

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

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## United States Court of Appeals for the Second Circuit

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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.*

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ON APPEAL FROM THE NATIONAL LABOR RELATIONS BOARD

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Square, LLC, 100 Greaves Lane Meat LLC  
and Jar 259 Food Corp.*

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1 third-party comes in and says I'll pay two million for that.

2 The stalking horse bid in the main, and the papers are in  
3 every, precluded somebody from picking off some individual  
4 store. If you want to outbid Acme for that hundred million,  
5 you got to take them all. And Key Food put together its  
6 putative members in the group and they made a bid for, as I  
7 said, I think the original number was 19, but I know there were  
8 certain stores that winnowed out and in fact, the members  
9 themselves changed during the course of the bid.

10 Q Can the witness be shown Joint Exhibit 3.

11 A Thank you.

12 Q Are you familiar with this document?

13 A Yes.

14 Q And what is it?

15 A There was an agreement among the Co-op and its members  
16 separately, and with A&P, a purchase agreement to -- which was  
17 approved by the Bankruptcy Court in July of 2015 to make such a  
18 purchase offer in the form of a stalking horse bid. And there  
19 was a motion made on July 19, 2015 which ultimately was  
20 approved to authorize this bid, and thereafter, the ultimate  
21 purchase of the stores at issue within the stalking horse bid.  
22 And that's separate and apart from an additional auction of  
23 further number of stores, which other members chose to bid on  
24 and ultimately obtained.

25 Q So for the stalking horse bid, I just want to direct your

1 October 21 with 342. There was no issue ever with the other  
2 three Unions. They all agreed in the same framework of MOAs as  
3 had been sent to Jhana Branker of 342 on October 22, 2015 and  
4 no one suggested that there was not an effective agreement  
5 between and among the parties.

6 Q Now, on October 22, 2015 --

7 A Yes.

8 Q -- you sent a memorandum of agreement to the Union; is  
9 that correct?

10 A I did.

11 Q And the first stores for Key Food members opened up on  
12 October 26; is that correct?

13 A It's in the documentation. I do know and it was stated  
14 repeatedly that Mr. Verderosa and the Almontes were opening up  
15 "next week." I think the first date might've been October 23.  
16 It may have been postponed a few days to October 26 but that  
17 framework is definitely very close if not correct.

18 Q So between the time of October 22nd when you sent the  
19 memorandum of agreement to the Union and the time of the first  
20 store's opening, did you make any other offers to Local 342?

21 A No.

22 Q Now, turn your attention back to the middle of 2015. When  
23 did negotiations with the Unions begin?

24 A On approximately July 20th I was retained by Key Food. I  
25 spoke to A&P. There was no literal conflict but as a courtesy

1 I said that the Key Food Co-op and its members would like me to  
2 participate in the bargaining on their behalf with -- with the  
3 Unions. They said fine. No problem. Chris McGarry, General  
4 Counsel, through Sheryl Schermer said "That's fine, Doug." And  
5 I met with the Key Food Co-op members and the Co-op July 23-4-  
6 5, in that world, to prepare for the bargaining which ensued on  
7 July 28, 2015.

8 Q So that was the first meeting with the Unions --

9 A It was, July 28, 2015.

10 Q And which Unions participated?

11 A All Unions including 464A, which represents currently the  
12 purchased stores that happen to be not only in Jersey but also  
13 Westchester. 464A was there. 1245, who had a couple of  
14 members as a vestige of a prior collective bargaining  
15 representative. 1500, 338 and 342 were all there. 1245 and  
16 its two or three members were essentially thereafter  
17 represented by the other Unions going forward and they were no  
18 longer involved in negotiations. So the four major Unions as  
19 far as number of members were 338, 464A, 1500 and 342. They  
20 were all there. Additionally, on July 28 at the offices of  
21 Local 1500 in Westbury.

22 Q Now, these Unions that you just named the numbers, they're  
23 all UFCW Unions?

24 A 338 happens to be and I don't know any longer the  
25 connection, if any. RWDSU, they'll have to sort out for me

1 themselves.

2 At approximately 4:30, quarter to five, Mr. Abondolo asked  
3 to speak to me.

4 I say, "Fine."

5 We go off into a side room. I actually remember the table.  
6 It was either oval or octagon shape with big backs. It was very  
7 comfortable. So he and I sit down.

8 And he said, "We have an agreement. We'll agree to what  
9 you want," in so many words.

10 Do I remember the exact sentence? No, but we were talking  
11 about our proposal. And he said, "We have an agreement. We're  
12 good to go. I want to raise one thing with you, though."

13 "What is that?"

14 It's the retirement -- withdrawn -- the buyout numbers. I  
15 said, "You don't want," exact words, I don't know, but "you  
16 don't want the 750 model that's in our contracts per year of  
17 service with A&P and the minimum of 5,000 and the maximum of  
18 14,000?"

19 He said, "No, what I want to do is I want 800 without a  
20 cap," because the 338 and 1500 and 464 had a cap, a minimum and  
21 a maximum. So he says, "I don't want that. I have the ability to  
22 get my Members a severance payment from A&P under those  
23 provisions that we talked about yesterday, testified to  
24 yesterday, where you get if you close down \$800 for each year of  
25 service if you've been employed by A&P since 1995; 1981 with

1 JUDGE GREEN: With regard to the people that are present.

2 THE WITNESS: Only with regard to the people who were  
3 present and those are the names, and yes, I remember them, but I  
4 want to be exhaustive, so that's why I referred to the document  
5 -- thank you.

6 Okay, so we have an agreement. He says, "We're done, but I  
7 need this."

8 Okay, it may be that we touched upon part timers being  
9 hired or not retained by 342 in the side room, I'm not sure, but  
10 definitely we talked about it when we got back into the main  
11 room. And the reason is just several days before in October  
12 Local 1500 and I refer to it in some of the notes had, by reason  
13 of the A&P bankruptcy number one, had an agreement to give part  
14 timers that were laid off a severance payment, as well as, full  
15 timers. And Rob Newell told me about it. And we included it in  
16 the other agreements.

17 And Richard said to me, "What about part timers?"

18 And I said, "We're going to hire all of the part timers, I  
19 think, but in the event that there aren't any."

20 He said, "I want to make sure that there's some  
21 assistance, help, that they get taken care of," whatever words  
22 he used, but in that spectrum of words.

23 So, I said, "Thank you, I'm glad. I'm happy that we have  
24 an agreement. Let me go out and talk to my people."

25 I go back. I go to --

1 appreciate it. "Let me talk to my people."

2 So he said, "We have an agreement. We're good. I want to  
3 change the buyout that you've proposed."

4 And that's how it's reflected in the ultimate MOA that I  
5 sent out, the next day to Jhana Branker, which says, 'Here is  
6 the 338 model of MOA' because Richard had agreed to it.

7 Q So, October 21 when your conversation with Mr. Abondolo  
8 ending, you said that you're going to out to speak to your  
9 people?

10 A Yes.

11 Q What happened then?

12 A I went out, talked to them. I said, "There's a change here  
13 in the math, guys," using that in a generic way, including  
14 Sharon. I said, "There's a little math difference here, but  
15 let's figure out the math. I don't care if a guy is there for 40  
16 years. He would get, which is not going to happen, he would get  
17 \$32,000, but he's going to get half of it from A&P, so it's  
18 \$16,000."

19 So could you lose in some instances, as far as what we've  
20 proposed, yeah. But in the main you're not going to.

21 Secondly, we have an agreement. Let's not screw around  
22 with going back and forth. And probably in most instances it  
23 will be less expensive than the minimum of 5 or maximum of 14.  
24 We have a deal. Let's conclude.

25 Everybody said, "Yeah, Doug. That's great. That's

1 mean, our positioning at the JFK Hilton was here. And they were  
2 over there, not as far as that wall, but apparently 85 feet  
3 behind Mr. Sollicito; 10 feet behind Mr. Conti -- so at the end  
4 of those benches. That's where we were, talking to each other  
5 like this, in a cordial sense.

6 We're done. Write it up. Send it to Lisa. I'm glad we're  
7 putting it to bed.

8 And then they said, "When are the stores opening up?"

9 And we now had a conversation about the stores opening up.  
10 And whether they could be of assistance, Ms. O'Leary asked.

11 Ms. Konzelman said, "No, thank you, but we don't need your  
12 help."

13 So, we had a deal.

14 Q Had any of the meetings with 342 or at which 342 attended  
15 -- had any of those meetings during the 2015 negotiations, aside  
16 from October 21, ended with any of the 342 Representatives  
17 coming around and shaking everybody's hand?

18 A No, no, in fact, I was startled. I frankly don't remember  
19 ever shaking Richard's hand ever in 20 years. Not that he's  
20 discourteous, but that was particularly interesting to me. And  
21 it happened, as reflected in their own notes, which you'll see.

22 MS. TOOKER: Objection, the documents speak for itself.

23 JUDGE GREEN: Do you know where it is?

24 THE WITNESS: Yes, we'll get to it. In one of the notes  
25 Lisa O'Leary says to me, "I wasn't there for the handshake,"

1 Q What was your understanding when Mr. Abondolo said that?

2 A Well, what he said was -- well, let me say what he said.

3 "Yes, I asked for 800 for every year of service. I  
4 understand the point."

5 We said, "We'll, give them the severance."

6 We had no objection to it, except Ms. O'Leary returned the  
7 releases. It also came up in the context of Quelis and Maffia.  
8 Quelis being Alleged Discriminatee.

9 Q What came up in that conversation with regard to Mr.  
10 Quelis?

11 A I didn't know frankly about Quelis because Quelis, as I've  
12 learned but I had learned about earlier, was at that  
13 demonstration on September 5<sup>th</sup> in a non-Union Howard Beach Store  
14 owned by -- I can't remember which Almonte, Frankie, not  
15 Gilbert. And this came up during this and what I understood at  
16 the time was -- and there will be testimony to that effect, 342  
17 literally pulled them out of the store, literally precluded them  
18 from working.

19 Secondly, this is November 19<sup>th</sup>. On November 15, 16, and 17  
20 there was also I think referred to an injunction action  
21 commenced by Diaz and Almonte's. They committed all sorts of  
22 illegality during those three days.

23 MS. TOOKER: Objection, this is all hearsay.

24 THE WITNESS: No, it's not. I commenced the action.

25 JUDGE GREEN: Let me ask you because I'm a little confused

1 you weren't sure who was going to be the ultimate Owners of the  
2 stores. Correct?

3 A Yes.

4 Q So at that point the proposals that were set forth were  
5 based on what the Key Food Co-Op had put forth. Correct?

6 A No, Pat Conti was sitting right there. Lenny Mandell was  
7 sitting right there. Almonte, Richie Almonte was there. and the  
8 Members were being kept advised as to what was going on. Sam  
9 Abed was at negotiations. Albert Diaz --

10 Q On July -- I'm talking about July 28<sup>th</sup>, 2015.

11 A Well, it doesn't matter. They authorized those --

12 Q I'm talking -- okay.

13 A -- those people authorized the proposals.

14 Q Okay.

15 A There was a meeting at the Co-Op. we went through it. and  
16 the Purchasers authorized that which was being said at the  
17 table, the Perspective Purchasers on July 28<sup>th</sup> and thereafter.  
18 And 464, if you'd like to know, Lenny Park was there. Kevin Kim  
19 was there. Mike Hassing was there.

20 Q I don't think that I have a question on the table. And I'm  
21 not sure if you're testifying about what meeting and who was  
22 there.

23 A Well, you tried to suggest that it was only the Co-Op that  
24 made these decisions, which was inaccurate.

25 Q Now there was a payment that the Key Food Co-Op had to

1 discussed?

2 A If I had to -- do I remember those exact words? No. Do I  
3 remember that sentiment repeatedly? Yes. Does it make sense?  
4 Yes. But do I remember the exact phraseology and what was  
5 said? No.

6 Q Okay.

7 A But it wouldn't surprise me because we did give  
8 information from Ms. Konzelman, and it was early in the day,  
9 because the stores didn't start to close, as the term is used,  
10 until several weeks later, and it was difficult to give them  
11 the exact framework that they would be opened up on.

12 Q So the list at this point couldn't have included which  
13 employers were going to take over which store --

14 A Couldn't? Couldn't?

15 Q -- because you didn't have that information, I think you  
16 just said?

17 A No, I didn't say that.

18 Q Okay. Did not --

19 A I said department. I'm not saying -- what's your  
20 question, I'm sorry?

21 Q My question is: At this point, any information provided  
22 by the Co-op to Local 342 did not include which particular  
23 owner was going to take over which store?

24 A On October 14th, a mere two days later, that was set forth  
25 ad nauseam. All members, all stores, all -- all departments,

1 JUDGE GREEN: Okay.

2 THE WITNESS: Okay.

3 MS. TOOKER: All right, just to clarify, it's a three-page  
4 document?

5 MR. WICH: Respondent's 33 is three pages --

6 THE WITNESS: Yes, it's three pages.

7 MR. WICH: -- yes.

8 MS. TOOKER: Okay.

9 MR. CATALANO: I would move each of the documents, R-31,  
10 32, and 33 into evidence.

11 JUDGE GREEN: Any objection?

12 MS. TOOKER: No objection, Your Honor.

13 MR. E. MILNER: No objection.

14 JUDGE GREEN: So R-31 through 33 are entered into  
15 evidence.

16 (Respondent's R-31 to R-33 received.)

17 BY MR. CATALANO:

18 Q All right, now, early after you opened up the store, was  
19 there, irrespective of the week of March, was there a problem  
20 with a particular individual with respect to sobriety who had  
21 been previously represented by 342?

22 A Early one.

23 MS. TOOKER: Objection to relevance.

24 JUDGE GREEN: So what's the relevance?

25 MR. CATALANO: The relevance is that there was an

1 agreement, and they were complying with the agreement. Local  
2 342 walked away entirely from this relationship.

3 JUDGE GREEN: So you're making a defense, and I know  
4 you've mentioned a few times, but just to clarify; you're  
5 making a -- your defense is essentially the Union abandoned the  
6 unit and therefore the Respondents --

7 MR. CATALANO: Yes.

8 JUDGE GREEN: -- didn't have an obligation to bargain?

9 MR. CATALANO: We had an agreement and they abandoned the  
10 unit.

11 MR. WICH: Your Honor, also on this point, just as a  
12 proffer, the employee at issue eventually separated and there  
13 was a severance payment made consistent with the agreement with  
14 342. And so that's where the testimony would lead.

15 JUDGE GREEN: Okay. Overruled. Go ahead.

16 THE WITNESS: There was a Norman Smith on the payroll. He  
17 was as full-time meat cutter, which is reflected, Judge, in the  
18 payroll here.

19 JUDGE GREEN: Okay. That's in R-33?

20 THE WITNESS: Yeah. He came to us immediately upon when  
21 we opened the store that he had some personal issues and that  
22 he couldn't work a full week. And I said to him personally,  
23 Mr. Smith, you're a full-timer, we're offering you 40 hours per  
24 week. We're taking dues as such. That's what you were working  
25 with Waldbaums. His rate of pay was the same, and the dues is

1 full-time. And he said I cannot work as many hours, I have  
2 problems and I might go to jail, and this sort of thing. And  
3 he needs certain time off.

4 We noticed that he was inebriated, stumbling around, and I  
5 called Local 342. I spoke to Lou Sollicito, a representative  
6 of Local 342 and I explained my predicament; that this guy is a  
7 problem and if he can't work a full week, and I can't catch him  
8 drinking, I'm prepared to lay him off and pay the agreed upon,  
9 as per the MOA, the \$8,000 separation money.

10 BY MR. CATALANO:

11 Q What did Sollicito say?

12 A Well, they went to the store. They must have spoke to the  
13 meat manager. And 342 said fine, just make sure you pay him  
14 the money, and that there's a release signed. And that's what  
15 I did. I paid him \$8,000. I spoke to Mr. Smith. He was very  
16 nice about it. We had a nice conversation. He said he had  
17 some issues, that he couldn't even work anymore, he wasn't  
18 sure. And I said well then take the severance.

19 And soon after my discussion, the Union did come to the  
20 store. They spoke to the staff. Mr. Murphy, the meat manager,  
21 and there was no opposition from the Union in regards to his  
22 separation.

23 Q And was there a payment made of \$8,000? And was there a  
24 release executed in this instance?

25 A There was a payroll check made to Mr. Smith for \$8,000.

1 Judge, I'm not sure --

2 Q It's reflected in what document?

3 A This three-page document --

4 JUDGE GREEN: R-33.

5 THE WITNESS: -- R-33 on 12/12 of \$8,000.

6 JUDGE GREEN: Okay.

7 MR. CATALANO: Thank you.

8 THE WITNESS: I sent the payroll check after he signed the  
9 release. When the release was --

10 MR. CATALANO: Okay.

11 BY MR. CATALANO:

12 Q Now, just as an aside, who drafted the release for you, in  
13 this instance, Park Plaza?

14 A I have a labor attorney, a Mr. David Wiesman, who handled  
15 my releases for all employees that received any money, above  
16 and beyond what they might be entitled to.

17 MR. WICH: If we can mark this document for identification  
18 as Respondent's Exhibit 34, please?

19 (Respondent's R-34 marked.)

20 BY MR. CATALANO:

21 Q Now, did there ever come a time that representatives of  
22 Local 342 came to you, by yourself, or to you and your brother  
23 by yourself, and suggest that they wanted to enter into some  
24 separate deal?

25 A I got a phone call from Mr. Sollicito. Perhaps it was

1 early November, soon after we opened, about bargaining  
2 separately from the Key Food Group. And I had a nice  
3 conversation with Lou Sollicito and I said I'm not going to do  
4 that. That I'm being represented by counsel, you Doug  
5 Catalano, and I'm with the Key Food Group and I cannot separate  
6 from the group and I won't bargain alone.

7 We had a nice conversation. He said, listen, we can get  
8 along. You don't have any issues. Let's go separately. And  
9 he proposed some other types of contract that I said to him, we  
10 have a contract and it's agreed upon. We have an MOA. There's  
11 nothing else to discuss at this particular point. So that's my  
12 bargaining. We have a signed -- we have an agreement.

13 Q Okay. Now, you mentioned Mr. Murphy before. Tell us what  
14 occurred with Mr. Murphy, as far as one, did you -- was he an  
15 employee who had formerly worked at Waldbaum?

16 A Mr. Murphy was the meat manager.

17 Q Okay. And --

18 A In the store, and I hired him and continued his  
19 employment.

20 Q And did you give him the same rate that he had been  
21 receiving at Waldbaum, if you recall?

22 A Yes, I did. His rate of pay as the meat manager was  
23 31.6250. And he was getting overtime every week.

24 Q All right. Now --

25 A In overtime.

1 A Yes.

2 Q -- for the record?

3 Okay. And which unions were in that store when you  
4 purchased the store?

5 A Local 338 and 342.

6 Q And 342 represented --

7 A The back wall, which is the meat department.

8 Q Okay. And did there ever come a time that you did a  
9 buyout with Local 338?

10 A Yes.

11 Q Okay. And that -- in connection with that so-called  
12 buyout, was that not to hire somebody and give him or her  
13 money?

14 MS. TOOKER: Objection.

15 THE WITNESS: Yes.

16 MS. TOOKER: There's -- first of all, it's a 338 buyout,  
17 which is not relevant to the 342 contract or whether there was  
18 one or not one. And also, we don't have any -- or layoffs in  
19 this store.

20 JUDGE GREEN: All right. So what's the relevance?

21 MR. CATALANO: I move -- I'll move on.

22 JUDGE GREEN: Okay.

23 BY MR. CATALANO:

24 Q Did you attend any of the collective bargaining sessions  
25 with Local 342?

1 A Yes.

2 Q Did you attend any of the bargaining sessions with the  
3 other unions?

4 A No.

5 Q Okay. What was the reason that you participated in the  
6 Local 342 negotiations?

7 A Mainly two reasons. One, because I was interested in  
8 what's going to happen, and you know, who I'm investing the  
9 money in the store. I would like to know what the final  
10 outcome would be for the bargaining. And I was also asked to  
11 attend because 342 requested the members to be present at the  
12 bargaining.

13 Q Okay. So you joined the 342 negotiations subsequent to  
14 the beginning of those negotiations; is that correct?

15 A Yes.

16 Q Okay. And how many sessions did you attend?

17 A Three. Maybe four.

18 Q Okay. And when you opened the store, what date was that,  
19 approximately?

20 A Well, the inventory and closing was October 28th, opened  
21 October 29th.

22 Q Okay.

23 A The following day.

24 Q Now, did you, with 338, have an agreement with 338 or  
25 abide by terms with 338 when you opened the store?

1 MR. CATALANO: I'll withdraw it.

2 BY MR. CATALANO:

3 Q Tell the Judge what Mr. Abondolo said concerning the  
4 agreement.

5 A I was there till the end and I remember him saying we had  
6 a deal. And I remember also --

7 JUDGE GREEN: Do you remember when during -- was it  
8 towards the end of the --

9 THE WITNESS: Yes.

10 JUDGE GREEN: -- the session?

11 THE WITNESS: Yes, it was towards the end. Yes.

12 JUDGE GREEN: Okay. Okay, and then what happened?

13 THE WITNESS: He walked across the room. I remember  
14 shaking hands, the meeting finished, and actually staying in  
15 the lobby, had a couple of drinks with the fellow members and  
16 that was the night.

17 BY MR. CATALANO:

18 Q Okay, and do you recall him saying anything during those  
19 negotiations about drafting a memorandum of agreement? Or  
20 asking anyone to do so.

21 A Yes. He asked it to be drawn up. He actually asked you.

22 Q Now, did there ever come a time that Mr. Abondolo was told  
23 by you as to whom you would hire when you opened up the store  
24 in Riverdale, during negotiations?

25 A Yes. I remember him asking us who we're going to need.

1 Q And did you tell him?

2 A Yes.

3 Q And what did you say to him?

4 A I'll keep the two full-timers.

5 Q And did you do so when you opened the store?

6 A Yes.

7 Q And what did you hire them at? What rate?

8 A At the rate that A&P was paying prior to the acquisition.

9 Q Okay. Now, when you opened up the store, did you at any  
10 time receive any information from 342 or any billing or dues  
11 authorization cards or anything?

12 A No.

13 Q Okay. And what ultimately happened to the two full-timers  
14 that you hired, if you recall?

15 A They both quit on good terms. They just stopped working.

16 MR. CATALANO: I have nothing else.

17 THE WITNESS: For personal reasons.

18 JUDGE GREEN: Do you know what their classifications were?

19 THE WITNESS: Meat manager, journeyman, and a part-time  
20 meat wrapper.

21 JUDGE GREEN: So --

22 THE WITNESS: Who was also hired.

23 JUDGE GREEN: -- the journeyman was the meat manager?

24 THE WITNESS: Well, yeah. A meat cutter -- I see -- I get  
25 confused with the actual titles, but --

1 Q. And how did you come up with that amount?

2 A. A&P supplied us the amount of time that he was -- had been  
3 an employee with them and we made the calculation at that  
4 point.

5 Q. And the \$800 per year, where did that come from?

6 A. The \$800 was part of the agreement that had been made with  
7 the Union as to the amount that should be given to any employee  
8 who was full-time and was being offered a buyout.

9 Q. I want to turn your attention again to 2015, turn your  
10 attention to meetings with 342 and bargaining sessions. Did  
11 you attend any bargaining sessions with 342?

12 A. Yes.

13 Q. About how many?

14 A. It may have been three, it might have been just two. I  
15 think it was three.

16 Q. So two or three?

17 A. Yes.

18 Q. And on October 14th, 2015 do you recall attending a  
19 negotiation on that day?

20 A. Yes.

21 Q. What do you recall of your involvement during that  
22 negotiation?

23 A. We kind of mixed in a little bit. We were meeting with  
24 the other, but it -- I'm sorry, could you ask me something  
25 specifically and --

1 Q. But you recall being at the October 14 meeting?

2 A. Yes.

3 MR. WICH: If the witness can be shown Respondent's  
4 Exhibit 14, please?

5 (Whereupon, the document was handed to the witness.)

6 THE WITNESS: Okay. Yeah, I remember a little bit.

7 BY MR. WICH:

8 Q. So does Respondent's Exhibit 14 help refresh your  
9 recollection?

10 A. Yes.

11 Q. So my question was what do you recall from that meeting,  
12 your participation, what you did during that meeting?

13 A. At some point we were asked which people that were in the  
14 Union that were employees of the store we were planning on  
15 keeping and if there were any that we were not.

16 Q. And you said we were asked, we who?

17 A. Well, the members of the co-op who were purchasing the  
18 stores individually.

19 Q. So on behalf of HB84 did you make any comments to them?

20 A. Yes. We decided that we were going to keep two full-  
21 timers and two part-timers in the Meat Department.

22 Q. And did you say that during that meeting?

23 A. Yes.

24 Q. And how did you reach that conclusion, that idea, that  
25 that would be the number of employees that you would keep?

1 A. Well, based on the size of the store and the size of the  
2 meat cases and during our previous visit the walk throughs that  
3 -- walking through the store seeing that they have X amount of  
4 feet of beef, X amount of feet of chicken, we thought that that  
5 amount of employees would be more than sufficient to fill the  
6 cases.

7 Q. I want to turn your attention to October 21, 2015, October  
8 21. Do you recall attending a meeting on that day --

9 A. Yes.

10 Q. -- with Local 342?

11 A. Yes.

12 Q. What do you recall happening on that day?

13 A. Well, a couple of different things. When we got there at  
14 some point someone who we didn't know arrived at the meeting  
15 and we were told later that he was a Federal mediator. And he  
16 introduced himself and kind of sat quietly in one of the  
17 corners.

18 Also that was the first meeting at which I saw Richard  
19 Abondolo who was the President of 342. At previous meetings  
20 when I had been there he was either did not arrive or arrived  
21 so late that I had already left, so those two things. And that  
22 was also the meeting where at the end of the meeting we had an  
23 agreement.

24 So Mr. Abondolo said we have a deal. He stood up and he  
25 shook hands with all the members of the co-op who were

1 the next morning we would have the paperwork.

2 Doug said that he would have that for him in the morning  
3 or something to that effect. And after that everybody was very  
4 relieved that finally we can go through with the purchase  
5 because everybody was anxious about --

6 MS. TOOKER: Objection, mischaracterization about what  
7 everyone felt.

8 BY MR. WICH:

9 Q. Well, how did you feel at the time?

10 A. Okay. So I myself felt relieved that the deal was going  
11 to be able to go through and we could take over the stores.  
12 Everything else financially was more or less in place and we  
13 wanted to be able to take over the stores before the  
14 Thanksgiving came around and we had plans of fixing things,  
15 adjusting things inside the store and we wanted things to get  
16 started.

17 Q. Now, with regard to HB84, when you opened the store did  
18 you hire any Union represented employees?

19 A. Yes.

20 Q. How many?

21 A. All of the employees were.

22 Q. Were Union represented?

23 A. Yes, they were all Union represented.

24 Q. Now, when you opened you mentioned before you had a Meat  
25 Department, right?

1 A. Yes.

2 Q. How did it come -- describe for us how you came to make a  
3 decision on a meat manager?

4 A. Sometime before we took over the store we were given a  
5 list of the employees and we went to the store and met with the  
6 manager that they had and we didn't know one employee from the  
7 other, they were just names on a piece of paper for us. He  
8 went through them and --

9 Q. Who was that manager?

10 A. Davis Britt.

11 Q. Okay.

12 A. He gave us his opinion of them and work habits and what he  
13 knew about them. On the list we were given there were people  
14 who were actually on the list, but were not actually employed  
15 at the store at that time. He also pointed those people out to  
16 us, to me and Frankie, and based on what he told us we made  
17 decisions on who we would keep as employees and who we were  
18 going to choose not to keep.

19 Q. Now, with regard to the meat manager who was Mr. Quiles,  
20 the meeting manager at the time?

21 A. He was when we had that conversation.

22 Q. And you had mentioned --

23 A. I'm sorry. On the sheet that we were reviewing that we  
24 were given they had somebody else as the meat manager which was  
25 Richard Maffia and in discussions with Mr. Britt he told us

1 that he had been transferred to a different store so they could  
2 try to kind of shore it up or fix some problems that they were  
3 having

4 And he told us that the cuts that he prepared were better when  
5 he was --

6 Q. Who?

7 A. Mr. Maffia, which is -- I'm sorry, the name Maffia was  
8 kind of a little funny to us just because of its connotations,  
9 but regardless his cuts were supposed to be better and the  
10 store was more profitable and high sales when he was there in  
11 that capacity as the manager than the current situation when it  
12 was Mr. Davis.

13 Q. So what decision did you eventually make in terms of who  
14 you wanted for the meat manager position?

15 A. Well, we were going to keep two full-timers and two part-  
16 timers and we wanted Mr. Maffia to be the meat manager at that  
17 point.

18 Q. Did you ever tell Mr. Britt to hire Mr. Quiles?

19 A. No, we couldn't do that. Mr. Britt was not our employee  
20 and neither was Mr. Quelis.

21 Q. So this was happening before you actually purchased the  
22 store, correct?

23 A. This -- yes.

24 Q. So Mr. Maffia wasn't at the store at the time?

25 A. I never saw Mr. Maffia until way after we took the store

1 over and I actually never met Mr. Quelis either.

2 Q. So did you undertake any effort to bring Mr. Maffia in to  
3 be the meat manager?

4 A. We asked the 342 Reps to make him available to us, he's  
5 the person we wanted and they told us, oh, you don't worry  
6 about him, he's somewhere else right now and we can't give him  
7 to you. That's just what they told us.

8 Q. Do you know when that occurred?

9 A. This was a couple of days before we took over. It may  
10 have been a week or more, I'm not a hundred percent sure.

11 JUDGE GREEN: Do you recall who you spoke to?

12 THE WITNESS: I think it was a phone conversation with  
13 Mike Palmer. Maybe I'm mistaken as to who, but he was  
14 basically the contact person that we had with 342.

15 BY MR. WICH:

16 Q. Did there ever come a point in time where Mr. Maffia did  
17 show up to work at HB84?

18 A. Yes.

19 Q. Describe what happened?

20 A. So they finally relented and they told him to go in and it  
21 happened on that morning he got to the store before opening  
22 time. He was in the store, he came in with his boots, he came  
23 in with his white jacket. He seemed prepared to work and on  
24 that day the Local 342 decided that they were not going to  
25 allow any of their Union members to continue to work in our

1 A&P store just not at our location.

2 Q. Anything else?

3 A. No. That his -- well, that his quality of work was  
4 supposed to be better than what we currently had at the store.

5 Q. And Ms. Nepay, what if any knowledge did you have of any  
6 Union activities that she was involved in?

7 A. Just that she was a member of 342 and an employee of the  
8 store.

9 Q. And for Ms. Diaz, what if any knowledge did you have  
10 of any Union activities she may have been engaged in?

11 A. The same, being a member and working at the store.

12 Q. Did being a Local 342 member figure into your decisions at  
13 all in terms of deciding to either not hire or let go any of  
14 these individuals?

15 A. The pool we had to choose from was all 342 so that wasn't  
16 an issue for us.

17 Q. After you opened the store, HB84, after it was opened  
18 there was some leafletting activity that went on by 342,  
19 correct?

20 A. Yes.

21 Q. Did that cause you any concerns?

22 A. Yes. It was bothering the customers, it was -- they put a  
23 big rat outside of our store. They were blocking the entrance  
24 to the store. They were using our shopping cars to rest their  
25 coffees, to put their coats. Our customers had to walk

1 MR. WICH: They might not have known the complete set of  
2 facts at the time.

3 JUDGE GREEN: You can argue whatever you'd like.

4 MR. WICH: Number one. Number two what's this in  
5 response to?

6 JUDGE GREEN: Well, I get it, but it's a little out of  
7 order, but it's admitted.

8 MS. TOOKER: Okay.

9 MR. WICH: Out of order in what way, Your Honor?

10 JUDGE GREEN: In the sense that we would have expected  
11 this to come in while Mr. Catalano was testifying and now it's  
12 coming in with regard to a witness who hasn't seen it, but it's  
13 relevant, it's not hearsay and it's admitted.

14 (General Counsel's Exhibit 78 received.)

15 MR. WICH: Your Honor, just for the record could you  
16 explain the relevance to me?

17 JUDGE GREEN: It seems to be -- listen, I haven't sat  
18 down and read it, but it seems to be your position statement on  
19 these cases.

20 MR. WICH: Thank you, Your Honor.

21 BY MS. TOOKER:

22 Q. All right. Mr. Almonte, did your company ever pay a  
23 severance payment to the Venus Nepay?

24 A. No.

25 Q. Did your company ever pay a severance pay to Khadsisha

1 Diaz?

2 A. No.

3 Q. Did your company ever pay a severance payment to Richard  
4 Maffia?

5 A. No.

6 Q. Did your company ever offer a buyout to any of those  
7 employees that I listed?

8 A. We were not able to speak to them directly. We were  
9 speaking with them through the negotiations that the lawyer had  
10 with 342.

11 Q. Okay, but were any payments made to them that were not  
12 payroll related, that were not for actual hours worked?

13 A. No.

14 MS. TOOKER: Can the witness be shown Joint Exhibit 15,  
15 please?

16 (Whereupon, the document was handed to the witness.)

17 MR. WICH: What's Joint 15?

18 MS. TOOKER: Joint 15 is the big stack of emails and  
19 we're going to be specifically dealing with  
20 15(1), which is -- if you go through it's towards the back and  
21 there's an email that appears from Gilbert Almonte dated  
22 Tuesday, November 24th, 2015.

23 THE WITNESS: On what day?

24 BY MS. TOOKER:

25 Q. Tuesday, November 24th, 2015. The emails are generally in

1 was there.

2 Q. Yeah, sounds like a mistake, right?

3 A. Um-hum.

4 MS. TOOKER: All right, nothing further.

5 JUDGE GREEN: Anything from the Charging Party?

6 MR. E. MILNER: No questions.

7 JUDGE GREEN: Okay. Let me just ask you a few questions.

8 JUDGE GREEN: Sure.

9 JUDGE GREEN: So at some point you decided that you  
10 wanted Mr. Maffia to be the meat manager at the Lincoln Road  
11 store.

12 THE WITNESS: Yes.

13 JUDGE GREEN: Was that before or after you took over?

14 THE WITNESS: We wanted him to be there when we took  
15 over.

16 JUDGE GREEN: Okay, so it was before?

17 THE WITNESS: Yes.

18 JUDGE GREEN: Now, at the time that you made that  
19 decision was Mr. Quiles employed at the store to your  
20 knowledge?

21 THE WITNESS: It was our understanding that he was.

22 JUDGE GREEN: So Mr. Maffia, it was your intention that  
23 Mr. Maffia replace Mr. Quiles?

24 THE WITNESS: Yes.

25 JUDGE GREEN: Okay,

1 took over the store, I was standing in front of the newly  
2 opened 49th and 8th Avenue store, we had opened that up on the  
3 26th, and I was just assessing what I wanted to do with the  
4 exterior and a Lou Liacano called me.

5 Q. And did you know Lou?

6 A. Yes. He and I have known each other for a while. And he  
7 said that he knew that the store was very heavy and if we  
8 wanted to not hire anybody to make up a list and to send it to  
9 him. Hearing that, that was music to my ears because I know  
10 the store was very over, you know

11 --

12 Q. Staffed?

13 A. Over-staffed.

14 JUDGE GREEN: Which store are we talking about? Did he  
15 indicate which store?

16 THE WITNESS: The Union Square store. That's the only  
17 store that -- where were we?

18 BY MR. CATALANO:

19 Q. You were saying that you knew that the store was over-  
20 staffed.

21 A. Oh. So I talked to my brother because he was at the  
22 office and I told him to make a list up of people that we might  
23 not want to hire because I had been going into the store as a  
24 shopper and I had met two former employees of mine that worked  
25 for our company years ago.

1 Q. And what are their names?

2 A. One is the Director of Security. His name is Mac McBrien  
3 and the other one is Santos Garcia, a produce clerk.

4 Q. And did you and/or your brother have discussions with them  
5 about performance in the store and if so did that impact you  
6 with respect to the decisions that were made?

7 A. Once I found out Mac was the Director of Security in the  
8 store, he spent the entire day on the cameras and then when he  
9 caught somebody he went after -- shoplifting, that was his  
10 primary focus or internal theft, okay, you know, such as  
11 employee theft. And I focused on him because sitting on the  
12 cameras all day long he's in a position to know what's really  
13 going on in the store from 36 different angles. You see a lot.

14 And I asked him his impression of who were the outstanding  
15 productive people, who were less than productive, and who were  
16 mediocre productive. And I got a lot of information from him.  
17 Santos was a produce clerk and not really effective because he  
18 was stuck in an aisle whereas Mac had a view of the store, the  
19 basement, everything all day long.

20 Q. So did you get an impression from him as to who were the  
21 better performers versus the --

22 A. Oh, yes.

23 Q. Okay. Now, did the sales in the store have any impact on  
24 your decision making as far as who would or would not be  
25 hired?

1 guys. He still jokes about it, all right, that he caught me  
2 sneaking downstairs to see what downstairs was like.

3 Q. And before the close did you have access to any sales  
4 figures?

5 A. No.

6 Q. Okay, sir, go ahead. We were talking about why you  
7 decided not to hire these 14 people.

8 A. Okay. So I was walking around the stores and you could  
9 just tell that after being in this business your whole life  
10 there was just so many people and people were trying to look  
11 busy. They weren't really working because there wasn't enough  
12 work to do because there was so many people.

13 And plus I was getting information from this guy Mac, like  
14 I told you, the Director of Security. And he, by the way, did  
15 give me a little information as to store sales because I asked  
16 him that we were told that the store's doing 350, okay, and he  
17 said he didn't think that the store was doing 350 anymore,  
18 maybe a couple of years ago it was.

19 Q. And in drawing up the of 14, continue with why those 14  
20 and why in certain departments and the like.

21 A. Well, the payroll with those 14 would have been \$60,000  
22 give or take a week. The whole store's entire gross profit  
23 would not have covered that payroll, never mind the rent, the  
24 electric, the armored cars, all the other expenses, the floor  
25 maintenance and everything. It was just a preposterous,

1 they don't look bad.

2 Q. And what line items or what are you talking about?

3 A. Productive labor and sales.

4 Q. All right. Let's talk about productive labor. Explain  
5 that to the Judge what the terminology means in the supermarket  
6 world and collective bargaining?

7 A. Productive labor is when somebody worked for 40 hours and  
8 you paid them. Unproductive labor is when you pay somebody a  
9 sick day or you pay someone a week's vacation or two-week's  
10 vacation or holiday, gets paid time for holiday and gets time  
11 off.

12 Q. Okay. So these were the numbers that you were provided.  
13 And did you trust those numbers or did you believe, prior to  
14 opening the store, that you needed to find more information  
15 out?

16 A. It was - I was suspicious of them and I grew more and more  
17 suspicious as time drew closer to us taking over.

18 Q. Okay, how often were you and/or your brother in that store  
19 to do your investigation prior to the opening?

20 A. He would go, but I tended to really go early in the  
21 morning or late at night and go shopping, you know.

22 Q. How many times in the aggregate for the two of you, if you  
23 had to give us your best recollection?

24 A. Ten, 12 times.

25 Q. Okay.

1 JUDGE GREEN: During what time, ten, 12 times?

2 THE WITNESS: During the time that we were taking over  
3 the store or about to take over the store.

4 BY MR. CATALANO:

5 Q. Okay. Now, the EBADA (Ph.), four wall EBADA, what is the  
6 number?

7 A. About 20.

8 Q. I see, yeah. Excuse me. And then four wall percentage  
9 2.8, what did that mean to you as an operator prior to opening  
10 the store?

11 A. If it were true it would be wonderful. It should be a  
12 little bit higher, like the store may be down. This is  
13 earnings before. This is not bottom line cash money, this is  
14 earnings before income tax, depreciation and amortization,  
15 okay? So depreciation and amortization go in there, but you  
16 know, it drives the number up, but you know.

17 Q. Okay. So you did your due diligence to the extent you  
18 could prior to the opening and did you make certain judgments  
19 that the staffing would be appropriate or not when you  
20 purchased the store?

21 A. Well, like I told you before, I already got the general  
22 sense when I was going in there covertly that people were  
23 tripping over themselves, as we say. And as you grow to see  
24 everything and we get more and more information, you see that  
25 the store was very heavily staffed.

1 make changes?

2 A. Yes.

3 Q. All right. At this time I'd just like to show you this  
4 document. Could you go to the third page? Is this document  
5 that you're looking at your affidavit?

6 A. Say that again?

7 Q. Is this document that you're looking at your affidavit  
8 that you gave to Ms. Alam?

9 A. Yes.

10 Q. All right. Can you go to the third page, please --  
11 actually if you can go to the last page, the fourth page? Is  
12 that your --

13 A. You mean this page, right?

14 Q. Yes. Do you see -- is your signature on that document?

15 A. Yes.

16 Q. And it appears to be signed on February 19th of 2016, is  
17 that correct?

18 A. Yeah.

19 Q. Now if you could go to the third page? In the -- about  
20 two-thirds of the way through of this second paragraph there's  
21 a sentence that starts, "Someone." Do you see that sentence?

22 A. Okay.

23 Q. Okay. So it says, "Someone from Seven Seas then asked  
24 Sharon Gowon who she recommended we hire out of the previous  
25 employees. Ms. Gowon thus provided a list of employees she

1 believed were good and which were lackluster in their  
2 performance." Is that an accurate reading of that statement?

3 A. Yeah.

4 Q. And is that still -- is it still your contention that  
5 that's a true statement?

6 A. Yeah, she did give her opinion at times.

7 Q. And in this document is there any mention of your  
8 conversations with Mac the security guard?

9 A. No.

10 Q. And when you gave this document were you asked the reasons  
11 you relied upon to not offer employment to the 14 people at  
12 issue?

13 A. Say that again?

14 Q. Sure. When you gave this statement did Ms. Alam ask the  
15 reasons, any reasons that you relied upon when you decided not  
16 to offer employment to those 14 people at issue?

17 A. She probably did.

18 Q. But on that basis you didn't mention Mac, is that right?

19 A. That's correct.

20 Q. Did you say anything about Santos when you gave this  
21 statement to Ms. Alam?

22 A. No.

23 Q. Okay.

24 MS. TOOKER: I have no further questions.

25 JUDGE GREEN: Nor do I. Thank you. No, hold on. Sorry,

1 I have just a couple of questions, but does the Charging Party  
2 have any questions?

3 MR. E. MILNER: No, Your Honor.

4 JUDGE GREEN: Okay. So the decision to not hire these 14  
5 people was that made -- who made that decision?

6 THE WITNESS: My brother and I.

7 JUDGE GREEN: And you both -- did you both consult on who  
8 should be let go and --

9 THE WITNESS: Say that again?

10 JUDGE GREEN: Did you consult with each other on who --  
11 which employees should be let go?

12 THE WITNESS: We knew we would have to let some people go  
13 because the economics of the payroll versus sales were just  
14 unfeasible.

15 JUDGE GREEN: Okay.

16 THE WITNESS: So we started with what appeared to be the  
17 least promising or what we were advised were the least  
18 promising.

19 JUDGE GREEN: Okay. And did either Sharon Gowan or Mac  
20 Mc -- what was his last name?

21 THE WITNESS: McBrien,

22 JUDGE GREEN: McBrien, did they ever make -- tell you  
23 anything about the Union position of any of these employees?

24 THE WITNESS: It wasn't really discussed. It was a  
25 matter of economics.

1 A No.

2 Q Okay. And did there come a time that you then became part  
3 of the negotiating process?

4 A Yes. They asked us to come down later on.

5 Q Okay. And with whom did you attend meetings, what union?

6 A 342.

7 Q Did you attend any meetings with 338 or 1500?

8 A None.

9 Q Now, were you advised as to the reason why you then joined  
10 the collective bargaining negotiations?

11 A They wanted us there.

12 Q Who is they?

13 A The 342.

14 Q Okay. And did you and your brother Randy then go to those  
15 meetings?

16 A Yes.

17 Q And how many meetings did you go to approximately?

18 A We went to a few of them actually. Probably about five or  
19 six.

20 Q Okay. Now, do you recall a meeting with Richard Abondolo  
21 in which he requested from you and the others the actual  
22 staffing that might be envisioned when you opened up the  
23 stores?

24 A Yes.

25 Q Who you would hire and not hire?

1 A Yes.

2 Q Okay. And do you recall such a meeting on October 14th  
3 2015?

4 A Yes.

5 Q Okay. And I'm going to show you R-14.

6 MR. CATALANO: Would you, Mr. Court Reporter, show the  
7 witness R-14?

8 THE WITNESS: Yes. This is exactly what we talked about.

9 BY MR. CATALANO:

10 Q On October 14th --

11 A Uh-huh.

12 Q -- 2015? Alright. Tell the Judge --

13 A Sure.

14 Q -- directly what these notations mean, what you were  
15 telling Mr. Abondolo at that collective bargaining meeting.

16 MR. E. MILNER: Objection. How can he tell what these  
17 notations --

18 JUDGE GREEN: Right.

19 MR. E. MILNER: He didn't write it.

20 JUDGE GREEN: So the question --

21 MR. CATALANO: What JD means he can say.

22 JUDGE GREEN: The question is what happened at the  
23 meeting.

24 MR. CATALANO: What happened at the meeting?

25 THE WITNESS: We were talking about staffing, because a

1 lot of the members felt that the stores were to heavily  
2 staffed. And we knew right away the sales were going down.  
3 And they were heavily staffed, even at the numbers that they  
4 had, just imagine what it would be if we took over. So right  
5 off the bat we knew we had too many people.

6 And I remember, you know, asking to take out five people  
7 in Greaves, because we had 12. And the same thing with Albany.  
8 We had six, I believe, the full timers there. We wanted to  
9 take out three.

10 BY MR. CATALANO:

11 Q Okay. Now, you mentioned Albany Avenue as part of being  
12 the stalking-horse --

13 A Yes.

14 Q -- bid process. How did it come about that you were in  
15 the throes of possibly purchasing Greaves Lane? How did that  
16 happen?

17 A Well, what happened was when we -- when the other -- when  
18 we knew that Stop&Shop took the other two locations, then we  
19 went to bid in a different location.

20 Q And were you part of an auction process?

21 A Yes.

22 Q Okay. And you, the successful bidder, to possibly close  
23 on the Greaves Lane store?

24 A Yes.

25 Q Okay. And when was that approximately?

1 A I think the -- that was later on, probably in October.

2 Q Okay. So here we are on October 14th and as the Judge  
3 said tell him what happened at that meeting and what other  
4 people were saying. How did it come about?

5 A It was the same. It was the same story. The stores were  
6 heavily staffed. Everyone was complaining about too many --

7 Q Well, that's --

8 A -- people.

9 Q -- a conclusion. I said please tell him what you said.  
10 What you said, not what you concluded that there was too many  
11 people. For evidence purposes, you have to tell the Judge what  
12 you said. I said this, that or whatever. So tell him.

13 A No, I told them it was too many people. I had to cut some  
14 off.

15 Q And did you tell them who and what positions?

16 A Yeah, we -- they had the list. There was a list that they  
17 gave us from A&P. And we choose for Greaves I believe it was  
18 five people that we took of the list and I believe Albany was  
19 three.

20 Q Alright. And now there are names here of positions.

21 A Uh-huh.

22 Q Can you tell us whether that -- those were the positions  
23 that you said you would or would not keep in those stores?

24 A I remember in Greaves we originally started with six full  
25 time butchers. And I told them right away I had to take out

1 Q And when you opened up --

2 UNIDENTIFIED SPEAKER: Can I just -- which store are we  
3 talking about?

4 MR. CATALANO: Which store --

5 THE WITNESS: He said Greaves first.

6 MR. CATALANO: Right.

7 THE WITNESS: So that's where I'm going.

8 JUDGE GREEN: Okay.

9 THE WITNESS: Yeah. So in Greaves we got numbers that the  
10 store was doing six and change, 6-60 I think it was. And the  
11 meat department was like 60,000. The first week I took over  
12 there I think we did like two and change.

13 MR. CATALANO: 200,000?

14 THE WITNESS: 200,000.

15 BY MR. CATALANO:

16 Q And A&P had given you information that Greaves Lane was  
17 doing 600,000 a week?

18 A 6-60 I think was the number.

19 Q And with respect to the meat department in Greaves Lane  
20 you have to be specific --

21 A They --

22 Q -- because somebody reads this record. That's why --

23 A Yeah, they --

24 Q -- I'm asking you to be precise.

25 A They had the same. They had the same thing. They did

1 10%. They figured 60,000 for the meat.

2 Q What were you advised by A&P what the sales were in the  
3 meat department?

4 A About 60,000.

5 Q Okay. And when you opened up what were you doing in  
6 Greaves Lane in the meat and deli departments approximately?

7 A The meat -- I'm talking about the meat only they said --

8 Q Okay.

9 A -- 60. I'm not talking about deli.

10 Q Let's go then, what do you get --

11 A The meat was probably about 25.

12 Q Okay. Now, I'm going to show you a document --

13 MR. CATALANO: These all copies? Okay.

14 MR. WICH: Have this marked as Respondent's exhibit 40,  
15 please.

16 THE WITNESS: Wow, it's worse than I thought.

17 MR. CATALANO: Wait. There's no question. What number is  
18 that? 40? Respondent's 40, sir. And Judge, is employer (sic)  
19 40 good? You ready? I know you'd mark it.

20 Okay. Mr. Abed, take a look at what's been marked as  
21 Respondent's 40. Tell the Judge in your own words what are  
22 these documents? What do these reflect?

23 THE WITNESS: These are sales figures for the Greaves  
24 Avenue (sic) store.

25 (Respondent's R-40 identified)

1 Q So what was the first week in sales?

2 A The first week of sales we had 1-68 it looks like --

3 Q Well, for the week ending November 22.

4 A Yeah, 1-65 9-60 1-13 in net sales. The next to last page

5 --

6 Q Yeah.

7 A -- if you go like halfway down the first thing there, net  
8 sales.

9 Q Okay.

10 A 1-65 9-60 1-13.

11 Q Yeah. Okay. And what information had you received back  
12 in the spring and in the summer as to what the sales were in  
13 that store?

14 A 4-62, 462,000. That was a average week for the period  
15 ending.

16 Q And how many full timers were in that store, including in  
17 the meat department?

18 A Same situation. The store was very heavy. I think in the  
19 meat department -- you're saying meat department only now,  
20 right?

21 Q Let's stay with the meat department then.

22 A Meat department only I think there was four full time  
23 butchers. No, I'm sorry. One, two -- yeah, four full time  
24 butchers and I think there was two full time wrappers I  
25 believe.

1 Q Alright. And what was the meat department's sales? You  
2 said 1-60 plus as far as per week in actual sales throughout  
3 the store. What were the meat department's sales?

4 A That week?

5 Q Yeah.

6 A 20,817.37.

7 Q Okay. And did you make a determination that there were  
8 too many full time employees in that store?

9 A Oh, yeah. We knew --

10 Q Including in the meat department?

11 A We knew there was too many even beforehand.

12 Q And was that a subject of your conversation with Local 342  
13 on October 14th?

14 A 100%.

15 Q And did you tell Local 342 on October 14th what you  
16 thought you might do, with respect to hiring --

17 A Yeah, I think it was we asked to -- we wouldn't need all  
18 the meat wrappers. I think one less meat wrapper and two less  
19 butchers.

20 Q Alright. Now, when you opened up the Greaves Lane store  
21 and the Albany Avenue stores, when were they opened up  
22 respectively?

23 A A week apart.

24 Q Okay. And --

25 A Exactly.

1 know, a butcher, or a meat cutter, a journeyman cutter or  
2 whatever, these titles don't mean anything to me. I want to  
3 see who's doing the work. You know, I'm not going to let a guy  
4 to go that's doing -- that's been there for a while that's  
5 making \$29 if he's not working good.

6 I've got to see what he's doing. So I have to actually go  
7 in the store. That's why I hired them all, to make a  
8 determination who I'm going to keep, who I'm not going to keep.

9 Q Alright. And did there come a time that you laid off  
10 certain individuals?

11 A Yes.

12 Q Okay. Did the layoff of any of those individuals or  
13 reduction to part time have anything to do with their being  
14 member of 342 or acting on behalf of 342 in any way?

15 A They were all 342.

16 Q But you have to answer the question.

17 A No.

18 Q Okay. Now, do you recall, prior to the opening of the  
19 store, a meeting -- negotiating meeting that was had on October  
20 21, 2015 at the JFK Hilton?

21 A Yes.

22 Q Were you there?

23 A Yes.

24 Q Was Mr. Abondolo there?

25 A Yes.

1 Q When you opened up the store did you hire the people at  
2 the agreed upon rate and that is to say their last rate at A&P?

3 A We couldn't take the store from A&P without taking the  
4 Union. That was part of the deal.

5 Q Well, I'm talking about specifics. Did you agree and then  
6 pay the same rate as they had previously receiving at A&P when  
7 you opened up the store?

8 A Where would I have gotten the rates from them? Of course.

9 Q Now -- and is that the same case for both Albany Avenue  
10 and --

11 A Greaves Lane.

12 Q -- Greaves Lane?

13 A Yes.

14 Q Okay. Now, as a general proposition there are suggestions  
15 here that staffing was cut back by you and your brother after  
16 you opened the store. Did that occur?

17 A Of course.

18 Q Okay. Now, there have been claims that Joseph Batiste in  
19 Albany Avenue, Calvin Harris, Robert Jenzen and Stephen Fiore  
20 were somehow negatively impacted, after you opened the store,  
21 because of an anti-union animus by you. Did you --

22 A Absolutely not.

23 Q -- do anything with respect to them, by reason of them  
24 being a member of 342 or anything that they had done previous  
25 to your opening the store?

1 A Two of them were laid off for business reasons and it was  
2 much later, so that doesn't make any sense. The other two were  
3 laid off, because we had too many people and we already  
4 discussed that we already discussed that we were two heavily  
5 staffed.

6 Q Name the two and the two --

7 A The Batiste and Harris we let them go shortly after we  
8 took over and the other two individuals Fiore and Jenzen worked  
9 for us for awhile.

10 Q Okay. And prior to your taking over the store, did you  
11 have any knowledge whatsoever about whether or not they did or  
12 did not support the Union in any way or have some role at A&P?

13 A Absolutely not.

14 Q Did their union membership have anything to do with the  
15 reason that they were selected to be laid off or reduced rather  
16 than somebody else?

17 A No.

18 Q In fact, the front of the store at Albany Avenue, which  
19 union represents those individuals?

20 A Local 1500.

21 Q And did you open up the store based upon a MOA with Local  
22 1500?

23 A Yes.

24 Q And when did you sign an agreement -- a fulsome agreement  
25 with Local 1500? How many months later if --

1 A Many months later.

2 Q Okay. And did you act and in accordance with the  
3 opportunity agreement --

4 A From day one.

5 Q Okay. And can you tell the Judge also with respect to  
6 Greaves Lane whether you laid anyone off, including Gina  
7 Cammarano, Debra Abbruzzese, Michael Fischetti or Anthony  
8 Vendetti, by reason of them being advocates for the Union?

9 A No.

10 Q Did you know what role they had at A&P prior to taking  
11 over the store?

12 A No.

13 Q Can you tell the Judge what was the reason they were  
14 selected, if they were, for reduced hours, or being laid off or  
15 otherwise? Tell the Judge.

16 JUDGE GREEN: Can you take this one at a time?

17 MR. CATALANO: Sure.

18 JUDGE GREEN: Who are we talking about?

19 MR. CATALANO: Gina Cammarano.

20 JUDGE GREEN: And this is --

21 MR. CATALANO: This is Greaves Lane.

22 JUDGE GREEN: Right.

23 THE WITNESS: All of them were laid off in -- for the same  
24 reason, we were too heavily staffed. We had too many people.  
25 We had to --

1 BY MR. CATALANO:

2 Q And it was an economic choice?

3 A Economic.

4 Q Is there any other reason?

5 A No.

6 Q After you opened up the stores, did 342 attempt to collect  
7 dues or did you set up -- withdrawn. Did you establish the  
8 payroll system so that dues would be forwarded to both 1500 and  
9 342?

10 A I don't do the payroll, but I believe we tried to collect  
11 the dues.

12 Q And forward it to 342?

13 A Yes.

14 Q Okay. And did you have a discussion with Lisa O'Leary  
15 about the dues?

16 A She did call.

17 Q What did she say? And tell the Judge in specific words  
18 what she said.

19 A It wasn't a good conversation. She was really upset I  
20 guess and it was something to the effect that what -- who the  
21 hell told you to collect dues?

22 JUDGE GREEN: And what did you say?

23 THE WITNESS: I mean we have these members that are paying  
24 the dues. We have to forward the dues. They said no, don't  
25 collect the dues anymore. So they made us stop collecting the

1 Q -- understanding.

2 A I believe it was her. I had heard her voice before.

3 Q Now, with the layoffs that were made in the first few  
4 months after opening, how did you -- did you make the decision  
5 or who made the decision to layoff the individuals that were --

6 A I did.

7 Q Okay. And do you consult with your brother at all? He's  
8 co-owner of the store.

9 A No.

10 Q And how would you make your decision?

11 A Well, I watched them all work. I felt certain ones  
12 weren't doing as good a job as I wanted to. That coupled with  
13 the economics with what was going on with the store.

14 Q Isn't it true that you were -- when you were working at  
15 the Albany Avenue and Greaves Lane store, did you observe any  
16 leafleting taking place by members of Local 342 outside your  
17 stores?

18 A When?

19 Q I mean did you ever?

20 A Afterwards.

21 Q Afterwards what?

22 A After the layoffs.

23 Q Oh, so you didn't observe any leafleting taking place in  
24 your stores before any of these people alleged to have been  
25 laid off?

1 A Yes, we did.

2 Q Okay. And when did you open up approximately?

3 A November 12th 2015.

4 Q Alright. Not prior to opening up did there come a time  
5 that you became involved in the collective bargaining process?

6 A Yes.

7 Q Okay. Were you involved in July, and August and  
8 September?

9 A No.

10 Q Alright. When did you become involved in the collective  
11 bargaining process?

12 A It was I would say -- no, no, -- October.

13 Q Okay.

14 A Late September. Mostly October.

15 Q Alright. And do you know why you would -- or became  
16 involved?

17 A At that point it was more zeroed in that the stores might  
18 becoming ours, but before that we didn't -- we weren't sure of  
19 anything then. It was still in bidding.

20 Q Alright. Did you bargain with 338 or was it only --

21 A I believe with 338 we had a short bargaining, but it was  
22 really short.

23 Q And then you became involved with 342 bargaining?

24 A Yes.

25 Q Okay. Now, did there ever come a time that Mr. Abondolo

1 Q -- required hours?

2 A Not that --

3 Q You don't recall?

4 A -- I remember, no.

5 Q Do you recall any discussion about a grievance or  
6 arbitration process, how that was going to take place?

7 A Not that I remember exactly.

8 Q Do you remember any discussions about open terms that --  
9 like how open terms were going to be handled, in the agreement  
10 that was being negotiated?

11 A I mean the more important fact was we were working on an  
12 agreement. We already had part of an agreement with other  
13 unions. So we were just trying to close out. So we were  
14 focusing on like the bigger picture. Stuff like bereavement  
15 pay or holidays were kind of pushed to the side, because we  
16 weren't really --

17 Q And you testified that you were at the -- a meeting that  
18 took place with a federal mediator around October 21st, is that  
19 right?

20 A Yeah.

21 Q At that time, did you -- was there any -- did you have any  
22 idea when you were going to close on your -- the store you bid  
23 for from A&P?

24 A We had estimated dates, but it was nothing concrete.  
25 There were still dates shifting and moving.

1 understanding was you could not open the store?

2 MR. CATALANO: Objection. He didn't say that.

3 JUDGE GREEN: She's asking -- overruled. She's asking --

4 MS. ALAM: It's a question.

5 JUDGE GREEN: -- for what he -- right, what he thought.

6 THE WITNESS: I mean I was never -- to be honest I'm not  
7 sure, because this is my -- this was my first time dealing with  
8 the Union. So --

9 BY MS. ALAM:

10 Q And were you at that whole meeting on October 21st from  
11 the beginning to end?

12 A Uh-huh, yes.

13 Q What time -- do you remember what time you got there?

14 A The normally would go from 9:00 to 5:00. We would take  
15 lunch breaks and some other breaks in between. But roughly I  
16 know that one was most of the day.

17 Q Do you remember -- so on that particular day, do you  
18 remember any conversation about part timers, or how many hours  
19 they had to work or anything about part timers?

20 A No. The only thing I remember was going over the list of  
21 employees, of 342 employees that I had in the store. And me  
22 along with the other Key Food members, we went down the list  
23 telling them who we were going to stay with, who we were going  
24 to reclassify, what were we doing with the departments, etc.

25 Q On that day? On the 21st?

2424

1 KONZELMAN - Direct

2 A. I was hired as the  
3 vice-president of finance in 2015 and in  
4 2016 was promoted to chief financial  
5 officer.

6 Q. And generally speaking, what are  
7 your duties?

8 A. I'm responsible for all the  
9 accounting and banking for the co-op, I  
10 handle audits, taxes, risk, insurance,  
11 contracts, negotiations, and, after we  
12 acquired the two corporate stores, I also  
13 was vice-president in charge of overseeing  
14 the corporate store operations.

15 Q. And when you say the two  
16 corporate stores, you're talking about the  
17 two stores that were purchased from A&P?

18 A. Yes.

19 Q. And just for the record, would  
20 you detail what those store addresses  
21 are.

22 A. We have one store on Francis  
23 Lewis Boulevard in Bayside Queens and  
24 another store in Jackson Heights on 75th.

25 Q. And what is the corporate entity

2425

1 KONZELMAN - Direct

2 that own those stores?

3 A. Each store is owned separately  
4 by an LLC. CS2 owns the store on Francis  
5 Lewis Boulevard and CS3 LLC owns the store  
6 on Jackson Heights.

7 Q. Alright. Now, with respect to  
8 the co-op, Key Food co-op, what trade  
9 names are utilized by the members of the  
10 co-op? And by that, when I use the term  
11 "members", I'm talking about individuals  
12 or corporations that are members of the  
13 co-op.

14 A. The co-op controls the rights to  
15 certain names around the New York area:  
16 Key Food, Food Universe, Food Dynasty, Key  
17 Food Marketplace, Marketplace by Key  
18 Food. Through the A&P bankruptcy, we also  
19 acquired Food Emporium and Super Fresh.  
20 And then members are not required to  
21 run -- to fly one of the Key Food  
22 banners. They can call their store  
23 anything they want. So there are stores  
24 Holiday Farms, Gala Fresh, Vittorio's  
25 Marketplace. So you're not required to

2426

1 KONZELMAN - Direct

2 use a Key Food name just because you're a  
3 member of the Key Food co-op.

4 Q. Okay. Generally speaking, when  
5 was the co-op created? What were --

6 A. We'll celebrating our 80th  
7 anniversary this week.

8 Q. And going backwards, may I  
9 assume that's to 1937?

10 A. Correct.

11 Q. Okay. And how many stores --  
12 and how many owners are there within the  
13 co-op framework?

14 A. Currently we have 240 different  
15 stores and it's about 110 different owners  
16 and owner groups that own those stores.

17 Q. Now, for the clarity of the  
18 record, explain what the co-op does in  
19 connection with services or within  
20 affiliation or with relationship with the  
21 members. Just in your own words describe  
22 to the judge --

23 A. The co-op --

24 Q. -- how the co-op operates.

25 A. The co-op is member owned. We

2427

1                                   KONZELMAN - Direct  
2    are owned with the members. The people  
3    that have those stores own/operate the  
4    co-op. We are a buying and service  
5    cooperative. So they choose to join the  
6    co-op to get economies of scale mostly in  
7    their buying. We have a very favorable  
8    contract with C&S that allows them to get  
9    most of their needs for their stores, the  
10   groceries, less expensively than they can  
11   get on their own. We also have a  
12   relationship with some of the big DSD,  
13   direct store delivery vendors, Coke,  
14   Pepsi, Frito Lay, Bimbo Bakeries for  
15   bread. So that's really to get the  
16   product into the store efficiently and  
17   inexpensively. We -- also, voluntarily,  
18   people can agree to have advertising  
19   services provided by the co-op so that the  
20   circular, the window signs, the shelf  
21   signs in the store can all be provided by  
22   the co-op within an economy of scale for  
23   buying.

24        Q.     I'm pretty sensitive to the  
25    needs of court reporters, since I

2432

1 KONZELMAN - Direct

2 Q. As a point of clarity, is the  
3 co-op -- what's the corporate structure of  
4 the co-op?

5 A. It's member owned. It is a  
6 corporation that is owned by its members.

7 Q. And the members, are they  
8 different entities or individuals than the  
9 co-op itself?

10 A. Yes.

11 Q. So that the co-op is not the  
12 same as Conte Foods?

13 A. No. They are all individual  
14 corporations, LLCs, partnerships that are  
15 the members of the cooperative.

16 Q. And can the members leave the  
17 co-op?

18 A. Yes.

19 Q. Can the members participate in  
20 other co-ops?

21 A. Yes. We have several members  
22 that do have certain stores with Key Food  
23 and other stores with other New York  
24 co-ops, Krasdale Foods, Associated Foods,  
25 Foodtown. So our members have some stores

2435

1 KONZELMAN - Direct

2 Q. And what did you learn,  
3 generally speaking? And then describe the  
4 role that you assumed in going forward.

5 A. We learned that there was likely  
6 going to be a bankruptcy and that there  
7 would be documents available and different  
8 people would have the opportunity to bid  
9 on certain stores and that there would  
10 be -- we entered into a nondisclosure  
11 with A&P almost immediately so that when  
12 the documents became available, the co-op  
13 could avail itself of the information and  
14 get it out to our members to buy stores.  
15 At the time, the co-op did not operate any  
16 corporate stores. We only wanted to put  
17 ourselves into the process to facilitate  
18 our members getting stores, and kind of  
19 lay in between A&P and the individual  
20 members to ease the flow of information.

21 My role -- I had just recently  
22 started and had some experience in  
23 negotiation, so my role was to take on  
24 that primary -- gather the information,  
25 disseminate the information, and then get

2437

1                                   KONZELMAN - Direct  
2     we had engaged as our investment bankers,  
3     were going through that documentation and  
4     deciding how to disperse it to our members  
5     in ways that are understandable.  
6     Sometimes the actual document got  
7     dispersed, sometimes we did some  
8     interpretation on it and gave it to the  
9     members so they could see lists of stores,  
10    terms of leases, sales information, so  
11    they could make their decision if they  
12    were interested in a particular store or  
13    not.

14           Q.     Now, in connection with your  
15    members, was there an internal process  
16    that was undertaken as to their evincing  
17    an interest to purchase stores? And how  
18    did that all settle in?

19           A.     We initially sent information to  
20    all members that these stores were  
21    available and that the co-op had signed a  
22    nondisclosure, we enjoined them in our  
23    nondisclosure and said that you would have  
24    information available. I would say about  
25    50 members expressed interest and attended

2438

1                                   KONZELMAN - Direct  
2     an initial meeting where we kind of went  
3     through what we thought the process might  
4     be. We were dealing with A&P, we were  
5     dealing with bankruptcy. It was -- they  
6     hadn't declared perhaps at that point yet,  
7     but it was indicated that that was going  
8     to happen. So we were involved with a lot  
9     of lawyers, a lot of bankers, getting  
10    information to and from, but eventually  
11    there was about 35 members that kind of  
12    said, yeah, I'm definitely going to be  
13    interested in buying a store.

14           Q.     And when you say "35 members",  
15    you mean 35 discrete members, not the  
16    owners of 35 stores?

17           A.     No. 35 discrete members or, you  
18    know, corporations. In the case of  
19    someone like Dan's or Tapps, it was  
20    corporations that might have owned,  
21    already owned six or seven stores looking  
22    to acquire another one, two, three.

23           Q.     And was there an internal  
24    bidding process ultimately to wean out  
25    those --

2439

1                                   KONZELMAN - Direct

2           A.       It took months. We started

3 with -- so there were, in some cases,

4 five and six members interested in one

5 particular location, in other cases there

6 might have been just one member interested

7 in a location. We took three rounds of

8 written bids from the members, with them

9 telling us what they wanted to bid on a

10 store, whether they needed our financing

11 or not, accumulated those bids and then

12 tried to allocate the stores so that the

13 co-op could become the strongest and get

14 the most stores. If one guy wanted five

15 different stores and one of the stores he

16 wanted had four other people interested,

17 we would kind of say, well, maybe you

18 should walk away from that one; where the

19 co-op is going to get that one from

20 somebody, could you concentrate on a

21 different one. So the co-op did advise

22 members towards certain stores to try and

23 get the biggest footprint of stores for

24 the cooperative because the goal in this

25 was for the cooperative to gain volume in

2439

1                                   KONZELMAN - Direct

2           A.       It took months. We started

3 with -- so there were, in some cases,

4 five and six members interested in one

5 particular location, in other cases there

6 might have been just one member interested

7 in a location. We took three rounds of

8 written bids from the members, with them

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11 or not, accumulated those bids and then

12 tried to allocate the stores so that the

13 co-op could become the strongest and get

14 the most stores. If one guy wanted five

15 different stores and one of the stores he

16 wanted had four other people interested,

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18 should walk away from that one; where the

19 co-op is going to get that one from

20 somebody, could you concentrate on a

21 different one. So the co-op did advise

22 members towards certain stores to try and

23 get the biggest footprint of stores for

24 the cooperative because the goal in this

25 was for the cooperative to gain volume in

2440

1                                   KONZELMAN - Direct

2    the market.

3           Q.     Okay.  Did there come a time  
4    then that what's been characterized in  
5    this proceeding as a stalking horse bid  
6    take shape?

7           A.     We initially made a bid and the  
8    first round bid with A&P was due in the  
9    middle of June and we actually put in a  
10   bid for 84 stores, you know, we had  
11   various members interested in.  That was a  
12   nonbinding bid.  We went back to our  
13   members, we sharpened that bid, we had to  
14   put a second -- we got our -- from the  
15   first round, A&P agreed to negotiate with  
16   Key Food, so we were able to put in a  
17   second round bid.  We were a qualified  
18   bidder, which was important.  So we put in  
19   a second round bid sometime in June and  
20   then on July 1st, we put in a binding bid  
21   to become a stalking horse bidder.  That  
22   bid was for 54 stores and was for close to  
23   \$200 million on July 1st and we had  
24   members representing that they were  
25   interested in those 54 stores.  It was not

2441

1                   KONZELMAN - Direct  
2     the co-op buying 54 stores. We were acting  
3     on behalf of our members. We had them  
4     supporting that they wanted those stores.

5           Q.     And do you recall how many  
6     different members were part of that first  
7     bid, approximately?

8           A.     Probably in the 20s, 20, 25  
9     different members or groups, some -- like  
10    I said, some saying I want three or four  
11    stores, some wanting just one.

12          Q.     And did that stalking horse bid  
13    become modified or truncated in any way?

14          A.     We put in 54 stores on July 1st  
15    and were notified probably about a week or  
16    ten days later that we were unsuccessful,  
17    and it came out in the press that both  
18    Acme and Stop & Shop had been successful  
19    in their stalking horse and that Key Food  
20    was unsuccessful. And we were extremely  
21    disappointed and proceeded to use  
22    everything at our disposal to go back at  
23    A&P and at Weil Gotshal to try and sell,  
24    say, well, there has to be something in  
25    our bid for 54 stores that Stop & Shop,

2449

1 KONZELMAN - Direct

2 Q. And did there come a time that  
3 the unions -- 342, 464A, 338 and  
4 1500 -- were or were not advised by Key  
5 Food and its members that they intended to  
6 enter into different collective bargaining  
7 agreements than those that were extant  
8 when A&P closed?

9 A. From the very first meeting,  
10 which was on July 28, we met with all four  
11 unions and Tom Clarke from the  
12 International, and made clear at that  
13 meeting that we were hopeful and were  
14 available to negotiate until the closing,  
15 which, at that point, was talking about  
16 being in September, to get to new  
17 agreements that were agreeable to both  
18 parties.

19 Q. And including from the  
20 inception, on July 28th and thereafter,  
21 were the unions advised of certain of the  
22 terms that were hoped for to be entered  
23 into when the Key Food stores up opened  
24 up?

25 A. From the start, it was made

2456

1 KONZELMAN - Direct

2 so, why?

3 A. From the start, the co-op  
4 stepped in, because we didn't know who was  
5 going to get which stores. Like I said,  
6 we had a meeting in June -- middle of June  
7 with 30 members saying I want a store, I  
8 want a store. When we started negotiating  
9 in July with the union directly, we still  
10 didn't know which members were going to  
11 get stores and we could not -- it would  
12 not have been practical to sit with four  
13 unions and 20 members who might or might  
14 not get stores, so we hired Mr. Catalano.  
15 I was appointed from the co-op, and then  
16 we elected -- we appointed three members  
17 to represent the interests of all the  
18 members. Pat Conte and Lenny Mandel, who  
19 had quite a bit of union experience, and  
20 then Richie Almonte, who was less familiar  
21 with the union, were going to represent  
22 all of the members in union negotiating.

23 Q. And I think there was a letter  
24 on September 11th that had been  
25 forwarded -- I think we may have

2457

1                   KONZELMAN - Direct  
2    identified it or at least sought to  
3    introduce it, some jointly. I'm not sure  
4    it's not already -- if it's not already  
5    somewhere in the record, but, if it  
6    ain't --

7                   MR. WICH: Mark it as  
8    Respondent's Exhibit 46.

9                   JUDGE GREEN: What's the date of  
10   it?

11                  MR. CATALANO: September 11th,  
12   2015.

13                  MR. WICH: September 11th, 2015,  
14   a letter from Ms. Konzelman.

15                  MS. ALAM: I believe that this  
16   document has already been entered as Joint  
17   Exhibit 4.

18                  MR. CATALANO: Good. Yes, I  
19   suspected.

20                  MR. WICH: I have Joint 4 as the  
21   October e-mail.

22                  MS. ALAM: Oh.

23                  JUDGE GREEN: You know, I don't  
24   think that's Joint 4. I have Joint 4 as  
25   an October 26 e-mail.

2458

1 KONZELMAN - Direct

2 MS. ALAM: Okay. Sorry.

3 (Respondent's Exhibit 46, letter  
4 dated September 11, 2015, from Sharon  
5 Konzelman, marked for identification, this  
6 date.)

7 Q. Did you forward this letter?

8 A. Yes, I did.

9 MR. CATALANO: I offer it.

10 JUDGE GREEN: Any objection?

11 MS. ALAM: Just one moment.

12 (Pause.)

13 MS. ALAM: No objection.

14 JUDGE GREEN: R-46 is entered  
15 into evidence.

16 (Respondent's Exhibit 46 marked  
17 into evidence, this date.)

18 CONTINUED DIRECT EXAMINATION

19 BY MR. CATALANO:

20 Q. Were you at each of the  
21 collective bargaining sessions with  
22 various unions?

23 A. I believe I was. There were a  
24 few after the store opens that -- after  
25 the stores opened, that I didn't make,

2459

1                   KONZELMAN - Direct  
2     because I was busy trying to get financing  
3     and closing and transfer taxes and a lot  
4     of other things, but I think up until the  
5     stores open on October 26th, I don't think  
6     I missed any of them.

7           Q.     Okay. Now, was there an  
8     additional letter that you had forwarded  
9     on September 14 to A&P?

10          A.     Yes.

11          Q.     I'll show you that document.

12                  MR. WICH: Just for the record,  
13     this is R-47. It's a double-sided copy of  
14     the document.

15                  JUDGE GREEN: Okay.

16                         (Respondent's Exhibit 47, letter  
17     dated September 14, 2015, marked for  
18     identification, this date.)

19          Q.     Is that your document?

20          A.     Yes, it is.

21                  MR. CATALANO: I offer it.

22                  JUDGE GREEN: Any objection?

23                  MS. ALAM: No objection.

24                  JUDGE GREEN: Okay. R-47 is  
25     entered into evidence.

2472

1                   KONZELMAN - Direct  
2   possession, because we were going through  
3   these points and negotiating.

4       Q.     Alright. Now, you referred to  
5   October 14th. Do you remember the  
6   negotiations on October 19th and whether  
7   you had more of the speaking role than  
8   might ordinarily have been the case  
9   previously?

10       A.     Yeah. I remember Mr. Abendolo  
11   and questioning you and saying that to  
12   determine whether -- who was representing  
13   the members and were the members agreeing  
14   to this and at every meeting -- actually,  
15   at 342's request, a lot of our members  
16   were appearing and were allowing myself  
17   and Doug to speak on their behalf, but, at  
18   that meeting, Mr. Abendolo asked that we  
19   read through this proposal, and I actually  
20   read through almost the whole proposal,  
21   saying that this is what Key Food was  
22   offering, not what Mr. Catalano was  
23   offering, read through each of these  
24   proposals.

25       Q.     And that was being offered on

2473

1 KONZELMAN - Direct

2 behalf of the members?

3 A. On behalf of the members, and I  
4 was speaking on their behalf and had the  
5 authority to do so and read through all of  
6 these proposals.

7 Q. Okay.

8 JUDGE GREEN: Which proposal?

9 THE WITNESS: The proposal --

10 JUDGE GREEN: R-20?

11 THE WITNESS: -- in the R-20.

12 JUDGE GREEN: Okay.

13 Q. Now, do you recall a meeting on  
14 October 21 at the JFK Hilton?

15 A. Yes.

16 Q. And do you remember a mediator?

17 A. Yes, there was. 342 had brought  
18 a federal mediator.

19 Q. Do you recall his name?

20 A. Mr. Tate I believe it was.

21 Q. Okay. And do you remember the  
22 structure of the room and where you were  
23 sitting and where Mr. Tate was sitting and  
24 where Mr. Abendolo and company were  
25 sitting?

2475

1 KONZELMAN - Direct

2 in your own words, rather than me --

3 A. The meeting was very important  
4 to us. It was October 21st and our first  
5 stores requested opening on October 26th  
6 and we really wanted to have the same  
7 level of negotiation of deal completed  
8 that we had with the other unions. With  
9 342 it was the only one left to finish, so  
10 we wanted to complete it. Although it  
11 wasn't going to preclude us from opening  
12 the stores on the 26th, we really wanted  
13 to go in with agreement and not with last,  
14 best, final, which our MOA, our asset  
15 purchase agreement, said we could. We  
16 wanted agreement.

17 So we went into that negotiation  
18 hoping to get to agreement. We got there  
19 probably about 1:00, met briefly, and then  
20 the 342 members left the room for an  
21 extended period of time and we weren't  
22 sure what was going on. When they came  
23 back, they asked Mr. Abendolo -- asked  
24 Mr. Catalano to step aside and talk to him  
25 and we sat in the room, they left for a

2479

1                   KONZELMAN - Direct  
2    changes to that document, we're done with  
3    those two changes.

4                   JUDGE GREEN:   Okay.

5                   MR. CATALANO:   Okay.

6    CONTINUED DIRECT EXAMINATION

7    BY MR. CATALANO:

8           Q.     And later that night, or after  
9    this meeting, did you take any steps by  
10   virtue of the fact that Mr. Abendolo said  
11   that "We were done", or whatever words you  
12   choose to use?

13          A.     Yes.  We first went out for  
14   celebratory drinks with my folks, which we  
15   hadn't done on any other session.  Then  
16   this was -- I believe it was a Wednesday  
17   night, stores were opening on Monday, and  
18   I went back to the office and wanted to  
19   get something out to all of the members,  
20   not just those that had been in the  
21   negotiating sessions, all of the members  
22   buying stores, telling them exactly what  
23   the terms and conditions that we had  
24   agreed to with the various unions were.  I  
25   spent that weekend drafting an agreement

2480

1                                   KONZELMAN - Direct  
2   going back and forth with Mr. Catalano to  
3   make sure it was complete and sent it  
4   actually on Sunday night to all my members  
5   saying, guys, we have an agreement with  
6   all four unions, here's the framework of  
7   what you have to do for those members that  
8   were opening stores as early as that  
9   Monday.

10         Q.     And that's an e-mail that you  
11         forwarded?

12         A.     It was an e-mail I forwarded to  
13         the entire -- to all the members acquiring  
14         stores.

15         Q.     And that's Joint 4, if you don't  
16         mind looking.

17                                   (Pause.)

18         A.     This is it.

19         Q.     That's the document you're  
20         referring to?

21         A.     Yes. This was the e-mail.

22         Q.     Now, thereafter, did Local 342  
23         send a document to the co-op through its  
24         representatives on November 2?

25         A.     I believe that's the date we did

2483

1                   KONZELMAN - Direct  
2 we supposed to do, and then, by the end of  
3 our November -- our stores, one opened one  
4 on November 2nd, one on the 16th, I  
5 believe -- by the end of November, we  
6 were starting to get bills on making the  
7 adjustments, because the rosters weren't  
8 quite accurate. 342, we had set up the  
9 payroll, you know, with a bucket for dues,  
10 but we never -- they never came in and  
11 signed up the members. We did --

12           Q.     And did -- was there buyouts by  
13 Key Food members? And did you, or your  
14 representatives, send releases to Local  
15 342, to effect the buyout?

16           A.     As I said, the first stores  
17 closed on October 26th. By about the  
18 middle of November, we had had lists  
19 of -- the co-op had been -- the persons --  
20 the entities saying to A&P which people  
21 weren't going to be hired and we pulled  
22 together packages with releases and tax  
23 forms to -- W-9 forms to send to the  
24 members that weren't hired. We made  
25 packages to send to each of the union.

2488

1 KONZELMAN - Direct

2 thousand dollars.

3 Q. Now, let's go to a different  
4 topic for the time being. The employees  
5 of the individual owners, such as  
6 Mr. Almonte, does the co-op supervise  
7 Mr. Almonte's employees?

8 A. No.

9 Q. And who sets the terms and  
10 conditions of employment for Mr. Almonte's  
11 employees?

12 A. Mr. Almonte or his managers.  
13 The individual stores run what goes on in  
14 the individual stores. Co-op does not get  
15 involved in that.

16 Q. Does the co-op get involved with  
17 wages of the --

18 A. No, not at all.

19 Q. -- employees or members?

20 A. We don't -- with the exception  
21 of the A&P stores, we don't get involved  
22 in whether a store is union, non-union,  
23 how many people they hire, who they hire,  
24 what they pay them, what hours they  
25 operate. That's not under the co-op's

2489

1 KONZELMAN - Direct

2 jurisdiction.

3 Q. But after the purchase of the  
4 stores, even for those A&P stores --

5 A. No.

6 Q. -- do you have any --

7 A. Just the only thing was that  
8 they would be union, but, other than that,  
9 what they did within the stores, what  
10 hours, who they hire --

11 Q. Or even today --

12 A. No.

13 Q. -- if Mr. Almonte, Conte,  
14 Mandel --

15 A. No.

16 Q. -- chose to set terms and  
17 conditions of employment or to modify  
18 things, do you have any --

19 A. Not.

20 Q. -- "you", the co-op -- have any  
21 role in that?

22 A. No.

23 Q. Does the co-op provide health  
24 and welfare benefits or annuities or  
25 contributions to the pension funds on

2490

1                                   KONZELMAN - Direct  
2    behalf of the employees of the member  
3    store owners?

4           A.     No.   Not for the members either.

5           Q.     And can employees organize, or  
6    is there any agreement that employees of  
7    the various members -- such as  
8    Mr. Conte -- that they have some outlet,  
9    grievance or arbitration proceeding or  
10   otherwise against the co-ops?

11          A.     No.

12          Q.     Is there any agreement to that  
13   effect?

14          A.     The co-op does not dictate how  
15   the individual owners operate their  
16   stores.  We dictate who they buy from and  
17   we will offer pricing and advertising  
18   support, if they wish to have it.

19          Q.     Okay.  So if -- together with  
20   hiring, if an individual was sought to be  
21   hired at Mr. Conte's store or  
22   Stop and Shop or Mr. Almonte's store, do  
23   you have any role in that --

24          A.     No --

25          Q.     -- the co-op?

2491

1 KONZELMAN - Direct

2 A. -- not at all.

3 Q. Other than in the A&P  
4 bankruptcy -- and how many stores did you  
5 say they were? 230 or so?

6 A. It's 240 currently.

7 Q. Had, or since then, has the  
8 co-op been involved in any negotiations  
9 with respect to union negotiations or on  
10 behalf of any of these members --

11 A. No.

12 Q. -- apart from that one instance?

13 A. No.

14 MR. E. MILNER: Objection.

15 JUDGE GREEN: As to what?

16 MR. E. MILNER: As to what the  
17 co-op did or didn't do after the  
18 allegations as they related to the  
19 proceeding.

20 JUDGE GREEN: That's overruled.

21 Q. Worker's Comp, unemployment  
22 insurance, who maintains those policy?

23 A. It's the responsibility of the  
24 individual members.

25 Q. Okay. And are there any

2492

1                   KONZELMAN - Direct  
2   handbooks or guidelines or directives from  
3   the co-op as to terms and conditions of  
4   employment relating to the employees in  
5   the stores?

6         A.     It's up to the individual  
7   stores.  The co-op doesn't get involved in  
8   that.

9         Q.     Now, in connection with these  
10  members and the co-op, has the co-op,  
11  through the years, maintained sales  
12  figures with respect to the sales in the  
13  stores of the members?  And, if so, for  
14  what reason?

15        A.     The co-op hosts the cash  
16  register systems, the point-of-sale  
17  systems in the individual stores, the  
18  reason being that a lot of the  
19  merchandizing funding from vendors is  
20  dependent on sales figures, so we have to  
21  be able to supply to the vendors how many  
22  units of a specific product might be sold  
23  from date to date at specific prices.  So  
24  we host the cash register systems, compile  
25  that and send that off to vendors when

2537

1                                   KONZELMAN - Cross  
2     for a rational inference that this  
3     document would say X, you know, adversely,  
4     to the respondents, but -- why don't we  
5     find out if -- why don't you look into  
6     whether it's actually there and produce it  
7     if it is, and then take it from there.

8                                   MR. CATALANO: I'm happy to  
9     produce it, if it exists.

10                                  MR. E. MILNER: Well, it must  
11     exist. Well, we have testimony, but we'll  
12     look into it further. Okay.

13     CONTINUED CROSS EXAMINATION

14     BY MS. ALAM:

15             Q.     Earlier, Ms. Konzelman, you  
16     testified that the co-op ultimately ended  
17     up being under the ownership of two of the  
18     stores that were part of stalking horse  
19     bid --

20             A.     Uh-hum.

21             Q.     -- and one of them, it had  
22     planned on taking over; correct?

23             A.     Yes.

24             Q.     But the other one -- which store  
25     was that?

2538

1 KONZELMAN - Cross

2 A. 103, Jackson Heights.

3 Q. The Jackson Heights store. Who  
4 initially had bid on the Jackson Heights  
5 store?

6 A. It was several bids. I believe  
7 the winning bid on that store would belong  
8 to Ruben Luna.

9 Q. And why did Mr. Luna not end up  
10 taking over the store?

11 A. I don't know.

12 Q. Did he -- I mean, not reasons,  
13 but did he -- did the Lunas back out on --  
14 refuse to honor their bid?

15 A. I -- I don't know why. He said  
16 "I'm..." -- he didn't want it any  
17 longer. We were looking to add a second  
18 store, we said we'd take it. I don't know  
19 why he didn't want it any longer.

20 Q. Did -- had he made a 30 percent  
21 down payment on that -- had the Lunas made  
22 a 30 percent down payment?

23 A. I don't recall. I believe he  
24 would have. I don't recall.

25 Q. So is it your testimony that

2545

1                   KONZELMAN - Cross  
2     the members to the contract negotiated  
3     between the co-op and the unions? Was  
4     there a term in there?

5           A.     There was a term in there that  
6     they were agreeing to be bound by what  
7     we -- it was referring back to the asset  
8     purchase agreement between the co-op and  
9     A&P. There was references to that  
10    agreement and sections of it in the asset  
11    purchase agreement between the --

12          Q.     Right. But I'm talking about  
13    the -- any agreement reached between -- in  
14    the bargaining of the union, an agreement  
15    reached about the terms and conditions of  
16    employment at those bargaining sessions,  
17    was -- was there any representation by the  
18    co-op that there's going to be something  
19    that bound the individual members to  
20    whatever was agreed upon between the union  
21    and the co-op?

22          A.     Yes. We told them it was going  
23    to be incorporated into the asset purchase  
24    agreement when the store was buying --  
25    when the -- the simultaneous closings were

2546

1 KONZELMAN - Cross

2 going to take place, they would be bound.  
3 Because the co-op was not buying the  
4 stores, the individuals -- we were buying  
5 the stores from A&P and simultaneously  
6 turning them right over to the members.

7 Q. Right.

8 A. So the members were going to be  
9 bound by what we negotiated. The co-op  
10 was not buying stores. It couldn't bind  
11 the co-op to the contract. The member was  
12 buying the store simultaneous closings.

13 Q. Did anyone from the -- in the  
14 negotiation sessions you were in, did  
15 anyone from the co-op ever represent that  
16 the members would be bound by some sort of  
17 loan or some note would be bound to the  
18 collective bargaining agreement --

19 A. Our note agreement doesn't refer  
20 to -- all it is is the -- the loan and the  
21 promissory note refers to what you're  
22 going to pay and how you're going to pay.  
23 The asset purchase agreement...

24 Q. But was that ever proposed by  
25 the co-op committee during negotiations?

2561

1 KONZELMAN - Cross

2 which was -- the Respondent's Exhibit 14?

3 A. Uh-hum.

4 Q. Now, at this time, you didn't  
5 have -- I think you had testified you  
6 didn't have the names of any of the  
7 employees from the --

8 A. We had --

9 Q. -- A&P --

10 A. We had rosters we were working  
11 off of titles. We didn't know who these  
12 people were.

13 Q. Sure. And I think you testified  
14 that you had advised the co-op on -- up  
15 until those requests, about how many  
16 employees, full-time employees that the --  
17 that you, speaking for the co-op, were  
18 planning on hiring?

19 A. Just in our two corporate  
20 stores.

21 Q. That's correct.

22 A. Yeah, the -- every -- other  
23 members spoke for their stores. We spoke  
24 for the corporate stores.

25 Q. So with regard to the remaining

1 A They had just passed that law every -- you get five days a  
2 year and you accrue, every 40 hours, a certain amount of time.

3 Q And do you know who the owners of the Key Food were?

4 A Sam and Randy.

5 Q Do you know their last name?

6 A I don't.

7 Q And do you know if all of the 342 members who worked at  
8 the Pathmark were initially hired on November 24th, when the  
9 Key Food opened?

10 A We were.

11 Q Okay. At any point were any of the 342 members fired?

12 A Yes.

13 Q Okay. And when was that?

14 A A week later.

15 Q Okay. And who was fired?

16 A It started Saturday with Gina from the deli and Debbie  
17 from seafood. They were the two managers. And that Monday  
18 they let go Anthony Vendetti and Michael Fischetti.

19 Q And do you know if there are any -- oh, sorry. What  
20 department did Anthony and Michael work in?

21 A The meat department.

22 Q And do you know if there were any employees in the meat  
23 department who were less senior than Anthony and Michael?

24 A Yes, there were. Myself and Vaughn.

25 Q And? I'm sorry?

1 A Vaughn.

2 Q Vaughn. And do you remember if the Union did anything  
3 when these employees were let go?

4 A They had a rally and demonstrations outside the store.

5 Q Do -- what were the Union supporters doing at those  
6 demonstrations?

7 A They were basically letting customers know that they  
8 promised to hire the workers and then we week later they  
9 started to fire them.

10 Q How were they letting customers know that?

11 A By a picket line, signs and pamphlets.

12 Q Do you remember what the signs said?

13 A I don't. Sorry.

14 Q It's okay. Alright. Now, do you remember at any point if  
15 the owners Sam or Randy said anything to you about the union  
16 demonstration?

17 A I do.

18 Q Okay. When was that?

19 A That was on Tuesday.

20 Q Tuesday? Which Tuesday?

21 A It was the second Tuesday I worked for them.

22 Q So this would have been sometime --

23 A The Tuesday right after Thanksgiving.

24 Q Okay. So who said something to you about the Union?

25 A Sam.

- 1 Q Okay. And where were you when he talked to you?
- 2 A I was actually in the ice box in the meat department.
- 3 Q Was there anybody else there?
- 4 A Yes, Munsee (ph) and Tony.
- 5 Q Who is Munsee?
- 6 A Munsee was the first person in the deli.
- 7 Q Okay. And who is Tony?
- 8 A Tony is a fellow butcher of mine.
- 9 Q Okay. And what did Sam say?
- 10 A Sam told us that the Union was out there and that he knows
- 11 that they were asking us to go stand out there on our lunch
- 12 break. And he told us if we do go out there that we wouldn't
- 13 be allowed back in.
- 14 Q Did you or anybody else respond to that?
- 15 A Yes. Tony and I both told him that you can't tell us what
- 16 to do on our lunch break and that you're putting us in a very
- 17 hard position to pick between the Union and our job.
- 18 Q Did he -- did Sam respond?
- 19 A Sammy said that's not a hard decision at all. If you go
- 20 out there you have no job or you can continue having a job and
- 21 not go stand on the line with the Union.
- 22 Q Did anyone say anything else?
- 23 A No, Sammy then left and we spoke amongst ourselves.
- 24 Obviously we were all pretty scared. Munsee wouldn't go out.
- 25 Tony and I weren't sure what to do. So I told him I would text

- 1 Stephen Booras and let him know what was going on.
- 2 Q And who's Stephen Booras?
- 3 A Our union rep.
- 4 Q Okay. Did you text Stephen?
- 5 A I did.
- 6 Q Okay. And what did he say?
- 7 A He said that I was absolutely correct that they legally
- 8 can't tell us that we can't come out there and stand with them
- 9 on our lunch break and that we should go out on our lunch break
- 10 and stand.
- 11 Q Okay. Did anything else happen that day?
- 12 A Sammy came back in maybe 20 minutes, 30 minutes later and
- 13 told us to work straight through lunch, so we didn't have to go
- 14 outside.
- 15 Q Did you work straight through lunch?
- 16 A We did.
- 17 Q Is that all that happened that day or was --
- 18 A At the end of our shift he then came back into the meat
- 19 room and told us if we go out there after our shift that we
- 20 would be fired the next day.
- 21 Q Okay. Who else was in the meat room at this time?
- 22 A Me and Tony.
- 23 Q Okay. And who was it that said that?
- 24 A Sammy.
- 25 Q Okay. Did you or Tony respond?

1 A We told him that you can't tell us what to do after our  
2 shift. That's absolutely ridiculous.

3 Q And what did -- did Sammy say anything?

4 A No.

5 Q Okay. Did you go outside after your shift?

6 A We did.

7 Q Okay. And what happened when you went outside?

8 A I first saw Stephen aside from the line. I went up to him  
9 and told him what was going on and that I was really scared.  
10 He assured me that it was illegal and if they did fire me that  
11 we could file -- we'd take legal action against them. So then  
12 I went to my car, and called my wife and let her know that I  
13 was going to go stand with the Union and probably be fired.  
14 And then I took off my hat, and my shirt, and fixed my hair,  
15 and put on my sunglasses to try and see if I could disguise  
16 myself a little bit.

17 Q Okay. Do you always wear a hat at work?

18 A Always. We're actually mandated by law to wear a hat.

19 Q Alright. So did you see either Sam or Randy out there  
20 when you were out with the Union?

21 A Sammy came out multiple times.

22 Q Okay. Do you know if he saw you?

23 A I don't think he recognized me. He looked right at me,  
24 but he didn't show any sign that he actually recognized who I  
25 was. So I think he just didn't know I was --

1 MR. CATALANO: Objection.

2 THE WITNESS: -- without my hat.

3 JUDGE GREEN: Okay. So sustained as to what he saw.

4 MS. TOOKER: Okay. So sorry, is it as to what Sam saw?

5 JUDGE GREEN: Correct --

6 MS. TOOKER: Okay.

7 BY MS. TOOKER:

8 Q Did you see -- so sorry, did you see Sam outside that day?

9 A I did.

10 Q Okay. When you saw him, was there any sign that he  
11 recognized you?

12 A There was not.

13 MR. CATALANO: Objection.

14 JUDGE GREEN: Overruled.

15 BY MS. TOOKER:

16 Q Did you stand out with the Union any other time?

17 A I did.

18 Q Okay. How many times?

19 A Every time they were out there for the next two weeks.

20 Q Okay. Do you remember about how many times that was?

21 A I'd say six to seven.

22 Q Okay. Did you see Sam or Randy at any other point?

23 A Yes, actually Randy came out and videotaped us standing on  
24 the line; both myself and Tony.

25 Q How long did he video tape you for?

- 1 A 20 minutes.
- 2 Q Alright. So after Anthony and Michael were fired from the  
3 meat department was anybody else fired?
- 4 A Yes, Dominic (ph) was fired a few weeks later. He was the  
5 manager.
- 6 Q Dominic was the meat manager?
- 7 A Right.
- 8 Q Was he also a Local 342 member?
- 9 A He was.
- 10 Q And did Key Food hire anybody after that?
- 11 A They did. The day they let Dom go they brought in Phil  
12 the next day. And later on they also hired Gene (ph) after  
13 Vaughn quit.
- 14 Q Okay. So do you know if Phil ever worked for Pathmark?
- 15 A For Pathmark, yes, he did.
- 16 Q Okay. Did he work in the Greaves Lane store?
- 17 A Never.
- 18 Q How about Gene? You said he -- they brought him after  
19 Vaughn quit?
- 20 A After Vaughn quit, yeah.
- 21 Q Okay. So sorry, what was Phil's position?
- 22 A Phil's position was the meat manager.
- 23 Q Okay. And what was Gene's position?
- 24 A Gene's position was just a cutter.
- 25 Q Okay. And had Gene ever worked for Pathmark?

1 A He had.

2 Q Do you know if he ever worked at the Greaves Lane store?

3 A To the best of my knowledge, no.

4 Q Okay. Was anybody else hired?

5 A Yes. They moved Tony to their Brooklyn location. They  
6 then fired Phil as the manager. And then they hired a guy Musa  
7 (ph).

8 Q Okay. So who's Tony?

9 A Tony was a butcher with me.

10 Q Do you know his last name?

11 A Dufay (ph).

12 Q Okay. And so then they fired -- after they fired Phil,  
13 who was the meat manager?

14 A They gave it to me. They actually called me to the  
15 office. This was Randy. He said that he woke up this morning  
16 not knowing if he was going to fire us both, but he decided he  
17 was just going to fire Phil and he'd give me the meat manager  
18 position. I then asked if I get meat manager salary. He told  
19 me no. You just have to take the position or you could leave.

20 Q When was this that you were promoted to meat manager?

21 A April.

22 Q April of what year?

23 A Of 2016.

24 Q Okay. And then you say they brought in a man named Musa?

25 A Musa.

1 Do you know whether dues authorization cards were presented to  
2 the Abed's by Local 342 for you to sign or did sign?

3 A Presented to them?

4 Q Yes.

5 A I don't know about that.

6 Q Did you ever ask that they forward -- the Abed's forward  
7 dues to the Union?

8 A Did I ask that they forward dues to the Union?

9 Q Yes.

10 A No.

11 Q Did you pay the Union directly?

12 A No.

13 Q Do you know whether 342 ever gave authorization cards to  
14 Sam and Randy to fill out, for the members of 342 who had been  
15 employed with Pathmark?

16 A Give to them? No, we filled them out.

17 Q You filled out dues authorization cards?

18 A Correct.

19 Q When you joined Key Food?

20 A Key Food. First day.

21 Q Okay. And did you give them to the Union?

22 A I did.

23 Q Okay. And did the Union ask that dues be deducted from  
24 Sam and Randy from your pay?

25 MR. E. MILNER: Objection.

1 A Yes.

2 Q Okay. Was anybody else fired around the same time as  
3 Debbie?

4 A I -- yes, it was the deli manager. Her name was Gina.  
5 There was Rocky and there was Mike Fischetti.

6 Q And do you remember if the Union did anything, after those  
7 employees were fired?

8 A They -- a couple days after that, they were outside  
9 picketing.

10 A Okay. You say they were picketing. What was it that the  
11 Union was doing outside if you know?

12 A They were protesting the firings of the people that were  
13 let go.

14 Q How were they doing that?

15 A I believe they were just -- I don't know, because I really  
16 didn't go out there.

17 Q Okay. Do you remember if Sam or Randy said anything about  
18 the Union being outside?

19 A They day that I heard that they were out there, I know  
20 that Sam came to me, when I was in the seafood department, and  
21 he told me that if -- that the Union is out there. If you go  
22 out there and speak to them, he's going to have to fire me.

23 Q Okay. Was there anybody else around when he said this to  
24 you?

25 A No, I was by myself.

1 MR. CATALANO: Objection. The question was did any -- did  
2 Diaz call 342. Ms. O'Leary said no.

3 MS. ALAM: I said contact.

4 MR. CATALANO: Okay. Contact. And all she said was I  
5 could find no record of it. That's not responsive to the  
6 question.

7 JUDGE GREEN: Alright. Well, do you understand?

8 THE WITNESS: Yeah. He didn't contact us for any help.

9 BY MS. ALAM:

10 Q Did anybody from the Glen Oaks store contact the Local 342  
11 with regard to a permanent position?

12 A No. No, absolutely not.

13 Q But the Union had -- did the Union tell Mr. Nelson Quelis  
14 to go to the Diaz store to find work?

15 A Yes.

16 Q And why is that?

17 A Because I had the conversation with Mr. Catalano that is  
18 referred to many different times like in bargaining notes and  
19 every place else. And I testified about it on direct I  
20 believe, that I was very upset that Mr. Quelis had been thrown  
21 out of the Almonte store. And I had told him that I was going  
22 to file unfair labor practice charges. That we were getting  
23 phone calls from other members saying that the Key Food owners  
24 weren't keeping people and telling them to get out. You know,  
25 they weren't going to keep them.

1           He said to me well, let's try and find a resolution for  
2 it. Why don't you find him someplace else to work? I said  
3 what are you kidding me? I mean there is no place else to work  
4 I said.

5           So he said well, what if we send a different butcher to  
6 the Almonte store? And I told him, you know, that only fixes  
7 half of my problem. What I was focused on and talked to Mr.  
8 Catalano directly about, was getting Mr. Quelis back into the  
9 Almonte store.

10          I wanted him to call the Almonte store and tell them to do  
11 that. He told me that the Almonte's didn't want Mr. Quelis.  
12 He told me he would call me back.

13          I did speak to Mr. Catalano again. He told me I could  
14 send Quelis over to the Diaz store, because I had asked him in  
15 the first conversation that maybe we could send -- what about  
16 the Diaz store? Can he go over there to work? Because it was  
17 a Waldbaum's store, the same as the one that the Almonte's had  
18 bought. You know, it was set up the same.

19          So I didn't know anything about Richard Maffia going to  
20 Almonte. It was Mr. Catalano that brought that up to me and  
21 said that he had spoken to Mr. Almonte. Mr. Almonte said yes,  
22 he'd take a 342 butcher, but they want Richard Maffia. They  
23 weren't interested in taking Quelis.

24          So I then caused my coworkers to send Mr. Quelis over to  
25 the Diaz store and Mr. Maffia to the Almonte store. And at

1 that point I felt like Mr. Catalano was working with me and I  
2 had told him that I won't have to file unfair labor practice  
3 charges or whatever else it was that, you know, I felt we could  
4 do about it. If he could get those two guys set up that way,  
5 I'd accept that.

6 I tell Mr. Quelis no, you can't go back into the Almonte  
7 store, but I've got a job for you over here. So I told the  
8 staff that the Key Food attorney had told me this situation was  
9 possible to send Maffia to the Almonte Key Food and Quelis to  
10 the Diaz Key Food.

11 Q Do you remember which staff you told to do that?

12 A Liz Fontanez I believe I spoke to her. And I might have  
13 also spoken to Steve Booras, because he's the field director  
14 and he supervises her.

15 Q Did Nelson Quelis end up getting a permanent position at  
16 the Diaz store in Glen Oaks?

17 A No.

18 Q How do you know that?

19 A I know that because Nelson Quelis personally called me  
20 afterwards, because my name had been used by the staff people  
21 that I work with who sent him there. He believed he was going  
22 to have a full time permanent position in the Diaz store. So  
23 since my coworkers had told him Lisa O'Leary had talked to the  
24 Key Food lawyer, and said go over here and do this and that, he  
25 called me personally to tell me that he'd worked there one day,

1 but there was no permanent job for him. They weren't going to  
2 keep him and that was that.

3 Q Did the Union try to get Mr. Quelis work after he was --  
4 he wasn't able to --

5 A Sure, both before that and afterwards. He would call in  
6 every Monday and when it was his turn we'd send him to  
7 whichever employer was calling for work.

8 Q And that's for temporary positions?

9 A That's for the temporary positions. There weren't any  
10 full time positions available at that point. There were way  
11 too many people out of work and there weren't enough stores  
12 purchased.

13 Q Was anyone from the Union ever told by representatives of  
14 the Key Food Co-Operative or by HB Food that Quelis could have  
15 his job back at the Howard Beach store?

16 A No. Not by Mr. Almonte. Absolutely not. And Mr.  
17 Catalano never said that to me and he and I spoke about Mr.  
18 Quelis quite a bit.

19 Q Did anyone from the Union ever reject an offer of  
20 reinstatement on behalf of Nelson Quelis?

21 A No.

22 Q Would they have if it was offered?

23 A No. For one thing it would arguably put us in a position  
24 that, you know, whatever the member was, including Mr. Quelis,  
25 that they could file an unfair labor practice charge, just like

GC Exh 19

**INDEX AND DESCRIPTION OF FORMAL DOCUMENTS**

**BOARD EXHIBIT NO. 1**

**DESCRIPTION**

**KEY FOOD COOPERATIVE, INC. et al.  
CASE NOS. 29-CA-164058 et al.**

- ✓1(A) CHARGE IN CASE NO. 29-CA-164058 DATE FILED NOVEMBER 12, 2015.
- ✓1(B) AFFIDAVIT OF SERVICE OF CHARGE DATED NOVEMBER 13, 2015.
- ✓1(C) DOCKET LETTER TO UNION OF CHARGE FILED IN CASE NO. 29-CA-164058 DATED NOVEMBER 13, 2015.
- ✓1(D) DOCKET LETTER TO EMPLOYER OF CHARGE FILED IN CASE NO. 29-CA-164058 DATED NOVEMBER 13, 2015.
- ✓1(E) FIRST AMENDED CHARGE IN CASE NO. 29-CA-164058 FILED JANUARY 7, 2016.
- ✓1(F) AFFIDAVIT OF SERVICE OF FIRST AMENDED CHARGE IN CASE NO. 29-CA-164058 DATED JANUARY 8, 2016.
- ✓1(G) AFFIDAVIT OF SERVICE OF FIRST AMENDED CHARGE IN CASE NO. 29-CA-164058 DATED JANUARY 27, 2016.
- ✓1(H) DOCKET LETTER TO UNION OF FIRST AMENDED CHARGE FILED IN CASE NO. 29-CA-164058 DATED JANUARY 8, 2016.
- ✓1(I) DOCKET LETTER TO EMPLOYER OF FIRST AMENDED CHARGE FILED IN CASE NO. 29-CA-164058 DATED JANUARY 8, 2016.
- ✓1(J) CHARGE IN CASE NO. 29-CA-167245 DATE FILED JANUARY 7, 2016.
- ✓1(K) AFFIDAVIT OF SERVICE OF CHARGE FILED IN CASE NO. 29-CA-167245 DATED JANUARY 8, 2016.
- ✓1(L) AFFIDAVIT OF SERVICE OF CHARGE FILED IN CASE NO. 29-CA-167245 DATED JANUARY 27, 2016.
- ✓1(M) DOCKET LETTER TO UNION OF CHARGE FILED IN CASE NO. 29-CA-167245 DATED JANUARY 8, 2016.
- ✓1(N) DOCKET LETTER TO EMPLOYER OF CHARGE FILED IN CASE NO. 29-CA-167245 DATED JANUARY 8, 2016.

- ✓1(O) CHARGE IN CASE NO. 29-CA-167319 DATE FILED JANUARY 7, 2016.
- ✓1(P) AFFIDAVIT OF SERVICE OF CHARGE FILED IN CASE NO. 29-CA-167319 DATED JANUARY 11, 2016.
- ✓1(Q) DOCKET LETTER TO EMPLOYER OF CHARGE FILED IN CASE NO. 29-CA-167319 DATED JANUARY 11, 2016.
- ✓1(R) DOCKET LETTER TO UNION OF CHARGE FILED IN CASE NO. 29-CA-167319 DATED JANUARY 11, 2016.
- ✓1(S) CHARGE IN CASE NO. 29-CA-167327 DATE FILED JANUARY 7, 2016.
- ✓1(T) AFFIDAVIT OF SERVICE OF CHARGE FILED IN CASE NO. 29-CA-167327 DATED JANUARY 28, 2016.
- 1(U) DOCKET LETTER TO EMPLOYER OF CHARGE FILED IN CASE NO. 29-CA-167327 DATED JANUARY 28, 2016.
- ✓1(V) CHARGE FILED IN CASE NO 29-CA-167400 DATE FILED JANUARY 7, 2016.
- ✓1(W)AFFIDAVIT OF SERVICE OF CHARGE FILED IN CASE NO. 29-CA-167400 DATED JANUARY 12, 2016.
- ✓1(X) DOCKET LETTER TO EMPLOYER OF CHARGE FILED IN CASE NO. 29-CA-167400 DATED JANUARY 12, 2016.
- ✓1(Y) FIRST AMENDED CHARGE IN CASE 29-CA-167400 FILED MARCH 15, 2016.
- ✓1(Z) AFFIDAVIT OF SERVICE OF FIRST AMENDED CHARGE IN CASE 29-CA-167400 FILED MARCH 15, 2016.
- ✓1(AA)CHARGE IN CASE NO. 29-CA-173762 DATE FILED APRIL 8, 2016.
- ✓1(BB)AFFIDAVIT OF SERVICE OF CHARGE FILED IN CASE NO. 29-CA-173762 DATED APRIL 12, 2016.
- ✓1(CC)DOCKET LETTER TO UNION OF CHARGE FILED IN CASE NO. 29-CA-173762 DATED APRIL 12, 2016.
- ✓1(DD)DOCKET LETTER TO EMPLOYER OF CHARGE FILED IN CASE NO. 29-CA-173762 DATED APRIL 12, 2016.
- ✓1(EE)ORDER CONSOLIDATING CASES, CONSOLIDATING COMPLAINT AND NOTICE OF HEARING IN CASE NOS. 29-CA-164058 et al., DATED JUNE 28, 2016.
- 1(FF)AFFIDAVIT OF SERVICE OF 1(EE) FILED IN CASE NOS. 29-CA-164058 et al. DATED APRIL 12, 2016.

*R 405 included*

1(GG)RESPONDENTS' ANSWER TO COMPLAINT IN CASE NOS. 29-CA-164058 et al, DATED JULY 11, 2016.

✓1(HH) CHARGE FILED IN CASE NO 29-CA-180296 DATE FILED JULY 14, 2016.

✓1(II) AFFIDAVIT OF SERVICE OF CHARGE FILED IN CASE NO. 29-CA-180296 DATED JULY 18, 2016.

1(JJ) AFFIDAVIT OF SERVICE OF CHARGE FILED IN CASE NO. 29-CA-180296 DATED AUGUST 30, 2016.

✓1(KK) DOCKET LETTER TO EMPLOYER OF CHARGE FILED IN CASE NO. 29-CA-180296 DATED JULY 18, 2016.

✓1(LL) DOCKET LETTER TO UNION OF CHARGE FILED IN CASE NO. 29-CA-180296 DATED JULY 18, 2016.

1(MM) CERTIFIED MAIL CARDS FOR COMPLAINT DATE STAMPED JULY 5, 2016 AND JULY 11, 2016.

✓1(NN) ORDER RESCHEDULING HEARING IN CASE NOS.29-CA-164058 et al. DATED SEPTEMBER 2, 2016.

✓1(OO) AFFIDAVIT OF SERVICE OF ORDER RESCHEDULING HEARING IN CASE NOS.29-CA-164058 et al. DATED SEPTEMBER 2, 2016.

✓1(PP) ORDER FURTHER CONSOLIDATING CASES, AND AMENDING CONSOLIDATED COMPLAINT AND NOTICE OF HEARING IN CASE NOS.29-CA-164058 et al. DATED SEPTEMBER 28, 2016.

✓1(QQ) AFFIDAVIT OF SERVICE OF ORDER FURTHER CONSOLIDATING CASES, AND AMENDING CONSOLIDATED COMPLAINT AND NOTICE OF HEARING IN CASE NOS.29-CA-164058 et al. DATED SEPTEMBER 28, 2016.

✓1(RR) AFFIDAVIT OF SERVICE OF COMPLAINT AND NOTICE OF HEARING IN CASE NOS.29-CA-164058 et al. DATED OCTOBER 7, 2016.

✓1(SS) ANSWER TO AMENDED CONSOLIDATED COMPLAINT DATED OCTOBER 12, 2016.

✓1(TT) FIRST AMENDED ANSWER TO THE AMENDED CONSOLIDATED COMPLAINT DATED FEBRUARY 7, 2017.

*1(GG a) Affidavit of Service of Answer,  
July 11, 2016*

A-378

Region 1 Meeting With Key Food

GC 9

Local 1500 Offices

Tuesday, July 28, 2015 @10:30am

Attendees: RA, LOL, Lou L, Lou S, Janel, 338, 1500, DeVito, 464A

Doug Catalano, Sharon (VP of ?? for Key Food Coop), Conte, Lenny Mandell, Rich Almonte

**NOTES**

**10:30 am – Union & Key Foods**

TC: Our International has a new president and we're really excited about our new structure moving forward. This is a stressful situation with A&P but we're excited about the opportunity to grow. The stress of the members for the last 5 years is around, maybe longer, and I think we're all happy to have that stress lifted and we think it will be a rebirth. We hope Key Food helps to play a role in this rebirth, and we're really optimistic about this meeting. We're looking to hear from you what you have in mind, and then we'll caucus and get back to you.

DC: The coop wants an arrangement with the Union asap. They operate with a different structure than A&P, and there is the opportunity to have the coop purchase more stores, or to the opposite effect, dependent on an agreement. If there is no agreement in a short fashion, there may not be the coop purchases of the stores and they may turn into TD Banks. We will tell the truth, the union may not agree with what we say, but we tell the truth. We would also hope that everything we say here is confidential and doesn't go out on websites, flyers, communications.

TC: So you're bid is on 19 stores, and you can still be overbid.

DC: Yes, but there needs to be a deal soon. The term sheet may be different for all but I think we can reach accommodation asap to fill the big picture to report to A&P and the bankruptcy courts that there has been an arrangement.

TC: So the 19 stores, are they being purchased by 19 individuals?

DC: Some have more than 1 owner, but there are 14 individuals and 2 stores are being bought by the coop. We have authorization to operate on all of the group's behalf.

338: So you see a blanket contract.

DC: Healthcare and Pension may vary but we're not looking to have the members reapplying for their positions. We plan to offer employment to all current employees. There are a couple major issues we need to work out. If they accept our offer, we'll go from there. It would be under the Key Food Trade Name. Not all the terms and conditions will be the same, but the same major issues. The current terms and conditions may not be optimal, and I don't want these stores to go the way of A&P is right now.

**Issues (Large Concepts):**

1. Contract would start the day the employees start. They can accept or not accept the conditions.
2. Retirement Benefit – we want a 401k not a contribution into a multi-employer plan. There are previous examples in where the UFCW has agreed to this type of situation so it should be able to work here. The withdrawal liability and ERISA is an issue. What happens now that A&P is not contributing and cannot. I

cannot recommend to the coop members to contribute into a multi-employer plan and would be interested in substituting it with a 401k that they can take with them, or we're right where A&P is today.

3. Health and Welfare – there are all sorts of models. We don't want someone who has current healthcare and to turn around and say no more. We need you to help us with the cost. There are some under 30 hours, but the FT cost. I'm looking into some progressive models where maybe a FT making xyz is 1,000's in contributions. Maybe if you have medical elsewhere, we'll give you a buyout.
4. Wages – Intend to keep the model the way it is for the lower wage individuals. Don't hold me to these exact #'s but those making \$15 or more we need to make adjustment. \$25/\$30 per hour rates, maybe we can preserve managers at the rate, but reduce those numbers elsewhere and raise them after 6 month period. Graduate them to a higher number, not as high as they were, but higher. I'm a big fan of lump sums and buyouts. Department Managers can stay at higher rates, but FT rates has to be a discussion. We can't continue at the same rates because then we're going to end up like A&P. We're not going to ask the lower paid, like \$8.50/\$9.50 to take a 10% hit.
5. Long Term Contract – 4 years would be optimal, could be 3 years, could be 2 years. If these negotiations are successful, the coop will buy more stores and use this contract. We're not looking for multiple tiers all over the place, and we'd like mutually agreed upon contracts.

TC: You didn't mention vacations and seniority.

DC: Of course we can't suggest extremes but that isn't as dramatic as wages and the other items. We can't contemplate the same kind of model as before, and buyouts work for me. Not all the coop members resonate Union. I want to hear what you have to say about wages.

?: You're asking our members to take another concession. And can we get a proposal for all these items?

DC: This has to be done quickly, and I can't sit there and spell out. There are too many details out there for each union, each issue.

338: What are you talking about?

DC: There is just so much. The multi-employer plan is a show stopper. There is seniority layoffs, transfer pay, some of these people will only have 1 shop, so they don't apply. Eligibility periods. If we don't change some things. Those models didn't work and we'll got the way of A&P if we run with those prior contracts and become a TD bank.

RA/TC: Okay, we need to caucus.

DC: Are we talking 30 mins, and hour, two hours?

TC: It won't be an hour.

**11:40am Key Food leaves– Union Caucuses**

**12:00 Lunch Arrives**

**12:30 – Key Food comes in, all eat lunch and talk.**

TC: So we understand that this is confidential and we will not post anything. We have questions about the outline

1. The 14 owners will sign off or coop? For 1 agreement?

DC: Both. The coop has the authority to sign off on behalf of everyone, but we would probably sign off as well, the 14. Can't bind anyone and I'm not sure what would happen if someone said no.

Sharon: The individual owners have to sign, they're the ones operating the stores.

2. So Grievances – who would deal with those?

DC: I'm not sure, but I can find you an answer.

3. We would like the list of 14 owners and stores, and who is teaming up?  
DC: Yes.
4. Is C&S supplying money? What is their input?  
DC: No, none. Don't think they're putting money in, but I don't know but that's just like the banks' stakes. They're not part of this.
5. You have some Union and some non-Union. Your double breasted?  
DC: Yes, I'm going to explain in lamens for some here(talking to his people). Anything bought new from A&P is included. Say owner one had 4 stores before and acquired 2 from sale, those 2 would be Union. Anything bought before the A&P deal would not, that would be illegal.
6. Future A&P stores, after the original 19?  
DC: Yes, envision that if the coop likes the agreement, then yes, they'll adopt it. Or mutually agree, say if Pat Conte bought a S&S and Union and him mutually agree to do Union.
7. If an A&P store goes dark, do you still intend to have a contract?  
DC: Yes, I'm glad you asked that. If they want to close a store for say 9 months for cleaning, a fresh coat of paint, the contract applies when it reopens and the first day of employment. A&P employees need to understand that dark period and the store may close down for a while and the members will get an offer after the dark period.  
TC: Do you foresee this?  
DC: I don't know. Someone mentioned it the other day. General outline that no one remodels before the holidays, though.
8. The stores are generally larger that you're acquiring?  
DC: Analysis is \$300k per week. We want to get in ASAP and have continuity.  
Sharon: September 24 is the auction and we can't get in before.
9. Any of the 19 stores going to be sold after 6 months?  
DC: Cannot say because that devalues stores committing future owners to the union. Can't commit that if it becomes sold it will be union. Can't speak for them, don't know them all. Won't commit to not selling, not that they're planning to.
10. Long Term Agreement?  
DC: Usually 4 years, but might be 3 or 2. Makes sense to me for the members to have longer security. The rationale is that it makes sense. (Mumbled some things I didn't quite understand)
11. Will you agree to Health and Welfare?  
DC: I'm inclined to make sure they have Healthcare. What are the #'s?  
TC: Well, if the #'s are okay, you're not opposed to being in the Union's plan?  
DC: We're not opposed, based on the #'s. I'm a big fan of the buyout (Personal story about working at a college)
12. You are opposed to taking part in the Union's Pension?  
DC: Some can be funded, but they're all underfunded, including Social Security. If it gets assessed for withdrawal liability, that uncertainty going forward we'd rather contribute to a 401k and they can take it

with them. The International can't say there are going to be more people contributing coming up, so it's going to be less, so there will be more withdrawals.

TC: So you're opposed to the International Pension?

DC: We don't want to do it.

13. Are you prepared to give us a written proposal?

DC: Why do you need a proposal from me if you have people writing it down? Can't they just photocopy it?

ALL: Not so good reaction.

DC: I will provide something.

14. Are you prepared to move forward?

DC: If you come up with a cap proposal for wages. Up to \$15 is okay, after \$15 it's a little difficult for them.

TC: Now you're looking for them to take another pay cut.

DC: So they can take the buyout, or be lowered and move up gradually. This model is too difficult to follow, that's why they went bankrupt.

Rob Newell 1500: (Gets Angry) That's bullshit. We have plenty of contracts that are good. It's the company bleeding the money dry. If you have someone dedicated to running the company and not taking all the member money and paying off the executives. I'm tired of hearing you talk about the contracts. (Leaves room)

DC: If they turn it into a TD Bank.

TC: These members are family to us. They've been with us a long time and the impact on their lives, paying bills, rent – we get heated. Let's caucus for 15 minutes.

DC: Let me say something about ACME. We're not speaking to them, we don't care about what they're doing. They're not relevant to us, whatever deal you have with them.

TC: It may not matter to you, but it matters to us. Let's caucus for 15 minutes.

DC: Okay. We're happy to meet sooner. This week, tomorrow, the weekend, late nights. Don't postpone us for Albertsons.

TC: I hear what you're saying.

**12:54 Key Food Leaves – Union Caucus**

**1:20pm - Key Food Returns**

TC: We want to move forward. We want a written proposal and a list of stores and people.

DC: What timing are you talking about?

TC: Well we have a subcommittee ready to meet tomorrow.

DC: Who will it be? And will you have all your people.

TC: Well it's Rich, John ...

DC: And will you have all your surrogates and assistants? You know if you have Lou and Lou.

TC: It will be Durso, Rich and SPIelman.

RA: At Durso's office, Local 338.

DC: Want to do it in SI at the coop?

338: 11am at my office? Okay?

DC: Okay. I don't want to waste time.

TC: Neither do we. Our subcommittee is very experienced.

DC: I can only do a big picture proposal and can't do every bit...

338: What do you mean?

DC: Minimum wage, new hires (he goes on) I can't deal with 9 unions versus 1 union.

338: Okay, I got it.

DC: (Keeps going)

338: Okay, I was just asking because I literally didn't hear what you said.

TC: Haven't you discussed details with your people yet?

DC: Yes, the accent was wages, buyout, Health and Welfare Plan for FT and a cheaper plan. Some of this depends on you. I need to conference with my people 1<sup>st</sup>, with the coop first tomorrow.

ALL: Name a time.

DC: 1pm. I'll get my authority and marching orders. I'll be with Lenny and Pat. I want the guys in the room to explain to the other guys in context.

RA: So bring them!

**1:45 END – Leave Boardroom**

CC 13

KEY FOOD BARGAINING NOTES

10/12/15

PRESENT FOR UNION: LO, LOU S., STEPHEN, JHANA, CAROLINA, LB

PRESENT FOR EMPLOYER: JOSEPH VEDDEROVA, ALVIN DIAZ, JOSE DIAZ, RANDY ABED, DOUG CATALANO, SHARON, LENNY MANDEL, PAT CONTI, RUBEN LUNA, SAM ABED

START: 11:41

LOU: LAST BARG SESSION YOU WERE GOING TO SUPPLY A LIST STORES AND CLASSIFICATIONS

SHARON: WE SENT THAT TO YOU ON THURSDAY

LOU: LIST DIDN'T PROVIDE INFORMATION WE NEED

LO: I THINK HE WANTS WHICH EMPLOYER IS BUYING WHAT STORES. JUST SO YOU ARE CLEAR OF WHAT WE ARE TALKING ABOUT

SHARON: OK

LOU: DO YOU HAVE WHAT DEPTS ARE YOU CLOSING? CLOSING?

DC: NO IT'S PREMATURE, WHEN WE KNOW WE WILL TELL YOU.

LOU: LAST WE LEFT OFF.....

DC: WE HAVE A DEAL WITH 338 AND 1500 WE ARE NOT INCLINED TO DO WHAT YOUR LAST REQUEST WAS.

LOU: DO YOU HAVE A PROPOSAL FOR US?

DC: TAKE A LOOK AT WHAT WE GAVE YOU IN SEPTEMBER, ARE YOU INTERESTED IN THAT PROPOSAL?

LOU: NO

DC WE AREN'T TAKING THOSE PPL WITH THOSE RATES.

LOU: WHY?

DC: DOESN'T WORK IT A FAILED MODEL.

LOU: IT'S A FAILED MODEL BUT IT WAS RUNNED BY A&P AND MISMANAGED, THEY ARERN'T GOING INTO THE STORE AND HAVE IT TUN THE SAME WAY.

PC: SO IF WE HAVE A BETTER MODLE WHY SHOULD THE EMPLOYEES BENEFIT FROM IT, WE THE EMPLOYERS SHOULD BENEFIT FROM IT?

LOU: I DON'T UNDERSTAND THE MINDSET BEHIND IT.

DC: WE AREN'T LOOKING TO LAY PPL OFF.

LOU: YOU AREN'T GIVING THEM A CHANCE, YOU ARE GOING TO TAKE OVER THE STORES OVER THE HOLIDAY AND YOU WILL DO BUSINESS. IF YOU WANT TO TAKE THE STORE WITH RESTIRCTIONS WITH THESE PPL AND HAVE TO FACE REDUCTIONS, HOW HAPPY DO YOU THINK THEY WILL BE? DO YOU WANT THEM TO QUIT AND WALK AWAY?

DC: WE AREN'T GIVING THEM A WAGE CUT. IF WE FIND STAFFING IS WRONG FOR THE STORE, IN PAST YEARS, IF A STORE CLOSED L342 INSISTED THEY BE TRANSFERED TO A DIFFERENT STORE, THERE FOR THE STAFFING IS TOO HIGH. WE UNDERSTAND THAT IT IS HARD TO BE HIGHERED BUT WE WILL CONSIDER THE BUYOUT.

LOU: WHAT'S THE MODEL

DC: YOU HAVE IT ALREADY. I GAVE PROPOSALS, BUT SINCE LOU SUGGESTS HE DIDN'T HAVE IT, HERE IT IS AGAIN.

SHARON: HANDING OVER WHAT THEY LAST PROPOSED.

DC: THIS IS THE MODEL.

LOU: IS THIS DURSO'S

SHARON: ITS 338 & 1500

DC: THIS HAS TO BE MODELED, AND FRANKLY I CAN THINK OF THINGS TO DO DIFFERENTLY FOR THE WALL TO WALL MEAT DEPT.

LOU: DID YOU GIVE US SOMETHING WRITING?

DC: I GAVE IT TO RA A WHILE AGO.

SHARON: THERE IS A HANDFULL OF CHANGES: 3 CHANGES, ADDED SENIORIRTY, CHANGED 6000 TO 8000, \$21.01 TO \$23.00 – THE STUFF IN GREY WAS CHANGES.

LO: THIS IS YOUR ACTUAL PROPOSAL FOR 342 WITH THE MODIFICATIONS.

SHARON: REVISED ON 9/22

DC: THEY ASKED FOR THESE CHANGES AND I ACCEPTED THEM.

LO: WHEN YOU SAY THEY YOU MEAN DURSO?

DC: YES.

LO: I'M TRTYHING TO FIGURE OUT IF THIS IS THE CURRENT PROPOSAL OR NOT?

DC: YES IT IS.

LOU: WHEN YOU PUT THEM TOGETHER WITH DURSO WHAT IS THE MINDSET? BEHIND IT WHAT IS THE ROP?

DC: IT'S TOO HIGH I DON'T KNOW IT.

LOU: SO HOW DO YOU PUT THESE NUMBERS TOGETHER?

DC: BC THESE GUYS ARE EXPERIENCED AND THEY HAVE BEEN AROUND A LONG TIME.

LOU: I FIND IT HARD YOU PUT IT TOGETHER.

DC: IF YOU FIND IT HARD TO BELIEVE THEN ASK 1500 OR 338

LOU: I'M NOT BARGINING FOR 338 OR 1500. ARE YOU SAYING DON'T HAVE TO EXPLAIN HOW YOU CAME UP WITH IT.

DC: THESE ARE L338 & 1500 TERMS, IT WAS PRODUCT MADE WITH CONSIDERATION OF WELL THOUGH OUT IDEAS. IT WAS A MODEL FOR 464A

LOU: YOU STILL HAVEN'T ANSWERED THE QUESTION WHAT ARE THE WAGE RATES?

DC: WHAT ARE YOU SAYING YOU DON'T WANT TO BARGAIN HERE TODAY, DO YOU WANT TO BARGAIN INDIVIDUALLY?

LENN: PUT RATES OF PAY ASIDE, 10% OR LESS OF PAYROLL. THEY WON'T BE ABLE TO PAY THE COOP. WHAT ARE THE FRINGES, EXAMPLE I'M CLOSING THE SEAFOOD DEPT, NOT GETTING RID OF PPL, BUT WHAT DO I DO WITH EXTRA PPL? DO I PUT THEM IN A DIFF DEPT? NONE OF THESE OWNERS CAN'T RUN A STORE WITH 10% OR LESS. THESE EMPLOYERS WILL NOT SURVIVE – ROP ARE DIFFERENT, YOU WANT TO HAVE SOME SORT OF JOB PROTECTION, THESE GUYS ARE RUNNING WITH 10% OR LESS.

LO: IT'S HELPFUL TO UNDERSTAND WHAT YOU ARE SAYING, AT LEAST IT GIVES US A SNAPSHOT ON HOW YOU EVALUATE IT AS OPPOSE TO CALL UP L338 OR 1500 AND FIGURE OUT HOW THIS WAS DONE.

LOU: GIVE ME SOME TIME TO LOOK AT IT.

BREAK: 12:00

START: 1:19

LO: LET'S LOOK AT THE AGREEMENT YOU WANT US TO USE AS A MODEL. ALTHOUGH, USING IT AS A MODEL, 338 AND 1500 HAVE AN AGREEMENT W/ YOU TENTATIVELY. L342 WANT TO GET TO A SIGNED AGREEMENT IF POSSIBLE. #1 RA EXPLAINED ABOUT INVOLUNTARY BUYOUT, AND THAT IS SOMETHING L342 CAN'T PUT ITS NAME ON. WHEN YOU PUT A TERM IN THE AGREEMENT OF 42 MONTHS I DON'T KNOW HOW FLEXIBLE YOU ARE. WE HAVE KEY FOOD AGREEMENTS THAT ADDRESS MEAT, SEAFOOD, AND DELI, WAS THIS MEANT TO STAND ALONE?

DC: I DON'T KNOW WHAT YOU MEAN

LO: IS THIS ATTACHED TO ANY KEY FOOD AGREEMENTS THAT L342 HAS?

DC: STANDS ALONE. WE AREN'T INCLINED TO DO A PICK QUICK OR DANS AGREEMENT, WE AREN'T GOING TO GIVE BIRTHDAY PAID, THE VENDORS, REITRMENT SUPPLEMENT THE ARBITRATION CLAUSE, THOSE AREN'T ACCEPTABLE. L342, IN MY OPINION, IS IN A BETTER POSITION THEN 338 OR 1500, GENERALLY SPEAKING. AS A LAWYER I HAVE LEARNED NEVER TO SAY NEVER OR ALWAYS. THE BACK WALL UNDERSTANDS THE VALUE OF CERTAIN MANAGERS. BUT A LOT OF THE LANGUAGE IN THIS AGREEMENT IS NOT THE INCLANATION.

LO: WELL INCLANATION IS A LOT DIFFERENT FROM SAY I'M NOT DOING IT AT ALL.

DC: I NEVER SAID THAT

LO: L342 CAN'T AGREE TO. L342 CAN'T DO AN AGREEMENT FOR 42 MONTHS WITH SOME POINTS AND NOT OTHERS. THIS ISN'T A LOGICAL DECISION BY LAW. L342 HAS TO HAVE A TOTAL AGREEMENT. THE KEY FOOD AGREEMENT MATCHES UP WITH THE A&P IN MANY INSTANCES. THEY ALL HAD DIFFERENT CONTRACTS WITH L342, WE HAD 6 DIFFERENT AGREEMENTS WITH THAT COMPANY, BUT IT ALSO DOESN'T FIT TO THE PPL WHO ARE BUYING THE STORES, AND THE ROP MIGHT BE DIFFERENT. YOU ASKED IF WE WANTED TO BARGAIN INDIVIDUALLY, THAT MIGHT BE A GOOD IDEA.

EVERY BUSINESS MAN IN THIS ROOM KNOWS IT MEANS MONEY. EXAMPLE; L338 AND 1500 THE LAST PAGE VACATION; IT'S PRETTY MUCH IN THE INDUSTRY. I'M JUST SAYING 342 DOESN'T CARE WHAT L338 & 1500 AGREED TO. WE WANT AN AGREEMENT. SO, SICK DAYS WE CURRENTLY HAVE 8 BUT YOU WANT 6, IF YOU

AGREE TO EVERYTHING ELSE WOULD I FEEL BAD SAYING TO PPL "LISTEN TAKE THE LESS SICK DAYS" WHEN EVERYTING IS OFF THAT'S WHEN IT'S A PROBLEM. I WON'T SIGN ANYTHING THAT ISN'T FINISHED. AS I GO THROUGH THIS I HAVE A PROBLEM WITH #2 WHEN #14 IS SITTING OUT THERE. I HAPPEN TO BELIEVE THAT THE CASHIERS ARE THE MOST IMPORTANT PART OF THE STORE, THEY ARE HANDELING THE MONEY. I WOULD WANT THEM TO BE HAPPY AND SKILLED.

DC: THEY ARE STANDING THERE ALL DAY.

LO: IT IS A HARD JOB AND HAS TO BE TAKEN SERRIOUSLY. WE DON'T REPRESENT MANY CASHIERS, BUT OUR WALL TO WALL WOULDN'T BE MUCH DIFFERENT FROM 338 OR 1500. DO YOU NEED ME TO STOP?

DC: NO, I'M LISTENING, I'M ONLY READING & LISTENING CONTIUE.....

LO: IF WE WORK ON IT, IT CAN BE DONE. WE MADE A COMPROMISE WITH STOP AND SHOP, 1500 PPL IN THR FRONT END. I ALSO SAW THE FRONT END AGREEMENT. THE PROBLEM WE HAVE IS WITH PROBATION PERIOD AND TERMINATING SOMEONE W/ NO JUST CAUSE. WE HAVE DIFFICULTY WHEN YOU PUT A RELATIVE IN REPLACE. TIME AND ATTENDANCE, PPL AREN'T BEING NICE TO CUSTOMERS, US OF CELL PHONE, I CAN UNDERSTAND THAT. WE ARE NOT LETTING ANY EMPLOYEE GO OTHER RTHAN A WITH CAUSE SITUATION.

DC: TELL ME WHEN I CAN JUMP IN TO ADDRESS ABOUT CONTAINING PPL.

LO: IF THE UNION IS GOING TO SIGN OFF ON SOMETHING THAT IS FAKE, I CAN'T GO TO SOMEONE AND SAY THAT THEY ARE GOING TO WORK FOR A NEW EMPLOYER AND BE ON PROBATION 60 DAYS. THIS AGREEMENT DOESN'T SAY THAT AT ALL. I'M NOT SAYING YOU CAN'T HAVE A PROBATION PERIDO FOR THEM. IF YOU WANT L342 TO SING OFF ON SOMEHTING, IT CAN'T SAY THAT.

DC: THAT WORKS FOR US; I DON'T KNOW IF YOU ARE PROPOSING THAT. WE THOUGHT IT WOULD BE DIFFICULT FOR SOMEONE TO LOSE MONEY, SO TO MAKE IT FAIR WE OFFERED A BUYOUT. WE HAVE 3 MEASURES WE ONLY NEED 2 INSTEAD OF 3. WE WILL GIVE PPPL AMD ASK FOR VOLUNTEERS. I HAVE NO INCENTIVE TO KEEP PPL THAT DON'T WORK OUT. INSTEAD OF ARBITRAITON WE

GIVE THEM MONEY TO LEAVE. DISINCENTIVE TO BRING IN A RELATIVE, NEVER SAY NEVER. IT'S ALL IN THERE TO GIVE THE PPL A SHOT.

LO: THE THREE THINGS YOU ARE TALKING ABOUT HAVE DISCONNECTS. YOU ARE PUTTING TOGETHER PROBATION PERIODS AND # OF PPL ARE BEING ALL COMBINED, WE SHOULD SEPARATE.....

DC: WE SAID WERE ONLY TAKING CERTAIN PPL AND GIVE THE OTHER PPL MONEY. IF WE KNOW THAT WE ARE ALL IN ACCORD AND GIVE THE PPL IN A&P MONEY, THEN WE ARE GOOD TO GO. AGREEMENT ON STAFFING WE ARE ALMOST THERE.

LO: I DON'T AGREE WE ARE ALMOST THERE ON STAFFING. THE DOCUMENT YOU DID HERE IS DIFFERENT FROM THE WAY WE WORK. THEY MIGHT, YOU HAVE DIFFERENT AGENDA FROM US.

DC: NOT L342 PICK QUICK & DUNS SUPREME, WE ARE NOT ACCEPTING THAT, I NEVER SAID WE WON'T DO ANYTHING IN THE CONTRACT.....

LO: WE AREN'T GETTING PAID TO ARGUE; I'M MAKING A POINT. THIS DOCUMENT ISN'T CUTTING IT L342 IS GOING TO NEED A DIFFERENT AGREEMENT. FOR INSTANCE THE AP PPL RIGHT NOW MAKE LESS MONEY THEN THE SAME CLASSIFICATION AS KEY FOOD. THEY WENT ON A WAGE FREEZE. WE ARE NOT GOING TO AGREE TO SOME THINGS AND NOT OTHERS, IT DOESN'T MAKE SENSE TO USE THIS AS A MODEL. I THINK IT COULD WORK OUT, WE CAN GET TO AN AGREEMENT, BUT I CAN'T WORK ON PIECES, IT DOESN'T MAKE SENSE FOR THE EMPLOYER.

DC: WE THINK IT IS WISE FOR EVERYONE INCLUDING THE EMPLOYER.

LO: YOU ARE SAYING TO GIVE SOMEONE \$8000 WHO HASN'T EVEN STARTED YET.

DC: YOU AREN'T AGREEING TO THAT, WE ARE SAYING WE DON'T NEED THE STAFF.

LO: I UNDERSTAND THAT, YOU'VE SAID IT ALREADY. WHAT I'M SAYING IS THAT THIS LANGUAGE ISN'T GOING TO SOLVE YOUR PROBLEM. THERE ARE 3

COMPONENTS TO YOUR PROBATION PERIODS. I'M NOT PREPARED TO TALK ABOUT THAT TODAY. HEALTH AND WELFARE; WE HAVE SPOKEN TO 338 AND WE CARE ABOUT THE INSURANCE. I SHOULD KNOW BY THE END OF THE WEEK IF IT'S POSSIBLE. IF IT IS WE CAN TRY TO SEE WHAT THE INTERNATIONAL FUND IS ABOUT. WE ARE MAKING A GOOD FAITH ATTEMPT TO GIVE THE EMPLOYER AFFORDABLE HC. IF WE CAN FIND A MORE ECONOMICAL WAY TO DO THINGS. 401K YOU AGREED IN CONCEPT THE FULL TIMERS AND PART TIMERS. I SEE IT ON PAGE 2 OF THIS AGREEMENT. IT'S NOT NECESSARY FOR L342 TO HAVE. IF WE END UP HAVING AN AGREEMENT WE AREN'T TAKING ANYTHING LOWER. WHERE DID IT COME FROM?

DC: WASN'T SAID.

LO: THIS ISN'T GOOD FOR L342, BC WE DON'T HAVE ANY ACTIVE PENSION FUNDS BUT THESE OTHER LOCAL DO. THE QUESTION I KEEP ASKING IS WHO WILL BE BUYING THE STORES, AND YOU SAID IT WOULD BE THE INDIVIDUAL STORE OWNER SIGNING OFF, AND YOU ALSO SAID IF WANTED TO HAVE AN INDIVIDUAL AGREEMENT.

DC: I NEVER SAID THAT. I REJECT TO BARGAIN INDIVIDUAL.

SHARON: I CAN'T TELL YOU WHO IS GOING TO GET THE STORES BC I DON'T KNOW. WE HAVE SOME OBJECTIONS....

LO: MY CONCERN ISN'T TO GET INTO THEIR BUSINESS BUT EVENTUALLY THEY WILL END UP.....

DC: NO WE DON'T WANT THAT, I NEVER SAID THAT. THIS IS AN UMBRELLA AGREEMENT FOR EVERYONE.

LO: YOU BROUGHT UP SOMETHING OR MENTIONED OF SEPARATE AGREEMENTS BC THESE STORES ARE DIFFERENT ANIMALS, THE WASS TO WALL AS OPPOSED TO A WALDBAUMS. I WAS TRYING TO DO SOMETHING CONSTRUCTIVE. WE MIGHT HAVE TO DO MORE IN THE CITY WALL TO WALL.

DC: THIS IS ON BEHALF OF THE COOP, THE UNION AND THE KEYFOOD MEMBERS.

LO: SO IT'S DIFFERENT FROM THE FIRST ONE.

SHARON: EVERYONE HAS AGREED TO.....

LO: THERE IS BUSINESS REASON WHY YOU DID THAT BUT IF THERE IS A GRIEVANCE DOWN THE ROAD WHO DO WE GO TO?

DC: WE CAN DISCUSS THAT LATER

LO: THESE ARE THE THINGS WE NEED WORK ON. I HAVE A PROBLEM WITH NOT KNOWING ALL THE PIECES. I JUST WANT TO FINISH THIS REALLY QUICK. THE TERMS OF THE CONTRACT ARE IDENTICAL FOR EVERYONE, THERE MIGHT BE SOME DISPARITIES THAT AREN'T IDENTICAL BUT THEY ARE THE CLOSE.

DC: EVERYTHING IS GRANDFATHERED IN EXCEPT FOR NEW HIRES, SAYS IT RIGH ON TOP. IF YOU LOOK AT #10 GRANDFATHERED IN. TAKE L342 PREMIUM FROZEN, DOUBLE TIME ON SUNDAY AND 26 OT RATE. IF THAT PERSON COMES IN IT WOULD BE GRANDFATHERED. THE REAL DEAL IS ALL ABOUT HOW MANY FULL TIMERS WE ARE KEEPING.

LO: I KNOW BUT YOU ARE SAYING THIS IS YOUR PROPSAL AND IT DOESN'T MATCH. I TYPED UP A PROPOSAL FOR YOU AND I WILL GIVE IT TO YOU. WE CAN DISCUSS IT LATER. WE MADE DIFFERENT PROPOSALS FOR THE WALL TO WALL WHICH WE BELIEVE MR. CONTI WILL HAVE IT. I'M NOT SAYING OU WILL ACCEPT IT, BUT THAT'S WHY WE SAY HAVE MORE THEN JUST ONE MODEL FOR L342 CONTRACT.

DC: THEY ARE PART TIMERS WHAT DO YOU MEAN?

LO: YOU HAVE MORE THEN 2 FULL TIMERS. I KNOW A FULL TIMER IF I SPEAK TO ONE. I DON'T UNDERSATND WHY YOU ARE SAYING THAT.

DC: FORGET IT MOVE ON. WE GAVE YOU A RECALL LANGUAGE

LO: IF YOU ONLY NEED ONE PERSON IN 295 WHAT WOULD THAT PERSON'S CLASSIFCATION BE? I'M BRINGING IT TO THE ATTENTION OF THE OWNERS HERE

TODAY JUST SO THEY SEE HOW THIS WORKS. I CANT HAVE YOUR CLIENTS FIRING ALL FULL TIMERS THEN REPLACE WITH ANOTHER FULL TIME PERSON.

SHARON: THAT WON'T HAPPEN, THERE ARE RECALL RIGHTS.

LENNY: MOST OF THE BUSINESSES ARE INDEPENDENTLY OWNED. MY FEELING IS TO PRESERVE THE JOBS NEEDED. I HAVE TWO BUTCHERS AND DON'T HAVE PROBLEM IF A STORE HAS TO BRING SOMEONE FROM A DIFFERENT UNION OR BRING IN FAMILY MEMBERS TO FILL IN FOR THAT DAY. UNLIKE A BIGGER COMPANY WHERE THEY CAN MOVE PPL FROM DIFFERENT STORES. SOMETIMES YOU MIGHT HAVE A FAMILY MEMBER WORK BUT THE JOB WILL BE PROTECTED. THAT ISN'T THE GOAL HERE. WE HAVE DISCUSSED IT TO PROTECT THE MEMBERS. THE GOAL IS AN ECONOMIC ONE.

LO: WHAT MIGHT BE PRACTICAL IS TO HIRE TWO EMPLOYEES AND EXCHANGE THEM FROM STORE TO STORE.

LENNY: THAT WON'T WORK BC OTHER EMPLOYEES HAVE A SAY. THERE PPL HERE FROM UNIONS WITH NO ISSUE AND OTHERS AREN'T UNION, IT MIGHT NOW WORK IN SOME CASES.

LO: SO I HAVE TO TRY TO OVERCOME THAT PROBLEM IN THE AGREEMENT. I DON'T WANT THOSE PROBLEM TO COME UP LATER. U KNOW WHAT YOU ARE SAYING AND THERE ARE WAYS TO WORKS THINGS OUT. WE HAVE STORES THAT FAMILY MEMBERS TO COVER BUT I NEED THE LANGUAGE WHERE IT DOESN'T VIOLATE THE MEMBERS RIGHTS. THERE IS NOTHING WRONG WITH USING THE KEY FOOD AGREEMENT. USING THE BEREAVEMENT CLAUSE, JURY DUTY AS AN EXAMPLE. YOU DON'T HAVE TO AGREE WITH IT BUT TO CONSIDER IT AGREE TO CONDITIONS AND FOLD INTO KEY FOOD AGREEMENT BC WHAT IM TRYING TO DO IS GET IS AN AGREEMENT. IT MAKES MORE SENSE BC THEN EVERYONE HAS THE SAME THINGS.

BREAK: 2:19

START: 3:15

DC; WHILE WE APPRECIATE WE ARE TRYING TO REACH AN AGREEMENT AND IF YOU COMPARE THE CONTRACTS WITH THE PROVISION WE HAVE A LOT TO TALK ABOUT HERE AND WORK NEEDS TO BE DONE. THIS JUST DOESN'T WORK, YOU ARE COMPARING THE KING KULLEN AND KEYFOOD CONTRACTS. WE KEEP SAYING AND CONTINUE TO URGE WE CANNOT HAVE THOSE PROVISIONS THEY AREN'T WHAT WE HAVE IN MIND WE DIDN'T DISCUSS THIS. WHY ASK HOW MANY WE NEED? THIS AGREEMENT SAYS YOU NEED EVERYONE AND NO ONE CAN BE LAID OFF FOR 10 MONTHS. I'M ALL FOR JOB PRESERVENC, BUT WE HAVE NO CHOICE WITH TERMS AND CODITIONS GOING FORWARD.

LO: THIS PROVISION DOESN'T APPLY ANY MORE (BEFORE 95) THEY COME IN WITH KEY FOOD PRIORITY DELI, MEAT, AND SEAFOOD IF THEY DON'T HAVE SEAFOOD WE WORK SOMETHING OUT. NO ONE REQUIRED TO HAVE DEPTS. IF YOU DON'T HAVE A FRESH SEAFOOD, MAYBE THAT PERSON CAN GO SOMEOWHERE ELSE. IT DOESN'T SAY JOB GUARANTEE FOR EVERY KEYFOOD EMPLOYEE. BUT RIGHT OFF THE BAT IF THEY COME AS NEW EMPLOYEES THEN YOUR JOB GUARANTEE DOESN'T EXIST.

DC: READING OFF PROPSOAL ARTICLE #5 – I UNDERSTAND THE EMPHASIS OF THE UNION BUT THAT IS NOT OUR THINKING. WE MIGHT ULTIMATLY GET THERE.

LO: THERE HAS BEEN OTHER TIMES THAT KING KULLEN BOUGHT STORES AND HAD OTHER THINGS LIKE THAT. IF THE FIRST SENTENCE CAN BE DRAFTED BETTER WE WILL. AND THERE IS LOTS OF STUFF IN THE KEY FOOD AGREEMENT THAT DOESN'T APPLY TO THESE GUYS.

DC: THERE ARE 13 HOLIDAYS IN THE KEY FOOD CONTRACT.

LO: OK BUT THESE PPL ARE NEW; ITS NECESSARY TO GET THEM WHOLE, BUT TO GIVE THEM.....NEED TO GIVE THEM CHANCE OF A FAIR SHOT.

DC: THAT ISN'T THE INTENT

LO: I'M NOT DOING MONEY DURING THE PROBATION.

DC: SO ARE YOU SAYING DON'T HIRE THEM AN NO PROBLEM.

LO: IT'S IMPORTANT FOR YOU TO LISTEN TO ME SO YOU CAN UNDERSTAND WHAT THE LOCAL IS TRYING TO ACHIVE. THE MOST IMPORTANT THING IS MEDICAL AND KEEP EVERYON WHOLE.

DC: THERE ARE MANY FULL TIMRES IN THE STORE FOR THIS MODEL.

LO: YOU MADE AN EMPLOYER KEEP PPL THEY DIDN'T HAVE.

DC: THE IDEA HERE IS NOT ACCEPTABLE TO THESE INDIVIDUALS WE WOULD LIKE TO CONTINUE TO BARGAIN BUT THEY AREN'T INTERESTED IN YOUR AGREEMENT.

LO: HOW MANY WALL TO WALL DO YOU HAVE?

SHARON: 3; BROOKLYN, MATTITUCK, AND MANHATTAN.

LO: I'M FAMILIAR WITH THAT GUY; HE CAN CLOSE THAT STORE FOR A 1 YEAR IF HE WANTS.

SHARON: AND WHEN HE OPENS THEY WILL USE THE AGREEMENT WE COME UP WITH.

LO: I DON'T THINK SO.

DC: WHY NOT?

LO: THE EMPLOYERS SAID ON THOSE WHO ARE CLOSING FOR A YEAR AS WELL, THEY SAID THEY WILL TAKE THE CONTRACT WITH L342 FOR WHENEVER THEY OPEN.

SHARON: THAT'S WHAT WE ARE SAYING AS WELL; WHATEVER CONTRACT WE COME UP WITH THEY WILL USE WHEN THEY OPEN UP.

DC: THE KEY THINGS ARE STAFFING, RATE OF PAY, H&W

LO: WHAT I'M SAYING TO BYOU IS TO GET AN AGREEMENT SOYOU CAN OPEN UP AND WE CFAN FINISH THE OTHERT PORTIONS LATERT.

DC: AS LONG AS WE HAVE AGREEMENT ON 5 THINGS; PENSION, STAFFING, LAID OFF MEMBERS, 401K, AND RATE OF PAY.

LO: IF WE DO IT CORRECTLY WE WON'T HAVE AN.....

SHARON: IF YOU ARE SAYING THAT WE NEED TO PUT THE MONEY SOMEWHERE ELSE THAT IS FINE. THE KEYFOOD ARE INDEPENDANTLY OPERATED COMPLETELY

LO: THE CONCEPT OF TRANSFERS IS TO HAVE THEMEMBER TO GO FROM ONE STORE TO ANOTHER WITH THE SAME EMPLOYER. PPL ARE ONLY WORRIED ABOUT WHAT THEY ARE MAKING AN HR. IF WE DO IT CORRECTLY LEGALLY WE WON'T HAVE A PROBLEM LATER. IF WE HAVE A BUYOUT OPTION.

DC: IT'S IN THE MOA OF THE KEY FOOD AGREEMENT. SOME OF IT CAN WORK, SOME OF IT CAN'T WORK.

LO: I DON'T KNOW THAT IT CANT' WORK. WE NEED TO DISCUSS HOW TRANSFERS WILL WORK. WE CAN'T GET THAT DONE IN 7 DAYS. IT'S DIFFICULT.

DC: WE DISCUSSED THAT IN LAST BARGAINING. TO USE SOMEONE ELSE FROM A DIFFERENT STORE THERE ISN'T A PROBLEM WITH THAT.

SHARON: THERE IS A PAYROLL ISSUE.

LO: IS THE KEY FOOD PAYROLL DONE THE SAME?

SHARRON: PAYROLL FOR STORE IS DONE COMPLETELY DIFFERENT. I CAN'T DO TEMPORARY TRANSFER; BUT PERM TRANS NO PROBLEM.

DC: I'M TALKING ABOUT PPL MOVING FROM ABED'S STORE INTO A DIAZ'S STORE. THAT MIGHT BE ILLEGAL, I CAN'T BARGAIN FOR OTHER PPL. WE AREN'T INCLINED TO DO THAT.

LO: IT'S A PROPOSAL IT'S ABOUT THE CONCEPT.

DC: YES I KNOW.

LO: I'M NOT HAVING PPL ON THE PAYROLL AND WAIT FOR THEM TO GET HURT – I'M TALKING ABOUT OWNERS HAVING FLEXABILITY TO PPL MOVE AROUND. ITS REALLY NOT AS HARD AS YOU MAKE IT SOUND.

SHARON IS CFO AND VERY DIFFERENT FROM WHAT I DO, SO I'M NOT WORRYING ABOUT HOW THEY DO THAT. SOME EMPLOYERS HAVE 10 STORES AND THEY HAVE THE SAME AGREEMENT. WE CAN'T MAKE AN EMPLOYER KEEP EMPLOYEES THAT THEY DON'T NEED. ALL WE CARE ABOUT IS THAT THE A&P MEMBERS KEEP THEIR JOB AT THEIR CURRENT RATE OF PAY.

SHARON: BUT IT'S NOT WHAT WE ARE TALKING ABOUT.

DC: WHAT ABOUT THE PART TIME CUTTER?

LO: LET'S TALK ABOUT A PARTICULAR STORE. I KNOW FOR A FACT THERE IS 1 BUTCHER, 1 MEAT MANAGER, AND 1 WRAPPER. THERE IS ALSO A SEAFOOD DEPT, A FULL ICE CASE AND IT'S IN MANHATTAN. YOU ARE LOOKING AT YOUR COMPETITION, 1 SEAFOOD MANAGER AND 2 PART TIME CLERKS. FOR YOU TO SAY YOU DON'T NEED THESE PPL.

SHARON: WE HAVE THAT, JANEL SENT IT TO US.  
UNLESS THEY ARE PART TIME

LO: YES, I JUST SAID 2 ARE PART TIMERS. IT COULD TURN OUT 6 MONTHS FROM NOW,

DC: THEY THINK AND HOPE TO EXPAND BUSINESS AND MAKE IT MORE PROFITABLE. YOU DON'T KNOW WHAT EXACTLY CAN HAPPEN.

LO: I'VE IDENTIFIED WHAT IT SHOULD BE AS A COMPLETE AGREEMENT, LETS TALK ABOUT NO MONTHS, LETS AGREE ON HIRE RATES AND THE THINGS THAT SURROUND THE CONTRACT, ROP, MEDICAL – WAIVER FOR THOSE WHO WANT TO OPT OUT. L342 IS TALKING TO 338 ABOUT HEALTHCARE. I MIGHT BE ABLE TO GET THE 338 AND INTERNATIONAL. WHEN I LOOK AT THIS AND THE EXAMPLE I GAVE YOU I'M CERTAIN SOMEONE WILL NEED 1 MEAT, 1 SEAFOOD .....WHY ARE WE ARGUING ABOUT WHAT IS NEEDED?

DC: WE NIGHT NEED SOMEONE ELSE, BUT THEY CAN'T COMMIT TO

LO: THE CUSTOMERS WANT TO SEE PPL THEY KNOW FROM OTHER STORES. WE HAVE OBJECTED THE BACK UP BIDDER FOR BEST YET. MY POINT IS YOU ARE BETTER OFF TAKING THOSE 12 – THEY ALREADY KNOW THE STORES.

DC: I'M SORRY, WE ARE TALKING AND NOT ON THE SAME PAGE. YOU ARE SAYING THEY KNOW WHAT THEY NEED. THAT ISN'T HELP FOR GOOD STAFFING. WE HAVE FROM THE BEGINNING WE WANT THE PPL BUT HAVE TO WORK OUT THE STAFFING. YOU HAVE TO GIVE THESE PPL SOME DIRECTRION.

LO: YOU HAVE IT WITH NEW HIRES.

DC: THE MEDICAL AND THE STAFFING WON'T BE A PROBLEM.

LO: THE PROBLEM WITH THE STAFFING IS.....

DC: WE ARE ONLY RESTRICTED TO OUR TERMS STATED HERE.

LO: WE ARE NOT DOING THE BUYOUT SO PLEASE GET THAT OUT OF YOUR HEAD. ARE YOU TELLING ME IF 342 SAYS YOU CAN TAKE ONLY 2 – I AM NOT A DISHONEST PERSON AND HAVE THEM BELIWVE I NEGOTIATED SOMETHING I DIDN'T, WE HAVE TO FIGURE OUT HOW TO GET PAST THE BIGGER HUMP. LET THEM TAKE THE PPL ON THEIR OWN. IF THEY SAY NO WE WILL HAVE A PROBLEM. I'M NOT GOING TO DO SOMETHING, OUR PHILOSIPHY IS WE AREN'T INTO ANYTHING TO SELL SOMEONE DOWN THE RIVER. WE REPRESENT PPL WHO HAVE SKILLS.

DC: THEY RECOGNIZE THINGS LIKE THAT.

LO: I DON'T KNOW IF WE CAN COME TO AN AGREEMENT LIKE THAT.

DC: THE ECONOMIC OUTCOME IS NOT REALITY.

LENNY: I'M SPEAKING FOR ME, THE WAGES IS NOT THE 1<sup>ST</sup> THING FOR US. THE CASE OF THE BUYOUT IS TO GIVE MONEY TO THE PPL I CAN'T KEEP. I DON'T THINK UNION WANTS TO SEE PPL ON THE STREET. ITHEY WE WILL TELL THE PPL, HERE IS MONEY IF WE CAN'T KEEP YOU.

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LO: YOU HAVE SOME GAGE ON THE PPL YOU NEED I UNDERSTAND THAT, YOUR PROPOSAL IS THAT WE DON'T WANT THE FULL-TIMERS BUT WE WANT TO FILL THE STORES UP WITH PART TIMERS.

DC: THAT IS WHY WE SAY TO GIVE THEM MONEY. THE FULL TIMERS CAN GET BUYOUT. ARE YOU SAYING THAT THE PART TIME COMPONENT IS NOT GOOD?

LO: ARE YOU SUGGESTING YOU WILL GIVE US A LAST AND FINAL.

DC: I NEVER SAID THAT; I KNOW THAT BC I HAVEN'T SPOKEN TO THESE GUYS. WE AREN'T EVEN NEAR THAT PART. THIS DISCUSSION IS VERY HELPFUL AND FRUITFULL. I SUGGEST FOR THE UNION TO OFFER A FINAL AGREEEMNT AND YOU DIDN'T ANSWER. I THINK THE DIALOG WAS HELPFUL TODAY.

LO: THE PROPOSALS WERE NOT ABOUT THE CONCEPTS. I DON'T THINK THE DIALOGUE WAS HELPFUL TODAY. I CANNOT HAVE THE PPL THAT WORK IN THEIR STORES TO WATCH OTHER PPL TAKE THEIR JOBS WHEN THE KEYFOOD GOES UP. (READING OFF DRAFT)

DC: THEY HAVE NO CONTRACT WITH US. NO FULL TIMER WILL BE OFFERED THE JOB THEY WILL HAVE A RIGHT FOR RECALL AND WE WILL GIVE THEM MONEY WITHOUT WORKING FOR US. (READING LAST SENTENCE IN PARAGRAPH 1)

LO: THE HEALTHCARE WILL WORK OUT TILL ITS TOLERABLE AND THE NUMBER OF THE PPL WHO WON'T GET JOBS.

DC: OUR PROPOSAL IS FLEXALBITY.

LO: THE NUMBERS YOU SENT OVER ARE VERY SMALL, IF YOU ONLY HAVE 2 FULL TIMERS WHO ARE THE 2 BUTHERS. WHO ARE THE WRAPPERS?

DC: I DON'T HAVE ONE YET.

LENNY: WE ARE REDUCING THE PPL BUT EVERYONE IN THIS ROOM NEEDS PPL. GRANTED THE BODY OF THE STORE IS DIFFERENT. SOME OF THE BIGGER MEAT DEPT MIGHT..... WE WANT TO STAFF THE STORE I KNOW I PAY PREMIUM PAST 7PM.

LO: WITH LOCAL 342 YOU DON'T HAVE TOO. SCHEDULING IS NOT A PROPOSAL. WE DON'T HAVE MANY ARBITRATIONS WITH YOU OR CONTI.

LENNY: YOUR PPL SUFFERED A LOT, SOME ARE HAPPY SOME AREN'T – THE MEAT WRAPPER SAYS HE'S TWO YEARS FROM RETIRMENT. YOU CAN'T FIRE THAT PERSON FOR NOT DOING A SO SO JOB. IF THEY AREN'T RETIRMENT AGE WHAT DO WE DO? THAT IS WHAT WE ARE TRYING TO GET AT.

LO: WE UNDERSTAND YOU DON'T NEED THAT MANY PPL IF I K NOW THEY HAVE A BAKERY OR SEAFOOD, YOU NEED A FRONT END.

DC: I DON'T THINK THAT IS ACCURATE. THESE GUYS ARE ALWAYS IN THE STORE. THEY MIGHT NOT OPERATE.....

LO: I'M TRYING TO THROW THINGS OUT THERE FOR THEM TO THINK ABOUT.

DC: THIS PROPSAL IS ANTAGONISTIC TO THE CONCEPT, WHY AM I GOING THROUGH THIS IF WE AREN'T GOING TO TAKE IT. THESE PROPOSALS DON'T SPEAK AS BEING PROFITABLE.

LO: YOU NEED TO THINK ABOUT IF THE NUMBERS ARE REALLY REAL. 1 FULL TIMER CAN'T BE REAL TO ME. THE STORE MANAGER IS THE OTHER EMPLOYER IN THE STORE. THERE CAN'T BE ONE PERSON IN THE MEAT DEPT (295) MEAT DEPT WITH SELF SERVICE SEAFOOD DEPT.

DC: WHICH IMPLYS THAT ON DAY 1 WE DON'T NEED YOU.

LO: I'M NOT MAKING THAT PROPSOAL AND I'M NOT OK WITH GIVING THE BUYOUT FOR THAT, IT'S NOT ACHEIVALBE.

LENNY: BACK TO MY POINT WE ARE WILLING TO COMPENSATE ANYONE WHO DOESN'T HAVE WORK. ARE YOU TRYING TO SAY YOU DON'T WANT TO BE RESPONSIBLE FOR NOT SAVING THEIR JOBS?

LO: REMEMBER WHAT WE ARE SAYING HERE, KEY FOOD OR BEST YET ISN'T BETTER BC THEY DON'T VALUE OUR JOBS. I THINK YOU CAN RE-EVALUTE THAT SITUATION.

**A-400**

DC: IF YOU ARE SAYING TO BE PROFITABLE TO THE PROCESS WE CAN TALK ABOUT THAT TOGETHER.

LO: LOOK AT IT AND COME UP WITH SOMETHING. L342 HASN'T CHANGED THEIR PROPOSAL ON ANYTHING TAKE A HARD LOOK ON THE STORES.

END: 5:00PM

A-400.1

G.C. 15

Key Food Bargaining

Wednesday, October 21, 2015

JFK Hilton Hotel

Federal Mediator: Carlos Tatte

Key Food: Doug Catalano (attorney), Sharon K, Alivin Diaz, Randy Abed, Sam Abed, Frank Almonte, Gilbert Almonte, Lenny Mandell, Steve Dicarolo

Local 342: Richard Abondolo, Lisa O'Leary, Stephen Booras, Jhana Branker

\*meeting begins at 1:30pm

Doug: Offering employment where we said we would probably not hire the Seafood Personnel, and let the other FT in the store for 30 days – if they don't make probation we would give them 750/year of service that they had with A&P max of 8,000. That persons services might be terminated with or without cause. Arbitration according to the proposal – mutually select abitrator

RA: Did the numbers change

Sharon: Increased by 2 to 25 – Petes Hill store and store # 36-777 food emporium on Grenech street. – got confirmation today that it has been awarded, the lawyers are papering it right now

RA: Any change eliminating stores?

Sharon: We dropped Tomkins avenue because it was wall-to-wall. The landlord took that back.

RA: Leave you with 170 FT?? did we discuss the part timers according to your notes? Is there an issue with the PT. there are 298 tota.

Sharon: We are going to have to discuss both full and part time in the wall to wall stores. No issues with part timers in back wall.

Doug: I cant remember any issues with the part timers in the back wall stores. There could be people – we have chosen to have a probationary period for both FT and PT and they might want to do that here, they didn't get to it

RA: You will take everybody with a 30 day probationary period

Doug: And if mutually agreed upon an additional 30 days to 60.

RA: Do we have a commitment that all PT are hired, not talking about seafood in the back wall stores.

Doug: Yes.

RA: Subject to the probationary period

①

A-400.2

Doug: Yes

RA: Not opening seafood departments? Just over wrap, no cutting.

Alvin Diaz: Meat department can do the cutting of seafood in my department

RA: So what about the PTers, can you use them?

Sharon: it has to be case by case, it is possible but it has to be store by store.

RA: So you cant commit to hire all the PTers then?

Sharon: We have to go back store by store again.

RA: I don't care

Larry: I would give all the PTers a job, I could put them in the deli, I have no problem will give them a job.

Sharon: That is okay

Alvin: I might not need the seafood dept PTers (Waldbaums Glen Oaks)  
2 FT cutters, FT wrapper and reclassify as PT as all wrappers are PT

Doug: During probation if they didn't get retained at the end of the period the FT will get 8,000 and 3 months medical.

RA: if you had 150 FT and he said this is what I need, everybody knows their needs, so if that was implemented upfront and we apply the theory the only thing missing would be the recall would be finished. The only part missing is – we have leftovers everywhere. We would want to see when they do hire in a year, when business goes up, they call us and ask if we have anybody that is left over.

Doug: as long as they can hire from any source, if you are asking could they also interview 342 members referred by you we can talk about that but if they refuse to hire from 342 and hire from somewhere else that is their inclination. We will talk about it.

RA: The only issue we have is whatever number we agree on on how long the person will be out, let someone go then the next day hire someone \$10 cheaper, how do we protect that?

Doug: With 338, they would have recall rights for one year despite getting a buyout that is the protection.

RA: I am trying to get it done so I don't have to go back and police it.

Doug: We gave that person money twice and I assume he is working somewhere else. But in the future where someone hires someone else at a lower rate, what happens, the same issue is presented 6

2

A-400.3

months or a year later, it is always going to be presented. They have to join the union whoever it is. It could always happen and whether it is one day or 2 years it is the same problem if the union is suggesting it's a problem. I don't know how to protect against it.

RA: unless you go the conventional recall then you have to police that.

\*caucus at 2:00pm

\*resume at 5:00pm

Doug: you suggested off the record a different model – if you've been with A&P under 342 contract \$800 for each year of service, A&P will pay 50% so we will pay \$400 for each year of service without a maximum. There are some people who have 40 year people and if you agree it will be paid out in 4 monthly payments. This is for the Full Timers if we don't hire them. If we do hire them and they don't pass probation – 338 model is a little different. What we talked about if they don't make the probation they will get \$750 with a max of \$8,500.

RA: I was concerned about getting into an understanding about part timers.

Doug: If we don't hire the FT you asked whos going to do the work. I will be candid and either FT will be reduced to PT or a PT cutter or reduce the full time to PT on day one. I will prepare something. Tomorrow rather than meet I will prepare something send it to you with these kinds of concepts. Last night we did not do a PT severance. We got calls from 338 that we misunderstood. We agreed this afternoon –

Sharon: Because we said we are hiring all the FT. we would offer 1-7 years of service 1 week at current rate of pay avg hours, 8-11 gets 2 weeks, 12-15 3 weeks, 16 or more get 4 weeks.

Doug: That's what they asked for and we said fine. We said we will hire all the PTers and we are with 338 and 1500 as well.

RA: Only if they don't make probation.

Doug: People might be used to the Waldbaums way which might not be the same way they are used to.

RA: Do you know how much that costs?

Doug: \$350-\$400 per week by 1 week, or 4 weeks. That's what they asked for. We weren't going to do anything but they asked for it and we said fine.

RA: We will work through the language.

A-400.4

Doug: I will put an MOA together and send it to you guys. We will send you something in the afternoon by this afternoon.

RA: Okay. By that point we can put it to bed. When are the transitions taking place.

Sharon: Monday will be the first inventories. Closing on three stores on Monday morning starting at 6am if it is done by 1pm then documents and money will change hands by 3pm, IT will flip the system and Monday or Tuesday mornings trucks will come to stock the store. Stores closing Wed are bumped to Mon, pushed those Monday stores to sometime in November.

LO: the new owners may want the people to help them do do what they are doing.

Sharon: No, we have Key Food ISE people coming in to unload the truck and tag the store and Tuesday the store will open and in the morning they may help to stock the shelves.

LO: You may need them for purposes of being in the store because you might want them to clean or move things.

Sharon: Nobody will be in the store Monday in the day – they need to have names and badges.

RA: People report to work Tuesday morning with the new owner.

Sharon: We just got clearance to go into the stores. Stores must be closed at 6:00am.

LO: You guys will go into the store before it happens so the people in the store will know.

Sharon: The new owner will meet with the manager now for the stores closing now but should be the week before when we have more time. After this first week of closing it will be a week in advance.

\*meeting ends at 5:15pm

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GC 16

MEMORANDUM OF AGREEMENT

Agreement effective October 22, 2015, by and between Key Food Co-Op and assigns (the "Employer") and UFCW Local 342, 166 East Jericho Turnpike, Mineola, New York 11501 (the "Union"):

WITNESSETH

WHEREAS, The Great Atlantic & Pacific Tea Company, Inc., and its subsidiaries, affiliates, banners and other related entities ("A&P"), have filed for Chapter 11 bankruptcy relief in the United States Bankruptcy Court of the Southern District of New York in Case No. 15-23007;

WHEREAS, the Union represents the employees at various A&P stores, and the Union and A&P are parties to a collective bargaining agreement;

WHEREAS, the Employer has purchased, or is in the process of purchasing, various stores from A&P;

WHEREAS, it is recognized that the efficient and orderly method of establishing and maintaining peaceful and harmonious labor relations and of dealing with problems and controversies arising out of employment is through negotiations and agreement, rather than through strikes and lockouts;

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement the parties agree as follows:

1. APPLICABILITY

a. The Employer represents itself and various Key Food Co-op members relating to the purchase of A&P stores. This Agreement shall apply to all A&P stores acquired by the Employer and/or its Key Food Co-op members directly from A&P.

b. If a Key Food member wishes to sell an A&P banner store within the shorter of (i) 42 months from the date of purchase and (ii) the term of the lease on that store, it will sell the store to (i) a purchaser other than the Co-op willing to recognize the unions representing the employees in that store and to proceed on the terms and conditions of employment under those collective bargaining agreements then in effect; or (ii) the Co-op. If the Co-op is the buyer, it will recognize the unions representing the employees in that store and proceed upon the terms and conditions of employment set forth in the collective bargaining agreements then in effect.

2. OFFER OF EMPLOYMENT

*only walk to work*

a. Upon the opening of its store, or stores, the Employer shall offer employment to current A&P employees before hiring anyone else subject to the terms of this agreement. A minimum of 50% plus 1 employees will be hired by the Employer from A&P employees.

b. The offer shall be made unconditionally without any review or interview.

c. Notwithstanding the above, the Employer may offer a buy-out to any full-time employee currently employed by A&P, before the opening of its store, or stores, or after the probationary period. In such instance, the Employer shall pay to the employee \$400 per each year of service with A&P. Payment shall be made of the aggregate amount in four (4) monthly installments. This buy-out may be voluntary, if offered by the Employer, or in lieu of a layoff. (no payment of entitlements). Buyout in lieu of layoff for one year from date of hire.

*?*

d. Future layoffs of employees not subject to the buy-out in 2(c) shall be by seniority (the last employee hired shall be the first employee laid off) within a classification. In case a buy-out results from a layoff or pursuant to 2(c) above, the affected employee shall have the right of recall based on seniority (the employee with the most seniority shall have the first right of recall) for a period of one year, and shall be entitled to receive the highest rate of pay he or she received prior to the layoff regardless of any payments received from a buy-out.

3. PROBATIONARY PERIOD

a. All full-time and part-time employees shall be on probation for the first thirty (30) days of his or her employment. This probationary period may be extended for an additional thirty (30) day period, but only upon mutual agreement.

b. During the probationary period, the Employer may terminate a full-time or part-time employee with or without cause. However, a full-time employee formerly employed by A&P who is terminated without cause shall be paid \$8,000.00 in severance pay, and the Employer shall make sufficient contributions in order to provide the employee with three (3) months of continued medical coverage after the termination. (no payment of entitlements) A part-time employee formerly employed by A&P who is terminated without cause shall be paid in accordance with the following schedule:

<u>Employment with A&amp;P</u>	<u>Weeks of Buy-Out (based on Avg. Hours of Work in Prior Year)</u>
1-7 years	1 week
8-11 years	2 weeks
12-15 years	3 weeks
16 years	4 weeks

c. No person who passes probation shall be disciplined or discharged except for just cause.

4. HOURS

a. A full-time employee shall be guaranteed an offer of a minimum of 40 hours in the basic regular work week (Monday to Saturday). A full-time employee may work a 10 hour/day, 4 days per week schedule.

b. A part-time employee shall be guaranteed an offer of a minimum of twenty (20) hours of work each week, subject to the employee's availability.

5. WAGES

a. All employees hired directly after being employed at A&P shall be hired at the same rate of pay as he or she received at A&P.

Full-time employees

b. Full-time employees hired from A&P shall receive the following pay increases:

First Increase: \$35.00 per week six (6) months from the date of this Agreement;

Second Increase: \$35.00 per week twelve (12) months after the First Increase;

Third Increase: \$35.00 per week twelve (12) months after the Second Increase;

Fourth Increase: \$2,000 lump sum payment (subject only to FICA withholding) six (6) months after the Third Increase.

c. The minimum hourly rate for a newly-hired full-time employee not hired directly from A&P shall be \$12.00 per hour. Post-probation, the full-time employee shall receive an increase of \$.50 per hour. Thereafter, the full-time employee shall receive an increase of \$35.00 per week on each of his or her anniversary date, i.e., the date of hire.

Part-time employees

d. Part-time employees hired from A&P shall receive the following pay increases:

First Increase: \$.40 per hour six (6) months from the date of this Agreement;

Second Increase: \$.40 per hour twelve (12) months after the First Increase;

Third Increase: \$.40 per hour, twelve (12) months after the Second Increase;

Fourth Increase: \$.40 per hour twelve (12) months, plus a \$1,000 lump sum payment (subject only to FICA withholding), after the Third Increase.

c. The minimum hourly rate of a newly-hired part-time employee shall be the statutory minimum wage. This rate shall be increased by \$.50 per hour after thirty (30) days. Thereafter, the part-time employee shall receive an increase of \$.40 per hour on each of his or her anniversary date.

f. The Employer may reclassify a full-time employee to part-time status within a twelve (12) month period following the expiration of the probationary period but only for objective business or economic reasons, and not for any other reason including discipline, retaliation, or reasons deemed capricious or arbitrary. Upon reclassification, the employee shall retain his or her wage rate and all previously-allowed paid time off.

g. Sunday premium. After thirty (30) days of employment, new full-time employees shall be paid time and a half for each hour worked on a Sunday. After one (1) year of employment, part-time employees shall be paid an additional \$2.00 per hour for each hour worked on a Sunday. After two (2) years of employment, part-time employees shall be paid time and a half of each hour worked on a Sunday. Former A&P employees hired directly from A&P shall be given their Sunday rate of pay for work on Sunday.

6. BENEFITS AND PAID TIME OFF

a. All former A&P employees shall be provided their benefits as received from A&P upon termination from A&P.

Holidays

b. All new full-time employees not hired directly from A&P who have worked 90 or more days and all part-time employees who have worked 120 or more days shall be paid on the following holidays:

- |                           |                  |              |
|---------------------------|------------------|--------------|
| New Year's Day            | Thanksgiving Day | Memorial Day |
| Christmas Day             | Independence Day | Labor Day    |
| Presidential Election Day |                  |              |

Vacation Days

c. All new full-time employees not hired directly from A&P shall receive the following paid vacation days each year:

- |             |                        |
|-------------|------------------------|
| One week    | One year of service    |
| Two weeks   | Two years of service   |
| Three weeks | Seven years of service |
| Four weeks  | Ten years of service   |

d. All new part-time employees not hired directly from A&P shall receive the following paid vacation days each year:

- |             |                        |
|-------------|------------------------|
| One week    | One year of service    |
| Two weeks   | Two years of service   |
| Three weeks | Three years of service |
| Four weeks  | Ten years of service   |

New part-time employees with less than three years of service shall receive the equivalent of 20 hours for each week of vacation pay. New part-time employees

with three years or more of service shall receive the equivalent of 25 hours for each week of vacation pay.

Personal Days:

e. All new full-time employees not hired directly from A&P shall receive the following paid personal days each year:

Two days	One year of service
Four days	Two years of service

f. All new part-time employees not hired directly from A&P shall receive the following paid personal days each year:

One day	One year of service
Two days	Two years of service
Three days	Three years of service

All new part-time employees shall receive the equivalent of four hours pay for each personal day.

Sick Days

g. All new full-time employees not hired directly from A&P shall receive the following paid sick days each year:

One day	Four months of service
Two days	Five months of service
Three days	Six months of service
Four days	Seven months of service
Five days	Eight months of service
Seven days	Two years of service
Eight days	Three years of service

h. All new part-time employees not hired directly from A&P shall receive the following paid sick days each year:

Three days	One year of service
Four days	Two years of service
Five days	Three years of service

Part-time employees shall receive the equivalent of four hours pay for each sick day.

7. HEALTH AND WELFARE FUND AND BENEFITS FUND

a. Full-time employees. The Employer shall pay into a health and welfare fund for each of its full-time employees covered by this Agreement the maximum sum of \$1,000.00 per month. Max of 5% increase each year thereafter.

b. Part-time employees. Part-time employees who average a minimum of thirty (30) hours over a six week period shall be offered ACA-compliant health insurance coverage, with the Employer contributing a maximum of \$400.00 per month and the employee contributing a maximum of \$20.00 per week (or 9.5% of income, whichever is lower). In addition the Employer shall pay for part-time employees who work under 30 hours per week the sum of \$70.00 each month. Maximum of 5% increase each year thereafter.

c. If a qualified employee formerly employed by A&P declines the Employer's offer of healthcare coverage, then the Employer shall pay to the employee a one-time, opt-out payment of \$3,000.00 upon proof that he or she is covered by an ACA-compliant health insurance carrier.

d. All employees formerly employed by A&P shall receive health insurance coverage on the date of hire. All new hires not previously employed by A&P shall receive health care coverage on the 90th day of his or her employment with the Employer.

8. RETIREMENT

a. The Employer shall contribute \$200 per month for each full-time employee and \$75 per month for each part-time employee to an Annuity Fund.

b. Employees formerly employed by A&P shall receive contributions to the Annuity Fund immediately. However, new hires not formerly employed by A&P shall begin receiving contributions to the Annuity Fund until his or her first anniversary date.

9. GRIEVANCE AND ARBITRATION PROCEDURE

a. Any complaint, dispute, or grievance arising between the parties concerning the interpretation or application of this Agreement shall be adjusted in the following manner:

b. A representative of the Union shall meet with the Employer or its designee to discuss the grievance. If after such discussion the grievance is not settled, either party may submit the grievance to a mutually agreed upon arbitrator or if no agreement, the parties will utilize the American Arbitration Association. The decision of the arbitrator shall be final and binding upon the parties and the employees and shall conclusively determine the matter submitted to the arbitrator. The cost of arbitration shall be borne equally by the parties. The grievance and arbitration procedure specified in this Agreement is the sole and exclusive remedy of the parties, and such procedure shall be in lieu of any and all other remedies at law, in equity or otherwise. No individual employee may initiate any arbitration proceeding.

10. DEPARTMENT HEADS

a. All back wall Key Food stores shall have a minimum of one (1) full-time department head, unless it is a wall-to-wall store, wherein it must have three (3) department heads.

b. All Key Food stores which are wall-to-wall stores with over \$325,000.00 in sales per week during a two month period shall have a minimum of four (4) full-time department heads.

11. ADDITIONAL TERMS

a. The parties may negotiate other terms and conditions of employment on or before Key Food begins operation of its business at the former A&P locations. Other than the terms herein, the terms and conditions of employment between the Union and A&P shall not be applied to the Employer unless and until they are negotiated by the parties.

12. FINALITY OF AGREEMENT

a. The parties understand that the Employer is currently negotiating similar agreements with other UFCW locals, and agree that the successful negotiation of such agreements is essential before the agreements herein take effect.

13. DURATION

a. The duration of this agreement shall vary depending on when a particular Key Food store commences operation. For each Key Food store, this agreement shall be in effect for 42 months starting on the day that the store commences operations.

14. Additional Terms

The parties agree that there will be a union security clause, recognition clause, no lie detector clause, management rights clause, no discrimination clause, bulletin board clause, and no employment of minors clause.

During the term of this Agreement, there shall be no lockout by Employer, and no-strike, picketing or hand billing by the Union. Employees shall not be required to cross a picket line in the event of safety issues, and a clause will be agreed upon that permits the waiver of the no-strike clause in the event of a failure by the Employer to make contributions. with all language in these clauses to be agreed upon.

Minimum of four (4) hours if called into work.

Breaks – For FT - 2 15 minute breaks, 1 hour unpaid lunch. PT – 1 15 minute break for each 4 hours worked. 1 hour unpaid lunch (for 8 hours), ½ hour unpaid lunch (for at least 5 ½ up less than 8 hours).

Overtime – overtime over 8 hours in a day (OT over 10 hours for an employee working a 10 hour/day, 4 day per week schedule).

Union Visitation – the union representative will advise the employer of his presence upon arriving at the workplace.

Funds – Employer will continue payment to funds for 13 weeks for illness or disability. The Union and Funds have the right to review the Employer's records.

Funeral Leave – FT – 3 working days. PT – same as FT (pro-rated) Immediate Family.

Jury Duty – Involuntary Jury duty will be two weeks/year (Grand Jury 30 working days over the term of the agreement).

Uniforms – the Employer will furnish/laundry uniforms if required to be worn.

Transfers – ok for employers w/ multiple stores covered by this Agreement. Subject to reasonable radius of home or last store location, reimbursement for additional fares/tolls/gas.

Shop Stewards – the Union may have one shop steward per store. 1 day off w/ pay per year for training

Dated this \_\_\_\_ day of October, 2015

KEY FOOD STORES CO-OPERATIVE, INC.

UFCW LOCAL 342

By: \_\_\_\_\_

By: \_\_\_\_\_

**A-413**

11/2 Changed MOA From 342  
G.C. 17

Garvin, Maria

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**From:** Janel D'Ammassa <jdammassa@UFCW342.ORG>  
**Sent:** Monday, November 02, 2015 6:31 PM  
**To:** Catalano, Douglas  
**Cc:** Lisa O'Leary; Lou Loiacono; Lou Sollicito; Stephen Booras; Margaret Monier; Carolina X. Martinez; Jhana Branker; Sherai Pernell  
**Subject:** Key Food Proposal  
**Attachments:** Local342ProposaltoKeyFood11-2-15.doc

**Filed:** -1  
**NRTID:** !nrtdms:0:!session:US\_DMS:!database:US19XX:!document:50925813,1:

Good Afternoon,

**Sent on behalf of President Richard Abondolo:**

Doug,

The attached document represents the reflection of my notes during our discussions. I don't believe that we are at all at a difference. I am willing to sit with you any time to discuss the terms and conditions for the rest of the agreement. Until then, it is my position that we are covered by the Key Food Industry Agreement for the following reasons. As you know, your employer is doing what they want and not following the rules. I expected this from the beginning, but I'm not very excited about it. I have complete faith in you that you will get it rectified so that we can move on. But not to have temporary provisions in place would be insane. I hope you could sign off on that and understand.

Also understand that it is difficult for me to get my members to join other unions. The understanding I had with the International is that we keep what we have, and that's what I intend to do. Union jurisdiction should not be discussed or even attempted to be addressed by your employers and I'm confident that they'll stay out of it.

I believe we have the dates. If you have any questions about this doc let me know.

\*\*Note: Doug, leave the grievance and arb language alone. I left Kennedy out in good faith. I'm not agreeing to AAA at all. I put 2 in, you can put 2. But with these guys you'll probably lose anyways, they'll follow no rules.

**Janel D'Ammassa**  
**UFCW Local 342**  
 166 East Jericho Turnpike  
 Mineola, NY 11501  
 Tel: (516) 824-3636  
 Fax: (516) 824-3615

Local 342 Proposal to Key Food Co-op

11-2-15

**MEMORANDUM OF AGREEMENT**

Agreement effective October 22, 2015, by and between Key Food Co-Op and assigns (the "Employer") and UFCW Local 342, 166 East Jericho Turnpike, Mineola, New York 11501 (the "Union"):

**WITNESSETH**

WHEREAS, The Great Atlantic & Pacific Tea Company, Inc., and its subsidiaries, affiliates, banners and other related entities ("A&P"), have filed for Chapter 11 bankruptcy relief in the United States Bankruptcy Court of the Southern District of New York in Case No. 15-23007;

WHEREAS, the Union represents the employees at various A&P stores, and the Union and A&P are parties to a collective bargaining agreement;

WHEREAS, the Employer has purchased, or is in the process of purchasing, various stores from A&P;

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement the parties agree as follows:

1. **APPLICABILITY**

a. The Employer represents itself and various Key Food Co-op members relating to the purchase of A&P stores. This Agreement shall apply to all A&P stores acquired by the Employer and/or its Key Food Co-op members directly from A&P.

b. If a Key Food member wishes to sell an A&P banner store within the shorter of (i) 42 months from the date of purchase and (ii) the term of the lease on that store, it will sell the store to (i) a purchaser other than the Co-op willing to recognize the unions representing the employees in that store and to proceed on the terms and conditions of employment under those collective bargaining agreements then in effect; or (ii) the Co-op. If the Co-op is the buyer, it will recognize the unions representing the

employees in that store and proceed upon the terms and conditions of employment set forth in the collective bargaining agreements then in effect up to and including wages and premiums.

2. OFFER OF EMPLOYMENT

a. Upon the opening of its store, or stores, the Employer shall offer employment to all current A&P employees before hiring anyone else subject to the terms of this agreement. All employees in UFCW Local 342 shall be offered work, except in the case where the employer is closing down Seafood Departments in which no cutting, wrapping or processing of fish is involved. The employer shall pay the Seafood employees a severance as stated below. In addition, if the employer decides to open a Seafood Department any time during one (1) year from the date of purchasing the store, the employer shall call back the Seafood employees to be reinstated in their former job at their former rate of pay that they received from A&P.

b. The offer shall be made unconditionally without any review or interview.

c. The employer shall after the thirty (30) day probationary period provide severance to any employee that the employer may lay off for a period of up to one (1) year from the date of hire of that employee. The employer agrees to the following:

- i. The Employer shall pay to the employee \$400 per each year of service with A&P. This shall be paid to those employees who are entitled to severance under the A&P Agreement.
- ii. In addition, the employer shall pay \$800 per year for each year of service with A&P for employees who are not entitled to severance under the A&P Agreement.
- iii. The employer agrees that all layoffs after the thirty (30) day probationary period shall be by seniority within the classification. All employees who have been laid off and paid severance shall also be entitled to three (3) months of medical coverage, which shall be provided by employer by either continuation of current medical coverage, or providing adequate monies to cover the COBRA payments.

### 3. PROBATIONARY PERIOD

a. All full-time and part-time employees shall be on probation for the first thirty (30) days of his or her employment. This probationary period may be extended for an additional thirty (30) day period, but only upon mutual agreement.

b. In addition, the employer agrees that all Part Time employees formerly employed by A&P and who are laid off without cause, those Part Timers shall be paid in accordance with the following schedule below.

c. During the probationary period, the Employer may terminate a full-time or part-time employee with or without cause. However, a full-time employee formerly employed by A&P who is terminated without cause shall be paid \$8,000.00 in severance pay, and the Employer shall make sufficient contributions in order to provide the employee with three (3) months of continued medical coverage after the termination. (no payment of entitlements) A part-time employee formerly employed by A&P who is terminated without cause shall be paid in accordance with the following schedule:

<u>Employment with A&amp;P</u>	<u>Weeks of Buy-Out (based on Avg. Hours of Work in Prior Year)</u>
1-7 years	1 week
8-11 years	2 weeks
12-15 years	3 weeks
16 years	4 weeks

c. No person who passes probation shall be disciplined or discharged except for just cause.

### 4. HOURS

a. A full-time employee shall be guaranteed an offer of a minimum of 40 hours in the basic regular work week (Monday to Saturday). A full-time employee may work a 10 hour/day, 4 days per week schedule.

b. A part-time employee shall be guaranteed an offer of a minimum of twenty (20) hours of work each week, subject to the employee's availability.

5. WAGES

a. All employees hired directly after being employed at A&P shall be hired at the same rate of pay as he or she received at A&P. In addition, those employees who worked the first hour of each week and who were receiving for that hour shall be paid their regularly hourly rate of pay upon hiring.

Full-time employees

b. Full-time employees hired from A&P shall receive the following pay increases:

First Increase: \$35.00 per week six (6) months from the date of this Agreement;

Second Increase: \$35.00 per week twelve (12) months after the First Increase;

Third Increase: \$35.00 per week twelve (12) months after the Second Increase;

Fourth Increase: \$2,000 lump sum payment (subject only to FICA withholding) six (6) months after the Third Increase.

c. The minimum hourly rate for a newly-hired full-time employee not hired directly from A&P shall be \$12.00 per hour. Post-probation, the full-time employee shall receive an increase of \$.50 per hour. Thereafter, the full-time employee shall receive an increase of \$35.00 per week on each of his or her anniversary date, i.e., the date of hire.

Part-time employees

d. Part-time employees hired from A&P shall receive the following pay increases:

First Increase: \$.40 per hour six (6) months from the date of this Agreement;

Second Increase: \$.40 per hour twelve (12) months after the First Increase;

Third Increase: \$.40 per hour twelve (12) months after the Second Increase;

Fourth Increase: \$.40 per hour twelve (12) months, plus a \$1,000 lump sum payment (subject only to FICA withholding), after the Third Increase.

e. The minimum hourly rate of a newly-hired part-time employee shall be the statutory minimum wage. This rate shall be increased by \$.50 per hour after thirty (30) days. Thereafter, the part-time employee shall receive an increase of \$.40 per hour on each of his or her anniversary date.

f. The Employer may reclassify newly hired full-time employee to part-time status only in lieu of a layoff within a twelve (12) month period following the expiration of the probationary period but only for objective business or economic reasons, and not for any other reason including discipline, retaliation, or reasons deemed capricious or arbitrary. Upon reclassification, the employee shall retain his or her wage rate and all previously-allowed paid time off.

g. Sunday premium. After thirty (30) days of employment, new full-time employees shall be paid time and a half for each hour worked on a Sunday. After one (1) year of employment, part-time employees shall be paid an additional \$2.00 per hour for each hour worked on a Sunday. After two (2) years of employment, part-time employees shall be paid time and a half of each hour worked on a Sunday. Former A&P employees hired directly from A&P shall be given their Sunday rate of pay for work on Sunday.

6. BENEFITS AND PAID TIME OFF

a. All former A&P employees shall be provided their benefits as received from A&P upon termination from A&P.

Holidays

b. All new hire full-time employees not hired directly from A&P who have worked 90 or more days and all part-time employees who have worked 120 or more days shall be paid on the following holidays:

- |                           |                  |              |
|---------------------------|------------------|--------------|
| New Year's Day            | Thanksgiving Day | Memorial Day |
| Christmas Day             | Independence Day | Labor Day    |
| Presidential Election Day |                  |              |

Vacation Days

c. All new hire full-time employees not hired directly from A&P shall receive the following paid vacation days each year:

- |             |                        |
|-------------|------------------------|
| One week    | One year of service    |
| Two weeks   | Two years of service   |
| Three weeks | Seven years of service |
| Four weeks  | Ten years of service   |

d. All new hire part-time employees not hired directly from A&P shall receive the following paid vacation days each year:

- |             |                        |
|-------------|------------------------|
| One week    | One year of service    |
| Two weeks   | Two years of service   |
| Three weeks | Three years of service |
| Four weeks  | Ten years of service   |

New part-time employees with less than three years of service shall receive the equivalent of 20 hours for each week of vacation pay. New part-time employees with

three years or more of service shall receive the equivalent of 25 hours for each week of vacation pay.

Personal Days

e. All new full-time employees not hired directly from A&P shall receive the following paid personal days each year:

Two days	One year of service
Four days	Two years of service

f. All new part-time employees not hired directly from A&P shall receive the following paid personal days each year:

One day	One year of service
Two days	Two years of service
Three days	Three years of service

All new part-time employees shall receive the equivalent of four hours pay for each personal day.

Sick Days

g. All new full-time employees not hired directly from A&P shall receive the following paid sick days each year:

One day	Four months of service
Two days	Five months of service
Three days	Six months of service
Four days	Seven months of service
Five days	Eight months of service
Seven days	Two years of service
Eight days	Three years of service

h. All new part-time employees not hired directly from A&P shall receive the following paid sick days each year:

Three days	One year of service
Four days	Two years of service
Five days	Three years of service

Part-time employees shall receive the equivalent of four hours pay for each sick day.

7. HEALTH AND WELFARE FUND AND BENEFITS FUND

- a. Full-time employees. The Employer shall pay into a the Local 338 health and welfare fund for each of its full-time employees covered by this Agreement. the maximum sum of \$1,000.00 per month. Max of 5% increase each year thereafter. In addition, the employer shall sign a participation agreement with the fund.
- b. The employer and the Union agree that after twelve (12) months of contributions into the Local 338 Health & Welfare Fund, UFCW Local 342 shall have the right to move those employees into a Local 342 Healthcare Fund and receive contributions from the employer on behalf of each employee to that Fund.
- c. The employer and the Union agree that the above formula shall also be implemented for Part Time employees over thirty (30) hours.
- d. Part-time employees. Part-time employees who average a minimum of thirty (30) hours over a six week period shall be offered ACA-compliant health insurance coverage, with the Employer contributing a maximum of \$400.00 per month and the employee contributing a maximum of \$20.00 per week (or 9.5% of income, whichever is lower).
- e. In addition, the Employer shall pay for part-time employees who work thirty (30) or more hours per week the sum of \$125 per month to the Local 342 Healthcare Fund for a

service plan in the case where any employee working more than thirty (30) hours per week decline the employer's offer of healthcare coverage.

f. In addition, the employer shall pay to employee a one (1) time opt out payment of \$1,500 upon proof that the employee is covered by an ACA-compliant health insurance carrier.

g. In addition, the Employer shall pay for part-time employees who work under thirty (30) hours per week the sum of \$75.00 each month. Maximum of 5% increase each year thereafter.

h. All employees formerly employed by A&P shall receive health insurance coverage on the date of hire. All new hires not previously employed by A&P shall receive health care coverage on the 90th day of his or her employment with the Employer.

8. RETIREMENT

a. The Employer shall contribute \$200 per month for each full-time employee and \$75 per month for each part-time employee to an Annuity Fund.

b. Employees formerly employed by A&P shall receive contributions to the Annuity Fund immediately. However, new hires not formerly employed by A&P shall begin receiving contributions to the Annuity Fund until his or her first anniversary date.

9. GRIEVANCE AND ARBITRATION PROCEDURE

a. Any complaint, dispute, or grievance arising between the parties concerning the interpretation or application of this Agreement shall be adjusted in the following manner:

b. A representative of the Union shall meet with the Employer or its designee to discuss the grievance. If after such discussion the grievance is not settled, either party may submit the grievance to a

mutually agreed upon panel of arbitrators. Each party shall pick two (2) arbitrators. The Union's picks are as follows: Elliot Shriftman and Ron Betso. The decision of the arbitrator shall be final and binding upon the parties and the employees and shall conclusively determine the matter submitted to the arbitrator. The cost of arbitration shall be borne equally by the parties. The grievance and arbitration procedure specified in this Agreement is the sole and exclusive remedy of the parties, and such procedure shall be in lieu of any and all other remedies at law, in equity or otherwise. No individual employee may initiate any arbitration proceeding.

10. DEPARTMENT HEADS

a. All back wall Key Food stores shall have a minimum of two (2) full-time department head, and a minimum of three (3) department heads where a Seafood Department is present, unless it is a wall-to-wall store, wherein it must have four (4) department heads.

11. ADDITIONAL TERMS

a. The Employer agrees to follow the terms and conditions of the Key Food Industry Agreement unless otherwise spelled out in this agreement, or unless negotiated otherwise.

12. FINALITY OF AGREEMENT

a. The parties understand that the Employer is currently negotiating similar agreements with other UFCW locals, and agree that the successful negotiation of such agreements is essential before the agreements herein take effect.

13. DURATION

a. The duration of this agreement shall vary depending on when a particular Key Food store commences operation. For each Key Food store, this agreement shall be in effect for 42 months starting on the day that the store commences operations.

14. Additional Terms

All of the following articles will be covered by the Key Food Industry Agreement, in addition to any others not stated here. Only those that have been signed off on in this agreement will change from what is stated in the Key Food Industry Agreement.

Strike Language – Strike language in the Key Food Industry Agreement.

Breaks – For FT – 2 fifteen (15) minute breaks, 1 hour unpaid lunch. PT – 1 fifteen (15) minute break for each 4 hours worked. 1 hour unpaid lunch (for 8 hours), ½ hour unpaid lunch (for at least 5 ½ up less than 8 hours).

Overtime – overtime over 8 hours in a day (OT over 10 hours for an employee working a 10 hour/day, 4 day per week schedule).

Union Visitation – the union representative will advise the employer of his presence upon arriving at the workplace.

Funds – Employer will continue payment to funds for 13 weeks for illness or disability. The Union and Funds have the right to review the Employer's records.

Funeral Leave – FT – 3 working days. PT – same as FT (pro-rated) Immediate Family.

Jury Duty – Involuntary Jury duty will be two weeks/year (Grand Jury 30 working days over the term of the agreement).

Uniforms – Uniform Language in the Key Food Industry Agreement.

Transfers – Transfer Language in the Key Food Industry Agreement.

Shop Stewards – the Union may have one shop steward per store. 1 day off w/ pay per year for training.

The Union is willing to sit and discuss any terms and conditions other than those signed off on in this agreement where both parties have agreed. In addition, it will remain the Union's position that until then, the Employer shall be governed by the Key Food Industry Agreement and this document.

Dated this \_\_\_\_ day of October, 2015

KEY FOOD STORES CO-OPERATIVE, INC.

UFCW LOCAL 342

By: \_\_\_\_\_

By: \_\_\_\_\_

A-426

11/24 Transition Agmt  
From 342

G.C. 20

Garvin, Maria

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**From:** Sherai Pernell <spernell@UFCW342.ORG>  
**Sent:** Tuesday, November 24, 2015 12:16 PM  
**To:** gatorsbro@aol.com  
**Cc:** Catalano, Douglas; Jhana Branker  
**Subject:** Local 342 Key Food Transition Agreement- Draft  
**Attachments:** Local 342 Key Food Transition Agreement(Draft)- 11-23-15.pdf  
  
**Importance:** High

Good Afternoon Mr. Mandell,

Please see and review the attached drafted Local 342 Key Food Transition Agreement Proposal.

Thank you.

Sherai Pernell  
UFCW Local 342  
[SPernell@ufcw342.org](mailto:SPernell@ufcw342.org)

11/23/2015

TRANSITION AGREEMENT

**THIS AGREEMENT** made between **Key Food Co-op**, hereinafter called the "Employer", and the **United Food and Commercial Workers Union Local 342**, hereinafter called the "Union"

WHEREAS, Key Food intends to assume control of A&P stores; and

WHEREAS, Key Food will hire the employees currently working at those stores.

WHEREAS, Key Food has positions available necessary to employ all employees under Local 342 jurisdiction. The employees will be required to agree with the company's offer which is governed by the current Key Food Agreement.

WHEREAS, those employees are currently represented by UFCW Local 342;

Employees eligible for any of the terms and conditions of this agreement are those hired in any converted store at the time of the conversion of that store.

WHEREAS, The Great Atlantic & Pacific Tea Company, Inc., and its subsidiaries, affiliates, and other related entities, ("A&P") have filed for Chapter 11 bankruptcy relief in the United States Bankruptcy Court of the Southern district of New York in Case No. 15-23007;

WHEREAS, the Union represents the employees at various A&P stores, and the Union and A&P are parties to the collective bargaining agreement;

WHEREAS, the Employer has purchased, or is in the process of purchasing, various stores from A&P;

NOW, THEREFORE, in consideration of the mutual promises contained in the Agreement the parties agree as follows:

OFFER OF EMPLOYMENT

- a. The employer agrees to offer a buy out to any full time employee who was employed by A&P, prior to being hired by the employer, who is terminated for any reason during the probationary period and/or for just cause anytime thereafter. In such instance the employer shall pay to the employee \$800 per week for each year of service with A&P if that employee did not receive severance from A&P. For employees who received A&P severance, the employer shall pay those employees \$400.00 for each year of service with A&P. This includes employees the employer let go or submitted to be let go by A&P prior to the acquisition.
- b. Layoffs shall be by seniority (the last employee hired shall be the first employee laid off) within classification. In case a buy-out results from a layoff, the affected employee shall

11/23/2015

have the right of recall) for a period of one year, and shall be entitled to receive the highest rate of pay he or she received prior to the layoff regardless of any payments received from a buy-out as described paragraph "a" above. For purposes of layoff, A&P employees subject to this agreement will keep their original A&P Company hire date within the acquired group or store.

### PROBATIONARY PERIOD

- a. All employees shall be on a probation for the first thirty (30) days of his or her employment beginning from the date the employer took possession of the stores. This probationary period may be extended for an additional thirty (30) day period, but only by mutual agreement.
- b. During the probationary period, the Employer may terminate an employee with or without cause, and said employee will receive the buyout as described in paragraph "a" of "Offer of Employment".
- c. No non-probationary employee shall not be disciplined or discharged except for just cause.

### HOURS

- a. All Full Time employees shall be guaranteed and offered a minimum of forty (40) hours per week. All employees may voluntarily work four (4) ten (10) hour days. A week's work for all regular full-time employees shall be forty (40) hours per week, consisting of five (5) eight (8) hour days.
- b. A part time employee shall be guaranteed an offer of a minimum of twenty (20) hours of work each week, subject to the employee's availability.

### WAGES

All employees hired from A&P shall remain at their current rate of pay. Key Food will consider these employees as new employees for purposes of any subsequent wage or scale increases. In addition, all A&P employees hired by Key Food who have had their first hour reduced to minimum wage, that hour shall be restored immediately upon being hired by the Key Food company.

#### Full-Time Employees

Full-time employees hired from A&P shall receive the following pay increases at the dates set forth below:

First Increase: \$35.00 per week six (6) months from the date of this agreement;

11/23/2015

Second Increase: \$35.00 per week twelve (12) months after the First Increase;

Third Increase: \$35.00 per week (12) months after the Second Increase;

\$2,000 lump sum (FICA only) six (6) months after the Third Increase.

- a. The minimum hourly rate for a newly-hired full-time employee shall be \$12.00 per hour. Post probation, the full time employee shall receive an increase of \$0.50 per hour. Thereafter, the full time employee shall receive an increase of \$35.00 per week on each of his or her anniversary date, i.e., the date of hire. No prior A&P employee shall be considered a new hire.
- b. The minimum hourly rate of new hired part time employee shall be the statutory minimum wage except for part time employees hired in the meat department who shall have a minimum wage of \$10.00 per hour. This rate shall be increased by \$0.50 per hour after thirty (30) days. Thereafter, the part time employee shall receive an increase of \$0.40 per hour on each of his or her anniversary date.
- c. The Employer may reclassify the full time employee to part time status within a twelve (12) month period with notification to the union following the expiration of the probationary period but only for objective business or economic reasons, and not for any other reason including discipline, retaliation, or reason deemed capricious or arbitrary. Upon reclassification, the employee shall retain his or her wage rate and all previously allowed paid time off.
- d. Sunday premium. After thirty (30) days of employment, full time employees shall be paid time and a half for each hour worked on a Sunday. After one (1) year of employment, part time employees shall be paid an additional \$2.00 per hour for each hour worked on a Sunday. After two (2) years of employment, part time employees shall be paid time and a half of each hour worked on a Sunday. Former A&P employees shall be given credit for the time worked at A&P in calculating Sunday premium.

Part-time employees:

Part-time employees hired from A&P shall receive the following pay increases at the dates set forth below:

First Increase: \$0.40 per hour six (6) months from the date of this agreement;

Second Increase: \$0.40 per hour twelve (12) months after the First Increase;

Third Increase: \$0.40 per hour (12) months after the Second Increase;

\$1,000 lump sum (FICA only) six (6) months after the Third Increase.

11/23/2015

PAID TIME OFF

- a. All employees hired from A&P shall continue their entitlements under the A&P agreement according to vacations, sick leave, holidays and personal days.

Holidays

- a. All newly hired full-time employees who have worked 90 or more days and all newly hired part-time employees who have worked 120 or more days, excluding former A&P employees, shall be paid on the following holidays:

New Year's Day	Thanksgiving Day	Memorial Day
Christmas Day	Independence Day	Labor Day
Presidential Election Day		

Vacation Days

- b. All newly hired part time employees, excluding former A&P employees, shall receive the following paid vacation days each year:

One week	One year of service
Two weeks	Two years of service
Three weeks	Three years of service
Four weeks	Ten years of service

Part time employees with less than three years of service shall receive the equivalent of 20 hours for each week of vacation pay. Part time employees with three years or more of service shall receive the equivalent of 25 hours for each week of vacation pay.

Personal Days

- c. All newly hired full time employees shall receive the following paid personal days each year:

Two days	One year of service
Four days	Two years of service

- d. All newly hired part time employees shall receive the following paid personal days each year:

11/23/2015

One day	One year of service
Two days	Two years of service
Three days	Three years of service

Part time employees shall receive the equivalent of four hours pay for each personal day.

#### Sick Days

- e. All newly hired full time employees shall receive the following paid sick days each year:

One day	Four months of service
Two days	Five months of service
Three days	Six months of service
Four days	Seven months of service
Five days	Eight months of service
Seven days	Two years of service
Eight days	Three years of service

- f. All newly hired part time employees shall receive the following paid sick days each year:

Three days	One year of service
Four days	Two years of service
Five days	Three years of service

Part time employees shall receive the equivalent of four hours pay for each sick day.

#### HEALTH AND WELFARE FUND

- a. Full time employees. The Employer shall pay to the Local 342 Health and Welfare Fund for each of its full time employees covered by this Agreement the sum of \$1,000.00 per month. Max of 5% increase each year thereafter.
- b. Part time employees. The Employer shall pay to the Local 342 Health and Welfare Fund for each of its part time employees covered by this Agreement the sum of \$95.00 per month. Max of 5% increase each year thereafter.
- c. All employees formerly employed by A&P shall receive health insurance coverage on the date of hire. All new hires not previously employed by A&P shall receive healthcare coverage on the 90<sup>th</sup> day of this or her employment with the Employer.

11/23/2015

- d. All part time cutters or wrappers that were formerly full-time at A&P and hired or reduced to part-time, shall receive single coverage for healthcare at a rate of \$550.00 per month. The employer may offer those employees \$2,000.00 per year to waive the coverage and the employer will make the part time contributions outlined in paragraph B above at \$95.00 per month.
- e. Effective December 1, 2015, if the Trustees deem it necessary to maintain the Plan of Benefits in effect as of December 1, 2015, they shall be empowered to require the contributing Employer to pay an additional five percent (5%) contribution monthly. In the event income to the Welfare Fund must be increased in order to maintain the current level of benefits, the matter will be referred to the Trustees for resolution.
- f. Shops with more than 50 part time employees working under the corporate name, corporate name not being Key Food, but whatever corporation the Employer operates that store under, has more than 50 employees working 30 or more hours per week, those employees shall be placed into a Bronze Plan at a rate of \$450.00 per month with a 5% call in each year of the agreement.

#### ANNUITY FUND

- a. The Employer shall contribute \$140.00 per month for each full time employee and \$50.00 per month for each part time employee to the Local 342 Annuity Fund six months after the signing of the agreements.
- b. Employees formerly employed by A&P shall receive contributions to the Local 342 Annuity Fund immediately. However, new hires not formerly employed by the A&P shall begin receiving contributions to the Local 342 Annuity Fund on his or her anniversary date.

#### SAFETY-EDUCATION-CULTURAL FUND

The Employer agrees to the following for the Safety Education and Cultural Fund:

Effective thirty (30) days after the signing of this agreement, the Employer agrees to contribute \$20.00 for each full time and part time employee currently on the payroll to the Safety Education and Cultural Fund. The employer agrees to contribute \$20.00 for each new hire going forward.

#### LEGAL FUND

The Employer agrees to the following for the Legal Fund;

11/23/2015

Effective thirty (30) days after the signing of this agreement, the Employer agrees to contribute \$10.00 for each full time and part time employee currently on the payroll to the Legal Fund. The Employer also agrees to contribute \$10.00 for each new hire going forward.

#### GRIEVANCE AND ARBITRATION PROCEDURE

- a. Any complaint, dispute or grievance arising between the parties concerning the interpretation or application of this Agreement shall be adjusted in the following manner:
- b. A representative of the Unions shall meet with the Employer or its designee to discuss the grievance. If after such discussion the grievance is not settled, either party may submit the grievance to arbitrator Elliott Shriftman, if not available Ron Betso and/or Federal Mediator. The cost of the arbitration shall be borne equally by the parties. The grievance and arbitration procedure shall be in lieu of any and all other remedies of the law, in equity or otherwise. No individual employee may initiate any arbitration proceeding.

#### DEPARTMENT HEADS

In the case of new stores that have been purchased in respect to the A&P Agreement, the Employer agrees to retain one (1) Union Department Head for each department under Local 342's jurisdiction.

#### PART TIME CUTTERS

The employer may use two (2) part time cutters in meat departments that are doing less than \$30,000 in weekly sales. These part time cutters will be paid the prevailing union wage rate.

Part time cutters will work a minimum of eight (8) hours per day but no more than twenty-four (24) hours per week.

These cutters shall receive an hourly wage increase of \$1.00 per year on their anniversary date of hire, but no more than \$3.00 in one contract term.

Former A&P cutters shall be afforded the opportunity to accept employment first as day cutters.

Part time cutters shall remain Part-Time status for a period not to exceed three (3) years. Upon the completion of three years, that part-time employee shall be made full-time and receive all full time benefits including family coverage.

11/23/2015

**DURATION**

The duration of this agreement shall vary depending on when a particular Key Food store commences operation. For each Key Food, this agreement shall be in effect for 36 months starting on the day that the store commences operations.

**Additional Terms:**

Note the substance of these additional terms is derived from the 2007-2011 Local 342 A&P CBA, except where indicated otherwise. The parties agree to review the CBA for the inclusion of additional terms in this MOA.

Strike Language – Strike language in the A&P Industry Agreement.

Breaks – For FT – 2 fifteen (15) minute breaks, 1 hour unpaid lunch. PT – 1 fifteen (15) minute break for each 4 hours worked. 1 hour unpaid lunch (for 8 hours), ½ hour unpaid lunch (for at least 5 ½ up less than 8 hours).

Overtime – overtime over 8 hours in a day (OT over 10 hours for an employee working a 10 hour/day, 4 day per week schedule).

Union Visitation – the union representative will advise the employer of his presence upon arriving at the workplace.

Employees called into work overtime, will be paid a minimum of 4 hours overtime pay.

Funds – Employer will continue payment to funds for 13 weeks for illness or disability. The Union and Funds have the right to review the Employer's records.

Funeral Leave – FT – 3 working days. PT – same as FT (pro-rated) Immediate Family.

Jury Duty – Involuntary Jury duty will be two weeks/year (Grand Jury 30 working days over the term of the agreement).

Uniforms – Uniform Language in the Key Food Industry Agreement.

Transfers – Transfer Language in the Key Food Industry Agreement.

Shop Stewards – the Union may have one shop steward per store. 1 day off w/ pay per year for training

11/23/2015

Any employee whose membership is terminated by the Union Executive Board or the International Union, the Employer shall be required to discharge said employee nor shall the Employer be permitted to hire said employee under the Labor Management Relations Act. The Employer shall have a ten (10) day notice to terminate, in writing, by the Union Executive Board.

Any employee who relieves a department head for the day, whether it be for the day off, sick day, compensation, etc., those employees shall receive the difference of their pay and the department head's rate of pay for the period they are Acting Manager.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
For Key Food

\_\_\_\_\_  
For UFCW Local 342

**11-23-2015 - This Agreement shall not be enforced and considered accepted until all UFCW Locals have completed their agreements with Key Food.**

Local 342 agrees to sign the above upon notification from the other UFCW Local unions that they have completed their understanding with the company.

G.C. 21

**Lisa O'Leary**

**From:** Richard Abondolo <ravaunion@gmail.com>  
**Sent:** Friday, November 27, 2015 4:21 PM  
**To:** Sharon Konzelman; Lisa O'Leary; Lou Sollicito; Lou Loiacono; Kelly Egan; Stephen Booras; douglas.catalano@nortonrosefulbright.com  
**Subject:** Re: Local 342 Key Food Transition Agreement (Draft)

Sharon

There is very little we are willing to change, you were able to achieve most of your ask there are certain things that we will need regardless the most important of all is the list of people we have for severance we need to get that agreed on before we talk about changes if any at all

A list of people with the amounts will be sent today and you could let us know that its agreeable or if there is any problems

our understanding is that all that were in the store working that your people fired will receive severance of 800 per year of service or 400 per year of service with the AP depending on their status where they fall in our formula with no cap, and the employee will be required to sign a acceptable release that's what we understand is the proposal

Please copy Lisa O'Leary on all future emails thanks

On Wed, Nov 25, 2015 at 1:29 PM, Sharon Konzelman <

> wrote:

Richard

Following is the information that we have been requested to be done regarding:

1. The document should be entitled a Memorandum of Agreement as the Co-Op Members will not be "transitioning" to a new agreement.
2. We intend to ask each of the affected Members to execute the MOA.
3. Probationary Period: Delete "not" in the sentence.
4. The "Whereas" clauses are incorrect, but we will provide you with those Whereas clauses we had in the document we had forwarded to Local 342 several weeks ago.
5. Offer of employment – (a) While the language is ambiguous, we agree to the concept that the severance payment would be \$800 for each year of service with A&P if the employee had not been entitled to receive a severance payment from A&P, and the buy-out amount will be \$400 if A&P did provide a severance payment to an A&P employee. These payments will only be provided to those employees who were not hired by our Members. (b) The seniority for lay-offs is acceptable but only applies down the line in the event that a number of full-time employees continue to be employed, but seniority is not relevant to buy-outs by the Members.
6. Probationary Period – Acceptable.

7. Hours – Acceptable.
8. Wages – Acceptable except that there may be a typo concerning when the \$2,000 lump sum payment is to be paid.
9. Paid time off – Acceptable.
10. Health & Welfare – Acceptable, except that part-time cutters in (d) must work at least 32 hours per week on average. For (e), the five percent additional contribution shall be limited to once during the life of the agreement. The five percent “call” in (f) shall also be limited to once during the life of the agreement.
11. Annuity Fund – Acceptable.
12. Safety-Education-Cultural Funds- \$10 per month.
13. Legal Fund - \$5 per month.
14. Grievance and Arbitration procedure: A mutually agreed upon arbitrator or the AAA.
15. Department heads – Unless it is a wall-to-wall store, only one department head for all meat, seafood, or deli departments shall be required.
16. Part time cutters – Acceptable but the weekly sales threshold should be \$50,000, and the part-time cutter may work during the regular workweek 32 hours. Retirees may be utilized in those roles. " Part- time cutters need not become FT after 3 years
17. Duration – 42 months.
18. Additional Terms – reference to the A&P or Key Food industry agreements should be deleted, and certain of those provisions listed need to be discussed. However, breaks, overtime, union visitation, four hours minimum overtime, funds, funeral leave, jury duty, and shop steward provisions are all acceptable.
19. Union security clause: while the Members will agree to the Union security clause, they cannot agree to terminate an employee because his membership was terminated by the Union executive board or the International Union.
20. Full relief pay for replacement Personnel in the absence of the department manager commences after one week's relief service by the replacement worker
21. The no -strike clause must include a commitment that there will be no - hand billing, informational picketing , or depictions during the length of the CBA

**A-438**

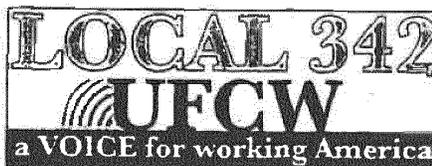


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For more information please visit

G.C. 22

Richard Abondolo  
President

Deana Telmany  
Director of Organization



Lisa O'Leary  
Secretary-Treasurer

Tenisha Williamson  
Recording Secretary  
Executive Assistant to the President

Mr. Alvin Diaz  
Mr. Jose Diaz  
Key Food

12/1/2015

RE: Demand to Bargain and conclude collective bargaining agreement

Dear Mr. Diaz and Mr. Diaz:

UFCW Local 342 writes to you as the Key Food owner/employer of the store your company recently purchased from A&P: the former Waldbaum's #613 located on Union Turnpike in Glen Oaks, NY.

The Asset Purchase Agreement Key Food signed with the A&P for Key Food purchased stores (Key Food APA), including the store listed above, states in pertinent part:

"Section 6.4

- (a) Obligation of Buyer. With respect to Covered Employees who are represented by an Affected Union and are legally authorized to work in the capacity in which they were last employed immediately prior to the Closing ("Affected Union Covered Employees"), at least 10 days prior to the Closing Date, Buyer shall make an offer of employment (emphasis added), which shall be effective as of the Closing Date and contingent upon the Closing, and shall be consistent with the terms and conditions required by the governing Affected Labor Agreements or Modified Labor Agreements (emphasis added), to the extent applicable. With respect to any Affected Union Covered Employee who is on long-term disability leave of absence as of the Closing Date, such offer shall be contingent upon such Affected Union Covered Employee returning to active status within a period of six months following the Closing. Notwithstanding the foregoing, nothing herein shall be construed as to prevent Buyer from terminating the employment of any Covered Employee, consistent with applicable law and the governing Affected Labor Agreements or the Modified Labor Agreements, as applicable, at any time following the Closing Date (emphasis added). Buyer shall have no obligation with respect to any Covered employee, who, as of immediately prior to the Closing, is not represented by an Affected Union."

UFCW Local 342, and the former A&P employees who are represented by Local 342, are third party beneficiaries of this Asset Purchase Agreement between Key Food and the A&P Tea Company. The approval by the bankruptcy court of the purchase of the former A&P stores by Key Food and your company, was contingent on this language that is within the Asset Purchase Agreement. Obviously the

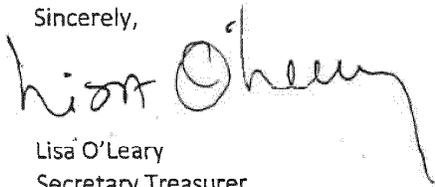
Union does not believe Section 6.4 (d) will support a neutral finding the Affected Unions or Covered Employees are not third-party beneficiaries.

UFCW Local 342 intends to enforce the Key Food APA, but in order to save the employer the expense of litigation on this matter, as well as the expense to defend various other labor related actions UFCW Local 342 may have a legal right to pursue, UFCW Local 342 writes to ask the employer to acknowledge this obligation, and requests that you conclude a labor agreement on behalf of the Local 342 members in the store purchased from A&P. We are available to conclude at any time this week with the exception of tomorrow, December 2<sup>nd</sup>, although we could possibly be available after 3 PM if the employer is interested. Please contact us by emailing Janel D'Amassa or calling Ms. D'Amassa at (516) 747-5980 to set up a mutually convenient time to conclude the collective bargaining agreement. You may also contact me of course, if you cannot for some reason get Ms. D'Amassa.

UFCW Local 342 has attempted over several months to conclude an agreement which could have been mutually acceptable to the various Key Food Co-Op members who are now the employers of the employees in your store, and other Key Food stores. As you are aware, the Co-Op through its attorney continues to make demands which violate the Key Food APA and the rights of the former A&P employees who Local 342 represents. We feel the time has come to conclude with the actual employer. Local 342 is under no obligation to bargain with the Key Food Co-Op except for the two stores the Co-Op purchased. Local 342 has tried to cooperate with the request of the Co-Op to bargain one agreement to cover all employers, but the Co-Op has not made it possible to conclude. We must at this point abandon that accommodation.

In closing Local 342 requests that you comply with applicable labor law, and bargain with Local 342 to conclusion as to the former A&P store your company purchased. If you refuse to bargain to conclusion with Local 342 directly, then the Union will have no choice but to pursue all legal remedies available to fairly represent our members employed by your company. Please contact us at your earliest convenience.

Sincerely,



Lisa O'Leary  
Secretary Treasurer

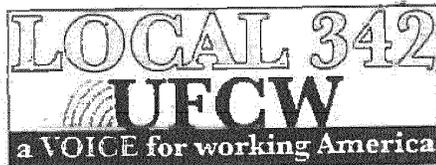
Cc: Lou Loiacono, UFCW Local 342 Executive Director  
Lou Sollicito, UFCW Local 342 Executive Director

**Lisa O'Leary**

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**From:** Lisa O'Leary  
**Sent:** Monday, November 30, 2015 6:03 PM  
**To:** 'diazjose1223@yahoo.com'  
**Cc:** Lou Loiacono; Lou Sollicito  
**Subject:** Bargaining Demand from UFCW Local 342  
**Attachments:** Scan0179.pdf

Dear Mr. Diaz: in the attachment please find a letter to you and your company from UFCW Local 342. Also, we request your company name and address, and other official contact information. Thank you, Lisa O'Leary



Richard Abondolo  
President

Deana Telmany  
Director of Organization

Lisa O'Leary  
Secretary-Treasurer

Tenisha Williamson  
Recording Secretary  
Executive Assistant to the President

Mr. Jamie Luna  
Key Food

12/1/2015

RE: Demand to Bargain and conclude collective bargaining agreement

Dear Mr. Luna:

UFCW Local 342 writes to you as the Key Food owner/employer of the store your company recently purchased from A&P: the former Food Emporium #762 located on Riverdale Avenue in the Bronx, NY.

The Asset Purchase Agreement Key Food signed with the A&P for Key Food purchased stores (Key Food APA), including the store listed above, states in pertinent part:

"Section 6.4

- (a) Obligation of Buyer. With respect to Covered Employees who are represented by an Affected Union and are legally authorized to work in the capacity in which they were last employed immediately prior to the Closing ("Affected Union Covered Employees"), at least 10 days prior to the Closing Date, Buyer shall make an offer of employment (emphasis added), which shall be effective as of the Closing Date and contingent upon the Closing, and shall be consistent with the terms and conditions required by the governing Affected Labor Agreements or Modified Labor Agreements (emphasis added), to the extent applicable. With respect to any Affected Union Covered Employee who is on long-term disability leave of absence as of the Closing Date, such offer shall be contingent upon such Affected Union Covered Employee returning to active status within a period of six months following the Closing. Notwithstanding the foregoing, nothing herein shall be construed as to prevent Buyer from terminating the employment of any Covered Employee, consistent with applicable law and the governing Affected Labor Agreements or the Modified Labor Agreements, as applicable, at any time following the Closing Date (emphasis added). Buyer shall have no obligation with respect to any Covered employee, who, as of immediately prior to the Closing, is not represented by an Affected Union."

UFCW Local 342, and the former A&P employees who are represented by Local 342, are third party beneficiaries of this Asset Purchase Agreement between Key Food and the A&P Tea Company. The approval by the bankruptcy court of the purchase of the former A&P stores by Key Food and your company, was contingent on this language that is within the Asset Purchase Agreement. Obviously the Union does not believe Section 6.4 (d) will support a neutral finding the Affected Unions or Covered Employees are not third party beneficiaries.

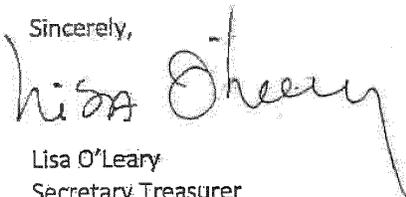
2571 Arthur Kill Road • Staten Island, NY 10309 • 718-982-0342

UFCW Local 342 intends to enforce the Key Food APA, but in order to save the employer the expense of litigation on this matter, as well as the expense to defend various other labor related actions UFCW Local 342 may have a legal right to pursue, UFCW Local 342 writes to ask the employer to acknowledge this obligation, and requests that you conclude a labor agreement on behalf of the Local 342 members in the store purchased from A&P. We are available to conclude at any time this week with the exception of tomorrow, December 2<sup>nd</sup>, although we could possibly be available after 3 PM if the employer is interested. Please contact us by emailing Janel D'Ammassa or calling Ms. D'Ammassa at (516) 747-5980 to set up a mutually convenient time to conclude the collective bargaining agreement. You may also contact me of course, if you cannot for some reason get Ms. D'Ammassa.

UFCW Local 342 has attempted over several months to conclude an agreement which could have been mutually acceptable to the various Key Food Co-Op members who are now the employers of the employees in your store, and other Key Food stores. As you are aware, the Co-Op through its attorney continues to make demands which violate the Key Food APA and the rights of the former A&P employees who Local 342 represents. While we appreciate that you have kept the lines of communication open between your company and Local 342, we feel the time has come to conclude with the actual employer. Local 342 is under no obligation to bargain with the Key Food Co-Op except for the two stores the Co-Op purchased. Local 342 has tried to cooperate with the request of the Co-Op to bargain one agreement to cover all employers, but the Co-Op has not made it possible to conclude. We must at this point abandon that accommodation.

In closing Local 342 requests that you comply with applicable labor law, and bargain with Local 342 to conclusion as to the former A&P store your company purchased. If you refuse to bargain to conclusion with Local 342 directly, then the Union will have no choice but to pursue all legal remedies available to fairly represent our members employed by your company. Please contact us at your earliest convenience.

Sincerely,



Lisa O'Leary  
Secretary Treasurer

Cc: Lou Loiacono, UFCW Local 342 Executive Director  
Lou Sollicito, UFCW Local 342 Executive Director

**Lisa O'Leary**

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**From:** Lisa O'Leary  
**Sent:** Monday, November 30, 2015 6:14 PM  
**To:** Sharon Konzelman  
**Cc:** Lou Loiacono; Lou Sollicito  
**Subject:** To Jamie Luna: bargaining demand from UFCW Local 342  
**Attachments:** Scan0181.pdf

Ms. Konzelman: we had earlier asked for the contact information for the Key Food Co-Op members who purchased A&P stores, but have never received it. Thus, I would ask that you forward the letter in the attachment to Mr. Jamie Luna.  
Thank you Lisa O'Leary



Richard Abondolo  
President

Deana Telmany  
Director of Organization

Lisa O'Leary  
Secretary-Treasurer

Tenisha Williamson  
Recording Secretary  
Executive Assistant to the President

Mr. Larry Mandel  
Mr. David Mandel  
Key Food  
183-14 Hillside Avenue  
Jamaica, NY

12/1/2015

RE: Demand to Bargain and conclude collective bargaining agreement

Dear Mr. Mandel and Mr. Mandel:

UFCW Local 342 writes to you as the Key Food owner/employer of the store your company recently purchased from A&P: the former Waldbaum's #655 at Park Plaza in Glen Head, NY.

The Asset Purchase Agreement Key Food signed with the A&P for Key Food purchased stores (Key Food APA), including the store listed above, states in pertinent part:

"Section 6.4

(a) Obligation of Buyer. With respect to Covered Employees who are represented by an Affected Union and are legally authorized to work in the capacity in which they were last employed immediately prior to the Closing ("Affected Union Covered Employees"), at least 10 days prior to the Closing Date, Buyer shall make an offer of employment (emphasis added), which shall be effective as of the Closing Date and contingent upon the Closing, and shall be consistent with the terms and conditions required by the governing Affected Labor Agreements or Modified Labor Agreements (emphasis added), to the extent applicable. With respect to any Affected Union Covered Employee who is on long-term disability leave of absence as of the Closing Date, such offer shall be contingent upon such Affected Union Covered Employee returning to active status within a period of six months following the Closing. Notwithstanding the foregoing, nothing herein shall be construed as to prevent Buyer from terminating the employment of any Covered Employee, consistent with applicable law and the governing Affected Labor Agreements or the Modified Labor Agreements, as applicable, at any time following the Closing Date (emphasis added). Buyer shall have no obligation with respect to any Covered employee, who, as of immediately prior to the Closing, is not represented by an Affected Union."

UFCW Local 342, and the former A&P employees who are represented by Local 342, are third party beneficiaries of this Asset Purchase Agreement between Key Food and the A&P Tea Company. The approval by the bankruptcy court of the purchase of the former A&P stores by Key Food and your 2571 Arthur Kill Road • Staten Island, NY 10309 • 718-982-0342



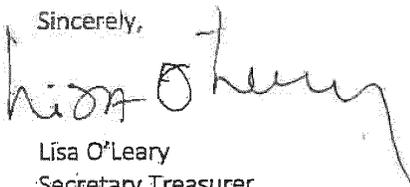
company, was contingent on this language that is within the Asset Purchase Agreement. Obviously the Union does not believe Section 6.4 (d) will support a neutral finding the Affected Unions or Covered Employees are not third party beneficiaries.

UFCW Local 342 intends to enforce the Key Food APA, but in order to save the employer the expense of litigation on this matter, as well as the expense to defend various other labor related actions UFCW Local 342 may have a legal right to pursue, UFCW Local 342 writes to ask the employer to acknowledge this obligation, and requests that you conclude a labor agreement on behalf of the Local 342 members in the store purchased from A&P. We are available to conclude at any time this week with the exception of tomorrow, December 2<sup>nd</sup>, although we could possibly be available after 3 PM if the employer is interested. Please contact us by emailing Janel D'Amassa or calling Ms. D'Amassa at (516) 747-5980 to set up a mutually convenient time to conclude the collective bargaining agreement. You may also contact me of course, if you cannot for some reason get Ms. D'Amassa.

UFCW Local 342 has attempted over several months to conclude an agreement which could have been mutually acceptable to the various Key Food Co-Op members who are now the employers of the employees in your store, and other Key Food stores. As you are aware, the Co-Op through its attorney continues to make demands which violate the Key Food APA and the rights of the former A&P employees who Local 342 represents. While we appreciate that you have kept the lines of communication open between your company and Local 342, we feel the time has come to conclude with the actual employer. Local 342 is under no obligation to bargain with the Key Food Co-Op except for the two stores the Co-Op purchased. Local 342 has tried to cooperate with the request of the Co-Op to bargain one agreement to cover all employers, but the Co-Op has not made it possible to conclude. We must at this point abandon that accommodation.

In closing Local 342 requests that you comply with applicable labor law, and bargain with Local 342 to conclusion as to the former A&P store your company purchased. If you refuse to bargain to conclusion with Local 342 directly, then the Union will have no choice but to pursue all legal remedies available to fairly represent our members employed by your company. Please contact us at your earliest convenience.

Sincerely,



Lisa O'Leary  
Secretary Treasurer

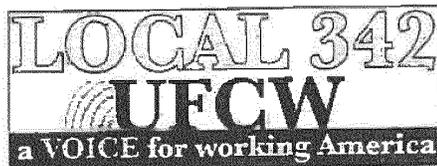
Cc: Lou Loiacono, UFCW Local 342 Executive Director  
Lou Sollitto, UFCW Local 342 Executive Director

**Lisa O'Leary**

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**From:** Lisa O'Leary  
**Sent:** Monday, November 30, 2015 6:19 PM  
**To:** 'larry.mandel@mandell.com'  
**Cc:** Lou Loiacono; Lou Sollicito  
**Subject:** Bargaining Demand from UFCW Local 342,  
**Attachments:** Scan0182.pdf

Dear Mr. Mandel: in the attachment please find a letter to you and your company from UFCW Local 342. Thank you, Lisa O'Leary



Richard Abondolo  
President

Deana Telmany  
Director of Organization

Lisa O'Leary  
Secretary-Treasurer

Tenisha Williamson  
Recording Secretary  
Executive Assistant to the President

Mr. Sam. Abed  
Mr. Randy Abed

12/1/2015

RE: Demand to Bargain and conclude collective bargaining agreement

Dear Mr. Abed and Mr. Abed:

UFCW Local 342 writes to you as the Key Food owner/employers of the stores your company recently purchased from A&P: the former Pathmark #637 located on Albany Avenue in Brooklyn, NY and the former Pathmark # 679 located on Greaves Lane in Staten Island, NY.

The Asset Purchase Agreement Key Food signed with the A&P for Key Food purchased stores (Key Food APA), including the two stores listed above, states in pertinent part:

"Section 6.4

- (a) Obligation of Buyer. With respect to Covered Employees who are represented by an Affected Union and are legally authorized to work in the capacity in which they were last employed immediately prior to the Closing ("Affected Union Covered Employees"), at least 10 days prior to the Closing Date, Buyer shall make an offer of employment (emphasis added), which shall be effective as of the Closing Date and contingent upon the Closing, and shall be consistent with the terms and conditions required by the governing Affected Labor Agreements or Modified Labor Agreements (emphasis added), to the extent applicable. With respect to any Affected Union Covered Employee who is on long-term disability leave of absence as of the Closing Date, such offer shall be contingent upon such Affected Union Covered Employee returning to active status within a period of six months following the Closing. Notwithstanding the foregoing, nothing herein shall be construed as to prevent Buyer from terminating the employment of any Covered Employee, consistent with applicable law and the governing Affected Labor Agreements or the Modified Labor Agreements, as applicable, at any time following the Closing Date (emphasis added). Buyer shall have no obligation with respect to any Covered employee, who, as of immediately prior to the Closing, is not represented by an Affected Union."

UFCW Local 342, and the former A&P employees who are represented by Local 342, are third party beneficiaries of this Asset Purchase Agreement between Key Food and the A&P Tea Company. The approval by the bankruptcy court of the purchase of the former A&P stores by Key Food and your company, was contingent on this language that is within the Asset Purchase Agreement. Obviously the Union does not believe Section 6.4 (d) will support a neutral finding the Affected Unions or Covered Employees are not third party beneficiaries.

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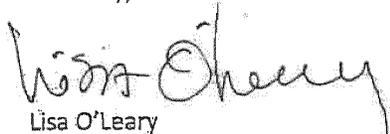


UFCW Local 342 intends to enforce the Key Food APA, but in order to save the employer the expense of litigation on this matter, as well as the expense to defend various other labor related actions UFCW Local 342 may have a legal right to pursue, UFCW Local 342 writes to ask the employer to acknowledge this obligation, and requests that both of you conclude a labor agreement on behalf of the Local 342 members in the two stores purchased from A&P. We are available to conclude at any time this week with the exception of tomorrow, December 2<sup>nd</sup>, although we could possibly be available after 3 PM if the employer is interested. Please contact us by emailing Janel D'Amassa or calling Ms. D'Amassa at (516) 747-5980 to set up a mutually convenient time to conclude the collective bargaining agreement. You may also contact me of course; if you cannot for some reason get Ms. D'Amassa.

UFCW Local 342 has attempted over several months to conclude an agreement which could have been mutually acceptable to the various Key Food Co-Op members who are now the employers of the employees in your stores and other Key Food stores. As you are aware, the Co-Op through its attorney continues to make demands which violate the Key Food APA and the rights of the former A&P employees who Local 342 represents. While we appreciate that you have kept the lines of communication open between your company and Local 342, we feel the time has come to conclude with the actual employer. Local 342 is under no obligation to bargain with the Key Food Co-Op except for the two stores the Co-Op purchased. Local 342 has tried to cooperate with the request of the Co-Op to bargain one agreement to cover all employers, but the Co-Op has not made it possible to conclude. We must at this point abandon that accommodation.

In closing Local 342 requests that you both comply with applicable labor law, and bargain with Local 342 to conclusion as to the former A&P stores your company purchased. If you refuse to bargain to conclusion with Local 342 directly, then the Union will have no choice but to pursue all legal remedies available to fairly represent our members employed by your company. Please contact us at your earliest convenience.

Sincerely,



Lisa O'Leary  
Secretary Treasurer

Cc: Lou Lajocono, UFCW Local 342 Executive Director  
Lou Sollicito, UFCW Local 342 Executive Director

Lisa O'Leary

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**From:** Lisa O'Leary  
**Sent:** Monday, November 30, 2015 6:28 PM  
**To:** 'randyabufawzi@aol.com'; 'supermanhere4u@aol.com'  
**Cc:** Lou Loiacono; Lou Sollicito  
**Subject:** Bargaining Demand from UFCW Local 342  
**Attachments:** Scan0184.pdf

Dear Mr. Abed and Mr. Abed: in the attachment please find a letter from UFCW Local 342. Also, please send me your company name and address and your official contact information. Thank you, Lisa O'Leary



Richard Abondolo  
President

Deana Telmany  
Director of Organization

Lisa O'Leary  
Secretary-Treasurer

Tenisha Williamson  
Recording Secretary  
Executive Assistant to the President

Mr. Joe Verderosa  
Key Food

12/1/2015

RE: Demand to Bargain and conclude collective bargaining agreement

Dear Mr. Verderosa:

UFCW Local 342 writes to you as the Key Food owner/employer of the stores your company recently purchased from A&P: the former Waldbaum's #292 located on Flatbush Avenue in Brooklyn, NY and the former Waldbaum's #295 located on Horace Harding Blvd in Flushing, NY.

The Asset Purchase Agreement Key Food signed with the A&P for Key Food purchased stores (Key Food APA), including the two stores purchased listed above, states in pertinent part:

"Section 6.4

(a) Obligation of Buyer. With respect to Covered Employees who are represented by an Affected Union and are legally authorized to work in the capacity in which they were last employed immediately prior to the Closing ("Affected Union Covered Employees"), at least 10 days prior to the Closing Date, Buyer shall make an offer of employment (emphasis added), which shall be effective as of the Closing Date and contingent upon the Closing, and shall be consistent with the terms and conditions required by the governing Affected Labor Agreements or Modified Labor Agreements (emphasis added), to the extent applicable. With respect to any Affected Union Covered Employee who is on long-term disability leave of absence as of the Closing Date, such offer shall be contingent upon such Affected Union Covered Employee returning to active status within a period of six months following the Closing. Notwithstanding the foregoing, nothing herein shall be construed as to prevent Buyer from terminating the employment of any Covered Employee, consistent with applicable law and the governing Affected Labor Agreements or the Modified Labor Agreements, as applicable, at any time following the Closing Date (emphasis added). Buyer shall have no obligation with respect to any Covered employee, who, as of immediately prior to the Closing, is not represented by an Affected Union."

UFCW Local 342, and the former A&P employees who are represented by Local 342, are third party beneficiaries of this Asset Purchase Agreement between Key Food and the A&P Tea Company. The approval by the bankruptcy court of the purchase of the former A&P stores by Key Food and your company, was contingent on this language that is within the Asset Purchase Agreement. Obviously the

2571 Arthur Kill Road • Staten Island, NY 10309 • 718-982-0342