' was -- his issues were just he has a situation
5 where his schedule kept getting -- he kept getting split
6 shifts.

7 Q What are split shifts?

8 A Now, he's a -- we are full-timers, we don't get split
9 shifts. You get your regular 7:00 to 4:00, 7:00 to 4:00, and
10 your day off. I think he was scheduled like a 12:00 to 8:00
11 or -- and they had him doing like a 9:00 to 6:00. A split
12 shift is when you have two different schedules. So that
13 happened a lot with him. I think he was getting his Sundays,
14 if my memory serves me certainly, but a lot of times it was
15 split shifts and a couple of things in the department he wasn't
16 happy with.

17 Q Okay.

18 A Yeah.

19 Q And did you -- what did you do to help Carlos with this
20 situation?

21 A Addressed with the meat manager, his name was Dave. Go to
22 Dave, and then of course the next step would be going to
23 Sharon.

24 Q All right. And do you recall working with an employee by
25 the name of Maria Ortega?

1 A At time and a half.

2 Q Okay. Okay, when you say that you worked two or three
3 times on Sundays, that was two or three times ever? Or two or
4 three times in that timeframe?

5 A In Union Square.

6 Q Okay. All right, and who was the last store manager that
7 you worked with?

8 A Sharon.

9 Q Okay. Do you know her last name?

10 A I don't recall her -- I can't remember.

11 Q Okay. And about how long was she your store manager at
12 14th Street?

13 A With me? Like a little over a year.

14 Q Okay. And were you a member of a union when you worked at
15 Food Emporium?

16 A Yes.

17 Q Which union was that?

18 A Local 342.

19 Q Okay. And have you ever had an elected position with the
20 union?

21 A I was the -- a shop steward for them.

22 Q Okay. And when did you become the shop steward?

23 A The year 2000.

24 Q And which store were you working in at that time?

25 A 26th Street and 8th Avenue.

1 Q Okay. And when you were transferred to Union Square, was
2 there another shop steward there?

3 A Yes, Tamika. Tamika Jones.

4 Q Okay. And so what was your role since Tamika was the shop
5 steward there?

6 A I also participated in -- like, when she wasn't at work,
7 her days off.

8 Q Okay.

9 A Vacation time.

10 Q Okay. So when she was not there or on vacation you would
11 act as shop steward?

12 A Yes.

13 Q Okay. Were there any other employees at that store who
14 also filled in for Tamika?

15 A No. We had another shop steward that was also -- her
16 store closed.

17 Q Okay.

18 A And she was transferred to 14th Street. Her name is
19 Jhana.

20 Q Okay. And when you're -- when you were acting as shop
21 steward, what were your duties?

22 A To call the union whenever any of the employees had some
23 kind of a problem in the store with, you know, as far as like
24 the manager or scheduling that was not right, or -- any
25 situation that they had. They would tell me and I would inform

1 the union.

2 Q Okay. And how often did employees come to you with
3 complaints or problems?

4 A Maybe twice or three times a week.

5 Q And so what were the more common issues that you learned
6 of?

7 A It was either time off that they asked for, their vacation
8 time, or the scheduling. Schedules were changed without them
9 knowing.

10 Q What do you mean by the schedules were changed?

11 A Like, if they were off on a Saturday and Sunday, they put
12 them on without letting them know that that was going to be
13 changed, you know.

14 Q So when employees brought their -- these complaints and
15 issues to you, what did you do?

16 A I would contact either Steve or Margaret from the -- from
17 Local 342.

18 Q Okay. And what did Margaret usually do when you called
19 her?

20 A She would call the stores, speak to Sharon or she would
21 just make a -- the time to stop by the store and discuss the
22 situation with the manager.

23 Q Okay. And how often did she usually come into the store?

24 A How often?

25 Q Um-hum.

1 A Every -- every time that it -- there was a situation she
2 would come to the store, you know.

3 Q So how many times, like a month, do you think that
4 happened?

5 A Two, three times a month.

6 Q And when Margaret was coming to the store, what did she
7 do?

8 A Well, she pull -- if I was there, she would call me and we
9 would talk about the situation, the problem that was going on.
10 And then we would go to the office and she would -- I would
11 call Sharon to come into the scanning room, and they would
12 discuss the matter.

13 Q Were you there when Margaret and Sharon discussed matters?

14 A Yes.

15 Q Okay. Was there anybody else that was usually part of
16 this?

17 A It was either me and -- and Tamika.

18 Q Okay.

19 A If Tamika wasn't there, I was with her.

20 Q Okay. Did you work with Maria Ortega at the Union Square
21 store?

22 A Yes.

23 Q Okay. What was Maria's position?

24 A She was the -- she worked in the café.

25 Q Okay. And was Maria active in the union?

1 MR. CATALANO: Objection.

2 JUDGE GREEN: Overruled.

3 BY MS. TOOKER:

4 Q You can answer the question.

5 A She -- she was very active. Very, very. Yes.

6 Q Okay. And how was Maria active in the union?

7 A She would always get involved. Like, if there was
8 problems, she was -- she spoke very well in Spanish, so
9 whenever there was a situation, someone couldn't translate or
10 whatever, she would help that employee with the translation.
11 And she would call and let us know. If I wasn't there, she
12 would let me know, you know, Dena, can you contact Margaret or
13 Steve and that was done. But she was always involved.

14 Q Okay. When you say that she helped people with
15 translations, what kind of -- who was she --

16 A Spanish.

17 Q -- translating for?

18 A Like, there was a few people that didn't speak very well
19 in English, so --

20 Q And who were they? Those people who were
21 Spanish-speakers, who were they wanting to speak to?

22 A The manager. When they wanted to -- when they had a
23 problem, so she would help them translate to the store manager,
24 whatever. And -- or not. Then she would call me and let me
25 know about it.

1 Q Okay. When -- when you said that she brought -- she
2 translated for the employees to talk to the store manager, was
3 that Sharon?

4 A Yes, Sharon.

5 Q Okay. All right, and so what kind of things did Maria
6 report to you?

7 A Things like Sharon changing the schedule. Or if they
8 asked for a Sunday, to work on a Sunday, she would -- she
9 didn't put them on the schedule for Sundays when they wanted to
10 work overtime.

11 Q Okay. Were there any specific issues that were problems
12 that Maria was having that she got to you?

13 A Well, Maria had that problem, too. She wanted to work
14 like the holiday or Sunday, and she wouldn't schedule Maria.

15 Q Okay. Do you remember when Maria was having this problem?

16 A Well, I remember there was 4th of July and that was the
17 holiday. And November was Thanksgiving holiday. Thanksgiving
18 Day.

19 Q Okay. And was Sharon the supervisor at the time of --

20 A Yes.

21 Q -- these issues?

22 A Store manager.

23 Q Okay. Thank you. And so when Maria reported this to you,
24 what did you do?

25 A I called Margaret.

1 Q Okay. And do you what, if anything, Margaret did about
2 it?

3 A Well, she called her and told her that they were entitled
4 to have those holidays.

5 Q She called who?

6 A Sharon.

7 Q Okay. All right, were you ever present when Maria asked
8 Sharon for -- to be scheduled for any Sundays or holidays?

9 A Yeah. There was -- yeah. It was for a Sunday, and I
10 remember her asking Sharon.

11 Q So who was it who asked Sharon?

12 A Maria Ortega.

13 Q Okay. And where were they when they were having this
14 conversation?

15 A Right in front of the self-checkout --

16 Q Okay.

17 A -- section there. By the café.

18 Q And -- okay. Do you remember when this conversation took
19 place?

20 A This was like the beginning of November.

21 Q Of what year?

22 A Of 2015.

23 Q And do you remember what Maria said?

24 A She asked her if she could schedule her for Sunday.

25 Q Do you remember what Sharon said?

1 A And she said no, that she couldn't do it. And she just
2 walked away. She had the habit of just walking away and
3 leaving you with the words in your mouth.

4 Q Do you know if Maria was ever scheduled for Sunday?

5 A She didn't put her on for Sunday.

6 Q Were there any problems that you ever tried to resolve
7 directly with Sharon without calling Margaret or Steven?

8 A Yes. Plenty of times, but --

9 Q Okay. What kind of things?

10 A Things like the scheduling of the employees, which is very
11 simple, but she -- she wouldn't really pay attention. She
12 would just walk away.

13 Q Okay. Did Sharon ever say anything about how she felt
14 about the union?

15 A Yes.

16 Q Okay. What did she say?

17 A She would say that the union was full of --

18 Q You can say it.

19 A Full of shit.

20 Q Okay. And do you remember when she said that?

21 A Yeah, that was during the period that we were going
22 through -- the time that we didn't know we were going to be
23 laid off or they were going to keep us in the store or
24 whatever. Like October into November.

25 Q Of what year?

1 didn't in November of 2015?

2 A No.

3 Q Okay. Now, when Sharon said that the union is full of
4 shit, she said that because she believed, according to your
5 words, that they weren't there for you; isn't that what she
6 said?

7 A Right.

8 Q How often -- who makes schedules in the store? In a
9 department.

10 A The store manager.

11 Q Okay. The store manager makes them or approves them?

12 A I don't know what they do.

13 Q What is a department head for? Like the produce
14 department head, the grocery department head --

15 A I don't know their job. I don't know.

16 Q You don't know whether they make the schedules?

17 A I don't know.

18 Q How many hours a day do you work in the store?

19 A Eight hours.

20 Q And did there ever come a time you had a conversation with
21 a department head about whether he or she was making a
22 schedule?

23 A No.

24 Q You don't know that they make schedules?

25 A If they made their schedules, I don't know that. That

- 1 A Yes.
- 2 Q Okay. And who was the shop steward?
- 3 A Tamika.
- 4 Q Okay. And was there ever a time where you had a problem
5 that you brought to Tamika to resolve?
- 6 A Yes.
- 7 Q Okay. Do you remember when that was?
- 8 A This was, I would say, maybe in April/May.
- 9 Q Of what year?
- 10 A 2015.
- 11 Q Okay. And what was the problem?
- 12 A I had to get a operation on my wrist, and I needed some
13 time off, and the store manager, Sharon, was kind of giving me
14 a hard time about it, so I had to let my shop steward know.
- 15 Q Okay. So you talked to Sharon about the time you needed
16 to take off?
- 17 A Um-hum.
- 18 Q Okay. What did Sharon say when you talked to her?
- 19 A Oh, she had the same problem and doesn't really need cause
20 for an operation and who's going to run the department. So she
21 was giving me a hard time about that.
- 22 Q Okay. So you talked to Tamika about this?
- 23 A Yes.
- 24 Q Do you know what Tamika did?
- 25 A Well, she said as long as I had my proper documentation

1 from the doctor I should -- I was fine. So, I was fine.

2 Q Okay. And did you take off the time that you needed?

3 A Yes.

4 Q Okay. Do you know if Tamika got the union involved at
5 all?

6 A I'm not sure.

7 Q Okay. How much time did you take off?

8 A Like a week and a half.

9 Q Okay. And eventually that request for the time off was
10 approved?

11 A Yes.

12 Q Okay. And was Sharon the person who approved it?

13 A Well, she had no choice because I had the documentation
14 from the doctor.

15 Q Okay. And when you returned from your sick leave, did
16 Sharon treat you differently at all?

17 A Yes.

18 Q How did she treat you differently?

19 A If I was five minutes late it was a problem. If I had a
20 problem getting the -- products out on time, that was a
21 problem, because of my wrist I was limited. So I was working a
22 little bit slower than what I had in the past because of the
23 operation.

24 Q Um-hum. Had you ever come into work late prior to your
25 surgery?

1 A Yes.

2 Q Okay. About how many times, do you know?

3 A Two or three times.

4 Q Okay. Did Sharon ever say anything to you about coming in
5 late those two or three times?

6 A No, because it was only like 5, 10 minutes, so it wasn't
7 really an issue.

8 Q Okay. Did she know about you coming in late those days?

9 A Yes.

10 Q Okay. How did she know about it?

11 A Well, she could check the timeclock. She could check our
12 time, see what time we punched.

13 Q Okay. And had you ever put the products out late for any
14 reason prior to your sick leave?

15 A Yes. Um-hum.

16 Q Okay. And did Sharon know about that?

17 A Yes.

18 Q Okay. About how many times do you think the products went
19 out late prior to your sick leave?

20 A Once every two weeks. Not that -- not that much.

21 Q Okay. And did Sharon ever say anything to you about it?

22 A No.

23 Q Okay. Did you -- let's see -- oh, withdrawn.

24 All right, at some point did you find that -- or did you
25 learn that Key Food was going to take over the Food Emporium

1 A Yes. Juana Diaz.

2 Q Were you an active member in the Union?

3 A Yes.

4 Q What sort of things did you do to be a member of the
5 Union?

6 A In the -- I would participate in the meetings.

7 Q Okay. How often were there union meetings?

8 A There were two big ones a year. Sometimes on occasions,
9 how would you say, like for training in Brooklyn and the
10 office, some Mondays.

11 Q When were the two big ones a year held?

12 A One in December and the other I don't remember. Around
13 the mid of the year.

14 Q Alright. Did Sharon know that you went to union meetings?

15 A Yes.

16 Q How did she know?

17 A Because we would work different schedules and we would get
18 together in the store.

19 Q Who would you get together with in the store?

20 A I would wait for Tina, Juana, Tamica, because we worked
21 different schedules.

22 Q Where would you wait for these other employees?

23 A Inside the store.

24 Q Was there a specific spot inside the store?

25 A Yes.

1 Q Where was that?

2 A Where people would sit to eat, which was part of the café.

3 Q Okay. And how long would usually wait in the seating
4 area?

5 A Around an hour, an hour and a half.

6 Q Alright. And did Sharon see you sitting there?

7 MR. WICH: Objection.

8 THE WITNESS: Yes.

9 JUDGE GREEN: It's overruled.

10 MS. TOOKER: So alright.

11 JUDGE GREEN: But if we can find out who was there --

12 MS. TOOKER: Yes, that's --

13 BY MS. TOOKER:

14 Q How did you know that Sharon could see you?

15 A Because she would ask what I was doing there.

16 Q And what did you say?

17 A That I was waiting for my coworker to go to the meeting.

18 Q Did you say which meeting?

19 A Yes.

20 Q And which meeting was that, that you said?

21 A The Union one.

22 Q Okay. Did the Union ever distribute materials or
23 information, during the meetings?

24 A Excuse me?

25 Q Did the Union ever distribute materials or information,

1 during the meeting?

2 A Yes.

3 Q Okay. What sort of material?

4 A Like the union contact.

5 MS. TOOKER: Excuse me, the contact or contract?

6 THE INTERPRETER: Contact.

7 MS. TOOKER: Okay. Union --

8 THE INTERPRETER: Union contact.

9 MS. TOOKER: Okay.

10 THE WITNESS: Contract.

11 MS. TOOKER: Oh.

12 THE WITNESS: And some information written for the people

13 that would not go to the union meetings.

14 BY MS. TOOKER:

15 Q Okay. So what did you do with this material that you got

16 at the union meetings?

17 A I would hand that out at my lunch.

18 Q Okay. Where did you hand it out?

19 A Inside the store.

20 Q Okay. Who did you give it to?

21 A Who I would give it to?

22 Q Yeah, who did you give the material to?

23 A To my coworkers.

24 Q Okay. Do you remember which coworkers specifically?

25 A Yes.

1 MS. TOOKER: Of course, yeah.

2 THE WITNESS: Excuse me?

3 MS. TOOKER: So did other employees know that you had
4 these contracts in your locker?

5 MR. WICH: Your Honor, there's also an objection as to her
6 knowledge of what other people knew.

7 JUDGE GREEN: Okay. I mean I'll allow you to ask the
8 question, but you're going to have to get around to that; how
9 she knows.

10 MS. TOOKER: Did other people know that you had the
11 contract in your locker?

12 THE WITNESS: Yes.

13 BY MS. TOOKER:

14 Q Okay. And how do you know that other people knew about
15 your locker contract?

16 A Because sometimes they would ask for it so they could
17 check on it, verify it.

18 Q Okay. Do you remember any of the names of the employees
19 who would ask you to see the contract?

20 A Different people.

21 Q Okay. Do you remember anyone specifically or --

22 A Yes, Antonio Borga.

23 Q Okay. Alright. So you said that people brought their
24 concerns and problems to you. What kind of problems did they
25 bring to you?

1 A Like the hour cuts. They would give the holidays to work.
2 They wouldn't give Sundays. They would post the schedule on
3 Fridays, but when they would go to work they would find
4 different hours there.

5 Q And how often did people come to you with issues like
6 this?

7 A All the time.

8 Q So how many times a week or a month, just approximately?

9 A Like every two weeks.

10 Q Alright. And which employees commonly talked to you about
11 these issues?

12 A Which workers?

13 Q Yeah.

14 A The ones that I mentioned. The same. Same person.

15 Q You mentioned Antonio Borga a few times. Was there any
16 reason Antonio came to you often?

17 A Yes.

18 Q What was that?

19 A She didn't know how to read the contract of the Union, she
20 didn't know English at all. At all. She would always try to
21 talk to the managers, and the manager would always go to aside
22 -- to one side.

23 Q Okay. And which manager was that?

24 A Sharon.

25 Q Okay. Alright. And so when employees made complaints

1 what did you do?

2 A If there wasn't a union representative I would call to the
3 Union directly. I would call Dena, or Tamica or Juana so they
4 could communicate with the representatives directly. That it
5 was Stephen and Margaret.

6 Q Okay. And Stephen or -- and Margaret, are those the ones
7 that you called, if you called the Union directly?

8 A Yes, I would leave them messages.

9 Q Okay. And if you talked to them or left them a message,
10 what happened?

11 A They would call me back and I would explain the problem
12 and we would talk to the manager or they would come to the
13 store.

14 Q Okay. So if a union representative called you, did they
15 call you on your cell phone or at the store?

16 A For the store.

17 Q Okay. And how did you receive calls when someone called
18 you at the store?

19 A Because they would pass it to me.

20 Q Okay. When they pass it to you, do they just forward the
21 call via the telephone or is there a PA system that you're
22 paged over?

23 A They would call me through the intercom and they would
24 tell me it's the Union.

25 Q Okay. And the intercom, who can hear that when it's --

1 when there's something -- a message over the intercom?

2 A The entire store.

3 Q Okay. So after you talked to them on the phone, what
4 usually happened?

5 A There were times that I would transfer the call myself to
6 Sharon or I would put it on hold and I would go look for her
7 directly inside the store. I would tell her that the Union is
8 on the phone.

9 Q And if you're going to transfer a call to Sharon, do you
10 use the intercom as well?

11 A Yes.

12 Q Okay. Alright. Did you have any issues during the winter
13 of 2014 that you talked to the Union about?

14 A Yes.

15 Q And what were those issues?

16 A The coffee shop is in the main entrance, like nine feet
17 from the door. So the door would always be damaged, broken and
18 I would get very cold.

19 Q Okay. So when you say the door is broken, what does that
20 mean?

21 A That it was open. Open.

22 Q Was it open all the time or just stayed open for a long
23 time?

24 A No, open all the time, because it was broken.

25 Q Okay. And you said this was in the winter, right?

- 1 A Yes.
- 2 Q Okay. Alright. So when the door was broken who did you
3 first contact about this problem?
- 4 A Sharon.
- 5 Q Okay. And when you talked to Sharon, where were you?
- 6 A I went to her office.
- 7 Q Okay. And what did you say to her?
- 8 A I complained that it was very cold.
- 9 Q And what did she say?
- 10 A To put on a coat.
- 11 Q Okay. Did you two say anything else at that time?
- 12 A Yes, I told her I had my coat on.
- 13 Q And what did she say?
- 14 A That she was going to report that to the company.
- 15 Q Okay. When you say that she was going to report that to
16 the company, what was she going to report?
- 17 A That the door was broken. That they had to come and fix
18 it.
- 19 Q Okay. After -- was there any other conversation with
20 Sharon?
- 21 A Yes, I told her, several times I complained that I
22 couldn't even feel my hands so I could return the money.
- 23 Q Okay. How many times did you talk to her about it?
- 24 A Every day.
- 25 Q For how long?

- 1 A Almost a month.
- 2 Q Okay. Did you talk to anybody else about this problem?
- 3 A Yes.
- 4 Q Who did you talk to?
- 5 A To the Union.
- 6 Q Who in the Union.
- 7 A Margaret.
- 8 Q Okay. And what did you say to Margaret?
- 9 A That I was working under inhumane situations.
- 10 Q Okay. And what did Margaret say?
- 11 A Came to the store.
- 12 Q And what did Margaret do when she came to the store?
- 13 A She closed the door.
- 14 Q Okay. Did she talk to you about the problem?
- 15 A Are you talking about Margaret or Sharon that told me
- 16 about the problem?
- 17 Q Did Margaret talk to you about the problem?
- 18 A Yes.
- 19 Q Okay. What did she say?
- 20 A That she spoke to Sharon. That they're just going to
- 21 leave one door, because it's two doors. That she had opened a
- 22 ticket so they could come and fix it.
- 23 Q Okay. Did you speak with Sharon after Margaret told you
- 24 that she had talked to Sharon?
- 25 A Yes.

1 Q What did Sharon say?

2 A That she did what she had to do. Needed to report to the
3 company and that she couldn't do anything else.

4 Q Okay. Was the issue with the door ever resolved?

5 A No.

6 Q They didn't come to fix it eventually or --

7 A No. The entire winter went on like that.

8 Q Okay.

9 JUDGE GREEN: What year are we talking about?

10 THE WITNESS: 2014.

11 MS. TOOKER: Okay. Alright. So we're going to move on.

12 Do you remember any issues that you had that you talked to
13 Sharon about in August or September of 2015?

14 THE WITNESS: Yes.

15 BY MS. TOOKER:

16 Q Okay. And what did you talk to Sharon about?

17 A I spoke a lot to Sharon about Sundays and the holidays.
18 And she never wanted to put me on the schedule.

19 Q How many times did you talk to Sharon?

20 A Long time.

21 Q So the question was how many times did you talk to Sharon
22 about the Sundays?

23 A More than five or six times.

24 Q Okay. And what did Sharon say when you asked her to work
25 Sundays?

1 A Most of the time she would just leave me talking and she
2 would just leave and other times she would say that she did not
3 need me.

4 Q Okay. Did you talk to anybody else about being scheduled
5 on Sundays?

6 A Yes.

7 Q And who did you talk to?

8 A With Tamica and Dena.

9 Q Let me just back up for a second. Was there any reason
10 that you were talking about -- or excuse me, that you were
11 requesting Sundays, during this period of time?

12 A Yes. Two reasons.

13 Q Okay. What were they?

14 A First was that they were closing all the stores. So I
15 knew that we were also going to be going. And the other
16 reason, it was already getting close to that our store would be
17 sold. So I explained to her that she would give me Sundays --
18 that to give me Sundays, I would pay some bills, like make
19 extra money.

20 Q Okay. So you said you talked to Dena and Tamica about
21 this.

22 A Yes.

23 Q Okay. Do you know what if anything Dena or Tamica did?

24 THE INTERPRETER: Tamica, Dena? Tamica, Dena --

25 MS. TOOKER: Did -- what did they do?

1 shop to be clean, all the walls.

2 Q Okay. After you told her you didn't have time, what did
3 she say?

4 A She left.

5 Q Okay. Did you have any other conversations with her?

6 A Yes.

7 Q And what did she say, during those conversations?

8 JUDGE GREEN: This is the same day? I'm sorry, this is
9 the same day?

10 THE WITNESS: Yes. I said -- I followed her and I got
11 Dena as a witness towards what I was going to say. So I
12 explained to give me four hours on Sunday so then I would be
13 able to clean a while.

14 BY MS. TOOKER:

15 Q And what did Sharon say?

16 A That Sundays were not for cleaning.

17 Q Okay. And did either you or Dena respond to that?

18 A Yes.

19 Q Who said what?

20 A Dena asked why she never wanted me to put on the schedule
21 for Sunday? What was the -- her problem with it?

22 Q And what did Sharon say?

23 A She laughed and she just left us both standing there.

24 Q Okay. And when you, and Sharon and Dena talked, where in
25 the store were you?

1 A No.

2 Q And I want to back up just a little bit. Did you ever
3 raise any complaints from other employees directly with Sharon?

4 A Yes.

5 Q What complaints were those?

6 A I remember that one was there was a guy that works in
7 maintenance, she put him to clean a stairs in a very high -- to
8 -- she put him to work in very high ladder. And I said through
9 the contact (*sic*) of the Union, he's not supposed to be there.
10 That was dangerous for his life.

11 Q When was that?

12 A That was in 2015.

13 Q Do you remember when in 2015 approximately?

14 A That was like when they were starting to sell the store.

15 Q Okay. Do you remember if it was in the spring, or summer
16 or --

17 A That was like starting September.

18 Q Okay. So when --

19 JUDGE GREEN: I'm sorry. I believe the interpretation was
20 I said through the contact of the Union. Is that contact or
21 contract?

22 THE INTERPRETER: Oh, I heard contact. Contact, sorry.

23 THE WITNESS: Contract.

24 MS. TOOKER: Okay. Alright. So when you told Sharon that
25 it was unsafe and against the contract of the Union, what did

1 she say?

2 THE INTERPRETER: Sharon said?

3 MS. TOOKER: What did Sharon say? Yes.

4 THE WITNESS: That it wasn't my business.

5 BY MS. TOOKER:

6 Q Okay. Was anything else said during that conversation?

7 A Go to my café to work.

8 Q Okay.

9 JUDGE GREEN: Was this conversation in English or Spanish?

10 THE WITNESS: In English.

11 JUDGE GREEN: Do you know whether Sharon speaks Spanish?

12 THE WITNESS: No.

13 JUDGE GREEN: No, she doesn't speak Spanish or --

14 THE WITNESS: She does not speak --

15 JUDGE GREEN: Okay.

16 THE WITNESS: -- Spanish.

17 MS. TOOKER: Okay. So when you speak to Sharon, is it in
18 English or Spanish?

19 THE WITNESS: In English.

20 BY MS. TOOKER:

21 Q Okay. The contract that you have in your locker, is that
22 in English or Spanish?

23 A In English.

24 Q Okay. Was there a time that you applied to work at Key
25 Food again?

1 JUDGE GREEN: Okay. Alright. Anything else we have as a
2 preliminary matter?

3 MS. ALAM: No, that's it, Your Honor.

4 JUDGE GREEN: Okay.

5 MS. ALAM: General Counsel would like to call Mr. Randy
6 Abed.

7 JUDGE GREEN: Alright. If you could raise your right
8 hand?

9 Whereupon,

10 RANDY ABED

11 Having been first duly sworn, was called as a witness and
12 testified herein as follows:

13 JUDGE GREEN: Okay. Have a seat. State your name for the
14 record and spell it, please.

15 THE WITNESS: First name is Randy, last name is Abed, A-B-
16 E-D, the last name.

17 DIRECT EXAMINATION

18 BY MS. ALAM:

19 Q Good morning, Mr. Abed. How are you?

20 A Good morning.

21 Q Mr. Abed, what is your affiliation with 1525 Albany Avenue
22 Meat LLC?

23 A I'm the owner --

24 Q Is there anyone else who has shares in the company?

25 A My brother.

1 Q And what is his name?

2 A Sam, last name the same, Abed, A-B-E-D.

3 Q What type of business is 1525 Albany Avenue Meat LLC
4 engaged in?

5 A Supermarket.

6 Q What is the address of the store or stores operated by
7 1525 Albany Avenue Meat LLC?

8 A 1525 Albany Avenue.

9 Q And is that in --

10 A Brooklyn, New York.

11 Q Okay. Is 1525 Albany Avenue Meat LLC a member of the Key
12 Food Co-Op?

13 A Yeah.

14 Q Or the Key Food Stores Co-Operative?

15 A Yeah.

16 MS. ALAM: I'd like to have marked for identification this
17 document as General Counsel exhibit 27 for the record. Handing
18 a copy to Respondent's counsel. Handing a copy to the witness.

19 BY MS. ALAM:

20 Q Mr. Abed, do you recognize this document? Take a minute
21 to look through it.

22 A Yes.

23 Q Can you just describe what the document is?

24 A It's a member -- membership agreement.

25 Q So is this a membership agreement between 1525 Albany

1 please?

2 A Yes, this is also part of the agreement.

3 Q And this is an agreement between Albany Avenue and it
4 looks like A&P, correct?

5 A Yes.

6 (General Counsel's GC-29 identified)

7 Q And the Key Food Stores Co-Operative?

8 A That's correct.

9 MS. ALAM: I'd ask that General Counsel exhibit 29 be
10 moved into evidence.

11 MR. WICH: No objection.

12 (General Counsel's GC-29 received in evidence)

13 BY MS. ALAM:

14 Q Okay. Mr. Abed, what is your affiliation with 100 is it
15 Greaves or Graves?

16 A Greaves Lane Meat LLC?

17 Q Owner.

18 A And do you also co-own this store with your brother?

19 A Yes.

20 Q What type of business is at 100 Greaves Lane Meat -- or
21 what type of business is 100 Greaves Lane Meat LLC engaged in?

22 A Supermarket.

23 Q And what is the address of the store operated by 100
24 Graves Lane -- Greaves Lane Meat LLC?

25 A 100 Greaves Lane, Staten Island, New York.

1 Q Is 100 Greaves Lane Meat LLC a member of the Key Food Co-
2 Op?

3 A Yes.

4 MS. ALAM: I'd like to have this document marked for
5 identification as General Counsel exhibit 30. I'll hand a copy
6 to Respondent's counsel --

7 BY MS. ALAM:

8 Q Mr. Abed, is this the membership agreement between 100
9 Greaves Lane Meat LLC and the Key Food Stores Co-Operative?

10 A Yes, ma'am.

11 (General Counsel's GC-30 identified)

12 MS. ALAM: I'd like to have General Counsel exhibit 30 be
13 moved into evidence.

14 JUDGE GREEN: Any objection?

15 MR. WICH: No objection.

16 JUDGE GREEN: GC-30 is admitted.

17 (General Counsel's GC-30 received in evidence)

18 BY MS. ALAM:

19 Q And Mr. Abed, when did you begin operating the store at
20 100 Greaves Lane?

21 A November. In the end towards November of 2015.

22 MS. ALAM: I'd like to have this document marked into
23 evidence as General Counsel exhibit 31, or marked for
24 identification. Giving a copy to the witness. Handed a copy
25 to Respondent's counsel.

1 JUDGE GREEN: I have that it has, yes.

2 MS. ALAM: Thank you.

3 BY MS. ALAM:

4 Q Local 342's actions were offensive to you, isn't that
5 true?

6 A Yes.

7 Q In fact, you called the police on them, didn't you?

8 A Yes.

9 Q And the first day that Local 342 started leafleting
10 outside of the Greaves Lane store, your brother and the co-
11 owner of that store Sam Abed got a call from Richard Abondolo,
12 the president of the Union, right?

13 A Yes.

14 Q You heard Mr. Abondolo ask your brother if they could work
15 something out, right?

16 A Yes.

17 Q And you heard your brother say that he couldn't do
18 anything without the Key Food Co-Operative, right?

19 A Correct.

20 Q And you testified earlier that you kept all the former A&P
21 employees at Greaves Lane, right?

22 A Correct.

23 Q You kept them at their original rate of pay initially?

24 A Yes, ma'am.

25 Q And with the same hours, correct?

- 1 A Yes.
- 2 Q But eventually you had to cut back people's hours, right?
- 3 A Correct.
- 4 Q You couldn't keep -- afford to keep people working
5 overtime on Sundays?
- 6 A Yeah, because the store wasn't doing the volume that we
7 thought it would do.
- 8 Q So you cut people's days from six days a week to five days
9 a week, right?
- 10 A Correct.
- 11 Q And you started doing that around Thanksgiving of 2015 --
- 12 A No.
- 13 Q -- would that be right?
- 14 A A little later.
- 15 Q Do you remember when?
- 16 A I'm not sure.
- 17 Q Did you have to cut hours -- employees' hours more after
18 that?
- 19 A Yes.
- 20 Q What other additional cuts in hours?
- 21 A As the store needed it. The store wasn't performing.
- 22 Q But do you know what the --
- 23 A (No audible answer)
- 24 Q Okay. And you said earlier you don't know when you
25 started cutting people hours. You believe that you started

1 cutting people's hours from six days a week to five days a week
2 a little later than Thanksgiving?

3 A Yes.

4 Q And eventually you laid off some people at the Greaves
5 Lane store, isn't that true?

6 A Correct.

7 Q You laid off a employee named Debra Abruzzese from the
8 seafood department around November 28th, isn't that true?

9 A Yes.

10 Q And that's November 28th 2015, right?

11 A Yes.

12 Q And you or your brother laid off an employee by the name
13 of Gina Commarano, whose the deli manager, on November 28th,
14 right?

15 A Yes.

16 Q And on November 30th 2015 you let go of an employee that
17 went by the nickname Rocky from the meat department?

18 A Yes.

19 Q His real name is Anthony Vendetti, right?

20 A Yes.

21 Q You also laid off an employee named Michael Fischetti from
22 the meat department on November 30th 2015, right?

23 A Yes.

24 Q And you laid them off because you believed they had the
25 least seniority in the unit, right?

- 1 A Correct.
- 2 Q But that isn't accurate is it?
- 3 A I wouldn't know that.
- 4 Q In fact they're some of the more senior people in the
5 unit, aren't they?
- 6 A I'm not sure.
- 7 Q But you had the documents of when people were hired from
8 A&P?
- 9 A Yes.
- 10 Q And you haven't offered Anthony Vendetti his job back?
- 11 A No.
- 12 Q Nobody from the company had offered him his job back?
- 13 A No.
- 14 Q You haven't -- or anybody from the company -- anybody from
15 Greaves Lane hasn't offered Gina Cammarano her job back,
16 correct?
- 17 A No.
- 18 Q No one from the company has offered Debra Abruzzese her
19 job back, correct?
- 20 A No.
- 21 Q And no one from the company has offered Michael Fischetti
22 his job back, correct?
- 23 A No.
- 24 Q After you laid off these employees, the Union started
25 leafletting outside the store again, right?

1 A Yes.

2 Q And you own another store that's not part of this case on
3 Kings Highway, is that right?

4 A Correct.

5 Q Local 342 stared leafleting outside that store, isn't that
6 true?

7 A Yes.

8 Q And someone from the Union named Kelly Egan (ph) even had
9 the nerve to dress up like the Grinch, right?

10 A Yes, ma'am.

11 MR. WICH: Objection.

12 JUDGE GREEN: Overruled.

13 BY MS. ALAM:

14 Q She was yelling merry Christmas, you're fired, right?

15 A That's what she was doing, yes.

16 Q You called the cops every day on Local 342 after they
17 resumed this leafleting, didn't you?

18 A I did not call every single day.

19 Q You called the cops on them?

20 A I called them one time.

21 Q You gave a statement to The National Labor Relations Board
22 in a case affiliated with this situation, is that true?

23 A Yeah.

24 Q And you had a chance to review the statement you gave and
25 you swore that the statement was true and complete to the best

1 of your knowledge, correct?

2 A Correct.

3 Q And you gave that statement closer to the events that took
4 place in this case, right?

5 A Yes.

6 Q Is this the statement you gave to the Board?

7 A Yes.

8 Q Is this -- is that your signature on the last page?

9 A Yes.

10 Q And you gave this statement on January 13th 2016, is that
11 right?

12 A January 11th 2016.

13 Q I think the -- I think you also look at the signature part
14 --

15 A Oh, yeah.

16 Q -- where you signed.

17 A January 13th, correct.

18 Q And I'd like you to look at page nine of the affidavit,
19 line 14. Read that to yourself to refresh your memory.

20 A Yes.

21 Q Okay. So now having read that, you called the police more
22 than once, isn't that true?

23 A Yes, I believe so.

24 Q In fact you called the police almost every day that Local
25 342 was engaged in leafletting?

1 A On the non-union stores, correct.

2 Q And you told the cops you wanted Local 342 removed from
3 your property, is that right?

4 A Are you talking about the non-union stores or are you
5 talking --

6 Q Okay. We'll start with non-union stores. Did you tell --
7 did you ask them to remove --

8 A Yes.

9 Q -- Local 342 from your property?

10 A Yeah.

11 Q What about at the Greaves Lane store?

12 A Away from the doors, yeah.

13 Q And Albany Avenue?

14 A Away from the doors, correct.

15 Q At the Greaves Lane store did you ask -- didn't you ask
16 the police to remove the employees from the parking lot?

17 A Yes.

18 Q And you share a parking lot with other stores, isn't that
19 true?

20 A Correct.

21 Q What else did you say to the police?

22 A I don't recall.

23 Q Eventually you started distributing a rule book to
24 employees, isn't that true?

25 A I'm not sure.

1 cutting people's hours from six days a week to five days a week
2 a little later than Thanksgiving?

3 A Yes.

4 Q And eventually you laid off some people at the Greaves
5 Lane store, isn't that true?

6 A Correct.

7 Q You laid off a employee named Debra Abruzzese from the
8 seafood department around November 28th, isn't that true?

9 A Yes.

10 Q And that's November 28th 2015, right?

11 A Yes.

12 Q And you or your brother laid off an employee by the name
13 of Gina Commarano, whose the deli manager, on November 28th,
14 right?

15 A Yes.

16 Q And on November 30th 2015 you let go of an employee that
17 went by the nickname Rocky from the meat department?

18 A Yes.

19 Q His real name is Anthony Vendetti, right?

20 A Yes.

21 Q You also laid off an employee named Michael Fischetti from
22 the meat department on November 30th 2015, right?

23 A Yes.

24 Q And you laid them off because you believed they had the
25 least seniority in the unit, right?

- 1 A Correct.
- 2 Q But that isn't accurate is it?
- 3 A I wouldn't know that.
- 4 Q In fact they're some of the more senior people in the
5 unit, aren't they?
- 6 A I'm not sure.
- 7 Q But you had the documents of when people were hired from
8 A&P?
- 9 A Yes.
- 10 Q And you haven't offered Anthony Vendetti his job back?
- 11 A No.
- 12 Q Nobody from the company had offered him his job back?
- 13 A No.
- 14 Q You haven't -- or anybody from the company -- anybody from
15 Greaves Lane hasn't offered Gina Cammarano her job back,
16 correct?
- 17 A No.
- 18 Q No one from the company has offered Debra Abruzzese her
19 job back, correct?
- 20 A No.
- 21 Q And no one from the company has offered Michael Fischetti
22 his job back, correct?
- 23 A No.
- 24 Q After you laid off these employees, the Union started
25 leafletting outside the store again, right?

1 A Gowon.

2 Q And when did Sharon become the store manager at Union
3 Square?

4 A Maybe about February.

5 Q Of what year?

6 A 20 -- was it 2015?

7 Q Yes. Had Sharon ever been your store manager before she
8 became the store manager at Union Square?

9 A Yes.

10 Q Okay. And when was that?

11 A Prior, before going to 14th Street.

12 Q Uh-huh. Do you remember the year that she was your store
13 manager approximately?

14 A 2014, maybe 2013.

15 Q 2013 she was your store manager?

16 A Uh-huh.

17 Q Okay. And about how long was she your store manager?

18 A A little over a year.

19 Q Okay. And what store were you working at, at that time?

20 A 87 Madison.

21 Q Okay. And were you a member of a union when you worked
22 for Food Emporium?

23 A Yes.

24 Q Okay. Which union?

25 A Local 342.

1 Street store?

2 A I don't recall.

3 Q Okay. You know what? If you can just speak up a little
4 bit?

5 A Okay.

6 Q Thank you. Alright. So if an employee came to you with a
7 schedule issue, what did you do about it?

8 A Go to Sharon.

9 Q Okay. And when you went to Sharon what happened?

10 A She will have to fix it, but it will always be a problem.

11 Q When you said it would be a problem, what do you mean by
12 that?

13 A She don't want -- she don't like to -- she didn't like to
14 change the schedule once the schedule was done.

15 Q Okay. And what sort of problems did people have with the
16 schedule?

17 A The hours, days off, because everyone had like a set
18 schedule. Once Sharon came in, it's like everything was
19 changed. She tried to change everything around.

20 So, you know, people would request days off and no, you
21 can't take that day off. And, you know, she knew people
22 couldn't work. They could only work, let's say, until 2:00
23 O'clock in the afternoon. I'm going to schedule to 3:00
24 O'clock in the afternoon. My schedule was also -- was a
25 problem.

1 continue to be a shop steward?

2 A No.

3 Q Okay. Who was the shop steward in 14th Street?

4 A Tamica.

5 Q Okay. Did any of the employees still report problems to
6 you?

7 A Yes.

8 Q Okay. Which of the employees reported problems to you?

9 A Which? A lot of the employees, because most of them came
10 from my store. We were -- most of us were seniors. So most of
11 us moved to 14th Street.

12 So they -- like they not preferred me, but they -- you
13 know, they worked with me so long that anytime they had a
14 problem they would come to me instead of Tamica. So, you know,
15 we were like Tamica's assistant. She was the shop steward at
16 that store, but we were -- me and Dena became like her
17 assistants.

18 Q Okay. And who is Dena?

19 A Dena was another shop steward on 68th and Broadway.

20 Q Okay. And did Dena work in the 14th Street store as well?

21 A Yes.

22 Q Okay. Alright. So what sort of issues did employees
23 report to you?

24 A Well, in the beginning we didn't have issues because Kevin
25 Smith was the store manager.

1 Q So sorry, do you know Rosa's last name?

2 A Silverio I believe it is.

3 Q And Ianna, do you know her last name?

4 A I think it's Jordan.

5 Q And Carlos, do you know his last name?

6 A Colon.

7 Q And just so we know for the record, Carlos Colon, do you
8 know if his full name is Jose Carlos Colon?

9 A Yes.

10 Q So that is correct that's --

11 A Yes.

12 Q -- his full name?

13 A That is full name.

14 Q Alright. Were there any other employees that reported
15 problems to you on a regular basis?

16 A Alicia.

17 Q Do you know her last name?

18 A No. There was people, but I don't remember everybody's
19 name.

20 Q That's fine. Alright. So when people reported problems
21 with the schedule, what sort of problems did they -- well, so
22 for example Rosa, what sort of problems did she have with the
23 schedule?

24 A Okay. Rosa used to work in the bakery department and
25 there was another young lady who was working in the bakery

1 department also. Okay. Now, Rosa had more seniority than this
2 other young lady. I think -- I believe the lady's name was
3 Erma in that.

4 So Sharon insist in putting Erma before Rosa, only because
5 Erma knew how to do the bakery and Rosa did not know how to do
6 bakery. But everyone was thrown into the department, once 87th
7 Street closed. Everybody was thrown in any department.

8 So Rosa was working in produce. She didn't know bakery.
9 But you had another young lady, who was Erma, who was at 14th
10 Street and was working in bakery. But Erma was also what they
11 call a recall --

12 Q What is a recall?

13 A They laid off tons of people when they closed 87th Street.
14 They laid off a lot of people. So they started recalling
15 people. So Erma because one of the recall. So Sharon insists
16 in putting her earlier, because she knew how to decorate the
17 cakes, she know how to make the cake. So that was a conflict
18 between me and Sharon every week.

19 Q Okay. How about Ianna, what was her problem with the
20 schedule?

21 A Ianna? Sharon insisted on changing her schedule just for
22 her. Ianna tell I can't work Tuesdays. Sharon would put her
23 Tuesday.

24 I can only work until this time. No, I need you until
25 this time. You need to work until this time. It was like just

1 to do it.

2 Q Was it common, under the other supervisors you worked for,
3 for them to accommodate employees' scheduling requests?

4 A Yes.

5 Q Okay.

6 A If someone --

7 Q Was it common --

8 A -- requested --

9 Q Okay. What --

10 A -- the day off or requested to work certain hours, it was
11 no problem. With Kevin we worked a couple of months, we didn't
12 have a problem. And even if he did a mistake, he was say okay,
13 I'll correct it.

14 Q Okay. And what about Carlos, what were the problems that
15 he reported?

16 A Carlos was the butcher. He was only supposed -- he could
17 only -- well, the butchers were only working 9:00 to 6:00.
18 Sharon wanted to throw him 2:00 to -- 12:00 to -- 2:00 to
19 10:00, which was no schedule for him. The latest they could
20 put him was 12:00 to 8:00.

21 And they had something in the contract what is called
22 split schedule. There's no split schedule. If you work 9:00
23 to 6:00, it's 9:00 to 6:00 the whole week.

24 Sharon insists on putting him two days out of the week
25 9:00 to 6:00, 2:00 to 10:00, 12:00 to 8:00. And he goes no,

1 that's a split schedule. He was not working at split schedule.

2 Q Okay. When you say that there's no schedule for him
3 that's 2:00 to 10:00, what do you mean by that?

4 A Well, for the year that he got hired.

5 Q Okay. So --

6 A He has seniority. There was someone else who had less
7 seniority than he did. His schedule is 2:00 to 10:00.

8 Q Okay. And you mentioned Alicia. What sort of problems
9 did she report to you?

10 A They had a lot of problems with seniority. Always putting
11 someone before someone.

12 Q Okay. What department did Alicia work in?

13 A A cashier.

14 Q Now, when people reported these schedule issues to you,
15 what did you do about that?

16 A Spoke to Sharon about it.

17 Q Where did you usually speak to Sharon?

18 A Where? Most of the time in well, what they call the
19 scanning room. It used to be a scanning office.

20 Q Is that your office?

21 A Yes.

22 Q Where is the scanning office located in relation to
23 Sharon's office?

24 A Oh, we were right below. Sharon was above and I was right
25 below.

1 Q Okay. And who was it in the store that made the schedule?

2 A Department heads did the schedule, but Sharon supersedes
3 everything. Sharon, if she said no, this one is not working
4 this schedule, you know?

5 Q So Sharon approved the schedule?

6 A Yes, Sharon.

7 Q And she could make her own changes?

8 A Changes, yes.

9 Q Okay. So is there a reason that you went to Sharon if
10 there was a problem, rather than the department heads?

11 A Because Sharon could change it. Department head will tell
12 you that's what Sharon wants. Speak to Sharon.

13 Q Okay. So were you able to resolve the scheduling issues
14 with Sharon generally?

15 A Most of the time. And when she didn't switch the
16 schedule, people just didn't come into work.

17 Q Alright. Were there every any -- oh, strike that. You
18 also said that there were some safety issues while Sharon was
19 the supervisor, the store manager I mean?

20 A Where? In 14th Street?

21 Q Yeah.

22 A Again, they were closing the store. So safety -- they
23 really didn't care about safety. Like for instance the
24 butcher. The butcher came to me.

25 They're not supposed to seeing their knife when they're

1 cutting, because the light was very not bright enough.

2 Understand? So when they're cutting if they see the knife,

3 they're not supposed to be seeing a shadow of the knife. That

4 became a problem.

5 Q So what you're saying is the lighting wasn't adequate in

6 the --

7 A Right, it wasn't --

8 Q -- meat department?

9 A Right.

10 Q Okay. So did you report that to Sharon?

11 A Yes.

12 Q Okay. And what did she do about it?

13 A It was never fixed.

14 Q Okay. Would Sharon deal with you as a representative of

15 the employees or --

16 A Once we got to 14th -- on 87th Street, she had to. She

17 had no choice, because I was the shop steward there.

18 Q How about 14th Street?

19 A 14th Street became a little different, because I was not

20 the shop steward. So she always used to say why are you coming

21 to me with a problem? Why are they coming to you, instead of

22 going to Tamica?

23 But most of these people came from my store. So they will

24 come to me. So she was like you're not the shop steward,

25 Tamica is. Tamica should be telling me the problems.

1 myself and Dena. Margaret would not speak to Sharon by
2 herself.

3 Q When Sharon came to the store on 14th Street, did she
4 change your schedule at all?

5 A Yes, it did.

6 Q Okay. How --

7 A Once again.

8 Q How did she change your schedule? Actually, strike that.
9 What was your schedule prior to Sharon coming to the store?

10 A Well, with Kevin Smith I was working Monday through
11 Friday, 7:00 to 3:30. Every Sunday doing scanning.

12 Q Okay. And how many hours a week did you work on Sundays?

13 A Five hours on Sundays.

14 Q Okay. And so what changed when Sharon came?

15 A Oh, what changed? It was no longer 7:00 to 3:30. It was
16 --

17 Q What time was it --

18 A 8:00 to 4:30.

19 Q Okay.

20 A My day off became a problem, because I was working Monday
21 through Friday. She wanted me there Saturday. And Sundays --
22 she took me off completely on Sundays when she first came.

23 But I had to bring in Margaret. So then -- so she knows
24 that every full timer was allowed to work two Sundays out of
25 the month. She used to say there's no scanning to be done on

1 Sundays. Okay?

2 So she put me -- she decided to put me on the registers
3 every other Sunday. But with Kevin Smith I was working every
4 Sunday in scanning. There's no scanning to on Sundays, but my
5 part timer was there on Sundays.

6 Q Okay. So when Sharon first took you off Sundays
7 completely --

8 A Uh-huh.

9 Q -- what if anything did you do?

10 A I called Margaret.

11 Q Okay. And did Margaret -- do you know if Margaret talked
12 to Sharon about it?

13 A She did, but Sharon didn't -- her arm didn't twist --

14 Q Okay. How do you know that Margaret talked to Sharon?

15 A Because I was allowed to work every other Sunday on the
16 register.

17 Q Okay. Did Margaret tell you that she had talked to Sharon
18 or --

19 A Well, she had spoken to Sharon in front of me.

20 Q Oh, okay.

21 A Uh-huh.

22 Q So you were there when Margaret --

23 A Uh-huh.

24 Q -- talked to Sharon? Do you remember what Margaret said
25 to Sharon?

1 A I believe she told her what the contract stated, that all
2 the full timers was allowed to work, you know, Sundays.

3 Q Okay.

4 A But Sharon's whole thing was like there's no scanning to
5 do on Sunday and that my job, scanning, but I had a part timer
6 who was allowed to work Sundays.

7 Q Okay. So during this meeting with Sharon and Margaret
8 about your Sundays and you not having any Sundays, do you
9 remember when that took place?

10 A No.

11 Q Okay. Do you remember how long it was after Sharon got to
12 the store?

13 A Oh, maybe the following week. Sharon changed everything
14 as soon as she came in.

15 Q Okay. So within the first couple weeks --

16 A Yes, she was doing it with everybody's schedule.
17 Everybody's schedule was changed, as soon as maybe the second
18 week she was there. I think the first week she just looked.
19 She observed, and she looked at the schedule and then she took
20 the whip out.

21 Q Okay. So during this conversation between Margaret and
22 Sharon is that when Sharon said that there was no scanning on
23 Sundays?

24 A Right.

25 Q And what did Margaret say about that?

1 A All the time.

2 Q How many times a week?

3 A Maybe about twice a week, whenever she had problems with
4 her schedule. If she had problems. Like one time she had a
5 problem with the bakery manager.

6 Q Uh-huh.

7 A And they wanted to have a meeting.

8 Q Okay. Hold on just a second. So this meeting -- sorry,
9 withdrawn. Do you remember a time where Rosa had an issue with
10 her apartment?

11 A Yes.

12 Q Okay. Do you remember if there was a meeting regarding
13 that?

14 A Yes.

15 Q Okay. Do you remember when that happened?

16 A No.

17 Q Okay. Do you remember how long before the layoffs it was
18 approximately?

19 A Could have been the summer maybe.

20 Q It was the summer?

21 A Right.

22 Q Around the summer --

23 A The summer.

24 Q -- before?

25 A Right.

1 Q Okay. Alright. Do you remember what the issue was?

2 A Well, Rosa had inspectors come into her house. So she
3 needed to be home at a certain time. And it was a problem with
4 Sharon.

5 Q Okay. On -- so she had to take time off to go home?

6 A Well, she had to take her time off or Rosa was just don't
7 come in.

8 Q Uh-huh. So who was at this meeting where you discussed
9 this?

10 A Myself, Sharon, maybe the bakery manager was there also.

11 Q Was Rosa there?

12 A Yes.

13 Q Okay. And were you there as an interpreter or as her
14 union representative?

15 A As an interpreter.

16 Q Okay. Was there a union representative there?

17 A Tamica.

18 Q Okay. Did Sharon have an opinion at all about you
19 translating for Rosa?

20 A Yes, she did.

21 Q And did she express this opinion at this meeting?

22 A Yes, she did.

23 Q And what was that opinion?

24 A She didn't want me there.

25 Q Did she say way?

1 after you were laid off?

2 A Yes.

3 Q Okay. Which employees continued to work that had less
4 seniority than you?

5 A Anthony -- oh, I'm sorry. You had Justin Conte and you
6 had Vaughn.

7 MR. CATALANO: I'm sorry; say again?

8 THE WITNESS: Vaughn.

9 MR. CATALANO: V-O-N?

10 THE WITNESS: V-A-U-G-H -- Vaughn. Yeah.

11 MR. CATALANO: Thank you. I didn't mean to cut you off,
12 but I didn't hear you.

13 THE WITNESS: Yeah.

14 MR. CATALANO: Thank you.

15 THE WITNESS: Sorry.

16 BY MS. TOOKER:

17 Q Do you know Ron's last name?

18 A No, I don't know. I forgot his last name.

19 Q Okay. After you were laid off by Key Food, did you get
20 any severance or buyout payment?

21 A No.

22 Q All right. And the day before you were laid off, do you
23 know if the union had any action at the store that day?

24 A Yes.

25 Q Okay. How do you know?

1 Q Okay. And when did you start working at that store on
2 Amboy Road and Greaves Lane?

3 A I believe it was 2007.

4 Q Okay. And what was your position at Pathmark?

5 A I was a meat cutter.

6 Q Okay. And what was your rate of pay?

7 A 28.75, I believe.

8 Q Did you have regularly scheduled hours?

9 A Yes, I did.

10 Q And what were those hours?

11 A 7:00 to 3:30, Monday to Saturday. I'm sorry; I was off
12 one day a week, pardon me.

13 Q Okay. Did you work Sundays?

14 A Yes.

15 Q Okay. Did you work ever Sunday?

16 A Yes.

17 Q Okay. And what was your rate of pay for Sundays?

18 A Sunday was at time and a half.

19 Q All right. When you worked 7:00 to 3:30, did you have any
20 unpaid time? So that's an eight and a half hour day; how many
21 hours were you paid for that?

22 A Oh, an hour for lunch.

23 Q Okay.

24 A I'm sorry, wait, 7:00 to 3:30, it was a half hour for
25 lunch.

- 1 Q Okay. So you got paid for eight hours?
- 2 A Correct.
- 3 Q Okay. Who was the store manager at Pathmark?
- 4 A His name was Steve Rabino.
- 5 Q Okay. Whose John Ferrera?
- 6 A John Perrera [sic] was the former store manager. He left.
- 7 Q Okay. Okay, and were you a member of the union when you
- 8 worked for Pathmark?
- 9 A Yes.
- 10 Q Which union was that?
- 11 A Local 342.
- 12 Q And did you ever have an elected position with the union?
- 13 A I was the backup shop steward.
- 14 Q Okay. And what was your responsibility as the backup shop
- 15 steward?
- 16 A To make sure that the members rights weren't being abused
- 17 or -- well, looking out for the other members in the union.
- 18 Q Okay. And who was the main shop steward?
- 19 A Michael Fischetti.
- 20 Q Okay. And at some point, Key Food took over the Amboy
- 21 Road store, right?
- 22 A Correct.
- 23 Q Okay. And when was that?
- 24 A I believe it was Monday, November 23rd.
- 25 Q All right. And do you know who the owners of the Key Food

1 Q Okay. Did you say anything when Domonic said that there
2 would be two days off a week?

3 A I asked him why.

4 Q Did he respond?

5 A He said he was just told that -- that going forward that's
6 what it was.

7 Q Did he say who told him?

8 A The store manager, Steve Rabino.

9 Q Did you say anything else?

10 A I asked him if there was going to be any other changes --

11 Q What did --

12 A -- that I should know about?

13 Q And what did he say?

14 A He didn't know.

15 Q Okay. Did you say anything else?

16 A No. I went to see the store manager, Steve Rabino,
17 myself.

18 Q Okay. And what did you say to Steve Rabino?

19 A I asked him for further explanation of what was happening,
20 if there was going to be other -- any other changes as far as
21 rate of pay, being paid for the holiday, any other changes that
22 I should know about that I should report to the -- you know, I
23 knew I had to report to the union.

24 Q Okay.

25 JUDGE GREEN: Is that something you said to him?

1 THE WITNESS: The store manager?

2 JUDGE GREEN: Yes.

3 THE WITNESS: Yes.

4 JUDGE GREEN: You said, I need to know in order to --

5 THE WITNESS: No, I -- I'm -- no.

6 JUDGE GREEN: Oh.

7 THE WITNESS: I just asked him if there was any further
8 changes that I should know about.

9 JUDGE GREEN: Okay.

10 MS. TOOKER: Okay.

11 BY MS. TOOKER:

12 Q And was Steve aware of your position as assistant shop
13 steward?

14 A Yes.

15 Q How did he know that?

16 A Oh, it's known. It was known in the store that Michael
17 was the shop steward and I was the backup.

18 Q Okay. And how long had Steve worked in the store?
19 Approximately?

20 A Four to five years.

21 Q Okay. All right, did Steve say anything else about
22 changes or anything?

23 A He said that he would have to find out from the owner and
24 he would let me know.

25 Q Okay. So do you remember what, if anything -- oh, excuse

1 me. Did I ask you what day was it that you had this
2 conversation with Steve?

3 A I believe it was Friday.

4 Q Okay. That's the first Friday after the takeover on the
5 23rd?

6 A Yes. That first week.

7 Q All right. Do you remember what, if anything, happened on
8 Saturday, the 28th?

9 A At the end of Saturday, at the end of the shift, my then
10 fiancée came to the meat department. She was upset, and she
11 told me that she had just been laid off.

12 Q Okay. Did she say anything else about the layoff?

13 A I asked her why, and she said she wasn't given a reason.

14 Q Okay. Did she tell her -- did she tell you who laid her
15 off?

16 A Steve Rabino.

17 Q And did you talk to anyone after Debra left?

18 A I went to the store manager, Steve Rabino.

19 Q Okay. And what did you say to Steve?

20 A I asked him why she was laid off.

21 Q And what did he say?

22 A He said he wasn't given a reason, he was just told to lay
23 her off, and the deli -- the deli manager, Gina Cammaretti.

24 Q Okay. Did you say anything else?

25 A I was in shock. I just asked him, you know, what was

1 going on, and he just shrugged. He couldn't give me an answer.

2 Q Okay. And did you talk to anyone from the union after you
3 heard about Debra's layoff?

4 A Afterwards, I called Steven Booras.

5 Q Okay. And what did Steven Booras say, if anything?

6 A He just said, you know, okay. You know, tell Debra to
7 call and put herself on the shapers list.

8 Q Okay. Do you remember what, if anything, happened -- or
9 let me step back. Withdrawn.

10 Did you work on Sunday, November 29, 2015?

11 A Yes.

12 Q Okay. Was there anything happening outside of the store
13 that day?

14 A There was a job action by the Local 342 outside the store.

15 Q Okay. Could you see the union demonstrators from inside
16 the store?

17 A Yes.

18 Q Okay. How could you see them?

19 A They were on a line right directly in front the store.

20 Q Okay. And how -- so are there windows that you can see
21 through?

22 A Yeah, the whole front of the store was encased in windows.

23 Q Okay. How many people were out there with the union?

24 A I would say between 20 and 30 on the line.

25 Q Did you go outside to join the union demonstrators at any

1 point?

2 A I did. I went outside on my break.

3 Q Okay. And how long was your break?

4 A Fifteen minutes.

5 Q Okay. And what did you do while you were out there?

6 A I spoke to Margaret Monier, one of the union reps. I
7 asked her if there's anything that they wanted us to do. She
8 said, no, just to go inside and continue working.

9 Q Okay. And what were the people who were outside, what
10 were they doing?

11 A They were handing out leaflets describing what the new
12 owners had done to the people that worked there.

13 Q And what was that?

14 A Laying off out of seniority, changing working conditions.

15 Q Okay. Did you hand out any leaflets while --

16 A While I was out there I did.

17 Q Okay. And were either of the owners at the store that
18 day?

19 A I believe so.

20 Q Okay. Do you remember which ones?

21 A I believe it was Sam, the other owner.

22 Q Okay. Do you know if Sam saw you with the group of union
23 demonstrators?

24 A I'm not sure.

25 Q Okay. All right, so what did you after your break?

1 A I went back inside and continued -- went back to work.

2 Q Okay. At any point during the day did you get a phone
3 call from Margaret, the union rep?

4 A Yes.

5 Q Okay. And what did she say?

6 MR. CATALANO: Objection.

7 JUDGE GREEN: Overruled.

8 BY MS. TOOKER:

9 Q Go ahead, what did she say?

10 A She called me on my cell phone and she asked me if I had
11 an interaction with a customer.

12 Q And what did you say?

13 A I said no.

14 Q Okay. Did she say anything else?

15 A She said that one of the owners told her that a cousin of
16 theirs came in and he spoke to me and I told them to go shop
17 elsewhere.

18 Q Okay. Did you do that at all?

19 A Not at all.

20 Q Okay. Did you have any interaction with customers that
21 day?

22 A No, I work behind a wall.

23 Q Okay. Do you know how long the union stayed that day
24 demonstrating?

25 A Early to mid-afternoon.

1 Q Okay. Did you see either of the owners again that day?

2 A One of the owners came back into the department and spoke
3 to Domonic Deverso, the meat manager.

4 Q Okay. Do you remember which one it was?

5 A Sam, I believe.

6 Q Okay. All right, and so what, if anything, happened the
7 next day, Monday, when you went to work?

8 A Monday, when I got to work one of the grocery people told
9 me that I was wanted in the office.

10 Q Okay. And did you go in the office?

11 A Yes.

12 Q Who else was in the office when you got there?

13 A Both the owners were there; Sam and Randy.

14 Q And who spoke first when you got in?

15 A I believe it was Randy.

16 Q Okay. And what did he say?

17 A He asked me if I had spoken to Richard.

18 Q Richard who?

19 A Richard, meaning Richard Abondolo, the president of Local
20 342.

21 Q And what did you say?

22 A I said I have no reason to speak to him.

23 Q Okay. What -- did he say anything else?

24 A He told me that from -- now going forward that they were
25 only going to deal with President Abondolo, as far as

1 negotiations. They weren't going to speak with anyone else.

2 Q Did you know why they were saying that?

3 A I had no idea.

4 Q Okay. Did they say anything else?

5 A They told me they were letting me go.

6 Q Okay. What did they say?

7 A I asked them why, and they said that the store wasn't
8 doing enough business.

9 Q Okay. Did you say anything in response?

10 A Yes. I said the store was only open a week, how could
11 they tell if they were going to do business or not?

12 Q And what did they say?

13 A They said, no, we're just -- we're not doing the business.
14 That was the answer they gave me, they're not doing the
15 business.

16 Q Okay. Was anything else said?

17 A No.

18 Q Okay. What did you do after that meeting?

19 A I left the building and I called my union rep.

20 Q And who was that?

21 A Steven Booras.

22 Q Okay. And what did Steven say when you talked to him?

23 A He told me to call the following morning to put myself on
24 the shaper workers list.

25 Q Okay. Did you see anybody else when you were making that

1 phone call?

2 A Yes, I saw Michael Fischetti also leaving the building.

3 He got in his car and he left.

4 Q Okay. Was it normal for -- withdrawn.

5 What time of day was this?

6 A Maybe 7:15.

7 Q In the morning?

8 A Yes. The beginning of the shift.

9 Q Okay. Was that normal for Michael to leave that time of
10 day?

11 A No.

12 Q Can you just repeat the --

13 A No.

14 Q Okay. Did you receive any severance or buyout payments
15 from Key Food?

16 A No.

17 MS. TOOKER: Okay, those are all the questions I have,
18 Your Honor.

19 JUDGE GREEN: Anything from the Charging Party?

20 MR. M. MILNER: No, Your Honor.

21 JUDGE GREEN: Any cross-examination from the Respondents?

22 MR. WICH: Can we have the Jencks materials, Your Honor?

23 JUDGE GREEN: How long do you need?

24 MR. WICH: Not long.

25 MR. CATALANO: Sam Abed's here, so I would like to talk to

1 Q Do you know who would have written the --

2 A That was the store manager.

3 Q What's the name of that store manager?

4 A I believe his name is Sam Saller (ph).

5 Q And did you have any documents that showed the sales, the
6 revenue of the store once it was under your ownership at Albany
7 Avenue?

8 A I believe we have some.

9 Q And did you use those documents in determining who to lay
10 off?

11 A Of course.

12 Q Have you provided any of those documents?

13 A No.

14 Q I'm going to go to 13. So aside from the two -- you said
15 earlier there's -- so there's no documents that reflect the
16 demotion of Stephen Fiore from meat manager to butcher?

17 A There were documents, I just couldn't find them.

18 Q So they do not exist in your possession at this time?

19 A I -- I don't have them in my possession. He was written
20 up many times.

21 Q But you have no documents. And how do you know he was
22 written up many times if you have no documents?

23 A He was demoted.

24 Q Huh?

25 A He was demoted.

1 Q Yeah, but --

2 A From a meat manager to a butcher.

3 Q So how do you know he was written up many times if you
4 have no documents that show that?

5 A He was written up.

6 Q Have you seen the write-ups?

7 A I hadn't actually seen them, but I was -- I told them to
8 write him up. Many times.

9 Q Have you -- okay. So Paragraph 14 goes to all personnel
10 policies distributed by -- to your employees at the Albany
11 Avenue store, including the date and distribution method. Have
12 you provided any -- like all the -- do you have any personnel
13 policies that were distributed to all the Albany Avenue
14 employees?

15 A I think it was an employee handbook.

16 Q Okay. Is that the only one?

17 A Yes.

18 Q And had you provided it?

19 A Yes.

20 Q You had?

21 A Um-hum.

22 Q And I think I provided it, but I did not get any -- I
23 didn't get any production from -- from your counsel or from
24 you. But, okay, that's fine.

25 MS. ALAM: I would like to have General Counsel Exhibit 40

1 A I said it was okay. But I was stopped from doing that and
2 supporting my union.

3 Q Okay. So after you got off the phone with Mike, what did
4 you do?

5 A I told the other employees in my department. That was
6 Debbie, Mr. Walsh -- Kevin Walsh, Swada (ph), and Tommy that we
7 were to go out, but at that time Sam and Randy came into the
8 department and said that we are not to leave the store. If we
9 leave the store that we are to -- to support our union, we are
10 to get fired.

11 Q So do you remember if it was Sammy or Randy?

12 A Sam.

13 Q Okay. So Sam -- so to the best of your recollection, can
14 you tell me exactly what Sam said?

15 A If you step out of this store to support your union I will
16 fire you.

17 Q Okay. Did you say anything in response or?

18 A Yeah, I was pissed. Yeah, he threatened me.

19 Q Okay. And what did you say?

20 A I didn't know what to say, you know, at that time. You
21 know, I went to the meat department with -- now we don't have
22 any representation because they got fired because of them.

23 Q Okay. Did -- sorry; before we move ahead, did anybody
24 else say anything to Sam or Randy about this issue?

25 A They were pissed because --

1 Q And when did you first start working for Local 342?

2 A October 2011.

3 Q And what is your current position at Local 342?

4 A At 342 I'm a union representative and also I work in the
5 contracts department.

6 Q How long have you held those positions?

7 A I've been a union rep since I started in 2011 and I've
8 been in the contracts department since about the beginning of
9 2015.

10 Q And what are your duties in your role as the contracts
11 manager?

12 A As contracts manager I work on the integration of MOA's
13 into a new CBA or up to date CBA, do research for bargaining
14 and prepare proposals for bargaining and just, you know, small
15 things involved with the research behind the bargaining.

16 Q What have your duties been as a union rep?

17 A Just servicing the membership, visiting shops, handling
18 grievances, putting together documentation for arbitrations,
19 things of that nature.

20 Q Do your duties include taking part in leafleting or
21 picketing events on behalf of Local 342?

22 A When called for, yeah.

23 Q Did you participate in a leafleting event on behalf of
24 Local 342 outside of the Lindenwood Howard Beach Key Food store
25 owned by the Almontes around mid-November 2015?

1 A Yeah.

2 Q Do you recall how many days you participated in that
3 leafleting?

4 A At --

5 Q Outside the Howard Beach?

6 A Outside of that location or --

7 Q Yes.

8 A I would say probably a week or two I think.

9 Q And when you were at the Lindenwood Howard Beach facility,
10 how many people were typically with you?

11 A It varied each day, but would range anywhere from between
12 five and 15 with different shifts and on a rotation. Some
13 people would do either early in the morning, and they would
14 leave and another wave would come during the afternoon.

15 Q And who would participate? Who were those people?

16 A Fellow staff members from 342, members from any store that
17 we were at or volunteer members from other shops that we
18 represent.

19 Q So it would be employees and I guess Local 342 members?

20 A Yeah, employees I guess from that location that we were at
21 and also from other places we represent.

22 Q Okay. So were people leaving work at the Howard Beach
23 store to participate? Were they taking time off work?

24 A From what I remember I think they just came out during
25 their lunch break as a show of solidarity.

1 Q Do you recall the names of any of the members or employees
2 of the Howard Beach Key Food that were participating in the
3 leafletting while you were there?

4 A I remember Nelson, Robert, Venus and Khadisha.

5 Q And do you know their names or no?

6 A Yeah, Nelson Quelis, Robert Haenlein, Venus Nepay and
7 Khadisha Diaz. I think that's her last name.

8 MS. ALAM: I'd like to have this document marked for
9 identification as General Counsel exhibit 45.

10 COURT REPORTER: What number?

11 JUDGE GREEN: 45.

12 MS. ALAM: 45.

13 COURT REPORTER: 45.

14 BY MS. ALAM:

15 Q Mr. Gorman, I'm showing you two pictures printed out from
16 Google Maps of a Key Food. Can -- do you recognize the first
17 picture in the document?

18 A Yes.

19 Q Can you identify what that is?

20 A It's the Lindenwood location.

21 (General Counsel's GC-45 identified)

22 Q And can you just describe what the picture shows?

23 A It's I guess the picture of the shopping center focused on
24 the area of the supermarket where Key Food operates.

25 Q So this would be -- like what vantage point would this be

1 MS. ALAM: Key Food Co-Op was negotiating a contract for
2 several different stores, correct?

3 THE WITNESS: (No audible answer)

4 BY MS. ALAM:

5 Q And those stores were going to be taken over by individual
6 owners?

7 A Yes, those were stores purchased from A&P.

8 Q Now do you recall if any of the owners that ultimately
9 took over operations of the former A&P stores ever said
10 anything to you about why they were having the Key Food Co-
11 Operative bargain on their behalf?

12 A Yes.

13 Q Who said something to you?

14 A Diaz, the owner of the Glen Oaks store.

15 Q And do you remember when he spoke to you?

16 A It was around October or November of 2015.

17 Q What did he say to you?

18 A He said that he wasn't authorized to bargain with us
19 individually. He said that he was instructed that the Co-Op --
20 he had to do it all with the Co-Op there, bargain together.

21 Q Did he say why?

22 A He said because of the funding. So if they were to break
23 off there was a risk that they could lose the loan from the Co-
24 Op to purchase the stores.

25 MS. ALAM: I'd like to have this document marked for

1 BY MS. ALAM:

2 Q Mr. Sollicito, can you identify this document for the
3 record, please?

4 A Yes. This would be the bargaining notes from September
5 24th with Key Food.

6 (General Counsel's GC-50 identified)

7 Q And do you know who took these notes?

8 A Lisa Boutis.

9 Q And did you attend a meeting with the Key Food Co-Op on
10 September 24th?

11 A I did.

12 Q And after looking over this document, is it your
13 recollection that it's an accurate depiction of what took place
14 at that meeting? Take a moment to look at it.

15 A Yes.

16 Q Do you recall where this meeting took place?

17 A Mineola.

18 Q And aside from you and Ms. Boutis, did anyone else from
19 Local 342 attend this meeting?

20 A No.

21 Q Do you recall who attended on behalf of the Key Food Co-
22 Operative?

23 A Doug Catalano.

24 Q And was anyone else at the meeting?

25 A I don't believe so.

1 Q Mr. Sollicito, Deana, can you spell her last name?
2 Telmany?

3 A T-E-L-M-A-N-Y.

4 Q What position does she hold with the Union?

5 A She's the director of organization.

6 MR. WICH: No objection.

7 JUDGE GREEN: Okay. GC-51 is entered into evidence.

8 (General Counsel's GC-51 received in evidence)

9 CONTINUED DIRECT EXAMINATION

10 BY MS. ALAM:

11 Q After this November 19th meeting, did you try to contact
12 Mr. Catalano for additional negotiation sessions?

13 A Yes.

14 Q How did you try to contact him?

15 A I reached out to him via text.

16 Q And what happened?

17 A He basically responded that because the lines were still
18 up, that they wouldn't be meeting until after Thanksgiving.

19 Q Did you ever reach out to any of the individual owners of
20 the stores --

21 A I did.

22 Q -- after that meeting?

23 A I also sent a text to Lenny Mandell. Lenny had said he
24 was available to meet. And then a short time later he text me
25 back. After I had gotten the text from Doug to take the lines

1 down, Lenny texted me back and told me to talk to Doug.

2 MS. ALAM: Okay. I'd like to have this document marked
3 for identification as General Counsel exhibit 52. Handing a
4 copy to Respondent's counsel --

5 BY MS. ALAM:

6 Q Mr. Sollicito, can you identify this document for the
7 record?

8 A Text message between me and Doug and myself and Lenny.

9 (General Counsel's GC-52 identified)

10 Q And --

11 A And one group text to a few of the other, Alan Aconte
12 (ph), Doug and Lenny, Alan Mandell (ph).

13 Q And is this the --

14 A And Steve DiCarlo.

15 Q Is this the text message conversations you were referring
16 to earlier?

17 A Yes.

18 Q You retained these on your phone?

19 A I did.

20 Q Was this on your work phone or personal --

21 A Yes.

22 Q -- phone? Work phone?

23 A Yes.

24 Q And did you forward these messages to anybody for this
25 trial?

1 A Okay.

2 Q Are you aware if the Union has ever taken the position
3 that there's not a contract between the Union and the stores at
4 issue here?

5 A Am I aware of it? No.

6 Q Are you aware, prior to Mr. Catalano making that comment,
7 because of what transpired, that one or more of the Respondents
8 believed that the Union had trespassed on their property? Are
9 you aware of that?

10 A Was I aware of that? No.

11 Q Before -- strike that.

12 MR. WICH: Nothing further.

13 JUDGE GREEN: Okay. Any redirect?

14 MS. ALAM: Yes, Your Honor.

15 CONTINUED REDIRECT

16 BY MS. ALAM:

17 Q Mr. Sollicito, during the entire course of the
18 negotiations between the Key Food Co-Operative and the
19 individual owners, has it ever been your understanding that the
20 parties, Local 342 and the Respondents, reached agreement on a
21 contract.

22 A No.

23 MS. ALAM: That's it.

24 JUDGE GREEN: Anything from the Charging Party?

25 MR. MILNER: No, nothing.

1 proposed?

2 A The response was that we -- well, 342 couldn't live with
3 it. I'm not sure about the others, but 342 was not for it.

4 Q Do you remember if there was any agreement reached at the
5 end of that meeting?

6 A No.

7 Q I'm sorry, was there any agreement reached at the other --
8 at this meeting?

9 A No.

10 Q Why were the other Locals 1500 and 338 meeting to bargain
11 with the Key Food Co-Op with Local 342? Why were you all
12 meeting together?

13 A We were trying to get a contract that we all could live
14 with, using the leverage of the amount of people we had.

15 Q And about how many in person meetings with Key Food and
16 its members did you attend that included Local 338 and Local
17 1500?

18 A About three.

19 Q Was there any sort of formal agreement that all three
20 Locals would be -- would have to bargain together?

21 A No.

22 Q Did the other Locals -- well, there was -- was there an
23 informal agreement?

24 A There was an understanding amongst the Locals of the UFCW,
25 not just 338 and 1500. There was 1245, 1262, 464. That we

1 A Yes.

2 Q At that point did you have any -- did you speak with any
3 of the individual owners of the stores directly?

4 A Yes.

5 Q Who did you speak with?

6 A I could -- I don't know if it was Sam or Randy Abed.

7 Q And the -- that's -- those are the owners of the Greaves
8 Lane store, correct?

9 A Yes, the old Pathmark --

10 Q How did -- do you remember when you spoke with them?

11 A There was a strike at the store and he was laying people
12 off and cutting hours. So I called the store to find out if we
13 could fix it.

14 Q Do you remember if this took place around the holiday or
15 anything?

16 A It was probably like in November some time.

17 Q And do you know what year?

18 A 2015.

19 Q And so what did you say to Mr. Abed when you called him?

20 A I asked him what was the issue and how we can help? I
21 asked him if he was interested in signing a transition
22 agreement. He told me he wasn't allowed to.

23 Q Sorry, he said he wasn't allowed to?

24 A Yes.

25 Q Did he expand on why he wasn't allowed to?

1 A Because the Co-Op wouldn't let him, because he has an
2 understanding with the Co-Op. Some type of agreement that he
3 would lose money if he signed it.

4 Q And you said that the demonstrations outside of the store
5 were happening because people had been let go. Did you talk to
6 him about the people let go?

7 A Right. Yes, I did.

8 Q Do you recall who was let go at this time --

9 A I'm going to say a deli manager, a seafood person --

10 Q Did he --

11 A -- a butcher.

12 Q Did he make any -- did he tell you why people had been let
13 go or did he make any --

14 A He said he couldn't afford them. He said their rates were
15 too high.

16 Q Did he talk about letting anyone else go?

17 A He said he was considering letting several other people
18 go.

19 Q Did he name anybody that he was planning on letting go?

20 A Yeah. He named one or two people that I could remember.
21 One was Anthony Venditti, the other one was Michael Fischetti
22 and I can't remember the last person.

23 Q And he said that he was going to let them go?

24 A Yes.

25 Q What was your response?

- 1 A Uh-huh.
- 2 Q Is that what you remember?
- 3 A Yes.
- 4 Q Did you make an agreement with Mr. Abed about his laying
5 off any additional Local 342 members?
- 6 A No.
- 7 Q Do you know what happened after you got off the phone?
- 8 A Yeah. I -- he went outside and he told the strike captain
9 that I said to take the line down.
- 10 Q Had you told him to do that?
- 11 A No.
- 12 Q How did you find out that he did that?
- 13 A The strike captain called me before I had chance to call
14 her and told me that's what he said.
- 15 Q And who's the -- who was the strike captain.
- 16 A Margaret Monier.
- 17 Q And what did you say to her?
- 18 A I said I'm taking it down in good faith, because we're
19 going to try to avoid a layoff and have discussion with him.
20 It was an awkward position to be in.
- 21 Q Do you know if there were any additional layoffs after you
22 took the strike down?
- 23 A The very next day.
- 24 Q Do you know who got let go?
- 25 A Yes. He went over to Anthony Venditti and told him that I

1 JUDGE GREEN: You can give your answer.

2 THE WITNESS: Okay. So it was the interpretation of the
3 Co-op that there was too many full-timers according to what you
4 guys were saying, right. But to say that there was too many
5 full-timers?

6 BY MR. CATALANO:

7 Q No, I'm sorry. I didn't ask you that. I asked you --

8 A Okay. What did you ask me?

9 Q -- did the Co-op (can we use that word) make it clear that
10 they believed that there were too many full-timers in the
11 stores?

12 A Yes, that they believed, right.

13 Q And did they also say right from the inception of the
14 bargaining that they did not want all of these full-time
15 employees to be hired and that rather, they would be given a
16 so-called buyout? Not a severance payment because they
17 wouldn't be employed by the Key Food personnel. Was that ever
18 made clear right --

19 A Sure.

20 Q -- from the inception?

21 A Sure.

22 Q Okay. Now, also, was it made clear that there could be no
23 contract with the other three major Unions, 1262 and 1245, off
24 to the side, but 1500, 338, 464A and 342 could not enter into
25 an agreement unless the others had also agreed; was that made

1 THE WITNESS: I'm sorry, Doug, what was the question
2 again?

3 BY MR. CATALANO:

4 Q Is there anything you recall sitting here today that's set
5 forth in this document that you remember having an agreement
6 with the Key Food people about any of these provisions? Such
7 as, as an example, probationary period, \$8,000 buyout, the
8 wages, the wage rates, the holiday?

9 A No.

10 Q Do you remember any of that?

11 A No, because the -- the deal was always presented to the
12 company as a package, so if it's not signed off on, it's not a
13 package, then we didn't agree to anything in there unless the
14 package is complete. That was always our position.

15 Q Okay. The question is: Did you at any time, subject to
16 this package concept, agree to \$1,000 per month healthcare
17 contribution?

18 A No, not unless it was a package.

19 MR. E. MILNER: Objection. He --

20 JUDGE GREEN: Overruled.

21 BY MR. CATALANO:

22 Q Assuming that the package was complete, did you agree to
23 \$1,000 per month contribution?

24 A I can't answer that question. It has to be a package. I
25 thought I --

1 them. Hi, how you doing, you know.

2 Q Do you recall their names?

3 A One was Sam Abed and I believe the other one was Randy
4 Abed.

5 Q When they took over the store, did they keep -- did the
6 Abeds keep all the departments as they were under Pathmark?

7 A Yes, they did.

8 Q Did they keep the seafood department?

9 A Seafood was, yes.

10 Q And the deli department?

11 A Yes.

12 Q When the store was owned by Pathmark was any of the meat
13 pre-packaged?

14 A Just the -- our chicken case was pre-pack. Like certain
15 stores it's certain items like that but basically, the chicken
16 case was all basically pre-packed.

17 Q Okay. And did that change when the store was taken over
18 by Key Food?

19 A Yes. They went back to ice-packed chicken. It comes in a
20 box with ice and parts are all loose, so you have to actually
21 take it all out, boat it all up.

22 Q So would you say there was less pre-packaged meat under
23 Key Food?

24 A Yes.

25 Q While you were working at Key Food, did the company let go

1 of any Local 342 members in the meat department?

2 A Yes, they did.

3 Q Do you remember who?

4 A There was Joe Bautista was a butcher. They had let him
5 go. There was another butcher, Calvin. I don't remember his
6 last name. They let him go. And I believe a part-time -- two
7 part-timers might have been gone. I don't remember their
8 names.

9 Q Do you remember when that happened?

10 A That Saturday after Thanksgiving.

11 Q Were either Calvin or Joseph Bautista active at Local 342?

12 A I know Joe Bautista was. He was the shop steward at the
13 time.

14 Q So after these people were let go, who was left at the
15 meat department?

16 A At that time it was just me and another butcher, O'Neal.

17 Q Do you remember O'Neal's full name?

18 A No, O'Neal is his last name.

19 Q Okay. Do you know if anyone was transferred to the Albany
20 Avenue store to work with you in the meat department?

21 A We had got a butcher from -- a butcher -- a full-time
22 butcher and a full-time meat wrapper I believe from the
23 Greaves -- Greaves Avenue store came.

24 Q Do you remember their names?

25 A One was -- the butcher's name was Antonio. He's got a --

1 BY MS. ALAM:

2 Q Could he issue disciplines?

3 A As an assistant from what I know from when I was with
4 Pathmark, they had the authority to do that. Under new
5 management I wasn't told. They had a store manager there, so
6 it wasn't like he was the definitive only person there.

7 Q And when he became -- when Sam, who was the receiver, move
8 to become the assistant store manager, how did his duties
9 change or increase?

10 A Well, I don't -- we really had not much dealing with him,
11 I'll be honest with you, at that point. Only when he was, you
12 know, when he come do the receiving. He walked the store, but,
13 you know, his -- I mean as far as we're concerned, he came by.
14 He would come by the case to see how everything was going, like
15 that. There was really no...

16 Q So while you were working at the Albany Avenue store, did
17 the Union do, Union Local 342, do any leafleting outside the
18 store?

19 A Yes.

20 Q Do you remember when they started?

21 A Probably -- wasn't there, so it had to be like in
22 December. Right after Christmas, early January, I believe,
23 like in that area.

24 Q And that's 2015 again?

25 A Well, 2015, early 2016, yeah, I believe. I'm not too

1 sure.

2 Q Do you know how long they were outside of the store for?

3 A Probably about a week, week-and-a-half.

4 Q Did anyone from the company say anything to you about the
5 leafleting?

6 A There was a conversation between me, the seafood manager
7 and the deli manager. Sammy came over, Abed, and just said --
8 he says you can't leaflet on company time or else that's going
9 to be a problem for you. No problem.

10 Q Do you remember where you were when he said this?

11 A The deli department.

12 Q Did you respond?

13 A No, there was no response. That was it.

14 Q Did anybody else say anything?

15 A No.

16 JUDGE GREEN: This was Sam Abed?

17 THE WITNESS: Sam Abed, yes.

18 BY MS. ALAM:

19 Q Did you take part in the leafleting?

20 A Yes.

21 Q When would you take part in the leafleting? Was it
22 outside of the Albany Avenue store?

23 A Correct. My lunch hour which is my time, because I have
24 to punch out for lunch, so I punch out and in. I get a half
25 hour, so that's my time, and then I would go after work. After

1 I clocked out at 3:30, I would give out leaflets.

2 Q When is your lunch break?

3 A It varied. 12:30 to 1:00, sometimes 1:00 to 1:30,
4 depends.

5 Q Do you remember how many times you went out and
6 participated with the demonstrators outside of the Albany
7 Avenue store?

8 A Well, if they were there let's say ten days, probably
9 about six or seven.

10 Q And what would you do while you were out there?

11 A We just stand outside by the curb and just hand out
12 leaflets, talk to people. Let them know what was going on
13 inside.

14 MR. CATALANO: This is Albany Avenue?

15 MS. ALAM: Yes.

16 BY MS. ALAM:

17 Q Who would you hand out the leaflets to?

18 A Whoever came to shop, customers.

19 Q And what if anything did you say to customers when you
20 gave them leaflets?

21 A Well, they came in saying that they were going to be a big
22 Union shop and we're going -- we're going to sign the contract
23 and then, you know, after a month goes by and there's not -- no
24 contract yet. We were just letting people know it was a non-
25 Union shop now. They're trying to make it a non-Union shop.

1 Q Would you wear anything while you were out there?

2 A They had -- I don't know what you call them. You know,
3 like things you put over your head with the cardboard, Local
4 342. This way they knew who we were.

5 Q Did you see any of the managers and/or owners of the
6 store? Managers, like supervisors or owners of the store while
7 you were out there?

8 A Randy Abed was out there one day.

9 Q What was he doing?

10 A He was standing on top of a bench with a megaphone. One
11 of those phones. Telling them how, you know, that we were
12 lying, that it was a Union stop and just carrying on.

13 Q About how far away was Mr. -- was Randy Abed from you?

14 A He was in front of the store. We were like on the outside
15 maybe about 50 feet. There was maybe more, because they have a
16 wall with an opening where cars come in, so we were on the
17 other -- outside of that by the curb and he was by the store
18 right in front of the bench.

19 Q Was there anything obstructing the line of vision from him
20 to you?

21 A Oh, no. He could see direct.

22 Q Had you interacted with Mr. Abed before this?

23 A Just hi. You know, nothing -- you know, hi, Randy. How
24 you doing. It was --

25 Q Did he know who you were?

1 A Oh, I'm sure he did, yes. I mean, he did walk the store.

2 Q Do you remember what you were doing when you were -- when
3 Randy Abed was on the megaphone?

4 A I was outside on my lunch handing out leaflets.

5 Q Did anyone -- any of the managers, supervisors or owners
6 of the store say anything to you about the leafleting after you
7 started participating in the leafleting?

8 A No, nobody said anything.

9 Q Did you participate in leafleting outside any of any other
10 Key Food stores?

11 A Yes, I leafleted at the Greaves Lane store also on my day
12 off.

13 Q Do you remember when?

14 A Probably the same area -- same time, because they had
15 multiple leafleting going on. So you got some people let's say
16 leafleting at Albany Avenue store the same day you might've had
17 them at the Greaves Lane store.

18 Q Do you remember how many times you went out to the Greaves
19 Lane store?

20 A Two or three.

21 Q And when would you go there?

22 A My day off.

23 Q In your opinion, was the leafleting effective?

24 MR. CATALANO: Objection.

25 JUDGE GREEN: Yeah. Sustained.

1 BY MS. ALAM:

2 Q Did you -- what would happen when the -- when the Local
3 342 members were leafleting at the stores?

4 A A lot of people would turn away.

5 Q And these were people who were potential customers?

6 A Correct.

7 Q Did you see any of the owners or managers while you were
8 leafleting outside the Greaves Lane store?

9 A Yes. Sammy was -- Sam Abed was there.

10 Q And what was he doing when you saw him?

11 A He was going into his store. We were -- we were by his
12 store. He was going into the store.

13 Q And how far away were you from him when you saw him?

14 A About ten feet.

15 Q What were you doing at the time?

16 A Handing out leaflets.

17 Q Did your relationship with Sam, the receiver/assistant
18 manager, change after you started participating in the
19 leafleting?

20 A Yeah, not too long after that, yes.

21 Q What changed?

22 A He became more of an --

23 MR. CATALANO: Objection.

24 JUDGE GREEN: Overruled.

25 THE WITNESS: It was more of an -- it started to get like,

1 kind of like confrontational. I don't know. Harassment. It
2 was, you know, in my opinion.

3 BY MS. ALAM:

4 Q Like what would he -- what would he do?

5 A Well, every time -- every time you left the room, it was
6 always "Where you going?" "What are you doing?" "How come you
7 doing that?" "Why ain't we doing this?" "Do this," you know.

8 Q When you say why aren't you doing that, what do you mean?

9 A Well, like if -- one of the -- one of the girls had to
10 do -- go to the bathroom or, you know, whatever. "Where is she
11 going?" "How long is she going to be?" "Why she got to go so
12 many times?" It was every day.

13 Q So he would ask you about other employees?

14 A Well, me too when -- if I had to go up to the office or,
15 you know, if he was in the area, then he'd say "Why are you
16 going up there?" "Let somebody else." You know, "You got to
17 do this." They wanted -- one day it was we should -- the way
18 we should do it, one guy should cut certain -- the whole case.
19 Another guy should do the pre-packed chicken and, you know,
20 wanted to run the room. That's the way I -- it came off to me.

21 Q But when you mentioned like the girl who is going to the
22 bathroom, he would direct that to you or was it directed to --

23 A Oh, to me. Yeah, that would always come to me. "Why she
24 go to" -- nobody -- you know, everything came to me.

25 Q And at this point, just to be clear, who was working at

1 the meat department?

2 A At that time --

3 MR. CATALANO: Objection. At what time?

4 MS. ALAM: At this point, after the leafleting had started
5 at Albany Avenue.

6 JUDGE GREEN: This is at Greaves Lane or Albany?

7 MS. ALAM: Albany Avenue. That's where we are.

8 THE WITNESS: At that time, it was myself, the butcher,
9 Antonio, the meat wrapper, Sharon, and there was one other
10 part-timer who worked at night.

11 BY MS. ALAM:

12 Q Did Sam, the receiver, ever complain to you that you were
13 outside too much taking breaks?

14 A No.

15 Q Did he ever complain to you that the meat case had not
16 been filled?

17 A No.

18 Q Did Sam Abed ever talk to you about those issues?

19 A No.

20 Q Did Randy Abed ever talk to you about those issues?

21 A No.

22 Q Did any store manager or supervisor speak to you about
23 those issues?

24 A No.

25 Q Did you ever receive any written disciplinary warnings

1 while you worked for Key Food?

2 A Never.

3 Q Were you ever shown any disciplinary warnings written?

4 A No.

5 Q Were you ever sent any written warnings in the mail?

6 A No.

7 Q Did you have any verbal warnings that were given to you
8 while you were at the Key Food on Albany Avenue?

9 A None whatsoever.

10 Q How long have you been a butcher?

11 A Twenty-five years.

12 Q And how long of that were you a meat manager?

13 A Probably since '97 maybe so.

14 Q During your employment, have you ever been disciplined for
15 having an empty meat case?

16 A Never.

17 Q I'd like to have the witness shown General Counsel
18 Exhibit -- one moment.

19 JUDGE GREEN: Let me just ask you. This change in your
20 relationship as you perceived it with Sam, the receiver, did
21 that coincide with about the same time that he became assistant
22 manager?

23 THE WITNESS: That coincided with after the leaflet and
24 picketing outside of the store -- outside of a store, not his
25 store.

1 JUDGE GREEN: Which was when?

2 THE WITNESS: Probably right after -- well, we picketed
3 after Christmas, so probably the first week in January. Like
4 in that area we started to get a little confrontational I guess
5 is the word. I don't know.

6 BY MS. ALAM:

7 Q And he had already -- had Sam, the receiver, already taken
8 on assistant store manager duties by that point?

9 A Yes.

10 Q So I would like to have the witness shown General Counsel
11 Exhibit 25 I think it is.

12 A (Reviewing)

13 Q Mr. Fiore, have you ever seen this document before?

14 A Yes.

15 Q When did you first see it?

16 A It was in January. We were getting our checks and the
17 store manager was handing them out.

18 Q This is January 2016?

19 A Yes.

20 Q What was the name of the store manager that was handing
21 them out?

22 A Mike Carlos was the store manager at the time.

23 Q Did Mr. Carlos say anything to you when he gave them out?

24 A Yes, they were to be filled out, signed and returned to
25 him by the end -- by the end of next -- the following week.

1 Q Did you look through this handbook after you were given
2 it?

3 A Yeah, honestly, kind of quickly. I didn't really give it
4 much of anything.

5 Q Were you ever spoken to about these -- this handbook after
6 you received it?

7 A Well, they said if we didn't hand it -- because there
8 was -- attached was, I believe, an application, like a Key Food
9 application. If we didn't hand it in, supposedly we weren't
10 going to have a job.

11 JUDGE GREEN: Who said that?

12 THE WITNESS: The store manager, Mike Carlos, at that
13 time.

14 JUDGE GREEN: Okay.

15 BY MS. ALAM:

16 Q You testified earlier that your wages when you first
17 started at the Key Food were the same as when you worked at
18 Pathmark. Did that ever change?

19 A Yes, it did.

20 Q When did that change?

21 A I believe it was the -- January -- it was a Saturday,
22 January 16 of 2016.

23 Q And what happened?

24 A Sam -- Sam Abed came over and was talking to me and had
25 told me that I make too much money. That he's going to have to

1 break me to a butcher.

2 Q When you say "break me," what is that?

3 A Well, that means when you break somebody when you go
4 from -- I guess demotion.

5 Q Was the meat manager position filled by somebody else?

6 A Yes, they brought O'Neal back from Staten Island back to
7 Brooklyn as the meat manager.

8 Q Do you know was he given the rate of pay that you were
9 given?

10 A No.

11 Q Do you know what rate of pay he was paid at as meat
12 manager?

13 A The rate of pay when he left. I think it was 20 or \$25 at
14 that time.

15 Q And how did you know that?

16 A He had said it. He was getting no extra pay for it.

17 Q And do you know what you -- did Sam Abed tell you what
18 rate of pay you were going to be getting once you were demoted?

19 A No. I assumed I was going to get an A rate, which is
20 29.55.

21 Q Did you have any other changes to your wages or hours?

22 A Yes, that -- that week when the new schedule came up, I
23 was working 35 hours a week with no Sunday.

24 Q Do you know if anybody else's hours got cut?

25 A Yes, me. Antonio had gotten cut the same thing, 35 hours,

1 and I believe the full-time meat wrapper, Sharon, had got cut
2 to 35 hours. O'Neal stood the same.

3 Q And when you finally did get your paycheck, did you find
4 out what your --

5 A Yes, I --

6 Q -- wage had been changed to?

7 A Twenty-five -- they changed it to \$25 an hour.

8 Q What was -- and you had assumed you said that it was the A
9 rate, which is what?

10 A 29.55.

11 Q Did you speak to anyone from management about your pay?

12 A When I spoke with the store manager, Mike Carlos, he told
13 me he talked to Randy and I should call then Randy. Whatever
14 their con -- he didn't tell me what their conversation was
15 about. He just ended it with I should call -- I'm sorry. He
16 said he spoke with Sammy Abed and I should -- then I should
17 call him and straighten it out.

18 Q And did you ever call Sam?

19 A I called. I left a message. I texted him two or three
20 times telling him that that's not the rate of pay that an (A)
21 butcher gets. No response.

22 Q When you said you had your hours reduced to 35 hours?

23 A Thirty-five a week.

24 Q What was it prior to that?

25 A It was 40. Forty hours a week, 7:00 to 3:30. When they

1 changed it, it became 35 hours a week, 9:00 to 5:30.

2 Q And you also I think said that you worked on Sundays?

3 A I lost Sunday when I -- when he broke me as a meat
4 manager. O'Neal was the only one working Sundays. O'Neal and
5 I believe a part-timer.

6 Q How many hours did you used to work on Sunday?

7 A As a meat manager, four or five hours.

8 Q And did you work every Sunday?

9 A Yes.

10 Q Did you go to work on January 30, 2016?

11 A Yes, I did.

12 Q What happened that day?

13 MR. CATALANO: January 16?

14 MS. ALAM: January 30th.

15 THE WITNESS: Randy Abed called me in the office and was
16 nice enough to let me go, I guess. He told me my services were
17 no longer needed.

18 BY MS. ALAM:

19 Q Did he say anything else?

20 A No. He didn't even look me in the eye.

21 Q Did you say anything in response?

22 A No. Take care. Be good.

23 Q Did he say why your services were no longer needed?

24 A No.

25 Q Do you know if anybody else was let go that day?

1 A The deli manager was also let go. His name is Rob. His
2 last name I don't remember.

3 Q Do you remember what time you were called into the office?

4 A Two, 2:30 in the afternoon.

5 Q Had you been working the whole day?

6 A Yes.

7 Q Did you ever receive a severance payment or any sort of
8 payment aside from your wages from Key Food?

9 A No.

10 Q Did you receive anything from Pathmark?

11 A No.

12 MS. ALAM: General Counsel rests.

13 MS. TOOKER: No, we don't rest.

14 JUDGE GREEN: Right. I understand what she means.

15 MS. ALAM: I want to rest.

16 JUDGE GREEN: Anything from the Charging Party?

17 MR. M. MILNER: No, Your Honor.

18 JUDGE GREEN: Anything from Respondents?

19 MR. WICH: The Jencks materials, Your Honor.

20 MR. CATALANO: Can we take a few minutes?

21 JUDGE GREEN: Sure. Let's take ten minutes.

22 (Whereupon, a brief recess was taken)

23 JUDGE GREEN: Back on the record. All right. The
24 Respondent's counsel is going to have some questions for you.
25 Recall that you are still under oath.

1 A It just says these are non-Union stores it said.
2 Q It did?
3 A As far as I remember, yes.
4 Q Did it ever say "Don't shop here. Shop at ShopRite"? Do
5 you remember?
6 A No, I don't remember.
7 Q Did you ever tell a customer "Don't shop at this store"?
8 MS. ALAM: Objection, Your Honor. Asked and answered.
9 MR. CATALANO: What's the answer?
10 JUDGE GREEN: Sustained. He said no.
11 MR. CATALANO: No. Okay. May I have Exhibits 33 and 34,
12 please.
13 BY MR. CATALANO:
14 Q These were the leaflets you were handing out, wasn't it?
15 I'm handing him Exhibit 34.
16 A (Reviewing) Yeah, it could be, yeah.
17 Q That was it. Okay. Now, take a look at 33. You were
18 handing this out too, right?
19 A (Reviewing) No, this one here I don't remember handing
20 out, no. This one I don't remember.
21 Q So the one on your left hand is the only one --
22 A I remember.
23 MR. E. MILNER: Which is the one in his left hand?
24 THE WITNESS: Thirty-four.
25 JUDGE GREEN: Exhibit 34 is the one you do remember

1 handing out?

2 THE WITNESS: Correct.

3 JUDGE GREEN: Okay.

4 BY MR. CATALANO:

5 Q And were you telling people that "342 is on strike"?

6 A On strike, no.

7 Q Did any of the leaflets or handbills say "On Strike"?

8 A On strike, no.

9 Q Were you ever asked to get off private property and to go
10 out at the entrance on Greaves Lane --

11 A No.

12 Q -- by the police? You weren't?

13 A No.

14 Q Did anybody ever get asked to go out on public property at
15 Greaves Lane; yes or no?

16 A Public property, no.

17 Q Did anybody tell you to get off the parking lot and away
18 from the front doors?

19 A Yes.

20 Q Okay. Who told you that?

21 A The police said that.

22 Q And how often did they tell you to get off the private
23 property?

24 A No, not get off private property. We weren't allowed to
25 be --

1 Key Food?

2 A Yes.

3 Q And had you dealt with Sharon prior to her being the store
4 manager at Union Square?

5 A Yes.

6 Q What store was she working at then?

7 A She worked -- the one prior to Union Square, she was the
8 store manager of Madison Avenue Food Emporium. And then prior
9 to that, she was on Sixth Avenue, I believe.

10 Q And what was her position in the Sixth Avenue store?

11 A Co-manager, assistant manager.

12 Q What does a co-manager do?

13 A They assist the store manager.

14 Q And do you remember when that was that she was the co-
15 manager in Sixth Ave?

16 A Approximately 2010 for about --

17 Q Do you know how long she was the co-manager?

18 A About two or three years over there that I could recall.

19 Q Now, in general, when you dealt with Sharon in your
20 capacity as Union representative, how were labor relations with
21 Sharon?

22 A Sharon -- it was very hard to get things resolved with
23 Sharon. She did follow parts of the contract, majority of
24 scheduling, hours, wages, stuff like that.

25 Q And your dealings with Sharon, how were they as compared

1 to other store managers that you dealt with?

2 MR. CATALANO: I'm sorry, can we know what time? Is she
3 talking about before the Key Food purchases?

4 MS. TOOKER: Yes. So I'll ask.

5 BY MS. TOOKER:

6 Q So just to clarify, so I'm talking about the time period
7 just your experiences with her as a manager in Food Emporium,
8 so the whole time that she was the co-manager at Sixth Avenue,
9 when she was at Madison and then 14th Street, so does that
10 change your answer at all?

11 A No.

12 Q Okay. So your dealings with Sharon, were they -- how were
13 they different than with other store managers?

14 A Majority of the store managers in the Food Emporium --
15 Food Emporium, I was able to resolve a lot of issues with any
16 complaints, misscheduling, possible grievances that the members
17 came to me with. I could talk to the store managers and
18 resolve it with them. They would fix it if it was wrong.

19 With Sharon it always -- very few times did it get
20 resolved at that level. I would always have to go to the next
21 step to Human Resources because she wouldn't change whatever
22 was incorrect.

23 Q When you say incorrect, is it incorrect according to --

24 A The contract.

25 Q Did Sharon ever say anything to you about what her opinion

1 of the Union was?

2 MR. CATALANO: Objection.

3 JUDGE GREEN: Overruled.

4 BY MS. TOOKER:

5 Q You can answer. So the question was if Sharon ever said
6 anything to you about what her opinion of the Union was?

7 A In -- yes.

8 Q Okay. So when was the most recent time that she said
9 something like that?

10 A The most recent was when the stores were starting to close
11 with bankruptcy.

12 Q And do you remember when that was?

13 A About -- around approximately September 2015.

14 Q Okay. And what was it that Sharon said?

15 A When I went to visit the members to make sure that --
16 because it was such a stressful time, to see if everybody was
17 okay, if they had any questions, on my way out the door Sharon
18 says, you know, why are you even here, you know. They don't
19 have a Union anymore. They don't -- you don't have to come see
20 them anymore.

21 Q Did you say anything in return?

22 A I said yes, they do have a Union and I just walked out
23 because I didn't want to upset the members as well by getting
24 into an altercation.

25 Q You said you were on your way out the door. Were there

1 any members around in this area?

2 A Yes, the cashiers and stock people.

3 Q About how many employees were there?

4 A Approximately ten.

5 Q Do you remember the names of any of them?

6 A I believe the shop steward was there. One of the shop
7 stewards, Juana Diaz, I believe.

8 Q And sorry, did you mention what store you were in when
9 this conversation took place?

10 A Union Square.

11 Q Did Sharon ever say anything else to you about the Union
12 and her opinion of it?

13 A In the past she just always would make comments, show
14 her -- she would get angry when the members would call me
15 instead of going to her to resolve issues.

16 MR. CATALANO: Objection.

17 JUDGE GREEN: Can we get more clarity on what that means?

18 MS. TOOKER: That is my intention.

19 BY MS. TOOKER:

20 Q How did you know that she was angry about this?

21 A By her body language and things that she would say to the
22 members.

23 Q Did she ever say anything to you?

24 A She would -- she would say "I don't know why they have to
25 call you. All they have to do is talk to me." Yes.

1 Q Did you respond when she said that?

2 A If you -- if you were willing to fix these things, then
3 they wouldn't have to call me in the first place.

4 Q Approximately how many times did you have a conversation
5 like that with her?

6 A Over the years I couldn't say for actually but more than
7 ten.

8 Q And who was the shop steward in the Union Square store?

9 A The original shop steward was Tamika Jones.

10 Q And what was Tamika's position in the store?

11 A Floral manager.

12 Q Were there any additional employees that acted like shop
13 steward?

14 A Yes.

15 Q Who were they?

16 A Dena. I don't know how to pronounce her last name.

17 MR. CATALANO: Objection. Acting like a shop steward.

18 JUDGE GREEN: Okay. Well, we can clarify.

19 BY MS. TOOKER:

20 Q Was there anybody else? And then we'll go to that.

21 A Juana Diaz.

22 Q Okay. And so what sorts of -- actually, so first --
23 sorry, withdrawn.

24 What was Juana's position in the store?

25 A Scan coordinator. Sorry.

1 Q And what was Dena's position in the store?

2 A Dena worked the registers.

3 Q So what were Tamika's duties as shop steward?

4 A She would -- in -- she would watch everything in the store
5 to make sure that the contract was being followed. Any members
6 that had complaints would go to her and she would try to
7 resolve it before it would come to the Union.

8 Q And what sorts of things did Juana and Dena do?

9 A They did the same.

10 Q And what were the circumstances that led to Juana and Dena
11 also being these pseudo-shop stewards?

12 MR. CATALANO: Objection.

13 JUDGE GREEN: What's the objection?

14 MR. CATALANO: I didn't hear how anybody else acted as a
15 shop steward, let alone know what pseudo shop stewards are.

16 JUDGE GREEN: Overruled.

17 THE WITNESS: Their stores had recently closed and all
18 three of them winded up being in the one store.

19 BY MS. TOOKER:

20 Q Okay. And how many elected shop stewards are there
21 usually in a store?

22 A Elected, one. Depending on how many members also that are
23 in a shop.

24 Q And Juana and Dena, when they were in their previous
25 stores, were they the elected shop stewards?

1 A Yes.

2 Q Okay. Now, were there certain employees that were more
3 likely to go to Juana or Dena than Tamika?

4 A Yes.

5 Q Do you know why that was?

6 MR. CATALANO: Objection.

7 JUDGE GREEN: Overruled.

8 THE WITNESS: Yes, because you had three stores kind of
9 working in one and the people from Dena's original store were
10 more comfortable going to Dena. And the members from Juana's
11 old store were more comfortable going to Juana and then the
12 original Tamika members would be comfortable going to Tamika.

13 JUDGE GREEN: Now, how did you know that?

14 THE WITNESS: The stewards would tell me. The members
15 would tell me.

16 JUDGE GREEN: Okay.

17 BY MS. TOOKER:

18 Q Who was the store manager before Sharon at the Union
19 Square store?

20 A At the Union Square, Kevin. Kevin Smith.

21 Q And prior to Sharon becoming the store manager at Union
22 Square, how often did you receive calls from the Union Square
23 shop stewards?

24 A Not often.

25 Q And if you didn't hear from them, what if anything would

1 you do?

2 A I would reach out to the shop stewards, make sure that
3 everything was going well.

4 Q How often did you do that?

5 A Weekly.

6 Q Now, once Sharon took over, you said that was about a year
7 before the Key Food takeover, right?

8 A Yes.

9 Q How often did you receive calls from the Union Square shop
10 stewards?

11 A From the first week that she was transferred there.

12 Q And how often did you get the calls?

13 A Weekly. More -- several times a week.

14 Q Was that more or less often than before Sharon took over?

15 A More.

16 Q And in general, what kind of issues did the shop stewards
17 and assistant shop stewards report in the Union Square store?

18 A Can you repeat that?

19 Q In general, what sort of issues did the shop stewards and
20 assistant shop steward report to you that was from the Union
21 Square store?

22 A After Sharon?

23 Q After Sharon.

24 A She started cutting hours, less than the contract
25 guaranteed. She started changing people's days of work. She

1 also tried to move people out of their departments, work more
2 than one department at a time.

3 Q And you said that there are contractual minimums for
4 employees?

5 A Yes.

6 Q Okay. I'm sorry, for the hours that they work. Okay.
7 Are there any contractual provisions that regulate the days
8 that people work?

9 A Yes, by seniority.

10 Q Can you explain that for me?

11 A Seniority would get the preferred scheduling.

12 Q And does the contract say anything about what departments
13 people will work in?

14 A Classifications, yes.

15 Q Okay. What does it say? I'm sorry, because you just said
16 before that you got calls about her moving people into
17 different departments.

18 A To work more than one department.

19 Q Okay.

20 A So for instance, if it was busy on the registers, she
21 would say, you know, stop what you're doing there and go to the
22 check-out and be a cashier for a little while. If it was busy
23 in the café, she may put somebody there.

24 Q So is there any contractual provisions that relate to
25 moving people around like that?

1 A Yes.

2 Q Okay. What does the contract say?

3 A Seniority and classifications.

4 Q Does the contract prohibit working in more than one
5 department?

6 A Yes.

7 Q All right. So in general, if you receive a call from a
8 shop steward about these types of issues, what do you do?

9 A First I would reach out to the store manager who is giving
10 the direction and try to resolve it.

11 Q And how do you reach out to the store manager?

12 A Phone call or if I'm in the area, I might go to the store.

13 Q And what sort of issues would you usually try to handle by
14 phone?

15 A I would always try to handle it by phone. Most of them.

16 Q Okay.

17 A Other than -- I'm sorry, other than like safety issues.
18 If I can't visualize something, I might go to the store for
19 that.

20 Q And how often did you go to the Union Square store when
21 Sharon was the manager?

22 A Weekly.

23 Q And once you got to the store, what did you do?

24 A First I would speak with the shop stewards.

25 Q And is that just Tamika or the others as well?

1 A When they were -- all three of them were working in the
2 store, I would speak to all three of them; Juana, Tamika and
3 Dena.

4 Q And once you spoke to the shop stewards, what did you do?

5 A They would tell me what the issue was. If the member who
6 had the issue was there, we would then go and speak to the
7 members who had the issues.

8 Q What did you do next?

9 A After I heard the issue, then I would contact the store
10 manager to see if it could be resolved.

11 Q Did you always go directly to Sharon?

12 A If she was the store manager on duty, yes.

13 Q All right. When you talked to Sharon or the store manager
14 on duty, was there anybody with you?

15 A Yes.

16 Q Who was with you?

17 A Juana, Tamika and Dena.

18 Q Did you ever go to the store when there wasn't a specific
19 call or issue, just to visit?

20 A Yes.

21 Q Okay. And on those visits, how did you conduct those
22 visits?

23 A Almost the same way except I wouldn't -- since there
24 wasn't an initial problem that I was called with, I would walk
25 with the shop stewards around the store to visit the

1 that?

2 MS. TOOKER: Yes.

3 BY MS. TOOKER:

4 Q Did any store managers ever complain to you about shop
5 stewards doing this on company time?

6 A Not that I recall, no.

7 Q And direct you that they couldn't?

8 A No. Sorry.

9 Q All right. So we talked about Juana Diaz. Did Juana ever
10 bring any issues that were regarding her own working conditions
11 to your attention?

12 A Yes.

13 Q And what types of issues did she bring to you?

14 A She was -- her hours were taken away from her within her
15 department on Sundays, which is a premium pay day.

16 Q And how many times did this happen?

17 A That I recall, twice.

18 Q What does the contract say about Sunday hours?

19 A If there's work to be performed, then they would be the
20 ones to -- the members would be the ones to do the work.

21 Q Does it say anything about full-time versus part-time
22 employees and Sunday hours?

23 A I don't recall the exact language.

24 Q All right. So when was the first time that Juana had this
25 issue with her Sunday hours being taken away?

1 A When she worked at Madison Avenue.

2 Q Okay. And who was the store manager at Madison Avenue
3 when Juana's Sunday hours were taken away?

4 A Sharon.

5 Q Same Sharon Gowon?

6 A Yes.

7 Q And was Juana the shop steward at Madison Avenue at the
8 time?

9 A Yes.

10 Q And what happened after she reported this to you on
11 Madison Avenue?

12 A I tried to resolve it with Sharon.

13 Q Was it resolved?

14 A No.

15 Q And do you remember when that happened?

16 A Estimated time?

17 Q Yeah, you can -- I mean, if you don't recall, then that's
18 fine. But if you can estimate when it was, then that would be
19 good too.

20 A Between -- it was either 2013 or 2014.

21 Q And now, you said that there was another time that they
22 were taken away. When did that happen?

23 A In Union Square.

24 Q Okay. So you said it was in Union Square that it
25 happened. Do you remember the approximate time frame?

1 A Yes, it was the first week that Sharon was transferred to
2 that store.

3 Q And prior to Sharon transferring, was Juana working on
4 Sundays?

5 A Yes.

6 Q How often?

7 A As often as she liked. I never heard any issue about it.

8 Q And do you know what work she was doing when she was
9 working on Sundays?

10 A In the scanning department.

11 Q Okay. How did you find out that Juana's hours were taken
12 away?

13 A She had called me.

14 Q Okay. What did she say when she called you?

15 A She was very upset. At the time, I wasn't even aware that
16 Sharon had been transferred that week to that store and this
17 was the first issue that started it off over there.

18 Q So what did you do when you first heard about this?

19 A I called Sharon.

20 Q And to the best of your recollection, what did you say and
21 what did Sharon say during this call?

22 A I don't believe we finished the conversation on the phone.
23 I asked what's going on about the scheduling. I don't remember
24 exactly what she said, but I do know I had to go to the store
25 that day. So I went in person.

1 A Yes, it was the first week that Sharon was transferred to
2 that store.

3 Q And prior to Sharon transferring, was Juana working on
4 Sundays?

5 A Yes.

6 Q How often?

7 A As often as she liked. I never heard any issue about it.

8 Q And do you know what work she was doing when she was
9 working on Sundays?

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11 Q Okay. How did you find out that Juana's hours were taken
12 away?

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14 Q Okay. What did she say when she called you?

15 A She was very upset. At the time, I wasn't even aware that
16 Sharon had been transferred that week to that store and this
17 was the first issue that started it off over there.

18 Q So what did you do when you first heard about this?

19 A I called Sharon.

20 Q And to the best of your recollection, what did you say and
21 what did Sharon say during this call?

22 A I don't believe we finished the conversation on the phone.
23 I asked what's going on about the scheduling. I don't remember
24 exactly what she said, but I do know I had to go to the store
25 that day. So I went in person.

1 Q Okay. And what did you do once you got to the store?

2 A I went with the shop stewards to speak to Sharon.

3 Q Okay. Do you remember what shop stewards were there?

4 A I do not. I know Juana was there for sure but -- I
5 believe Dena was there as well. I'm not sure if Tamika was
6 there.

7 Q And what was the conversation you had with Sharon in the
8 store?

9 A Can you tell me what's going on, basically. Why last week
10 everything was fine with Juana's schedule and working -- there
11 was work to be performed in scanning department and now this
12 week you're here and there's not and you're cutting her hours.

13 Q What did Sharon say?

14 A Not much. I believe she went up into the office and
15 didn't finish the conversation, so I had to call Human
16 Resources.

17 JUDGE GREEN: Where did the conversation begin?

18 THE WITNESS: In the front of the store by the customer
19 service.

20 JUDGE GREEN: Okay.

21 BY MS. TOOKER:

22 Q And where is Sharon's office in relation to the front of
23 the store?

24 A She would stay at -- customer service and the bookkeeper's
25 office was kind of one. One was -- customer service was lower

1 level. Bookkeeper's office was upper level. Sharon would stay
2 up there.

3 Q In the bookkeeper's office?

4 A Yes.

5 Q All right. So you said you had to contact HR?

6 A Yes.

7 Q Okay. Who in HR did you talk to?

8 A His name was Sean Grigals, G-R-I-G-A-L-S, I believe.

9 Q And were you able to resolve the problem with Sean?

10 A Yes.

11 Q What happened?

12 A I believe -- no, not -- not right away.

13 THE WITNESS: Can we take a quick break?

14 JUDGE GREEN: Yes. Why don't we go off the record for
15 five minutes.

16 (Whereupon, a brief recess was taken)

17 JUDGE GREEN: Okay. Back on the record.

18 BY MS. TOOKER:

19 Q All right. So I think when we broke, we were talking
20 about your discussions with Sean from HR regarding Juana Diaz
21 and her Sunday hours.

22 A Yes.

23 Q I think you said that you weren't able to resolve it with
24 John at first?

25 A With Sean, correct.

1 of Sunday hours to full-timers versus part-timers?

2 A Sunday hours got scheduled by classification and
3 seniority, so full-time would be scheduled before a part-timer.

4 Q All right. And you said you had to call Sean in HR about
5 this problem. How often did you have to call Sean in HR to
6 resolve problems that were raised in the Union Square store?

7 A When Kevin Smith was there, Kevin and I basically worked
8 out majority of the issues that ever came up. Once Kevin left
9 and Sharon came in, I would say almost all the time. Even if -
10 - maybe there was once or twice Sharon would say that she was
11 going to address something or something was being addressed, it
12 just never got done. I always had to wind up calling Human
13 Resources, Sean.

14 Q Are you familiar with an employee by the name of Rosa
15 Silverio?

16 A Yes.

17 Q Do you know what department she worked in at Union Square?

18 A I believe Rosa was bakery.

19 Q And do you know if she brought any issues to the Union?

20 A Yes.

21 Q And do you recall what issues she brought to the Union?

22 A She had scheduling issues.

23 Q Was there a certain person who she usually went to?

24 A She would go to Juana.

25 Q Do you know what her scheduling issues were?

1 A I don't recall details, but I know it was something had
2 happened at her apartment and she needed her schedule adjusted,
3 and she was having an issue getting that done.

4 Q And were you involved in resolving this?

5 A Juana resolved this issue.

6 Q And are you familiar with an employee named Keesha Fields?

7 A Yes.

8 Q And what was her department in Union Square?

9 A She was the bakery manager.

10 Q Do you know anything about Keesha taking time off for
11 surgery?

12 A Yes.

13 Q How do you know about that?

14 A She had called -- she either called me or one of the shop
15 steward had informed me. I believe Keesha called me. I spoke
16 with her about it.

17 Q What was the problem?

18 A She needed to have a procedure done, surgery, and she was
19 being denied the time to go have it done by Sharon.

20 Q What did you do when you received this call?

21 A Called Sharon.

22 Q Was this issue resolved?

23 A Not with Sharon. I had to go to Sean of Human Resources.

24 Q Was it resolved with Sean?

25 A Yes.

1 Q Was there any formal grievance?

2 A No.

3 Q And are you familiar with an employee by the name of Maria
4 Ortega?

5 A Yes.

6 Q And what was Maria's job in the Union Square store?

7 A She worked in the café.

8 Q Was Maria active in the Union?

9 A Yes.

10 Q Okay. What did she do?

11 A Maria would help. She would help other people. She would
12 call me if there were issues going on in the store regardless
13 if it was about herself or not. Even though she wasn't a shop
14 steward, she was still -- she would speak up if she saw
15 something that was not right, you know. She would let
16 management know.

17 Q Okay. And what kind of things did she call you about?

18 A The last thing that I recall with Maria was it was winter
19 and the café is directly across from one of the exit doors in
20 Union Square and the door was broke.

21 Q When you say the door was broken, how was it broken?

22 A It wasn't opening and shutting properly, so Sharon's
23 resolve to that was to keep the door open. There's a switch
24 that you can hold the door open or closed, so she did the
25 switch to keep the door open so that the customers weren't

1 inconvenienced but it was the wintertime and it was very cold.
2 And since the café was -- not only the rest of the store that
3 could feel the cold, the café was directly across from it, so
4 Maria felt it the most.

5 Q How far away is the café where Maria stands from the open
6 door?

7 A I would say from where I am to where that section is with
8 the door. The gate right here.

9 Q Like eight or ten feet?

10 A Approximately, yeah. It wasn't far.

11 Q So how did you find out about the door issue?

12 A Maria had called me.

13 Q And do you remember winter of what year this was?

14 A This was -- this was early 2015, like around March or
15 April, I believe.

16 Q And it was still cold then?

17 A Yeah. I could be wrong with the month, but it was around,
18 you know, the middle -- the end of the winter.

19 Q So what did you do when you found out about the problem?

20 A I called Sharon right away.

21 Q And what did you say to Sharon?

22 A I asked her what was going on with the door. She says
23 well, you know, we called it in. That was really all I got
24 from her.

25 Q When you say she called it in, what does that mean?

1 A To -- to maintenance to have the door fixed.

2 Q Okay. Did you do anything else?

3 A I went into the store. I was in the area at that time.

4 To see for myself how bad it was, so when I got there, it was
5 very, very bad and I told her, I says "You can't keep the door
6 open. You have to shut it." I know the customers -- you know,
7 there were other doors that the customers could use, but I
8 couldn't resolve it with Sharon.

9 Q So what did you do after you talked to Sharon and she
10 wouldn't --

11 A I called Sean to notify him of what was going on.

12 Q And what happened?

13 A I don't know if he spoke to her or whatever, but at that
14 time, you know, she had shut it while I was there. Maintenance
15 was supposed to get it fixed. He knew she was handling that.
16 I didn't really talk to Sean about that at that time, just
17 about shutting the door. So I waited 24 hours. The next day I
18 called again to see if the door was fixed. It wasn't fixed.

19 Q So in the meantime, was it open or closed?

20 A She had kept it closed while I was there and maybe a
21 little bit after I left, but then I heard -- I found out that
22 she had opened it again.

23 Q Who did you find out from?

24 A Maria.

25 Q And when you say she opened it again, who are we talking

1 about?

2 A Sharon.

3 Q All right. So after you found out that it was -- you
4 waited you said the 24 hours, what happened after that?

5 A And it still wasn't fixed. I called Sean. That's when I
6 called Sean and I says this is a safety issue. It's a health
7 issue. It needs to get fixed. What's going on? Why is it
8 taking so long? He said he would take care of it.

9 Q Did it get taken care of?

10 A Yes, it was. That day.

11 Q Was there ever any formal grievance filed about that?

12 A No.

13 Q Now, earlier you said that Maria would call with other
14 people's issues and, you know, whenever anything was not right.
15 How often did you get calls from Maria, approximately?

16 A Directly not that often. Maybe once a month. But like I
17 said, she was very vocal. She would, you know, address things
18 as well if something was not safe or --

19 Q What do you mean by she would address them?

20 A She would let the store manager know that something was
21 wrong --

22 Q How do you know that?

23 A -- or speak to the shop stewards.

24 Q Okay. How do you know that she spoke to the store
25 manager?

1 Q Okay. Would she have any way to know that the Union was
2 involved on behalf of Natalie?

3 A Yes.

4 Q How is that?

5 A When she came to Union Square, Natalie was still working
6 there and now she was on the register not in the bakery.

7 Q Okay. And how would she know that it was the Union that
8 did that?

9 A I believe there was conversation about it. I had also
10 called Sharon with the -- with the placements, not -- not even
11 just about Natalie but mostly about Natalie and had the
12 conversation of why, you know.

13 Q How did that conversation go?

14 A Not well.

15 Q What was said?

16 A Because that's where I put her, basically. So I didn't
17 waste my time more.

18 Q So it was Sharon who said Natalie was in the bakery
19 because that's where I put her?

20 A Right.

21 JUDGE GREEN: I'm a little confused. When did that
22 conversation take place?

23 THE WITNESS: It had to be before I spoke with Kevin
24 Smith.

25 JUDGE GREEN: And Sharon -- Ms. Gowon was the store

1 manager at Madison Avenue at that point?

2 THE WITNESS: Yes.

3 JUDGE GREEN: And this was a conversation over the phone?

4 THE WITNESS: Yes.

5 JUDGE GREEN: Okay.

6 BY MS. TOOKER:

7 Q And do you know when the Madison Avenue store closed so
8 that people would be transferred to 14th Street, approximately?

9 A I don't recall the exact date.

10 Q But it would -- was Juana transferred from Madison Avenue?

11 A Yes.

12 Q And everybody from Madison Avenue was transferred at the
13 time of the closing?

14 A Yes.

15 Q All right. Are you familiar with an employee named
16 Madeline Gomez?

17 A Yes.

18 Q What department did she work in at Union Square?

19 A Floral I believe. The floral department.

20 Q In Union Square?

21 A Oh, in Union Square, no. In Union Square she was put into
22 the deli department.

23 Q Okay. And where did she work before Union Square?

24 A Floral department.

25 Q And who assigned her to work in the deli department?

1 A Sharon.

2 Q What store did Madeline work in before Union Square?

3 A Madison Avenue.

4 Q Okay. So she was the same group of people who were
5 transferred?

6 A Yes.

7 Q Did Madeline ever bring any issues to the Union?

8 A Yes.

9 Q Okay. What issues did she bring?

10 A When -- once Sharon was transferred to Union Square, she
11 started cutting hours. With her cutting the hours in the deli
12 department, took away help from people using the slicers and
13 Maddy was then left alone at -- she was going to be left alone
14 to work on slicers, which she never really did. She used to
15 make the sandwiches. She used to do hot foods. There was a
16 lot of other things to do other than working on the slicer in
17 the deli.

18 So when the hours got cut, Natalie got affected by having
19 to do that job function that she wasn't trained for and she was
20 very afraid to use the slicer not knowing how.

21 Q So how did you find out about all of this?

22 A Maddy had called me.

23 Q And what did you do when Madeline called you?

24 A I called up Sharon.

25 Q Okay. What did Sharon say?

1 A "There's nothing I can do about it. This is her job that
2 she has to do."

3 Q Did you do anything after you talked to Sharon?

4 A I called Sean.

5 Q Sean in HR?

6 A Yes.

7 Q And what did Sean say?

8 A I explained the situation and that, you know, Maddy was
9 afraid and not trained properly to even work on the slicer.
10 She's been doing other job functions in the deli since she's
11 been there, so he agreed to have her trained as long as she
12 needed to be comfortable to work on the slicers.

13 Q And you said all this happened around the time that Sharon
14 was transferred to --

15 A After she was transferred to Union Square, yes.

16 Q And so Madeline used the slicer when she was working at
17 the deli?

18 A After being properly trained.

19 Q All right. Were there any other issues that Madeline
20 reported?

21 A Over the years, yeah.

22 Q Let's specifically talk about the time that she was in
23 Union Square and at the deli.

24 A Okay. Yes.

25 Q Okay. What kind of issues?

1 A It was a safety issue.

2 Q What kind of safety issues?

3 A There were -- there was several. The slicers themselves.
4 There's a safety switch so-to-speak the way it works. When you
5 turn the dial all the way, the slicer stops spinning -- the
6 blade stops spinning. It wasn't working on the slicers. I
7 think more than one. Maybe two of them. And there was some
8 wiring issues as well, so Maddy called me about those.

9 Q What kind of wiring issues?

10 A Exposed wires. They looked -- where the casing was coming
11 out.

12 Q Like it was frayed?

13 A The electric sockets, yeah.

14 Q All right. What did you do when you received these safety
15 reports from Madeline?

16 A For that -- for those particular ones I went to the store
17 to go see them myself.

18 Q What did you do when you went to the store?

19 A I spoke with the shop stewards and we went to go look,
20 speak with Maddy, and she showed us all the issues. After she
21 showed us the issues, I contacted Sharon to come to the
22 department to come and look at everything.

23 Q What did Sharon say?

24 A I don't recall exactly but she wasn't too happy.

25 Q Would Sharon have any way of knowing that Madeline was the

1 one who reported the issues?

2 A Yes, because I had Maddy showing us the things that she
3 called about.

4 JUDGE GREEN: When you say "us," you're talking about
5 Ms. Gowon?

6 THE WITNESS: Yes and the -- and I had the shop stewards
7 there as well.

8 JUDGE GREEN: Okay.

9 BY MS. TOOKER:

10 Q And about how many times did Madeline call about these
11 kind of issues, safety issues?

12 A Whenever they occurred. I'm trying to think. There were
13 scheduling issues that -- shift times. Not always for herself
14 either, you know, just to let me know what was going on in the
15 department.

16 Q Okay. So I don't know, in the, you know, few months
17 preceding, so let's say the month, the year of 2015, January
18 through November when Key Food took over, about how many times
19 do you think you got calls from Madeline?

20 A About four, approximately.

21 Q Okay. And are you familiar with -- actually, sorry.
22 Strike that.

23 You said that Sharon was not too happy when she had to
24 come back to the deli and look at the safety problems. How
25 could you tell that she was not happy?

1 MR. CATALANO: A mild objection to she wasn't happy. We
2 haven't heard the facts but I'm trying to let it all go so we
3 could expedite this but.

4 JUDGE GREEN: Understood. Thank you. That's what we're
5 trying to get at now.

6 MS. TOOKER: Exactly.

7 BY MS. TOOKER:

8 Q How could you tell that she wasn't too happy?

9 A Sharon is very -- her body language and she said she
10 wanted to know why I had to come and see the issues. She said
11 to Maddy, you know, "Why didn't you just speak to me about it?
12 Why do you have to call Margaret? I'll take care of it." She
13 says -- so Maddy was like Margaret was just in the store,
14 because now Maddy got nervous, you know. And then I said yeah,
15 I just happen to come -- come and Maddy showed me everything
16 that was wrong. And then Sharon storms off.

17 JUDGE GREEN: Do you recall what about Ms. Gowon's body
18 language suggested to you that she was upset?

19 THE WITNESS: Sharon used to tap her foot like this and
20 kind of like (indicating).

21 JUDGE GREEN: Fold her arms?

22 THE WITNESS: Yeah, she --

23 JUDGE GREEN: Okay.

24 THE WITNESS: Sometimes she would just not say anything
25 and storm off, so she was very visibly, you know, when she was

1 upset, you could tell.

2 BY MS. TOOKER:

3 Q Are you familiar with Elena Pagan?

4 A Yes.

5 Q Which department did she work at in Union Square?

6 A She was also deli.

7 Q Do you recall any issues reported by Elena?

8 A Yes.

9 Q What issues?

10 A Elena's hours were cut. Elena used to be a full-timer and
11 at some point of store closing, she was reduced to a part-
12 timer. So she was supposed to have a certain amount of hours
13 even those she was a part-timer and when Sharon reduced the
14 schedule, she reduced her hours as well and didn't give her the
15 guaranteed hours.

16 Q When was it that Sharon reduced the schedule?

17 A Within the first few weeks that she had gotten there.

18 Q And how did you find out about this problem?

19 MR. CATALANO: Wait. Can we have what year that is?

20 BY MS. TOOKER:

21 Q Do you recall when it was that Sharon took over?

22 A I believe it was around January 2015.

23 Q So how did you find out about this problem with Elena's
24 hours?

25 A Elena called me.

1 Q And what did you do when you found out about this?

2 A I called Sharon.

3 Q Were you able to resolve the issue with Sharon?

4 A No.

5 Q What did you do when you weren't able to resolve it with
6 Sharon?

7 A I had to call Sean.

8 Q And was the issue resolved after you talked to Sean?

9 A Yes.

10 MR. CATALANO: Judge, it's -- I don't know, one-something.
11 I would like to just know --

12 MS. TOOKER: I mean, we have a bit more. I think now is
13 probably just as good a time as any to take a break or we can
14 go --

15 JUDGE GREEN: Did you want to finish with Ms. Pagan?

16 MS. TOOKER: I think we're done with Ms. Pagan for now.

17 JUDGE GREEN: Okay. Then let's break for lunch.

18 (Whereupon, at 1:06 p.m. a luncheon recess was taken to
19 reconvene at 2:15 p.m.)

20

1 THE COURT: Yes.

2 MS. TOOKER: General Counsel's 54.

3 BY MS. TOOKER:

4 Q Can you tell me what General Counsel 54 is?

5 A (Reviewing) This is an email that -- an email exchange
6 between me and then Human Resources Michael Fredericks
7 regarding Ricardo Nunez' retro-pay and correction.

8 Q And do you know when Mr. Nunez received his retro-pay?

9 A Early June 2010.

10 MS. TOOKER: I would like General Counsel Exhibit 54
11 entered into evidence.

12 THE COURT: Any objection?

13 MR. CATALANO: May I ask what the relevance is? Is this
14 the continuing claim that perhaps Sharon Gowon had some sort of
15 interaction with 342 while at Pathmark for five years?

16 THE COURT: What's the relevance?

17 MS. TOOKER: The relevance is Mr. Nunez' union activity.

18 THE COURT: Okay. Overruled. And 54 is admitted into
19 evidence.

20 (General Counsel's GC-54 received)

21 BY MS. TOOKER:

22 Q Are you familiar with an employee by the name of Lucy
23 Maldonado?

24 A Yes.

25 Q You can give GC-54 back to the court reporter.

1 What was her position at the Union Square store?

2 A Lucy was a seafood manager.

3 Q And did Lucy ever report any issues to the Union?

4 A Yes.

5 Q Did she ever have any problems that she reported to the
6 Union while she was at Union Square and Sharon was the store
7 manager?

8 A Yes.

9 Q What issue was that?

10 A Vacation -- her vacation entitlements were incorrect.

11 Q Okay. What does that mean?

12 A How many weeks she was being given for the year.

13 Q Okay. How did you find out about that?

14 A Lucy called me.

15 Q And when did she call you?

16 A It had to be early 2015.

17 Q And once Lucy called you, what if anything did you do?

18 A Contacted Sharon.

19 Q And what conversation did you have with Sharon?

20 A To have Lucy's entitlements corrected.

21 Q Was that over the phone or in person?

22 A Over the -- over the phone.

23 Q And what did Sharon say?

24 A She said she would look into it.

25 Q Was there any follow-up?

1 A I followed up with Sharon when it didn't get corrected.
2 She said she still didn't get information, so then I had to
3 call Sean.

4 Q What happened after you called Sean?

5 A He was working on getting the weeks corrected.

6 Q Was there any resolution?

7 A No, because Lucy -- while this was still being corrected,
8 Lucy winded up getting hurt at the job in the elevator and was
9 out on comp, so I don't know if it was credited back to her at
10 the time, but I didn't hear that it wasn't because it was
11 supposed to get corrected.

12 Q And are you familiar with an employee by the name of
13 Carlos Colon?

14 A Yes.

15 Q And what department did he work in?

16 A Produce, I believe.

17 Q Do you know if he had any issues that he reported to the
18 Union while Sharon was the store manager at Union Square?

19 A I don't recall.

20 THE WITNESS: Can I say something?

21 THE COURT: In response to that questions?

22 THE WITNESS: Yeah.

23 THE COURT: Yes.

24 THE WITNESS: Carlos was the butcher.

25 BY MS. TOOKER:

1 Q Okay. So he wasn't in produce. He was in the meat
2 department?

3 A Yes.

4 Q Okay.

5 A I got it mixed up. Sorry.

6 Q It's okay. Do you now recall any issues that he had that
7 he brought to the Union?

8 A Yes, yes.

9 Q Okay. What issues did he have?

10 A Scheduling. They were changing his shift.

11 Q Okay. And how did you find out about this issue?

12 A During a visit at the store he spoke to me.

13 Q And what was the problem with the scheduling?

14 A They pushed him to a later shift, if I'm correct, his
15 start time.

16 Q And is there any provision in the collective bargaining
17 agreement or the contract about this issue?

18 A There -- there is and if it was done properly, then they
19 could do that but it was being investigated if it was being
20 done properly.

21 Q Okay. So did you investigate it?

22 A Yes.

23 Q And what did you find?

24 A I spoke with Sharon and I don't recall the outcome on that
25 one. I had asked why -- why the change all of a sudden? He's

1 been working that shift. They've been working with those hours
2 for the longest time and I had a conversation with her but I
3 believe it was left alone. He worked the shift and then later
4 on he got moved up again.

5 Q Was there any formal grievance filed about this?

6 A No.

7 MS. TOOKER: I would like this document marked as General
8 Counsel Exhibit 55. Everybody should have a copy already.

9 (General Counsel's GC-55 identified)

10 MS. TOOKER: So this is a document that I actually
11 discussed with Respondent's Counsel before we started. This is
12 a portion of a document that I understand the A&P gave to Key
13 Food with a list of all of the employees that were in each of
14 the different stores and I have taken out all of the -- that
15 document was by location so I took everybody out that was at
16 the 10 Union Square to make it a little bit more manageable for
17 us.

18 THE COURT: Okay.

19 MS. TOOKER: So I mean, I don't know if that
20 representation was accurate as far as you guys are concerned,
21 Respondent's concern?

22 MR. CATALANO: To the best of our knowledge that is
23 accurate.

24 THE COURT: So these are the employees at the Union Square
25 store?

1 this list?

2 A The majority, yes.

3 Q Is there anybody on this list other than those that we've
4 already talked about that you recall making complaints to the
5 Union?

6 A Yes.

7 Q Who is that?

8 A A few examples, Esteban Acevedo.

9 Q Esteban Acevedo, so he is on the first page about ten
10 down. And what problems did he have that you can recall?

11 A He had issues with his entitlements as well.

12 Q Okay. What were those issues?

13 A Every year -- mostly every year. I shouldn't say every
14 year. When the new time would get credited to the people, his
15 father also worked for the company and they used to mix up
16 their entitlement so they would be credited the wrong amounts.

17 Q Okay. So what entitlements are you talking about?

18 A Vacation time, personal time.

19 Q Did you ever -- withdrawn.

20 Do you know how long Esteban worked at the Union Square
21 store? Was he one of the people who were transferred there or
22 did he work there long term?

23 A He was -- he was long term.

24 Q Did you ever deal with this issue with Sharon?

25 A No.

1 Q Why didn't you deal with it with Sharon?

2 A She wasn't the store manager at the time.

3 Q What time of year did the entitlements get credited?

4 A January. January/February.

5 Q Okay. So do you know if she was working there in January
6 or February of 2015?

7 A I don't recall him calling me for that issue in 2015. It
8 was the year prior.

9 Q Anybody else on this list that you recall had any issue
10 that they reported to the Union?

11 A Richard Allcroft, second page, middle.

12 Q And what were Mr. Allcroft's issues that he reported?

13 A He had quite a few issues with his job function and heavy
14 boxes, things like that, that I used to address. Job functions
15 that were being asked of him.

16 Q And do you know if he works for Key Food now?

17 A I don't recall.

18 Q Do you know if he started working for Key Food at the time
19 that Key Food took over?

20 A I believe yes. I know he was going -- he was getting
21 ready to retire, so I'm not sure if he retired prior or right
22 before they took over.

23 Q Anybody else on the list?

24 A Yes. Let me see.

25 Q Actually, sorry, if you don't mind me asking. Do you know

1 if Mr. -- how did you know that Mr. Allcroft intended to
2 retire?

3 A He had told me. I spoke to him.

4 Q Do you know if it was -- if anybody else knew that he
5 intended to retire?

6 A Yeah, management knew.

7 Q How do you know that they knew?

8 A Because we had discussion because he had to -- there was
9 an issue with -- about his benefits. He was nervous about his
10 benefits, so he was asking a lot of questions.

11 Q All right. Anybody else on this list?

12 A Yeah. (Reviewing) Jerry Simpson. Let's see.

13 Q What issues did Mr. Simpson report?

14 A Jerry had issues with his schedule and getting full-time.

15 Q What do you mean getting full-time?

16 A I'm sorry, about -- about his schedule and full-time and
17 part-time hours, like putting part-time work before him.

18 Q And when did he have these issues?

19 A I would say 2014.

20 Q So before Sharon?

21 A Yes. There's a lot of them. I'm just trying to remember
22 the issues that they called about.

23 Q Was there anything that you did deal with Sharon about
24 with Jerry?

25 A Jerry, Jerry, Jerry. It's possible that the scheduling

1 was in 2015 as well, but I don't recall exactly.

2 You have Abdoulie Secka, he was a scheduling issue.

3 Q What was his job?

4 A He was grocery.

5 Q And what was his scheduling issue?

6 A His hours, how many hours he was getting.

7 Q When did that occur?

8 A It occurred quite often.

9 Q Was it before or after Sharon?

10 A Before. I didn't deal with Sharon his issue.

11 THE COURT: What page is he on?

12 THE WITNESS: He's the first member, first page at the
13 top.

14 BY MS. TOOKER:

15 Q Going to the last page, do you recall dealing with any
16 issues related to Jeanette Knight?

17 A Yes.

18 Q What were her issues?

19 A Jeanette was also getting ready to retire and she had many
20 questions also.

21 Jenny, right above Jeanette, I dealt with some issues with
22 her, but she didn't want to go forward with them. It was a
23 working conditions, you know, work load. She just wanted me to
24 be aware. She didn't want me to talk to anybody about it, but
25 in case it got worse, she wanted me to be aware that it was

1 happening.

2 Q So you never talked to Sharon about Jenny?

3 A No.

4 Donna Levy.

5 Q I'm sorry, who?

6 A Donna Levy, Levy.

7 Q What were her issues?

8 A They wanted her to take the position as bakery manager at
9 one time and she was very upset. She didn't want to do it.

10 Q Do you know when that happened?

11 A That was 2014.

12 Q Was that before or after Sharon was the manager?

13 A Before. More?

14 Q I mean if that's all you can remember, that's fine.

15 A No, you got Michael Webb.

16 Q What were his --

17 A His issue was calling out sick a lot. He had a medical
18 condition. He winded up in the hospital and he wanted me to be
19 aware of it, you know, of his condition, but he didn't want to
20 let everybody know about it, so I didn't speak to anybody.

21 Q So you never spoke to Sharon --

22 A No.

23 Q -- or any other managers about it?

24 A I don't believe so, no. It was only if an issue came up.

25 Q I'm sorry, you mentioned earlier that Jeanette Knight, she

1 had a whole bunch of questions about retirement?

2 A Yes.

3 Q Do you remember when those questions came up?

4 A During the bankruptcy. That time period.

5 Momar Cisse, he's like fifth from the top on the first
6 page. He had scheduling issues as well.

7 Q And when did those happen?

8 A I believe that was with Kevin Smith. His issues were
9 corrected.

10 Q Were you able to correct those issues directly with Kevin
11 or --

12 A Yes.

13 Q -- did you have to go to HR?

14 A No, Kevin did it.

15 Off the top of my head that's, you know.

16 Q That's who you remember. Okay. You can just give that
17 back to the court reporter.

18 Now, did you ever file any written grievances with Sharon
19 when she was the store manager at Union Square?

20 A I don't believe so.

21 Q You testified that there were a whole lot of issues and,
22 you know, you were getting calls multiple times a week. Why
23 was it that no written grievances were ever filed?

24 A Because I was able to resolve them with the Human
25 Resources person.

1 Q All right. So now we're going to change gears. Do you
2 recall being at a Union action that was held on November 29 of
3 2015 at the Amboy Road Store in Staten Island?

4 A Yes.

5 Q Okay. Also known as the Greaves Lane store; it's at that
6 intersection?

7 A Yes.

8 Q What was your role in that action?

9 A I was a Union representative.

10 Q And what time of day did that start?

11 A Approximately 10 a.m.

12 Q Okay. And when did it go until?

13 A That day?

14 Q Yeah.

15 A I would say around 2 p.m. Two or 3 p.m.

16 Q How many people participated in that action?

17 A On that day about ten to 12.

18 Q Was that the first job action that took place at that
19 store in Staten Island?

20 A That I'm aware of, yes.

21 Q Of the ten or 12 people, about how many of them were Union
22 representatives?

23 MR. CATALANO: Objection. When you say Union
24 representatives, we're talking about employed by 342?

25 MS. TOOKER: Yeah, thanks for that clarification.

1 BY MS. TOOKER:

2 Q Of the people who were there, how many people were
3 employees of Local 342?

4 A I started, myself, just me.

5 Q Okay. And the other people, who were they?

6 A Volunteers from other -- other members.

7 Q And what were these members/volunteers doing while they
8 were engaged in this action?

9 A They were -- we were doing -- we were speaking to the
10 customers. I'm trying to think of the word I want.

11 Q When you were speaking to the customers, what sort of
12 things were you telling them?

13 A We were letting them know what was happening to the
14 members working in that store after the new owners took over.

15 Q And what was happening at that time?

16 A People were getting let go.

17 Q Where is the Greaves Lane store located; is it on the
18 street or in a plaza?

19 A It's in a shopping plaza.

20 Q And where was the group of Union supporters in relation to
21 the store?

22 A Facing the front of the store. Not directly in front of
23 it. It was like a road where the cars pass and then like a
24 tree sidewalk. We were standing on the tree-lined sidewalk.

25 Q And is the tree in a parking lot?

- 1 A Yes.
- 2 Q And what does the front of that store look like, that
- 3 Pathmark?
- 4 A Large, with very large windows across the whole front.
- 5 Q I'm so sorry, I said it was a Pathmark, but at this time
- 6 that we're talking, it was a Key Food, right?
- 7 A Yes.
- 8 Q Sorry for getting things confused. So I'm sorry, you said
- 9 there was a whole bunch of windows?
- 10 A Yes, across the whole front of the building.
- 11 Q Did you have an employee contact at the store that day?
- 12 A Yes, I did.
- 13 Q Who was that?
- 14 A Anthony Venditti.
- 15 Q And who is Mr. Venditti?
- 16 A He's a Union member. He's a butcher in the store and he
- 17 was acting as shop steward for the day.
- 18 Q And did Mr. Venditti come out at any point and join the
- 19 Union action?
- 20 A Yes, he did.
- 21 Q About when was that?
- 22 A I would say approximate time, twelve o'clock maybe.
- 23 Q And how long was he out there with you?
- 24 A About 15 minutes. Ten, 15 minutes.
- 25 Q And do you know if he was on a break?

1 A Yes.

2 Q I'm sorry, yes, he was on a break?

3 A Yes, he was on a break.

4 Q And what did Mr. Venditti do while he was outside with the
5 Union group?

6 A Speaking with the customers.

7 Q Did you see the owners of the store at any point during
8 that day?

9 A Yes.

10 Q Do you know his name?

11 A Now, Randy. That's who I saw. Randy Abed.

12 Q Did you know who he was at the time?

13 A Yes.

14 Q How did you know him at the time?

15 A He -- he came out of the store. He was videoing, taking
16 pictures, and then when the cops showed up, he was the one that
17 was speaking to the police. And I called my supervisor to
18 confirm, you know, what he looked like.

19 Q Who was your supervisor that you called?

20 A Stephen Booras.

21 Q When did you see Randy while you were there?

22 A He was outside. He was outside. He was going in and out
23 of the store. It had like a lobby area where the entrance is,
24 so if he was in the store, I could still see him through the
25 window. Otherwise, he was outside right in front of the store

1 for, I would say, a third of the time that we were there.

2 Q A third of the time he was outside?

3 A Yeah.

4 Q Okay. And how much of the time could you see him through
5 the window inside?

6 A He was in and out.

7 Q And when he was inside, could you tell whether he was
8 looking outside?

9 A Yes, he was standing up against the window. There's like
10 a ledge and he was either on the phone or talking to people.

11 Q When he was on the phone or talking to people, which way
12 was he facing?

13 A I can't say a hundred percent the entire time. I mean he
14 may have turned around for a second, but mostly he was watching
15 us.

16 Q Did Randy say anything to the group of Union supporters?

17 A At that time, no.

18 Q Anytime during the day?

19 A I don't recall.

20 Q Do you know if Randy could see Mr. Venditti when he was
21 outside?

22 A Yes.

23 MR. CATALANO: Objection.

24 THE COURT: Overruled.

25 BY MS. TOOKER:

1 Q How could you tell that he could see Mr. Venditti?

2 A We were clearly directly right across from him while he
3 was watching us.

4 THE COURT: He was inside or outside the store?

5 THE WITNESS: At the time when Anthony was outside, he was
6 outside.

7 THE COURT: Okay.

8 BY MS. TOOKER:

9 Q And is Mr. Venditti an easy guy to recognize in a crowd?

10 A Yeah.

11 MR. CATALANO: Objection.

12 THE COURT: Okay.

13 THE WITNESS: Yes.

14 THE COURT: Overruled. Why don't you ask for more
15 specifics.

16 MS. TOOKER: Yes.

17 BY MS. TOOKER:

18 Q In what way might he stand out, Mr. Venditti?

19 A Can I call him Rocky?

20 Q Sure. You can call him --

21 A He's known as Rocky. He was -- Rocky is a big guy, very
22 tall. He had his eat coat on at the time he was outside. And
23 everybody knows him because he's been working there for so
24 long. You know, most of the customers were approaching him to
25 say hey, what's going on?

1 Randy, so I could only assume that it was Randy.

2 Q Did the police talk to you or anybody else in the group?

3 A I don't believe that day.

4 Q Were there any additional job actions that the Union held
5 at the Greaves Lane store?

6 A Yes.

7 Q When did those start?

8 A Periodically after the first time. Maybe a week or two
9 later.

10 Q And the first time, was that November 29?

11 A Yes.

12 Q How often did you have these actions?

13 A It was up to Christmas time straight.

14 Q Every day?

15 A Yes.

16 Q What happened at Christmas time? You said they stopped at
17 Christmas?

18 A No, no, no, I says we went through Christmas time straight
19 and then after Christmas time kind of -- it was on and off or I
20 was on and off. I wasn't there every -- each time.

21 Q Were you there each time prior to Christmas?

22 A The majority, yes.

23 Q How many people attended these daily actions?

24 A I would say ten to 12. Ten to 12 each day.

25 Q And who were the people that were coming for this?

1 the Contes.

2 THE WITNESS: Can I go get my glasses?

3 THE COURT: Yes.

4 THE WITNESS: (Reviewing) No, this is the Abed affidavit
5 for the Greaves Avenue store.

6 BY MR. CATALANO:

7 Q Yeah. Is there any other affidavit?

8 A Not present, no.

9 Q No. So you went through great detail about a Sharon
10 Gowon. Did you come up with these facts after speaking to the
11 General Counsel about why there was or was not some sort of
12 alleged animus?

13 MR. E. MILNER: Objection.

14 MS. TOOKER: Objection to the form of the question in that
15 it implies that her testimony is somehow made up and contrived
16 by General Counsel.

17 MR. CATALANO: I asked a question.

18 MR. E. MILNER: Same objection.

19 MR. CATALANO: I asked a question.

20 THE COURT: Okay.

21 MR. CATALANO: You can draw whatever inference you choose
22 but --

23 MR. E. MILNER: Argumentative.

24 THE COURT: Right. Okay. I didn't quite get the
25 question. Can you restate it?

1 BY MR. CATALANO:

2 Q Okay. What was the reason if any that you didn't detail
3 any facts about the Conte store in March of 2016 in your
4 affidavit when you came in to speak to the NLRB?

5 A The day that I came for this affidavit it was about the
6 Greaves Avenue store.

7 Q Did you file any other affidavits concerning 14 Street?

8 A I don't file.

9 Q Did you sign any other affidavits?

10 A I don't believe so. I don't recall. I don't think so.

11 Q Did you tell the NLRB back in March of 2016 that you
12 thought that Sharon Gowon had done something improper?

13 A That wasn't the conversation we were having at that time.
14 At that time, it was about the Greaves Avenue store.

15 Q All right. Let me repeat the question. Did you say
16 anything to the NLRB back in March of '16 as to whether you
17 thought Sharon Gowon was doing something improper; yes or no?

18 MR. E. MILNER: Objection; asked and answered.

19 THE COURT: No. Overruled.

20 THE WITNESS: I don't recall. I only recall talking about
21 the Greaves Avenue store on that day.

22 BY MR. CATALANO:

23 Q Okay. Now, who is Danny Wodzenski?

24 A He worked for Food Emporium.

25 Q Okay. And how many times did you speak to Danny Wodzenski

1 THE COURT: Right. So just -- just -- the question is:
2 Does this refresh your recollection as to?

3 BY MR. CATALANO:

4 Q Whether or not there were signs posted saying that 342 was
5 on strike?

6 A I'm sorry, can you repeat that? I was looking at the
7 picture.

8 Q Does this refresh your recollection as to whether or not
9 there were signs saying that Local 342 was on strike?

10 A I don't think I was there that day when -- when that sign
11 was posted so. I know I didn't tell people that. We were
12 saying -- we weren't saying that they were on strike.

13 Q Were you saying to people "Shop somewhere else"?

14 A No.

15 Q No?

16 A No.

17 Q Was there any literature that said "Shop somewhere else"?

18 A I wasn't saying to people to shop somewhere else.

19 Q Was there any literature that said "Shop somewhere else"?

20 A I don't recall what the leaflet said at the time because I
21 hand out a lot of them, so I don't want to say the wrong thing.

22 Q All right. Can you see 33 and 34? Can you look at the
23 basket on -- is that 33 or 34?

24 A Thank you.

25 Q Are those the leaflets that were handed out at Greaves

1 Venditti was going to be laid off?

2 A No.

3 Q Were you ever notified that the Greaves Lane store
4 intended to reduce the hours of employees of members of 342 in
5 that store?

6 A No.

7 Q Were you -- do you know if any members -- excuse me.
8 Strike that.

9 Do you know if any representatives of the Union were ever
10 notified by a representative of the Greaves Lane store that the
11 store intended to reduce the hours of 342 members?

12 A No.

13 Q Now, regarding the Albany Avenue store, were you ever
14 notified that John Batiste was going to be laid off by any of
15 the representatives of the Albany Avenue store?

16 A No.

17 Q Were you ever notified by any of the representatives of
18 the Albany Avenue store that Calvin Harris was going to be laid
19 off?

20 A No.

21 Q Were you ever notified by any of the representatives of
22 the Albany Avenue store that Stephen Fiore was going to be laid
23 off?

24 A No.

25 Q Were you ever notified by any of the representatives of

1 the Albany Avenue store that Robert Jenzen would be laid off?

2 A No.

3 Q Were you -- did any of the 342 employees ever notify you
4 that they had been told by a representative of the Albany
5 Avenue store that any of these four employees were going to be
6 laid off?

7 A Can you repeat that?

8 Q Sure. I'll try my best. Were you ever told by any of the
9 342 representatives, you know, employees of 342, that a
10 representative of the Albany Avenue store notified them that
11 these four employees were going to be laid off?

12 A No.

13 Q Were you ever notified personally that the employer
14 intended to distribute a handbook to employees of the Albany
15 Avenue store?

16 A Repeat that.

17 Q Were you ever personally notified by a representative of
18 the Albany Avenue store that they intended to distribute a
19 handbook to employees?

20 A Absolutely not.

21 Q Was it ever reported to you by any other 342 employee that
22 they were notified by a representative of the Albany Avenue
23 store that the employer intended to distribute a handbook to
24 employees?

25 A No.

1 Q Were you ever notified that the Albany Avenue store
2 intended to reduce the pay and hours of Stephen Fiore?

3 A No.

4 Q Were any of the -- withdrawn.

5 Did any of the employees of Local 342 notify you that a
6 representative of the Albany Avenue store told them that they
7 intended to reduce the pay and hours of Stephen Fiore?

8 A No.

9 Q Were you ever notified by a representative of the Albany
10 Avenue store that this employer intended to reduce the hours of
11 Robert Jenzen?

12 A No.

13 Q Was it ever reported to you by any 342 employee that a
14 representative of the Albany Avenue store notified them that
15 there would be a reduction of hours of Robert Jenzen?

16 A No.

17 Q Almost done. Were you ever notified that Richard Maffia
18 would be laid off by the Howard Beach store?

19 A No.

20 Q Were you ever notified by anyone at the Howard Beach store
21 that Venus Napay was going to be laid off?

22 A No.

23 Q Were you ever notified by anyone in the Howard Beach store
24 that Kadisha Diaz would be laid off?

25 A No.

1 handbills before they were "fired" or you know that they
2 didn't?

3 A When I was there when they leafleted, it was after they
4 were fired.

5 Q Okay. So you don't know whether they handed out the
6 leaflets before they were fired?

7 MR. E. MILNER: Objection.

8 MR. CATALANO: Do you?

9 JUDGE GREEN: No, overruled.

10 THE WITNESS: Yes, when they were on their breaks.

11 BY MR. CATALANO:

12 Q They handed out these leaflets before they were fired on
13 their breaks that said "Shop elsewhere"?

14 A So Mike Fischetti only did it when he was fired.

15 Q Only did it when he was fired --

16 A Correct.

17 Q -- or after he was fired?

18 A After he was fired.

19 Q Okay.

20 A Go ahead.

21 Q How about the others, Venditti?

22 A After working hours.

23 Q Okay. So while he was still employed, he handed out such
24 a leaflet?

25 A Correct.

1 A Yes, it was.

2 Q Did you receive an increase in pay?

3 A Yes, I went up to 31.38 an hour.

4 Q The Utrecht Avenue, Waldbaums store, was that closed after
5 the A&P bankruptcy?

6 A Yes, it was.

7 Q What was your last day of work at that store?

8 A November 5th.

9 Q Did you ever work at the store on 153rd Avenue in Howard
10 Beach after it became a Key Food?

11 A Yes, I did.

12 Q When did you start working there?

13 A I believe it was November 9th.

14 Q How did you come to work at that store?

15 A I received a phone call from Stephen Booras, our union
16 representative, that I was requested by name to be a meat
17 manager there.

18 Q Did you say anything to accept or reject that offer?

19 A Yes, I accepted it.

20 Q When did you report to Key Food?

21 A That Monday, November 9th.

22 Q What happened when you reported to work?

23 A Well, I met with the store manager, Mr. Davis, and he
24 introduced me to the owner, Alberto Almonte, and we discussed
25 days to make the orders, what day I would be off.

- 1 Q What day did you decide that you'd be off?
- 2 A They said Tuesdays was the meat manager's day off.
- 3 Q Did you fill out any paperwork as part of your new
- 4 position?
- 5 A Yes. On my lunch break, I went and I filled out the tax
- 6 information, dependents and stuff like that.
- 7 Q Who gave you that information to fill out?
- 8 A The owner, Mr. Almonte.
- 9 Q That was Gilbert Almonte?
- 10 A Yes.
- 11 Q Who else was working in the meat department when you
- 12 started at Key Food?
- 13 A It was Robert. He was running the place temporarily.
- 14 Q Do you know Robert's last name?
- 15 A No, I don't. There was Venus, Khadisha, and Benito.
- 16 Q Do you know what Venus' position was?
- 17 A Venus was the meat wrapper.
- 18 Q Do you know if she was full-time or part-time?
- 19 A She was full-time.
- 20 Q What was Khadisha's position?
- 21 A Khadisha was part-time meat wrapper.
- 22 Q What about Benito?
- 23 A Benny, he was a clerk. He did the cold cuts and freezer.
- 24 Q Do you know his last name?
- 25 A No, offhand, no, I don't.

1 Q How about Khadisha, do you know hers?

2 A Diaz.

3 Q And Venus, do you know her last name?

4 A I'm sorry, no.

5 Q Not a problem. Had you worked with Nelson Quelis at
6 Waldbaums?

7 A Yes, I did. He was the meat manager when I was first man
8 there.

9 UNIDENTIFIED SPEAKER: Question. What store are we
10 referring to?

11 MS. TOOKER: I said at Waldbaums.

12 UNIDENTIFIED SPEAKER: I know.

13 MS. TOOKER: Oh, sorry.

14 BY MS. TOOKER:

15 Q So when you worked with Nelson Quelis, was that at the
16 153rd Howard Beach store?

17 A Yes, for Waldbaums.

18 Q Was Nelson working at Key Food when you got there?

19 A No, he wasn't.

20 Q Did you go into work on Tuesday, November 10th?

21 A No. That's the day they gave me off.

22 Q Did you go to work on Wednesday, November 11th?

23 A Yes. When I showed up in the morning, the assistant
24 manager, Danny Ryan, he asked me what I was doing there. I

25 said I was off yesterday, I'm supposed to work today. And then

1 he made a phone call. After the call, he says we don't need
2 you anymore.

3 Q Where were you when you talked to Danny Ryan?

4 A In the front of the store.

5 Q Did you say anything when he told you that they didn't
6 need you?

7 A I said it was kind of odd to be requested to be meat
8 manager for them and then to get laid off in two days' time.

9 Q Did he say anything?

10 A He didn't answer.

11 Q Do you know who he called on the phone?

12 A He called one of the owners. I wasn't sure which one it
13 was on the phone until on my way out, he happened to be coming
14 in. It was Gilberto Almonte.

15 Q Did you talk to Mr. Almonte at all when you were going
16 out?

17 A Yeah, he said, sorry, we just don't need you anymore.

18 Q Did you have any additional conversation with him?

19 A No, I left the store.

20 Q Did either Mr. Almonte or Mr. Ryan explain to you why they
21 were letting you go?

22 A No.

23 Q Did you report your layoff to the Union?

24 A Yes, I did. I called Stephen Booras as soon as I got back
25 in my car.

1 14th Street, Union Square, full-time.

2 Q So you had -- how had you made your information request?

3 A I had called him on the phone and said that I needed a
4 list of the full-time employees that he intended on letting go.

5 Q And this was in response to that verbal --

6 A Yes.

7 Q Were you instructed by anybody from 342 to make that
8 request?

9 A Yes.

10 Q Who?

11 A President Abondolo.

12 Q Did you speak to Paul or Pat Conti about the members that
13 were being let go after you received this email?

14 A Yes.

15 Q Do you remember when?

16 A Sometime in November, I believe.

17 Q How did you speak to them?

18 A Well, I had called Pat on the phone after I got word that
19 he was letting go some top senior, full-time members inside
20 14th Street, in the 14th Street store.

21 Q What did she say over the phone?

22 A Well, I had specifically said to him that I got word
23 you're letting these full-timers go. That if you intended on
24 letting anyone go that we needed to discuss the severance money
25 and the reason as to why you're letting them go. His response

1 to me was I don't know why they're being let go, I'd have to
2 find out.

3 Q Did he say who he was going to find out from?

4 A His brother, Paul.

5 Q Did you meet with either Paul or Pat Conti after this
6 conversation?

7 A Yes.

8 Q When did you next meet with them or speak with them?

9 A I had a meeting with them in December.

10 Q Is that 2015?

11 A Yes.

12 Q Where was the meeting?

13 A In Mineola.

14 Q What did you talk about at that meeting?

15 A The intent of the meeting was to see if they would agree
16 to an accretion for the stores that they purchased and to
17 discuss anything that they would like to discuss in regards to
18 bargaining, to help move negotiations along.

19 Q Was anybody besides Pat and Paul Conti, and yourself, was
20 anybody else at this meeting?

21 A Lou Sollicito was present.

22 Q Did either of the Conties respond about what could be done
23 to move things along with regard to the newly purchased stores
24 from A&P?

25 A Yes.

1 Q Do you remember approximately how many sessions you took
2 part in?

3 A Maybe four.

4 Q Do you know if you led any of those sessions?

5 A No, I did not.

6 Q Now you testified earlier with regard to Respondent's
7 Exhibit 2.

8 MS. ALAM: I guess if the witness could just be shown
9 Respondent's Exhibit 2?

10 BY MS. ALAM:

11 Q You testified earlier that Respondent's Exhibit 2 as a
12 response by Pat Conti from your request for two things, a
13 seniority list and a list of people they were planning on
14 letting go or not hiring. Now the attachment to Respondent's
15 Exhibit 2, is that all you received from Pat Conti pursuant to
16 your phone call request?

17 A No.

18 Q Oh, you got something else?

19 A No, this is it. This is all I got.

20 Q That's all you got. Did you ever receive a seniority
21 list?

22 A No.

23 Q Do you know why you were directed to ask for a seniority
24 list?

25 A It was a list of employees for the store and who it is

1 Q And were the other meat department employees that you
2 worked with, were they hired by Key Food?

3 A Right.

4 Q Was anybody not hired?

5 A When I was on vacation, the only person who wasn't hired
6 was Nelson.

7 Q How did you find out that Nelson wasn't hired?

8 A Because he called my house that Sunday to let me know they
9 didn't hire him for some reason I don't know.

10 Q How long did you work for Key Food?

11 A I'm not too sure, give or take about three weeks or so.
12 I'm not too sure.

13 Q Did your work change at all when Key Food took over?

14 A Pardon me?

15 Q Did you work, the work that you were doing, did it change
16 at all when Key Food took over?

17 A When they took over, yes, change a little bit. He didn't
18 want me to wrap on the automatic machine.

19 Q He didn't want you to wrap on the automatic machine?

20 A Right. He had changed it a little bit.

21 Q So if you're not using the automatic machine, who do you
22 wrap the meat?

23 A Manually, by machine, the manual machine.

24 Q So even when you're wrapping manually, there is a machine
25 involved?

1 A Well, before he took over, we had two machines, the other
2 wrapper, the main wrapper.

3 JUDGE GREEN: Who are you talking about, who took over?

4 THE WITNESS: Key Food.

5 BY MS. TOOKER:

6 Q Who told you that you couldn't use the automatic wrapper
7 machine?

8 A Gilbert.

9 Q Gilbert Almonte?

10 A Right.

11 Q Which one is faster to use, the automatic machine or the
12 manual?

13 A The automatic.

14 Q Did Gilbert tell you why he didn't want you to use the
15 automatic machine?

16 A He said he didn't like how the automatic wrapped.

17 Q And when Key Food took over, do you know if there were
18 more or less items to be wrapped in the meat department?

19 A Right.

20 Q Well, were there more or less?

21 A After he took over, it was more we wrapped.

22 Q So after Key Food took over --

23 A Right, right.

24 Q -- it was more or less that you had?

25 A More meat to be wrapped, more chickens.

1 Q Why were there more chickens to be wrapped?

2 A Because it didn't come pre-wrapped. It came loose, like
3 the old days they had packed chickens.

4 Q Okay. So when you worked for Waldbaums, how did the
5 chickens come?

6 A Everything came prepacked, chickens came.

7 Q And Key Food, they weren't prepacked?

8 A No. I had more work then.

9 Q What was the last day that you worked for Key Food?

10 A I'm not too sure. I think it was November 10th, 2015.

11 Q What happened after you ended your shift on that day?

12 A I went there Tuesday. On my way home, I was ready to
13 checking out stuff. He looked around and he seen me. He said,
14 Venus, when you've finished doing your business, can I have at
15 talk with you.

16 Q Who said that?

17 A Gilbert. He told me you're fired. I'm like, oh, wow,
18 what happened.

19 Q Did he say what happened?

20 A He said I'm having a lot of problems.

21 Q Did he say what he was having problems with?

22 A He didn't specify. He said I know you're an excellent
23 worker but I've got to let you go. So I says to him could you
24 please let me change to we-go (ph.). He goes, no, that's it.

25 Q Did you or he say anything else?

1 A No, that was it. Well, then he says, because I about to
2 cry when he said I was gone, he said you're such a nice person,
3 but I've got to let you go, I'm having problems. And that was
4 it.

5 Q Do you know if anybody else was also fired that week?

6 A The part-timer, Keisha.

7 Q How do you know that she got fired that week?

8 A Because she called my house to let me know that she got
9 laid off, too.

10 Q Do you know when she called?

11 A After work, after she went there. I'm not too sure,
12 either that or Thursday.

13 Q Did you receive a severance payment after you were let go?

14 A A what?

15 Q Did you receive any severance?

16 A Oh, sure, yeah, Waldbaums.

17 Q So who gave you the severance?

18 A Waldbaums.

19 Q Did you get any severance payment from Key Food?

20 A No.

21 Q When you worked at Waldbaums, were you a member of a
22 union?

23 A Yes.

24 Q What union was that?

25 A Local 342.

1 A Just the meat department.

2 Q Who was the shop steward in that store?

3 A Nelson Quelis.

4 Q What was his job in the store?

5 A He was the meat manager and the shop steward.

6 Q How involved was Nelson with the union generally?

7 A He was very much involved. Every time we called him for
8 anything we needed, he was available.

9 Q What kind of things did you call him for?

10 A Strikes, leafleting.

11 Q When you called him for that sort of thing, what were you
12 asking him to do?

13 A If he was able to help and volunteer his time.

14 Q And did he do that?

15 A Most of the time he did, yes.

16 Q Approximately, how often did Nelson come and volunteer for
17 strikes, or leafleting, or anything like that?

18 A Two or three times a year, if anything was happening.

19 Q Who are the other meat department employees who worked at
20 the Howard Beach/Lindenwood store in the fall of 2015?

21 A It was Nelson Quelis, who was the meat manager; Venus
22 Nepay, who was a full-time wrapper; Khadisha Diaz, who was a
23 part-time wrapper; and Benito Gambino, who was also a part-time
24 wrapper.

25 Q Were there any other butchers who were working at the

1 transferred from Staten Island?

2 A No, I don't.

3 Q Do you know if anybody was transferred out of the Albany
4 Avenue store to work at another store?

5 A The seafood first person, his name was Ray. At first,
6 they pushed his hours back and made him work a couple of days
7 in seafood and a couple of days in the deli department and
8 then, I'm going to say right Christmas, they transferred him
9 to, or right around Christmas time, they transferred him to the
10 store in Staten Island.

11 Q And do you know where Ray lived?

12 A Ray lived in Garrison Beach in Brooklyn.

13 Q Do you know if while you were there the Albany Avenue
14 store continued to have a seafood department?

15 A While I was there it had a seafood department, yes.

16 Q Now, do you currently work at Key Food?

17 A No, I do not.

18 Q What was your last day there?

19 A Saturday, January 30, 2016.

20 Q And on that Saturday, did you work a full day that day?

21 A Yes, I did.

22 Q What happened when you finished work on that Saturday?

23 A My day was over. I walked up to the office, punch for the
24 end of the day, and Randy stuck his head out of one of the
25 offices and asked me to come in. And I went into the office

1 and he told me that the store could no longer afford to pay me
2 and that I was being let go.

3 Q Did he say anything else?

4 A He said "You don't have to punch out for the day. I took
5 care of that. Thank you."

6 Q Did you say anything in response?

7 A No, I just -- I was rather angry at the time, so it's just
8 best I just kept to myself, kept my composure and left the
9 store.

10 Q Had you ever been disciplined while you were working for
11 Key Food?

12 A No.

13 Q Had you ever had any sort of verbal discipline or warning
14 or anything like that?

15 A No.

16 Q Had anybody ever talked to you about your performance?

17 A Actually, when they took over, Randy told me that he was
18 in the store a number of times before they bought the store and
19 that he actually liked the way I work, watched me interact with
20 customers, and that's one reason why he felt that he wanted to
21 keep me when they took over the store.

22 Q Did you ever receive any sort of severance or payment
23 after you were, aside from your wages, after you were let go
24 from Key Food?

25 A No, I did not.

1 MS. ALAM: That's all the questions I have.

2 JUDGE GREEN: Okay. Did there come a time when your hours
3 changed?

4 THE WITNESS: Yes.

5 JUDGE GREEN: When was that?

6 THE WITNESS: After Christmas I was given the choice to
7 either have -- excuse me -- to have my Sundays taken away from
8 me or get dropped down to 35 hours a week and keep my Sunday.
9 I decided to lose the Sunday so I would keep my 40-hour work
10 week to be considered a full-time worker, and then two weeks
11 after that, after losing my Sundays, agreeing to lose my
12 Sundays, I was -- my schedule was cut down to 35 hours a week
13 regardless.

14 JUDGE GREEN: So who was the one who made you the first
15 offer? Who is the person who said you can either go down to 35
16 hours during the week or lose your Sundays?

17 THE WITNESS: I -- it was Randy.

18 JUDGE GREEN: That was Randy?

19 THE WITNESS: Yes.

20 JUDGE GREEN: Okay. And then how long -- so you kept your
21 Sundays?

22 THE WITNESS: Yes.

23 JUDGE GREEN: Wait. You kept your Sundays and kept 40
24 hours? When Randy first asked you, I'm sorry, what did you do?

25 THE WITNESS: When he first asked me?

1 JUDGE GREEN: Right.

2 THE WITNESS: I decided to give away my Sundays.

3 JUDGE GREEN: Give away your Sundays. Okay.

4 THE WITNESS: This way so I can keep -- so I would still
5 be considered a 40-hour full-time worker.

6 JUDGE GREEN: Okay. And then at some point you were
7 reduced to 35 hours?

8 THE WITNESS: Two weeks later they just cut my hours when
9 I got my schedule. The store manager handed me my schedule and
10 told me that they cut my hours. I was cut to 35 hours.

11 JUDGE GREEN: Okay. Anything from the Charging Party?

12 MR. E. MILNER: No questions.

13 JUDGE GREEN: Anything --

14 MR. CATALANO: Affidavit?

15 MS. ALAM: (Handing)

16 MR. CATALANO: Thank you.

17 JUDGE GREEN: Let's go off the record for five minutes.

18 (Whereupon, a brief recess was taken)

19 JUDGE GREEN: Okay. So back on the record and the
20 Respondent's counsel is going to ask you some questions.

21 CROSS EXAMINATION

22 BY MR. CATALANO:

23 Q When you were hired by Key Food, Mr. Jenzen, did you
24 maintain the same regular rate of pay \$23.19 an hour?

25 A Yes.

1 when you spoke with Davis Britt?

2 A I do think so.

3 Q Did you speak with Davis Britt -- you spoke with Davis
4 Britt about him continuing as store manager for your store,
5 correct?

6 A Yes.

7 Q And that was before you took ownership of the store?

8 A Yes.

9 Q Do you know how long before you took ownership of the
10 store you spoke to Mr. Britt about him continuing as store
11 manager?

12 A I don't recall. We didn't know when we were going to
13 actually be taking over so.

14 Q Could it have been two weeks before?

15 A Probably closer to a week but it may have been.

16 Q Okay. So I'm going to try to wake up my computer. We
17 have what -- I'm going to ask that the witness be shown what
18 has been entered as Joint Exhibit -- I think it's Joint Exhibit
19 14. And I'll put it up because I know we just sent the
20 electronic version of that Joint Exhibit to you guys, so I know
21 you may not have it.

22 Okay. So I have Joint Exhibit 14 is what appears to be --
23 what it's titled as is "Employee Earnings Record." Would you
24 know how -- were you involved in -- this was a document that
25 was produced pursuant to the subpoena request. Were you

1 Q -- and the pay rates given to you by the Almontes?

2 A Yes.

3 MS. ALAM: No further questions, Your Honor.

4 JUDGE GREEN: Anything from the Charging Party?

5 MR. E. MILNER: No questions.

6 JUDGE GREEN: Anything from the Respondent.

7 MR. CATALANO: No.

8 JUDGE GREEN: Thank you. You are free to go.

9 (Witness is excused)

10 JUDGE GREEN: So is that it? Are you close -- are you
11 resting?

12 MS. ALAM: Yes, so General Counsel is ready now to rest --
13 finally rest its case.

14 JUDGE GREEN: Okay. And is the Respondent ready to go
15 forward?

16 MR. WICH: Your Honor, at this point, with the General
17 Counsel resting we would like to make a motion to dismiss, if
18 Your Honor is ready.

19 JUDGE GREEN: Yes.

20 MR. WICH: At this point, Your Honor, Respondents would
21 like to make a motion to dismiss under the authority of Yale
22 University 330 NLRB 346 citing Auto Workers Local 1112 (1978).
23 A case in which ALJ granted a motion to dismiss in Yale
24 University. The standard was set forth as "In reviewing a
25 motion to dismiss the complaint for failure of proof as to an

1 essential element of the General Counsel's case, we are guided
2 by Federal Rule of Civil Procedure 52(c) which permits the
3 trial judge to enter judgment against a party if the evidence
4 shows the party has not sustained its burden of proof.

5 The burden of proof in this case, Your Honor, is on the
6 General Counsel by a preponderance of the evidence. I'm sure
7 Your Honor is well aware of the preponderance of the evidence
8 that is cited by the Board in Pacific Design Center, 339 NLRB
9 415 (2003), citing McCormick's Evidence at 676, 677 (1st ed.
10 1954). "A preponderance of the evidence means that the
11 proffered evidence must be sufficient to permit the conclusion
12 that the proposed finding is more probable than not."

13 And so in reviewing this motion, Your Honor, the question
14 is not whether the General Counsel has presented any evidence.
15 The question is: Have they presented sufficient evidence to
16 support their claims on a basis of more probable than not?

17 With that being said, the Respondents move to dismiss the
18 following seven claims. Claim No. 1, except for CS2 General
19 Counsel has failed to prove by a preponderance of the evidence
20 that Key Food Stores Co-operative, Inc. is a Joint Employer
21 with any of the other Respondents.

22 On this claim, Your Honor, we respectfully disagree with
23 the current state of the law, which we understand to be
24 established by Browning Ferris Industries of California, 362
25 NLRB No. 186 (2015). And we reserve the right, if need be, in

1 post-hearing briefs to urge that the current state of the law
2 is incorrect and urge that the law be returned to Joint
3 Employer as it existed before the Browning Ferris decision.
4 That notwithstanding, given the current state of the law, we're
5 making this instant motion to you based on the standard set
6 forth in Browning Ferris, which I'm going to refer to as BFI.

7 As a first point, it is vital to understand that the
8 entirety of this case arises from U.S. Bankruptcy Law as
9 applied by the U.S. Bankruptcy Court in the A&P bankruptcy
10 proceeding 2015. Prior to the first store's taking ownership
11 and commencing operations, the first stores being HB 84 and
12 Paramount Horace Harding, taking ownership and commencing
13 operations on October 26, 2015, none of the Respondents other
14 than the Co-op were a statutory employer. None of the
15 Respondents other than the Co-op employed anyone until they
16 commenced operations.

17 Further, this is no certainty as to who or which
18 corporation business entity would agree to purchase any of the
19 stores out of bankruptcy until near the time of the various
20 closings. For example, a Local 342 representative, Lou
21 Sollicito, stated during a September 25, 2015 meeting that he
22 doubted that Joe Verderosa, an owner eventually of two of the
23 Paramount stores that came through the bankruptcy and that are
24 at issue in this proceeding, Mr. Sollicito, as late as
25 September 25th doubted that Mr. Verderosa would even operate

1 any of the A&P stores. And that's in Respondent's Exhibit 12,
2 page 9.

3 As a second point, my understanding the entirety of this
4 case, the discussions with Local 342 prior to October 26, 2015
5 were a product solely of the U.S. Bankruptcy Court and U.S.
6 Bankruptcy Law. They were neither required by nor conducted
7 under the auspices of the National Labor Relations Act.

8 The evidence is clear that neither party saw that the
9 Co-op was the intended Employer. To the contrary, after the
10 individual stores opened, Local 342 sought to avoid
11 negotiations with the Co-op and negotiate directly with the
12 individual stores. As provided in GC Exhibit 22, a letter that
13 was written by Ms. O'Leary on December 1, 2015 to the various
14 stores, Ms. O'Leary said "We," we being the Union, "We feel the
15 time has come to conclude with the actual Employer." Those
16 were letters sent to the individual Respondents not the Co-op.

17 Further, in that letter Local 342 admitted that it is
18 "under no obligation to bargain with the Key Food Co-op except
19 for the two stores that the Co-op purchased." So in that
20 letter, as of December 1, 2015 Local 342 itself admitted that
21 there was no bargaining obligation, no bargaining relationship
22 between the Co-op except for the two company stores and 342.

23 Therefore, the evidence of the General Counsel is clear
24 that once the purchases were completed and operations commenced
25 at the various stores, there is the individual store and only

1 the individual store that had a bargaining obligation with
2 Local 342. Further, the General Counsel has offered no
3 evidence that the Co-op exercised or reserved any authority or
4 power to exercise any discretion over the terms and conditions
5 of employment of the employees of the various stores other than
6 CS2.

7 Before the stores were purchased from A&P there were no
8 employees upon which a Joint Employer relationship could be
9 based and as mentioned earlier, no statutory employer to which
10 the Co-op could be considered a Joint Employer. The fact that
11 the Co-op, pursuant to the direction of the Bankruptcy Court,
12 engaged in negotiations with Local 342 to reach a labor
13 contract that would be applicable to the various stores once
14 they hired a sufficient complement of employees is of no
15 moment.

16 It was up to the individual stores as the ultimate buyers
17 to decide whether to enter into their asset purchase agreements
18 with the Co-op, which as a condition required adoption of a
19 modified labor agreement or compliance with the Bankruptcy
20 Court's direction on making offers of employment. This
21 scenario is similar to a regular seller requiring a buyer to
22 adopt the seller's labor contract as part of an asset purchase.
23 Doing so does not make the seller a Joint Employer with the
24 buyer.

25 In further comparison, if the Bankruptcy Court had

1 conditioned hypothetically the asset sales on the adoption of
2 the buyers of the existing A&P labor contracts, doing so would
3 not have made A&P a Joint Employer with the buyers.

4 In short, the General Counsel has failed to prove by a
5 preponderance of the evidence that the Co-op is a Joint
6 Employer either prior to any time after the various closings on
7 the stores. Also, under BFI, Joint Employer status is extended
8 "only with respect to such terms and conditions which it
9 possesses the authority to control." BFI at page 16.

10 BFI does not stand for and has never been interpreted as
11 finding a Joint Employer relationship on all matters when the
12 shared authority is limited in scope. Here the only relevant
13 complaint on Joint Employer status is the hiring or layoff or
14 separation or discharge of individuals at the various
15 independently owned and operated stores.

16 The only argument that has been offered by the General
17 Counsel is that the Co-op was involved in some form of
18 negotiations with Local 342 prior to those stores opening.
19 There is no evidence that has been offered that the Co-op had
20 the authority or retained any authority to determine any
21 hiring, firing, separation, discharge or layoff decisions at
22 those stores.

23 As such and for this independent reason, the General
24 Counsel has failed to prove Joint Employer status as relevant
25 to the claims asserted. For the foregoing reasons, the General

1 Counsel has failed to provide -- failed to prove by a
2 preponderance of the evidence that save for CS2 the Co-op was a
3 Joint Employer at any relevant time and for any material
4 purpose.

5 As such, the claims of Joint Employer status against the
6 Co-op should be dismissed.

7 Claim No. 2. The General Counsel has failed to prove by a
8 preponderance of the evidence that Seven Seas Union Square
9 violated Section 8(a)(1) of the Act through the acts of Pat
10 Conte on February 14, 2017.

11 The total evidence of misconduct presented by the General
12 Counsel from certain harassment and intimidation allegedly by
13 Mr. Conte was that during a break in testimony he said in
14 English to the witness "You lost an earring." And that when
15 Ms. Ortega reached for her ear, he said "Oh, you don't know
16 English."

17 According to Ms. Ortega, Mr. Conte laughed and chuckled at
18 the time. The total evidence of surveillance presented by the
19 General Counsel -- the appearance of surveillance was a
20 photograph taken by Mr. Conte. As a preliminary matter, the
21 allegation is meritless.

22 There is no prohibition against cameras in the courtroom
23 and Mr. Conte as a member of the public was permitted to and
24 did lawfully observe Ms. Ortega's testimony. There can be no
25 allegation of unlawful surveillance when Mr. Conte was lawfully

1 permitted to "surveil" the entirety of her testimony during
2 these proceeding.

3 At this point, if I could have the court reporter -- do
4 you have Joint Exhibit 12? It should be a photograph. If you
5 could just hold it up for the Judge.

6 Judge, this is Joint Exhibit 12, a photograph taken by
7 Paul Conte. Looking at the angle of that photograph, it is
8 clear that it was taken close to Mr. Conte's lap. As you can
9 see, it's focused upward toward the ceiling with his body
10 blocking any line of sight between the camera and Ms. Ortega's
11 testimony as to where she was located.

12 And as you can see, she's not even visible in the picture
13 that was taken.

14 Thank you.

15 During cross examination Ms. Ortega testified that she
16 felt humiliated not because of Mr. Conte's behavior but because
17 she felt he didn't believe her. Such is not a violation of
18 Section 8(a)(1).

19 Further, the General Counsel offered no evidence that
20 Mr. Conte was acting as an agent of Seven Seas Union Square,
21 LLC at the time of the alleged incident. Nothing of the
22 alleged conduct permits a conclusion that his actions were in
23 furtherance of that business.

24 As addressed in Braun Electric Company, 324 NLRB 1 at 2
25 (1997) citing Electrical Workers IBEW Local 453, 258 NLRB 1427

1 at 1428.

2 JUDGE GREEN: I'm sorry, could you repeat those cites?

3 MR. WICH: Braun Electric, 324 NLRB 1 at page 2 (1997)
4 citing Electrical Workers IBEW Local 453, 258 NLRB 1427 at 1428
5 (1981). As addressed in Braun, it takes more than the holding
6 of a position to find agency status as "The holding of an
7 elective office does not mandate a finding of agency per se."

8 Further, assuming arguendo that Mr. Conte was acting as an
9 agent of Seven Seas at the time, the claim runs up against the
10 free speech protections of Section 8(c) of the Act. Mr. Conte
11 had the right to express his disbelief in Ms. Ortega's
12 testimony, as well as his belief that she could not
13 understand -- excuse me. That she could understand English.

14 Lastly, Mr. Conte's alleged conduct had no connection to
15 any promise or threat concerning Ms. Ortega's testimony. As
16 such, he cannot be found to have been unlawfully coercive,
17 which is the standard here. Was the conduct coercive in
18 response to Section 7 activity?

19 And by failing to do so, General Counsel is unable to
20 prove a Section 8(a)(1) violation.

21 For all the foregoing reasons, General Counsel has failed
22 to prove the case by a preponderance of the evidence.

23 The following claims, Your Honor, which relate to the
24 8(a)(3), there's a common theme. Actually, three common themes
25 that resonate.

1 First, with all of the 8(a)(3) claims there was evidence
2 offered by the General Counsel as Section 7 activity and there
3 was evidence offered by the General Counsel of adverse action,
4 but General Counsel failed to provide evidence of protection
5 between the two. Lacking such a connection fails to make a
6 case.

7 The second, it's unusual to say the least, given the
8 significant number of 8(a)(3) allegations in the complaint that
9 there were no -- no alleged independent 8(a)(1) examples of
10 misconduct. So none of the complaint, none of the allegations
11 assert that there were any unlawful threats, any unlawful
12 coercive activity related to the 8(a)(3) claims.

13 Lastly, as noted by Your Honor during the General
14 Counsel's case in chief, much of the evidence produced in
15 support of the 8(a)(3) was hearsay evidence and the explanation
16 that we repeatedly received was that it was corroborative for
17 other evidence that was never produced.

18 So these are three things that follow all of the claims
19 related to 8(a)(3).

20 Starting with Claim No. 3 the General Counsel has failed
21 to prove by a preponderance of the evidence that Seven Seas
22 Union Square violated Section 8(a)(3) of the Act by refusing to
23 hire the individuals identified in paragraph 32(a) of the
24 amended complaint.

25 First, there is no evidence of Union animus by Sharon

1 Gowon. To the contrary, Ms. Gowon, for example, permitted a
2 contractual shop steward, Tamika Jones, in the store while
3 permitting other employees, including Dena Iturralde and Juana
4 Diaz, who according to their testimony, held no official Union
5 position, were not formal shop stewards, to act in the store as
6 shop stewards as well.

7 So Ms. Gowon, who is alleged to have this animus against
8 Section 7 activity not only permitted the contractual shop
9 steward, she permitted two people who had no authority to act
10 as shop steward to engage in Union business during working
11 time.

12 According to Tamika Jones, Ms. Gowon would permit Jones,
13 as well as Iturralde and Diaz to make rounds through the store
14 with the Union rep, Margaret Monier, weekly for about three --
15 two to three hours during working time.

16 According to Ms. Monier, Ms. Gowon agreed to meeting with
17 Jones, the shop steward, Iturralde and Diaz, again, these
18 latter two individuals having no official Union role, to
19 discuss grievances and complaints among the workers. Again,
20 cutting against any argument that Ms. Gowon held any animus.

21 Further, Ms. Gowon permitted Maria Ortega, again, having
22 no official Union role, to distribute Union materials in the
23 work place and to take Union business calls from Margaret
24 Monier. Again, even though Ortega held no Union position.

25 So Ms. Gowon, who is being argued without any evidence to

1 have exhibited or maintained or harbored Union animus, did
2 exactly to the contrary. She allowed people in the store who
3 had no official role with the Union to conduct Union business
4 freely.

5 Third, there is no evidence of any threats by Ms. Gowon
6 tied to the Section 7 activity of any employees.

7 Further, there's no evidence of grievances or unfair labor
8 practice charges that were filed involving allegations against
9 Ms. Gowon.

10 Second, General Counsel provided no evidence that Seven
11 Seas relied upon the recommendations of Ms. Gowon with specific
12 regard to the alleged discriminatees. The General Counsel
13 called only one witness on this issue, Pat Conte.

14 Mr. Conte testified that Ms. Gowon told the store "who she
15 thought would not work out so well probably and who was an
16 excellent worker." Transcript at page 385, lines 22 through
17 23.

18 General Counsel provided no evidence that Ms. Gowon made
19 recommendations concerning all of the employees or indeed for
20 any of the alleged discriminatees. Further, Mr. Conte
21 testified that the store relied on Ms. Gowon's representations
22 "in most cases." Transcript 385, lines 24 through 25.

23 Again, General Counsel provided no evidence that the store
24 relied upon any recommendations to the extent they may have
25 been made with specific regard to the alleged discriminatees.

1 Finally, again, Mr. Conte was the only witness called by
2 General Counsel in this regard and going back to the standard
3 of preponderance of the evidence, General Counsel in
4 questioning Mr. Conte about who was hired and who wasn't hired
5 elicited this testimony from Mr. Conte: "I don't actually do
6 the hiring."

7 So all of the evidence that General Counsel provided came
8 from a witness who didn't actually do the hiring according to
9 the evidence of the General Counsel. So on that basis alone
10 General Counsel has failed to provide evidence to show that
11 Ms. Gowon's recommendations, to the extent that they were made,
12 concerning discriminatees were actually relied upon in making
13 hiring decisions at the store.

14 Turning to the evidence of Section 7 activity as being
15 alleged by the General Counsel as a basis to deny employment it
16 is woefully lacking on the following individuals:

17 Beginning with Keesha Fields, Ms. Fields testified only
18 that she took a leave of absence which was approved, and she
19 didn't even know if the Union got involved in the leave of
20 absence. That was the entirety of her Section 7 activity.

21 Then you heard not from any individuals but through the
22 hearsay testimony of Margaret Monier of other individuals.
23 Rosa Silverio. What was her Section 7 activity? At some
24 point, she requested a schedule adjustment because she had an
25 apartment problem.

1 Natalie Tirado. She was assigned to the bakery by
2 Ms. Gowon when she originally transferred over to the A&P Union
3 Square facility. That's the entirety of the evidence of her
4 Section 7 activity.

5 Madeline Gomez. Madeline Gomez, she wanted to be trained
6 on a meat slicer. That's her Section 7 activity.

7 Elena Pagan at some point had a complaint about guaranteed
8 hours. What happened to that complaint? It was resolved.

9 Ricardo Nunez, five years --

10 JUDGE GREEN: Who was that last one?

11 MR. WICH: Elena Pagan, Pagan, P-A-G-A-N.

12 JUDGE GREEN: Okay.

13 MR. WICH: Ricardo Nunez, five years -- five years before
14 the closing of the Union Square store, according to Ms. Monier,
15 said that he had been paid incorrectly and that issue was
16 resolved.

17 Lucy Maldonado at some point raised a question about
18 vacation entitlements.

19 Carlos Colon at some point raised a concern about his
20 scheduled shift.

21 Jerry Simpson. Jerry Simpson had an issue about his
22 schedule even before Ms. Gowon came to United States, so his
23 Section 7 activity preceded Ms. Gowon.

24 And Troy O'Neill, I'm sure General Counsel will correct me
25 if I'm wrong, but I don't believe we heard any evidence about

1 Troy O'Neill and Section 7 activity.

2 So for these individuals, the sum and substance of their
3 Section activity ranges from no evidence to isolated -- an
4 isolated incident before Ms. Gowon was even at the Union Square
5 store to very discrete, isolated instances that when we're
6 talking about a preponderance of the evidence casts serious
7 doubt on why anyone based on this type of Section 7 activity,
8 routine and common, isolated, would choose to discriminate
9 against these individuals.

10 Also, on the Section 7 activity and Seven Seas it's
11 important to remember that Seven Seas hired over 100 Local 342
12 members that had worked for A&P to staff that store. Again,
13 cutting against any argument to any claim of Union animus.

14 Based on all of the foregoing General Counsel has failed
15 to prove by a preponderance of the evidence that (1) Ms. Gowon
16 harbored Section 7 animus. (2) That such alleged animus played
17 any role in her recommendations. (3) That Ms. Gowon made any
18 recommendations with specific regard to any of the alleged
19 discriminatees and (4) That Seven Seas relied on any such
20 recommendations concerning specifically any of the alleged
21 discriminatees to the extent they may have even been made.

22 As such, the General Counsel has failed to offer
23 sufficient evidence to withstand a motion to dismiss this
24 claim.

25 Claim No. 4. General Counsel has failed to prove by a

1 preponderance of the evidence that 100 Greaves Lane violated
2 Section 8(a)(3) of the Act by laying off Anthony Venditti.
3 Again, the store hired all its employees from A&P, which were
4 represented by Local 342. As a preliminary matter, therefore,
5 there's no evidence of animus against Section 7 activity.

6 The total of the General Counsel's evidence on Anthony
7 Venditti was that he went outside to a Union demonstration and
8 passed out leaflets during a 15-minute break. Importantly,
9 Mr. Venditti testified he wasn't sure whether any of the owners
10 of 100 Greaves Lane saw him while he was on that break.

11 The General Counsel has offered no evidence that either
12 Sam or Randy Abed were aware that Mr. Venditti engaged in that
13 Section 7 activity. Without evidence of awareness, without
14 making the connection between Mr. Venditti engaging in that
15 activity and knowledge on behalf of either Sam or Randy Abed,
16 the General Counsel has failed to show by a preponderance of
17 the evidence that Mr. Venditti's separation from employment is
18 because of that activity.

19 Therefore, on this claim the motion to dismiss should be
20 granted.

21 Claim No. 5. The General Counsel has failed to prove by a
22 preponderance of the evidence that 1525 Albany Avenue violated
23 Section 8(a)(3) of the Act by laying off Stephen Fiore. Again,
24 1525 Albany Avenue hired all of the employees that were
25 employed by the A&P represented by Local 342.

1 Again, as a preliminary matter on this claim there's no
2 evidence of animus against Section 7 activity. The total of
3 the General Counsel's evidence on Stephen Fiore was that he
4 went outside to a Union demonstration and passed out leaflets.

5 Mr. Fiore testified in response to this question:

6 "Q Did anyone, any of the managers, supervisors or owners of
7 the store say anything to you about the leafleting after you
8 started participating in the leafleting?"

9 That was the question. Mr. Fiore's answer was:

10 "A No, nobody said anything." Transcript 1149, lines 5
11 through 8.

12 General Counsel offered no evidence that either Sam or
13 Randy Abed engaged in surveillance, took pictures, maintained a
14 list or even noticed the fact that Mr. Fiore was one of the
15 people that was participating in the demonstration.

16 In short, the General Counsel on this claim has offered
17 only number (1) alleged protected activity and number (2) an
18 adverse employment action. General Counsel has offered no
19 evidence connecting the two.

20 As such, the motion to dismiss this claim should be
21 granted.

22 Claim No. 6. The General Counsel has failed to prove by a
23 preponderance of the evidence that HB 84 violated Section
24 8(a)(3) of the Act by refusing to hire Nelson Quiles or laying
25 off Venus -- excuse me, Venus Napay, Richard Maffia or Khadisha

1 Diaz.

2 Once again, this store hired all its employees from A&P
3 represented by Local 342. Again, as a preliminary matter,
4 therefore, there is no evidence animus against Section 7
5 activity.

6 With regard to Nelson Quiles, the evidence presented and
7 the allegation of the General Counsel shows that he was
8 terminated from A&P prior to HB 84 taking ownership and
9 commencing operations of the store. The General Counsel has
10 argued and alleged that Mr. Quiles was terminated at the urging
11 of HB 84. However, General Counsel has offered no evidence
12 that HB 84 made any such demand to A&P or that A&P would have
13 or did accede to any such demand.

14 Because the General Counsel's evidence shows that the
15 adverse action was taken by A&P and not HB 84, the General
16 Counsel has failed to prove by a preponderance of the evidence
17 that HB 84 unlawfully terminated Mr. Quiles.

18 Further, Mr. Quiles affidavit offered no indication of an
19 effort to seek employment on or about November 9, 2015 as
20 alleged in paragraph 87 of the amended complaint. Without
21 competent evidence of an effort to so seek employment, the
22 General Counsel cannot sustain the burden of proving by a
23 preponderance of the evidence that HB 84 unlawfully refused to
24 hire him on or about that date.

25 With regard to Richard Maffia, Mr. Maffia testified that

1 he did not engage in any of the Union's demonstrations until
2 after being laid off. In the case of Mr. Maffia, the General
3 Counsel has failed to offer any evidence of Section 7 activity
4 or knowledge of such activity by HB 84 prior to the complaint
5 of separation of employment.

6 With regard to Venus Napay, again, she testified that she
7 participated in Union demonstrations only after being laid off.
8 In her case, the General Counsel has failed to offer any
9 evidence of Section 7 activity or knowledge of such activity by
10 HB 84 prior to the complaint of action.

11 With regard to Khadisha Diaz, she offered no testimony of
12 Section 7 activity. Rather she testified only that her mother
13 was an employee of Local 342. However, she also testified that
14 her mother probably had not visited the store while it was
15 owned by HB 84.

16 Again, no evidence connecting Section 7 activity by
17 Ms. Diaz and knowledge by HB 84 prior to the complaint of
18 action.

19 With regard to each of these individuals, therefore, the
20 General Counsel has failed to prove by a preponderance of the
21 evidence that HB 84 engaged in unlawful conduct under Section
22 8(a)(3).

23 With regard to Mr. Quiles, the employment action took
24 place before HB 84 took ownership and commenced operations of
25 the store.

1 With regard to Mr. Maffia, Ms. Napay and Ms. Diaz, there
2 is insufficient evidence of either Section 7 activity or
3 knowledge of such activity prior to the complaint of actions.

4 Claim No. 7. The General Counsel has failed to prove by a
5 preponderance of the evidence that Seven Seas Union Square, 100
6 Greaves Lane, 1525 Albany Avenue, HB 84 or Key Food CS2 laid
7 off any employees in violation of Section 8(a)(5) of the Act.

8 As an initial point on this, Your Honor, as mentioned
9 earlier, there's no evidence of any role of the Co-op or
10 reservation of authority to play any role by the Co-op in the
11 complaint off -- excuse me, in the complained of layoff
12 decisions.

13 For the reasons outlined earlier, the Co-op is not a Joint
14 Employer and my comments following will focus on the individual
15 stores.

16 As mentioned earlier, in order to properly analyze this
17 case, it is vital to account for the fact that the acquisition
18 of the stores at issue as a product of U.S. Bankruptcy Law as
19 acquired by the U.S. Bankruptcy Court. The bargaining that
20 occurred prior to October 22, 2015 was a product of the
21 bankruptcy proceedings and not because of any obligation under
22 the National Labor Relations Act.

23 The terms under which the Bankruptcy Court approved the
24 sale of the A&P stores required those stores to adopt a
25 modified labor agreement with the applicable Unions, as the

1 various stores indisputably did with Local 338, 1500 and 464A,
2 or make offers of employment. Make offers of employment not
3 employ, make offers of employment based on the last best final
4 offer to the Union.

5 The General Counsel's position and the evidence the
6 General Counsel has provided in support of that position is
7 that no modified labor agreement was reached with Local 342.
8 The last best final offer to Local 342 under the General
9 Counsel's theory in evidence therefore was Respondent's
10 Exhibit 1, which was Mr. Catalano's October 22, 2015 memorandum
11 of agreement to Local 342.

12 The last best final offer included, among other things, in
13 Section 2(c) a buyout to full-time employees either prior to
14 store opening or after the probationary period and buyouts
15 and/or layoffs extending for one year from the date of hire.
16 And in Section 3 a probationary period where employees may be
17 terminated with or without cause subject to a severance
18 period -- excuse me, severance payment.

19 On this claim alleging a violation of Section 8(a)(5) an
20 unanswered question also, Your Honor, is what is the basis for
21 the bargaining obligation upon which the Section 8(a)(5) claim
22 is being made?

23 The complaint alleges a layoff of these individuals. Was
24 there any evidence of a layoff provided by the General Counsel?
25 No.

1 In fact, the concept of a layoff was inconsistent with the
2 General Counsel's allegations in the complaint. The General
3 Counsel never alleged that there was a failure to recall as one
4 might expect in a layoff. The General Counsel alleged a
5 failure to reinstate or offer reinstatement. That is
6 indicative of a discharge not a layoff under the General
7 Counsel's evidence.

8 The General Counsel's evidence provided in case in chief
9 indicates that for some of these stores that other individuals
10 might have been hired to replace people who were "laid off,"
11 which again, in the legal sense of the term is not a layoff at
12 all. It's a discharge.

13 And so the General Counsel, although having alleged a
14 layoff in the common sense of the word, has failed to provide
15 evidence of a layoff in the legal sense of the word. But even
16 assuming arguendo a layoff in the legal sense of the word,
17 General Counsel has provided no evidence as to the reason for
18 the alleged layoff.

19 Under layoffs there's a duty to bargain about the decision
20 when a layoff is due to labor costs not a duty to bargain about
21 the decision when a layoff is due for other reasons. Why did
22 the alleged, assuming arguendo a layoff occurred, why did the
23 layoff occur? We don't know because the General Counsel
24 provided no evidence to that end.

25 To the extent these individuals were discharged and not

1 subject to a layoff, General Counsel still does not have a
2 basis to assert a Section 8(a)(5) violation. To the extent
3 that the General Counsel's theory might be presented under the
4 theory and unstated in Alan Ritchey, Ritchey was voided by the
5 U.S. Supreme Court in Noel Canning.

6 The principles underlying Alan Ritchey were not revived
7 until the NLRB's decision in Total Security Management 364 NLRB
8 No. 106 issued in 2016. In Total Security Management, the
9 Board specifically said that the underpinnings of Alan Ritchey
10 would only apply prospectively and so the Alan Ritchey Total
11 Security Management theory of 8(a)(5) bargaining obligations is
12 simply inapplicable to employment decisions that preceded the
13 Total Security Management decision.

14 But even setting all that aside, setting aside layoff,
15 setting aside discharge, the reality is, as presented by the
16 evidence of the General Counsel that a mechanism for the
17 separation of employees was presented in the last final best
18 offer as was required by the Bankruptcy Court. The General
19 Counsel's evidence shows that this offer came only after
20 discussions with Local 342.

21 Now, the General Counsel argues there was no agreement but
22 there was negotiations. There was bargaining with Local 342
23 concerning this mechanism for the separation of employees. As
24 such, there is no 8(a)(5) violation arising from the actions of
25 the Employers making offers of employment that included the

1 mechanisms that (1) complied with the requirements of the U.S.
2 Bankruptcy Court and (2) were made only after discussions with
3 Local 342.

4 In that these complained of layoffs or separations or
5 discharges were encompassed in the offer which was discussed
6 previously with Local 342, the General Counsel has failed to
7 prove by a preponderance of the evidence that Section 8(a)(5)
8 was violated with regard to those separations.

9 Thank you.

10 JUDGE GREEN: Okay. Thank you very much.

11 I take it that General Counsel has no authority from the
12 Region to withdraw any allegations?

13 MS. TOOKER: No, Your Honor, we don't.

14 JUDGE GREEN: I just have a couple of questions about
15 these allegations with regard to Mr. Conte dealing with
16 Ms. Ortega. So the picture -- there's no evidence that he
17 actually took a picture of an employee or a witness or that he
18 aimed the phone with the camera of an employee or a witness,
19 correct?

20 MS. ALAM: I believe Ms. Ortega did have testimony towards
21 that. That the camera was aimed at her and she is an employee.

22 MS. TOOKER: I mean I think the timing of the picture is
23 just fortuitous that she's not in it. I mean Eric is just in
24 the way because he was walking through at that point. If it
25 was taken a second before, she would have been in the picture.

1 JUDGE GREEN: So you're saying it was aimed -- she was --
2 Mr. Conte was sitting there and aiming the camera towards me,
3 correct? That's the evidence we have?

4 MR. E. MILNER: No, no.

5 MS. TOOKER: No, no, it's that --

6 MS. ALAM: That's why the picture is in evidence. The
7 picture is taking --

8 JUDGE GREEN: It's a selfie?

9 MS. ALAM: It's a selfie.

10 JUDGE GREEN: Right.

11 MS. ALAM: So whatever is behind her --

12 JUDGE GREEN: No, I get it.

13 MS. ALAM: -- is what is being --

14 JUDGE GREEN: Okay. So you're saying it's a failed
15 attempt at surveillance because -- that selfie is a failed
16 attempt at surveillance because he was trying to point it --

17 MS. TOOKER: She was there, right.

18 JUDGE GREEN: Okay.

19 MS. ALAM: And I don't know if it's failed. It's just
20 that at that moment when the picture was -- right. When the
21 picture was clicked, there was an obstruction.

22 MS. TOOKER: But he would have still been able to monitor
23 her before that.

24 JUDGE GREEN: And do you have any -- will you be
25 presenting any case law that the harassment, so-called

1 harassment is a ULP?

2 MS. ALAM: Of course.

3 JUDGE GREEN: Really? Saying "You really don't know
4 English." That's a ULP?

5 MS. ALAM: Oh, the -- I mean, I doubt I'll be able to find
6 a case exactly on point, but I have -- I will be presenting
7 cases of statements made during testimony, during hearing
8 testimony, that could be considered 8(a)(1).

9 JUDGE GREEN: Okay. I'm not going to -- I'm not going to
10 dismiss it.

11 I am going to ask you to revisit those with the Regional
12 Director and I'm going to deny the dismissal -- the motion to
13 dismiss in other respects.

14 And with that, let's proceed to the Respondent's case
15 unless the parties have something else.

16 MS. ALAM: Can we just take a quick break. I have to use
17 the restroom.

18 JUDGE GREEN: Sure.

19 MR. WICH: If we could, Your Honor, just before we take a
20 break. It's going to be quick.

21 At the outset of the hearing we had a motion to amend the
22 complaint and this had to do with the Seven Seas allegations
23 and most of the amendment was deletions. There was an addition
24 to paragraph 32(a) the employees named below were employed by
25 A&P until on or about the dates listed below, next to their

1 want to keep these employers in business and to put their money
2 on the line, you can't go along with what's been the past. And
3 with respect to A&P, a failed model twice in three years.

4 Q Now, during the 2015 negotiations, were there any other
5 terms of the Key Food industry agreement that you found
6 problematic?

7 A Well, I could remember off the top of my head a hiring
8 haul. Example, you couldn't hire anybody. A successors and
9 assigns clause. You couldn't sell to anybody unless he or she
10 agreed to go forward on the same terms and conditions.

11 Health and welfare contributions, 1300 a month for full-
12 timers, 1800 a month is now being bandied about by 342. Who
13 could afford \$1800 a month? Sure. But what it means is fewer
14 employees. That's what it means, so the health and welfare,
15 the retirement supplement, the hiring haul, the failure to be
16 able to sell to other than someone who agrees to go forward on
17 the same terms and conditions of employment, which ab initio,
18 from the inception, makes your store less valuable because
19 there are fewer buyers.

20 I recommended to them that they not agree to such terms.
21 I was familiar with them big time from representing A&P.

22 Q Did there come a point in time when you were appointed as
23 labor counsel to A&P in connection with their first bankruptcy?

24 A Yes. The first bankruptcy I think was in 2010. How I
25 heard about it was, I was at 1500 with a gentleman by the name